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ENLISTMENT DISQUALIFICATION
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ARMED FORCES QUALIFICATION TEST
ARMED SERVICES VOCATIONAL APTITUDE BATTERY

Purpose. Military Entrance Aptitude Test's are designed to predict trainability and are used to determine military occupation and classification. In addition, Armed Forces Qualifications Test (AFQT) scores are used (in conjunction with education) to balance or control the required number of accessions. The Armed Services Vocational Aptitude Battery (ASVAB) produces the AFQT and 10 classification scores which are associated with Army Military Occupational Specialties (MOS). These scores are set to alleviate attrition in the training base.

Cause for Disqualification. Current enlistment standards will accept an applicant with an AFQT of 26 or greater. However, depending on the Army enlisted accessions plan the total number of applicants who score between 26 to 30 may be limited.

a. Applicants who are not high school graduates may not enlist if they score below 31 on the AFQT.

b. Applicants may not be accepted by law if they score less than 10 on the AFQT.

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Statute/Policy. Title 10, USC Section 520(a) and 520(b) (1980/1981).

Historical Notes. Until June 1962, a minimum AFQT was used to select applicants for enlistment (1950 to 1962, AFQT varied from 10 to 31). In June 1962 an education differential was introduced. Example: From June 1962 thru October 1965, high school graduates needed an AFQT of 21 (plus three aptitude area scores of 90 or greater) and a non-high school graduate required a 31. A complete history is enclosed (see annex A). It is also noted that no more than 20 percent test score (AFQT) category IV may be enlisted in any year (10 USC, Section 520).

Related waiverable criteria. Some latitude is given for applicants who are within 1 or 2 points of an aptitude area score and no MOS is available and they are otherwise qualified.

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AGE

Purpose. Age limitations are designed to consider the special characteristics and requirements of military life. The intense physical conditioning required to prepare for combat is one of the most obvious reasons a generally youthful military force is required. Minimum age (18) is considered to be an age at which an applicant has matured and has had the opportunity to complete his or her high school education.

Cause for Disqualification. All applicants for initial enlistment must be not less than 18 years of age (17 years of age requires parental consent). An applicant who has reached their 35th birthday is also not qualified to enlist.

Statute/Policy. Title 10 USC, Section 505 (1968) for the Regular Army (RA). For United States Army Reserve (USAR) it is a matter of policy as authorized under Title 10 USC, Section 510. We have made the USAR standards the same as authorized by law for the RA.

Historical Notes. None

Related waiverable criteria. A person who is less than 18 years of age may enlist, provided he or she has the written, verified consent of both parents or custodial guardian.

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CITIZENSHIP

Purpose. To ensure only those applicants who have been lawfully admitted to the US or who have attained US citizenship by birth or naturalization are permitted to enlist. In addition, security clearance requirements for some MOS require US citizenship.

Cause for Disqualification.

a. Applicants who are not United States citizens by birth, naturalization or who have not derived citizenship may not enlist (exception as noted below).

b. Applicants who are aliens must have been lawfully admitted for permanent residence or they are not qualified.

c. Aliens admitted for temporary residence, aliens present in the U.S. on a tourist visa or school visa, those under amnesty program, or aliens granted a temporary status may not enlist.

Statute/Policy. Title 10 USC, Section 3253(c) (1956).

Historical Notes. An executive order was published in 1986 to comply with agreements between the United States and the Freely Associated States of Micronesia. Each of the Island Nations under a Compact of Free Association obtained the authority for their citizen's to enlist in the US Armed Forces.

Related Waiverable criteria. None for basic eligibility. However, all enlistees are advised that if they are not a US citizen within 8 years of federal service, they will be denied reenlistment. The purpose is to ensure that all individuals, who upon reaching the 8th year of service, can qualify for a security clearance which is a requirement/necessity for the higher enlisted grades.

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EDUCATION

Purpose. Education credentials have proven to be the best single predictor of successful completion of first term enlistments. The High School Diploma is a predictor of successful adjustment to military life.

Cause for Disqualification.

a. The number of male enlistees within a fiscal year who are not high school graduates may not exceed 35 percent of all male enlistments.

b. A non-high school graduate may not enlist if he or she scores less than 31 on the Armed Forces Qualification Test.

Statute/Policy.

a. Statute.

- Title 10 USC, Section 3262 (1986).

- Title 10 USC, Section 520 (1982).

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b. Policy. Definition of an education category is defined by DoD memorandum. The following criteria is used by all Services.

(1) High School Diploma Graduate (HSDG).

- Completed a 4 year (day program) traditional high school.

- Completed a classroom adult education program and received a high school diploma.

- Has not completed high school, but has completed not less than 15 semester hours at a recognized college or university.

(2) High School Graduate (HSG).

- Completed a general education development course/test (GED).

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- Completed a correspondence, occupational or home study high school program.

- Completed any other credential programs other than those listed in (1) above.

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EDUCATION (CON'T)

(3) Non-High School Graduate (NHSG).

- Does not have any credential or certificate of completion.

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(4) Depending upon manpower requirements. The CG, USAREC may open or close a particular category of enlistments based upon his mission, but must stay within the Army Accession Plan of 95 percent High School Diploma Graduates (HSDG).

Note. For Army Accession purposes, only HSDG are counted for the percentage of High School Diploma Graduate enlistments.

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TAB D

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DEPENDENTS

Purpose. To ensure that initial term soldiers are not placed (and the Army) in a position where they could be non-deployable or have expenses and responsibilities exceeding their capability. To ensure assignment limitation and dependent care is within the Army's capability without placing a burden or restriction on the Army or the soldier.

Cause for Disqualification.

a. Single parents are not permitted to enlist.

b. Married couples with children may not enlist together.

c. If an applicant is married to another person in the military, and has a dependent under 18, they may not enlist.

d. A married applicant with more than 2 additional dependents is not qualified.

Statute/Policy.

a. Statute. The only statute that has applied in this issue is that we (the Army) may not deny enlistment into the USAR based on dependent status. If the former soldier was a single parent in a Regular Component and the reason for separation was not a result of being a single parent, then the applicant may not be disqualified based on their dependent status.

b. Policy.

(1) A person who has surrendered custody of a child or children may be enlisted, provided it was not their intent to regain custody after enlistment. The Army recognizes that some persons have given custody to other persons, but does not encourage, require, or consider this a qualification. We simply have a rule to recognize this status.

(2) Dependent waivers are considered in cases where a person is married and has more than 2 additional dependents.

Historical Notes. None. It should be noted that the next edition of the enlistment regulation (AR 601-210) will give greater detail to dependent qualifications and allow a review process for all categories of custody, child support, and court orders involving custody and support.

Related Waiverable criteria. The Army will consider a waiver to the enlistment criteria when a person who does not meet the standards can show that the additional dependents will not affect their duty performance or ability to meet their obligations. Prior service applicants have their enlistment grade taken into consideration.

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MORAL/ADMINISTRATIVE

Purpose. To determine the suitability of applicants to serve in the military, as well as, determine their potential for a security clearance for certain MOS. To not allow persons to enter the Army who have shown little respect for law, authority or established social standards. To prevent the introduction into the Army of persons who have a history or current status that is inconsistent with military standards of conduct.

Cause for Disqualification.

- An applicant is not qualified to enlist if he or she:

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- Is intoxicated or under the influence of drugs at the time he or she applies for enlistment.

- Has a history of psychotic disorder or is in a state of insanity.

- *Is a sexual pervert.

- *Is a homosexual.

- Has or had a history of chronic venereal disease.

- Is a security risk.

- Has criminal charges pending.

- Has open traffic tickets.

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- Is on probation or parole, to include unsupervised probation.

- Is enlisting to comply with a court imposed disposition to do so.

- Has been convicted for the sale, trafficking or distribution of a controlled substance.

- Has been or is a chronic cannabis user.

- Has been convicted of 3 or more DUI/DWI within the 5 years proceeding application for enlistment.

- Is confirmed to have tested positive for drugs at time of physical examination for enlistment.

- Has 5 or more convictions for misdemeanor offenses.

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- Has more than 1 felony offense.

* DoD and DA are reviewing policy with an expected disposition on qualification expected on or after 15 July 1993.

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MORAL/ADMINISTRATIVE (CON'T)

Statue/Policy. Title 10 USC, Section 504 (1968) - persons convicted of a felony may not enlist except when the Secretary concerned grants an exception.

Historical Notes. None.

Related Waiverable Criteria. All arrest records are considered at time of enlistment. If the applicant meets established criteria for waiver submission, a commander at the battalion level or higher must approve the enlistment. Felony waivers require general officer approval (CG, USAREC).

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PHYSICAL/MEDICAL STANDARDS

Purpose. To ensure that all applicants are physically capable of enduring the rigors of military training and duty. Further, to ensure that no person could be placed at risk concerning his or her medical condition as a result of military service. 00030 Medical conditions which would require continuous or repetitive hospitalization are listed below, as well as, conditions that would be detrimental to the combat readiness of a soldier. Battlefield availability of routine medications or treatment and impairment due to those conditions are also considerations in the denial of enlistment for the reasons listed below.

Cause for Disqualification. Applicant has/has had the following conditions:

- Only one kidney.
- Cataract surgery.
- Vision not correctable to 20/400 (1 eye). 00030
- Uncorrected Heart Murmur - (Do to valve disease or "hole in the heart).
- Surgery for a ruptured disc.
- High blood pressure (even if controlled by medication).
- Cancer (except skin cancer) (except some types of female cervical cancer).
- Cerebral Palsy.
- Diabetes.
- Drug or alcohol addiction.
- Heart attack.
- Hodkins disease.
- Leukemia. 00030
- Mental retardation.
- Multiple sclerosis.
- Muscular dystrophy.

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PHYSICAL/MEDICAL STANDARDS (CON'T)

- Psoriasis.
- Schizophrenia.
- One lung.
- Noticeable limp.
- Noticeable (unsightly) deformity.
- Paralysis of limb or joint.
- Persistent pulse rate (greater then 100 beats per minute).
- Harelip (not repaired by surgery).
- Hole in the roof at the mouth.
- Tremor or other abnormal, uncontrollable movement.
- Severe stutter.
- Asthma (after age 12).
- Sleepwalking.
- Bed wetting (after age 12).
- Deafness in both ears.
- Blindness in one/both eyes.
- Absence of a hand.
- Absence of a foot.
- Complete loss of thumb.
- Complete loss of finger (except little finger).

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Statue/Policy. DoDD 6130.3 Physical Standards for Enlistment, Appointment, and Induction, March 31, 1986.

TAB G

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PHYSICAL/MEDICAL STANDARDS (CON'T)

Historical Notes. With respect to remedial medical conditions, "New Mental Standards", commonly known as " Project 100,000" program, included a quota for " Medically Remedial" conditions. Between October 1966 and September 1969, 85 percent of the medical Remedial were overweight and underweight cases, and 17 percent required surgery. On 1 December 1971, this project was canceled.

Related Waiver Criteria.

a. Medical conditions which pose little risk of recurrence or further aggravation may be waived by the USAREC Command Surgeon. The criteria varies by disease, injury, or condition.

b. As an example, the following are the number of waivers considered and approved by USAREC in FY 92.

Type of Waiver	Number Considered	Number Approved
Ears (general)	28	10
Ear Drum	17	4
Eyes (general)	78	21
Opthal Moscropic	38	13
Pupils	5	2
Occular Motility	37	11
Lungs and Chest	265	89
Heart	77	37
Vascular System	47	21
Feet	417	205
Eye Refraction	256	110
Psychiatric	227	115

Overall, USAREC considered 3,710 waivers of which 1,338 were approved.

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TAB G

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PRIOR MILITARY SERVICE

Purpose. To ensure that applicants who have had previous military service are allowed reentry only in those cases where such service was honorable, faithful, and without cause for discharge.

Cause for Disqualification. The following separation/discharge is cause for a non-waiverable disqualification. 00030

- Is retired from any Armed Force.
- Is not eligible for a security clearance based on previous military duty.
- Discharged with less than an honorable discharge from another armed force.
- Was barred from reenlistment.
- Has received a bad conduct or dishonorable discharge.
- Was last discharged for drug or alcohol abuse or as a rehabilitation failure.
- Was released from entry on AD (EAD) by reason of physical disability and reverted to inactive status for the purpose of retirement under Sections 1331 through 1337, Title 10, United States Code, instead of discharge with entitlement to receive disability retirement pay.
- Was last discharged with/for: 00030
  - Physically disqualified on orders to AD.
  - Military Personnel Security Program.
  - Physical disability resulting from intentional misconduct or willful neglect, or incurred during period of unauthorized absence. No entitlement to severance pay.
  - Discharged as a result of board action or acceptance of discharge as homosexual or discharge for homosexual tendencies.
  - Desertion. 00030
  - Alien without lawful admittance or legal residence in the United States.

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PRIOR MILITARY SERVICE (CON'T)

- Conscientious objection per AR 600-43.

- Permanently retired by reason of physical disability.

- Officers removed from active or inactive service by reason of having attained maximum age or service -- AR 140-10.

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Statute/Policy. Except for that which governs reenlistment, no specific statue exist's for "reentry" criteria. There is however, statutory authority to ensure "Former Officers" who were serving as an enlisted soldier immediately prior to his/her commissioning, are allowed to reenter in their former grade. Former officers without statuary authority for reentry are by policy denied enlistment.

Historical Notes. On 1 October 1992 (as a result of the lower prior service requirements) all waivers for applicants with prior service who were separated for cause have been suspended. No applicants who received VSI/SSB are being accepted for the RA. The In-Service Retention Control Points are being applied to all applicants applying for reentry.

Related Wavier Criteria. Involuntary separations may be waived in meritorious cases. Examples of routine waiver requests are hardship discharge, entry level, pregnancy as well as erroneous, defective or other similar type discharges.

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TAB H

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MINIMUM APTITUDE STANDARDS FOR ENLISTMENT OF MALES (WITHOUT PRIOR SERVICE) INTO THE ARMY FROM 1946 to 1983

Effective Period	Minimum Aptitude Standards
April 1946 - April 1947	Standard Score of 70 on R-1, R-2 or R-3/R-4.
April 1947 - July 1948	Standard score of 80 on R-1, R-2 or R-3/R-4.
July 1948 - Nov. 1948	Standard score of 80 on R-5, R-6.
Nov. 1948 - Dec. 1948	Standard score of 70 on R-5, R-6.
Jan. 1950 - July 1950	Percentile score of 31 on Armed Force Qualification Test (AFQT) 1, 2, (equivalent to a standard score of 90).
July 1950 - June 1951	Percentile score of 13 on AFQT (equivalent to a standard score of 70).
June 1951 - Dec. 1955	Percentile score of 10 on AFQT (equivalent to a standard score of 65).
Jan. 1956 - June 1957	Percentile score of 10 for 2-year enlistments; AFQT 21 for over 2-year enlistments.
July 1957 - July 1958	Percentile score of 31 on AFQT.
Aug. 1958 - Dec. 1958	Percentile score of 31 on AFQT or AFQT 21 and standard scores of ≥ 90 in two or more aptitude areas of Army Classification Battery (ACB).
Jan. 1959 - May 1962	Percentile score of 31 on AFQT.
June 1962 - Oct. 1965	Education Differential introduced (a) High School Graduate (HSG) with AFQT 31 fully qualified: or HSG with AFQT 21-30 and standard scores of ≥ 90 in three Army Qualification Battery (AQB) aptitude areas; (b) Non-High School Graduate (NHSG) with AFQT 31.
Nov. 1965 - March 1966	(a) HSG with AFQT 16 fully qualified; (b) NHSG with AFQT 31; or NHSG with AFQT 16-30 and General Technical (GT) score ≥ 80 and standard scores of 90 in two additional AQB aptitude areas.
April 1966 - Jan 1967	(a) HSG with AFQT 16 fully qualified; (b) NHSG with AFQT 31; or NHSG with AFQT 16-30 and standard scores of ≥ 90 in two AQB aptitude areas.
Sept. 1967 - Feb. 1968	(a) HSG with AFQT 10; (b) NHSG with AFQT 31; or NHSG with AFQT 16-30 and a standard score of ≥ 90 in one AQB aptitude area; or NHSG with AFQT 10-15 and standard scores of ≥ 90 in two AQB aptitude areas.
March 1968 - June 1971	(a) HSG with AFQT 16 fully qualified; (b) NHSG with AFQT 31; or NHSG with AFQT 16-30 and standard scores of ≥ 90 in two AQB areas.

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COMMISSIONING DISQUALIFICATIONS
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AGE

Purpose

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Age limitations are designed to consider the special characteristics and requirements of military life. The intense physical conditioning required to prepare for combat is one of the most obvious reasons a generally youthful military force is required. The minimum age is eighteen for commissioning. Public law has set age criteria for each grade:

Age Requirement	Rank	
18 thru 28	2Lt	(minimum age for
18 thru 33	1Lt	Army Nurses and
- 39	CPT	Army Med Spec Corps
- 49	MAJ	is 21)

Cause for Disqualification

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Most officer candidates are appointed as a second lieutenant. If all current appointment criteria is not met by age 28, the applicant will not qualify for commissioning. Exceptions are made for AMEDD and Chaplain officers.

Statute/Policy

USC, Title 10, Sec 531
AR 135-100
AR 135-101

Historical Notes

None

Waiverable

The minimum ages are not waiverable, however, the appointing authority or the Secretary of the Army may waiver the maximum age for each grade.

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CITIZENSHIP
AND STATUS WITH OTHER GOVERNMENTS

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Purpose

To ensure only those applicants who have been lawfully admitted to the U.S. or who have attained U.S. citizenship by birth or naturalization are eligible to be commissioned. In addition, all officers are required to hold a secret security clearance which requires citizenship.

Cause for Disqualification

a. Applicants who are not United States citizens by birth, naturalization, or who have not derived citizenship may not be commissioned (exceptions are noted below).

b. Applicants who are aliens must have been lawfully admitted for permanent residence or have applied for permanent residence.

c. Citizens who are employed by a foreign government are ineligible.

d. Citizens residing outside the U.S. are ineligible except where U.S. has troops stationed or if they are employed with the U.S. government.

Statute/Policy

USC, Title 10, Sec 32

Historical Notes None

Waiverable

None for basic branch eligibility. Medical, Dental and allied specialists are exempt.

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EDUCATION

Purpose

To ensure a standard of basic knowledge and skills which enable a soldier to be a leader and role model.

Cause for Disqualification

a. Appointee must be a high school graduate or pass a GED.

b. Appointee must demonstrate understanding and proficiency in the English language. Nonnative speaking applicants must pass the ECLT with a score of 80.

c. Branch specific education criteria must be met for appointment into that branch.

d. If enrolled in ROTC or the Military Academy, the course of study must be completed in order to be commissioned.

e. OCS commissioning requires a two year college degree.

f. AMEDD, Chaplain and JAG branches have specific education, certification, and licensing requirements.

g. Warrant officer applicants must have completed a basic training camp.

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Historical Notes None

Waiverable Criteria

None for the high school or GED requirement. None for branch specific requirements.

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MORAL/CHARACTER

Purpose

To determine the suitability of an individual to be an officer, a leader, and a member of the military with the high standards demanded by the public for uniformed personnel. To disallow appointment of people incapable of being role models and enforcing moral standards with subordinates. To assure the potential of obtaining a secret security clearance.

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Cause for Disqualification

An applicant is not qualified if he or she:

a. Is intoxicated or under the influence of drugs at the time he or she applies for a commissioning program.

b. Has a history of psychotic disorder or is in a state of insanity.

c. Is a sexual pervert.

d. Is a homosexual.

e. Is a security risk.

f. Has criminal charges pending.

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g. Is on probation or parole.

h. Has conviction by any military or civilian court.

i. Is confirmed to have tested positive for drugs at the time of the precommissioning physical exam.

j. Is a Conscientious objector.

k. Members, past or present, of any foreign or domestic organization advocating subversive policy against the Government.

Statute/Policy

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USC, Title 10, Sec 532

Historical Notes None

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Waiverable

Convictions without confinement may be waived by the appointment authority. Other convictions and offenses involving moral turpitude may be waived by the Secretary of the Army.

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OTHER/PRIOR MILITARY SERVICE

Purpose

To avoid conflicting commitments and to keep the misfit person out of repeat military service.

Cause for disqualification

Persons released from any military service for any of the following reasons:

a. Under other than honorable conditions.

b. For unsatisfactory service.

c. Resignation in lieu of court-martial.

d. Two time pass overs for promotion (eligible for a Reserve Commission, not RA).

e. Separated as a security risk.

f. Failure to maintain eligible for rotation (eligible for one year after discharge).

g. Persons denied retired pay or annuities (Title USC Sec 8311).

h. U.S. Military Academy Cadets may not be appointed USAR. They must be appointed RA (Title 10 Sec 532).

Statute/Policy

USC, Title 10, Sec 532

Historical Notes None

Waiverable

Request for waiver will be accepted for exceptional applicants. No waiver is authorized for cadet appointments.

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PHYSICAL/MEDICAL STANDARDS

Purpose

To ensure that all applicants are physically capable of enduring the rigors of military training and duty. Further, to ensure that no person could be placed at risk concerning his or her medical condition as a result of military service. To avoid medical liability of the service for persons chronically or terminally ill.

Cause for Disqualification

* Only one kidney
* Cataract surgery
* Vision not correctable to 20/400 (one eye)
* Uncorrected Heart Murmur - (Due to valve disease or "hole in the heart")
* Surgery for a ruptured disc
* High blood pressure (even if controlled by medication)
* Cancer (except skin cancer) (except some types of female cervix cancer)
* Cerebral Palsy
* Diabetes
* Drug or alcohol addiction
* Heart attack
* Hodgkin disease
* Leukemia
* Mental retardation
* Multiple sclerosis
* Muscular dystrophy
* Psoriasis
* Schizophrenia

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PHYSICAL/MEDICAL STANDARDS (CON'T)

* One lung
* Noticeable limp
* Noticeable (unsightly) deformity
* Paralysis of limb of joint
* Persistent pulse rate (greater than 100 beats per minute)
* Harelip (not repaired by surgery)
* Hole in the roof of the mouth
* Tremor or other abnormal, uncontrollable movement
* Severe stutter
* Asthma (after age 12)
* Sleepwalking
* Bed wetting (after age 12)
* Deafness in one/both ears
* Blindness in one/both eyes
* Absence of a hand
* Absence of a foot
* Complete loss of thumb
* Complete loss of finger (except little finger)

Statue/Policy

DoDD 6130.3, Physical Standards for Enlistment, Appointment, and Induction, March 31, 1986.

Historical Notes

With respect to remedial medical conditions a "New Mental Standards" commonly known as "Project 100,000" program included a

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quota for "Medical Remedial" conditions. Between October 1966 to September 1969, 85 percent of the medical Remedial were overweight and underweight cases. Seventeen percent required surgery. On December 1, 1971, this project was cancelled.

Related Waiver Criteria

Medical conditions which pose little risk of reoccurrence or further aggravation can be waived by the USAREC Command Surgeon. The criteria varies by the effects of the disease, injury, or condition.

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Years Commissioned Service

Purpose

To assure a person is able to earn military retirement or assure the understanding that a minimum of 20 years active service is required.

Cause for Disqualification

A person must be able to serve 20 years of active commissioned service before their 55th birthday or before their mandatory removal date or age.

Statute/Policy

USC, Title 10, Sec 532
AR 135-101

Historical Notes Unknown

Waiverable

AMEDD officers and Chaplains may be appointed after age 33 (or when unable to serve 20-years commissioned service) if they sign a statement stating they "realize a 20 year retirement is not guaranteed."

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ARMED FORCES QUALIFICATION TEST
ARMED SERVICES VOCATIONAL APTITUDE BATTERY

Purpose. Military Aptitude Tests are designed to predict trainability and are used to determine military occupation and classification. In addition, aptitude area scores are used to balance or control reclassification into and out of occupational specialties. The Armed Services Vocational Aptitude Battery (ASVAB) produces the AFQT and 10 classification scores which are associated with Army Military Occupational Specialties (MOS).

Cause for Disqualification. Current standards for initial term soldiers require soldiers to attain three aptitude area scores of 85 or higher in order to reenlist. Initial Term Sergeants and soldiers on their second or subsequent enlistment are exempt from aptitude requirements.

Statute/Policy. Title 10 USC, Section 520(a) and 520(b) (1980/1981).

Historical Notes. Until 1 October 1992, mid-career soldiers were required to meet aptitude test requirement of two aptitude area scores of 85 or higher and GT score of 100 or higher. Prior to 1983, all soldiers were required to meet aptitude area requirement prior to reenlistment.

Related Waiverable Criteria. Initial term reenlistment criteria is non-waivable.

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AGE

Purpose. Age limitations are designed to consider the special characteristics and requirements of military service. Preparation and readiness for combat and the resulting physical requirements require a youthful, deployable force.

Cause for Disqualification. All soldiers desiring reenlistment must be not less than 18 years of age at the time of reenlistment, nor more than 55 years of age the last day of their enlistment. Soldiers who have completed 20 or more years of Federal Service at their 55th birthday may not be reenlisted or extended for any period which is beyond their 55th birthday.

Statute/Policy. Title 10 USC, Section 505 (1968).

Historical Notes. None.

Related Waiverable Criteria. Soldiers who have not completed 20 years active Federal Service at their 55th birthday may extend or reenlist provided they are otherwise qualified or are former commissioned officers, and can complete 20 years active Federal Service by age 60. No other waiver provisions exist for age.

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CITIZENSHIP

Purpose. To ensure only those soldiers who have been lawfully admitted to the U.S. or who have attained U.S. citizenship by birth or naturalization are permitted to reenlist. In addition, security clearance requirements for some MOS require U.S. citizenship.

Cause for Disqualification.

a. Applicants who are not United States citizens by birth, naturalization or who have not derived citizenship may not reenlist.

b. Applicants who are aliens must have been lawfully admitted for permanent residence or they are not qualified.

Statute/Policy. Title 10 USC, Section 3253(c) (1956).

Historical Notes. An executive order was published in 1986 to comply with agreements between the United States and the Freely Associated States of Micronesia. Each of the Island nations under a Compact of Free Association obtained the authority for their citizens to enlist (or reenlist) in the U.S. Armed Forces.

Related Waiverable Criteria. None for basic eligibility. However, all soldiers are advised that if they are not a U.S. citizen within 8 years of federal service, they will be denied reenlistment. The purpose is to ensure that all individuals, who upon reaching the 8th year of service, can qualify for a security clearance which is a requirement/necessity for the higher enlisted grade.

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OFFICER COMMISSIONING PROGRAM
ROTC/USMA/OCS

Purpose

The basic officer commissioning programs for the U.S. Army, Reserve Officer Training Corps (ROTC), United States Military Academy (USMA) and Officer Candidate School (OCS) are designed to prepare the future leadership of the U.S. Army. Each commissioning program has established requirements for eligibility, within the standard Army appointment criteria, and the command authority for each program is authorized to commission graduates upon completion of all requirements.

Cause for Disqualification

All applications must meet appointment, academic and physical standards. Upon disenrollment from each program, an individual does not qualify for commissioning.

Policy

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USC, Title 10, Sec 531, Ch 33

AR 135-100
AR 145-1
AR 601-51

Historical Notes None

Waiverable criteria

Some latitude is given for exceptional applicants who do not meet one of the eligibility criteria. Waivers can be granted but few are considered based on the large numbers of applicants for all commissioning programs (except AMEDD).

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EDUCATION

Purpose. Education credentials have proven to be an indicator of a soldier's potential for assumption of higher level responsibilities. Additionally, many service schools or courses require prerequisite training prior to selection for training or reclassification.

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Cause for Disqualification.

a. All soldiers must possess a high school diploma, GED, associate or higher degree to be eligible for reenlistment. soldiers must also meet specific criteria for any options which may require specialized knowledge prior to training (i.e., algebra, biology).

Policy. Soldiers were not required to have a high school diploma for reenlistment purposes prior to 1988. The only reenlistment criteria before 1988 were for a soldier to be eligible for the particular option being requested.

Related Waiverable Criteria. The education requirement is not waivable.

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HEIGHT/WEIGHT

Purpose. To deny retention to soldiers whose appearance and health are detrimental to their essential function and day-to-day effectiveness and combat readiness. Self-discipline to maintain proper weight distribution and high standards of appearance are essential to every individual in the Army.

Cause for Disqualification. Soldiers who exceed height and weight standards as prescribed in AR 600-9. Soldiers who exceed the maximum weight for their height are administered a body fat test in accordance with prescribed policy. This test is based on the soldier's age, sex and height/weight.

Statue/Policy. Since 1972, soldiers have had to meet height and weight restrictions of varying degrees to qualify for reenlistment. Prior to 1972, weight control was only a factor if medical complications resulted.

Related Waiverable Criteria. Individuals who have a temporary medical condition which precludes loss of weight, and pregnant soldiers may receive waivers to allow extension on active duty until their condition changes. Additionally, soldiers with over 18 years active service may be extended to 20 years for retirement purposes.

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MORAL/ADMINISTRATIVE

Purpose. To deny retention to soldiers who, through demonstrated disregard for established rules show limited potential for future positions of trust or reasonable successful fulfillment of military responsibilities. Soldiers whose behavior is detrimental to upholding standards of military conduct are also subject to scrutiny.

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Cause for Disqualification.

A soldier is not qualified to reenlist if he or she:

- is currently enrolled in the drug or alcohol abuse program.
- fails to successfully complete the drug and alcohol abuse program.
- has a history of psychotic disorders.
- has a history of questionable moral character, sexual perversion, antisocial behavior, or homosexuality.
- is a security risk.
- is an alien who does not attain U.S. citizenship prior to 8 years of service.
- is being processed for separation for misconduct, unsuitability, overweight, fraudulent enlistment.
- is other than an initial term soldier with record of AWOL/lost time or court-martial.
- has been barred from reenlistment by the appropriate commander or HQDA.

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Statue/Policy. Title 10 USC, Section 508 (1968).

- No person whose service during last term of enlistment was not honest and faithful may be reenlisted unless authorized by the Secretary.

Related Waiverable Criteria. The only waivable disqualifications for reenlistment are for 5 or less days AWOL (initial term only). Any soldier who has instances of AWOL/lost time or conviction by court-martial on current enlistment is ineligible for reenlistment unless promoted after the disqualification. In those instances, the promotion will act in lieu of a waiver and the soldier will be allowed to reenlist.

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PHYSICAL/MEDICAL STANDARDS

Purpose. To reenlist, soldiers must meet retention physical standards as prescribed in AR 40-501, or have been found physically qualified to perform in his/her occupational specialty on a worldwide basis under field conditions. In addition to medical standards, soldiers are required to pass their most recent Army Physical Fitness Test within nine months of their desired reenlistment date. 00030

Cause for Disqualification.

Soldiers with conditions which impact upon their ability to perform specified duties in such a manner as to reasonably fulfill the purpose of their employment in the military are subject to referral to a Physical Evaluation Board (PEB). A general list of conditions which require medical board action are as follows:

- Abdominal and gastrointestinal defects/surgery
- Blood and blood-forming tissue diseases
- Dental disease/jaw abnormalities
- Ear disease/hearing dysfunction
- Endocrine and metabolic disorders
- Upper and lower extremities (amputations, etc.) 00030
- Eye disease/visual irregularities
- Genitourinary system/surgery
- Head and neck abnormalities
- Heart and vascular system/cardiovascular
- Tuberculosis/breathing disorders
- Neurological/psychotic/mental disorders
- Skin and cellular disorders
- Spine/rib and sacroiliac joint disorders
- Allergies and systemic diseases
- Malignant and benign neoplasms

Statue/Policy. DODD 6130.3, Physical Standards for Enlistment, Appointment and Induction, March 31, 1986.

Related Waiverable Criteria. Soldiers with permanent physical profiles that prevents administration of a physical fitness test may be granted a waiver by the first General Officer or General Court-Martial Convening Authority. PERSCOM may grant reenlistment waivers to soldiers not meeting medical fitness standards. 00030

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GRADE/YEARS OF SERVICE

Purpose. To ensure that soldiers are competitive with their peers, and as a measure to eliminate marginal or substandard performers who through reduction in rank or as a result of limited demonstrated potential show limited future in positions of increased responsibility. Soldiers are expected to reasonably progress through the ranks during a normal career.

Cause for Disqualification.

Currently, soldiers must not exceed the maximum active federal service authorized for their rank as follows:

PVT - PFC	3 years
CPL - SPC	8 years
SGT	13 years
SGT (Promotable)	15 years (effective 1 Oct 93)
SGT (Promotable)	20 years (currently until 1 Oct 93)
SSG	20 years
SFC	22 years
SFC(P), MSG, 1SG	24 years
MSG(P), 1SG(P), SGM, CSM	30 years

Statute/Policy. Since 1971, soldiers have been subject to grade and service criteria as a condition for reenlistment.

Historical Notes. Prior to 1971, the Army utilized a very liberal policy with respect to pay grade as a reenlistment criteria. In 1971, a policy similar to the current policy was adopted. Although some changes have been implemented since 1971, the basic purpose of the policy has remained: to allow demonstrated performers who progress with their peers to reenlist and to deny reenlistment to marginal performers.

Related Waiverable Criteria. Initial term soldiers, regardless of rank are authorized retention until expiration of their term of service. Prior service soldiers and former officers are exempt from grade and service restrictions for the duration of their first enlistment upon reentry or reversion to enlisted status. Soldiers who are assigned to special bands (West Point Band, the Army Band and the Army Field Band) are allowed retention to the following service points:

SSG(P), SFC	30 years
SFC(P), 1SG, MSG	33 years
1SG/MSG(P), SGM/CSM	35 years

Command Sergeants Major serving in nominative positions where the commander is a LTG or GEN are authorized retention beyond 30 years - not to exceed 35 years. Additionally, waiver provisions exist for soldiers in the rank of PFC, who incur a DA imposed service requirement to extend up to 5 years, 29 days active service.

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BARS TO REENLISTMENT

Purpose. Commanders constantly evaluate soldiers under the "whole person" concept. Soldiers who, when evaluated are not considered suited for future military service or lack potential for advancement are considered for administrative separation or initiation of a bar to reenlistment. Additionally, Department of the Army, in conjunction with centralized promotion/selection boards, routinely selects substandard performers for separation under the Qualitative Management Program (QMP).

Cause for Disqualification.

Factors considered in the "whole person" concept are:

- recent nonjudicial punishment of a serious nature.
- repetitive nonjudicial punishment.
- low aptitude area scores.
- low education achievement combined with a pattern of disciplinary problems.
- low enlisted efficiency reports.
- poor job performance based on failure of performance tests.
- slow progression as a result of misconduct or substandard performance.
- limited potential for future levels of increased responsibility.
- civil convictions or severe indebtedness.
- severe family problems/failure to adequately support dependents.
- substandard hygiene/AWOL/overweight.
- apathetic behavior.
- failure of Physical Fitness Test/Weapons Training.
- immoral acts, nonadaptability.

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Statute/Policy. Title 10 USC, Section 508 (1968) and Section 1176 (1992).

Related Waiverable Criteria. Bars to reenlistment imposed on soldiers by field commanders or HQDA allow the soldier to appeal prior to final disposition. Field bars are rehabilitative in nature. The bar is reviewed after an initial 3-month period. If the commander feels the soldier has made progress the bar may be removed. If, after a second 3-month review, the commander feels the soldier cannot overcome the bar, separation proceedings are initiated. In the case of bars imposed under QMP, there is no rehabilitative period. Upon final appeal processing, soldiers selected for QMP are separated on a predetermined date. Soldiers who are barred with over 18 years active service are authorized extension to 20 years active service for retirement purposes.

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ADMINISTRATIVE AND OTHER SEPARATIONS
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695-0986

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ENTRY LEVEL SEPARATIONS

Purpose. Soldiers in entry level status (i.e., first 6 months of active duty) must meet various standards to qualify for retention.

Cause for Disqualification.

a. Entry level performance and/or conduct. Pertains to soldiers whose performance of duty is unsatisfactory and/or are guilty of minor disciplinary infractions. Examples include inability to adapt to military life; lack of trainability; lack of ability, aptitude, motivation, or self-discipline; and character/behavior characteristics incompatible with continued service.

b. Failure to meet procurement medical fitness standards. Applies to soldiers who were not medically qualified at time of entry on active duty. Medical condition must be identified during first 6 months of active duty.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), DOD Directive 1332.14, AR 635-200.

Historical Notes. Entry level performance and/or conduct separation provision was established in 1982, replacing the Trainee Discharge Program.

Related Waivable Criteria. Entry level performance/conduct separation is not mandatory. If, in commander's judgment, soldier responds to counseling and meets standards, he/she is retained. Regarding procurement medical standards, if, in judgment of commander and medical authority, soldier can complete training and perform duty despite medical condition, soldier may be retained.

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PERFORMANCE

Purpose. Soldiers beyond entry level status must perform their duties in a satisfactory manner to qualify for retention.

Cause for Disqualification. Unsatisfactory performance, as manifested by inability of soldier to perform duties effectively, including lack of potential for advancement or leadership. Separation under this provision includes soldiers with two consecutive failures of Army Physical Fitness Test (APFT) and those eliminated for cause from NCO Education System courses.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), DOD Directive 1332.14, AR 635-200.

Historical Notes. Unsatisfactory performance separation provision was established in 1982, replacing the separation for unsuitability and Expeditious Discharge Program provisions.

Related Waivable Criteria. Separation for unsatisfactory performance is not mandatory, but is intended as a management tool to ensure soldiers meet standards. If, in commander's judgment, soldier responds to counseling and performance of duty is acceptable, retention is authorized. However, initiation of separation proceedings is required for soldiers with two consecutive APFT failures and those eliminated for cause from NCO Education System courses.

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CONDUCT

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Purpose. Soldiers must display acceptable conduct and deportment to qualify for continued service.

Cause for Disqualification. Misconduct, classified into subcategories of minor disciplinary infractions, pattern of misconduct, conviction by civil court, commission of a serious offense, and abuse of illegal drugs. Misconduct can run the gamut from indebtedness to barracks thievery to driving while intoxicated to spouse or child abuse. Administrative separation provisions are not intended to replace disciplinary action to spare a soldier from the harsher penalties which may be imposed under the UCMJ.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), UCMJ, DOD Directive 1332.14, AR 635-200.

Historical Notes. Soldiers have always been subject to involuntary separation for misconduct and indiscipline.

Related Waivable Criteria. Separation for misconduct is not mandatory, but serves the best interests of the Army when the circumstances involve conviction by civil court, serious offense, or drug abuse. Counseling is required, and soldier must be given chance to correct deficiencies, before separation proceedings are initiated for minor disciplinary infractions or pattern of misconduct.

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WEIGHT CONTROL

Purpose. Soldiers must meet body fat composition/weight control standards of AR 600-9 to qualify for continued service.

Cause for Disqualification. Failure to meet body fat standards. Soldiers who do not comply with AR 600-9, and for whom a medical condition does not exist, are subject to separation. Initiation of separation proceedings is required for soldiers who do not make satisfactory progress in the weight control program after 6 months, as well as for those who fail to maintain body fat standards during the 12-month period following completion of the program, unless the commander elects to impose a bar to reenlistment.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), DOD Directive 1332.14, AR 600-9, AR 635-200.

Historical Notes. Weight control failure was initially an unsatisfactory performance separation provision, and made a convenience of the Government separation in 1984. Pursuant to a 1992 DOD policy change, it became a distinct, stand-alone basis for separation.

Related Waivable Criteria. None.

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PERSONALITY DISORDER

Purpose. Soldiers must demonstrate acceptable levels of social behavior and emotional stability to qualify for continued service.

Cause for Disqualification. Soldiers may be separated for personality disorder (not amounting to disability) that interferes with assignment to or performance of duty. Condition must be a deeply-ingrained, maladaptive pattern of behavior of long duration that adversely affects the soldier's ability to perform duty. Diagnosis of personality disorder must be made by a psychiatrist or licensed clinical psychologist.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), DOD Directive 1332.14, AR 635-200.

Historical Notes. Personality disorder--at one time called character and behavior disorder--was originally grounds for separation under the unsuitability provision. the current personality disorder distinct separation provision was adopted in 1982.

Related Waivable Criteria. Separation for personality disorder is not mandatory. If, in the commander's judgment, the soldier responds to counseling and meets standards, retention is permitted.

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ALCOHOL OR OTHER DRUG ABUSE REHABILITATION FAILURE

Purpose. Soldiers entered in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) per AR 600-85 must successfully complete the program to qualify for continued service.

Cause for Disqualification. Soldiers enrolled in the ADAPCP may be separated because of inability or refusal to participate in, cooperate in, or successfully complete the program. Initiation of separation proceedings is required for soldiers designated as alcohol/drug abuse rehabilitation failures.

Statute/Policy. 10 USC 1169 (broad Secretarial separation authority), DOD Directive 1332.14, AR 600-85, AR 635-200.

Historical Notes. Separation on grounds of alcohol/drug rehabilitation failure has been Army policy since 1977.

Related Waivable Criteria. None.

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DEFECTIVE ENLISTMENT

Purpose. Soldiers whose enlistment or reenlistment contracts are defective are liable to denial of continued service.

Cause for Disqualification. Soldiers may be separated on grounds of erroneous or fraudulent enlistment or reenlistment. Fraud is a court-marital offense.

Statute/Policy. 10 USC 1169 (broad Secretarial authority for separation); 10 USC 883 and Article 83, UCMJ (fraudulent enlistment); DOD Directive 1332.14, AR 635-200.

Historical Notes. Separation on grounds of erroneous or fraudulent enlistment/reenlistment is long-standing policy.

Related Waivable Criteria. Field separation authorities are authorized to grant waivers, in clearly meritorious cases, to permit retention of highly deserving soldiers. Waiver approval authorities are the Special Court-Martial Convening Authority for erroneous enlistment/reenlistment, and the General Court-Martial Convening Authority for fraudulent entry.

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PUNITIVE DISCHARGE

Purpose. Soldiers must not violate the Uniform Code of Military Justice (UCMJ) to qualify for retention.

Cause for Disqualification. A soldier may receive a dishonorable discharge pursuant to an approved sentence of general court-martial, or a bad conduct discharge pursuant to the approved sentence of a general or special court-martial.

Statute/Policy. 10 USC 877-934, UCMJ Articles 77-134.

Historical Notes. Majority of current UCMJ punitive articles have been in force since 1956.

Related Waivable Criteria. None, however appellate review must be completed and the affirmed sentence ordered duly executed.

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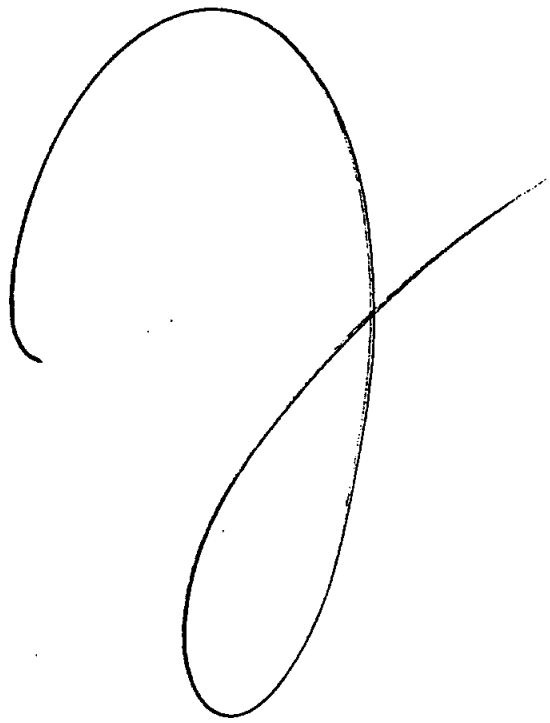

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Directives Restricting Assignment Opportunities

Mental Ability

- Assignment opportunities
  - -- ASVAB test scores are used as selection criteria in the assignment of enlisted personnel to educational programs (ETM chapter 7).
  - -- Academic Profile Codes (APCs) are used as selection criteria in the assignment of officers to graduate education (OPNAVINST 1520.23B).

Physical Ability (i.e. strength, endurance, swimming)

- Assignment opportunities
  - -- Failure to maintain established physical standards will terminate flight status and result in reassignment (MILPERSMAN 3410300).

Health (i.e. physical, mental)

- Assignment opportunities
  - -- HIV and permanent LIMDU members will be homeloaded indefinitely once they have PCSed to an area that provides adequate medical care (BUPERS Policy Decision # 05-20-92).
  - -- Members with physical disabilities are limited in assignment opportunities (MILPERSMAN).
  - -- Personnel with two or more hospitalizations for psychiatric disorders will not be considered for overseas assignment (OTM 3.011 and ETM 4.012).
  - -- Personnel with two or more hospitalizations for psychiatric disorders will not be considered for recruiting duty (ETM 11.032).
  - -- Enlisted personnel suffering from an active venereal disease or any other disease that require periodic treatment shall not be assigned to a ship or station where there is no medical officer attached (MILPERSMAN 1830180 and NAVMED P-117).
  - -- Certain types of duty assignments (aviation duty, submarine duty, nuclear power duty etc.) require special physical qualifications (MILPERSMAN 1830180 and NAVMED P-117).

-- Individuals with excessive or tasteless tatoos are not eligible for recruiting duty (ETM 11.032).

-- Individuals who have obvious skin blemishes or tatoos that when viewed would bring discredit upon the United States Navy or who have speech impediments or accents are ineligible for duty aboard USS CONSTITUTION, the Nautilus Memorial Museum, and the Arizona Memorial (ETM 9.24, 9.36, 9.55).

-- Members with speech impediments are ineligible for instructor duty (ETM 10.01).

Gender

- Assignment opportunities

  -- All female members receive a pregnancy test prior to reporting to sea duty in CONUS or overseas (types 2 and 4). Females testing positive prior to reporting will be reassigned (MILPERSMAN 1830200 and NAVMED P-117).

  -- Woman are prohibited from permanent assignment for duty in combatant ships (Title 10 USC section 6015).

Job Skills/Experience (i.e. education, civilian/military experience)

- Assignment opportunities

  -- Officers who have been selected for postgraduate education and who fail of selection to the next higher rank prior to transfer to the college or university will be reassigned (MILPERSMAN).

Behavior

- Assignment opportunities

  -- Individuals with a history of unsatisfactory or marginal performance in the last two years may be considered unsuitable for overseas assignment (OTM 3.011 and ETM 4.012).

  -- All members involved in substantiated cases involving child/sexual molestation shall be permanently disqualified for overseas duty (ETM 4.012).

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Nationality

- Assignment Opportunities
  - -- Foreign nationals are not assigned to remote land-based sea duty and preferred overseas shore duty (types 3 and 6 less Hawaii, Alaska and Puerto Rico) on their first tour of duty (ETM 4.0).
  - -- US citizenship is required for assignment to Stinger detachments (ETM 9.49).
  - -- US citizenship is required for all immediate family members including in-laws for assignment to the White House Communication Agency (ETM 9.51).
- Security clearance
  - -- Assignment of an SCI cleared individual with a foreign national spouse must transfer from the spouse's country upon completion of a normal tour and cannot return until the spouse accepts US citizenship (OTM 16.39).
  - -- Non-immigrant aliens are restricted from assignment to certain billets and ratings due to lack of ability to gain appropriate security clearances (BUPERSINST 1430.16).

Physiological Standards (i.e. height and weight)

- Career progression
  - -- Members diagnosed as obese and/or fail the PRT three consecutive times, shall not normally be issued PCS orders or Temporary Duty Under Instruction (TEMDUINS) orders. They are not suitable for overseas assignment (OTM 3.011 and ETM 4.012).

Age

- Assignment opportunities
  - N/A

Marital Status

- Assignment opportunities
  - -- Military couples will not be issued orders to the same activity unless they will be assigned to different reporting seniors (OTM 16.38 and ETM 3.21).

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-- Military couples are restricted from serving together on Diego Garcia (OTM 3.21 and ETM 4.012).

-- Military couples will not be involuntarily assigned to sea duty in CONUS or overseas (types 2 and 4) simultaneously (MILPERSMAN 1820340).

-- Every effort will be made to collocate military married couples (ETM 9.24, OTM 16.37 and MILPERSMAN 1820340).

-- Non-Petty Officers assigned for duty aboard USS CONSTITUTION and the Arizona Memorial will be unmarried (ETM 9.24 and 9.55).

Presence of Dependents

- Assignment opportunities

-- Enlisted personnel in paygrades E-3 and below with dependents will not be assigned to duty in an overseas area, including Hawaii, on afloat units or shore-based activities (ETM 4.0).

-- Individuals with more than three dependents will not normally be assigned to accompanied overseas duty (OTM 3.084 and ETM 4.033).

-- Service members with dependents will be afforded the opportunity to adjust PRD's to align with dependents school breaks (ETM 3.030).

-- The PRD of pregnant service members will be adjusted to ensure a member does not transfer prior to or after 6 weeks of anticipated delivery date (ETM 3.065).

Health of Dependents

- Assignment opportunities

-- Overseas service may be denied if members dependents do not pass overseas screening (DODINST 1315.7 of 9 Jan 87 and OPNAVINST 1300.14).

-- No personnel with a known EFM (handicapped or exceptional dependents who require special medical care and/or special education) will be ordered overseas without CHNAVPERS approval (ETM 4.012).

-- Members/dependents with documented drug abuse or drug related offenses are unsuitable for overseas duty (OTM 3.011 and ETM 4.012).

Sexual Orientation

- Assignment opportunities

  -- N/A

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U.S. AIR FORCE

UNIFORM CLOTHING WHICH CAN'T BE WORN BUT IS NOT INCLUDED IN THE UCMJ

Description	Men	Women
Individual uniform component items except as specified/certified, i.e., service dress coat, trousers, skirt, slacks, sweater, headgear, outerwear, insignia, accouterments (belt buckle, cuff links, aiguilettes)	X	X
Gloves except for gray or black	X	
Gloves except for gray, white or black		X
Ear muffs except for dark blue, gray or black	X	X
Neck scarf except for white or gray	X	X
Hosiery except for dark blue, neutral, dark brown, black or off black. No pattern on acceptable colors		X
Hosiery	X	
Civilian outergarments	X	X
No other color than white cardigan sweater worn only with maternity uniform, food service and hospital uniform	X	X
Maternity uniform	X	
Undergarments in which color shows through blouse and doesn't complement the person's skin tone		X
Underwear, crew neck, if exposed at collar, all colors except for white when worn with the service, service dress, and white utility uniform	X	X
Underwear with BDU other than green brown, black. Includes dickies, turtleneck T-shirt, thermal undershirt, turtleneck shirt, T-shirt	X	X
Socks other than black, if visible	X	X
Purse	X	
Purse, certain styles and sizes		X
Shoes and boots, certain styles	X	X
Umbrella except for black or dark blue	X	X
Suspenders except for mess dress in white, blue or black color	X	

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Suspenders		X
Ornamentation:		
Tattoos		X
Hair	X	
Hair except as specified		X
Necklace, if visible	X	X
Nose Rings	X	X
Earrings	X	
Earrings--more than 1 per earlobe, must be worn as a pair, can only wear small conservative gold, white pearl, silver, diamond, pierced or clip, and don't extend below earlobe		X
Sunglasses, nonconservative and mirrored lens	X	X
Rings on fingers, no more than 3 can be worn	X	X
Bracelets, nonconservative, wider than 1 inch, no more than 2 can be worn	X	X
Ankle bracelets		X
Glasses with chains worn around the neck		X
Eye glass frames or lenses	X	X
Cardigan sweater other than white color and then only with maternity uniform, food service and hospital uniform		X
Maternity uniform	X	
Parts of pens and pencils when carried in the compartment of the left pocket of the blue shirt	X	
Wallets, pencils and pens (except BDU shirt), checkbooks, watch chains, fobs, pins, jewelry, handkerchief, combs, cigars, cigarettes, pipes, sunglasses, and so forth, are not to be exposed	X	X
Gym bag worn over the shoulder	X	X
Headphones except when authorized in performance of duty	X	X

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Religious apparel other than dark blue or black yarmulke, 6 inches in diameter	X	
Personal Grooming Standards		
Beards, unless waiver for health	X	X
Dyed hair color that don't complement the person's skin tone	X	X
Wigs except for medical reasons, can't exceed limits of natural hair	X	
Wigs can't be worn by person's engaged in aircraft flightline or inflight operations	X	X
Wigs which exceed limits of natural hair		X
Excessive amount of grooming aids	X	X
Hair touching eyebrows, protruding below front band of properly worn headgear except for women's beret and flight cap	X	X
Hair style--worn in extreme or fad style or exceed length or bulk standard or violates safety requirements	X	X
Hairnets except when worn for safety reasons. Must be conservative, solid color similar to person's hair color	X	X
Mustaches		X
Mustaches unless below lip line of upper lip or extended sideways beyond vertical line drawn upward from corner of mouth. No handlebar mustaches.	X	
Sideburns		X
Sideburns unless straight and of even width, not flared, not extended below lowest part of the exterior ear opening	X	
Nail polish except for uniform, conservative in color and in good taste. No ornamentation		X
Nail polish	X	
Medals and ribbons worn on outergarments	X	X
Foreign awards and decorations unless approved in AFR 900-48	X	X

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ANG can't wear state decorations when on Federal active duty	X	X
Ribbons on mess dress or formal dress	X	X
Men can't wear more than 5 badges and women 3 badges on service dress and ceremonial uniforms, no more than 5 on BDUs	X	X
Badges of US fraternal and international government organizations except at their meetings	X	X
Alterations which change the intended appearance of the garment as designed	X	X
Uniform condition which is frayed, worn out, faded, patched, etc. Garments not must kept zipped, snapped or buttoned	X	X

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DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330-5000

AF REGULATION 33-3

1 October 1987

WORKING DRAFT

Military Personnel Procurement

ENLISTMENT IN THE UNITED STATES AIR FORCE

This regulation prescribes the eligibility requirements and administrative procedures for enlistment in the Regular Air Force and the United States Air Force Reserve (Delayed Enlistment Program, Air Force Academy Preparatory School, and Air Force Reserve Officers' Training Corps). It does not apply to the Air National Guard units. It applies to all enlistment activities. It implements DOD Instructions 1304.22, 20 April 1983, 1304.2, 14 March 1975, DOD Directives 1304.23, 15 February 1984, 1304.21, 21 April 1982, 1145.1, 22 January 1986, 1304.11, 5 December 1966, 1205.14, 24 May 1974, 1145.2, 25 February 1986, 1304.25, 17 March 1986, and 10 U.S.C. 511(a).

This regulation requires the collection and maintenance of information protected by the Privacy Act of 1974. Authority to collect and maintain the records prescribed in this regulation are 10 U.S.C. 504, 505, 508, and 510, and EO 9397. Privacy Act Statements required by AFR 12-35 are on each form or are on a separate statement to accompany the form. Systems of records notice F035 AF MP H, Air Force Enlistment/ Commissioning Records System, applies.

Proposed publications that affect any military personnel function are processed as required by AFR 5-13.

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Distribution: F

Withdrawn Draft

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TABLE 1-1

CONDITIONS THAT MAKE APPLICANTS INELIGIBLE TO ENLIST

STATUS	Applicants are ineligible when one of the following conditions exists
1	Intoxicated or under the influence of alcohol or drugs at any time during enlistment processing.
*2	Has questionable moral character; history of antisocial behavior (including history of psychosis), sexual perversion, homosexual or bisexual activity, frequent difficulties with law enforcement agencies.
3	Has moral disqualification listed in table 1-3, received a presidential pardon for draft evasion, or has been involved with narcotics, marijuana, or illegal drugs (see note 1).
4	Enlistment is not clearly consistent with interest of national security (AFR 205-32).
5	Conscientious objector or person with personal beliefs, convictions, or religious practices which preclude unrestricted duties or assignments.
6	Under restraint imposed by civil or criminal court or subject of a subpoena ordering attendance on some specified future date (includes those relieved from restraint on the condition of enlistment). (See paragraph 1-1w for definition of restraint.)
7	Civil or criminal charges filed or pending (includes those released from charges on condition of enlistment) (see note 2).
8	Receiving disability compensation from any federal or other agency.
*9	Applicant has disqualifying physical impairment, disease, medical condition, or alcoholism (see note 1).
10	On AD or ADT with any branch or component of the US Armed Forces (see note 3).
11	Has any dependents under age 18 or incapable of self-care and is single, married to a military member, or has a common-law spouse (see note 1).
12	Has more than one dependent under age 18 or incapable of self-care and not entitled to enlist in pay grade E-4 or higher (see note 1).
13	Separated from active duty with the Regular Air Force for a period of less than 3 months.
14	Separated with a reenlistment eligibility (RE) code that bars reenlistment (see notes 1 and 4).
15	Separated as a result of having been nonselected for reenlistment under the Selective Reenlistment Program (SRP) or having NCO status vacated or denied.
16	Separated while undergoing a period of observation on the Control Roster, with an active Unfavorable Information File (UIF), or while serving punishment (suspended or unsuspended) pursuant to Article 15, Uniform Code of Military Justice (UCMJ).
17	Separated with other than an Honorable Discharge Certificate (General or Bad Conduct Discharge), or with a DD Form 214 or NGB Form 22 that reflects "other than honorable" (see note 4).
18	Separated for failure to meet acceptable standards of conduct or duty performance, unsuitability, misconduct, personal abuse of drugs, for the good of the service, national security, or conviction by court-martial (see note 4).
19	Separated because of physical disability or medical reasons (see note 1).
20	Separated in pay grade E-3 or lower after completing 24 months' active duty service (see note 1).
21	Discharged before completing 24 months' active duty service (see note 1).
22	Separated and charged with 5 or more days' time lost (see note 1).
*23	Separated with 12 or more years' total active federal military service (TAFMS) (see note 1).
24	Retired, eligible for retired pay under any provision of law, or retired and serving on extended active duty (EAD) in a Reserve status.
*25	Separated from a Regular component of the armed forces 4 or more years' (after adjustment of date of separation by years of satisfactory service with the USAFR or ANG).
26	Separated from active duty in pay grade E-4 or lower after 6 years' or more TAFMS (see note 1).

(Table continued on next page.)

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TABLE 1-1 CONTINUED

STATUS	Applicants are ineligible when one of the following conditions exists
27	Separated with 4 years' or more TAFMS in another branch of the Armed Forces (see note 5).
28	Has ever held a commission as an officer or warrant officer in any Regular or Reserve component except as provided in paragraph 8-3 (see note 3).
29	Separated with 24 or more months active duty in a Regular component of the armed forces and is not a US citizen or US national.
30	Has previously served in any other country's Armed Forces (see note 1).

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NOTES:

1. For exceptions, see paragraph 1-8.
2. In civil suit cases only, an applicant may enlist provided a statement of nonappearance is obtained from legal or court officials.
3. Warrant officers and enlisted personnel from other branches of the Armed Forces are eligible to apply for an Air Force commissioning or appointment program; however, failure to complete the program renders the enlistee ineligible to remain in or revert to enlisted status in the Air Force.
4. Applicants with a General Discharge and whose RE code has been upgraded to "1" are exceptions to this rule and may be considered for enlistment if not otherwise ineligible by this table. Before processing applicants claiming this status, USAFRS/RSOPA will verify eligibility with HQ AFMPC/DPMAPA.
5. Exception is granted for applicants who have served satisfactorily with the ANG or USAFR for 2 preceding continuous years and possess a critical AFSC and enlist for directed duty assignment. See paragraph 1-1x for definition of "satisfactory service."

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★TABLE 1-2

AGE REQUIREMENT FOR ENLISTMENT (USAF)

RULE	A If the applicant is	B then the minimum age is attainment of the	C and the maximum age is less than
1	NPS	18th birthday (see note 1).	00030
2	PS	none	the 28th birthday; after adjustment (see note 2).

NOTES:

1. Minimum age for enlistment is 17 if applicant is a high school diploma graduate or enrolled high school senior when parental or guardian consent for enlistment of a minor in the US Armed Forces has been properly executed by parents or legal guardians on DD Form 1966. Parental consent is not required for a married 17-year-old applicant. Emancipated 17-year-old applicants may enlist with a parental consent waiver from the USAFRSQ commander.
2. Age, when reduced by TAFMS in a Regular component, must equal less than 28 years.EXCEPTION: When PS applicant has previous satisfactory service (as verified on AF Form 526) with the ANG or USAFR, age, when reduced from Regular component TAFMS must first equal less than 35 years, and when further reduced by years of satisfactory ANG or USAFR service, must equal less than 28 years. (Title 10, USC, Section 505 prohibits enlistment of anyone 35 or over.) See paragraph 1-1x for definition of "satisfactory service."

★TABLE 1-3

PROCESSING APPLICANTS WITH MORAL DISQUALIFICATIONS

RULE	A If the applicant has a conviction or an adverse adjudication for	B and the applicant wants to enlist in the RegAF and the number of offenses is	C then approval is delegated to 00030
1	minor traffic (figure 1-1, para A) (see notes 1, 2, 3 and 4)	four or more (or three minor traffic and one serious traffic or minor nontraffic) in any 365 day period in the past three years	USAFRS
2	serious traffic and minor nontraffic (figure 1-1, para B) (see notes 1, 2, 4 and 5)	two in past four years	USAFRS
3	serious traffic and minor nontraffic (figure 1-1, para B) (see notes 1, 2, 4 and 5)	three in past six years	USAFRS
4	serious traffic and minor nontraffic (figure 1-1, para B) (see notes 1, 2, 4 and 5)	four or more in a lifetime	USAFRS
5	serious offense (figure 1-1, para C) (see notes 1, 2 and 6)	one or more in a lifetime	USAFRS
6	major offenses (figure 1-1, para D) (see notes 1 and 2)	one or more in a lifetime	USAFRS

NOTES:

1. A 3-month waiting period is required following termination of parole, probation, suspended sentence, or any period of confinement for those convicted. Exception:Suspended sentences for minor traffic offenses. 00030
2. Disapproval authority is delegated to the USAF recruiting squadron commander for Regular Air Force applicants. Refer questionable cases to next higher headquarters within Recruiting Service. Figure 1-1 provides a uniform guidelist of typical offenses, minor traffic offenses, minor nontraffic offenses, serious traffic offenses, serious offenses, and major offenses.
3. An exception to the waiver requirement for rule 1 is granted to those applicants who are otherwise qualified and meet all the following conditions:

a. Three or more years have passed since the latest conviction or adverse adjudication for minor traffic violation that occurred during the 1-year period, and the applicant has no previous or subsequent conviction or adverse adjudication for any offenses in rule

2.
b. The entire 3-year (or more) period was free of lawfully imposed probation, restriction, or restraint.
4. For Regular Air Force applicants, USAFRS may delegate waiver authority to USAFRSQ/CC.
5. An exception to the waiver requirement for rule 2 is granted to those applicants who have favorable moral eligibility determination from the recruiting squadron commander and are otherwise qualified and meet all the following conditions:
a. All minor nontraffic convictions or adverse adjudications occurred prior to applicant's eighteenth birthday.
b. Five or more years have passed since the latest conviction or adverse adjudication was rendered.
c. The entire 5-year (or more) period was free of lawfully imposed probation, restriction, or restraint.
6. For Regular Air Force applicants, USAFRS may delegate waiver authority to USAFRG/CC or CD.

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TABLE 1-4

MINIMUM APTITUDE QUALIFICATIONS FOR NPS AND PS APPLICANTS

RULE	A If the enlistment category is a	B then the minimum AFQT score required is	C and the minimum aptitude score requires is
1	high school diploma graduate or higher (see notes 1, 2, and 3)	21	general score 30 and MAGE composite 133 (add mechanical, administrative, general, and electronic scores for MAGE composite).
2	alternative credential holder (see notes 1, 2, and 3)	50	
3	nonhigh school graduate (see notes 2 and 3)	65	

NOTES:
1. See table 5-1 for documents required to verify educational level.
2. PS or NPS applicants enlisting for retraining must be qualified on a current production ASVAB.
3. PS individuals without high school diploma (or higher) are ineligible for enlistment unless enlisting for directed duty assignment.

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★TABLE 1-5

DEPENDENCY ELIGIBILITY DETERMINATION

RULE	A If the applicant is	B and has	C then the applicant's
1	unmarried, separated, has military spouse, or common-law spouse	legal or physical custody of any dependent incapable of self care (see note 1)	ineligible and waiver is not authorized.
2		neither legal nor physical custody of any dependent incapable of self care (see note 1)	ineligible without USAFRS review (see note 2)
3	married to a civilian spouse and enlisting in paygrade E-4 or higher	two or more dependents incapable of self care (see note 1)	eligible provided spouse is capable of self care.
4	married to a civilian spouse and enlisting in paygrade E-3 or lower		ineligible without an approved USAFRS waiver (see note 3).

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NOTES:
1. Refer to paragraph 1-1k for definition of dependent. Any pending changes in applicant's dependency status such as a living fetus, divorce, separation, etc, just be taken into consideration at time of processing for enlistment.
2. Refer to paragraph 1-8e for USAFRS dependency eligibility review. USAFRS may delegate this review to USAFRSQ/CC.
3. Refer to paragraph 1-8e (2) for waiver submission criteria. USAFRS may delegate waiver approval to USAFRG/CC or CD.

WITHDRAWN DRAFT

DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330-5000

18 December 1992

Officer Personnel

APPOINTMENT IN COMMISSIONED GRADES AND DESIGNATION AND ASSIGNMENT IN PROFESSIONAL CATEGORIES—RESERVE OF THE AIR FORCE AND UNITED STATES AIR FORCE (TEMPORARY)

00030

★This regulation states the policies and procedures for the direct appointment of persons as commissioned officers and the designation and assignment in professional categories, Reserve of the Air Force (ResAF) and as commissioned officers, United States Air Force (Temporary). It explains the method of application, eligibility requirements, and where to apply for appointment, designation, and assignment. It implements Department of Defense Directives 1205.14, 24 May 1974, 1215.8, 17 April 1985, 1304.19, 1 June 1984, 1312.2, 4 October 1989, 1312.3, 22 October 1985, 1320.7, 27 July 1981, with change 1, 6025.6, 18 July 1985, with change 1, and DOD Instructions 1115.5, 8 May 1967, with changes 1 and 2, and 1205.2, 24 October 1956. This regulation applies to units and members of the USAF Reserve (USAFR). It applies to the Air National Guard (ANG) when published in the NGR (AF) 0-2.

The Privacy Act of 1974 affects this regulation. The authority to collect and maintain the data prescribed in this regulation are Title 10, United States Code (U.S.C.), Sections 591, 2104, 2107, 8067, and 9411. Each form subject to the provisions of AFR 12-35 that this regulation requires contains a Privacy Act Statement, either incorporated in the body of the document or in a separate statement accompanying each document. System of records notice F035 AF MP R, Application for Appointment and Extended Active Duty Files, applies.

Proposed supplements that affect any military personnel function are processed as AFR 5-13 requires. Attachment 1 contains a list of abbreviations and acronyms used in this regulation.

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00130

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Approved by: HQ AFMPC/DPMA (Col Leo M. Cutcliff, Jr.)
Editor: Geri Martin
Distribution: F

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TABLE 2-2

CONDITIONS THAT MAKE APPLICANTS INELIGIBLE FOR APPOINTMENT

ITEM	A Applicants are ineligible for appointment when one of the following conditions exists (see note 1)
1	Questionable moral character, history of antisocial behavior, alcoholism, sexual perversion (includes homosexuality and bisexuality), frequent difficulties with law enforcement agencies, history of psychotic disorders.
2	Moral disqualification (convicted or adversely adjudicated of offenses as indicated in figure 2-1) or has been involved with narcotics, dangerous drugs or marijuana.
3	Appointment is not clearly consistent with interest of national security under AFR 205-32 as determined by the appointing authority after completion of the minimum investigation (waiver will not be considered).
4	Conscientious objector or person with personal beliefs or convictions that preclude unrestricted assignments.
5	On AD in another uniformed service (see note 2).
6	Member of the Reserve force of another uniformed service (see note 3).
7	Persons enrolled in training or instruction leading to a commission in any of the uniformed services, including the Merchant Marine.
8	Disenrolled from an officer training program as defined in AFR 53-5.
9	Previously applied for appointment but was not selected, or, was selected for appointment but declined acceptance (see note 4).
10	Not available for AD 30 calendar days from the date of acceptance of appointment when appointment depends on immediate entry on AD.
11	Not available for AD 30 calendar days from the date of the order calling the person to active duty in time of war or national emergency declared by the President or the Congress, or, when otherwise authorized by law (see note 5).
12	Cannot qualify for retirement under Title 10, U.S.C., Section 8911 (active duty retirement) or Section 1331 (Reserve retirement), before or on removal from an active status, unless the person acknowledges in writing, that retention for retirement is not possible (see note 6).
13	On the retired roll of any of the uniformed services.
14	Discharged with other than an honorable discharge certificate or with other than ?Honorable? on DD Form 214, Certificate of Release or Discharge From Active duty, or DD Form 215, Correction to DD Form 214.
15	Released from AD or discharged for failure to meet acceptable standards of conduct or duty performance, unsuitability, misconduct, personal abuse of drugs, for the good of the service, for security reasons or court-martial convictions.
16	Discharged for failure to meet minimum Reserve participation requirements.
17	Discharged for physical disability.
18	Discharged for hardship reasons.
19	Discharged for failure to respond to official correspondence.
20	Eliminated from the Inactive Status List Reserve Section (ISLRS).
21	Dropped from the rolls of any uniformed service because of confinement to a state or federal penitentiary or correctional institution, or due to absence without authority for 3 months.
★22	Received severance pay, or separation pay, or readjustment pay, when released from AD or discharged from any uniformed service (see note 9).
23	Resigned in lieu of court-martial, reclassification, elimination, or any form of corrective or disciplinary action.
24	Nonselection for promotion for the second time (regardless of selection for continuation on active duty); or after initial continuation on active duty, not subsequently continued due to nonselection or declination (see note 7).
25	Deferred as defined in Title 10, U.S.C., Section 8368, or whose name has been removed from the recommended list under Title 10 U.S.C., Section 8377.
★26	Regular officer resigned with more than 18 years of active duty (see note 9).
27	Retirement eligible Regular officer.

TABLE 2-2. CONTINUED

ITEM	A
	Applicants are ineligible for appointment when one of the following conditions exists (see note 1).
28	Retired as a Regular officer.
29	Not in the best interest of the Air Force to grant a commission.
30	Has any dependents under age 18 years or incapable of self-care and is single, married to a military member, or has a common-law spouse (see note 8).
*31	Has been twice nonselected for appointment to the MSC, if application is for appointment to perform on EAD.

NOTES:

1. Refer to paragraph 2-3 for waiver policy.
2. A commissioned officer may establish eligibility by obtaining a conditional release from the parent uniformed service according to AFR 35-39.
3. A member may establish eligibility by obtaining a conditional release from the parent service according to AFR 35-39, unless the member is on AD or under orders to report for AD.
4. An individual is not eligible to reapply for 12 months from the date notified of nonselection or the date the individual declined the appointment. This restriction does not apply to persons applying for appointment or reappointment for judge advocate duties or designation as a judge advocate. This restriction also does not apply to persons who wish to affiliate with the Air Force Reserve after declining to execute the oath of office because they did not want to accept AD assignments offered them.
5. This applies if appointment is based on ANG or USAFR requirements but not if appointment is for immediate entry on AD with the USAF.
6. Each commissioned officer whose Reserve grade is below major general (except an officer covered by Title 10, U.S.C., Section 8845) has to be removed from an active status on the last day of the month the officer becomes age 60 years (Title 10, U.S.C., Section 8843). A Reserve officer has to be removed from an active status 30 days after the officer completes 28 years of service computed under Title 10, U.S.C., Section 8853 if the officer is a first lieutenant, captain, or major, or if the officer is a lieutenant colonel and is not on the recommended list for promotion to colonel (Title 10, U.S.C., Section 8848). The SAF, with the officer's consent, may retain in an active status any Reserve officer of the Air Force who is designated as a MC, DC, NC, or BSC officer, until the officer becomes age 68 years, or a chaplain until the officer becomes age 60 years (Title 10, U.S.C., Section 8855). An officer may be retained in an active status under Section 8855 only to fill a mission-based requirement. The SAF may retain an officer (other than an officer who is designated as a chaplain) in an active status under Section 8855 after the date on which the officer becomes 68 years of age if the Secretary determines that continued retention is necessary for Air Force needs. Title 32, U.S.C., Section 324(a)(1) shall not apply to an officer during any period in which the officer is retained in an active status under Title 10, U.S.C., Section 8855.
7. Reserve officers of other uniformed services who apply for appointment under paragraph 2-6 and former officers who held an aeronautical rating who apply for appointment under paragraph 2-7 are ineligible if they have been nonselected for promotion for the first time.
8. Such individuals are eligible to apply for appointment; however, a waiver request or a dependency eligibility determination has to accompany their application. The following applicants are exempt from the dependency restrictions and do not require a waiver or dependency eligibility determination:
   a. Former RegAF officers who apply for ResAF appointment under paragraph 2-4 if discharge from the RegAF and acceptance of the Reserve commission takes place on the same date.
   b. Officers appointed as ResAF on removal from the TDRL.
   c. Officers who interservice or intraservice transfer under AFR 35-39.
   d. Air Force enlisted members who are serving on AD or in Ready Reserve units of the ANGUS and USAFR.

★9. EXCEPTION: Voluntary Separation Incentive (VSI) and Special Separation Benefit (SSB) Program recipients and members involuntarily separated from active duty due to reduction in force are eligible for appointment in the Reserve of the Air Force, if separating from active duty effective 1 February 1992 through 30 September 1995.

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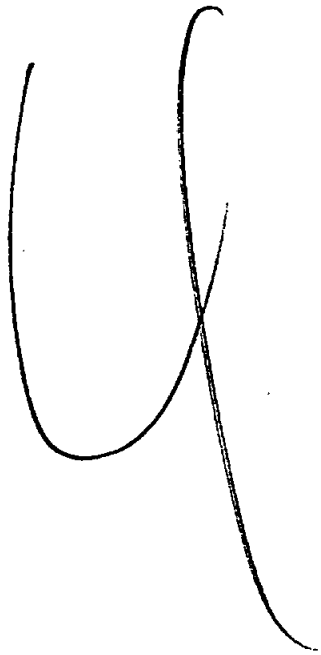

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POLICIES THAT RESTRICT SERVICE IN THE MARINE CORPS 00030

Mental Ability

- We will not enlist applicants who have placed in mental group V of the entrance aptitude test (by DoD policy).

- We strictly limit the number of accessions from mental groups IV and IIIB from entrance aptitude tests (Marine Corps policy).

- Those applicants who are selected for accession will be assigned to different skills based on entrance examination skills.

- If a Marine desires to further his/her career by changing their MOS it is necessary to ensure that the individual possesses the requisite scores from the entrance aptitude tests before a career field change can be approved (Marine Corps policy).

Physical Ability

- All entry level training graduates (officer and enlisted) must pass a physical fitness test (different standards for males and females).

- There are certain MOS's that require physical skills beyond those demanded for entry into the Marine Corps, i.e. swimming skills for those crew members assigned to Assault Amphibian Vehicles (Marine Corps policy).

- Career progression in the Marine Corps is tied to physical excellence based upon performance on physical fitness tests. Those Marines who fail to maintain physical standards can be separated from the service (Marine Corps policy).

Health

- Applicants for service in the Marine Corps must meet the standards (physical & mental) contained in the Manual of the Medical Department.

- There are many physical and mental conditions that will permanently disqualify an applicant from enlistment/commission (i.e. chronic back problems, ruptured disc, HIV etc.). 00030

- Personnel on active duty also can be separated for health reasons.

- Personnel with some health problems (i.e. HIV Positive) are barred from certain assignments such as ship detachments and overseas duty.

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Gender

• The Marine Corps subscribes to a gender neutral accession policy. Requirements for men and women are not gender-normed (Marine Corps policy).

• The Marine Corps employs the women of the Corps in all roles except those explicitly prohibited by combat exclusion policies based on Title 10 U.S.C. and the DoD Risk Rule for direct combat.

• Women are simultaneously assured the opportunity for a full and meaningful career within those occupational specialties open to women.

• Women may not be assigned, progress or be promoted into an MOS closed to women because of combat exclusion policies.

Job Skills/Experience

• The Marine Corps has established a limit on the number of applicants who do not possess a high school diploma that can be enlisted (policy).

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• Candidates for Marine Corps officer programs are expected to possess or be in the process of obtaining a baccalaureate degree (policy).

• A Marine can be separated from the service when he/she has served the total active service authorized, namely service limitations/high year of tenure (policy/statutory authority).

Behavior

• Applicants for commissioning/enlistment who have engaged in certain types of criminal behavior will be barred from accession (i.e. multiple felonies).

• Certain types of non-criminal behavior will be a bar to accession (i.e. drug/alcohol rehabilitation, sleep-walkers, bad wetters) (policy).

• A Marine may be administratively separated while in an entry level status if the member is unqualified by reason of entry level performance or conduct (policy/statutory authority).

Nationality

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• We will enlist U.S. Citizens or legal aliens only (policy).

• Policy requires that critical billets such as guards for nuclear weapons be U.S. citizens or nationals.

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• Security clearances are only granted to those individuals who are U.S. citizens or nationals.

• A Marine who is a legal alien may be denied assignment to MOS's and billets based upon his/her inability to obtain a security clearance.

Physiological Standards

• For enlistment purposes, applicants (male and female) must meet height and weight standards established by Marine Corps policy. Those who do not meet these standards will not be enlisted or commissioned.

• Marines assigned to flying duties must meet certain anthropometric and visual acuity requirements. These requirements are Navy/Marine Corps policies.

• Whenever a Marine's performance deteriorates or has an adverse effect on others in the unit that Marine may be administratively separated (i.e. Bed wetting, sleep walking, chronic air or motion sickness. pseudofolliculitis barbae, allergy or height (policy).

Age

• Applicants for enlistment must be between the ages of 17 and 35. Underage or overage applicants will not be enlisted.

• Candidates for a commission must be between the ages of 20 and 33 (policy). Federal statue prohibits the commissioning of an individual who is age 35 or more.

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• DoD policy also requires service members to leave the service at the age of 60 (officers).

• Enlisted members will not normally be approved for service on active duty if it results in serving past the last day of the month in which the applicant will attain age 55 years (policy and statutory authority).

Marital Status

• Marital status does not preclude applicants from enlistment/commissioning (policy).

• In order to be assigned as a Marine Security Guard, Marines in the rank of sergeant and below must be single.

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• There are several specific policies regarding the assignment of military couples (military members married to

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military members), for the purpose of establishing a joint household.

• Compensation for married members of the Marine Corps is based upon law.

Presence of Dependents

• Marine Corps policy concerning dependency for enlistment purposes is that applicants with dependents will not be encouraged or considered for enlistment unless they are determined to be particularly well-qualified.

• Single parents with custody of minor dependents are ineligible for enlistment.

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• Once on active duty, there are several policies regarding the assignment deferment or reassignment of single parents.

• There are assignment deferment policies for Marine mothers of newborns wherein their overseas assignments may be deferred for a period of four months.

• When a Marine's parental responsibilities result in repeated absenteeism, interfere with a Marine's effectively performing duty, or preclude present or future availability for worldwide assignment, administrative separation is required.

• There are numerous dependent restricted tours particularly in Okinawa and Korea, where dependents are not permitted.

• Compensation paid to members on behalf of their dependents is predicated on law, specifically 37 U.S.C..

Health of Dependents

• There is no policy that denies enlistment based solely upon the health of a dependent, however, the general dependency rules mitigate against the enlistment of an individual with a dependent other than a spouse.

• The Exceptional Family Member Program requires that a Marine with an exceptional family member will not be assigned overseas to an accompanied tour unless required medical services are available.

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• A Marine may be administratively separated when genuine dependency or undue hardship exists and the Marine has made every effort to remedy the situation (policy and statutory authority).

Sexual Orientation

• Department of Defense policy precludes the enlistment of

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homosexuals (this includes those who have homosexual tendencies and have participated in homosexual acts), this is Marine Corps policy as well.

* • A Marine may be administratively separated on the basis of pre-service, prior service, or current service conduct or statements.

* • Marines charged with the commission of a serious offense (of a sexual nature) either in the military or civil community may be administratively separated.

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PARTIAL LISTING OF CG POLICIES REGARDING MEMBER
COMPLIANCE/DEVIATION WITH/FROM ORGANIZATIONAL NORMS

Conformity to expectations of conduct - UCMJ Punitive Articles 80-13 (common misconduct under PERSMAN (12-B-18)

...drugs
...frequent involvement of discreditable nature with civil or military authorities
...sexual perversion (lewd/lascivious acts, sodomy, indecent exposure, indecent acts upon a child, abuse of family member,
...pattern of failure to pay debts
...pattern of dishonorable failure to pay support dependents
...pattern of failure to comply with valid decrees, orders, judgements of a civil court
...Article 134 UCMJ basis of CG policy re: Fratenization - Personal Relationships (CG PERSMAN Ch 8-H)

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Conformity/suitability for military service - (CG PERSMAN - Ch 12-B-16) discharge by reason of "unsuitability" for:

...inaptitude
...personality disorder (as determined by medical authority includes personality behavior disorder (i.e. pedophelia, schizophrenia, deviant behavior)
...apathy, defective attitudes, inability to expend effort constructively
...unsanitary habits
...alcohol abuse
...financial irresponsibility

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Conformity to appearance - CG Uniform Manual Ch 1

...clothing/standards of "fit"
...clothing/standards of cleanliness and repair
...clothing/zippers on coats 2/3's up
...clothing/misc. "No eccentricities or faddishness of dress, jewelry, or grooming will be permitted. Earings (Male) are prohibited under ANY circumstances and aboard ANY military installation when wearing civilian clothing."
...grooming/no hair nets, ribbons (women)
...grooming/cosmetics must be conservative color "eccentricity of color and manner of wearing not permitted"
...Religious Apparel/while attending diving services only
...decorative jewelry/no "nose rings or ornamental teeth"

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"Judgements on faddishness or eccentricity should be based upon standards of the general military community rather than the local civilian community." (Agenda item 35-21 for next Uniform Board)

Conformity for safety of personnel (COMDTINST M1020.6C)

...Helmets/protective clothing required when riding motorcycles/bicycles on military facilities

Conformity for fitness and appearance (COMDTINST 1020.8B)

..Maximum Allowable Weight Standards for CG Military Personnel

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REFERENCES:

Dept of Defense

DOD 1332.14 Enlisted Administrative Separations

DOD 6130.3 Physical Standards for Enlistment, Appointment, and Induction

DOD 1332.30 Separation of Regular Commissioned Officers for Cause

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Army

AR 635-200, Separation Procedures for Officer Personnel (AC)

AR 635-100, Separation of Enlisted Personnel (AC)

AR 601-280, Total Army Retention Program (AC)

AR 40-501, Standards for Medical Fitness

AR 135-175, Separation of Officers (RC)

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AR 135-178, Separation of Enlisted Soldiers (RC)

Navy

Naval Military Personnel Manual

SECNAVINST 1920.6A Administrative Separation of Officers

SECNAVINST 1910.4A Enlisted Administrative Separations

OPNAVINST 5510.1H Navy Security Manual

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Navy Uniform Regulations

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Air Force

AFR 160-43 Medical Examination and Medical Standards

Marine Corps

MCO P1100.72 USMC Enlisted Procurement Manual

MCO P1100.73 USMC Officer Procurement Manual

MCO P1020.34E USMC Uniform Regulations

MCO P1900.16 USMC Separation and Retirement Manual

Coast Guard

COMDTINST M11000.6A U.S. Coast Guard Personnel Manual

COMDTINST M1020.6C U.S. Coast Guard Uniform Regulation

Command Instruction 1020.8B Maximum Allowable Weight Standards for Coast Guard Military Personnel

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Volume 25, Number 2, March/April 1993

Family Planning Perspectives

Perceptions of AIDS and Risky Behavior
Condom Use, Perceptions and Preferences

National Survey of Men: Sexual Behavior



25th Anniversary Volume

A Publication of
The Alan Guttmacher Institute

What Do the Men Say?

This issue of *Family Planning Perspectives* is devoted to the first release of data from the National Survey of Men. The survey, conducted under a grant from the National Institute of Child Health and Human Development, examines sexual behavior, condom use and related attitudes, and perceptions of AIDS and the risk of human immunodeficiency virus infection among men aged 20–39. The survey is planned as an ongoing study of this group of 3,321 respondents. The first round of the survey, from which the current data were taken, was conducted in 1991. One follow-up round has already been fielded; subsequent rounds are planned, contingent on funding.

The National Survey of Men is one of the first representative surveys of the sexual behavior of U.S. men. Although there have been many nationally representative surveys on reproductive health and contraceptive issues that have questioned women, few have questioned men. In addition, most previous surveys of sexual behavior have used convenience samples, or in other ways been nonrepresentative of the total population—male or female. The comprehensiveness of the data set also puts the National Survey of Men in a category by itself.

The data are being analyzed by a research team from Battelle Human Affairs Research Centers in Seattle. The four articles and one technical note written by these researchers detail what proportions of U.S. men have engaged in vaginal, anal and oral sex, and whether differences in sexual behavior exist within the context of various relationships such as marriage, cohabitation and steady partners; which men are most likely to use condoms; how men regard condoms and whether color, lubrication, ribbing and other design features are important to them; and how perceptions of the risk and severity of AIDS, including their own risk of HIV infection, affect men's sexual behavior and the risks they take.

We have published the articles together because the research findings obviously complement each other and are interconnected. We hope the range of professionals who read our journal—be they providers, researchers, policymakers or educators—can better use the data if they have the broad perspective before them.

There are many policy and public health reasons for needing to know more about sexual behavior than we currently do. The arrival of AIDS on the American social scene has focused attention not only on the inadequacy of data on sexual behavior, but also on how little is known about past changes in sexual activity, about prophylactic behavior, and about how to alter risky behavior. Public health interventions aimed at risky practices are more likely to be effective if we understand why target audiences engage in such behavior: Are they unaware of the danger, do they rationalize their behavior, do they feel powerless to change or do they simply choose to ignore the risk? This data set, its follow-up and other survey data still being analyzed represent the first steps toward improving our knowledge of adult sexual behavior and of condom use and other preventive health behavior.

Olivia Schieffelin Nordberg
Editor-in-Chief

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UPDATE

Pill Builds Strong Bones...New Implant on the Way...How Many AIDS Orphans?...

AIDS and the Motherless Child

By the end of 1995, AIDS will have killed the mothers of more than 45,000 U.S. children and teenagers.[1] According to recently published calculations, approximately 18,500 youths aged 17 or younger had lost their mother to AIDS as of the end of 1991—10,100 children aged 12 or younger and 8,400 adolescents. According to the researchers who constructed the mathematical model that produced these estimates, an additional 14,500 children and 12,600 adolescents will be left motherless by AIDS between 1991 and 1995, bringing the totals to 24,600 children aged 12 or younger and 21,000 13–17-year-olds. They add that "unless the course of the epidemic changes dramatically,...by the year 2000, the overall number of motherless children and adolescents will reach 82,000." They further calculate that because the New York area has been hit particularly hard by AIDS, the number of children and teenagers in New York City made motherless by AIDS will exceed 16,000 by 1995. "Unless increased attention and resources are devoted to this vulnerable population," the investigators conclude, "a social catastrophe is unavoidable."

1. D. Michaels and C. Levine, "Estimates of the Number of Motherless Youth Orphaned by AIDS in the United States," *Journal of the American Medical Association*, 268:3456–3461, 1992.

Early Success for Single Implant

A one-capsule hormonal implant known as Uniplant provided almost complete contraceptive protection for one year, according to the results of a small Brazilian study.[1] The implant, which contains 38 mg of nomegestrol acetate, was inserted in the buttocks of 100 sexually active women of childbearing age attending a clinic in Salvador, Brazil. Eighty women used the device for one year, and 91 used it for at least six months. One pregnancy occurred over the course of 1,085 woman-months of use, for a Pearl pregnancy rate of 1.1 pregnancies per 100. One in five users experienced amenorrhea in the first few months of use, and one in 10 had bleeding between periods, but the incidence of both problems fell with duration of use. Nine of the 20 women who discontinued implant use before one year said they preferred other methods, three wanted to become pregnant, one became pregnant, three cited irregular bleeding and the rest mentioned several other problems. An examination of residual drug levels in implants removed at various times in the study period led the researcher to conclude that the implant does not maintain hormone levels in the body that are high enough to inhibit ovulation throughout one year of use, but probably prevents pregnancy in other ways, such as interfering with sperm penetration of the cervical mucus.

1. E. M. Coutinho, "One Year Contraception with a Single Subdermal Implant Containing Nomegestrol Acetate (Uniplant)," *Contraception*, 47:97–105, 1993.

N.J. Teachers' Views on Sex Ed

The majority of instructors in New Jersey's public schools who teach family life education believe they are well prepared for the task, but relatively few address potentially controversial topics and most doubt that students are "very likely" to change their behavior in significant ways as a result of the courses.[1] A statewide survey of 390 teachers (about one-third of family life education instructors in the state) found that 95% are white and 76% are female. Respondents had taught the topic for an average of nearly 11 years, and three-quarters believed they were very prepared to teach such courses. The average time spent each year on sexuality-related topics was only 24 class-hours, though, ranging from 40 hours in high school to 16 hours in elementary school. Although 63% or more of the instructors said they cover such topics as healthy development, self-esteem and universal values, human immunodeficiency virus infection and AIDS, and pregnancy and reproduction, 43% or fewer discuss contraception, sexual orientation, masturbation, abortion or sexual pleasure. Eighty percent thought it very likely that their students would be better informed after receiving family life education, but fewer than 20% thought it very likely that exposure to such classes would make students more able to know how to use condoms, to talk to their parents about sex, to practice contraception effectively or to have fewer unintended pregnancies.

1. W. A. Firestone, "New Jersey Teachers Evaluate Family Life Education," *Family Life Matters*, No. 18, Rutgers University, New Brunswick, N.J., 1993.

Pill Use May Increase Bone Mass

Physical activity, calcium intake and oral contraceptive use all contribute to increases in bone mass among women in their 20s.[1] In a longitudinal study involving 156 never-pregnant white women from two Nebraska universities, researchers tested the women's total bone density and spine and forearm bone density. Over the 4–6 years of the study, the participants' bone density increased by 5% in the forearm, by 6–7% in the lumbar spine and by nearly 13% overall. A multiple regression analysis showed that increased physical activity and better nutrition both led to a significantly greater increase in bone mass, according to all measures; likewise, oral contraceptive use was significantly associated with gains in total bone mass. The authors of the study conclude that women who use oral contraceptives during their 20s might be expected to experience a net gain of about 11% in total body bone mass.

1. R. R. Recker et al., "Bone Gain in Young Adult Women," *Journal of the American Medical Association*, 268:2403–2408, 1992.

Mifepristone for Labor Induction

Mifepristone, the French abortion drug known popularly as RU 486, appears to be safe and effective for the induction of term labor, according to a recent French study.[1]

Update is compiled and written by Michael Klitsch, associate of *Family Planning Perspectives*.

At the start of a four-day observation period, 112 pregnant women who were at term and judged to be in need of labor induction were given either 200 mg of mifepristone or a placebo on each of the first two days. The investigators found that women given mifepristone were significantly more likely to go into labor spontaneously (54% vs. 18%), and by day four were significantly less likely to need a prostaglandin for cervical ripening (23% vs. 58%). Women treated with mifepristone who began to deliver spontaneously were much less likely than the control women to require oxytocin for labor augmentation, and the mean time elapsed until start of labor was almost one day less for women who received mifepristone than for those who received the placebo (52 hours vs. 74 hours). There were no statistically significant differences in neonatal measures between infants exposed to mifepristone and those unexposed. The researchers conclude that "obstetricians may consider anti-progesterones as a simple and potentially safe method of labor induction."

1. R. Frydman et al., "Labor Induction in Women at Term With Mifepristone (RU 486): A Double-Blind, Randomized, Placebo-Controlled Study," *Obstetrics and Gynecology*, 80:972–975, 1992.

High-Risk Sex During Pregnancy

Some teenagers pregnant at an early age appear to engage in high-risk sex during their pregnancy, according to results from a study of sexually transmitted disease (STD) infection.[1] Clinicians enrolled 267 consecutive pregnant teenagers aged 17 or younger who visited a teenage maternity clinic in the Birmingham, Alabama, area between 1986 and 1991. Their mean age was 15, and they were 17 weeks into their pregnancy, on average, when they came to the clinic. All were tested for STDs initially, and most were tested again at the start of the third trimester. Twenty-eight percent tested positive for an STD (including 19% for chlamydia) at entry into the study; 19% tested positive (including 8% for chlamydia) at the third-trimester examination. Very few teenagers found to be infected at the second examination had tested positive at entry into the study. Overall, 24% tested positive for chlamydia at some time during pregnancy, and 39% tested positive for a treatable STD. A stepwise logistic regression analysis showed that the only variable significantly associated with the risk of chlamydial infection was another STD infection—an indication of the "high coinfection rates among the study population." The researchers conclude that "the positive STD rate on repeat screening...suggests that high-risk sexual activity, such as unprotected sex with multiple sex partners, may persist through pregnancy" among young adolescents, and that multiple STD screenings may be necessary for such teenagers if adverse pregnancy outcomes are to be reduced.

1. M. K. Oh et al., "Chlamydial Infection and Sexual Behavior in Young Pregnant Teenagers," *Sexually Transmitted Diseases*, 20:45–50, 1993.

Do Vitamins Prevent Fetal Defects?

Women who take folic acid supplements before becoming pregnant may be at reduced risk of having a baby with neural tube defects.[1] In a large-scale study conducted in Hungary, researchers recruited 7,540 nonpregnant women younger than 35 who intended to become pregnant and gave them either a vitamin supplement (which contained folic acid plus a number of other vitamins) or a placebo. A total of 4,704 women became pregnant and had their pregnancies evaluated; the rate of congenital malformations was significantly higher among the women who received the placebo than among those given vitamin supplements (22.9 per 1,000 vs 13.3 per 1,000, p=.02). Six women in the placebo group had a baby with neural tube defects, compared with none from the vitamin group. The author of an editorial appearing concurrently with the study noted that because a multivitamin supplement was used, "we cannot be sure that the preventive effect was due to folic acid, alone or in association with the other components of the supplement."[2] He adds, however, that the weight of evidence from previous studies of the occurrence of neural tube defects among children of women whose previous offspring had such defects "does make the focus on folic acid convincing."

1. A. E. Czeizel and I. Dudás, "Prevention of the First Occurrence of Neural-Tube Defects by Periconceptional Vitamin Supplementation," *New England Journal of Medicine*, 327:1832–1835, 1992.

2. I. H. Rosenberg, "Folic Acid and Neural-Tube Defects—Time for Action?" *New England Journal of Medicine*, 327:1875–1877, 1992.

Pill Use and Ovarian Cancer

The pill's protective effect against invasive epithelial ovarian cancer rises steadily with duration of use, according to a recently conducted meta-analysis of 12 previous case-control studies.[1] Using data from nearly 2,200 women with invasive epithelial ovarian cancer and almost 8,900 controls, the researchers found that, depending on the study, a pill user was about 30–34% less likely than a nonuser to develop ovarian cancer. Furthermore, the risk of ovarian cancer fell as duration of pill use rose: Women who had used the pill for six or more years were 45–70% less likely than other women to develop ovarian cancer. The researchers caution, however, that these studies were generally based on data from women who used higher dosage oral contraceptives, and may not reflect the effects of current low-dose formulations. The study also found that infertile women—those with long periods of unprotected sexual intercourse but no lifetime pregnancies—were at heightened risk of ovarian cancer, as were women who had used fertility drugs.

1. A. S. Whittemore et al., "Characteristics Relating to Ovarian Cancer Risk: Collaborative Analysis of 12 U. S. Case-Control Studies: II. Invasive Ovarian Cancers in White Women," *American Journal of Epidemiology*, 136: 1184–1203, 1992.

Late Births Raise Breast Cancer Risk

A woman's age at her last full-term pregnancy may have a greater impact on increasing her risk of breast cancer than her age at first full-term pregnancy, according to a case-control study conducted in Brazil.[1] When researchers compared 509 women with breast cancer and 509 age-matched controls from the same hospitals, they found that, as in previous studies, women with a greater number of lifetime births were at reduced risk of breast cancer, and those whose first birth was at a relatively later age were at increased risk. Women whose last birth occurred relatively late were also at increased risk. When the investigators controlled for the effects of parity and age at last birth, age at first birth no longer exerted any significant influence on breast cancer risk; however, even when they adjusted for parity and age at first birth, age at last birth increased the risk for each five-year age-group by 18%. The investigators observe that when considered alone, age at last birth "was only marginally associated with breast cancer risk. Once adjustment was made for parity the effect increased and became highly significant." They hypothesize that at a relatively late age, pregnancy may "stimulate breast tissue growth at a point where no further growth is desirable, thus increasing the risk of malignancy."

1. A. Kalache, A. Maguire and S. G. Thompson, "Age at Last Full-Term Pregnancy and Risk of Breast Cancer," *Lancet*, 341:32–35, 1993.

ARTICLES

The Sexual Behavior of Men In the United States

By John O. G. Billy, Koray Tanfer, William R. Grady and Daniel H. Klepinger

A nationally representative study of the sexual behavior of men aged 20-39 in the United States shows that the prevalence and frequency of sexual acts (vaginal, anal and oral) and sexual orientation vary by social and demographic characteristics. Analysis of data from 3,321 respondents to the 1991 National Survey of Men reveals that 95% of men have had vaginal intercourse; among them, 23% have had 20 or more vaginal sex partners in their lifetime. About one-fifth of never-married and formerly married men had had four or more partners over a recent 18-month period. However, 41% of never-married men and 32% of formerly married men did not have coitus during the four weeks preceding the interview. Only 20% of men have ever engaged in anal intercourse. Among these, 51% had not done so during the previous 18 months, and 90% had not done so during the previous four weeks. Seventy-five percent of men have performed oral sex and 79% have received oral sex, although 53% of men who ever performed oral sex had not done so during the four weeks prior to interview, and only 11% had done so six or more times. The frequency of receiving oral sex is similar. Only 2% of sexually active men aged 20–39 have had any same-gender sexual activity during the last 10 years, and only 1% reported being exclusively homosexual during this interval. (Family Planning Perspectives, 25:52–60, 1993)

In this era of AIDS and other sexually transmitted diseases (STDs), knowledge of the sexual behavior of the U.S. population is essential to prevent the spread of infection. Sexual orientation (heterosexual or homosexual), type of sexual contact (vaginal, anal or oral), number of sex partners and frequency of sex have all been cited as risk factors for the transmission of these diseases.

As for sexual orientation, the risk of infecting or being infected by a partner with AIDS is higher among men who have sex with men because infection with the human immunodeficiency virus (HIV) is more prevalent among this group.[1] However, the incidence of heterosexually transmitted AIDS has increased in the United States.[2] The Centers for Disease Control and Prevention estimates that 4% of all AIDS cases reported by April 1991 can be attributed to heterosexual contact with a partner who is known to be infected or at high risk of infection; 30% of these cases occurred among men and 70% among women.[3] Although this gender difference may exist because more men than women are HIV-positive and can infect female partners, recent evidence suggests that male-to-female transmission of HIV may be at least 20 times as efficient as female-to-male transmission.[4]

With respect to types of sexual contact, female infection through vaginal intercourse with an infected partner has been confirmed by most studies.[5] Although its incidence is less documented, female-to-male infection can also occur through vaginal intercourse.[6] HIV transmission through receptive anal intercourse is generally believed to be more efficient than transmission through vaginal intercourse.[7] Even though the virus has been isolated in saliva, research suggests that the risk of becoming infected with HIV by receiving or performing oral sex is minimal.[8] There are, however, documented cases in which a heterosexual man and a homosexual man appear to have become infected by engaging in oral sex with an infected partner.[9]

The number of sex partners is the most frequently cited risk factor for AIDS and other STDs.[10] As Stuart Seidman and colleagues note, having multiple partners "reflects the increased likelihood of encountering a sexually transmitted pathogen through having multiple potential exposures, and... may reflect an increased probability of choosing a partner with an infection through a riskier pattern of partner recruitment."[11] Although the evidence is mixed, a few studies report that the risk of HIV transmission increases with the frequency of sexual contact with an infected partner.[12]

Although some information about the sexual practices of Americans is available, much of our knowledge about sexual behavior has come from nonprobability samples, clinical studies and other small specialty samples; from select groups, such as college students; or from localized samples. The National Academy of Sciences has called for "a more detailed, representative, and contemporary evaluation of sexual behavior analogous to the Kinsey Report."[13] Forty years after its publication, research by Alfred Kinsey and colleagues still represents the most comprehensive study of adult sexual behavior, particularly the sexual practices of men.[14]

Over the last few decades, social scientists have obtained information about many aspects of adolescent sexual behavior through such studies as John F. Kantner and Melvin Zelnik's 1971 and 1976 National Surveys of Young Women and the 1979 National Survey of Young Women and Men and, more recently, Freya Sonenstein's 1988 and 1990 National Survey of Adolescent Males. Some data on women's sexual activity has been obtained from four cycles of the National Survey of

John O. G. Billy, Koray Tanfer and William R. Grady are senior research scientists and Daniel H. Klepinger is a research scientist at Battelle Human Affairs Research Centers in Seattle. This article is based on research supported by the National Institute of Child Health and Human Development (NICHD), under Grant No. HD-26288. The views expressed in this article are those of the authors and do not necessarily reflect the opinions or policies of NICHD or the Battelle Memorial Institute.

Family Growth (1973, 1976, 1982 and 1989), which focuses on the family planning and childbearing activities of women.

Other sizeable efforts to provide information about the sexual behavior of men and women include a volunteer sample used in a study by *Playboy*,[15] and Philip Blumstein and Pepper Schwartz's[16] study of heterosexual couples, gay men and lesbian couples recruited largely from Seattle, San Francisco and New York. The Kinsey Institute study,[17] conducted in 1971 but not released until 1989, is made up of a probability sample of 3,018 noninstitutionalized adults in the United States. This study was primarily attitudinal, with very few questions pertaining to the sexual behaviors of the respondents. A telephone survey of 2,095 adults, conducted in 1987 by the *Los Angeles Times*, oversampled residents in five cities with the highest prevalence of AIDS, but the response rate was only about 33%.[18]

The General Social Survey (1988, 1989 and 1990), based on a probability sample of approximately 1,500 noninstitutionalized men and women in the United States, is a nationally representative source of information about adult sexual behavior, but it includes only a one-page self-administered questionnaire with items about sexual activities that have occurred within the past year or since the respondent was 18 years old.[19] Joseph Catania and associates recently completed the 1990 National AIDS Behavioral Surveys, which includes nationwide and high-risk cities telephone surveys of almost 14,000 English- or Spanish-speaking adults aged 18–75.[20] These surveys, which can be weighted to obtain national representativeness, provide detailed information about vaginal and anal intercourse only among respondents who reported an HIV-related risk factor. Finally, the National Health and Social Life Survey, conducted by the National Opinion Research Center at the University of Chicago, contains an extensive battery of questions about the sexual practices of adults, but the results are not yet available.[21]

Men have the highest AIDS prevalence of any demographic group, yet the scarcity of studies conducted since Kinsey's pioneering work illustrate how difficult it has been to obtain national-level estimates of a full range of their sexual practices and sexual orientation. The study on which this article is based is designed to help fill this gap. We describe the prevalence and incidence of vaginal, anal and oral sex acts and the sexual orientation of men in the United States. We also examine how sexual practices and orientation vary by social and demographic characteristics.

This study provides information about men who are at high risk of contracting and transmitting AIDS and other STDs because of their sexual behavior. Their behavior has implications not only for those men who put themselves at some risk of infection by engaging in certain sexual practices, but also for their female partners, to whom the AIDS virus is more easily transmitted.

Methodology

The data for this study were taken from the National Survey of Men (NSM-1), a nationally representative sample of men aged 20–39 from households in the coterminous United States. The survey was based on a stratified, clustered, disproportionate area probability sample design. Individual interviews with 3,321 respondents of all marital statuses were conducted in 1991 for an overall response rate of 70%. Black households were oversampled to ensure adequate representation. The final sample was weighted on the basis of population characteristics to account for stratification, clustering, disproportionate area sampling and oversampling of black men, and to adjust for differential nonresponse. (For further details about the survey design of the NSM, including issues pertaining to data quality, see: K. Tanfer, "National Survey of Men: A Technical Note," pp. 83–86 of this issue.)

We examined three types of sexual acts: vaginal intercourse, anal intercourse, and proceptive and receptive oral sex. During the interview, respondents were asked whether they had ever engaged in each of these behaviors. Those who answered "yes" were asked a series of follow-up questions about each type of act. Regarding vaginal and anal intercourse, we analyze the number of partners with whom the respondent had ever had intercourse, the number of partners since January 1990 (an average of 18 months) and the number of times the respondent had had intercourse during the last four weeks. We asked those who had ever had vaginal or anal intercourse for the month and year of the first experience (or their age at that time). Although we do not examine the age of onset in detail, we discuss this aspect when relevant.

Since the series of questions about oral sex did not elicit information about age at first experience or number of partners ever or since January 1990, we examine only the number of times during the last four weeks that the respondent performed or received oral sex. We also obtained information about the gender of the respondents' first anal sex partner and that of their anal sex partners and oral sex partners during the last four weeks.

The results are expressed in terms of percentages and medians. We use the median as a measure of central tendency because data about the number of partners and frequency of intercourse are typically highly skewed; a few men reported having had over 900 vaginal sex partners in their lifetime or having had vaginal intercourse more than 90 times in the last four weeks.

In addition to types of sexual acts, we determined the respondents' sexual orientation by asking, "During the last 10 years, what would you say that your sexual activity has been?" Response categories include 1) exclusively heterosexual, 2) mostly heterosexual, 3) evenly heterosexual and homosexual, 4) mostly homosexual and 5) exclusively homosexual. We report the percentage of men with any same-gender experience over the last 10 years and the percentage whose sexual behavior has been exclusively homosexual.

To identify the groups at higher risk of contracting and transmitting AIDS and other STDs through their sexual behavior, we examine how each of the above outcome measures varies by social and demographic characteristics. The factors included in the analysis are the respondent's race (white* or black) and ethnicity (Hispanic or non-Hispanic); age; current marital status; current relationship status, if single; education; and religion.

Since organized religions generally promote a more restrictive sexual ideology, we hypothesize that men who identify themselves as members of a religion (particularly a conservative religion) will have fewer sex partners and will be less likely to engage in nonvaginal sexual acts. Assuming that education reflects the degree to which an individual is open to new ideas and nontraditional values, we might expect to find a positive relationship between education and the likelihood of engaging in nonvaginal sexual behaviors, as well as between education and the frequency of intercourse and the number of sex partners. Persons with higher education are usually more knowledgeable about STD acquisition and transmission, however, and this may mitigate the positive relationship we would expect to find between education and risky sexual practices.

Like religion and education, age and marital or relationship status may have ideological components that define the type or frequency of appropriate sexual behavior. Marriage provides a stable context for the production and nurturance of offspring,

*White includes all men not classified as black (white, Asian or Pacific Islander, Native Americans and nonblack Hispanics).

implying that a husband and wife will have sex together with some regularity and that vaginal intercourse will be included. Age and marital or relationship status are also exposure variables. The likelihood that a man will exhibit any given sexual behavior is a function of the length of time he has been at risk of engaging in that behavior; therefore, we expect such outcome measures as ever engaging in vaginal, anal or oral sex and number of different sex partners to be positively related to age. A man who is married, cohabiting, or has a regular partner also has greater opportunities for frequent sexual contact and for engaging in a variety of types of sexual acts.

We also examine the effects of race and ethnicity on the sexual behavior of men. There is evidence that blacks have historically had higher levels of nonmarital and marital fertility than have whites, and that blacks and Hispanics are more likely to be sexually active as adolescents than are white non-Hispanics.[22] Numerous studies of adolescent and adult fertility-related behaviors have found that the effects of race and ethnicity persist when other individual characteristics are controlled and that race often modifies the effects of other factors. The reasons for these main and interaction effects remain unclear, but they are in part presumed to reflect the fact that blacks and ethnic minorities have been denied equal access to major social institutions and that they differ in fertility norms and sexual ideologies.[23] This argues for examining the effects of race and ethnicity on the sexual behavior of adult men.

We have two cautions regarding the selection and interpretation of the covariates. First, some of these factors were assessed at the time of the interview and represent statuses that may have occurred subsequent to the sexual behavior outcomes. Thus, we cannot draw conclusions regarding causality; it is not very meaningful to discuss the lifetime number of partners or even of partners since January 1990 as a causal function of a man's current marital or relationship status. Instead, we describe the association of the prevalences and incidences of specific sexual behaviors with certain social and demographic characteristics.

Second, the results shown for categories of a particular covariate are unadjusted for any of the other covariates. This informs us about the actual sexual behavior of men within any given social or demographic group, but does not tell us whether differences in sexual practices by ethnicity, for example, result from ethnic differences in marital or relationship status composition. In presenting the results, we discuss the findings for a covariate after adjusting for other relevant factors, when appropriate.

Results

The results presented here were based on weighted data and can be generalized to the U.S. population. (The number of respondents given at the top of table columns are

Table 1. The percentage of U.S. men who have ever had vaginal intercourse and among those who have, the number of partners and frequency, by social and demographic characteristics, 1991 National Survey of Men

Characteristic	% ever had (N=3,317)	Number of partners ever (N=3,111)			Number of partners since January 1990† (N=3,169)				Number of times in last 4 weeks (N=3,151)			
		Median	% with 1–3	% with ≥20	Median	% with 0	% with 1	% with ≥4	Median	% 0 times	% 3–4 times	% ≥10 times
All	**95.4**	**7.3**	**28.2**	**23.3**	**1.1**	**4.3**	**70.9**	**9.6**	**3.7**	**21.9**	**16.8**	**22.5**
Race	*		*	*			*	*		*		
White	95.1	6.6	29.7	21.8	1.1	4.3	72.9	8.7	3.7	22.6	16.6	22.6
Black	97.4	10.2	16.7	34.7	1.3	4.2	56.6	16.8	3.3	17.0	18.1	21.6
Age	*			*		*	*	*		*	*	*
20–24	90.1	6.2	29.2	17.9	1.4	2.9	52.1	17.5	2.4	30.8	13.0	19.1
25–29	95.2	6.8	28.3	20.5	1.1	7.6	67.7	11.7	4.6	20.5	12.9	29.4
30–34	98.0	7.5	26.5	25.8	1.1	3.2	78.9	6.0	3.8	20.5	19.4	19.8
35–39	97.6	8.1	28.9	27.8	1.1	3.5	81.4	5.0	3.9	17.4	20.9	21.7
Marital Status	*		*	*		*	*	*		*	*	*
Never-married	88.3	8.1	21.5	23.3	1.4	9.8	45.0	18.3	1.4	40.9	10.2	15.9
Currently married	100.0	5.3	36.3	19.7	1.0	0.2	95.8	0.6	4.9	5.8	23.1	25.8
Formerly married	100.0	14.7	13.4	39.6	1.6	5.1	43.2	22.4	3.0	31.8	10.9	28.5
Relationship status	*		*	*		*	*	*		*	*	*
Cohabiting	96.5	11.9	14.1	35.4	1.2	1.0	68.6	8.5	7.6	6.8	10.6	41.0
Has regular partner	97.8	9.9	18.8	29.7	1.6	0.4	48.3	25.0	4.7	8.3	14.7	28.6
No regular partner	84.2	8.2	22.3	21.9	1.5	18.3	31.8	18.9	0.2	75.9	6.7	2.4
Hispanic								*			*	
No	95.2	7.4	28.0	23.5	1.1	4.3	71.2	9.3	3.7	21.8	17.4	22.2
Yes	97.0	7.0	29.8	22.0	1.2	3.8	67.6	13.2	3.4	23.2	11.8	25.0
Education			*			*	*	*				
<high school	97.2	8.0	23.1	26.2	1.2	4.1	68.8	10.4	4.3	21.8	16.4	25.9
High school graduate	95.7	7.4	26.9	23.6	1.2	3.1	71.1	9.0	3.5	21.7	17.0	22.3
Some college	95.1	7.6	28.1	24.8	1.2	5.8	66.1	12.5	3.6	23.5	16.2	22.0
≥college	94.0	6.1	33.4	19.6	1.1	5.0	77.2	7.3	3.8	20.7	17.5	21.6
Religion	*		*	*				*		*		*
Conservative Protestant	93.5	5.4	37.0	19.4	1.1	4.9	74.0	8.8	4.6	15.0	18.8	27.6
Other Protestant	96.4	7.7	27.0	23.3	1.2	3.5	71.0	7.1	3.7	20.9	16.8	23.8
Catholic	95.8	6.9	29.4	22.4	1.1	5.0	71.9	11.7	3.3	23.3	17.4	18.7
Other or none	94.6	8.4	20.5	28.7	1.2	3.9	66.5	11.7	3.6	27.3	14.2	22.4

*In this and subsequent tables, differences within the column of percentages for each characteristic are significant at p≤.05. †In this and Table 2, a period averaging 18 months. *Note:* In this and subsequent tables, whites include all men not classified as black. The 20–24 age-group contains 53 respondents aged 19, and the 35–39 age-group contains 81 men who were 40 or 41 years old. The small number of respondents who were married but not living with their wife have been coded as formerly married. Relationship status includes single men only. Persons of Hispanic origin may be of any race, but most in this sample were white. The "high school graduate" category includes vocational and technical school graduates and those with graduate equivalency diplomas. The "other Protestant" vs. "conservative Protestant" designation is based on the coding of the orthodoxy of beliefs of each denomination, as provided by Dr. Rodney Stark at the University of Washington.

the unweighted numbers.) Nearly all men aged 20–39 in the United States were sexually experienced: Among whites, 97% had had vaginal, anal or oral sex; among blacks, 99% had done so (not shown). The mean age at first sexual contact of any type was 16.8 among whites and 15.2 among blacks.

Vaginal Intercourse

Table 1 presents the prevalence, number of partners and frequency of vaginal intercourse among men, by social and demographic characteristics. Ninety-five percent of men aged 20–39 had engaged in this act. Black men were slightly more likely than white men to have had vaginal intercourse (97% vs. 95%). Black men in this age range of the population are younger than white men and more likely to be never-married. Therefore, when age and marital status were controlled, the difference between the two groups regarding ever having had coitus increased from two percentage points to four. The observed difference between Hispanics and non-Hispanics also widened after adjustment for age and marital status. The effect of age on the likelihood of ever having had vaginal intercourse was largely a function of marital status.

More than 88% of never-married men had experienced coitus; 87% of white men and 95% of black men had done so (not shown). That not all men who were cohabiting or who had a regular sex partner had had vaginal sex reflects some homosexual couples and perhaps some heterosexual couples who had engaged in sexual acts other than coitus. Higher educational levels and being a conservative Protestant was associated with a lower likelihood of ever having had vaginal intercourse. Although the effects of these variables became more pronounced when age and marital status were controlled, they remained relatively small.

The median lifetime number of vaginal sex partners was 7.3, with black men reporting 10.2 and white men reporting 6.6. This difference may be related to the younger age at first intercourse reported among blacks—15.0, compared with 17.2 years among whites (not shown). Approximately 23% of men had had 20 or more partners in their lifetime: About 22% of all white men and 35% of all black men had done so.

The lifetime number of vaginal sex partners was positively and linearly related to age. Currently married men had had the fewest partners in their lifetime among all marital status groups, probably reflecting duration in a union intended to be monogamous. Among black men, however, currently married men had had as many partners as never-married men, even after age was controlled (not shown). This may be the result of higher marital dissolution rates and shorter marital durations among blacks. Currently cohabiting men had had more partners than other single men, even after age and race were controlled. No differences in the lifetime number of partners were found between Hispanic and non-Hispanic men.

A negative association was found between educational level and median lifetime number of partners: Men with less than a high school education had had nearly two more partners than had those who graduated from college. This difference, however, exists only among whites (results not shown). Religion was strongly related to the number of partners a man had ever had: Conservative Protestants had had the fewest partners, and men of other or no religion had had the most.

Only 4% of men aged 20–39 had had no vaginal sex partners over the 18-month period from January 1990 to the average interview date. Almost 10% of never-married men and 5% of formerly married men had been abstinent during this interval. However, approximately one-fifth of never-married men and of formerly married men had had four or more partners. While most currently married men had had only one partner (96%), a far smaller percentage (69%) of currently cohabiting men had had one partner. After adjustments for marital status, the effects of age on having had one sex partner and on having had four or more partners were largely attenuated.

As Table 1 shows, the percentage of black men who had had four or more partners since January 1990 was almost twice as high as that of white men (17% vs. 9%). After adjustment for marital status, this eight-percentage-point difference declines to six. The similarity between whites and blacks in the percentage who had had no partners was also a function of marital status. Net of this factor, black men were significantly less likely to have remained abstinent than white men.

Unlike the effect of race, the effect of Hispanic ethnicity on the percent having had four or more partners was not attenuated by adjustments for marital status, age or race. Hispanics were significantly more likely than non-Hispanics to have had four or more partners over the 18-month interval.

Men who had attended or completed college were more likely to have abstained during this period. However, this weak positive association of education with abstinence was found only among whites (not shown). The effect of religion was also generally weak: Men in the "other or no religion" category and those who were Catholic were slightly more likely than Protestants to have had four or more partners, even after adjustment for compositional differences.

Table 1 shows the frequency of vaginal intercourse during the four weeks prior to the interview; the median number of acts was 3.7, or about once a week. Forty-one percent of never-married men and 32% of formerly married men were sexually inactive during this period. Only 16% of never-married men but 29% of formerly married men had had vaginal intercourse frequently (10 or more times, or on average, at least 2.5 times per week). The percentage of men who had had coitus frequently was actually slightly higher among formerly married men than among married men (26%). However, a far higher percentage of married men (23%) had had vaginal intercourse 3–4 times (on average, once a week) than had formerly married men (11%), and few married men had been abstinent (6%).

Like married men, few cohabiting men had been sexually inactive during this period (7%); however, a much higher percentage of cohabitors (41%) had had vaginal sex 10 or more times. These results remained relatively unaffected when we adjusted for age and race. When we adjusted for marital status, the effect of age on coital frequency became far more pronounced than is evident in Table 1: There was a marked reduction in the number of coital acts among men aged 30–39, compared with those aged 20–29.

Regardless of adjustments for marital status and age, there was little difference in coital frequency by race or ethnicity. The only notable difference was that 23% of whites and 17% of blacks had been sexually inactive during the four-week period. However, 17% of whites and 25% of blacks had had vaginal intercourse one or two times (not shown); thus, about the same percentage were inactive or infrequently active.

Educational attainment was also generally unrelated to coital frequency. Some effects of religion differed by race: Among whites, conservative Protestants had had the highest median frequency of vaginal intercourse among all religious groups, while among blacks, men who were Catholic or part of the other or no religion category had the highest median frequency. These relationships, however, were weak. Among whites, the effect of religion on abstinence in the last four weeks was attenuated and lost significance when we controlled for age and marital status.

Table 2. The percentage of U.S. men who have ever had anal intercourse and among those who have, the number of partners and frequency, by social and demographic characteristics

Characteristic	% ever had (N=3,298)	Number of partners ever (N=586)			Number of partners since January 1990 (N=590)				Number of times in last 4 weeks (N=593)		
		Median	% with 1	% with ≥4	Median	% with 0	% with 1	% with ≥2	% 0 times	% 1 time	% ≥2 times
All	**20.1**	**1.6**	**47.8**	**20.2**	**0.5**	**51.0**	**40.4**	**8.6**	**90.1**	**4.6**	**5.3**
Race	•								•		•
White	21.0	1.6	48.1	19.7	0.5	51.6	40.0	8.4	91.0	4.5	4.5
Black	13.6	1.8	43.0	26.4	0.6	43.5	45.4	11.1	79.3	5.5	15.2
Age	•					•	•	•	•	•	•
20–24	12.8	1.9	40.7	22.4	1.1	16.7	56.4	27.0	74.3	10.0	15.7
25–29	19.8	1.5	50.1	16.6	0.4	55.0	38.2	6.8	89.4	6.6	3.9
30–34	19.7	1.4	55.9	18.2	0.3	60.4	35.1	4.5	94.8	3.0	2.3
35–39	27.3	1.8	43.7	23.0	0.4	56.7	38.7	4.7	94.4	1.9	3.7
Marital status	•		•	•			•	•			
Never-married	17.9	2.1	33.3	27.0	0.6	47.5	32.4	20.1	86.2	5.8	8.0
Currently married	19.9	1.4	57.8	14.6	0.5	51.3	47.7	1.1	92.3	3.4	4.2
Formerly married	28.5	1.7	47.7	22.5	0.4	57.4	35.6	6.9	91.9	5.5	2.6
Relationship status	•					•	•	•	•		
Cohabiting	26.7	1.8	42.7	20.6	0.7	34.7	63.4	2.0	83.5	8.2	8.3
Has regular partner	22.6	2.0	36.0	22.8	0.4	54.1	29.0	17.0	83.9	7.3	8.8
No regular partner	16.4	2.2	37.4	31.2	0.4	56.4	20.9	22.7	95.0	2.5	2.5
Hispanic			•	•				•	•		•
No	19.7	1.5	49.4	19.1	0.5	52.1	41.2	6.7	91.8	4.8	3.4
Yes	24.0	2.2	32.5	29.8	0.7	43.0	32.3	24.7	76.2	2.7	21.1
Education	•		•	•							•
<high school	14.4	1.6	46.4	21.4	0.4	55.1	39.3	5.7	92.7	6.8	0.5
High school graduate	19.0	1.9	41.4	28.8	0.6	47.5	42.9	9.6	89.5	3.8	6.8
Some college	22.6	1.5	50.9	15.6	0.6	47.6	41.6	10.8	88.1	4.4	7.5
≥college	22.3	1.4	55.3	10.5	0.3	59.4	35.3	5.2	92.8	5.5	1.8
Religion			•					•	•		
Conservative Protestant	18.3	1.4	57.0	18.2	0.6	46.8	41.7	11.5	90.9	2.3	6.8
Other Protestant	20.6	1.4	53.1	17.4	0.4	55.5	41.1	3.5	87.8	7.3	4.9
Catholic	18.9	1.7	46.9	18.6	0.6	47.4	40.1	12.5	87.9	4.6	7.5
Other or none	22.1	2.1	32.1	28.0	0.5	51.0	41.3	7.7	96.9	1.6	1.5

Anal Intercourse

Table 2 summarizes the reports of anal intercourse, by social and demographic characteristics. Anal intercourse is not prevalent among men aged 20–39: only 20% had ever engaged in this act.* There was a significant difference by race: While 21% of white men had had anal intercourse, only 14% of black men had done so. This difference remained after adjustments for age and marital status. The difference between Hispanics and non-Hispanics increases and becomes statistically significant after controlling for age and marital status.

The likelihood of having had anal intercourse was positively related to age: Among men aged 35–39, 27% had had anal intercourse, compared with only 13% of men aged 20–24. Because of this association, the age-adjusted marital status results were different from the unadjusted results shown in Table 2. After controlling for age, we found that currently married men were the least likely to have had anal sex. The adjusted percentages among never-married, currently married, and formerly married men were 21%, 18% and 26%, respectively. Net of age, 25% of currently cohabiting men had had anal intercourse, representing a seven percentage point difference compared with married men. These age-adjusted marital status differences generally pertain only to white men.

Black men who were currently married and never-married were equally likely to have engaged in anal sex, and those who were formerly married were most likely to have done so. Cohabiting black men were the least likely to have had anal intercourse. Among both black men and white men, the likelihood of ever having engaged in anal sex was lowest among those with less than a high school education, although among whites the effect of education was not statistically significant (not shown). Religion had no effect on ever having had anal intercourse.

On average, men had their first anal intercourse experience at age 22, which was substantially higher than the mean age at first vaginal intercourse. This comparison, however, was based on the 95% of all men who had ever experienced coitus but only the 20% who had ever had anal sex. Nearly all men (90%) who had had anal sex had done so the first time with a woman. As Table 2 indicates, almost 50% of men had had only one anal sex partner in their lifetime, although a substantial proportion (20%) of this relatively small group had had four or more partners. Age and race were unrelated to the number of anal sex partners a man had ever had. Some of the covariates with large differences among categories were not statistically significant, in part, because the sample size was small. Hispanics were far more likely than non-Hispanics to have had more than one anal sex partner. Currently married men had had the fewest anal sex partners in their lifetime, compared with other marital status groups. Currently cohabiting men had had slightly more partners than had married men.

Education had a strong negative effect on lifetime number of anal sex partners. Men with a high school education or less were more likely than men with at least some college education to have had four

*Joseph Catania and colleagues (see reference 24) reported that among sexually active heterosexual men and women aged 18–75 who have an HIV risk factor (multiple or high-risk partners, receipt of a blood transfusion or use of injectable drugs), 22% had ever had anal intercourse. Based on three very limited studies that asked men about this behavior, June Reinisch and colleagues (see reference 24) estimated that 18% had ever engaged in heterosexual anal intercourse. Our results are similar to these estimates.

or more partners. This relationship persisted even after we controlled for race, age and marital status. With respect to religion, the median lifetime number of partners was highest among men in the other or no religion group. This association remained strong after other variables were controlled.

Among men who had ever had anal sex, 51% had not done so between January 1990 and the date of interview. Among the 49% remaining, 40% had had anal sex with only one partner and 9% with two or more partners. Whites and blacks did not differ with respect to this distribution. Hispanics, however, were far more likely than non-Hispanics to have had two or more anal sex partners. Age also exhibited a significant effect: Men aged 20–24 were significantly more likely than those of any other age-group to have had one or more partners during the 18-month period.

The proportion of men who abstained from anal intercourse during this period does not vary by marital status. Among black men, however, the percentage who abstained from anal intercourse was significantly lower among formerly married men, compared with other marital status groups (not shown). Regarding number of partners, currently married men were more likely to have had only one partner, and never-married men were more likely to have had two or more. Currently cohabiting men were also more likely to have had only one partner and less likely to have had two or more partners than were other single men. Cohabiting men were also less likely than married men and least likely among the relationship status groups to have abstained from anal intercourse during the 18-month period. Education had no effect on the number of anal intercourse partners since January 1990, but religion did: Men who were conservative Protestants and those who were Catholic were the most likely to have had two or more partners during this time period.

Further evidence that anal intercourse is a nonprevalent and infrequent sexual act is that 90% of men who had ever had anal intercourse had not done so during the four weeks prior to interview. Men who had done so were almost evenly divided between those who had had anal sex once and those who had done so two or more times. Most men (75%) reported having had anal sex with women only (not shown). Whites were significantly less likely than blacks to have had anal sex, and non-Hispanics were less likely than Hispanics. White men aged 20–24 were significantly more likely than white men of the other age-groups to have had anal intercourse during the last four weeks. The frequency of anal sex during this interval does not differ by marital status, except among black men: Abstention was lower among formerly married men, compared with the other marital status groups (not shown). Cohabiting men were more likely than married men to have had anal intercourse in the month preceding interview. Although there were a few significant differences in frequency of anal intercourse by education and religion, none of these relationships persisted after age, race and marital status were controlled.

Oral Sex

Table 3 presents the oral sex behaviors of the study population by social and demographic characteristics. Among men aged 20–39, 75% had ever performed and 79% had ever received oral sex. Among whites, there was little difference in the

Table 3. The percentage of U.S. men who have ever performed or received oral sex and the frequency among those who have, by social and demographic characteristics

Characteristic	Ever		Last 4 weeks							
			Performed (N=2,074)				Received (N=2,360)			
	% performed (N=3,286)	% received (N=3,290)	Median times	% 0 times	% 1–2 times	% ≥6 times	Median times	% 0 times	% 1–2 times	% ≥6 times
All	**74.6**	**78.8**	**0.4**	**53.0**	**20.9**	**10.8**	**0.4**	**52.8**	**23.7**	**10.1**
Race	*	*		*	*	*		*		
White	78.8	81.0	0.5	52.1	21.3	11.1	0.5	52.0	24.1	10.2
Black	42.8	62.0	0.3	65.6	14.4	6.0	0.3	60.8	19.4	9.2
Age	*	*				*		*		
20–24	67.1	74.8	0.5	52.2	21.2	9.6	0.7	46.7	26.3	10.6
25–29	77.5	80.3	0.6	49.1	20.6	14.1	0.5	51.7	23.3	10.4
30–34	77.0	79.2	0.4	56.9	19.2	9.2	0.4	55.0	23.7	10.4
35–39	76.2	80.5	0.4	53.4	22.6	10.1	0.4	56.8	21.8	9.3
Marital status	*	*		*	*			*		
Never-married	66.2	75.1	0.4	58.2	19.4	10.4	0.4	55.4	22.2	11.1
Currently married	79.0	79.8	0.5	49.7	22.9	10.1	0.5	52.0	25.0	8.8
Formerly married	85.5	87.3	0.5	51.9	16.9	14.4	0.7	48.0	23.1	12.2
Relationship status	*	*		*	*	*		*	*	*
Cohabiting	85.8	88.8	2.1	36.4	19.2	22.2	1.4	39.5	21.8	20.1
Has regular partner	74.6	85.2	1.7	32.8	30.8	15.8	1.7	32.7	30.1	17.5
No regular partner	62.2	68.7	0.1	86.6	8.0	2.6	0.1	78.0	16.0	2.1
Hispanic		*								
No	74.8	79.3	0.4	53.4	20.9	10.8	0.4	53.2	23.6	9.9
Yes	73.0	73.9	0.7	48.0	20.5	10.9	0.7	47.7	24.7	12.8
Education	*	*								
<high school	59.9	61.2	0.5	51.5	18.8	10.0	0.5	49.8	25.8	9.3
High school graduate	71.7	76.3	0.5	51.8	23.0	10.4	0.5	52.6	24.0	9.8
Some college	78.6	84.5	0.5	52.4	18.1	11.8	0.5	51.4	23.3	12.0
≥college	83.2	86.2	0.4	56.2	21.1	10.7	0.4	55.7	22.9	9.0
Religion	*	*								
Conservative Protestant	67.5	71.5	0.7	48.2	19.8	11.3	0.5	51.6	24.7	9.6
Other Protestant	75.6	80.4	0.4	54.7	22.5	10.2	0.4	56.2	20.8	9.4
Catholic	75.6	78.3	0.4	53.2	21.2	10.6	0.5	50.8	26.4	10.7
Other or none	76.9	82.7	0.5	52.6	18.2	11.7	0.5	50.5	24.0	10.8

percentages that performed and received oral sex, but blacks exhibited a higher prevalence of having received oral sex than of having performed it.

There were also substantial differences by race in the likelihood of ever having engaged in these sexual acts, even after adjustments for age and marital status. Among white men, 79% had performed oral sex, compared with 43% among black men; 81% of whites had received oral sex, compared with 62% of blacks. At the individual level, data not shown indicates that 16% of whites and 37% of blacks had never performed or received oral sex; 3% of whites and 1% of blacks had performed but had never received it; 5% of whites and 21% of blacks had received but had never performed it; and 76% of whites and 41% of blacks had performed and had received oral sex. Regarding ethnicity, white Hispanics were less likely than other whites to have performed or to have received oral sex (not shown).

Men aged 20–24 were the least likely among age-groups to have engaged in either of these behaviors. This difference persisted even after we adjusted for marital status, although it was weakened, especially among those who had received oral sex. Whether or not we controlled for age, the percentage of men who had performed or received oral sex was lowest among never-married men, intermediate among currently married men and highest among formerly married men. Among never-married men, 75% had received oral sex, and 66% had performed it. Among married men, in contrast, the proportions who had received and who had performed oral sex were almost identical (80% and 79%, respectively). The proportions who had performed and who had received oral sex were also similar among formerly married or cohabiting men, suggesting that oral sex is mutual behavior among couples in a relationship of some duration. Cohabiting men were more likely than married men to have performed and to have received oral sex. These patterns were not the same among black men: Married men, formerly married men and cohabiting men were more likely to have received than to have performed oral sex. Cohabiting black men were no more likely than married black men to have performed and to have received oral sex.

Among both whites and blacks, a higher educational level was associated with a greater likelihood of having engaged in oral sex. Regarding religion, conservative Protestants were generally the least likely to have received or to have performed oral sex. After we controlled for age, race and marital status, the effect of religion was weakened with respect to having performed oral sex but remained strong and significant regarding having received oral sex.

Fifty-three percent of men who had ever performed oral sex had not done so during the four weeks prior to the interview. Among those who had, 97% reported that they had done so with a woman (not shown). During this time period, 21% of men had performed oral sex one or two times and 11% had done so six or more times. This distribution was almost the same for the frequency of receiving oral sex. However, since the frequency during the last four weeks' measure was conditional upon those who had performed or had received oral sex, the population bases were different.

Black men were less likely to have performed oral sex during this period, and they had a lower frequency of having performed oral sex than did white men. Blacks were also less likely than whites to have received oral sex. White Hispanics were more likely than other whites to have performed or received oral sex during the four weeks prior to interview (not shown).

When marital status was controlled, men aged 30 and older were less likely than were younger men to have performed or to have received oral sex in the last four weeks. Married men and formerly married men were more likely than never-married men to have performed or to have received oral sex, a relationship that became more distinct when age was controlled. Among black men, however, marital status had no significant effect on having performed oral sex, and formerly married men were most likely to have received oral sex (not shown). Cohabiting men and other single men who had a regular sex partner were more likely than married men to have performed oral sex and were more likely to have done so six or more times over the four-week period. The same relationship existed with respect to receiving oral sex.

Although there was some indication that men who had a college education were less likely to have performed or to have received oral sex in the four weeks prior to the interview, the overall effects of education were not statistically significant. Neither were the effects of religion, which were further attenuated after age and marital status were controlled.

Sexual Orientation

Table 4 shows that 2% of sexually active men aged 20–39 (2.4% among whites and 1.3% among blacks) had had any same-gender sexual activity during the last 10 years. Approximately 1% of the men (1.3% among whites and 0.2% among blacks) reported having had exclusively homosexual activity.

Despite the small number of respondents who reported any same-gender contact over the last 10 years, and hence the larger sampling errors, we found that a few covariates were significantly related to sexual orientation. Currently and formerly married men were less likely to have had any same-gender sexual activity than were never-married men. Hispanic men were more likely than non-Hispanic men to have had any same-gender sexual contact and to have had only same-gender contact, even after adjustments were made for marital status and age. The effect of age on exclusively same-gender activity attenuated after marital status was controlled. We also found that education was positively related to having had any same-gender activity, but not to exclusive homosexual activity.

Discussion

Our descriptive analyses of the sexual behavior of U.S. men shows that while virtually all men aged 20–39 are sexually experienced, some types of sexual acts are far more prevalent than others. Vaginal intercourse is nearly universal, even among never-married men in this age range, and three-fourths of men have performed and received oral sex. However, only one-fifth have engaged in anal sex and half of these had not done so in the 18 months prior to the survey. Overall, then, a very small proportion of the adult male population is engaging, and engaging frequently, in sexual contact that involves a high risk of AIDS transmission.

On the other hand, more than one-fifth of men have had 20 or more vaginal sex partners in their lifetime, and a similar proportion of never-married and formerly married men had had four or more partners over an 18-month period. These behaviors are risky, given the current AIDS epidemic. But vaginal sex is infrequent among many single men; at least one-third had not had coitus in the four weeks preceding the interview.

Our examination of the three types of sexual acts by social and demographic characteristics reveals some interesting subgroup differences. The results confirm that marital and relationship status are important "exposure" variables that differentiate men in terms of their number of sex partners, frequency of sex and type of sex act. Age is also associated with some sexual behaviors: For example, men aged

20–24 were significantly more likely than men of the other age-groups to have had one or more anal sex partners since January 1990 and during the four weeks prior to the interview.

Race and ethnicity are also associated with differences in men's sexual behavior. Never-married blacks were more likely than never-married whites to have had vaginal intercourse. Although there was little difference in coital frequency by race, blacks had had more vaginal sex partners in their lifetime and since January 1990. In contrast, less than 14% of black men had had anal sex, compared with 20% of white men. Among those who had ever had anal sex, however, race was unrelated to lifetime number of anal sex partners and number of partners since January 1990. Whites who had ever engaged in anal sex were significantly less likely than blacks to have had anal sex during the four weeks prior to interview.

With regard to oral sex, black men were less likely than white men to have performed or to have received oral sex in their lifetime and within the last four weeks before the interview. Although there was little difference among white men in the prevalence of having performed and having received oral sex, black men were far more likely to have ever received than to have ever performed this act. We conclude that, in general, black men's sexual activity tends to involve primarily vaginal sex and, to a limited extent, receiving oral sex.

Our analysis by ethnicity found that Hispanics were less likely than non-Hispanics to have performed or to have received oral sex. Although there was no difference in lifetime number of vaginal sex partners or coital frequency during the four weeks prior to the interview, Hispanics were more likely than non-Hispanics to have had four or more sexual partners since January 1990. Hispanics were also more likely to have ever had anal intercourse, to have engaged in this act with more than one partner both over their lifetime and since January 1990, and to have had anal sex more frequently over the last four weeks. This higher prevalence and incidence of anal intercourse may be partly attributed to the higher same-gender sexual orientation among Hispanics. Regardless, their pattern of multiple vaginal sex partners, greater involvement in anal intercourse, and more prevalent same-gender sexual contact places this ethnic group at higher risk of contracting and transmitting the AIDS virus.

Some aspects of men's sexual behavior differ according to education and religion. Men with higher education were more likely to have had anal intercourse and to have performed or received oral sex. Education was also positively associated with having had a same-gender sexual experience within the last 10 years, but it was not associated with being exclusively homosexual. More highly educated men had had fewer vaginal and anal sex partners in their lifetime. These findings suggest that those with more education had more stable sexual relationships and that they were more likely to experiment within those unions. Overall, the effect of education on the risk of transmitting or acquiring HIV is probably minimal because the positive effect of education on type of sexual act and on sexual orientation is balanced by its negative effect on number of partners.

As for religion, conservative Protestants had had the fewest number of vaginal sex partners in their lifetime, and men of the other or no religion category had had the most partners. Lifetime number of anal intercourse partners was highest among the latter group. Conservative Protestants were the least likely to have ever received or performed oral sex. In general, men who were not members of an organized religion, particularly a conservative religion, tended to engage in riskier sexual practices.

Findings such as those pertaining to the effects of education and religion are consistent with the notion that membership in certain social groups instills more or less traditional values about sexual behavior and may either provide greater opportunities to engage in or may prohibit engaging in a variety of sexual practices. So, too, is our finding that currently cohabiting men had had more vaginal sex partners, were more likely to have had anal intercourse, and were more likely to have performed and received oral sex than were married men.

The percentages of same-gender sexual activity in our results appear slightly lower than those from some other recent surveys, but none is close to the 10% figure that persists from Kinsey's study. The 1989 General Social Survey (GSS) found that 98% of sexually active men aged 18 and older were exclusively heterosexual during the 12-month period prior to interview.[25] Using GSS data on the number of male and female sex partners that respondents (men and women) had had since age 18, Smith estimated that "three percent have not been sexually active as adults, 91–93 percent have been exclusively heterosexual, 5–6 percent have been bisexual and less than 1 percent have been exclusively homosexual."[26]

Table 4. The percentage of men aged 20–39 who have experienced same-gender sexual activity during the last 10 years, by social and demographic characteristics

Characteristic	Any same-gender activity (N=3,224)	Exclusively same-gender activity (N=3,224)
All	**2.3**	**1.1**
Race		
White	2.4	1.3
Black	1.3	0.2
Age		*
20–24	3.0	2.3
25–29	2.8	1.2
30–34	2.2	0.4
35–39	1.3	0.7
Marital status	*	*
Never-married	4.9	2.8
Currently married	0.6	0.0
Formerly married	1.1	0.5
Relationship status		
Cohabiting	4.5	4.1
Has regular partner	3.3	1.8
No regular partner	4.4	1.9
Hispanic	*	*
No	2.0	1.0
Yes	4.8	2.8
Education	*	
<high school	0.1	0.0
High school graduate	1.7	1.4
Some college	2.8	1.4
≥college	4.0	0.8
Religion		
Conservative Protestant	2.6	0.6
Other Protestant	2.2	1.3
Catholic	2.7	1.3
Other or none	0.9	0.5

The results of a recently completed survey of more than 20,000 men and women aged 18–69 in France indicate that 4% of men had had at least one same-gender sexual experience during their lifetime and that 1% had done so over the 12 months prior to the interview.[27] These low levels of same-gender sexual contact suggest that the adult male population in which HIV is heavily concentrated is not as large as many had assumed.[28] This has implications for the construction of models used to estimate the prevalence of HIV in the United States, in which a primary model component is the current number of male homosexuals.[29]

The descriptive results presented here cannot begin to adequately test hypotheses about the effects of individual-level characteristics on sexual behavior. Still, they provide important insights for the development of multivariate analyses that include other individual and community characteristics and that examine the sexual practices of men and their partners within the context of their specific rela-

tionship. We plan to conduct such analyses in the future.

Another caution is in order. As Seidman and colleagues[30] and Catania and colleagues[31] have discussed, estimating an individual's actual risk of STD infection is a complex process. For a better assessment, "one would need to know the size and characteristics of his or her sexual network, the prevalence of HIV infection across the social strata in which those sexual networks are embedded, the type and frequency of sexual practices engaged in, as well as information on donor infectivity and host susceptibility."[32]

Our study falls short of meeting these demands. Nevertheless, by describing the sexual behavior (particularly those practices that are markers for an elevated risk of STD infection) of men in the United States and by examining how these behaviors vary by social and demographic characteristics, this study provides public health officials with preliminary information about groups that are most in need of intervention.

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Condom Use Among U.S. Men, 1991

By Koray Tanfer, William R. Grady, Daniel H. Klepinger and John O. G. Billy

A 1991 study of a nationally representative sample of men aged 20–39 finds that 27% of sexually active men had used a condom in the four weeks before interview. Black men are more likely than white men to report condom use (38% vs. 25%), and men younger than 30 are more likely to do so than are those older than 30 (36% vs. 19%). Among white men, condom use increases with years of education; among black men, however, those with 12 years of education are much less likely to report condom use than are those with more or less than 12 years (28% vs. 43–50%). Condom use is positively related to number of partners. Men who have engaged in anal intercourse, those who have had a one-night stand and those who are bisexual or homosexual are also more likely to report condom use. Among those who reported using a condom in the previous four weeks, 55% of whites and 18% of blacks had done so only for birth control and 7% of whites and 9% of blacks had done so only for protection against infection with the human immunodeficiency virus and other sexually transmitted organisms; the remainder had used a condom for both reasons. (Family Planning Perspectives, 25:61–66, 1993)

The incidence of sexually transmitted diseases (STDs) rose dramatically during the 1980s. In 1988, an estimated 12 million new sexually transmitted infections occurred in the United States.[1] Increases occurred not only in the incidence of historic venereal diseases such as gonorrhea and syphilis, but also in about 20 other diseases, syndromes and complications of STDs.[2] During the same period, the human immunodeficiency virus (HIV), the virus that causes AIDS, spread rapidly, first among homosexual men and then among heterosexuals. The Centers for Disease Control and Prevention estimates that at least one million Americans are now infected with HIV.[3] Heterosexual transmission is expected to account for an increasing proportion of those who become infected with HIV in the future.[4]

The risk of STD infection can be virtually eliminated by total abstinence from sex; individuals who do not wish to abstain can substantially diminish their risk by engaging in "safer sex" practices, such as limiting the number of people with whom they have sex, avoiding sex with partners they do not know well, choosing partners who have a relatively low risk of being infected, or maintaining a mutually faithful relationship. They can also reduce their risk of contracting and transmitting STDs by taking precautions that minimize the potential for exposure to body fluids through damaged rectal or genital tissue.[5]

Condoms can provide effective protection by blocking the transmission of a wide variety of sexually transmissible organisms. Research has demonstrated that latex condoms help to protect against gonorrhea, syphilis, chlamydial infections, trichomoniasis, herpes simplex, mycoplasmas and HIV.[6] In laboratory experiments, sperm and most disease-causing organisms, including HIV, have not passed through intact latex condoms.[7] Because condoms help prevent STDs, they also help prevent conditions in women that result from STD infection, such as pelvic inflammatory disease (PID), which in turn can lead to ectopic pregnancy and infertility. Condom use may also protect women against cervical cancer,[8] which research has linked to infection with certain types of human papillomavirus.[9]

When the condom is used correctly, it is also a relatively effective method of birth control. But, after more effective methods—oral contraceptives and the IUD—were introduced in the early 1960s, condom use declined.[10] Recently, however, this trend seems to have reversed: Data from the 1988 National Survey of Family Growth show that between 1982 and 1988, the use of the condom increased significantly among women younger than 25 and those who had never been married.[11]

The behavioral response of the American public to the STD epidemic is not well documented. Knowledge about how the spread of these diseases has affected the prevalence of condom use and its variation across population subgroups is particularly limited. Most of the nationally representative data on condom use focus on contraception because they were collected before concern about HIV and other STDs became widespread. Moreover, with a few exceptions, our knowledge about contraceptive behavior is based on information reported by women only.*

Because the condom is a method used by men, we need information from men if we are to understand the factors associated with condom use and formulate strategies and interventions to prevent the spread of HIV and other STDs. The primary purpose of this article is to provide information on the prevalence of and factors associated with condom use among 20–39-year-old men in the United States.

Data and Methods

The National Survey of Men (NSM-I) was conducted in 1991, using a stratified and clustered area probability sample of households in the contiguous United States. A total of 3,321 men aged 20–39 were interviewed; black households were oversampled to ensure adequate representation. The interview response rate was 70%. (For a detailed description of the survey design, see: K. Tanfer, "National Survey of Men: A

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*At the time this article was written, three other population-based, nationally representative surveys had collected information from adult men on sexual behavior and contraception. The General Social Survey (see: T. W. Smith, "Adult Sexual Behavior in 1989: Number of Partners, Frequency of Intercourse and Risk of AIDS," *Family Planning Perspectives*, 23:102–107, 1991) contained seven self-administered questions on sexual behavior in the 12 months before interview, but did not request information on condom use. In the 1990 National AIDS Behavioral Survey (see: J. A. Catania et al., "Prevalence of AIDS-Related Risk Factors and Condom Use in the United States, *Science*, 258:1101–1106, 1992), questions on the frequency of specific sexual behavior, including condom use, were asked only of a subsample of respondents who reported a risk factor. The results of the National Health and Social Life Survey conducted by the National Opinion Research Center at the University of Chicago are not yet available (John H. Gagnon, personal communication, Dec. 1992).

Table 1. Percentage of sexually active U.S. men aged 20–39 who reported using a condom at least once during the four weeks before interview, by race and age, according to marital status, National Survey of Men, 1991

Marital status	All			White			Black		
	Total (N=2,608)	<30 (N=1,095)	≥30 (N=1,513)	Total (N=1,600)	<30 (N=637)	≥30 (N=963)	Total (N=1,008)	<30 (N=458)	≥30 (N=550)
All	26.5	35.9	19.0	24.8	33.9	17.8	38.1	48.1	28.4
Married	18.3	23.1	16.2	17.8	22.7	15.7	23.5	27.6	21.6
Single	39.0	44.9	27.6	36.6	42.6	25.0	49.2	56.0	38.0

Note: In Tables 1–3 and 5, the samples include all respondents who had had vaginal or anal intercourse or oral sex at least once in the four weeks preceding interview.

Technical Note," pp. 83–86). The final sample was weighted according to population statistics to account for stratification, clustering, disproportionate sampling and differential nonresponse; unless otherwise noted, all results presented here are based on weighted data. The results can be generalized to the U.S. population represented by this sample, subject to sampling error.

The dependent variable, condom use, is a dichotomous variable that indicates whether a respondent used a condom at least once during sexual activity in the four weeks preceding his interview. Other studies have employed use at last intercourse as a measure of condom use, but we asked about use at last intercourse only if a respondent was married or cohabiting, or was not cohabiting but had a regular sex partner. We focused on the four weeks before interview because for some men, especially those without a regular partner, last intercourse could have occurred a long time before their interview, and because last intercourse could be atypical of the usual sexual behavior of the respondent.

Condom use is dependent on sexual activity, so we restricted our analyses to the 2,608 men who had had vaginal or anal intercourse or oral sex during the four-week period before their interview. We chose the four-week time frame because, in a shorter period, atypical weeks of sexual activity and gaps in sexual activity caused by a partner's menstrual bleeding could distort the data, and a longer period could lead to recall problems. Finally, in examining the prevalence of and the factors associated with condom use during the four weeks before interview, we did not differentiate between condom use to prevent pregnancy and condom use to prevent STD transmission because use for either reason usually serves a dual purpose. Oral and anal sex are exceptions, because no risk of pregnancy exists.

We examined three groups of factors associated with condom use—individual characteristics; sexual behavior; and knowledge, attitudes and perceptions of the risk of pregnancy and STDs. All of the variables included in these three groups are important because they help sort individuals into categories according to degrees of exposure and risk.

Individual Characteristics

Personal characteristics may be associated with access to knowledge about STDs, with awareness of the benefits of using condoms and with access to condoms. They are also likely to be associated with a man's ability to assess his own risk and his perception of his ability to avoid infection.

We hypothesized that men of higher socioeconomic status are more likely than those of lower socioeconomic status to have been exposed to information regarding the acquisition and transmission of STDs, to be able to assess their risk of acquiring an STD, and to have easy access to condoms. We also expected men of higher socioeconomic status to be more skilled in communicating with their partner about STD prevention and negotiating preventive measures such as use of condoms. We used education as a measure of socioeconomic status.

We expected age to influence condom use for three reasons: Older men are less likely than younger men to engage in high-risk behavior; the sexual behavior and health prevention patterns of older men may be more resistant to change; and younger men may have had greater exposure to educational material on STDs and preventive behavior.

Condom use, like any other preventive behavior that requires cooperation and social interaction, is strongly influenced by social reinforcement. Thus, we expected condom use to be positively associated with the presence of norms that proscribe certain sexual practices or that support risk reduction. We used religion and ethnicity to represent the influence of peer norms and affiliation with a social network.

Finally, we examined condom use by race because several researchers have found significant differences in behavior related to health and contraception even after controlling for many economic, social and educational factors.[12]

Sexual Behavior

Research has shown that, without preventive measures, certain sexual practices increase the risk of disease transmission more than others.[13] People who engage in receptive anal intercourse, sex with more than one partner, or sex with partners they do not know well are at relatively high risk, compared with those who engage in vaginal sex with a long-term partner within a mutually monogamous relationship.[14] Consequently, we hypothesized that people who engaged in high-risk sexual practices would be more likely to use condoms.

Risk Assessment

Because condoms provide protection against both pregnancy and STDs, we examined condom use separately in relation to perceptions about pregnancy prevention and perceptions about disease prevention. We assumed that, in general, those for whom the cost of an unintended pregnancy would be high would emphasize effective contraception at the expense of disease prevention (i.e., use of condoms), while those for whom STDs were a greater concern would tolerate a higher risk of pregnancy to maximize their protection against infection. We also expected that some individuals would find a high risk of either outcome unacceptable and would use a condom in conjunction with a highly effective method of birth control.

To determine how factors related to pregnancy prevention affect condom use, we asked the respondents whether they were fertile, whether they wanted more children, whether one act of unprotected intercourse was likely to result in conception, and whether using a condom, compared with using no method, was a good way to prevent pregnancy.

Concern about disease prevention is also an important determinant of condom use. We expected that men who had recently had an STD would be more likely to use condoms. To test this hypothesis, we examined the association between current condom use and STD experience since 1988. The year was chosen to capture recent experience within a sample large enough for meaningful analysis.

To engage in preventive behavior, it is essential to know what constitutes risk. Therefore, we expected condom use to be associated with knowledge about HIV and other STDS, knowledge about risk factors and knowledge about preventive behavior.

The respondents' knowledge about HIV was measured by their responses to nine questions on the modes of transmission.

Perception of one's personal risk and the perceived severity of the outcomes have also been found to be important determinants of preventive behavior.[15] We used each respondent's subjective assessment of the rate of HIV infection in his community as an indirect measure of his perception of his personal risk. We also asked each respondent if there was any chance that he was infected with HIV or would become infected in the next 12 months.

We measured the respondents' level of concern about AIDS by asking eight questions that explored perceptions about the seriousness of the disease; the painfulness of its symptoms; the efficacy of treatment and the possibility of curing AIDS; and personal, social and medical costs of infection and treatment. We scored the response to each question on a five-point scale and used the total of those scores as an overall concern index; subsequently, we dichotomized the overall score as low concern (15–29) or high concern (30–40).

The intention to be tested for HIV may also be an indicator of preventive health behavior because it suggests concern about infection. Therefore, we expected to find a positive relationship between condom use and the intention to be tested.

Finally, to take steps to reduce their risk, individuals who are knowledgeable about behavioral risks and who feel that they may be at risk must also believe that they can take preventive measures that will reduce their risk. To measure this variable, we included a question examining the respondents' perceptions about the effectiveness of using condoms (as opposed to using no method) in preventing infection.

Results

As Table 1 shows, we found a strong racial difference in condom use: Of the sexually active men in our sample, 25% of whites and 38% of blacks reported having used a condom in the four weeks preceding the survey. Condom use also varied according to age and marital status. We expected this to be the case, because sexual behavior, especially high-risk sexual behavior, varies by age and marital status.[16] Each of these three factors was independently related to condom use. The association between condom use and other demographic factors tends to be moderated by age and marital status.* Therefore, when it is appropriate, we show our results by age and marital status as well as by race.

Table 2. Percentage of sexually active respondents who reported using a condom in the four weeks before interview, by social and demographic characteristics, according to race, marital status and age

Characteristic	N	Total	Race		Marital status		Age	
			White	Black	Married	Single	<30	≥30
Age		•	•	•	•	•		
20–24	507	38.9	35.8	56.5	18.8	45.4	na	na
25–29	588	33.3	32.3	40.3	24.7	44.2	na	na
30–34	737	21.4	20.7	26.7	18.9	27.7	na	na
35–39	776	16.7	14.9	30.0	13.8	27.3	na	na
Marital status		•	•	•			•	•
Married	1,544	18.3	17.8	23.5	na	na	23.1	16.2
Formerly married	275	26.1	23.8	39.7	na	na	34.6	21.5
Never married	789	43.6	41.5	51.9	na	na	46.6	33.6
Type of relationship		•		•			•	•
Married	1,544	18.3	17.8	23.5	na	na	23.1	16.2
Cohabiting	270	23.7	23.3	26.2	na	na	32.7	11.3
Single, with regular partner	626	44.2	42.1	51.8	na	na	47.9	35.5
Single, without regular partner	168	46.0	41.8	69.2	na	na	51.8	36.2
Education		•	•	•	•	•	•	•
<12 yrs.	287	21.5	17.4	42.5	11.5	32.6	31.2	9.2
12 yrs.	1,056	22.5	21.7	27.7	15.1	34.3	30.5	15.8
>12 yrs.	1,264	31.5	29.4	50.0	22.9	45.0	43.1	22.6
Religion		•	•					•
Conservative Protestant	605	25.1	22.1	36.8	19.2	36.9	33.2	18.9
Other Protestant	1,022	23.3	19.8	40.0	15.7	35.0	33.4	15.7
Catholic	609	27.3	26.4	43.7	18.3	40.7	36.8	18.9
Jewish or other	82	38.8	38.7	†	26.6	56.9	31.6	43.2
None	287	31.2	31.8	27.3	22.8	40.4	44.1	19.5
Hispanic‡		•	•			•	•	•
Yes	176	38.7	38.2	56.1	22.5	60.8	45.5	28.6
No	2,432	25.3	23.3	37.7	17.9	36.6	34.5	18.3

*p≤.05, in this and subsequent tables, indicates a statistically significant relationship between the variable and condom use. †Sample size too small for meaningful analysis (N<20). ‡Hispanics could be of any race. *Note:* na=not applicable.

Individual Characteristics

The data in Table 2 present a more detailed picture of the relationship between condom use and demographic characteristics. Condom use was negatively associated with men's current age, declining sharply after age 30. Although this may reflect the effects of other factors that are closely related to age, such as marital status, education and income, the relationship remained in a separate analysis after we controlled for race, marital status, religion, ethnicity, education and income (data not shown).

We explored the effect of men's relationship status on condom use in two ways. When we examined condom use according to marital status (married, formerly married or never married), married men were the least likely to report having used a condom in the last four weeks. Likewise, the breakdown by relationship status shows that condom use was negatively related to relationship stability. For example, single men who did not have a regular sex partner were more likely to report condom use than were those who had a steady partner, and single men with a steady partner were more likely to report condom use than were men who were cohabiting. The condom use rate among cohabiting couples was similar to that among married couples.

Condom use increased with education, particularly among white men. Among blacks, it was lower among men with exactly 12 years of education than it was among those who had less than or more than 12 years of schooling (28% vs. 43% and 50%). Controlling for the effects of age and marital status did not alter this relationship. A separate analysis suggests that the difference by race in the relationship between education and condom use may result from differences in risk perception by educational attainment.

Religion had a limited effect on condom use in our sample. There was no significant difference between Catholics and

*In an analysis of variance, we found two-way and three-way interaction effects in addition to independent effects of age and marital status on condom use. As a rule, we do not include these data in the text, but we do comment on "net" or "adjusted" results when warranted. The full analyses containing data not shown here, or elsewhere in this issue, are available from the lead author.

Table 3. Percentage of sexually active respondents who reported using a condom in the four weeks before interview, by sexual behavior variables, according to race

Variable	N	Total	White	Black
No. of vaginal sex partners since January 1990				
1	1,895	21.5	21.2	25.2
2–3	386	35.4	29.2	58.0
≥4	289	48.1	45.5	56.3
No. of vaginal sex partners in four weeks before interview				
1	2,384	25.1	23.9	34.4
≥2	162	53.5	49.9	59.6
Anal intercourse since January 1990†				
Yes	265	23.0	20.8	45.1
No	238	23.4	23.5	22.5
Anal intercourse in four weeks before interview†				
Yes	60	35.2	35.0	‡
No	443	21.7	20.6	36.5
One-night stand since January 1990§				
Yes	244	37.8	33.2	59.6
No	1,005	24.2	23.7	28.4
One-night stand in four weeks before interview§				
Yes	56	61.6	69.9	‡
No	1,193	25.5	24.0	36.6
Sexual orientation††				
Exclusively heterosexual	2,566	26.1	24.3	‡
Bisexual or homosexual	41	52.0	52.5	38.1

†Among men who had ever had anal intercourse (N=526). ‡Sample size too small for meaningful analysis (N<20). §Among men who had ever had a one-night stand (N=1,249). ††As measured by sexual behavior during the 10 years before interview.

Protestants, regardless of race, marital status or age. Conservative Protestants were as likely to use condoms as were mainstream Protestants, and self-identified fundamentalists were no less likely to use condoms than were men who did not consider themselves fundamentalists (data not shown). Among white men only, condom use was consistently higher among those who were affiliated with a non-Christian religion or were not affiliated with any religion than it was among those affiliated with a Christian religion.

Overall, Hispanic men were more likely than non-Hispanic men to use condoms; this relationship remained significant after we controlled for the effects of age, marital status and race. This is primarily because Hispanic men are more likely than non-Hispanic men to engage in high-risk sexual behavior (see: J. O. G. Billy et al., "The Sexual Behavior of Men in the United States," pp. 52–60 in this issue), to perceive themselves as at risk of HIV infection and to worry about getting AIDS (not shown).

We found no statistically significant difference in condom use among the four (West, Midwest, South, and Northeast) census regions of the United States (not shown).

Sexual Behavior

The first sexual behavior we examined was partner change. We used two measures of partner change—the number of vaginal sex partners between January 1990 and the date of interview (an average of 18 months), and the number of vaginal sex partners in the four weeks preceding the interview. Although the first measure is primarily a risk marker, the second is a direct risk factor. As Table 3 shows, both were strongly and positively associated with condom use.

Men who had had multiple sex partners since January 1990 were more likely than men who had been monogamous to have used a condom in the four weeks prior to their interview. Black men with two or more partners were more than twice as likely as those who had been monogamous to report condom use, but among whites, the prevalence of condom use doubled only among men with four or more partners; this difference remained significant after adjustment for age and marital status. Among men who had had more than one partner in the month preceding the survey, 54% reported condom use during that period.

Anal intercourse did not appear to be associated with condom use: Among men who had ever engaged in anal intercourse, those who had done so between January 1990 and the survey date were not more likely to report current condom use than were those who had not had anal intercourse during that period. White males who had had anal intercourse in the previous four weeks were more likely to report condom use than were those who had engaged in anal intercourse but not during the previous four weeks. Having engaged in oral sex (either fellatio or cunnilingus) did not appear to affect condom use, perhaps because oral sex often occurs along with vaginal intercourse.

Another risk marker used in our analysis was the one-night stand, which we defined as "oral, anal, or vaginal sex with a total stranger, with whom [the respondent] never had sexual contact again." Overall, condom use was positively associated with casual-sex experience. Men who had had a one-night stand since January 1990, or in the four weeks prior to their interview, were more likely to report condom use.

We did not find a strong relationship between condom use and having ever paid for sex (not shown). We were not able to use a more recent or more specific reference period for this variable because of the generally low incidence of such experiences in this sample of men.

We caution that use of condoms in the four weeks prior to interview does not necessarily correspond to the specific sexual behaviors defined by these variables; rather, the sexual behavior variables are used as risk factors for infection with STDs (including HIV) and as behavioral markers for condom use.

The last variable in this group was the respondents' self-reported sexual orientation in the last 10 years. We regrouped the initial five-point scale, which ranged from exclusively heterosexual to exclusively homosexual, into a dichotomy: exclusively heterosexual vs. other. The condom use rate was twice as high among bisexual or homosexual men as it was among heterosexual men. This relationship remained significant after we adjusted for age and marital status (not shown).

Risk Awareness

As Table 4 shows, whites were three times as likely as blacks to report using condoms only for birth control (55% vs. 18%), but blacks were twice as likely to report using

Table 4. Percentage distribution of respondents who reported using a condom during the four weeks before interview, by reason for use, according to race, marital status and age

Reason	Total	Race		Marital staus		Age	
	(N=737)	White (N=398)	Black (N=339)	Married (N=452)	Single (N=285)	<30 (N=414)	≥30 (N=323)
Birth control only	48.6	55.3	18.1	83.1	24.1	41.1	59.8
STD prevention only	7.6	7.2	9.4	0.7	12.5	8.0	6.9
Birth control and STD prevention	43.4	37.1	71.8	15.9	62.9	50.8	32.3
Other reasons	0.4	0.4	0.7	0.4	0.5	0.0	1.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

them for both birth control and STD prevention (72% vs. 37%). The difference in the proportions reporting condom use only for STD prevention was small (7% of whites and 9% of blacks). Young men and single men, who are generally at higher risk of infection, were more likely to report condom use for disease prevention.

Table 5 shows rates of condom use according to factors that are related to pregnancy prevention and STD prevention. As we expected, men who were sterile rarely reported condom use. After adjusting for age and marital status, we found that men who were not sterile were almost three times as likely as sterile men to use condoms (28% vs. 10%, not shown). Men who wanted more children were nearly twice as likely to use condoms as were those who wanted no more children (31% vs. 17%), primarily because the latter are more likely to use a highly effective contraceptive method instead of condoms. This relationship remained significant after we adjusted for age and marital status (not shown).

Men who believed that the probability of conception from one instance of unprotected coitus was greater than 50% were more likely to report condom use than were those who thought that the probability was less than 50%. Condom use was also higher among men who considered using a condom a more effective way to prevent pregnancy than using no method at all. These correlations do not necessarily imply that such attitudes increase condom use, because we would expect men who use condoms to attribute higher effectiveness to them.

Recent STD experience increased the likelihood of condom use twofold among white men, but had no effect on the likelihood of use by black men (Table 5). However, a separate analysis of variance (not shown) indicates that this racial discordance might result from compositional differences in the two populations. We found a significant positive association between STD experience since 1988 and condom use among both whites and blacks once we controlled for age and marital status. White men who had had an STD infection since 1988 were nearly twice as likely as those who had not had such an infection to report condom use during the four weeks before the survey (46% vs. 24%; $p<.01$). Among black men, those who had had an STD since 1988 were about one and a half times as likely as those who had not to report condom use (39% vs. 25%; $p<.05$).

We tested several measures of HIV awareness and concern for associations with condom use. First, we examined the respondents' knowledge about HIV transmission. Of nine questions, they answered an average of eight correctly, with 88% answering 8–9 questions correctly and only 2% answering fewer than six correctly. Condom use was positively associated with HIV knowledge among blacks. We did not find such an association among whites, in part because of a ceiling effect in HIV knowledge among these men.

Both blacks and whites were more likely to report condom use during the four weeks before the survey if they knew someone who had AIDS. If the infected person was a relative or friend of the respondent, the likelihood of condom use was higher than if the respondent and the infected person were not well acquainted. Men who thought the prevalence of HIV infection was much higher in their own community than in the United States overall were more likely to report condom use than were men who thought that their community's prevalence rate was much lower than the U.S. average (30% vs. 20%).

Assessment of personal risk of being infected now, or in the future, was another strong predictor of condom use: Respondents who perceived that they were at some risk of infection were more likely to report condom use in the previous month. Condom use was 50% higher among men with a high level of concern about HIV infection and its sequelae than among those with a low level of concern (30% vs. 21%). Men who intended to be tested for HIV were more likely to have used a condom in the previous month than were men who did not intend to be tested (31% vs. 21%).

Finally, men who perceived using condoms as a good way of preventing STD transmission were more than twice as likely to have used a condom (29% vs. 13%). The relationship between attitudinal variables and condom use reported here should be interpreted with caution, because the direction of such a relationship cannot be established with these data.

Discussion

Our results show that the threat of AIDS has not stopped men from engaging in unprotected sex and that this continued risk-

Table 5. Among sexually active respondents, percentage who reported using a condom in the four weeks before interview, by factors related to prevention of pregnancy or STD infection, according to race

Factor	N	Total	White	Black
PREGNANCY PREVENTION				
Sterility				
Sterile	170	2.7	2.5	9.4
Not sterile	2,438	28.8	27.2	38.6
Want no more children				
Yes	775	17.4	15.5	35.0
No	1,809	30.9	29.6	39.0
Perceived probability of conception from intercourse once without contraception				
≤50%	1,722	24.1	22.4	39.5
>50%	876	32.8	31.8	36.7
Condom's efficacy in preventing pregnancy, compared with no method				
Much better	1,147	31.8	30.0	43.0
Somewhat better	1,102	25.6	23.7	40.4
Equal or worse†	327	11.8	11.2	16.3
DISEASE PREVENTION				
STD since 1988				
Yes	100	48.6	54.0	34.4
No	2,508	26.0	24.2	38.3
HIV knowledge level				
High	2,289	27.0	25.3	39.5
Low	319	23.0	21.4	30.6
Know anyone with AIDS				
No	1,947	24.2	22.5	36.8
Yes, not friend or relative	296	31.4	30.8	35.0
Yes, friend or relative	353	38.6	36.6	48.1
HIV rate in respondent's community compared with the U.S. rate				
Much lower	465	20.1	18.8	37.4
About same	1,941	28.5	26.8	38.7
Much higher	155	30.3	27.3	41.7
Likelihood of being infected with HIV				
Now				
No chance	1,523	23.1	21.4	35.2
Some chance	1,074	31.7	30.1	42.8
Next 12 months				
No chance	1,743	23.7	22.0	35.2
Some chance	839	32.4	30.6	45.5
AIDS concern level				
Low	737	20.5	20.1	24.8
High	1,834	29.8	27.6	42.3
Intention to have HIV test				
Yes	1,317	31.3	28.7	42.3
Maybe	514	25.7	25.5	27.4
No	764	21.0	20.3	31.8
Condom's efficacy in preventing STDs, compared with no method				
Good	2,201	28.8	27.0	41.5
Not good	368	12.7	11.1	22.8

†Includes equal, somewhat worse and much worse.

taking does not appear to result from lack of awareness. A preliminary examination of our data showed that between January 1990 and the interview date (an average of 18 months), one-third of the men in our sample had engaged in one or more types of sexual behavior that put them at some risk of HIV infection. The proportion engaging in such behavior was somewhat higher among black men (47%) than among white men (33%). Among those who had engaged in high-risk sexual activities, 75% of the black men and 62% of the white men reported condom use during the same period. A parallel estimate of the proportion of men who, during the four weeks preceding the survey, had engaged in sexual activity that increased the risk of HIV infection was smaller (about 10%), but so was the proportion of risk-takers who had used condoms (about 45%)

The condom use figures may overestimate the actual level of protection against infection, because our study defined condom use as having used a condom at least once in the four weeks prior to the survey. Moreover, these figures do not necessarily correspond to condom use during the specific high-risk sexual activity the men engaged in.

Some respondents may underreport their sexual behavior (e.g., number of partners, anal intercourse, one-night stands) because of embarrassment or social unacceptability; some respondents may overstate their preventive health behavior (e.g., condom use) because of the social desirability of such behavior. Therefore, the estimates of HIV risk factors reported here are likely to be lower boundary figures.

Although condom use appears to be higher among men who engage in high-risk sexual activities, it is still too low. Furthermore, condom use is not distributed uniformly across the risk groups: Intervention efforts may not have reached all groups to the same extent, and some people appear to be ignoring the health risks of their behavior. Our data suggest that more comprehensive education and prevention programs are needed to address the health implications of high-risk sexual behavior. Empirical data such as those presented in this and the accompanying articles are crucial if public health efforts are to reach the individuals and groups who need them the most.

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Condom Characteristics: The Perceptions And Preferences of Men in the United States

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Perceptions regarding the consequences of condom use, as well as preferred characteristics of condoms, are examined in a nationally representative sample of 3,321 men aged 20–39. The psychological and interpersonal effect most often cited is that using a condom "shows that you are a concerned and caring person." This is particularly the case among black men and men who are young and have low educational attainments. However, the same men usually agree that using a condom sends unwanted messages to one's partner—for example, that doing so "makes your partner think that you have AIDS" and "shows that you think that your partner has AIDS." In contrast, white men and those who are highly educated tend to cite embarrassment when buying condoms as a frequent consequence of condom use. The device-related consequences cited most often, particularly among black, unmarried, young and poorly educated men, are that using a condom results in reduced sensation, that one must be careful during sex or the condom may break and that one must withdraw quickly after sex or the condom may come off. When purchasing condoms, most men look for those that are easy to put on, have the right amount of lubrication and stay on; these preferences are particularly prevalent among black men. Few men identify color, ribbing and partner's preference for condom type as important.

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A small but rapidly growing segment of the demographic literature is devoted to investigations of the determinants of condom use among men and women in the United States. Many of these investigations focus on the effect on condom use of either knowledge and attitudes about AIDS and sexually transmitted diseases (STDs), or knowledge of the condom's efficacy in protecting the user from those diseases.[1] The number of studies on this topic is growing, as they are meant to inform education and intervention programs promoting the use of condoms.

Condom use is also affected by perceptions about its psychological, social or physical consequences. For example, the perception that using a condom will cause embarrassment or offend one's partner may be a significant factor in inhibiting its use. Information about both the prevalence of such perceptions and how those perceptions are affected by individual characteristics may thus be critical in designing effective condom promotion programs.

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Since condom promotion is essentially a marketing effort, it is also important to note that condoms users may select from many types with a variety of attributes, such as lubricated or nonlubricated, spermicidal or nonspermicidal, ribbed or nonribbed, natural skin or latex, and with or without a reservoir tip. Condoms also come in many colors and thicknesses. A thorough knowledge of how consumer preferences are shaped by individual characteristics would allow providers to help clients select condoms with characteristics they are likely to find acceptable. However, investigations of consumer preferences have been conducted almost exclusively by condom manufacturing or marketing firms, and the results of those studies are therefore generally unavailable to researchers, program planners and policy analysts.

This study examines both perceptions about the consequences of condom use and preferences for various condom characteristics among adult males in the United States, and is the first systematic investigation of these topics. Perceptions regarding two dimensions of condom use are examined. The first dimension encompasses psychological and interpersonal consequences of condom use, or those having an impact on the relationship between the man and his partner. The second dimension involves the device-related consequences of condom use, including factors such as reduced physical sensation and the need to withdraw quickly after sex to avoid condom slippage during withdrawal. Consumer preferences, in this study, refer to those characteristics that a man looks for when selecting a condom.

Background

Almost all of the existing research that focuses on perceptions about the advantages and disadvantages of condom use is based on small, nonrepresentative samples of college students[2] or clinic patients.[3] Further, although males and females might be expected to have different perceptions about certain condom attributes, such as its possible reduction of physical sensation, all but one of the studies we reviewed, the results of a reader survey by *Consumer Reports*,[4] report the undifferentiated perceptions of mixed-gender groups. Thus, the perceptions of neither males nor females can be clearly identified from the results of most of these studies.

Despite these limitations, however, these studies still provide valuable information about how people view condoms and their use. Two advantages of condom use are commonly cited: effectiveness in preventing AIDS and other STDs,[5] and effectiveness in reducing the risk of an unintended pregnancy.[6] Overall, however, the perceived characteristics of condom use reported in the various studies are overwhelmingly negative. The most commonly cited disadvantages of condom use, mentioned by participants in all of the studies reviewed, are embarrassment in purchasing or using the condom, and reduction in physical pleasure or sensation. Another commonly cited disadvantage of condom use is intrusiveness. Study participants reported that condom use interrupts lovemaking,[7] breaks a romantic mood,[8] and reduces spontaneity.[9] Somewhat less commonly cited but nevertheless important disadvantages of condom use are fears about breakage and about offending one's partner.[10]

The *Consumer Reports* study represents the only available information on consumer

preferences for different types of condoms.[11] The condom features that survey respondents most often cited as desirable are lubrication and a reservoir tip; about three-fourths of respondents favored these features. Also popular were extra-thin, extra-strong, and spermicidally lubricated condoms. The authors of this report note, however, that while 35–40% of respondents liked each of these features, about 10% of respondents indicated that they would not use condoms that had them.

Additional information about popular and unpopular condom characteristics was provided by these respondents when they reported the advantages and disadvantages of particular brands. The participants preferred condoms that were easy to put on; thin; colored; stayed on; were liked by their partner; had the right amount of lubrication; and were inexpensive. The disadvantages of certain brands were that they were difficult to put on; had too much lubrication; didn't stay on; caused allergy; were too expensive; were thick, and reduced sensation; and had an unpleasant odor.

This study builds on the information obtained in the previously mentioned studies in two ways. First, it is based on a nationally representative survey, and the results can be generalized to 20–39-year-old U.S. males. Second, it takes into account individual characteristics and how they affect perceptions about condoms as well as preferences for certain types of condoms.

Data Source and Methods

The data used here were obtained in a national household survey conducted in 1991. The National Survey of Men (NSM-I) was based on a stratified and clustered area probability sample of households in the coterminous United States. Personal interviews were conducted with 3,321 men aged 20–39 of all marital statuses. Black households were oversampled to ensure adequate representation. The interview response rate was 70%. The final sample was weighted on the basis of population statistics to account for stratification, clustering and disproportionate sampling, as well as differential nonresponse. The results based on weighted data can be generalized to the U.S. population represented by this sample, subject to sampling error. (For further details, see: K. Tanfer, "National Survey of Men: A Technical Note," pp. 83–86 in this issue.)

The major purpose of the NSM-I was to develop an understanding of factors influencing adult males' use of condoms to prevent AIDS. As part of that survey, a series of questions designed to elicit information about the respondent's attitudes and perceptions regarding the characteristics of condoms was included in a special "condom module." The analysis presented here is based on responses to two sets of questions included in the module. For the first set, the respondent was handed a show card that had a five-point scale (ranging from "strongly disagree" to "strongly agree") that he was to use to indicate his level of agreement with 13 statements about condoms. He was then read the following:

"Now I am going to read you some statements about condoms. Using this scale, first decide how strongly you agree or disagree with each statement. Then tell me the number that is next to your choice."

The statements read to the respondent were meant to elicit his perceptions about the two dimensions of condom use. Four statements capturing the psychological consequences of condom use are: "It is embarrassing to buy a condom"; "Discarding a used condom after sex is embarrassing"; "Putting on a condom during sex adds excitement"; and "Using a condom shows that you are a concerned and caring person." Also part of the psychological and interpersonal dimensions of condom use are two statements measuring perceptions about how using a condom influences a partner's view of the respondent. These statements are: "If a man uses or suggests using a condom, his partner may think that he has AIDS," and "If a man uses or suggests using a condom, it means that he thinks that his partner may have AIDS."

The second set of consequences concern the device-related dimension of condom use. There are seven statements regarding these consequences: "Condoms cost too much"; "Condoms reduce sensation. That is, you don't feel as much when you use one"; "Sex lasts longer when you use a condom"; "When using a condom you have to be careful because it may break"; "Condoms are difficult to put on"; "A condom often comes off during sex"; and "A man has to withdraw right after sex or the condom may come off during withdrawal."

Most of the consequences of condom use examined in this study are considered because they were identified as important in prior research. However, some are included because they are expected to become increasingly important with the spread of AIDS. These include the effects of condom use on the perception of oneself as a caring person and the interpersonal consequences of condom use.*

Statements about the consequences of condom use were asked of all respondents who had ever had sex. In this sample, 77 men said they had not yet had sex at the time of the interview and an additional 61 men did not respond to questions on perceptions about condom use. Thus, our analysis of the perceptions of the consequences of condom use is based on 3,183 men. The original five-point scale is collapsed and presented as the proportion of respondents who either "moderately" or "strongly" agreed with a statement. This greatly simplifies the analysis and yet accurately represents the distribution of responses provided.

Consumer preferences for specific condom characteristics were measured by asking which characteristics are important to a man when he selects a condom. This question was placed in the context of another question about brand preference—i.e., whether there is one brand that a man prefers most. Thus, the question is clearly linked to consumer behavior for the respondent. For the question about positively valued characteristics, men were given a show card with 12 condom characteristics and asked: "What are the characteristics that you look for in a condom?"†

This question was asked only of "current" condom users, defined as men who had used a condom between January 1990 and the interview (an average of 18 months). Further, 34 men were omitted from the analysis because they failed to provide a date for when they last used a condom (the same 77 men mentioned above were not asked the question because they had not had sex at the time of the interview). Only seven men were excluded because of missing data on the question about positively valued characteristics. Overall, the condom characteristics analysis includes 699 black men and 962 men of other races.

The samples used in this study include both homosexual and bisexual men. The results are not shown separately for these groups of men, however, since only 23 reported having engaged exclusively in same-gender sex during the ten years proceeding the survey, and only 40 reported that they had had both male and female sex partners during that period. Thus,

*Respondent perceptions about whether condoms are effective in preventing pregnancy and preventing the acquisition of HIV and other STDs are not included in this analysis. The survey did not ask about perceptions of the condom's effectiveness, except to rate its effectiveness relative to other contraceptive methods.

†The condom characteristics considered are those explicitly asked about in the *Consumer Reports* survey, or those that respondents to that survey offered as the advantages or disadvantages of specific condom brands.

there are too few of these men in the sample to allow stable estimates of their perceptions and preferences. Including these men has no significant effect on any of the relationships reported in the analysis.

The effects of six individual-level characteristics on the perceptions and preferences of men are investigated in this analysis. These characteristics are race, ethnicity (whether they were of Hispanic origin), marital status, relationship status (among the unmarried), age and education. Race and ethnicity are included in the analysis because sociocultural differences related to these factors are certain to affect perceptions about the role of condoms in sexual behavior as well as consumer preferences with respect to condom characteristics.

Marital status and relationship status (cohabiting; not cohabiting but having a regular sex partner; and having no regular sex partner) are included as covariates because they define the relationship context within which condoms are being used. Married men are more likely than other men, for example, to be using condoms within a committed, long-term relationship. They also would face lower costs from an unintended pregnancy and are probably less likely to be using condoms for disease prevention. Among unmarried men, those who are formerly married (separated, divorced or widowed) are more sexually experienced and may be more likely to engage in some high-risk sexual behaviors. Men without a regular sex partner are probably the most likely to be using condoms for disease prevention. These factors are likely to affect perceptions and preferences regarding condoms.

Age is positively related to the level of a man's sexual experience and the likelihood that he has ever used a condom. It may also be negatively related to the level of exposure the man has had to educational or promotional efforts aimed at increasing condom use, since the intensive promotion of condoms for sexually transmitted disease and AIDS prevention is a relatively recent phenomenon.

Education is included as a measure of socioeconomic status, which could have an effect on consumer preferences. Education is also related to a greater acceptance of new ideas and technologies, a more rational world view, and more access to and a better understanding of information about condoms; the latter may be particularly important in promoting accurate perceptions about condoms. Other measures of socioeconomic status (mother's education, father's education and income) were considered for inclusion in the analysis; however, the effects of these measures on perceptions and preferences consistently mirrored those of education but generally had a weaker impact. Thus, to reduce the size of the tables and simplify the exposition of results, only completed education was included in the analysis.

In addition to these central covariates, the analysis of perceptions about condom characteristics included a variable indicating whether the man had ever actually used a condom. This variable is clearly related to the accuracy of perceptions about the nature of condom use.* The significance level of each covariate on the outcomes considered is determined using an analysis of variance (ANOVA) procedure. To find out whether the described relationships are only a function of compositional differences with respect to the other covariates considered, we use ordinary least square regressions to determine the independent effects of the covariate on each outcome. The regression results are not presented but inform the presentation of the findings.

Table 1. Percentage distribution of men aged 20–39, by condom use status, according to social and demographic characteristics, 1991 National Survey of Men

Characteristic	N	Never-users	Past users*	Current users†	Total
All	3,210	11.3	37.7	50.9	100.0
Race					
Black	1,205	9.1	30.4	60.6	100.0
White	2,005	11.5	38.8	49.7	100.0
Marital status					
Never married	1,177	10.2	23.3	66.5	100.0
Currently married	1,643	12.3	49.0	38.7	100.0
Formerly married	390	10.2	36.9	52.9	100.0
Relationship status					
Cohabiting	286	7.0	46.3	46.7	100.0
Regular sex partner	680	7.5	17.2	75.2	100.0
No regular sex partner	601	13.5	26.1	60.4	100.0
Age					
20–24	697	9.2	17.8	73.0	100.0
25–29	730	9.7	34.5	55.8	100.0
30–34	863	12.1	42.8	45.1	100.0
35–39	920	13.6	52.7	33.7	100.0
Hispanic origin					
Hispanic	215	16.2	19.2	64.6	100.0
Other	2,988	10.8	39.6	49.6	100.0
Education					
<12 years	358	16.5	39.3	44.3	100.0
12 years	1,287	12.1	40.4	47.5	100.0
>12 years	1,563	9.2	35.1	55.7	100.0

*Men who used condoms prior to January 1990. †Men who used condoms between January 1990 and date of interview, a period averaging 18 months. *Note:* In this and subsequent tables, white race includes some Asians and others not classified as black; relationship status includes only men not currently married.

Results

Condom Use Status

Before examining the relationship between men's characteristics and their perceptions and preferences regarding condoms, it is important to show how those characteristics are related to actual condom use. First, experiences gained in using condoms undoubtedly influence perceptions about the consequences of use. Knowledge about patterns of use thus informs us about one source of the relationship between men's characteristics and their perceptions. Second, questions about preferences for specific condom characteristics were asked only of "current" condom users, who were defined as men who had ever used condoms between January 1990 and the interview. The information in Table 1 (which includes all men who had ever had sex by the time of the survey, less 34 men who did not provide a date of last condom use) therefore defines the population included in the analysis of those preferences.

The results in Table 1 show that black men are significantly more likely than men of other races to be current condom users, as are young men, unmarried men with no regular sex partner, Hispanics, and men who have more than a high school education. Those groups exhibiting the highest proportions of current users also have the smallest proportions of men who had never used condoms, although differences in the proportions who had never used condoms are substantially smaller.

The Psychological Dimension of Use

Table 2 (page 70) shows the percentages of men who either moderately or strongly agreed with statements concerning the psychological and interpersonal consequences of condom use. Nearly three-fourths of men agreed that using a condom "shows that you are a concerned and caring per-

*Interpretations of the nature of relationships between condom use and the perceptions and preferences of the participants must be made with caution because causal order cannot be established. That is, perceptions about condoms may be both the cause and the result of actual condom use.

Table 2. Percentages of men aged 20–39 who either moderately or strongly agreed with statements about the psychological and interpersonal dimensions of condom use, by social and demographic characteristics

Characteristic	N	Shows you are caring person	Makes partner think you have AIDS	Shows you think partner has AIDS	Embarrassing to buy	Embarrassing to discard	Putting on condom adds excitement
All	3,183	74.8	15.4	17.8	26.8	19.9	15.7
Race		**	**	**	**		
Black	1,200	88.9	23.0	26.3	19.1	16.7	16.4
White	1,983	73.0	14.4	16.7	27.8	20.3	15.6
Marital status		**				*	
Never married	1,178	79.2	14.3	17.8	27.1	21.5	16.0
Currently married	1,618	71.6	16.1	17.4	27.1	18.0	15.9
Formerly married	387	74.2	16.3	20.2	24.1	22.6	13.9
Relationship status				**			*
Cohabiting	287	79.8	15.0	17.7	29.6	20.7	15.9
Regular partner	679	75.0	12.8	14.5	24.7	21.5	12.0
No regular partner	599	79.8	16.2	21.7	26.5	22.4	18.2
Age			**	**	**	**	**
20–24	691	78.1	10.2	13.2	22.6	23.8	15.6
25–29	727	74.0	16.8	18.9	27.3	18.3	12.6
30–34	850	71.7	13.6	15.7	32.6	21.6	20.6
35–39	915	76.0	20.5	23.1	23.9	16.3	13.8
Hispanic origin				*	*		
Hispanic	208	74.0	18.6	23.4	31.6	23.8	15.3
Other	2,968	74.9	15.1	17.4	26.3	19.6	15.8
Education		**	**	**	*		**
<12 years	348	81.1	25.8	29.7	26.4	24.3	9.1
12 years	1,280	76.1	15.9	18.1	24.2	20.1	16.4
>12 years	1,553	72.2	12.7	15.0	29.2	18.8	16.5
Ever used condoms		**	**	**			**
No	320	60.5	20.7	26.2	30.5	21.7	8.0
Yes	2,839	76.4	14.8	16.9	26.4	19.7	16.6

Note: In this and subsequent tables, statistically significant differences within columns of percentages for each characteristic are indicated by *=p<.05 and **=p<.01.

son," a far higher level of agreement than is found for any of the other statements in the table. This perceived benefit of condom use has not been documented in prior research. Agreement is fairly low on statements indicating that it is embarrassing to buy and discard condoms, even though, as noted previously, prior studies have consistently identified embarrassment as an important disadvantage of condom use.

Black men are significantly more likely than white men to agree that "using a condom shows that you are a concerned and caring person." However, they are also significantly more likely to agree that using a condom influences perceptions about the AIDS infection status of a man and his partner. That is, blacks are more likely to agree both that "If a man uses or suggests using a condom, his partner may think that he has AIDS," and that "If a man uses or suggests using a condom, it means that he thinks that his partner may have AIDS." Thus, for blacks more than whites, the positive message about concern and caring implied by condom use is somewhat balanced by negative messages about possible AIDS infection.

White men are significantly more likely than black men to agree that it is embarrassing to buy a condom, but there are no race differences in the perception that it is embarrassing to discard a condom after use. Men of both racial groups also display low levels of agreement with the statement that putting on a condom during sex "adds excitement."

Marital status has significant effects on two of the psychological and interpersonal consequences of condom use. Not surprisingly, unmarried men, who are at higher risk of acquiring and transmitting AIDS and STDs, are more likely to agree with the statement that using a condom "shows that you are a concerned and caring person." They are also more likely than married men to agree that discarding a condom after use is embarrassing.

Among unmarried men, those with no regular sex partner are the most likely to agree that using a condom conveys the message that you think your partner has AIDS. This may be a function of the lower levels of trust and communication that characterize less committed relationships. Men with no regular sex partner are also the most likely to agree that putting on a condom adds to sexual excitement.

Age has strong and significant effects on all consequences of condom use except showing that "you are a caring person." Overall, younger men are less likely than older men to agree that condom use sends an unwanted message about the AIDS infection status of a man or his partner. Men aged 30-34, on the other hand, are the most likely to agree that condom use entails embarrassment and that putting on a condom during sex adds excitement.

Hispanic origin has a significant effect only on agreement with the statement that using a condom "shows you think partner has AIDS." Hispanic men exhibit a significantly higher level of agreement with this statement than other men. However, the magnitude of this effect declines to nonsignificance when age and educational attainment are controlled.

Poorly educated men are significantly more likely to agree that condom use shows that one is a caring person, but they are also more likely to agree that it sends unwanted messages about the possible AIDS infection status of a man and his partner. Education is positively related to the perception that putting on a condom during sex is exciting, and negatively related to the perception that buying condoms is embarrassing.

Not surprisingly, men who have ever used condoms have much more positive views about the consequences of condom use than do men who have never used them. Those who have used condoms are significantly less likely to agree that condom use either makes their partners think that they have AIDS or shows that they think their partners have AIDS, and are significantly more likely to agree that using a condom shows that one is a concerned and caring person. They are also more likely to agree that putting on a condom during sex is exciting.

The Device-Related Dimension

Table 3 shows the levels of agreement with statements describing the device-related dimensions of condom use. A large majority of men agree with two statements: "Condoms reduce or eliminate sensation" and "When using a condom you have to be careful during sex because it may break." These findings are consistent with the research on condom use discussed previously. The relatively high levels of agreement with the statements that withdrawing promptly is necessary and that condoms prolong sex are also consistent with the findings of the *Consumers Reports* study,[12] which is the

only one to report the perceptions of males separately from those of women.

Race is strongly related to two consequences of condom use. Black men are significantly more likely than white men to agree both that condoms often come off during sex and that one must be careful during sex or the condom will break. Their confidence in the reliability of technology itself then is lower than that of white men.

Marital status has significant effects on nearly all of the consequences of condom use included in Table 3. Married men are the most likely to agree that condoms reduce sensation, but they are the least likely to agree that condoms often come off during sex, that one must be careful during sex to avoid breakage, and that one must withdraw promptly after sex to avoid slippage. Formerly married men, in contrast, tend to have the most negative perceptions about condom use: They are the least likely to agree that condoms prolong sex and are the most likely to agree that condoms are difficult to put on, that they often come off during sex and that prompt withdrawal is necessary.

The relationship status of unmarried men is also an important determinant of perceptions about the device-related consequences of condom use. In general, men without a regular sex partner probably have the most positive view of these consequences, possibly because they are at the highest risk of acquiring HIV or another STD and therefore gain the greatest benefits from condom use. They are the least likely to agree that condoms cost too much, reduce sensation and are difficult to put on. Cohabiting men, like married men, are the group most likely to agree that condoms reduce sensation.

Older men generally have less negative perceptions than younger men about the consequences of condom use. Age is negatively related to the belief that condoms cost too much, that one must be careful during sex or they will break, and that one must withdraw quickly after sex or the condom may come off. The major exceptions to this age pattern are that the oldest men (aged 35–39) are more likely than younger men to express agreement with the statement that condoms often come off during sex, and the youngest men (aged 20–24) are more likely than older men to agree that sex lasts longer when a condom is used.

The effects of Hispanic origin are mixed. Hispanic men are more likely than others to agree that condoms are too costly and may break if one is not careful during sex, but they are less likely to agree that one must withdraw quickly after sex, or that condoms are difficult to put on. However, the effect of Hispanic origin on agreement with the statement that one must be careful during sex becomes nonsignificant when other factors are controlled. Therefore, on balance, Hispanics have somewhat more positive perceptions than others about the device-related consequences of condom use.

Highly educated men also tend to have more positive perceptions than do less educated men about the device-related attributes of condom use, although this group is significantly more likely to agree that one must withdraw quickly after sex.

Men who have ever used condoms are more likely than those who have not to agree with all of the statements shown in Table 3, except the statement that condoms often come off during sex. Overall, this means that condom users have more negative perceptions about the device-related attributes of condom use than those who have never used condoms.

Table 3. Percentages of men aged 20–39 who either moderately or strongly agreed with statements about the device-related dimensions of condom use, by social and demographic characteristics

Characteristic	N	Costs too much	Reduces sensation	Makes sex last longer	Often comes off during sex	Must be careful or may break	Must withdraw quickly	Difficult to put on
All	**3,183**	**13.2**	**74.8**	**31.6**	**22.3**	**63.5**	**43.1**	**23.5**
Race					**	**		
Black	1,200	16.2	73.7	31.9	38.4	78.3	42.8	24.9
White	1,983	12.8	75.0	31.6	20.1	61.5	43.1	23.3
Marital status			*	**	**	**	**	**
Never married	1,178	14.1	72.5	34.0	22.6	70.4	46.7	21.8
Currently married	1,618	12.8	75.5	31.6	20.3	58.5	38.8	22.6
Formerly married	387	12.1	75.6	24.4	29.9	62.4	49.5	32.8
Relationship status		**	**	**				**
Cohabiting	287	13.6	81.5	30.4	28.8	64.5	50.0	26.6
Regular partner	679	16.8	74.8	36.8	21.7	68.2	48.5	29.1
No regular partner	599	11.1	68.6	28.1	24.6	70.3	45.3	19.7
Age		**		**	**	**	**	
20–24	691	16.8	73.7	38.3	19.5	72.9	45.8	22.2
25–29	727	14.9	75.6	29.9	20.3	64.5	45.5	22.4
30–34	850	13.0	76.6	29.7	22.8	59.9	41.9	24.0
35–39	915	8.8	73.4	29.6	26.1	58.1	39.7	25.2
Hispanic origin		**				*	**	**
Hispanic	208	20.1	70.2	35.2	20.6	69.1	32.0	14.1
Other	2,968	12.6	75.3	31.4	22.5	63.0	44.1	24.4
Education		**		**	**	**	**	
<12 years	348	19.5	73.2	24.8	30.0	73.8	39.6	24.6
12 years	1,280	12.8	73.2	28.7	24.5	65.5	39.2	22.6
>12 years	1,553	12.2	76.7	36.0	18.5	59.3	47.6	24.1
Ever used condoms		*	**	**		**	**	
No	320	9.0	55.4	9.1	24.8	56.6	25.5	20.7
Yes	2,839	13.7	77.1	34.3	21.9	64.2	44.8	23.8

Consumer Preferences

Table 4 (page 72) shows the percentages of current condom users who look for particular characteristics when they acquire a condom. The three most frequently cited characteristics are "stays on," is "easy to put on," and has the "right amount of lubrication." Other important characteristics are that the condom is "easy to obtain," "has reservoir tip" and is "thin." The least important characteristic is color, but whether a condom has ribbing is also relatively unimportant.

The results in Table 4 provide evidence of significant race differences in condom preferences. Black men are significantly more likely than men of other races to indicate that they look for condoms that are easy to put on and have the right amount of lubrication. The condom's color and that it has no unpleasant odor are also more important to black men than to others. Whether a condom has a reservoir tip and how easy it is to obtain are, in contrast, less salient features for blacks than for men of other races.

Marital status has significant effects on preferences for color, spermicide and ribbing. Formerly married men are more likely than others to indicate that they look for ribbed condoms. Married men, who face the lowest social and psychological costs from an unintended pregnancy, are significantly less likely than unmarried men to look for condoms with a spermi-

Table 4. Percentage of current condom users who look for various characteristics in selecting a condom, by social and demographic characteristics

Characteristic	N	Easy to put on	Right amount of lubrication	Thin, greater sensation	No unpleasant odor	Color	Low cost	Has spermicide	Stays on	Has ribbing	Has reservoir tip	Partner likes	Easy to obtain
All	**1,661**	**56.6**	**53.8**	**42.4**	**32.0**	**6.6**	**17.6**	**32.6**	**58.0**	**12.7**	**42.7**	**27.0**	**46.6**
Race		*	*		**	**					*		*
Black	699	64.1	60.2	39.6	42.5	11.7	16.3	32.4	63.1	13.7	36.6	27.1	40.2
White	962	55.3	52.8	42.9	30.3	5.8	17.8	32.6	57.2	12.5	43.6	27.0	47.7
Marital status						**		**		**			
Never married	796	56.0	55.3	41.0	33.0	8.3	16.4	38.2	60.1	12.1	45.2	25.1	46.2
Currently married	653	58.3	50.4	45.3	30.4	3.6	19.2	24.5	56.0	10.0	39.4	28.5	46.7
Formerly married	212	53.4	58.4	39.5	33.2	9.1	17.6	34.9	55.7	23.3	42.6	30.0	47.8
Relationship status					*		**	*		**	*	*	*
Cohabiting	146	61.9	59.6	44.2	32.3	10.7	28.8	36.3	55.8	20.3	53.7	34.2	43.5
Regular partner	528	56.7	58.1	42.4	37.8	9.5	15.9	42.3	62.4	16.5	46.2	27.4	52.0
No regular partner	334	52.4	52.7	38.0	28.5	6.8	13.6	33.2	57.2	10.4	40.4	22.3	42.1
Age								**			**		
20–24	524	54.5	51.2	40.0	32.0	7.6	17.4	47.2	61.3	11.7	46.4	26.1	47.0
25–29	410	60.1	56.2	44.8	36.5	6.5	21.4	27.8	56.1	15.5	49.1	27.8	44.7
30–34	412	53.5	55.6	45.2	27.7	7.8	16.7	24.1	54.9	10.6	34.7	27.6	50.2
35–39	315	59.2	53.9	39.6	31.1	3.4	13.6	24.1	58.8	13.0	36.8	26.6	44.1
Hispanic origin					**		*			**			*
Hispanic	125	57.0	47.2	46.3	18.8	5.4	11.5	34.8	52.7	5.5	37.7	23.0	39.1
Other	1,530	53.0	54.6	42.0	33.7	6.8	18.4	32.3	58.6	13.6	43.2	27.5	47.6
Education			**	**				**		**	**	**	
<12 years	153	54.4	52.8	28.5	33.3	12.0	22.0	36.4	56.3	20.9	32.3	38.0	49.5
12 years	641	57.0	46.8	41.1	30.0	6.0	15.1	26.9	55.9	14.3	37.4	24.4	45.8
>12 years	865	56.6	59.8	46.0	33.4	6.1	18.8	36.5	60.0	9.9	48.8	27.1	46.8

Note: Current condom users are defined as men who had used a condom between January 1990 and the date of the interview, a period averaging 18 months.

cide. The color of a condom is also less important to married men.

The relationship status of unmarried men has significant effects on preferences for a number of condom characteristics. Cohabiting men look for condoms that are low in cost, have ribbing and have a reservoir tip; they also are the most likely to look for condoms that their partner likes. Noncohabiting men who have a regular sex partner are the most likely group to look for condoms that have no unpleasant odor, have a spermicide and are easy to obtain.

Age is negatively related to preferences for condoms with spermicide and condoms with a reservoir tip. Men who are not of Hispanic origin are significantly more likely than Hispanics to indicate preferences for four condom characteristics: no unpleasant odor, inexpensive, ribbed and easy to obtain.

Education has effects on many of the characteristics included in Table 4. The "right amount of lubrication" and whether the condom has spermicide are more likely to be viewed as important features by men of the highest and lowest education levels than by men with a high school education. Preferences for condoms that are thin and have a reservoir tip are positively related to educational attainment, and a preference for condoms that are ribbed and those that the man's partner likes are negatively related to education.

Discussion

The perceived psychological or interpersonal effect of condom use most often cited by the men in this study is that using a condom "shows that you are a concerned and caring person." This is particularly so for black men and for men who are young and have low educational attainments. Among the same men, however, this positive perception tends to be balanced by the perception that using a condom sends unwanted messages to one's partner. These groups are more likely than others to agree that using a condom "makes your partner think that you have AIDS" and "shows that you think that your partner has AIDS." For white and highly educated men, in contrast, embarrassment (especially in buying a condom) tends to be cited more often as a consequence of condom use than the messages it sends to one's partner. These results suggest that educational and condom promotion programs need to address the interpersonal issues inherent in condom use. Providing condoms in an atmosphere that reduces embarrassment may also be helpful.

Regarding the device-related consequences of condom use, the most often cited were that using a condom results in reduced sensation and that one must be careful during sex or the condom may break. This latter perception is particularly prevalent among black, unmarried, young and poorly educated men. These groups are also likely to agree that one must withdraw quickly after sex or the condom may come off.

The level of concern about breakage (62% of white and 78% of black men agree that one must be careful or the condom will break) is far higher than actual breakage rates. In the sample of men included in this study who used condoms during the six-month period preceding the survey, the condom breakage rate was only about 2.6% (not shown). However, the high level of concern prompted us to further investigate this issue. We discovered that the 2.6% condom breakage rate means that 13% percent of condom users actually experienced condom breakage during the six-month observation period. Further, the likelihood of experiencing condom breakage is significantly higher among black, young, unmarried and poorly educated men than it is among white, older, married and highly educated men. These are the groups that exhibited high levels of agreement that condom breakage during sex is a concern.

A similar pattern was found for condom slippage. The 2.7% condom slippage rate in this study means that 14% of men actually experienced condom slippage during the observation period. Again, the likelihood of experiencing slippage is significantly higher among groups that are significantly more likely to agree that

"condoms often come off during sex." Clearly, much of men's concern about condom breakage and slippage results from their own experiences with condoms. However, why the risks of experiencing condom breakage and slippage are related to race, age, marital status and education needs further investigation.

The most often cited preferences among consumers are for condoms that stay on, are easy to put on and have the right amount of lubrication. These preferences are particularly prevalent among black men. The fact that "stays on" is so important to many of the survey participants is consistent with their perception that condoms often slip off. The high preference for condoms that are easy to put on, however, is inconsistent with the fact that few men agreed that "hard to put on" is a characteristic associated with condoms.

Regarding the other characteristics examined, few men identified color and ribbing as important, although formerly married and cohabiting men placed greater importance on these characteristics, which are associated with sexual pleasure. "Partner likes it" is only the ninth (out of 12) most cited characteristic that men look for in a condom; the most highly educated men are the least likely to cite it as an important characteristic and there are no differences by marital status in its importance.

The fact that this study focuses on males is particularly important. Although the condom is a male method, most of what we know about its use has been obtained from analyses of female contraceptive behavior. Thus, this article provides a unique opportunity to both examine the use of condoms from the adult male perspective and to shift the focus of condom-use analysis to the characteristics of condoms themselves rather than on their role as a contraceptive method. It also provides a first look at how men's perceptions and attitudes about these characteristics are shaped by their own characteristics. Finally, this analysis is based on recent data and is therefore relevant in developing an understanding of factors affecting condom use during today's growing AIDS epidemic.

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Perceptions of AIDS Risk and Severity And Their Association with Risk-Related Behavior Among U.S. Men

By Daniel H. Klepinger, John O. G. Billy, Koray Tanfer and William R. Grady

According to a nationally representative sample of 3,321 men aged 20–39 surveyed in 1991, men appear well aware of the severity of AIDS: Nearly all know that AIDS destroys the immune system and that there is no cure for the disease, but a substantial minority do not think that AIDS will necessarily result in pain and death. Men's perceptions of the disease's severity seem to have little impact on their sexual behavior, with no clear relationship between men's knowledge of AIDS and their recent number of sex acts, their condom use or their participation in anal or casual sex. Men's perceptions of the general risk of human immunodeficiency virus (HIV) transmission also appear to have little impact either on their concerns about AIDS or on their behavior, but their perceptions about the AIDS rate in their local community do affect their concerns and behavior. Men know that certain kinds of behavior place them at risk, and their prior behavior significantly influences their perceptions of their own HIV risk. However, speculation about their own HIV status is only moderately related to their recent sexual behavior.

(Family Planning Perspectives, 25:74–82, 1993)

Growing concern about AIDS has increased the importance of understanding health behavior related to the transmission of the human immunodeficiency virus (HIV), which causes AIDS. As of December 1991, more than 200,000 Americans had been diagnosed with AIDS,[1] and more than one million more were estimated to be infected with HIV.[2] Estimates are that upwards of 13 million people worldwide are infected with HIV, and rates of infection appear to be increasing rapidly in many parts of the world.[3]

Medical research has discovered how HIV is transmitted and how the risk of transmission can be greatly reduced or prevented. Because HIV is transmitted only through blood and other bodily fluids, the primary modes of transmission are sexual contact, direct blood contact—i.e., intravenous drug use and needle-sharing, as well as needle pricks and surgical accidents among health care workers—and transfusion with contaminated blood. Thus, most people can easily reduce their risk of exposure to HIV by modifying their behavior—for instance, by abstaining from sex, practicing safer sex (limiting their number of partners, avoiding casual sex, using condoms and maintaining mutually faithful monogamous relationships) and not using intravenous drugs or sharing needles.

Until a medical cure or vaccine for AIDS is developed, the primary public health response to the epidemic is to educate people about reducing their risk of acquiring or transmitting HIV and to convince them to modify their behavior accordingly. It is therefore very important to learn more about health behavior related to the transmission of HIV. In particular, we need to understand why some individuals do not protect themselves adequately against HIV, and why many others who generally do not engage in high-risk behavior do so on occasion.

There is a large and growing literature on health behavior and on why individuals place themselves at risk despite their knowledge of how to avoid disease. Although there are several distinct conceptual models of health behavior in the literature, they contain many of the same components.[4] Most predict that the probability of exposure, the probability of infection if exposure occurs, and the severity of the disease itself all influence how individuals behave with respect to exposing themselves and possibly others to a specific disease. According to such models, individuals will do more to prevent exposure to a disease or avoid transmitting a disease to others when the risk of exposure is high, when the risk of contracting the disease once one is exposed is high, and when the impact of the disease is perceived as severe.

This is the first detailed description of data from the National Survey of Men (NSM-I), and hence we do not attempt to disentangle the complex interrelationships that determine behavior. Rather, we provide a general description of U. S. men's perceptions about the risk and severity of HIV infection and AIDS, and how they are associated with each other and with men's sexual behavior.

Methodology

The data used in the analyses presented here were obtained from a national household survey conducted between March 1991 and January 1992. The NSM-I was based on a stratified and clustered area-probability sample of households in the contiguous United States. (For a more detailed description of the NSM-I methodology, see pp. 83–86.) Personal interviews were conducted with 3,321 men aged 20–39. Black households were oversampled to ensure adequate representation. The interview response rate was 70%. The sample used for this analysis was weighted on the basis of population statistics to account for stratification, clustering, disproportionate sampling and differential nonresponse, and all results presented in this article are based on weighted data. The results can be generalized to the U.S. population represented by this sample, subject to sampling error.

Perceived Risk of HIV Infection

The columns in the first half of Table 1 display the proportions of the weighted sample reporting a greater than 50% likelihood of HIV transmission, through each of three modes. (For instance, respondents were asked: "If a man has intercourse only once with a woman who has AIDS or the AIDS virus, how likely is it that he will get AIDS if they do not use any contraception?") As Table 1 shows, roughly three-quarters of the respondents believed there is a greater than 50% chance of becoming infected if a person has unprotected sex once with someone who is HIV-positive. Given the relatively low rates of transmission estimated by the medical community (less than .001 for male-to-female transmission),[5] the data in Table 1 suggest that most

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respondents greatly overestimate the risk of HIV transmission. Their ranking of the relative risk of transmission, however, corresponded with medical evidence: Respondents were most likely to believe there is a greater than 50% chance of male-to-male transmission (82% did so) and least likely to believe there is a greater than 50% chance of female-to-male transmission (71%); the proportion of men stating that there is a greater than 50% chance of male-to-female transmission lay approximately halfway between these (75%).

The remaining rows in the first half of Table 1 show that U.S. men's perceptions about the risk of HIV transmission varied significantly by selected demographic characteristics. In general, respondents who were older, were white, were more educated, or knew someone who is HIV-positive or has AIDS* were significantly less likely than others to report that there is a greater than 50% chance of acquiring HIV from a single unprotected sexual encounter with someone who is HIV-positive. Respondents who were highly educated or who knew more than four HIV-positive individuals were much less likely to believe that HIV has a high transmission rate.

The second half of Table 1 concerns men's perceptions about the AIDS rate in their local community. As the first row of this section shows, the majority of respondents (55%) believed that they live in a community where the AIDS rate is lower than the national average; few (16%) believed they live in an area with a higher-than-average AIDS rate. Table 1 shows that in general, respondents who were younger, were black, were less educated, were not married or knew someone who is HIV-positive were significantly more likely than others to have reported living in a community with a higher AIDS rate. Perceptions of local AIDS rates also varied significantly by region, with respondents in the West and the South reporting higher rates (not shown).

Although there were significant differences by demographic characteristics, the majority of nearly all groups reported living in an area with a lower-than-average AIDS rate. The exceptions were blacks, respondents who were not sexually active at the time of the interview, respondents living in the West, and those who had a friend or relative who is HIV-positive or who knew more than one person who is HIV-positive. Respondents who knew four or more HIV-positive persons were least likely to report living in an area with a lower-than-average AIDS rate (37%) and most likely to report living in a community with a higher-than-average rate (34%).

Table 1. Percentage distribution of 20–39-year-old U.S. males, by perceived risk of more than 50% for three modes of HIV transmission and by perception of their local community's AIDS rate, according to selected characteristics, 1991 National Survey of Men (NSM)

Characteristic	N (weighted)	>50% female-to-male	>50% male-to-female	>50% male-to-male	Community AIDS rate			Total
					Above avg.	Avg.	Below avg.	
Total	**3,321**	**70.6**	**75.3**	**82.2**	**16.0**	**29.1**	**54.8**	**100.0**
Age		•••	•••	•••		•••		
20–24	769	76.5	82.5	87.8	18.5	31.0	50.5	100.0
25–29	802	71.8	73.5	82.7	13.2	31.0	55.9	100.0
30–34	869	68.1	74.3	80.9	13.6	30.6	55.8	100.0
35–39	871	66.7	71.7	78.2	18.9	24.3	56.8	100.0
Race		••	••	•		•••		
White†	2,923	69.8	74.6	81.6	15.4	28.6	56.0	100.0
Black	389	76.7	80.8	86.7	20.9	33.1	46.0	100.0
Education		•••	•••	•••		••		
<High school	359	74.3	75.9	83.4	13.2	33.6	53.1	100.0
High school	1,437	75.2	80.0	87.7	13.9	29.9	56.2	100.0
Some college	804	72.5	76.4	83.1	19.6	28.8	51.6	100.0
College graduate/ postgraduate	712	57.1	64.4	69.6	17.8	25.6	56.6	100.0
Relationship status			••			••		
Married	1,618	71.8	77.2	83.0	14.8	26.2	59.0	100.0
Cohabiting	286	67.8	73.1	81.1	18.9	30.1	51.0	100.0
Not cohabiting, has partner	574	69.5	74.7	82.5	16.0	30.3	53.7	100.0
Not cohabiting, has no partner	834	69.9	72.9	81.2	17.5	33.5	49.0	100.0
Know someone with AIDS/HIV		•••	••	•••		•••		
Friend/relative	321	70.6	75.2	78.1	22.2	32.2	45.6	100.0
Other	393	61.2	67.9	75.9	19.9	30.5	49.7	100.0
No one	2,589	72.1	76.6	83.8	14.7	28.4	56.9	100.0
No. known with AIDS/HIV		••	••	•••		•••		
1	386	67.7	74.4	81.4	14.3	32.2	53.4	100.0
2–3	207	65.2	69.8	74.4	25.3	30.9	43.8	100.0
≥4	125	58.8	63.2	66.4	33.8	29.2	37.0	100.0

†In this and subsequent tables, this category includes all men not classified as black (i.e., white, Asian, etc.). *Note:* Ns do not necessarily add to total because of missing data. In this and subsequent tables, statistical significance is indicated by *=p<.05, **=p<.01 and ***=p<.001. Reported significance levels are based on simple chi-square tests of association. Please note that for space reasons, when percentage distributions were divided by only two variables, one category has been left out.

Men's Perceived HIV Status

Perceptions of the risk of already having a disease may have important implications for health behavior if those perceptions are associated with the willingness to avoid high-risk behavior. Respondents in the NSM-I were asked to estimate their own HIV status at the time of the interview. As the first row of Table 2 (page 76) shows, relatively few respondents (about 6%) believed there was a 50% or greater chance that they were HIV-positive at the time of the interview, a level only slightly higher than that reported in a study of adolescent males.[6] The majority (60%) said there was no chance that they were infected.

Table 2 also shows that perceptions about one's own HIV status were significantly related to education, relationship status, and knowledge of someone who is HIV-positive, but (as other studies have found) not to age or race.[7] More educated respondents were less likely to report that there is no chance they are HIV-positive, and were more likely to report some chance of being infected, but there was little educational difference in the proportions reporting a 50% or greater chance of having AIDS. Small regional differences in responses (not shown) indicate that respondents in the West were the least likely to report having no chance of being HIV-positive (56.2%), and respondents in the South were the most likely to report having a 50% or greater chance (6.8%).

Married respondents were the least likely to report a 50% or greater chance of being HIV-positive and the most likely to report no chance of HIV infection. Co-

*Unless stated otherwise, all references in this article to respondents' statements about HIV status were worded in the survey as "AIDS or the virus that causes AIDS" or "AIDS or the AIDS virus." For instance, the question asked of respondents about knowing someone who is HIV-positive was worded as "Have you ever personally known someone who had AIDS or the AIDS virus?"

Table 2. Percentage distribution of respondents, by measures of their personal concern about AIDS, according to selected characteristics, 1991 NSM

Characteristic	Perceived personal HIV-infection risk			% who frequently worry	HIV test history			Total
	None	Some	≥50%		Tested only for HIV	Tested for reason other than HIV	Not tested	
Total	60.4	34.2	5.5	23.1	20.1	20.6	59.3	100.0
Age				...		...		
20–24	62.5	31.1	6.4	32.5	23.0	17.8	59.2	100.0
25–29	59.7	35.6	4.6	19.9	24.1	20.0	55.9	100.0
30–34	59.9	35.1	5.0	20.6	19.8	21.4	58.8	100.0
35–39	59.6	34.6	5.9	20.1	14.0	22.8	63.2	100.0
Race				...		...		
White	60.6	34.1	5.2	20.5	18.7	20.4	60.9	100.0
Black	58.5	34.2	7.3	42.4	30.1	22.3	47.6	100.0
Education		...		...		.		
<High school	72.7	22.3	5.0	29.0	19.3	18.4	62.3	100.0
High school	64.5	29.0	6.5	24.2	21.9	18.9	59.2	100.0
Some college	53.0	42.3	4.6	24.3	20.5	21.2	58.3	100.0
College graduate/ postgraduate	54.1	41.3	4.6	16.4	16.2	24.4	59.4	100.0
Relationship status		...		...				
Married	64.6	32.4	2.9	12.9	18.5	22.5	59.0	100.0
Cohabiting	52.4	39.2	8.7	26.6	27.1	19.0	53.9	100.0
Not cohabiting, has partner	55.3	38.9	5.8	32.9	23.8	18.5	57.7	100.0
Not cohabiting, has no partner	58.3	32.6	9.0	34.9	17.9	19.1	63.0	100.0
Know someone with AIDS/HIV		...		...		...		
Friend/relative	48.2	39.7	12.1	31.8	35.4	18.0	46.6	100.0
Other	57.3	37.4	5.3	21.8	27.4	16.2	56.4	100.0
No one	62.5	32.8	4.7	22.0	16.9	21.7	61.4	100.0
No. known with AIDS/HIV		...		...		...		
1	57.4	35.9	6.7	25.1	26.9	16.3	56.8	100.0
2–3	55.5	37.7	6.9	23.5	30.8	14.0	55.2	100.0
≥4	33.7	50.6	15.8	38.0	46.6	23.5	29.9	100.0

habiting respondents and those not sexually active at the time of the survey were the most likely to report a 50% or greater chance that they are HIV-positive, but the former were less likely than the latter to report no chance of infection. Men who were sexually active but not married or cohabiting were somewhat more likely than those who were cohabiting to report no chance of being HIV-positive, and somewhat less likely to report a 50% or greater chance. Overall, married respondents were the least likely to believe they could be HIV-positive, while those who were cohabiting were the most likely to believe they might be infected.

The most striking data in the first three columns of Table 2 concern the proportions knowing someone who is HIV-positive: Respondents who reported having an HIV-positive friend or relative were nearly three times as likely as those who knew no one infected with HIV to report a 50% or greater chance that they are themselves HIV-positive. Compared with respondents who did not know anyone who is HIV-positive, respondents who knew four or more infected individuals were nearly four times as likely to perceive that they are at relatively high risk, and were almost half as likely to report having no chance of being infected.

The fourth column of Table 2 shows the proportions of respondents who said that they worry frequently or very frequently about AIDS. Overall, almost one-quarter (23%) of the respondents said that they worry frequently about AIDS, a proportion somewhat higher than that found for adolescent males.[8] Table 2 also shows that, as was the case with perceptions of HIV status, worrying about AIDS was significantly related to education, relationship status and knowledge of someone who is HIV-positive. Unlike the results concerning the respondents' own HIV status, however, age and race were also significantly related to reports of worrying about AIDS: Nearly half (42%) of black respondents reported worrying frequently about AIDS, twice the rate among whites; similarly, almost one-third of 20–24-year-old respondents reported doing so, compared with only about one in five 35–39-year-olds.

Respondents with less than a high school diploma were almost twice as likely as respondents with a college education to report worrying about AIDS. (These results were similar to those concerning HIV status.) Further, respondents who were not sexually active or who were sexually active but not married or cohabiting were nearly three times as likely as married respondents to report worrying frequently about AIDS, while those who were cohabiting were twice as likely as married respondents to say they did. Finally, respondents with an HIV-positive friend or relative or those who knew four or more HIV-positive people were about 50% more likely to report worrying about AIDS than were respondents who did not know anyone with AIDS. Respondents in the Midwest were the least likely to report worrying about AIDS, while those in the Northeast and South are the most likely to do so (not shown).

The last two columns of Table 2 contain data on whether respondents had been tested for HIV infection: The first column shows the proportions who had been tested specifically for HIV, the second shows the percentage who had had an HIV test as part of blood tests for some reason other than determination of HIV status and the third shows the percentage not tested for HIV. Although the decision to be tested may be based on a variety of reasons (e.g., parenthood or a new sexual relationship), the proportion being tested provides a behavioral measure of perceived HIV status, since people concerned about being HIV-positive or more worried about AIDS in general are more likely to get tested. We used these measures because those seeking a blood test specifically for HIV are probably more concerned about AIDS or about being HIV-infected than are those being tested because they were already having blood drawn for other reasons.

As shown, two out of five respondents reported having been tested for HIV infection, half of these specifically for HIV. In general, the patterns among those having a blood test were similar to those observed among respondents worried about AIDS. There are, however, important differences: First, the quantitative size of the differentials across demographic groups is smaller for the proportion who had a blood test than for the proportion who worried about AIDS, suggesting that personal concern about AIDS does not necessarily indicate that one will find out if one is infected. Second, the results differ by relationship status. In contrast to the other data shown in Table 2, the data on HIV testing show that overall, currently cohabiting men were the most likely to have had a blood test and were most likely to have been tested specifically for HIV, while those not sexually active at the time of the survey were the least likely to have been tested, for any reason. Respondents

in the Midwest and the West were the least likely to report having been tested, but respondents in the West were the most likely to report that they were tested specifically for HIV (not shown).

Once again, the most dramatic differentials were seen among respondents who reported having a friend or relative who is HIV-positive: Such respondents were twice as likely to have had a blood test specifically for HIV as were respondents who did not know anyone who is HIV-positive (35% vs. 17%). Compared with respondents who did not know anyone infected with HIV, those who knew four or more such people were nearly three times as likely to report having been tested specifically for HIV. A full 70% of those who knew four or more HIV-positive people reported having been tested for HIV, compared with less than 40% among those who did not know anyone who is HIV-positive.

Perceived Severity of AIDS

Given that most models of health behavior posit that the perceived severity of a disease influences the extent to which an individual will avoid or reduce the risk of exposure to the disease, people who do not believe that AIDS is painful or necessarily lethal may be less concerned about exposing themselves or others to HIV than are those who believe that AIDS results in painful death. To assess perceptions of the severity of AIDS, we asked respondents if they agreed that AIDS destroys the immune system, has no cure, is painful, or results in death within five years of infection; we also asked if they believed that a cure will be available within five years.

Like the findings of other studies,[9] the results shown in Table 3 indicate that nearly every respondent understood that AIDS destroys the immune system (97%) and is not currently curable (96%). However, only slightly more than half of the respondents agreed that AIDS is painful, while about two-thirds believed that AIDS results in death within five years. Furthermore, almost half of respondents believed that there will be a cure for AIDS within five years. These data indicate that a sizable minority of men believe that HIV infection does not necessarily result in pain or even death.

Perceptions about the severity of AIDS varied significantly by demographic characteristics. Younger respondents were less likely to agree that AIDS destroys the immune system, that there is no cure, or that death occurs within five years, and were more likely to believe that there will be a cure within five years. White respondents and those with more education were more likely than blacks or less educated respondents to report that AIDS destroys the immune system and has no cure, although the latter were more likely to agree that AIDS is painful and that death is likely within five years. The association between relationship status and the perceived severity of AIDS was relatively weak and displayed no clear pattern.

Having an HIV-positive friend or relative was positively and significantly related to knowing that AIDS destroys the immune system and is painful, and was negatively associated with expecting a cure in five years. On the other hand, knowing someone infected with HIV was negatively related to agreeing that death occurs within five years, probably because many of those who knew someone who is HIV-positive also knew that survival beyond five years is not uncommon. However, knowing more HIV-positive people was negatively associated with believing that AIDS destroys the immune system, is painful and causes death within five years, and was positively associated with believing there will be a cure within five years. Many of these differences, although statistically significant, were quantitatively small, particularly for responses concerning destruction of the immune system and the incurability of AIDS.

Table 3. Percentage of respondents agreeing with statements about the severity of AIDS, according to selected characteristics, 1991 NSM

Characteristic	AIDS destroys immune system	There is no cure for AIDS	AIDS is painful	Death occurs within five yrs.	There will be cure in five yrs.
Total	96.7	95.5	57.8	68.2	46.8
Age	***	***		***	**
20–24	93.2	92.6	56.8	68.4	50.6
25–29	98.5	95.9	60.1	64.8	42.2
30–34	97.4	96.5	57.0	65.4	47.4
35–39	97.5	96.7	57.3	74.1	46.8
Race		***	***	*	
White	96.9	96.1	55.6	67.6	46.4
Black	95.0	90.7	73.8	72.7	49.8
Education	***	***	**	***	
<High school	94.2	92.0	58.4	67.5	42.9
High school	95.6	94.6	61.0	72.2	47.7
Some college	98.0	96.6	55.6	65.3	48.6
College graduate/ postgraduate	98.7	97.7	53.2	64.1	44.6
Relationship status	*			**	*
Married	97.0	95.8	57.5	68.7	46.7
Cohabiting	97.2	94.4	59.4	61.9	39.5
Not cohabiting, has partner	97.6	96.9	57.7	65.3	47.2
Not cohabiting, has no partner	95.7	94.2	57.8	71.6	48.9
Know someone with AIDS/HIV	***		*	***	**
Friend/relative	98.6	95.1	64.6	60.6	42.7
Other	99.2	94.8	57.7	63.9	40.8
No one	96.1	95.7	57.0	69.9	48.3
No. known with AIDS/HIV	***		**	***	**
1	99.1	95.9	63.4	62.5	38.3
2–3	98.7	92.8	61.5	65.5	45.2
≥4	98.5	95.3	48.0	57.1	44.7

Personal Concerns About AIDS

Perceived AIDS Risk

People who perceive the risk of HIV infection to be higher would be expected to be more concerned personally about AIDS. Thus, we examined respondents' beliefs about the risk of HIV transmission and about their own community's AIDS rates, according to three measures of personal concern about AIDS.

The data in Table 4 (page 78) indicate that respondents' perceptions of the risk of HIV transmission frequently were unrelated to their personal concern about AIDS. Perceptions of transmission risk were unrelated to worry about AIDS or to the likelihood of having been tested for HIV, except that those who believed the chance of male-to-male transmission to be 50% or greater were somewhat more likely to report that they worried frequently about AIDS.

Perceptions of the risk of male-to-male transmission were not significantly related to the respondents' evaluation of their own HIV status. This finding may be related to how few respondents reported having had sex with another man, but it is somewhat at odds with the fact that respondents who perceived higher male-to-male transmission rates were more likely to worry about AIDS.

Although perceptions about the risks of heterosexual HIV transmission were significantly related to respondents' evaluations of their own HIV status, the associations were not in the expected direction: Those who reported the risk of female-to-male and male-to-female transmission to be greater than 50% were more likely to believe there is no chance that they are HIV-positive.

Finally, in contrast to these results, the respondents' perceptions about community AIDS rates were significantly related to all measures of personal concern about AIDS.

Table 4. Percentage distribution of respondents, by measures of their personal concern about AIDS, according to perceived risk of HIV transmission and according to community AIDS rate, 1991 NSM

Risk of transmission and community rate	Perceived personal HIV-infection risk			% who frequently worry	HIV test history			Total
	None	Some	≥50%		Tested only for HIV	Tested for reason other than HIV	Not tested	
TRANSMISSION PATTERN								
Female-to-male		**						
≤50%	56.0	37.1	6.8	21.0	21.7	19.6	58.7	100.0
>50%	62.2	32.9	4.9	23.9	19.4	21.0	59.6	100.0
Male-to-female		*						
≤50%	56.4	37.2	6.4	21.8	19.6	19.0	61.4	100.0
>50%	61.7	33.2	5.2	23.5	20.2	21.1	58.7	100.0
Male-to-male				**				
≤50%	59.2	33.7	7.1	18.8	20.4	18.7	60.9	100.0
>50%	60.6	34.2	5.1	24.0	20.0	21.0	59.0	100.0
COMMUNITY AIDS RATE		**		***		***		
Above average	54.7	36.7	8.5	30.1	19.6	28.0	52.4	100.0
Average	60.2	34.3	5.4	25.2	23.1	20.0	56.9	100.0
Below average	62.1	33.3	4.6	19.9	18.6	18.7	62.7	100.0

Respondents who reported living in a community with a higher-than-average AIDS rate were less likely to report no chance and more likely to report a 50% or greater chance of being HIV-positive. They were also more likely to have worried frequently about AIDS and to have had a blood test, although they were generally not more likely to have been tested specifically for HIV.

Prior Risk-Behavior

We would expect that people evaluating their personal concern about AIDS would take into account their prior HIV-related risk-behavior. Individual behavior is probably a much better predictor of personal concern than perceptions of general risk, since it is a more accurate gauge of one's actual risk of contracting an HIV infection. Table 5 presents data on a variety of prior HIV-related risk-behaviors, by measures of personal concern about AIDS.

Percentage distributions for prior HIV-related behavior are shown in the first column of Table 5. A more detailed description of many of these variables, along with breakdowns by selected demographic characteristics, is presented in an accompanying article (see pp. 52–60). A majority of respondents, however, had had fewer than 10 lifetime partners and no more than one recent partner. Not surprisingly, these and other proportions shown in the table are greater than those reported for adolescents.[10]

The results in Table 5 clearly demonstrate that men do consider their prior HIV-related risk-behavior when they evaluate their own concern about AIDS. Respondents who had had a greater number of sexual partners (since January 1990 or ever) were significantly more likely to believe they had a greater chance of being HIV-positive (a finding supported by prior research),[11] to worry about AIDS, and to have had a blood test for HIV. The one exception to this pattern is that, compared with respondents who had had a relatively small number of sexual partners (since January 1990 or ever), those who reported no sexual activity were the most likely to report a better than 50% chance of being HIV-positive, were more likely to report worrying about AIDS and to have had a blood test specifically for HIV, and were less likely to believe there is no chance they are HIV-positive.

The results for anal sex, sexual preferences, casual sex, paying for sex, and experience with STDs are as expected: Respondents who had had anal sex, since January 1990 or ever, or who reported ever having had sex with another man were significantly more likely to be personally concerned about AIDS. For instance, as prior research has shown,[12] respondents who reported having had only female partners were three times as likely to believe they had no chance of being HIV-positive and were one-fifth as likely to believe they had a 50% or greater chance as respondents who had ever had a male partner. The same pattern applied to worrying about AIDS and to having a blood test.

Similarly, men were significantly more likely to believe their chance of being HIV-positive was 50% or greater, to have worried about AIDS or to have had a blood test if they had experienced a condom break during sex, had had a partner who might have been HIV-positive, had had a one-night stand, had paid for sex, had ever had an STD, had had sex while infected with an STD, or had had a partner with an STD. In fact, one-fifth of respondents who had had a partner with an STD and one-quarter who had had a partner with a 50% or greater chance of being HIV-positive believed that they also had a 50% or greater chance of being infected.

Surprisingly, drug use was only weakly associated with concern about AIDS. Having used intravenous drugs, shared needles or had sex with a drug user were significantly related to the likelihood that the respondent had been tested for HIV, but these activities were unrelated to worrying about AIDS and were inconsistently related to respondents' perceptions of their own HIV status. Although respondents who had used intravenous drugs or had shared needles were less likely than respondents who did not use drugs to believe there was no chance that they were HIV-positive, respondents who reported having had sex with a drug user were not significantly different from other respondents in their assessment of their HIV status.

Perceptions and Behavior

Perhaps the most important link between perceptions and health behavior, at least from a public health perspective, is the association between one's perceptions of a disease and one's behavior related to the transmission of that disease. Health behavior models predict that individuals who perceive the risk and severity of HIV infection to be higher will be more likely to engage in safer sex. In particular, if individuals are concerned about possibly infecting others,[13] we would expect that those who perceive they are likely to be HIV-positive will engage in less risky behavior. This link is particularly important for the AIDS epidemic because appropriate behavior on the part of HIV-positive individuals would greatly reduce the spread of AIDS. Health behavior models also predict that individuals who view AIDS as being a very painful and deadly disease, for which there is little hope for a cure in the near future, will be less likely than other men to engage in behavior that places them at risk of being infected with HIV.

In this section, we look at the association between men's HIV-related risk-behavior during the four weeks preceding the interview and their perceptions about the general and the personal risk of acquiring HIV and about the severity of AIDS. (We assume that their perceptions did not change appreciably during the four weeks preceding the interview.)

Perceived General Infection Risk

Percentage distributions of AIDS-related behavior in the four weeks prior to the interview are shown in the first column of

Table 5. Percentage distribution of respondents, by past AIDS-related risk behavior; and percentage distribution of respondents, by measures of concern about AIDS, according to past risk behavior, 1991 NSM

Risk behavior	% dist.	Perceived personal HIV-infection risk			% who frequently worry	HIV test history			Total
		None	Some	≥50%		Tested only for HIV	Tested for reason other than HIV	Not tested	
Lifetime no. of partners			...		...		...		
0	5.4	60.6	24.4	15.0	30.7	20.1	11.9	68.0	100.0
1–3	26.6	70.3	27.5	2.2	15.9	13.9	19.5	66.6	100.0
4–9	26.1	58.6	36.8	4.6	18.8	19.2	17.4	63.4	100.0
10–19	19.8	58.2	37.2	4.6	26.8	21.4	23.9	54.7	100.0
20–39	14.1	54.7	37.8	7.4	28.6	23.8	27.1	49.1	100.0
≥40	8.0	48.2	40.7	11.2	36.8	34.9	20.5	44.6	100.0
No. of recent partners†			...		...		..		
0	9.4	57.0	31.7	11.3	30.5	21.5	14.1	64.4	100.0
1	67.4	64.5	32.1	3.4	16.5	18.8	20.6	60.6	100.0
2–3	14.4	51.5	42.6	5.8	34.8	22.6	23.0	54.4	100.0
≥4	8.8	48.4	37.3	14.3	46.2	22.0	24.9	53.1	100.0
No. of anal-sex partners			...		...		...		
0	81.0	63.4	32.1	4.4	21.5	18.7	20.8	60.5	100.0
1	9.1	48.7	43.9	7.4	23.9	21.5	23.3	55.2	100.0
≥2	9.9	45.6	41.6	12.7	32.0	30.0	17.4	52.6	100.0
No. of recent anal-sex partners†			...		...		...		
0	90.6	61.8	33.2	5.0	21.8	18.8	21.3	59.9	100.0
1	7.7	49.0	43.2	7.8	22.1	28.2	17.5	54.3	100.0
≥2	1.6	29.3	44.5	26.3	74.8	57.2	5.5	37.3	100.0
Sexual preference			...		...		...		
Female only	94.4	61.0	34.2	4.8	22.2	19.3	21.4	59.3	100.0
Male only/bisexual	2.2	21.1	56.3	22.5	60.0	68.6	3.8	27.6	100.0
No sex last 10 years	3.4	68.3	17.6	14.2	22.4	10.3	7.7	82.0	100.0
Had condom break or slip in last six months			...		...		..		
Yes	7.9	46.1	44.7	9.1	35.1	25.0	25.9	49.1	100.0
No	92.1	61.5	33.3	5.2	22.0	19.5	20.2	60.3	100.0
Probability any partner had AIDS‡			...		...		...		
None	65.4	76.3	22.1	1.6	18.2	19.1	22.2	58.7	100.0
Some	25.5	33.4	60.9	5.7	21.4	17.1	25.3	57.6	100.0
≥50%	9.1	38.6	36.3	25.0	45.5	35.6	17.1	47.3	100.0
No. of partner's partners‡			...		...		...		
0	85.1	61.6	33.8	4.6	20.8	18.8	20.4	60.8	100.0
1–2	9.6	59.3	32.8	7.8	28.6	23.6	22.2	54.2	100.0
≥3	5.3	42.6	42.3	15.0	48.6	33.7	20.4	45.9	100.0
Ever had one-night stand			...		...		...		
Yes	45.7	52.3	40.3	7.4	25.9	23.7	20.4	55.9	100.0
No	54.3	67.0	29.1	3.8	20.7	17.2	21.0	61.8	100.0
Ever paid for sex			...		...		...		
Yes	6.7	40.5	51.3	8.2	34.5	37.2	13.7	49.1	100.0
No	93.3	61.7	33.0	5.3	22.3	19.0	21.2	59.8	100.0
Ever used needles			..				...		
Yes, shared	2.0	44.8	44.6	10.6	23.9	47.8	6.3	45.9	100.0
Yes, didn't share	1.1	51.3	35.9	12.9	23.5	47.2	21.4	31.4	100.0
No	96.9	60.8	33.9	5.3	23.3	19.2	20.9	59.9	100.0
Ever had sex with drug user							.		
Yes	4.4	53.9	36.7	9.3	25.8	29.0	20.8	50.2	100.0
No	95.6	61.4	33.4	5.1	22.9	19.5	20.6	59.9	100.0
Ever had STD			...		...		...		
Yes, had sex while infected	2.5	35.7	47.2	17.1	23.3	28.9	10.6	60.5	100.0
Yes, had no sex	8.5	50.2	41.5	8.3	35.8	30.2	22.8	47.0	100.0
No	89.0	62.0	33.1	4.9	21.9	18.9	20.7	60.4	100.0
Partner had STD‡			...		...		.		
Yes	3.5	40.0	38.4	21.6	38.2	27.1	20.7	52.2	100.0
No	96.5	61.1	34.0	4.9	22.5	19.8	20.6	59.6	100.0
Total	100.0	na	na	na	na	na	na	na	na

†During the period between January 1990 and the interview (an average of 18 months). ‡For all wives and for partners since January 1990.

Table 6 (page 80), followed by respondents' perceptions of HIV infection risk. The format of Table 6 differs from that of previous tables in that outcome variables are now displayed down rows instead of across columns.

Table 6 shows a relatively weak association between perceptions of risk and HIV-related risk-behavior in the preceding four weeks.* Perceived probability of transmission was significantly related to frequency of intercourse and to the number of partners, but not to other variables. Moreover, respondents who believed HIV transmission rates to be greater than 50% were more likely to be sexually active and tended to have had sex more often than respondents who thought transmission rates were lower, although these differences were relatively small.

In contrast, perceptions of community AIDS rates were consistently associated with behavior, although the differences were not as large as in our earlier findings. Respondents who reported living in an area with a higher-than-average AIDS rate were significantly less likely to be sexually active, had sex less often and had fewer partners than those who believed their area had a lower-than-average AIDS rate. The former were also significantly less likely to report that they had had casual sex, although they were no more likely to have used a condom and were more likely to have used no method of birth control. Moreover, respondents who believed their community had a higher-than-average AIDS rate were more likely to have had anal sex and to have had sex while under the influence of alcohol.

Perceived Personal Infection Risk

Unlike the perceptions of general risk, personal concern about AIDS was significantly related to risk-behavior during the preceding four weeks. Respondents who thought they had a 50% or greater chance of being HIV-positive were more likely to have forgone sex and tended to have had sex less frequently than respondents who believed there was little or no chance that they were HIV-positive. Further, unlike the results of other studies,[14] our results indicated that respondents who reported at least some chance that they were HIV-positive were more likely to have used condoms than were those who believed there was no chance they were infected.

Only about one-third of sexually active

*Results for male-to-male transmission are not shown in Table 6 because only differentials by number of partners and the proportion having casual sex were statistically significant, and these differences were quite small.

Table 6. Percentage distribution of all respondents, by self-reported measures of risky sexual behavior in the past four weeks, according to various perceptions of the general and personal probability of HIV risk, 1991 NSM

Risky behavior	Total	Probability of transmission				Community AIDS rate			Perceived personal HIV-infection risk			Often worry		HIV test history		
		Female-to-male		Male-to-female		Below avg.	Avg.	Above avg.	None	Some	≥50%	Yes	No	Tested only for HIV	Tested for reason other than HIV	Not tested
		≤50%	>50%	≤50%	>50%											
		*		*		*			**			***			**	
No. of sex acts																
0	26.1	29.2	24.8	30.5	24.6	23.8	28.9	28.8	26.1	24.5	35.1	33.8	23.6	24.4	23.5	27.6
1–2	17.1	17.3	17.1	17.0	17.2	16.9	17.8	16.8	17.0	16.8	22.0	16.9	17.3	19.5	16.7	16.4
3–4	16.0	15.1	16.3	14.9	16.3	16.5	15.6	14.8	16.9	14.9	12.9	14.9	16.3	13.3	15.8	17.1
5–9	19.5	19.7	19.4	18.0	20.0	20.8	18.0	17.6	19.2	20.6	15.1	14.0	21.2	20.1	23.2	18.1
10–19	15.9	14.6	16.4	15.4	16.0	16.0	14.2	18.5	16.0	16.8	8.5	11.8	17.1	15.3	15.4	16.1
≥20	5.5	4.0	6.1	4.2	5.9	6.0	5.5	3.5	4.9	6.4	6.5	8.6	4.5	7.4	5.4	4.7
		*		**		*			**			***				
No. of partners																
0	25.8	28.9	24.5	30.4	24.3	23.6	32.3	28.4	25.8	24.5	35.0	33.6	23.3	24.3	23.2	27.4
1	70.4	67.2	71.8	66.0	71.9	72.5	67.7	68.3	70.9	71.6	58.1	59.8	73.8	70.6	73.5	69.2
≥2	3.7	3.9	3.7	3.6	3.8	3.9	3.7	3.3	3.3	4.0	6.8	6.5	2.9	5.1	3.3	3.4
						*			*			***			*	
Had casual sex																
Yes	1.4	1.0	1.7	1.0	1.6	1.0	2.0	2.0	1.0	2.1	2.7	3.1	1.0	2.9	1.3	1.1
No	98.6	99.0	98.3	99.0	98.4	99.0	98.0	98.0	99.0	97.9	97.3	96.9	99.0	97.1	98.7	98.9
						*			**			***			*	
Had anal sex																
Yes	1.9	1.6	2.0	1.9	1.9	1.4	2.5	2.6	1.2	2.8	3.3	3.5	1.4	2.7	0.9	2.0
No	98.1	98.4	98.0	98.1	98.1	98.6	97.5	97.4	98.8	97.2	96.7	96.5	98.6	97.3	99.1	98.0
						***			***			***			*	
No. of times had sex & used alcohol																
0	75.0	74.1	75.3	72.5	75.8	73.1	79.5	73.1	78.2	70.4	69.2	75.9	74.6	75.4	73.7	75.6
1	10.2	10.4	10.1	11.5	9.8	12.3	8.0	7.0	9.8	11.1	9.2	7.1	11.2	10.1	10.5	10.2
2	7.5	8.1	7.2	7.6	7.4	7.0	7.2	9.4	6.3	8.9	11.0	6.0	7.9	6.0	6.9	8.2
≥3	7.1	6.9	7.1	8.1	6.7	7.1	5.0	10.5	5.4	9.5	9.6	11.0	5.9	8.4	8.9	5.7
						***			**			***				
Contraceptive use																
Condom	21.7	22.7	21.1	22.7	21.3	21.8	21.6	21.1	19.3	25.5	23.8	27.2	20.0	22.5	20.1	21.8
Other method	49.0	48.7	49.2	50.0	48.7	52.2	45.4	44.9	50.6	46.8	46.1	38.5	52.3	44.8	50.4	50.2
No method†	29.3	28.6	29.6	27.3	30.0	26.0	33.0	34.0	30.1	27.7	30.1	34.3	27.7	32.8	29.5	28.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

†Consists both of sexually active respondents who did not use contraceptives and of those not sexually active in past four weeks.

respondents who reported at least a 50% chance of being HIV-positive said they had used condoms during the preceding four weeks, however. Furthermore, those who perceived a greater chance of being infected were more likely to have had anal sex and casual sex; these respondents were also more likely to have had sex while under the influence of alcohol, and to report that drinking reduced their likelihood of using condoms (not shown).

Overall, respondents who reported worrying about AIDS were significantly less likely to have been sexually active during the preceding four weeks. On the other hand, those who worried often about AIDS tended to have had sex more often and with a greater number of partners than did those who did not worry frequently about AIDS, were more likely to have had casual sex or anal sex, and were more likely to have had sex while under the influence of alcohol. They were much more likely to report using condoms, however; about 40% of sexually active men who worried about AIDS had used condoms during the preceding four weeks.

Respondents who had been tested for HIV were significantly more likely than respondents who had not been tested to have had sex during the preceding four weeks and to have had sex more often, but they did not have significantly more partners. They were somewhat more likely to have had casual sex or anal sex. Finally, as other research has shown,[15] condom use does not appear to have been significantly related to having been tested for HIV infection.

Perceived Severity and Behavior

The results presented in Table 7 show that perceptions of the severity of AIDS are generally not associated with sexual behavior in the four weeks preceding the interview. Almost two out of every three comparisons in Table 7 show no statistically significant differences, and most of the significant differences are small. Of the five measures of the perceived severity of AIDS, only that involving the physical pain of AIDS was consistently associated with behavior.

Of greater concern is that less than half of the significant associations are in the expected direction—that is, greater perceived severity of AIDS being positively related to risky behavior. For example, respondents who agreed that AIDS is painful were more likely than other respondents to have had multiple partners, to have had casual sex, to have had sex under the influence of alcohol, and to have reported that drinking reduces the likelihood they would use condoms (not shown). Although believing that there is no cure for AIDS and believing that there will be one within five years were not consistently associated with AIDS-related behavior, the significant associations were at least in the expected direction.

Discussion

The results presented in this article provide important information about how adult males in the United States perceive the risk of AIDS and how those perceptions are related to their risk-taking behavior. For instance, relatively few men think there is a 50% or higher chance that they are HIV-positive, but almost 40% believe there is some chance that they are infected, and nearly 25% worry frequently about AIDS. In addition, over 40% of the men in our sample reported having had a blood test for HIV, and about half of these said they had had the test specifically to find out their HIV status.

Our findings also suggest that U.S. men

overestimate the risk of HIV transmission when one is exposed to the virus, but do not accurately assess their actual risk of exposure. Between 70% and 80% of respondents believed the probability of HIV transmission from one unprotected sexual contact was greater than 50%, which is much greater than current medical research estimates; in contrast, only 16% reported living in a community with a higher-than-average AIDS rate.

Perceptions about transmission rates and the risk of exposure appear to have different effects on men's perceptions of their own risk of AIDS and on their HIV-related risk-behavior. We find little evidence to support the argument that perceived transmission rates are related to men's evaluations of their own HIV status, their concerns about AIDS, their likelihood of having been tested for HIV, or their risk-behavior. However, perceptions of the risk of exposure (as measured by men's reports of their local community AIDS rate) were significantly related to each of these measures.

Along with the finding that men tend to overestimate transmission rates and underestimate exposure risk, these results indicate that men's perceptions of the risk of exposure are more salient to their personal concern about AIDS and their HIV-related risk-behavior than are general perceptions about the probability of transmission. One might conclude, then, that the strategy chosen by most men to protect themselves against HIV infection is to reduce the probability of contact with someone who is HIV-positive, rather than to protect against the possibility that a partner is HIV-positive. We cannot determine from the results presented here whether this strategy arises because men assume that they are safe if they avoid HIV-positive individuals, or because they believe that their own risk of exposure is unrelated to sexual transmission (i.e., because they practice safe sex or are not sexually active).

According to models of health behavior, before individuals are motivated to change their behavior to reduce their risk of exposure to a disease, they must first understand what places them at risk of the disease and perceive a connection between their own behavior and their risk of acquiring it. Findings presented in this article suggest that, except perhaps for drug users and their partners, this critical link has been established among adult men in the United States. However, given the high risk of HIV infection associated with intravenous drug use, needle-sharing, and intercourse with intravenous drug users, the lack of association between these factors and evaluations of one's own HIV status suggests a great deal of denial or indifference on the part of drug users and their sex partners. On the other hand, the observed pattern could be related to the high rates of HIV testing (50% or greater) seen in these groups, and the increased knowledge about HIV status that testing provides.

Although health behavior models predict that perceptions of one's own risk of infection will be related to risk-behavior, the motivation for reducing risk-behavior may differ by HIV status—that is, individuals who do not believe they are infected may be more willing to modify their health behavior because they are motivated by a desire to protect their own health, while those who believe that they are already infected would be motivated primarily by a desire to protect the health of others.

The findings of this study suggest that men who believe there is a good chance they may be HIV-positive fall into two groups: those who refrain from sexual activity or reduce it to below-average levels, and those who engage in high-risk behavior. Men in the former group appear to behave in the way health behavior models predict, while those in the latter group are probably continuing the types of high-risk behavior that led them to suspect that they may be HIV-positive. This group's continued high-risk behavior may be caused by an inability to stop that behavior, a lack of concern over infecting others, or a consistent tendency to engage in risky behavior, both related and unrelated to AIDS. Whatever the reason for their continued high-risk behavior, it is the behavior of these people that is most likely either to fuel or to contain the spread of AIDS.

Our results also show that almost all adult men understand that AIDS destroys the immune system and that there is no cure for AIDS; there is, however, considerable diversity of opinion about whether AIDS is painful and over the likelihood of a cure (or death) within five years. A sizable minority of men appear to believe that infection with HIV need not result in painful death; and theory predicts that these men may be less likely to reduce the kinds of behavior that place them at risk. Surprisingly, the results also indicate that although adult males are well aware of the severity of AIDS, perceptions of its severity are not important determinants of HIV-related risk-behavior.

Finally, in examining how perceptions vary by demographic and other background characteristics, we found that old-

Table 7. Percentage distribution of respondents, by risky sexual behavior in past four weeks, according to perceptions about the severity of AIDS, 1991 NSM

Behavior	AIDS destroys immune system		There is no cure for AIDS		AIDS is painful		Death occurs within 5 yrs.		There will be a cure within 5 yrs.	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
No. of sex acts		***								*
0	25.6	37.3	26.1	26.3	25.4	26.9	27.0	24.0	26.7	25.5
1–2	17.1	19.1	17.0	20.9	17.7	16.5	17.0	17.4	19.0	15.5
3–4	16.3	7.1	15.9	17.4	16.0	15.9	15.9	16.1	16.3	15.7
5–9	19.3	26.0	19.6	17.7	19.2	19.8	19.2	20.0	18.0	20.8
10–19	16.2	4.7	16.1	9.7	16.2	15.4	15.4	16.9	15.2	16.4
≥20	5.5	5.9	5.3	8.0	5.5	5.5	5.4	5.6	4.9	6.0
No. of partners		*		**		***				
0	25.4	37.2	25.8	26.1	25.2	26.7	26.8	23.8	26.5	25.3
1	70.8	61.2	70.7	63.9	69.7	71.4	69.5	72.5	69.8	71.0
≥2	3.8	1.6	3.4	10.0	5.1	1.9	3.7	3.7	3.7	3.8
Had casual sex				**		***		*		
Yes	1.5	0.8	1.3	4.8	2.2	0.5	1.8	0.7	1.6	1.3
No	98.5	99.2	98.7	95.2	97.8	99.5	98.2	99.3	98.4	98.7
Had anal sex										
Yes	1.9	0.3	1.8	4.3	2.0	1.8	2.0	1.6	2.0	1.8
No	98.1	99.7	98.2	95.7	98.0	98.2	98.0	98.4	98.0	98.2
No. of times had sex & used alcohol						***				***
0	74.7	81.3	74.9	75.6	73.2	77.5	74.8	75.4	72.8	76.9
1	10.3	7.1	10.0	14.3	11.0	9.0	10.6	9.3	12.4	8.3
2	7.6	4.3	7.7	3.6	8.9	5.4	7.6	7.1	6.9	8.0
≥3	7.0	7.4	7.1	6.6	6.4	7.9	6.7	7.7	7.4	6.7
Contraceptive use						**				
Condom	21.9	14.6	21.4	27.3	23.9	18.7	21.8	21.4	20.7	22.5
Other method	49.1	48.9	49.4	40.3	47.2	51.5	47.9	51.4	48.4	49.6
No method	29.0	36.5	29.2	32.4	28.9	29.8	30.3	27.3	30.9	27.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

er respondents, men with more education and respondents who had a friend or relative who is HIV-positive or who know more than one HIV-positive person tend to believe that transmission rates are lower and local community AIDS rates are higher. Since our respondents tended to overestimate transmission rates, the differential rates reported by these groups may represent their greater access to or understanding of scientific information concerning HIV transmission. Nonetheless, even among these more informed respondents, perceptions of the risk of HIV transmission were much higher than those supported by medical research.

Younger men, blacks and respondents with less education are more likely to report that they worry frequently about AIDS and are more likely to have had a blood test for HIV. In contrast, less educated respondents are less likely to believe that there is some chance they might be HIV-positive, and younger respondents and blacks are not significantly more likely to perceive they might be HIV-positive. The inconsistency between the results regarding personal HIV status and those for the other two measures of concern about AIDS may indicate that while blacks, young people and the less educated do not believe they are more likely to be infected with HIV, they appear more concerned than other groups about acquiring HIV.

Further, the results showed that unmarried respondents and those with an HIV-positive friend or relative or who know more than one HIV-positive acquaintance are more likely to report a greater chance of being HIV-positive themselves and are more likely to report worrying frequently about AIDS and having been tested for HIV. This pattern could indicate that knowing someone who is HIV-positive sensitizes people to the risk of having or acquiring HIV; alternatively, it may be the result of a type of selection, in that respondents who know people who are HIV-positive may themselves have life-styles that place them at greater risk of acquiring HIV. Respondents who were not sexually active at the time of the interview tended to report both very low and very high probabilities of HIV infection, probably because this group contained respondents who had had very few or no sexual relationships (and thus were at very low risk) as well as those who had had many relationships but were now refraining from sexual activity for fear of infecting others.

Overall, these findings indicate that perceptions of one's own HIV status are not as strongly related to concerns about AIDS or the decision to be tested for HIV as might be suspected, suggesting that concerns about AIDS and the decision to be tested are strongly influenced by other factors, or that the relationship between perceptions of HIV status and concern about AIDS and having a blood test are mediated by other factors.

The results presented in this article provide limited support for the general model of health behavior, positing that individuals will do more to prevent exposure to a disease or to avoid transmitting the disease to others when the risk of exposure is high, the risk of transmission once exposure takes place is high, or the consequences of contracting the disease are great.

We have not attempted to disentangle the complex interrelationships among the various components of AIDS-related behavior. In subsequent research, we intend to examine predictions made by health behavior models, using a number of multivariate models. For instance, we will examine how demographic and other background variables are related to perceptions of the severity of AIDS and to the risks of exposure and transmission. We then intend to examine how past behavior and background characteristics are related to concerns about AIDS (men's HIV status, the degree to which they worry about AIDS, and whether they have been tested for HIV). Our next step will be to examine how perceptions of the risk of exposure and transmission, along with past risk-behavior and background characteristics, are related to concerns about AIDS. Finally, we will examine how these perceptions and background characteristics are related to recent risk-behavior. In this way, we hope to develop a better understanding of the factors that influence the behavior that places one at risk of contracting HIV infection.

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TECHNICAL NOTE

National Survey of Men: Design and Execution

By Koray Tanfer

The National Survey of Men (NSM-I) was conducted in 1991, under a grant from the National Institute of Child Health and Human Development, to examine issues related to sexual behavior and condom use among men aged 20–39. It is intended to serve as the baseline survey for a longitudinal study of this group of U.S. men. This technical note describes the survey design and execution.

Sample Design

The NSM-I was based on a multistage, stratified, clustered, disproportionate-area probability sample of households in the contiguous United States. The study population consisted of 20–39-year-old noninstitutionalized males. We oversampled the black population to ensure their adequate representation in data analysis. We did not attempt to oversample other groups or high-risk populations such as homosexual or bisexual men, however; these are represented in the sample proportionate to their size in the U.S. population.

The master national sampling frame consisted of 100 primary selection units; within these were 4,000 secondary selection units, and within each of these one listing area, with an average population of 125, was selected. A total of 20,086 housing units in these listing areas were canvassed (see Table 1); of these, 2,434 were found to be outside the sample universe because they were vacant or dilapidated or were not housing units. Of the remaining 17,652 housing units, 16,414 were successfully screened for eligibility. The screening interviews yielded 4,751 eligible men for the extended interview; 3,321 of these (69.9% of all eligible males) were successfully interviewed.

To meet the survey objectives, two separate samples were selected: a main sample of the general population, containing 1,062 listing areas, and an oversample, containing 153 listing areas designated as black listing areas. The probability of selection of a listing area in the main survey sample was one in 10,511, and the probability of selection of a listing area in the black oversample was one in 1,164.

Questionnaire Contents

The questionnaire consisted of the following sections:

• *Background.* This section contained questions on the respondent's personal background and characteristics, such as age, race, education, religion, work status, income, marital or relationship status, living arrangements and residential history.

• *Sexual Initiation and Current Exposure.* These questions concerned the respondent's date of or age at initiation of different types of sexual activity (e.g., vaginal intercourse, anal intercourse and oral sex), the frequency with which he changed partners, the frequency with which he engaged in different types of sexual intercourse, the incidence and prevalence of particular sexual practices within different reference periods (ever, since January 1990 and in the preceding four weeks), the frequency with which he had paid for sex or had had one-night stands, and his sexual orientation over the past 10 years.

• *Current Wife or Partner.* Questions in this section focused on the social, demographic and economic characteristics of the respondent's current partner or wife, the couple's sexual relationship, their contraceptive practice and sexually transmitted disease (STD) prevention behavior before and after they were married (or before and after their relationship began, if they were not married) and the number of pregnancies during their relationship. With the exception of questions on pregnancy and pregnancy prevention, items in this section applied to both male and female partners.

• *Previous Marital Relationships.* This section included questions similar to those in the preceding section (although there were fewer) about behavior in previous marriages for respondents who had been married more than once or who were currently divorced or widowed.

• *Other Nonmarital Sexual Partners.* These questions concerned the people (other than his wife or current partner) with whom the respondent had engaged in oral, anal or vaginal sex since January 1990; the questions focused on demographics and on sexual behavior, contraceptive use and STD prevention. More questions were asked regarding relationships that had lasted one month or more than for shorter term relationships. With a few exceptions,

Table 1. Breakdown of the sample universe for the 1991 National Survey of Men (NSM-I), by unit and number in unit

Sample unit	No.
Addresses	**20,086**
Vacant/not a housing unit	2,434
Housing units	17,652
Households	**17,652**
Not screened	1,238
Screened	16,414
Screened households	**16,414**
Male ineligible	11,663
Age	11,311
Language	180
Other	172
Male eligible	4,751
Eligible males	**4,751**
Not interviewed	1,430
Refused	1,284
Other*	146
Interviewed	3,321

*Includes interviews that were partially completed or were deemed to be unusable.

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questions in this section were applicable to both male and female partners.

• *Nonsexual Partners.* Questions in this section centered on the people with whom the respondent may have had a relationship since January 1990, but with whom he had not engaged in oral, anal or vaginal sex, and with whom he may or may not have engaged in other types of sexual activity (petting or mutual masturbation, for example). Specific questions were similar to those in the preceding section, but were fewer.

• *Health and Risk-Taking Behavior.* The incidence and prevalence of infertility, STDs and any related treatment, as well as of smoking, drinking, drug use, needle-sharing and other risk-taking behavior (such as drinking and driving, seat belt use, speeding, and sexual behavior under the influence of alcohol or drugs) were explored in this section.

• *Attitudes, Perceptions and Knowledge.* These questions covered the respondent's knowledge of, attitudes about and perceptions of health-related and contraception-related issues: properties of different contraceptive methods (such as effectiveness, side effects and degree of interference with sex); attitudes toward sexuality, pregnancy, abortion, and transmission and consequences of AIDS and a number of STDs (e.g., gonorrhea, syphilis and herpes); experience of human immunodeficiency virus (HIV) testing; perceived susceptibility to AIDS; and personal risk assessment.

• *Condom Module.* The questions in this section concerned the men's reasons for using or not using condoms, their brand preference, their preference for specific properties (lubrication or ribbing, for example), the incidence and prevalence of condom breakage and leakage, and various attitudinal items related to condom use.

• *Follow-up Information.* Because the NSM-I is part of a longitudinal survey, the respondent was asked to provide two references—friends or relatives who did not live with him—and to report his work or school address, his intentions to move (including his future address, if known) and his social security number. This information is being used to trace respondents from the baseline survey who are subsequently not living at the address at which they were first interviewed.

• *Interviewer Observations.* Immediately after leaving the respondent, the interviewer assessed the quality of the interview and the respondent's perceived truthfulness regarding questions on sexual activity, contraception and pregnancies, as well as the respondent's overall degree of cooperation.

• *Self-Administered Questions.* The last items consisted of a set of self-administered attitude scales measuring self-esteem, locus of control, and attitudes toward marriage, plus three subscales measuring alienation—normlessness, social isolation and powerlessness.

Data Collection and Processing

All data collection and processing was carried out by the Institute for Survey Research at Temple University, in Philadelphia. Potential respondents received no advance notification of the study. The nature of the survey was explained to the selected respondent after the screening interview, first orally, by the interviewer, and then in a written introduction in a letter handed to the respondent. This letter also served as the respondent's informed consent. Both the oral explanation and the letter explicitly referred to the health implications of the spread of STDs and AIDS and to the link between sexual practices, preventive behavior and the risk of infection. The respondent was told that he would be asked questions on his sexual and health behavior, including specific sexual practices and disease prevention practices. The privacy of the interview and the confidentiality of the information collected were stressed, and respondents were assured of anonymity.

All interviews were conducted in person using a standard questionnaire; the self-administered instrument was completed by the respondent. The oral portions of the questionnaire were administered entirely by female interviewers.* The average interview lasted 80 minutes. The survey design did not specifically call for race-matching of the respondent and the interviewer, but because of the stratification and the clustering of the sample areas and because of the oversampling strategy used, a large majority of respondents were interviewed by an interviewer of the same race.

A total of 206 interviewers and nine regional field coordinators were recruited for the field work; of these, 189 interviewers and seven coordinators worked on the survey. (The remaining interviewers and coordinators either did not want any assignments or were deemed unsuitable for the study.) The interviewers and coordinators were trained in nine four-day training sessions.

Of the 189 interviewers, 91% were experienced in interviewing; all were at least high school graduates, 41% had had some college education, and 32% were college graduates. Completed interviews were edited, check edited, coded and check coded by the Institute staff. All data were entered by the in-house staff using key-to-tape equipment and were verified by a second key-to-tape operator.

Response Rates

Ideally, to avoid nonresponse bias, a researcher would identify and interview all eligible persons in a target sample. Because this never happens, response rates in social surveys—especially in those that deal with sensitive issues—have consistently been considerably below the ideal.[1] This survey, with an interview response rate of 70%, is no exception. As Table 1 shows, the large majority of nonrespondents refused to be interviewed, but in an additional 146 cases, interviews were unusable or only partially completed or potential respondents did not keep interview appointments.† (Among those who were in the eligible age-group, 180 were ineligible because they did not speak English, 58 were too ill to be interviewed, 102 had moved out of the sample area before being interviewed and 12 were ineligible for other reasons.)

Seventy percent is a respectable response rate for a survey of sexual and health behaviors, given the highly sensitive nature of the questions. The National AIDS Behavioral Surveys, a recent national probability survey of HIV-related risk factors among the general heterosexual population, obtained a response rate of 70% by telephone. The investigators note that this

*We do not know what impact using female interviewers may have had on the reliability of answers to some of the more sensitive items. The effect on data quality of using female interviewers will be formally assessed soon in an examination of couples' reports of sexual behaviors in a subsample of the survey. The second wave of the NSM will employ both male and female interviewers, which will allow us to compare results by the interviewer's gender. A previously published review of interviewer effects suggests that respondents generally are more likely to report sexual behaviors to female interviewers than to male interviewers (see: J. A. Catania et al., "Methodological Problems in AIDS Behavioral Research: Influences on Measurement Error and Participation Bias in Studies of Sexual Behavior," *Psychological Bulletin*, 108:352–353, 1990).

†We are conducting a comprehensive analysis of nonresponse in the NSM-I, based on data from the 20,000 or so screening interviews, and will examine differential response rates according to age, race, marital status, household size, household composition, and place of residence of all eligible men in the sample frame. We will compare respondents with nonrespondents on the basis of these characteristics to determine the extent of possible self-selection into or out of the survey. We do not have a complete record of the reasons for refusals, primarily because the interviewers were not specifically instructed to ascertain these in detail. If such reasons were volunteered, they were recorded on the screening forms. These most likely are incomplete and less informative than one would wish, but a content analysis of these comments may nonetheless shed some light on the issue of nonresponse.

rate compared favorably with the responses to other telephone and face-to-face surveys in this field, and that nonresponse in their survey was unrelated to the topic of investigation.[2]

A second type of bias results when respondents deliberately do not answer specific questions or do not have the required information. Such item nonresponse in the NSM-I was generally below 2% and was often as low as 0.2%, even for sensitive questions about the incidence of one-night stands, the trading of sex for money or drugs, and the respondent's STD infection status and experience with anal intercourse. Furthermore, item nonresponse appears to have been random rather than systematic.

Given the interview response rate and the trivial level of item nonresponse, we believe that data from the NSM-I provides useful estimates of the prevalence of many contemporary behaviors that heretofore were not available.

Sampling Error

The extent to which estimates based on survey data differ from true population values depends on the extent of sampling and nonsampling error. Nonsampling error arises from nonresponse, misreporting, miscoding and other errors, and is usually not calculable. Sampling error arises from the natural variability associated with using a portion of the population to make inferences to the total population. Sampling theory permits the estimation of sampling errors when measurable probability designs are used.

How close a sample estimate is to the population value can be determined by confidence intervals, which describe the probabilistic relationship between the sample estimate and the population value. The size of the confidence interval around a sample parameter is also influenced by the sample design, the sample size and the proportion of the survey respondents falling into a particular category.

Unlike the use of a simple random sampling design, use of a stratified and clustered sample design requires sampling variance estimates to be based on the relationship of the variance between primary selection units to the variance within primary selection units. The ratio of this sampling variance to the variance that would have been obtained if a simple random sample had been used is known as the design effect.[3] The larger the design effect, the larger the effect of the complex sample design on the sampling error.

Standard errors based on the assumption of simple random sampling underestimate the true value of the variance in a complex (e.g., stratified and clustered) sample design. In Table 2, we provide standard errors for various estimated percentages, separately for the white and the black samples; these have been adjusted for design effects that result from not using a simple random sample. Using these standard errors, one can calculate approximate 95% confidence intervals by multiplying the standard error by 1.96, then adding the result to and subtracting it from the estimated percentage. For example, for a value of 60% in a base population of 2,000 in our survey, the lower bound of the confidence interval would be 60−(2.36x1.96), or 55.4%; the upper bound would be 60+(2.36x1.96), or 64.6%.

Table 2. Standard errors for given values of estimated percentages (p/q), by race, according to base population, 1991 NSM-I

Base population	Whites						Blacks					
	.05/.95	.1/.9	.2/.8	.3/.7	.4/.6	.5/.5	.05/.95	.1/.9	.2/.8	.3/.7	.4/.6	.5/.5
50	8.27	8.49	8.94	9.39	9.83	10.28	5.20	5.50	6.09	6.67	7.26	7.85
100	4.44	4.66	5.11	5.55	6.00	6.45	3.31	3.61	4.20	4.78	5.37	5.96
250	2.14	2.36	2.81	3.25	3.70	4.15	2.18	2.47	3.06	3.65	4.24	4.82
500	1.37	1.59	2.04	2.49	2.94	3.38	1.80	2.09	2.68	3.27	3.86	4.45
1,000	0.99	1.21	1.66	2.11	2.55	3.00	1.61	1.91	2.49	3.08	3.67	4.26
1,500	0.86	1.08	1.53	1.98	2.42	2.87	1.55	1.84	2.43	3.02	3.61	4.19
2,000	0.80	1.02	1.47	1.91	2.36	2.81	1.52	1.81	2.40	2.99	3.58	4.16
2,500	0.76	0.98	1.43	1.88	2.32	2.77	1.50	1.79	2.38	2.97	3.56	4.14

Note: q=1−p.

Weights

After the survey was completed, the final sample was weighted to reflect differential sampling rates, as well as to account for multiple households, multiple eligibility and differential nonresponse. The final weight assigned to each male respondent was the product of five components: sampling weight, screening weight, eligibility weight, nonresponse weight and poststratification weight.

• *Sampling Weight.* The sampling weight compensates for deviations from an equal probability design and is defined as the reciprocal of a respondent's probability of selection. In this case, the sampling weight was the product of the listing area ethnicity weight and the housing unit weight. The listing area ethnicity weight adjusted for the oversampling of the housing units in the black oversample and was the inverse of a listing area's probability of selection. The housing unit weight, the inverse of the housing unit's selection probability, was assigned to housing units in a dwelling when more than one such unit was discovered in a given dwelling.

• *Screening Weight.* Because not all households in the sample were successfully screened for eligibility, we adjusted for screening nonresponse. We first weighted all households by the sampling weight, and then calculated a separate screening response rate within each cell of a three-way cross-tabulation of households according to listing area ethnicity (black and white), census region (Northeast, South, Midwest and West) and population size (less than 50,000 and 50,000 or more). The screening weight was the inverse of the screening response rate in a given cell and was allocated to respondents according to their respective cell.

• *Eligibility Weight.* According to the primary eligibility criterion for the NSM-I, respondents were to have been born between January 1, 1951, and December 31, 1971, or to be between ages 20 and 39, if the respondent's birthday was not known. The sampling design specified that one male respondent per household was to be selected; consequently, the eligibility weight, which compensated for households with more than one eligible male, was the inverse of a respondent's probability of selection within the household—or, more simply, the number of eligible men in the household.

• *Nonresponse Weight.* Since not all eligible men in the sample participated in the survey, nonresponse weights were calculated to adjust for differential participation. These were obtained by first weighting all eligible men by the product of the sampling weight, the screening weight and the eligibility weight, and then by calculating an interview response rate within each cell of a three-way cross-tabulation of respondents by listing area ethnicity, census region and population size. The nonresponse weight was the inverse of the response rate in a given cell and was allocated to respondents according to their respective cell.

• *Poststratification Weight.* To align the sample with the U. S. population on the basis of social and demographic characteristics, poststratification weights were obtained after the sample was weighted by the

product of the sampling, screening, eligibility and nonresponse weights. First, the sample and the population it represented were stratified by age (younger than 30 or 30 and older), race (black or white), education (less than high school, high school or more than high school) and marital status (never-married or ever-married). Subsequently, weights were obtained within each cell of the four-way cross-tabulation of these strata by taking the ratio of the proportion of the population in that cell to the proportion of the weighted sample in the same cell. Respondents were allocated a poststratification weight according to their respective cell.

The final weight was the product of the five weights described above. It was scaled to the sample size to produce a self-weighting sample with a mean weight of 1.00 and a standard deviation of 1.16. The minimum and maximum values of the final weight were 0.07 and 11.40, respectively.

Discussion

The spread of HIV infection in the United States has emphasized that we need information about sexual behavior if we are to understand both the AIDS epidemic and the social processes involved in behavioral change. It is widely recognized, though, that research on sexual behavior in the United States is in an underdeveloped state. Since Alfred Kinsey and his colleagues used social science techniques in the 1940s to document the sexual behavior of American men and women,[4] both the volume and quality of sex research have been uneven, particularly research about behaviors known to spread HIV and other STDs.[5] Furthermore, the defects of Kinsey's own work are widely known—among them the lack of probability sampling and the disproportionate recruitment of respondents from college campuses and the Midwest.

The NSM-I is one of the few national surveys based on a probability sample that have focused on the sexual behavior of men. Given the difficulties inherent in conducting a sample survey on such a sensitive issue, the data from the NSM-I described in the four accompanying articles in this issue are encouraging. Most important, the successful execution of the NSM-I should erase any doubts about the feasibility of conducting surveys on sexual behavior or about the willingness of the public to cooperate. It is evident that such surveys can obtain response rates that are as acceptable as those obtained in surveys of less sensitive topics. It is also encouraging that other surveys of sexual behavior and health have produced similar results, despite using a different methodology.[6]

Obtaining *direct* measures of sexual, contraceptive and health behavior similar to those sought in the NSM-I in an unobtrusive way is not only impossible, but also rarely socially acceptable. Consequently, researchers must rely on individuals' self-reports of their behavior. Because many questions are sensitive and personal, it is naive to expect everyone to answer them accurately; there will always be some underreporting and overreporting of behavior. Moreover, there will always be a certain amount of imprecision because of recall problems. Combined with problems of selective participation and nonresponse bias, such errors, if unchecked, could compromise the ability to draw inferences from the survey data.

Nevertheless, questions about errors in the data should not lead to the outright rejection of findings from survey-based studies. Although it might be difficult to provide convincing evidence of the reliability and validity of data derived from surveys, the research literature contains important demonstrations of the consistency, reliability and validity of measures of sexual behavior. Furthermore, when data on human behavior are obtained by means of surveys of probability samples of the population, we can use statistical theory to make inferences about the population and avoid the myriad of biases inherent in convenience sampling or other types of subject recruitment.

As more surveys on the health and sexual behavior of the U.S. population are conducted, we will be able to better assess the reliability of the NSM-I findings. More important, such surveys will enable researchers, scientists, service providers and policymakers to regularly monitor the public's response to STD and HIV prevention programs.

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SPECIAL REPORT

State Legislation on Reproductive Health In 1992: What Was Proposed and Enacted

By Terry Sollom

In 1992, state legislatures across the country considered more than 1,300 measures dealing with abortion, family planning, sexuality education, infertility, maternal and infant health, sexually transmitted diseases (STDs), and AIDS. Fewer than 115 bills were approved, and 21 were later vetoed. What follows is a summary of state legislative activity in 1992.*

Abortion

The 1992 legislative term was relatively unproductive in regard to the enactment of abortion-related legislation, even though 320 bills—more than two-thirds of them antiabortion measures—were introduced. New restrictions on access to abortion services passed in a handful of states; on the other hand, several actions were taken, either by lawmakers or voters, to guarantee the right to abortion.

Status of Legal Abortion

Although the U.S. Supreme Court's June 1992 ruling in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* declared that attempts by states to make early abortion illegal will not be permitted, *Casey*'s outcome showed that the Court is just one vote short of the majority required to overturn *Roe* v. *Wade* outright. In anticipation of that possibility, four states—Connecticut, Maryland, Nevada and Washington—have enacted protections for abortion rights since 1989, either through legislation or referenda. All are operational, including the law in Maryland, where in November 1992 voters approved a ballot referendum (passed by the legislature in 1991) that codified the basic parameters of *Roe* by guaranteeing the right to abortion until fetal viability and beyond that point when the life or health of the woman is endangered or when the fetus is deformed. Antiabortion activists in Arizona placed a measure on the November 1992 ballot to prohibit most abortions in the state, but voters rejected it.

Aside from the two abortion referenda, 31 legislative measures to preserve women's right to abortion and ensure access to services were introduced in 17 states; another 24 bills to prohibit most abortions were submitted in 10 states. None of the abortion ban measures was enacted, but legislation in Kansas to repeal criminal abortion laws was approved. The new law is a controversial compromise measure that guarantees the legality of abortion prior to fetal viability, but also includes a parental notification requirement for minors seeking an abortion and a provision mandating an eight-hour waiting period for all women, after a lengthy, detailed counseling session. It prohibits cities and counties from further regulating or restricting abortion and makes blockading an abortion clinic a misdemeanor.

Parental Involvement

The Supreme Court has ruled that if states adopt either a parental consent or a two-parent notification law, they must at least provide the minor with some type of "bypass." In recent years, to ensure that minors who are unable to talk to their parents receive counseling and the benefit of adult involvement, some states have devised routes other than the traditional judicial bypass, ranging from required consultation with a physician, psychologist or other health professional to discussion with a member of the clergy or with another adult relative or adult who knows the minor well. At the end of 1992, 23 states were enforcing some kind of parental involvement law.

Of the 63 parental involvement measures considered in 1992, three with nontraditional bypass clauses were approved and one with the traditional judicial bypass was vetoed; in addition, a traditional law enacted in 1990 was amended to expand the medical emergency exception clause. Several measures to repeal or soften existing statutes were introduced, but none became law; several bills to require consent or notice were defeated.

In Wisconsin, a drastically amended conventional parental consent measure was approved, with several exceptions and alternatives endorsed by abortion rights advocates. Besides containing a judicial bypass option, this one-parent consent law allows any adult family member older than 25 to give consent, has exceptions to consent that include minors who may commit suicide or whose pregnancies resulted from incest or sexual assault, and contains a "clergy waiver" that permits clerics to file an affidavit asking the judge to allow the abortion without parental involvement because they have personally counseled the minor about her options and about involving her parent.

The abortion rights bill signed into law in Kansas contains a provision that one parent be notified when a minor seeks an abortion; a judicial bypass option is available. If the minor's physician determines that an emergency threatens her health, safety or well-being, or if there is a reported charge of incest involving a parent, then notification can be waived.

Voters in Maryland approved an abortion rights referendum containing a one-parent notification requirement that does not include a judicial bypass option, although it allows notice to be waived if the

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*Six legislatures (in Arkansas, Montana, Nevada, North Dakota, Oregon and Texas) did not convene sessions in 1992. In 25 states (Alaska, California, Delaware, Georgia, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, West Virginia and Wisconsin), legislation was carried over from the 1991 to the 1992 session.

minor's physician determines that she is mature enough to give informed consent or that notice would not be in her best interests or may lead to physical or emotional abuse. The legislation vetoed in Virginia was a standard one-parent notification requirement with a judicial bypass option.

Counseling and Waiting Periods

Since the late 1960s, 13 states have enacted mandatory preabortion counseling laws (under the rubric of "informed consent") coupled with waiting periods, and another four states have enacted counseling laws without waiting periods. Only two of these were being enforced at the end of 1992. The Supreme Court struck down waiting periods and this type of counseling in 1983; in *Casey*, however, the Court upheld such requirements as not presenting an "undue burden."

In 1992, 41 counseling or waiting period bills were introduced in 24 states, but just one, in Kansas, was enacted, as part of the new abortion rights law. The law requires an eight-hour waiting period after a woman has given her written informed consent, and requires that the state-mandated information include risks of and alternatives to the abortion procedure; the gestational age of the fetus; and the risks associated with childbirth. The only other operational law, in Mississippi, was enacted in 1991 and went into effect in August 1992 after it had been delayed by several court actions. It requires a woman to wait 24 hours for an abortion after receiving compulsory, state-determined counseling. In December, the Supreme Court turned down an appeal for review of the appeals court decision upholding the law; a similar provision in Pennsylvania was found constitutional in *Casey*, but as of the end of 1992 it was not operational.

Public Funding for Low-Income Women

In 1992, 13 states provided state funds for abortions for low-income women; several other states funded abortions only for reasons such as rape, incest, fetal deformity or grave risk to the woman's health. All other states funded abortions only in cases where the pregnant woman's life was endangered. In late 1992, the new governor of Alaska directed the state department of health to change its nonrestrictive policy and to fund abortions only when a physician certifies that an abortion is necessary to prevent death or disability or to ameliorate a condition harmful to a woman's physical or psychological health, or when a pregnancy results from rape or incest. After numerous public hearings, the state attorney agreed to enforce the new policy; a court action is expected before the regulation goes into effect, sometime in February 1993.

Although 34 bills were introduced in 14 states to overturn funding bans, provide greater access for women in need or reverse laws that allow funding in most cases, none was enacted. In New York and West Virginia, legislation to end nonrestrictive funding for abortion was introduced. Measures aimed at expanding funding included an Iowa bill to provide funds when a pregnancy puts a woman's health at risk; an Illinois measure to delete language from the public aid code that bans coverage except in cases of life endangerment; an attempt in Massachusetts to require equal access to abortion under Medicaid; Minnesota and Pennsylvania bills to remove the life-only requirement and allow abortion for medical necessity; a Rhode Island measure to require coverage for victims of rape or incest; and a Wisconsin bill to eliminate funding prohibitions.

Clinic Licensing and Harassment

While most abortion facilities, like other outpatient providers, are already licensed through state or local agencies, licensing requirements aimed solely at abortion clinics are usually designed to make the provision of services more difficult. In 1992, seven measures on clinic licensing were introduced in Alabama, Kentucky, Mississippi, New York, Oklahoma and South Carolina,* but none was enacted. An eighth bill, sponsored by prochoice lawmakers in California, would have made it unlawful for "pregnancy crisis centers," staffed by antiabortion activists, to advertise or to operate as a clinic without a license, but the governor vetoed it.

In 1992, 16 bills to protect clinic employees, patients and property from violence and harassment, and ensure access to abortion facilities, were introduced in 10 states, and two were enacted. The Kansas law makes blockading an abortion facility a misdemeanor punishable by a six-month jail sentence, a $1,000 fine, or both. A new California law makes it a misdemeanor to intentionally prevent another person from entering or exiting a health care facility, school or place of worship.

Family Planning

Legislative proposals dealing with pregnancy prevention, particularly among young and low-income women, continue to provoke debate and controversy. Even though none of the more radical proposals was approved, some legislation pertaining to hormonal contraceptive implants (e.g., Norplant), sexuality education and condom distribution in schools was examined at length and voted on, with a few such measures becoming law.

Clinics and Abortion Counseling

Enforcement of the 1988 Title X gag rule, which the Republican administration promulgated to prohibit abortion counseling at 4,000 federally funded family planning clinics, was expected to put a heavy financial burden on those clinics and states that decided not to comply, thereby forfeiting federal funds. Early in 1992, when implementation of the rule was imminent, the governors of Massachusetts, New Jersey, New York, Rhode Island and Vermont expressed opposition and pledged replacement funds for clinics in their states, although only Vermont appropriated funds for services should the gag rule become operational. (In January 1993, President Bill Clinton rescinded the gag rule.)

Contraceptive Implants

In 1992, 62 bills introduced in 26 states concerned family planning and contraceptive issues, with many related in some way to hormonal implants; one was enacted and one was vetoed. The new law, approved in Louisiana, requires the department of health to provide public assistance recipients with family planning information and services, including information about abstinence but excluding information about abortion. The department is required to compile a list of contraceptive methods and devices, including the hormonal implant but excluding "abortifacients." A recipient who chooses to use a method on the list is guaranteed an examination within 14 days of her initial request; after the examination, the method is made available within seven days. The vetoed measure, in California, would have required the department of health to provide written notices to all applicants for and recipients of Aid to Families with Dependent Children (AFDC) and Medi-Cal about the availability of family planning services and devices, including the implant.

Since the Food and Drug Administration's approval of the implant in December 1990, it has become available to all eligible clients of Medicaid agencies in all 50 states. A few legislators have introduced bills providing financial incentives to poor women for use of the implant or mandat-

*These were clinic licensing bills pertaining strictly to abortion facilities; it is possible that other bills introduced in 1992 dealing with outpatient clinics, doctors' offices or hospitals could also have had an impact on the licensure and operation of abortion facilities.

"I'd like to have another child, but we also want some time before the next one."

Kris Miller
Clinton, MA



NORPLANT® SYSTEM
levonorgestrel implants

Lasts 5 years...yet is reversible

Serious as well as minor side effects may occur. The most common side effect which has been observed is menstrual bleeding irregularities.

Please see brief summary of prescribing information on the following page.

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NORPLANT® SYSTEM

levonorgestrel implants

Lasts five years...yet is reversible

BRIEF SUMMARY OF PRESCRIBING INFORMATION. CONSULT THE PACKAGE LITERATURE FOR FULL PRESCRIBING INFORMATION.

Indications and Usage

The NORPLANT SYSTEM is indicated for the prevention of pregnancy and is a long-term (up to 5 years) reversible contraceptive system. The capsules should be removed by the end of the 5th year. New capsules may be inserted at that time if continuing contraceptive protection is desired.

Contraindications

1. Active thrombophlebitis or thromboembolic disorders. 2. Undiagnosed abnormal genital bleeding. 3. Known or suspected pregnancy. 4. Acute liver disease; benign or malignant liver tumors. 5. Known or suspected carcinoma of the breast.

Warnings

A. WARNINGS BASED ON EXPERIENCE WITH THE NORPLANT SYSTEM

1. *Bleeding Irregularities* — Most women can expect some variation in menstrual bleeding patterns. Irregular menstrual bleeding, intermenstrual spotting, prolonged episodes of bleeding and spotting, and amenorrhea may occur, and could mask symptoms of cervical or endometrial cancer. Overall, these irregularities diminish with continued use. Because amenorrhea may occur, missed menstrual periods cannot serve as the only identifier of early pregnancy. Perform pregnancy tests whenever pregnancy is suspected. If pregnancy occurs, the capsules must be removed. Hemoglobin concentrations found in clinical trials generally indicated that reduced menstrual blood loss is associated with NORPLANT SYSTEM use. Blood loss resulting in hemoglobin values consistent with anemia occurred rarely.

2. *Delayed Follicular Atresia* — Atresia of the follicle is sometimes delayed, resulting in enlarged follicles that are clinically indistinguishable from ovarian cysts. In the majority of women, enlarged follicles disappear spontaneously. Rarely, they twist or rupture and surgical intervention may be required.

3. *Ectopic Pregnancies* — Ectopic pregnancies have occurred among NORPLANT SYSTEM users, although clinical studies have shown no increase in the rate of ectopic pregnancies per year among NORPLANT SYSTEM users as compared with users of no method or of IUDs. The incidence among NORPLANT SYSTEM users (1.3 per 1000 woman-years) was significantly below the rate estimated for noncontraceptive users in the U.S. (2.7 to 3.0 per 1000 woman-years). Ectopic pregnancy risk may increase with duration of NORPLANT SYSTEM use and increased weight of the user. Rule out ectopic pregnancy in any patient presenting with lower-abdominal pain.

4. *Breast-feeding* — Steroids are not the contraceptives of first choice for lactating women. Levonorgestrel has been identified in breast milk. Limited data suggests no significant effects on infant growth or health when mothers used the NORPLANT SYSTEM beginning 6 weeks after parturition.

5. *Foreign-body Carcinogenesis* — Rarely, cancers occur at foreign-body intrusion sites or old scars. None has been reported in NORPLANT SYSTEM clinical trials and risk to users is judged to be minimal.

6. *Thromboembolic Disorders* — Remove capsules if active thrombophlebitis or thromboembolic disease develops. With prolonged immobilization removal should be considered.

B. WARNINGS BASED ON EXPERIENCE WITH COMBINATION (PROGESTIN PLUS ESTROGEN) ORAL CONTRACEPTIVES (OCs)

Note: Many of the side effects or risks listed below are thought to be estrogen-related; the association of the NORPLANT SYSTEM progestin-only method to these risks is unknown.

1. *Cigarette Smoking* — Cigarette smoking increases the risk of serious cardiovascular side effects from combined OC use. Risk increases with age and heavy smoking (≥15 cigarettes/day) and is quite marked in women over 35 years old.

2. *Elevated Blood Pressure* — Increase in blood pressure has been reported in combination OC users; prevalence increases with long exposure.

3. *Thromboembolic Disorders and Other Vascular Problems* — An increased risk of thromboembolic and thrombotic disease is associated with combination OC use. Estimate of relative risk is 4- to 11-fold higher for users vs. nonusers.

Cerebrovascular Disorders: Combination OCs increase the relative and attributable risk of cerebrovascular events (thrombotic and hemorrhagic strokes). Generally, risk is greatest among hypertensive women > 35 years of age who smoke.

Myocardial Infarction (MI): An increased risk of MI has been attributed to combined OC use. This is thought to be primarily thrombotic in origin and related to the estrogen component. Increased risk occurs primarily in smokers or women with other underlying risk factors for coronary-artery disease. Relative risk of heart attack for combined OC users is estimated as 2 to 6 times that for nonusers. Absolute risk is very low for women under 30 years old.

Studies indicate a significant trend toward higher MI and stroke rates with increased progestin doses in combination OCs. However, recent data indicated no increased MI risk with past use of levonorgestrel-containing OCs.

4. *Carcinoma* — Recent evidence in the literature suggests no association between OC use and increased risk of breast cancer in the overall population of users. The Cancer and Steroid Hormone (CASH) study also showed no latent effect on breast cancer risk for at least a decade following long-term use. Some of these same studies have shown an increased relative risk of breast cancer in certain subgroups; no consistent pattern has been identified. Some studies suggest an association between combination OCs and an increase in the risk of cervical intra-epithelial neoplasia in some populations of women. The extent to which such findings may be due to differences in sexual behavior and other factors remains controversial. A cause-and-effect relationship between combined OC use and breast or cervical cancer has not been established. Combination OCs may decrease ovarian and endometrial cancer risk. Irregular bleeding patterns associated with NORPLANT SYSTEM use could mask cervical or endometrial cancer symptoms.

5. *Hepatic Tumors* — Hepatic adenomas are associated with combination OC use; estimated incidence is 3 events per 100,000 users per year. Risk increases after 4 or more years of use. Hepatic adenomas are benign but may rupture and cause death through intra-abdominal hemorrhage.

6. *Ocular Lesions* — Retinal thrombosis is associated with OC use and is believed to be related to the estrogen component. However, NORPLANT SYSTEM capsules should be removed if there is unexplained partial or complete vision loss; onset of proptosis or diplopia; papilledema; or retinal vascular lesions. Undertake appropriate diagnostic and therapeutic measures immediately.

7. *Use Before or During Early Pregnancy* — Extensive epidemiological studies reveal no increased risk of birth defects when OCs are used prior to pregnancy. Studies also do not suggest a teratogenic effect when taken inadvertently during early pregnancy. No evidence suggests that risk with NORPLANT SYSTEM use is different.

8. *Gallbladder Disease* — Early studies reported an increased lifetime relative risk of gallbladder surgery in OC or estrogen users. More recent studies, however, indicate that the relative risk of gallbladder disease with OC use may be minimal; this may be related to use of OCs with less estrogen and progestin content.

Precautions

GENERAL:

1. *Physical Examination and Follow-up* — A complete medical history and physical examination should be taken prior to implantation or reimplantation of NORPLANT SYSTEM capsules and at least annually during its use. Exams should include special reference to the implant site, blood pressure, breasts, abdomen and pelvic organs, including cervical cytology and relevant laboratory tests. Rule out malignancy in cases of undiagnosed, persistent or recurrent abnormal vaginal bleeding. Women with a strong family history of breast cancer or who have breast nodules should be monitored with particular care.

2. *Carbohydrate Metabolism* — Altered glucose tolerance is found in some combination and progestin-only OC users. Effects of NORPLANT SYSTEM on carbohydrate metabolism appear minimal. Observe diabetic and prediabetic patients carefully while using the NORPLANT SYSTEM. Follow women being treated for hyperlipidemias closely if using the NORPLANT SYSTEM. Some progestins may elevate LDL and may render control of hyperlipidemias more difficult. (See **Warnings**.)

3. *Liver Function* — Consider removing capsules if jaundice develops. Steroid hormones may be poorly metabolized in patients with impaired liver function.

4. *Fluid Retention* — Steroid contraceptives may cause some degree of fluid retention. Prescribe with caution, and careful monitoring, in patients with conditions possibly aggravated by fluid retention.

5. *Emotional Disorders* — Consider removing capsules if significant depression occurs since the symptom may be drug-related. Observe carefully those with history of depression and consider removal if depression recurs to a serious degree.

6. *Contact Lenses* — Contact-lens wearers who develop visual changes or changes in lens tolerance should be assessed by an ophthalmologist.

7. *Insertion and Removal* — Insertion is advised during the first 7 days of the cycle or immediately following abortion to insure that the woman is not pregnant and to assure contraceptive effectiveness during first cycle of use. Capsules may be inserted at any time during the cycle provided pregnancy has been excluded and a nonhormonal contraceptive method is used for the remainder of the cycle. Insertion is not recommended before 6 weeks postpartum in breast-feeding women. Follow insertion and removal instructions closely. Healthcare professionals are strongly advised to be instructed in the procedures before they attempt them. Proper insertion just under the skin facilitates removals; proper insertion and removal should result in minimal scarring. If all capsules cannot be removed at first attempt, attempt removal later when the site has healed. Bruising may occur at implant site during insertion or removal. Hyperpigmentation may occur over implant site but is usually reversible following removal. **See Full Prescribing Information for Detailed Insertion/Removal Instructions.**

8. *Infections* — Implant site infection has been uncommon (0.7%); aseptic technique and proper insertion/removal reduces possibility of infection. Institute treatment if infection occurs; remove capsules if infection persists.

9. *Expulsion* — Expulsion of capsules was uncommon; frequency increased when capsule placement was extremely shallow, was too close to incision, or when infection was present. Replace expelled capsule with new sterile capsule. Treat and cure any infection before replacement. Contraceptive efficacy may be inadequate with fewer than 6 capsules.

10. *Provisions for Removal* — Advise women that capsules may be removed at any time for any reason. Personnel instructed in removal technique should perform removal on request or at the end of 5 years of usage. Upon removal, dispose of capsules in accordance with Centers for Disease Control Guidelines for biohazardous waste.

DRUG INTERACTIONS: Reduced efficacy (pregnancy) in NORPLANT SYSTEM users has been reported when phenytoin or carbamazepine were used concomitantly. Warn NORPLANT SYSTEM users of possible decreased efficacy with use of related drugs.

DRUG/LABORATORY TEST INTERACTIONS: 1. Sex-hormone-binding globulin concentrations are decreased. 2. Thyroxine concentrations may be slightly decreased and triiodothyronine uptake increased.

CARCINOGENESIS: See **Warnings** section and Full Prescribing Information.

PREGNANCY: Pregnancy Category X. See **Warnings** section and Full Prescribing Information.

NURSING MOTHERS: See **Warnings** section and Full Prescribing Information.

INFORMATION FOR THE PATIENT: See Patient Labeling. Provide copy of patient labeling to the patient. Advise patients that Prescribing Information is available upon request. Inform prospective users of risks and benefits associated with NORPLANT SYSTEM use, with other forms of contraception, with no contraception, and about insertion/removal procedures. Informed consent from all patients may be desired in light of techniques involved with insertion and removal.

Adverse Reactions

The following have been associated with the NORPLANT SYSTEM during first year of use: many bleeding days or prolonged bleeding (27.6%); spotting (17.1%); amenorrhea (9.4%); irregular (onsets of) bleeding (7.6%); frequent bleeding onsets (7.0%); scanty bleeding (5.2%); pain or itching near implant site - usually transient - (3.7%); infection at implant site (0.7%); removal difficulties affecting subjects - based on 849 removals - (6.2%).

Controlled clinical studies suggest that the following, occurring during the first year, are probably associated with NORPLANT SYSTEM use: headache; nervousness; nausea; dizziness; adnexal enlargement; dermatitis; acne; change of appetite; mastalgia; weight gain; hirsutism, hypertrichosis, and scalp-hair loss. The following were reported with a frequency of 5% or greater during the first year and possibly may be related to NORPLANT SYSTEM use: breast discharge; cervicitis; musculoskeletal pain; abdominal discomfort; leukorrhea; vaginitis.

Overdosage

Overdosage may cause fluid retention with its associated effects and uterine bleeding irregularities.

Dosage and Administration

The NORPLANT SYSTEM consists of six Silastic® capsules, each containing 36 mg of the progestin, levonorgestrel. The total administered (implanted) dose is 216 mg. Implantation of all six capsules should be performed during the first 7 days of the onset of menses by a healthcare professional instructed in the NORPLANT SYSTEM insertion technique. Insertion is subdermal in the midportion of the upper arm about 8 to 10 cm above the elbow crease. Distribution should be in a fanlike pattern, about 15 degrees apart, for a total of 75 degrees. Proper insertion will facilitate later removal. **(See Full Prescribing Information for Detailed Insertion/Removal Instructions.)**

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ing its use by women convicted of certain crimes or by mothers receiving public assistance. In the 1991–1992 legislation term, 20 bills, amendments and welfare reform proposals in 13 states—California, Colorado, Hawaii, Kansas, Louisiana, Mississippi, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington and West Virginia—concerned the implant. The most extreme proposals, if considered at all, were softened by amendments or defeated outright; none became law. Many measures that did not provide incentives or mandate use (such as the previously mentioned laws in California and Louisiana) sought to help low-income women and substance abusers gain access to the implant.

Attracting the greatest amount of attention nationwide were two bills in Tennessee (neither of them approved) that, as initially introduced, would have established a special program to offer initial payments of $500 to AFDC recipients willing to use the implant, and $50 annually while they used it. After an outcry against the legislation, two amendments were adopted—one offering a $500 incentive for men receiving Medicaid to have a vasectomy, the second changing the $500 cash payment to a $500 scholarship for use at a state educational or vocational program. (Similar incentive legislation had been rejected in Kansas, Louisiana and Texas in 1991.)

The legislator who sponsored the Kansas incentive bill defeated in 1991 introduced a measure in 1992 as well. It would have required women convicted of a felony drug offense who were capable of becoming pregnant to use the implant as a condition of probation, with an exception for women whose doctor stated they were medically unable to tolerate the implant. This proposal was also rejected.

In Washington, legislation that died without action would have permitted a court to order the involuntary insertion of the implant if a woman gave birth to a baby with fetal alcohol syndrome or drug addiction. The measure would have permitted removal of the device six months after the court found the woman to be alcohol-free or drug-free. A bill introduced but not considered in Ohio would have required a woman whose baby was born addicted to undergo drug rehabilitation treatment or agree to use the implant for five years. A similar measure that did not pass in South Carolina sought to authorize courts to order implant use for any woman whose infant tested positive for a controlled substance; she would have been eligible to have it removed after successfully completing a drug treatment program and remaining drug-free for two years.

Legislation designed to revise Mississippi's welfare payment system included a provision mandating implant use for any woman receiving state assistance who had four or more children; women who did not agree to implant use would have their payments terminated. The measure also sought to prohibit women from receiving assistance for an illegitimate child born after they had enrolled in a state aid program. The implant provision was later dropped from the bill, which died when the legislature adjourned.

Education and Prevention

In 1992, 73 bills on sexuality or health education were introduced; five were enacted, one was vetoed and two resolutions were adopted. Thirty-five bills on teenage pregnancy prevention and care programs were proposed, with two enacted, and 22 bills on school health services or centers were proposed, with one enacted.

The governor of Georgia vetoed a measure approved overwhelmingly by the legislature that would have prohibited school districts from providing sexuality education that would "promote or encourage the violation of Georgia law." The governor pointed out in his veto message that since antiquated state laws make it illegal to engage in premarital sex and oral and anal sex, the measure would have made it impossible for teachers to instruct on anything other than abstinence.

Of the five sexuality education bills approved in 1992, two dealt with issues consistently raised when the teaching of sexuality matters is discussed. In Louisiana, the enacted legislation provides that any sexuality education instruction offered in the public schools cannot include the religious beliefs or the moral and ethical judgments of instructors on practices in human sexuality. A new Alabama law requires all public school curricula that include sexuality education or the reproductive process to emphasize that abstinence is the only completely effective protection against unwanted pregnancy, STDs and AIDS, and that abstinence outside of marriage is the expected social standard for unmarried school-age children; additionally, all course materials on contraception are to include the latest medical information on rates of failure in preventing pregnancy and disease.

A second measure approved in Louisiana allows schools to provide special sexuality education instruction to pregnant and parenting females, regardless of grade level. The governor also vetoed a bill that would have limited AIDS education to certain science courses in school systems with no sexuality education; he expressed concern that AIDS education would not be available to all students. In California, the importance of obtaining prenatal care must now be discussed in all public school health instruction.

In addition to these new laws, two nonbinding resolutions were adopted—a Colorado measure asking boards of education to utilize curricula and teaching materials that emphasize abstinence, and a Hawaii resolution requesting the departments of health and education to develop a "postpone sexual involvement" program. Abstinence-focused bills also were introduced, but not enacted, in Iowa, Maryland, Michigan, Missouri, New Jersey and North Carolina.

Concerns about parental involvement in a teenager's decisions on reproductive health issues other than abortion were expressed in several measures. Many of the sexuality education bills would have required students to obtain parental consent to attend such a class; other bills would not have allowed a student to use a school-based clinic or health center without first having consent. In Kentucky, legislation that died in committee would have prohibited a physician from prescribing contraceptives to an unmarried minor without written parental consent.

Legislation intended to prohibit the distribution of contraceptives on school grounds was introduced, but not enacted, during 1992 in California, Massachusetts, New Hampshire, New Jersey and New York. In Louisiana and Michigan, however, measures not acted on would have authorized school districts to make condoms available to students. Of 22 bills on school health services introduced in 1992, just one was enacted: The new law, in New York, authorizes for a 15-year period projects that already provide comprehensive health services to public school students. Georgia legislation to authorize boards of education to establish school-based health clinics (and require parental consent) and Minnesota legislation to require reproductive health care as one of the services offered in clinics in junior and senior high schools died at adjournment.

Maternal and Infant Health

Despite large budget deficits and severe program cutbacks resulting from the nationwide economic recession, 380 state bills were introduced in 1992 to establish early intervention and wellness programs for prenatal and infant care; prevention

and treatment programs for pregnant women using alcohol and drugs; infertility insurance coverage; and family or medical leave for workers. More than 40 of these bills were signed into law.

Medicaid Coverage of Prenatal Care
During a five-year period ending in 1991, Congress passed seven laws requiring or permitting states to expand Medicaid coverage to pregnant women and families with incomes above the normal income cutoffs for Medicaid. In 1992, several of the 103 measures introduced that pertained to prenatal care programs and insurance coverage dealt with Medicaid. In Ohio and Louisiana, legislation was approved to adopt the Medicaid option of covering pregnant women with incomes up to 185% of the federal poverty level. (All states must provide benefits to those with incomes up to 133%.) Lawmakers in Rhode Island expanded coverage through state-funded medical assistance programs for pregnant women up to 200%.

Because of budgetary constraints, however, some state lawmakers proposed retrenchments in the program. Officials in Arkansas contended that federal mandates caused a $52 million increase in Medicaid expenditures. Combined with a revenue shortfall and the state's balanced budget amendment, lawmakers agreed to a rollback from the 185% option to the 133% mandate. As a component of the Florida governor's 1991 Healthy Start Initiative, Medicaid coverage for pregnant women and infants was slated to increase from 150% to 185% in 1992, but the legislature voted to repeal the expansion. After the governor vetoed the measure, compromise legislation allowed the 185% option to be in effect until March 1993, after which funding will drop to 150%. Florida also initiated an incentive program to convince more obstetricians and nurse-midwives to accept Medicaid patients, by raising reimbursement rates to competitive levels.

Legislation approved in Louisiana contains a number of components to make Medicaid more accessible, including simplified application forms, the assignment of health workers to locations frequented by pregnant women likely to be eligible for services, and the provision of expanded or flextime Medicaid office hours. In an effort to overhaul and link all its various maternity care programs, the Kansas legislature enacted a bill giving state health officials until January 1993 to develop a plan to consolidate publicly funded prenatal care services under one agency.

Perinatal Drug and Alcohol Exposure
A majority of the 62 bills pertaining to the abuse of potentially harmful substances during pregnancy sought either to offer testing, counseling, referral and treatment services or to require the posting of warning signs or the establishment of task forces; the remainder dealt with whether criminal charges could be brought against pregnant or postpartum women involved with substance abuse. Six bills were enacted, none imposing criminal sanctions. In Kansas, a comprehensive law requires health officials to develop a risk-assessment profile to help health care providers screen pregnant women for prenatal substance abuse and to give such women first priority when they are referred for treatment. A new law in Virginia gives pregnant substance abusers priority status for treatment in rehabilitation facilities. Kentucky legislation expands access to state-funded prenatal care services and to substance abuse education and treatment programs to include pregnant illicit drug users of all incomes.

Infertility Insurance Coverage
As new technologies to treat infertility have improved, more states are mandating health insurance carriers to cover some or all infertility services. In 1992, 20 bills regarding the provision of infertility insurance benefits were introduced; none was enacted. Bills in Alabama, Alaska, Florida, Kentucky, Louisiana, Missouri, Vermont and Wisconsin would have required insurers to provide coverage for some expenses incurred for infertility diagnosis and treatment. In Massachusetts (where benefits are already mandated), a bill that died would have allowed insurance companies to withhold benefits from unmarried women having in vitro fertilization. To date, 10 states regulate health insurance coverage of infertility costs.

STDs and AIDS

Although the number of Americans infected with an STD is increasing, it is the AIDS epidemic, with its accelerating caseload, that has jolted legislators into action. Of the 455 bills introduced in 1992 on issues related to STDs and AIDS, the majority dealt exclusively with AIDS; 34 were enacted. Following the pattern of the past 10 years, half of the legislation—223 bills in 42 states—pertained to testing, counseling, reporting and confidentiality. Legislators also continued their efforts on education and prevention, with 80 bills in 28 states, and on treatment and insurance coverage, with 59 bills in 21 states. Although the number of measures establishing criminal penalties for human immunodeficiency virus (HIV) transmission has decreased in the past two years, legislators from 21 states introduced 45 such bills in 1992. Another eight sought to combat discrimination against HIV-infected individuals.

Testing, Consent and Confidentiality
The ability of minors to make decisions regarding HIV testing and treatment was the subject of two of 16 measures enacted on testing, consent and confidentiality issues. Although all 50 states allow minors to consent to testing and treatment for STDs, just six specifically authorize them to consent to HIV testing. A new law in Connecticut permits minors to consent to HIV testing, but requires parental consent for any kind of treatment, with several broad exceptions: For example, the physician can forgo obtaining consent if it would result in delayed treatment.

Legislation amending Illinois's AIDS Confidentiality Act provides that if a person under age 18 tests positive for AIDS, a health care provider must make a "reasonable effort" to notify the minor's parent or legal guardian if, in the professional judgment of the provider, notification would be in the best interest of the minor and if the minor has not agreed to notify a parent. However, under the statute, a health care provider acting in good faith is not obligated to notify the minor's parent, and no civil or criminal liabilities can be imposed for a failure to do so. In Michigan, a measure died that would have required notification of parents when minors are being treated for AIDS, STDs or substance abuse.

Education and Prevention Strategies
By the end of 1992, 33 states mandated some form of HIV or AIDS education at some level in the public schools, 14 states encouraged such instruction and three had no policy. Of 80 prevention or education bills introduced in 1992, six were enacted and six were vetoed.

The debate over how best to teach AIDS prevention in the public schools has centered largely on whether sexual abstinence should be emphasized over the use of condoms. Laws passed in 1992 in Alabama, Colorado and Hawaii specify that abstinence instruction should be emphasized in any kind of sexuality or health education program in the public schools. The measure vetoed by Georgia's governor would have required an abstinence-only curriculum for the state's AIDS education and sexuality education courses, and the bill vetoed by the governor of Louisiana would have limited AIDS education to only certain science classes.

Landmark French and British Studies Examine Sexual Behavior, Including Multiple Partners, Homosexuality

From 11% to 13% of men and 6%–7% of women in France and Great Britain had intercourse with at least two people in the past year, according to data collected from almost 40,000 citizens of these countries who were recently surveyed on sexual behavior in the largest studies of this kind conducted to date.[1] About 4% of men in France said they had ever had homosexual intercourse; the same percentage of men in Britain said they had had a homosexual partner. Among the youngest respondents in the French study (aged 18–19), almost half of women and more than two-thirds of men had used a condom in the last year. Many respondents in the British study who had risk factors for human immunodeficiency virus (HIV) infection had been tested for the virus.

Sexual Behavior in France

The French study was requested and funded by the French government. The survey, conducted from September 1991 to February 1992, drew telephone numbers at random from all over France, then selected the appropriate participant aged 18–69 from the households responding (that is, the next person in the house to have a birthday). A short questionnaire asked about number of sexual partners; incidence of homosexual or bisexual intercourse and sex with prostitutes; and drug use. If a respondent reported a risk factor, he or she was given a longer questionnaire that elicited a sexual biography and details on psychological and social characteristics. The long questionnaire was also issued to a "control group" of 2,549 people selected by their date of birth. There were ultimately 20,055 questionnaires for analysis, representing 9,928 men (2,642 long questionnaires, of which 1,146 were controls) and 10,127 women (2,178 long questionnaires, of which 1,403 were controls.)

French men reported an average of 11 sexual partners, while women reported three; the total number of partners in the past year was 1.2 for men and 0.9 for women. Thirteen percent of men and 6% of women said they had had intercourse with at least two people during the past year; these proportions decreased significantly with age. However, among those with at least two partners in the past year, the percentages reporting more than one sexual partner at a time increased with age: Among those aged 18–24, 7% of men and 5% of women had had at least two current sexual partners at some time, compared with 34% of men and 52% of women aged 35–49.

Having had two or more partners in the past year was more common in urban communities (18% of men and 10% of women) than in rural areas (10% of men and 4% of women). Among these multipartner heterosexuals, 18% of men and 10% of women had had three or more new partners during the previous year. These proportions were 32% and 18% among homosexual and bisexual men and women, respectively.

The proportions of respondents who reported having had intercourse at least once during their lifetime with a person of the same sex were 4% for men and 3% for women. These proportions were lower over the last year (1.1% and 0.3%, respectively) and the last five years (1.4% and 0.4%, respectively). Homosexual and bisexual activity among men was 4.7 times higher among Paris residents than among rural respondents. Among respondents who had had homosexual intercourse at least once, most had had sex with partners of both sexes (82% of men and 78% of women).

Over the past five years, 3% of the men surveyed had had sex with prostitutes; such behavior was reported about five times more frequently by Paris residents than by rural respondents. Among men aged 45–69, 10% had had first intercourse with a prostitute, compared with 2% among respondents aged 20–24. Only 0.5% of men and 0.2% of women said they had injected drugs. The researchers note, however, that people who inject drugs regularly might be difficult to contact and may therefore not be represented in the survey.

Condoms had been used during intercourse at least once by 57% of men and 44% of women. The youngest subjects were significantly more likely to have used them than were older respondents (among 18–19-year-olds, 80% of men and 48% of women used a condom at some time in the past year). Women were significantly more likely than men to have used condoms for the first time over the past year (10% of women vs. 5% of men aged 18–24). Men were more likely to say they used a condom for contraceptive purposes (24% of men and 9% of women in this age-group). Condom use was more likely among those with several homosexual or heterosexual partners—that is, those most at risk of sexually transmitted diseases or HIV infection. Among homosexual men aged 18–44 who had had multiple partners, condom use during the last year was about 75%; among men and women with multiple heterosexual partners, these proportions were 65% and 50%, respectively.

Sexual Behavior in Britain

The British study, which was privately financed by the Wellcome Trust, was conducted from May 1990 to December 1991. Addresses known to be representative of the national distribution of urban, rural and metropolitan areas were selected. An interviewer randomly selected an individual aged 16–59 from each household. The sample was weighted to adjust for household size and different response rates between regions. Using face-to-face interviews, show cards and a self-completed questionnaire, interviewers collected information on homosexual and heterosexual experience, sexual practices, number of heterosexual and homosexual partners, history of injecting drugs and attendance at a clinic to treat an STD. The number of participants was 18,876.

The highest proportion of respondents with two or more partners during the past year (27%) was found among men aged 16–24, but another 27% in this age-group said they had had no partners during this time. The proportions with multiple partners decreased with age: Among men aged 25–34, 15% had multiple partners in the past year; among men aged 35–44, this

proportion was 9%, and among those aged 45–59, it was 5%. Among women, 16% of 16–24-year-olds had had two or more partners in the past year, compared with 7% of 25–34-year-olds, 4% of 35–44-year-olds and 2% of 45–49-year-olds. The proportion reporting 10 or more partners over a lifetime was lowest among those aged 16–24 (16% of men and 5% of women), and was higher among respondents aged 25–34 (31% of men and 10% of women) and 35–44 (29% of men and 9% of women) than among those older than 45 (21% of men and 4% of women).

Of the male respondents, 6% reported some homosexual experience (as defined by the respondent); 4% said they had had a homosexual partner (defined as a male partner with whom anal sex, oral sex or another form of genital contact had occurred) at some time and 1.4% reported a homosexual partner sometime in the past five years. Men younger than 35 were the most likely to have had a homosexual partner in the last five years (1.8%); over their lifetime, men aged 35–44 were the most likely (5%). The highest percentage of men reporting homosexual partnerships was in Greater London, where 12% said they had had some homosexual experience, 9% said they had ever had a homosexual partner, and 5% said they had had a homosexual partner sometime in the past five years.

Only 0.8% of British men and 0.4% of British women said they ever had injected drugs; for drug use over the past five years, these proportions were 0.4% and 0.3%. Respondents who lived in London at the time of the survey were the most likely ever to have injected drugs (2.1% of men and 0.8% of women). Reports of injecting drugs were almost entirely limited to respondents younger than 45 (1.0% of men and 0.5% of women).

More than one in seven respondents who had had five or more heterosexual partners in the past five years had attended an STD clinic during that time, and approximately one in five who reported 10 or more partners over their lifetime had ever attended a clinic. Among men who reported homosexual partners, more than 50% who had had five or more in the past five years had attended an STD clinic during that time.

About 13% of respondents said they had had an HIV test in the past five years. The most frequently cited reason for having done so was a blood donation (8% of men and 6% of women), but more than 4% of men and almost 3% of women had done so for reasons other than blood donation, pregnancy, insurance or travel. Proportions of those tested declined among respondents older than 45. More than 20% of men and more than 25% of women who had had five or more heterosexual partners in the past five years reported having had an HIV test, and 10% of this group said they had done so for reasons other than the four listed above. Among men with homosexual partners in the past five years, more than 40% had had an HIV test, and more than 25% of these respondents said it was not for any of the above reasons. Nearly half of those who had injected drugs had been tested. The authors note that since the rates of testing among respondents with high-risk behaviors were higher than those among the general population, these groups appear to be aware that they are at risk.—*R. Turner*

Reference

1. Analyse des Comportements Sexuels en France (ACSF) Investigators, "AIDS and Sexual Behavior in France," *Nature*, 360:407–409, 1992; and A. M. Johnson et al., "Sexual Lifestyles and HIV Risk," *Nature*, 360:410–412, 1992.

Young Americans, the Unmarried and Blacks Are Most Likely to Have Had Multiple Partners in the Past Year

A large number of American men and women are at risk of acquiring a sexually transmitted disease (STD) because they have multiple sexual partners or have sex with strangers. Young people, men, single people and blacks are more likely than others to engage in these high-risk activities, according to an analysis of 1988–1990 data from the General Social Survey (GSS).[1]

The GSS, based on a nationally representative sample of U.S. adults aged 18 and older, is conducted annually by the National Opinion Research Center, at the University of Chicago. The GSS includes adult men and women of all ages, and asks several questions concerning sexual behavior. For this analysis, investigators examining data for a subsample of 2,896 respondents sought to identify factors associated with three behaviors that can increase an individual's risk of acquiring an STD: having two or more sexual partners, having five or more partners and having sex with a stranger.

Overall, 13% of respondents had had two or more partners during the year preceding the survey; 3% had had five or more; and 4% had had intercourse with a casual date or pickup or had paid for sex (see Table 1). About 1% had had at least five partners and had also had sex with a stranger (not shown).

Bivariate analysis showed that age, gender, race and marital status were strongly related to all three outcome measures ($p \leq .05$). For example, respondents aged 18–24 were the most likely to have had multiple partners and to have had sex with a stranger (37% and 13%, respectively); these proportions declined steadily with age (to 21% and 8%, respectively, of those in their late 20s, and to 9% and 2%, respectively, of those aged 40–49). Men were twice as likely as women to have had multiple partners (18% vs. 9%), and were considerably more likely to have had sex with a stranger (7% vs. 1%). Relatively few currently married respondents (3%), but sizable proportions of previously married and never-married respondents, (17% and 35%, respectively), had had more than one partner. Blacks were more likely than members of other racial and ethnic groups to have had multiple partners (25% vs. 11%), particularly black males, regardless of marital status; racial and ethnic differences with respect to having had sex with a stranger were not statistically significant.

Education and income were not associated with the outcome variables (not shown), but certain life-style characteristics were: Respondents who never attend church were more likely than those who attend occasionally or regularly to have had more than one partner (21% vs. 6%) and to have had sex with a stranger (7% vs. 1%). Those who occasionally drink heavily were more likely than those who do not to have had multiple partners (26% vs. 8%) or to have had sex with a stranger (9% vs. 2%). Smoking also had a positive association with risky behavior.

Results of a multivariate analysis revealed four factors to be significant predictors of having had at least two partners, having had at least five partners and having had sex with a stranger: age, gender, marital status and alcohol consumption. As respondents' age increased by one year, their likelihood of engaging in any of the three behaviors decreased by 5% (odds ratios of 0.95 for each outcome variable). Likewise, men were close to three times as likely as women to have had at least two partners, more than seven times as likely to have had five or more partners and nearly six times as likely to have had

Table 1. Percentage of U.S. men and women, by number of sexual partners during preceding year and percentage who had had sex with a stranger during preceding year, according to various characteristics, General Social Survey, 1988–1990 (N=2,590)

Characteristic	No. of partners ≥2	No. of partners ≥5	Sex with stranger
Total	**12.7**	**2.7**	**3.6**
Age			
18–24	37.2	9.4	13.2
25–29	21.0	3.8	7.5
30–39	10.8	2.0	2.1
40–49	8.5	1.1	1.8
50–59	5.6	1.7	1.4
60–89	1.6	0.3	0.2
Sex			
Male	17.7	5.0	6.7
Female	8.5	0.8	1.1
Marital status			
Currently married	3.3	0.5	0.6
Separated, widowed or divorced	17.3	2.2	3.5
Never married	35.4	9.2	13.3
Race			
White	11.3	2.1	3.4
Black	25.0	7.7	6.4
Other	10.5	3.0	2.2
Church attendance			
Never	20.8	6.5	7.2
Monthly or less	15.0	2.9	4.5
Nearly weekly	5.7	0.6	0.9
Ever drink alcohol			
Yes	15.7	3.2	4.4
No	6.0	1.5	1.8
Sometimes drink heavily			
Yes	25.7	6.5	8.8
No	8.2	1.4	1.9
Currently smoke			
Yes	18.3	4.2	5.1
No	10.1	1.9	2.9

sex with a stranger (odds ratios of 2.67, 7.17 and 5.62, respectively).

Those who were currently married had a significantly reduced risk of engaging in these three behaviors (odds ratios of 0.11, 0.10 and 0.08) compared with other respondents, and those who drank heavily on occasion were somewhat more likely than others to have engaged in these types of behavior (odds ratios of 1.86, 2.66 and 2.98). Race had no effect on the likelihood of having had sex with a stranger, but blacks were more likely than other respondents to have had two or more and five or more partners (odds ratios of 2.34 and 2.82). Independent of the effect of heavy drinking, alcohol consumption was associated with respondents' having had multiple partners (odds ratio of 2.06). The effects of smoking and church attendance were not significant at this level of analysis.

The investigators estimated that 4.8 million U.S. adults have five or more sexual partners in a year and that 6.6 million have sex with a stranger. Thus, a substantial number of men and women each year increase their risk of acquiring STDs, including the human immunodeficiency virus, through such behavior.

However, although the GSS is useful for estimating the number of Americans who may be at risk of acquiring an STD, the investigators note that it has certain limitations. Because the survey does not include questions on condom use, it cannot indicate whether individuals engaging in high-risk behaviors are taking measures to reduce their risk of acquiring an STD. The survey also does not ask about illegal drug use, which may interfere with condom use. Because the section of the GSS regarding high-risk behavior is self-administered, judging the validity of responses is difficult, and a certain amount of misreporting may account for some of the observed differences.

More information about high-risk sexual behavior among American adults is clearly needed, the investigators conclude. Future research covering STD history, condom use, drug use and partner selection will provide critical guidance for STD interventions and treatment programs. *—D. Hollander*

Reference

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Risk of Late Fetal Death, Preterm Birth Increases In Women 30 and Older

Women aged 30 and older are at greater risk than younger women of having a first birth that ends in late fetal death, even when risk factors such as type of household, education, smoking status, infertility and pregnancy complications are taken into account. The Swedish study of first births to women aged 20–52[1] also found that a woman's odds of having a moderately low birth weight baby or a preterm delivery increased with maternal age.

The study population consisted of all 173,715 single births from 1983 to 1987 to nulliparous women of Scandinavian citizenship who were aged 20 or older, as recorded in the Swedish Medical Birth Register. In addition to basic birth data, the register collects information on social and demographic characteristics, cohabitation with the infant's father, smoking habits, previous infertility problems, complications during pregnancy, and delivery and the neonatal period. Using the mother's personal identification number, the researchers validated the births by comparing them with a parish-based population register, and linked them to Swedish statistical information for data on the mother's educational status. Maternal age at infant's birth was stratified into five-year age-groups. Late fetal death was defined as a stillbirth that occurred at a gestational age of 28 weeks or later; early neonatal death was defined as a death in the first six days of life. Pregnancy complications were divided into three categories: hypertensive diseases (essential and pregnancy-induced hypertension), diabetes mellitus (insulin-dependent and gestational diabetes) and antepartum hemorrhage (abruptio placentae, placenta previa or other hemorrhage). Low birth weight was divided into very low birth weight (less than 1,500g) and moderately low birth weight (1,500–2,499g). Preterm delivery was categorized as very preterm (32 completed weeks or less) or moderately preterm (33–36 completed weeks). Infants who were small for gestational age were less than two standard deviations below the mean birth weight for gestational age, according to the Swedish birth-weight curve.

Rates of late fetal death increased with maternal age, and were higher among women aged 35 and older (5.0 per 1,000 live births among 35–39-year-olds and 6.5 among 40–52-year-olds) than among women aged 20–34 (3.6 among 20–24-year-olds, 3.7 among 25–29-year-olds and 4.8 among 30–34-year-olds). Rates of early neonatal death were lowest among women aged 25–29 (2.6 per 1,000) and increased with age thereafter, to 4.9 among 35–39-year-olds and 4.7 among 40–52-year-olds.

Because rates of late fetal and early neonatal death varied by maternal education, cohabitation with the infant's father, maternal smoking, infertility, and incidence of such pregnancy complications as hypertensive diseases, diabetes and antepartum hemorrhage, the investigators conducted a multiple regression analysis to control for the effects of these variables. They found that after adjustment, the odds ratio for late fetal death (relative to women aged 20–24) was significantly greater for women aged 30–34 (1.4) and almost significantly greater for women older than 35 (1.4). Adjusted odds ratios for early neonatal death were not significantly higher among women aged 30 and older.

Among the entire sample, rates of very low birth weight and moderately low birth weight were 0.6% and 4.0%, respectively. Relative to 20–24-year-olds, there

was no additional risk of very low birth weight among 25–29-year-olds, and there was only a slightly greater risk among 30–34-year-olds (adjusted odds ratio of 1.2); risks were more elevated among 35–39-year-olds (1.9) and women aged 40 and older (1.8). (The researchers note that adjusting the odds ratios for the effects of the other variables reduces the size of the crude odds ratio for very low birth weight because of the effect of age-related diseases such as hypertension and antepartum hemorrhage.) For moderately low birth weight, adjusted odds ratios relative to 20–24-year-olds increased with age: They were 1.1 among women aged 25–29, 1.4 among those aged 30–34, 1.7 among those aged 35–39 and 2.0 among those aged 40 and older.

The rates of very preterm delivery and moderately preterm delivery were 1.1% and 5.4%, respectively, for the entire sample. On both measures, risk increased with maternal age. Relative to women aged 20–24, the researchers found significantly increased odds ratios of 1.2 for women aged 30–34, 1.7 for women aged 35–39 and 1.9 for women older than 40. For moderately preterm delivery, the adjusted odds ratios were not significantly elevated among women aged 25–29 or 30–34, but the odds ratio was higher among women aged 35–39 (1.2) and women older than 40 (1.5).

Overall, 2.8% of infants were born small for their gestational age. Adjusted odds ratios showed that the risk varied with maternal age, from 1.1 among 25–29-year-olds to 1.4 among 30–34-year-olds and 1.7 among 35–39-year-olds, then down to 1.4 among women older than 40. The investigators note that adjustment raised the odds ratios because smoking, the most important risk factor for small-for-gestational-age infants, was more prevalent among 20–24-year-olds (the reference group) than among older mothers.

The researchers calculate that women aged 30 and older who are having their first child face a 40% increased risk of late fetal death, compared with women aged 20–24 having a first birth. They note that among nulliparous women older than 35, the risk of low birth weight, preterm delivery and having a small-for-gestational-age infant can increase with maternal age, from 20% to 100%. They also observe that data on other potential confounding factors, such as maternal nutrition and infections during pregnancy, were not available; however, these factors may be related to social and economic status and smoking, which were controlled for in the analyses. The researchers conclude that "delayed childbearing among nulliparous women with uncomplicated pregnancies is associated with increased risks of poor pregnancy outcomes."—*R. Turner*

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Male Teenagers Seem to Know More About Condoms, Are More Comfortable Obtaining Them Than Females

Teenage males may be more likely than teenage females to know how to obtain and use condoms correctly and to use birth control consistently, according to a California study that measured knowledge, behaviors and intentions regarding prevention of pregnancy and sexually transmitted diseases (STDs).[1] The study, which surveyed 1,033 California high school students (443 of them sexually experienced), showed that females were less comfortable than males with obtaining birth control, and were less likely to have used a method at either their first or most recent sexual encounter. The female respondents were also more likely than their male peers to report intending to abstain or to use a protective method in a variety of hypothetical situations.

At the beginning of the 1989–1990 school year, 1,033 teenagers (527 males and 506 females) attending 13 high schools in 10 California school districts were surveyed prior to the implementation of a new pregnancy prevention skills curriculum for adolescents. Their mean age was 15.4; 60% were non-Hispanic whites, 21% were Hispanics, 9% were Asians or Pacific Islanders, 2% were blacks, 2% were Native Americans and 6% were of another racial or ethnic group. The 90-question survey was designed to examine gender differences among adolescents in their knowledge, behavioral intentions and behavior regarding the prevention of pregnancy and STDs.

The investigators used logistic regression and linear regression techniques to measure the effect of gender on dependent variables, after controlling for the effects of ethnicity, religion and risk status. (A total of 577 students who did not live with both parents, whose mother had not finished high school, who received grades of mostly D or lower, or who had drunk alcohol one or more times during the preceding month and had usually had five or more drinks each time were considered to be at higher risk.)

Female students were significantly more likely than males to have discussed pregnancy (71% vs. 54%), birth control (45% vs. 33%) and sexual abstinence (66% vs. 44%) with their parents. Females were also more likely to perceive that at least half of their peers were having sex (79% vs. 64%) and that more than half were using birth control (42% vs. 34%). Fifteen percent of females and 11% of males said that a sister had become pregnant before age 19.

Overall, slightly less than half of the students (44%) reported ever having had sex. When the 569 students who had not had sex were asked to indicate why they had not, females were significantly more likely than males to state that they were "not ready" (71% vs. 40%) or to cite their values or religion (32% vs. 14%) or their parents' wishes (38% vs. 12%). Females were somewhat more likely than males to say they had not had sex because they were afraid of STDs or AIDS (40% vs. 31%).

Of the 234 males and 209 females who were sexually experienced, males reported a lower mean age at first intercourse than did females (13.3 years vs. 14.0 years). However, females reported having had sex 3.3 times during the past month, compared with 2.1 times reported by males. Females also reported significantly more pregnancy scares than did males. Males and females appeared equally likely to have engaged in certain types of high-risk sexual behavior: One-third each had used the rhythm method, one in 10 each practiced douching as a contraceptive method (or had a partner who did so) and more than half reported having had sex when they were drunk or high. The only significant difference was that females were more likely than males to report that they had ever relied on withdrawal as a contraceptive method (70% vs. 55%).

When the sexually experienced students were asked whether they had "always" practiced contraception, 35% of males and 22% of females said that they had. Males were also more likely than females to say that they had ever used birth control (87% vs. 78%), that they had always or almost always used a method (51% vs. 47%), that they had used one at first intercourse (34% vs. 30%) and that

they had used one at their most recent sexual encounter (50% vs. 44%).

Among the 337 students who gave reasons for not having used a contraceptive method, females were more likely than males to say they felt uncomfortable obtaining a method (26% vs. 15%) and that they had not known about contraception (11% vs. 5%). Males were somewhat more likely to say that using a contraceptive "spoils sex" (16% vs. 10%) and were significantly more likely to say that they had not used a method because their partner had not wanted them to (20% vs. 4%). By far the most common reason, however, was that sex had been unplanned (61% among females and 54% among males). Female respondents were significantly more likely than males to have obtained a method from a health facility (56% vs. 12%); in contrast, 88% of males, compared with 44% of females, had obtained birth control from a "store, friend or relative."

Females were nearly twice as likely as males to say that they (or their partner) had relied on oral contraceptives at first intercourse (16% vs. 9%) or at their most recent sexual encounter (36% vs. 16%). Both males and females were highly likely to have relied on condoms at first intercourse (91% vs. 84%), although males were significantly more likely than females to have used a condom (either alone or with another method) during their most recent sexual encounter (84% vs. 64%).

There were no significant differences between males and females in most measures of contraceptive knowledge, except on eight questions that measured knowledge about condoms. Males were significantly more likely than females to know that one must leave space at the tip of a condom when putting it on (74% vs. 57%) and that one must hold onto a condom while withdrawing it from the vagina (50% vs. 34%). Males were also more likely to know that condoms protect against STDs (75% vs. 67%), that they offer more protection from STDs than the contraceptive sponge (74% vs. 65%) and that latex condoms provide better protection than those made from animal skin (47% vs. 38%).

The students were asked what they would do in a variety of situations involving decisions about sex (for example, what they would do if a person they had dated for six months wanted to have sex). Females, on average, were consistently more likely to say that they would either abstain from sex or use a method that would protect them from pregnancy and STDs. Females chose the "best" answer in approximately nine of 11 questions, on average, while males chose the best answer in about eight of the questions.

The researchers conclude that although teenage females may be more knowledgeable than their male peers about sexual issues in general, they may be less prepared to protect themselves against pregnancy and STDs because of their less consistent use of condoms. The investigators suggest that sexuality education should include specific information about condoms, as well as role-playing designed to help females develop the interpersonal skills needed to encourage partners to use condoms.—*M. Witwer*

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Menstrual Complaints Rise with Increasing Years Since Tubal Sterilization

Women who are sterilized are more likely to experience menstrual problems five years after surgery than two years after, according to a longitudinal study of women in six cities across the country.[1] Five years after sterilization, 35% of the participants in the study reported a high level of pain during menstruation, 49% had a heavy or very heavy menstrual flow and 10% had spotting between menstrual periods. In contrast, one year after sterilization, only 27% of the women reported high levels of menstrual pain, 41% had a heavier flow and 7% had spotting between periods.

The authors of the study obtained data from the Collaborative Review of Sterilization, a national prospective study of tubal sterilization initiated in 1978 to evaluate the long-term medical effects of sterilization, including menstrual changes. All women seeking tubal sterilization at several medical centers across the country were asked to participate in the study. Among 8,044 women who enrolled in the study from 1978 to 1983, a total of 5,794 underwent interval sterilization (i.e., at least six weeks after their last pregnancy).

Before surgery, the women were interviewed by trained nurses who collected demographic, medical and obstetric information. For a baseline measure of menstrual functioning before surgery, the participants were asked to describe a typical menstrual cycle when they were not pregnant or using an IUD or the pill for contraception. The interviewers reviewed medical records of the participants after surgery to determine which sterilization method was planned and which was performed; they also noted any abnormal pelvic findings recorded at the time of surgery.

Follow-up interviews of the participants were conducted one year after sterilization and each year thereafter, up to five years after surgery. During follow-up interviews, the women were asked about their three most recent menstrual cycles, including the usual number of days in their cycle and the number of days of bleeding. They were then asked to rank the irregularity of their cycles and the amount of pain on a four-point scale, and the amount of bleeding during the first three days of their cycle on a five-point scale. The women who could not be located for a follow-up interview and those who did not respond to all questions were excluded from the analysis for that particular year, but were included for other years in which data were available. Women who had had a pregnancy, hysterectomy, repeat sterilization or a tubal reanastomosis and those who refused to participate in a follow-up interview were excluded from the analysis at that point.

The study included data on 5,070 women who had an interval sterilization between 1978 and 1983 at one of 12 medical centers located in Baltimore; Buffalo; Chapel Hill, N. C.; Honolulu; Sacramento, Calif.; and St. Louis. Women were excluded from the study if they were missing a fallopian tube; were sterilized by a method other than had been planned; had more than one method of sterilization; had incomplete enrollment information; became pregnant or had additional surgery in the first follow-up year; refused to be interviewed; or did not receive a follow-up interview. Most participants were aged 30 or older at the time of sterilization and had been pregnant two or more times. Follow-up rates ranged from 90% one year after surgery to 69% five years after.

To determine if menstrual problems after tubal sterilization were related to the surgical method used, the researchers examined data for six different methods—unipolar or bipolar electrocoagulation, silastic band application, spring clip application, partial salpingectomy and thermocoagulation. Individual characteristics that could affect menstruation—race, body mass, education, age, pregnancy history, pelvic pathology and surgery history, contraceptive method used immediately before sterilization and any pelvic pathology detected during sterilization—were also examined.

To study changes over time, the researchers compared the women's menstrual functioning at baseline with their description of it two years and five years after sterilization. Using the Pearson chi-square test, they analyzed the association between method of sterilization and change in menstrual functioning five years after surgery for each menstrual outcome. In a separate model of generalized estimating equations, they examined each category of menstrual outcome—pain, irregular cycles, amount of bleeding, and spotting between periods—in relation to the baseline characteristics. Confidence intervals were calculated for the differences between mean values for the first follow-up and all subsequent follow-up years (2–5 years after surgery).

In the first analysis, most women reported no changes in menstrual functioning two years after sterilization. By the fifth year, most women still did not experience a change; however, the percentage of women who experienced more pain increased from 16% to 22%, those who had more bleeding increased from 19% to 25% and those who reported spotting rose from 5% to 9%.

When the investigators adjusted for all years of follow-up, they observed significant changes in menstrual functioning by the fifth year, compared with the first year: The percentage of women who had more pain during menstruation increased from 27% to 35%; those who reported heavier bleeding increased from 41% to 49% and those who experienced spotting increased from 7% to 10%. Cycle length had decreased significantly, from 28.1 days per cycle to 27.9. No significant change in the number of days of bleeding was found.

Regarding differences in methods of sterilization, women who had undergone unipolar coagulation reported having the longest cycles, while women sterilized with the spring clip had the shortest cycles. The latter women were also most likely to have had increased bleeding in the first three days of menstruation. Those who had undergone thermocoagulation were most likely to have irregular cycles. There were no significant associations between spotting or number of days of bleeding and sterilization method.

The researchers also found statistically significant associations between individual characteristics and menstrual functioning after sterilization: Black women reported less spotting and irregular cycles and fewer days of bleeding than did white women; women who were older when they were sterilized experienced less pain and more regular menstruation (up to age 40) than did those who were younger; women with more lifetime pregnancies had less pain and shorter cycles than those with fewer pregnancies; and women who used an IUD before sterilization had fewer days of bleeding than those who used no contraceptive method. The investigators did not find an association between the degree of tissue destruction that results from tubal occlusion and poststerilization menstrual changes.

The authors of the study point out th decreased cycle length and greater reg larity occur as women get older until th reach the premenopausal period, wheth or not they have been sterilized. They al noted that use of the pill or an IUD befo sterilization may confound the effects sterilization because women who u these methods tend to experience chang in menstruation once they have disco tinued using them, whether or not th have been sterilized.

The authors caution that since the wom en served as their own controls, it is n clear whether the menstrual changes we related to sterilization, aging or other fa tors. Subjects lost to follow-up may als have experienced different changes tha did those who remained in the study. Re porting may also have differed accordin to institution; however, the authors we not able to examine this effect because th medical centers were highly correlate with particular sterilization methods.

The researchers suggest that "if tub sterilization leads to changes in menstru al function, such changes may take som time to develop." They recommend tha future research "focus on menstrual fun tion at five years or more after steriliza tion" and that it include the experience nonsterilized women.—*S. Edwards*

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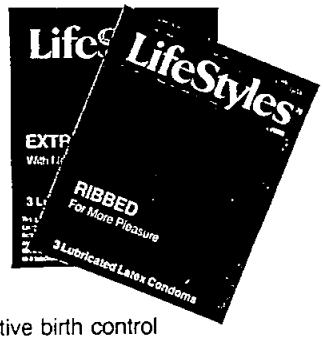

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Gary L. Bauer
President

How Lifting the Military Homosexual Ban May Affect Families

Arguments against lifting the ban on homosexuals in the armed forces have focused on how the sexual tension that would be created would harm good order, morale and discipline and thus reduce the military's fighting effectiveness.

Condoning open homosexuality would also threaten a particularly vulnerable group within the military: military families.

Here are some of the likely effects:

Housing

The U.S. military maintains living quarters for families on its bases around the world. Following the pattern already established in cities that have homosexual rights ordinances, such as Madison, Wisconsin, it is reasonable to foresee that homosexual couples would press for equal access to base housing without regard for the impact that their open embrace of homosexuality might have on children.

Once sexual orientation is eliminated as a selective factor, marriage itself will be redefined or suffer reduced status in the consideration of on-base housing assignments. For example, in the wake of adoption of special rights for homosexuals at Stanford University, the campus now extends housing privileges to same-sex couples. Objections by families with children were brushed aside as "bigotry." The campus already has a waiting list for family housing, so mothers and fathers with children now face additional competition from homosexual couples.

Social Environment

Lifting the ban on homosexuals would create a less wholesome social environment for military families. Most people recognize that some homosexuals are already in the military but keep their sexual orientation and practices private. If, however, open homosexuals are permitted in the military, parents will find it difficult to shield their children from public displays of homosexual affection. Older children who may be struggling with their budding sexual identities are not prepared to deal with homosexuals as potential role models.

Also, if homosexuals achieve their goal of marital equivalence, unmarried heterosexual couples are likely to clamor for the same status. Again, the Stanford example: On Oct. 29, 1992, the faculty senate called for full benefits for same sex and opposite-sex domestic partners.[1] Thus, families now find themselves competing for housing and other benefits with unmarried heterosexuals as well as same-sex couples. Such a policy

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reduces marriage to an irrelevancy. This is the wrong cultural message to send in a time when millennia of experience and a growing body of research clearly demonstrate that marriage-based families are the best environment in which to raise children.

Pornography

Base PXs now carry several pornographic publications, including *Playboy, Penthouse and Hustler.* Suppliers may be pressured into carrying homosexual pornography as well. With the recent outcry over sexual harassment in the military and the documented behavioral link between pornography and acts of violence being committed against women and children, the military would be wise to ban the sale of all pornography from its bases.

Benefit Demands

Military medical facilities are already hard-pressed to meet the needs of families. Lifting the ban on homosexuals would add to the burden on medical facilities in disproportionate numbers. According to research compiled by the Jewish War Veterans of the United States, 42% of those soldiers who tested positive for HIV which causes AIDS had participated in homosexual sex.[2] Each case has cost the military approximately $200,000, with the military spending $3 billion on AIDS-related medical costs over the past 10 years.[3] If the ban on homosexuals is lifted, it is reasonable to assume that the number of AIDS cases and the associated costs would rise significantly.

Because of their higher incidence of sexually-transmitted diseases,[4] homosexuals as a group will compete disproportionately for services with other participants in the military's medical system. Families may find one of their children, suffering from chicken pox, standing in waiting room lines behind homosexuals suffering from diseases they incurred during homosexual activity.

CO-LOs--Currently, the military attempts to provide for the collocation of spouses when a husband and wife both serve in the same branch of the armed forces. If the ban is lifted, homosexual couples would press for the same benefits, and compete with these families.

Conclusion

Civil society has long recognized the value of strong, stable families. Military families face a number of unique and difficult challenges in their service to our country. A relatively low pay scale, frequent relocations and long periods of absence by some parents make the military family especially vulnerable. Undermining military families by placing homosexual behavior on a par with marital fidelity would provide devastating evidence that our government no longer recognizes the importance of strong families in cultivating the virtues that enable us to be a free, self-governing people.

--Robert H. Knight, Director of Cultural Studies
Daniel S. Garcia, Research Assistant

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The Medical Risks of the "Don't Ask, Don't Tell" Policy

Proponents of the "don't ask, don't tell" "compromise" hail it as a breakthrough settlement of the controversy surrounding homosexuals in the military. In reality, the proposal would remove an important screening tool to keep homosexuals out; it would make it easier for them to get in and stay in.

"Don't ask, don't tell" is the first step toward full and open acceptance of homosexuality in the military. In the desire to avoid political embarrassment for Bill Clinton, proponents overlook the serious health risks that homosexuality poses to our armed forces and to national security.

A memorandum by Army Surgeon General Alcide LaNoue shows that allowing homosexuals into the military would pose a great health threat to our military personnel.[1] In a summary of his findings, he states, "Homosexuality, with its propensity for male-to-male sex, increases the incidence of HIV (and other) infections...."

Homosexuality also "increases medical costs." With the ban in place, openly homosexual inductees are turned away. However, with the ban lifted, a homosexual recruit could contract HIV within days and be accorded full medical benefits for the rest of his life. [See Appendix A]

Homosexual activists are already campaigning to end HIV testing in the military.[2] If HIV testing and the ban are lifted it could cost taxpayers as much as $10 billion over a 10-year period.

Health Risks in the Military

The health risks of allowing homosexuals into the armed forces are detailed in Gen. LaNoue's memorandum. Among the report's findings:

- "Homosexual male-to-male sex has a negative impact on the safety and adequacy of the blood supply and increases the risk of occupational exposure to HIV-infected blood." In supporting statements, Gen. Lanoue notes that "the Army Medical Department is dependent on active duty soldiers for much of its blood supply" and that "84% of donated blood...in the

fourth quarter of 1992 came from military donors."

- "Rescission of the ban on military service by open homosexuals would have a negative impact on the Army's efforts to reduce the incidence of HIV infection and other STD's." The report adds that "HIV and other STD rates will increase to the extent that the proportion of homosexual males in the Army increases because homosexual/bisexual men are allowed to enter and remain in the Army."

- "Rescission of the ban on military service by open homosexuals would have a negative impact on readiness and deployability."

- "Homosexual male-to-male sex has had a profound effect on increasing medical costs within the United States and within the U.S. Army."[3]

Bleeding is an everyday occurrence in war and military training. Homosexuals, when wounded or injured, pose an unnecessary risk to those soldiers around them because of the higher probability that their blood is HIV positive or infected with hepatitis B and other blood-borne diseases typically transmitted through homosexual activity.

For a detailed account of one military leader's concerns, see Appendix B.

Health Risks of Homosexual Behavior

As a group, homosexuals represent a significant health risk. Common homosexual practices (anal intercourse, oral sex, oral-anal contact, et al.) are among the most effective means of spreading disease.[4] In addition, homosexuals as a group are highly promiscuous.[5,6,7,8] The average homosexual has 50 partners a year;[9] many of these are anonymous contacts. Consequently, homosexuals:

- Account for two-thirds of all AIDS cases.[10]

- Account for a disproportionate number of America's most serious STD's,[11] including syphilis, gonorrhea, genil warts, and hepatitis A and B.

- Have a much shorter life expectancy than heterosexuals as indicated by a study of more than 6,400 obituaries in 16 homosexual newspapers. The average age of homosexuals who died from AIDS is 39; from all other causes it is 41.[12]

In addition, homosexuals are three times more likely than heterosexuals to suffer drug and alcohol abuse problems.[13]

Deployability

The Army Surgeon General reports that "readiness suffers when soldiers

are nondeployable. Homosexuals are more likely to be nondeployable for health reasons, either because of HIV or high rates of sexually transmitted diseases."

"As the force structure is reduced, the impact on deployability by each new HIV-infected soldier is magnified, even at current rates of infection. Moreover, the rate of infection can be expected to increase if the exclusion policy is lifted and the proportion of male homosexual soldiers comprising the force increases." [14]

Not only would U.S. military troops be put at risk, but their civilian counterparts as well. For a detailed summary, see Appendix C.

Costs

The Army Surgeon General reports that, because of their practices, homosexuals typically require a disproportionate amount of medical care and that "resources to provide this care must be provided, at the expense of other medical programs. The cost involved can be staggering."

Costs are measured "in terms of money, personnel, supplies and equipment, education, surveillance, investigations, and other infection control measures." The report cites a GAO study which predicts that the cost of treating AIDS in the military could reach $10 billion over a 10-year period.[15,16]

Because of the military's unique role in society, decisions affecting it should be based on whether or not they enhance its ability to perform because of their higher propensity for diseases, homosexuals pose a significant threat to the ability of the armed forces to accomplish their mission.

Any policy that would allow for greater numbers of homosexuals within the ranks would be a threat to the armed forces and the national security. "Don't ask, don't tell" won't work.

--Robert H. Knight, Director of Cultural Studies

Daniel S. Garcia, FRC Research Assistant; Jacklyn Webb, R.N.; and Jonathan Rucker, Duke University student, contributed to this report.

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APPENDIX A

The following is an excerpt from a speech given by Jacklyn Webb, R.N., Army Nurse Corp Veteran, to the Pentagon Task Force on June 8, 1993.

"Consider this comparison of benefits that relates to health care: I have been a military wife for 22 years and thereby qualify for space available care in an active duty facility. I also happen to be a Veteran of the Army Nurse Corps, honorable discharged 20 years ago as a Vietnam Era Veteran with no service connected disabilities. That VA status qualifies me for discretionary, space-available care by the VA. I am a heterosexual with no known health risks.

"John Doe entered the service on 1 February 1993 and was not asked the homosexual question. He was in apparent good health upon entry and was HIV negative. John was commissioned as a 2nd Lieutenant. Since enlistment he has finished initial training where he engaged in male-to-male sexual activity off post and has engaged in male-to-male sex off-post at his current assignment. He has not divulged his behavior to anyone.

"This week he presented in sick call with a cough and fever. Upon examination, the doctor discovered that Lieutenant Doe had bronchopulmonary candidiasis and herpes simplex pneumonia. He has also seroconverted to HIV positive.

"Lt. Doe is no longer deployable, and will be taken off active duty. He will receive a medical discharge, under honorable circumstances and since he is not subject to fraudulent entry charges, he will be eligible to receive care in an active duty care facility for the rest of his life.

"He will also be given between 30% and 100% of his pay until the day he dies, with the percentage of pay increasing the sicker he becomes. By the way, he qualifies for a $200,000 Servicemens' Group Life Insurance Benefit and Survivor Spouse benefits. After discharge, Lt. Doe's health is in a rapid state of decline and his funds are rapidly being depleted, and even though he is drawing 50% of his active duty pay, he is too sick to work and will have to think about longer-term care.

"As his AIDS progresses he applies to the VA and is given a mandatory eligiblity since his income is below $18,171 and his illness occurred while in service. He must now be provided hospital, outpatient and nursing home care without any limitation. John is also eligible for dental care, beneficiary travel for medical care, free outpatient medications and even overseas medical benefits through the VA."

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APPENDIX B

The following is an excerpt from a statement by Col. John W. Ripley, USMC (Ret), who testified on behalf of The Retired Officers Association before the House Armed Services Committee on May 4, 1993.

"If there is one overwhelming characteristic of the battlefield with which I am familiar, it is the extreme and constant likelihood of death, serious injury, traumatic wounds; torn, bleeding bodies seen so shocking that no one in this room could hardly prepare or imagine them. Even realizing that this happens on a frequent, almost daily basis, the combat veteran is still shocked at what he sees when his own men suffer such grievous injuries regularly.

"Consider the great fear that all military men, in or out of combat, would have knowing that homosexuals serve with them comprise at least 2/3 of all current AIDS cases and are far more likely to suffer from and spread infectious diseases such as hepatitis, and syphilis than any other group.

"We see each of them as infectious and life-threatening disease carriers. They are eleven times more probable of having syphilis, they are eight times more probable of having hepatitis and they are a shocking, incredible, five thousand times more probable of having AIDS. How can any sane person not feel threatened working around such an obvious, extraordinary threat to his personal health?

"And in combat, the story becomes radicalized on a comparison with non-combat. This is where blood flows so freely that it is unusual throughout the day not to be wearing someone else's blood. Let me give you an example, (the example of the shoot down at Khe Sanh).

"It seemed to me in combat that on a regular basis, several times a day, I was pinching off someone's artery, sticking a thumb in a chest hole to prevent loss of breath, giving mouth to mouth resuscitation, pouring a canteen of water into an open abdomen to flush out the filth and blood and try to find the wound, trying to gently put a man's jaw back into place so he wouldn't choke to death on his own blood, replacing eyes back in their sockets, collecting limbs and throwing them in ponchos so that they could be evacuated with the body. This was regular activity, normal activity -- not unusual at all.

"Now can you imagine the extraordinary fear fighting men have thinking that at least some of that blood may come from a homosexual who without question to our way of thinking will carry a life threatening disease? I myself carry a very serious disease because of having been immersed in the blood of those around me. I am disabled because of this and it came from normal circumstances -- not those impaired on me by the forced perversion of homosexuals being around me.

"For a homosexual to claim that they are just like the rest of us and that this won't affect them and they will be, so to speak, "clean" is bloody nonsense. We know they have hundreds of sexual partners during their lifetime and they continue to engage in male to male sex not using condoms with no thought of the spread of disease.

"Another realization recently is that they are far more likely to suffer from intestinal disorders, known as gay bowel syndrome. To think that these walking repositories of disease -- let alone would be imposed on the battlefield -- is beyond shocking and virtually defies any logic whatsoever. No one, no one in this room, no one outside this room, no one anywhere can challenge the logic of not putting that kind of added threat in a combat environment.

"...A young Marine in front of me one hot day virtually disappeared; was atomized by an artillery blast that blew him into tiny fragments, and as I looked around the thirty-odd Marines around me we were all covered with part of him -- his blood, his flesh, his bones. He was completely on all of us.

"Had he been AIDS infected, we in turn would have all become infected as well. Over thirty Marines would have become casualties and possibly lost our lives because of this gross irresponsibility that you would now impose on us."

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APPENDIX C

The following is a passage from the Association of the United States Army's Land Warfare Paper No. 6, 1990, "AIDS and Its Impact on Medical Readiness."

"As the prevalence of HIV rises in the world, deployment of U.S. troops must be viewed in the context of its impact on strategic and tactical planning, especially with regard to land forces and their interaction with the local populace, be it buddy care or medical support to civilian casualties, protecting the blood supply, intimate civilian contact, unit morale or political concerns.

"Sexually transmitted diseases have traditionally been two or three times higher in U.S. military troops than in their civilian counterparts (up to 100 times higher in wartime). HIV infection is a new threat set in this mode. All diseases carry a political liability. But none as much as a sexually transmitted disease (social disease) that kills.

"In this regard, the military is caught in the classic catch-22 scenario; some foreign nations will view our military as the conduit that contaminates their populace (some countries have already stipulated that American troops are not welcome unless certified to be free of HIV); while the home front may view the military as the conduit that brings the problem home (many U.S. public health officials blamed the rise in penicillin-resistant gonorrhea in the 1980s on importation by military troops of such organisms from the Far East; most HIV disease in Cuba has been traced to Cuban soldier contact in Angola).

"Furthermore, because HIV infects blood, a new dimension has been added. Modern warfare has stressed modern military medicine in many areas, but perhaps the most critical is the need to replace blood loss and correct blood clotting disorder with transfusions or uncontaminated freshly drawn blood. The requirement to reduce the risk of AIDS through blood transfusions to as low a level as possible (hopefully zero) is imperative.

"There are simply not enough blood reserves in our troops to cover transfusion requirements far more than just a few casualties and we must rely on fresh blood obtained from the local civilian populace. When as many as one in 10 or 20 is infected, the utility of that blood supply is obviously in question.

"In addition, the rendering of care to civilian casualties would be severely compromised if even a small percentage were infected. Rendering medical assistance is important in winning their hearts and minds, and if callousness towards and withdrawing care from civilian casualties ensues, our morality is undetermined. Thus, not only is our safe blood supply threatened, but the unit cohesiveness and trust necessary for an efficient combat force is undetermined. In short, HIV potentially isolates us!

"Finally, health care costs to the military, already stretched because of CHAMPUS costs, will be staggering. Even if new cases were to occur, the 10-year projection in 1989 dollars for the Department of Defense (DoD is $1.7 billion to $1.9 billion. At the present incidence rate of new cases, the cost is projected to be $2.7 billion to $3.0 billion. And these figures are based

only on 60 percent of health care beneficiaries utilizing the military health care system (in other words, the potential 10-year cost is close to $5 billion!)."

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Insight

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Gary L. Bauer
President

Homosexual Security Issue Clouded by Partisan "Study"

One of the main arguments used by proponents of lifting the military ban on homosexuals is that recent studies "prove" that homosexuals are not a security risk.

The centerpiece of this argument is a study from the Defense Personnel Security Research and Education Center (PERSEREC), an agency of the Department of Defense. Written by Theodore R. Sarbin, Ph.D and Kenneth E. Karols, M.D., Ph.D., "Nonconforming Sexual Orientations in the Military and Society" was leaked to Congress in 1988 and published in 1990 as part of Gays in Uniform, a pro-homosexual book from Alyson Publications in Boston. Alyson also publishes the controversial elementary school textbooks Heather Has Two Mommies and Daddy's Roommate, as well as Macho Sluts, which includes a story about a lesbian who seduces her own daughter into sadomasochistic sex, The Age Taboo, an anthology of arguments for men having sex with boys, and Gay Sex: A Manual for Men Who Love Men, which includes seven recommendations by the North American Man/Boy Love Association, a pro-pedophile organization, on how pedophiles can avoid angry parents and the police.[1]

Since its publication, the PERSEREC paper has been cited repeatedly as proof that gays do not constitute a military security risk.[2] This occurred even after the Department of Defense rejected the initial 1988 report as biased and misdirected and released another version in 1991. Here is a typical media citation, from *The Washington Post*: "...the Defense Department's own internal studies largely have erased the notion that gays in uniform constitute a security risk."[3]

The report may have been instrumental in persuading former Secretary of Defense Richard V. Cheney to characterize the homosexual security issue as "a bit of an old chestnut."[4] It was the central piece of evidence regarding security in a June, 1992 General Accounting Office report on homosexuals in the military,[5] and was cited uncritically in testimony by Lawrence J. Korb of the Brookings Institution on March 31, 1993 at the Senate Armed Services Committee hearings on the homosexual policy.[6]

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The PERSEREC study also was cited in "The Final Report and Recommendations of the Federal Emergency Management Agency Security Practices Board of Review" (Nov. 12, 1992), which touched off a debate over whether homosexuals were a security risk for that agency. FEMA Security Practices Board member Lorri L. Jean calls the PERSEREC study "the definitive study on 'Homosexuality and Personnel Security.'"[7] And the Final Report notes that "the Board found the PERSEREC study particularly compelling."

Clearly, this study has had an enormous impact. But just a cursory look reveals some striking weaknesses and biases:

• Heavy reliance on the discredited work of sex study pioneer Alfred C. Kinsey,[8] even exaggerating Kinsey's already overblown findings of sexual deviance in the general population, including the now-dead 10% estimate for homosexuality (many more reliable surveys indicate that it is less than 2% and may be less than 1%).[9] During the Senate Armed Services Committee hearings, Lawrence J. Korb cited the PERSEREC study as having estimated that homosexuals in the military comprise 200,000 (10% of 2 million).

The 1988 PERSEREC study also had a "bisexuality index" derived from Kinsey, which was dropped from the 1991 version. Bisexuals may be more vulnerable to blackmail than homosexuals, because they lead double lives and because of the risk of passing on to heterosexuals the diseases that are epidemic among homosexuals. Dropping Kinsey-derived statistics may have strengthened the report, but the topic of bisexuality itself is worthy of examination. The 1991 PERSEREC report ignores bisexuality.

• Numerous citations from a single historian: Vern Bullough, a Kinsey disciple and a member of the editorial board of the Dutch pro-pedophile journal, *Paidika: The Journal of Paedophilia*, which advocates sex between men and boys. In the May, 1991 *NAMBLA Bulletin*, published by the pro-pedophile North American Man-Boy Love Association, Bullough is quoted in an advertisement for *Paidika*: "'Required reading for all those interested in research and studying intergenerational sex research.' --Dr. Vern Bullough."

• Open hostility toward traditional sexual mores, and pejorative references to biblical Judaism and Christianity as "superstition." The study quotes Bullough, who dismisses as "fundamentalist preachers" all who believe that "nonconforming sexual behavior is sinful."

• Bold, polemical statements that defy a wealth of contrary scientific evidence. Example: "Homosexuals are like heterosexuals in being selective in their choice of partners, in observing rules of privacy, in considering appropriateness of time and place, in connecting sexuality with the tender sentiments, and so on" (p. 31). For authoritative descriptions of typical gay sexual practices, see gay journalist Randy Shilts' 1987 book And the Band Played On (St. Martin's Press, New York), a 1978 Indiana University study (Bell and Weinberg),[10] which reports that the typical male homosexual has hundreds of sex partners, The Gay Report (Summit, New York, 1979) by Karla Jay and Allen Young, and numerous other studies that document a high degree of promiscuity and high-risk sexual practices among homosexuals.

• Ignoring the Bell and Weinberg study's finding that a significant number of homosexuals report that "someone has threatened [them with] exposure of homosexuality in order to get something of value."[11] The PERSEREC report was supposed to determine vulnerability of homosexuals to blackmail. Its omission of the blackmail information is inexplicable in a study about security risks.

• Uncritical acceptance of a controversial pre-birth hormonal biological explanation for homosexuality, with no documentation other than a 1987 study (Ellis and Ames)[12] that relies primarily on animal studies and public opinion polls. An authoritative survey (Byne and Parsons) of available data on genetic studies in the March, 1993 *Archives of General Psychiatry* concludes that "there is no evidence at present to substantiate a biologic theory."[13]

• Misleading description of the American Psychiatric Association's removal in 1973 of homosexuality from the list of mental disorders, omitting such facts as an American Medical Association membership survey in 1975 that found 69% agreeing that homosexuality is "pathological." Sarbin and Karols also omit mention of other studies by psychotherapists such as Elizabeth Moberly and Gerald van den Aardweg, or Masters and Johnson, who report a 79.1% success rate in changing patients' orientation from homosexual to heterosexual.[14]

• Frequent citations from pro-homosexual, value-laden sources, such as feminist law professor Sylvia A. Law of New York University, who misrepresents religious beliefs and Biblical references.[15] For instance, Law claims that most organized religions do not condemn homosexual conduct. She also fails to acknowledge any link between homosexuality and promiscuity, and indicates that differences between men and women are socially contrived rather than inherent and natural. Law openly attacks the traditional family, favors homosexual marriage, and derides traditional values as rightly "disappearing."[16]

• Misrepresents military policies. For example, the report says that many members discharged for homosexuality had security clearances. But it does not mention that many service members with more than two years of service generally require and are routinely given a security clearance.

• Makes unwarranted assumptions such as that "the vast majority of homosexuals in the armed forces remain undiscovered by military authorities, and complete their service with honor." This conclusion is based on no evidence whatever, except the low numbers of homosexuals discovered contrasted with the inflated Kinsey-derived 10% estimate for homosexuality in the population. There is no way of knowing how many homosexuals are in the military or whether their military presence reflects their numbers in the general population.

• Criticizes in a partisan, non-scientific fashion Article 125 of the Uniform Code of Military Justice, which prohibits sodomy. The 1988 version says: "On the reasonable assumption that the number of military personnel who are homosexual may be as high as 10 percent, only a minute percentage are separated from the service. This discrepancy calls into question the usefulness of Article 125." (p. 24)

The idea that Article 125 is not commonly employed is unfounded. Additionally, many soldiers charged with sodomy are separated from the services via disciplinary procedures short of a court-martial. This saves the government prosecution expenses and quickly removes the service member from the military with a less than honorable discharge.

• Omits any reference to any study examining military unit cohesion and discipline and their effect on combat readiness.

• Compares homosexuals to African-Americans in language identical to that used by gay activists, ignoring those who find the linkage inaccurate and even offensive. Gen. Colin Powell calls the comparison "convenient but invalid."[17]

• Makes ideological generalizations without any corroboration. Example: "One of the more powerful reasons for rejecting change has to do with the idealized imagery of the combat soldier." And: "Although unsupported by evidence, the belief is widely held that men must be rugged, tough and macho to achieve success in battle." (p. 27)

• Ignores medical evidence about AIDS and questions the military's policy of excluding HIV-positive recruits. Example: "The military must weigh the costs of rejecting large numbers of HIV positives (an unknown percentage of whom would not develop the disease) against the medical costs of monitoring and treatment of those who turn out to develop the symptoms." The idea that evidence of HIV infection may or may not be a marker for eventual onset of AIDS is misinformation at its worst. To date, medical science has concluded that HIV infection always means the eventual onset of AIDS. Some people test falsely positive for HIV, but once HIV infection is reliably determined through further tests, that person will develop full-blown AIDS. To suggest otherwise is misleading. This misinformation also plays into the demand by gay activists to end HIV testing of recruits,[18] a program that has saved the military billions of dollars in AIDS-related health costs.

Finally, the original PERSEREC report team went well beyond its mandate to determine whether homosexuality constitutes a security risk factor, and addressed instead overall suitability for service. A Feb. 10. 1989 memo by Craig Alderman, Jr., Deputy Undersecretary of Defense for Policy, criticizes the report as "fundamentally misdirected....It is as if *Consumer Reports* commissioned research on the handling characteristics of the Suzuki Sammurai (sic), and received instead a report arguing that informal import quotas for Japanese automobiles were not justified."[19]

No cost figures for the study have been made available, but the memo concludes that the PERSEREC study "has expended considerable government resources, and has not assisted us one whit in our personnel security program."

-- LT. COL. ROBERT L. MAGINNIS and ROBERT H. KNIGHT

Col. Maginnis is an active-duty Army officer assigned to the Pentagon. His views do not necessarily represent those of the Department of Defense. Mr. Knight is Director of Cultural Studies for the Family Research Council.

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1.Peter LaBarbera, "Who publishes those pro-gay kids' books?", Lambda Report, February, 1993, p. 1.

2.John Lancaster, "Hill Study Challenges Military's Exclusion of Gays," The Washington Post, June 19, 1992, p. A-1.

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6.Testimony by Lawrence J. Korb of the Brookings Institution, March 31, 1993, before the Senate Armed Services Committee, chaired by Senator Sam Nunn (D-GA).

7.Enclosure to Tab F of "The Final Report and Recommendations of the Federal Emergency Management Agency Security Practices Board of Review."

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16.Law, op. cit., p. 234.

17.Letter to Rep. Patricia Schroeder (D-CO), May 8, 1992.

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19.Craig Alderman, Memo for Mr. Peter R. Nelson through Mr. Maynard Anderson, Feb. 10, 1989.

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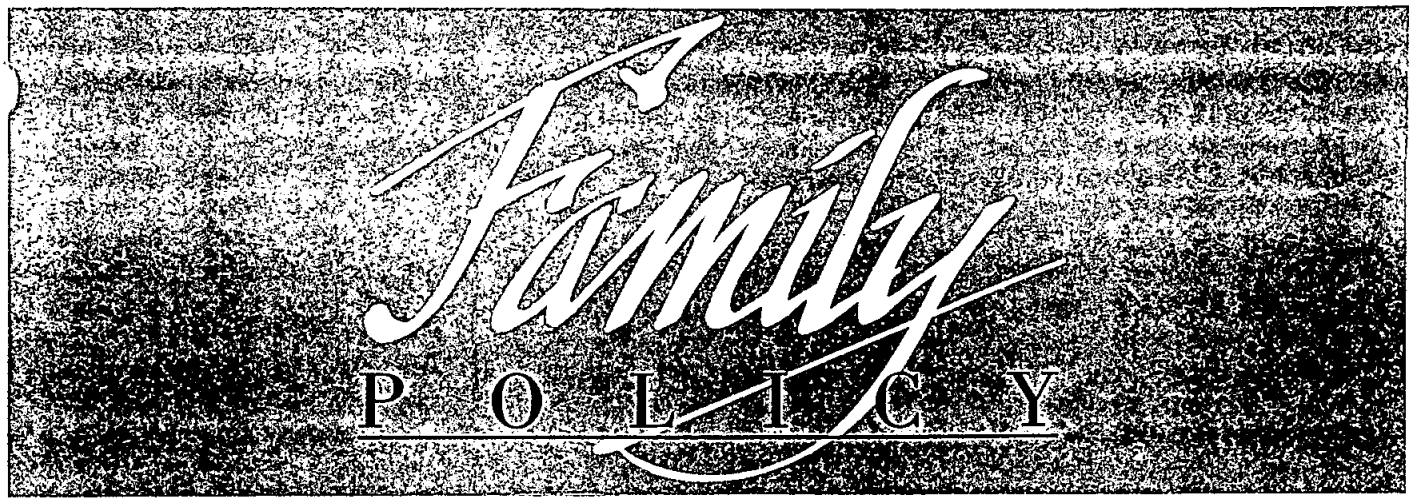

The Battle Over Homosexuality

Why the Military's Ban Should Not Be Lifted

The American armed forces are unique. In a government based upon consent of the governed, the military is autocratic. In a society that treasures individual freedom, the soldier conforms and sacrifices self for mission accomplishment. In a country where the right to speak out is paramount, the soldier must defend that right while not enjoying its full extent.

The mission of the United States Armed Forces is to fight and win our nation's wars. It takes an army to do that, not a debating society. For this reason, the Supreme Court has long recognized that "the differences between the military and civilian communities result from the fact that 'it is the business of armies and navies to fight or be ready to fight wars.' "[1]

To accomplish this important, difficult, and dangerous mission, the military has many requirements with no parallel in civil society. Soldiers on the battlefield are not free to "call in sick" if they do not feel like working. They cannot vote on whether to take the objective by frontal assault or a flanking movement. They are not given the option of wearing button-down collars or the latest fashion. Theirs is the duty of obedience to the lawful orders of their superiors. This is but one aspect of the discipline and teamwork necessary to train, maintain, and employ an effective fighting force. All military rules, regulations, policies, traditions, and customs are related to, and in some manner support, the ultimate goal of combat effectiveness.

The homosexual exclusion is not based upon a benign, non-behavioral factor such as skin color. It is based on conduct.

Personnel policies are not judgments on the personal worth of individuals; they merely seek to enhance the military's ability to efficiently and effectively accomplish its mission. Consequently, many categories of individuals do not qualify for military service, such as older Americans, youths, overweight people, and those with poor eyesight. None of the people in these groupings loses any civil rights as a result, nor do those who are excluded over homosexuality.

Since the goal of all personnel policies is to enhance the military's ability to accomplish its mission, the central question in the debate raging today over the homosexual exclusion policy is whether repeal of the ban would improve combat effectiveness.

Background of the DoD Policy

The military's policy, like the Uniform Code of Military Justice and the codes of the states that criminalize sodomy,

derives from a long history of general condemnation of homosexual conduct. Sodomy was not a crime under early English common law. It was first punished by the secular courts under a statute of Henry VIII.[2] Sodomy was held in such opprobrium that Blackstone referred to the mere mention of it as a "disgrace to human nature."[3] Because sodomy was an offense over which the civilian courts had jurisdiction, it was not specifically included in the military codes until the 18th Century, when it became punishable under the Laws Relating to the Government of His Majesty's Ships, Vessels, and Forces

All military rules, regulations, policies, traditions, and customs support the ultimate goal of combat effectiveness.

by Sea.[4] Similarly, it was not included in the early American military codes because it was punishable by the civilian courts under the common law adopted from England and because regulations limited enlistment to "[n]one but men of good character, sound in body and mind, of good appearance, and well formed and fit, *in every particular. . . .*"[5]

During World War I, however, the Army prosecuted sodomy under the "General Article" (art. 96) of the Articles of War of 1916. After World War I, Army regulations provided for the discharge of soldiers who evidenced "habits or traits of character which serve to render retention in service undesirable," or were "disqualified for service, physically or in character, through [their] own misconduct."[6] During World War II, the Army discharged homosexuals routinely. In January 1944, the War Department issued Circular No. 3, which reminded commanders that homosexual conduct was punishable under the Articles of War, and that administrative discharge generally served the military's best interests. By 1950, Army Regulation 600–443 provided for separation of "[t]rue, confirmed, or habitual homosexual personnel, irrespective of sex. . . ." Over the next two decades, personnel policies generally required discharge of homosexuals, but attempted to classify those whom the regulations considered "reclaimable" and permitted them to serve. In 1970, Army regulations were amended to dismiss for "unfitness" soldiers who committed homosexual acts. Soldiers who merely had homosexual "tendencies" were discharged for "unsuitability."

The current homosexual exclusion policy was promulgated in 1981 and was designed to eliminate vagaries in previous policy directives and to implement a uniform policy for all the services. Accordingly, it eliminated the "unsuitability" discharge for "homosexual tendencies." The policy defined "homosexual" as one who "engages in, intends to engage in, or desires to engage in homosexual acts," and defined "homosexual acts" as "bodily conduct, actively undertaken or passively permitted, between persons of the same sex for sexual satisfaction." To insure consistent application among the services, the policy clarified that discharge was mandatory for homosexuals within the meaning of the Department of Defense (DoD) Directive.

The policy presumes that public admission of homosexuality 'can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct.'

Operation of the Current Policy

Under the current policy, a soldier faces discharge for homosexuality when one or more of the following criteria are met: (1) the soldier has engaged in, attempted to engage in, or solicited another to engage in homosexual acts; (2) the soldier has admitted that he or she is a homosexual; (3) the soldier has married or attempted to marry a person known to be of the same sex. When presented with credible evidence of any of the above conditions, commanders must initiate separation proceedings. The soldier has certain rights, including notice of the proceedings, legal counsel, cross-examination of witnesses, presentation of evidence and

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witnesses, and the right to either remain silent or testify. The separation boards must recommend discharge if they find that the individual is a homosexual within the meaning of the DoD Directive. If the basis for the separation proceeding is that the soldier has engaged in, attempted to engage in, or solicited another to engage in homosexual acts, the separation board may recommend retention if they find that the conduct in question was a departure from the soldier's usual behavior, is unlikely to recur, was not accompanied by force or coercion, that under the circumstances retention of the soldier is consistent with good order, morale, and discipline, and that the soldier does not desire or intend to engage in homosexual acts in the future. In other words, if these additional factors are present, the soldier is not a homosexual within the meaning of the Directive.

The homosexual exclusion is based largely upon the considered professional judgment of military commanders responsible for raising, maintaining, training, and employing a military force.

The DoD policy also requires discharge of those who admit they are homosexual, unless the separation board finds that they are not homosexuals within the meaning of the DoD Directive. As a practical matter, this requires the soldier facing discharge for admissions of homosexuality to either deny making such an admission or to convince the separation board that if he was a homosexual at one time he is one no longer. Because the definition of homosexual in the DoD Directive is tied to sexual conduct rather than to amorphous concepts of sexual tendencies, orientation, or preference, the policy presumes that any one who admits to being a homosexual will engage in the conduct that defines the class. As the court put it in *Ben-Shalom v. Marsh*, 881 F.2d 454, 464 (7th Cir. 1989) admission "can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct."[7] Discharging soldiers based solely upon their admission of homosexuality precludes intrusive investigations and inquiries into the soldiers' sexual practices. Furthermore, because it is reasonable to believe that homosexuals will engage in the conduct that defines the class, excluding those who admit their homosexuality serves the goal of preventing the disruption and adverse impact upon unit readiness, morale, and discipline that homosexual conduct within the military environment causes.

An Adverse Impact

The homosexual exclusion is based largely upon the considered professional judgment of military commanders responsible for raising, maintaining, training, and employing a military force.[8] Their professional judgment, as embodied in DoD Directive 1332.14, is that:

> *the presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the military services [1] to maintain discipline, good order, and morale; [2] to foster mutual trust and confidence among servicemembers; [3] to insure the integrity of the system of rank and command; [4] to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; [5] to recruit and retain members of the military services; [6] to maintain public acceptability of military service; and [7] to prevent breaches of security.*

These seven specific reasons have been set forth in the DoD Directive since the current policy was adopted in 1981. The following paragraphs illustrate the specific application of each of these factors:

- **Discipline, good order, and morale.** Sodomy committed by soldiers, on or off post, with civilians or military members, is subject to criminal sanction under the UCMJ. Exclusion of homosexuals from military service is a means of precluding military service by a group of individuals who, by definition, commit or intend to commit criminal acts. Precluding their service reduces the number of disciplinary cases and separations, which detract from mission accomplishment and the operational efficiency of the military.

Homosexuals in military service have a direct, adverse impact on the morale of other soldiers. Instances of homosexual conduct within units destroy morale and esprit required to perform the difficult and dangerous task of fighting

the nation's wars. As Col. (Retired) David Hackworth, the nation's most decorated living veteran, writes: "I cannot think of a better way to destroy fighting spirit and gut U.S. combat effectiveness."[9]

- **Mutual trust and confidence:** Critical to the effectiveness of military units is the existence of supportive interpersonal relationships and small group cohesion. Homosexuals in the military have an adverse impact on the ability of military leaders to sustain these relationships and build camaraderie. Homosexuals in the military tend to polarize units by increasing the opportunities for destructive emotional relationships among troops.

A policy that permits service by admitted, but purportedly celibate, homosexuals while excluding those caught engaging in homosexual acts is unworkable: it would create an atmosphere of mistrust and suspicion.

Soldiers bond together based upon shared values and goals. Placing homosexuals into the involuntary associations that characterize military life threatens the fundamental value system of the vast majority of soldiers and hinders team building, which is central to combat readiness. A policy that permits service by admitted, but purportedly celibate, homosexuals while excluding those caught engaging in homosexual acts, is unworkable; it would create an atmosphere of mistrust and suspicion. Assimilation of known homosexuals into the Armed Forces also would raise divisive collateral issues, such as recognition of homosexual relationships and marriages, joint duty assignments of homosexual couples, eligibility for on-base family housing, and changes to policies pertaining to survivor and dependency benefits. Moreover, the debate over such derivative issues would complicate any assimilation of homosexuals into the force and detract from the primary mission of combat readiness.

- **Integrity of rank and command:** A known homosexual military officer loses respect and trust, which are indispensable for leaders. For example, troops look to their commanders to enforce regulations on a fair and equitable basis. Since the sexual activity in which homosexuals typically engage is, in most instances, punishable under the Uniform Code of Military Justice (UCMJ), a homosexual commander would be faced with the choice of covering up his own misconduct, reporting his sexual activity to his superiors, or abstaining from sex altogether. If the commander reports his own misconduct, disciplinary action must follow and the commander's ability to lead would be destroyed. Likewise, because it is unrealistic to believe that one who claims to be a homosexual would not engage in the conduct that defines the class, few would believe that the commander was celibate. Most would suspect him of engaging in sexual activity proscribed by the applicable criminal laws and, as a result, question his commitment to adhere to and apply other laws and regulations on a fair and equitable basis. Clearly, the commander's moral authority to hold the trust and confidence of his subordinates would be severely compromised.

The presence of known or admitted homosexuals in the military would make it significantly more difficult to prevent personal relationships that interfere with senior-subordinate relationships. Junior personnel, particularly recruits, are vulnerable to abuse, including unwanted sexual advances by those in authority. A 1990 report by the Navy Women's Study Group concluded that "[j]unior women feel intimidated when homosexuality is suspected or present in their command and there are indications that some have been victimized by lesbian harassment." The study observed that junior women lack the experience, maturity, and confidence needed to combat the problem effectively. They expressed fear of retaliation from what is perceived as an alliance of lesbians. This fear inhibits their reporting harassment and cooperating with investigations.[10]

The military does not exist to provide career opportunities for everyone who desires to serve. Nor is the military designed to be a laboratory for social experiments.

- **Assignment and worldwide deployment:** Bathing and sleeping facilities traditionally have been segregated by gender because the vast majority of men and women are attracted to the opposite sex, and view being forced to sleep, shower, and use

toilet facilities with members of the opposite sex as an infringement of privacy. When individuals of the same gender find members of the same gender sexually attractive, the same invasion of privacy occurs even in gender-segregated facilities. This infringement would be aggravated in combat or simulated combat operations.

- **Recruitment and retention:** Allowing homosexuals to serve could severely damage the image of the military in the eyes of the American people. Most Americans would view a change in the policy as tacit approval of homosexual conduct. Because of the general societal aversion to homosexual practices,[11] many Americans would no longer consider the military an appropriate career option for young men and women.

Repealing the homosexual policy also creates a host of logistical problems. Providing separate living facilities for heterosexual males, homosexual males, heterosexual females, and homosexual females would help protect privacy interests, but at great financial cost. It also would facilitate homosexual relationships by providing openly-sanctioned gathering places for those expressing homosexual desires.

- **Security:** In recent months, Department of Defense officials have stated that concerns over security do not support the policy. In fact, Secretary of Defense Dick Cheney called the argument that homosexuals are more likely than heterosexuals to divulge defense secrets "a bit of an old chestnut."

While the presence of homosexuals in the military does present some unique challenges to security—for example, some hostile intelligence agencies view homosexuality as an indicator of other exploitable traits—it is important to note that the current policy does not hang or fall on the security issue.

Challenges to Current Policy

Opponents of the policy claim that discharging soldiers based solely on admissions of homosexuality without evidence of homosexual conduct violates soldiers' free speech rights. They also claim that the policy subjects homosexuals to the same sort of discrimination suffered by racial minorities and that it should be declared unconstitutional because it denies them equal protection under the law. They claim that homosexuals should, like racial or ethnic groups, be given special protection and that the policy

Most Americans would view a change in military policy as tacit approval of homosexual conduct.

should be examined under the strict scrutiny standard normally reserved for policies that impact adversely on racial minorities and other suspect classes. These arguments have been markedly unsuccessful. While gathering some sympathy from individual judges, the final decision of every United States Court of Appeals to address the issue has rejected both free speech claims and suspect class status for homosexuals.[12]

After the Supreme Court's decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), upholding Georgia's right to criminalize consensual homosexual sodomy committed in private, no one can seriously doubt the military's right to discharge those who engage in homosexual conduct. After all, if a state can impose criminal penalties for engaging in homosexual sodomy, the military can certainly apply its non-criminal administrative procedures to discharge those who engage in homosexual conduct. Even the sponsors of legislation to repeal the DoD policy seem to recognize the need to deal with sexual misconduct.[13] Furthermore, the vast majority of those who have been discharged for their homosexual activity have not challenged the military's right to exclude them for engaging in prohibited sexual conduct. Only four reported federal court decisions since 1978 have dealt with discharges for homosexual conduct where the evidence of homosexual conduct came from other than admissions of the servicemember.[14] The majority of federal cases have dealt with discharges that were based upon service members' admissions of homosexuality without extrinsic evidence of homosexual conduct.[15]

Thus, the real controversy surrounding the DoD policy arises over the discharge of those whose homosexuality is revealed solely through their own admissions and statements absent any extrinsic evidence of homosexual acts. Critics claim that this creates a status-conduct dichotomy and that discharges based upon mere admissions of homosexuality punish individuals because of their sexual orientation without demonstrating any adverse impact on military discipline, morale, and combat effectiveness.[16] Moreover, critics claim the current policy gives official sanc-

tion to unfair, unfounded, and unreasonable stereotypes of homosexuals held by "homophobic" bigots. Homosexual activists argue that rather than yielding to "private bias," military officials should teach those who hold such views that homosexuals are just as capable and competent as any other group to serve their country. Reversing the policy and allowing homosexuals to serve, they say, would be consistent with the military's efforts to eradicate racial prejudice within its ranks. In addition, critics claim that the current policy discriminates against individuals because of their "sexual preference" or "sexual orientation."

Conduct, Not Temptation

In evaluating these arguments, it is important to specify that current DoD policy does not preclude military service by someone who is tempted to commit homosexual acts any more than it precludes service to someone who is tempted to steal. Instead, DoD policy excludes from service people who actually engage in homosexual acts or who implicitly announce their intention to do so by publicly identifying themselves as homosexuals.

Thus, current DoD policy is based not on temptation—but conduct. It is this conduct that can disrupt the cohesion, unity, esprit, and teamwork so necessary to field a military force capable of fighting and winning our nation's wars. Furthermore, while the Uniform Code of Military Justice does not proscribe homosexuality, it does, like many state criminal codes, criminalize sodomy. It excludes from service those who, by definition, are likely to engage in conduct that constitutes a criminal offense.[17] This, in turn, reduces the time, effort, and resources a commander must devote to disciplinary and administrative proceedings that result from allegations of illegal sexual conduct.

The fact that the policy excludes those who are most likely to engage in sexual misconduct does not mean that the policy improperly caters to private bias or unfairly discriminates because of homosexual status. By imposing criminal sanctions under the Uniform Code of Military Justice for sodomy,[18] Congress determined that the so called "private bias" against such conduct was sound public policy. Indeed, our entire system of criminal law is based upon notions of what is "good" and "bad" for society at large. If the DoD homosexual policy improperly caters to "private bias," then our entire criminal code is equally suspect.

Homosexuals in the military have a direct, adverse impact on the morale of other soldiers.

The fact remains that the principal activity by which homosexuals gratify their sexual desires, sodomy,[19] is punishable under the governing criminal code. Furthermore, the Supreme Court has held that "[p]roscriptions against [sodomy] have ancient roots. . . " and that basing criminal law on moral values does not offend the Constitution.[20]

Proponents of the private bias argument are not attempting to have the military get in step with the prevailing values of society. What they are really trying to do is force the military to lead the charge to *change* the prevailing values of American society. Such efforts are ill-advised. National security considerations do not give the military the luxury of adopting personnel policies for the purpose of driving social change.

Comparison with Racial Segregation Policy

As it was noted earlier, critics of the DoD policy also charge that the exclusion of homosexuals is similar to the policy of official racial segregation that existed in the military prior to 1948. They point out that racial segregation was justified by claims of reduced combat effectiveness if whites were forced to live and work with black soldiers.

The homosexual exclusion policy is not a civil rights issue. Equating the homosexual policy to racial discrimination trivializes racial minority groups' struggles for civil rights and ignores the fundamental difference between racial discrimination and the homosexual policy.[21]

The racial segregation that existed in the military, and the rest of society, prior to 1948 wrongly judged the value of a human being by the color of his skin. Racial discrimination stereotypes minorities by assigning certain conduct and characteristics to them based upon the benign factor of skin color. In other words, racial discrimination goes from skin color to unwarranted and bigoted conclusions about conduct and to the effect of that conduct on the group or society at issue.

The homosexual exclusion, however, is not based upon a benign, non-behavioral factor such as skin color but on conduct. By definition, a homo-

sexual, for purposes of the DoD policy, is one who engages in, desires to engage in, or intends to engage in conduct that is a criminal offense in the military and much of civilian society. Thus, the policy is conduct-based. There is not the quantum leap from benign factor to unsupported and bigoted conclusions about character and conduct. With homosexuals, conduct defines classification.

Personnel policies are not judgments on the personal worth of individuals; they merely seek to enhance the military's ability to efficiently and effectively accomplish its mission.

General Colin Powell, Chairman of the Joint Chiefs of Staff, probably said it best in responding to Rep. Patricia Schroeder's letter chiding him for supporting the DoD policy in testimony before Congress:

I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument. I believe the privacy rights of all Americans in uniform have to be considered, especially since those rights are often infringed upon by the conditions of military service.[22]

Conclusion

By excluding categories of personnel whose presence detracts from the ability to accomplish the mission, commanders are freed to concentrate on preparing to fight tomorrow's war. All personnel policies support this ultimate goal. Thus, the homosexual policy is a personnel *policy,* not an individualized personnel *decision.* The force is too large and the mission too important to permit individualized personnel decisions on every individual who desires to serve. Managing by categories eliminates groups that military experience and judgment reveal do not contribute to the discipline and readiness needed to fight and win wars. For example, some overweight individuals or some people with physical or mental handicaps might be able to perform certain needed jobs within the military. Personnel policies are directed, however, toward developing and maintaining an efficient and effective fighting force and exclude these categories rather than accommodating individual desires. These policies are not "anti-fat people" or "anti-handicapped" or "anti-homosexual;" they are "pro-combat-ready force."

The military exists as an institution to fight and win our nation's wars. It does not exist to provide career opportunities for everyone who desires to serve. Nor is the military a laboratory for social experiments.

It is not the mission or function of the military to lead the charge to abandon traditional views of American society regarding homosexuality. Nor is it, for that matter, the mission or function of the courts. Indeed, the Supreme Court has repeatedly held that "judges are not given the task of running the Army."[23]

The military is a unique institution with unique requirements. Policies regarding force composition must be dictated by the mission—national defense. For this reason, proponents of change must bear the burden of establishing that repeal of the policy will actually enhance the military's ability to accomplish the difficult and dangerous task of national defense.

The reasoned, professional judgment of military leaders concludes that homosexual conduct within the military environment impairs the effectiveness of combat forces. Accordingly, a policy that excludes homosexuals from military service because they engage in or are likely to engage in conduct that is generally inimical to readiness is not only legal and reasonable, but necessary.

To do otherwise would be jeopardizing our nation's security to advance a political agenda.

—William A. Woodruff

Woodruff, a retired Colonel from the U.S. Army Judge Advocate General's Corps, is an Associate Professor of Law at the Campbell University School of Law.

ENDNOTES

1 Parker v. Levy, 417 U.S. 733, 743 (1974) quoting Toth v. Quarles, 350 U.S. 11, 17 (1955). See also In re Grimley, 137 U.S. 147, 153 (1890) ("An army is not a deliberative body, It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier.")

2 25 Hen. 8, c. 6 (1533).

3 3 W. Blackstone, Commentaries 215–216 (W. Lewis 1922).

4 Art. 29, 22 Geo. 2 (1749).

5 Gen. Regs. for the Army, 1841, art. 49, para. 679 (emphasis in original).

6 Department of the Army Regulation No. 615–360, para. 49 (March 1, 1926).

7 Ben-Shalom v. Marsh, 881 F.2d 454, 464 (7th Cir. 1989).

8 Opponents of the policy are quick to point out that no empirical study has ever demonstrated that combat effectiveness would suffer if homosexuals were allowed to serve. They claim that "professional military judgment" is merely a euphemism for stereotypical attitudes towards homosexuals. The fallacy of this view is that "combat effectiveness" is not something that one can determine through opinion polls or controlled experiments. The only way to put the issue to test is to repeal the ban and then engage in actual combat operations. Obviously, no one would seriously propose such a test. Thus, it is reasonable to rely upon those who have the experience in leading combat forces to use their best judgment to develop personnel policies that will, in their professional opinion, contribute to combat effectiveness.

9 David C. Hackworth, "The Case for a Military Gay Ban: My Combat Experience Tells Me Its the Only Sensible Policy," The Washington Post, June, 28, 1992, p. C-5.

10 In recent testimony before the Defense Advisory Committee on Women in the Service (DACOWITS), some have argued that the homosexual exclusion policy actually contributes to the sexual harassment of women. They claim that men will report as lesbians those women who deny them sexual favors. Placing a woman in the position of either fighting unfounded allegations of lesbianism or providing sexual favors is outrageous and must not be tolerated. Elimination of the homosexual exclusion policy, however, will not eradicate sexual harassment. If some men used false charges of drug use, larceny, or violation of any number of military rules and regulations in an effort to coerce sexual favors from female soldiers, no one would seriously argue that the law or rule in question should be repealed to remove the possibility of its misuse. Similarly, eliminating a personnel policy that serves important national interests because some men misuse it is not the answer.

11 Cf. Bowers v. Hardwick, 478 U.S. 186, 194–196 (1986).

12 See, e.g., Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992) cert. denied, 61 U.S.L.W. 3418 (1992) (rejecting first amendment claim and remanding case to district court for consideration of equal protection claim under rational basis test); Ben-Shalom v. Marsh, 881 F.2d 454, 462–464 (7th Cir. 1989) (finding "absolutely no First Amendment violation," and holding that homosexuals do not constitute a suspect class and that strict scrutiny of the policy is not justified), cert. denied, 110 S. Ct. 1296 (1990); Rich v. Secretary of the Army, 735 F.2d 1220 (10th Cir. 1984) (rejecting equal protection, first amendment, and substantive due process challenges to a discharge for fraudulently concealing homosexuality on enlistment forms).

13 Bills introduced in the 102nd Congress that would prohibit discrimination "on the basis of sexual orientation" preserved the right of the military to punish "sexual misconduct" so long as the rules and regulations applicable to "sexual misconduct" are applied in a manner that does not discriminate on the basis of sexual orientation. H.R. 5208 (May 19, 1992); S. 3084 (July 28, 1992).

14 Dronenburg v. Zech, 741 F.2d 1388 (D.C. Cir. 1984) (extrinsic evidence of homosexual conduct); Secora v. Fox, 747 F. Supp. 406 (S.D. Ohio 1989) (extrinsic evidence of homosexual conduct); Doe v. Secretary of the Air Force, 563 F. Supp. 4 (D.D.C. 1982) (extrinsic evidence of homosexual conduct); Berg v. Claytor, 591 F.2d 849 (D.C. Cir. 1978) (extrinsic evidence of homosexual conduct). See also Hatheway v. Secretary of the Army, 641 F.2d 1376 (9th Cir. 1981) (art. 125, Uniform Code of Military Justice, prohibiting sodomy is constitutional).

15 See, e.g., Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992) cert. denied, 61 U.S.L.W. 3418 (1992) (only evidence of homosexuality was plaintiff's admissions); Ben Shalom v. Marsh, 881 F.2d 454, 457 (7th Cir. 1989) (only evidence of plaintiff's homosexuality was her own admission); Watkins v. U.S. Army, 875 F.2d 699, 705 n.9 (9th Cir. 1989) (district court considered only admission of homosexuality as basis for denial of reenlistment); Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989) (plaintiff's admission of homosexuality without extrinsic evidence of homosexual acts served as basis of discharge); Mathews v. Marsh, 755 F.2d 182, 183 (1st Cir. 1985) (plaintiff disenrolled from ROTC following voluntary admission that she was a lesbian); Rich v. Secretary of the Army, 735 F.2d 1220, 1225 (10th Cir. 1984) (Army relied upon plaintiff's admission of homosexuality in discharge for fraudulent enlistment); Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980) (plaintiff's admissions of homosexual conduct without extrinsic evidence of homosexual acts served as basis for discharge); Matlovich v. Secretary of the Air Force, 591 F.2d 852, 853 (D.C. Cir. 1978) (plaintiff's admission of homosexual conduct without extrinsic evidence of homosexual acts served as basis for discharge); Steffan v. Cheney, 780 F. Supp. 1, 2 (D.D.C. 1991) (plaintiff dismissed from Naval Academy based solely upon his admission of homosexuality); Johnson v. Orr, 617 F. Supp. 170 (E.D. Calif. 1985) (plaintiff's letter to her commander advising him she was a lesbian was basis of discharge); Krugler v. United States Army, 594 F. Supp. 565, 566 (N.D. Ill. 1984) (plaintiff's sworn statement admitting homosexual conduct served as basis of discharge); Meinhold v. Department of Defense, No. CV-92–6044-TJH (C.D. Calif. filed Oct. 6, 1992) (plaintiff admitted homosexuality on network news program); Cammermeyer v. Cheney, No. C-92–942Z (W.D. Wash. filed Jun. 11, 1992) (plaintiff admitted homosexuality during security clearance interview). But see Von Hoffburg v. Alexander, 615 F.2d 633 (5th Cir. 1980) (same sex marriage);

16 See, e.g., Jeffery Davis, Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives, 131 Mil. L. Rev. 55, 105 (1991).

17 Sodomy is the primary means through which homosexuals obtain sexual satisfaction. A. Bell & M. Weinberg, Homosexualities, 106–11, 327–30 (1978).

18 "Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy." Art. 125, UCMJ; 10 U.S.C. 925.

19 Bell & Weinberg, supra note 17.

20 Bowers v. Hardwick, 478 U.S. 186 (1986) (Due process clause of Constitution does not prohibit states from prosecuting consensual homosexual sodomy committed in private home).

21 "The equation of homosexuality with the noble history of civil rights in this country serves only to dilute, distort, and denigrate true civil rights." Dr. Anthony Evans, Executive Director, The Urban Alternative, quoted in T. Marco, Oppressed Minority, or Counterfeits? Citizen, Vol. 6 No. 4, April 20, 1992. "Gay rights is not, nor will it ever be, a civil rights issue, but rather a question of morality and individual values." Rev. Gill Ford, Pastor, Salem Baptist Church, Denver, Colorado. Id. "The Freedom Bus that went to Selma was never intended to go on to Sodom." Id. quoting an African-American pastor from Kansas City, Missouri.

22 Letter from Gen Colin Powell to Rep. Patricia Schroeder, May 8, 1992, reprinted in Crisis, July/August 1992, at page 46.

23 Orloff v. Willoughby, 354 U.S. 83, 93 (1953). See also Goldman v. Weinberger, 475 U.S. 503, 507 (1986); Rostker v. Goldberg, 453 U.S. 57, 64–68 (1981).

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The Homosexual Lifespan

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Key Words: AIDS, homosexuality, lifespan, murder, suicide, violence

IBM compatible, Wordstar 2000/Ventura

Summary:

Study Objective: To estimate the homosexual lifespan.

Design: 6,516 obituaries/death notices from 16 U.S homosexual journals over the past 13 years were compared to obituaries from 2 conventional newspapers.

Measurements and main results: The obituaries from the non-homosexual newspapers were similar to U.S. averages for longevity: the median age of death of married men was 75, 80% died old (65 or older); for unmarried men it was 57, 32% died old; for married women it was 79, 85% died old; for unmarried women it was 71, 60% died old. For the 6,383 homosexual deaths, the median age of death if AIDS was the cause was 39 irrespective of whether or not the individual had a Long Time Sexual Partner [LTSP], 1% died old. For those 803 who died of non-AIDS causes the median age of death was 42 (41 for those 299 with a LTSP and 43 for those 504 without] and <9% died old. Homosexuals more frequently met a violent end from accidental death, traffic death, suicide, and murder than men in general. The 133 lesbians registered a median age of death of 45 (23% died old) and exhibited high rates of violent death and cancer as compared to women in general.

Conclusions: Old homosexuals appear to have been proportionately less numerous than their non-homosexual counterparts in the scientific literature from 1858 to 1992. The pattern of early death evident in the homosexual obituaries is consistent with the pattern exhibited in the published surveys of homosexuals and intravenous drug abusers. Homosexuals may have experienced a short lifespan for the last 140 years; AIDS has apparently reduced it about 10%.

The Homosexual Life-Span

Introduction: How long is the homosexual life-span? The answer bears upon several issues:

1) Over the past 140 years, a number of major surveys of homosexuals reported on very few older homosexuals. If Bancroft (1) is correct and homosexuality is "compatible with full health", why are older homosexuals almost absent in the leading surveys? Where were they before the AIDS epidemic and where are old homosexuals today?

2) Since marriage is associated with longevity and lower morbidity in heterosexuals, legalizing marriage between homosexuals has been proposed as a way to reduce the spread of Sexually Transmitted Disease (STD), especially the Human Immunodeficiency Virus [HIV], the putative cause of AIDS. Since members of the same sex cannot get married in these United States, a strict comparison of the effects of homosexual vs. heterosexual marriage is impossible. However, homosexuals often consider themselves "married" and report that they have "long time sexual partners" [LTSP]. A comparison between the life-spans of those who have a LTSP (or partners) vs. those who do not ought to provide insight into how protective legalizing such "marriages" might be. Do homosexuals with a LTSP (analogous to marriage) exhibit lower mortality? and

3) The overall healthfulness of a life-style is often judged by the average life-span associated with it. Thus the life-spans of drug users and/or smokers have been compared to that of non--users and the difference has been interpreted as evidence that smoking or drug use is injurious. A comparison of the life-span of homosexuals to that of heterosexuals would provide some basis for judging the relative healthfulness of the two sexual orientations. Further, it would have some bearing upon the debate about whether homosexuality is inherently pathological or whether "the only obvious difference between homosexuals and heterosexuals is in psychosexual object choice" (2, p. 15).

Since, unlike sex or color, there is no known biological marker to indicate sexual preference, determining who was and was not homosexual from death records or by reputation would be unsettlingly problematic. But, as with other newspapers and magazines devoted to a particular city or community, a number of homosexual publications currently publish obituaries. While each publication has its idiosyncrasies, one can usually determine the sex, age, cause of death, and who the survivors were. Since leaders of the homosexual movement determined who belonged in the "homosexual community's obituaries," such a compilation would appear free of bias against homosexuals.

Methods

All of the obituaries in the *Washington Blade*, the weekly homosexual newspaper of the nation's capital, from March 21, 1986, when its obituaries began, to November 20, 1992 were examined. A few issues carried no obituaries, and 8 scattered issues in 1989 were unavailable, but we report on those which provided an age and cause of death [a few obituaries gave neither] as well as a few stories regarding deaths carried into the obituary-news space. Most lived in the Washington, DC area, but some out-of-area homosexual notables also appeared (some in other countries). All were included in the tabulations. Those listed as having a (or two, and in one instance 9 long-time or life companion(s), a lover, *et cetera* within the survivors were counted as having a long time sexual partner [LTSP]; those whose survivor(s) did not include a LTSP were counted as not having a LTSP; those in which no one was listed as a survivor and/or there was ambiguity as ? but included with the non-LTSPs; and those who left a wife as legally married. Occupation is included if reported for all those who did not die of AIDS.

According to an April 30, 1991 interview with John Hannond, who keeps the obituaries for the *New York Native*, only the *Washington Blade* is so democratic as to list anyone who is homosexual – the rest of the homosexual periodicals list only prominent homosexuals. He noted that if the *Native* listed all of its possible obituaries "it would be terribly depressing" and for this and other reasons, the *Native* was quite selective regarding obituaries. More abbreviated summaries of the obituaries of: 1) four years (3/87-3/91) of *Just Out*, the monthly homosexual paper of Portland, Oregon [because of the small size of the paper, the five deaths that were the topics of news stories or letters were also included]; 2) Boston's *Gay Community News* from 1984 through July 4-17, 1992 [all out-of-area obituaries were excluded, and listings that appeared in both the *News* and *Windows* were included with *News*], and the issues housed in the library of congress (scattered from 2/25-3/3/91 through 4/1/91]; 3) Boston's *Bay Windows* from 1985 through December, 1990 [the following issues were missing from the Boston public library: 10/15/89-10/30/89); 4) the *New York Native* from its inception in 12/5/80 through 11/16/92 [the issues 7/88 through 12/88 were missing from the New York city library], 5) the *Bay Area Reporter* [starting in 10/18/84 when obituaries commenced and continuing through 10/22/92. The following 22 issues were missing from the stacks kept at the Castro Street branch of the San Francisco public library: all of 2/87, 6/25/87, 7/30/87, 10/8/87, 12/10/87; in 1988 1/7, 3/24, 5/12, 6/23, 7/7, 8/11, 9/29, 10/13, 10/20, 10/27, 11/3; 2/16/89, 12/7/89, and 4/18/91); 6) Chicago's *Windy City Times* from 10/10/85 when obituaries started to 8/1/91; 7) San Diego's *Update* from 10/24/90 to 2/26/92, 8) the *Seattle Gay News* from 1979 through 2/7/92 (however, because of the high violence rate [see below], only 1983 through 5/24/91 is in-

cluded in the estimates), 9) Sacramento's *Mom...Guess What!* from 1985 when obituaries/memorials started through 6/15/92, 10) *Philadelphia Gay News* 1989 through 6/12-18/92; 11 & 12) Minneapolis/St. Paul's *Equal Time* September 1989 through 9/25-10/9/92 and *GLC Voice* October 1, 1990 through August 19, 1991, 13) Atlanta's *Southern Voice* as housed in the Castro branch of the San Francisco public library October 11, 1990 through August 1, 1991 and Denver's *Out Front* from June 29, 1990 through June 24, 1992[1]. Every attempt was made to count famous homosexuals' deaths (e.g., Liberace, Rock Hudson) only once. Additionally, all death notices listed in *the Advocate*, the national homosexual magazine frm 6/4/91 through 9/22/92 were examined, but because of significant overlap with other sorces, only 55 gay and 7 lesbian deaths from this source are incorporated into our totals.

For comparison, the obituaries of 46 days of the *Washington Post* (1/8-1/31/1986; 6/8-7/15/1988; 4/9-4/23/1989) and 23 days of *The Oregonian* (8/1-1/10/1988; 4/25-4/26/1991; 10/1-10/11/1990) were examined, with males and females sorted into the married or unmarried (the widowed were included with the married, the divorced with the unmarried).

Results

Comparison sample: Our sample of *Post/Oregonian* obituaries yielded 73.3% of men and 80.2% of women who lived to at least age 65 (i.e., died old). Married men ranged in age from 30 to 105 with a median of 75, 80% died old; unmarried males ranged in age from 17 to 89 with a median of 57, 32% died old. Married women ranged in age from 37 to 102 with a median of 79, 85% died old; the unmarried ranged in age from 16 to 91 with a median of 71, 60% died old. Seven (2%) of the 377 male obituaries were written in such a fashion that it appeared likely that they were homosexual. These ranged in age from 34 to 75 with a median of 48, 14% were old. The US Census Bureau estimated that 73.1% of males and 84.6% of females died old in 1988.[1]

- **Findings From *The Blade***

Our analysis employed 1,253 obituaries which were recorded in sufficient detail to be used. For the 1,234 males, 1052 (85%) died of AIDS or AIDS-related illness, 182 of other causes. Of those who died of AIDS: 1) 470 had a long time sex partner [LTSP]; age of death ranged from 23 to 71, with a median age of death of 37; 2) 564 did not have a LTSP; their age of death ranged from 23 to 67, with a median of 37. Sixteen died married to a wife; their age of death ranged from 28 to 62 with a median of 44.5 (14 of these died of AIDS, ranging in age from 28 to 62 with a median of 45).

Of those who didn't die of AIDS: 1) 62 had LTSPs; their age of death ranged from 24 to 71 with a median of 42; 2) 121 did not have LTSPs; their age of death ranged from 17 to 88 with a median of 42.

The 30 lesbians ranged in age from 26 to 93 with a median age of 42; 6 (20%) attained age 65. The "democratic" nature of the *Blade*'s obituaries is illustrated by the fact that the most frequent occupation listed was that of waiter (5% of occupations) followed by hairstylist/beautician (3%), bartender (2%) and artist (2%); occupational status clearly increased with age of death. In contrast, the *Native*'s listed no waiters, hairstylists or bartenders (the *Bay Area Reporter* also appears democratic, albeit considerably less complete in details about cause of death than the *Blade*). The completeness of the *Blade* is illustrated by its having only 21 obituaries in which no cause of death was listed.

Homosexuals who didn't die of AIDS, with a long time sex partner [LTSP] (n = 62, Median age 42)

24 brain hemorrhage, flight attendant/25 lung cancer, musician/26 suicide, musician/28 heart failure, teller/28 seizure,salesman/29 heart failure, waiter/29 double pneumonia, teller/29 heart failure, caterer/29 cryptococis, Navy/29 degenerative brain disease/30 substance abuse, cosmetologist/30 bronchial pneumonia, artist/30 stab wounds, realtor/31 cardiac arrest, teacher/32 cerebral aneurysm, florist/32 Hodgkins disease, compt progmr/33 cancer, ?/33 renal cell carcinoma, waiter/33 infectious gastroenteritis, Air Force/ 34 heart attack, medical receptionist/35 brain tumor, Army/36, auto accident, public relations/37 heart attack, document clerk/ 37 kidney failure, teacher/38 auto accident, public relations/39 cerebral encephalopathy, hairstyl/40 bone marrow disease, fashion designer/41 viral hepatitis, founded Wash Gay Liberation Front in 1970/ 41 liver biopsy, restaurant mgr/ 41 heart attact, federal attny/ 42 brain infection, secretary/42 liver disease,?/42 stroke, poet/ 42 head injuries in fall, designer/42 liver disease, writer/42 hepatitis, blood bank technician/43 cancer, foreign service/43 diabetes, managment analyst/43 pulmonary embolism, filmmaker/ 44 cardiac arrest, bartender/ 44 heart attack, academic administ/ 45 heart failure, printer/ 45 drowned, executive at Gay STD clinic/ 44 asthma, gay ad exec/ 46 heart failure, airline sales/ 48 pulmonary hypertension, real estate salesman/ 48 cardiac arrest, Emergency Room Physician/ 49 cancer, dancer/51 neurological condition, US Army/54 throat cancer, bar owner/54 cancer, electrician/ 55 neck cancer, ?/ 55 congestive heart failure, founded gay married men's grp (left a wife also)/ 55 cancer, researcher/ 56 pacreatic cancer, ?/61 heart attack, artist/63, heart attack, female impersonator/ 66 stroke, engineer/67 cancer, painter/ 68 lung cancer, gay bar owner (left 2 "partners in life")/ 69 heart failure, raised horses/ 71 cancer, Ntl Geographic soc

Homosexuals who didn't die of AIDS, no LTSP (n = 121, Median age 42) 17 skiing accident, artist/ 20 murdered, ?/23 hepatitis, female impersonator/ 24 "indeterminate causes, not foul play" wked for former Congressman Rbt Bauman/ 24 respiratory failure, artist/ 25 suicide, lobbied for Indian rights/ 25 auto accident, clerk/ 25 suicide, ?/ 27 stab wounds, computer progmr/ 27 cancer, lawyer US Dept Labor/ 27 plane crash, medical student/ 28 cancer, computer operator/ 28 pneumonia, instrument

repair/ 28 auto accident, nurse/ 29 pneumonia, clothier/30 toxoplasmosis, US Navy/ 30 respiratory failure, elementary school tcher/ 30 murdered, congressional aide/30 suicide, DC govt placed him in custody of gay male foster parents/ 30 auto accident, bartender/ 31 shot dead, computers/ 32 auto accident, restauranteur/ 32 hepatitis B, artist/ 33 cancer, lawyer/ 33 "of unknown causes" waiter/ 34 suicide, accountant/ 34 bronchial pneumonia, activist/ 34 heart attack, professor/ 34 auto accident, nurse/ 34 heart attack, film maker/ 35 melanoma, hairstylist/ 35 murdered, communications mgr/ 35 suicide, ?/ 35 blood clot, US Justice Dept/ 35 cryptoccocal meningitis, hairstylist/ 36 heart attack, lawyer/ 36 kidney failure, bar owner/36 pneumonia, singer/ 37 internal hemorrhage, clerk/ 37 murdered, student/ 38 murdered, flight attendant/ 38 suicide ?/ 39 substance abuse ?/ 39 heart attack, ?/39 peritonitis,dancer/40 asthma, lawyer/ 40 heart attack, medical tech/ 40 respiratory failure, poet/ 40 auto accident, waiter/ 40 auto accident, singer/ 41 "long illness" wked Whitman-Walker/ 41 brain cancer, curator/ 41 murdered, female impersonator/ 41 liver failure, FBI/ 41 drowned, clothing store owner/ 41 liver failure, Ntl Red Cross/ 41 cancer, Organized 1979 Natl March on Washington for Gay Rights/ 42 lung cancer, radiology technician/ 42 corronary arteriosclerosis, accountant/ 42 "in sleep" female impersonator/ 42 respiratory failure, US Dept Labor/ 42 suicide, hospital consultant/ 43 leukemia, writer/ 43 murdered, Naval commander/ 44 brain tumor, priest/ 44 cancer, author/ 44 diabetes, dance critic/ 44 murdered, professor/ 44 murdered, federal wker/ 45 chronic asthma, bartender/ 45 suicide, author/actor/ 45 cancer, dancer (in drag)/ 47 stroke, librarian/ 46 stroke, poet/ 46 "found floating in river" female impersonator/ 47 liver disease, female impersonator/ 47 non-Hodgkins lymphoma, ?/ 47 substance abuse, gay novelist/47 suicide, counselor/48 Burkitt's lymphoma, bar owner/ 48 cancer, created Madam/ 49 murdered, financial forecaster/ 49 murdered, gay activist/ 49 massive coronary, publisher/ 49 burned to death, mgr/ 49 suicide, political activist/ 49 stroke, Social Security Administrator/ 50 drowned, professor/50 cancer, editor/51 heart attack, real estate/ 51 stroke, waiter/ 52 cancer, US State Dept/53 cancer, accountant/ 54 atherosclerosis, cook/ 55 suicide, professor, Johns Hopkins/ 57 lung cancer, Laud Humphries, scholarly books on gays/ 57 bladder disease, novelist (*Kiss Spider Woman*)/ 58 pulmonary aneurysm, doorman/ 59 lung cancer, organist/ 60 liver failure, actor/ 60 cancer, purchasing agent hospitals/61 lymphoma, filmaker/ 62 suicide, published gay paper/ 62 heart surgery, printer/ 63 stomach cancer, James Baldwin, writer/ 64 heart attack, banker/64 heart attack, ?/65 heart attack, artist/66 stabbed to death, ?/ 66 esophogal cancer, interior decorator/ 69 lung cancer/ 69 burned to death, bar owner/ 70 kidney failure, artist/ 71 stroke, artist/ 72 cancer, alcoholism therapist/ 72 cancer, ?/ 77 cancer, author/83 heart attack, artist/ 88 stroke, artist

legally married to a woman (n = 16, median age of 44.5) 28 AIDS, clerk/ 30 AIDS, florist/ 33 AIDS mgr, food service/33 AIDS fighter pilot/ 36 AIDS direct mail planner/ 43 AIDS construction/ 44 AIDS active in gay/married grp/ 44 pulmonary failure banker/ 45 AIDS salesman/ 48 AIDS professor/ 50 AIDS teacher, pub sch/ 52 AIDS founded S/M group/ 56 AIDS congressman/ 57 heart attack, V.P. elementary sch, left both wife and lover/ 60 AIDS, actor/ 62 AIDS, counselor

- **From Portland's** *Just Out:* 24 murdered ?/ 30 suicide lover/ 30s ? ?/ 34 ? 10 yr lover/ 30s murdered ?/ 36 heart attack, founded Natl Organization for Family Diversity, lover/ 30s murdered ?/ 40s substance abuse ?/ 41 murdered ?/ 40s substance abuse ?/ 52 murdered ? The 5 with a LTSP who died of AIDS ranged in age from 29 to 41 with a median age of death of 40. The 11 without LTSPs who died of AIDS, ranged in age from 28 to 55 with a median age of death of 38.

- **From the** *New York Native*: 18 homosexuals who died of AIDS with LTSPs were aged 30 to 53 with a median age of 38. The ages of the 53 without LTSPs who died of AIDS ranged from 28 to 72 with a median age of 40.

Those who didn't die of AIDS with LTSPs were: 27?/ 36 long illness/ 44 substance abuse/ 53 bowel cancer/ 60 suicide/ 81 cancer for a median age of 49. Those without lovers were: 30s Cytomegalvirus/ 37 immune dysfunction/ 41 "long illness"/ 42 sudden death/ 44 diabetes/ 44 ?/ 45 suicide/ 45 murdered/45 murdered/ 45 pneumonia/ 46 murdered/ 46 accident (violent)/ 56 heart attack/ 57 murdered/ and 59 gall bladder operation for a median age of 45. Those whose LTSP was uncertain were: 21 murdered/ 26 murdered/ 29 murdered/ 30 penumonia/ 36 brief illness/ 38 substance abuse/ 41 murdered/ 43 cerebral hemorrhage/ 44 diabetes/ 44 asthma/ 47 brief illness/ 48 murdered/ 50 murdered/ 51 heart attack/ 51 diabetes/ 51 heart attack/ 56 suicide/ 57 infection of the nervous system/ 64 accidental fall, for a median of 44. The 5 which listed neither LTSP information nor cause of death were aged 33, 34, 40, 40s, and 76. Of the 117 deaths, 3 (2.6%) were in old age.

- **Boston's** *Gay Community News*: 27 with a LTSP died of AIDS, their ages ranged from 27 to 60 with a median of 39; 47 without a LTSP died of AIDS; their ages ranged from 21 to 66 with a median of 39. Three had no cause of death listed. For those seven with a LTSP who did not die of AIDS: 26 murdered/ 35 systemic lupus/ 36 suicide/ 37 long illness/ 41 "brief illness"/ 45 murdered/ 69 asthma (had an ex-wife and children) for a median age of death of 37. For those without a lover: 29 murdered/ 35 murdered/ 38 long illness/ 39 aortic aneurism/ 41 multiple stab wounds/ 41 heart attack/ 41 heart attack/ 43 ? "the search for the perfect boy-bottom is over for Greg" (an S/M activist and supporter of NAMBLA)/ 45 lymphoma/ 55 pulmonary embolism/ 55 pulmonary embolism/ 67 peritonitis/ 70 cancer

(his son died of AIDS at age 27)/ ? murdered/ 74 heart attack/ 76 coughing fit. The median age of death for these 15 non-AIDS deaths without LTSP was 43. Of the 96 deaths, 5 (5.2%) occured in old age.

- **Boston's *Bay Windows:* Died of AIDS**: 34 with a LTSP, ages ranged from 28 to 47 with a median of 36.5; 37 without a LTSP, ages ranged from 26 to 65 with a median of 37; one (3%) died old. Unknown cause for 10 ranging in age from 29 to 45 with a median of 38. For those who **did not die of AIDS**: with a LTSP: 27 long illness/ 28 pneumonia/ 31 murdered/ 35 lengthy illness/ 36 long illness/ 37 long illness/ 40 pneumonia/ 43 auto accident/ 45 lymphoma/ 64 liver cancer/ 70 esophagal cancer; for those without a LTSP: 29 brief illness/ 34 long illness/ 35 liver failure/ 36 long illness/ 38 ill several months/ 43 bicycle accident/ 46 passed away [natural?]/ 47 long illness.

- **San Francisco's *Bay Area Reporter*** yielded 3,317 obituaries. The 3,286 homosexuals were divided into three groups: 1) those who died of AIDS [PCP, pneumosistis, and ARC were included], 2) those who died of non-AIDS causes, and 3) those whose cause of death was not listed. For those who died of AIDS: the ages of death for the 710 with LTSPs ranged in age from 23 to 68 with a median age of 39; 2 (< 1%) survived to age 65; the 1325 without LTSPs ranged in age from 22 to 70 with a median age of 39; 6 (< 1%) lived to old age. For those with an unlisted cause of death, the 259 with LTSPs ranged in age from 22 to 80 with a median age of 39; 5 (2%) were old vs. the 710 without LTSPs who ranged in age from 23 to 87 with a median age of 43 and 7 (1%) were old.

For those who didn't die of AIDS, the 78 with LTSPs ranged in age from 20 to 80; with a median age of death of 42, 6 (8%) died in old age: 20 murdered/ 21 suicide/ 25 traffic accident/ 27 drowned/ 28 Hodgkins'/ 28 suicide/ 28 lung cancer/ 29 lymphoma/ 30 heart attack/ 31 TB/ 31 heart attack/ 32 leukemia/ 32 pneumonia/ 32 liver failure/ 33 meningitis/ 33 motorcycle accident/ 33 pneumonia/ 34 murdered/ 34 crytosporidomoses/ 34 over-dosed/ 34 heart attack/ 35 "brief illness"/ 35 toxoplasmosis/ 36 cryptococcal meningitis/ 36 lymphoma/ 37 MAI/ 37 heart attack/ 39 lymphoma/ 40 liver failure/ 40 "short illness"/ 40 liver failure/ 41 lymphoma/ 41 toxoplasmosis lymphoma/ 41 sudden death (illness)/ 41 cryptoccocal meningitis/ 42 cancer/ 42 suicide/ 42 liver failure/ 42 murdered/ 42 murdered/ 43 leukemia/ 43 mycobacterium/ 43 internal hemorrhage/ 43 heart attack/ 43 heart attack/ 44 murdered/ 45 heart attack/ 46 heart attack/ 46 pneumonia/ 46 cancer/ 46 liver disease/ 46 lung cancer/ 47 lung cancer/ 47 murdered/ 47 heart attack/ 47 brief illness/ 47 stroke/ 48 lymphoma/ 49 liver cancer/ 51 cancer/ 55 heart attack/ 56 emphasema/ 56 cancer/ 56 heart attack/ 58 brain tumor/ 59 non-AIDS cancer/ 59 heart attack/ 59 emphysema/ 59 non-AIDS cancer/ 60 liver failure/ 62 cancer/62 heart failure/ 63 emphasema/ 65 liver cancer/ 70 murdered/ 70 cancer/ 71 lung cancer/ 78 heart-lung disease/ 80 stroke.

The 186 without a LTSP ranged in age from 17 to 85; with a median age of death of 45, 17 (9.1%) died in old age: 17 murdered/ 22 substance abuse/ 23 aortic aneurysm/24 auto accident/ 24 suicide/ 24 suicide/ 27 suicide/ 29 Hodgkins/ 29 pneumonia/ 29 pneumonia/ 29 pulmonary disease/ 29 CMV/ 29 TB/ 29 murdered/ 30 stroke/ 30 heart attack/ 30 lung cancer/ 30 lymphoma/ 30 heart attack/ 31 malignant melanoma/ 31 brain tumor/ 31 pneumonia/ 31 cryptomeningitis/ 32 brief illness/ 32 diabetes/ 33 motorcycle accident/ 32 OD/ 33 pneumonia/ 33 heart failure/ 34 liver cancer/ 34 diabetes/ 34 liver failure/ 34 pneumonia/ 34 abdominal surgery/ 35 lymphoma/ 35 suicide/ 35 murdered/ 35 liver failure/ 35 PML/ 35 heart attack/ 35 devastating illness/ 35 brain tumor/ 35 heart attack/ 36 "unexpectedly & suddenly"/ 36 cancer/ 36 Parkinson's/ 36 cancer/ 36 cancer/ 36 bacterial pneumonia/ 36 brain cancer/ 37 cerebral hemorrhage/ 37 pancreatitis/ 38 sudden illness/ 38 heart attack/ 38 heart attack/ 39 melanoma/ 39 murdered/ 39 Burkitts lymphoma/ 39 murdered/ 39 heart failure/ 40 "suddenly, inexplicably"/ 40 cancer/ 40 liver failure/ 40 lymphoma, not AIDS/ 40 lymphoma/ 40 hepatitis/ 40 sudden pneumonia/ 41 cryptoccalmeningitis/ 41 liver cancer/ 41 brain cancer/ 41 heart attack/ 42/ hepatitis/ 42 liver cancer/ 42 leukemia/ 42 cancer/ 42 liver failure/ 42 HBV/ 42 cystic fibrosis/ 43 auto accident/ 43 bone cancer/ 43 heart attack/ 44 traffic accident/ 44 auto accident/ 44 PML/ 44 cancer/ 45 sudden death/ 45 murdered/ 45 heart attack/ 45 murdered/ 45 dread disease/ 45 cancer/ 45 non-AIDS cancer/ 45 liver failure/ 46 heart surgery/ 46 kidney failure/ 46 suicide/ 47 heart attack/ 47 pneumonia/ 47 aspiration (of object)/ 47 traffic accident/ 47 toxoplasmosis/ 47 lung cancer/ 47 long illness/ 47 heart attack/ 47 heart attack/ 47 heart attack/ 48 heart attack/ 48 heart attack/ 48 lymphoma/ 48 carcinoma/ 48 toxoplasmosis/ 48 liver failure/ 49 short illness/ 49 lymphoma/ 49 lung cancer/ 49 chronic fatigue syndrome/ 49 heart attack/ 49 long illness/ 49 lymphoma/ 49 stomach problems/ 49 liver failure/ 49 not HIV/ 49 liver failure/ 50 cancer/ 50 viral infection/ 50 cancer/ 51 chronic hepatitis/ 51 hepatitis/ 51 heart attack/ 51 fall/ 52 cancer/ 52 during surgery/ 52 lymphoma/ 52 cerebral hemorrhage/ 53 sudden death/ 53 heart attack/ 53 heart attack/ 53 blood clot/ 54 suicide/ 54 cancer/ 54 fall/ 55 cancer/ 55 heart attack/ 55 spinal surgery/ 55 abdominal surgery/ 56 cancer/ 56 melanoma/ 57 cancer of throat/ 58 murdered/ 59 heart attack/ 59 heart attack/ 60 blood clots/ 60 cancer/ 60 cancer/ 61 heart attack/ 61 cancer/ 61 plane crash/ 62 cancer/ 62 Parkinson's/ 62 respiratory failure/ 62 prolonged illness/ 62 emphysema/ 63 cancer/ 63 natural causes/ 64 C.O.P.D./ 64 heart failure/ 64 murdered/ 64 cancer/ 65 auto accident/ 66 cancer/ 68 bone cancer/ 68 fall/ 68 lung cancer/ 68 cancer/ 69 blood clot on brain/ 70 cardiovascular disease/ 70 cancer/ 70 Parkinson's/ 71 heart attack/ 71 heart attack/ 72 liver disease/ 73 surgical complications/ 74 heart attack/ 78 fall/ 85 penumonia.

The 16 homosexuals who died married to a woman were aged 28, 34, 34, 35, 35, 36, 37, 37 40, 40, 41, 45, 55, 56, 61, 61 and 68. A female who was surgically transformed into a male died of AIDS at age 40; a male who was surgically transformed into a woman died of unlisted causes at 59.

- Chicago's *Windy City Times*: AIDS deaths: For the 93 who had a LTSP, ages of death ranged from 26 to 59, with a median of 38; for the 131 who did not have a LTSP, ages of death ranged from 23 to 71, with a median of 38, 1 (1%) was old. For those whose cause of death was unlisted, the 13 who had a LTSP ranged in age from 31 to 52, with a median of 40; for the 21 without a LTSP, age of death ranged from 21 to 65, with a median age of death of 40, 1 (5%) was old.

The 18 who did not die of AIDS and had a LTSP were: 27 lung cancer/ 31 heart attack/ 34 fall/ 35 heart attack/ 36 TB/ 37 long illness/ 42 brain tumor/ 43 heart attack/ 43 stroke/ 43 PML/ 45 cancer/ 46 diabetes/ 52 heart attack/ 56 cancer/ 58 cancer/ 59 heart attack/ 63 lung cancer/ 71 lung cancer with a median age of death of 43. **For the 31 who didn't have a LTSP:** 29 heart attack/ 30 auto accident/ 31 murdered/ 32 heart attack/ 34 renal failure/ 34 cancer/ 35 liver failure/ 36 heart attack/ 36 liver failure/ 37 murdered/ 37 hepatitis/ 38 murdered/ 38 heart attack/ 40 heart attack/ 41 brief illness/ 41 encephalitis/ 42 heart attack/ 43 heart attack/ 47 emphysema/ 49 heart attack/ 49 suicide/ 49 suicide/ 50 heart attack/ 55 pancreatic cancer/ 55 brain lesions/ 56 toxoplasmosis/ 57 liver failure/ 58 cancer/ 58 cancer/ 64 respiratory failure/ 64 heart attack with a median age of death of 41. The ages of those survived by a wife were: 36, 41, 51, 54, and 86. Two men who had been surgically transformed into females died at 48 (plane crash) and 62 (cancer).

- San Diego's *Update:* For those who died of AIDS: the 165 with LTSPs ranged in age from 25 to 64 with a median of 40; the 232 who were without LTSPs ranged in age from 23 to 65 with a median age of death of 40. **Those who died of non-AIDS, with LTSP:** 25 murdered/ 29 motor cycle accident/ 33 brain lymphoma/ 34 heart failure/ 34 auto accident/ 35 traffic accident/ 38 suicide/ 41 Tourette syndrome/ 42 long illness/ 44 heart attack/ 44 lung cancer/ 45 heart attack/ 45 liver cancer/ 62 leukemia/ 65 colon cancer/ 69 lung cancer/ 73 heart failure/ 73 heart failure; median age of death was 44; **without LTSP:** 28 suicide/ 33 heart failure/ 36 drug overdose/ 37 suicide/ 37 heart attack/ 39 diabetes/ 39 peritonitis/40 long illness/ 40 suicide/ 41 brief illness/ 41 Crohn's disease/ 43 pneumonia/ 45 auto accident/ 46 liver cancer/ 47 heart failure/ 48 heart attack/ 48 brain tumor/ 50 long illness/ 50 non-AIDS cancer/ 52 auto accident/ 58 emphysema/ 59 lung cancer/ 60 drug overdose/ 63 heart attack/ 64 fibrotic mesenteritis/ 65 stomach cancer/ 67 stroke/ 67 heart attack/ 67 cancer/ 70 auto accident/ 70 heart at-

tack/ 71 emphysema/ 72 emphysema/ 73 colon cancer/ 74 heart attack/ 76 prostate cancer with a median age of death of 50. The 8 married to a wife were aged 35, 40, 40, 44, 48, 63, 67 and 78.

- From *Seattle Gay News*: Had we started with 1979 there would have been an additional 10 murders, 3 suicides, 3 non-vehicular accidents and a heart attack. The reporting appeared too focused on dramatic events until 1983, so the following covers 1983 through February 7, 1992. For those who died of AIDS, those 72 with a LTSP ranged in age from 29 to 62 with a median age of 38; those 115 without a LTSP ranged in age from 24 to 66 with a median of 36, 1 (1%) was old. Unknown cause of death: those 33 with a LTSP ranged in age from 25 to 47 with a median of 38; the 84 without a LTSP ranged in age from 19 to 75 with a median of 40, 4 (5%) attained old age. The 8 with a LTSP who died of non-AIDS: 26 murdered/ 33 heart failure/ 35 diabetes/ 35 heart failure/ 37 traffic accident/ 41 murdered/ 52 murdered/ 53 liver cancer for a median of 36; the 38 without a LTSP who died of non-AIDS: 16 murdered/ 18 murdered/ 24 murdered/ 26 suicide/ 27 short illness/ 28 epileptic seizure/ 30 cancer/ 30 diabetes/ 31 liver failure/ 32 sudden illness/ 32 brain cancer/ 33 heart failure/ 34 leukemia/ 35 substance abuse/ 35 substance abuse/ 35 murdered/ 35 diabetes/ 36 heart attack/ 38 heart attack/ 38 auto accident/ 39 hepatitis/ 40 suicide/ 41 heart failure/ 43 natural causes/ 40s murdered/ 42 murdered/ 43 sudden death/ 49 stroke/ 50 heart failure/ 53 substance abuse/ 55 heart failure/ 55 meningitis/ 58 lung cancer/ 58 lung cancer/ 62 lung cancer/ 73 cancere/ 77 heart failure for a median of 37 and 2 (5%) attaining old age. Those who died married to a woman were aged 32, 34 and 40.

- From Sacramento's *Mom...Guess What!* AIDS: 17 with LTSP ranging from 31 to 54, with a median of 40 and 1 without age; 23 without LTSP ranging from 27 to 60, with a median of 39 and 1 without age. Of unlisted causes with LTSP: 7 ranging from age 27 to 68 and a median of 44; 12 without LTSP ranging from 29 to 68 with a median of 42. Of those who didn't die of AIDS: with a LTSP: 24 murdered/ 38 suicide/ 46 long illness; without a LTSP: 33 severe dehydration/ 56 cancer. Two of these 66 (3%) attained old age.

- From Atlanta's *Southern Voice* who died of AIDS: with LTSP, ages 32 and 44; without LTSP, ages 36, 37, 40 & 46. One, with LTSP died at 33 of unlisted cause.

- From *Philadelphia Gay News:* AIDS: 7 with LTSP, aged 30 to 58 with a median of 40; 17 without LTSP, aged 27 to 54 with a median of 39. Of unlisted causes and LTSP: 5 ranging in age from 36 to 48 with a median of 40; without an LTSP were aged 36, 41, 50, 52 and 73. Of those who didn't die of AIDS: 2 with a LTSP:42 murdered/ 44 "died suddenly"; while of those without an LTSP: 30 murdered/ 31 "short illness"/ 33 chronic fatigue syndrome/ 37 murdered/ 50 murdered/ 52 murdered.

• **From** Mineapolis/St. Paul *Equal Time* and *GLC News*: AIDS: 19 with a LTSP ranging in age from 24 to 47 with a median of 39; 30 without an LTSP ranging in age from 27 to 49 with a median of 36. Two with LTSP died of unlisted causes at 27 and 38; 5 without LTSP died at 31, 32, 34, 43 and 52. Non-AIDS: with LTSP: 34 of "unknown cause"/ 34 stroke/ 47 heart attack/ 52 heart attack; without LTSP were: 21 murdered/ 28 murdered/ 32 murdered/ 36 non-Hodgkins lymphoma/ 36 liver cancer/ 39 murdered/ 43 fall/ 43 kidney failure/ 48 murdered/ 50 murdered/ 53 murdered/ 56 suicide/ 62 cancer. One died of AIDS with a wife at age 32.

• **From** Denver's *Out Front:* males' names, year (at times date) of birth and death, and usually picutures were recorded. Only 3 deaths were specifically attributed to AIDS, one to traffic and only 3 were noted as having a LTSP. The 69 recorded ranged in age from 24 to 58 with a median of 36.

• **From** *The Advocate*: As noted above, there was considerable overlap between those listed in the *Advocate* and other homosexual journals, so only 55 of the male deaths are included in our talley. However, of the 160 homosexual deaths, 142 (89%) were due to AIDS; 17 due to other causes, one not given. The AIDS deaths ranged from age 21 through 72 with a Median of 42, the non-AIDS deaths ranged from age 33 through 73 with a Median of 65. Five (3.1%) of the deaths were violent with an age range of 34 to 70 and a median of 44.

Lesbians: *Blade* 24 auto accident/ 24 ?/ 26 beaten to death, activist/ 26 auto accident, police officer/ 28 auto accident, cable TV installer/ 32 liver cancer, lesbian activist/ 33 suicide, industrial hygienist/34 suicide, activist/ 35 AIDS, AIDS educator/ 36 liver cancer, ?/ 36 AIDS, model/39 lung cancer/ 39 Lung cancer, editor/ 41 "apparent natural causes" ?/41 ? with daughter & adopted son/ 43 operation failed, poet, 2 children/ 44 breast cancer/ 45 breast cancer, poet, 2 adopted children/58 lung cancer, publisher/ 58 cancer, ?/ 58 cancer, poet/ 60 cancer, activist/ 62 heart surgery, printer/ 63 lung cancer, accounting/ 65 lung cancer, actress/73 ?, ?/ 74 cancer, machinist/ 83 ?, actress/ 83 cancer, novelist/ 93 heart failure, artist/ *Just Out* 45 cancer, professor *Gay Community News* 33 cervical cancer/ 40s suicide/ 40s murder/ 44 breast cancer/ 45 brain tumor/ 65 unknown causes/ 76 asthma *NY Native* 29 murdered/ 33 murdered/ 35 AIDS, actress/ 45 brain tumor, artist/ 48 ?, Pres. Gay Woman's Alternative/ 66 cancer, had son w gay in 1959/ 67 ? writer / 78 ? writer/ *Bay Area Reporter* 23 suicide/ 30 ?/ 31 ?/ 32 motorcycle accident/ 34 cervical cancer/ 36 ?/ 40 ?/ 40 breast cancer/ 41 murdered/ 42 diabetes/ 44?/ 44 cancer/ 44 AIDS/ 44 ?/ 44 AIDS [3 children]/ 45 cancer/ 45 cancer/ 46 cancer/ 55 lung cancer/ 59 ?/ 59 ?/ 63 pneumonia/ 64 lung cancer/ 70 pneumonia/ 78 ?/ 79 heart attack/ 80 ?/87 pneumonia/ 88 ?/ ? ?/ *Windy City Times* 45 breast cancer/ 46 ?/ 47 pancreatic cancer/ 52 heart attack/ 55 suicide/ 59 cancer/64 kidney

failure/ 65 cancer/ 72 pneumonia/ 78 stroke/ 78 ovarian cancer/ 84 ?/ *Update* 40 liver cancer/ 65 lung cancer/ 79 stroke/ 92 heart failure/ *Seattle Gay News* 15 heart failure/ 19 suicide/ 22 pneumonia/ 30s short illness/ 30s cancer/ 37 fall/ 40 cancer/ 40s suicide/ 43 traffic accident/ 43 cancer/ 43 murdered/ 45 leukemia/ 46 ?/ 46 cancer/ *Bay Windows* 38 murdered/ 40 murdered/ 57 cancer/ *Mom ...Guess What?* 39 AIDS/ 42 AIDS/ 65 lung cancer/ *Philadelphia Gay News* 28 brief illness/ 39 bleeding stomach/ 44 died suddenly (had son) *Equal Time* 27 traffic accident/ 33 fall/ 33 fall/ 40 ?/ 41 heart infection/ 49 ? (3 children)/ 50's suicide/ 53 metastatic breast cancer/ 60 metastatic breast cancer/ 87 pneumonia/ *Southern Voice* 37 head injury/ 83 cancer/ *The Advocate* 25 AIDS/ 37 AIDS/ 41 AIDS/ 69 hemorrhage/ 79 stroke/ 83 stroke. For the 133 lesbians, the median age of death was 45, 31 (23%) attained old age.

Discussion

The tragedy for both the deceased and society from such foreshortened lives is heart-rending. One cannot help but be saddened by the frequency of early and often violent death among those so young.

Overall estimate: Combining the 6,516 homosexual obituaries (excluding the 4 individuals who had a sex-change), the median age of death for homosexuals was 39 if AIDS occurred (39 for those with (a) Long Time Sex Partner(s) [LTSPs], 39 for those without). Our finding of a median age of 39 for AIDS deaths jibes both with contemporary brain research on homosexuals who died of AIDS: 10 in Holland ranged in age from 25 to 43 with a median of 39 (3) and 19 in the U.S. ranged in age from 26 to 53, with a mean age of 38.2 (4) and the mean age of 39 for the initial 26 homosexuals with AIDS reported by the *Morbidity and Mortality Weekly Report* on July 4, 1981. The median age of those who did not die of AIDS was 42 with <9% attaining old age [41 for those with LTSPs, with <7% attaining age 65; 43 for those without, with <11% attaining age 65]. The 47 married to a woman had a median age of death of 44 with 4 (9%) reaching old age. Overall, <2% of homosexuals reached old age, but if AIDS is excluded as a cause of death then 71 (9%) of 803 died old (some of the diseases, such as lymphoma, "long illness," and some heart failures, may have been related to HIV infection, and some of the "missing" causes of death may have failed to reveal a violent death or heart failure [and "sudden death,""brief illness" and "natural causes" adds uncertainty to the data base as well]). If the 16 homosexual deaths that arguably might have involved AIDS/HIV (e.g., lymphoma, long illness) among those with LTSPs were removed their distribution still yielded a Md of 41, but removal of the 21 deaths among the non-LTSPS that might have involved AIDS/HIV raised their Md to 44, their proportion attaining old age to <12%; and the overall Md of those not dying of AIDS/HIV to 44. So some contamination of the non-AIDS data-base of deaths by HIV infection seems likely.

The murder, suicide, accident and heart attack rates among homosexuals substantially exceeded those of either White or Black males aged 25 to 44 in 1988[2]. Considering violent deaths: 91/6,516 = 1.4% of homosexuals were murdered which is 21 times the .064% of Black and 116 times the .012% of White males aged 25 to 44; 37/6,516 = .57% of homosexuals committed suicide which is 30 times the .019% of Black and 24 times the .024% of White males aged 25 to 44; 36/6,516 = .55% died in motor vehicle accidents which is 18 times the .031% of White and 14 times the .038% of Black males aged 25 to 44; and 20/6,516 = .31% died in non-motor vehicle accidents which is 10 times the approximately .03% of White and 8 times the .04% of Black males aged 25 to 44 (assuming that about half of accidental death is due to motor vehicle accidents). Overall, not including drug overdosing, 2.8% of

homosexuals experienced a violent death which is 17 times the .161% of Black and 28 times the .097% of White males aged 25 to 44. Additionally, the homosexuals' heart failure rate of 114/6,516 = 1.7% was 22 times the 0.081% of White and 11 times the 0.165% of Black males aged 25 to 54.[2]

The lesbian material is limited but was consistent over the period of data gathering. For instance, the first 33 lesbians in our data-base, collected in the first 3 months of data-gathering, had a median age of death of 45, 27% died old. The lesbian murder rate of 8/133 = 6.0% is 501 times the .012% of White females aged 25-44; their suicide rate of 8/133 = 6.0% is 859 times the .007% rate of White females aged 25-44, and their motor vehicle accident rate of 6/133 = 4.5% is 322 times the .014% of White females aged 25-44. Lesbians' 26/133 = 19.5% violent deaths exceeded the 2.8% of homosexuals' by a factor of 7 and exceeded that of White females aged 25-44 (.039%) by a factor of 487. The rate of AIDS deaths among lesbians (10/133 = 7.5%) exceeded that of females-in-general (.00014%) by a considerable margin. Although about 20% of the causes of death for both homosexuals and lesbians were not provided, all were utilized in the denominator.

On its face, the consistency of the median age of death for homosexuals indexed by the obituaries of 16 independent homosexual journals over an eleven year period, suggests an average life-span locating in the mid-40s if AIDS fails to intervene, late 30s-to-early-40s if it does. The more limited evidence regarding lesbian deaths suggests an average life-span of under 50 years. Our findings seem markedly discordant with physician Bancroft's (1) contention that a "homosexual lifestyle is compatible with all the criteria of health except possibly fertility," clinical psychologist Hooker's (2) observation that "the only obvious difference between homosexuals and heterosexuals is in psychosexual object choice" or psychoanalyst Ernest van den Haag's assertion that "homosexuality does not shorten life" (6). It is, however, remarkably in line with the contentions of homosexual gerontologist Donald Catalano (7) that age 40 among homosexuals is equivalent to age 65 among heterosexuals (e.g., among "Gay men, 40 is often the age at which the guy is thought of as 'older.' Among Lesbians, it is sometimes as young as 30!") Biologist Peter Duesberg opined that "[male] homosexuality ... hasn't become any more dangerous in 1980 than it was in Socrates' and Plato's day" (8). Our results suggest that AIDS has reduced the homosexual lifespan by about 3 to 5 years, making homosexuality appreciably more dangerous today than in the past [if we assume an average age of death of 42 before AIDS, then AIDS is associated with a 7% to 12% reduction in life-span].

The discrepancy between the median life-span of married men and homosexuals (i.e., 75 – 42 = 33 years ignoring AIDS deaths) or married women and lesbians (i.e., 79 – 45 = 34 years) is considerably

larger than any registered discrepancy between "conventional" life-styles (e.g., smokers v. non-smokers; high fat v. low fat diet) which we could locate in the literature. In terms of "unconventional" lifestyles, homosexuality appears similar to the shortened and more violent lives of intravenous drug users (9). In a prospective 4-year study of 3,324 U.S. addicts, death rates were 3 to 14 times higher than those of similar age in the general population (10). A retrospective Italian study of 4,473 addicts (11) noted a 10-fold excess in the expected death rate from all causes among males and an 18 times higher-than-expected death rate among females. An excess of violent death among users was noted in both studies.

No evidence that having a homosexual long time sexual partner [LTSP] might be protective of the participants' health surfaced. Perhaps this is related to the often noted lack of fidelity in homosexual relationships (12), but whatever the reason, these data lend no support to the notion of public health benefits from homosexual marriage. On the other hand, the 45 who died married to a woman ranged in age from 28 to 86 with a median of 43 suggesting some benefit from marriage to a woman. Toward the end of data collection, we examined 59 consequtive months of the *Washington Blade* regarding those who were listed as having left (a) child(ren)). The 893 without children ranged in age from 21 to 97 with a median age of death of 37, and 10 (1%) died old; the 74 with children ranged from 30 to 69 with a median age of death of 46; 2 (3%) died old. These results are also consistent with the notion that there may be health benefits associated with marriage to a woman and/or fatherhood – possibly related to reduced homosexual activity and/or delayed entry into homosexuality.

Since they provided so much of the database, the *Blade*'s and *Bay Area Reporter*'s differences are of interest. While 16/3,286 = 0.49% of San Francisco homosexuals were murdered, 0.27% committed suicide, 0.30% died in traffic accidents, and 0.21% died in other accidents (i.e., 1.3% met a violent death); each of these statistics is lower than its corresponding rate for homosexuals in Washington, DC (e.g., 1.3% + 0.97% + 0.89% + 0.57% = 3.7%]. The difference could be a function of social differences in the two cities (although both have had "gay rights" since the mid-1970s), differences in method of selection of obituaries, or the many missing 'cause of death' reports in the San Francisco material [almost 30%]. It would seem inappropriate to regard Portland as being the "most violent" because 22% of its few obituaries involved a violent death, likewise for Philadelphia's 12%, New York's 12.8%, Sacramento's 4.7%, Minneapolis' 4.4% or Boston's 4.0%. But Seattle's 3.9% is not too far removed from Chicago's 2.2%, or San Diego's 2.9%. Those cities which contributed substantial numbers of deaths to our data-base (e.g., San Francisco, Washington, Seattle, Chicago, San Diego) had lower rates of violent death than the other cities, so we suspect that the journalistic attention that violent death attracts accounts for some elevation of violent death rate. However, since the *Advocate* covers the

homosexual movement all across the world and generated a violent death rate of 5/159 (3.1%), it appears likely that a high rate of violent death is a component of the gay life.

Even if eminent homosexuals are considered, the pattern of dying is similar. For instance, the *Washington Blade* ran a retrospective "The Decade in Review: The Community loses some of its best and brightest" December 29, 1989. 74 gay and 5 lesbian deaths were recorded. The notable gays ranged in age from 30 to 75 with a median of 44 and only 3 (4%) attained old age. Two (2.7%) died a violent death. The 5 lesbians ranged in age from 35 to 87 with a median of 45 and 2 (40%) died old.

The pattern of obitiuaries was quite notably consistent. For instance, obituaries from the *Bay Area Reporter, Equal Time, Mom ... Guess What?* and *Philadelphia Gay News* were collected in a batch for October, 1991 through June, 1992 at the San Francisco Castro branch public library in June, 1992. This sub-sample yielded: 1) 118 gays with LTSPs who died of AIDS; their age range of death was 25-68; their median age of death was 39 and 2 (2%) attained old age; 2) 302 gays with no LTSPs who died of AIDS; their age range of death was 25-67; their median age of death was 39 and 1 (< 1%) attained old age; 3) 21 gays with LTSPs who died of something other than AIDS; their age range of death was 28-80; their median age of death was 42 and 2 (11%) attained old age; 4) 41 gays without LTSPs who died of something other than AIDS; their age range of death was 24-85; their median age of death was 40 and 2 (5%) attained old age; and 5) 9 lesbians whose ages of death were 23 (suicide), 36 (?), 39 (AIDS), 41 (murdered), 42 (diabetes), 44 ("died suddenly"), 46 (cancer), 49 (?), and 64 (lung cancer).

How could homosexuals' life-span be so short and the phenomenon apparently go unnoted in the professional literature? The extremely influential 1969 *National Institute of Mental Health Task Force on Homosexuality* (2), which recommended social acceptance of homosexuality and homosexuals, didn't even mention Sexually Transmitted Diseases, much less a shortened life-span. Homosexuals themselves may be generally unaware of their reduced life chances. The article highlighting the thinking of Donald Catalano of "an abandonment of the chronological mark, with the replacement being 'functional age'" (7) speculating on gay gerontology was the only systematic treatment of the concept we found in many thousands of pages of homosexual newspapers. Another homosexual writing about "A scary thing about being gay" wondered "where do the Gay men go?" since his sources hadn't seen any in nursing homes (13). Even the 1990 issue of the *Journal of Homosexuality* devoted to "Gay Midlife and Maturity" featured samples notable for their paucity of those over the age of 64 [see below]. Likewise Harry (14) noted that his sample "appears to somewhat underrepresent truly older respondents. This is a problem found in all of the studies of male homosexuals" (p. 30, only 1% of his respon-

dents were over the age of 59). The infrequency of older homosexuals in meeting places or areas in which homosexuals congregate might be construed by homosexuals as a reasonable response to the premium placed upon youth and youthful looks among them. Perhaps they assume that older homosexuals, knowing that they would attract little sexual interest, simply absent themselves from such gatherings. Not noticing the absence or underrepresentation of an age group in which one is not particularly interested would be understandable. The homosexual life is often mobile, with participants leaving one city for another (the obituaries list large numbers of bartenders, waiters, hairstylists and functionaries in the "homosexual community" who can easily move rapidly with little economic penalty), that keeping track of participants who are not well known is made difficult. The various cohabitive arrangements of homosexuals are short (the longest such union averaging less than a year in one study [15) so that 'losing track' of a previous partner might be expected. Only after our study was well underway did we notice how seldom older faces graced the pages of homosexual newspapers. Further, many individuals apparently quit the lifestyle (perhaps this is particularly so of females, as is claimed in the December, 1988 *Guide Magazine*). So some unknown mix of high mobility, short relationships, and dropping out of the life style may combine to hide the high mortality rate from homosexuals themselves. Finally, perhaps this pheomenon has been overlooked. Questions of handedness have occupied significant amounts of scientific attention for over 75 years, yet the possible discovery that the left-handed may live shorter lifespans was only documented in 1991 (16).

It might be argued that the gay movement, which is often dated from the Stonewall riot of 1969, is too new to have incorporated older people, so older homosexuals either don't exist or are unknown to other homosexuals. There are a number of considerations that argue against this explanation: 1) The *New York Native* serves one of the oldest, if not the oldest homosexual community in the U.S. – Kinsey studied it intensively in the 1940s. Of the cities from which the *Gay Report* got its samples, the largest sub-sample was from New York and the next largest from San Francisco and the fourth largest from Chicago – the size of the sub-sample suggestive of the age as well as the size of the underlying communities. Hooker (17) studied the homosexual communities in Los Angeles, San Francisco, Chicago and New York in the late 1940s-early 1950s. Given the intergenerational sexual contacts (e.g., through prostitution and "sugar daddyism") and social contacts it would appear unlikely that older homosexuals would be unknown to the gay community in New York, Chicago or San Francisco. (In fact, the only photograph of an old person in 5 consecutive years of the *Seattle Gay News* was that of a 67 year old who was featured as a "mainstay of Seattle's gay community" in its March 16, 1979 issue). Given their interest in making their numbers and influence appear as great as possible, no obvious reason to shelter

dead older homosexuals from appearing in the homosexual press' obituaries presents itself. Further, the *Native* is highly selective in its obituaries, having listed only 117 eminent or prominent homosexuals in 11 years of publication. Eminence is associated with age, and the median age of the *Native*'s homosexuals who died of AIDS was 39, two years older than those listed in the *Blade*; likewise the median age of those who did not die of AIDS in the *Native* was 46 vs. a comparable median of 65 in the *Blade*.. *The Advocate*, which lists eminent homosexual's deaths worldwide, yielded 160 deaths ranging in age from 26 to 73, with a median of 42. Yet even with this displacement toward older age of death, only 3 (2.6%) of the 117 homosexuals listed in the *Native* and 13 (8%) of those listed in *The Advocate* attained old age vs. the 1% recorded in Washington's *Blade* and San Francisco's *Bay Area Reporter.*

2) Some old homosexuals' deaths were recorded, albeit at a rate consistent with a relatively short average life-span.

3) The obituaries/death notices from the homosexual press may be biased in some unknown fashion. However, we found no systematic evidence of an increase in median age of demise or proportions surviving to age 65. Thus the median age of deaths recorded in the *Blade* , the *Bay Area Reporter, Seattle Gay News* and *Update* per calender year have varied upward or downward by a year or two, but not in any systematic fashion. Finally,

4) we performed random area samples in 6 U.S. urban areas in 1983-1984 (15). Of those claiming to be bisexual or homosexual, 5.6% of men claimed to be a father and 32.1% of women claimed to be a mother. Examining 864 consecutive obituaries from the *Washington Blade*, we found that 71/847 (8.4%) of gays and 6/18 (33%) of lesbians had one or more children according to the listing. While this correspondence between two quite dissimilar methods of data-collection does not bear directly on the life-span question, it suggests that the pool of homosexuals was similar in the two data-bases and further suggests a stability in the social characteristics of homosexual practitioners over the past decade.

Studies of homosexuality have reported age distributions consonant with considerable attrition of homosexuals as they age:

1) In 1858, considerably before health effects of homosexuality were widely debated, Tardieu (18) reported on the age distribution of males imprisoned in France for sodomy. Of the 216 whose age was given, the age range was from under 15 to 69, with a median age of under age 25; 2.3% were old. If only those aged 18 or over is considered, the median age increased to almost 40, and 3.5% were old.

2) In 1914, Hirschfeld (19) reported on males convicted in Germany of involvement in sodomy. The age distribution ranged from under 15 to over the age of 50, with a median of 24 years. Since "over 50"

was the last category, it cannot be determined just how many, if any, attained age 65. But only 9% were over age 50, which is similar, if smaller, than Tardieu's 12% over age 50, and it appears probable that no more than 1% to 3% were old. If we ignore those under the age of 18, the median age increases to almost 29, and as many as 4% might be old.

3) Long before the official onset of AIDS in 1981, Kinsey and his investigators spent over 12 years in the late 1930s and 1940s, assiduously seeking respondents from reputationally homosexual situations (e.g., bars, baths, homosexual boarding houses, social clubs *et cetera*) where a wide age range of homosexuals would be expected. While Kinsey's non-homosexual sample was also deficient in old subjects, the manner in which he sampled favored obtaining older homosexuals. Since most of his sampling was in schools and prisons, the youngish cast of his non-homosexual sample was assured. Much of his homosexual sample came from the schools and prisons as well. With the apparent exception of prostitutes, Kinsey never engaged in special sampling for non-homosexuals *per se*. But he went to extraordinary efforts to obtain homosexuals. He was rapidly seen by homosexuals as a liberator — someone who would free homosexuality from social opprobrium. In appreciation, homosexuals volunteered to be included in his sample (20). Since, if anything, older followers of a divergent life-style have reason to justify and account for their life-choices, we could expect older homosexuals to have been especially eager to tell their life histories. This volunteer bias, coupled with cash payments for leads and interviews, would seem to assure age diversity. As males/females, whites/Blacks, and delinquents/non-delinquents were reported on separately, it would appear reasonable to consider them 8 different samples of homosexuals. For males, 8 (1%) of 946 white non-delinquents; 4 (1%) of 782 white delinquents; 1 (1%) of 95 Black non-delinquents; and none of 243 Black delinquents were older than 65. For females the corresponding statistics were 2 (1%) of 260, none of 84, none of 45 and none of 86. Even if the homosexual samples were combined, only 0.6% of his gays and 0.4% of his lesbians were over the age of 65 (21).

4) One of the more influential samples of homosexuals was provided by the Mattachine Society (one of the original homosexual rights organizations) in the late 1940s and early 1950s. This sample was recruited from what was then the leadership of the homosexual community. The Mattachine assembled a psychologically mature group of homosexuals to present to Evelyn Hooker (17) to prove that they could score as normal on various projective tests. Yet the oldest of these 30 subjects was 50 [her Table 1 incorrectly lists a 57], the next oldest was 44, and the median age was 33. In the early 1960s, Berger (18) reported a concerted attempt to draw a sample of old homosexuals. But he ended up starting his sampling at age 40 and only 34 of his 112 respondents were over the age of 59.

5) In 1969-1970, when only a handful of homosexuals had ever died of AIDS (and organized medicine was unaware that AIDS existed), the Kinsey institute surveyed homosexuals in San Francisco (12). Sampling was devised to represent the range of homosexuals living there at the time. Although recruiting of respondents occurred in 8 different ways (e.g., bars, advertisements), and the investigators intended to get only a quarter of the sample from those over the age of 45, only 23% of the homosexual sample and 18% of the lesbian sample was older than 45. The decision to draw only a quarter of its sample from homosexuals over 45 (and not to report the age distribution of its sample) is consonant with a paucity of older homosexuals.

6) In 1977, when probably fewer than a hundred homosexuals in the world had, unbeknownst to the medical community, died of AIDS, the largest survey of homosexuals reported 0.2% of its lesbians (2/948) and 0.8% of its homosexuals (33/4,168) were aged 65 or older (23).

7) In 1978 openly homosexual Spada (24) questionnaired 1,022 homosexuals by mail. The median age was 30, but only 2.5% were over age 65.

8) In 1979, openly lesbian Mendola (25) questionnaired 405 homosexuals by mail. The median age was 34, and only 10% were aged 50 or over – given the shape of the age curve, probably less than 1% were old. In 1978, a sample of 478 Australian homosexuals aged 16 to 74 yielded only 11% over age 45 (26). In the same year, a sample of 101 homosexuals who belonged to a group for gays over age 40 in Chicago yielded only 21 over age 59 (27). Similarly, a study of 46 gay couples reported only one individual who was over age 65 (28). It would seem that given the desire to justify one's life-course, older homosexuals should have been attracted to the Kinsey, 1970 Kinsey Institute, Hooker and possibly even the Jay-Young, Spada and Mendola efforts. Few may have come forward because few existed.

9) Interest in Gay Bowel Syndrome, STDs and hepatitis generated a number of samples of homosexuals in the mid-1970s to early 1980s: a) in 1982, only one of 103 homosexuals in San Francisco was old (29); b) between 1977 through 1979 the oldest of 102 homosexuals in Seattle was 58 (30); c) in 1979, 5,324 homosexual visitors to Denver's STD clinic had a median age of 27, a mean of 28.5 and the oldest was 67 (31); d) in 1980, only 2 of 145 homosexuals in Stockholm were older than 59 (32); e) in 1982, the oldest in a Danish study of 84 homosexuals was 50 (33); f) in 1977 apparently none of 144 Seattle homosexuals was old, and only 14 were over the age of 35 (34); g) in the early 1980s, 604 homosexuals from Sweden, Finland, Australia and Ireland averaged about age 30, and apparently less than 1% were old (35); h) in 1982 only 22% of a sample of 261 Pennsylvania homosexuals and only 11%

of 104 lesbians were were older than 44 (36). The oldest homosexual of 161 out of Houston was aged 54 (37) and the oldest out of 150 from Minneapolis was aged 40 (38).

10) In 1983, at the beginnings of the AIDS epidemic, Family Research Institute (FRI) performed a 5-city random sexuality survey (15). Adult respondents classified themselves as asexual, exclusively heterosexual, mainly heterosexual, bisexual or homosexual in sexual interest and then, later in the questionnaire, as heterosexual, bisexual or homosexual. Considering only the ages of those who answered both questions, for men, the 1,429 who reported being non-homosexual at the time of the interview ranged in age from 18 to 85, with a median age of 35 and 121 (8%) were old (aged 65 or older). The 81 who reported being bisexual or homosexual ranged in age from 18 to 72, with a median age of 32 and 3 (4%) were old. For women, the 2,359 non-homosexuals ranged in age from 18 to 85, with a median age of 35 and 141 (6%) were old. The 69 who were lesbian ranged in age from 19 to 64, with a median age of 28 and none were old. For those under the age of 31, 75 (4.7%) of 1,591 were "gay" vs. 3 (1.8%) of 168 who were homosexual in the sample aged 65 or over. In 1984 FRI repeated its survey in Dallas, TX with an emphasis upon drawing from reputationally homosexual areas of town. For males, 9% (30/352) and for females, 6% (24/417) of the samples were old. Yet none of the 9 lesbians and none of the 57 homosexuals exceeded age 55.

11) In 1970, the National Opinion Research Center (NORC) questionnaired a national random sample of approximately 1100 men regarding whether they had had a homosexual experience in the past two years (39). Respondents were divided into those aged 21-29, 30-44, 45-64 and 65+. Fractions that said they had were 2.6%, .7%, 1.1%, and 0% respectively. A similar nationwide survey was performed by NORC in 1988 regarding homosexual activity in the past year. Fractions of the 579 men that said they had were 3.8%, 2.1%, 2.2% and 2.9% respectively. [The percentages are estimates, NORC did not report the raw numbers that fell into each category.] In 1986, Ross (48) administered a questionnaire to 631 men and 935 women randomly drawn from Australians aged 15 and over. The percentage of those aged 15-24, 25-34, 35-44, 45-54, 55-64 and 65 and over who reported homosexual sex in the past year was 6.0%, 10.5%, 3.3%, 11.3%, 4.6% and 2.0% for males and 3.2%, 2.2%, 3.2%, 1.4%, 4.3%, and 2.3% for females.

12) From the beginings of the AIDS epidemic until today, the age distribution of homosexuals in the medical literature tends to trace a pattern similar to that generated by our sample of obituaries. For instance, the first 7 homosexual AIDS cases in Italy ranged in age from 22 to 51 with a median of 39 (40), while a 1990 sampling of 349 homosexuals in San Francisco reported a median age of about 34 and only

4.3% were aged 50 or older (41). In the 1984 multicenter AIDS cohort study, the oldest male homosexual of 1,153 in Baltimore/DC was 60; the oldest of 1,102 in Chicago was 60; the oldest of 1,063 in Pittsburgh was 68; and the oldest of 1,637 in Los Angeles was 50. The median ages of the samples were 33, 32, 31 and 32 respectively (42). In 1988-1989 similar samples of 201, 202, & 198 homosexual males yielded mean ages of 31, 30 & 34 with the oldest age in Chicago being 69, in Denver 54, and in San Francisco 75 (43). In a large, still apparently unpublished study of 1,917 lesbians (*Blade*, January 15, 1988), 80% of the respondents were between the ages of 25 and 44 (as compared to 29% between those ages for adult women in-general). While the data is incompletely reported, the British random phone survey of 18,876 men and women aged 16-59 reported that 1.8% of men under the age of 35 and 1.0% of those 35-59 claimed at least one homosexual experience in the past 5 years (47).

While not attempting to index homosexuality *per se*, the on-going National Center for Health Statistics AIDS knowledge survey (44) has asked 119,347 randomly chosen respondents whether, since 1977, men have "had sex with another man" or "taken illegal drugs by needle" "even 1 time." While the age data is not broken down by sex, on-average 4% of those aged 18 through 29, 3% of those aged 30-49, and about .5% of those aged 50 or older answered yes to this question. While we cannot know whether the decline occurs because of deaths and/or withdrawals from homosexuality, even if homosexual sex were the only reason for an affirmative response, these results would be consistent with a substantial drop-off in homosexual activity among men in their 40s and continued diminution throughout the rest of the life-span.

Does Sexual Vigor Incline Toward A Reduced Lifespan?

Pitirim Sorokin studied the lifespans of a number of life-styles and contended that "Don Juans and Messalinas rarely reached old age; usually they die early, often by violent means. ... profligates undermine their vitality and shorten their life's span." (45, p. 57) Sorokin compared the average lifespans of 3,090 Christian Catholic saints with those of 332 monarchs and found that the saints averaged 69 years of life and monarchs 54. He also reported that the "more Bohemian" of the professionals (e.g., "poets, musicians, painters, etc.") had the next lowest to monarchs' lifespan at age 64 while the theologians had the highest for the period at 69. Sorokin argued that continence or sexual moderation was probably the decisive factor in his findings. Some buttresing for his contention is found in the results of studying animals and plants that are not allowed to engage in sex – generally the de-sexed or those kept from having sex live considerably longer (46). One of the hallmarks of the homosexual lifestyle is its emphasis upon sex. The average homosexual reports prodigious sexual feats in terms of numbers of

partners, activities/partner *et cetera*. Thus the shortened lifespan of homoseuxals might be a consequence of the sheer volume of sexual activity in which they indulge.

Is homosexual activity toxic or heterosexual activity beneficial?

The homosexuals appearing in the obituaries of homosexual journals are visible and known as homosexuals. Richard Isay (49), Chairman of the American Psychiatric Association's Committee on Gay, Lesbian, and Bisexual Issues, contends that those who are "out" and known as gay are the healthiest of homosexuals. If these are the healthiest homosexuals, the considerable differential between the life-spans of these homosexuals and non-homosexuals crys for explanation. Is something other than life-threatening infectious organisms passed between those who engage in homosexuality? Is some biochemical substance exchanged that *harms* the body? Does the lack of social-psychological complementarity that typically exists with a man-woman couple causes greater stress that somehow translates into more frequent bodily dysfunction? And/or, perhaps some biochemical substance is *missing* in homosexual sex that ordinarily benefits those who participate in heterosexual sexual exchange.

Conclusion: Although employing different methodologies, 11 of the 13 studies of homosexuality, performed a century before, decades before, at the very beginnings of, and during the AIDS epidemic, generated data sets consistent with disproportionately early deaths among homosexuals (the only partial exceptions are the 1988 NORC effort, and even it reports a diminution in old age, albeit not as precipitous and the 1986 Ross effort regarding sex between women). With the limited exceptions of the 1988 NORC (and its non-fit could easily be due to a chance sampling fluctuation and may be related to providing neither numerators nor denominators for its findings) and the 1986 Ross effort, 45 of the 47 samples detailed above (counting samples of the sexes separately, and the only exceptions being the 1988 NORC and 1986 Ross studies) produced results consistent with an underlying age distribution of homosexuals that peaks in the 20s, with a midpoint in the early-40s tapering off rapidly into old age. It is noteworthy that the 45 samples were similar in age distribution – with a paucity of old homosexuals irrespective of country or continent from which they were drawn. Similarly, each of the 15 sets of homosexual newspaper obituaries, from coast to coast and internationally, independently generated a distribution of deaths consistent with the same kind of curve. Drug abusers and homosexuals are disproportionately affected by AIDS. It also appears that they shared and currently share a sharply reduced lifespan associated with their lifestyles.

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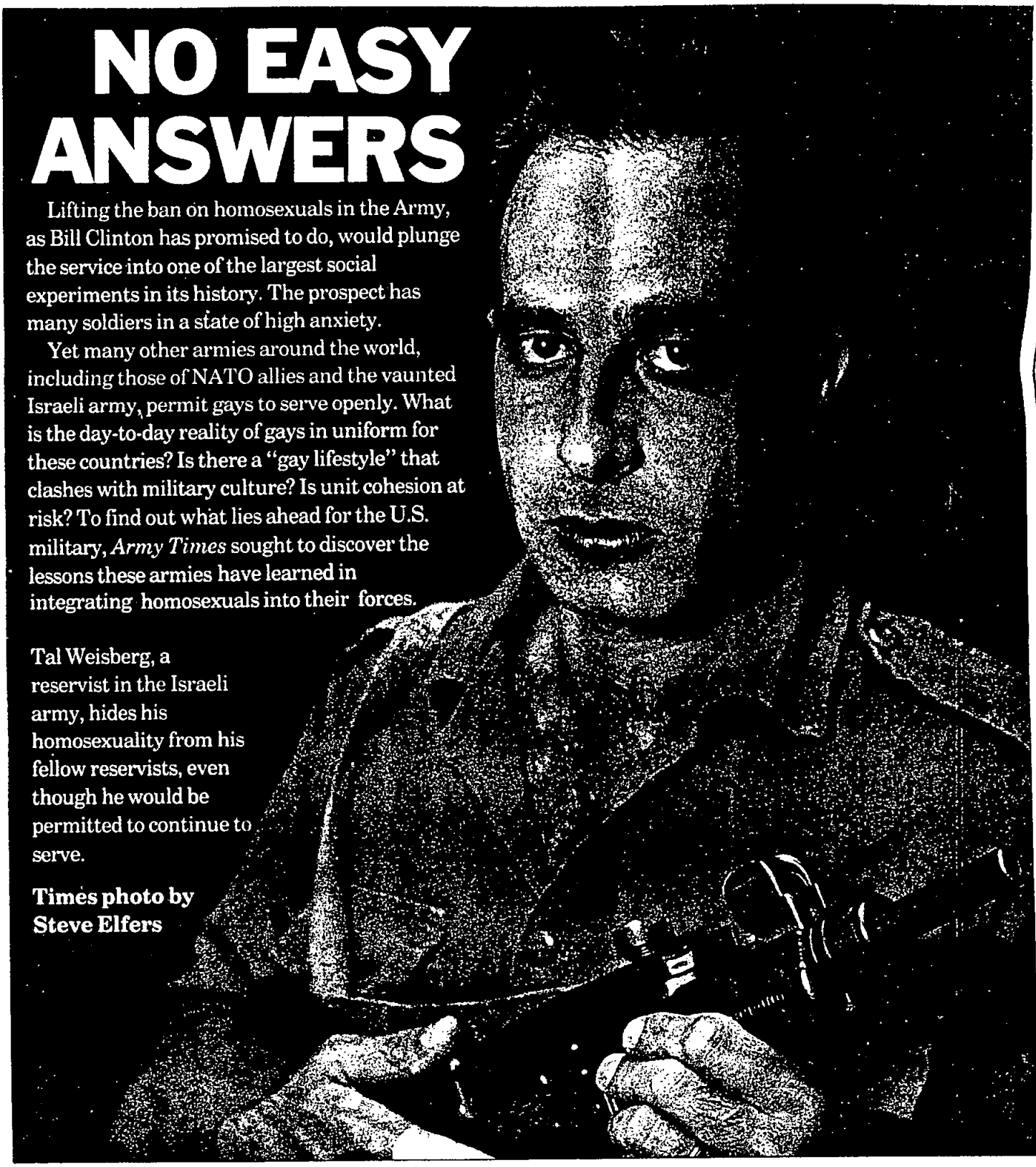
Cover Story

NO EASY ANSWERS

Lifting the ban on homosexuals in the Army, as Bill Clinton has promised to do, would plunge the service into one of the largest social experiments in its history. The prospect has many soldiers in a state of high anxiety.

Yet many other armies around the world, including those of NATO allies and the vaunted Israeli army, permit gays to serve openly. What is the day-to-day reality of gays in uniform for these countries? Is there a "gay lifestyle" that clashes with military culture? Is unit cohesion at risk? To find out what lies ahead for the U.S. military, *Army Times* sought to discover the lessons these armies have learned in integrating homosexuals into their forces.



Tal Weisberg, a reservist in the Israeli army, hides his homosexuality from his fellow reservists, even though he would be permitted to continue to serve.

Times photo by Steve Elfers

Cover Story

In Israel: The hard reality

Gays are allowed to serve in the military but they are not fully accepted

By Tom Philpott
Times staff writer

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

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

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

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

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

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

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

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

The Israeli myth

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

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

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

Yet, the Israeli military handles homosexuals delicately compared with the U.S. military, where gays face immediate discharge regardless of assignment, specialty or overall performance. Many here consider such a blanket ban unnecessarily harsh. Homosexuals in the Israeli military do

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In the U.S.: Fear and loathing

Troops say if gays are allowed in the military, 'they'll get their asses kicked'

By Greg Seigle
Times staff writer

WASHINGTON — Openly gay soldiers are not welcome in the Army.

So says Col. Dan Ruiz, an operations officer with Eighth Army, Korea, when asked what he thought of President-elect Clinton's pledge to lift the 48-year ban against gays in the military. His reasoning echoed that of many soldiers interviewed on the issue.

"The military is a real conservative organization. People submit to short hair, wearing uniforms, taking orders and conforming," Ruiz said in December while visiting Fort Belvoir, Va. "People who gravitate toward that system want structure. ... They all have the same interests and beliefs, for the most part. To be different — especially to be gay — shakes everything up.

"Sexual preference is a private thing," Ruiz said. "Is there a real need to announce your sexual preference?"

Pressed to explain why he thinks homosexuality might affect military performance, Ruiz said he thinks it is "unnatural." Again, his views summarized those of other troops.

Troops cited a number of reasons for their uneasiness about serving with homosexuals, ranging from fear of AIDS to religious convictions. Although some expressed empathy for and acceptance of homosexual soldiers, most opposed Clinton's campaign pledge to lift the gay ban. Many vehemently reject the idea.

'Somebody's going to get killed'

Many soldiers, especially young enlisted men, reacted with anger when asked about the possibility of lifting the ban, which has been policy since 1944. Spec. Robert Krug of Fort Belvoir's Operational Support Airlift Command is livid over Clinton's pledge.

"I hate it. I don't like it at all," Krug said, his expression reflecting his feelings. "Everything about [the homosexual] lifestyle bothers me."

"Somebody's going to get killed or hurt," PFC Jason Sturtz of A Company, 610th Ordinance Battalion, Fort Belvoir, said matter-of-factly. "There would never be any trust. There's going to be a lot of gay-bashing."

Others were even more blunt.

"They'll get their asses kicked," said Pvt. Steve Denovi, a military policeman with the 502d Military Police Company, 2d Armored Division, Fort Hood, Texas. Denovi said he probably would be prejudiced against openly gay soldiers when on duty and would "do everything to get them out."

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Cover Story

Some troops ready to accept gay comrades

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Soldiers opposed to lifting the ban, who by far are the most vocal among those interviewed, gave many reasons why they do not want gays working or fighting beside them. The principal reasons they cited included:

■ Machismo. Male soldiers, particularly those in the combat arms, regard gay men as feminine. They worry that gay soldiers could not pull their weight or would be afraid to fight, thereby jeopardizing the safety of the unit. Many heterosexual soldiers also worry that gays would make sexual advances.

■ Fear of AIDS. Many soldiers, dreading the HIV virus, said they would hesitate to assist an injured gay comrade to avoid possible contact with a gay person's blood. Some said they would be afraid to perform mouth-to-mouth resuscitation on soldiers they think might be homosexual. Many said the AIDS issue is a valid medical reason for keeping gays out of uniform.

■ Cohesion. Soldiers who are different are almost always ridiculed by other troops, and often are isolated within the unit. This could create disciplinary problems if groups of heterosexual soldiers ostracized — or even assaulted — gay soldiers. This also would not bode well for commanders in their efforts to maintain morale and keep order, or for cohesion within any unit, which many of those interviewed said is essential.

■ Legal — The Uniform Code of Military Justice, as well as civilian sodomy laws, would need to be amended by Congress and other legislative bodies. Army lawyers predicted incidents of discrimination, harassment and assault on openly gay soldiers, and appeals by gay former soldiers booted from the service, would swamp the legal system.

■ Religion. Many soldiers base their disdain for homosexuals on religious beliefs. Homosexuality, they said, is unnatural and is not accepted in the Bible. Most Christian opposition to homosexuality is based on the writings of Saints Augustine and Thomas Aquinas, who said homosexuality cannot lead to conception, and therefore is sinful.

Overall, most soldiers said they would feel uncomfortable knowing the soldier alongside them was homosexual, and almost all said it would disrupt unit cohesion.

Allowing openly homosexual troops in the Army, according to PFC Charles Harrisson, of the 3d, "would be breaking up the brotherhood; I think it would ruin morale in the field.

"How are you going to do a field dressing on a wounded soldier who's gay and has AIDS?" Harrisson asked. "If I knew he was gay, I wouldn't do it."

'They don't bother me'

But some soldiers are more forgiving and ready to accept gays.

"You have so many in the Army now, they can finally come out and live free," said SSgt. Sheri Dixon of Fort Belvoir.

And as long as gays do not make sexual advances toward their fellow soldiers, many said they would not have a problem working or fighting alongside them. If gay soldiers do not exhibit behavior that makes others question their judgment, many said they could accept gay peers, commanders and subordinates.

"If their behavior is not acceptable, they'll be ostracized," said Sgt. David White, a full-time Maryland National Guardsmen with the 29th Infantry Division (Light Infantry), Fort Belvoir.

"The [good-conduct] rules are going to be the same, and everyone's going to have to follow the rules," said SSgt. Michael Irvin of the 3d Infantry Division, Fort Myer, Va. "If General [Colin] Powell, [the chairman of the Joint Chiefs of Staff who opposes lifting the ban] says it's OK, then it's fine with me, too."

Female soldiers, especially nurses, appear to be more accepting of gays.

"They don't bother me," said Sgt. Reinavel Robles, a nurse at the U.S. Army Radar Clinic at Fort Myer. "Everybody should be treated the same."

Sgt. Lisa Comeaux, a nurse at Fort Lewis, Wash., expressed no objection to having homosexuals in the ranks. "I think everybody has the right to a personal life outside the military as long as they are not pushing on me," she said.

Not all female troops, however, would welcome openly gay soldiers.

"Serving with a gay person wouldn't bother me," said Spec. Sharon Cates, a Korean linguist at Fort Lewis. "But I think a lot of my friends find it difficult to live with, shower with or sleep in the same room with them. You can't have cohesion if you feel threatened by other people."

Some women said lifting the ban would cause many problems.

"You have enough [sexual harassment] problems with men and women" serving together, said Capt. Marie Wilson, who works at U.S. Army Publication and Printing Command, Alexandria, Va. "I am just morally against homosexuality. It creates too much tension. I just get sick when I think about it."

A social testing ground?

Many soldiers do not like their Army being used as a social laboratory. The Army has helped minorities and women gain acceptance in American society by incorporating them into the force and prosecuting those who harass or assault them. But minorities and women had to conform to Army standards, not vice versa, some troops said.

"Is it fair for the military to be used as a testing ground? No!" said Maj. Gamaliel Turner, an operations officer with Eighth Army. Turner, who is black, pointed to Ruiz, a Hispanic. "It's easy to recognize that he's a minority, or I'm a minority," Turner said. "That is a personal thing, not behavioral. Gay people shouldn't go around telling people about their sexual preference. Is there a real need to announce how you make love?"

SSgt. Michael Hester, a ground surveillance radar specialist at Fort Lewis, questioned whether the Army should accommodate or protect gay soldiers.

"What exceptions would we have to make to accept these individuals?" asked Hester, a 17-year veteran. "We shouldn't have to make exceptions."

"I think it'll strain the disciplinary system," said Sgt. Maj. Bob Wisdom, a 20-year veteran who is the engineering sergeant major for the Military District of Washington. "I think there'll be animosity from other soldiers that would create discipline problems."

Many soldiers are fearful they would be forced to accept a lifestyle many of them see as unnatural, if not immoral. They said they are afraid gay soldiers would approach them sexually in their barracks or showers — or worse, chicken out in combat. Further, they worry morale would sag and discipline crumble, and that they no longer would be proud to serve.

"Where are we going to stop? Are we going to let these guys wear high heels and long hair and earrings?" Ruiz asked.

Gay-rights activists said statements like that are classic examples of homophobia and fear of the unknown. They said gays have served admirably and would continue to do so if they did not have to hide their lifestyle. Indeed, it is doubtful homosexual soldiers would flaunt their sexuality within the ranks if Clinton acts on his pledge.

"A guy or girl's not going to come to work and admit they're gay," said a male colonel who works for Army Secretary Michael Stone in the Pentagon. "I don't have any problem with homosexuals in the Army. We already have them, we just don't know where they are."

But soldiers who joined the Army and conformed to its standards remain uneasy that lifting the ban could change the Army as they know it.

"The military should not be used to run some social experiment," said 1st Lt. Kevin Reis, a member of A Battery, 26th Field Artillery Regiment, 4th Infantry Division (Mechanized), Fort Carson, Colo. "The military's homophobic system has worked just fine for 50 years, why go

See GAYS page 24



Too close for comfort: Many soldiers are concerned about sharing sleeping quarters and showers with gays.

Cover Story

In Israel, ideal of gay integration, reality clash

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not fear criminal investigation, court-martial or abrupt dismissal. And "gay bashing" — physical attacks against homosexuals — is seen here as a violent American phenomenon.

The masquerade

Yaron's experience in a close-knit operational unit provides ammunition to both sides in the gay debate. He remains in the closet, even after six years of active duty and six more in the reserves. The masquerade, he says, said, is painful, but necessary. If he reveals his homosexuality, not only would it bother some crewmen, particularly the younger ones who don't know him, but it might upset his squadron commander. The navy has too many reserve officers for too few seagoing billets, so Yaron likely would get a quick transfer to a desk job.

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

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

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

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

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

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

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

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

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

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

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

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

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

'We don't have a problem'

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

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

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

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

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

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

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

A different context

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

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

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

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

Quality sent to combat

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

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

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

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

Psychological testing

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

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

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

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

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

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

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

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

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

Fighting for change

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

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

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

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

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

'Just don't do it'

Cheney says lifting gay ban is unwise

By Jim Wolffe
Times staff writer

WASHINGTON — Secretary of Defense Dick Cheney has simple advice for President-elect Clinton on dealing with his campaign pledge to lift the military's ban on homosexuals: "Just don't do it."

He declined during a Dec. 28 interview to offer any specific advice to Clinton on how to proceed if he decides to lift the ban because he thinks it's the wrong thing to do.

"I've looked seriously at this issue a number of times and I gave it a lot of thought. My decision was that it would not be wise to change the policy. It was a conscious decision on my part and I defend it," Cheney said.

He said he agrees with Gen. Colin Powell, chairman of the Joint Chiefs of Staff, who said in a December speech that while he, too, opposes lifting the ban, he does not expect mass resignations if the policy is changed. But, Cheney said, lifting the gay ban is an "enormously complex" issue and "not one that lends itself to some quick-and-easy answer with the issuance of an executive order.

"Decades of practice have led to the current situation and if you're going to change it, you better do it very, very carefully," Cheney said. "But if it were my call, I would not change the policy. But, it's not my call."

Cheney said he is less sure — or at least less willing to say — what he thinks should happen with another thorny issue — the ban on women serving in combat billets.

While saying he would leave it to the Clinton administration to deal with the issue and not make any specific recommendations on his way out the door, "no matter how satisfying that might be," he did rank various combat assignments in terms of how easy it would be to make a decision about allowing women in.

He said the one clear consensus, which he supports, that came out of the recently completed work of the Presidential Commission on the Assignment of Women in the Armed Forces is that women should not be assigned to ground combat units.

"There are enough unique features and aspects (of ground combat) so that we're justified in continuing the exclusionary policy," he said.

He called the assignment of women to fighter aircraft "a much closer call," but would not say what his preference would be or what makes it a closer call.

And while not endorsing the idea of putting women on combatant ships, Cheney pointed out that supply ships, on which women do serve, steam in tandem with the combatants. "If they can be accommodated there, perhaps they can be accommodated on the combatants."

Costly but justified

Investigators say work on officer quarters not unreasonable

By Rick Maze
Times staff writer

WASHINGTON — The $200,000 renovation of a general officer's quarters at Fort Myer, Va., that raised eyebrows on Capitol Hill was not an unreasonable project, according to the Department of Defense inspector general.

Pentagon auditors said the 1990 renovation of the quarters used by the Air Force chief of staff was so expensive because it involved replacing the heating, air conditioning and ventilation systems. That accounted for 80 percent of the cost.

The building, Quarters 7 on general's row on the historic base located near the Pentagon, needed a new heating and air-conditioning system because of the high utility costs of the previous system and numerous service calls, says the report. The report was released in December, more than two years after the issue was raised by Sen. William Roth, R-Del.

The military has a policy of maintaining quarters for general officers "in an excellent state of repair, commensurate with the rank of the occupant and the age and historic significance of the building," the audit report says. Because these quarters often are the largest and oldest on an installation, upkeep and renovation costs are higher than for other family housing units, the report says.

Worldwide, the military has 990 quarters for generals and admirals, including 137 in the Washington, D.C., area.

Roth, a member of the Senate Governmental Affairs Committee, in 1990 questioned the project that he viewed as excessive. He also was concerned about press reports at the time that the spouses of generals and admirals had too much influence over the renovation.

The inspector general found the only influence spouses have over renovations is wallpapering, costing about $2,000 per occupancy.

Roth aides said the senator is not entirely satisfied with the report. For $200,000, an entirely new house could be built for the general and his family, aides said.

The renovation cost might not be considered outrageous if the services were also maintaining family quarters in the same state of repair as a general's house, Roth aides said. Defense officials have reported a backlog of several years on routine maintenance of officer and enlisted quarters. There also is a backlog in construction of new family housing projects.

Other members of Congress also are concerned about the high cost of keeping up flag officers' homes. For example, Sen. Sam Nunn, D-Ga., the Senate Armed Services Committee chairman, has asked defense investigators to look at the renovation costs of the distinguished visitors quarters at Fort Myer and at the cost of maintaining general officers quarters at Bolling Air Force Base, D.C.

As part of the audit of the Air Force chief of staff's quarters, currently occupied by Gen. Merrill McPeak, defense auditors compared the renovation cost of Quarters 7 with other projects at senior officers' quarters.

The most expensive project found by auditors was the $543,000 renovation of Quarters A at the Washington Navy Yard, the home of the chief of naval operations. The current occupant of what is known as Tingey House is Adm. Frank Kelso. The home and other Navy Yard quarters are being renovated to convert them from steam heating to gas heating, remove asbestos, install central air conditioning and preserve historic features, auditors said.

At Bolling, the Air Force has a long-range plan to renovate about six general officers quarters a year, with a cost per house of between $225,000 and $299,000, auditors said.

At Fort Myer, just down the street from the Air Force chief of staff's quarters, the Army spent $256,000 to renovate the quarters used by the Army's deputy chief of staff for operations and plans. Lt. Gen. J. Binford Peay is the current occupant. The money went for replacement of the heating and air conditioning system, renovating two bathrooms and replacing the chimney and the front and rear porches.

Lower-cost alternatives to the expensive renovations were looked at by the services, auditors said. At the Washington Navy Yard, for example, Navy officials would have preferred to build an entirely new home for the chief of naval operations. But that home and other flag officers quarters at the Navy Yard are historic structures, so they could not be replaced even though they were in critical need of repairs.

Nearly 900 slated for promotions

Infantry, administration top career list

ALEXANDRIA, Va. — Infantry, Administration, Supply and Services, Medical, Mechanical Maintenance and Armor first sergeants and master sergeants accounted for more than half the soldiers recommended for promotion by the Army's most recent sergeants major board.

The selection board was in session Sept. 9-Oct. 29, 1992, at the Enlisted Records and Evaluation Center, Fort Benjamin Harrison, Ind. It recommended 892 soldiers for promotion. The zone of consideration included 5,044 first sergeants and master sergeants. Names of the selected NCOs were published in the Dec. 28 *Army Times*.

Since the early 1970s, when the Army restructured and converted to an all-volunteer force following the Vietnam War, personnel managers have used promotions to help align the NCO corps by career fields and specialties. Quotas for centralized selections to the top three NCO ranks are based on actual and projected requirements, while advancements to sergeant and staff sergeant are authorized monthly based on documented requirements. Promotion opportunities are highest in understrength specialties.

Career fields with the most selections for sergeant major are Infantry, 124; Administration, 124; Supply and Services, 60; Medical, 58; Mechanical Maintenance, 53, and Armor, 51.

Soldiers with the highest selection rates are in Public Affairs (72.7 percent), Visual Information (40 percent), Administration (32.7 percent), Combat Engineering (32.5 percent), Aircraft Maintenance (26.1 percent) and General Engineering (26 percent).

Statistics compiled by the Total Army Personnel Command and Enlisted Records and Evaluation Center show the average age of selectees is 39 years and eight months. They have been in the Army nearly 20 years; have spent three years and seven months as a master sergeant or first sergeant, and have credit for nearly two years of college. About 70 percent of the promotable soldiers have completed, or are scheduled to enroll in, the Sergeants Major Course.

All but one of 892 selectees had an official photograph on file at the Enlisted Records Center. Under Army policy, new photos received at the center are not placed on microfiche personnel files, but reviewed by the board in original "hard-copy" format.

Board members are instructed to use photos to evaluate a soldier's military bearing and appearance. In cases where soldiers appear overweight, board members closely review height and weight data in the files.

Who gets promoted

Career Mgt. Field	Considered	Selected	Rate
11	706	124	17.6
12	126	41	32.5
13	357	37	10.4
14	114	11	9.6
18	324	48	14.8
19	316	51	16.1
23	16	1	6.3
25	5	2	40.0
27	48	3	6.3
29	79	10	12.7
31	333	50	15.0
33	12	2	16.7
35	8	1	12.5
37	5	1	20.0
46	11	8	72.7
51	50	13	26.0
54	98	8	8.2
55	82	7	8.5
63	343	53	15.5
67	119	31	26.1
71	379	124	32.7
74	70	4	5.7
76	314	60	19.1
77	23	4	17.4
79	234	29	12.4
81	13	1	7.7
88	95	15	15.8
91	291	58	19.9
93	65	12	18.5
94	56	10	17.9
95	134	31	23.1
96	85	19	22.4
97	23	2	8.7
98	110	21	19.1
Totals	5,044	892	17.7

Cover Story



Times file photo

'A very closed system': Though officially the Israeli army does not bar gays, in reality, as one soldier put it, homosexuality is viewed as "a kind of curse."

Israel's invisible soldiers

Gay Israelis avoid ridicule, get ahead by staying in closet

By Tom Philpott
Times staff writer

TEL AVIV — Israeli authorities refused to allow active-duty service members to be interviewed on the issue of gays in the ranks. But since almost every Israeli adult has served in the military, or currently serves in the reserves, opinions are not hard to find.

The consensus among those interviewed is that homosexuals in the Israeli military are virtually invisible.

Allon Klebanoff, a reserve army captain who commands a tank company, says gays stay hidden and no one goes looking for them.

His experience during 12 years of service involves a single incident during a training exercise. As executive officer of the company, Klebanoff said he walked by a tent and saw two soldiers in the same sleeping bag.

"I just looked the other way," he said. "They are good soldiers. Never any problems about them. Had they been bad soldiers, had I needed an excuse to get rid of one or both of them, I may have used it.

"I may be liberal," added Klebanoff, a history teacher who was wounded in action in the Bekaa Valley, Lebanon in 1982. "Maybe somebody else would have said, 'There's no room for gays in my unit.' ... In Israel you'll find policy in many cases comes down to how the commanders decide."

A homosexual, "if he is clever, won't say 'I'm gay.' ... Keep it to yourself. Nobody needs to know," he said.

A retired Israeli naval officer, who asked not to be named, said during 31 years of service he never had to deal with the issue of homosexuality.

"If the gay restricts himself, and nobody in the boat knows about it and he doesn't show any sexual advances, I don't see any problem. If this guy starts with another fellow, there's probably a problem."

> **"In Israel you'll find policy in many cases comes down to how the commanders decide. [A homosexual], if he is clever, won't say 'I'm gay.' ... Keep it to yourself. Nobody needs to know."**
>
> **— Allon Klebanoff**
> *Israeli reserve army captain*

But no one openly homosexual ever served in a seagoing billet, he said.

"I don't want to see a gay in our uniform. He can serve in an office someplace or on a base. Not at sea!"

A young women who recently completed her two-year army obligation said she doesn't believe there are lesbians serving openly in the Israeli army.

"It's not open and people don't talk about it. If there were some, I didn't know about them," the young woman said.

Erez Weiss, 23, said during his three-year tour as a helicopter crewman, he never met or heard of a homosexual in uniform.

"I don't think it would have been accepted. It is a very closed system and they probably would throw him out. If there is someone who's gay, he hides it. ... It's a kind of curse."

A 41-year-old reserve army sergeant named Israel, who refused to give his full name, said he was assigned to an artillery battalion for most of his 18 years in service and never met an avowed homosexual.

"A gay would have had lots of problems. [They] do not fit in with the image of a fighter. ... He has no place in a combat unit. And it has nothing to do with morale of the troops. He would be automatically rejected."

That feeling surfaced during the Persian Gulf War, he said, when he was assigned to a unit in Tel Aviv that rescued citizens from the rubble of Iraqi missile attacks. Because his temporary commander, a major, had very effete mannerisms, he and other soldiers refused to follow his commands. They did their jobs despite the officer, rather than by following his orders.

"Everybody called him homosexual. ... He had no support," Israel said. "No one respected him. ... And I'm not talking just for me. I'm talking for a whole company.

"At the same time, it is stupid not to have gays serving as [military] computer programmers and in the medical corps."

One soldier finds fear is worst foe

TEL AVIV — Tal Weisberg hid his homosexuality from family and friends for years. He still does from fellow reservists in the Israeli army.

"The difficulties are not in the field or with military authority, but dealing with the [military] environment," he says.

"In your personal life, you can go where you want and be with whom you want. During service in the army, you are stuck with fellow soldiers. And if they are not open about gay issues, and they find out you are gay, it can be a very difficult problem."

The Israeli military is not the open society for homosexuals official policy suggests. Weisberg says he "came out" only after leaving active duty. He discussed his feelings with army psychologists and trusted them not to "transfer this information to military authorities." As far as he knows, they did not.

Weisberg doesn't talk about his personal life with other soldiers during stints on active duty as a reserve maintenance specialist. If someone asks why a nice looking 34-year-old is not married, he says, "I have a good cover story." He actually was married once and has two children.

The "common attitude" among other soldiers, Weisberg says, is that homosexuals "are faggots and drag queens." As a result, he knows only one openly gay soldier.

"The problem is our problem and not a societal problem," he says. "Our fear of coming out, and our fear of the personal consequences, prevents us from coming out." But he has hope that the comfort level for gays will rise in time and more will serve openly.

"Most people in the Army are much more accepting of the gay community now" than they were even a few years ago, he says.

But in the military, homosexuals, like heterosexuals, have to control their sex drives.

"Obviously, there are situations where [a gay] sees a sexy soldier and he desires him," Weisberg says. "But it's the same thing if a straight soldier sees a sexy woman soldier and desires her ...

"We do have more opportunity to be closer to men, [sharing] the same tents and the same showers. But gay people are very careful with those things. They won't try to hit on somebody unless they are positive they are gay, too."

Weisberg would like the Israeli military to be more flexible in assigning gays, "allowing them to choose where to serve."

"If I was permitted, I would prefer to be in a place where I wouldn't have to stay in camp all the time," he said. "I would do my duties and come home. But that's only my personal choice. I'm sure there are some who would like to be combat officers or serve on ships.

"If people learn to appreciate the person and to know they can count on him in time of need, his sexual orientation is totally irrelevant. If you are a [jerk] it doesn't matter if you are straight or gay."

Cover Story

NATO acceptance of gays runs full spectrum

BONN, Germany — "In working with allies," wrote Winston Churchill, "it sometimes happens that they develop opinions of their own."

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

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

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

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

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

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



Times file photo

Still cold: German soldiers can find themselves side by side with openly gay conscripts, but military life for gays in the *Bundeswehr* is often unpleasant.

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

Treated the same way?

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

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

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

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

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

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

"I really have never heard of such a case in my 29 years of military service," said an army pilot, who added he would prefer not

See NATO page 22

Ending gay ban may be toughest legal challenge yet

By Greg Seigle
Times staff writer

WASHINGTON — The Army has a history of being called upon to carve courses through risky, uncharted territory.

In 1948, when racial minorities were being treated largely as second-class citizens, President Harry Truman signed an executive order forcing the Army to end its discriminatory policy. The Army responded, breaking new social ground by having soldiers of different races eat, sleep and work together. In doing so, the Army stiff-armed strong opposition from conservative whites who said it couldn't be done. The service showed it meant business by, among other things, promoting blacks and kicking out soldiers who openly opposed their new comrades.

In 1973, the Army abolished the separate Womens Army Corps and opened the door for women to serve in the regular Army. Despite cries from conservative ranks that mixing the sexes wouldn't work and would soften the Army, women have proven to be an asset in many military fields. As is the case with race relations, there are still gender-based problems in the service, but undoubtedly the Army has helped women make great strides in American society by accepting them and penalizing those who opposed or harassed them.

But dozens of soldiers recently interviewed by *Army Times* say the current controversy over lifting the military gay ban is one issue the Army should not have to address on behalf of society. The Army is a war-fighting machine, not a social testing ground, they said.

Army lawyers interviewed here said the legal implications of lifting the 48-year-old ban on homosexuals in the military would affect their workload significantly.

For starters, they said, Congress would have to amend the Uniform Code of Military Justice, or UCMJ, and sodomy laws in 25 states would come under review. Leaders of the Democratic-controlled Congress recently told President-elect Clinton that he would not get the simple majority needed to amend the UCMJ and its laws against homosexual practices.

Army lawyers, meanwhile, are leery of case overloads if the UCMJ is amended and homosexuals are allowed to serve openly in the military.

"I foresee a massive pickup in business," said Capt. Glenn Kirschner, a lawyer with U.S. Army Legal Services Agency, or USALSA, Falls Church, Va.

In private conversations, some of the Army's top lawyers said changing military laws and trying to accommodate homosexuals is not worth the trouble it would cause. They also said the backlash expected to occur if the gay ban were lifted would detract from the Army's ultimate purpose: ensuring national security.

"I think you'll see everything from ostracizing . . . to assault and possibly worse," said Capt. Steve Walters, another lawyer with USALSA. "Our office would definitely get swamped."

Col. Joe Briggs, the deputy chief of staff for engineering and housing for the Army Materiel Command, Alexandria, Va., said unit commanders also would bear the brunt of disruptions caused by lifting the gay ban. Homosexuals, he said, "are not going to be in the majority and it's going to cause problems."

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DOCUMENT: 1 of 1

60 Minutes Apr 25, 1993
7:00-8:00 PM CBS
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Segment: Profile: Macho, tough and gay; homosexual officers in the **Dutch** Army discuss the open policy
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MACHO, TOUGH AND GAY

ED BRADLEY: If he were a colonel in the American Army, and not one in the **Dutch** Army, he'd most likely, if he could get away with it, be one of the thousands who marched today in Washington in support of gay rights. But he probably wouldn't be in uniform, because there is, after all, a widespread belief among our military that allowing gays to serve openly would destroy morale and discipline. Well, in Holland they have served openly since 1974, and this man who describes himself as 'macho, tough, and gay,' is a colonel we met in the **Dutch** Army who told us how he lets new recruits know just where he stands.

Lieutenant Colonel RENE HOLTEL (**Dutch** Army): My name is Rene Holtel. I'm a colonel of the Royal Netherlands Army. I'm a battalion commander, and I'm gay.

(Footage of Holtel addressing recruits)

Lt. Col. HOLTEL: (Voiceover) So that if you want to see a queen in uniform, they should have a good look for the next one and a half hours because this is probably the only time they'll see a gay lieutenant colonel dressed in uniform.

BRADLEY: What's their reaction? What do they say?

Lt. Col. HOLTEL: They start laughing.

(Footage of Holtel marching troops)

BRADLEY: (Voiceover) Lieutenant Colonel Rene Holtel is the highest-ranking openly gay officer in the **Dutch** Army. But he hasn't always been so open about his homosexuality. For many years, he went to great lengths to hide it.

(Footage of Holtel walking)

Lt. Col. HOLTEL: (Voiceover) I tried to change the way I walked. I put a mirror, an extra mirror in my room, and I could see my ass when I was walking from one mirror to another. And when I found that it was wiggling too much, I just put some books on my head and started training until it didn't wiggle anymore.

BRADLEY: So in other words, you tried to--to make yourself look as--as

macho, as tough...

Lt. Col. HOLTEL: That's right. And that's one of the things that's still bothering me, because it's very difficult to get rid of it. I learned to roll my cigarettes with one hand on my leg because I had seen truck drivers doing that, and I thought a truck driver--he never can be gay. Well, by now I know a little bit more about that.

(Footage of Holtel with the troops)

BRADLEY: (Voiceover) Colonel Holtel commands a supply battalion which regularly takes part in NATO exercises in Germany. It's an offense for any member of the **Dutch** armed forces to discriminate, either physically or verbally, against another soldier because he or she is gay. Such discrimination could end in court-martial. But does Colonel Holtel think that the fact he's gay affects his ability to command his troops?

Lt. Col. HOLTEL: No, I'm a pro. And the fact that I'm gay is something that has nothing to do with the fact that I'm a professional soldier, that I'm a career officer.

I'm in the ...(unintelligible) sector.

(Footage of Holtel talking to his staff)

Lt. Col. HOLTEL: (Voiceover) My battalion staff--I'm working with them very closely day in, day out, 24 hours a day. Every now and then we're sleeping together, we're showering together, we're living together and it's no problem whatsoever.

(Footage of Holtel in a tent with his staff)

BRADLEY: (Voiceover) The only problem these soldiers seemed to have sharing a tent with Colonel Holtel was the fact that he smokes.

Our chairman of the Joint Chiefs of Staff, General Colin Powell, says that having gays openly in the military would have a negative effect on discipline on the order, on morale.

Lt. Col. HOLTEL: That's what they said about 40 years ago about blacks in the Army, and the president of the Joint Chiefs of Staff in 1993 is a black.

BRADLEY: He says this is different.

Lt. Col. HOLTEL: And I don't agree. It's the same. He is black by birth; I'm gay by birth. I didn't choose for--it; it happened to me, just as it happened to him.

(Footage of Holtel's troops in their barracks)

BRADLEY: (Voiceover) Back at the barracks, we asked some of the soldiers in Colonel Holtel's battalion how they felt about having a gay commanding officer.

What--what did you think when you came here knowing that--did--did you know that the commander here way--was gay?

Unidentified Soldier #1: No, I hear it for the first time now, but I have no problem with it. It's--we--I think it's normal that someone is gay if

he wants to.

BRADLEY: What about showers?

Unidentified Soldier #2: What about it? You have showers for girls, and you have showers for boys.

BRADLEY: Right. But you don't have showers for straight men and showers for gay men.

Soldier #2: And gay women. That's makes four sho--four kinds of showers.

BRADLEY: But you don't, you only have two showers.

Unidentified Soldier #3: The people who are not feeling comfortable have to look for another time to take a shower.

BRADLEY: Have you found that having gays in your military has been a disciplinary problem?

Soldier #3: Not at all. As long as the commander--commanding officer is not dancing in--in a pink skirt before his troops, there's no problem.

BRADLEY: And you don't have that problem with this commander?

Soldier #3: No, not at all. On the contrary, he's very...

Unidentified Soldier #4: Strict.

Soldier #3: ...strict. Yeah.

BRADLEY: He runs a tight ship?

Soldier #3: Oh, yeah.

(Footage of Holtel with a member of his command)

BRADLEY: (Voiceover) But what if a gay commander doesn't run a tight ship, uses his position to make advances towards a soldier under his command? Colonel Holtel says such behavior would be treated with the same severity as sexual harassment of women soldiers by their male colleagues.

So there--there are rules of conduct?

Lt. Col. HOLTEL: Of course there are.

BRADLEY: And what happens if they're violated?

Lt. Col. HOLTEL: You get court-martialed.

BRADLEY: Whether it's a man against a woman or a man against another man?

Lt. Col. HOLTEL: Yeah. What's the difference? If I would try to rape one of my male soldiers, it would be the same as if I would try to rape one of my female soldiers. But I didn't come here because I found this is a male or a gay paradise, I came here because I like the profession.

(Footage of Major Franz Van Dorp, his, partner, Peter, and the **Dutch** Grenadier Guards marching)

BRADLEY: (Voiceover) Major Franz Van Dorp is an infantry officer in the **Dutch** Grenadier Guards, one of Holland's crack units. His partner, Peter, is a singer with the Netherlands Chamber Choir. Major Van Dorp, who served with the UN peacekeeping forces in Lebanon, says that not having to hide his homosexuality has allowed him to function better as a soldier.

Do your colleagues--the other soldiers, the other officers--know about Peter?

Major FRANZ VAN DORP (**Dutch** Grenadier Guards): Yes. He--he's been to official dos at--at the barracks.

BRADLEY: You go together?

Maj. VAN DORP: Yes.

BRADLEY: And--and what's their reaction to him?

Major VAN DORP: Colleagues' wives have said, like, 'Hmm, now we've got two men to dance with.' Actually, they start a conversation to show how liberal they are, so that's something I don't need either. He's my partner, and so of course I take him to official dos, just like I go to concerts with--with him, which is his job.

BRADLEY: Peter, when--when you accompany the major to parties on--on the base, are you comfortable doing that?

PETER (Major Van Dorp's Partner): People do of course look at you, because if Franz is on his work alone, he might be gay, but it's not visible, it's not obvious. If we are there together, it's very obvious, and so people look at you. But people don't come to you with--with feelings of--of hate or rejection.

(Footage of Bradley talking to Van Dorp and Peter)

BRADLEY: (Voiceover) Major Van Dorp says he's only once had any kind of trouble in the Army because he was gay, and that was when he needed a higher security clearance.

I--is that a--a valid concern? I mean, some commanders say that someone who is gay could be targeted for blackmail.

Maj. VAN DORP: No, of course...

BRADLEY: And could be a security...

Maj. VAN DORP: When the organization more or less forces their gays to be in the closet, then they can be blackmailed. Actually, they--they create the situation in which people can be blackmailed. Whereas, when you're open about it, who's going to blackmail you? Nobody.

(Footage of Sergeant Major Marjorie Jonkers getting in her car)

BRADLEY: (Voiceover) If Marjorie Jonkers were in the US military, she might be a prime target for blackmail, because, as a sergeant major in the **Dutch** Air Force, she works in a NATO-linked communications center that's so high security we weren't permitted to see her at work. But the fact that she's gay isn't a security issue here. In fact, it doesn't

seem to be an issue at all.

Did anyone ask you when you went in?

Sergeant Major MARJORIE JONKERS (**Dutch** Air Force): No, no. Nobody.

BRADLEY: No questions at all?

Sgt. Maj. JONKERS: No questions at all.

BRADLEY: The people you supervise know...

Sgt. Maj. JONKERS: Yes, yes.

BRADLEY: ...and the people you work with?

Sgt. Maj. JONKERS: Yes, everybody knows.

BRADLEY: Is it a problem?

Sgt Maj. JONKERS: No. I think I feel more the pressure of being a woman in the forces than being gay.

BRADLEY: Because?

Sgt. Maj. JONKERS: It's a--it's a man's world, the forces, so there are difficulties for women in the forces and that's what I feel, but not being gay.

BRADLEY: What--what would you say to people in the United States who would argue that--that gay women should not be in the armed forces?

Sgt. Maj. JONKERS: Why? I would like to know why.

BRADLEY: They would be subjected, straight women, to unwanted sexual advances.

Sgt. Maj. JONKERS: Sure, they do. No, I work with women, and I like them and I think they like me--me, too. But they are not afraid of me, and I am not going after them. No, it's just--you do your job, you work, you be with your colleagues, you fix a job, and that's it. And it doesn't matter what color you have, what religion you have, what sexuality you have. That doesn't matter.

BRADLEY: As long as you do your job?

Sgt. Maj. JONKERS: As long as you do your job, and do it right.

(Footage of ships at sea, a submarine and Lieutenant Commander Gerrit Van Der Putten)

BRADLEY: (Voiceover) The **Dutch,** for centuries a seafaring nation, have today only a small navy, but it's one of the most modern naval forces in NATO. On board frigates which patrol the North Atlantic for periods of up to three months at a time, men and women serve side by side. With the exception of submarine service, nowhere in the military do people have to live together in more cramped quarters and for longer periods of time than on board ships like these. Lieutenant Commander Gerrit Van Der Putten is openly gay. He's just been promoted to executive officer of a brand-new frigate, the pride of the **Dutch** fleet, where he's responsible

for the discipline and morale of 160 sailors. So far, he says, there's been no sign of a mutiny.

Lieutenant Commander GERRIT VAN DER PUTTEN (**Dutch** Navy): If I would give the order to fire a gun or to fire a torpedo or a missile, I couldn't do it in a gay way. You do it right or you do it wrong, and it's on target or it's--it's not on target. There's no gay way to do that. You give the order, and that's it.

BRADLEY: What--what's the reaction of men on your ship to your homosexuality? Do you think they make fun of you, talk about you behind your back?

Lt. Com. VAN DER PUTTEN: Oh, I'm sure they do. I'm sure they do. But that doesn't affect their respect towards me as a person, so it doesn't affect my--my functioning in my warfare job, my combat job.

BRADLEY: Have you ever felt that you had to be better at--at what you do than someone who's straight?

Lt. Com. VAN DER PUTTEN: Yeah. I had to--I had to try and be perfect so--to build up a credit--well, because of the--the unseen discrimination, and it is there. I want to have a--credit, to say, 'Well--well, look at me as a professional, I'm doing my job, so what the hell are you talking about?' Leave me alone in my sexuality.

BRADLEY: But you say there is unseen discrimination?

Lt. Com. VAN DER PUTTEN: Oh, yes, it's there.

(Footage of a military ceremony, brochures on homosexuality and Holtel talking to troops)

BRADLEY: (Voiceover) To combat the unseen discrimination, the **Dutch** have recently launched a new offensive. The ministry of defense now publishes information about homosexuality in its recruiting brochures, and it also finances an organization called the Foundation for Homosexuality and the Armed Forces. Headed by Colonel Holtel, the foundation runs a telephone hotline to help gays who feel they have problems in the military, and it organizes teaching programs for all new recruits.

Do you think that lifting the ban on gays has worked here?

Lt. Col. HOLTEL: Of course it did. I think I'm one of the living examples of that. It did work. But lifting the ban and doing nothing after that is not enough. You can order someone to leave gays alone--that will work out only in the same moment as you start telling him why they should leave him alone--not because it's the law, but because it's a part of the normal human--human behavior.

(Footage of Holtel at a military gathering)

BRADLEY: (Voiceover) Colonel Holtel's growing reputation as the campaigning gay colonel doesn't seem to have made him any less popular with his fellow officers or to have affected his future career prospects.

You are a lieutenant colonel, are you as high as you're--you can expect to go in the military?

Lt. Col. HOLTEL: No. Actually, I expect to go a little bit higher.

(Footage of Holtel in the field)

BRADLEY: (Voiceover) Do you foresee the day when there will be a gay general in the **Dutch** Army?

Lt. Col. HOLTEL: (Voiceover) I think there are gay generals in the **Dutch** army. But not only in the **Dutch** Army; there are gay generals in the American Army as well.

(Holtel winks at the camera after saluting his driver)

INDEX: Netherlands
Military
Homosexuality

BRS CPrint Mode -- Enter Command_:

FILE
30

OFFICE OF SECRETARY OF DEFENSE
Military Working Group

1. Date: 7 MAY 93

2. Operation Code

X - Originator or office affixing routing sheet
A - Appropriate action
B - Guidance
C - Signature
D - Comment
E - Recommendation
F - Concurrence
G - Information
H - Return to: _____
I - Initial
J - Disposition
K - Decision
L - Retention
O - (Other) _____

ROUTING - use numbers to show order of routing
use 'C' for CONCURRENT routing

4. Rtg.	5.Opr-Code	6. Addressees	7.Date In	7.Date Out	8.Initials Concur	8.Initials Nonconcur
1	G	LTGEN ALEXANDER				
1	G	MG OTJEN				
1	G	RADM REDD				
1	G	BRIGGEN DAVITTE				
1	G	RADM LOY				
1	G	BGEN MILLER				
1	G	STAFF DIRECTOR				
1	G	DPTY STAFF DIR				
1	G	DPTY FOR SPEC PROJ				
		SJA				
1	G	OPS & PLANS DIR				
	X	OPS OIC		5/7	C	
1	G	PLANS OIC				
		COMM/ADP				
1	G	PANEL COOR DIR				
1	G	PERS PANEL OIC				
1	G	OPS PANEL OIC				
1	G	SERV LIFE PANEL OIC				
1	G	LEGAL OIC				
		RESOURCE MGMNT DIR				
		LOGISTICS OIC				
		BUDGET OIC				

3. Subject

HOMOSEXUALS IN THE BRITISH ARMED FORCES

9.Nature of Action Required	Originator's Initials	Due Date (if any)
Routine		
Urgent		

10.References Held by(Name,Grade,Office Code,Telephone ext)

K. CORBETT, MAJ, OPS BR, X244

11.Remarks and Signature (If additional space is necessary, attach plain paper)

Attached for information is a sanitized report from the DIA.

Very Respectfully,

K. L. CORBETT

Serial:

FOR OFFICIAL USE ONLY

HMG POLICY CONCERNING THE EMPLOYMENT OF HOMOSEXUALS IN THE BRITISH UNIFORMED

SUMMARY: (U) THE QUEEN'S REGULATIONS DESCRIBE ALL ACTS OF HOMOSEXUALITY AS A PUNISHABLE CRIMINAL OFFENSE UNDER MILITARY LAW. AS A PRACTICAL MATTER, UKMOD POLICY--EXCEPT FOR CASES UNDER AGGRAVATED CIRCUMSTANCES--PROVIDES FOR AN ADMINISTRATIVE DISCHARGE OF OFFENDERS.

TEXT:

1. (U) THE QUESTION OF HOMOSEXUALITY IN BRITAIN'S ARMED FORCES IS A NON-ISSUE--ALTHOUGH THE CURRENT WASHINGTON DEBATE HAS RECEIVED WIDE COVERAGE IN THE BRITISH MEDIA--AT UKMOD. [redacted] NEITHER THE PARLIAMENT NOR DEFENCE MINISTERS ARE INTERESTED IN ADDRESSING THE SUBJECT SINCE SO MANY OTHER (MORE IMPORTANT) PROBLEMS CONFRONT THE MILITARY ESTABLISHMENT. ADDITIONALLY, THERE ARE VERY FEW LETTERS FROM CONCERNED CITIZENS THAT ADDRESS EITHER SUPPORT FOR OR REJECTION OF HOMOSEXUALS IN THE MILITARY.

2. (U) BRITISH CIVIL LAW DESCRIBES HOMOSEXUAL ACTS BETWEEN MALES UNDER THE AGE OF 21 AS A CRIMINAL OFFENSE THAT IS PUNISHABLE IN A COURT OF LAW. THERE ARE NO PROHIBITIONS FOR PERSONS (MALE OR FEMALE) OVER THE AGE OF 21. THE QUESTION OF LESBIANISM IS NOT ADDRESSED BY THE LAW, NO MATTER WHAT THE AGE OF THE PERSON. HOWEVER, MILITARY LAW IS VERY EXPLICIT IN THAT ALL HOMOSEXUAL ACTS COMMITTED BY MEMBERS OF THE UNIFORMED FORCES--FOR EITHER MALES OR FEMALES--IS A MILITARY CRIMINAL OFFENSE.

3. (U) AS A PRACTICAL MATTER, HOWEVER, [redacted] UKMOD LEGAL PHILOSOPHY FOLLOWS THE LOGIC THAT COMMANDERS MUST NOT ENFORCE A MILITARY LAW MORE RIGOROUSLY THAN WHAT LOCAL AUTHORITIES WOULD DO WITH A CIVIL CASE UNDER BRITISH LAW. THIS INTERPRETATION WAS ADOPTED AT UKMOD APPROXIMATELY 18 MONTHS AGO FOLLOWING A HOUSE SELECT COMMITTEE REPORT THAT REVIEWED THE ENTIRE HOMOSEXUAL ISSUE. [redacted] COMMENT -- PARLIAMENT WILL REVISE THE MILITARY LAW DURING THE NEXT QUADRENNIAL REVIEW WHICH COMES DUE IN 1996.)

4. (U) IN PRACTICE, BRITISH MILITARY AUTHORITIES QUICKLY (AND QUIETLY) ADMINISTRATIVELY DISCHARGE THOSE PERSONS WHO DEMONSTRATE A HOMOSEXUAL ORIENTATION OR OPENLY DECLARE OTHER THAN A HETEROSEXUAL PREFERENCE. ALTHOUGH RECRUITS ARE NOT ASKED ABOUT HOMOSEXUALITY--NOR ARE RECRUITS REQUIRED TO SIGN A STATEMENT DENYING THAT THEY ARE HOMOSEXUALS--EACH IS GIVEN A PAMPHLET WHICH ADVISES ON HMG POLICY THAT THOSE WHO ENGAGE IN HOMOSEXUALITY ARE SUBJECT TO ADMINISTRATIVE DISCHARGE PROCEEDINGS. [redacted] -- AN ADMINISTRATIVE DISCHARGE IN THE UK IS AN UNCHARACTERISED DOCUMENT THAT WOULD NEITHER RAISE

QUESTIONS NOR HINDER CIVILIAN EMPLOYMENT OPPORTUNITIES FOR A FORMER MEMBER OF THE BRITISH FORCES. WHILE THE SOURCE COULD NOT PROVIDE AN EXACT NUMBER [redacted] IT WAS ESTIMATED THAT ONLY A VERY FEW PEOPLE ARE DISCHARGED ANNUALLY FOR VIOLATING THE HOMOSEXUAL POLICY.)

5. (U) THE ONLY EXCEPTIONS TO THE DISCHARGE POLICY ARE THOSE CASES WHERE AGGRAVATED CIRCUMSTANCES LED TO OR RESULTED IN AN INDIVIDUAL COMMITTING A SEXUAL OFFENSE. THESE CASES MOST PROBABLY WILL BE RESOLVED USING COURTS MARSHAL PROCEDURES UNDER THE QUEEN'S REGULATIONS.

6. (U) [redacted] BRITISH MILITARY LEADERS SUPPORT THE CURRENT POLICY THAT EXCLUDES HOMOSEXUALS FROM SERVICE IN HM FORCES. RATIONALE FOR MAINTAINING THE PRESENT EXCLUSION POLICY IS THAT MILITARY MEMBERS LIVE IN A CLOSE COMMUNITY 'UNDER STRESS' WHERE THE MORALE OF THE GROUP IS PARAMOUNT. THERE IS NO JUDGMENT BASED ON MORALITY ASPECTS OF THE HOMOSEXUAL ISSUE....SIMPLY THAT HOMOSEXUALITY IS NOT CONDUCIVE TO GOOD ORDER AND DISCIPLINE OF A MILITARY UNIT. ADDITIONALLY, THE SOURCE BELIEVES THAT SENIOR MILITARY LEADERS HAVE A RESPONSIBILITY TO THE PARENTS OF YOUNG 17/18 YEAR OLDS WHO VOLUNTEER FOR DUTY WITH HM FORCES TO ENSURE THAT THEIR OFFSPRING ARE NOT SUBJECTED (OR EXPOSED) TO THE HOMOSEXUAL LIFE STYLE.

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WC - May Corbett

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FILE
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3-11 [illegible]

INTERNATIONAL ARMIES: APPROACH TO GAYS IN THE MILITARY

COUNTRY	ACCEPT GAYS	WHEN BEGAN	CONSCRIPT	ASSIGNMENT LIMITATIONS	SOCIETAL VIEW	FORCE SUSTAINMENT	
BRITAIN	No, but policy under review	N/A	No	N/A	Deviant behavior	N/A	
ITALY	No	N/A	Yes	N/A	Psychological Illness	N/A	
GERMANY	Yes, but cannot lead or have clearance. If careerist with under 4 years, then separated.	Early 80s	Yes	Cannot lead or hold security clearance.	Abnormal but accepted	No impact	No be
FRANCE	Yes. Gets psych screen and based on results, may remain in service.	Always	Yes	Case by case based on performance	Abnormal but accepted	No impact	In Per
ISRAEL	Yes. Gets psych screen and based on results, may remain in service.	Always	Yes	Based on clearance; no restrictions unless soldier requests special treatment.	No law against, but Jewish religion does not accept.	No impact	Not be
NETHERLANDS	Yes, no caveats	1974	Yes, unions; informal one for gays	No restrictions	Minority, but not necessarily thought of as abnormal	No impact	
CANADA	Yes, no caveats	1992	No	No restrictions	Not main stream but accepted	Too early to measure	
NORWAY	Yes. Gets psych screen and based on results, may remain in service.	1985	Yes	No restrictions	Not main stream but accepted	No impact	
SPAIN	Yes, as long as they are discreet	1978	Yes	No restrictions	Abnormal; not accepted	No impact	
JAPAN	Yes, as long as they are discreet	1947	No	No restrictions	Abnormal and shameful	No impact	

INTERNATIONAL ARMIES: APPROACH TO GAYS IN THE MILITARY

FORCE STAINMENT	DATA BASE	PROMO RATES	INDISCIPLINE	AIDS INCREASE	TRANSITIONAL PROBLEMS	FUTURE PROBLEMS
N/A	N/A	N/A	N/A	Unknown. No mandatory testing	N/A	None
N/A	N/A	N/A	N/A	Unknown. Have HIV testing	N/A	None
No impact	Not sure but believes yes if known.	Not tracked	Believes they tend to be model soldiers	Unknown. No mandatory testing	Initial concerns passed quickly, smooth transition	HIV testing
No impact	In medical & Per records if known	Not tracked	Unknown	Unknown. Do have HIV testing	N/A	None
No impact	Not sure, may be in records.	Not tracked	Unknown	Unknown. No mandatory testing	N/A	None
No impact	No	Not tracked	No	Unknown. No mandatory testing	No significant problems	None
o early to measure	No	Unknown	Too early	Unknown. No mandatory testing	Too early	Assaults by heterosexuals. Conduct standards. Gays: overseas assignments?
o impact	No	Not tracked	Unknown	Unknown. No mandatory testing	None	None
o impact	No	Not tracked	Unknown	Unknown. No mandatory testing	None	Yes. As gay rights activists agitate, homosexuals may become more open.
o impact	No	Not tracked	Unknown	Unknown. No mandatory testing	None	Almost no homosexuals in the Japanese defense force

FILE
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Subject: Ireland.military

Irish Times, Friday January 29 1993

Code of conduct for Army possible

by Jim Cusack, Security Correspondent

A CODE of conduct governing "interpersonal relationships" may be introduced in the Defence Forces in the event of decriminalisation of homosexual acts between consenting males, the Minister for Defence and the Marine, Mr Andrews, said at Collins Barracks in Dublin yesterday.

The Minister's statement was welcomed by the Gay and Lesbian Equality Network last night. A spokesman said it would support a code of conduct which governed both homosexuals and heterosexuals serving in the Defence Forces.

[...]

Commenting on the issue of homosexuality in the Defence Forces, the Minister said he supported decriminalisation and opposed discrimination on grounds of religion, race or sexual orientation. "The implications [of decriminalising homosexual acts between adult males] for the Defence Forces will need careful examination," he said.

Subject: Israel.military

Israeli army accepts gays -- in theory
By Louis J. Salome
Atlanta Journal-Constitution

Jerusalem -- The Israeli military has a well-burnished reputation as one of the most tested and successful armies in the world.

Also as the most socially liberal.

But if the ban on homosexuals in the U.S. military is removed, the Israeli experience could indicate to gay and lesbian servicemen and women that there might be a reason to stay in the closet.

Homosexual soldiers and Israel's only gay rights organization say homosexuals routinely are discriminated against in promotions and usually are banned from serving in sensitive positions if their sexual orientation is discovered.

Despite the absence of a ban on homosexuality, Israeli service personnel ''are screened scrupulously'' on their

sexual orientation before promotions are given, said Liora Moriel, the leader of Israel's only gay rights organization.

''Usually they don't get promoted'' if they come out of the closet or if their lifestyle is revealed, she said.

Some homosexuals keep quiet and do get promoted to high levels, Ms. Moriel said. Her organization advises them to ''get a few promotions under their belt'' before they go public, she said.

The Israeli military denies discriminating against homosexuals but acknowledges that they are subjected to psychological testing.

Israel's constant state of war with its Arab neighbors and its citizen-soldier strategy have made it historically reluctant to turn aside able-bodied people -- often flouting conventions in the process.

Military service is obligatory for most Israelis, including unmarried women, who were drafted as early as 1949 despite the sometimes violent protests of religious conservatives.

Men now serve three years in the regular army, typically from ages 18 to 21, and until age 51 in the reserves. Women serve two years in the regular army, and their reserve duty usually ends in their mid-20s.

At the end of 1991, Israel had 176,000 soldiers serving full time and 430,000 in the reserves.

The army has no idea how many of its soldiers are homosexual, but it operates on the notion that Israel has the same percentage as other non-Middle Eastern societies.

Despite Israel's prevailing religious conservatism, which generally promotes the Old Testament teaching that homosexuality is an abomination, the the military has helped open the door slightly more to acceptance of homosexuals.

But society also has limited their acceptance in the military. ''The Israeli military reflects Israeli society, and in Israeli society, no one usually stands up and says he's gay,'' said Lt. Col. Moshe Fogel, an army spokesman.

Colonel Fogel said there is no discrimination when Israelis enter the military. Homosexual soldiers agree. But they also agree that if a soldier is discovered to be homosexual or goes public on the matter, he or she will not be booted out of the service.

That's where the agreement ends. Homosexual soldiers scoff at the military's refusal to acknowledge that gays and lesbians aren't promoted if their sexual orientation is discovered or they go public.

Colonel Fogel acknowledged that suspected homosexuals are sent to an army psychologist for testing. The purpose, he said, is to look for any personality or character weaknesses; homosexual soldiers interviewed said they were told the test is conducted to see if they are security risks.

Colonel Fogel said homosexuality is not treated as an illness in the exams. If a soldier meets tests of ability,

personality and character, he or she can continue to serve without limitations, he insisted.

Homosexuals who acknowledge their sexual orientation and aren't concerned about the personal or professional implications can request transfers to non-combat or less stressful reserve units. The requests usually are granted.

''There have been senior officers who have been declared gay,'' Colonel Fogel said, and he cited a full colonel who rose in the ranks after his homosexuality was revealed. But the colonel's homosexuality was known only to a small circle, Colonel Fogel said, and he could not cite an example of a gay or lesbian soldier with a higher rank.

Homosexual soldiers say the psychological testing results in a flagged personnel file that puts a lid on their military careers.

They say this forces them to stay in the closet, at least until they have served long and well enough to reach a higher rank.

Some say the military will protect homosexuals in higher ranks -- as in the case of the full colonel -- if their sexual orientation is kept within a small circle but not if they go public.

Amit Kama, 32, of e ¦Zjcid knows several homosexuals who remain in highly sensitive intelligence units only because their sexuality is a closely guarded secret.

''If you come out,'' said Mr. Kama, a reserve corporal in the civil defense authority, ''sensitive positions will not be available and you'll have problems with promotions. You'll get nowhere.''

Active in promoting gay and lesbian rights, Mr. Kama said a soldier who admits to being homosexual or is suspected of it usually is referred to a psychologist.

In interviews for this article, homosexual soldiers spoke of difficulty in dealing with soldiers to whom they are attracted, of difficulty in dealing with horseplay in the showers and of cruel jokes about homosexuals that often circulate in the ranks.

Gays and lesbians said they frequently had secret lovers in camps where they were based.

Women said they keep their lesbianism secret because they fear harassment by male soldiers.

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FILE
33

Tom
FYI

NORTHWESTERN UNIVERSITY

Department of Sociology
Evanston, Illinois 60208-1330
Telephone (708) 491-5415
Fax (708) 491-9907

December 7, 1992

To: General Gordon R. Sullivan
LTG Tom Carney
MG John Fugh
BG Tom Jones
Army Research Institute

From: Charles Moskos

Subject: Homosexuals in the Israeli and Germany Armed Forces

Israel. I have just returned from a research trip to Israel where I spent some time looking at the status of homosexuals in the Israeli Defense Force (IDF). My sources were individuals closely tied to the social science community of the IDF. The information given below is much more accurate than that usually given through IDF public relations.

1. Background. Israel is a society with very few open gays. No gay rights movement exists in Israel as we know it in the United States. Only in recent years have gay bars opened up in Tel-Aviv (though apparently nowhere else in Israel). Open gays are treated more as objects of condescension, and sometimes ridicule, rather than hostility.

2. An effeminate or "swish" gay for all practical purposes will not be inducted into the IDF. Rather he would be given a medical exemption. Gays without distinctive traits are conscripted just like anybody else.

3. Openly declared gays are rarely assigned to a combat unit, and apparently never to an elite combat unit. It is also an unwritten rule that gays will not be placed in intelligence work.

4. Virtually all gay soldiers are assigned to "open" bases, i.e. bases where the majority of soldiers commute to their homes at night. These are the same kind of bases that most women soldiers are assigned to. "Closed" bases are those considered to be combat ready.

5. No open gay holds a command position in a combat arm anywhere in the IDF. This is a categorical statement. It is doubtful that any open gay holds a command position even in the support branches, though an openly gay technician or specialist with some rank may be found here or there.

6. From a non-random sample of 40 IDF soldiers (from colonel to sergeant), I found only one soldier who ever knew of a gay person in his unit. In brief, open gay soldiers are far and few in the IDF.

7. De facto, open gays in the IDF are treated much in the manner of women soldiers, e.g. usually reside in their homes, not allowed into combat units, kept out of forward base areas.

Germany. The following information was obtained from Drs. Juergen Kuhlmann and Ekkerhard Lippert of the SOWI (Sozialwissenschafliches Institut der Bundeswehr -- the Social Science Institute of the German Military). Address: Winzererstr. 52, 8000 Munich 40, Germany, fax 011-49-89-120003-352. Again, the information given below is more accurate than that usually given by the public relations office.

1. Background: Germany is a society with a visible gay community, resembling in many ways the situation in the United States. As in Israel, the issue of gays in the military is affected by the presence of conscription.

2. Officially, there is no exemption from conscription on the basis of homosexuality. Most gay men subject to the draft, however, opt for the civilian service option (Zivildienst). This alternative service program allows men to reside in their own homes if they choose.

3. Some numbers of gays are conscripted into the Bundeswehr.

4. By military regulations openly gay soldiers cannot be promoted. The rationale is that gays do not serve as proper leadersip models. This restriction has been upheld by both military and civilian courts.

5. The no-promotion rule means, in effect, that there are no open gays in the career force.

6. The number of closet gays in the the career force is unknown, but it probably approximates the proportion in the American forces.

7. The German military foresees no change in the policy toward homosexuals.

FILE
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Homosexuals in Israeli Army: No Official Discr

By CLYDE HABERMAN
Special to The New York Times

JERUSALEM, Feb. 20 — For 15 years, Prof. Uzi Even had done top-secret research for the military. In the 1967 and 1973 wars he was assigned as an intelligence officer with combat units in Sinai and on the Golan Heights.

Then, after a security check 10 years ago turned up that he was living with another man, he decided he would no longer hide his homosexuality.

"It was as though an iron curtain came down between me and my colleagues," said Professor Even, chairman of the chemistry department at Tel Aviv University. "They were ordered not to speak to me."

In short order, his security clearance was canceled, he was stripped of his rank, which even now he does not reveal for security reasons, and he was given office chores on reserve duty.



Rina Castelnuovo/The New York

After a security check by the Israeli military 10 years ago revealed that he was living with another man, Prof. Uzi Even, right, shown at home with his companion Amit, decided he would no lon his homosexuality. As a result, his secur ance was canceled, and he was stripped of

No Official Discrimination

Officially, there is no discrimination against homosexuals in the Israeli armed forces. Virtually all Israeli men and women, except for Arabs and ardently Orthodox Jews, enter the service at the age of 18, and homosexuals are no exception. Conscripts are not asked about sexual orientation, and people who are openly gay are not drummed out of the service because of it.

But as Professor Even's experience suggests, the Israeli Army may be something less than the model of tolerance and openness supposed by some who cite Israel's example in advocating an end to the ban on homosexuals in the military in the United States.

By coincidence, at the same time that the United States has been enmeshed in the issue, Israel has recently been engaging in a rare and occasionally intense public debate on attitudes toward homosexuality in its army.

Pressure to Hide Homosexuality

Although homosexuals serve with everyone else in the military in Israel, many Israeli homosexuals say that in reality they feel pressures to hide their orientation, both in active service and the reserve duty that most men perform for a month or two each year until the age of 51.

"Israeli society is a macho society, and the army is a mirror of that," said Rafi Niv, who writes on homosexual issues for a local newspaper in Haifa. "Most gay soldiers I know are in the closet."

Generally speaking, homosexuality is not considered acceptable in a country where the family is central and where strict religious values shape public policy on personal behavior, from cradle to tomb. There is an incipient gay rights movement, but it is not large and the issue itself is far from dominant for most Israelis.

Despite the fact that gay Israelis are conscripted, for example, those soldiers who are found to be homosexuals, or who declare that fact openly, are required to undergo psychological testing and security checks, an indication that the Army still regards them with distrust and concern that their orientation might reflect emotional disorders.

The requirement of security checks appears also to reflect concern about blackmail for those who have kept their homosexuality to themselves.

Risks in Psychological Testing

While nothing negative necessarily results from the psychological testing, homosexuals say they find the process intrusive and threatening. Indeed, there are real risks: Some Army professionals acknowledge that those men's chances of being assigned to highly classified work or to certain combat units are highly reduced.

"Maybe we are more afraid than we really have to be," said a 34-year-old insurance-company supervisor in Haifa who insisted on not being identified. "But I don't serve with the same people each time I do reserve duty. When I'm stuck for 30 days with people and I don't know how they will react, it is better that I don't come out."

Professor Even argues that his experience bears out these concerns.

"I was openly gay," he said in a interview. "Nobody could say that I was subject to blackmail because by that point there was nothing to blackmail me with."

The fact that homosexuals are accepted in the Israeli armed forces may have something to do with the role played by the army in Israeli society. Because of universal conscription, banning homosexuals would be seen as a discriminatory act against one group.

Even in an age when it is not the revered institution it once was, the military remains the one common denominator in a fractious country. Service is generally regarded as a critical rite of passage. Important relationships are forged in the Army, and the type of unit one serves in often can determine success later in life.

"Saying you can't serve because you're a homosexual is saying you can't be a part of society, period," said Lieut. Col. Moshe Fogel of the army.

The Israeli Defense Forces, as the army is officially called, have been accepting homosexuals with no questions asked at least since the 1970's. They were years ahead of Parliament, which eliminated sodomy as a crime only in 1988, and banned job discrimination on the basis of sexual orientation in late 1991.

There is no military code governing homosexual con lations prohibit sexual act eral on military bases, a rules are often ignored a tween men and women.

The code also forbids off ally men — from coercin nates — usually women — relations, a rule that ma women complain is also re lated. Presumably, these apply as well to homosex But the day-to-day reali Fogel says, is that gay so their orientation to themse the issue does not arise

Army Issues Statem

After Professor Even the army issued a forma rejecting charges of bias that homosexuals are not p a group, from sensitive ass

Officers who argue that tolerant of homosexuals cite Col. Doron Meisel, who held sitions in the medical c three chiefs of staff, all of w he was gay.

Colonel Meisel's death t two years ago, at the age

: No Official Discrimination, but Keep It Secret



Rina Castelnuovo for The New York Times

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her his homosexuality. As a result, his security clear-
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and banned job discrimi-
basis of sexual orienta-
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There is no military code specifically governing homosexual conduct. Regulations prohibit sexual activity in general on military bases, although the rules are often ignored at least between men and women.

The code also forbids officers — usually men — from coercing subordinates — usually women — into sexual relations, a rule that many Israeli women complain is also routinely violated. Presumably, these codes would apply as well to homosexual activity. But the day-to-day reality, Colonel Fogel says, is that gay soldiers keep their orientation to themselves, and so the issue does not arise.

Army Issues Statement

After Professor Even's testimony, the army issued a formal statement rejecting charges of bias and saying that homosexuals are not prohibited, as a group, from sensitive assignments.

Officers who argue that the army is tolerant of homosexuals cite the case of Col. Doron Meisel, who held senior positions in the medical corps under three chiefs of staff, all of whom knew he was gay.

Colonel Meisel's death from cancer two years ago, at the age of 46, left open, however, the question of whether his homosexuality would have stood in the way of future promotion.

Another gay reservist, a professor at Hebrew University in Jerusalem, does his annual duty in an intelligence unit, and often has access to top-secret material. He says that several other people in his unit are also gay, and their homosexuality is known to everyone with whom they work.

"It's not an issue," he said. But then after a pause he added, "in my unit."

"If the security people knew about it then it could become an issue," he acknowledged.

Evaluation Mandatory

Psychological evaluation of known homosexuals has been mandatory since 1983, and few would say that it works to their advantage. Army officials said they had no explanation why the evaluations were instituted at that time.

"Soldiers declared or found to be homosexuals will be restricted from serving in highly sensitive units like intelligence," Reuven Gal, a former Army chief psychologist, said in an interview last week with Israel Radio. "Or they might be excluded from some combat units that are highly condensed or under high stress or may serve for long periods of time in seclusion."

Much seems to depend on the attitude of the soldier's commanding officer toward homosexuality, and the arbitrariness is one reason that several gay groups are campaigning to scrap the 1983 regulations.

"If being gay is disqualifying for sensitive positions, it's wrong to keep gays in the service," said Liora Moriel, head of one such group. "But if it's not a disqualifying factor, these rules should be taken off the books."

But it may take more than rule-book changes to purge anti-gay attitudes from the military, given the degree to which it reflects the larger society.

The impact of this matter was made clear by a recent parliamentary hearing that Professor Even addressed: While it was under way, lawmakers from Orthodox Jewish parties refused even to enter the Parliament building.

Prime Minister Yitzhak Rabin, a former Army chief of staff, says he sees no reason for anti-gay discrimination, and he promises an inquiry to see if Professor Even should be returned to his former position.

Thus far, the professor has not heard back. But he says the public's verdict is in and, judging from the press reaction and from phone calls, it is sympathetic. "I was expecting some crank calls," he said. "But I got only one."

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USNMR 10 February 1993

MEMORANDUM FOR RECORD

SUBJECT: Homosexuals in NATO Armed Forces - Denmark

1. Telephone call from CDR Kure, Deputy Danish NMR, to LTC Olson, Assistant USNMR. Response to inquiry on issue of homosexuals in Danish Armed Forces.

2. Answer to all questions is no.

3. Homosexuality is not acknowledged as a relevant issue in Denmark.

Linda L Olson

LINDA L. OLSON
LTC, USA
Assistant USNMR

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Moved to File 102
of "MWG FILES"

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1ST STORY of Level 1 printed in FULL format.

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November 30, 1992, Monday, Final Edition

SECTION: FIRST SECTION; PAGE A1

LENGTH: 2111 words

HEADLINE: Many Allies Allow Gays in the Military;
Canada, Australia Are Latest to Drop Exclusionary Policy

SERIES: Occasional

BYLINE: John Lancaster, Washington Post Staff Writer

DATELINE: OTTAWA

BODY:

The latest and final challenge to Canada's policy of excluding homosexuals from its armed forces could have been lifted straight from the pages of an American newspaper: A top-notch air force officer is investigated for homosexuality, resigns under pressure, then goes to court to get the policy overturned.

But the case of Michelle Douglas v. the Canadian Forces had an ending that has yet to be written in the United States. After a lengthy review of arguments on both sides of the issue, Canada's military leadership concluded there was no credible basis for continuing the ban and last month agreed to drop it before the Douglas case even went to trial.

"We would not have been able to prove that it [homosexuality] had that deleterious effect on cohesion and morale that everyone talked about," said Daniel E. Munro, a retired brigadier general who serves as director general for personnel policy in the Canadian Forces. "Basically, we realized that we didn't have the evidentiary foundation. . . . It just wasn't there. I mean, you can't use the old cohesion and morale arguments just based on folklore. You have to be able to prove this stuff."

Canada is hardly alone in opening its military ranks to gay men and lesbians. Homosexuals serve legally in the armies, navies and air forces of many U.S. allies around the world, including major NATO countries that routinely conduct field exercises with U.S. troops.

In the view of many critics, the growing number of foreign military services that accept homosexuals -- Australia joined the list only last week -- has undermined the Pentagon's position that the presence of openly gay soldiers, sailors and airmen would undermine morale and fighting effectiveness. President-elect Clinton has pledged to overturn the ban on homosexuals in the U.S. military, although he has not offered a timetable for doing so.

A General Accounting Office review of 17 foreign military forces, most of them belonging to U.S. allies or NATO countries, found earlier this year that only four -- including Canada's at the time -- explicitly banned gay men and lesbians. Countries that permit homosexual service personnel include France,

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Germany, Italy, Japan, the Scandinavian countries and Israel; Britain, Greece and Portugal are the only NATO powers besides the United States that still prohibit them.

"We don't have any ban and we don't have any problem," said Kristian Andersen, a Danish air force general and military attache' in Washington. "I don't understand why you have a debate on it. . . . Nobody cares about it."

Pentagon officials acknowledge that the U.S. policy runs counter to international trends, but they question the value of such comparisons. Although they are reluctant to say so on the record, U.S. military officials argue privately that countries where homosexuals are permitted to serve can afford to suffer some loss of combat effectiveness; the United States, with its global military commitments and superpower status, cannot.

"We are the best," said a senior U.S. military officer who insisted on anonymity. "Most of these NATO nations . . . have a national security policy which calls for responsibilities within their borders, whereas our forces are in all far-flung areas of the globe."

That argument, of course, assumes that the introduction of openly gay soldiers into largely heterosexual units would undermine fighting prowess. That does not appear to have happened in Israel, where gay men and lesbians can serve openly and whose army is widely considered among the best in the world.

But Pentagon officials say such a comparison is invalid because Israel's military relies on conscripts and thus cannot exempt one class of citizens while forcing others to serve. They also suggest that U.S. attitudes toward homosexuality are such that gay service personnel would be less welcome in the U.S. military than they are in many other countries.

"Without sounding too ethnocentric about it, we're just different," said Brig. Gen. Thomas Draude, chief of public affairs for the Marine Corps. "As a former rifle company commander, I can tell you that the presence of a homosexual in my unit in Vietnam . . . would have been detrimental to our effectiveness."

Even in countries where homosexuals are allowed to serve, their presence is often controversial and subject to some restrictions. Israel, for example, screens gay service personnel for mental health problems, and France does not exactly welcome them either: A Defense Ministry spokesman said homosexuals who cite fear of persecution by fellow soldiers often are granted exemptions to the country's mandatory 10-month service obligation.

Some of the most liberal attitudes are found in the armed forces of the Netherlands, which distributes training brochures on sensitivity toward homosexuals and has considered placing recruiting ads in gay magazines. But the presence of gay service personnel in the Dutch military also has had its costs, according to a 1990 study by the Royal Netherlands Navy.

The study found that unwarranted fears by straight Dutch sailors may affect "not only the individual homosexual . . . but also the surrounding working and living environment where the climate can be drastically impaired."

Nevertheless, the record of U.S. allies does tend to cast doubt on Pentagon claims that permitting gay men and lesbians in U.S. military units will cause

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widespread disruptions -- from mass resignations to homophobic violence.

The Netherlands study, for example, noted that most gay service personnel have chosen to keep their sexual orientation to themselves, a pattern that has been repeated elsewhere. And Munro, from the Canadian Defense Forces, said he has seen no evidence that gay soldiers here are suddenly emerging from their closets simply because it is now legal to do so.

"This notion of what's going to happen to the first two gays who dance together on the dance-room floor of the junior-ranks mess in the airborne regiment, I mean I just don't think that will happen," said Munro. "It certainly won't happen in the near future. On the other hand, if they do it, then clearly nothing should happen to them, and a lot of appropriate disciplinary action will be taken against anybody who does something."

The policy that was overturned last month -- Canadian Forces administrative order 19-20 -- explicitly prohibited homosexuals from all uniformed branches and even required Canadian troops to inform on fellow service members they suspected of homosexuality. In practice, however, the all-volunteer military had begun to relax its stance in 1987, when gay soldiers were offered the option of remaining on active duty but without opportunities for promotion or transfer.

The decision to abandon the policy stemmed from a suit filed by Douglas, the former air force lieutenant, who left the military three years ago after an investigation into her sexual status. Douglas's attorneys claimed that the ban violated Canada's 1982 Charter of Rights and Freedoms, which is roughly analogous to the U.S. Bill of Rights.

Initially, lawyers for the Canadian Forces prepared a defense, hiring retired U.S. Army Col. Darryl Henderson to make the argument that homosexual soldiers would undermine the "cohesion" of military units. "Cohesion . . . is based on very strong agreement on basic norms, basic values and any value . . . that presents a cleavage in that group . . . is going to degrade cohesion," said Henderson, a former commander of the Army Research Institute in Washington.

But Douglas's attorneys said there were no scientific data to back up that claim and accused the Canadian military of resorting to the same arguments used by the U.S. armed forces in the 1940s to resist integration.

"Armies are very flexible organizations able to absorb all kinds of human material and make soldiers out of them," said Michael Bryans, a military policy expert here who helped prepare Douglas's case. "The only argument left is, 'It's our club and we make the rules.' "

Munro, noting that Canadian anti-discrimination law is somewhat tougher than in the United States, said it was clear that Douglas would prevail if her case went to trial. "All of the old sort of traditional bogeymen about gays and lesbians . . . weren't there anymore," he said.

The decision to overturn the ban in the 80,000-strong Canadian military evoked little interest here in comparison to the controversy generated by Clinton's pledge to do the same in the United States.

Munro said he hopes to avoid problems with anti-homosexual bias by instituting sensitivity training along the lines of courses now taught to

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incoming enlisted personnel and officers on avoiding sexual harassment of women in uniform. "It's not going to be overnight and it isn't going to be easy," he said. "In the end, the policy change is clearly a leadership issue. If the leadership of the organization doesn't accept it, then it's not going to work."

Among countries that do not actively prohibit homosexual service personnel, policies vary widely according to culture and tradition. Some countries explicitly welcome homosexuals; some allow them but place strict limits on homosexual behavior; still others try to ignore the issue.

An example of the latter category is France, whose military regulations do not even mention homosexuality and where gay and lesbian draftees almost invariably keep their sexual orientation to themselves, according to a Defense Ministry spokesman. "Because homosexuals a priori don't want to come into the army, if they do they hide it, because they feel the culture of the French army rejects them," the spokesman said.

He added, however, "If someone wants to be open about it, that's not forbidden."

Germany, too, maintains a conscript army and has not prohibited gays since homosexuality was removed from the country's list of criminal offenses in 1969. German military officials have reported few problems assimiliating homosexuals into the military, and their presence has never been a major issue.

"There were never any problems," said Lt. Col Burkhard Friedrichs, spokesman for the German army's 10th Armored Division in Simaringen and a 30-year military veteran. Friedrichs and other German military officials said homosexual behavior is generally ignored unless it is overt or disruptive.

"It's a private matter," Friedrichs said.

"I know one commander who's gay," said a Luftwaffe officer. "His commander knows it, his unit knows it, but does it influence how he does his job? No." The officer added: "He doesn't live on base, he doesn't behave against military law, and that's it. If he's behaving like everybody else, then where's the problem?"

But despite Germany's official posture of tolerance toward homosexual soldiers, gay rights advocates still complain of widespread discrimination, from blocked promotions to denial of access to classified material. "In an organization where homosexuality is not considered suitable, one can't expect that they will clearly stand up against discrimination," according to Volker Beck, a spokesman for the advocacy group German Gay.

Besides the United States, Britain, too, has prohibited homosexuals in the armed forces "since time immemorial," according to a spokesman for the Defense Ministry. Gay men and lesbians are not allowed to join and are removed if their homosexuality comes to light -- or if their sexual orientation becomes known while they are serving. Those who are ousted are given an administrative discharge, which carries no stigma.

The policy allows for exceptions only in "the most exceptional cases," according to a recent report from the Defense Ministry to a House of Commons select committee. "Even when no disciplinary action is taken," the report said, "those found to have homosexual tendencies or to be engaging in homosexual

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practices will almost inevitably be administratively discharged."

The report said the reason for the ban is that "homosexuality, including lesbianism, is not compatible with the tightknit corporate environment of military life."

There is, however, no wide-ranging witch hunt underway in British military ranks for closeted homosexuals. In 1990, for example, nine sailors, 34 soldiers and 24 airmen were discharged for homosexuality. These figures have been essentially constant over the past few years, and represent, for example, roughly the same number of military men and women discharged annually for running up bad debts.

Correspondent Eugene Robinson in London and special correspondents Steve Vogel in Bonn and Sharon Waxman in Paris contributed to this report.

GRAPHIC: PHOTO, THIS TRAINING PAMPHLET ON SENSITIVITY TOWARD HOMOSEXUALS WAS PUBLISHED BY THE DUTCH MILITARY. KEN FAUGHT/TORONTO STAR; PHOTO, THE WASHINGTON MONTHLY

TYPE: FOREIGN NEWS

SUBJECT: ARMED FORCES; MILITARY PERSONNEL; HOMOSEXUALS; MILITARY DISCIPLINE AND LAW; AUSTRALIA; PERSONNEL MANAGEMENT; CIVIL RIGHTS; GERMANY; CANADA

ORGANIZATION: NATO

NAMED-PERSONS: MICHELLE DOUGLAS; BILL CLINTON; THOMAS DRAUDE

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MEMORANDUM FOR DASD (MM&PP), LtGen Alexander
THRU PDASD (MM&PP), Mr. Timenes
Director, O&EPM, COL Deutsch
Staff Director, OSD MWG, COL Neuendorf

June 3, 1993

SUBJECT: GAO Review - Policies and Practices of Other Nations Towards Homosexuals Who Serve in the Military - GAO Code 703008

At the request of Senator Sam Nunn (Chairman, SASC) and Senator John Warner, The GAO National Security and International Affairs Division (Military Operations and Capabilities Issues) concluded their review of the policies and practices of other nations toward homosexuals who serve in the military and the lessons learned. GAO representatives met with OSD and Service representatives for their exit briefing at 1000 on April 14, 1993.

The following is a synopsis of key points and issues:

a. Their efforts were primarily two pronged: 1) Obtain laws and policies from the U.S. Embassies of 25 countries that have 50,000 or more military personnel and 2) Visit Canada, Sweden, Germany, and Israel to obtain detailed information of policies and practices.

b. An appendix to the report will address the nuances of the 25 countries surveyed for policies only. In addition, a matrix table with country, size, source of personnel (volunteers or conscripts), homosexuals allowed to serve, laws and polices will be included. GAO stated that 4 countries declined to participate because the issue was too sensitive: Algeria, China, Egypt and Saudi Arabia. In summary, GAO briefed that 11 countries permit known homosexuals to serve, 11 countries do not permit homosexuals to service and 3 countries have no laws or policies that address this issue: Japan, Poland and South Africa. Said otherwise, 14 were European countries, 5 South American (of which none allow open homosexuals to serve). 4 countries have recently revised their policies: Australia, Canada, Portugal and Spain.

c. The GAO used many of the Senate sources identified in their committee hearings and met with Gen Trainor, Larry Korb, social scientists, Walter Reed, and church and homosexual advocacy groups for their sources in the four countries visited: Canada, Germany, Israel and Sweden.

d. According to GAO, five "themes" evolved:

- Military policies reflect civilian laws
  - -- German military has determined the homosexuals are unsuitable in the military in some cases

- Military policies concerning homosexuals have evolved
  - -- Military policies were preceded by changes of attitudes and changes in civil law.
  - -- These changes have evolved over years...Canada, 7 years; Germany, 24 years; Sweden, 11 years; and Israel since their inception, 1948.

- There are no inconsistencies between policies and practices

-- The military personnel and disciplinary practices GAO reviewed were induction, assignment, promotion and discipline.
-- Israel had some inconsistencies up to May 18, 1993 when the Knesset revoked policy of not assigning to intel positions.
-- People in Sweden claimed there were career limitations, however, GAO found no evidence.
-- It was too soon to draw any conclusions in Canada.
-- The German policy and practices are vague and flexible

- Few homosexuals openly identify themselves
  -- GAO believes this is because these cultures think homosexuality is a private matter and not openly discussed; there is fear of discrimination and negative reactions from peers and superiors; young soldiers are still struggling with their own sexuality; there is no advantage to identifying one's homosexuality and in most of these countries, military personnel serve close to home and can maintain private lives.
  -- Once the member has established his/her career, reputation and gain respect, then he or she identify his/her homosexuality. The average age is 25-26.

- The presence of homosexuals in the military is not an issue
  -- Most of the countries were surprised the U.S. is bringing the subject up.
  -- This issue is just not talked about.

e. Questions from those in attendance included:

- How may homosexuals were interviewed, how were they contacted?
  -- GAO interviewed approximately 40 to 60 individuals. 11 to 15 were reserve officers and enlisted in Israel; none in Canada and Germany. The GAO got their manes through advocacy groups.
- Did GAO realize the disparity between the 4 countries visited and the U.S. and its military forces?
  -- GAOs gaol was to research countries which shared the western value system. They are not trying to make an analysis or comparison.
- How can you say that the presence of homosexuals in the military is not an issue, yet the countries would not let you talk to their units? (No comment)
- What do you mean by known homosexuals?
  -- Known by peers and in some cases, superiors. The question is not asked by these countries, however, Germany comes close.
- Did you find evidence that these countries wanted more homosexuals to serve?
  -- No, the advocacy groups were low key.
- Did these countries give you a percentage of homosexuals?
  -- These countries do not keep official records of this information.

f. GAO briefed Senator Warner on Friday, May 28, 1993 and plans to have its final report Thursday, June 10, 1993 for the public.

LtCol Cherie Zadlo/O&EPM/x56312/3 Jun 93

FILE
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DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

22 June 1992

Defence Instruction (General) PERS 35-3 is issued pursuant to section 9A of the *Defence Act 1903.*

A.J. AYERS
Secretary

P.C. GRATION
General
Chief of the Defence Force

LIST B – ISSUE NO PERS B/4/92

NEW INSTRUCTION

PERS 35-3 Unacceptable Sexual Behaviour by Members of the Australian Defence Force

SINGLE SERVICE FILING INSTRUCTIONS

This Instruction should be filed as:

1. NAVY PERS 16-5
2. ARMY PERS 96-3
3. AIR FORCE PERS 29-15

CANCELLATION

DI(G) PERS 35-1 ISSUE NO PERS B/8/86 dated 3 NOV 86 is cancelled. The information is now contained in the attached Instruction DI(G) PERS 35-3 ISSUE NO B/4/92 dated 22 JUN 92.

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

INTRODUCTION

1. Australian human rights legislation, in particular the Sex Discrimination Act (SDA) and the Human Rights and Equal Opportunity Commission Act (HREOC Act), and the changing composition of the Australian Defence Force (ADF) have necessitated the development of an ADF statement of policy regarding the extent to which the ADF may, and should, become concerned with the sexual behaviour of its personnel - given that sexual relations and activities are a normal part of adult life and are primarily and predominantly a private matter for each individual. The central element of the policy stated in the following paragraphs is that the Australian Defence Force (ADF) has no concern with the sexual activities of its members, provided they are not unlawful and are not contrary to or inconsistent with the inherent requirements of the ADF.

AIM

2. The aim of this Instruction is to state ADF policy regarding unacceptable sexual behaviour by ADF members and the Service action which may be taken as a consequence.

STATEMENT OF POLICY

3. It is an inherent requirement of ADF service that all ADF members contribute to operational effectiveness, the preservation of group cohesion, respect for command relationships, collective discipline and maintenance of morale. The inherent requirement of the Service places an obligation on Service members to refrain from behaviour which:

a. results in loss of confidence in the member's ability to contribute to the mutual dependence and collective discipline of the group; or

b. is contrary to, or inconsistent with, military objectives and standards of professional and personal conduct required to achieve such objectives.

4. This obligation defines the limits of ADF concern regarding the sexual behaviour of members. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour and will normally warrant disciplinary and/or administrative action, where such behaviour:

a. is prejudicial or is likely to be prejudicial to group cohesion;

b. is prejudicial or is likely to be prejudicial to command relationships;

c. is prejudicial or is likely to be prejudicial to the attainment of military objectives through reducing the operational effectiveness, health or safety of the individual or the group;

d. takes advantage of, or threatens the person or personal integrity of subordinate or underage persons;

e. brings or has the potential to bring discredit on the ADF; or

f. is unlawful under either civil or military law.

5. In certain circumstances in the ADF environment (that is in the environs of the establishment/unit/installation, ship, aircraft or in any other situation in which the member is deployed to perform military duty), and in particular in some training and operational elements, any

sexually related behaviour may be contrary to the inherent requirements of the Service and therefore warrant prohibition through the promulgation of a general order as defined in the Defence Force Discipline Act (DFDA).

6. In all ADF and single Service 'on entry' training institutions, including the Australian Defence Force Academy, sexual relations and public displays of affection and private intimacy between students and staff, and between all students, regardless of their training status, are to be prohibited within the precincts of the institution and during absences from the institution on duty through the promulgation of a general order as defined in the DFDA.

DEFINITION

7. In this Instruction 'administrative action' is action available to a commander or superior authority to deal with unacceptable behaviour or actions on the part of a member. Administrative action includes, but is not limited to: counselling, adverse report, administrative censure, warning for discharge, involuntary separation from the Service, and recommendations affecting posting, promotion or employment. Administrative action is separate and distinct from disciplinary action, with different rules.

SEXUAL OFFENCES

Offences under Civil Law

8. When a report of sexual activity indicates that a civil or military offence may have been committed, an assessment is to be made as to whether it is more appropriate for the matter to be investigated as a civil or military offence. Advice should be sought from legal and superior military sources in this event. However, if urgent action is required, such as referral of the victim to a counselling service, this action is to be taken before recourse is made to the advice referred to above. If it is decided that the matter should be investigated as a possible civil offence, the complainant is to be assisted in reporting the matter to the civil police without delay (or to Service authorities if outside Australia). Cases of sexual assault, in particular, require swift referral so that appropriate counselling and medical/forensic tests can be conducted through the expert resources available to the civil authorities. A Commanding Officer's responsibilities are outlined in Annex A.

Sexual Offences under DFDA

9. Activities of a sexual nature which might attract Service disciplinary action include unwelcome sexual behaviour, sexual harassment, obscene behaviour, use of sexist language which provokes anger and could provoke a disturbance, disobedience of an order regarding the elimination of discriminatory practices, and conduct which encourages divisions or disrespect between personnel. In appropriate cases, conduct in the nature of assault might attract disciplinary action. (Annex B provides examples of some specific offences which may be relevant.)

SEXUAL HARASSMENT

10. The Commonwealth has acted to eliminate sexual harassment in employment, in the SDA. Sexual harassment is defined as an unwelcome sexual advance, or an unwelcome request for sexual favours, or unwelcome conduct of a sexual nature where the subject of such actions (inter alia):

a. has reasonable grounds for believing that a rejection of the advance, a refusal of the request, or the taking of objection to the conduct would disadvantage the member in any way in employment; or

b. is disadvantaged in employment as a result of rejection of the advance, refusal of the request or the taking of objection to the conduct.

11. It is Government policy that employers (which term includes the ADF for these purposes) provide a work environment free from sexual harassment, as far as is possible. The failure by any member to meet this obligation may result in a public hearing before the Human Rights and Equal Opportunity Commission (HREOC) and orders to pay compensation to any victim. Such action would be in addition to any proceedings for a disciplinary or criminal offence.

12. Sexual harassment under the SDA does not of itself constitute an offence although it is unlawful and compensation may be adjudged. However, the conduct giving rise to the allegation or complaint of sexual harassment may constitute a criminal and/or disciplinary offence.

RESPONSIBILITIES REGARDING SEXUAL OFFENCES AND SEXUAL HARASSMENT

Responsibility of All Members

13. It is the responsibility of every member to ensure that complaints of sexual behaviour amounting to an offence and/or sexual harassment involving ADF members are reported promptly for investigation and resolution (avenues of complaint are detailed in Annex C). All personnel within the command chain are to act on such complaints with speed, thoroughness and impartiality.

Responsibilities of Commanders

14. It is the responsibility of all Commanders to:

a. foster integration, and take all possible action to prevent or eliminate prejudice, unjustified discrimination and sexual harassment;

b. maintain an environment where complainants (ie victims and witnesses of sexual behaviour amounting to an offence and/or sexual harassment) are confident they will receive support from their superiors; and

c. respond promptly, seriously and with sensitivity to allegations of behaviour amounting to an offence and/or sexual harassment.

Sexual harassment has the capacity to seriously erode the mutual respect between superiors, subordinates and peers which is the basis of discipline in the ADF. It is therefore imperative that an early initial assessment be made regarding all allegations of sexual harassment to determine whether or not the matter should be handled primarily by disciplinary or administrative means. Further guidance for Commanding Officers on handling cases of sexual harassment which amount to disciplinary offences is at Annex A to this Instruction.

Resolution of Complaints Alleging Sexual Harassment

15. In most cases, complaints of sexual harassment can, and should, be resolved at establishment/unit level. Inevitably the issue will require tact and sensitivity and in some cases mediation. Any measures aimed at resolution must include firm steps necessary to ensure there is no recurrence of sexual harassment or victimisation of either party. This may require consideration of posting action or involuntary separation from the Service.

False Allegations of Sexual Offences/Harassment

16. Where it is established that a complaint of a sexual offence or sexual harassment is false and malicious, vexatious or mischievous, then disciplinary or administrative action against the complainant is to be considered.

OTHER SEXUAL BEHAVIOUR WARRANTING ADMINISTRATIVE ACTION

17. When a member's sexual behaviour is brought to the attention of the ADF as being inconsistent with or contrary to inherent requirements of ADF service, as stated in paragraphs 3 and 4 of this instruction, or the specific and promulgated requirements of the ADF, Service or unit which are consistent with the requirements in paragraphs 3 and 4, then consideration is to be given to taking administrative action. Such unacceptable behaviour is not subject to rigid definition and the administrative action taken in consequence may vary in nature, significance and impact according to the member's rank, appointment or duties. (Annex B describes some examples of unacceptable sexual behaviour.)

Annexes:

A. Guidelines for Commanding Officers

B. Examples of Unacceptable Sexual Behaviour

C. Avenues of Complaint

D. Outline of relevant provisions of Sex Discrimination Act and Human Rights and Equal Opportunity Commission Act.

Sponsor: ACPERS

GUIDELINES FOR COMMANDING OFFICERS

INTRODUCTION

1. This Instruction has been prepared to ensure that the ADF as a whole satisfies its legal obligations in a consistent and compassionate manner while recognising and upholding the inherent requirements of ADF service as stated in paragraphs 3 and 4 of the instruction. The identification and handling of sexual behaviour which is unacceptable in the ADF are not matters amenable to set procedural instructions or arbitrary directions to Commanding Officers (compared with the ADF's drugs policy for instance). The prime responsibility for execution of the policy contained in this Instruction must rest with individual Commanding Officers.

2. Commanding Officers are to ensure that all members in their unit are aware of the policy contained in this Instruction together with unit sources of advice, counselling and information regarding avenues of complaint.

Guide to Action under this Policy.

3. The instruction addresses unacceptable sexual behaviour in three parts:

a. sexual offences;

b. sexual harassment which is unlawful under the Sex Discrimination Act; and

c. other sexual behaviour which is unacceptable because of its adverse impact on the ADF.

Following are some notes for guidance regarding these provisions.

Sexual Offences.

4. When a report of sexual activity indicates that a civil offence appears to have been committed the complainant is to be assisted in reporting the matter to the civil police without delay (or Service authorities if outside Australia). The Commanding Officer's prime responsibilities are to ensure that both the alleged offender and the alleged victim are provided with necessary Service assistance and support and to ensure there is no victimisation or retribution within the unit during the course of investigations and judicial proceedings. If it is considered necessary for the effective functioning of the unit that one or more of the members involved be transferred pending completion of police and judicial action then the Commanding Officer should ensure this is arranged in a manner which does not prejudge the outcome of the judicial proceedings.

Internal handling of Complaints regarding Sexual Harassment

5. Where sexual harassment is of such gravity as to warrant disciplinary action (because of the nature of the conduct, the ranks of the persons involved, the circumstances in which the conduct took place, or a combination of these and other factors) the appropriate charge will depend on the facts of each case. While cases of harassment might be dealt with as 'prejudicial conduct' cases where the evidence suggests that an assault may have occurred should be charged under the appropriate provision of the DFDA (See Annex B paragraph 2). Legal advice should be sought in making decisions in such cases.

6. A member may choose to lodge a complaint of sexual harassment with an external agency regardless of Service action already taken. For this reason it is essential that adequate records of the initial complaint, unit investigation and consequential action are taken, ensuring in particular that conversations and interviews are properly recorded.

7. Where a complaint of sexual harassment has been made to more than one agency and referred to the Commanding Officer for response, the Commanding Officer is to forward details to the relevant Service Office for determination of further action, forwarding appropriate interim advice to the agencies involved.

8. If one or more complaints are lodged externally while a redress of grievance on the same grounds is being investigated then it may be necessary for the Commanding Officer to seek the complainant's consent to suspend redress action. Usually this requirement will be initiated by the Service Office in consultation with the Assistant Chief of the Defence Force (Personnel) (ACPERS) who is the ADF's point of contact for both the Defence Force Ombudsman and the Human Rights and Equal Opportunity Commission. In most circumstances ACPERS provides the ADF response to externally lodged complaints as well as negotiating the initial avenue for action.

Handling of allegations or information regarding Other Sexual Behaviour Warranting Service Action

9. When a member's sexual behaviour is brought to the attention of the Commanding Officer as being unacceptable (rather than unlawful), then the matter should be investigated discreetly and with sensitivity and the Commanding Officer may subsequently consider taking administrative action.

10. The decision whether or not to act on information regarding a member's sexual behaviour will not be easy and a Commanding Officer may consider it prudent to seek legal and superior military advice before acting - if only to ensure that the commander's personal beliefs and opinions will not unduly influence considerations.

11. The timing of considerations regarding administrative action is also difficult. If information is acted upon, without sound evidence of an adverse impact on the ADF, then the reasons for adverse administrative action may be successfully challenged as conjectural and lacking substance. If action is delayed, however, then some extraordinary administrative effort may be required to remedy the situation.

12. Commanding Officers are to observe the following requirements in addressing matters of this nature:

a. the matter is to be handled sensitively and discreetly;

b. the rules of natural justice are to be applied, in particular the member concerned is to be informed promptly of any investigation and is to be given adequate opportunity to respond to any allegations made against him or her;

c. the member should be counselled against repetition of the behaviour in question where it is found to contravene the requirements of this Instruction; and

d. each case is to be considered on its merits using only reliable evidence and considering all relevant factors.

Disciplinary Action

13. In more serious cases the behaviour of the member may warrant consideration of disciplinary action. In addition to sexual assault and other offences involving a victim, a member's sexual behaviour may justify disciplinary action where the behaviour:

a. may prejudice the discipline of the Defence Force;

b. may bring discredit on the Defence Force; or

c. may constitute a breach of a general standing order promulgated by the member's Service or unit.

Group Prejudice

14. Paragraphs 3 and 4 of this Instruction place an obligation on individual members to refrain from behaviour which could be prejudicial to group cohesion. In some circumstances group cohesion may be undermined as much by the actions of the group as the individual, warranting consideration of action which would constructively assist both the group and the individual to identify the causes and minimise the consequences of such prejudice. Paragraph 14 of the instruction lays down the responsibilities of Commanding Officers regarding prejudice or intolerance.

Prohibition of Sexually Related Behaviour within the unit

15. A Commanding Officer who decides that the formal prohibition of sexual activities and related behaviour is warranted should be sensitive to the extent of such behavioural restrictions in adjacent units to ensure members in the same environment are not subject to inconsistent rules, leading to resentment and loss of morale. In all cases, before such a prohibition is promulgated the relevant superior commander is to be informed.

16. The prohibition of such conduct, together with the applicable circumstances and conditions, is to be promulgated in relevant general orders as defined in the DFDA. Any such promulgated order is to:

a. include the nature and scope of administrative action or other consequences which a breach of the order might attract, whether or not the matter is to be dealt with under the DFDA; and

b. accord with the principles of this Instruction.

Commanding Officers must be prepared to justify such action in terms of the beneficial and deleterious effects of such an order, the factors considered to necessitate such action and the enforceability of the order. As guidance, an order prohibiting sexually related behaviour should not usually extend beyond the restrictions to be imposed in 'on entry' training institutions as laid down in paragraph 6 of this Instruction.

EXAMPLES OF UNACCEPTABLE SEXUAL BEHAVIOUR

1. This Annex provides examples of unacceptable sexual behaviour in the ADF. The examples are no more than illustrations of behaviour which may attract action or which have warranted action in the past. No example in this Annex may be used as the authority or justification for disciplinary or administrative action. Each case must be considered on its own merits.

Examples of Sexual Activity Amounting to a Service Offence

2. Activities of a sexual nature which may attract disciplinary action under the Defence Force Discipline Act (DFDA) would include offences under the following sections:

a. Disobedience of a Lawful Command - Sec 27

b. Failure to Comply with a Lawful General Order - Sec 29

c. Assault - Sec 33(a)

d. Creating a Disturbance - Sec 33(b)

e. Obscene Behaviour - Sec 33(c)

f. Using Insulting or Provocative Words - Sec 33(d)

g. Assault on an Inferior - Sec 34

h. Prejudicial Behaviour - Sec 60

i. Sexual offence under Part 111A of the NSW Crimes Act in its application to the Jervis Bay Territory - Sec 61 (note: a charge under Sec 61 should not be laid without prior recourse to legal advice)

By way of example, a course of conduct involving pinching or patting of a subordinate may warrant a charge of assault while unwelcome demands for sexual activity may warrant charges of 'prejudicial behaviour'. Sexual activity which may endanger other personnel should be the subject of disciplinary action. However, an isolated incident involving sexist and objectionable comments or leers and gestures with sexual connotations may warrant firm counselling rather than disciplinary action (repeated incidents of such behaviour, in spite of counselling, would warrant consideration of disciplinary action).

Examples of Sexual Harassment

3. An example of sexual harassment is that of a junior female who is afraid to complain about the sexual advances of her male instructor because he has indicated that she will fail to qualify if she rejects him. Sexual harassment also occurs when the victim objects to the advance, request or conduct and is then unfairly treated in employment. An example would be the removal of a female officer from an appointment because of her outspoken objection to sexually explicit language directed to her by male subordinates.

4. The examples used in paragraph 3 above are not intended to suggest that females are the only victims and males the only perpetrators of sexual harassment. A female member might force the continuation of a sexual relationship with a male superior by threatening to inform his superiors or spread rumours if he does not agree. Fear of official retribution, for instance reposting action, may be the sole reason for the male's continuation of the relationship. Such a threat by the female member may constitute sexual harassment.

5. Finally, sexual harassment may occur between members of the same gender. For instance, a female member may be afraid to complain about the unwelcome sexual advances of her female superior because she has good reason to believe she will receive a poor annual assessment if she complains or otherwise objects to the advances. This constitutes sexual harassment.

Examples of Unacceptable Harassment

6. Bullying and other forms of harassment of weaker members by stronger members is sometimes labelled sexual harassment when it is directed by members of one gender against members of the other gender. Such behaviour may not constitute sexual harassment as defined in the SDA; but may nevertheless constitute behaviour contrary to the inherent requirement of ADF service. Group intolerance of, or prejudice against, an individual member for instance because of the individual's sexual preference, which results in victimisation is also unacceptable harassment. (See also paragraph 14 of Annex A.)

Examples of Unacceptable Sexual Behaviour

7. Any unwelcome sexual advance, unwelcome request for sexual favours or unwelcome conduct of a sexual nature is unacceptable sexual behaviour and warrants disciplinary or administrative action against the perpetrator. (Conduct of a sexual nature includes the making to, or in the presence of a person, a statement of a sexual nature, concerning that person, whether the statement is made orally or in writing.) Unwelcome sexual behaviour does not include action or conduct which reflects mutual respect, friendship or attraction.

8. Some examples of unwelcome sexual behaviour are:

a. spreading rumours regarding a colleague's sexual life;

b. public discussion of sexual activities - with the intention of embarrassing colleagues; and

c. derogatory remarks to a colleague regarding their sexual appeal.

9. Some other circumstances in which sexual behaviour would be unacceptable, together with the reasons for the unacceptability, include:

a. indiscreet sexual relationships between a superior and a subordinate, resulting in damage to unit cohesion and an undermining of the superior's authority;

b. public flaunting and advocacy of a particular sexual proclivity, causing offence to members of the member's group and thus liable to provoke a breakdown in group cohesion and loss of professional respect; and

c. sexual relationships and activities conducted openly in the communal environment of a mess or barrack block, or encouraging younger members to accept participation in such activities as a requirement of communal living.

DI(G) PERS 35-3
File as: (NAVY PERS 16-5
(ARMY PERS 96-3
(AIR FORCE PERS 29-15

AVENUES OF COMPLAINT

General Avenues of Complaint

1. A member who has cause to complain about unacceptable sexual behaviour in the ADF environment should complain to a superior officer in the member's chain of command. If for any reason this is not appropriate or the member believes that lodgement of a complaint may provoke hostility or disbelief, then an application for redress of grievance should be lodged with the member's Commanding Officer. (See DI(G) PERS 34-1.) This avenue of complaint places a legal onus on the Commanding Officer to have the matter investigated swiftly and the grievance redressed without victimising, penalising or prejudicing the complainant.

2. In some circumstances a member may have grounds for not wishing to complain to any authority within the chain of command. The Defence Force Ombudsman may accept the complaint for investigation if he is satisfied special circumstances exist.

Complaints concerning Sexual Harassment

3. While it is preferable that Service action be taken to investigate and resolve complaints of sexual harassment members also have the right to refer the matter to the HREOC, under the provisions of the Sex Discrimination Act. It should be recognised that this avenue may not satisfy the immediate military objective of stopping the harassment, and acting against the offender, in a timely manner.

Complaints by Personnel subjected to Administrative Action

4. When administrative action is considered to be warranted as a result of non-compliance with this Instruction the rules of natural justice require that:

a. the member be advised of the proposed action;

b. the member be given access to all adverse material upon which the decision is based; and

c. the member be allowed a reasonable opportunity to comment on the adverse material and the proposed action.

If the affected member is aggrieved by the decision to take administrative action, or the decision making process, then the member may submit an application for redress of grievance.

Complaints Concerning Discrimination.

5. A member who believes that he or she has been discriminated against, contrary to the provisions of Commonwealth human rights legislation, may submit a complaint to the HREOC, however members who are considering this avenue of complaint should be encouraged to use the redress of grievance avenue initially - as a remedy of first resort.

Concurrent Complaints

6. When a complaint is lodged concurrently through more than one avenue of complaint, the ADF, in consultation with relevant external agencies, and where appropriate the complainant, will suspend action on all but one statement of complaint in order to facilitate speedy resolution of the matter and consistency in the advice provided.

DI(G) PERS 35-3
File as: (NAVY PERS 16-5
(ARMY PERS 96-3
(AIR FORCE PERS 29-15

OUTLINE OF RELEVANT PROVISIONS OF THE SEX DISCRIMINATION ACT AND THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT

The Sex Discrimination Act

1. The Sex Discrimination Act was passed by the Commonwealth Parliament in 1984. The Act gives effect to Australia's international obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and promotes recognition of the principle of equality between men and women. It also aims to eliminate sexual harassment at work and in educational institutions.

2. The major objects of the Act are:

   a. to promote equality of men and women:

   b. in certain areas to eliminate discrimination on the basis of sex, marital status or pregnancy; and

   c. to eliminate discrimination involving sexual harassment.

3. The provisions of the Sex Discrimination Act:

   a. make certain forms of sex discrimination unlawful;

   b. provide for investigation of complaints of unlawful discrimination;

   c. allow the Human Rights and Equal Opportunity Commission to intervene in court proceedings which involve sex discrimination;

   d. make provision for legislation to be examined to ensure that it is consistent with the objects of the Act or for new legislation to be proposed; and

   e. give the Commission an educational and research role in regard to the Act.

4. Sexual harassment in the workplace or in education is unlawful under the Sex Discrimination Act. Where a person who is sexually harassed in these circumstances acts to prevent further harassment, the Sex Discrimination Act protects that person against disadvantage and/or dismissal. Sexual harassment is defined in paragraph 10 of this Instruction.

5. A complaint of an act of sexual harassment (or other sex discrimination) may be made by:

   a. any person or persons affected by the act;

   b. any person or persons included in a group of people on behalf of the group;

   c. a trade union on behalf of its members.

All complaints must be submitted to the Human Rights and Equal Opportunity Commission in writing.

6. If after a conciliation and inquiry process the Commission is satisfied that the complaint is substantiated then a determination can be made. Such determinations may include declarations such as:

   a. that loss or damage suffered is to be redressed;

   b. that a person should be employed, re-employed or promoted: and/or

c. that damages be paid by way of compensation for loss or damage suffered (but this does not apply to a representative action).

If necessary, determinations may be enforced by the Federal Court.

The Human Rights and Equal Opportunity Commission Act 1986

7. The Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act) gives effect to Australia's international obligations under the following international human rights instruments:

a. International Covenant on Civil and Political Rights;

b. Declaration of the Rights of the Child;

c. Declaration on the Rights of Disabled Persons;

d. Declaration on the Rights of Mentally Retarded Persons; and

e. Convention Concerning Discrimination in Respect of Employment and Occupation (International Labour Organisation number 111).

8. ILO Convention 111 is concerned with discrimination in employment and occupation. This Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

a. race;

b. colour;

c. national extraction;

d. social origin;

e. sex;

f. religion; or

g. political opinion.

9. Recent federal regulations also apply this Convention to discrimination on the basis of:

a. age;

b. disability (physical, intellectual, psychiatric or mental);

c. impairment;

d. sexual preference;

e. marital status;

f. criminal record;

g. medical record; and

h. trade union activity.

DI(G) PERS 35-3
File as: (NAVY PERS 16-5
(ARMY PERS 96-3
(AIR FORCE PERS 29-15

10. Section 3 of the HREOC Act defines discrimination as being any distinction, exclusion or preference made on the basis of any of the grounds outlined above that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation - but does not include any distinction, exclusion or preference, in respect of a particular job, based on the inherent requirements of the job.

11. The HREOC Act establishes the Human Rights and Equal Opportunity Commission. The Human Rights Commissioner exercises certain statutory powers of inquiry, conciliation and settlement of complaints under the HREOC Act on behalf of the Commission.

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SEXUAL MISCONDUCT

PURPOSE

1. This order prescribes the Canadian Forces (CF) career policy and procedures applicable to cases of sexual misconduct.

RELATED ORDERS

2. This order should be read in conjunction with:

a. QR&O 19.61 (Certificate of Conviction);

b. CFAO 4-13 (Unusual Incidents);

c. CFAO 19-38 (Personal Relationships);

d. CFAO 19-39 (Personal Harassment);

e. CFAO 34-25 (Psychoneurotic and Personality Disorders - Medical Examination and Disposal); and

f. CFAO 114-3 (Conduct of Officers & WOs - Notification to NDHQ).

DEFINITIONS

3. In this order, "sexual misconduct" means an act which has a sexual purpose or is of a sexual or indecent nature and which, subject to paragraph 4, constitutes an offence under the Criminal Code or the Code of Service Discipline.

Note - Examples of sexual misconduct dealt with under the provisions of this order would include, but are not limited to, sexual activity between consenting adults under prohibited circumstances, sexual abuse of a child, incest, sexual assault, aggravated sexual assault, indecent exposure and bestiality.

INCONDUITES À CARACTÈRE SEXUEL

OBJET

1. La présente ordonnance énonce la ligne de conduite en matière de carrière et les procédures des Forces canadiennes (FC) applicables aux cas d'inconduites à caractère sexuel.

ORDONNANCES CONNEXES

2. La présente ordonnance doit être lu en tenant compte des ordonnances suivantes :

a. ORFC 19.61 (Certificats de condamnation);

b. OAFC 4-13 (Incidents inusités);

c. OAFC 19-38 (Relations personnelles);

d. OAFC 19-39 (Le harcèlement);

e. OAFC 34-25 (Troubles psychonévrotiques et troubles de personnalité: examen médical et mesures prévues concernant ces cas);

f. OAFC 114-3 (Conduite des officiers et des adjudants - avis au QGDN).

DÉFINITIONS

3. Dans la présente ordonnance, «inconduite à caractère sexuel» s'entend d'un acte dont l'objet est sexuel ou qui est à caractère sexuel ou indécent et qui, sous réserve du paragraphe 4, constitue une infraction sous le régime du Code criminel ou du code de discipline militaire.

Nota - Des exemples d'inconduite à caractère sexuel dont fait état cette ordonnance pourraient inclure, notamment des activités à caractère sexuel entre adultes consentants dans des circonstances prohibées, l'abus sexuel sur des enfants, l'inceste, l'agression sexuelle, l'agression sexuelle grave, l'exhibitionnisme et la bestialité.

SEXUAL HARASSMENT

4. Where conduct is alleged that could constitute sexual harassment but not an offence under the Criminal Code (e.g. lewd comments), it shall be dealt with pursuant to CFAO 19-39 (Personal Harassment). Where conduct is alleged that could be both a Criminal Code offence and sexual harassment (e.g. a pat on the behind), the applicable order will depend on the way in which the military authority responsible for taking action decides to treat the matter. If, based on the complaint or other information, the authority determines that the matter is sufficiently serious that a charge for a Criminal Code offence is a reasonable possibility upon the completion of an investigation, this order shall be applied until the investigation is completed. If the investigation does not provide sufficient evidence to support a charge for a Criminal Code offence but does support a finding of sexual harassment, the post-investigation procedures for harassment in CFAO 19-39 shall be applied. Otherwise, this order shall continue to apply.

5. Prior to making a determination that the evidence is not sufficient to support a charge under the Criminal Code, the military authority concerned should consult with the unit legal adviser. If doubt exists as to whether civilian authorities will be laying a charge under the Criminal Code, the legal adviser shall obtain the information from the civil authorities and inform the responsible military authority of the decision. In order to ensure that there is a minimal delay in dealing with the matter, these consultations are to be completed on a priority basis.

POLICY

6. It is CF policy that sexual misconduct, and sexual harassment that is dealt with under CFAO 19-39, is unacceptable and will not be tolerated. A CF member who has engaged in sexual misconduct is liable to disciplinary and administrative action, including release if appropriate. An applicant for enrolment who has engaged in sexual misconduct may be refused enrolment.

HARCÈLEMENT SEXUEL

4. Lorsque l'on soutient que la conduite reprochée pourrait constituer du harcèlement sexuel mais non une infraction au Code criminel (c'est-à-dire des commentaires impudiques), celle-ci devrait être traitée conformément à l'OAFC 19-39 (Le harcèlement). Lorsque l'on soutient que la conduite pourrait être une infraction au Code criminel et du harcèlement sexuel (c'est-à-dire une petite tape sur le derrière), l'ordonnance applicable dépendra de quelle manière l'autorité militaire chargée du cas décidera de la traiter. Si, en se fondant sur la plainte ou sur d'autres informations, l'autorité décide que le cas est suffisamment sérieux pour qu'il soit raisonnablement possible de porter une accusation en vertu du Code criminel à l'issue de l'enquête, cette ordonnance doit être appliquée jusqu'à ce que l'enquête soit complétée. Si l'enquête ne fait pas suffisamment ressortir d'éléments de preuve pour supporter une accusation sous le Code criminel mais démontre du harcèlement sexuel, les procédures après enquête portant sur le harcèlement qui sont prévues à l'OAFC 19-39 s'appliquent. Dans le cas contraire, cette ordonnance doit continuer à être appliquée.

5. Avant de déterminer qu'une preuve n'est pas suffisante pour supporter une accusation en vertu du Code criminel, l'autorité militaire concernée devrait demander l'avis du conseiller juridique de l'unité. S'il y a des doutes quant à savoir si les autorités civiles porteront des accusations en vertu du Code criminel, le conseiller juridique devrait s'enquérir auprès des autorités civiles de la décision d'en porter ou non et en informer l'autorité militaire responsable du cas. De manière à s'assurer que le délai entourant ces consultations soit le plus court possible, celles-ci seront faites de façon prioritaire.

POLITIQUE

6. La politique des FC prescrit que les inconduites à caractère sexuel ainsi que le harcèlement sexuel dont il est question dans l'OAFC 19-39, sont inacceptables et ne seront aucunement tolérées. Tout militaire qui commet une inconduite à caractère sexuel est passible de mesures disciplinaires et administratives, y compris de libération, si cela s'avère nécessaire. Un candidat qui fait une demande d'enrôlement peut être refusé pour le motif qu'il a commis une inconduite à caractère sexuel.

INVESTIGATION

7. Where an allegation is made that a CF member has engaged in sexual misconduct, the commanding officer (CO) shall ensure that an investigation is conducted into the allegation as soon as practicable. The type of investigation will depend on the nature of the alleged sexual misconduct. Where the allegation concerns a possible offence under the Criminal Code, the matter should be referred to the Military Policy for a determination of which policy force, military or civilian, should conduct the investigation. Where the allegation concerns a possible offence contrary to the Code of Service Discipline, the investigation may consist of an informal investigation, a summary investigation, a board of inquiry or a military police investigation, as appropriate under the circumstances. If a police investigation is conducted, nothing precludes the conduct of an informal investigation, a summary investigation, or a board of inquiry to resolve issues not covered by the police investigation. If there is doubt as to the most suitable type of investigation, the advice of the unit legal advisor should be sought.

8. Where the investigation supports the allegation of sexual misconduct, the CO shall consult with a medical officer on the need for a medical examination in accordance with CFAO 34-25. He shall record the results of that consultation and refer the member against whom the allegation is made for an examination if recommended.

DISCIPLINARY ACTION

9. On completion of the investigation required in paragraph 7, the CO shall take such disciplinary action, if any, as is considered appropriate.

ADMINISTRATIVE ACTION

10. When sexual activities take place in circumstances where they are contrary to the Code of Service Discipline, they constitute sexual misconduct even if they are otherwise lawful (e.g. sexual activity between consenting adults that takes place in a location where such actions are prohibited by CF orders). Cases of this nature shall be handled at the unit level unless the CO considers them to be sufficiently serious that release may be warranted.

ENQUÊTE

7. Si l'on impute à un militaire des FC la perpétration d'une inconduite à caractère sexuel, le commandant doit s'assurer qu'une enquête est menée sur cette allégation dans les meilleurs délais. Le genre d'enquête pourra varier selon le type d'inconduites à caractère sexuel reproché. Si l'imputation de cette inconduite a trait à une infraction possiblement commise en contravention avec le Code criminel, l'affaire devrait être rapportée à la Police militaire pour que celle-ci détermine lequel des corps policiers - militaire ou civil - devrait mener l'enquête. Si l'imputation a trait à une infraction possiblement commise en contravention avec le code de discipline militaire, l'enquête peut, selon que cela s'avère indiqué suivant les circonstances, prendre la forme d'une enquête menée de façon informelle, d'une enquête sommaire, d'une commission d'enquête ou une d'enquête de la Police militaire. Si une enquête policière est menée, il n'y a rien qui empêche de faire tenir simultanément une enquête menée de façon informelle, une enquête sommaire ou une commission d'enquête si celle-ci a pour mandat de résoudre des questions qui ne sont pas couvertes par l'enquête policière. S'il y a un doute sur le type d'enquête le plus approprié, on devrait demander l'avis du conseiller juridique de l'unité.

8. Lorsque l'enquête supporte l'inconduite à caractère sexuel reprochée, le commandant devrait consulter le médecin militaire pour décider de la nécessité d'un examen médical selon l'OAFC 34-25. Il devrait noter les résultats de cette consultation et faire subir au membre un examen si cela s'avère indiqué.

MESURES DISCIPLINAIRES

9. À la fin de l'enquête prescrite par le paragraphe 7, le commandant est tenu de prendre, si nécessaire, les mesures disciplinaires qu'il juge indiquées.

MESURES ADMINISTRATIVES

10. Lorsque des activités sexuelles surviennent dans des circonstances qui sont en contravention avec le code de discipline militaire, elles constituent de l'inconduite à caractère sexuel même si elles sont par ailleurs légales (c'est-à-dire l'activité sexuelle entre adultes consentants survenant dans un endroit où de tels actes sont interdits aux termes des ordres des FC). Les cas de ce genre doivent être traités au niveau de l'unité à moins que le commandant ne les considère suffisamment sérieux pour justifier la libération.

11. In cases not handled at the unit level under paragraph 10, the CO shall consider the results of the investigation and all other relevant factors. Where the CO is satisfied that the member has engaged in sexual misconduct, the CO shall:

a. decide whether to recommend to NDHQ that the member is retained in or released from the CF; and

b. if the decision is to recommend release, prepare and deliver a Notice of Intent to Recommend Release in all cases regardless of rank and years of service.

12. In those cases not handled at the unit level under paragraph 10, the CO shall not place the member on Counselling and Probation or Report of Shortcomings, give the member a reproof, or take any other administrative action that might interfere with the proper determination of the question of release until the decision with respect to release or retention has been made by NDHQ. This does not prevent the member from being suspended from duty under QR&O 19.75 where appropriate.

REPORTING

13. An allegation of sexual misconduct by a member may qualify as an unusual incident for the purposes of CFAO 4-13 and may require special reporting under that order. In addition, where proceedings under the Code of Service Discipline have been commenced against an officer, CWO, MWO or WO, there is a special reporting requirement contained in CFAO 114-3.

14. In those cases not handled at the unit level under paragraph 10, the CO shall report the alleged sexual misconduct to NDHQ/Director General Personnel Careers Officers (DGPCO) or Director General Personnel Careers Other Ranks (DGPCOR), as appropriate. This report, and all subsequent reports required by this order, (except for police investigation reports which are handled independently and made available at each level within the chain of command), shall be forwarded through the chain of command.

11. Dans les cas qui ne sont pas traités au niveau de l'unité conformément au paragraphe 10, le commandant doit considérer les résultats de l'enquête et tout autre facteur pertinent. Si le commandant est d'avis que le militaire a commis une inconduite à caractère sexuel, il doit :

a. décider s'il recommande au QGDN le maintien du militaire dans les FC ou la libération de celui-ci;

b. s'il décide de recommander la libération, préparer et remettre un avis d'intention de recommander la libération, et ce dans tous les cas, quel que soit le grade et le nombre d'années de service.

12. Dans les cas qui ne sont pas traités au niveau de l'unité conformément au paragraphe 10, le commandant ne doit pas placer le membre en mise en garde et surveillance ou faire un rapport d'insuffisance à son sujet, ni lui adresser un reproche, ni prendre des mesures administratives qui pourraient entraver la détermination adéquate de la question de la libération avant que le QGDN n'ait pris la décision de libérer le militaire des FC ou de le maintenir dans celles-ci. Cela n'empêche toutefois pas, dans les cas jugés appropriés, de suspendre le militaire de ses fonctions en vertu de l'article 19.75 des ORFC.

RAPPORT

13. Une allégation d'inconduite à caractère sexuel à l'égard d'un militaire peut, pour l'application de l'OAFC 4-13, être qualifiée d'incident inusité et nécessiter un rapport spécial aux termes de cette ordonnance. De plus, si des procédures sous le code de discipline militaire ont été prises contre un officier, un adjudant-chef, un adjudant-maître ou un adjudant, il faut le rapporter en suivant la procédure de l'OAFC 114-3.

14. Dans les cas qui ne sont pas traités au niveau de l'unité conformément au paragraphe 10, le commandant doit rapporter l'inconduite à caractère sexuel reprochée au QGDN/Directeur général - Carrières militaires (Officiers) (DGCMO) ou au Directeur général - Carrières militaires (Personnel non officier) (DGCMP), selon le cas. Ce rapport et tout autre rapport ultérieur exigés par la présente ordonnance (sauf les rapports d'enquête policière, lesquels sont traités séparément et disponibles à chacun des niveaux de la chaîne de commandement) doivent être acheminés par la chaîne de commandement.

15. In order to treat fairly the victim of sexual misconduct and the member against whom an allegation is made, it is essential that the reports under paragraph 14 be handled expeditiously and with respect for individual privacy. Therefore, all levels in the chain of command are to treat these reports as priority matters for onward transmission in the shortest possible time and with access controlled on a strict need-to-know basis.

16. The report made pursuant to paragraph 14 shall include:

a. all available investigation reports, other than police reports, relating to the allegation of sexual misconduct;

b. where applicable, a statement identifying any relevant police reports;

c. a summary prepared by a medical authority of the findings of a report prepared under paragraph 8, if any, or confirmation that a medical examination was not required;

d. a recommendation as to whether the member should be retained in or released from the CF with any information supporting that recommendation and any additional recommendations;

e. where applicable, a copy of the Notice of Intent to Recommend Release;

f. where a Notice of Intent to Recommend Release has been given, a copy of the information and representations, if any, provided by the member with respect to the alleged sexual misconduct or the recommendation for release; and

g. a statement as to whether a charge has been, or is likely to be, laid under the Criminal Code or Code of Service Discipline with respect to the sexual misconduct.

17. On completion of any disciplinary action the CO shall forward a report to NDHQ/DGPCO or DGPCOR, as appropriate, containing:

a. the charge report or charge sheet;

b. a summary of the evidence presented;

15. Afin que toute victime d'une inconduite à caractère sexuel et que le militaire faisant l'objet du rapport soient traités correctement, il est essentiel que les rapports visés par le paragraphe 14 soit traités promptement tout en respectant la vie privée des personnes en cause. Par conséquent, tous les niveaux d'autorité de la chaîne de commandement doivent traiter ces rapports comme des sujets prioritaires pour qu'ils puissent être acheminés dans les plus brefs délais tout en s'assurant que leur accès en soit strictement réservé à ceux qui doivent en prendre connaissance.

16. Le rapport fait aux termes du paragraphe 14 doit comprendre les documents et renseignements suivants :

a. tous les rapports d'enquête disponibles relatifs à l'allégation d'inconduite à caractère sexuel, sauf ceux d'enquêtes policières;

b. une déclaration identifiant tout rapport d'enquête policière pertinent, le cas échéant;

c. un résumé, préparé par une autorité médicale, des conclusions du rapport confectionné aux termes du paragraphe 8, le cas échéant, ou la confirmation qu'un examen médical n'était pas requis;

d. la recommandation appuyant la libération ou le maintien du militaire dans les FC ainsi que tout renseignement ou document appuyant cette recommandation ou toute recommandation additionnelle;

e. une copie de l'avis d'intention de recommander la libération, le cas échéant;

f. dans le cas où un avis d'intention de recommander la libération du militaire a été donné, une copie des renseignements et de l'argumentation fournis par le militaire à l'égard de sa présumée inconduite à caractère sexuel ou de la recommandation en vue d'obtenir sa libération;

g. une déclaration à l'effet qu'une accusation a été portée ou est susceptible de l'être en vertu du Code criminel ou du code de discipline militaire relativement à l'inconduite à caractère sexuel.

17. Lorsque les mesures disciplinaires sont terminées, le commandant doit acheminer un rapport au QGDN/DGCMO ou DGCMP, selon le cas, qui inclut les document ou renseignements suivants :

a. le procès-verbal d'accusation ou l'acte d'accusation;

b. un résumé de la preuve qui a été présentée;

c. the finding with respect to the charge or charges;

d. the sentence imposed, if any; and

e. the member's conduct sheet.

18. On the completion of any proceedings under the Criminal Code the CO shall forward a report to NDHQ/DGPCO or DGPCOR, as appropriate, containing the results of the civil court proceedings, including any certificate of conviction.

NDHQ REVIEW

19. A Career Review Board (CRB) shall be established at NDHQ to review cases of sexual misconduct. Representatives of DGPCO and DGPCOR shall be included in the membership of this board.

20. Upon receiving a report under paragraph 14, the CRB shall determine whether there is sufficient information upon which to base a recommendation. The CRB shall obtain any further information that may be required prior to considering its recommendation.

21. Where the CRB is satisfied that it has sufficient information upon which to make a recommendation, it may determine its recommendation and take further action in accordance with this order, whether or not action under the Criminal Code or Code of Service Discipline has been concluded. The propriety of the CRB proceeding in circumstances where such action has not been completed will be a matter for the board to determine based on the circumstances of the particular case.

22. If the CRB is satisfied that the evidence establishes that the member has engaged in sexual misconduct, the CRB will normally recommend the release of the member to the approving authority. In deciding whether the recommendation should be for retention or release, the CRB shall consider the following factors:

a. the nature of the sexual misconduct;

b. where there is a victim, the impact of the sexual misconduct on the victim if such information is available;

c. the service record of the member;

d. the summary of evidence and findings of any service tribunal;

c. le verdict rendu à l'égard de l'accusation ou des accusations;

d. le cas échéant, la sentence qui a été infligée;

e. la fiche de conduite du militaire.

18. À la fin de toute procédure prise sous le régime du Code criminel, le commandant doit acheminer un rapport au QGDN/DGCMO ou DGCMP, selon le cas, qui comprend les résultats des procédures devant la cour civile ainsi qu'un certificat de condamnation.

EXAMEN PAR LE QGDN

19. Un Comité de révision des carrières (CRC) est constitué au QGDN pour examiner les cas d'inconduites à caractère sexuel. Sont inclus à titre de membres de ce comité, les représentants du DGCMO et du DGCMP.

20. Sur réception d'un rapport visé par le paragraphe 14, le CRC doit décider s'il détient suffisamment de renseignements sur lesquels il peut fonder sa recommandation. Le CRC doit obtenir tout autre information qui peut être nécessaire avant de considérer la recommandation qu'il fera.

21. Lorsque le CRC est d'avis qu'il détient suffisamment de renseignements lui permettant de faire une recommandation, il peut décider de la faire et prendre toute autre mesure en conformité avec la présente ordonnance, peu importe si les mesures prises en vertu du Code criminel ou du code de discipline militaire sont terminées. L'opportunité pour le CRC de procéder dans des circonstances où de telles mesures ne sont pas terminées est une question que doit déterminer le comité selon les circonstances de l'affaire.

22. Si le CRC est d'avis que la preuve établit la commission d'une inconduite à caractère sexuel à l'égard du militaire, le CRC recommandera normalement la libération du militaire à l'autorité approbatrice. Pour décider s'il devrait faire une recommandation appuyant la libération du militaire des FC ou le maintien du militaire dans celles-ci, le CRC doit considérer les facteurs suivants :

a. le genre d'inconduite à caractère sexuel;

b. s'il y a une victime, les conséquences de l'inconduite à caractère sexuel sur la victime si de tels renseignements sont disponibles;

c. l'état de service du militaire;

d. le résumé de la preuve et des verdicts de tout tribunal militaire;

e. any certificate of conviction or other available information relating to a civilian trial;

f. the results of the medical assessment, if any;

g. the recommendation of the CO and the officer commanding the command;

h. the information and representations provided by the member, if any; and

i. such other factors as the CRB may determine to be relevant.

23. Where the CRB determines that the recommendation is to retain the member without the need for further representations by the member, that recommendation shall be forwarded to the approving authority for a decision. Unless otherwise directed, the approving authority for officers is DGPCO and for non-commissioned members is DGPCOR. Where the CRB decides to recommend retention despite finding that the member has engaged in sexual misconduct, it shall provide reasons why release would not be appropriate as well as recommendations as to what other administrative action should be taken. If the approving authority concurs with the recommendation, the officer commanding the command and the CO shall be informed of the decision and of the administrative conditions applicable to the retention, if any.

24. Where the approving authority does not concur with a recommendation for retention under paragraph 23, that authority shall:

a. if the CO has recommended the member's release and the member has not objected to that recommendation, initiate action to have the member released; and

b. in any other case, refer the matter to the CRB for action in accordance with paragraphs 25 to 28.

25. Where the CRB determines that it may recommend release of the member, it shall provide the member with all the available information upon which it will be basing its decision, subject to lawful exemptions, and inform the member that he may make any desired representations in writing through the CO within 14 days of the receipt of the CRB's information.

e. tout certificat de condamnation ou tout autre renseignement disponible relatif au procès civil;

f. les résultats de l'évaluation médicale, s'il y a lieu;

g. la recommandation du commandant et de l'officier commandant le commandement;

h. les renseignements et l'argumentation fournis par le militaire, s'il y a lieu;

i. tout autre facteur que le CRC détermine pertinent à cette fin.

23. Lorsque le CRC décider de recommander le maintien du militaire dans les FC sans que d'autres argumentations du militaire soient nécessaires, cette recommandation doit être acheminée à l'autorité approbatrice pour qu'elle rende sa décision. À moins d'instruction contraire, DGCMO est l'autorité approbatrice pour les officiers et DGCMP est celle des militaires du rang. Dans le cas où le CRC décide de recommander le maintien du militaire dans les FC en dépit du fait qu'elle reconnaît que le membre a commis une inconduite à caractère sexuel, le comité doit motiver sa décision en précisant les motifs pour lesquels la libération ne serait pas indiquée de même que ses recommandations quant aux mesures administratives qui devraient être prises. Si l'autorité approbatrice est d'accord avec la recommandation qui lui a été faite, l'officier commandant le commandement et le commandant doivent être informés de la décision et, le cas échéant, de toute condition administrative applicable au maintien du militaire dans les FC.

24. Lorsque l'autorité approbatrice n'est pas d'accord avec la recommandation de maintien du militaire dans les FC en vertu du paragraphe 23, elle doit :

a. si le commandant a recommandé la libération du militaire et que ce dernier ne s'est pas opposé à celle-ci, prendre les mesures pour que le militaire soit libéré;

b. dans tout autre cas, renvoyer l'affaire au CRC pour décision en conformité avec les paragraphes 25 à 28.

25. Lorsque le CRC décide qu'il est en mesure de recommander la libération du militaire, il est fourni au militaire, sous réserve de toute exemption légale, tous les renseignements disponibles sur lesquels le CRC fondera sa décision, et on l'avise qu'il peut, s'il le désire, présenter toute argumentation en la remettant par écrit en passant par son commandant dans les 14 jours suivants la réception des renseignements du CRC.

26. The CRB may extend the 14 day time limit for response where it is informed by the CO that the member is unable to meet the time limit for a valid reason such as duty requirements or illness.

27. On receipt of the representations of the member provided pursuant to paragraph 25, or on being informed by the CO that the member has not provided any further written representations, the CRB shall determine its recommendation based upon all the information before it.

28. The CO and the member shall be informed, through the chain of command, of the decision by the approving authority, the reasons for that decision, and any further action to be taken.

APPLICANTS FOR ENROLMENT OR RE-ENROLMENT

29. Where information is received during the recruiting procedure that an applicant for enrolment or re-enrolment has engaged in sexual misconduct, the enrolling authority shall not normally enrol the applicant. In cases where the enrolling authority considers that this general policy should not be applied, the enrolling authority shall refer the matter to NDHQ/Director General Recruiting, Education and Training for direction.

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26. Le CRC peut prolonger le délai de réponse de 14 jours s'il est avisé par le commandant du militaire que celui-ci ne peut satisfaire au délai prescrit pour un motif valable tel que les conditions de service ou la maladie.

27. Sur réception de l'argumentation du militaire fournie aux termes du paragraphe 25, ou en ayant été informé par le commandant du militaire que le militaire n'a pas remis d'argumentation écrite, le CRC doit faire sa recommandation en se fondant sur tous les renseignements qu'on lui a remis.

28. Le commandant et le militaire doivent être avisés, par le biais de la chaîne de commandement, de la décision de l'autorité approbatrice, des motifs appuyant celle-ci ainsi que toute autre mesure à prendre.

CANDIDATS À L'ENRÔLEMENT ET AU RÉENRÔLEMENT

29. Lorsque des renseignements sont reçus pendant la procédure d'enrôlement selon lesquels un candidat à l'enrôlement ou au réenrôlement a commis une inconduite à caractère sexuel, l'autorité compétente en matière d'enrôlement ne doit normalement pas enrôler cette personne. Dans les cas où l'autorité compétente juge que cette politique générale ne devrait pas être suivie, elle doit renvoyer l'affaire au QGDN/Directeur général - Recrutement, éducation et instruction et obtenir à cet égard des instructions.

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C O U R T E S Y T R A N S L A T I O N

EMBASSY OF THE FEDERAL
REPUBLIC OF GERMANY
- Defense Attaché -

Washington, D.C.
February 3, 1993

SUBJECT: The German position on homosexuals in the armed forces

ENCL.: - 3 -

PURPOSE:

1 - Information on the Federal Armed Forces' policy and procedures to be applied if service members (regular volunteers/temporary-career volunteers) are found to be homosexual.

STATEMENT OF FACTS:

2 - Because of the U.S. President's intention of permitting homosexuals to serve in the U.S. Armed Forces without being subject to punishment, the Pentagon started in mid-1992 to request information on the subject from various sources, including the Federal Ministry of Defense. The German Military Attaché Staff in Washington, D.C., has described the German position. The Pentagon has knowledge of the position held by Germany.

3 - Homosexuality is a criterion evaluated in the pre-induction examination of conscripts. The criterion on which decisions are based is the medical assessment of whether - and to what degree - the potential conscript will be able to integrate himself into the male military community without being identified as a homosexual (for details see Joint Service Regulation ZDv 46/1 see Annex 1).

4 - Since the general public in its majority rejects homosexuality, potential candidates will not be admitted as temporary-career volunteers or regular volunteers if they are known to be homosexual.

5 - If temporary-career volunteers or regular volunteers are found to be homosexual they will be relieved from assignments as leaders, instructors or educators of soldiers. This is a precaution against possible reactions of other military personnel - such as rejection, provoking or exposing to ridicule - and to prevent any loss of authority or interference with military discipline.

6 - This approach of the Federal Ministry of Defense was upheld as legal by several court decisions (Federal Administrative Court, latest decision in 1990). The detailed reasons are shown in Annex 3.

7 - Homosexuality as a disposition of temporary-career or regular service members does not constitute an offense under criminal law; neither does it provide grounds for dismissal for medical reasons.

8 - The 2nd Military Affairs Division of the Federal Administrative Court ruled that homosexual activities on duty constitute a displinary offense. In cases of severe disciplinary misconduct (e.g. superiors performing homosexual acts on subordinates, taking advantage of their superiority in rank), disciplinary court proceedings will be entered into. For details as to the disciplinary assessment of a case see Annex 1.
Annex 2 shows a list of disciplinary court proceedings entered into during the 1981 - 1991 period because of soldiers engaging in homosexual activities.

9 - Various civilian sources have published figures on the percentage of homosexual soldiers serving in the Federal Armed Forces; these can be considered estimates only, as the Federal Armed Forces do not keep statistics on the subject.
"Gay groups" have asserted the number of homosexuals in the armed forces to be 10%, which is an average estimate relating to the German population as a whole. It should be assumed, though, that the average figure relating to the Federal Armed Forces is considerably lower both because of the forces' induction criteria and the fact that everyday life and duty requirements on a military post make it difficult for homosexuals to go unidentified.

10 - The fact that section 175 of the German Penal Code has been abolished does not result in the Federal Armed Forces changing their policy, since the decision not to assign homosexual soldiers to leader positions is derived exclusively from the general public's attitude towards homosexuality.

11 - The Federal Armed Forces' policy is supported by a study prepared by the Ministry's P II 4 branch in February 1985 based on the viewpoint of military psychology, titled "A Social-psychological Comment on Homosexuals in the Armed Forces".
The Federal Armed Forces' position on the "homosexuals in the armed forces" issue is a result of findings obtained by interdisciplinary cooperation of military physicians, military psychologists, experts in the fields of leadership and civic education, and legal experts. The Ministry's departments involved in the issue have consented to the official position described.

ASSESSMENT

13 - The allegations made by the public as to the Federal Armed Forces' resorting to disciplinary punishment of homosexuals are incorrect. Only homosexual misconduct on duty is subject to punishment.

14 - The allegations made as to the unequal treatment of homosexuals are correct, since the Federal Armed Forces will relieve homosexual service members from their assignments as leaders, instructors or educators if they become known to be homosexuals.



15 - The figures given are estimates or projections made by civilian sources; they can neither be proven by the sources nor be confirmed by the Federal Armed Forces. Because of the armed forces' characteristic professional environment, however, it seems inappropriate to apply average figures obtained for society as a whole to the Federal Armed Forces as well.

16 - The Federal Armed Forces are considered to reflect society as a whole. More than any other employer the Federal Armed Forces depend on the willingness of young men to serve voluntarily. The Federal Armed Forces are obliged to allow for a still existing rejection of homosexuality on the part of the general public. The armed forces cannot be expected to assume the role of a pioneer in achieving the recognition of homosexuals in society.



Homosexuals in the Federal Armed Forces
An assessment of general, medical, and disciplinary aspects

I. Assessment of general aspects

1 - The issue of homosexuality in the armed forces must not be analyzed in isolation from the general public's view of and attitude towards homosexuality.

2 - Today, the general public still resorts to stereotyped "labelling" of homosexuality with mostly negative associations, thus holding a view which has only little changed in the course of time.

3 - This approach of society as a whole continues to discriminate homosexuals. Homosexuals are not seen as individuals but as members of a group subject to collective discrimination.

4 - Once a person has been found to be homosexual, fellow citizens must be expected to react accordingly. Reactions may vary from mild reservedness to complete rejection. It must always be expected that homosexuals are subjected to deliberate provocation and ridicule.



5 - The fact that a military superior becomes known to be homosexual may detract from his authority and affect a unit's discipline as well as the bonds that keep it together.



6 - Homosexual regulars and temporary-career volunteers will be relieved from assignments as leaders, instruc-

tors or educators if they become known to be homosexual.
This policy, which was confirmed by a decision of the Federal Administrative Court on June 26, 1990, may result in homosexual regulars or temporary-career volunteers not being furthered in their professional development or not being entrusted with positions of enhanced responsibility.
A soldier's homosexual disposition as such is not subject to disciplinary punishment; it is not a disciplinary offense.

III. Assessment of medical aspects

7 - Primarily, homosexuality is not a medical disorder. For this reason, a soldier admitting or found to be homosexual will not automatically be referred to medical treatment.

8 - If a homosexual soldier is found to show patterns of psycho-pathological disorder he will be referred to psychiatric/psychological assessment, as will all other soldiers showing such disorders.

9 - The criterion of homosexuality is reviewed during selection, induction and commencement-of-service examinations according to Joint Services Regulation ZDv 46/1 ("Provisions for Medical Examinations of Conscripts for the Purpose of Personnel Selection and Induction, the Acceptance and Appointment of Volunteers, and the Discharge of Members of the Armed Forces").

10 - Homosexuality has been assigned "deficiency number 13", with the following degrees to be applied:

- III/13 - Abnormal sexual behavior
- IV/13 - Sexual misconduct not interfering considerably with adaptability, performance, endurance, or integration into the military community
- IV/13 - Distinct sexual deviations interfering with integration into the military community.

11 - In assessing the homosexuality of a conscript it must be determined whether or not he is able to integrate himself into the military community without being identified as a homosexual. Candidates that are known to be homosexual will not be admitted to serve as regular volunteers or temporary-career volunteers.

III. Assessment of disciplinary aspects

12 - In cases where disciplinary or legal action has been taken against a temporary-career volunteer, decision may be taken that he be dismissed during the first four years in service if his remaining in the armed forces would severely impair military order or would be detrimental to the Federal Armed Forces' reputation (section 55, paragraph 5 of the Legal Status of Military Personnel Act).

13 - In cases of severe disciplinary misconduct (e.g. superiors performing homosexual acts on subordinates, taking advantage of their superiority in rank) Federal Armed Forces disciplinary courts may rule that regular or temporary-career volunteers - especially those who enlisted for more than four years - be dismissed from service (section 58 of the Military Disciplinary Code).

14 - Lieutenants will invariably be dismissed by the end of the third year which they serve as officers if they are found to lack the qualifications required to be accorded the "regular" status, e.g. on the grounds of homosexual behavior (section 46, paragraph 4 of the Legal Status of Military Personnel Act).

15 - Officers and non-commissioned officers who have been accorded the status of "regular" or "temporary-career volunteer" and have served in the armed forces for more than four years are not eligible for early retirement or dismissal because of being homosexual, unless they are found to be "unable to discharge their duties"; homosexuality as such is not deemed to constitute such inability.

16 - The 2nd Military Affairs Division of the Federal Administrative Court ruled that homosexual activities on duty must not be tolerated. The community spirit of the troops would be severely affected if the armed forces tolerated homosexual relationships between individuals, along with their emotional implications. Any such behavior is to be regarded as a disciplinary offense according to section 23, paragraph 1 of the Legal Status of Military Personnel Act.

Annex 2

SUBJECT: Number of disciplinary proceedings entered into during the 1981 - 1991 period because of soldiers engaging in homosexual contacts

1981	-	6
1982	-	5
1983	-	6
1984	-	7
1985	-	5
1986	-	5
1987	-	6
1988	-	5
1989	-	1
1990	-	6
1991*)	-	3

*) 1991 = as of October 31, 1991

1 - officers:	19
2 - senior NCOs:	30
3 - junior NCOs:	6

Judgments were rendered as follows for the 55 cases referred to above:

1 -	Disciplinary discharge:	9
2 -	Demotion:	18
3 -	Debarment from promotion and reduction in pay:	10
4 -	Debarment from promotion:	8
5 -	Reduction in pay:	2
6 -	Acquittal:	7
7 -	Suspension of proceedings:	1

22. Homosexual soldiers are not to be assigned to instructor positions in military units
(Military Complaints Regulations, sections 17 I, III.21)

The fact that homosexual soldiers will not be assigned as instructors to units is not objectionable from a legal viewpoint (as ruled by the Federal Administrative Court, No 63, 286 - NJW 1980, 178).

Order of the Federal Administrative Court dated November 8, 1990 - 1. WB 61/90

Facts: The applicant, who is a lieutenant with the status of "temporary-career volunteer", requested that he be assigned to the position of platoon leader and senior instructor. The Federal Minister of Defense denied the request because of the applicant's indisputable homosexual disposition. A petition that the matter be decided in court, which the applicant filed in response to the Ministry's decision, was dismissed by the Federal Administrative Court.

Reasons (excerpts):

Just like all other soldiers, the applicant is not entitled to be assigned to a particular position. Rather, the competent superior will decide at his own discretion which position a soldier should be assigned to based on duty requirements (established rulings of the court senate: cf. Federal Administrative Court 83, 19 f = NVwZ 1985, 831). The superior must always allow for the requirement that a soldier is to be assigned

depending on his qualification, ability, and performance. The Federal Minister of Defense considers the applicant's disposition as a lack of qualification for the requested assignment. This opinion is not objectionable from a legal viewpoint. The decision as to whether a soldier is qualified for a particular assignment will depend on a number of specialty-related and personal requirements. (Federal Administrative Court 86, 70). If the facts which the statement as to the soldier's qualification is based on are indisputable, the superior has some "discretional latitude" which he is expected to apply, allowing for the requirements of the position the soldier desires to be assigned to (cf. Federal Administrative Court 83, 251 = NJW 1988, 836). The court's review will therefore be limited to determining whether the superior was mistaken as to the legal scope of his "discretional latitude" in a particular case, whether he failed to apply generally accepted standards of assessment, or whether his assessment was based on considerations irrelevant to the case. In the case presented to this court, the considerations made by the Federal Minister of Defense were within the scope of "discretional latitude". They were relevant to the case, allowing for the realities of life, which the Federal Minister of Defense cannot be reasonably expected to close his eyes to. This is as true today as it was in 1979, when the court senate approved of the Minister's considerations concerning case 63, 286 = NJW 1980, 1178. While it may be correct to assume that public opinion on homosexuality has undergone a further change, resulting in increasing tolerance in this matter, it cannot be assumed that young soldiers in training will be tolerant to such a degree that would justify us to regard the Minister's considerations as irrelevant. It is not within the senate's province to

decide whether homosexuality today is still a general impediment for promotion regardless of the position in question (cf. Federal Administrative Court, JZ 1976, 444, and Federal Administrative Court 63, 286 (299) = NJW 1980, 1178).

The Federal Minister of Defense

-- Armed Forces Staff --

5300 Bonn 1

23 August 1991

SUBJECT: Homosexuals in the Armed Forces

REFERENCE:. Inquiry dated 21 August 1991 received from Mr. Barr

Enclosure: -1- Excerpt from a report dated 25 October 1979 issued by the Federal Administrative Court, 1st Military Affairs Division

With respect to the issue of how homosexuals are dealt with in the German Federal Armed Forces, the following evaluation is being offered by the Armed Forces Staff (Fue S I 4):

I. Medical assessment

For the purpose of being considered within the scope of the examination to be conducted in connection with the selection and induction, acceptance, and appointment, the problem of homosexuality has been addressed in the Joint Service Regulation # 46/1, "Provisions with Respect to Carrying out Medical Examinations at the Time of Selection and Induction, and Commencement of Service of Draftees, the Acceptance and Appointment of Voluntary Applicants, as well as the Discharge of Members of the Armed Forces"; the various degrees of homosexuality encountered have been assigned deficiency number 13, with deficiency figure III/13 referring to the concept of "abnormal sexual behavior", figure IV/13 to "sexual misconduct not interfering with adaptability, efficiency, the ability to take stress or to integrate into a community" and deficiency figure VI/13 identifying "pronounced sexual deviations impacting on the ability to integrate oneself into a community." - Item 261 of the Joint Service Regulation elaborates that "it is of secondary importance whether or not a male occasionally entertains homosexual contacts or what kind of sexual activities he engages in."

In evaluating a potential soldier's fitness for service, the essential question is if and to what extent, the respective individual will prove capable of integrating himself into a military male community.

...

In assessing the homosexuality of a conscript undergoing basic military service it is vital to determine whether he will be able to adapt to a military community without causing major problems or whether he lacks this capability of integration. Applicants for regular or temporary-career service status are declined if they are known to be homosexuals.

II. Evaluation under the Terms of Public Service Law

In cases where a temporary-career volunteer had disciplinary action instituted against him or a judgment under criminal law passed against him on charges of homosexual activity, he may, during the first year of military service, be discharged on condition that his continued service would seriously jeopardize the military order or harm the image of the German Federal Armed Forces (Article 55 (5) SG (Legal Status of Military Personnel Act)). In cases of severe disciplinary misconduct (e.g. superiors performing homosexual acts on subordinates, taking advantage of their superiority in rank), regular NCOs and officers or temporary-career volunteers, notably if their terms of service exceed four years, must expect a Federal Armed Forces Disciplinary and Complaints Court to adjudge a discharge against them (§ 58 WDO (Military Service Regulations)).

Any lieutenant who has not yet completed his third year in service as officer will invariably be discharged if he fails to meet the standards expected from a regular officer, e.g. because of homosexual contacts (§ 46 (4) SG (Legal Status of Military Personnel Act)).

...

Officers or NCOs with the status of regular soldiers or temporary-career volunteers whose service terms exceed four years will not be eligible for early retirement or discharge, on account of their homosexuality, unless they are considered unfit for military service for reasons other than homosexuality.

III. Fundamental Assessment

In discussing the use of homosexual superiors in the armed forces, the focus of attention must not be on potential sexual activity between superiors and subordinates, since such misconduct is liable to disciplinary action anyway.

The problem of homosexuality in the armed forces must not be viewed in isolation from prevailing social realities.

The working reports commissioned by the Federal Armed Forces Psychological Service and furnished by Dr. Max H. Flach in February 1985 under the title: "Homosexuality in the armed forces - Aspects of social psychology" - MoD Bonn P II 4 - No. KL-1-85 - provide a scientific study of this subject that includes an attempt to analyze the way in which homosexuality in the armed forces affects the general public.

In his study, Flach arrives at the conclusion that from the social-psychological analysis of the situation homosexual servicemen find themselves in, it becomes clear that the problem cannot be viewed in isolation from pre-existing "social realities" in the Federal Armed Forces and society,

...

as a whole. Today as in the past, homosexuality implies the notion of a lifestyle that is not subject to established rules of living together or to the standards and norms valid in a predominantly heterosexual society. With the resultant stereotypes and "labels" it places on homosexuals, society comes to associate certain aspects of homosexual behavior, of lifestyle, personal derangements, as well as physical and psychological abnormalities without even bothering about the homosexual individual concerned. Society displays this kind of behavior toward the soldier as well.

Not only does this type of social reaction add to the discrimination against homosexuals but, within the armed forces, it inevitably results in the exclusion of homosexual superiors from positions as military leaders and instructors.

In his working papers, Dr. Flach makes reference to the theory of interaction which suggests that deviations in conduct and the behavioral patterns and disturbances they entail cannot be explained by studying the individual affected - the homosexual superior - alone, but that due consideration must be given to those fellow human beings - subordinates, superiors, parents as well as the military environment - who observe, experience and are affected by such divergent behavior on the part of the individual concerned,

On this subject, Dr. Flach elaborates as follows: "...In both cases, reality is that even the widely increasing tolerance of homosexuals has done little to change their minority status or diminish the discrimination they are

...

exposed to. In this context, ADLER stated as early as in 1930: "The spontaneous rejection of homosexuality is rooted in society's sense of community and varies with the strength of social cohesion. Thus, homosexuals are bound to encounter difficulties as regards their social respectability or legal protection, and they will find themselves charged with sinful behavior." Hence, the subject of homosexuality provides a field of discussion where prejudice and anxieties grow rampant. The homosexual is no longer seen as an individual person but as a member of a group subject to collective discrimination. If, for example, a homosexual has fallen into disrepute for being sexually intemperate, this only testifies to the fact that homosexuals are dissolute and perilous human beings. Not only tend the varying forms of homosexuality to be disregarded, but also are widely different manifestations of deviant behavior (e.g. crime, drug addiction, espionage etc.) subsumed under the label "homosexuality". Thus, homosexual delinquency is in no way considered as an exceptional phenomenon. In all, it is safe to say that the homosexual will continue to function as a unique figure of projection, with the projected image being determined, among other things, by such negative male qualities as: effeminate, unmanly, of low moral standing, weak, politically dangerous, depraved, insidious, criminal, cowardly, lecherous, decadent.

Logically, such notions, opinions, thought patterns and prejudice held by the majority of our population are liable to not only influence the behavior of the homosexual's fellow human beings, but will ultimately also affect his own behavior and thinking. Thus, once a person has been recognized - either in private or military life - as homosexual,

...

his fellow human beings, or comrades, must be expected to react accordingly. Possible types of reaction range from mild reservedness to outright rejection. Also, there is the persistent danger that the homosexual individual is deliberately provoked and held up for ridicule. To the extent that military superiors are involved, the situation may be further aggravated by a major loss in confidence. This will not only substantially detract from the superior's authority but may also affect a unit's discipline and the bonds that keep it together..."

Based on the military draft system, the Federal Armed Forces continue to function as a closely cooperating, male community of high efficiency. The rejection of homosexuality by wide segments of society becomes manifest within the armed forces, too, when the disclosure of a direct superior/instructor's homosexual inclinations seriously impairs the trusting cooperation characterizing small combat teams.

Unlike in all other areas of social life, the government places young people fit for military service under obligation to join the armed forces as conscripts. Society is therefore entitled to demand that its young be instructed and led by irreproachable superiors only. The alertness displayed in recording any incidents involving violations against the principles of modern leadership in the armed forces reflects the high expectations held by the general public as far as the education of its young people is concerned.

...

Consequently, any decision on the use of homosexual superiors in the armed forces must make due allowance for the concerns of the public.

Any such decision will have an immediate impact on the reputation and the image of the Federal Armed Forces in society.

As a logical consequence, homosexual regulars or temporary-career volunteers should, once their inclinations have come to be known, be kept from filling positions which require them to act as immediate superiors leading, instructing, training, or educating servicemen.

This general approach - confirmed by a ruling of the Federal Administrative Court passed on October 25, 1979 - may imply that regulars and temporary-career volunteers with homosexual orientation are denied further promotion or assignments involving greater responsibility.

For additional documentation, Fue S I 4 refers to a position paper on the above subject submitted to the Naval Attaché in Washington on January 17, 1990.

By direction
signed
Heinsen

...

Since the Federal Ministry of Defense had failed to respond within one month on a complaint that was filed by letter of March 10, 1978, and received on March 13, 1978 - i.e. within the prescribed time limits -, with this complaint viewed as an application for a judicial ruling (§ 17, article 4 (1) WBO (Military Complaints Regulations), the applicant was entitled to directly appeal to the Federal Administrative Court, Military Affairs Division, for a ruling on the matter (§§ 21, article 17, 1 (2) WBO (Military Complaints Regulations)).

The application was, however, found to be without sufficient cause.

MoD Bonn's decision to deny the applicant further assignments as a military superior and to exclude him from promotion is legally valid; its finding that the applicant is not qualified as a military superior cannot be legally interfered with.

The reason underlying MoD Bonn's disputed ruling was the applicant's report on his homosexual orientation. Homosexual inclinations, however, render a serviceman unqualified as a military superior.

As late as in 1957, the Federal Constitutional Court had found that homosexuality was clearly in violation of public morality (Federal Constitutional Court 6, 389, 434). Whether this is still the case appears doubtful. There is no denying the fact that attitudes towards homosexual patterns of behavior have changed. This has found expression specifically in the legislator's greater tolerance of "ordinary" male homosexuality. In line with this current trend is the ruling passed by the 2nd Military Affairs Division with the Federal Administrative Court on

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June 10, 1970 (NZWehrr 1971, 31 = ZBR 1971, 30), which, in matters of disciplinary authority, negates the fact that homosexual contacts entertained in private life render a soldier untrustworthy. However, the question of whether a serviceman commits a disciplinary offense by engaging in homosexual activities while off duty must be separated from the assessment of a homosexual soldier's ability to perform as a superior and his eligibility for further promotion.

Any decision on a soldier's future assignments is influenced not only by duty requirements but to a substantial degree also by his aptitude for the assignment in question, given the provision that servicemen should be assigned duties that are in keeping with their aptitude, capabilities and performance (§ 3 SG Legal Status of Military Personnel Act)). No serviceman is entitled to a particular position or assignment. It is for the military superior responsible to decide according to his best judgement and in line with duty requirements on his future assignment. With the duty requirements underlying an assignment decision constituting an unascertained legal concept, they are fully verifiable by the courts; otherwise, assignment decisions, and notably aptitude assessments, can be reviewed merely in terms of a misinterpretation of the concept of aptitude and the legal confines of evaluation authority, the incorrectness of facts on which the decision is based, non-adherence to normal standards of value or indulgence in improper speculation (see resolution adopted by the Federal Administrative Court on March 28, 1979 - 1 WB 11/78 - for further documentary proof).

The Federal Minister of Defense was justified in regarding the applicant unqualified as superior.

...

The 6th Chamber of Appeals of the Federal Administrative Court, in its order issued on February 16, 1976 (JZ 1976, 444) pointed to the fact that homosexual inclinations render a military superior - notably an officer - unfit for promotion, since such inclinations are apt to strain close official and human contacts, highly important as they are in the military environment. This is unreservedly true today, too. And this also holds true with regard to an officer's eligibility for further promotion. There is the imminent danger that a homosexually oriented superior, without he being constantly aware of this, perceives his subordinates to be not only servicemen requiring his assistance and subject to his command authority but regards them as potential sexual partners. It cannot be ruled out that his behavior towards his subordinates is affected by improper motives, i.e. sexual motives. Apart from this very concrete danger which varies with each individual serviceman, the mere fact that subordinates are aware of their superior's homosexual inclinations may seriously disrupt service operations. Behavioral patterns displayed by individuals with a homosexual disposition, while considered normal in heterosexuals may, on the part of subordinates, give rise to idle talk, suspicions, rejection of the superior and difficulties in the issuance of, and compliance with, orders. Article 3 of the Basic Law notwithstanding, the Federal Ministry of Defense must not close its eyes to this possibility. Even now that "ordinary" male homosexuality is no longer considered a criminal offense, it must proceed on the assumption that the homosexual will be denied acceptance by a vast majority in as closely knit a male society as the Federal Armed Forces are. Currently, there is no need for the Federal Armed Forces to actively oppose the attitude of the majority of the soldiers by enforcing the alleged claim of homosexual male personnel to equal opportunities against the prevailing opinion. If it did so,

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difficulties which were bound to occur in the line of duty would weaken the unit's combat strength and thus adversely affect the Federal Armed Forces' constitutionally mandated defensive mission.

The case of the applicant is even more aggravated by the fact that he filed a report revealing his homosexual tendencies for the simple reason that, according to his own words, he is determined "to commit himself to publicly enforce equal rights for homosexuals." Such blatant presentation of one's own homosexuality is apt to even multiply the probability and scope of problems bound to occur in the sphere of duty. Furthermore, while stating in a personal interview on March 1, 1978 that until then he had exercised the necessary restraint while on duty and that he had not violated his obligations in the line of duty and did not intend to do so, the applicant doubted that he would be able to maintain this kind of restraint in the future.

Considering these circumstances, the Federal Ministry of Defense cannot be debarred from considering - within the scope of assessment authority allowed - the applicant unqualified to assume the responsibilities of a military superior and thus from ruling out his assignment as a superior. The applicant's reference to the use of female medical officers in the Federal Armed Forces is besides the point, since their heterosexual disposition will keep them from being exposed to a loss of authority.

Regarding the applicant's citation of the illegality of his transfer to a trainee's billet for special duties at the General Army Office effective December 1, 1977, the Division held that it was put forward in support of the charge of illegality against the ruling issued on March 1, 1978. His arguments must not be

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viewed as a subsequent extension of his application which would have to be rejected since the military grievance code does not provide for the extension of an application as allowed in other types of proceedings (see Federal Administrative Court ruling of February 24, 1976 - 1 WB 113/74).

The application must therefore be dismissed as unfounded.

FILE
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EMBASSY OF ISRAEL
שגרירות ישראל
DEFENSE AND ARMED FORCES ATTACHE
WASHINGTON, D.C.

3-2

TREATMENT OF HOMOSEXUALS IN THE IDF

1. The information about a draftee being a homosexual or lesbian is reported (either directly by the draftee or as a result of an interview in cases in which there is a suspicion of this) at the qualification tests and / or at the medical diagnosis conducted in the drafting process.

2. Homosexuality is not defined as an illness,or as a factor that effects the soldiers physical fitness profile.

3. In cases in which homosexuality is declared, it is accustomed to check and relate if any aspects of the phenomenon such as the following are visible :

- A low self esteem.
- Personality disorders.
- Conflicts based on a non defined sexual identity.

In cases in which these aspects exist, a clause of mental disturbance will be applied based on a psychiatrist check.

4. Other than that, it is taken into account that homosexuals may be more prone to certain physical illnesses. With this in mind a blood test checking for HIV is considered.

5. The army's orders regarding homosexuals are as follows:

A. The assignment of homosexual soldiers in the reserves,conscripts, and career duty is a limited one due to their sexual preference's which might cause a security problem.

B. With this in mind, it is defined that homosexuality is not a mental disorder, or an aberration, thus no homosexual soldier will be disqualified or limited merely for being a homosexual. Each case is then evaluated individually.

C. The check is conducted by health and security professionals. These evaluate if the specific soldier might endanger the army security wise.

D. In accordance with these tests the army will determine the restrictions in the assigning of the soldier and in extreme cases it is probable that a recommendation to stop the service will be suggested.

SUMMARY

6. The IDF does not restrict the drafting of homosexuals/lesbians, unless they are found to be unfit for service according to the basic standards which are required from any draftee.

It is mentioned again that the information is given directly by the homosexual during the medical check ups or at the personal interview.

FILE
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WORKING DRAFT

JCS

TREATMENT OF HOMOSEXUALITY IN OTHER MILITARIES

The following information has been compiled by the Joint Staff from multiple sources

BELGIUM

- Conscripts are not asked about their sexual orientation
- Homosexuality is not a reason for exclusion from the draft unless a significant "psychopathology," determined by a clinical evaluation, exists
- If a serving homosexual is exposed publicly, the member is referred to the medical community to determine if the member should be continued on active duty; confidentiality is maintained
- Serving homosexuals may have limited access to confidential documents and excluded from certain tasks and units
- Homosexual behavior among members of the Armed Forces is not tolerated and will result in psychological evaluation

CANADA

- Criminal sodomy laws were repealed in 1969
- Armed Forces was one of the last institutions to maintain a discriminatory practice regarding homosexuals serving in the military
- Government ended the military's policy concerning homosexuals October 1992
- Previous to policy change, questions were not asked to determine homosexual orientation but, when discovered, homosexuals were discharged
- Armed Forces have developed an instruction outlining inappropriate sexual behavior prohibited under civil law; not based on specific gender or orientation

WORKING DRAFT

DENMARK

- No law or policy regarding homosexuals in the military
- No questions are asked concerning sexual orientation
- Sexual preference is treated as a private, personal matter and is not considered a matter relevant to military service

FRANCE

- No formal, established policy
- No questions asked
- Sexuality is considered a private matter; it is considered rare in French society for homosexuals to declare their status.
- Homosexuals may be medically exempted from conscription if they believe that their sexual proclivity causes psychological problems
- Commanders can separate a serving homosexual if the behavior is incompatible with military life
- An avowed homosexual may be allowed to serve if he or she is not causing problems
- May be a problem if an avowed homosexual is serving in a job linked with national security.

GERMANY

- Homosexuality was decriminalized in 1969
- No written policy regarding homosexuals serving in the Armed Forces
- No questions asked as part of the conscription or enlistment process; however, if a doctor discovers homosexual orientation during the medical exam, the inductee will be eliminated from entry if declared psychologically unfit
- Potential homosexual draftee may be exempted from military service is he states that he cannot control his sexual urges

Declassified

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GERMANY (cont)

- Discrimination against serving homosexuals exists
  - Practicing homosexuals:
    -- not electable to officer or petty officer ranks on the grounds that homosexuals cannot command adequate respect from soldiers
    -- denied security clearances
    -- can be removed from the Service, subject to a court decision, if behavior disturbs the military
  - Non-practicing homosexuals are not discharged, but are watched and their career advancement is blocked

GREECE

- Homosexuals are not allowed to serve in the "regular" Armed Forces
- Homosexual conscripts who want to serve may do so if they do not "misbehave" but are denied certain duties such as service aboard a warship
- Serving homosexuals who display inappropriate behaviors are discharged
- Homosexual conscripts or enlistees who display "strong homosexual tendencies" during the entry process are not allowed to serve

ITALY

- An administrative policy is in place regarding homosexuals serving in the Armed Forces
- Homosexuality is considered incompatible with military service
- The question of orientation is asked during the induction process
- Homosexual conscripts are medically evaluated and, if found psychologically "normal," they are declared eligible but not desirable, put on a special profile and sent home
- Serving homosexuals, once discovered, are discharged under an administrative procedure

WORKING DRAFT

LUXEMBOURG

- Homosexuals are not precluded from military service
- Sexual orientation is not questioned during the entry process
- Sexual orientation is considered a private, personal matter; serving homosexuals are advised to keep it a private concern
- Inappropriate sexual behavior, homosexual or heterosexual, are punishable by discharge or court martial

NETHERLANDS

- Since 1974, government prohibits all forms of discrimination within all governmental institutions
- Homosexuals in the military are represented by a union
- Human relations training for military commanders includes homosexual issues
- Unwanted advances, of any kind, are treated as improper behavior
- Per a 1990 study by the Netherlands Navy, intolerance toward homosexuals still exists in the Armed Forces
  - Homosexual lifestyle is not accepted by many heterosexual military members
  - Baiting, fear, and "unprovable forms of discrimination" still exist
  - Many homosexual military members still stay "in the closet"

NORWAY

- Regulations and laws do not exist regarding homosexuals in the Armed Forces
- Conscripts are not asked about their sexual orientation
- Homosexuality is not a reason for discharge
- Persons displaying unwanted aggressive behavior are transferred to another unit or Service

WORKING DRAFT

WORKING DRAFT

NORWAY (cont)

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

PORTUGAL

- Official policy not available; unofficially, the policy is to not allow homosexuals to serve in the military
- Homosexual enlistees and/or conscripts are not accepted into active duty
- If discovered, serving homosexuals are discharged

SPAIN

- The policy to exclude homosexuals from military service was changed within the last two years
- No questions are asked concerning sexual orientation
- Homosexual orientation is no longer a reason for discharge
- Homosexuals discovered engaging in behaviors considered inappropriate are adjudged as would be any offender of the military's Uniform Code of Military Justice

TURKEY

- Homosexuality is forbidden in the Armed Forces
- Homosexual conscripts or volunteers are not allowed to serve
- If discovered, serving homosexuals are discharged and, dependent upon the circumstances, may be charged with the military justice article addressing "disgrace"

UNITED KINGDOM

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

WORKING DRAFT

UNITED KINGDOM (cont)

- Avowed homosexuals are not enlisted
- If discovered, serving homosexuals are discharged:
  - Homosexuals who engaged in activity with a member of the same rank over 21 are involuntarily administratively discharged
  - Homosexuals who engaged in activity with someone under 21 or of a different rank are court martialled, then discharged

AUSTRALIA

- Government ended the policy disallowing homosexuals to serve in the Australian Defence Force (ADF) in November 1992
- Service personnel are required to refrain from conduct damaging to group morale or professional capability and cohesion
- Unacceptable, rather than unlawful, sexual behavior may be grounds for administrative separation
- ADF has developed an instruction to state ADF policy regarding unacceptable sexual behavior by ADF members and the Service action which may be taken as a result

ISRAEL

- The Armed Forces do not exclude based on sexual orientation
- No questions are asked regarding sexual orientation
- Admitted homosexuals can enter the military, but are not accepted for entry into highly classified units
- Although officially accepted, many homosexuals stay "in the closet" due to fears of stunted career growth and social stigma

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JAPAN

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

WORKING DRAFT

JAPAN (cont)

- Few, if any cases, have been found
- If a homosexual was discovered in the service, he would be disciplined but not discharged
- Homosexuality is contrary to the ethics and mores of the Japanese society

NEW ZEALAND

- Homosexuals are not allowed to enter the military
- If discovered, practicing homosexuals, or those charged with indecent acts, are discharged
- Current policy is under review

REPUBLIC OF KOREA

- Armed Forces are conscript
- Homosexuals are not allowed to enter the military
- Self-proclaimed homosexuals serving in the military are psychologically evaluated and discharged
- Homosexual activity is against the penal code, military members are discharged if found guilty of homosexual acts

SAUDI ARABIA and EGYPT

- Homosexuality is against Muslim law and is punishable by death
- Existence of homosexuality is not acknowledged since it is contrary to the prevailing religion
- No regulation or policy regarding homosexuality exists for the military since this would acknowledge its existence

WORKING DRAFT

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HMG POLICY CONCERNING THE EMPLOYMENT OF HOMOSEXUALS IN THE BRITISH UNIFORMED

SUMMARY: (U) THE QUEEN'S REGULATIONS DESCRIBE ALL ACTS OF HOMOSEXUALITY AS A PUNISHABLE CRIMINAL OFFENSE UNDER MILITARY LAW. AS A PRACTICAL MATTER, UKMOD POLICY--EXCEPT FOR CASES UNDER AGGRAVATED CIRCUMSTANCES--PROVIDES FOR AN ADMINISTRATIVE DISCHARGE OF OFFENDERS.

TEXT:

1. (U) THE QUESTION OF HOMOSEXUALITY IN BRITAIN'S ARMED FORCES IS A NON-ISSUE--ALTHOUGH THE CURRENT WASHINGTON DEBATE HAS RECEIVED WIDE COVERAGE IN THE BRITISH MEDIA--AT UKMOD. [redacted] NEITHER THE PARLIAMENT NOR DEFENCE MINISTERS ARE INTERESTED IN ADDRESSING THE SUBJECT SINCE SO MANY OTHER (MORE IMPORTANT) PROBLEMS CONFRONT THE MILITARY ESTABLISHMENT. ADDITIONALLY, THERE ARE VERY FEW LETTERS FROM CONCERNED CITIZENS THAT ADDRESS EITHER SUPPORT FOR OR REJECTION OF HOMOSEXUALS IN THE MILITARY.

2. (U) BRITISH CIVIL LAW DESCRIBES HOMOSEXUAL ACTS BETWEEN MALES UNDER THE AGE OF 21 AS A CRIMINAL OFFENSE THAT IS PUNISHABLE IN A COURT OF LAW. THERE ARE NO PROHIBITIONS FOR PERSONS (MALE OR FEMALE) OVER THE AGE OF 21. THE QUESTION OF LESBIANISM IS NOT ADDRESSED BY THE LAW, NO MATTER WHAT THE AGE OF THE PERSON. HOWEVER, MILITARY LAW IS VERY EXPLICIT IN THAT ALL HOMOSEXUAL ACTS COMMITTED BY MEMBERS OF THE UNIFORMED FORCES--FOR EITHER MALES OR FEMALES--IS A MILITARY CRIMINAL OFFENSE.

3. (U) AS A PRACTICAL MATTER, HOWEVER, [redacted] UKMOD LEGAL PHILOSOPHY FOLLOWS THE LOGIC THAT COMMANDERS MUST NOT ENFORCE A MILITARY LAW MORE RIGOROUSLY THAN WHAT LOCAL AUTHORITIES WOULD DO WITH A CIVIL CASE UNDER BRITISH LAW. THIS INTERPRETATION WAS ADOPTED AT UKMOD APPROXIMATELY 18 MONTHS AGO FOLLOWING A HOUSE SELECT COMMITTEE REPORT THAT REVIEWED THE ENTIRE HOMOSEXUAL ISSUE. [redacted] COMMENT -- PARLIAMENT WILL REVISE THE MILITARY LAW DURING THE NEXT QUADRENNIAL REVIEW WHICH COMES DUE IN 1996.)

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4. (U) IN PRACTICE, BRITISH MILITARY AUTHORITIES QUICKLY (AND QUIETLY) ADMINISTRATIVELY DISCHARGE THOSE PERSONS WHO DEMONSTRATE A HOMOSEXUAL ORIENTATION OR OPENLY DECLARE OTHER THAN A HETEROSEXUAL PREFERENCE. ALTHOUGH RECRUITS ARE NOT ASKED ABOUT HOMOSEXUALITY--NOR ARE RECRUITS REQUIRED TO SIGN A STATEMENT DENYING THAT THEY ARE HOMOSEXUALS--EACH IS GIVEN A PAMPHLET WHICH ADVISES ON HMG POLICY THAT THOSE WHO ENGAGE IN HOMOSEXUALITY ARE SUBJECT TO ADMINISTRATIVE DISCHARGE PROCEEDINGS. [redacted] -- AN ADMINISTRATIVE DISCHARGE IN THE UK IS AN UNCHARACTERISED DOCUMENT THAT WOULD NEITHER RAISE

QUESTIONS NOR HINDER CIVILIAN EMPLOYMENT OPPORTUNITIES FOR A FORMER MEMBER OF THE BRITISH FORCES. WHILE THE SOURCE COULD NOT PROVIDE AN EXACT NUMBER [redacted] IT WAS ESTIMATED THAT ONLY A VERY FEW PEOPLE ARE DISCHARGED ANNUALLY FOR VIOLATING THE HOMOSEXUAL POLICY.)

5. (U) THE ONLY EXCEPTIONS TO THE DISCHARGE POLICY ARE THOSE CASES WHERE AGGRAVATED CIRCUMSTANCES LED TO OR RESULTED IN AN INDIVIDUAL COMMITTING A SEXUAL OFFENSE. THESE CASES MOST PROBABLY WILL BE RESOLVED USING COURTS MARSHAL PROCEDURES UNDER THE QUEEN'S REGULATIONS.

6. (U) [redacted] BRITISH MILITARY LEADERS SUPPORT THE CURRENT POLICY THAT EXCLUDES HOMOSEXUALS FROM SERVICE IN HM FORCES. RATIONALE FOR MAINTAINING THE PRESENT EXCLUSION POLICY IS THAT MILITARY MEMBERS LIVE IN A CLOSE COMMUNITY 'UNDER STRESS' WHERE THE MORALE OF THE GROUP IS PARAMOUNT. THERE IS NO JUDGMENT BASED ON MORALITY ASPECTS OF THE HOMOSEXUAL ISSUE....SIMPLY THAT HOMOSEXUALITY IS NOT CONDUCIVE TO GOOD ORDER AND DISCIPLINE OF A MILITARY UNIT. ADDITIONALLY, THE SOURCE BELIEVES THAT SENIOR MILITARY LEADERS HAVE A RESPONSIBILITY TO THE PARENTS OF YOUNG 17/18 YEAR OLDS WHO VOLUNTEER FOR DUTY WITH HM FORCES TO ENSURE THAT THEIR OFFSPRING ARE NOT SUBJECTED (OR EXPOSED) TO THE HOMOSEXUAL LIFE STYLE.

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This section summarizes homosexual exclusion policies for foreign militaries.

- Contrary to widely held beliefs, the vast majority of the credible militaries ban homosexual behavior, including:

  - United Kingdom, where avowed homosexuals are not enlisted

  - Germany, which prohibits homosexuality for enlistees and conscripts

  - France, where homosexuals are not taken as conscripts and where commanders can separate a serving homosexual.

  - Greece, where homosexuals are not allowed to serve in the regular army

  - Italy, where homosexuals are discharged under administrative procedure

  - Spain, where UCMJ precludes homosexual service

  - Turkey, where homosexuality is forbidden in the armed forces

  - Portugal, where serving homosexuals are discharged

  - Belgium, where serving homosexuals are discharged

WORKING DRAFT

BACKGROUND PAPER

National positions on Homosexuals in the Military

Each NMR provided his nation's position on homosexuals in the military. The first ten nations restrict homosexuals while the last five do not.

Belgium--Based upon royal decree ("Perturbation Sexuel") homosexuality is regarded as a psychological anomaly inconsistent with military service. Homosexual conscripts medically evaluated, not accepted for duty. Serving homosexuals evaluated and discharged.

France--No legislation, no written codes. However, homosexuals not taken as conscripts. Serving homosexuals who receive complaints counselled for improper behavior, encouraged to separate from service. Handled on case by case basis.

Germany--Homosexuality prohibited for enlistees and conscripts. Serving homosexuals discovered in first four years of service discharged. After four years can be disciplined for homosexual behavior.

Greece--No homosexuals are allowed in regular army. Homosexual enlistees or conscripts displaying strong homosexual tendencies categorized as "ability 5" and not allowed to serve. Homosexuals who want to serve can do so unless they misbehave, then they are discharged. Serving homosexuals are denied certain duties such as duty aboard warships.

Italy--Administrative policy within armed forces. Homosexual conscripts medically evaluated, if psychologically normal they are declared eligible but not desirable, put on a special profile and sent home. Serving homosexuals are discharged under administrative procedure.

Portugal--Homosexuality treated as "indecent behavior." Homosexual enlistees and conscripts not taken on active duty. Serving homosexuals are discharged.

Spain--Spanish UCMJ precludes homosexual service. If medically discovered prior to enlistment they are not allowed to serve. Serving homosexuals are psychologically evaluated and discharged once they are discovered.

Turkey--Homosexuality forbidden in armed forces. Homosexual conscripts or volunteers not allowed to serve. Serving homosexuals are discharged, dependent upon the circumstances, may be charged with military justice article addressing "disgrace."

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United Kingdom--Avowed homosexuals not enlisted. Serving homosexuals over 21 with partners of the same rank are not prosecuted, but involuntarily administratively discharged. If the act was with someone under 21 or of different rank, they are courtmartialed, then discharged. The aggressor in "unwanted advances" receives a "fringe of homosexual conduct" official warning. Upon subsequent advances the aggressor may be discharged.

United States--Homosexuals not allowed to enlist. Serving homosexuals are discharged and in certain instances can be court-martialed.

Canada--Sexual behavior is governed but sexual orientation is not. Any necessary discipline is based upon conduct rather than homosexuality. Sexual practices regarded as purely a personal matter.

Denmark--No law, no policy. Not acknowledged as a relevant issue. National servicemen or volunteers never asked. Treated as a personal, private issue.

Luxembourg--Homosexuals not precluded from service. Serving homosexuals advised that it is a private issue and to keep it private.

Netherlands--Basic law prohibits all discrimination, for any reason. Union of homosexuals in the military. Unwanted advances treated as improper behavior. Courses conducted for commanders in human relations which includes homosexual issues. Legislation pending for homosexual survivor benefits.

Norway--No regulations, no legislation, no laws. Conscripts never asked about sexual preference. Homosexuality not a legal reason for discharge, unwanted aggressors transferred to another unit or service. Unwanted advances treated as improper behavior which is contrary to good order and discipline, but homosexuality is not the main issue.

COORDINATED WITH: Name: All NMR'S
Mr. Max Johnson, SHAPE Legal Advisor

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EMBASSY OF ISRAEL
שגרירות ישראל
DEFENSE AND ARMED FORCES ATTACHE
WASHINGTON, D.C.

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TREATMENT OF HOMOSEXUALS IN THE IDF

1. The information about a draftee being a homosexual or lesbian is reported (either directly by the draftee or as a result of an interview in cases in which there is a suspicion of this) at the qualification tests and / or at the medical diagnosis conducted in the drafting process.

2. Homosexuality is not defined as an illness,or as a factor that effects the soldiers physical fitness profile.

3. In cases in which homosexuality is declared, it is accustomed to check and relate if any aspects of the phenomenon such as the following are visible :

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- A low self esteem.

- Personality disorders.

- Conflicts based on a non defined sexual identity.

In cases in which these aspects exist, a clause of mental disturbance will be applied based on a psychiatrist check.

4. Other than that, it is taken into account that homosexuals may be more prone to certain physical illnesses. With this in mind a blood test checking for HIV is considered.

5. The army's orders regarding homosexuals are as follows:

A. The assignment of homosexual soldiers in the reserves,conscripts, and career duty is a limited one due to their sexual preference's which might cause a security problem.

B. With this in mind, it is defined that homosexuality is not a mental disorder, or an aberration, thus no homosexual soldier will be disqualified or limited merely for being a homosexual. Each case is then evaluated individually.

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C. The check is conducted by health and security professionals. These evaluate if the specific soldier might endanger the army security wise.

D. In accordance with these tests the army will determine the restrictions in the assigning of the soldier and in extreme cases it is probable that a recommendation to stop the service will be suggested.

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SUMMARY

6. The IDF does not restrict the drafting of homosexuals/lesbians, unless they are found to be unfit for service according to the basic standards which are required from any draftee.

It is mentioned again that the information is given directly by the homosexual during the medical check ups or at the personal interview.

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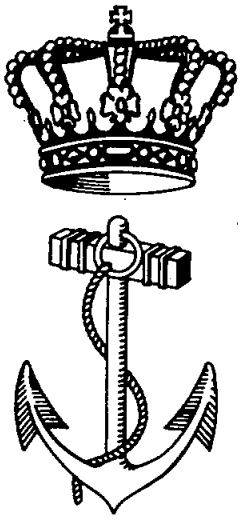

POLICY PLAN ON HOMOSEXUALITY IN THE ROYAL NETHERLANDS NAVY

Lieutenant Commander S.J.H. Benistant (SVBO)
Drs. C.J. Thuijsman

SWO-1990-5

Directorate of Personnel Royal Netherlands Navy
Social Science Research Department (SWO)

Policy Plan
Homosexuality in the Royal Netherlands Navy

* Abstract
* Foreword
1. What is our aim?
2. How has it been tackled?
3. What are the problems?
4. What causes the problems?
5. What has to be done?
6. Survey of the projects

Lieutenant Commander S.J.H. Benistant
Drs. C.J. Thuijsman

Decided on by the Admiralty Board on
31st October 1990

Abstract

HOMOSEXUALITY IN THE ROYAL NETHERLANDS NAVY'

In 1974 the Dutch Government passed a law to ensure that sexual preference would no longer be a reason for treating some people differently from others under any circumstances. Naturally the Ministry of Defence also fell within the ambit of this law.

But although Dutch society was slowly moving towards adopting a more liberal attitude towards homosexuality thanks to the efforts of the gay and lesbian liberation movements, television, education etcetera, the subject was still not an item that was openly discussed in the armed forces. In fact quite a few members of the armed forces[1] are still unaware that homosexuality ceased to be a reason for discharge as of 1974.

A chief petty officer in the Royal Netherlands Navy (RNLN) talked about the problems of working and living as a homosexual in the R.N.N: in a radio broadcast in 1987. The broadcast generated about 140 reactions, mostly from other homosexuals[2] in the armed forces and most of them indicating that they too encountered problems in the armed forces or navy.

Around the same time a few homosexual officers and chief petty offices in the Royal Netherlands Army founded the Organisation for Homosexuality in the Armed Forces, which led to international publicity.

In 1989 a male homosexual officer (Lieutenant Commander (LTZ1)) was invited to talk on another radio programme. Since he had had a brilliant career, his account of working and living in the RNLN presented a somewhat different picture to that of the petty officer some years earlier.

Both the radio broadcasts and the Organisation for Homosexuality in the Armed Forces revealed that homosexual men and women had had to deal with various problems in their daily lives and work within the armed forces or RNLN However, no further information whatsoever was forthcoming as to the nature of the problems they encountered.

The Social Science Department of the RNLN therefore advised its Director of Personnel to start paying systematic attention to the subject within the RNLN This advice met with a positive response.

A two-man team (the writer of this paper and a homosexual officer who was willing to cooperate) started a research

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[1] As could be heard in conversations with homosexuals in the Royal Netherlands Navy.

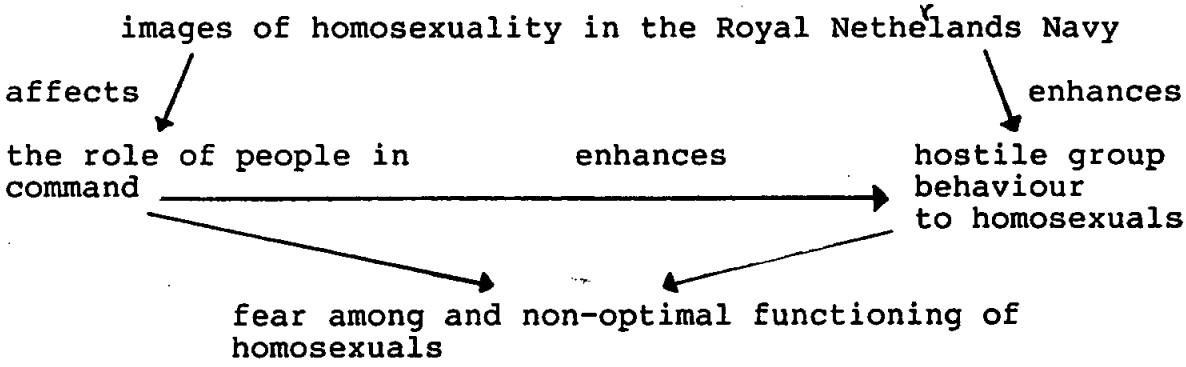
[2] The word 'homosexual' is used for both homosexual men and lesbian women.

project. Since there was no relevant and clear information on the subject, the gathering of information using survey methods was not thought to be appropriate. The team decided to adopt a method used in management consultancy.[3]

Some 40 in-depth interviews with both male and female homosexuals (seamen, petty officers and officers) were arranged, though many respondents feared some negative feedback. Furthermore interviews were held with 25 key-members of the organisation, people who would be able to generate relevant information such as padres, clergymen, doctors, heads of navy schools etc.

Since there was a great deal of redundancy among the respondents - as an inherent consequence of the method used[4] - the material could be divided into four major themes. The themes revealed the common organisational problems that could be looked at in relationship to each other.

The themes and their interrelationships are given below.



A set of activities has been proposed for each of the four themes. At the moment navy personnel and institutions (including the Commander in Chief (CINC) who was interviewed in one of the navy bulletins on his viewpoint) are playing an important role in establishing a better climate for homosexual men and women in the Royal Netherlands Navy.

Drs C.J. Thuijsman
30-9-91

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[3] Briefly the method adopted is based on theoretical and pragmatic notions about the way policy can and should be made and is called the 'Analysis and Synthesis of Policy making'. It was developed by Dr L.E.M. Klinkers.

[4] The reader should be aware of the fact that policy-making in this way differs from policy-making using the results of a large-scale survey.

Foreword

How do you make policy for a subject as unclear as homosexuality? A subject that is receiving a lot of attention at the moment, for example because of the request for advice by the Social Council for the Armed Forces.[5] This attention is doubly confirmed by the existence of a "civil service advisory and coordination group on homosexuality in the armed forces".[6] Moreover, a major social science study was started on 1st March 1991.

A subject that is unclear needs to be tackled by a clear method. Hence the decision to incorporate aspects of the method used in the text so as to make this clear for readers.

Readers of this report will not all be equally well-informed on its subject-matter. This is why first of all it will be made clear what homosexuality is.

Homosexuals are people who say that they feel themselves exclusively or primarily attracted to persons of their own sex. It is wrong to think that sexuality subdivides mankind into the two main groups of homosexuals and heterosexuals, along with a few who cannot make up their minds and who are called bisexuals.

If one looks at the research findings on this subject, (for example studies carried out by Kinsey), it emerges that the dividing line between homosexuals and heterosexuals is anything but clear cut. On the contrary, there is a fairly broad transitional area (ranging from those who are exclusively, primarily, frequently, occasionally and scarcely, not at all oriented towards their own sex). The number of homosexual men and women is presumed to be a percentage between 5 (exclusively homosexual) and 10 percent (a slight orientation towards one's own sex). Whether these figures apply to the Royal Netherlands Navy cannot be assumed with any certainty. On the one hand the Royal Netherlands Navy as a male community may certainly have an additional attraction, but on the other hand the military community may be off-putting to homosexuals.
Taking into account both effects, the percentage of homosexual

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[5] The Social Council for the Armed Forces is an advisory body of and for the Minister of Defence. The Council gives advice on a great variety of matters. In early 1991 the Council did so on the subject of "homosexuality in the Armed Forces". The members of the Council come from all ranks of civilian life. Mrs Andersen-Boers is researcher with the Council.

[6] The civil service advisory and coordination group ' comprises representatives of the three armed forces services (Army, Navy and Air Force) who advise the minister on the subject of homosexuality.

personnel in the Royal Netherlands Navy could likewise very well be between 5 and 10 percent.

Words can carry an ethical or emotional meaning alongside their functional one. In the case of a subject like homosexuality this is certainly the case, for besides the definition everyone has his or her own (primary) interpretation of the word, depending on their upbringing, the information they have been given and/or their experiences. It may also take on the form of prejudice with all the accompanying repercussions for homosexuals and the surroundings in which they live and work.

Within an organisation as big and as diverse as the Royal Netherlands Navy there are also different assessments of the phenomenon of homosexuality. In that sense the Navy is no different to the world outside. But one feature of the way the Navy operates is the fact that the working and living communities are highly interwoven. That this has implications for the individual homosexual will become clear in this report.

In formal terms there is no discrimination in the Royal Netherlands Navy. In formal terms in the Navy action will be taken and corrective measures applied if necessary for any offence. In formal terms many people in the Navy adopt a tolerant attitude towards homosexuality and say that "as long as I'm not bothered by it, I don't mind". However, '<u>not being bothered</u>' is a subjective experience. It would therefore be going too far to say that non-homosexuals in the Royal Netherlands Navy see homosexuality as a completely normal phenomenon. This is not the case in civilian society either!

Actual demonstrable abuses such as structural forms of anti-homosexual violence, or abuses relating to homosexuality tolerated by the Admiralty Board and senior officers in command were not encountered by the researchers. It need come as no surprise (nor lead to any misplaced complacency) because in a community such as the Navy that is subject to firm social control, overt cases of this kind are fortunately exceptions.

However, the study has produced a great quantity of covert baiting, deliberate or otherwise, (fancied) fears, uncertainties, unprovable forms of discrimination, and outmoded views.

An attempt has been made by means of this report to provide some clarity in such an unclear and inaccessible area. It is not the case that the report can answer all readers' questions. Much regarding this subject remains out of view, so that it is risky to make statements with any great certainty.

The Hague, October 1990

C.J. Thuijsman
S.J.H. Benistant

1. WHAT IS OUR AIM?

The first thing is that the Royal Netherlands Navy has in its organisation homosexual men and lesbian women.[7] The care taken in the treatment of Navy personnel applies to this group just as it does to any distinct group within our organisation, though this group is vulnerable on certain points as the analyses will reveal. The vulnerability is experienced more sharply because of the nature of the organisation; a working and living community in which private lives and working lives are in many cases interwoven. A policy aiming at looking after the welfare of this group does a modern organisation credit, promotes the tolerance of its personnel and hopefully results in a positive contribution to the working and living climate.

1.2 The projects

It will be clear to everyone that 'a policy' cannot be put into effect just like that. It would perhaps make things clear if a number of matters relating to this policy plan were first made explicit.

The policy plan has been drawn up on the basis of a 'zero-option': a situation in which the Navy and the researchers in particular were required to formulate policy to a certain extent on the basis of knowing nothing. This is no sinecure, for they found themselves confronted with issues that were unclear and complex. Moreover these features of the situation interact. These circumstances - the causes of which to a substantial degree lie beyond the immediate sphere of influence of the Navy - make it difficult to bring about any real improvements.

This policy plan maps out the problems encountered by homosexual personnel. It was ascertained for each of these problems what the underlying causes were. The key issue now is to eliminate these causes: the core of policy implementation.

It should be added that not all the causes can be eliminated (for example because a cost-benefit or feasibility analysis produces a negative outcome). It is also the case that more agencies within - and in some cases outside - our organisation are being commissioned to work out the policy.
Those items which the researchers think can make a fundamental contribution to improving the working and living circumstances of homosexuals are given in the final section in project form. The agency that should carry responsibility for the implementation is indicated for each project. For the rest a number of projects take the form of a recommendation. The fact that nevertheless the word 'project' is used for these cases,

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[7] The Royal Netherlands Navy has 17,000 regulars (including 3,000 marines) and 6,000 civilian staff.

is intended to emphasize the accompanying commitment since recommendations would be too non-committal.

Let it be said again that this policy plan is intended in the first place to bring about improvements in the living and working circumstances of homosexuals in the Navy; not in the expectation that ideal situations can be achieved by tackling all the problems simultaneously, but simply on the basis of the endeavour to bring the Navy step by step closer to the situation that is considered desirable.
The Royal Netherlands Navy wishes to embark on this endeavour to reach a more desirable situation taking its own responsibility for policy as the point of departure.

2. HOW HAS IT BEEN TACKLED?

2.1 Set-up of the plan

The subject of homosexuality is not one which is directly available to our observation. It is consequently debatable whether for example information that is relevant to policy can be produced by a questionnaire survey of such a complex and sensitive subject. This is why in making the arrangements for the policy plan the researchers decided to explain the method they had pursued to readers by incorporating it into the text.

The plan was confined to the main problems in the form of key themes to prevent the whole exercise getting bogged down in too many issues.

The knowledge and expertise of three categories were used as well as that of a number of persons outside the Navy.

1. Homosexuals in the Navy who had openly come out;
2. Homosexuals in the Navy who had opted (or felt themselves forced) not to come out - or only in a very small circle;
3. Key figures who through the nature of their work (the head of a school; staff of the MDD[8] or MSD[9]; padres; etc.) could produce information on the subject.

The representativeness that was attempted in this, was not based on a numerical criterion (involving as many people as possible), but on a functional criterion: involving those people who might be able to give reliable information and opinions, cutting across the hierarchy, sections and services.

Epistemologically one might debate whether the functional criterion selected (instead of the usual numerical criterion) could provide certainty about whether the information acquired was a full representation of reality. A possible reply to this question has two parts:

1. Even in a survey (with a large sample) absolute certainty can never be obtained - especially not with regard to 'taboo-subjects'; in the case of 'closed questions' knowledge never extends beyond the question put; in the case of 'open questions' the same phenomenon arises, nor is there any certainty as to respondents being fully representative (although with bigger samples the uncertainty decreases.)
2. The representation of reality approaches completeness at the point when no new knowledge is generated (in this case: no new problems and underlying causal structures arise from the interview).

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[8] The MDD is the social work organisation for all Dutch military personnel.

[9] The MSD is a naval agency for the rehabilitation of military personnel with mental or physical problems.

Moreover it should be pointed out that the formulation of policy - which was the aim of this plan - on the basis of data from a survey can only be meaningful and feasible if enough knowledge is available on the subject matter for the problem areas to be assessed statistically. In the case of the present subject - homosexuality in the Navy - this is not the case. It is precisely in those cases where there is scarcely any knowledge, if any, on the subject of policy that a clear approach - made explicit in this text - can be an adequate means of obtaining that knowledge.

No operational time limits were set for the policy plan. It will be necessary both inside and outside the Directorate of Personnel to check regularly to what extent the projects are actually having an effect. On the basis of these assessments (feedback) a decision may be taken to adjust the priorities or step up the activities.

When a policy plan is written it may readily become an irritating account; words and ways of thinking creep in that are not automatically clear to everyone. Whether the Navy personnel have any use for it, is equally debatable. However, this policy plan has been written as an official assignment of the Directorate of Personnel with a view to surveying the subject of homosexuality in the Royal Netherlands Navy and conducting policy on this basis.

This policy plan has thus been written not only out of the necessity of ensuring that it is theoretically sound but that it is equally feasible in practice.
This policy plan is about the way in which policy has been developed and what has ultimately come out of the process. This has been done deliberately because this method of policymaking deviates on a number of points from the normal method. The main point is the close link between the problems that emerged and the proposed projects, the criterion of functionality and the intention of the researchers not to produce solutions from behind their desks, but to have these put forward by the respondents themselves.
The outcome of the exercise (converted into specific projects) derives directly from the material produced and has been grouped in such a way that it is possible to enter into the well-informed discussion of the feasibility (costs, personnel, resources) and the expected return so as to be able to take sound policy decisions.

2.2 Policy and practice

To be able to present a policy that is theoretically sound and feasible in practice (which is in fact an endeavour to achieve a desired situation or more specifically to implement all the activities deriving from the goal that are intended to ensure that the chance of achieving the final goal is as great as possible) a balance has to be struck between the principles of policymaking and the requirements set of it in practical terms.

The points of departure of the researchers in their policy-making have been:

- Do not base policy on 'the logic of the self-evident', with abstract problem-solving strategies deriving from the idea that 'we know really what it's all about', without being clear whether the abstract strategies actually adequately represent the problematical reality (the 'trap of thinking in terms of problem-solving'); and thus without being clear whether the proposed policy measures affect what they are supposed to affect: namely the causes.
- Try not to want to gain an overview and affect everything, but keep to the key issue: where is the pain, (symptom) and where does it come from (cause)?.
- Do not attempt to order everything in a comprehensive way (perfectionism for certainty's sake), but try to eliminate as many uncertainties as possible on the way towards the desired situation (reducing the symptom means reducing uncertainty). Thus one should not say: we'll make the Royal Netherlands Navy into the best employer for homosexuals, but: we shall try to ensure that the Royal Netherlands Navy is also a good working and living environment for homosexuals.
- The uncertainty as to whether the desired situation is being brought closer lies in the possibility of combatting the causes of the symptom. Some causes can be eliminated and then one is on the right track: part of the problem is removed. Some causes cannot be eliminated (any longer) or only with extreme difficulty - this is after all often the case in practice - so that all one can do is to fight the symptoms. However this must be made clear to everyone, including the price that has to be paid for this.
- Incorporate into the measures to be taken a mechanism that allows one to see whether one is on the right track, in other words whether there are signs that the position of homosexuals is improving (periodical evaluation).
- Try not to think solely from the viewpoint of the Navy organisation (that is disciplinary thinking), but also from the homosexuals' viewpoint (that is subject and problem-oriented thinking).
- Look to see on which main subjects the Navy should concentrate first of all; main subjects that largely determine the daily well-being of homosexuals. If these subjects are known then in fact a name has been given to something that is problematical (a symptom), about which something should be done.
- Try to establish what the implications are of the main issue (a problematical situation).
  Once one knows what policy effort (in terms of projects) the homosexual population needs, it is possible to conduct efficient and effective policy.
- The next thing to do is try to make the product that

meets this need and give those who have to do the real work the possibility of doing that well.

2.3 The method of inquiry

It may be gathered from the above that policy-making started with a search for key informants in and outside the organisation and the subsequent inviting of them for an interview.
An advertisement was inserted in four naval magazines published by the KVMO[10], the VBM[11], the denominational and religious - including humanist - welfare organisations, addressed to the group of naval personnel who had not come out and was therefore unknown to the researchers. The cooperation of these four groups was crucial because it reflected that the intention to formulate policy on this subject was endorsed from four important quarters. The signing of this advertisement by the Directorate of Personnel served the same end.

The advertisement failed as a method of getting in touch with the group of 'genuine anonymous homosexuals'; it produced only four reactions. According to one of the key informants (who received seven telephone calls in response to the advertisement) distrust proved to be one of the main motives for not responding to the call ("what are they going to do with the information in The Hague")[12]. But despite this it was possible to talk with more than four anonymous homosexuals. This was done through a method of working which involved respondents being motivated to come and talk and by means of a 'snowball effect' persuading homosexual colleagues who were known to them to do the same. After about 35 interviews this method failed to produce any new interviewees. Although the call was also directed at civilian staff, no reaction at all was forthcoming from this quarter.

Altogether 65 interviews were conducted, in which five questions were put each time. These questions are given below along with the aim of each of the questions.

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10 KVMO is the organisation representing the interests of Royal Naval officers.

11 The VBM is the organisation representing the interests of military personnel (mainly however seamen and petty officers).

12 The Hague is the administrative centre of the Royal Netherlands Navy, the seat of the Commander in Chief and his three Directors, including the Director for Personnel.

Question 1.

- What do you think is the problem when it comes to homosexual men and lesbian women in the Navy?
. What do you personally regard as a problem, bottleneck, as inappropriate or undesirable behaviour vis-à-vis homosexuality in the Navy; what do you find painful in this field?

→ This question allowed the themes (the problem areas) to be mapped out and named.

Question 2.

- Can you indicate concrete facts from which it emerges that the problems and bottlenecks you referred to do exist in the Navy?
. Can you give concrete practical examples why it is a problem for you in the Navy?
. Describe one or more events that you yourself regard as undesirable or inappropriate.

→ This question forces the respondents to produce facts to verify the problems referred to in the preceding question, so that the reality value of the problems referred to can be enhanced.

Question 3.

- You have indicated what you think are the problems regarding homosexual men and lesbian women in the Navy. Can you indicate what you think are the causes of these problems and bottlenecks?
. Why is it that you encounter these problems, what do you think are the causes?

→ By posing this question insight is obtained into the causal structure underlying the problems referred to.

Question 4.

- With regard to the subject of homosexuals in the Navy, everyone can imagine a certain ideal situation. What would you really like to see achieved to be able to refer to an ideal situation of this kind?
. What would you like to see changed in our organisation regarding the position of homosexual and lesbian personnel?

→ By posing this question the contours of the policy goals (the desired situation) become visible.

Question 5.

- Why do you want to see this achieved?

→ This request for motives is intended to ascertain whether or not the goals put forward in the preceding question were utopian and to find out about what motivates people to choose exactly those goals (the question of the legitimacy of the policy to be developed).

Comment: it looks as if more questions were posed (questions 1; 2; 3 and 4). But the questions preceded by a dot differ only in the way that they are formulated and serve simply as an aid in cases where the main question proved to be too difficult for the respondent.

2.4 What was said

To give the reader an impression of the nature of the replies to the questions posed, a collection of the replies are given by question. The replies have been reproduced as literally as possible and those who encountered no problems have also been included. Where "xxx" is indicated in the text, this has been done for reasons of anonymity.

What do you think is the problem? (question 1)

- "As soon as it is known that you are a lesbian, people look at you with all kinds of prejudices and that applies to everything. Not only your functioning in the navy, but even the way in which you drink your coffee or tie your shoe laces".
- "If you don't drink you are a queer, if you don't act like a he-man you are a homo, etcetera".
- "The Navy is a heterosexual society in which there are a lot of prejudices against homosexuals. I am afraid that I would encounter difficulties in my work if people found out that I was one of them. When one expresses contempt in the group, one always finds support in the group".
- "You are walking around with a secret which you think you should keep to yourself. That saps your energy and wears you out".
- "Homosexuality is not accepted at all. It is associated

with everything that a person in the navy should loathe. This starts even at the EMMV.[13] Absolutely everyone who performs in some way or other below the norm is a queer, a sissy, etc. The most disgusting sexist remarks are made from high to low. This is encouraged".

- "I really don't have any problems. I have never made a secret of my sexual preference as a woman for women".

And what are the facts? (question 2)

- "As a seaman I was caught with a man who is otherwise now married. Then at my own request I left the ship (but actually it was on the advice of the doctor who said that I would be better off leaving the ship, because if it leaked out that I was homosexual my life wouldn't be worth living). I was stationed on xxx via the social work department's PDA[14].
- "My superior and colleagues know about me. They have never, in any way whatsoever, given any sign that I am less than them as a result of my being lesbian".
- "Example: to the question of a 'baksmeester'[15] at the EMMV school as to whether you could identify homosexuals, one knew the answer namely: a black little fingernail; a striking earring; a ring on the little finger; girls with very short hair; lesbians are masculine women".
- Superior to one of the researchers: "We have a lesbian xxx here. She does her best and nobody has any problems with this".
- "The worst was when the 'provoost'[16], saw what was happening and did not interfere. One of his jobs is to prevent fights, but homosexuals can apparently be beaten up". (Note: It did not get as far as fisticuffs but was confined to some pushing and shoving.)
- "There is a civilian working here who is openly homosexual and simply harasses men whom he likes. I do not want to be identified with him and his behaviour".
- Corporal to one of the researchers: "If you are in the shower with one of them I wouldn't dare bend down. If they were to put you under the shower with a bunch of 'women' then you'd certainly feel a little bit nervous as well wouldn't you; certainly you would".
- "There was a boy on board who went ashore but didn't drink any beer. The group called him: homo, queer,

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[13] EMMV: the school where regulars receive their first training.

[14] PDA: a Navy unit working with psychodiagnostics.

[15] The person who is responsible for regulars in their first six weeks.

[16] Petty officer supervising young seamen in the canteen of the naval barracks.

pansy, poofter, fag etc. and assumed that he was not normal. It was a reason for the group to ignore him as much as possible".

- "I once confided to a colleague who was working at the xxx. He said that I would miss out on a number of clearances and that I would be excluded from certain posts. I did not want to run that risk".
- "No, not really. Since I behave as a hetero, I have encountered no problems. The only question is how long I can keep it up".
- "All kinds of games with sexual undertones are in fact homosexual acts. Jerking each other off or grabbing somebody's genitals under the shower are all part of it. I never really thought about it, but this kind of thing does take place. But you shouldn't call it "homosexuality" because then you run a good risk of the persons who were doing it beating you up".
- "I know a Lieutenant Commander who did not dare come out because of fear for his career".
- "I have photographs of beautiful women with me and I always take a girl friend to parties. Sometimes the girl is in on the plot, sometimes she isn't".

<u>And what are the causes according to the respondents</u> (question 3)

- "Lack of knowledge: completely wrong image of dirty homosexuals and their anal sexual practices".
- "Homosexuality is associated with weakness and that does not fit into the image of the Navy as a he-man society".
- "By making negative remarks about homosexuals they hope that they will be backed by the group (a cheap success). I don't think they do it deliberately. It is just bluffing about how big they are without realising that they are hurting someone".
- "Fear for aids".
- "The preconceived idea that homosexuals are dirty and furtive".
- "Young people in the navy are uncertain about their sexual identity. They do not want to be homosexual and display as much heterosexual behaviour as possible".
- "It is simply accepted that one should talk about homosexuals and lesbians in a prejudiced and pejorative way. Nobody puts a stop to the process and this is why the process will continue".

<u>What do you want to see achieved</u> (question 4)

- "I would like to see a change in attitude so that homosexuality is regarded as being just as normal as heterosexuality".
- "There ought to be an organisation with expert guidance and support for homosexual personnel with problems in this field".
- "I myself would be satisfied if my sexual inclination, once it was known, was not a reason for gossip,

backbiting and would not be an obstacle to the personnel having confidence in me".

And why do you want this? (question 5)

- "Because I don't want to do myself harm if I am at sea for so long and have to find my social and emotional support there too".
- "My functioning at work should be the main issue and not the supposed way in which I spend my private life".
- "You should be able to be yourself at work as well. You don't need to shout to the whole world that you're lesbian, but if you're asked or if it just happens to turn out that way, you shouldn't have to keep quiet".
- "Life would be much more pleasant. Now I am much more reserved on subjects from which one might deduce that I am a homosexual. I'm continually on my guard. Even now I'm wondering whether it is a good idea to take part in this interview".
- "I drink too much because sometimes I think I'm going crazy. But life is rotten. It's only when I go home at the weekend that I can be more or less myself".
- "My functioning is affected because I am leading a double life".
- "Homosexuality is an inextricable part of me. I want to be myself in this respect too. Now I'm walking around with a secret that is not something I can talk about though I'm not committing any punishable offence. That is very strange".
- "It would make my life and that of other people quite a bit less complicated".
- "Functioning at work and pleasure in life would be considerably enhanced if there was full integration and liberation".
- "If more homosexuals were to come out for themselves than the few there are at the moment, those who surround them would automatically learn to make allowances for minorities".

3. WHAT ARE THE PROBLEMS?

The questions were designed to demarcate the area on which the navy organisation should concentrate according to the persons who were approached. In qualitatively processing the material what was noticeable above all was the context within which the problem had to be understood: the navy as an organisation in which the interfaces between private life and work are frequent and where because of the nature of the operations people are forced to live together over a longer period. Whether or not therefore all the problems that have been spotted here can be considered to apply one by one to the other armed forces services is unlikely. A number of these will display major parallels.
It emerges that there are 'families' among the problems put forward, that is to say themes which the researchers think belong together on qualitative grounds. Once everything had been sorted out, the comments could be categorised under four headings.

First of all there was the theme **'the image of homosexuality'**, built up from a number of components relating to prejudice, ignorance, conservatism, lack of understanding, being ill-informed etc.
The second theme is the **'role of the group'**, this being hostile behaviour of the group as a reaction to deviant behaviour in this case the reaction to homosexuality. Such hostile behaviour is built up of a number of behavioural variants the most striking of which are verbal violence, gossip, being ostracised from the group, making the person in question a laughing stock etc. These are phenomena that can be understood on the grounds of the need of young naval personnel to gain rapid command of the Navy culture so as not to be left out. Acceptance of and adaption to the group norm is the best guarantee of survival.
The third theme is centred around **'the role of staff in command'**. This is a reference to the failing role of a (small) number of staffin command if undesirable situations occur vis-à-vis homosexuals within their purview and competence to interfere.
The fourth theme lastly is the **'fear among homosexuals'**. Sub-optimal functioning may arise as a result of this fear. Sub-optimal functioning therefore affects not only the individual homosexual in the navy, but also the surrounding working and living environment where the climate can be drastically impaired.

It can be deduced from these themes that the main point for policy is the assertion: "that there are clearly unfriendly tendencies towards homosexuality in the Navy". This assertion can be supported with facts from the survey. The ultimate goal of policy therefore should be to ensure that the armed forces (the Navy) will become an organisation that is less unfriendly towards homosexuals and to endeavour to ensure in the long run that individual homosexuals can act as freely within the organisation as their heterosexual colleagues. The objective

of having the Navy become friendly to homosexuals has deliberately not been assumed here; as long as society around us fails to take a friendly stance, such a goal would be utopian and unfeasible.

4. WHAT CAUSES THE PROBLEMS?

4.1 The method of analysis

Each theme has been built up from a great many comments, of which only a few have been listed above for brevity's sake. What do these themes mean? Nothing other than an indication of the problems encountered by homosexuals.
Giving problems a name (or having a name given to them by those who are involved) is one thing; trying to find out where they come from is a second; fighting the causes is a third.

The analysis (the interviewing of homosexuals and key informants with the help of the five questions) enabled analysis of the causes to be made for each theme and this made five items clear:

- the extent of the problems in reality relating to each theme;
- the details within the whole;
- the lines connecting up the details;
- the areas in which it would not be sensible or it would be impossible to take steps (for example negative cost-benefit or feasibility analysis; this would be the case with reference to the cause that was put forward 'because the Navy is a typical hetero society');
- the area in which the measures can have an effect (combatting causes).

If the causes can be understood in their interrelationships it may be possible to find out how each cause can be tackled or eliminated. In doing so, however, it may emerge that a cost-benefit analysis or feasibility study proves negative since the prime cause cannot be tackled by the Navy (e.g. the fact 'that Dutch society is not friendly towards homosexuals'), though the causes related to this can be tackled (e.g. the attitudes to homosexuality that people bring with them when they enter the Navy and which can be strengthened or weakened at the EMMV).

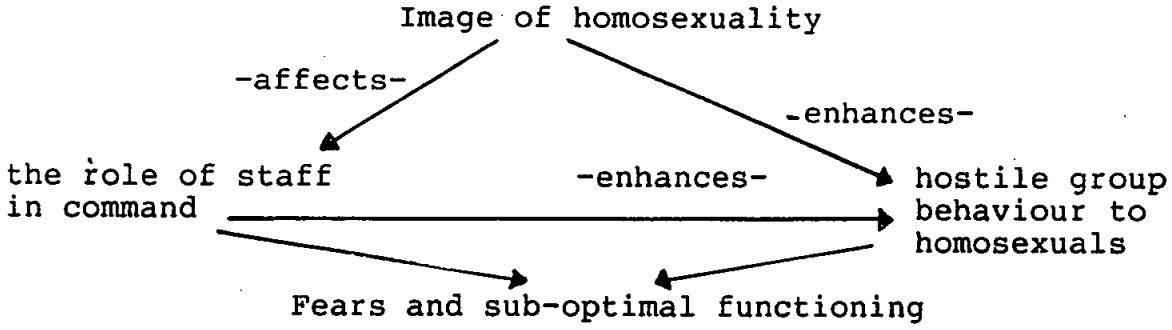
In cases where the researchers are of the opinion that a cost benefit analysis or feasibility study would prove negative, no proposal for elimination (project) has been made. In cases where the elimination of a cause is a feasible alternative, a policy option is provided in the form of a project proposal.

4.2 The themes and their interrelationships

The four themes referred to are interrelated. It is not possible to mathematically or statistically verify this relationship with the usual method. The model is an aid to understanding the relationships and seeing how they affect one another. This is not only important for a sound understanding of the policy subject, but it also indicates where the proposed measures can have an effect. The model can only be verified on the grounds of plausibility and the model's

capacity to relate the themes to each other in a meaningful way. The model otherwise has no pretensions to being scientifically complete.

The model.



4.3 A number of additional remarks

4.3.1 General

The researchers were faced with the task of clarifying a subject that in terms of its nature and scope was highly unclear and diverse. The majority of the homosexuals interviewed certainly encountered problems. But what the one experienced as a problem was for the other so inherent to the Royal Netherlands Navy organisational culture that the person in question had become reconciled to this: "that's just the way it is in the Navy". For the rest the impression was gained that lesbian personnel encountered fewer problems, although the evidence for this is not strong and based on ten interviews.
It emerged from the interviews that the homosexuals are confronted in their working environment with a stereotyped image of 'the homosexual', that can be defined as follows:

- 'a pansy type' in words and behaviour;
- subservient;
- weak personality;
- physical (sport)performance under the norm;
- sexually hyperactive ;
- permanently preoccupied with pestering unsuspecting heterosexuals.

The paradox is that the above type of person is not to be found in the Royal Netherlands Navy, at least not as far as the researchers know. This stereotyped picture is also used by many heterosexuals. However, when asked whether they knew such a stereotyped homosexual no apply was forthcoming. This imaginary type of homosexual however serves as a model for an extensive range of inferior, undesirable and menacing characteristics.

4.3.2 On the subject of sexual violence

A. When asked, none of those interviewed were able to give examples from their own personal experience of physical anti-homosexual violence perpetrated by personnel in the Navy.
B. Examples of physical threats, verbal violence and/or ostracism (resulting in a person becoming socially isolated), are referred to by many of the homosexuals interviewed as a form of mental cruelty personally experienced in the Navy.
C. All the women interviewed, when asked, denied ever having been the victim of physical sexual violence. Various men interviewed had been the victim of what can be described as physical sexual violence, but the memory of this is often repressed, while moreover they do not define it as violence, but as a kind of initiation rite.

re c. In the American literature this phenomenon is referred to as 'horseplay', i.e. all kinds of rough games with a clear sexual undertone or explicit sexual significance. Horseplay of this kind is not just an incidental occurrence. However it was impossible to acquire any certainty as to the frequency. It is not the case that homosexuals are exclusively the passive object of such horseplay. It is the case that those who are different from the group norm in some way, for example because they have protruding ears, introvert behaviour, red hair etc., are the first in line for such horseplay.
Only physically and/or mentally strong personalities who are different in some way from the group norm are able and dare to stand out in a group.

4.3.3 Coming out

The survey revealed that at practically all levels in the hierarchy from seaman (M) to captain at sea (M) and seaman (F) to lieutenant (F) - homosexuals are working in the Navy or have been until recently. As was mentioned earlier, no interviews took place with civilian staff so that no statements could be made on this.

In the Navy in which much depends on cooperation and teamwork, many opt for the relative anonymity of the group rather than a position in which they stand out from the rest.
The few openly homosexual persons who the researchers encountered were moderately pugnacious people who could afford to be themselves and to be clear about their sexual preference. This is combined in all cases with a respected position, good to very good assessments, frequent popularity with others and with other obviously positively appreciated characteristics.

4.3.4 The advertisement

The advertisement placed by the Directorate of Personnel in

the four Navy publications, together with a press release, was a signal from the Director for Personnel to the rest of the organisation to enable information to be obtained from the group of homosexual personnel who are open about it or otherwise.
The researchers had further no opportunity of announcing what they were doing within the Royal Netherlands Navy other than in the aforementioned way.
The real anonymous homosexuals (those who nobody within the Navy organisation knows are homosexual) are still anonymous! Thus no information was obtained from this group. Manifest anti-homosexuals did not report to the researchers either and were consequently not interviewed. Nor did civilian staff respond, nor were they interviewed.

The impression has been gained that the great majority of homosexual personnel in the Navy are still 'in the closet'. The reasons for this may be that:
- they are married (and have children);
- they (still) have doubts about their sexual identity. They hope to be heterosexuals and fear the future as homosexuals;
- they have a negative self-image;
- they have no incentive at all to inform those around them;
- all kinds of personal reasons, one being religion;
- the verbal anti-homosexual violence has become such part of the 'macho'-vernacular they are not readily inclined to present themselves as such and to check in practice whether people mean what they say.

One reason given for not coming out is fear. This emerged among other things from:
- Naval cadets[17] who stated that such a person (homosexual naval cadet) would have to leave, his life would be made a misery and he would be the victim of baiting that could never be proved but that would continue until he left the Royal Naval Academy of his own accord.
- The petty officer in the Marine Corps[18] who stated that he would no longer be eligible for an operational posting, (despite having an excellent service record) and would have to spend the rest of his career as xxx at the xxx-barracks or welfare petty officer with the fleet.[19]
- An officer who recently followed a course abroad, was strongly advised not to reveal his homosexuality during

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[17] Students at the Royal Naval Academy.

[18] The Marine Corps (3,000 men) is part of the Navy.

[19] Persons who show films, provide entertainment for others; often it is a job for people who are no longer able to cope with physical or mentally-demanding navy work.

the course because he would certainly have failed the examination. (Homosexuality is still a reason for dismissal in the country in question[20].)

Fear was also expressed by those who in due course (sometimes years) have more or less come out and at present take the view that it doesn't happen like that at all. Nevertheless many said that they felt that they had to be continually proving themselves to avoid those around them reverting to stereotyped images. The comment "we don't like queers, but you are alright" is an illustrative one in this connection.

There was initial contact with one who bitterly regretted having announced that he was homosexual on board about ten years ago and had received such an unpleasant response that he wished that he had never said it. The person in question originally wanted to cooperate in the survey, but after his initial contact did not get in touch again.

4.3.5. Other observations and remarks

> The view that as long as homosexuals in the Navy do not complain, the problem is apparently not so pressing that attention needs to be devoted to it, is not correct. Complaining means standing out and that is exactly what they do not want. There has to be an incident or at least a good reason for informing those at work about the homosexuality of the person in question.

> Far and away the majority of homosexuals in the Navy (men more so than women) declared that if they had been free in their choice of sexual preference, than they would <u>never</u> have opted to be homosexual. The fact that it is so (and it is becoming widely recognized that 'cure' or 'therapy' is not possible), they make the best of it.

> With the exception of a few militant homosexuals it remains a question of compromise. The heterosexual community determines the scope in which homosexuals may behave as such. The homosexual who has a friend back home can be tolerated, but to introduce that friend on social occasions as another would his wife or girlfriend, makes homosexuality visible in a way which people regard as unseemly (because it is demonstrative).

> Places where deliberate (verbal) aggression towards homosexuals may occur are to a certain extent predictable. In pluriform units, such as a ship (to a greater degree on a ship with a mixed crew) there is little sign of deliberate aggression. Intolerance in the group is highest in highly group-oriented institutions, such as the Royal Naval Academy, the SEMMV and sections

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[20] The reference here is to Great Britain.

of the Marine Corps. If you meet two conditions here, namely being different from the rest (e.g. not explicitly heterosexual) and not being in the category of the physically strongest, you have an exceptionally high chance of confrontation with the group.

> The senior ranks interviewed suspected the Admiralty Board of 'repressive tolerance' in relation to the phenomenon of homosexuality. According to them the Admiralty Board does not really want personnel who are openly homosexual to be placed in the Navy limelight, but the authorities are temporarily talking a sympathetic stance in order to resist political pressure.
To refute this view and to prove the opposite, it would be advisable for the Commander in Chief (CINC) to make a public statement on homosexuality. Moreover in that case nobody would be able to hide behind a supposed view held by the CINC.

> The question of whether homosexuality is a problem for someone, cannot be answered unambiguously. A problem after all is as big as someone experiences it. The subtle gradations in intensity cannot be indicated because they vary and depend on the person, the time and the circumstances. Moreover it is also the case that when it ceases to be a problem for the person involved, but remains so for those around him or her, it is ipso facto still a problem situation.

5. WHAT SHOULD BE DONE?

A list of the projects that should be tackled to improve the working and living environment of homosexuals in the Royal Netherlands Navy is given below by theme. In a number of cases the project takes the form of a recommendation, but a recommendation that demands to be worked out in greater detail. Each of the projects comes under the policy responsibility of a particular agency. The agencies that the researchers believe should take the lead for the purposes of carrying responsibility and effectiveness are given for each project.
Which projects are to be implemented and in which order is a question that needs to be discussed further and will be partly determined by the expected benefit and the accompanying costs (personnel, resources, financing). Beside this of course the responsibilities of the agencies mentioned for other matters besides this subject, will also play a role in the scheduling and setting of priorities. One cannot do everything simultaneously. Consequently the implementary agencies will have to indicate the time-scheduling of each project.

To give some direction to the setting of priorities, it might be useful to highlight the main line that was referred to by virtually every respondent. That is the fact that, within the organisation, private life and work are closely interrelated and moreover that the nature of the work entails that people are frequently required to live at close quarters over longer periods. Because of this, attention is focused in the first instance on those projects that help to eliminate prejudice against homosexuality. This ought to be done at the earliest possible stage in a person's naval career, because it is precisely in the process of socialisation that the primary attitude forming is of permanent influence. Since 'the first blow is half the battle', it is proposed that priority be given to those projects that concentrate on personnel who are doing their preliminary training (KIM/EMMV). This involves not only providing factual information during the teaching programme, but also giving attention to providing guidance for young navy personnel.

6. LIST OF PROJECTS (31st October 1990)

Theme 1: Image forming

Project description	Initiators[21]
Education	
1.1.	Development of a general teaching package to inculcate greater tolerance towards and understanding of minorities, explicitly including homosexual personnel.
Publicity	
1.2.	Anticipation of national publicity on the policy effort of the Royal Netherlands Navy on homosexuality.
1.3.	The administrative top-ranking officials of the Royal Netherlands Navy give an interview on the occasion of the implementation of this policy in a Navy magazine, so that everyone becomes aware that discrimination is no longer appropriate in a modern organisation in any way whatsoever.

Theme II: Role of staff in command

2.1.	Review the policy on transfer in relation to the view of 'disturbed working relationships' within the context of the policy document.
2.2.	Develop a flow diagram for commanders which tells them what to do in a particular situation when they are confronted with homosexuals on board as an aid to building up skills.
2.5.	Be cautious in allocating the posts of 'baksmeesters' and instructors in the case of initial naval training, where the importance of attitudes and social skills as well as professional skills have priority.

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[21] The Dutch report lists the agencies involved in each project.These have been left out of the English language version.

2.6. See to it that homosexuals who get into difficulties are not labelled as medical cases by their surroundings, but call things by their name and involve the working environment in looking for a solution.

2.7. Give currency to the existence of the '06-number' (free phone for reporting violence in the armed forces). Make it clear that the 06-number is not only there for physical violence but also verbal violence. Make it clear that this number can also be contacted at a later stage (e.g. after an exercise), that it can be done anonymously, and what the organisation behind the 06-number can do for someone.

2.8. Instruct the staff as to the possible sanctions in the case of observed discrimination.

2.10. Devote attention to discrimination and verbal violence in the course for navy bar-tenders.

Theme III: Role of the group

3.1. Train the staff on management courses to correct the forming of negative images.

3.2. Encourage sound consultations with padres and clergymen to deal with controversial subjects.

3.3. Do not pass on controversial matters to the religious welfare people but deal with these yourself.

3.4. Convince the groups that discrimination will not be tolerated and actually resort to sanctions.

3.5. Consider introducing a form of supervision in cafeterias and canteens for groups of young naval personnel. Pay particular attention here to the job of senior seaman in the cafeteria, the cafeteria-committee, 'baksmeester', etc. and other openings.

Theme IV: Fear among homosexuals

4.1.	Make it clear that homosexuality in itself has no detrimental consequences on legal status.
4.2.	Look to see to what extent the Staff Officer for Social Affairs can play a clearer role in cases of discrimination; people who get into difficulties, harassment etc.
4.3.	Involve the expertise of the Organisation for Homosexuality in the Armed Forces in implementing the policy. Promote cooperation between the relevant Royal Naval bodies and nationally-operating organisations providing help to and information about homosexuality. Take stock of the need to promote expertise among bodies that are professionally involved with homosexuality.
4.4.	Encourage the promotion of expertise among personnel in the medical services.
4.5.	See to it that policy on the subject of sexuality is properly complied with in the case of security checks.

FILE
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United States General Accounting Office

GAO

Report to Congressional Requesters

June 1992

DEFENSE FORCE MANAGEMENT

DOD's Policy on Homosexuality

GAO/NSIAD-92-98

GAO

United States
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Washington, D.C. 20548

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National Security and
International Affairs Division

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June 12, 1992

The Honorable John Conyers, Jr.
The Honorable Gerry E. Studds
The Honorable Ted Weiss
House of Representatives

This report responds to your joint request that we review the Department of Defense's (DOD) policy of excluding homosexuals from serving in the armed forces. Also, as you requested, our supplemental report Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S) contains statistical information such as the number of service personnel expelled for homosexuality as a result of DOD's exclusion policy.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from its issue date. At that time, we will send copies to interested committees; other Members of Congress; and the Secretaries of Defense, the Air Force, the Army, the Navy, and the Marine Corps. We will make copies available to other parties upon request.

Please contact the Director for Defense Force Management Issues, Paul L. Jones, on (202) 275-3990, if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix V.

Frank C. Conahan

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

In response to a request from Representatives John Conyers, Jr., Ted Weiss, and Gerry E. Studds, GAO examined certain aspects of the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces. Specifically, GAO was asked to

- compile and analyze statistics on the separation of homosexuals from the military services between 1980 and 1990, including the number of personnel by service, race/ethnicity, gender, rank, and occupational category;
- determine the cost of replacing personnel separated under this policy and the cost of investigating allegations of homosexuality;
- identify and analyze the evidence that has been developed by DOD, the military services, or nondefense sources and cited as support for the current policy on homosexuality; and
- obtain information on the general public's attitudes, other nations' military forces policies, and other organizations' views on the compatibility of homosexuality with the military or other work environments.

Background

According to DOD officials, U.S. forces have had policies prohibiting homosexuals from serving in the military since the beginning of World War II. DOD's current policy on homosexuality was formalized in 1982 and specifically states that:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

According to DOD, a homosexual is "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

Results in Brief

On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair, and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well as disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.

GAO also found that

- recent polls suggest that the public has become more accepting of homosexuality and of homosexuals' serving in the military;
- some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and
- police and fire departments in several major U.S. cities have removed employment restrictions without adverse effects on mission.

GAO Analysis

Number of Discharges

During fiscal years 1980 through 1990, approximately 17,000 servicemen and women (an average of about 1,500 per year) were separated from the services under the category of "homosexuality." Approximately 1,000 military personnel were discharged in 1990. No determination that their behavior had adversely affected the ability of the military services to perform their missions was required. In terms of rank, gender, and race/ethnicity, the majority were enlisted personnel; most were men; and most were white. However, some groups were consistently discharged at a rate higher than their representation in the total active force or individual service. For example, between 1980 and 1990, the Navy, representing 27 percent of the active force, accounted for about 51 percent of the discharges; and women, representing 11 percent of the total active Navy force, accounted for 22 percent of those discharged.

Cost of Policy

Limited cost information associated with the administration of DOD's policy was available. Basically, only the costs of recruiting and training the personnel needed to replace those discharged for homosexuality could be readily estimated. In fiscal year 1990, recruiting and initial training costs associated with the replacement of personnel discharged for homosexuality were estimated to be $28,226 for each enlisted troop and $120,772 for each officer. The total cost of replacing personnel discharged for homosexuality, however, would need to include other factors such as out-processing and court costs.

The services' investigative agencies could not provide specific information on the costs of investigating alleged cases of homosexuality. However, during fiscal years 1986 through 1990, DOD investigative agencies conducted a total of 3,663 such investigations. In 1990, a total of about 472 investigations were conducted. These figures are approximate because the services can administratively handle investigations involving homosexuality under other categories, and the investigative agencies had to estimate the number of such cases. In addition, Navy investigations are simultaneously categorized as more than one offense, such as sodomy and indecent assault; again, the Navy adjusted its figures to account for this policy.

Studies of Homosexuality in the Military

DOD and the services have commissioned two major efforts that focused on whether homosexuals were more of a security risk than heterosexuals and concluded that there was no factual data to substantiate that premise. The Navy's 1957 Crittenden Report[1] (which did not question the underlying premise of DOD's policy) stated, "A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." A more recent draft report, prepared by DOD's Defense Personnel Security Research and Education Center (PERSEREC), commented that the DOD policy prohibiting homosexuals from serving in the military was based on the same rationale used to limit the integration of blacks.[2] Specifically, it stated:

> The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

The PERSEREC effort, initiated in 1986, has been packaged as several interim products with the final report issued in late 1991.

In addition, national organizations such as the American Psychiatric Association and the American Psychological Association, familiar with the extensive research conducted on homosexuality in the general population and with military veterans, disagree with DOD's policy and the policy's implied characterization of homosexuals.

In testimony before the House Budget Committee, the Secretary of Defense in July 1991 and the Chairman of the Joint Chiefs of Staff in February 1992 backed away from security concerns as a major basis for DOD's policy. However, both officials continued to support the policy on the basis of their belief that it is needed to maintain good order and discipline.

[1]Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, Mar. 15, 1957.

[2]Presidential Executive Order 9981, July 26, 1948, required the integration of blacks into the armed forces. Congress also passed the Women's Armed Services Integration Act in 1948 to institutionalize career opportunities for women in the military.

Attitudes Toward Homosexuality

General public attitudes in the United States about homosexuality appear to be changing. GAO reviewed three recent national polls, conducted by Gallup and Penn and Schoen Associates, Inc., which indicated that more Americans now say they believe that homosexuals should be allowed to participate in various occupations, including the armed forces. A Gallup survey conducted in March 1991 of a cross section of the American population of adults aged 18 and over showed that 69 percent of those interviewed felt that homosexuals should be allowed to serve in the armed forces, whereas only 51 percent felt that way in 1977.

Selected Police/Fire Department Policies

Additionally, since the early 1970s, a number of police and fire departments have adopted policies prohibiting discrimination on the basis of sexual orientation and have hired homosexuals into their work forces. Officials from all eight of the departments that GAO contacted stated that they had not experienced any degradation of mission associated with these policies. Most department officials did not identify major problems related to retaining homosexuals in a work force, but a few pointed out isolated cases of problems indirectly involving homosexuals.

Other Nations' Policies on Homosexuals in the Military

The policies regarding homosexuals serving in the military forces of 17 selected nations—predominantly members of the North Atlantic Treaty Organization and other U.S. allies—ranged from policies very similar to that of the United States to no stated policy addressing homosexuality as either a legal or a military personnel issue.

Four of the 17 countries, or about 24 percent, had policies that appear to have been designed to prevent homosexuals from entering military service and to separate from service or preclude retention beyond an existing service obligation those active duty personnel identified as homosexual. While 13 countries did not exclude homosexuals from entering their armed forces, several had policies requiring separation if an individual's homosexuality was disclosed later or if an individual's behavior was found to be aggressive, harassing, or disruptive. During the past 10 years, at least two countries have dropped their exclusion policies. One of the four countries that now exclude homosexuals is reviewing its policy—it expects to rescind the existing restriction in the near future.

Recommendations

On May 19, 1992, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While GAO is making no recommendations in this report, GAO's analysis should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces.

Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others. DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that GAO correctly notes that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that GAO erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that is, that homosexuality is incompatible with military service - - and GAO's report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, GAO recognizes that this study went beyond its directed task. However, GAO believes that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, GAO suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduced on this matter, GAO has deleted its suggestion.

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Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
DMTAG	Design, Methodology, and Technical Assistance Group
DOD	Department of Defense
GAO	General Accounting Office
PERSEREC	Personnel Security Research and Education Center

Background

According to Defense officials, the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces is based on the professional military judgment that the policy promotes overall combat effectiveness.

Although the language and administration of the military's policy on homosexual orientation has changed since 1941, the current policy has, according to both scientific researchers and DOD officials, evolved from the one adopted during the mobilization for World War II. Exclusion was then grounded on (1) prevailing sodomy statutes that viewed homosexuality as a criminal offense and (2) the psychiatric belief that homosexuality was a mental disorder. At that time, the rationale was that the psychiatric screening of recruits for mental disorders (including homosexual orientation) would enhance the psychiatric profession's prestige, as well as be less costly to the government over the long term. That is, it was anticipated that such screening would reduce the patient load of veterans' hospitals after the war. Many psychiatrists also felt that it was more humane to screen out homosexual recruits from the draft and separate homosexual persons already in the military services rather than imprison them under military sodomy regulations.

Definitions and Population Projection

Under present policy, DOD defines a homosexual as "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." The limited data currently available (largely Kinsey Institute studies) suggests that the primary sexual orientation of between 5 and 10 percent of the general U.S. population is homosexual.[1]

In commenting on a draft of this report, DOD questioned the predictive value or relevance to today's military of earlier studies conducted by the Kinsey Institute. It stated that we had failed to point out that DOD's exclusion policy—which involves an initial screening out process and a lack of acceptance of homosexuality in the military environment—tends to limit the number of homosexuals in the military.

[1]Based on a DOD military population of approximately 2 million, the number of homosexual personnel would range from about 100,000 to 200,000 personnel using these percentages.

DOD is correct in stating that a solid estimate of the military homosexual population is not available. However, a number of studies done after the Kinsey efforts clearly suggest that (1) there are considerably more homosexuals serving in the military and completing their terms of service than are being caught and discharged and (2) the limiting effects of the exclusion policy (for example, the screening processes) may not be particularly effective.[2]

Current DOD Policy

DOD's guidance on homosexuality is contained in Directives 1332.14, "Enlisted Administrative Separations," and 1332.30, "Separation of Regular Commissioned Officers for Cause." The first directive was officially revised on January 28, 1982; the second on February 12, 1986. Specifically, the guidance states that:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

Prior to 1982, DOD directives did not require the initiation of separation processing or provide grounds for the possible retention of personnel involved in or suspected of homosexual behavior. Accordingly, the regulations of the military services differed substantially in how these and other matters were addressed. According to DOD officials, these differences resulted in substantial difficulties in responding to legal challenges in the courts.

According to DOD officials and documents, the primary reasons for the 1982 and 1986 policy revisions were to (1) establish uniform policies and procedures for all the services and (2) provide a stronger basis for defending the policies and procedures in the courts. Specifically, the new

[2]These studies include the Navy's Crittenden Report of 1957; a 1967 study by the Institute of Sex Research at the University of Indiana; Homosexuals and the Military, C.J. Williams and M.S. Weinberg, 1971; Homosexual Men and Women Who Served Their Country: Journal of Homosexuality, J. Harry, 1984.

directives defined the terms "homosexual" and "homosexual act"; standardized the services' procedures for processing homosexual cases; and clarified the specific actions for which a person would be separated—homosexual acts (including attempt and solicitation), admissions of homosexuality, and homosexual marriages. Further, the directives precluded retention of homosexuals except in limited extenuating circumstances. "Extenuating circumstances" involved cases in which homosexual activity was unlikely to recur and was shown to be, for example, an act motivated by youthful curiosity or performed under intoxication or in response to pressure from a superior. The directives also afforded the right to appeal all separations for homosexuality. Finally, under the 1982 directive, homosexuals are no longer processed for separation by reason of unsatisfactory performance or misconduct—instead they are processed under the category "homosexuality." Almost 95 percent receive an honorable or a general discharge.

Appeals Processes Uphold DOD's Policy

Current DOD regulations afford the right to appeal homosexual separations through processes within the military adjudication system. Service members may also pursue redress in the civil court system.

Military Avenue of Appeal

According to DOD regulations and DOD officials, a service member who is alleged to be or who admits to being homosexual is notified in writing by the appropriate command that he or she is being considered for discharge. At such time, the service member is afforded the opportunity under the military adjudication system to have the case heard before an Administrative Board, where the individual is represented by an appointed military counsel, military counsel of the respondent's own choice, or civilian counsel retained at the service member's own expense.

If the Board finds the service member is not a homosexual on the basis of the facts provided and recommends retention, the service member is normally retained. If the Board finds that the allegation is supported by the preponderance of the evidence, the service member is normally processed for discharge. The service member may petition the respective Board for Correction of Military/Naval Records, which reviews the case on the basis of possible error. If the Correction Board finds no error or injustice in the decision made by the Administrative Board, then the decision to discharge stands.

If the service member wishes to appeal further, he or she may file suit in a civil court, at which time all expenses, including attorney fees, are incurred by the individual because he or she is no longer in the military.

Civil Courts' Appeals Jurisdiction

A service member separated from service under DOD's policy may seek review by a federal court as to whether the discharge was proper. The member may file an action in a federal district court if the member's complaint presents a federal question or if the member seeks a declaratory judgment. In addition, under the Tucker Act, the district courts and the U.S. Claims Court have concurrent jurisdiction over actions filed by service members seeking monetary relief not exceeding $10,000. The Claims Court has exclusive jurisdiction if the amount claimed exceeds $10,000. Further, reviews of administrative decisions by the armed services that have resulted in discharges also may be sought under the Administrative Procedure Act. The act permits courts to set aside action by a military review board that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" or when it is claimed that a review board's decision was "unsupported by substantial evidence."

Objectives, Scope, and Methodology

We obtained statistics on the composition of the active forces and on service members discharged for homosexuality between fiscal years 1980 and 1990 by branch of service, race, gender, rank, and occupational code. We obtained statistics on the composition of the active military force, discharges for homosexuality, years of service/pay grades, and occupational categories from DOD's Defense Manpower Data Center. Where possible, we analyzed costs associated with the implementation of DOD's policy. Because DOD does not routinely maintain such cost data, our cost analysis is very limited. DOD was able to provide only information on the cost of recruiting and training dischargees' replacements. We also obtained pay grade and years-of-service data for those personnel discharged for homosexuality between fiscal years 1980 and 1990. In a separately issued supplement to this report entitled Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S), we present these statistics in full.

We were not able to calculate the original investment cost of training and compensation, the cost of investigating alleged or actual homosexual cases, or the cost of out-processing servicemen and women who had been identified as homosexuals. According to DOD officials, there were relatively few service members who had been discharged from service academy and

Reserve Officer Training Corps programs on the grounds of homosexuality, and only a few had been asked to repay educational costs paid by the military.

In a 1984 letter to some Members of Congress, we addressed some of the matters discussed in this report. At that time, we provided a breakout of the numbers of service members discharged for homosexuality by branch of service, race, gender, rank, and career occupation and some costs associated with the implementation of DOD's policy of excluding homosexuals.[3] In this 1992 report, we were also asked to evaluate available evidence used by DOD to support its rationale for implementing the policy.

To determine what evidence exists to support DOD's rationale for its homosexual exclusion policy, we asked DOD to identify any research studies that had been conducted or commissioned and any reports or drafts that had been written to examine the rationale and premises underlying the existing policy. We reviewed the documents so identified. We interviewed officials from the Department of Defense, the Air Force, the Army, the Navy, and the Marine Corps to obtain their views on the origin, the rationale, and the implementation of the policy. We also interviewed officials from the Personnel Security Research and Education Center, the U.S. Army Criminal Investigative Division Command, the Air Force Office of Special Investigations, and the Naval Investigative Service.

To obtain information on the status and results of research in the area of homosexuality in the general population, we met with official representatives of the national professional associations with cognizance of and expertise in this area. These organizations included the American Psychiatric Association and the American Psychological Association. We obtained position papers from each, discussed the understanding and interpretation of the research available on homosexuality, and obtained their views on DOD's policy. GAO's Design, Methodology, and Technical Assistance Group (DMTAG) assisted us in developing our strategy for selecting these organizations and accompanied us on several of the significant meetings.

We also obtained copies of national polls on the public's changing attitudes toward homosexuality in general and homosexuality in the military and discussed the results with polling experts and representatives.

[3]B-216657, Oct. 11, 1984.

We also contacted embassy officials of U.S. allies and solicited their current policies governing homosexuals serving in their armed forces (see app. II).

Finally, we selected and visited eight police and fire departments in four U.S. cities where the employment of homosexuals is not prohibited and obtained the officials' views on their policies and experiences (see app. III). While these organizations are not comparable to the U.S. military in all ways, we believe that these organizations have attributes that are similar to those of military units. For example, their members work closely together; sleep in close quarters; use the same restroom facilities; maintain trust, confidence, discipline, and morale; and respect the system of rank and command.

We conducted our review between September 1990 and May 1992 in accordance with generally accepted government auditing standards.

DOD's Separations of Homosexuals

DOD-wide statistics show that 16,919 servicemen and women were discharged under the separation category of homosexuality between fiscal years 1980 and 1990—an average of about 1,500 annually, or about 1.6 percent of the average number of involuntary discharges. Most of these personnel were enlisted, men, and white. According to DOD officials, personnel separated under this category might have been identified in a number of ways, including self-admission, allegations leading to investigations, and being caught in compromising situations. DOD and service officials acknowledged that the numbers we cite do not reflect the total number of homosexual military personnel separated because homosexuals could also have been separated under other categories such as misconduct.

The costs associated with the administration of homosexual discharges, which involve a separation process and may include investigation, are not tracked by DOD or the services. However, calculations using DOD-provided average costs for the recruiting and initial training of enlisted and officer personnel suggest a replacement cost of approximately $27 million for those personnel separated for homosexuality in 1990—if these individuals were replaced on a one-for-one basis.

Discharge Criteria

DOD's policy states that homosexuality is incompatible with military service because the presence of persons who engage in or demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission. Accordingly, identification as a homosexual is the only criterion that needs to be met to discharge a person under this separation category—no specific determination of an individual's negative impact on the military mission is needed prior to separation.

Historically, contested discharges for homosexuality have been upheld both in the military administrative review process and in the civilian court system. This has been true even in cases involving personnel with exemplary service records, such as the following:

- An Army sergeant, whose commanding officer said he was "one of our most respected and trusted soldiers," was expelled after 14 years of service including tours in Vietnam and Korea.
- An Air Force sergeant, the recipient of a Bronze Star and a Purple Heart, was expelled after 12 years of service including a tour of duty in Vietnam.

- A Naval Academy midshipman, ranked at the top of his class, was expelled 6 weeks prior to graduation.
- The promotion of a captain with 15 years' service in the Army Reserve was suspended. She was subsequently expelled from the military.
- A Navy petty officer who had served 9 years as a linguist and cryptographer with a top secret clearance was discharged.
- An Army Reserve sergeant who had enlisted for a 3-year term and who was the only female in her drill sergeant training course was acknowledged by her superiors as a fine candidate for drill sergeant school, a capable soldier, and an excellent instructor. She was subsequently discharged one year short of her initial enlistment period.

In commenting on a draft of this report, DOD stated that of necessity, it creates categories to manage military personnel and guide accession and retention decisions. Categories include those mandated by law, such as age and citizenship (for officers), and those mandated by regulation, such as height and weight limits, physical and mental standards, single parenthood,[1] and homosexuality. DOD commented that each regulatory category is predicated on the professional military judgment of DOD leaders that creating that category contributes to overall combat effectiveness. Accordingly, DOD separates individuals in selected categories, such as homosexuals, regardless of their individual performance records.

Analysis of Discharges for Homosexuality

We summarized DOD's data on discharges and separations for homosexuality during fiscal years 1980 through 1990 by service, race/ethnicity, gender, and rank. Our analysis showed that some groups have consistently been discharged at a rate higher than their representation either DOD-wide or in their respective services. Our analysis of discharge data is discussed below. In a separately issued supplement to this report entitled Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S), we present this analysis in full.

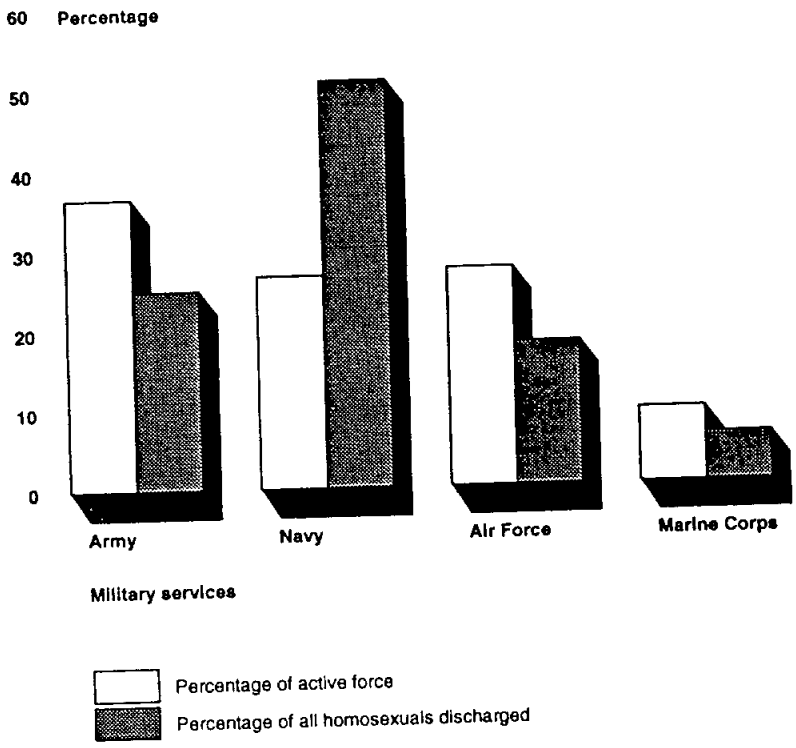
Discharges by Service

The Navy, representing 27 percent of the active force during this period, accounted for 51 percent (8,638 cases) of the total number of discharges for homosexuality. While the Army represented 37 percent of the active force, it accounted for 25 percent (4,235 cases) of all discharges for homosexuality. The Air Force, representing 27 percent of the active force,

[1]Under current regulations, a single parent may not enter the military services; however, individuals who become single parents while in service are allowed to stay.

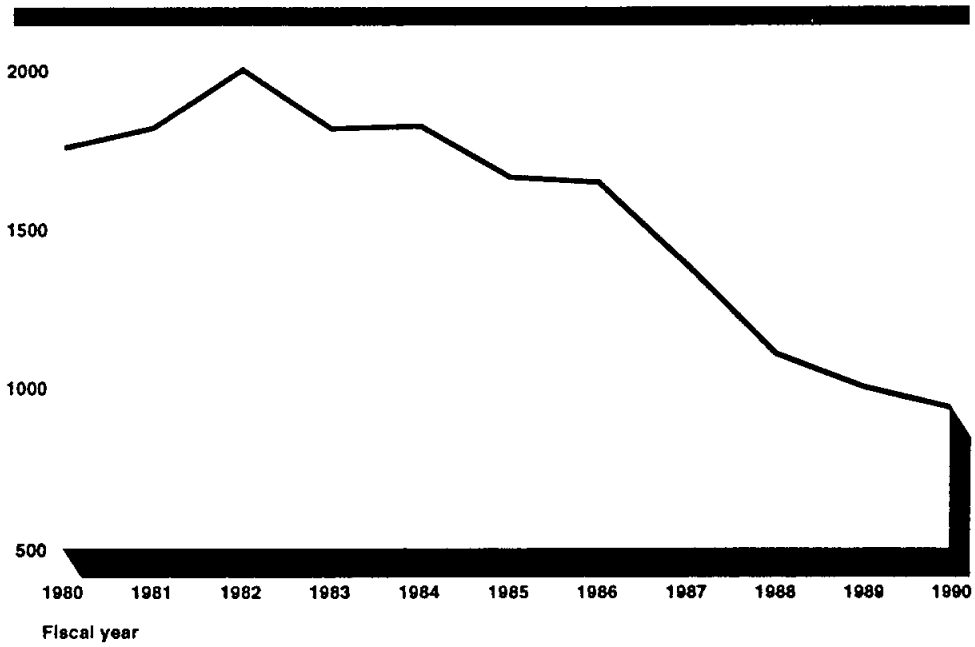
accounted for 18 percent (2,993 cases) of all these discharges. The Marine Corps represented 9 percent of the active force and 6 percent (1,053 cases) of the total number of these discharges. The Marine Corps, the smallest service, also had the fewest discharges overall. (See fig. 2.1.)

Figure 2.1: Discharges for Homosexuality by Service



DOD-wide, the total number of reported discharges for homosexuality dropped 47 percent between fiscal years 1980 and 1990 (see fig. 2.2). Some DOD officials said that there may be various reasons for the trend, including, but not limited to (1) the flexibility available to local commanders to administratively handle situations involving homosexualit without bringing in an investigative agency and to select an alternative separation category other than homosexuality; (2) the likelihood that officers are given the option of resigning, which eliminates the investigative process and the homosexual categorization; and (3) the apparent softening of the general public's attitude toward homosexuality.

Figure 2.2: DOD-Wide Number of Homosexuals Discharged

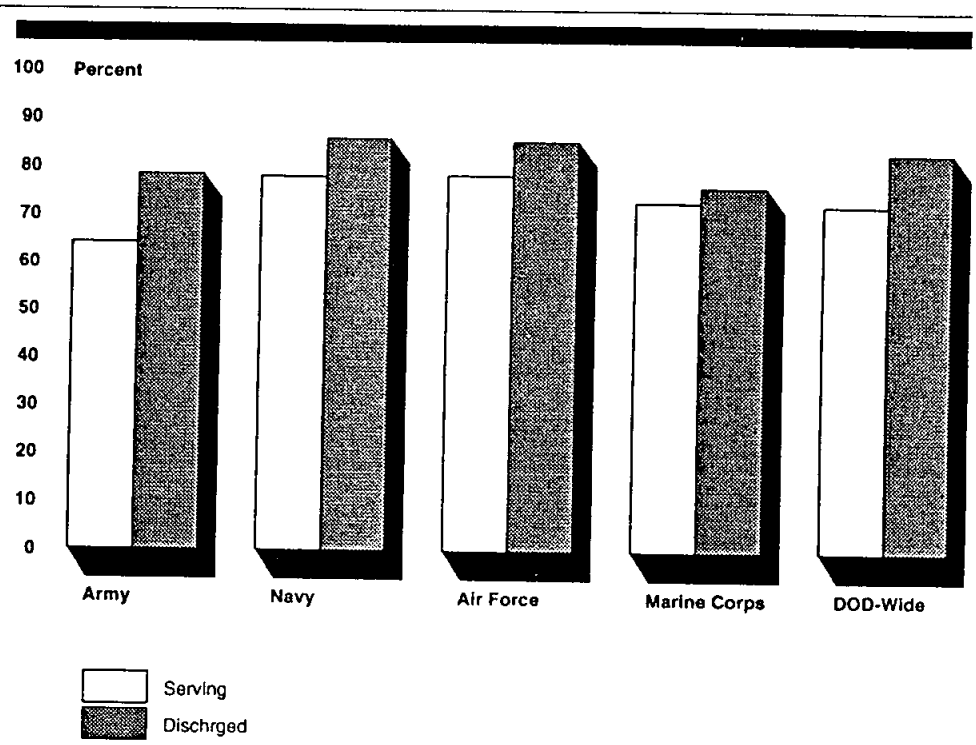


On the basis of DOD's comments, we compared the total number of involuntary separations for the period with the number of separations for homosexuality. We found that as the total number of involuntary separations decreased, so did the total number of separations for homosexuality. For example, the total number of involuntary separations peaked in 1982 at slightly over 108,000 actions and dropped almost 36 percent by 1990. Separations for homosexuality also peaked in 1982 at almost 2,000 cases and dropped 47 percent by 1990. We were unable to determine why this correlation had occurred.

Discharges by Race

We summarized DOD's race/ethnicity categories into three basic groups: white, black, and "other." In each branch of the military, whites were discharged for homosexuality at a rate consistently higher than their rate of representation. DOD-wide, from fiscal years 1980 through 1990, white men and women constituted 83 percent (14,125 cases) of all personnel discharged for homosexuality while making up about 72 percent of all personnel serving (see fig. 2.3). Conversely, black men and women accounted for 13 percent (2,204 cases) of all discharges while they represented 20 percent of the total serving. The "other" category made up 4 percent (590 cases), while representing 8 percent of the active force.

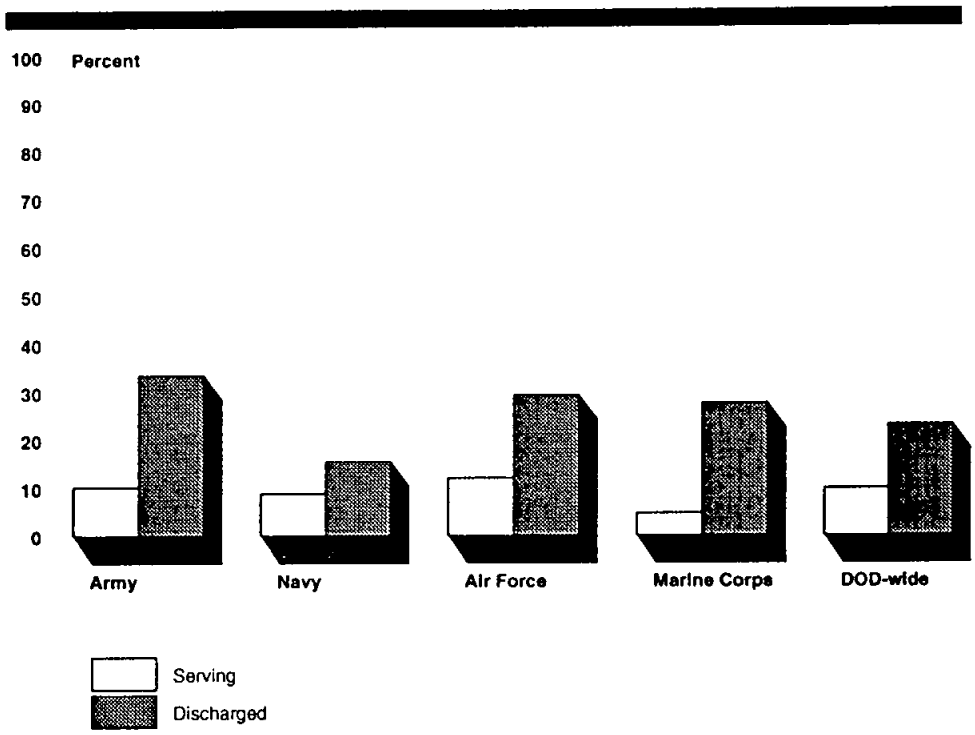
Figure 2.3: Average Percentage of Whites Serving Compared With Average Percentage of Whites Discharged for Homosexuality



Discharges by Gender

In each branch of the military services, women were discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.4). DOD-wide, from fiscal years 1980 through 1990, women constituted 23 percent of all discharges for homosexuality (3,900 cases), contrasted with their representation as just 10 percent of all military personnel. While women in all the services were discharged for homosexuality at a rate consistently ranging two to three times higher than their rate of representation, this pattern was most noticeable in the Marine Corps, where the discharge rate was almost six times their rate of representation. Women constituted 28 percent of all discharges for homosexuality (303 cases) in the Marine Corps, but only 5 percent of all personnel serving. Conversely, DOD-wide men represented 77 percent of all discharges for homosexuality and 90 percent of all military personnel.

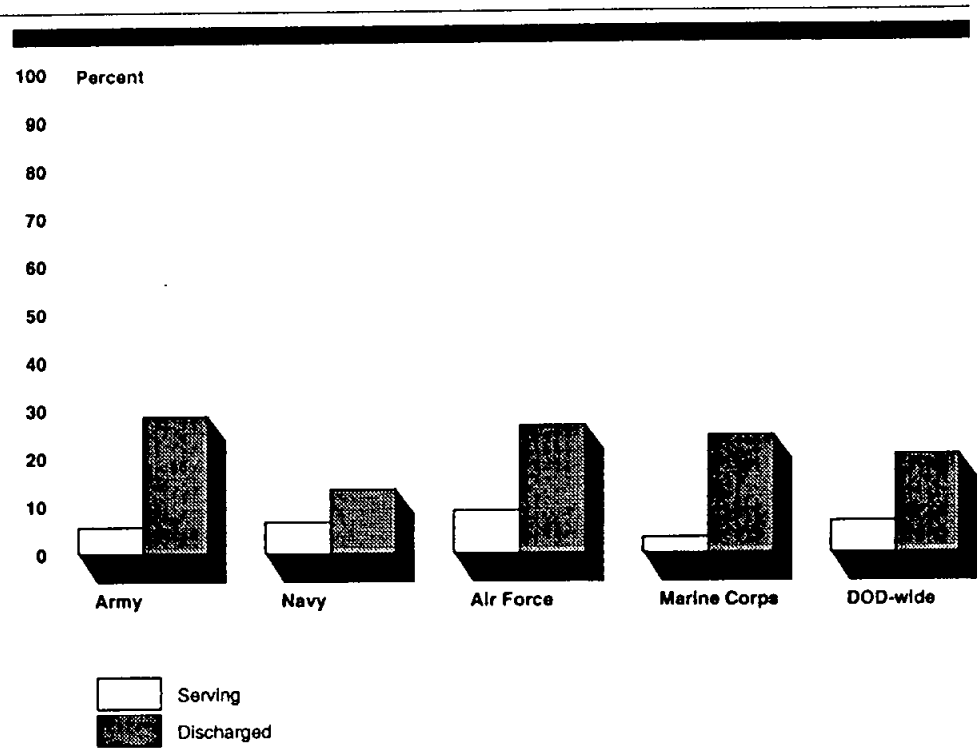
Figure 2.4: Average Percentage of Women Serving Compared With Average Percentage of Women Discharged for Homosexuality



Discharges by Race and Gender

In each military service, white women were discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.5). DOD-wide, from fiscal years 1980 through 1990, white women constituted 20 percent (3,421 cases) of those discharged for homosexuality, while they represented just 6 percent of all personnel serving. The disproportionate discharge rate of white women was evident in all of the services, but most noticeable in the Marine Corps. Marine Corps women constituted 24 percent of such discharges, while they represented just 3 percent of the personnel serving. Conversely, white men represented 63 percent (10,704 cases) of such discharges and 66 percent of all serving. The percentages for other groups were as follows: black men, 11 percent of those discharged and 17 percent of those serving; black women, 2 percent of those discharged and 3 percent of those serving; "other" men, 3 percent of those discharged and 7 percent of those serving; and "other" women, 1 percent of those discharged and 1 percent of those serving.

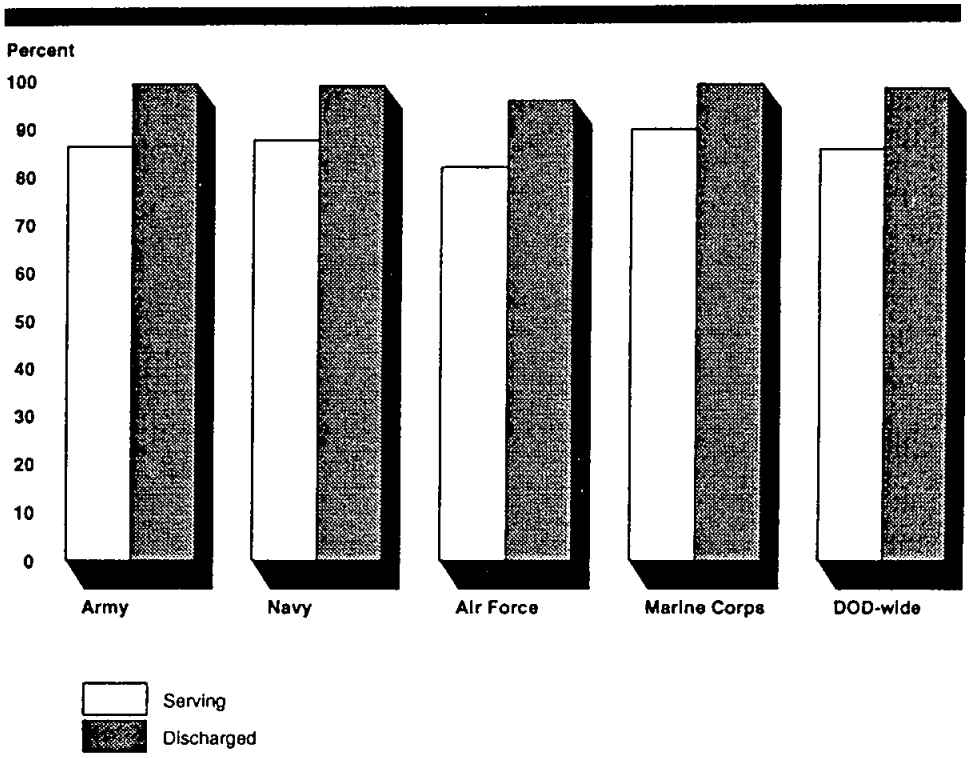
Figure 2.5: Average Percentage of White Women Serving Compared With Average Percentage of White Women Discharged for Homosexuality



Discharges by Rank

Enlisted personnel have been discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.6). Their rate of discharge is also higher than that of officers. DOD-wide, from fiscal years 1980 through 1990, enlisted personnel constituted 99 percent of those discharged for homosexuality, while making up 86 percent of all personnel serving, a difference of 13 percent. Conversely, officers represented 1 percent of such separations and 14 percent of all serving.

Figure 2.6: Average Percentage of Enlisted Personnel Serving Compared With Average Percentage of Enlisted Personnel Discharged for Homosexuality



Discharges by Occupational Code

DOD categorizes its military personnel (both officers and enlisted personnel) under 10 broad occupational area codes.[2] The officer and enlisted codes are similar but not identical. DOD-wide, about 50 percent of all enlisted personnel who served during the 11-year period we reviewed were employed in the three job categories of Electrical/Mechanical Equipment Repairers (20.2 percent); Infantry, Guncrews, Seamanship Specialist (14.7 percent); and Functional Support and Administration Personnel (15.7 percent). These three categories accounted for approximately 36 percent of the discharges for homosexuality during the period. We noted no obvious, sizable disparities in terms of discharge rates and representation in the occupational categories. However, almost 24 percent of the discharges for homosexuality came from the "Nonoccupational" category, while only about 9 percent of the personnel belonged to that category.

[2]One of these categories, "Nonoccupational," is used to designate individuals such as patients, students, prisoners, and trainees and is not an actual occupation field.

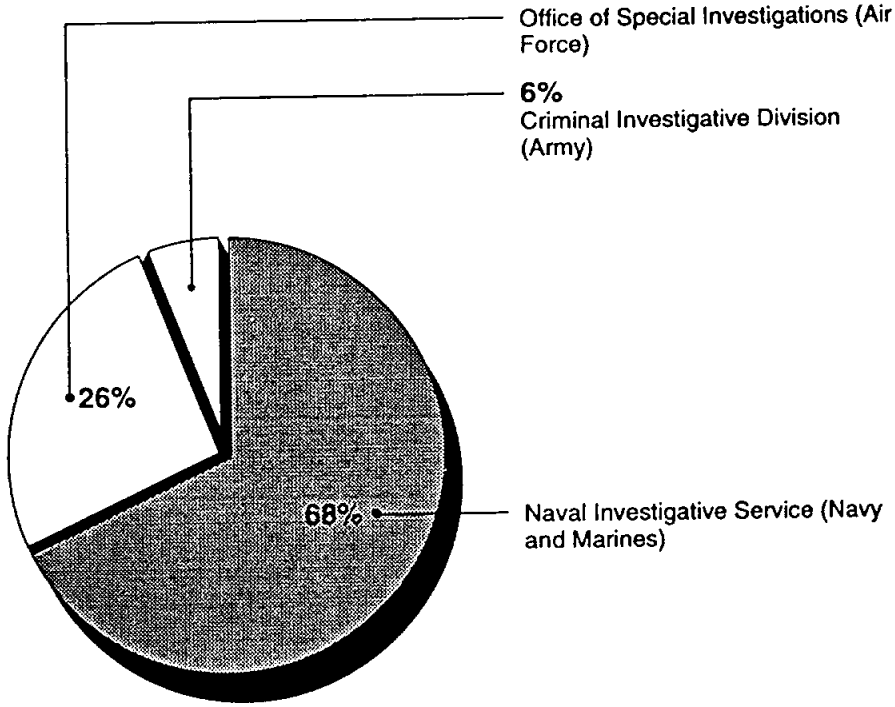
Investigations of Homosexual Behavior

There are three criminal investigative agencies within DOD: the Army's Criminal Investigation Command, the Air Force's Office of Special Investigations, and the Naval Investigative Service. These organizations investigate specific allegations of criminal activity. Certain sex-related crimes, such as sodomy, may entail either homosexual or heterosexual behavior. We reviewed data provided by each of the services on investigations involving homosexuality. Consistent and reliable information on these cases was not available from the three investigative agencies before 1986, and most did not maintain data by the categories of race, gender, rank, or occupational code. While the Naval Investigative Service did maintain data by gender, it has only maintained data by race since 1986. Accordingly, for consistency, our analysis covers fiscal years 1986 through 1990. For this period, DOD investigative agencies experienced a total investigative caseload of about 186,000. Of these, 3,663, an average of approximately 730 per year, were investigations related primarily to homosexuality. However, this figure may be understated because each DOD investigative agency has its own policies and procedures governing investigations of criminal activity involving homosexuality and its own coding process. For example, while the Army and the Air Force use a specific code for categorizing investigations of homosexuality, the Navy does not. Navy investigations of homosexuality are categorized under the same offense code as sodomy and indecent assault. Additionally, investigations of homosexuality that are administratively handled at the local command level may not be reported or recorded in the system as such. Commanders have this flexibility.

Figure 2.7 shows that for fiscal years 1986 through 1990, the Navy conducted 68 percent of all DOD-wide investigations of homosexuality. The Air Force conducted 26 percent, and the Army 6 percent. Our analysis also shows that, while overall investigative budgets appear to be increasing, the number of investigations involving homosexuality appears to be decreasing. The number of investigations of homosexuality throughout the services dropped from 907 to 472, a decline of 48 percent.

Although DOD officials could not explain this decline, some officials speculated various reasons for it. For example, one investigative agency official stated that it could be due in part to the shift in responsibility for homosexuality cases from investigative agencies to the military police or the provost marshall. Other officials stated that it could be due to the advent of a higher caliber all-volunteer force and a new focus on large, time-consuming procurement fraud cases.

Figure 2.7: DOD-Wide Investigations of Homosexuality



Note: Percentages have been rounded to the nearest whole number.

In commenting on a draft of this report, DOD stated that the statistics from the Naval Investigative Service reflect investigations of both heterosexual and homosexual sodomy/indecent sexual acts. We agree. However, we were told there are a limited number of such cases. Accordingly, we believe that figure 2.7 and the discussion of investigations in this section fairly represent the activity in this area.

Cost of Expulsions

The costs of administering DOD's exclusion policy were not available because DOD does not routinely maintain records of such costs. While DOD criminal investigative agency officials provided us with figures reflecting total investigative budgets, they stated that records of costs related to carrying out individual investigations or discharges were not maintained and that such costs could not be reliably extrapolated. According to DOD officials, the only costs that were readily identifiable were those for recruiting and providing initial training to personnel replacing troops discharged for homosexuality. For fiscal year 1990, these estimated costs were $28,226 for each enlisted individual and $120,772 for each officer.

The total cost of replacing personnel discharged for homosexuality, however, would need to include factors such as out-processing and court costs.

Support for DOD's Policy on Homosexuality

According to DOD, its policy "is based solely upon concerns about homosexuality itself"—that is, the concerns about the effect of homosexuality on factors such as discipline, good order, and morale. Those concerns led to the professional military judgment that the exclusionary policy promotes overall combat effectiveness. Therefore, DOD has not conducted specific research to develop empirical evidence supporting the overall validity of the premises and rationale underlying its current policy on homosexuality.

Efforts to examine the security risk issue have concluded that available data does not substantiate that homosexuals pose a security risk. In addition, professional psychiatric, psychological, sociological associations and other experts familiar with the research conducted on homosexuality in general disagree with the basic rationale behind DOD's policy.

DOD's Position

Defense officials stated that DOD's policy is not based on scientific or empirical data, but rather on the considered judgment of military professionals and civilian policymakers serving in various leadership positions throughout DOD and the services. The policy is based on the conviction that homosexual behavior is incompatible with military service in that it interferes with maintaining good order, discipline, and morale. DOD officials do not contend that homosexuals cannot or do not perform as well on the job as heterosexuals; in fact, in some cases commanders have noted that homosexuals are extremely good performers. For example, an interesting opinion regarding homosexuality was expressed in a recent message from the Commander of the Naval Surface Fleet, Atlantic. The message stated:

> Experience has shown that the stereotypical female homosexual in the Navy is more aggressive than her male counterpart, intimidating those women who might turn her in to the chain of command. As a result, the ability to obtain credible evidence during an investigation of female homosexuality is often stymied, and all that remains are unsubstantiated rumors leading to accusations of a "witch-hunt" as investigations unsuccessfully search for evidence. Experience has also shown that the stereotypical female homosexual in the Navy is hardworking, career-oriented, willing to put in long hours on the job and among the command's top professionals. As such, allegations that this woman is a homosexual, particularly if made by a young and junior female sailor with no track record, may be dismissed out of hand or pursued half-heartedly.

Defense officials contend that DOD and the services understand the elements critical to ensuring the proper emotional bonding of personnel in military units. In addition, these officials state that a major factor that must be considered when examining the exclusion policy is the lack of

acceptance of homosexuals in general and of homosexuals in the military in particular. According to these officials, homosexuality is not an acceptable behavior in society's eyes, and military policy should reflect this standard. DOD policy officials stated that the courts have consistently upheld DOD's position and that the agency has no intention of changing existing policy.

To examine the evidence or rationale DOD has for its policy, we reviewed documents related to its 1982 policy revision. This was the last time DOD revised and clarified the policy. It appears that the main purpose of that revision was to ensure more consistent application of the policy—not a review of the validity of the underlying rationale. For example, in a January 16, 1981, memorandum to the service Secretaries and the Chairman of the Joint Chiefs of Staff, the Deputy Secretary of Defense stated:

> The revision contains no change in policy. It reaffirms that homosexuality is incompatible with military service. In order to provide workable policies and procedures for all the military departments, however, and to provide the strongest possible basis for supporting these policies and procedures in court, it is important that applicable provisions be both clear and uniform.
>
> [Text omitted.]
>
> I have personally worked on this problem from time to time during most of the four years I have served in the Department. I firmly believe that the most important aspect of our policy is the ability to keep homosexuals out of the service and to separate them promptly in the event they are in fact enlisted or commissioned.

Judicial Consideration of DOD's Policy

The courts have consistently upheld DOD's policy on homosexuality as constitutional under a rational basis standard of review. Under this standard, the government is only required to establish that regulations implementing the policy are rationally related to legitimate governmental interests. According to DOD, the courts have not required scientific evidence to support DOD's policy. The courts, giving special deference to military judgments, have accepted as legitimate governmental interests such military objectives as good order, morale, and discipline, without requiring the government to produce scientific evidence to support the policy. In more limited contexts, a few federal courts have cautioned DOD on nonconstitutional grounds concerning application of the policy. For example, it has been held that the government must afford a member facing discharge under military regulations that contain an exception to th policy a reasoned explanation as to why that member does not come withi

the exception, including a fact-sensitive inquiry into the member's particular circumstances. Also, one federal court has held that the Army could not deny a service member's reenlistment under its regulations when the service, with full knowledge of the member's homosexuality, has repeatedly permitted the member to reenlist in the past. Appendix I lists examples of homosexual expulsions for which performance was not an issue.

Studies Initiated by DOD and the Services Do Not Address the Policy's Rationale

DOD and the services identified two major efforts completed in the last 35 years that dealt with homosexuality. These efforts included the Navy's 1957 "Crittenden Report" and a 1988 draft of a report by the Personnel Security Research and Education Center (PERSEREC), which was initiated in 1986. Basically, the Crittenden Report was undertaken to look at the Navy's procedures and standards in processing homosexuals out of the military. The PERSEREC study was undertaken specifically to examine the security risk associated with civilian personnel who were homosexuals. Despite the specific objectives of these studies, both addressed issues concerning the overall suitability of homosexuals to serve in the armed forces.

Navy Crittenden Report

The Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals was submitted to the Secretary of the Navy on March 15, 1957. This document is informally called the "Crittenden Report," after the Board's Chairman, who was appointed in 1956 to examine various issues surrounding the Navy's policies, procedures, and directives governing homosexuals, including security risk implications. Although at the time of the study there was increased knowledge of homosexual behavior and treatment, specific questions had been raised on which the Board was specifically asked to make recommendations. The Board's recommendations were to address issues involving one-time offenders, voluntary confessions, types of discharge, treatment of offenders, clinical evaluations, review procedures, responsibility to the civilian community, the screening of applicants for enlistment, the treatment of women, and related administrative practices. The Board was not asked to examine the validity of the rationale underlying the policy. However, it contained considerable information regarding the status of research and homosexuality in the Navy.

The Board, comprised of several members from the U.S. Navy and the U.S. Marine Corps, reported its findings and recommendations to the Secretary of the Navy in a three-part document, which did not question the underlying DOD policy on homosexuality, but concluded in part, the following:

> The Board was unable to uncover any statistical data to prove or disprove that homosexuals are in fact more of a security risk than those engaged in other unsocial or immoral activity. Even the number of cases of blackmail revealed as a result of past investigations, which were cited to the Board, is negligible.
>
> [Text omitted.]
>
> The Board is in agreement that a homosexual is not necessarily more of a security risk, per se, than other transgressors of moral and criminal codes. Further the Board recognizes that the propensities and vulnerabilities associated with homosexual activity, as in the case of promiscuous heterosexual activity, do provide serious security implications.

The report further stated that: "Isolated cases are mentioned, but to determine that a homosexual is more of a security risk than a non-homosexual, these instances would have to be measured against security breaks by non-homosexuals, and against the proper observance of security by homosexuals."

The report further explained that:

> There is considerable information which would indicate that other factors in the personality constitute the security risk rather than the factor of homosexuality alone. One such item, for example, would be feelings of inadequacy which drive a man to boast of the secrets he possesses. Such boasting might very well be done to any sexual partner, whether the partner be homosexual or heterosexual. Some intelligence officers consider a senior officer having illicit heterosexual relations with the wife of a junior officer or enlisted man is much more of a security risk than the ordinary homosexual.

The report also stated that, although there are some homosexuals who have adjustment difficulties in coping with military life, the difficulties may or may not be due to their homosexuality. According to the report, there have been many documented instances of individuals who have reported themselves as having homosexual tendencies and who nonetheless have continued on duty and served honorably and well.

Research on Personnel Security by PERSEREC

An effort to examine the correlation between homosexuality and security risk violations by civilian employees was undertaken by the Defense Personnel Security Research and Education Center at the direction of the Deputy Under Secretary of Defense for Security Policy. PERSEREC, established in 1986, is a DOD research, analytical, and educational facility whose missions are to (1) perform personnel security research and analysis for DOD and (2) furnish educational assistance, instruction, and advice on personnel security research to DOD components. PERSEREC now operates under the guidance of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) in Washington, D.C., and is based in Monterey, California.

In 1986, PERSEREC was tasked with validating and reporting on existing criteria for granting civilian personnel security clearances and with developing more objective, uniform, and valid adjudication standards. For example, PERSEREC was to clarity relationships between risk and various personal characteristics, including sexual orientation.

In December 1988, PERSEREC completed a draft report entitled Nonconforming Sexual Orientations and Military Suitability. Although it did not address the results of the 1957 Crittenden report, it echoed the security observations of that report.

The PERSEREC draft report revealed no evidence that homosexuality is related to security risk violations or that sexual orientation affects an individual's suitability for military service. In fact, the report stated that the development of ethnology as an area of study has made possible more precise examination of the influence of biological factors on the formation of sexual orientation. In addition to including data supporting a biological cause for homosexuality, the authors stated that they had examined recent and contemporary studies that led to the inference that homosexual men and women as a group are not different from heterosexual men and women in regard to their adjustment or job performance. The report also made the following comments regarding DOD's policy on homosexuals in the military:

> The intensity of prejudice against homosexuals may be of the same order as the prejudice against blacks in 1948, when the military was ordered to integrate.[1]

[1]Presidential Executive Order 9981, July 26, 1948.

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

Although the draft report did not specifically address the integration of women in the military, it stated that it would be possible to set out as a hypothesis and test directly and indirectly the question of whether the presence of men or women identified as nonconforming in sexual orientation actually influences such features of military life as discipline, group morale, and integrity.[2] Direct testing would involve integrating men who identify themselves as holding nonconforming sexual attitudes with men who do not so identify themselves. The same design could be used for women.

The report also stated that:

Social science specialists helped develop programs for combating racial discrimination, so that now the military services are leaders in providing equal opportunity for black men and women. It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.

Although the PERSEREC draft was submitted in late 1988, it was rejected by DOD because it went beyond the requested scope, which was to determine security risk implications, and, instead, addressed the suitability of homosexuals serving in the military. The study was not finalized until September 1991, and the report was revised at least three times at DOD's direction in order to focus on its assigned task.

The following quotes were extracted from PERSEREC's draft 1988 report:

During the period 1981-1987, 4,914 men were separated from the Army and the Air Force on the grounds of homosexuality. Of these, 40 percent of the Army sample and 50 percent of the Air Force sample held Secret or Top Secret security clearances. It is reasonable to suppose that background investigations had yielded no information that would indicate that the subjects were security risks . . . .

[Text omitted.]

The argument goes that they would be candidates for blackmail if a foreign agent learned that they were homosexuals. This argument is somewhat blunted when we remind ourselves

[2]In 1948 Congress acknowledged the quality and value of the contribution women made in World War II and passed the Women's Armed Services Integration Act of 1948.

that blackmail is also an option for foreign agents who acquire knowledge about heterosexual men and women secretly engaged in adultery. Also, decriminalizing homosexual behavior has done much to decrease the danger of blackmail.

Studies of homosexual veterans make clear that having a same gender or an opposite-gender orientation is unrelated to job performance in the same way as is being left- or right-handed.

In its conclusions and recommendations, the 1988 draft report stated that the time was ripe for DOD to engage in empirical research to test the hypothesis that men and women of atypical sexual orientation can function with heterosexuals appropriately in military units. The report further suggested that DOD use a general framework for developing research programs and that the findings of such research could be employed by DOD policymakers as they continue their efforts to improve the effectiveness of recruitment, selection, and training programs.

Although the scope of the finalized version of the PERSEREC report, dated September 1991, was narrower than earlier versions (that is, it addressed only the civilian personnel security issue), it contained much of the same basic information included in the 1988 version. For example, the 1991 report stated:

Few data have been put forward to support the belief that being homosexual predisposes a person to unreliability, disloyalty, or untrustworthiness. Scores of studies have made clear that large individual differences in moral beliefs are to be found among heterosexuals and homosexuals. It is invalid to generalize from sexual orientation to trustworthiness. Life styles of homosexuals are as varied as the life styles of heterosexuals.

The conclusions and recommendations of the 1991 report were considerably narrower than those included in the 1988 version. For example, the 1991 report concluded and recommended the following:

Homosexuals have been targets of discriminatory policies. The residues of earlier constructions of homosexuality (sin, crime, or illness) may influence personnel security specialists to treat homosexuals as a morally suspect class. Given that homosexuals (like heterosexuals) are a diverse group, fairness and personnel efficiency require a case-by-case policy. The current case-by-case policy is appropriate to the task of determining eligibility for security clearance. However, the implementation of the policy needs to be examined in light of the fact that investigators, adjudicators, and other personnel security specialists are drawn from the general population, and large segments of the population continue to view homosexuality as sin, crime, or illness, constructions that might bias eligibility decisions. The work of investigators and adjudicators should be monitored to ensure that practice follows policy.

According to the Deputy Director for Personnel Security, the recommendation is not for DOD to take any new actions but reinforces what DOD is already doing—which is looking at each situation on a case-by-case basis. DOD has several initiatives ongoing that address the report's recommendations. For example, DOD has had a 2-week adjudication course in place since 1988 to teach and encourage adjudicators to put their own personal prejudices and biases aside when making adjudication decisions not only for homosexuals but for anyone involved in trying to obtain a security clearance. DOD has also devised a 2-week advanced course for adjudicators that will focus on promoting uniformity and consistency in the application of DOD's adjudication standards. According to the Deputy Director of Personnel Security, this course was to be offered to the adjudicators sometime in May 1992. In addition, on the basis of PERSEREC's review of DOD's adjudication standards, DOD is revising its standards to improve their specificity and clarity.

In commenting on a draft of this report, DOD disagreed with our observation that the Crittenden and the PERSEREC reports did not support DOD's policy. DOD explained that, as GAO had stated, the Crittenden study looked at the Navy's procedures and standards in separating homosexuals. According to DOD, its premise that homosexuality is incompatible with military service was the foundation for the study, and the report did not question that premise.

We do not disagree with DOD regarding the purpose and objective of the Crittenden report and did not suggest that this effort questioned the underlying premise to DOD's policy. However, we did find that the study contained considerable information and data that raise questions about th policy. For example, with regard to security risk, the report stated, "A thir concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." In addition, the report mad the following summary statements: (1) homosexual behavior is much mor frequent than has been generally believed; (2) many exclusively homosexual persons have served honorably in all branches of the military service without detection; (3) homosexual behavior cannot be correlated with any other characteristic or group of characteristics of the personality and (4) the concept of homosexuality as a clinical diagnosis has been discarded.

DOD further commented that the PERSEREC draft report was misdirected. PERSEREC was tasked with studying the correlation, if any, between homosexuality and security risks for DOD civilian employees and

government contractors. The purpose of the study was to help the Department assess homosexuality as a factor in adjudicating security clearances for civilian and contractor employees. The study was never commissioned to address the homosexual exclusion policy—an entirely separate and broader issue based on uniquely military concerns. DOD also commented that the draft report's authors had not discussed the draft with knowledgeable DOD officials, and as a result, they had misunderstood the policy and its basis (that is, DOD's belief concerning the effects on morale, discipline, and so on of allowing homosexuals to serve in the military). DOD said that therefore the subsequent analysis was flawed. Further, DOD emphasized that the opinions expressed in the report did not reflect those of the Department and, thus, should not be considered as authoritative.

We recognize that the PERSEREC study went beyond its directed task. However, we believe that DOD should not discount the information obtained and presented because such data was not authorized as part of the original task. The PERSEREC draft did, in fact, address homosexuality in the context of its effects on morale and discipline in the services.

Recent DOD Statements Indicate Security Risk Is No Longer a Major Concern

In testimony delivered on July 31, 1991, the Secretary of Defense, in defending DOD's policy, made the following remarks:

> I have inherited a policy that has been in the department now for many years that does focus specifically upon the military and military service and is based upon the proposition that a gay lifestyle is incompatible with military service. That is the policy. I think there have been times in the past when it has been generated on the notion that somehow there was a security risk involved, although I must say I think that is a bit of an old chestnut. The question turns more upon the need of the department to maintain the combat-effectiveness of our military units and that our sole mission in life is to be prepared to fight and to win wars. And that based upon that, the department over the years, specifically the military services, have pursued a policy that said that certain kinds of individuals in our society are not, do not serve in those combat units.

In a statement before the House Budget Committee in February 1992, the Chairman of the Joint Chiefs of Staff said that he agreed with the Secretary of Defense. He said that the ban on homosexuals serving in the military is not based on a security argument but on his judgment and the judgment of the service chiefs that homosexual behavior is inconsistent with maintaining good order and discipline. He stated that it is difficult in a military setting, where there is no privacy and where you do not get a choice of where you live, to introduce a group of individuals—who are proud, brave, loyal, good Americans but favor a homosexual life-style—and put them in with a group of heterosexuals who would prefer not to have a

person of the same sex find them sexually attractive, put them in close proximity, and ask them to share the most private of their facilities together—the bedroom in the barracks, the latrines, and the showers.

Scientific Evaluations of Homosexuality

Scientific and medical studies disagree with the military's long-standing policy holding that homosexuality is incompatible with military service. During the course of our review, we met with representatives from the American Psychiatric Association and the American Psychological Association, as well as other mental health professionals, and were told that these organizations do not support DOD's exclusion of homosexuals. These organizations, through various steps, are trying to convince DOD to change its policy to improve the mental health and functioning of its members and to help end the discrimination that they believe can lead to psychological distress and psychiatric disorder. These steps include (1) dialogues between gay and lesbian groups and the military; (2) the banning of military advertising and recruiting either at association meetings or in association publications; and (3) the protesting of military training programs, such as Reserve Officer Training Corps programs, on university and college campuses.

The concept of homosexual orientation as a mental disorder was formally rejected by the psychiatric profession about 20 years ago. In 1973, the American Psychiatric Association removed homosexuality from the list of mental illnesses after psychiatric, psychological, medical, and scientific evidence showed that it could not be considered a mental illness or a personality or psychopathological disorder. The Association's 1973 position on homosexuality and homosexuals in the military was that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Furthermore, rejecting the conception of homosexual orientation as a pathology has been supported by psychology and social work.

The American Psychological Association's resolution of January 1975 supported the position taken in 1973 by the American Psychiatric Association by also opposing the exclusion and dismissal of persons from the armed services on the basis of sexual orientation. Further, the American Psychological Association asserted that (1) no burden of proof of judgment, capacity, or reliability should be placed on homosexuals that is greater than that imposed on any other persons within the armed services and (2) homosexuals should be granted the same protection from discrimination as other minorities are granted. According to DOD officials,

they agree with the conclusions of these organizations in stating that homosexuality is no longer to be considered indicative of any mental or physical disorder.

According to those we interviewed and position papers provided by the organizations we visited, current research supports the idea that homosexuality can no longer be viewed as "abnormal" if a significant minority of the population engage in it at some time in their adult lives.[3] Instead, homosexuality is now considered by many social scientists and researchers (1) to be a normal variation in the spectrum of human sexual behavior and (2) not pathological or indicative of any mental illness or impairment in functioning. Many social scientists and researchers now believe that discrimination against homosexuals leads to unhealthy behavior and attitudes on both sides. Further, many experts believe that the military's policy is unsupported, unfair, and counterproductive; has no validity according to current scientific research and opinions; and appears to be based on the same type of prejudicial suppositions that were used to discriminate against blacks and women before these policies were changed.

Over the years, many studies have documented homosexuals' mental health and their level of functioning. Some experts have looked at homosexuals in the military and found that many performed well despite the nonaccepting attitude of the services. Experts believe that when homosexuals experience a higher incidence of depression or drug abuse, they may do so in part because they are unable to integrate their sexuality because of homophobia,[4] both internal and external. Many experts believe that DOD's exclusion policy perpetuates this homophobia and leads to further discrimination against homosexuals, which in turn leads to an atmosphere not conducive to their mental health or that of those prejudiced against them. These experts believe that attitudes can be altered by allowing open communication and the sharing of ideas between the two groups. If a more tolerant attitude were enforced, it would lead to the better functioning of all.

[3]Surveys of human sexuality conducted by the Kinsey Institute in the 1940s and 1950s, though their samples of patients were flawed, demonstrated that homosexual behavior was much more prevalent than expected. These surveys suggested that 5 to 10 percent of the general adult population could be considered predominantly homosexual and that approximately one-third had engaged in such behavior sometime in adulthood.

[4]A common term used to connote an inexplicable fear of homosexuality.

DOD partially agreed with our statement that scientific and medical studies disagree with the long-standing military policy that holds that homosexuality is incompatible with military service. DOD stated that the American Psychological Association and the American Psychiatric Association have written to DOD expressing their disagreement with its exclusion policy, but neither has addressed the issue of overall combat effectiveness. According to DOD, these groups focus on homosexuals in the general population and the relationship between homosexuality and the mental health of the individual.

As discussed in this report, many individuals discharged under DOD's exclusion policy have exemplary records and have held important positions within their units. Additionally, the research cited by groups that disagree with DOD's policy includes studies looking at veterans of military service who have served honorably.

Public Attitudes and Other Views

We obtained information about the general U.S. population's attitudes toward homosexuality through nationwide polls; we also contacted representatives of other nations to determine how their policies were similar to or different from DOD's. Finally, we contacted police and fire departments in several major U.S. cities where policies of nondiscrimination against sexual preference have been established.

Changes in Public Perceptions

Information from three national polls shows a shift in society's thinking on homosexuality. National polls conducted in the mid-1980s showed an increasing intolerance of homosexuality at a time when the fear of contracting Acquired Immune Deficiency Syndrome (AIDS) was at its highest point among the general public. But new surveys show that this trend is reversing. In October 1989, a Gallup poll found that the tolerance of homosexuality was on the rise among the public. The results of the poll show that from a sample of 1,227 adults, aged 18 and older, almost half (47 percent) believed that homosexual relations between consenting adults should be legal, up from one-third (33 percent) who felt that way in 1987. Seven in 10 (71 percent) felt that homosexuals should have equal job opportunities, compared to 6 in 10 (59 percent) in 1982. In 1989, just over one-third (36 percent) believed that homosexual relations should not be legal, whereas more than half opposed legalization in 1987 (55 percent). The results of another Gallup poll conducted in March 1991, shown in table 4.1, show a change in the trend of public opinion on the hiring of homosexuals in various job categories.

Table 4.1: Percentage of the Public Who Believed That Homosexuals Should Be Hired for Various Jobs

Figures in percentages

Job category	1977	1982	1985	1987	1989	1991
Salesperson	68	70	71	72	79	89
Armed forces member	51	52	55	55	60	69
Doctor	44	50	52	49	44	54
Clergy member	36	38	41	42	44	54
Elementary school teacher	27	32	36	33	42	52
High school teacher	[a]	[a]	[a]	[a]	47	60

[a]The poll did not address this category between 1977 and 1987.
Source: National Gallup Poll, Mar. 25-27, 1991.

A national poll conducted in April 1991 by Penn and Schoen Associates, Inc., for the Human Rights Campaign Fund on "Public Attitudes Towards Homosexuals and Their Place in the Military" further supports the fact that

the public's attitude towards homosexuals' serving in the military has changed. According to this poll, 81 percent of Americans believed that homosexuals should not be discharged from military service solely because of their sexual orientation. Fourteen percent believed homosexuals should be discharged.

Other Nations' Policies

In the course of our work, we obtained information on the policies of 17 other nations, predominantly U.S. allies and North Atlantic Treaty Organization countries, on homosexuals' serving in their armed forces. (See app. II for a listing of these countries.) These nations had various, sometimes diametrically opposed approaches to and legislation affecting the presence of homosexuals in their armed forces. The attitudes ranged from the view held by the United States to less strict ones in other countries. Some, in fact, do not view homosexuality as a legal or a military issue. Four of the 17, or 24 percent, had policies that specifically exclude homosexuals from serving in the armed forces. Four of the remaining 13 restricted homosexuals' duties or relieved them from duty for disruptive behavior. Seven of the 17, or 41 percent, had no written policy addressing homosexuality. Two of the 17, or 12 percent, stated that during the recruiting process, the question regarding the individual's sexual orientation was not asked.

The Canadian Forces has also had a long-standing policy of excluding homosexuals. The Canadian policy on homosexuality was reviewed in detail in 1986 as part of a wider review by a special task force of a number of personnel policies. The task force's recommendation was to maintain the policy of not accepting declared homosexuals into the Canadian Forces. That recommendation was accepted in early 1987. However, the policy on homosexuality has been under review almost continuously since that time.[1]

Over the past few years, the Canadian Forces' policy has changed in that its focus has changed from targeting "homosexual propensity" to targeting "homosexual activity." On an interim basis, pending the completion of the present policy review, members who engage in homosexual acts are offered the opportunity to be discharged. If they refuse, they may complete their terms of service under career restrictions, including no promotions, no postings elsewhere, and no further career training. Discharged

[1]Currently, there are five court challenges to the Canadian Forces' policy on homosexuality. None of these had come to trial by March 11, 1992.

members are given the equivalent of what is an honorable discharge in the United States.

The British Defense Force, like the U.S. military, is an all-volunteer force and is opposed to having homosexuals serve in the military. British Defense Force officials recently told us that the British Defense Force does not knowingly accept homosexuals. However, for homosexuals identified while in service, Britain provides a system of warnings, meaning that an individual who admits to his or her homosexuality need not be automatically discharged, but rather can be reminded of the military's disapproval of homosexual activity, warned against any misconduct, and perhaps counseled. A British embassy official told us that the issue of homosexuals' serving in the British military had been raised in Parliament, but there was no mention of changing the policy.

The policies of Denmark, France, Belgium, Italy, and Finland specifically state that individuals whose homosexuality interferes with their ability to effectively perform required duties are to be discharged. They are discharged only after medical diagnoses have been provided and medical decisions of fitness have been rendered by physicians.

Selected Police/Fire Department Policies

All but one of the eight police and fire departments we visited in four cities had written policies dictating nondiscrimination on the basis of sexual preference or allowing the employment of homosexuals. Many of these policies dated as far back as the mid-1970s. None of the officials we interviewed from these departments viewed homosexuality as an issue; most believed that the key element in their hiring practices was to hire based on previous job performance—not on an individual's sexual orientation. Several of the department officials saw the inclusion of homosexuals as having a positive impact on management-personnel relations.

Both police and fire department officials stated that the elements of unit/team cohesiveness, discipline and good order, morale, trust and confidence, and a system of command rank and respect are important to their overall mission.

Police and fire department officials who have admitted homosexuals into their departments stated that homosexuals and heterosexuals appear to have acceptable working relationships. This may be due partly to the fact that all of the departments we visited had developed and put in place

sensitivity, diversity, and/or cultural awareness training programs. While most department officials did not identify major problems involving homosexuality, a few pinpointed isolated cases indirectly involving homosexuals. In these cases, the issues focused not on the person's homosexuality, but on his or her religious beliefs and/or job performance.

In terms of security breaches, most police and fire department officials stated that, while some assignments are considered confidential or secret in nature, most department officials believed that homosexuals, whether "closeted or admitted," were no more subject to breaches of security or blackmail than heterosexuals.

Most of the police and fire departments with policies endorsed by the city mayors and department chiefs target their recruiting to gay and lesbian communities as well as to the communities of blacks, Hispanics, and Asians. In fact, some departments have gay and lesbian liaisons, councils, task forces, and/or a gay officers' action league to assist the department in its recruiting efforts and in maintaining or bringing about equality and balance throughout the department. Additionally, some fire and police department officials stated that the public seems to view their open policies as positive moves in that they break down barriers in society. These officials cited the advances made in race relations as evidence that attitudes can be changed. Some other officials stated that they believe exclusionary policies based on sexual orientation are counterproductive and only create further stress.

Conclusions and Agency Comments

Conclusions

For more than 50 years, DOD and its predecessors have excluded homosexuals from military service. This policy is based on the belief that the presence of homosexuals seriously impairs the accomplishment of the military mission. Because this policy is based on military judgment, it is difficult to challenge. The courts have routinely accepted DOD's judgment on the policy in cases brought by discharged homosexuals. DOD has stated that its policy is not based on scientific or sociological analysis. Studies of the security risk issue have refuted DOD's position, but there are other bases for the policy that may not lend themselves to conclusive analysis.

On May 19, 1992, H.R. 5208, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While we are making no recommendations in this report, we believe this report should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces. In deliberations, Congress could consider the following factors:

- Since DOD last revised the policy in 1982, public attitudes toward homosexuals have been changing, and its own PERSEREC draft report disclosed considerable information that raised questions about the policy.
- Several allied countries allow homosexuals into the military or are reassessing their policies on homosexuals; many U.S. police and fire departments have also accepted homosexuals into their ranks and have generally not reported adverse impacts.
- Recent congressional testimonies by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff indicate that the concern over homosexuals' being security risks, which was once a significant basis for the policy, is no longer a major concern.
- There are many avenues for discharging military personnel, including homosexuals, who have behavior problems; changing the policy to permit homosexuals to remain in the military would not entail condoning inappropriate behavior.
- A careful look at the policy may reveal a middle ground similar to what some other countries have taken, discouraging homosexuals from joining the military but not automatically discharging those who are already in it.

Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others.

DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that we correctly note that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that we erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden Report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that homosexuality is incompatible with military service - - and our report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that, while there were not accurate figures concerning the frequency of homosexual behavior in the Navy, indications were that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, we recognize that this study went beyond its directed task. However, we believe that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, we suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduced on this matter, we have deleted this suggestion.

Examples of Expulsions for Which Performance Was Not an Issue

Matlovich v. Secretary of the Air Force

Former Technical Sergeant Leonard P. Matlovich was a 12-year Air Force veteran who had served a tour of duty in Vietnam and had received a Bronze Star and a Purple Heart. Matlovich informed the Secretary of the Air Force in writing of his belief that his sexual preferences were homosexual, although he did not believe these preferences would in any way interfere with his Air Force duties. Under an Air Force regulation that bars homosexuals except in exceptional situations, he was administratively processed for separation after admitting his sexual orientation and his engagement in homosexual activity. Subsequently, Matlovich was honorably discharged. On the day before his discharge, Matlovich filed suit with the United States District Court for the District of Columbia Circuit, seeking a temporary restraining order against his discharge and an injunction and declaratory relief against the Air Force on the grounds that its policy was unconstitutional. The District Court ruled in favor of the Air Force, stating that, although there had been times when, due to extenuating circumstances, the Air Force had retained persons who had engaged in homosexual acts, there was no need to consider this case an exception (exceptions have been granted to only one-time offenders). The United States Court of Appeals for the District of Columbia (591 F.2d 852 (D.C. Cir. 1978)) held that it was unable to determine from the record why the Air Force had not retained Matlovich under the "unusual circumstances" exception to the general policy and remanded the case to the district court. The appeals court instructed the Air Force to either promulgate advance written rules or directives, or formulated criteria; or to establish the standards for the policy through case-by-case decision-making and apply those standards to Matlovich's case. The case was subsequently dismissed on December 16, 1980, pursuant to a court-approved monetary settlement between Matlovich and the Air Force.

Secora v. Fox

Former Technical Sergeant Claude E. Secora was a 16-year active duty veteran in the United States Air Force serving as a computer operator. He was the recipient of the Air Force Commendation medal and the National Defense medal. Secora was administratively processed for separation in 1978 under an honorable discharge on the grounds that he had violated the same Air Force regulation challenged in the Matlovich case. Secora filed suit in the United States District Court for the Southern District of Ohio on the grounds that the Air Force regulation was unconstitutional and that it had denied him equal protection.

A federal magistrate, upon declining to address the constitutional issues, relied on the Matlovich decision in finding that the Air Force had not

complied with its own regulations in discharging Secora because it had failed to put forth its reasons for not retaining him under the "unusual circumstances" exception to the general policy of discharging officers who engage in homosexual activity. The District Court agreed with the magistrate and ruled that Secora was entitled to a reasoned explanation with respect to the regulation as to why he did not come within the "unusual circumstances" exception (747 F. Supp. 406 (S.D. Ohio 1989)). The court held that such an explanation required a fact-sensitive inquiry into Secora's particular circumstances, especially since he was facing discharge notwithstanding a 16-year, unblemished service record. The court ruled that the Air Force must show cause why Secora did not meet the Air Force's rule of exception to its policy if there was no current pattern of homosexuality and Secora's ability to perform military service had not been compromised. Both parties have moved for summary judgment in the District Court, where the case is currently pending.

Watkins v. United States Army

Former Staff Sergeant Perry Watkins was a 14-year active duty veteran in the United States Army, who had served tours in Vietnam and Korea. He had been completely candid about his homosexuality from the start of his Army career and had been allowed to reenlist on three occasions (in 1971, 1974, and 1979), with the Army's full knowledge of his homosexuality. The record indicates that in all respects Watkins was an outstanding soldier. He became, in the words of his commanding officer, "one of our most respected and trusted soldiers." This official stated that "from daily personal contact I can attest to the outstanding professional attitude, integrity, and suitability for assignment within the Personnel Reliability Program, of SP5 Watkins." While Watkins' case was making its way through eventual appeals in the federal courts, the Army rated his performance and professionalism. He received 85 out of 85 possible points, including perfect scores for the categories "earns respect," "integrity," "loyalty," "moral courage," "self-discipline," "military appearance," "demonstrates initiative," "performs under pressure," "attains results," "displays sound judgment," "communicates effectively," "develops subordinates," "demonstrates technical skills," and "physical fitness."

In 1982, Watkins filed suit in the United States District Court for the Western District of Washington challenging revocation of his security clearance and seeking to prevent his discharge from the Army under an Army regulation that mandated the discharge of all homosexuals regardless of merit. The District Court enjoined the Army from discharging

Watkins based on his admission of homosexuality. After the Army subsequently denied Watkins' reenlistment under a regulation making homosexuality a nonwaivable disqualification for reenlistment, the court held that the Army was estopped from relying on this regulation. After certain procedural maneuvers by the parties between the United States Court of Appeals for the Ninth Circuit (721 F.2d 687 (9th Cir. 1983)) and the District Court, a panel of the appeals court held that the reenlistment regulations violated the constitutional guarantee of equal protection because they discriminated against persons of homosexual orientation and were not necessary to promote a legitimate compelling governmental interest (847 F.2d 1329, 1352-1353, (9th Cir. 1988)).

The full appeals court, declining to rule on the constitutional issue, held the Army to be estopped from barring Watkins' reenlistment solely on the basis of his acknowledged homosexuality (875 F.2d 699 (9th Cir. 1989)). The appeals court reasoned that Watkins had been completely candid about his homosexuality from the start of his career, and the Army, with full knowledge of this fact, had continued to reenlist him despite its long-standing policy to the contrary. In weighing the injustice to Watkins against the possible damage to the public interest, the court noted that Watkins, after having relied on the Army's 14-year approval of his service, had been injured by the loss of his career, whereas harm to the public interest from his reenlistment was nonexistent since he had demonstrated he was an excellent soldier. In 1990, the United States Supreme Court denied the Army's petition to review the case (875 F.2d 699 (9th Cir. 1989) cert. denied, —U.S. —, 111 S. Ct. 384, 112 L. Ed. 2d 395 (1990)), and Watkins and the Army subsequently agreed to settle. Watkins was promoted to the rank of sergeant first class effective June 1, 1992, and voluntarily retired. He received back pay and allowances with offsets from civilian pay earned for the period between his 1984 discharge and his retirement date.

Pruitt v. Cheney

Former Captain Dusty Pruitt was a 15-year active and reserve veteran in the United States Army who was separated from the Army Reserve under an honorable discharge for homosexuality on July 19, 1986. Pruitt served in the Army between 1971 and 1975. After leaving active service to seek ordination as a methodist minister, Pruitt remained an officer in the U.S. Army Reserve. On May 25, 1982, Pruitt was notified of her selection for promotion to the rank of major effective February 6, 1983. Pruitt's outstanding record in both active and reserve service is undisputed.

Pruitt, who had no record of allegations of prohibited homosexual conduct, openly admitted in an interview published in the Los Angeles Times on January 27, 1982, that she was a homosexual. The Army, as a result of the article, suspended her promotion to major pending an investigation that ultimately resulted in her being discharged from the reserves based on an Army regulation providing for the discharge of a person who "desires to engage in, or intends to engage in, homosexual acts." On the basis of her written admission of homosexuality to her commanding officer, an administrative board concluded that separation of Pruitt was warranted, and she was discharged from the reserve effective July 9, 1986. Pruitt filed suit in 1987 in the United States District Court for the Central District of California (See Pruitt v. Weinberger, 659 F. Supp. 625 (C.D. Cal. 1987)) alleging that Army regulations had violated her first amendment rights because they called for punishment solely on the basis of her assertion of her status rather than any conduct in which she had engaged. The District Court dismissed Pruitt's action for failure to state a first amendment claim, reasoning that acknowledgment of her homosexuality was simply an admission that she fell within a class of people whose presence the Army deemed incompatible with its expressed goals, and it was not for the court to question the wisdom of the Army's policy. A three-judge panel of the United States Court of Appeals for the Ninth Circuit (943 F.2d 989 (9th Cir. 1991)) agreed with the District Court that Pruitt had failed to state a first amendment claim. The appeals court further held that Pruitt's case stated an equal protection claim—that she had been discharged based on her mere status as a homosexual without evidence that she had engaged in homosexual conduct while on duty or had performed poorly as an officer—which should have been heard by the District Court. The appeals court held that Pruitt should have been allowed to present evidence to support her equal protection allegations and that the Army should have been required to establish on the record that its regulation had a rational basis. Accordingly, the appeals court reversed the dismissal of Pruitt's action and remanded the case to the District Court to determine whether the Army's discrimination against Pruitt was rationally related to a permissible governmental purpose.

The Army has asked for reconsideration of the decision by the full appeals court, contending that Pruitt had not properly raised the equal protection claim in the District Court. The Army's request is currently pending before the appeals court, and the decision on rehearing is pending before the District Court.

Steffan v. Cheney

Former midshipman Joseph C. Steffan was a 4-year student at the United States Naval Academy who was administratively processed for separation 6 weeks prior to graduating at the top of his class and after admitting he was homosexual. Although he was not charged with any homosexual conduct, he resigned on April 1, 1987, and was honorably discharged. On December 22, 1987, he filed suit in the United States District Court for the District of Columbia challenging DOD's policy of excluding homosexuals from active service, alleging that his separation violated his constitutional rights of free speech and association, due process, and equal protection. He sought reinstatement, a bachelor of science degree, and a commission as an ensign.

During the discovery phase of his case, Steffan refused to answer a deposition question asking whether he had engaged in homosexual activities while at the Academy or since departing on the grounds that the question was irrelevant and violated his fifth amendment privilege against self-incrimination.

In November 1989, the District Court (733 F. Supp. 121 (D.D.C. 1989)) dismissed Steffan's suit as a sanction for failure to cooperate in discovery regarding his homosexual activities. The court reasoned that Steffan could not refuse to answer on the grounds of irrelevance since the Navy had the right to refuse his reinstatement for homosexual conduct, and his request for reinstatement raised the issue of whether he was qualified for such relief. Moreover, the court stated that the Navy was entitled to information necessary to defend itself against Steffan's claims to such relief. In addition, the court reasoned that since Steffan had raised the issue of homosexual conduct by seeking reinstatement, he could not use the fifth amendment as a shield to frustrate the Navy's right to prepare a defense.

The United States Court of Appeals for the District of Columbia (920 F.2d 74 (D.C. Cir. 1990)) reversed and remanded to the District Court, holding that the discovery sanction was improper because Steffan's discharge was based solely on the grounds of his admission that he was homosexual; his request for relief on those grounds did not put into issue the question of whether he had engaged in homosexual conduct, unless such conduct was a basis for his separation. On December 9, 1991, the District Court (Cir. No. 88-3669-OG, D.D.C.) upheld the right of the Navy to expel Steffan from the Naval Academy, holding that the military's ban on homosexuals was justifiable on military grounds as well as a reasonable step toward protection against the spread of Acquired Immune Deficiency

Syndrome in the armed forces. Steffan's attorneys have indicated that they will appeal the District Court's decision in the near future.

Dronenburg v. Zech

Former petty officer James L. Dronenburg was a 27-year-old, 9-year veteran who had served in the Navy as a linguist and cryptographer with a top secret clearance. He had maintained an unblemished service record and earned many citations praising his job performance. During a Navy investigation and an administrative discharge hearing concerning allegations of homosexual conduct, Dronenburg acknowledged that he was a homosexual and that he had repeatedly engaged in homosexual conduct with a 19-year-old seaman recruit in the Navy barracks. On April 21, 1981, Dronenburg was honorably discharged for violating regulations implementing a Navy policy of mandatory discharge for homosexual conduct.

On April 20, 1981, Dronenburg filed suit in federal district court challenging the Navy's policy as unconstitutional on the grounds that it violated his right of privacy and right of equal protection of the laws. The district court granted summary judgment for the Navy, and Dronenburg appealed to the United States Court of Appeals for the District of Columbia. A three-judge panel of the Appeals Court (741 F. 2d 1388 (D.C. Cir. 1984)), concluding that it found no constitutional right to engage in homosexual conduct, applied the rational basis standard in reviewing Dronenburg's constitutional challenges to the Navy's regulation. In applying that standard, the court held that the Navy's policy did not violate Dronenburg's rights of privacy or equal protection because the policy is a rational means of achieving legitimate state interests such as discipline, good order, and morale. In so holding, the court noted the following:

> The effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline. The Navy is not required to produce social science data or the results of controlled experiments to prove what common sense and common experience demonstrate... 741 F.2d at 1398. [Underscoring supplied.]

A rehearing on the case before a full panel of the appeals court was denied (746 F.2d 1579 (D.C. Cir. 1984)).

Ben-Shalom v. Marsh

Former Army Reserve Sergeant Miriam Ben-Shalom originally enlisted in the Army Reserve in 1974 for a 3-year period, serving as a drill instructor. She apparently was the only woman in her drill sergeant training school course and was acknowledged to be a fine candidate for drill sergeant school, a capable soldier, and an excellent instructor. Ben-Shalom publicly acknowledged her homosexuality at various times during her enlistment: in conversations with fellow reservists, in an interview with her division newspaper, and while teaching drill sergeant candidate class. During an investigation of the matter and at an administrative discharge hearing, there was never any evidence that she had engaged in homosexual conduct. On December 1, 1976, she was honorably discharged under an Army regulation that permitted discharge for any soldier who "evidenced homosexual tendencies, desire or interest, but is without homosexual acts." Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin seeking reinstatement on the basis that her discharge under the regulation had violated her constitutional rights of free speech and privacy and equal protection of the laws. The District Court (489 F. Supp. 964 (E.D. Wisc. 1989)) held the regulation to be constitutionally overboard and a violation of Ben-Shalom's right of privacy. The equal protection claim was denied because the court found she could not establish either a constitutionally protected "property" or "liberty" interest under the fifth amendment. The court ordered her to be reinstated for the remainder of her enlistment term.

Following additional court actions concerning enforcement of the reinstatement order, the Army eventually reinstated Ben-Shalom for her original enlistment term, which was extended by court order due to the protracted litigation.

While serving her original enlistment term, Ben-Shalom, again admitting her homosexuality, sought and was denied reenlistment for another 6-year term. She was denied reenlistment on April 7, 1988, under a new, reworded Army regulation making the status of homosexuality a "nonreviewable morale and administrative" disqualification. On May 3, 1988, Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin, claiming that the new regulation violated the first amendment because it chilled her right to freedom of speech since she would no longer be able to make statements regarding her sexual orientation. She also claimed the regulation violated her fifth amendment right to equal protection of the laws because the regulation was not necessary to achieving a compelling state interest or, alternatively, failed to rationally further a legitimate, articulated state purpose. The district court (702 F.

Supp. 1372 (E.D. Wisc. 1989)) agreed with Ben-Shalom, holding that the regulation unreasonably chilled her right to freedom of speech and did not further a compelling state interest in violation of equal protection principles. The United States Court of Appeals for the Seventh Circuit reversed (881 F. 2d 454 (7th Cir. 1989)). The Appeals Court ruled that the regulation did not prohibit speech per se, but prohibited the homosexuality that Ben-Shalom's speech merely identified. The court reasoned that when speech and nonspeech elements are combined in the same course of conduct, limitations on speech are permissible when there is a sufficiently important governmental interest in regulating the nonspeech element. Regarding the due process claim, the court ruled that the deferential rational basis standard of review was applicable and that the regulation met this standard because it promoted a legitimate government interest. In 1990, the United States Supreme Court denied Ben-Shalom's petition to review the case (881 F.2d 454 (7th Cir. 1989), cert. denied, – U.S. –, 110 S. Ct. 1296, 108 L. Ed. 2d 473 (1990)).

Other Nations' Policies Regarding Homosexuals in the Military

Country	Specifically exclude	Allow
Austria		X
Belguim[a]		X
Canada	X	
Denmark		X
Finland[a]		X
France[a]		X
Germany[a]		X
Italy		X
Japan		X
Luxembourg		X
Netherlands		X
New Zealand	X	
Norway		X
Portugal	X	
Spain		X
Sweden		X
United Kingdom[b]	X	
United States[b]	X	

[a]Although these countries allow homosexuals to serve in their armed forces, they place certain restrictions on homosexuals. These restrictions include (1) limiting their access to confidential documents; (2) excluding them from certain tasks, such as officer and recruiting training; (3) excluding them from leadership roles; and (4) relieving them from duty if the behavior becomes disturbing to other service members.

[b]These countries specifically ask during the recruiting process if the individual has homosexual tendencies in an effort to prevent homosexuals from entering.

List of Organizations Visited by GAO

International Association of Chiefs of Police
110 North Glebe Road, Suite 200
Arlington, Virginia 22201

International Association of Fire Chiefs
1329 18th Street, N.W.
Washington, D.C. 20036

District of Columbia Police Department
Room 5080
300 Indiana Avenue, N.W.
Washington, D.C. 20001

District of Columbia Fire Department
Suite 201
1923 Vermont Avenue, N.W.
Washington, D.C. 20001

New York City Police Department
1 Police Plaza
New York City, New York 10038

New York City Fire Department
250 Livingston Street
Brooklyn, New York 11202-5884

San Francisco Police Department
Hall of Justice, Room 525
850 Bryant Street
San Francisco, California 94102

San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, California 94102

Seattle Fire Department
301 Second Avenue South
Seattle, Washington 98104

United States Capitol Police
119 D Street, N.E.
Washington, D.C. 20510

Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-4000

APR 17 1992

)RCE MANAGEMENT
AND PERSONNEL

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report entitled--"DEFENSE FORCE MANAGEMENT: DoD's Policy on Homosexuals in the Military," dated March 9, 1992 (GAO Code 391137/OSD Case 8983). The draft report addresses the basis for the DoD policy, describes the procedures, analyzes separation and cost statistics, and reviews various studies, public opinions polls, and policies of other nations.

The report makes no recommendations, but does suggest that Members of the Congress may wish to urge the DoD to reexamine the basis for the policy and determine whether the policy could be revised to better serve Military needs. The Department agrees or partially agrees with some findings, does not agree with other findings, and disagrees with the matter for congressional consideration.

The GAO correctly notes that the DoD policy is based upon Military judgment. In fact, the DoD policy is based upon a series of carefully considered, professional Military judgments and almost 50 years of experience by a succession of civilian and Military leaders. The GAO also appropriately emphasizes that Military judgments about overall combat effectiveness are inherently subjective in nature, and that scientific or sociological analyses are unlikely to ever be dispositive.

An important issue not addressed by the draft report is the distinction between the DoD homosexual exclusion policy and the broader social policy question of homosexuality in American Society. Many citizens view homosexuality as a religious or moral issue; others see it as one of civil rights. There are many aspects to what is very vomplex and controversial issue.

The DoD homosexual exclusion policy is however, like other Military personnel policies, based on what contributes to overall combat effectiveness. The GAO addresses both the social policy and the combat effectiveness issues without distinguishing between them.

The draft report may also be misleading in another respect. The DoD policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. Rather, the DoD policy is based on concerns about the effects that homosexuality, that is sexual desire or behavior directed toward a member of one's own sex, has in the Military environment. It continues to be the Department of Defense policy that the presence in the Military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the Military mission.

Finally, the draft report minimizes the importance of years of litigation before the Federal courts. Numerous decisions have established a virtually unanimous body of law affirming the constitutionality of the Military homosexual exclusion policy. Those cases all required a determination by the judicial branch that the DoD policy is rationally related to legitimate Governmental interests. The courts consistently have found that the Military interests underlying the policy--good order, discipline and morale--were substantial and that the Military concern about homosexuality has a basis in fact. The GAO, however, devotes less than a page to that significant body of law.

The detailed DoD comments on the report findings and matter for congressional consideration are provided in the enclosure. Thank you for providing the opportunity to comment on the draft report.

Sincerely,

Christopher Jehn

Enclosure:
As stated

GAO DRAFT REPORT - DATED MARCH 9, 1992
(GAO CODE 391137) OSD CASE 8983

"DEFENSE FORCE MANAGEMENT: DOD'S POLICY ON HOMOSEXUALS IN THE MILITARY"

DEPARTMENT OF DEFENSE COMMENTS

* * * * *

FINDINGS

FINDING A: The Origin of Military Policy on Homosexual Orientation. The GAO reported that the current Military policy on homosexual orientation is a direct descendent of the policy adopted during the mobilization for World War II. The GAO explained that, at that time, Service policies were grounded both on prevailing sodomy statutes and on the psychiatric belief that homosexuality was a mental disorder. The GAO reported that, according to the DoD, the following definition of homosexuality is used by the Military Services today:

> "A homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts...A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

The GAO speculated that if the composition of the Military Services mirrors the general U.S. population, the number of homosexuals in the Military is between 5 percent and 10 percent--or 100,000 to 200,000 personnel.

The GAO observed that, under current DoD guidance, homosexuality has been determined to be incompatible with Military Service. The GAO noted that the DoD policy was revised in 1982 and in 1986 (1) to establish uniform policies and procedures for all the Military Services, and (2) to provide a stronger basis for defending the policies and procedures in the courts. The GAO reported that the DoD directive precludes retention of an individual determined to be homosexual, except in very limited extenuating circumstances. The GAO also noted that the directive also affords the right to appeal all separations due to homosexuality. In addition, the GAO observed that, under the 1982 directive, homosexuals are no longer processed for separation by reason of unsuitability or

Now on p.10.

misconduct--instead, they are processed under the category "homosexuality" and, therefore, may receive an honorable or a general discharge. The GAO also reported that a Service member, separated from Service under DoD policy may seek review by a Federal court as to whether the discharge was proper. (pp. 17-22/GAO Draft Report)

DOD COMMENTS: Partially concur. While it is true that the DoD has had an exclusionary policy on homosexuals serving in the Military since World War II, the GAO never clearly states that the DoD no longer bases its policy on any belief that homosexuality is a mental disorder. Stating that the current policy is a direct descendent of the World War II policy--which the GAO states was based, in part, on the belief that homosexuality was a mental disorder--could mislead readers into concluding that the current DoD policy is based on similar concerns. The GAO emphasis (later in the report) on studies by the American Psychiatric Association and the American Psychological Association reinforce such a misconception. It is important that it be made clear that the current DoD policy is not based upon any considerations of mental disorders among homosexuals.

The DoD policy is based solely upon concerns about homosexuality itself--that is, sexual desire or behavior directed toward a member of one's own sex. The policy stems from the unique require-ments of the Military environment and the effect of such conduct on the ten separate concerns that underlie the policy. Those underlying concerns led to the professional Military judgement that the exclusionary policy promotes overall combat effectiveness. Some of those concerns, such as discipline, good order, and morale are so important they justify the policy by themselves. Other concerns, such as security, are of relatively lesser significance.

There are three critical factors underlying the DoD exclusionary policy on homosexuals that need to be recognized. First, the DoD policy is the result of the considered professional Military judgement based on years of experience, of civilian and Military leaders of the Department of Defense. Second, the policy is a matter of professional Military judgement, not scientific or sociological analysis. Third, the DoD policy is based solely on what contributes to overall combat effectiveness (i.e., accomplishment of the Military mission).

Based on surveys of the adult population of the United States by the Kinsey Institute in the 1940s and 1950s, the GAO speculates that 5 to 10 percent of Military personnel

are homosexual. However, at the same time, the GAO asserts that the Kinsey "samples of patients were flawed." It is not clear what predictive value or relevance surveys of the general public 40 or 50 years ago have to today's Military. The GAO also cites unnamed researchers for the proposition that the composition of the Military likely mirrors American society with respect to the number of homosexuals in the Military. The GAO fails to point out, however, the obvious differences--(1) the initial screening out of homosexuals during the enlistment/appointment process, (2) the limiting effect of the exclusion policy itself, and (3) the lack of acceptance of homosexuality in the Military environment.

In addition, the GAO does not put the discharges due to homosexuality in perspective. Such discharges make up less than one-third of 1 per cent of all discharges in any year, with fewer than one out of every 1,500 Military personnel discharged because of homosexuality.

Concerning Military administrative discharges, it needs to be recognized that the process is a complex one. For example, Service Members may seek judicial review of pending adminis-trative discharge actions while still on active duty. Also, administrative boards do not make "innocent" or "guilty" determinations--they are not criminal courts. In addition, enlisted Service Members may be separated even though a Board recommends retention. On the other hand, Service members may be retained even if a board recommends separa-tion, if the discharge authority makes certain findings. Also, Service Members do not appeal administrative separation decisions to Boards for the Correction of Military/ Naval Records or Discharge Review Boards. Instead, they petition those boards for relief--which is a separate administrative process.

FINDING B: DoD Separation of Homosexuals (Management by Category). The GAO reported the DoD policy states categorically that homosexuality is incompatible with Military Service because the presence of persons who engage in, or demonstrate a propensity to engage in, homosexual conduct seriously impairs the accomplishment of the Military mission. The GAO explained, therefore, identification as a homosexual is the only criterion that needs to be met to discharge a person under that separation category--no specific determination of an individual's negative impact on the Military mission is needed prior to separation. The GAO found, for example, that in some cases Service members have been expelled for homosexuality despite their exemplary service records.

The GAO further reported that, when individuals have contested those decisions, discharges for homosexuality have been upheld both in the Military administrative review process and in the civilian court system. The GAO found that to be so even in cases involving personnel with exemplary Service records.

The GAO found that, between FY 1980 and 1990, 16,919 U.S. servicemen and women were discharged under the separation category of homosexuality--an average of about 1,500 annually. The GAO reported that (1) most were enlisted, (2) most were men, and (3) most were white. The GAO noted that the cited statistics may be understated because they do not include separations under categories such as misconduct, personality/behavior disorder, and unfit/unsuitable--which also could include homosexuals. (pp. 26-28/GAO Draft Report)

Now on p. 16.

DOD COMMENTS: Partially concur. The GAO is describing a concept that is vital to the management of the Military Services--i.e., management by category. That concept is not, however, discussed and, thus, the statements in the report could be interpreted to imply that the GAO is questioning the propriety of the management of Military personnel by category.

Of necessity, the DoD creates categories to guide accession and retention decisions. Categories include those mandated by law, such as age and citizenship (for officers), as well as those mandated by regulation--such as height and weight limits, physical and mental standards, and single parenthood. Each regulatory category is predicated on the professional Military judgement of DoD leaders that creating the category contributes to overall combat effectiveness.

The DoD exclusion policy on homosexuals serving in the Military clearly states that, because homosexual conduct in the Military environment adversely affects overall combat effectiveness, homosexuality is incompatible with Military Service. Thus, the DoD discharges homosexuals regardless of their individual performance records. The GAO is, therefore, correct in stating that, in some cases, Service Members have been separated for homosexuality despite having exemplary performance records.

The statistics cited by the GAO accurately reflect the number of Military personnel discharged under the DoD separation code of homosexuality. The figures are not, however, understated. Any statement that the DoD considers

them to be understated is inaccurate. Rather, it is the DoD position that the separation code of homosexuality does not include all homosexuals who are separated from the Military.

Homosexual Military personnel whose sexuality is not known may be separated administratively for various reasons, like any other Service Member. For example, if they have a medical problem, they may be separated for medical reasons; if their Military performance is bad they may be separated for unsatisfactory/substandard performance; and if they complete their obligated service, they may be separated or retired for that reason.

FINDING C: Discharges By Service. The GAO found that the Navy, representing 27 percent of the active force during the period from FY 1980 through FY 1990, accounted for 51 percent of the total number of discharges (8,638 cases). The GAO observed that, while the Army represented 37 percent of the active force, it accounted for 25 percent of all homosexual discharges (4,230 cases), and the Air Force, representing 27 percent of the active force, accounted for 18 percent (2,993 cases). The GAO reported that the Marine Corps, however, represented 9 percent of the active force and only 6 percent of the total number of discharges (1,053 cases).

The GAO speculated that, while the total number of reported homosexual discharges DoD-wide dropped 47 percent between FY 1980 and FY 1990, the trend is probably not an accurate representation of the level of discharges associated with homosexual activity. The GAO explained that local commanders have the flexibility to handle situations involving homosexuality administratively (without bringing in an investigative agency) and to select an alternative separation category to homosexuality for discharging personnel. The GAO also pointed out that few officers are separated under the homosexuality category, because officers are more likely to be given the option of resigning--which eliminates the investigative process and the homosexual categorization. (pp. 28-30/GAO Draft Report)

Now on p. 18.

DOD COMMENTS: Concur. The GAO discharge statistics are correct. Concerning the Navy, due to the Navy life at sea during extended deployments, identification of homosexuals may well occur more often than in the other Services. The DoD, therefore, draws no conclusions.

The GAO also correctly states there has been a 47 percent decline in the number of discharges under the homosexuality separation code, but then speculates that the decline is probably not an accurate representation of the level of discharges associated with homosexual activity. It is emphasized that the alternative separation categories available today are the same as they have been for 10 years and the option of officer resignation is the same now as it has been for 10 years--there has been no change in DoD or Service policy in either area since 1981. Further, the 47 percent decline in administrative separations by reason of homosexuality reflects only cases where there was no criminal activity, or where the command decided that whatever criminal activity was present did not warrant court-martial.

It should be noted that the GAO also reviewed statistics from the Service criminal investigative agencies (see Finding I). Those statistics reflect cases where there were allegations of serious criminal activity. Of interest, the GAO reported that there also was a similar decline in cases involving homosexuality investigated by the criminal investigative agencies--a 48 percent decrease in only five years (1986-1990).

FINDING D: Discharges By Race. The GAO reported that, in each branch of the Military, whites were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DoD-wide, for the period from FY 1980 through FY 1990, white men and women constituted 83 percent (14,125 cases) of all personnel discharged for homosexuality, while only making up about 72 percent of all personnel serving. The GAO observed that, conversely, black men and women accounted for only 13 percent (2,204 cases) of all discharges versus 20 percent of the total serving in the Military. (p. 31/GAO Draft Report)

Now on p. 19.

DOD COMMENTS: Concur.

FINDING E: Discharges By Gender. The GAO reported that, in each branch of the Military Services, women were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DOD-wide, from FY 1980 through FY 1990, women constituted 23 percent of homosexual discharges (3,900 cases), as contrasted with their representation as just 10 percent of all Military personnel. The GAO observed that, while women in

all the Services were discharged for homosexuality at a rate consistently ranging two to three times higher than their rate of representation, that pattern was most noticeable in the Marine Corps, where the discharge rate for women was almost six times their rate of representation. The GAO found that women constituted 28 percent of all homosexual discharges (303 cases) in the Marine Corps, but only 5 percent of all personnel serving. The GAO noted that, conversely, on a DOD-wide basis, men represented 77 percent of discharges for homosexuality and 90 percent of all Military personnel. (p. 32/GAO Draft Report)

Now on p. 20.

DOD COMMENT: Concur. The GAO statistics are correct, but could be misinterpreted. In a force as small as the Marine Corps, where women make up an even smaller percentage of the force, changes of even a few discharges more or less will greatly affect the percentages. In addition, the sample size used (i.e., Women Marines discharged due to homosexualtiy) is so small that any conclusions based on such a small sample size would be questionable. For example, in FY 1990, the Marine Corps discharged only ten women due to homosexuality.

FINDING F: Discharges By Race and Gender. The GAO reported that, in each Military Service, white women were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DOD-wide, for the period from FY 1980 through FY 1990, white women constituted 20 percent of those discharged for homosexuality (3,421 cases), while they represented just 6 percent of all personnel serving. The GAO observed that the disproportionate discharge rate of white women was evident in all of the Services, but was most noticeable in the Marine Corps. The GAO noted that Marine Corps women constituted 24 percent of such discharges, while they represented just 3 percent of the personnel serving. The GAO found, conversely, white men represented 63 percent (10,704 cases) of such discharges and 66 percent of all serving. (p. 33/GAO Draft Report)

Now on p. 21.

DOD COMMENTS: Concur. See DoD response to Finding E.

FINDING G: Discharges By Rank. The GAO reported that enlisted personnel have been discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO noted, however, that their overall rate of discharge is also higher than that of officers. The GAO found that DoD-wide, for the period from FY 1980 through

FY 1990, enlisted personnel constituted 99 percent of those discharged for homosexuality, while making up 86 percent of all personnel serving in the Military--a difference of 13 percent. The GAO observed that, conversely, officers represented only 1 percent of such separations and 14 percent of all those serving in the Military Services. (p. 34/GAO Draft Report)

on p. 22.

DOD COMMENTS: Concur.

FINDING H: Discharges By Occupational Code. The GAO reported that DOD-wide, about 50 percent of all enlisted personnel, who served during the 11-year period it reviewed, were employed in the three job categories of (1) Electrical/Mechanical Equipment Repairer, (2) Infantry, Guncrews, Seamanship, and Functional Support, and (3) Administration. The GAO found that those three job categories accounted for approximately 36 percent of the homosexual discharges during the period. The GAO also found, however, that almost 24 percent of the homosexual discharges came from the "Nonoccupational" category (which includes patients, prisoners, and students), while only about 9 percent of the overall Military personnel belonged to that category. The GAO concluded that those personnel may have been re-categorized from other categories prior to their discharge or had been identified as homosexuals while incarcerated or in training. (p. 35/GAO Draft Report)

on p. 23.

DOD COMMENTS: Partially Concur. Although the statistics are correct, the DoD conclusion regarding the non-occupational catetoy is speculation.

FINDING I: Investigations of Homosexuality. The GAO reported that there are three Military criminal investigative agencies within the DoD--(1) the Army Criminal Investigation Division, (2) the Air Force Office of Special Investigations, and (3) the Naval Investigative Service, The GAO noted that, when requested, those agencies investigate allegations of homosexuality and any associated charges of criminal activity involving force, assault, and battery. The GAO found that consistent and reliable information on investigations of homosexuality was not available from the three investigative agencies before 1986, and most did not maintain data by the categories of race, gender, rank, or occupational code. The GAO reported that, since FY 1986, the DoD investigative agencies experienced a total investigative caseload of about 186,000, of which 3,663 (an average of approximately 730 per year)

were investigations related to homosexuality. The GAO explained, however, that the figure may be understated because each DoD investigative agency has its own policies and procedures governing investigations of homosexuality and its own coding process. The GAO reported, for example, that Navy investigations of homosexuality are categorized under the same offense code as sodomy and indecent assault, and investigations of homosexuality that are handled administratively at the local command level may not be reported or recorded in the system as such.

The GAO reported that, for FY 1986 through FY 1990, the Navy conducted 68 percent of all DoD-wide investigations of homosexuality, the Air Force conducted 26 percent, and the Army conducted 6 percent. The GAO found that, while overall investigative budgets appear to be increasing, the number of investigations of homosexuality appears to be decreasing. The GAO explained that the number of investigations of homosexuality throughout the Services dropped from 907 to 472--a decline of 48 percent. The GAO reported that DoD officials speculated the drop could, in part, be due (1) to the shift in responsibility for homosexuality cases from investigative agencies to the Military police or the provost marshall, (2) to the advent of a higher caliber all-volunteer force, and (3) to a new focus. (pp. 35-38/GAO Draft Report)

Now on p. 24.

DOD COMMENTS: Partially concur. There are no criminal investigations of "homosexuality," per se. The Military criminal investigative agencies only investigate specific allegations of criminal activity. Certain sex-related crimes, such as sodomy, may encompass either homosexual or heterosexual behavior.

In addition, the statistics provided by the three Service criminal investigative agencies (and tabulated at Appendix IV of the report) are not comparable. The numbers for the Air Force Office of Special Investigations reflect sex crimes involving homosexual behavior. The Army Criminal Investigations Command numbers reflect only those criminal investigations involving homosexual behavior on file in the central-ized Crime Records Center index, not all investigations involving homosexual behavior. However, the Naval Investi-gative Service numbers reflect both heterosexual and homo-sexual sodomy/indecent sexual acts cases. The Naval Investigative Services statistics in appendix IV are, therefore, inaccurately labeled as "homosexual."

The error in the Naval Investigative Service statistics means the GAO statement that there were 3,663 (1986-1990) investigations related to homosexuality by the three criminal investigative agencies is not valid (see report figure 2.7 and the related analysis). In addition, the statement that the Naval Investigative Service conducted 68 percent of the investigations also is not valid.

The report notes that the number of criminal investigations involving homosexual behavior declined by 48 percent during the 1986-1990 period. As noted above, this figure includes heterosexual behavior reported by the Naval Investigative Service. However, looking solely at the Office of Special Investigations and the Criminal Investigations Command statistics, a similar drop is apparent.

FINDING J: Cost of Expulsion. The GAO reported that the costs of administering the DoD exclusion policy were not available because the DoD does not maintain records on such costs on a routine basis. The GAO noted that the only costs that were readily identifiable were the costs of replacing troops discharged for homosexuality. The GAO estimated that, during FY 1990, those costs totaled about $27 million. The GAO reported that other costs were not known--such as (1) the cost of original training and compensation, (2) the cost of out-processing, (3) the cost of court actions, and (4) the costs of dismissing cadets from training programs . (p. 38/GAO Draft Report)

)n p. 25.

DOD COMMENT: Nonconcur. Each year the Department of Defense separates about 300,000 Service members, approximately 100,000 of whom are separated for force management reasons. Homosexuals make up less than one-third of 1 percent of that total.

In estimating the cost, the GAO apparently assumed that none of those separated for homosexuality would be lost through normal attrition or for force management reasons. There also was no recognition that approximately one-half the enlisted force does not serve beyond the initial enlistment. The GAO cost estimate is, therefore, well in excess of what reasonably could be projected under normal circumstances.

Moreover, for the past 4 years the DoD has been required to reduce the Military force from 2.17 million in 1987 to 1.64 million by the end of FY 1995. Therefore, if the 1,000 personnel discharged annually during that period by reason of homosexuality had not been discharged, the DoD

would have had to either discharge 1,000 other personnel or reduce accessions by 1,000. Thus, there was no replacement cost during that period and there will be none for some time in the future.

FINDING K: Support for the DoD Policy on Homosexuality. The GAO reported that, except for undertaking efforts to analyze the security risk associated with homosexuals, the DOD has conducted or commissioned only limited research to develop empirical evidence supporting the validity of the premises and rationale for its current policy on homosexuality. The GAO noted the DoD efforts to examine the security risk issue have concluded that there is no factual data to substantiate that specific premise. The GAO also pointed out that the professional psychiatric, psychological, and sociological associations and other experts familiar with the research conducted on homosexuality in the general population tend to disagree with the basic rationale underlying the DOD policy.

The GAO concluded that the DOD policy is not based on scientific or empirical data, but rather on the considered judgment of Military professionals, who know what it takes to field an effective fighting force to protect the vital interests of the nation. The GAO observed, however, that such judgment is primarily anecdotal in nature and based on the opinions and experiences of individuals in various leadership positions throughout the DoD and the Services. The GAO found that the policy is based on the conviction that homosexual behavior is incompatible with Military Service in that it interferes with maintaining good order, discipline, and morale.

The GAO observed that the DoD and the Services understand the elements critical to ensuring the proper emotional bonding of personnel in Military units. The GAO reported that, according to DoD officials, homosexuality is not an acceptable behavior in the eyes of society, and Military policy should reflect that standard. The GAO reported that the courts have consistently upheld the DoD position on homosexuality. The GAO concluded that the Department has no intention of changing its existing policy. (pp. 39-41/ GAO Draft Report)

Now on p. 27.

DOD COMMENT: Partially concur. The responses to Findings M and O address the DoD studies and other expert opinion mentioned by the GAO.

The DoD is concerned the GAO statement that the professional Military judgement underlying the exclusionary policy on homosexuals is "primarily anecdotal" in nature could be interpreted to imply professional Military judgement is not a valid basis for Military personnel policies. It is important to emphasize the DoD depends upon the professional judgement of Government officials to make many and various important decisions that are not capable of being determined authoritatively by scientific means or proven by studies. The Military homosexual exclusion policy is one of those types of decisions.

FINDING L: Judicial Consideration of DoD Policy. The GAO reported that the courts consistently have upheld the DoD policy as constitutional under a rational basis standard of review. The GAO explained that, under the standard, the Government is only required to establish that regulations implementing the policy are rationally related to legitimate Governmental interests. The GAO observed that the courts, in giving special deference to Military judgments, have accepted as legitimate Governmental interests such Military objectives as good order, morale, and discipline--without requiring the Government to produce scientific evidence to support the policy. (pp. 42/GAO Draft Report)

ow on p. 28.

DOD COMMENT: Concur. Federal courts have upheld the Military homosexual exclusion policy and accepted its rational relationship to legitimate Military purposes. In fact, since the current DoD policy on homosexuality became effective in 1982, every court that has ruled finally on the issue has upheld the homosexual exclusion policy.

In consistently upholding the DoD policy, the courts have not required scientific evidence to support the DoD policy because the Military constitutes a specialized community, governed by a separate discipline from that of the civilian community. The courts consider the complex, subtle, and professional decisions as to the composition, training, equipping, and control of a Military force to be a matters of professional Military judgement.

FINDING M: Studies Initiated By the DoD and the Services Do Not Support the Policy. The GAO reported that the DOD and the Military Services could identify only two major studies initiated by the DOD and the Services about homosexuality in the Military--(1) the Navy 1957 "Crittenden Report" and (2) the Personnel Security Research and Education Center efforts, which were initiated in 1986.

The GAO found that the Crittenden Report was unable to uncover any statistical data to prove or disprove that homosexuals are more of a security risk than those engaged in other unsocial or immoral activity. The GAO noted that even the number of cases of blackmail revealed as a result of past investigations, which were cited to the Board, was negligible. The GAO observed the Cittenden Report determined that a homosexual is not necessarily more of a security risk, per se, than other transgressors of moral and criminal codes. The GAO noted that the report further determined that the propensities and vulnerabilities associated with homosexual activity, as in the case of promiscuous heterosexual activity, do provide serious security implications.

The GAO further reported that more recent efforts involving the examination of the correlation between homosexuality and security risk violations were undertaken by the Defense Personnel Security Research and Education Center at the direction of the Deputy Under Secretary of Defense for Security Policy. The GAO reported that the initial product from the center, entitled, Nonconforming Sexual Orientation and Military Suitability, was completed in December 1988, and echoed the findings of the Crittenden report. The GAO stated that the report revealed no evidence that homosexuality is related to security risk violations or that sexual orientation affected the suitability of an individual for Military Service. The GAO noted that the report concluded that the development of ethnology as an area of study has made possible more precise examination of the influence of biological factors on the formation of sexual orientation.

The GAO reported that, although completed in late 1988, the report was not finalized until September 1991--because of delays associated with the extensive review and revision it underwent. The GAO found that, although the scope of the finalized version of the report, dated September 1991, was more narrow (that is, it only addressed the security issue), it contained the same basic information included in the 1988 version. The GAO observed that the 1991 report stated:

> "Few data have been put forward to support the belief that being homosexual predisposes a person to unreliability, disloyalty, or untrustworthiness."

The GAO noted that the conclusions and recommendations of the 1991 report were considerably narrower than those included in the 1988 version. (pp. 43-53/GAO Draft Report)

Now on p. 29.

DOD COMMENTS: Nonconcur. The GAO errs in stating that the two cited reports do not support the DoD policy. The Crittenden report clearly supports the policy. The Personnel Security Research and Education Center "report" (a 1988 draft of a study that was never completed) misstated the DoD policy; thus, its "analysis" was flawed. The completed Personnel Security Research and Education Center report, published in 1991, addressed only civilian security clearance policy and had nothing to do with the Military homosexual exclusion policy.

As stated, the Crittenden study was to look at the Navy procedures and standards in separating homosexuals. The premise that homosexuality is incompatible with Military Service was the foundation for the study, and the report did not question that premise.

The other "DoD study" that was addressed in the GAO report relates to a misdirected draft prepared by researchers for the Personnel Security Research and Education Center. The Center was tasked with studying the nexus, if any, between homosexuality and security clearances for DoD civilian employees and Government contractors. The purpose of the study was to help the Department assess homosexuality as a factor in adjudicating security clearances for civilian and contractor employees. It was never commissioned to address the homosexual exclusion policy--an entirely separate and broarder issue based on uniquely Military concerns.

Notwithstanding its charge, in 1988, the Personnel Security Research and Education Center submitted a draft entitled--Nonconforming Sexual Orientation and Military Suitability. That draft document represented an abandonment of the tasking that had been given to the Center--instead, focusing on the Military homosexual exclusion policy. The authors of the draft did not discuss their research with those in the DoD most knowledgeable about the policy. As a result, they misunderstood the policy and its basis, and their subsequent "analysis" was flawed. The opinions expressed in the draft document were solely those of the authors, and did not and do not reflect those of the Department of Defense. It is, therefore, not accurate to refer to the Personnel Security Research and Education Center 1988 draft as a DoD report, or to consider its tentative findings, as they relate to the Military homosexual exclusion policy, to be authoritative.

FINDING N: Recent DoD Statements Indicate Security Risk Is No Longer A Concern. The GAO reported that recent testimony

by the Secretary of Defense indicated that there have been times in the past when the incompatibility of the gay lifestyle with Military service was based on a security risk notion. The GAO reported that the Secretary indicated it now is more a matter of the need of the Department to maintain the combat-effectiveness of the Military units--and, for that reason, the DoD has continued to pursue a policy that states certain kinds of individuals in our society do not serve in those combat units.

The GAO further reported that the Chairman of the Joint Chiefs of Staff, in a February 1992 statement before the House Budget Committee, expressed agreement with the Secretary of Defense. The GAO observed the Chairman indicated that the ban is not justified by the onetime DoD contention that homosexuals pose a greater security risk--but, instead, is based on the premise that homosexual behavior is inconsistent with maintaining good order and discipline. The GAO noted that the Chairman indicated that it is difficult, in a Military setting where there is no privacy, to introduce a group of individuals--who are proud, brave, loyal, good Americans but favor a homosexual life-style--to a group of heterosexuals, who would prefer not to have a person of the same sex find them sexually attractive. (pp. 53-54/GAO Draft Report)

Now on p. 35.

DOD COMMENT: Partially concur. Both the Secretary of Defense and the Chairman, Joint Chiefs of Staff, have stated that the Military homosexual exclusion policy is not based solely on security considerations. In the case of Military personnel other factors, such as good order and discipline, unit cohesion, and morale are much more important factors. For DoD civilian employees, homosexuality, per se, is not grounds for denial of employment or security clearances. It is, however, a relevant factor in a determination of whether a person should be entrusted with classified information. Its significance must be determined on a case-by-case basis, in light of the particular circumstances involved.

FINDING O: Scientific Evaluations of Homosexuality. The GAO reported that scientific and medical studies tend to disagree with the long-standing Military policy, which holds that homosexuals are incompatible with Military service. The GAO noted that the American Psychiatric Association and the American Psychological Association, as well as other mental health professionals, do not support the DoD exclusion. The GAO noted that those organizations are trying to convince the Military to change the DoD policy to improve the mental health and functioning of its members

and to help end the discrimination that they believe can lead to psychological distress and psychiatric disorder. The GAO observed that those organizations have taken steps, including (1) supporting dialogue between gay and lesbian groups and the Military, (2) banning of Military advertising and recruiting either at association meetings or in association publications, and (3) protesting Military training programs on university and college campuses, such as the Reserve Officer Training Corps programs.

The GAO reported that current research tends to support the idea that homosexuality can no longer be viewed as abnormal, if a significant minority of the population engage in it at some time in their adult lives. The GAO further reported that many experts believe that the Military policy (1) is unsupported, unfair, and counterproductive, (2) has no validity according to current scientific research and opinions, and (3) appears to be based on the same type of prejudicial suppositions that were used to discriminate against blacks and women before those policies were changed. The GAO explained many experts also believe the DoD exclusion policy perpetuates discrimination against homosexuals, which leads to an atmosphere that is not conducive to the mental health of both the homosexual individual and those prejudiced against them. (pp. 54-57/GAO Draft Report)

low on p. 36.

DOD COMMENT: Partially concur. The American Psychological Association and the American Psychiatric Association have written to the DoD expressing their disagreement with the DoD policy, but neither addressed the issue of overall combat effectiveness. As the GAO noted, instead, both groups focused on those arguments with which the DoD simply takes no position because they are not the basis for the exclusionary policy--i.e., that homosexuality is not a mental disorder and/or that homosexuality, per se, implies no impairment in judgement, stability, reliability, or general social or vocational capability.

In short, both groups, as well as many other social science experts, look at the Military homosexual exclusion policy from a social policy perspective. They focus on homosexuals in the general population and the relationships between homosexuality and the mental health of the individual. The DoD, on the other hand, looks at the policy solely from a Military, overall combat effectiveness standpoint, and draws no conclusion about the broader social issue.

FINDING P: Public Attitudes and Other Views. The GAO reported that recent national polls have shown a shift in

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See comment 1.

See comment 2.

See comment 3.

society thinking on homosexuality. The GAO noted that previous national polls, conducted in the mid-1980s, showed an increasing intolerance of homosexuality at a time when the fear of contracting Acquired Immune Deficiency Syndrome (AIDS) was at its highest point among the general public, but new surveys show that the trend is reversing. The GAO reported that one national poll shows that the public attitude toward homosexuals serving in the Military has changed. The GAO observed that 81 percent of Americans believe that homosexuals should not be discharged from Military Service because of their sexual orientation, while 14 percent believed they should. (pp. 58-60/GAO Draft Report)

DOD COMMENT: Partially concur. The GAO summarizes three public opinion polls, but does not include them in the report. Therefore, it is difficult to make specific comments. However, other information from the public, and from within the DoD, also is of interest.

The DoD receives many letters concerning its exclusion policy on homosexuals. In the past, the DoD heard mainly from those opposed to the policy. More recently, however, that has not been the case. Mail from the public now is running more than 2 to 1 in support of the policy.

Moreover, a recent Navy study concluded that, despite the apparent increase in society's acceptance of homosexuals, there was virtually no support among Navy women and men at all levels, and at every site visited, to change the current Navy homosexual exclusion policy. The study noted that, although many young people entering the Navy today view the homosexual life style as a legitimate choice, experience with the exceptionally close living and working environment in the Navy tends to convince many of the junior personnel homosexuality cannot be tolerated among Navy members.

FINDING Q: Other Nation Policies. The GAO reported that different nations have various, sometimes diametrically opposed, approaches to (and legislation affecting the presence of) homosexuals in their armed forces--and some do not view homosexuality as a legal or a Military issue. The GAO found, for example, that among 18 country policies it reviewed, five had policies specifically excluding homosexuals from serving in the armed forces, while seven had no written policy addressing homosexuality. The GAO noted that some countries, such as Australia, Canada, and Britain, have very strict policies and procedures. The GAO noted, however, that the current Australian policy is

Now on p. 40.

being reviewed and may be updated to balance the Military requirements against human rights (privacy, freedom, and so on). The GAO reported that the Canadian Defense Force also has had a long standing policy of not accepting declared homosexuals into the Canadian Defense Forces. The GAO reported that the British Defense Force, like the U.S. Military, is an all-volunteer force and is opposed to having homosexuals serve in the Military. The GAO noted that the British Defense Force does not knowingly accept homosexuals. (pp. 59-63/GAO Draft Report)

DOD COMMENT: Concur. Military personnel policies in the United States are, however, based upon the unique factors in our nation that go into the overall combat effectiveness equation. Thus, while policies in other nations may be of interest, they can never be dispositive. The U.S. must make its own policies based upon what is best for the national security.

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FINDING R: **Police/Fire Department Policies**. The GAO reported that all but one of the eight police and fire departments (in four cities) it visited had written policies dictating nondiscrimination on the basis of sexual preference or allowing the employment of homosexuals. The GAO noted that many of the policies dated as far back as the 1970s. The GAO reported that none of the officials it interviewed viewed homosexuality as an issue. The GAO reported that, in terms of security breaches, most police and fire department officials stated that, while some assignments are considered confidential or secret in nature, most department officials believed that homosexuals, whether "closeted" or admitted, were no more subject to breaches of security or blackmail than heterosexuals. The GAO pointed out that most of the police and fire departments with policies endorsed by the city mayors and department chiefs target their recruiting to gay and lesbian communities, as well as to the communities of blacks, Hispanics and Asians. (pp. 63-65/GAO Draft Report)

DOD COMMENT: Partially concur. While not disputing the information relating to police and fire departments, the DoD is concerned about possible comparisons with the Military Services. Although there are some organizational similarities between police or fire departments and the armed forces, there are also some very fundamental differences. The mission and related training, deployments, work environment, authority of the commander over subordinates, living conditions, and lack of personal privacy combine to make any such comparison misleading.

FINDING 8: Overall GAO Conclusions. The GAO reported that, for more than 50 years, the DoD and its predecessors have had a policy of excluding homosexuals from Military Service, based on the belief that the presence of homosexuals seriously impairs the accomplishment of the Military mission. The GAO noted that, because the policy is based largely on Military judgment, it is difficult to challenge--and the courts have routinely accepted the DoD judgment. The GAO concluded, however, that the DoD policy is not based on scientific or sociological analysis. The GAO further concluded it is unlikely that any such analysis could prove conclusively the policy is right or wrong. The GAO pointed out that, although studies of the security risk issue have tended to refute the DoD position, there are other bases for the policy that do not lend themselves to conclusive analysis. Recognizing that more study alone cannot solve the problem, the GAO nonetheless concluded that it may be appropriate for the DoD to take a new look at its policy.

The GAO reported that its conclusion is based on the following factors:

- since the DOD last examined the policy in 1982, public attitudes toward homosexuals have been changing, and DoD studies have raised questions about the policy;
- several National Atlantic Treaty Organization countries allow homosexuals into the Military or are reassessing their policies on homosexuals;
- many U.S police and fire departments have accepted homosexuals into their ranks and have not reported any adverse impacts;
- recent congressional testimony by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff indicate that the concern over homosexuals being security risks, which was once a significant basis for the policy, is no longer a serious issue;
- there are many avenues for discharging Military personnel, including homosexuals, who have behavior problems and changing the policy to permit homosexuals to remain in the Military would not entail condoning inappropriate behavior; and

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- a careful look at the policy may reveal a middle ground similar to what some other countries have taken--for example, discouraging homosexuals from joining the Military but not automatically discharging those who are in. (pp. 66-67/GAO Draft Report)

DOD COMMENTS: Nonconcur. Each of the factors appearing in the overall conclusion section has been addressed separately in other findings. There is no new information presented that would lead the DoD to consider changing the Military homosexual exclusion policy.

* * * * *

MATTER FOR CONGRESSIONAL CONSIDERATION

SUGGESTION: Because (1) it has been ten years since the DOD last examined its policy and regulations, (2) public attitudes toward homosexuality are changing, (3) formal DOD studies of the issue have challenged the [security] basis for its policy, and (4) DOD officials have stated that the Department will not change its policy unless it is mandated to do so by the Congress--the GAO suggested that Members of the Congress consider directing the DOD to reexamine the basis for the policy and determine whether the policy could be revised to better serve Military needs. (p. 68/GAO Draft Report)

DOD COMMENT: Nonconcur. The DoD continually reviews all Military personnel policies as the situation warrants, and the Military homosexual exclusion policy is no exception. There is no new information in the GAO report related to overall combat effectiveness that would cause the DoD to change that policy.

* * * * *

RECOMMENDATIONS TO THE DEPARTMENT OF DEFENSE

NONE.

The following are GAO's comments on DOD's letter dated April 17, 1992.

GAO Comments

1. We believe that we have included sufficient evidence in the report to establish a clear trend toward increasing support for permitting homosexuals in the work place. Table 4.1 shows an increasingly more positive attitude on an identically worded opinion question that was administered six different times over 14 years to the same population by the same survey organization.

2. Tabulations of self-initiated letters are not valuable when, as in this case, stronger evidence is available in the form of more technically sound, public opinion poll evidence.

3. The information that DOD provides about its own "recent Navy study" is not sufficient to determine the value of the study. For example, DOD does not provide information about the sample design, the reliability of the opinion measurement process, the actual questions asked of personnel, or steps, if any, that were taken to ensure confidentiality for those who were critical of existing policies.

Major Contributors to This Report

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Supplement to a Report to Congressional Requesters

June 1992

DEFENSE FORCE MANAGEMENT

Statistics Related to DOD's Policy on Homosexuality



GAO/NSIAD-92-98S

GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-247235

June 12, 1992

The Honorable John Conyers, Jr.
The Honorable Gerry E. Studds
The Honorable Ted Weiss
House of Representatives

This report provides information that supplements our report entitled Defense Force Management: DOD's Policy on Homosexuality (GAO/NSIAD-92-98). Information presented in this report covers fiscal years 1980 through 1990.

- Appendix I provides details on the composition of active military personnel.
- Appendix II provides details on personnel discharged for homosexuality by race, gender, rank, and occupational codes.
- Appendix III compares discharge rates for homosexuality by race and gender along with rates of representation in the military force.
- Appendix IV provides data on cases involving homosexuality investigated by the military services' criminal investigative agencies.
- Appendix V provides information on the average years of service and pay grades for personnel discharged from the military under the category of homosexuality.

The information presented in this report was obtained from the Department of Defense's (DOD) Defense Manpower Data Center. We did not verify or test the accuracy of the data. We did obtain DOD officials' comments on the data contained in this report.

We conducted our review between September 1990 and March 1992 in accordance with generally accepted government auditing standards.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to interested congressional committees and other Members of Congress and to the Secretaries of Defense, Air Force, Army, and Navy. We will also make copies available to others upon request.

Please contact Paul L. Jones, Director for Defense Force Management Issues on (202) 275-3990 if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix VI.

Frank C. Conahan
Assistant Comptroller General

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Abbreviations

DOD	Department of Defense
PG	pay grades
YOS	years of service

Composition of Military Personnel

Tables I.1 through I.20 contain data on the composition of military personnel by race, gender, and rank for each service and the services combined for the 11 years we reviewed. Tables I.21 through I.24 present numbers and percentages of personnel employed for the combined services by occupational code.

Table I.1: Army Personnel by Race, Gender, and Rank

Fiscal year	Total serving	Race			Gender		Rank	
		White	Black	Other	Male	Female	Enlisted	Office
1980	**772,376**	481,492	228,476	62,408	703,417	68,959	673,716	98,66
1981	**776,582**	483,139	231,725	61,718	703,316	73,266	674,747	101,83
1982	**775,884**	486,299	228,663	60,922	702,586	73,298	672,498	103,38
1983	**775,260**	496,472	219,271	59,517	699,712	75,548	669,312	105,94
1984	**775,728**	506,074	213,625	56,029	698,832	76,896	667,584	108,14
1985	**776,050**	510,693	209,568	55,789	697,292	78,578	666,149	109,90
1986	**777,596**	511,545	208,651	57,400	696,576	81,020	667,402	110,19
1987	**776,661**	506,727	211,111	58,823	693,961	82,700	668,406	108,25
1988	**767,468**	495,108	212,079	60,281	684,207	83,261	660,226	107,24
1989	**765,287**	485,793	217,070	62,424	679,309	85,978	658,119	107,16
1990	**728,345**	454,891	211,636	61,818	645,193	83,152	623,509	104,83
Average	**769,749**	492,567	217,443	59,739	691,309	78,423	663,788	105,961

Table I.2: Composition of Army Personnel by Race, Gender, and Rank

Figures in percentages

Fiscal year	Race			Gender		Rank	
	White	Black	Other	Male	Female	Enlisted	Officer
1980	62.3	29.6	8.1	91.1	8.9	87.2	12.8
1981	62.2	29.8	7.9	90.6	9.4	86.9	13.1
1982	62.7	29.5	7.9	90.6	9.4	86.7	13.3
1983	64.0	28.3	7.7	90.3	9.7	86.3	13.7
1984	65.2	27.5	7.2	90.1	9.9	86.1	13.9
1985	65.8	27.0	7.2	89.9	10.1	85.8	14.2
1986	65.8	26.8	7.4	89.6	10.4	85.8	14.2
1987	65.2	27.2	7.6	89.4	10.6	86.1	13.9
1988	64.5	27.6	7.9	89.2	10.8	86.0	14.0
1989	63.5	28.4	8.2	88.8	11.2	86.0	14.0
1990	62.5	29.1	8.5	88.6	11.4	85.6	14.4
Average	64.0	28.2	7.8	89.8	10.2	86.2	13.8

Table I.3: Gender of Army Personnel by Race

		White		Black		Other	
Fiscal year	Total serving	Male	Female	Male	Female	Male	Female
1980	**772,376**	442,232	39,260	203,605	24,871	57,580	4,828
1981	**776,582**	443,191	39,948	203,384	28,341	56,741	4,977
1982	**775,884**	446,972	39,327	199,877	28,786	55,737	5,185
1983	**775,260**	455,147	41,325	190,114	29,157	54,451	5,066
1984	**775,728**	463,634	42,440	183,818	29,807	51,380	4,649
1985	**776,050**	467,642	43,051	178,674	30,894	50,976	4,813
1986	**777,596**	467,898	43,647	176,443	32,208	52,235	5,165
1987	**776,661**	462,963	43,764	177,517	33,594	53,481	5,342
1988	**767,468**	452,225	42,883	177,306	34,773	54,676	5,605
1989	**765,287**	443,156	42,637	179,884	37,186	56,269	6,155
1990	**728,345**	414,764	40,127	174,797	36,839	55,632	6,186
Average	**769,749**	450,893	41,674	185,947	31,496	54,469	5,270

Table I.4: Gender Composition of Army Personnel by Race

Figures in percentages

	White		Black		Other	
Fiscal year	Male	Female	Male	Female	Male	Female
1980	57.3	5.1	26.4	3.2	7.5	0.6
1981	57.1	5.1	26.2	3.6	7.3	0.6
1982	57.6	5.1	25.8	3.7	7.2	0.7
1983	58.7	5.3	24.5	3.8	7.0	0.7
1984	59.8	5.5	23.7	3.8	6.6	0.6
1985	60.3	5.5	23.0	4.0	6.6	0.6
1986	60.2	5.6	22.7	4.1	6.7	0.7
1987	59.6	5.6	22.9	4.3	6.9	0.7
1988	58.9	5.6	23.1	4.5	7.1	0.7
1989	57.9	5.6	23.5	4.9	7.4	0.8
1990	56.9	5.5	24.0	5.1	7.6	0.8
Average	58.6	5.4	24.2	4.1	7.1	0.7

Table I.5: Navy Personnel by Race, Gender, and Rank

		Race			Gender		Rank	
Fiscal year	Total serving	White	Black	Other	Male	Female	Enlisted	Officer
1980	**521,710**	423,453	54,189	44,068	487,027	34,683	458,453	63,257
1981	**534,773**	430,762	57,883	46,128	495,080	39,693	469,089	65,684
1982	**547,456**	439,093	61,563	46,800	504,662	42,794	479,679	67,777
1983	**553,438**	440,894	63,938	48,606	507,243	46,195	483,525	69,913
1984	**558,745**	442,715	66,233	49,797	510,613	48,132	489,867	68,878
1985	**566,283**	446,067	69,113	51,103	514,878	51,405	495,601	70,682
1986	**576,420**	448,521	73,912	53,987	523,576	52,844	504,369	72,051
1987	**584,625**	447,840	79,589	57,196	531,464	53,161	512,588	72,037
1988	**586,830**	444,686	84,130	58,014	531,934	54,896	514,298	72,532
1989	**586,600**	436,137	89,684	60,779	529,511	57,089	514,345	72,255
1990	**573,737**	419,965	91,498	62,274	516,635	57,102	501,542	72,195
Average	**562,783**	438,194	71,976	52,614	513,875	48,909	493,032	69,751

Table I.6: Composition of Navy Personnel by Race, Gender, and Rank

Figures in percentages

	Race			Gender		Rank	
Fiscal year	White	Black	Other	Male	Female	Enlisted	Officer
1980	81.2	10.4	8.4	93.4	6.6	87.9	12.1
1981	80.6	10.8	8.6	92.6	7.4	87.7	12.3
1982	80.2	11.2	8.5	92.2	7.8	87.6	12.4
1983	79.7	11.6	8.8	91.7	8.3	87.4	12.6
1984	79.2	11.9	8.9	91.4	8.6	87.7	12.3
1985	78.8	12.2	9.0	90.9	9.1	87.5	12.5
1986	77.8	12.8	9.4	90.8	9.2	87.5	12.5
1987	76.6	13.6	9.8	90.9	9.1	87.7	12.3
1988	75.8	14.3	9.9	90.6	9.4	87.6	12.4
1989	74.3	15.3	10.4	90.3	9.7	87.7	12.3
1990	73.2	15.9	10.9	90.0	10.0	87.4	12.6
Average	77.9	12.8	9.3	91.3	8.7	87.6	12.4

Table I.7: Gender of Navy Personnel by Race

		White		Black		Other	
Fiscal year	Total serving	Male	Female	Male	Female	Male	Female
1980	**521,710**	394,856	28,597	49,686	4,503	42,485	1,583
1981	**534,773**	398,633	32,129	52,344	5,539	44,103	2,025
1982	**547,456**	405,011	34,082	55,125	6,438	44,526	2,274
1983	**553,438**	404,777	36,117	56,510	7,428	45,956	2,650
1984	**558,745**	405,773	36,942	57,988	8,245	46,852	2,945
1985	**566,283**	407,489	38,578	59,693	9,420	47,696	3,407
1986	**576,420**	410,066	38,455	63,485	10,427	50,025	3,962
1987	**584,625**	410,166	37,674	68,452	11,137	52,846	4,350
1988	**586,830**	406,640	38,046	71,958	12,172	53,336	4,678
1989	**586,600**	397,680	38,457	76,306	13,378	55,525	5,254
1990	**573,737**	382,252	37,713	77,680	13,818	56,703	5,571
Average	**562,783**	402,122	36,072	62,657	9,319	49,096	3,518

Table I.8: Gender Composition of Navy Personnel by Race

Figures in percentages

	White		Black		Other	
Fiscal year	Male	Female	Male	Female	Male	Female
1980	75.7	5.5	9.5	0.9	8.1	0.3
1981	74.5	6.0	9.8	1.0	8.2	0.4
1982	74.0	6.2	10.1	1.2	8.1	0.4
1983	73.1	6.5	10.2	1.3	8.3	0.5
1984	72.6	6.6	10.4	1.5	8.4	0.5
1985	72.0	6.8	10.5	1.7	8.4	0.6
1986	71.1	6.7	11.0	1.8	8.7	0.7
1987	70.2	6.4	11.7	1.9	9.0	0.7
1988	69.3	6.5	12.3	2.1	9.1	0.8
1989	67.8	6.6	13.0	2.3	9.5	0.9
1990	66.6	6.6	13.5	2.4	9.9	1.0
Average	71.5	6.4	11.1	1.7	8.7	0.6

Table I.9: Air Force Personnel by Race, Gender, and Rank

		Race			Gender		Rank	
Fiscal year	Total serving	White	Black	Other	Male	Female	Enlisted	Officer
1980	**554,103**	437,475	78,209	38,419	494,213	59,890	456,202	97,901
1981	**566,839**	445,412	81,769	39,658	503,820	63,019	467,209	99,630
1982	**579,038**	453,076	85,568	40,394	515,019	64,019	476,850	102,188
1983	**588,322**	460,727	86,869	40,726	522,880	65,442	483,443	104,879
1984	**592,671**	464,943	87,295	40,433	526,097	66,574	486,425	106,246
1985	**597,000**	467,832	88,850	40,318	527,487	69,513	488,604	108,400
1986	**603,717**	472,921	90,703	40,093	530,646	73,071	494,666	109,051
1987	**602,584**	471,527	90,902	40,155	527,276	75,308	495,244	107,340
1988	**571,983**	446,651	87,215	38,117	498,103	73,880	466,856	105,127
1989	**566,530**	443,032	85,693	37,805	489,952	76,578	462,831	103,699
1990	**530,865**	413,879	81,200	35,786	457,284	73,581	430,818	100,047
Average	**577,605**	452,498	85,843	39,264	508,434	69,170	473,559	104,046

Table I.10: Composition of Air Force Personnel by Race, Gender, and Rank

Figures in percentages

	Race			Gender		Rank	
Fiscal year	White	Black	Other	Male	Female	Enlisted	Officer
1980	79.0	14.1	6.9	89.2	10.8	82.3	17.7
1981	78.6	14.4	7.0	88.9	11.1	82.4	17.6
1982	78.2	14.8	7.0	88.9	11.1	82.4	17.6
1983	78.3	14.8	6.9	88.9	11.1	82.2	17.8
1984	78.4	14.7	6.8	88.8	11.2	82.1	17.9
1985	78.4	14.9	6.8	88.4	11.6	81.8	18.2
1986	78.3	15.0	6.6	87.9	12.1	81.9	18.1
1987	78.3	15.1	6.7	87.5	12.5	82.2	17.8
1988	78.1	15.2	6.7	87.1	12.9	81.6	18.4
1989	78.2	15.1	6.7	86.5	13.5	81.7	18.3
1990	78.0	15.3	6.7	86.1	13.9	81.2	18.8
Average	78.3	14.9	6.8	88.0	12.0	82.0	18.0

Table I.11: Gender of Air Force Personnel by Race

		White		Black		Other	
Fiscal year	**Total serving**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
1980	**554,103**	391,511	45,964	68,158	10,051	34,544	3,875
1981	**566,839**	397,366	48,046	70,940	10,829	35,514	4,144
1982	**579,038**	404,909	48,167	73,976	11,592	36,134	4,260
1983	**588,322**	411,984	48,743	74,462	12,407	36,434	4,292
1984	**592,671**	415,743	49,200	74,248	13,047	36,106	4,327
1985	**597,000**	416,902	50,930	74,703	14,147	35,882	4,436
1986	**603,717**	419,728	53,193	75,437	15,266	35,481	4,612
1987	**602,584**	417,991	53,536	73,931	16,971	35,354	4,801
1988	**571,983**	393,393	53,258	71,328	15,887	33,382	4,735
1989	**566,530**	387,845	55,187	69,301	16,392	32,806	4,999
1990	**530,865**	361,214	52,665	65,197	16,003	30,873	4,913
Average	**577,605**	401,690	50,808	71,971	13,872	34,774	4,490

Table I.12: Gender Composition of Air Force Personnel by Race

Figures in percentages

	White		Black		Other	
Fiscal year	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
1980	70.7	8.3	12.3	1.8	6.2	0.7
1981	70.1	8.5	12.5	1.9	6.3	0.7
1982	69.9	8.3	12.8	2.0	6.2	0.7
1983	70.0	8.3	12.7	2.1	6.2	0.7
1984	70.1	8.3	12.5	2.2	6.1	0.7
1985	69.8	8.5	12.5	2.4	6.0	0.7
1986	69.5	8.8	12.5	2.5	5.9	0.8
1987	69.4	8.9	12.3	2.8	5.9	0.8
1988	68.8	9.3	12.5	2.8	5.8	0.8
1989	68.5	9.7	12.2	2.9	5.8	0.9
1990	68.0	9.9	12.3	3.0	5.8	0.9
Average	69.5	8.8	12.5	2.4	6.0	0.8

Table I.13: Marine Corps Personnel by Race, Gender, and Rank

		Race			Gender		Rank	
Fiscal year	Total serving	White	Black	Other	Male	Female	Enlisted	Officer
1980	**188,483**	134,942	38,855	14,686	181,777	6,706	170,287	18,196
1981	**190,691**	138,014	38,633	14,044	183,075	7,616	172,335	18,356
1982	**194,266**	142,411	38,254	13,601	185,832	8,434	175,234	19,032
1983	**195,047**	145,363	36,668	13,016	186,138	8,909	175,064	19,983
1984	**196,284**	147,290	35,926	13,068	187,059	9,225	175,927	20,357
1985	**198,082**	147,099	37,014	13,969	188,388	9,694	177,928	20,154
1986	**198,860**	146,099	37,635	15,126	188,972	9,888	178,673	20,187
1987	**199,708**	145,171	38,153	16,384	189,920	9,788	179,545	20,163
1988	**197,368**	142,089	37,972	17,307	187,756	9,612	177,316	20,072
1989	**196,817**	140,714	37,711	18,392	187,151	9,666	176,770	20,047
1990	**196,353**	139,582	37,462	19,309	187,034	9,319	176,545	19,808
Average	**195,633**	142,616	37,662	15,355	186,646	8,987	175,966	19,669

Table I.14: Composition of Marine Corps Personnel by Race, Gender, and Rank

Figures in percentages

	Race			Gender		Rank	
Fiscal year	White	Black	Other	Male	Female	Enlisted	Officer
1980	71.6	20.6	7.8	96.4	3.6	90.3	9.7
1981	72.4	20.3	7.4	96.0	4.0	90.4	9.6
1982	73.3	19.7	7.0	95.7	4.3	90.2	9.8
1983	74.5	18.8	6.7	95.4	4.6	89.8	10.2
1984	75.0	18.3	6.7	95.3	4.7	89.6	10.4
1985	74.3	18.7	7.1	95.1	4.9	89.8	10.2
1986	73.5	18.9	7.6	95.0	5.0	89.8	10.2
1987	72.7	19.1	8.2	95.1	4.9	89.9	10.1
1988	72.0	19.2	8.8	95.1	4.9	89.8	10.2
1989	71.5	19.2	9.3	95.1	4.9	89.8	10.2
1990	71.1	19.1	9.8	95.3	4.7	89.9	10.1
Average	72.9	19.3	7.8	95.4	4.6	89.9	10.1

Table I.15: Gender of Marine Corps Personnel by Race

		White		Black		Other	
Fiscal year	Total serving	Male	Female	Male	Female	Male	Female
1980	**188,483**	130,125	4,817	37,416	1,439	14,236	450
1981	**190,691**	132,593	5,421	36,969	1,664	13,513	531
1982	**194,266**	136,408	6,003	36,378	1,876	13,046	555
1983	**195,047**	139,015	6,348	34,673	1,995	12,450	566
1984	**196,284**	140,761	6,529	33,780	2,146	12,518	550
1985	**198,082**	140,390	6,709	34,688	2,326	13,310	659
1986	**198,860**	139,434	6,665	35,154	2,481	14,384	742
1987	**199,708**	138,654	6,517	35,683	2,470	15,583	801
1988	**197,368**	135,840	6,249	35,484	2,488	16,432	875
1989	**196,817**	134,631	6,083	35,101	2,610	17,419	973
1990	**196,353**	133,868	5,714	34,843	2,619	18,323	986
Average	**195,633**	136,520	6,096	35,470	2,192	14,656	699

Table I.16: Gender Composition of Marine Corps Personnel by Race

Figures in percentages

	White		Black		Other	
Fiscal year	Male	Female	Male	Female	Male	Female
1980	69.0	2.6	19.9	0.8	7.6	0.2
1981	69.5	2.8	19.4	0.9	7.1	0.3
1982	70.2	3.1	18.7	1.0	6.7	0.3
1983	71.3	3.3	17.8	1.0	6.4	0.3
1984	71.7	3.3	17.2	1.1	6.4	0.3
1985	70.9	3.4	17.5	1.2	6.7	0.3
1986	70.1	3.4	17.7	1.2	7.2	0.4
1987	69.4	3.3	17.9	1.2	7.8	0.4
1988	68.8	3.2	18.0	1.3	8.3	0.4
1989	68.4	3.1	17.8	1.3	8.9	0.5
1990	68.2	2.9	17.7	1.3	9.3	0.5
Average	69.8	3.1	18.1	1.1	7.5	0.4

Table I.17: DOD Personnel by Race, Gender, and Rank

		Race			Gender		Rank	
Fiscal year	Total serving	White	Black	Other	Men	Women	Enlisted	Officer
1980	**2,036,672**	1,477,362	399,729	159,581	1,866,434	170,238	1,758,658	278,014
1981	**2,068,885**	1,497,327	410,010	161,548	1,885,291	183,594	1,783,380	285,505
1982	**2,096,644**	1,520,879	414,048	161,717	1,908,099	188,545	1,804,261	292,383
1983	**2,112,067**	1,543,456	406,746	161,865	1,915,973	196,094	1,811,344	300,723
1984	**2,123,428**	1,561,022	403,079	159,327	1,922,601	200,827	1,819,803	303,625
1985	**2,137,415**	1,571,691	404,545	161,179	1,928,045	209,370	1,828,278	309,137
1986	**2,156,593**	1,579,086	410,901	166,606	1,939,770	216,823	1,845,110	311,483
1987	**2,163,578**	1,571,264	419,755	172,559	1,942,621	220,957	1,855,783	307,795
1988	**2,123,669**	1,526,554	421,396	175,719	1,902,020	221,649	1,818,696	304,973
1989	**2,115,234**	1,505,676	430,158	179,400	1,885,923	229,311	1,812,065	303,169
1990	**2,029,300**	1,428,317	421,796	179,187	1,806,146	223,154	1,732,414	296,886
Average	**2,105,771**	1,525,694	412,924	167,153	1,900,266	205,506	1,806,345	299,427

Table I.18: Composition of DOD Personnel by Race, Gender, and Rank

Figures in percentages

	Race			Gender		Rank	
Fiscal year	White	Black	Other	Male	Female	Enlisted	Officer
1980	72.5	19.6	7.8	91.6	8.4	86.3	13.7
1981	72.4	19.8	7.8	91.1	8.9	86.2	13.8
1982	72.5	19.7	7.7	91.0	9.0	86.1	13.9
1983	73.1	19.3	7.7	90.7	9.3	85.8	14.2
1984	73.5	19.0	7.5	90.5	9.5	85.7	14.3
1985	73.5	18.9	7.5	90.2	9.8	85.5	14.5
1986	73.2	19.1	7.7	89.9	10.1	85.6	14.4
1987	72.6	19.4	8.0	89.8	10.2	85.8	14.2
1988	71.9	19.8	8.3	89.6	10.4	85.6	14.4
1989	71.2	20.3	8.5	89.2	10.8	85.7	14.3
1990	70.4	20.8	8.8	89.0	11.0	85.4	14.6
Average	72.5	19.6	7.9	90.2	9.8	85.8	14.2

Table I.19: Gender of DOD Personnel by Race

		White		Black		Other	
Fiscal year	**Total serving**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
1980	**2,036,672**	1,358,724	118,638	358,865	40,864	148,845	10,736
1981	**2,068,885**	1,371,783	125,544	363,637	46,373	149,871	11,677
1982	**2,096,644**	1,393,300	127,579	365,356	48,692	149,443	12,274
1983	**2,112,067**	1,410,923	132,533	355,759	50,987	149,291	12,574
1984	**2,123,428**	1,425,911	135,111	349,834	53,245	146,856	12,471
1985	**2,137,415**	1,432,423	139,268	347,758	56,787	147,864	13,315
1986	**2,156,593**	1,437,126	141,960	350,519	60,382	152,125	14,481
1987	**2,163,578**	1,428,773	142,491	356,583	63,172	157,265	15,294
1988	**2,123,669**	1,386,118	140,436	356,076	65,320	159,826	15,893
1989	**2,115,234**	1,363,312	142,364	360,592	69,566	162,019	17,381
1990	**2,029,300**	1,292,098	136,219	352,517	69,279	161,531	17,656
Average	**2,105,771**	1,390,954	134,740	356,136	56,788	153,176	13,977

Table I.20: Gender Composition of DOD Personnel by Race

Figures in percentages

	White		Black		Other	
Fiscal year	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
1980	66.7	5.8	17.6	2.0	7.3	0.5
1981	66.3	6.1	17.6	2.2	7.2	0.6
1982	66.5	6.1	17.4	2.3	7.1	0.6
1983	66.8	6.3	16.8	2.4	7.1	0.6
1984	67.2	6.4	16.5	2.5	6.9	0.6
1985	67.0	6.5	16.3	2.7	6.9	0.6
1986	66.6	6.6	16.3	2.8	7.1	0.7
1987	66.0	6.6	16.5	2.9	7.3	0.7
1988	65.3	6.6	16.8	3.1	7.5	0.7
1989	64.5	6.7	17.0	3.3	7.7	0.8
1990	63.7	6.7	17.4	3.4	8.0	0.9
Average	66.1	6.4	16.9	2.7	7.3	0.7

Table I.21: DOD Personnel by Enlisted Occupational Code

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
Infantry, guncrews, and seamanship specialists	250,896	274,185	295,742	279,141
Electronic equipment repairers	164,200	171,866	171,230	169,632
Communications and intelligence specialists	161,829	174,255	168,969	168,506
Health care specialists	82,942	95,806	96,749	93,062
Other technical/allied specialists	41,105	42,824	40,529	41,247
Functional support and administration personnel	284,627	285,397	268,762	276,887
Electrical/mechanical equipment repairers	361,482	374,079	347,765	357,773
Craftsmen	73,083	74,622	68,571	71,212
Service and supply handlers	165,917	167,308	153,410	160,011
Nonoccupational (patients, prisoners, students, and trainees)	207,435	170,806	120,108	154,614
Unknown (clerical errors)	4,040	839	579	1,509
Total	**1,797,611**	**1,831,987**	**1,732,414**	**1,807,309**

[a]These standard DOD codes are applicable to all services.

Table I.22: Composition of DOD Enlisted Personnel by Occupational Code

Figures in percentages

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
Infantry, guncrews, and seamanship specialists	14.0	15.0	17.1	15.7
Electronic equipment repairers	9.1	9.4	9.9	9.6
Communications and intelligence specialists	9.0	9.5	9.8	9.5
Health care specialists	4.6	5.2	5.6	5.2
Other technical/allied specialists	2.3	2.3	2.3	2.3
Functional support and administration personnel	15.8	15.6	15.5	15.6
Electrical/mechanical equipment repairers	20.1	20.4	20.1	20.2
Craftsmen	4.1	4.1	4.0	4.0
Service and supply handlers	9.2	9.1	8.9	9.0
Nonoccupational (patients, prisoners, students, and trainees)	11.5	9.3	6.9	8.7
Unknown (clerical errors)	0.2	0	0	0.1
Total	**100.0**	**100.0**	**100.0**	**100.0**

[a]These standard DOD codes are applicable to all services.

Table I.23: DOD Personnel by Officer Occupational Code

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
General officers/ executives[b]	5,771	4,397	1,705	4,777
Tactical operating officers	91,535	119,666	121,110	107,010
Intelligence officers	10,598	13,121	13,409	12,001
Engineer/maintenance officers	47,885	45,504	39,548	46,045
Scientists and professionals	15,616	15,095	13,611	15,197
Health care specialists	32,308	39,915	44,893	36,910
Administrators	32,585	32,103	21,602	31,368
Supply, procurement, and allied officers	14,844	22,177	24,638	19,068
Nonoccupational (patients, prisoners, trainees, and students)	6,489	9,436	14,712	8,576
Unknown (clerical error)	34,420	5,897	1,658	18,477
Total	**292,050**	**307,311**	**296,886**	**299,427**

[a]These standard DOD codes are applicable to all services.

[b]DOD's accounting system changed in 1988. Civilian executives and directors are no longer counted under this category.

Table I.24: Composition of DOD Officer Personnel by Occupational Code

Figures in percentages

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
General officers/ executives [b]	2.0	1.4	0.6	1.6
Tactical operating officers	31.3	38.9	40.8	35.7
Intelligence officers	3.6	4.3	4.5	4.0
Engineer/maintenance officers	16.4	14.8	13.3	15.4
Scientists and professionals	5.3	4.9	4.6	5.1
Health care specialists	11.1	13.0	15.1	12.3
Administrators	11.2	10.4	7.3	10.5
Supply, procurement, and allied officers	5.1	7.2	8.3	6.4
Nonoccupational (patients, prisoners, trainees, and students)	2.2	3.1	5.0	2.9
Unknown (clerical error)	11.8	1.9	0.6	6.2
Total	**100.0**	**100.0**	**100.0**	**100.0**

[a]These standard DOD codes are applicable to all services.

[b]DOD's accounting system changed in 1988. Civilian executives and directors are no longer counted under this category.

Discharges of Homosexuals

The following tables contain discharge data by race, gender, and rank for each service and the services combined. Tables II.1 through II.20 present the total numbers of involuntary discharges and the percentage of homosexuals discharged for each service and the services combined for the 11 years we reviewed. Tables II.21 through II.24 present the numbers of discharged homosexuals and percentages by occupational code for the services combined and for enlisted and officer personnel.

Table II.1: Army Discharges by Race, Gender, and Rank

			Homosexual discharges						
			Race			Gender		Rank	
Fiscal year	Involuntary discharges[a]	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	43,465	409	313	79	17	270	139	404	5
1981	45,531	414	320	76	18	267	147	410	4
1982	50,795	454	351	85	18	321	133	449	5
1983	47,895	391	298	80	13	242	149	389	2
1984	45,874	478	389	76	13	284	194	478	0
1985	35,959	454	372	66	16	301	153	453	1
1986	37,050	491	371	98	22	352	139	489	2
1987	34,355	348	271	59	18	241	107	348	0
1988	33,124	276	214	47	15	186	90	274	2
1989	33,562	301	239	51	11	200	101	296	5
1990	34,605	219	176	32	11	147	72	216	3
Total	**442,215**	**4,235**	**3,314**	**749**	**172**	**2,811**	**1,424**	**4,206**	**29**
Average	40,201	385	301	68	16	256	129	382	3

[a]Discharges for failure to meet minimum behavioral/performance criteria.

Table II.2: Composition of Army Discharges by Race, Gender, and Rank

Figures in percentages

		Homosexual discharges						
		Race			Gender		Rank	
Fiscal year	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	0.9	76.5	19.3	4.2	66.0	34.0	98.8	1.2
1981	0.9	77.3	18.4	4.3	64.5	35.5	99.0	1.0
1982	0.9	77.3	18.7	4.0	70.7	29.3	98.9	1.1
1983	0.8	76.2	20.5	3.3	61.9	38.1	99.5	0.5
1984	1.0	81.4	15.9	2.7	59.4	40.6	100.0	0
1985	1.3	81.9	14.5	3.5	66.3	33.7	99.8	0.2
1986	1.3	75.6	20.0	4.5	71.7	28.3	99.6	0.4
1987	1.0	77.9	17.0	5.2	69.3	30.7	100.0	0
1988	0.8	77.5	17.0	5.4	67.4	32.6	99.3	0.7
1989	0.9	79.4	16.9	3.7	66.4	33.6	98.3	1.7
1990	0.6	80.4	14.6	5.0	67.1	32.9	98.6	1.4
Average	1.0	78.3	17.7	4.1	66.4	33.6	99.3	0.7

Table II.3: Gender of Army Discharges by Race

		White		Black		Other	
Fiscal year	Homosexual discharges	Male	Female	Male	Female	Male	Female
1980	409	196	117	66	13	8	9
1981	414	193	127	63	13	11	7
1982	454	245	106	162	23	14	4
1983	391	165	133	67	13	10	3
1984	478	212	177	66	10	6	7
1985	454	238	134	52	14	11	5
1986	491	257	114	79	19	16	6
1987	348	189	82	35	24	17	1
1988	276	138	76	38	9	10	5
1989	301	150	89	40	11	10	1
1990	219	118	58	22	10	7	4
Total	**4,235**	**2,101**	**1,213**	**590**	**159**	**120**	**52**
Average	385	191	110	54	14	11	5

Table II.4: Male and Female Army Discharges by Race

Figures in percentages

	White		Black		Other	
Fiscal year	Male	Female	Male	Female	Male	Female
1980	47.9	28.6	16.1	3.2	2.0	2.2
1981	46.6	30.7	15.2	3.1	2.7	1.7
1982	54.0	23.3	13.7	5.1	3.1	0.9
1983	42.2	34.0	17.1	3.3	2.6	0.8
1984	44.4	37.0	13.8	2.1	1.3	1.5
1985	52.4	29.5	11.5	3.1	2.4	1.1
1986	52.3	23.2	16.1	3.9	3.3	1.2
1987	54.3	23.6	10.1	6.9	4.9	0.3
1988	50.0	27.5	13.8	3.3	3.6	1.8
1989	49.8	29.6	13.3	3.7	3.3	0.3
1990	53.9	26.5	10.0	4.6	3.2	1.8
Average	49.6	28.6	13.9	3.8	2.8	1.2

Table II.5: Navy Discharges by Race, Gender, and Rank

			Homosexual discharges						
			Race			Gender		Rank	
Fiscal year	Involuntary discharges[a]	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	18,334	973	872	74	27	857	116	970	3
1981	20,674	1,089	962	104	23	973	116	1,083	6
1982	25,054	1,111	974	107	30	952	159	1,105	6
1983	27,154	937	815	93	29	782	155	930	7
1984	26,409	888	746	107	35	765	123	885	3
1985	23,503	799	676	86	37	664	135	794	5
1986	25,111	735	611	93	31	600	135	727	8
1987	25,658	656	552	77	27	553	103	647	9
1988	27,320	498	415	69	14	423	75	488	10
1989	24,651	440	377	50	13	353	87	433	7
1990	18,514	512	445	58	9	427	85	505	7
Total	**262,382**	**8,638**	**7,445**	**918**	**275**	**7,349**	**1,289**	**8,567**	**71**
Average	23,853	785	677	83	25	668	117	779	6

[a]Discharges for failure to meet minimum behavioral/performance criteria.

Table II.6: Composition of Navy Discharges by Race, Gender, and Rank

Figures in percentages

		Homosexual discharges						
		Race			Gender		Rank	
Fiscal year	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	5.3	89.6	7.6	2.8	88.1	11.9	99.7	0.3
1981	5.3	88.3	9.6	2.1	89.3	10.7	99.4	0.6
1982	4.4	87.7	9.6	2.7	85.7	14.3	99.5	0.5
1983	3.5	87.0	9.9	3.1	83.5	16.5	99.3	0.7
1984	3.4	84.0	12.0	3.9	86.1	13.9	99.7	0.3
1985	3.4	84.6	10.8	4.6	83.1	16.9	99.4	0.6
1986	2.9	83.1	12.7	4.2	81.6	18.4	98.9	1.1
1987	2.6	84.1	11.7	4.1	84.3	15.7	98.6	1.4
1988	1.8	83.3	13.9	2.8	84.9	15.1	98.0	2.0
1989	1.8	85.7	11.4	3.0	80.2	19.8	98.4	1.6
1990	2.8	86.9	11.3	1.8	83.4	16.6	98.6	1.4
Average	3.3	86.2	10.6	3.2	85.1	14.9	99.2	1.0

Table II.7: Gender of Navy Discharges by Race

Fiscal year	Homosexual discharges	White		Black		Other	
		Male	Female	Male	Female	Male	Female
1980	973	764	108	69	5	24	3
1981	1,089	864	98	90	14	19	4
1982	1,111	823	151	100	7	29	1
1983	937	676	139	83	10	23	6
1984	888	639	107	95	12	31	4
1985	799	564	112	71	15	29	8
1986	735	492	119	83	10	25	6
1987	656	459	93	71	6	23	4
1988	498	348	67	67	2	8	6
1989	440	304	73	39	11	10	3
1990	512	367	78	54	4	6	3
Total	**8,638**	**6,300**	**1,145**	**822**	**96**	**227**	**48**
Average	785	573	104	75	9	21	4

Table II.8: Male and Female Navy Discharges by Race

Figures in percentages

Fiscal year	White		Black		Other	
	Male	Female	Male	Female	Male	Female
1980	78.5	11.1	7.1	0.5	2.5	0.3
1981	79.3	9.0	8.3	1.3	1.7	0.4
1982	74.1	13.6	9.0	0.6	2.6	0.1
1983	72.1	14.8	8.9	1.1	2.5	0.6
1984	72.0	12.0	10.7	1.4	3.5	0.5
1985	70.6	14.0	8.9	1.9	3.6	1.0
1986	66.9	16.2	11.3	1.4	3.4	0.8
1987	70.0	14.2	10.8	0.9	3.5	0.6
1988	69.9	13.5	13.5	0.4	1.6	1.2
1989	69.1	16.6	8.9	2.5	2.3	0.7
1990	71.7	15.2	10.5	0.8	1.2	0.6
Average	72.9	13.3	9.5	1.1	2.6	0.6

Table II.9: Air Force Discharges by Race, Gender, and Rank

		Homosexual discharges							
			Race			Gender		Rank	
Fiscal year	Involuntary discharges[a]	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	16,642	305	278	20	7	206	99	297	8
1981	17,177	239	211	24	4	168	71	221	18
1982	18,504	310	263	39	8	202	108	297	13
1983	18,339	341	289	44	8	254	87	335	6
1984	19,734	330	286	35	9	221	109	314	16
1985	17,719	289	243	39	7	206	83	282	7
1986	17,616	332	284	42	6	260	72	319	13
1987	14,518	279	230	39	10	208	71	265	14
1988	12,557	230	197	18	15	146	84	215	15
1989	10,967	198	162	21	15	133	65	189	9
1990	9,292	140	118	16	6	108	32	138	2
Total	**173,065**	**2,993**	**2,561**	**337**	**95**	**2,112**	**881**	**2,872**	**121**
Average	15,733	272	233	31	9	192	80	261	11

[a]Discharges for failure to meet minimum behavioral/performance criteria.

Table II:10: Composition of Air Force Discharges by Race, Gender, and Rank

Figures in percentages

		Homosexual discharges						
		Race			Gender		Rank	
Fiscal year	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	1.8	91.1	6.6	2.3	67.5	32.5	97.4	2.6
1981	1.4	88.3	10.0	1.7	70.3	29.7	92.5	7.5
1982	1.7	84.8	12.6	2.6	65.2	34.8	95.8	4.2
1983	1.9	84.8	12.9	2.3	74.5	25.5	98.2	1.8
1984	1.7	86.7	10.6	2.7	67.0	33.0	95.2	4.8
1985	1.6	84.1	13.5	2.4	71.3	28.7	97.6	2.4
1986	1.9	85.5	12.7	1.8	78.3	21.7	96.1	3.9
1987	1.9	82.4	14.0	3.6	74.6	25.4	95.0	5.0
1988	1.8	85.7	7.8	6.5	63.5	36.5	93.5	6.5
1989	1.8	81.8	10.6	7.6	67.2	32.8	95.5	4.5
1990	1.5	84.3	11.4	4.3	77.1	22.9	98.6	1.4
Average	1.7	85.6	11.3	3.2	70.6	29.4	96.0	4.0

Table II.11: Gender of Air Force Discharges by Race

Fiscal year	Homosexual discharges	White		Black		Other	
		Male	Female	Male	Female	Male	Female
1980	305	185	93	14	6	7	0
1981	239	144	67	21	3	3	1
1982	310	172	91	26	13	4	4
1983	341	212	77	37	7	5	3
1984	330	188	98	26	9	7	2
1985	289	165	78	35	4	6	1
1986	332	221	63	38	4	1	5
1987	279	165	65	35	4	8	2
1988	230	119	78	14	4	13	2
1989	198	104	58	18	3	11	4
1990	140	90	28	13	3	5	1
Total	**2,993**	**1,765**	**796**	**277**	**60**	**70**	**25**
Average	272	160	72	25	5	6	2

Table II.12: Male and Female Air Force Discharges by Race

Figures in percentages

Fiscal year	White		Black		Other	
	Male	Female	Male	Female	Male	Female
1980	60.7	30.5	4.6	2.0	2.3	0
1981	60.3	28.0	8.8	1.3	1.3	0.4
1982	55.5	29.4	8.4	4.2	1.3	1.3
1983	62.2	22.6	10.9	2.1	1.5	0.9
1984	57.0	29.7	7.9	2.7	2.1	0.6
1985	57.1	27.0	12.1	1.4	2.1	0.3
1986	66.6	19.0	11.4	1.2	0.3	1.5
1987	59.1	23.3	12.5	1.4	2.9	0.7
1988	51.7	33.9	6.1	1.7	5.7	0.9
1989	52.5	29.3	9.1	1.5	5.6	2.0
1990	64.3	20.0	9.3	2.1	3.6	0.7
Average	59.0	26.6	9.3	2.0	2.3	0.8

Table II.13: Marine Corps Discharges by Race, Gender, and Rank

			Homosexual discharges						
			Race			Gender		Rank	
Fiscal year	Involuntary discharges[a]	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	9,330	67	54	13	0	57	10	67	0
1981	12,622	75	49	21	5	58	17	75	0
1982	14,231	123	98	21	4	88	35	123	0
1983	15,309	146	110	30	6	98	48	146	0
1984	14,453	126	96	21	9	83	43	124	2
1985	10,596	118	95	19	4	85	33	118	0
1986	9,632	86	61	20	5	60	26	84	2
1987	8,516	97	76	17	4	66	31	96	1
1988	9,049	96	76	18	2	65	31	96	0
1989	7,969	58	42	8	8	39	19	57	1
1990	7,556	61	48	12	1	51	18	61	0
Total	**119,263**	**1,053**	**805**	**200**	**48**	**750**	**303**	**1,047**	**6**
Average	10,842	96	73	18	4	68	28	95	1

[a]Discharges for failure to meet minimum behavioral/performance criteria.

Table II.14: Composition of Marine Corps Discharges by Race, Gender, and Rank

Figures in percentages

		Homosexual discharges						
		Race			Gender		Rank	
Fiscal year	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	0.7	80.6	19.4	0	85.1	14.9	100.0	0
1981	0.6	65.3	28.0	6.7	77.3	22.7	100.0	0
1982	0.9	79.7	17.1	3.3	71.5	28.5	100.0	0
1983	1.0	75.3	20.5	4.1	67.1	32.9	100.0	0
1984	0.9	76.2	16.7	7.1	65.9	34.1	98.4	1.6
1985	1.1	80.5	16.1	3.4	72.0	28.0	100.0	0
1986	0.9	70.9	23.3	5.8	69.8	30.2	97.7	2.3
1987	1.1	78.4	17.5	4.1	68.0	32.0	99.0	1.0
1988	1.1	79.2	18.8	2.1	67.7	32.3	100.0	0
1989	0.7	72.4	13.8	13.8	67.2	32.8	98.3	1.7
1990	0.8	78.7	19.7	1.6	83.6	16.4	100.0	0
Average	0.9	76.4	19.0	4.6	71.2	28.8	99.4	0.6

Table II.15: Gender of Marine Corps Discharges by Race

Fiscal year	Homosexual discharges	White		Black		Other	
		Male	Female	Male	Female	Male	Female
1980	67	45	9	12	1	0	0
1981	75	35	14	20	1	3	2
1982	123	67	31	18	3	3	1
1983	146	67	43	26	4	5	1
1984	126	55	41	20	1	8	1
1985	118	70	25	13	6	2	2
1986	86	39	22	17	3	4	1
1987	97	48	28	14	3	4	0
1988	96	48	28	15	3	2	0
1989	58	24	18	7	1	8	0
1990	61	40	8	11	1	0	1
Total	**1,053**	**538**	**267**	**173**	**27**	**39**	**9**
Average	96	49	24	16	2	4	1

Table II.16: Male and Female Marine Corps Discharges by Race

Figures in percentages

Fiscal year	White		Black		Other	
	Male	Female	Male	Female	Male	Female
1980	67.2	13.4	17.9	1.5	0	0
1981	46.7	18.7	26.7	1.3	4.0	2.7
1982	54.5	25.2	14.6	2.4	2.4	0.8
1983	45.9	29.5	17.8	2.7	3.4	0.7
1984	43.7	32.5	15.9	0.8	6.3	0.8
1985	59.3	21.2	11.0	5.1	1.7	1.7
1986	45.3	25.6	19.8	3.5	4.7	1.2
1987	49.5	28.9	14.4	3.1	4.1	0
1988	50.1	29.2	15.6	3.1	2.1	0
1989	41.4	31.0	12.1	1.7	13.8	0
1990	65.6	13.1	18.0	1.6	0	1.6
Average	51.1	25.4	16.4	2.6	3.7	0.9

Table II.17: DOD Discharges by Race, Gender, and Rank

			Homosexual discharges						
			Race			Gender		Rank	
Fiscal year	Involuntary discharges[a]	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	87,771	1,754	1,517	186	51	1,390	364	1,738	16
1981	96,004	1,817	1,542	225	50	1,466	351	1,789	28
1982	108,584	1,998	1,686	252	60	1,563	435	1,974	24
1983	108,697	1,815	1,512	247	56	1,376	439	1,800	15
1984	106,470	1,822	1,517	239	66	1,353	469	1,801	21
1985	87,777	1,660	1,386	210	64	1,256	404	1,647	13
1986	89,409	1,644	1,327	253	64	1,272	372	1,619	25
1987	83,047	1,380	1,129	192	59	1,068	312	1,356	24
1988	82,050	1,100	902	152	46	820	280	1,073	27
1989	77,149	997	820	130	47	725	272	975	22
1990	69,967	932	787	118	27	733	199	920	12
Total	**996,925**	**16,919**	**14,125**	**2,204**	**590**	**13,022**	**3,897**	**16,692**	**227**
Average	90,630	1,538	1,284	200	54	1,184	354	1,517	21

[a]Discharges for failure to meet minimum behavioral/performance criteria.

Table II.18: Composition of DOD Discharges by Race, Gender, and Rank

Figures in percentages

		Homosexual discharges						
		Race			Gender		Rank	
Fiscal year	Homosexual discharges	White	Black	Other	Male	Female	Enlisted	Officer
1980	2.0	86.5	10.6	2.9	79.2	20.8	99.1	0.9
1981	1.9	84.9	12.4	2.8	80.7	19.3	98.5	1.5
1982	1.8	84.4	12.6	3.0	78.2	21.8	98.8	1.2
1983	1.7	83.3	13.6	3.1	75.8	24.2	99.2	0.8
1984	1.7	83.3	13.1	3.6	74.3	25.7	98.8	1.2
1985	1.9	83.5	12.7	3.9	75.7	24.3	99.2	0.8
1986	1.8	80.7	15.4	3.9	77.4	22.6	98.5	1.5
1987	1.7	81.8	13.9	4.3	77.4	22.6	98.3	1.7
1988	1.3	82.0	13.8	4.2	74.5	25.5	97.5	2.5
1989	1.3	82.2	13.0	4.7	72.7	27.3	97.8	2.2
1990	1.3	84.4	12.7	2.9	78.6	21.4	98.7	1.3
Average	1.7	83.5	13.0	3.5	77.0	23.0	98.7	1.3

Table II.19: Gender of DOD Discharges by Race

Fiscal year	Homosexual discharges	White		Black		Other	
		Male	Female	Male	Female	Male	Female
1980	1,754	1,190	327	161	25	39	12
1981	1,817	1,236	306	194	31	36	14
1982	1,998	1,307	379	206	46	50	10
1983	1,815	1,120	392	213	34	43	13
1984	1,822	1,094	423	207	32	52	14
1985	1,660	1,037	349	171	39	48	16
1986	1,644	1,009	318	217	36	46	18
1987	1,380	861	268	155	37	52	7
1988	1,100	653	249	134	18	33	13
1989	997	582	238	104	26	39	8
1990	932	615	172	100	18	18	9
Total	**16,919**	**10,704**	**3,421**	**1,862**	**342**	**456**	**134**
Average	1,538	973	311	169	31	41	12

Table II.20: Male and Female DOD Discharges by Race

Figures in percentages

Fiscal year	White		Black		Other	
	Male	Female	Male	Female	Male	Female
1980	67.8	18.6	9.2	1.4	2.2	0.7
1981	68.0	16.8	10.7	1.7	2.0	0.8
1982	65.4	19.0	10.3	2.3	2.5	0.5
1983	61.7	21.6	11.7	1.9	2.4	0.7
1984	60.0	23.2	11.4	1.8	2.9	0.8
1985	62.5	21.0	10.3	2.3	2.9	1.0
1986	61.4	19.3	13.2	2.2	2.8	1.1
1987	62.4	19.4	11.2	2.7	3.8	0.5
1988	59.4	22.6	12.2	1.6	3.0	1.2
1989	58.4	23.9	10.4	2.6	3.9	0.8
1990	66.0	18.5	10.7	1.9	1.9	1.0
Average	63.3	20.2	11.0	2.0	2.7	0.8

Table II.21: DOD-Wide Enlisted Personnel Discharged for Homosexuality by Occupational Code

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
Infantry, guncrews, and seamanship specialists	109	93	104	101
Electronic equipment repairers	124	85	92	103
Communications and intelligence specialists	173	133	104	149
Health care specialists	149	117	73	127
Other technical/allied specialists	31	19	17	25
Functional support and administration personnel	300	225	124	250
Electrical/Mechanical equipment repairers	243	208	116	195
Craftsmen	40	37	24	37
Service and supply handlers	179	157	97	162
Nonoccupational (patients, prisoners, students, and trainees)	471	302	169	367
Unknown (clerical errors)	1	2	0	2
Total	**1,820**	**1,380**	**920**	**1,518**

[a]These standard DOD codes are applicable to all services.

Table II.22: Composition of DOD-Wide Enlisted Personnel Discharged for Homosexuality by Occupational Code

Figures in Percentages

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
Infantry, guncrews, and seamanship specialists	6.0	7.0	11.3	6.9
Electronic equipment repairers	6.8	6.5	10.0	7.0
Communications and intelligence specialists	9.5	10.2	11.3	10.0
Health care specialists	8.1	8.6	7.9	8.3
Other technical/allied specialists	1.7	1.5	1.8	1.6
Functional support and administration personnel	16.4	16.8	13.5	16.3
Electrical/mechanical equipment repairers	13.3	12.3	12.6	12.8
Craftsmen	2.2	2.8	2.6	2.5
Service and supply handlers	9.9	11.7	10.5	10.8
Nonoccupational (patients, prisoners, trainees, and students)	25.9	22.4	18.4	23.6
Unknown (clerical errors)	0.1	0.2	0	0.1
Total	**100.0**	**100.0**	**100.0**	**100.0**

[a]These standard DOD codes are applicable to all services.

Table II.23: DOD-Wide Officers Discharged for Homosexuality by Occupational Code

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
General officers/ executives	0	0	0	0
Tactical operating officers	3	4	3	4
Intelligence officers	1	2	0	2
Engineer/maintenance officers	3	2	1	2
Scientists and professionals	2	2	0	4
Health care specialists	3	3	3	3
Administrators	4	5	1	4
Supply, procurement, and allied officers	1	2	2	1
Nonoccupational (patients, prisoners, trainees, and students)	1	2	2	2
Unknown (clerical error)	3	1	0	4
Total	**21**	**23**	**12**	**26**

Table II.24: Composition of DOD-Wide Officers Discharged for Homosexuality by Occupational Code

Figures in percentages

	Fiscal year			
Occupational code (0-9)[a]	**1980-84 average**	**1985-89 average**	**1990**	**11-year average**
General officers/ executives	0	0	0	0
Tactical operating officers	15.4	19.8	25.0	18.3
Intelligence officers	5.7	9.5	0	6.9
Engineer/maintenance officers	15.5	8.8	8.3	11.8
Scientists and professionals	11.1	8.9	0	9.1
Health care specialists	12.7	14.3	25.0	14.6
Administrators	18.6	19.1	8.3	17.9
Supply, procurement, and allied officers	3.6	8.0	16.7	6.8
Nonoccupational (patients, prisoners, trainees, and students)	3.5	8.3	16.7	6.9
Unknown (clerical error)	14.0	3.3	0	8.0
Total	**100.0**	**100.0**	**100.0**	**100.0**

[a]These standard DOD codes are applicable to all services.

Comparison of Rates of Discharge With Rates of Representation

Tables III.1 through III.25 contain data on the rates of discharge and rates of representation by race, gender, and rank for each service and the services combined for the 11 years we reviewed. Tables III.26 and III.27 present these rates by occupational code for the combined services for enlisted and officer personnel for the 11 years we reviewed.

Table III.1: Comparison of Army Rates of Representation With Rates of Discharge for Homosexuality by Race

Figures in percentages

Fiscal year	Whites serving	White homosexual discharges	Blacks serving	Black homosexual discharges	Others serving	Other homosexual discharges
1980	62.3	76.5	29.6	19.3	8.1	4.2
1981	62.2	77.3	29.8	18.4	7.9	4.3
1982	62.7	77.3	29.5	18.7	7.9	4.0
1983	64.0	76.2	28.3	20.5	7.7	3.3
1984	65.2	81.4	27.5	15.9	7.2	2.7
1985	65.8	81.9	27.0	14.5	7.2	3.5
1986	65.8	75.6	26.8	20.0	7.4	4.5
1987	65.2	77.9	27.2	17.0	7.6	5.2
1988	64.5	77.5	27.6	17.0	7.9	5.4
1989	63.5	79.4	28.4	16.9	8.2	3.7
1990	62.5	80.4	29.1	14.6	8.5	5.0
Average	64.0	78.3	28.2	17.7	7.8	4.1

Table III.2: Comparison of Army Rates of Representation With Rates of Discharge for Homosexuality by Gender

Fiscal year	Males serving	Male homosexual discharges	Females serving	Female homosexual discharges
1980	91.1	66.0	8.9	34.0
1981	90.6	64.5	9.4	35.5
1982	90.6	70.7	9.4	29.3
1983	90.3	61.9	9.7	38.1
1984	90.1	59.4	9.9	40.6
1985	89.9	66.3	10.1	33.7
1986	89.6	71.7	10.4	28.3
1987	89.4	69.3	10.6	30.7
1988	89.2	67.4	10.8	32.6
1989	88.8	66.4	11.2	33.6
1990	88.6	67.1	11.4	32.9
Average	89.8	66.4	10.2	33.6

Table III.3: Comparison of Army Rates of Representation With Rates of Discharge for Homosexuality by Rank

Fiscal year	Enlisted serving	Enlisted homosexual discharges	Officers serving	Officer homosexual discharges
1980	87.2	98.8	12.8	1.2
1981	86.9	99.0	13.1	1.0
1982	86.7	98.9	13.3	1.1
1983	86.3	99.5	13.7	0.5
1984	86.1	100.0	13.9	0
1985	85.8	99.8	14.2	0.2
1986	85.8	99.6	14.2	0.4
1987	86.1	100.0	13.9	0
1988	86.0	99.3	14.0	0.7
1989	86.0	98.3	14.0	1.7
1990	85.6	98.6	14.4	1.4
Average	86.2	99.3	13.8	0.7

Table III.4: Comparison of Army Rates of Representation With Rates of Discharge for Homosexuality (Blacks and Whites by Gender)

Figures in percentages

	White males		White females		Black males		Black females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	57.3	47.9	5.1	28.6	26.4	16.1	3.2	3.2
1981	57.1	46.6	5.1	30.7	26.2	15.2	3.6	3.1
1982	57.6	54.0	5.1	23.3	25.8	13.7	3.7	5.1
1983	58.7	42.2	5.3	34.0	24.5	17.1	3.8	3.3
1984	59.8	44.4	5.5	37.0	23.7	13.8	3.8	2.1
1985	60.3	52.4	5.5	29.5	23.0	11.5	4.0	3.1
1986	60.2	52.3	5.6	23.2	22.7	16.1	4.1	3.9
1987	59.6	54.3	5.6	23.6	22.9	10.1	4.3	6.9
1988	58.9	50.0	5.6	27.5	23.1	13.8	4.5	3.3
1989	57.9	49.8	5.6	29.6	23.5	13.3	4.9	3.7
1990	56.9	53.9	5.5	26.5	24.0	10.0	5.1	4.6
Average	58.6	49.6	5.4	28.6	24.2	13.9	4.1	3.8

Table III.5: Comparison of Army Rates of Representation With Rates of Discharge for Homosexuality ("Other" Races by Gender)

Figures in percentages

	Other males		Other females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	7.5	2.0	0.6	2.2
1981	7.3	2.7	0.6	1.7
1982	7.2	3.1	0.7	0.9
1983	7.0	2.6	0.7	0.8
1984	6.6	1.3	0.6	1.5
1985	6.6	2.4	0.6	1.1
1986	6.7	3.3	0.7	1.2
1987	6.9	4.9	0.7	0.3
1988	7.1	3.6	0.7	1.8
1989	7.4	3.3	0.8	0.3
1990	7.6	3.2	0.8	1.8
Average	7.1	2.8	0.7	1.2

Table III.6: Comparison of Navy Rates of Representation With Rates of Discharge for Homosexuality by Race

Figures in percentages

Fiscal year	Whites serving	White homosexual discharges	Blacks serving	Black homosexual discharges	Others serving	Other homosexual discharges
1980	81.2	89.6	10.4	7.6	8.4	2.8
1981	80.6	88.3	10.8	9.6	8.6	2.1
1982	80.2	87.7	11.2	9.6	8.5	2.7
1983	79.7	87.0	11.6	9.9	8.8	3.1
1984	79.2	84.0	11.9	12.0	8.9	3.9
1985	78.8	84.6	12.2	10.8	9.0	4.6
1986	77.8	83.1	12.8	12.7	9.4	4.2
1987	76.6	84.1	13.6	11.7	9.8	4.1
1988	75.8	83.3	14.3	13.9	9.9	2.8
1989	74.3	85.7	15.3	11.4	10.4	3.0
1990	73.2	86.9	15.9	11.3	10.9	1.8
Average	77.9	86.2	12.8	10.6	9.3	3.2

Table III.7: Comparison of Navy Rates of Representation With Rates of Discharge for Homosexuality by Gender

Figures in percentages

Fiscal year	Males serving	Male homosexual discharges	Females serving	Female homosexual discharges
1980	93.4	88.1	6.6	11.9
1981	92.6	89.3	7.4	10.7
1982	92.2	85.7	7.8	14.3
1983	91.7	83.5	8.3	16.5
1984	91.4	86.1	8.6	13.9
1985	90.9	83.1	9.1	16.9
1986	90.8	81.6	9.2	18.4
1987	90.9	84.3	9.1	15.7
1988	90.6	84.9	9.4	15.1
1989	90.3	80.2	9.7	19.8
1990	90.0	83.4	10.0	16.6
Average	91.3	85.1	8.7	14.9

Table III.8: Comparison of Navy Rates of Representation With Rates of Discharge for Homosexuality by Rank

Figures in percentages

Fiscal year	Enlisted serving	Enlisted homosexual discharges	Officers serving	Officer homosexual discharges
1980	87.9	99.7	12.1	0.3
1981	87.7	99.4	12.3	0.6
1982	87.6	99.5	12.4	0.5
1983	87.4	99.3	12.6	0.7
1984	87.7	99.7	12.3	0.3
1985	87.5	99.4	12.5	0.6
1986	87.5	98.9	12.5	1.1
1987	87.7	98.6	12.3	1.4
1988	87.6	98.0	12.4	2.0
1989	87.7	98.4	12.3	1.6
1990	87.4	98.6	12.6	1.4
Average	87.6	99.2	12.4	0.8

Table III.9: Comparison of Navy Rates of Representation With Rates of Discharge for Homosexuality (Blacks and Whites by Gender)

Figures in percentages

	White males		White females		Black males		Black females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	75.7	78.5	5.5	11.1	9.5	7.1	0.9	0.5
1981	74.5	79.3	6.0	9.0	9.8	8.3	1.0	1.3
1982	74.0	74.1	6.2	13.6	10.1	9.0	1.2	0.6
1983	73.1	72.1	6.5	14.8	10.2	8.9	1.3	1.1
1984	72.6	72.0	6.6	12.0	10.4	10.7	1.5	1.4
1985	72.0	70.6	6.8	14.0	10.5	8.9	1.7	1.9
1986	71.1	66.9	6.7	16.2	11.0	11.3	1.8	1.4
1987	70.2	70.0	6.4	14.2	11.7	10.8	1.9	0.9
1988	69.3	69.9	6.5	13.5	12.3	13.5	2.1	0.4
1989	67.8	69.1	6.6	16.6	13.0	8.9	2.3	2.5
1990	66.6	71.7	6.6	15.2	13.5	10.5	2.4	0.8
Average	71.5	72.9	6.4	13.3	11.1	9.5	1.7	1.1

Table III.10: Comparison of Navy Rates of Representation With Rates of Discharge for Homosexuality ("Other" Races by Gender)

Figures in percentages

	Other males		Other females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	8.1	2.5	0.3	0.3
1981	8.2	1.7	0.4	0.4
1982	8.1	2.6	0.4	0.1
1983	8.3	2.5	0.5	0.6
1984	8.4	3.5	0.5	0.5
1985	8.4	3.6	0.6	1.0
1986	8.7	3.4	0.7	0.8
1987	9.0	3.5	0.7	0.6
1988	9.1	1.6	0.8	1.2
1989	9.5	2.3	0.9	0.7
1990	9.9	1.2	1.0	0.6
Average	8.7	2.6	0.6	0.6

Table III.11: Comparison of Air Force Rates of Representation With Rates of Discharge for Homosexuality by Race

Figures in percentages

Fiscal year	Whites serving	White homosexual discharges	Blacks serving	Black homosexual discharges	Others serving	Other homosexual discharges
1980	79.0	91.1	14.1	6.6	6.9	2.3
1981	78.6	88.3	14.4	10.0	7.0	1.7
1982	78.2	84.8	14.8	12.6	7.0	2.6
1983	78.3	84.8	14.8	12.9	6.9	2.3
1984	78.4	86.7	14.7	10.6	6.8	2.7
1985	78.4	84.1	14.9	13.5	6.8	2.4
1986	78.3	85.5	15.0	12.7	6.6	1.8
1987	78.3	82.4	15.1	14.0	6.7	3.6
1988	78.1	85.7	15.2	7.8	6.7	6.5
1989	78.2	81.8	15.1	10.6	6.7	7.6
1990	78.0	84.3	15.3	11.4	6.7	4.3
Average	78.3	85.6	14.9	11.3	6.8	3.2

Table III.12: Comparison of Air Force Rates of Representation With Rates of Discharge for Homosexuality by Gender

Figures in percentages

Fiscal year	Males serving	Male homosexual discharges	Females serving	Female homosexual discharges
1980	89.2	67.5	10.8	32.5
1981	88.9	70.3	11.1	29.7
1982	88.9	65.2	11.1	34.8
1983	88.9	74.5	11.1	25.5
1984	88.8	67.0	11.2	33.0
1985	88.4	71.3	11.6	28.7
1986	87.9	78.3	12.1	21.7
1987	87.5	74.6	12.5	25.4
1988	87.1	63.5	12.9	36.5
1989	86.5	67.2	13.5	32.8
1990	86.1	77.1	13.9	22.9
Average	88.0	70.6	12.0	29.4

Table III.13: Comparison of Air Force Rates of Representation With Rates of Discharge for Homosexuality by Rank

Figures in percentages

Fiscal year	Enlisted serving	Enlisted homosexual discharges	Officers serving	Officer homosexual discharges
1980	82.3	97.4	17.7	2.6
1981	82.4	92.5	17.6	7.5
1982	82.4	95.8	17.6	4.2
1983	82.2	98.2	17.8	1.8
1984	82.1	95.2	17.9	4.8
1985	81.8	97.6	18.2	2.4
1986	81.9	96.1	18.1	3.9
1987	82.2	95.0	17.8	5.0
1988	81.6	93.5	18.4	6.5
1989	81.7	95.5	18.3	4.5
1990	81.2	98.6	18.8	1.4
Average	82.0	96.0	18.0	4.0

able III.14: Comparison of Air Force Rates of Representation With Rates of Discharge for Homosexuality (Blacks and /hites by Gender)

igures in percentages

	White males		White females		Black males		Black females	
iscal year	**Serving**	**Homosexual discharges**	**Serving**	**Homosexual discharges**	**Serving**	**Homosexual discharges**	**Serving**	**Homosexual discharges**
980	70.7	60.7	8.3	30.5	12.3	4.6	1.8	2.0
981	70.1	60.3	8.5	28.0	12.5	8.8	1.9	1.3
982	69.9	55.5	8.3	29.4	12.8	8.4	2.0	4.2
983	70.0	62.2	8.3	22.6	12.7	10.9	2.1	2.1
984	70.1	57.0	8.3	29.7	12.5	7.9	2.2	2.7
985	69.8	57.1	8.5	27.0	12.5	12.1	2.4	1.4
986	69.5	66.6	8.8	19.0	12.5	11.4	2.5	1.2
987	69.4	59.1	8.9	23.3	12.3	12.5	2.8	1.4
988	68.8	51.7	9.3	33.9	12.5	6.1	2.8	1.7
989	68.5	52.5	9.7	29.3	12.2	9.1	2.9	1.5
990	68.0	64.3	9.9	20.0	12.3	9.3	3.0	2.1
verage	69.5	59.0	8.8	26.6	12.5	9.3	2.4	2.0

able III.15: Comparison of Air Force ates of Representation With Rates of ischarge for Homosexuality ("Other" aces by Gender)

Figures in percentages

	Other males		Other females	
Fiscal year	**Serving**	**Homosexual discharges**	**Serving**	**Homosexual discharges**
1980	6.2	2.3	0.7	0
1981	6.3	1.3	0.7	0.4
1982	6.2	1.3	0.7	1.3
1983	6.2	1.5	0.7	0.9
1984	6.1	2.1	0.7	0.6
1985	6.0	2.1	0.7	0.3
1986	5.9	0.3	0.8	1.5
1987	5.9	2.9	0.8	0.7
1988	5.8	5.7	0.8	0.9
1989	5.8	5.6	0.9	2.0
1990	5.8	3.6	0.9	0.7
Average	6.0	2.3	0.8	0.8

Table III.16: Comparison of Marine Corps Rates of Representation With Rates of Discharge for Homosexuality by Race

Figures in percentages

Fiscal year	Whites serving	White homosexual discharges	Blacks serving	Black homosexual discharges	Others serving	Other homosexual discharges
1980	71.6	80.6	20.6	19.4	7.8	0
1981	72.4	65.3	20.3	28.0	7.4	6.7
1982	73.3	79.7	19.7	17.1	7.0	3.3
1983	74.5	75.3	18.8	20.5	6.7	4.1
1984	75.0	76.2	18.3	16.7	6.7	7.1
1985	74.3	80.5	18.7	16.1	7.1	3.4
1986	73.5	70.9	18.9	23.3	7.6	5.8
1987	72.7	78.4	19.1	17.5	8.2	4.1
1988	72.0	79.2	19.2	18.8	8.8	2.1
1989	71.5	72.4	19.2	13.8	9.3	13.8
1990	71.1	76.4	19.1	19.0	7.8	4.6
Average	72.9	76.4	19.3	19.0	7.8	4.6

Table III.17: Comparison of Marine Corps Rates of Representation With Rates of Discharge for Homosexuality by Gender

Figures in percentages

Fiscal year	Males serving	Male homosexual discharges	Females serving	Female homosexual discharges
1980	96.4	85.1	3.6	14.9
1981	96.0	77.3	4.0	22.7
1982	95.7	71.5	4.3	28.5
1983	95.4	67.1	4.6	32.9
1984	95.3	65.9	4.7	34.1
1985	95.1	72.0	4.9	28.0
1986	95.0	69.8	5.0	30.2
1987	95.1	68.0	4.9	32.0
1988	95.1	67.7	4.9	32.3
1989	95.1	67.2	4.9	32.8
1990	95.3	83.6	4.7	16.4
Average	95.4	71.2	4.6	28.8

Table III.18: Comparison of Marine Corps Rates of Representation With Rates of Discharge for Homosexuality by Rank

Figures in percentages

Fiscal year	Enlisted serving	Enlisted homosexual discharges	Officers serving	Officer homosexual discharges
1980	90.3	100.0	9.7	0
1981	90.4	100.0	9.6	0
1982	90.2	100.0	9.8	0
1983	89.8	100.0	10.2	0
1984	89.6	98.4	10.4	1.6
1985	89.8	100.0	10.2	0
1986	89.8	97.7	10.2	2.3
1987	89.9	99.0	10.1	1.0
1988	89.8	100.0	10.2	0
1989	89.8	98.3	10.2	1.7
1990	89.9	100.0	10.1	0
Average	89.9	99.4	10.1	0.6

Table III.19: Comparison of Marine Corps Rates of Representation With Rates of Discharge for Homosexuality (Blacks and Whites by Gender)

Figures in percentages

	White males		White females		Black males		Black females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	69.0	67.2	2.6	13.4	19.9	17.9	0.8	1.5
1981	69.5	46.7	2.8	18.7	19.4	26.7	0.9	1.3
1982	70.2	54.5	3.1	25.2	18.7	14.6	1.0	2.4
1983	71.3	45.9	3.3	29.5	17.8	17.8	1.0	2.7
1984	71.7	43.7	3.3	32.5	17.2	15.9	1.1	0.8
1985	70.9	59.3	3.4	21.2	17.5	11.0	1.2	5.1
1986	70.1	45.3	3.4	25.6	17.7	19.8	1.2	3.5
1987	69.4	49.5	3.3	28.9	17.9	14.4	1.2	3.1
1988	68.8	50.0	3.2	29.2	18.0	15.6	1.3	3.1
1989	68.4	41.4	3.1	31.0	17.8	12.1	1.3	1.7
1990	68.2	65.6	2.9	13.1	17.7	18.0	1.3	1.6
Average	69.8	51.1	3.1	25.4	18.1	16.4	1.1	2.6

Table III.20: Comparison of Marine Corps Rates of Representation With Rates of Discharge for Homosexuality ("Other" Races by Gender)

Figures in percentages

	Other males		Other females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	7.6	0	0.2	0
1981	7.1	4.0	0.3	2.7
1982	6.7	2.4	0.3	0.8
1983	6.4	3.4	0.3	0.7
1984	6.4	6.3	0.3	0.8
1985	6.7	1.7	0.3	1.7
1986	7.2	4.7	0.4	1.2
1987	7.8	4.1	0.4	0
1988	8.3	2.1	0.4	0
1989	8.9	13.8	0.5	0
1990	9.3	0	0.5	1.6
Average	7.5	3.7	0.4	0.9

Table III.21: Comparison of DOD-Wide Rates of Representation With Rates of Discharge for Homosexuality by Race

Figures in percentages

Fiscal year	Whites serving	White homosexual discharges	Blacks serving	Black homosexual discharges	Others serving	Other homosexual discharges
1980	72.5	86.5	19.6	10.6	7.8	2.9
1981	72.4	84.9	19.8	12.4	7.8	2.8
1982	72.5	84.4	19.7	12.6	7.7	3.0
1983	73.1	83.3	19.3	13.6	7.7	3.1
1984	73.5	83.3	19.0	13.1	7.5	3.6
1985	73.5	83.5	18.9	12.7	7.5	3.9
1986	73.2	80.7	19.1	15.4	7.7	3.9
1987	72.6	81.8	19.4	13.9	8.0	4.3
1988	71.9	82.0	19.8	13.8	8.3	4.2
1989	71.2	82.2	20.3	13.0	8.5	4.7
1990	70.4	84.4	20.8	12.7	8.8	2.9
Average	72.5	83.5	19.6	13.0	7.9	3.5

Table III.22: Comparison of DOD-Wide Rates of Representation With Rates of Discharge for Homosexuality by Gender

Figures in percentages

Fiscal year	Males serving	Male homosexual discharges	Females serving	Female homosexual discharges
1980	91.6	79.2	8.4	20.8
1981	91.1	80.7	8.9	19.3
1982	91.0	78.2	9.0	21.8
1983	90.7	75.8	9.3	24.2
1984	90.5	74.3	9.5	25.7
1985	90.2	75.7	9.8	24.3
1986	89.9	77.4	10.1	22.6
1987	89.8	77.4	10.2	22.6
1988	89.6	74.5	10.4	25.5
1989	89.2	72.7	10.8	27.3
1990	89.0	78.6	11.0	21.4
Average	90.2	77.0	9.8	23.0

Table III.23: Comparison of DOD-Wide Rates of Representation With Rates of Discharge for Homosexuality by Rank

Figures in percentages

Fiscal year	Enlisted serving	Enlisted homosexual discharges	Officers serving	Officer homosexual discharges
1980	86.3	99.1	13.7	0.9
1981	86.2	98.5	13.8	1.5
1982	86.1	98.8	13.9	1.2
1983	85.8	99.2	14.2	0.8
1984	85.7	98.8	14.3	1.2
1985	85.5	99.2	14.5	0.8
1986	85.6	98.5	14.4	1.5
1987	85.8	98.3	14.2	1.7
1988	85.6	97.5	14.4	2.5
1989	85.7	97.8	14.3	2.2
1990	85.4	98.7	14.6	1.3
Average	85.8	98.7	14.2	1.3

Table III.24: Comparison of DOD-Wide Rates of Representation With Rates of Discharge for Homosexuality (Blacks and Whites by Gender)

Figures in percentages

	White males		White females		Black males		Black females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	66.7	67.8	5.8	18.6	17.6	9.2	2.0	1.4
1981	66.3	68.0	6.1	16.9	17.6	10.7	2.2	1.7
1982	66.5	65.4	6.1	19.0	17.4	10.3	2.3	2.3
1983	66.8	61.7	6.3	21.6	16.8	11.7	2.4	1.9
1984	67.2	60.0	6.4	23.2	16.5	11.4	2.5	1.8
1985	67.0	62.5	6.5	21.0	16.3	10.3	2.7	2.3
1986	66.6	61.4	6.6	19.3	16.3	13.2	2.8	2.2
1987	66.0	62.4	6.6	19.4	16.5	11.2	2.9	2.7
1988	65.3	59.4	6.6	22.6	16.8	12.2	3.1	1.6
1989	64.5	58.4	6.7	23.9	17.0	10.4	3.3	2.6
1990	63.7	66.0	6.7	18.5	17.4	10.7	3.4	1.9
Average	66.1	63.3	6.4	20.2	16.9	11.0	2.7	2.0

Table III.25: Comparison of DOD-Wide Rates of Representation With Rates of Discharge for Homosexuality ("Other" Races by Gender)

Figures in percentages

	Other males		Other females	
Fiscal year	Serving	Homosexual discharges	Serving	Homosexual discharges
1980	7.3	2.2	0.5	0.7
1981	7.2	2.0	0.6	0.8
1982	7.1	2.5	0.6	0.5
1983	7.1	2.4	0.6	0.7
1984	6.9	2.9	0.6	0.8
1985	6.9	2.9	0.6	1.0
1986	7.1	2.8	0.7	1.1
1987	7.3	3.8	0.7	0.5
1988	7.5	3.0	0.7	1.2
1989	7.7	3.9	0.8	0.8
1990	8.0	1.9	0.9	1.0
Average	7.3	2.7	0.7	0.8

Table III.26: Comparison of DOD-Wide Enlisted Personnel's Rates of Representation With Their Rates of Discharge for Homosexuality by Occupational Code

Figures in percentages

	Fiscal year											
Occupational code[a]	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Average
Unknown												
Serving	0.1	0.2	0.1	0.1	0.6	0.1	0.1	0	0	0	0	0.1
Discharged	0	0	0	0	0.3	0.2	0.4	0.2	0	0.2	0	0.1
0												
Serving	13.8	13.9	13.9	14.0	14.2	14.4	14.2	14.1	15.5	16.7	17.1	14.7
Discharged	5.6	5.5	6.3	5.9	6.6	7.5	6.7	6.6	5.8	8.2	11.3	6.7
1												
Serving	8.8	8.7	9.1	9.4	9.5	9.5	9.2	9.2	9.2	9.8	9.9	9.3
Discharged	7.6	6.7	7.0	6.4	6.3	6.8	5.3	5.2	6.6	8.8	10.0	6.8
2												
Serving	8.2	8.8	8.9	9.2	9.8	9.5	9.5	9.5	9.5	9.5	9.8	9.3
Discharged	7.2	9.3	9.4	11.1	10.5	9.2	9.4	9.2	11.6	11.5	11.3	9.8
3												
Serving	4.4	4.6	4.6	4.7	4.8	4.8	4.8	5.5	5.6	5.5	5.6	5.0
Discharged	6.6	8.3	9.9	8.1	7.8	9.5	9.6	7.6	8.9	7.4	7.9	8.4
4												
Serving	2.1	2.3	2.3	2.3	2.4	2.4	2.3	2.3	2.3	2.3	2.3	2.3
Discharged	1.7	1.6	2.2	1.8	1.4	1.8	1.2	1.2	1.3	1.8	1.8	1.6
5												
Serving	15.3	16.2	15.9	15.9	15.7	15.8	16.0	15.6	15.4	15.1	15.5	15.7
Discharged	15.2	15.8	16.4	18.0	16.8	15.8	18.2	18.2	17.0	14.9	13.5	16.5
6												
Serving	19.8	20.2	20.4	20.5	19.6	20.1	20.6	20.7	20.5	20.1	20.1	20.2
Discharged	13.1	13.5	13.8	12.6	13.7	11.6	11.2	12.7	14.1	12.0	12.6	12.8
7												
Serving	4.0	4.1	4.1	4.0	4.1	4.2	4.2	4.1	4.0	4.0	4.0	4.1
Discharged	1.9	2.2	2.1	2.1	2.7	2.6	2.9	2.9	2.2	3.4	2.6	2.5
8												
Serving	8.9	9.4	9.3	9.2	9.4	9.4	9.3	9.0	9.0	9.0	8.9	9.2
Discharged	9.6	9.3	9.4	10.8	10.2	12.3	12.5	10.4	11.6	11.8	10.5	10.7
9												
Serving	14.4	11.5	11.3	10.7	9.8	9.8	9.8	10.1	9.0	7.9	6.9	10.1
Discharged	31.6	27.7	23.5	23.3	23.6	22.8	22.6	25.7	20.9	20.0	18.4	24.2

(Table notes on next page)

[a]Occupational codes:

Unknown DOD does not know job code due to clerical error
0 Infantry, guncrews, and seamanship specialists
1 Electronic equipment repairers
2 Communications and intelligence specialists
3 Health care specialists
4 Other technical and allied specialists
5 Functional support and administration personnel
6 Electrical/mechanical equipment repairers
7 Craftsmen
8 Service and supply handlers
9 Nonoccupational (includes patients, prisoners, students, and trainees)

Table III.27: Comparison of DOD-Wide Officers' Rates of Representation With Their Rates of Discharge for Homosexuality by Occupational Code

Figures in percentages

	Fiscal year											
Occupational code[a]	**1980**	**1981**	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**Average**
Unknown												
Serving	12.1	12.2	11.9	11.7	11.0	3.2	3.2	2.8	0.1	0.2	0.6	6.2
Discharged	12.5	10.7	12.5	20.0	14.3	0	4.0	12.5	0	0	0	7.9
1												
Serving	2.0	2.0	2.0	2.0	1.9	1.9	2.0	2.1	0.6	0.6	0.6	1.6
Discharged	0	0	0	0	0	0	0	0	0	0	0	0
2												
Serving	31.2	31.2	31.2	31.2	31.9	37.5	37.5	36.7	41.8	41.2	40.8	35.7
Discharged	25.0	14.3	8.3	20.0	9.5	38.5	20.0	8.3	18.5	13.6	25.0	16.7
3												
Serving	3.6	3.6	3.6	3.6	3.7	4.1	4.1	4.2	4.4	4.5	4.5	4.0
Discharged	6.3	7.1	8.3	6.7	0	7.7	16.0	0	14.8	9.1	0	7.5
4												
Serving	26.0	16.4	16.4	16.6	16.6	15.6	15.7	15.6	13.5	13.6	13.3	15.4
Discharged	18.8	14.3	16.7	13.3	14.3	15.4	12.0	8.3	3.7	4.5	8.3	11.5
5												
Serving	5.3	5.3	5.3	5.4	5.4	5.4	5.3	5.1	4.4	4.4	4.6	5.1
Discharged	6.3	10.7	4.2	20.0	14.3	7.7	16.0	0	7.4	13.6	0	9.3
6												
Serving	11.2	11.0	11.0	11.0	11.1	11.2	11.3	13.5	14.4	14.6	15.1	12.3
Discharged	18.8	10.7	20.8	13.3	0	7.7	8.0	16.7	7.4	31.8	25.0	14.1
7												
Serving	11.6	11.3	11.1	11.0	10.8	12.9	12.8	11.4	7.6	7.4	7.3	10.5
Discharged	6.3	25.0	16.7	6.7	38.1	7.7	16.0	29.2	33.3	9.1	8.3	19.8

(continued)

Figures in percentages

	Fiscal year											
Occupational code[a]	**1980**	**1981**	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**Average**
8												
Serving	4.9	4.9	5.2	5.1	5.2	6.2	6.3	7.0	8.2	8.4	8.3	6.4
Discharged	6.3	3.6	8.3	0	0	15.4	4.0	16.7	3.7	0	16.7	6.2
9												
Serving	2.1	2.1	2.3	2.4	2.3	2.0	1.8	1.6	5.0	5.1	5.0	2.9
Discharged	0	3.6	4.2	0	9.5	0	4.0	8.3	11.1	18.2	16.7	7.0

[a]Occupational codes:

Unknown DOD does not know job code due to clerical error
1 General officers/executives
2 Tactical operating officers
3 Intelligence officers
4 Engineering and maintenance officers
5 Scientists and professionals
6 Health care specialists
7 Administrators
8 Supply, procurement, and allied officers
9 Nonoccupational (includes patients, prisoners, students, and trainees)

DOD-Wide Criminal Investigations

The following tables contain data concerning DOD criminal investigations. Tables IV.1 through IV.3 present the total number of investigations reported and the percentages of cases involving homosexuality reported by each service criminal investigative agency. Table IV.4 presents the averages of the total budgets and caseloads for each service investigative agency and investigative agency combined for the 5 years we reviewed.

Table IV.1: Total DOD-Wide Investigations (Total and Homosexual)

	Army CIC[a]		Navy NIS[b]		Air Force OSI[c]		DOD-wide	
Calendar year	**Total**	**Homosexual**	**Total**	**Homosexual**	**Total**	**Homosexual**	**Total**	**Homosexual**
1986	**11,455**	39	**21,125**	618	**4,480**	250	**37,066**	907
1987	**12,205**	45	**19,957**	632	**5,442**	278	**37,604**	955
1988	**13,384**	53	**19,456**	503	**6,087**	177	**38,927**	733
1989	**14,910**	42	**16,200**	380	**6,239**	174	**37,349**	596
1990	**12,940**	34	**17,638**	345	**4,860**	93	**35,435**	472
Total	**64,894**	213	**94,376**	2,478	**27,114**	972	**186,384**	3,663

[a]Criminal Investigative Command: (1) Data by calendar year; (2) in the vast majority of investigations, identification codes other than "homosexuality" are used; and (3) does not include all criminal cases involving homosexuality, only those in the data bank of the Criminal Records Center.

[b]Naval Investigative Service: (1) Data includes Navy and Marines and (2) data includes sodomy and indecent sexual acts committed by heterosexuals.

[c]Office of Special Investigations.

Table IV.2: Percentages of All Criminal Investigations Categorized as Investigations of Homosexuality

Calendar year	Army cases	Navy cases	Air Force cases	DOD cases
1986	0.3	2.9	5.6	2.4
1987	0.4	3.2	5.1	2.5
1988	0.4	2.6	2.9	1.9
1989	0.3	2.3	2.8	1.0
1990	0.3	2.0	1.9	1.3
Average	0.3	2.6	3.6	2.0

Table IV.3: Percentages of All DOD Investigations of Homosexuality Performed by Each Service

Calendar year	Army cases	Navy cases	Air Force cases
1986	4.3	68.1	27.6
1987	4.7	66.2	29.1
1988	7.2	68.6	24.1
1989	7.0	63.8	29.2
1990	7.2	73.1	19.7
Average	5.8	67.6	26.5

Table IV.4: DOD Investigation Budgets and Caseloads by Investigative Agency

Dollars in thousands

Calendar year	Budget	Percentage of change from previous year	Total caseload	Percentage of change from previous year
Army CID				
1986	$24,318	[a]	**11,455**	[a]
1987	29,358	20.7	**12,205**	6.5
1988	31,902	8.7	**13,384**	9.7
1989	32,310	1.3	**14,910**	11.4
1990	34,000	5.2	**12,940**	-13.2
Average		9.0		3.6
Navy NIS				
1986	32,362	[a]	**21,125**	[a]
1987	32,267	-0.3	**19,957**	-5.5
1988	33,769	4.7	**19,456**	-2.5
1989	34,736	2.9	**16,200**	-16.7
1990	34,913	0.5	**17,638**	8.9
Average		2.0		-4.0
Air Force OSI				
1986	21,100	[a]	**4,486**	[a]
1987	26,000	23.2	**5,442**	21.3
1988	27,000	3.8	**6,087**	11.9
1989	33,500	24.1	**6,239**	2.5
1990	41,800	24.8	**4,860**	-22.1
Average		19.0		3.4

[a]Data not available.

Average Years of Service and Pay Grades for Homosexuals Discharged

Tables V.1 through V.7 contain data on the average years of service (YOS) and pay grades of (PG) homosexuals discharged by race, gender, and rank for each service and the combined services for the 11 years we reviewed.

Table V.1: Army Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Race, Gender, and Rank

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1980												
YOS	2.0	2.1	2.3	2.2	1.7	**2.0**	5.6	0	1.4	5.6	1.4	**4.7**
PG	2.6	2.6	2.8	2.5	2.7	**2.6**	2.3	0	1.0	2.3	1.0	**2.0**
1981												
YOS	2.4	2.4	1.7	2.6	1.8	**2.3**	5.9	0	9.6	7.7	6.0	**6.8**
PG	2.9	2.7	2.3	2.8	2.8	**2.8**	2.0	0	1.0	1.5	2.0	**1.8**
1982												
YOS	2.6	2.8	2.1	2.8	2.1	**2.6**	3.9	0.4	0	1.5	9.8	**3.2**
PG	2.9	2.8	2.6	2.9	2.9	**2.9**	2.8	1.0	0	2.3	3.0	**2.4**
1983												
YOS	2.7	3.9	3.0	3.3	2.4	**2.9**	4.3	0	0	5.7	3.0	**4.3**
PG	3.1	3.4	3.3	3.2	3.1	**3.2**	2.5	0	0	3.0	2.0	**2.5**
1984												
YOS	2.1	3.3	1.9	2.5	2.0	**2.3**	0	0	0	0	0	**0**
PG	2.8	3.3	3.5	2.9	2.9	**2.9**	0	0	0	0	0	**0**
1985												
YOS	1.9	3.3	3.4	2.4	1.8	**2.2**	0.6	0	0	0	0.6	**0.6**
PG	2.6	3.2	3.1	2.7	2.9	**2.7**	1.0	0	0	0	1.0	**1.0**
1986												
YOS	1.9	3.2	1.8	2.3	1.9	**2.2**	4.9	1.8	0	0	3.4	**3.4**
PG	2.6	3.3	2.7	2.7	2.8	**2.7**	2.0	2.0	0	0	2.0	**2.0**
1987												
YOS	1.9	3.1	3.7	2.2	2.2	**2.2**	0	0	0	0	0	**0**
PG	2.6	3.0	3.3	2.6	2.9	**2.7**	0	0	0	0	0	**0**
1988												
YOS	2.1	4.1	2.7	2.4	2.7	**2.5**	2.8	0	0	4.1	1.4	**2.8**
PG	2.9	3.4	2.9	2.9	3.2	**3.0**	1.5	0	0	2.0	1.0	**1.5**
1989												
YOS	1.9	3.4	1.6	2.3	1.9	**2.2**	6.2	2.2	0	1.6	6.6	**4.6**
PG	2.6	3.4	2.5	2.7	2.8	**2.8**	2.7	1.5	0	2.0	2.3	**2.2**

(continued)

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1990												
YOS	2.7	2.7	2.5	2.7	2.6	**2.7**	10.6	0	5.0	17.6	4.3	**8.8**
PG	2.9	2.8	3.4	2.8	3.1	**2.9**[a]	3.5	0	3.0	4.0	3.0	**3.3**[b]

[a]Approximately $18,726.

[b]Approximately $57,698.

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9). The range for officers was $31,669 (O-1) to $94,326 (O-6).

Table V.2: Navy Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Race, Gender, and Rank

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1980												
YOS	2.1	2.5	2.2	2.2	1.8	**2.2**	2.3	0	0	2.3	0	**2.3**
PG	2.7	2.8	2.5	2.7	2.6	**2.7**	1.7	0	0	1.7	0	**1.7**
1981												
YOS	2.4	2.2	2.3	2.3	2.3	**2.3**	3.7	0	0	4.1	1.3	**3.7**
PG	2.9	2.4	2.6	2.8	2.9	**2.8**	2.3	0	0	2.6	1.0	**2.3**
1982												
YOS	2.4	2.7	3.3	2.5	2.3	**2.4**	4.3	2.3	0	5.2	1.4	**3.9**
PG	2.8	2.5	2.8	2.8	3.0	**2.8**	1.8	1.0	0	2.0	1.0	**1.7**
1983												
YOS	2.7	2.9	2.9	2.8	2.5	**2.7**	8.1	0	0	10.1	3.2	**8.1**
PG	3.0	2.9	3.0	2.9	3.1	**3.0**	2.6	0	0	2.8	2.0	**2.6**
1984												
YOS	2.8	2.8	2.8	2.9	2.4	**2.8**	2.2	0	0	2.2	0	**2.2**
PG	3.1	2.9	2.8	3.1	3.0	**3.1**	1.3	0	0	1.3	0	**1.3**
1985												
YOS	3.1	3.4	3.3	3.2	2.8	**3.1**	7.8	6.6	0	7.5	0	**7.5**
PG	3.2	3.0	3.1	3.1	3.3	**3.2**	3.0	3.0	0	3.0	0	**3.0**
1986												
YOS	3.0	3.4	2.6	3.1	2.8	**3.1**	4.9	0	0	5.1	4.9	**4.9**
PG	3.2	3.1	3.3	3.2	3.2	**3.2**	2.4	0	0	2.4	2.4	**2.4**

(continued)

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1987												
YOS	2.9	2.9	3.3	2.8	3.5	**2.9**	4.7	0	0	4.9	3.8	**4.7**
PG	3.1	3.0	3.2	3.1	3.4	**3.1**	2.1	0	0	2.0	2.5	**2.1**
1988												
YOS	3.1	3.0	3.9	3.1	3.5	**3.1**	7.8	1.8	0	7.7	2.5	**7.2**
PG	3.2	3.0	3.8	3.2	3.4	**3.2**	2.9	4.0	0	3.1	2.0	**3.0**
1989												
YOS	3.3	2.8	4.2	3.3	3.2	**3.3**	10.8	3.8	0	10.6	7.8	**9.8**
PG	3.2	2.7	3.8	3.2	3.2	**3.2**	2.3	2.0	0	2.8	1.0	**2.3**
1990												
YOS	2.9	3.0	2.2	2.9	2.8	**2.9**	3.6	0	2.6	3.8	1.5	**3.4**
PG	3.0	2.6	2.8	3.0	3.1	**3.0**[a]	2.0	0	2.0	2.2	1.0	**2.0**[b]

[a]Approximately $18,899.

[b]Approximately $42,973.

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9). The range for officers was $31,669 (O-1) to $94,326 (O-6).

Table V.3: Air Force Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Race, Gender, and Rank

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1980												
YOS	2.3	3.7	1.6	2.7	1.6	**2.4**	5.8	3.5	0	6.6	2.1	**5.5**
PG	2.8	2.8	2.7	2.9	2.5	**2.8**	2.4	2.0	0	2.8	1.0	**2.4**
1981												
YOS	2.8	3.1	1.8	3.2	1.8	**2.8**	6.7	1.3	0	7.8	1.5	**6.4**
PG	3.0	3.2	2.8	3.2	2.6	**3.0**	2.2	1.0	0	2.4	1.5	**2.2**
1982												
YOS	2.9	4.0	3.4	3.4	2.3	**3.0**	6.6	2.5	0	6.4	4.2	**5.9**
PG	3.1	3.4	3.1	3.2	3.0	**3.1**	2.2	1.0	0	2.0	2.0	**2.0**
1983												
YOS	3.2	3.1	3.5	3.4	2.5	**3.2**	5.7	0	0	6.3	2.8	**5.7**
PG	3.2	3.2	3.5	3.2	3.1	**3.2**	2.2	0	0	2.4	1.0	**2.2**

(continued)

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1984												
YOS	3.2	4.0	3.5	3.2	3.5	**3.3**	7.8	6.5	0	7.8	7.1	**7.7**
PG	3.3	3.5	3.1	3.2	3.4	**3.3**	2.1	2.0	0	2.1	2.3	**2.1**
1985												
YOS	3.7	3.8	3.5	4.0	2.8	**3.7**	6.8	0	0	7.6	5.0	**6.8**
PG	3.3	3.5	3.0	3.4	3.2	**3.3**	2.1	0	0	2.2	2.0	**2.1**
1986												
YOS	3.7	3.7	5.0	3.8	3.3	**3.7**	7.0	0	10.4	8.3	1.8	**7.3**
PG	3.3	3.3	4.0	3.3	3.3	**3.3**	2.2	0	2.0	2.2	2.0	**2.2**
1987												
YOS	4.0	4.0	3.3	4.1	3.4	**3.9**	7.2	4.7	0	7.7	1.8	**6.9**
PG	3.4	3.3	2.8	3.4	3.3	**3.4**	2.1	2.5	0	2.3	1.0	**2.1**
1988												
YOS	3.0	5.3	4.8	3.8	2.5	**3.3**	6.3	0	0	6.7	5.2	**6.3**
PG	3.1	3.8	3.5	3.5	2.8	**3.2**	1.9	0	0	1.8	2.3	**1.9**
1989												
YOS	4.0	5.0	3.9	4.6	3.0	**4.1**	8.2	0	0	7.3	15.8	**8.2**
PG	3.2	3.8	3.5	3.5	3.0	**3.3**	2.4	0	0	2.4	3.0	**2.4**
1990												
YOS	4.4	3.6	4.9	4.8	2.9	**4.4**	7.0	0	0	7.0	0	**7.0**
PG	3.4	3.0	3.5	3.5	3.0	**3.3**[a]	2.5	0	0	2.5	0	**2.5**[b]

[a]Approximately $19,869.

[b]Approximately $48,535.

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9). The range for officers was $31,669 (O-1) to $94,326 (0-6).

Table V.4: Marine Corps Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Race, Gender, and Rank

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1980												
YOS	2.5	1.8	0	2.4	2.5	**2.4**	0	0	0	0	0	**0**
PG	2.6	2.2	0	2.4	3.2	**2.5**	0	0	0	0	0	**0**
1981												
YOS	2.8	2.3	3.2	3.0	1.7	**2.7**	0	0	0	0	0	**0**
PG	2.8	2.3	3.0	2.7	2.4	**2.6**	0	0	0	0	0	**0**
1982												
YOS	2.7	2.0	3.1	2.8	2.2	**2.6**	0	0	0	0	0	**0**
PG	2.8	2.5	2.5	2.8	2.7	**2.8**	0	0	0	0	0	**0**
1983												
YOS	2.9	4.0	1.3	3.3	2.6	**3.1**	0	0	0	0	0	**0**
PG	2.9	3.3	2.2	2.9	3.0	**3.0**	0	0	0	0	0	**0**
1984												
YOS	3.2	3.3	2.2	3.2	3.0	**3.1**	4.2	0	0	7.1	1.3	**4.2**
PG	3.3	3.1	2.8	3.1	3.5	**3.3**	2.0	0	0	3.0	1.0	**2.0**
1985												
YOS	2.5	2.3	2.4	2.7	1.8	**2.4**	0	0	0	0	0	**0**
PG	2.8	2.9	3.3	2.9	2.7	**2.9**	0	0	0	0	0	**0**
1986												
YOS	3.4	3.3	1.8	3.2	3.3	**3.3**	14.0	0	0	14.0	0	**14.0**
PG	3.2	3.3	3.0	3.1	3.3	**3.2**	4.0	0	0	4.0	0	**4.0**
1987												
YOS	3.3	5.4	4.8	3.9	3.2	**3.7**	2.8	0	0	2.8	0	**2.8**
PG	3.1	3.8	3.3	3.2	3.2	**3.2**	1.0	0	0	1.0	0	**1.0**
1988												
YOS	2.5	3.3	3.0	2.5	2.9	**2.7**	0	0	0	0	0	**0**
PG	2.9	3.1	3.0	2.7	3.2	**2.9**	0	0	0	0	0	**0**
1989												
YOS	4.0	4.6	3.0	3.9	3.9	**3.9**	0.7	0	0	0.7	0	**0.7**
PG	3.4	3.6	2.6	3.3	3.4	**3.3**	1.0	0	0	1.0	0	**1.0**
1990												
YOS	3.3	3.1	1.2	3.3	3.2	**3.3**	0	0	0	0	0	**0**
PG	3.0	3.0	2.0	3.1	2.6	**3.0**[a]	0	0	0	0	0	**0**[b]

(Table notes on next page)

[a]Approximately $18,899.

[b]Zero dollars.

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9). The range for officers was $31,669 (O-1) to $94,326 (O-6).

Table V.5: DOD-Wide Personnel's Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Race, Gender, and Rank

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1980												
YOS	2.2	2.4	2.1	2.3	1.7	**2.2**	5.0	3.5	1.4	5.3	1.9	**4.6**
PG	2.7	2.6	2.6	2.7	2.6	**2.7**	2.2	2.0	1.0	2.4	1.0	**2.1**
1981												
YOS	2.4	2.4	2.1	2.5	2.0	**2.4**	5.9	1.3	9.6	6.9	2.7	**5.8**
PG	2.9	2.6	2.5	2.8	2.8	**2.8**	2.2	1.0	1.0	2.3	1.6	**2.1**
1982												
YOS	2.5	2.8	2.9	2.7	2.2	**2.6**	5.5	1.9	0	5.1	4.2	**4.9**
PG	2.9	2.7	2.8	2.9	2.9	**2.9**	2.2	1.0	0	2.1	1.8	**2.0**
1983												
YOS	2.8	3.4	2.8	3.0	2.5	**2.9**	6.7	0	0	8.0	3.0	**6.7**
PG	3.0	3.1	3.1	3.0	3.1	**3.1**	2.4	0	0	2.6	1.8	**2.4**
1984												
YOS	2.7	3.2	2.7	2.9	2.5	**2.8**	6.6	6.5	0	6.8	5.7	**6.6**
PG	3.1	3.1	3.0	3.1	3.1	**3.1**	2.0	2.0	0	2.0	2.0	**2.0**
1985												
YOS	2.8	3.4	3.3	3.1	2.4	**2.9**	6.6	6.6	0	7.5	3.5	**6.6**
PG	3.0	3.2	3.1	3.0	3.1	**3.1**	2.3	3.0	0	2.6	1.7	**2.4**
1986												
YOS	2.9	3.4	2.5	3.0	2.6	**2.9**	6.8	1.8	10.4	7.7	2.9	**6.8**
PG	3.0	3.2	3.1	3.1	3.1	**3.1**	2.4	2.0	2.0	2.4	2.0	**2.4**
1987												
YOS	2.9	3.4	3.5	3.0	3.0	**3.0**	6.0	4.7	0	6.5	2.8	**5.9**
PG	3.1	3.1	3.2	3.0	3.2	**3.1**	2.0	2.5	0	2.2	1.8	**2.1**
1988												
YOS	2.8	3.6	3.8	3.0	2.9	**3.0**	6.5	1.8	0	7.0	4.1	**6.4**
PG	3.1	3.2	3.3	3.1	3.1	**3.1**	2.2	4.0	0	2.4	2.0	**2.3**

(continued)

	Enlisted personnel						Officers					
	Race			Gender			Race			Gender		
Fiscal year	White	Black	Other	Male	Female	Total	White	Black	Other	Male	Female	Total
1989												
YOS	3.1	3.5	3.3	3.3	2.7	**3.1**	8.3	2.8	0	7.2	8.5	**7.6**
PG	3.1	3.2	3.2	3.1	3.0	**3.1**	2.4	1.7	0	2.4	2.0	**2.3**
1990												
YOS	3.1	3.0	2.9	3.2	2.7	**3.1**	5.7	0	3.8	6.0	3.4	**5.4**
PG	3.1	2.8	3.2	3.0	3.0	**3.0**[a]	2.4	0	2.5	2.4	2.3	**2.4**[b]

[a]Approximately $18,899.

[b]Approximately $47,423.

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9). The range for officers was $31,669 (O-1) to $94,326 (O-6).

Table V.6: DOD-Wide Enlisted Personnel's Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Occupational Code

	Occupational code[a]										
Fiscal year	Unknown	0	1	2	3	4	5	6	7	8	9
1980											
YOS	0	2.5	2.8	3.2	2.0	2.4	3.3	2.5	2.6	2.5	1.0
PG	0	2.8	3.6	3.2	2.6	3.2	3.2	3.3	3.0	2.8	1.7
1981											
YOS	0	2.7	3.3	2.7	2.8	3.6	3.3	2.5	3.5	2.5	1.1
PG	0	2.8	3.7	3.1	3.4	3.6	3.3	3.4	3.4	2.7	1.8
1982											
YOS	0	3.0	3.2	2.9	2.9	3.3	3.3	2.8	3.3	2.8	1.2
PG	0	2.9	3.7	3.2	3.3	3.3	3.3	3.2	3.1	3.0	1.8
1983											
YOS	0	3.4	3.6	3.4	3.2	3.7	3.7	3.0	3.3	3.2	1.3
PG	0	3.2	3.8	3.5	3.4	3.6	3.4	3.3	3.2	3.1	2.0
1984											
YOS	2.1	3.0	3.6	3.4	3.4	2.9	3.5	3.1	3.4	2.7	1.3
PG	2.7	3.1	3.7	3.5	3.5	3.6	3.5	3.4	3.3	2.9	2.1
1985											
YOS	1.1	2.3	3.9	3.5	3.3	3.8	4.0	3.6	3.3	3.1	1.2
PG	2.0	2.5	3.9	3.6	3.3	3.6	3.5	3.6	3.5	3.1	2.0

(continued)

	Occupational code[a]										
Fiscal year	Unknown	0	1	2	3	4	5	6	7	8	9
1986											
YOS	0.3	3.4	3.6	3.7	3.6	4.4	3.6	3.1	3.0	3.3	1.1
PG	1.5	3.1	3.8	3.5	3.5	3.8	3.5	3.4	3.2	3.0	1.9
1987											
YOS	3.4	3.1	3.7	3.3	3.4	3.2	4.3	3.4	3.5	3.7	1.2
PG	3.3	3.2	3.7	3.6	3.2	3.2	3.6	3.5	3.2	3.2	2.0
1988											
YOS	0	2.9	3.9	3.0	3.7	3.3	4.2	3.6	2.4	3.0	1.0
PG	0	3.2	3.9	3.2	3.4	3.6	3.6	3.7	2.8	3.0	2.0
1989											
YOS	1.2	2.9	3.3	4.0	3.8	5.3	4.1	3.5	4.0	3.4	0.9
PG	1.5	3.1	3.6	3.6	3.4	3.8	3.6	3.5	3.3	3.2	1.6
1990											
YOS	0	3.4	3.6	3.8	3.6	4.3	3.8	3.6	3.9	3.3	0.8
PG	0	3.3	3.6	3.4	3.2	3.0	3.3	3.5	3.5	3.2	1.5

[a]Occupational code:

Unknown DOD does not know job code due to clerical error
0 Infantry, guncrews, and seamanship specialists
1 Electronic equipment repairers
2 Communications and intelligence specialists
3 Health care specialists
4 Other technical and allied specialists
5 Functional support and administration
6 Electrical/mechanical equipment repairers
7 Craftsmen
8 Service and supply handlers
9 Nonoccupational (includes patients, prisoners, students, and trainees)

Note: In 1990, the average annual cost of maintaining an enlisted member on active duty ranged from $14,717 (pay grade E-1) to $54,356 (E-9).

Table V.7: DOD-Wide Officers' Average Years of Service and Pay Grades of Those Discharged for Homosexuality by Occupational Code

	Occupational code[a]									
Fiscal year	Unknown	1	2	3	4	5	6	7	8	9
1980										
YOS	2.4	0	5.2	1.9	4.3	8.3	6.4	3.5	2.9	0
PG	1.5	0	2.0	1.0	1.7	3.0	3.7	2.0	1.0	0
1981										
YOS	4.0	0	5.8	6.8	12.2	3.9	1.7	6.6	1.7	1.3
PG	2.0	0	2.0	1.5	3.3	2.7	2.3	1.9	1.0	1.0
1982										
YOS	1.9	0	7.5	5.7	3.5	3.8	4.7	6.0	3.2	3.2
PG	1.0	0	2.5	1.0	1.3	5.0	3.0	1.8	2.0	2.0
1983										
YOS	5.8	0	7.8	1.7	10.0	6.9	6.9	3.0	0	0
PG	1.3	0	2.7	1.0	2.5	3.0	3.5	2.0	0	0
1984										
YOS	2.2	0	6.1	0	11.4	5.5	0	7.6	0	3.6
PG	1.3	0	2.5	0	2.3	3.0	0	1.9	0	1.0
1985										
YOS	0	0	5.8	1.8	8.5	8.5	8.9	2.3	9.2	0
PG	0	0	2.8	1.0	2.0	5.0	1.0	1.0	2.5	0
1986										
YOS	0.8	0	7.1	10.0	8.5	6.1	2.1	7.8	4.4	2.7
PG	1.0	0	2.4	2.8	2.0	2.5	2.0	3.0	2.0	1.0
1987										
YOS	1.6	0	5.0	0	10.3	0	6.7	4.0	10.9	3.4
PG	1.0	0	3.0	0	3.5	0	2.5	1.7	2.3	1.5
1988										
YOS	0	0	10.2	2.5	12.8	13.7	3.0	5.5	2.7	4.1
PG	0	0	3.0	1.5	4.0	4.0	3.0	1.8	1.0	2.0
1989										
YOS	0	0	7.7	0.8	7.5	13.8	7.3	12.5	0	4.1
PG	0	0	2.7	1.0	2.0	3.7	2.3	3.0	0	1.3
1990										
YOS	0	0	9.7	0	2.0	0	6.9	1.5	2.0	3.5
PG	0	0	3.3	0	1.0	0	3.3	1.0	1.5	2.0

(Table notes on next page)

[a]Occupational code:

Unknown DOD does not know job code due to clerical error
1 General officers and executives
2 Tactical operations officers
3 Intelligence officers
4 Engineering and maintenance officers
5 Scientists and professionals
6 Health care specialists
7 Administrators
8 Supply, procurement, and allied officers
9 Nonoccupational (includes patients, prisoners, students, and trainees)

Note: In 1990, the average annual cost of maintaining an officer on active duty ranged from $31,669 (pay grade O-1) to $94,326 (O-6).

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Report to the Honorable
John W. Warner, U.S. Senate

June 1993

HOMOSEXUALS IN THE MILITARY

Policies and Practices of Foreign Countries

GAO/NSIAD-93-215

GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-253590

June 25, 1993

The Honorable John W. Warner
United States Senate

Dear Senator Warner:

In response to your request, we performed a review of the policies concerning homosexuals in the militaries of 25 foreign countries, and a more in-depth review of both the policies and practices in four of these countries. The four countries—Canada, Germany, Israel, and Sweden—allow homosexuals to serve in the military. For these four countries, we gathered detailed information on their military policies, including the evolution of these policies; compared the military policies to civilian laws; determined whether the practices of the armed services are consistent with their policies; and discussed the experiences each country has had concerning homosexuals in the military.

The Canadian, German, Israeli, and Swedish military policies and practices regarding homosexuals developed as the result of circumstances unique to each country. Factors such as the rights of homosexuals, societal attitudes towards homosexuals, and the military's role in society appear to have had an impact on each nation's experiences. Various officials we interviewed said that their country's experiences cannot necessarily be reproduced by another country; however, insights can be gained from their experiences.

Scope and Methodology

To obtain information on a broad range of foreign countries' laws, policies, and regulations governing the military service of homosexuals, we initially selected a sample of 29 countries which had active duty force levels over 50,000 in 1991. Four of the 29 countries did not wish to be included in this review or considered the issue too sensitive to address. For the remaining 25 countries, we obtained an official position on their laws, policies, and regulations concerning homosexuals in the armed services either through the U.S. embassies and foreign government officials in the respective countries or from the countries' embassies in Washington, D.C. We also held discussions with some of the countries' embassy officials to clarify their laws, policies, and regulations.

For our detailed review, we selected Canada, Germany, Israel, and Sweden because these countries allowed homosexuals to serve in the military and met certain criteria regarding their cultural heritage, the size of their

armed forces, and their recent combat or deployment experience. In addition, we attempted to include countries which represented a range of attitudes concerning homosexuality.

Our work in the four countries included discussions with mid- and senior-level military and government officials, former active duty military personnel, members of the reserve forces, representatives of veterans and homosexual advocacy groups, and academic experts. These groups provided a broad range of views concerning the treatment of homosexuals in the military. We also intended to talk to active duty officers and enlisted personnel at military headquarters and field units. However, of the four countries, only Sweden permitted us to interview active duty unit personnel. Nevertheless, our discussions with numerous other knowledgeable civilians and military personnel, representing a wide spectrum of opinions, gave us no indication that unit personnel would have provided a different perspective.

Appendix I discusses our scope and methodology in more detail. Appendix II describes the military policies concerning homosexuals for 21 of the 25 countries in our sample, including related information on the practices of some of the countries. Appendixes III through VI discuss the results of our in-depth review for the remaining four countries—Canada, Germany, Israel, and Sweden.

Background

Congress is currently debating the President's proposal to lift the ban on homosexuals in the U.S. armed forces. As part of this debate, Congress has expressed an interest in foreign countries' military policies and experiences concerning homosexuals.

The 25 countries included in our review represent a wide range of cultures, religions, forms of government, and geographic locations. The four countries selected for our more detailed review—Canada, Germany, Israel, and Sweden—generally reflect Western cultural values yet still provide a range of ethnic diversity. Germany and Sweden have ethnically homogeneous populations. Israel's population is diverse, with immigrants from all over the world. The largest ethnic groups in Canada are people with British or French backgrounds, or some combination of the two. However, almost one-third of the population has other ethnic backgrounds.

Each of the four countries reviewed in detail has active armed forces that exceed 50,000 military personnel and has been involved recently in regional conflicts, United Nations peacekeeping missions, or both. Of the countries selected, only Canada has an all-volunteer military force. Germany's military consists of 57 percent volunteer forces, and the remaining 43 percent are conscripted.[1] Israel's and Sweden's forces primarily consist of conscripted military personnel, although they do maintain a small volunteer corps. All four countries allow women to serve in some capacity. Canada is the least restrictive in this regard, allowing women to serve in combat and non-combat roles; Germany is the most restrictive, allowing women to serve in only the medical and music corps.

Policies permitting homosexuals to serve in the military in these countries have been in place for a period of time ranging from 8 months in Canada to 45 years in Israel.

Results in Brief

While many countries have no specific law or military regulation on homosexuals serving in the military, of the 25 countries in our sample, 11 have policies that do not permit homosexuals to serve in the military, and 11 have policies that do. Three of the countries do not have any laws, regulations, or policies that address this issue and did not provide information regarding homosexuals serving in the military. Other variables may affect the service of homosexuals in the military. For example, most countries set standards of conduct applicable to all military personnel. Also, some countries place restrictions on known homosexuals who serve.

Of the four countries we reviewed in more detail, Canada, Israel, and Sweden have policies of not discriminating against homosexuals in the military. Germany imposes restrictions on homosexual volunteers. In all four countries, military policies concerning homosexuals developed over time, reflecting changes in civilian law and societal attitudes toward homosexuals. Most military officials and advocacy group representatives said that the countries' practices toward homosexuals in the armed services were consistent with military policies.

Military officials in all four countries said that the presence of homosexuals in the military is not an issue and has not created problems in the functioning of military units. A key factor, they said, was that homosexuals are reluctant to openly admit their sexual orientation for a variety of reasons. For example, (1) sexuality is considered to be a private

[1]Conscription is the requirement for a person to enroll for compulsory service in the armed forces.

matter, (2) homosexuals fear discrimination or negative reactions from their peers or superiors if they reveal their sexual orientation, and (3) homosexuals do not see any advantage to openly identifying their homosexuality. Military officials from Canada, Israel, and Sweden said that, on the basis of their experience, the inclusion of homosexuals in the military is not a problem and has not adversely affected unit readiness, effectiveness, cohesion, or morale. In Germany, military officials told us that problems associated with homosexual military personnel are dealt with on a case-by-case basis and their service is restricted if necessary.

Policies Concerning the Military Service of Homosexuals in 25 Foreign Countries

Table 1 shows which countries do not permit homosexuals to serve and which do permit homosexuals to serve. The table also provides information on whether the country's military force consists of all volunteers, mostly conscripts, or some other combination of volunteers and conscripts. Volunteer forces generally are the source of career military personnel.

Table 1: Policies Concerning Military Service of Homosexuals in Foreign Countries

Country	Size of active force	Primary source of personnel	Policy allows homosexuals to serve[a]	Applicable laws, regulations, policies, and/or restrictions
Australia	68,000	All-volunteer	Yes	Military policy changed in Nov. 1992.
Belgium	85,000	Both[b]	Yes	No specific law/military reg.
Brazil	297,000	Both	No	No specific law/military reg.
Canada	78,000	All-volunteer	Yes	Prohibition lifted in October 1992.
Chile	92,000	Both	No	Civilian law applies.
Colombia	134,000	Both	No	Military code applies.
France	453,000	Both	Yes	No specific law/military reg.
Germany	476,000	Conscript Volunteer	Yes No	Civilian laws changed in 1969.
Greece	159,000	Conscript	No	Military reg. applies.
Hungary	87,000	Both	No	No specific law/military reg. Restrictions apply to volunteers.
Israel	141,000	Conscript	Yes	Military regulation on restrictions revoked in May 1993.
Italy	361,000	Conscript	No	Codified into law in 1985.
Japan	246,000	All-volunteer	[c]	No specific law/military reg.
Peru	105,000	Conscript	No	No specific law/military reg. on acceptance. Military code applies regarding discharge.
Poland	305,000	Conscript	[d]	No specific law/military reg.
Portugal	62,000	Both	Yes	Military laws modified in 1989.
Republic of Korea	600,000	Conscript	Yes	Military law applies.
Romania	201,000	Conscript	No	Civilian law applies.
South Africa	72,000	Both	[d]	No specific law/military reg.
Spain	257,000	Both	Yes	Civilian laws revised in 1985.
Sweden	53,000	Conscript	Yes	Civilian law/military policy.
The Netherlands	92,000	Both	Yes	No specific law/military reg. Military policy revised in 1974.
Turkey	579,000	Conscript	No	Military law applies.
United Kingdom	300,000	All-volunteer	No	Military law applies.
Venezuela	75,000	Both	No	Military law applies.

Note: Appendix II provides additional information concerning these military policies.

[a]When no specific law or regulation applies, the countries' officials informed us of the policy.

[b]The Belgium military is currently transitioning to an all-volunteer force.

[c]Japanese officials indicated the issue is handled on a case-by-case basis

[d]Officials did not provide detailed information to enable us to make this determination.

Military Policies Closely Reflect Civilian Laws in the Four Selected Countries

Military policies regarding homosexuals in Canada, Israel, and Sweden closely reflect civilian laws. In these three countries, military policies are consistent with civilian laws and regulations for homosexuals. In Germany, both civilian laws and military policies do not specifically address homosexuality. However, the court system has allowed the military to place restrictions on homosexuals.

Canada's constitution and laws have been interpreted by the courts to prohibit discrimination based on sexual orientation. On the basis of a court case which applied this interpretation to the military, the Canadian Forces recently revoked its policy prohibiting homosexuals from serving. Civilian anti-discrimination laws now apply to the military.

Israel's 1992 labor law prohibits discrimination against homosexuals in the workplace. Until May 1993, an Israeli military policy restricted known homosexuals from certain assignments in the military. Israel rescinded this policy and now places no restrictions on the recruitment, assignment, or promotion of homosexual soldiers and civilians due to their sexual inclination.

A 1987 Swedish law prohibits discrimination based on sexual orientation and makes it illegal for individuals to make derogatory comments about a person's homosexuality. The country's military policy concerning homosexuals parallels civilian law and prohibits discrimination against homosexuals.

The German constitution provides for basic civil rights and equality of all people, but German law does not specifically address sexual orientation. German military policy states that military personnel may be discharged for "suitability" reasons. Although the policy does not refer specifically to homosexuals, the military has interpreted the policy as applying to them. German courts have upheld this interpretation. As a result, the policy essentially gives the military flexibility in dealing with homosexuals by allowing the military to discipline or discharge a homosexual service member based on the individual's behavior, time in service, and status (conscript or volunteer).

Military Policies Concerning Homosexuals Have Evolved

In all four countries, military policies concerning homosexuals have developed over time. These policy changes were usually preceded by changes in civilian laws, reflecting the attitudes of the society at large. As society showed increased acceptance of homosexuals, the military tended to follow.

Canada has modified its military policy over the past 7 years to remove all restrictions on homosexuals. In 1986, the Canadian Forces began to reevaluate its policy of excluding homosexuals from the military. The review was prompted by the adoption of the equal rights provision of the country's new constitution. During this review, the military instituted an interim policy in 1988 that allowed homosexuals to serve, but with restrictions. In 1992, a court ruled that the military's policy concerning homosexuals was unconstitutional, and the military revoked its policy and removed all restrictions on homosexuals.

Germany's military policy has been modified over the past 24 years, although it does not grant homosexuals total equal rights. The German armed forces began permitting homosexuals to serve in 1969, when the penal code was revised to decriminalize homosexual acts[2] for males ages 21 and over. In 1987, Germany's Federal Administrative Court ruled that homosexual orientation alone was not sufficient grounds for revoking security clearances, and the military has since changed its policy accordingly. In 1990, this same German court found that the German military is justified in not allowing homosexuals to serve in leadership or educational positions.

Israel has no constitution or bill of rights; however, a number of basic laws, together, serve that purpose. The Israeli military has allowed homosexuals to serve since the country was founded in 1948. Under a 1983 military regulation, however, homosexuals were prohibited from serving in intelligence positions requiring top security clearances. The regulation also required identified homosexuals to undergo a psychological examination to determine their ability to serve. However, we were told that in practice these policies were never formally implemented. Recently, Israeli society has become more accepting of homosexuality and has increasingly recognized homosexual rights. Homosexual acts were decriminalized in 1988, and discrimination against homosexuals in the workplace was outlawed in 1992. In May 1993, the military adopted a policy that no restrictions will be placed on the

[2]Homosexual acts are defined differently depending on the country, but generally refer to sexual acts between same gender partners.

recruitment, assignment, or promotion of homosexuals due to their sexual inclination.

Sweden modified its military policies over a period of 11 years before arriving at the current policy of not discriminating against homosexuals. The military had automatically exempted homosexuals from military service until 1976. In 1979, when the National Board of Health and Welfare removed homosexuality from its Classification of Illnesses Handbook, the military stopped considering homosexuality as an illness. The military, however, continued to annotate the file records of homosexual individuals. This practice was halted in 1984 when a Parliamentary commission concluded that homosexuality must not disqualify an individual from serving in the armed forces. In 1987, Sweden passed its law prohibiting discrimination against homosexuals. The law also applies to the armed forces.

No Apparent Inconsistency Between Military Policies and Actual Practices Toward Homosexuals

Discussions with numerous government officials, private groups, and individuals indicated that military practices in Canada, Germany, Israel, and Sweden were consistent with military policies concerning homosexuals. In Canada and Sweden, military officials and others said the armed forces comply with their policies. Homosexual rights groups in Canada were satisfied with the military's policies and practices. While one homosexual rights group in Sweden believed that despite the military's anti-discrimination policy, homosexual officers may be denied career opportunities, the group could provide no supporting evidence. The other major Swedish homosexual rights group we interviewed did not believe homosexuals were discriminated against in the military.

German military officials said they deal with homosexuals on a case-by-case basis, in accordance with the flexibility provided under their policies. How each case is handled, they said, hinges on such factors as whether the individual is a conscript or volunteer, the individual's rank and time in service, and whether the individual exhibits homosexual orientation or engages in homosexual behavior. Depending on the circumstances, a homosexual soldier may not be punished at all, may be restricted from certain assignments, or may be disciplined in some other way. In practice, according to German military officials,

- homosexuals may serve as conscripts in the military if medical personnel determine during the induction screening that the individual's sexual

orientation does not prevent them from functioning effectively in a military environment;
- volunteers (officers and noncommissioned officers) who declare their homosexuality during induction are not accepted, and those already in military service may be removed from assignments involving leadership, training, and educational tasks; and
- individuals who engage in homosexual activity while on duty may be subjected to a range of disciplinary actions to include discharge.

While German military officials acknowledge that some of their policies and practices constitute discrimination, they believe this is justified in order to maintain good order and discipline in the armed forces.

According to military officials, Israel's practices toward homosexuals were less restrictive than its policies at the time of our review (before the current policy was instituted on May 18, 1993). For instance, according to military officials and others (including reserve officers), the 1983 regulation prohibiting the assignment of homosexuals to intelligence positions requiring security clearances was never formally implemented. According to officials, homosexuals were found to be capable of doing their jobs without problems, and therefore it did not make sense to enforce this regulation. With the recent revision of this policy, practices and policies are more consistent.

Few Homosexual Military Personnel Openly Identify Their Sexual Orientation

According to defense officials, military personnel, and representatives of homosexual advocacy groups, there are some openly homosexual military personnel in the armed forces of the four countries; however, homosexuals tend not to openly admit their sexual orientation. Military officials and others we talked to in all four countries said a central reason is that these countries consider a person's sexuality a private matter. Other reasons varied from country to country and included: (1) homosexuals fear discrimination or negative reactions from their peers or superiors if they reveal their sexual orientation; (2) younger soldiers who feel they may be homosexual may still be struggling with their sexual orientation; (3) homosexuals do not see any advantage to openly identifying their homosexuality; and (4) many service members serve in close proximity to their homes and can maintain their private lives.

Even though most homosexuals in the military do not openly identify their sexual orientation, some defense officials and others we interviewed said once a homosexual member of the armed forces has established a

professional reputation and gained the respect of coworkers, the person may feel more comfortable in revealing his or her sexual orientation to them. In Israel, for example, we talked to a number of reserve military personnel who said that on active duty they served openly as homosexuals, still received promotions, and were not restricted in their assignments.

Foreign Militaries Report No Adverse Effect Because Presence of Homosexuals Is Not an Issue

Military officials in Canada, Germany, Israel, and Sweden said that the presence of homosexuals has not created problems in the military because homosexuality is not an issue in the military or in society at large. We were told that a key reason the presence of homosexuals is not an issue in these countries' militaries is that few homosexual military personnel openly identify their sexual orientation, as discussed earlier. For example, a 1984 report on homosexuality by Sweden's Parliament stated that "the silence surrounding homosexuals and homosexuality is virtually total." Swedish military personnel at all levels agreed that this silence is pervasive in the military.

Military officials from each country said that, on the basis of their experience, the inclusion of homosexuals in their militaries has not adversely affected unit readiness, effectiveness, cohesion, or morale. For example, Israeli officials said that homosexuals have performed as well as heterosexuals and have served successfully in all branches of the military since 1948. In Canada, where problems in these areas were predicted, military officials said none had materialized since the revocation of the policy banning homosexuals. They attributed the lack of problems to the military leadership's support of the new policy and the military's ability to keep a low profile on the issue. German military officials said that their policies prevent problems because they allow for flexibility in dealing with homosexual individuals, and their service is restricted if necessary.

We are sending copies of this report to the Chairmen of the Senate and House Committees on Armed Services, to the Secretary of Defense, and to the Secretary of State. We will also make copies available to others on request.

This report was prepared under the direction of Mark E. Gebicke, Director, Military Operations and Capabilities Issues, who may be reached on (202) 512-5140 if you or your staff have any questions. Other major contributors to this report are listed in appendix VII.

Sincerely yours,

Frank C. Conahan
Assistant Comptroller General

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Abbreviations

DND	Department of National Defence
HIV	human immunodeficiency virus
IDF	Israeli Defense Force

Objectives, Scope, and Methodology

At the request of Senator John W. Warner, we performed a review of the policies concerning homosexuals in the militaries of 25 foreign countries, and a more in-depth review of the policies and practices in four of these countries to obtain a perspective of their experiences.

To obtain information on a broad range of foreign countries' laws, policies, and regulations governing the military service of homosexuals, we initially selected a sample of 29 countries which had active duty force levels over 50,000 in 1991. Four of the 29 countries did not wish to be included in this review or considered the issue too sensitive to address. For the remaining 25 countries, we obtained official information on their laws, policies, and regulations concerning homosexuals in the armed forces either through the U.S. embassies in the countries or from the countries' embassies in Washington, D.C. We also held discussions with some of the countries' embassy officials to clarify their laws, policies, and regulations.

In selecting the countries for a more detailed review of policies and practices, we attempted to capture a range of attitudes toward homosexuality. Other criteria we used included: (1) predominance of Western cultural values; (2) military forces exceeding 50,000; and (3) recent military combat and/or deployment experience (for example, participation in the Persian Gulf War, regional conflicts, or United Nations peacekeeping missions). On the basis of these criteria, we selected Canada, Germany, Israel, Sweden, and France. During the initial phases of our review, French government officials informed us that they did not wish to provide us information on this topic. As a result, we excluded France from the in-depth phase of this review.

We gathered detailed information on the military policies of Canada, Germany, Israel, and Sweden, including the evolution of these policies; compared the military policies to civilian laws; and determined whether the practices of the armed services are consistent with their policies. However, we did not attempt to describe the circumstances surrounding the development of these laws and policies. In addition, we discussed the experiences each country has had concerning homosexuals in the military with military personnel, veterans and homosexual advocacy group representatives, academics, and U.S. embassy personnel.

Canada, Germany, and Israel did not permit us to interview active duty unit personnel. They provided the following reasons:

- Canadian officials cited the recent change in policy and their intent to keep a low profile on the issue. They believed that the military leadership would have more flexibility in implementing this policy if the issue remained low-key.
- Germany's chief of protocol said that "an official visit to units would serve no purpose."
- Israeli officials said our presence could be a disruption and preferred to maintain a low profile on this issue. Israeli officials felt that homosexuals were not an issue in the military and wanted it to remain that way.

To obtain a list of credible government and military officials, homosexual and veterans advocacy groups, and academic sources to interview in each foreign country, we contacted

- the countries' Auditors General;
- U.S. government agencies, professional societies, and individual experts in a variety of fields, including the Congressional Research Service; the Army Research Institute; Walter Reed Army Hospital; the American Psychiatric Association; the American Sociological Society; the American Psychological Association; the American Ethnological Association; the American Anthropological Association; Lawrence Korb, a military analyst at the Brookings Institute; Charles Moskos, a military sociologist at Northwestern University; and Lieutenant General (Ret.) Bernard Trainor, Director of the National Security Program at Harvard University;
- public opinion polling experts, including World Association for Public Opinion Research, the Gallup Organization, and Roper Institute;
- U.S. veterans associations, including the American Legion, Veterans of Foreign Wars, Association of the United States Army, Noncommissioned Officers Association, Retired Officers Association, the Military Coalition, and the Air Force Association; and
- U.S. homosexual advocacy groups, including the Human Rights Campaign Fund, Campaign for Military Service, Military Freedom Initiative, International Gay and Lesbian Human Rights Commission, International Lesbian and Gay Association, National Gay and Lesbian Task Force, the Gay and Lesbian Foreign Service Association, and Federal Gay, Lesbian, and Bisexual Employees.

After we obtained a list of contacts for each country, we supplied the list to the respective U.S. embassy to verify the contacts' credibility within the country.

Specifically, we interviewed the following sources in each country:

Canada

In Canada, we interviewed officials from the U.S. embassy; the Department of National Defence's Personnel Policy Division; the Department of Justice's Human Rights Law Section; Canadian Human Rights Commission; the only open homosexual member of Parliament; a member of Parliament who belongs to the Progressive Conservative Party and is opposed to the new policy; the Canadian Auditor General; Statistics Canada, which tabulates government data; the Conference of Defence Associations, a veterans umbrella group, consisting of 22 organizations; Pink Triangle Services, a local homosexual advocacy group; and Equality for Gays and Lesbians Everywhere, the only national homosexual advocacy group. We also interviewed a cultural anthropologist from Criterion Research Corporation; Michelle Douglas, a former military officer whose court case forced the military to change its policy; a political scientist from the University of Toronto who specializes in homosexual rights; a political scientist from the University of Toronto who specializes in polling data; a representative from Gallup Canada, Inc.; and a military sociologist under contract to the U.S. Army Research Institute to analyze the impact of Canada's new policy on homosexuals.

In Washington, D.C., we interviewed the former Canadian Chief of the Defence Staff, the key military official responsible for implementing the court's decision to allow homosexuals to serve in the military.

Germany

In Germany, we interviewed representatives from the U.S. embassy; the Ministry of Defense's personnel, health, and legal divisions; the Department of the Navy; the Bundestag (the German Parliament); the Ministry of Justice; the Deutscher Bundeswehr Verband e.V., an association representing the views of active duty and retired members of the armed forces; the Catholic and Protestant churches; and the Schwulenverband in Deutschland and the Bundesverband Homosexualität, two homosexual advocacy groups in Germany. We also interviewed a professor conducting research for the U.S. Army Research Institute on Germany's military policy regarding homosexuals and a University of Frankfurt sexologist who is an expert on German sexuality and sociological trends.

Israel

In Israel, we interviewed officials from the U.S. embassy and the Israeli Defense Forces, including the Chief of Security, who was responsible for drafting the military's new regulation on homosexuals, and the head of the Mental Health Department; a member of the Israeli Knesset (equivalent to

the U.S. Congress) who has held public hearings on homosexuality in Israel; officials from the Society for the Protection of Personal Rights, the leading homosexual rights group in Israel; an attorney of the Association for Civil Rights in Israel, the country's primary civil rights group; the Director of the Israeli Institute for Military Studies, who was a former Chief Psychologist of the Israeli Defense Forces and is a specialist on cohesion and battlefield stress; the President of the Israel Psychological Association, the only body of professional psychologists in Israel; a pollster frequently used by the U.S. embassy; and a sociologist at the Jerusalem-based Israel Institute of Applied Social Research. Several Israelis we spoke with were either retired military officers or still in the reserves. In addition, we confidentially interviewed 11 homosexual and heterosexual reserve corps and retired Israeli Defense Forces military personnel to obtain first-hand information on their experience.

We attempted to identify organizations that oppose homosexuals in the Israeli military, but were told by several sources, including U.S. embassy officials, that there were none.

Sweden

In Sweden, we interviewed officials from the U.S. embassy and the Swedish Defense Personnel Division of the Joint Defense Staff and the National Services Administration Enrollment Office and Medical Board; senior military officers, 15 active duty unit-level officers and 27 conscripts at Air Force, Army, and Navy facilities; a member of Parliament from the Liberal Party who chairs the Parliamentary Commission on Registered Partnerships and is the former Director of the National Board of Health and Welfare; a member of Parliament from the Moderate Party who is the Vice-Chair of the Human Resource Council of the Swedish Defense; a member of Parliament from the Christian Democrat Party who opposes passage of legislation permitting registered partnerships; and an official from the Office of the Ombudsman Against Ethnic Discrimination. We also interviewed the President and other representatives of the Swedish Federation for Gay and Lesbian Rights, the most prominent advocacy group for gays, lesbians, and bisexuals; the President of Gay Moderaterna, an independent gay conservative organization that works both domestically and internationally to achieve equal rights for homosexuals; a social researcher with the Institute for Social Policy and the Department of Social Work of the University of Gothenburg; the Director of the Swedish Institute for Sexual Research; the Chairman and the Project Officer of the Central Council of Conscripts, whose members are elected by their peers to represent the conscripts before the Swedish Defense

Force; and the President of Noah's Ark-Red Cross Foundation, founded to work with the prevention of HIV disease and to support those who are HIV-infected.

Officials from the homosexual advocacy groups and the U.S. embassy were unable to identify any organizations that were opposed to the admission of homosexuals into the military. In addition, the homosexual advocacy groups were unable to locate retired or active duty homosexual military personnel who were willing to meet with us.

We conducted our review from March to May 1993 in accordance with generally accepted government auditing standards. We discussed the results of our review with U.S. officials at the Departments of State and Defense.

Foreign Countries' Policies on Homosexuals in the Military

Australia

Although the Australian Defence Force did not have an official ban on admittance of homosexuals into the military (upon entry, recruits were not questioned about their sexual orientation), a 1986 military policy provided guidance to commanding officers in handling cases where a member of the armed forces was identified as homosexual. Under this policy, when a soldier declared his or her homosexuality or was found to be homosexual, the soldier was discreetly asked to resign and usually complied. Otherwise, the service would initiate actions to terminate the individual's military career.

In November 1992, the Australian government ended this policy of prohibiting homosexuals from serving in the military. The new military policy on unacceptable sexual behavior applies to all service members regardless of sexual orientation. The policy states that the passage of human rights legislation, in particular the Sex Discrimination Act and the Human Rights and Equal Opportunity Commission Act, necessitated the development of a policy on unacceptable sexual behavior.

An embassy official told us that Australia does not have laws prohibiting sodomy that would have conflicted with implementing the new policy. Implementation of the new policy is the responsibility of individual commanders. We were told that command briefings were held throughout the chain of command to implement the new policy. Implementation is monitored routinely through the chain of command.

An Australian official stated that although it is too early to assess the results of the revised policy, no reported changes have occurred in the number of persons declaring his or her sexual preference or the number of recruits being inducted. Effects on unit cohesiveness have not yet been fully determined. However, early indications are that the new policy has had little or no adverse impact.

Belgium

Belgium has no laws or regulations regarding the service of homosexuals into the military. Embassy officials stated that in practice homosexuality does not constitute grounds for exclusion or dismissal from the Belgian armed forces unless there is evidence of a psychopathic disorder such as sexual perversion. During recruitment, the military does not ask an individual's sexual orientation. If homosexuality is discovered after enlistment, however, commanders may restrict the individual's duty assignments. For instance, limitations may be placed on the person's access to classified information, or the person may be excluded from

certain tasks or units. In addition, we were told improper sexual conduct among members of the armed forces is not tolerated.

Brazil

Although Brazilian law does not contain any specific reference to homosexuality, Brazilian embassy officials informed us that homosexuals who exhibit behavior which degrades the appropriate military decorum and military honor are barred from military service. Moreover, the Statute of the Military governs a pattern of behavior to be adhered to by all personnel while they are on and off duty. An individual found guilty of engaging in libidinous acts, including homosexual acts, while on duty or on base is considered to be in violation of the penal code and subject to punishment, including possible discharge.

Canada

Detailed information on Canadian policies and practices regarding homosexuals serving in the military is presented in appendix III.

Chile

The Chilean constitution does not specifically refer to sexual conduct or activities contrary to moral principles. However, article 365 of the civilian penal code declares sodomy a crime against family order and public morality punishable by imprisonment. Because sodomy is a crime under the civilian penal code, neither the code of military justice nor the internal regulations of the various armed services deal with this subject. Nonetheless, there exists a long-standing military policy that persons found to have "some kind of abnormal conduct or deviance, such as homosexuality, alcoholism, drug addiction . . .," are rejected for military service.

Colombia

Known homosexuals are excluded from serving in the Colombian military. Article 184 of Colombia's Code of Disciplinary Action for the Military Forces describes offenses against military honor, which is understood to be a combination of moral and professional qualities. Among the offenses identified in the disciplinary code is "to associate oneself with or maintain obvious relations with persons that have a previous criminal record or are considered criminals of whatever category or are antisocial like drug addicts, homosexuals, prostitutes, or pimps." Engaging in homosexual acts is considered to be an offense against military honor.

France

The French government informed us that there are no specific laws, regulations, or written policies which deal specifically with homosexuals serving in the French military. Officials did not provide additional information on homosexuals serving in their military. However, in 1992, we reported that although homosexuals serve in the French armed forces, certain restrictions may apply to an individual's duty assignments.[1]

Germany

Detailed information on German policies and practices regarding homosexuals serving in the military is presented in appendix IV.

Greece

According to military regulation, known homosexuals are barred from serving in the Greek armed forces. Upon initial screening, potential recruits are asked a series of questions to determine their suitability for service in the military. If an individual is found to have "psychosexual disorders," the term used for homosexuality, the recruit is considered unfit for service. After 2 years, the individual must return to the induction center for another evaluation. At that time, following a final screening, if an individual is still considered to be homosexual, the individual's military obligation is complete. Military personnel, including both officers and enlisted personnel, found to be engaging in homosexual acts while on active duty are discharged from the service on grounds of a "psychological disorder."

Hungary

Although Hungary has no specific laws on the acceptance of homosexuals into the armed forces, the Hungarian Ministry of Defense provided information that stated military personnel discovered to be homosexual may be discharged from the Hungarian Defense Forces. A conscript who claims to be a homosexual during the induction screening process is referred for a psychiatric evaluation. If the medical personnel declare an individual to be homosexual, that person is not considered qualified and receives an exemption.

If conscripts, who serve only 1 year, do not acknowledge their homosexuality during the induction screening process but are later discovered to be a homosexual, no effort is made to remove them from the military unless some other law is violated. In contrast, officers who are discovered to be homosexual are subject to dismissal. At least one officer was dismissed under this policy.

[1]Defense Force Management: DOD's Policy on Homosexuality (GAO/NSIAD-92-98, June 12, 1992).

Israel

Detailed information on Israeli policies and practices regarding homosexuals serving in the military is presented in appendix V.

Italy

Current law prohibits homosexuals from serving in the Italian armed services. Individuals who declare their homosexuality during the draft enrollment process, or whose pre-induction psychological interview indicates homosexuality, whether acknowledged by the conscript or not, are barred from entering military service. If a soldier's homosexuality is discovered after enrollment, the soldier is administratively declared unfit for service and discharged.

Japan

No written regulations or policies exist regarding service of homosexuals in the Japanese Defense Force. However, Japanese embassy officials said the lack of any written regulations or policies does not necessarily constitute acceptance of homosexuality in the military. On the contrary, within the overall Japanese society, homosexuality is a subject which is not openly discussed. Known homosexuals might not be selected to enter the military, according to Japanese government officials, and persons found engaging in homosexual activities while in the military could be reassigned.

Peru

Although Peru's military code does not specifically prohibit homosexuals from joining the armed services, military recruiters routinely reject those they suspect of being homosexual. In addition, under article 269 of the Military Code of Justice, officers found to have committed homosexual acts are to be discharged, while enlisted personnel are subject to discharge and a prison term. If the officer's offense includes violence, threats, or abuse of authority, or involves any other type of coercion, then the officer is also subject to a prison term.

Poland

Poland does not have any special laws, regulations, or policies regarding homosexuals in the armed services.

Portugal

Following the revision of military service laws in 1989, there no longer exists any regulation that prohibits homosexuals from serving in the Portuguese armed services. As a result, homosexuals are theoretically permitted to serve without any career restrictions or discrimination.

However, homosexuals who show signs of mental illness during the induction screening process may be excluded, according to Portuguese military officials.

Republic of Korea

Although Korea does not have specific laws on homosexuality, there are military and civilian laws governing sodomy and other sexual activities. Article 92 of the Korean Military Criminal Law prohibits certain sexual activity between soldiers, regardless of consent and regardless of whether the sexual activity is between two men, two women, or a man and a woman. If found in violation, persons are expelled from military service and are subject to a prison term. In contrast, civilian laws (articles 298, 299, and 245) which govern indecent sexual acts by force, sexual exploitation, and sexual acts in public apply only if no consensual agreement exists between the two people involved.

Recruits are not asked about their sexual orientation upon entry into service. An embassy official said it is a constitutional obligation for all healthy, able-bodied men to serve their country for a period of 2-1/2 years. Conscripts who declare their homosexuality are still required to serve. However, a commanding officer who knows of a conscript's sexual orientation may limit the soldier's duty assignments.

Romania

Under Romania's civil penal code, the practice of homosexuality is illegal. Homosexual acts in the military are punishable with a 1-to 5-year prison term. Further, if a member of the armed services declares that he is a practicing homosexual or is accused of engaging in homosexual acts, a trial is held to determine whether the civilian penal code had been violated. U.S. Department of State officials stated that because of the legal hurdles and complications, homosexuality is considered a non-issue in Romania's military.

South Africa

According to the South African Defence Force, there are no written laws, regulations, or policies regarding the service of homosexuals in the military.

Spain

Prior to the 1985 revision of civilian law to decriminalize homosexual activities, persons who committed improper sexual behavior would have been subject to a maximum penalty of a 6-year prison term. The Spanish

government no longer considers being homosexual a crime, but certain sexual behaviors are still subject to prosecution, according to current civilian laws. Sexual behavior which is subject to prosecution includes indecent exposure, engaging in sexual activities with minors or with mentally incapacitated persons, or any type of non-consensual sexual activities. Civilian laws apply to the behavior of both homosexuals and heterosexuals.

Sweden

Detailed information on Swedish policies and practices regarding homosexuals serving in the military is presented in appendix VI.

The Netherlands

Article 1 of the Constitution of the Netherlands prohibits discrimination on the basis of religion, convictions about life, political affiliation, race, sex, or on any other grounds. According to embassy officials, this includes sexual orientation. Other Dutch legislation elaborates on this principle. As a result, government policy, including military policy, explicitly prohibits unequal treatment based on the knowledge of an individual's sexual orientation. Individuals are to be judged on the basis of performance and conduct. Only when improper sexual behavior, heterosexual or homosexual, interferes with the proper performance of duties and discipline is action to be taken on the basis of Dutch military criminal and disciplinary law.

Upon entering military service, an individual is not asked questions relating to sexual orientation. If the individual discloses a homosexual orientation, this information is not recorded in the individual's files. Dutch officials told us that they do not consider it relevant to a soldier's ability to carry out his or her duties. For this reason, the number of homosexuals in the Dutch armed forces is not recorded. However, a September 1992 study by the Netherlands Institute for Social and Sexological Research showed that 0.9 percent of male military personnel and 3.5 percent of female military personnel regard themselves as homosexual.

A goal of the Dutch Ministry of Defence's policy is to actively create such conditions within the armed forces that every employee is able to function optimally. With regard to homosexuals, this involves enhancing their acceptance and integration in the armed forces. In 1991, the Ministry of Defence (1) initiated a policy that made awareness of homosexuality a subject of initial training and education programs for new recruits, (2) expanded the expertise of social workers in dealing with

homosexuality-related problems, and (3) expanded general information programs within the armed forces on the subject of the nondiscrimination policy of the Ministry of Defence. Furthermore, the Advisory and Coordination Committee on Homosexuals in the Armed Forces advises the Minister of Defence on subjects pertaining to homosexuality. Participating on this committee are representatives of the armed forces and the Directorate-General of Personnel.

Despite these efforts, the Ministry of Defence acknowledges that the goal of full integration has not been reached. While explicit discrimination has become rare, heterosexuals still tend to keep homosexual colleagues at a distance, thereby excluding them from the atmosphere of comradeship that is of importance for cohesion within military units. Homosexuals continue to keep their sexual orientation private to avoid adverse reactions from colleagues.

Dutch military officials have emphasized that acceptance of homosexuals within the military, while not complete, has reached a point that their presence rarely becomes an issue. Naval commanders have noted that homosexuals and heterosexuals on board ship are subject to the same standard of conduct, namely, that sexual contact of any kind is not permitted. Where this standard is not upheld, disciplinary action, usually a transfer of one or both individuals, is taken.

Turkey

The Turkish armed forces prohibits known homosexuals from serving. Homosexuality is regarded as immoral behavior, and military personnel discovered to be homosexuals are discharged from duty on charges of indecency, according to an article of the military penal code. The individual does not face further prosecution once this has occurred.

Traditional moral values governing Turkish social life do not tolerate homosexuality. The armed services view homosexuality as indecent behavior that degrades the honor, dignity, and credibility of the military.

United Kingdom

Under section 1 of the Sexual Offenses Act of 1967, an act of buggery or gross indecency between two, but no more, consenting males over age 21 in private ceased to be a criminal offense in the civil sector. However, such an act remains an offense under the service discipline acts—the Naval Discipline Act 1957, the Army Act 1955, and the Air Force Act 1955. Homosexuals committing such offenses are therefore excluded from

service in the United Kingdom's armed forces. (Lesbians are similarly excluded, although lesbianism is not, and never has been, a criminal offense in the United Kingdom.)

The service discipline acts are reviewed every 5 years. During the last review in 1991, the House of Commons Select Committee on the Armed Forces Bill recommended, and the Ministry of Defence accepted, that homosexual acts which are legal in civilian law should not constitute an offense under military law. Therefore, a member of the armed forces found to engage in a legal homosexual act will not be prosecuted under military law, but will be administratively discharged. However, a service member could still be prosecuted under military law if it is found that the act disgraced or discredited military decorum.

Upon entry into the British armed forces, the individual is provided a pamphlet entitled "The Armed Forces, Your Rights and Responsibilities." The pamphlet clearly states that homosexuality and homosexual behavior are not compatible with service life. Further, it states that if a person engages in homosexual acts, he or she may not be prosecuted under service law, depending upon the circumstances, but the person will be dismissed.

From approximately 1986 to 1991, 9 servicemen were dismissed from the Navy, 22 from the Army, and 8 from the Royal Air Force following conviction for an offense involving homosexual activity. Another 296 servicemen were discharged as a result of administrative action—no formal disciplinary charges were brought against them.

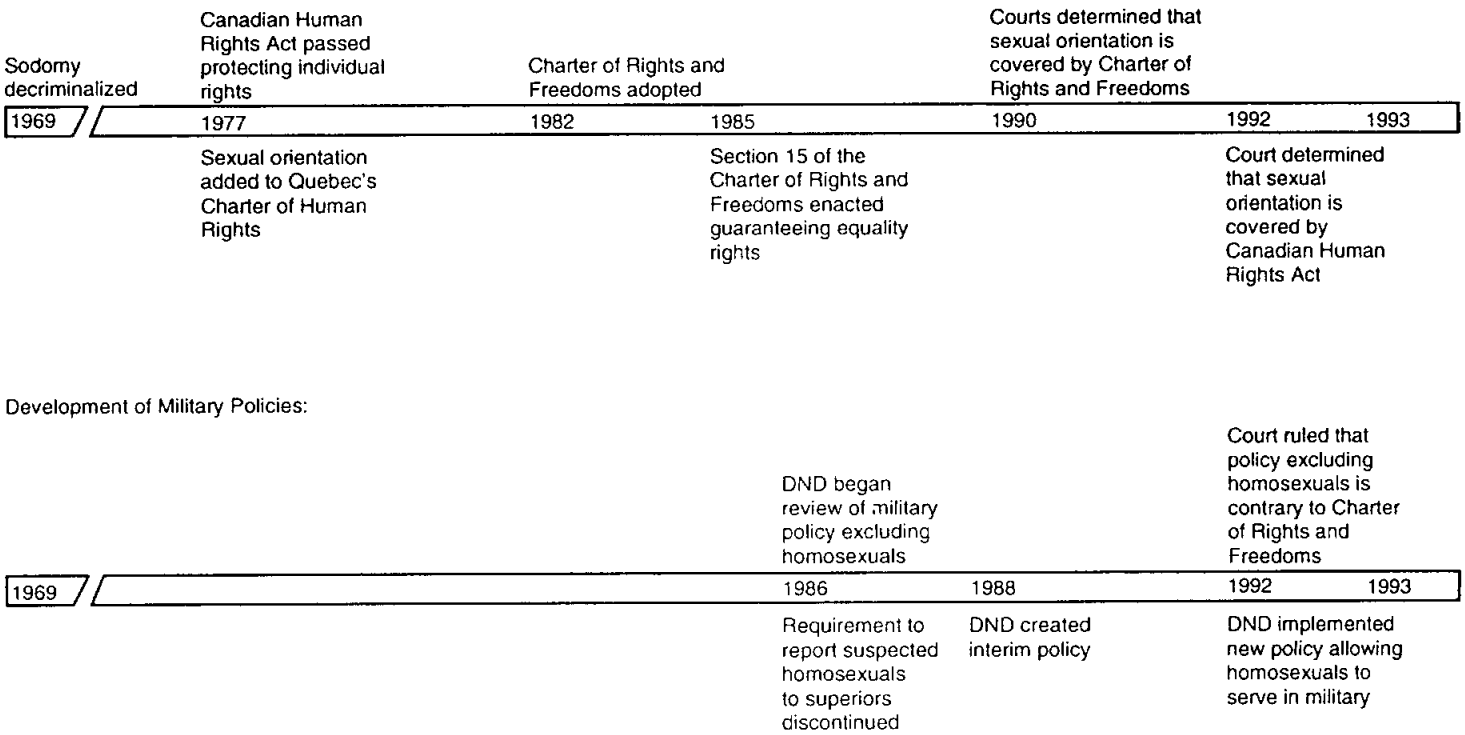
Venezuela

Regarding service of homosexuals in the military, Venezuelan officials responded, "The Military Legislation of the Venezuelan Armed Forces is clear and it does not admit homosexuals in the military."

Canada

Canada has only recently revoked its policy prohibiting homosexuals from serving in the military. While it is too early to predict the long-term consequences of lifting the ban, the military did not experience any problems in the first 6 months since the new policy took effect in October 1992, according to Canadian officials and others we interviewed. Department of National Defence (DND) officials believe the Canadian Forces has made a smooth transition in implementing the new policy because of the military leadership's active support and enforcement of the policy and because of steps taken to keep it a low-profile issue. In addition, the Canadian people had already acknowledged the rights of homosexuals in civilian law and perceived the change as bringing military policy in line with civilian laws. Figure III.1 summarizes the development of civilian and military policies concerning homosexuals.

Figure III.1: Development of Civilian and Military Policies in Canada



Background

According to the 1991 census, Canada has a population of approximately 27 million. The largest ethnic groups are people with British or French backgrounds, or some combination of the two. However, almost one-third of the population has other ethnic backgrounds. The majority of Canadians are either Roman Catholic or Protestant. While most Canadians report a religious affiliation, a much smaller proportion regularly attends church.

The Canadian Forces, an all-volunteer military force, consists of approximately 77,800 active forces and 33,700 reserves. Men constitute 86 percent of the force and women 14 percent. Women are permitted to serve in combat and noncombat positions. Military personnel can be assigned to one of the many military bases throughout the country and therefore do not necessarily serve close to their homes.

According to a Department of National Defence document, Canadian Forces are committed to 16 peacekeeping operations and 4 related operations. These operations involve the deployment of Canadian Forces personnel to a wide variety of countries, such as Cambodia, Cyprus, El Salvador, India, Jordan, Korea, Lebanon, Somali, and the former Yugoslavia.

Canadian Law Prohibits Discrimination on the Basis of Sexual Orientation

Canadians believe that equality is one of their basic values, and this belief is reflected in their constitution and legislation. Canada's laws provide protection of equality rights and prohibit discrimination on the basis of sexual orientation. Homosexual rights have developed over time, marked by the following key events:

- In August 1969, the Canadian government revised the criminal code to decriminalize sodomy.
- In August 1977, Parliament passed the Canadian Human Rights Act, which states that "race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for which a pardon has been granted are prohibited grounds of discrimination." The act does not specifically address sexual orientation.
- In December 1977, Quebec's provincial legislature added sexual orientation to its list of illegal grounds for discrimination in its Charter of Human Rights. Quebec thus became the first Canadian jurisdiction—federal, provincial, or municipal—to explicitly prohibit discrimination based on sexual orientation.

- In April 1982, Canada adopted the Charter of Rights and Freedoms as part of the country's constitution. Section 15, the equality rights provision of the Charter, went into effect in 1985.[1] The provision states: "Every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Like the Canadian Human Rights Act, section 15 does not specifically address sexual orientation.
- In February 1989, the Supreme Court of Canada ruled that section 15 was to be interpreted broadly, and that analogous grounds or other characteristics that form the basis for discriminating against a group or individual will be entitled to protection under the provision. In the few cases that have dealt with the issue, most courts have ruled that sexual orientation is an illegal basis for discrimination.
- In May 1990, the Federal Court of Appeal acknowledged in a court case that "it is the position of the Attorney General of Canada that sexual orientation is a ground covered by section 15 of the Charter [of Rights and Freedoms]."
- In August 1992, the Court of Appeal for Ontario determined that the Canadian Human Rights Act should be interpreted to include sexual orientation as an illegal basis of discrimination. As of May 1993, the Department of Justice was sponsoring a bill that would amend the act to include sexual orientation as an illegal basis of discrimination.

Although sexual orientation is an illegal basis for discrimination, Canada does not officially recognize homosexual marriages and adoptions, and does not recognize partner benefits for homosexual couples. However, as a result of the Ontario Court of Appeal decision, Department of Justice officials said that new court cases have been brought forward which challenge the government's stance on partner benefits.

Homosexuals Recently Allowed to Serve in the Military

Until recently, the Canadian Forces prohibited homosexuals from serving in the military. Its former policy stated: "Service policy does not allow homosexual members or members with a sexual abnormality to be retained in the Canadian Forces." The policy also required military personnel to report to their superiors other soldiers whom they suspected or discovered were homosexual. DND began to reevaluate its policy in 1986, and the policy was amended in 1988. In 1992, the Federal Court of Canada

[1]Parliament authorized the 3-year delay to allow governments time to bring their laws in line with the Charter.

declared that the Canadian Forces' policies restricting the service of homosexuals were contrary to the Charter of Rights and Freedoms. As a result, the Canadian Forces revoked its policies and removed all restrictions on homosexuals. Civilian anti-discrimination laws now apply to the military. DND officials said they are also revising related policies, including those concerning inappropriate sexual conduct, personal relationships, and harassment. According to these officials, the standards of conduct for homosexual members will be identical to those for heterosexual members.

According to DND officials, the Canadian Forces does not recognize homosexual marriages or extend partner benefits to homosexual couples. DND officials plan to make no changes to this policy until the civilian government resolves these issues.

Series of Events Led to the Lifting of the Ban on Homosexuals

Soon after section 15 of the Charter of Rights and Freedoms went into effect, a DND official said that a number of service members filed discrimination lawsuits against the Canadian Forces. In 1986, DND began to reexamine its exclusionary policy on homosexuals, initiating a series of steps that led to the revocation of the policy.

In February 1986, the Canadian Forces removed the requirement that military personnel report a suspected or known homosexual member of the Canadian Forces to their commanding officer. In January 1988, as DND continued to review its ban on homosexuals, it created an interim policy. The interim policy stated that

> administrative action might be taken to release a member of the Canadian Forces who acknowledges that he or she is a homosexual and the member concerned does not object to being released. If the member did not agree to be released he or she would be retained with career restrictions which, . . . would have meant [he or] she was ineligible for promotion, for conversion of [his or] her existing terms of service, for posting outside the geographic area, for transfer to the reserve force or for any further qualification courses or training except that required to carry out restricted employment.

In their policy review, DND officials confronted a number of concerns that had been raised about homosexuals serving in the military. These concerns fell into the following areas: security, health, unit cohesion and morale, privacy, recruitment, and discipline. The officials said that they were unable to justify continuing the ban on the basis of any of these concerns. For example:

- Concerns had been raised that homosexuals presented a security risk because they could be blackmailed on the basis of their sexual orientation. DND determined that homosexuals are not considered to be a greater security risk than heterosexuals. A DND official said that security classifications are now made on a case-by-case basis and that no assumptions are made about an individual's security risk based on sexual orientation.
- Another argument for the ban was that the presence of homosexuals would disrupt unit cohesion and morale. DND officials said that they could not find compelling statistical evidence or research data to support this view, which they felt was needed because the courts do not defer to military expertise or opinion.

On the basis of the policy review, the military's senior leadership concluded that the policy excluding homosexuals should change. In 1991, DND attempted to administratively revoke the policy, but a group from the Progressive Conservative Party of Parliament blocked the proposal.

On October 27, 1992, a Canadian court ruled in favor of a former military officer, a homosexual, who had claimed in a lawsuit that the Canadian Forces discriminated in discharging her on the basis of her sexual orientation. The court stated that the "[Canadian Forces'] policy and any interim policies that have evolved regarding service of homosexuals in the Canadian Armed Forces are contrary to the Charter [of Rights and Freedoms]." That same day, the Canadian Forces' Chief of the Defence Staff issued a statement supporting the court's decision.

Officials Said Practices Comply With New Policy

In accordance with the new policy, the Canadian Forces does not take any action when a soldier declares his or her sexual orientation, DND officials said. They also said no restrictions, such as limitations in assignments and promotion opportunities, are placed on the individual.

No Near-Term Problems Reported

We discussed the new policy with the only open homosexual member of Parliament; a member of the Progressive Conservative Party who disagrees with the new policy; two homosexual advocacy groups, one of which is the only national organization for homosexuals; a veteran's umbrella group consisting of 22 individual veterans organizations; the Canadian Human Rights Commission; the Department of Justice; as well as DND. All but the Progressive Conservative Party member favor the new policy, and all said they had received no reports of problems associated with it. Mass resignations, lower recruitment, morale and cohesiveness

problems, gay bashing incidents, and more open displays of homosexual behavior—the major problems that had been predicted—have not materialized, DND officials said. In addition, DND and the Canadian Human Rights Commission stated that no active duty members have brought the Canadian Forces to court for discrimination based on sexual orientation since the policy changed.

DND officials told us that they considered implementing the new policy in three phases. First, DND is obtaining compliance with the new policy, and second, DND is promoting acceptance of the policy. DND has not yet attempted the third phase, which is to change the attitudes of military personnel toward homosexuals. Homosexual advocacy groups stated that training was needed to change attitudes.

DND officials and representatives of homosexual advocacy groups said the greatest advantage to the new policy is that homosexuals no longer have to fear being discovered and forced out of the military. They also believe, however, that many homosexuals will not openly express their sexual orientation because they will see no advantage gained in doing so. A representative of a homosexual advocacy group said that because the military is a conservative organization, it attracts conservative homosexuals who would be less likely to be open about their sexual orientation. DND officials said that the new policy has not caused homosexual military personnel to "come out of the closet" in mass numbers.

Significant Factors in the Canadian Experience

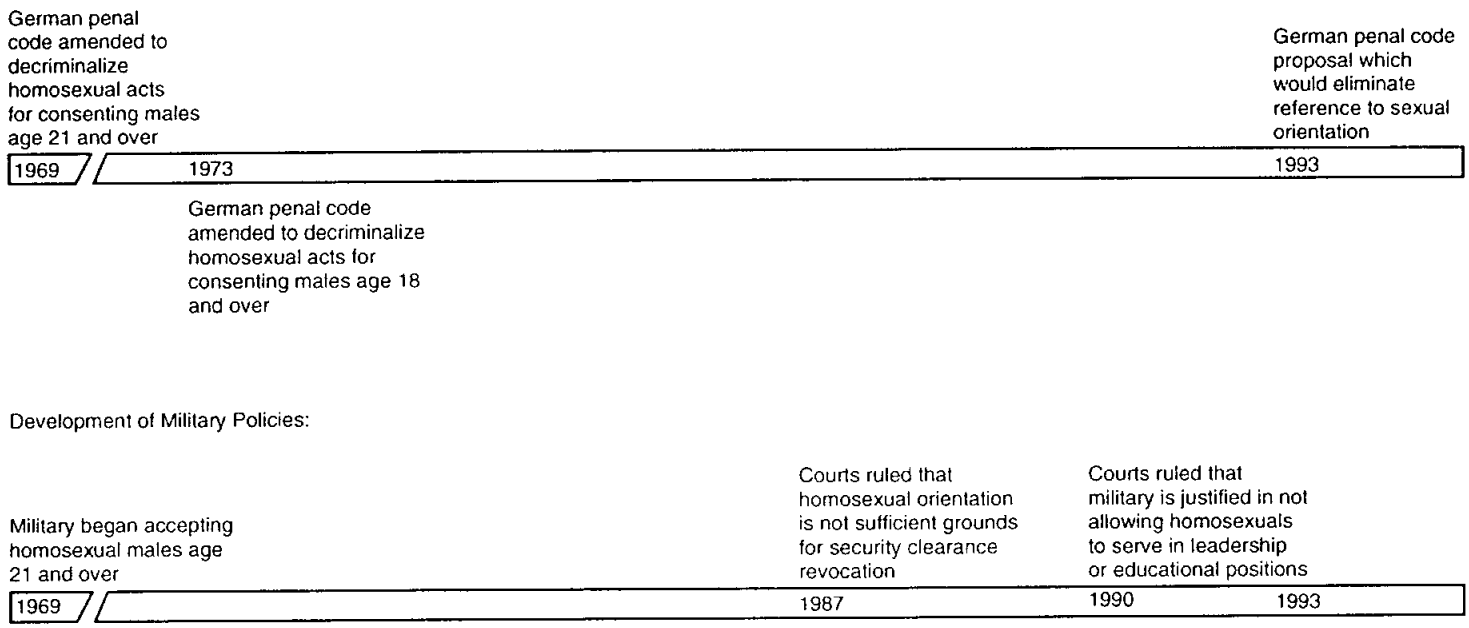
DND officials said the military leadership's public support for the new policy and its unified front were significant factors in making a smooth transition to the new policy. DND also has been able to keep a low profile on the issue. The press corps, for example, has been required to submit all questions relating to the policy to DND's public affairs office.

The cultural and legal aspects of the issue also played a pivotal role in Canada. Canadians' believe that equality is one of their basic values, and it is reflected in their laws. Legislation and court rulings concerning discrimination on the basis of sexual orientation provided a legal impetus for lifting the ban.

Germany

Germany's policy has permitted homosexuals to serve in the military as conscripts since 1969; however, homosexual volunteers are subject to restrictions during their military careers. While these policies are opposed by homosexual rights groups as discriminatory, they have been upheld by German courts. Military officials acknowledged that homosexual soldiers are discriminated against, but said the policies are effective because they allow for flexibility and deal with homosexual individuals on a case-by-case basis. The officials also said there have been few problems involving homosexual soldiers and characterized the issue of homosexuals in the military as a "non-issue." Figure IV.1 summarizes the development of civilian and military policies concerning homosexuals.

Figure IV.1: Development of Civilian and Military Policies in Germany



Background

Germany has a population of approximately 80 million, with ethnic Germans constituting 93 percent. Most Germans are either Catholic or Protestant, and the Churches play an important role in German society.

The German armed forces have about 476,300 service members on active duty and 1 million in the reserves. Women are allowed to serve only in the medical and music corps. Fifty-seven percent of the forces are volunteer, and the remaining 43 percent are conscripts. Conscripts are called up at age 19 and are required to serve 12 months. An individual's military service obligation may be deferred for educational reasons. In addition, conscientious objectors may fulfill their obligation in alternative civilian service. Military officials said they try to accommodate conscripts by housing them in areas close to their homes.

The German military is a home-based defense force with no recent combat experience. Military deployment overseas is limited because operations outside of North Atlantic Treaty Organization countries are restricted by the constitution; however, certain noncombat activities are allowed. As of March 1993, Germany has supported five noncombat missions outside Germany, including a recent peacekeeping mission to Bosnia.

Civilian Law Provides No Specific Rights or Protection to Homosexuals

The German constitution provides for basic civil rights and equality of all people, and Germany has relaxed its restrictions on homosexuals over the last 24 years. However, homosexuals have no expressed rights or protection under German law. In 1969, the civilian penal code was amended to no longer consider homosexual relations among males over age 20 as criminal behavior. In 1973, the law was modified to reduce the age of consent to 18. The law is expected to be changed in 1993 to eliminate specific references to homosexuality.

The changes in the penal code appear to reflect a slow change in German attitudes toward homosexuals. Studies have shown that Germans have become gradually more accepting of homosexuality, although a portion of the population still does not accept homosexuals. Older and more religious Germans living in rural areas tend to be less tolerant of homosexuals than younger, less religious Germans living in urban areas, according to these studies.

Military Policies Toward Homosexuals Are Restrictive

Germany began to permit homosexuals to serve in the military after homosexual behavior was decriminalized in 1969. Military policy, however, makes a distinction between service as a volunteer and service as a conscript. If a volunteer is discovered to be homosexual during the induction process, he will not be inducted into the military. Military officials said homosexuals are not accepted as volunteers because it is assumed volunteers will eventually rise to leadership positions. According to these officials, homosexuals in leadership positions would undermine military order and discipline.

Similarly, if volunteers are identified as homosexual during their military service, they are usually removed from assignments involving leadership, training, and educational tasks, according to military officials. If a volunteer has served for only a short period of time (within the first 4 years of service), he may be discharged from service. Additional disciplinary actions may include demotion, ban from promotions, and a reduction in salary. These measures are taken, an official said, to prevent negative acts against the homosexual soldier, such as rejection, provocation, or ridicule, and to prevent breakdowns in discipline.

Homosexuals may serve as conscripts as long as their sexual orientation does not prevent them from living and working in the military environment. During the medical induction examination, examining physicians do not routinely ask conscripts about their sexual orientation, but they may do so if they suspect the conscript is homosexual on the basis of his dress, mannerisms, or statements he makes about his social and sexual activity. Once a conscript is identified as homosexual, he may be required to undergo a separate psychological evaluation. The physicians make this decision on a case-by-case basis, and the decision usually turns on the frequency of homosexual conduct.

If the psychological evaluation indicates that the homosexual would have problems integrating himself into a military environment, the individual will be released from his military obligation. The results of the exam and the reasons for dismissal are kept confidential.

German military policies tend to treat homosexual behavior more harshly than homosexual orientation. Under the military code of conduct, soldiers may be discharged for engaging in homosexual activity, such as acts conducted while on duty and acts involving superiors and their

subordinates.[1] The code of conduct states that a discharge for such acts is justified when they indicate the individual lacks suitability for service in the military or his presence would imperil military order or harm the reputation of the armed services.

A senior military official said that until 1987, the armed forces had a policy of withdrawing security clearances from individuals found to have a homosexual orientation because these individuals were believed to be vulnerable to compromise by foreign intelligence agents. However, Germany's Federal Administrative Court ruled in 1987 that a homosexual orientation alone was not a sufficient reason to remove an individual's security clearance. The armed forces changed its policy to reflect this decision. In November 1990, the Federal Administrative Court found that the German military is justified in not allowing homosexuals to serve in leadership or educational positions.

Officials Said Practices Are Flexible

Military officials said their practices concerning homosexuals generally are consistent with existing policies and that actions taken against homosexual soldiers vary depending on the individual involved and the circumstances surrounding each case. Military officials also said that disciplinary actions are also influenced by the rank of the soldier and his time in service. Since German military policies allow flexibility with regard to homosexuals, their cases tend to be dealt with on a case-by-case basis, according to officials.

German homosexual advocacy groups believe the military's policies and practices are discriminatory because they sanction disciplinary actions against a homosexual soldier regardless of the soldier's qualifications or skills. As a result of these policies, homosexual rights advocates state that the percentage of homosexuals in the military is lower than that in the general population. The military does not maintain its own statistics. In addition, these homosexual rights advocates said that professional soldiers are reluctant to acknowledge their homosexuality because doing so would effectively end their career.

Germany's Federal Administrative Court has upheld the military's policies regarding homosexuals. Nevertheless, if the current policy is not changed by the military or the German parliament in 1993, homosexual advocacy groups plan to present their case before the German Supreme Court.

[1]Heterosexual military personnel engaging in sexual acts while on duty will be subject to disciplinary proceedings.

Officials Reported Few Problems Involving Homosexuals

Military officials, characterizing the issue of homosexuals in the armed forces as a "non-issue," said there have been few incidents involving homosexuals. Official documents indicate that 63 disciplinary court proceedings charging soldiers with homosexual behavior were convened between 1981 and 1992.

Significant Factors in the German Experience

German military officials acknowledge that homosexual soldiers are discriminated against, but believe that their policies and practices toward homosexuals have been effective for several reasons.

First, the policies allow for flexibility, and incidents involving homosexuals are dealt with on a case-by-case basis. A variety of disciplinary actions may be taken, ranging from no response to immediate removal from service.

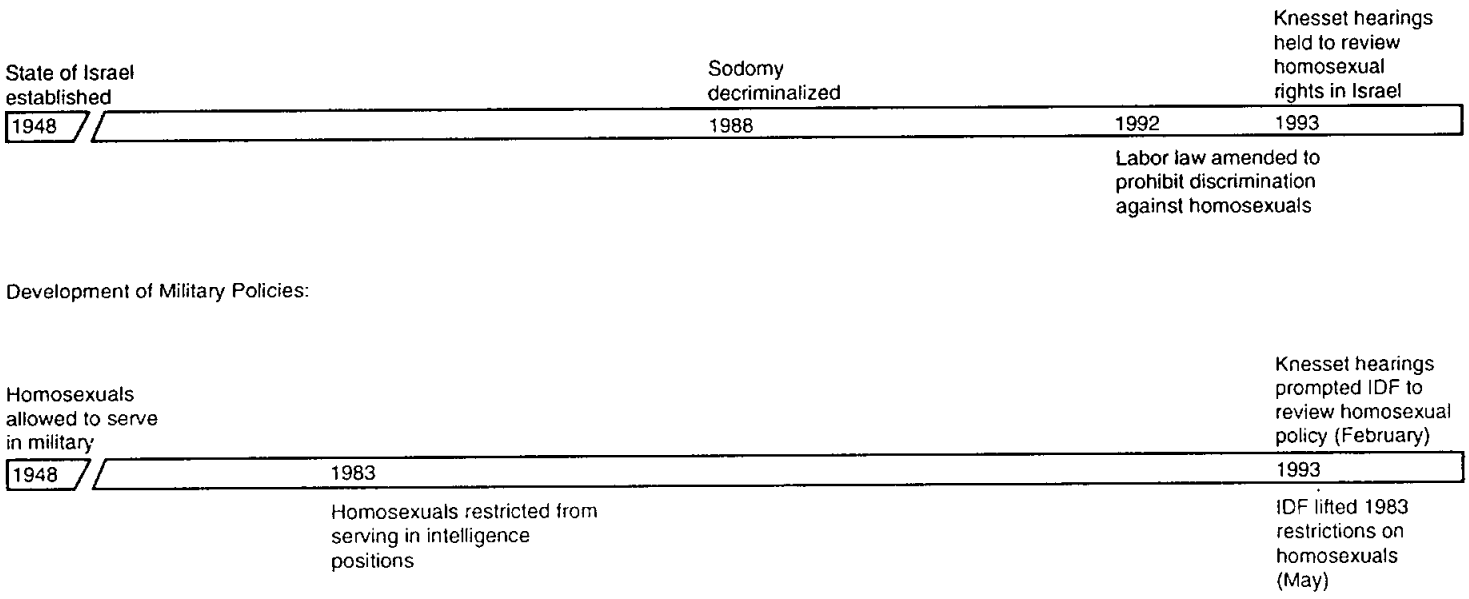
Second, the German military focuses on behavior, not orientation. Individuals who are disruptive are separated from the military.

Finally, the regulations controlling the conduct of German soldiers are strict and clear.

Israel

Homosexuals have been permitted to serve in the Israeli Defense Forces since the state was founded in 1948. There are no restrictions or limitations concerning the promotion potential of homosexuals, and no special effort is made to identify homosexuals while in the service. Government officials and others we interviewed said homosexuals have served without problems, and their presence has never been an issue. Generally, homosexual soldiers tend to keep their sexual orientation to themselves until they are well established in their units. Figure V.1 summarizes the development of civilian and military policies concerning homosexuals.

Figure V.1: Development of Civilian and Military Policies in Israel



Background

Israel has a population of approximately 5.2 million.[1] Although 82 percent are Jewish, the society is diverse, with immigrants coming from all over the world. Israelis vary widely in their cultural, economic, and educational

[1]This figure includes Jews living in the occupied territories of the West Bank, East Jerusalem, the Gaza Strip, and the Golan Heights. The estimated 2.1 million Arabs and other ethnic groups living in these areas are not included in this figure because they are not considered Israeli citizens.

backgrounds, as well as their views toward religion and sexuality, but most remain bonded by their mutual religion (Judaism), their pride in the state, and the perception that the state provides the only means of ensuring their safety.

The Israeli Defense Forces has an estimated 141,000 people on active duty and 504,000 in the reserves. Service is based on universal conscription of men and women, who become eligible for service at age 18. Arabs and Bedouins are not required to serve but may volunteer. Also exempted from mandatory service are married and pregnant women and people with severe physical or psychological handicaps. Ultra-Orthodox Jews generally do not serve. Males are required to serve on active duty for 3 years, with reserve obligations of 30 to 60 days a year until they reach their mid-50s. Women must serve on active duty for 2 years, with reserve obligations until age 24. Generally, Israeli soldiers spend a minimal amount of time away from their homes.

We were told by various sources that the military is a very important part of Israeli society. Military service is often considered to be a precondition to a successful career because military service influences the networks and associations used later in life. Since nearly everyone is required to serve in the armed forces, establishing a military record is important. People with medical or psychological problems often try to hide their problems in order to serve.

The Israeli Defense Forces have been involved in perpetual regional conflicts involving the West Bank and Gaza Strip resulting from the 1987 Palestinian uprising. According to Defense officials, Israel is in a constant state of alert due to its close proximity to Arab countries.

Israeli Law Is Supportive of Homosexual Rights

According to various sources, Israel in recent years has become more accepting of homosexuality, and this is reflected in recent changes in law. Israelis have traditionally held negative views toward homosexuals because Judaism condemns homosexuality. But due to Western influences, more homosexuals are revealing their sexual orientation. According to recent studies by Israeli and U.S. sociologists, Jews in Israel view homosexual rights more favorably than Americans. We were told by U.S. embassy officials that an active homosexual community now exists in Tel Aviv. Nevertheless, most homosexuals still do not reveal their sexual orientation until later in life due to fears of negative parental and societal reactions.

While Israel has no constitution or provisions similar to the U.S. Bill of Rights, the Declaration of the Establishment of the State of Israel includes language that guarantees freedom from discrimination on the basis of sex, race, or religion. Israel's laws regarding citizen rights, including homosexual rights, are still evolving and are gradually becoming more specific. In the absence of a Bill of Rights or similar legal provisions, Israel has relied on the courts to safeguard civil rights and liberties.

Israel has increasingly recognized homosexual rights. For example, Israel decriminalized sodomy in 1988. Further, in 1992, Israel amended its labor law to prohibit discrimination against homosexuals in the workplace. According to the amendment, employers cannot discriminate against employees and job seekers due to a person's "sexual inclination." The amendment covers all conditions of employment, including hiring, working conditions, promotion, training, and dismissal.

In February 1993, the Knesset's subcommittee dealing with homosexual rights hosted a conference to draw attention to homosexual equality before the law.[2] According to the subcommittee's chairperson, the subcommittee is working to obtain full equal rights for homosexuals, and is developing legislation to establish partnership rights for homosexual couples. Currently, homosexual marriages are not recognized, and homosexual partners do not have spousal rights.

Homosexuals Permitted to Serve in the Military Without Limitations

Under Israeli military policy, homosexuality is not a reason for deferment or discharge. Until recently, the military policy restricted homosexuals from serving in intelligence positions; however, this policy was not followed in practice. Currently, no special effort is made to identify homosexuals, and the military places no restrictions concerning the promotion potential of homosexuals. Further, military regulations on sexual behavior state that sexual activity is not to take place in the barracks (males and females live in the same barracks); the regulations make no distinction between heterosexuals and homosexuals. Any problems related to homosexuals are to be handled through normal channels, such as the unit psychologist.

During our in-country review, Israel officially had a military policy that placed certain limitations on the assignment of homosexuals. The regulation, established in 1983, stated that the assignments of homosexuals would be limited because their sexual orientation could

[2]The Knesset is the Israeli equivalent of the U.S. Congress.

prove to be a security hazard. According to the regulation, under no circumstances shall a homosexual soldier serve in a position requiring a top secret security clearance in the intelligence community.

Military officials said that conscripts are not asked about their sexual orientation during induction. However, those who identified themselves as homosexual were required under the 1983 regulation to undergo additional psychological testing. The tests were intended to determine whether (1) the individual's inclination could prove to be a security hazard or (2) the individual had the mental fortitude and maturity to withstand the pressure of serving in the defense forces.

On May 18, 1993, Israel adopted a new military policy concerning homosexuals. This policy states that no restrictions shall be placed on the recruitment, assignment, or promotion of homosexual soldiers and civilians due to their sexual inclination. This policy was implemented after we had conducted our in-country review.

Practices Agree With New Policy

Even though Israel's military policy toward homosexuals is new, our review shows that its practices are more consistent with the new policy than with the 1983 regulation. According to active and reserve military officials, the 1983 regulation prohibiting the assignment of homosexuals to intelligence positions requiring top secret clearance was never formally implemented. According to these officials, homosexuals were found to be capable of doing their jobs without problems, and therefore it did not make sense to enforce this regulation. Homosexual soldiers, we were told, have served and are currently serving in intelligence positions. For example, we spoke with a number of reservists and retired military personnel who stated that while on active duty they served openly as homosexuals, still received promotions, and were not restricted in their assignments. However, a former colonel in Israeli intelligence testified at the February 1993 conference hosted by the Knesset subcommittee dealing with homosexual issues that he was summarily dismissed from his unit when his homosexual orientation became known in 1983.

According to military officials, the Knesset's conference prompted the Israeli Defense Forces to reevaluate its written policy toward homosexuals. As a result of this conference, the Israeli Defense Forces drafted and adopted its new policy.

Representatives of the leading homosexual and civil rights organizations in Israel said they are satisfied with the military's practices toward homosexuals. They told us that being homosexual has no bearing on an individual's military career and that homosexual soldiers are judged on their merits like any other soldier. Other than the case involving the former colonel stated above, neither organization was aware of any cases in which a homosexual's career had been harmed because of the individual's sexual orientation.

Israel Has Experienced Few Problems Related to the Presence of Homosexuals in the Military

Military officials believe the Israeli Defense Forces has been very effective in including homosexuals in military service, and they knew of few problems associated with their presence. This was confirmed by representatives of Israeli homosexual and civil rights groups, openly homosexual reservists, and retired soldiers who told us they were openly homosexual during their active duty and reserve service.

Any problems concerning homosexuals that have arisen, officials said, generally involve a homosexual's inability to cope in the military environment. Some military officials believe that homosexuals tend to have more adjustment problems than heterosexuals and that this was one justification for the former policy requiring additional psychological testing of homosexuals.

However, military officials responsible for security and mental health said homosexuals adjusted to military life as well as heterosexuals. These officials noted that most heterosexual soldiers can control their sexual urges when they are living in mixed-sex quarters, and the same is true of homosexual soldiers. Security officials said homosexuals can hold security clearances without posing an unnecessary security risk.

Military officials said most conscripts do not declare their sexual orientation during mandatory service. We were told that most homosexual soldiers are not certain of their sexual orientation at the time of their conscription (usually age 18). Furthermore, those who are certain they are homosexual prefer not to reveal their sexual orientation while on active duty. According to homosexual advocacy groups, homosexual soldiers who openly declare their sexual orientation generally wait until their mid-20s or later when they are established in their units and are judged on their individual merits.

The military has not studied how the inclusion of homosexuals in the military affects unit readiness, effectiveness, cohesion, or morale, but officials told us that, based on their experience, the inclusion of homosexuals has not had an adverse impact on these areas. They also said homosexual soldiers performed as well as heterosexuals.

The Israeli Defense Forces does not provide any educational or training courses dealing with homosexuals to unit personnel. Military officials see no need for training because there are few problems related to the presence of homosexuals.

Significant Factors in the Israeli Experience

Israeli officials cited several factors that may account for Israel's lack of problems in integrating homosexuals in the military.

First, the Israeli military has allowed homosexuals to serve for 45 years, ever since the country was created. Hence, most people do not have strong feelings about homosexuals' presence in the military. Moreover, homosexuals and homosexual rights in general are not issues which are at the forefront of public debate.

Second, military service is highly regarded in Israel, and deferments are not viewed favorably.

Third, homosexuals have served creditably in the defense forces and have not hurt their units' morale, cohesion, readiness, or capability, based on the experiences of military officials.

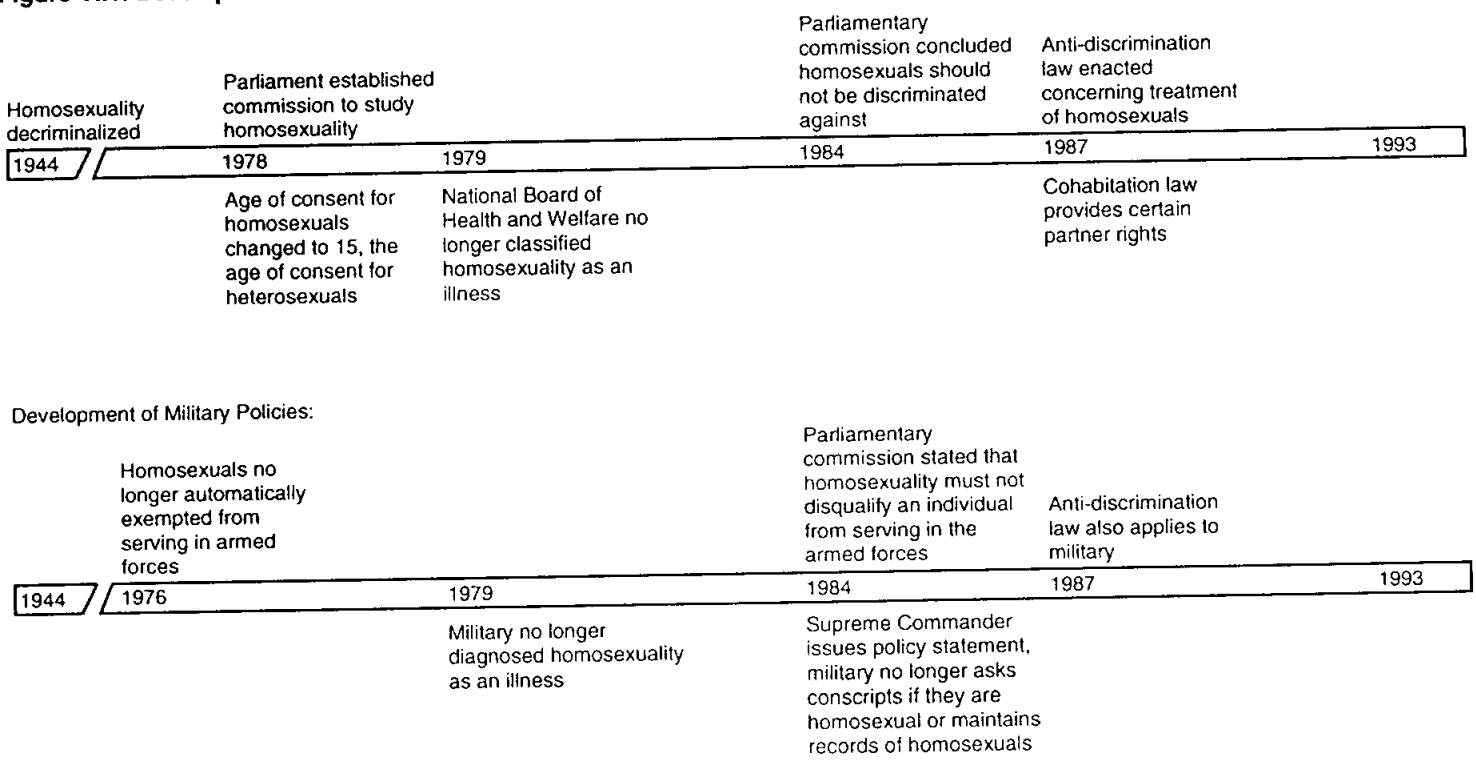
Fourth, universal conscription in Israel results in a military force that reflects the diversity of Jewish society. Military personnel accept this diversity, and homosexuals are viewed as just another subgroup.

Finally, in peacetime, Israeli soldiers spend a minimal amount of time away from their homes and thus are not isolated from their private lives.

Sweden

Sweden's military has experienced few problems since it began formally allowing homosexuals to serve in the military in 1976. Military officials believe they have been effective in integrating homosexuals, and military officials as well as unit-level officers and conscripted personnel agree with the current policy allowing homosexuals to serve in the military. However, most homosexuals keep their sexual orientation to themselves, and there was a perception among those we interviewed that openly homosexual members of the military might face subtle discrimination, harassment, or other negative treatment from their peers. Figure VI.1 summarizes the development of civilian and military policies concerning homosexuals.

Figure VI.1: Development of Civilian and Military Policies in Sweden



Background

Sweden has a population of about 8.6 million, with the vast majority being ethnic Swedes. Approximately 95 percent of the population belong to the Church of Sweden (Lutheran); however, only a small percentage are active in the church.

The Swedish military forces have approximately 53,000 active duty personnel. In the event of war, Sweden can call up a total of 850,000 troops. Women may serve in the military, but only as officers. About 225 women are currently in the armed forces.

Sweden has universal conscription of men between the ages of 18 and 47. Most young men enroll for military service at age 18 or 19 and start their service within 3 years of enrollment. After completing active duty, the men periodically receive refresher training to maintain their military skills and serve in the reserves until age 47. Swedish conscripts serve only a short time—5 to 17 months—and are permitted frequent visits home.

Military officials and others said most young men consider military service an obligation and want to fulfill their military duty. However, it has become easier to obtain an exemption from military service, and there is less stigma attached to not completing military service than in previous generations. In addition, for the first time, Sweden's current defense budget is not sufficient to conscript all available young men. As a result, about 6,000 of the eligible conscripts will not be required to serve this year.

Currently, Swedish soldiers are serving with United Nations peacekeeping forces in Lebanon, Korea, Cyprus, Angola, Kuwait, Central America, Kashmir, Cambodia, Croatia, and the Middle East.

Swedish Law Prohibits Discrimination Against Homosexuals

Sweden has historically been a strong advocate of human rights, as demonstrated by its role as a "safe haven" for individuals denied human rights in their home countries. The basic rights and freedoms of Swedish citizens are guaranteed by the Instrument of Government, Sweden's constitution. Some rights are absolute, while others can be restricted by Parliament. Homosexuality is not a specifically protected right, but discrimination against homosexuals is prohibited by a 1987 law and is a criminal offense under the Swedish penal code. Sweden has no laws that restrict sexual behavior or prohibit sexual acts between consenting adults.

While homosexual rights are protected, the issue generally is not discussed in Swedish society because sexuality is considered a private matter. In 1984, a parliamentary commission on homosexuality found that "the silence surrounding homosexuals and homosexuality is virtually total." On the basis of our discussions with numerous individuals, we found that this silence is still pervasive in Swedish society. The

overwhelming sentiment is that homosexuals should have equal rights, but that their sexual preferences should be kept to themselves.

Sweden began to ease restrictions on homosexuals in 1944, when it decriminalized homosexuality under the penal code, but most changes in homosexual rights have occurred within the last 15 years. In 1978, the age of consent for homosexuals was changed to 15 to coincide with the age of consent for heterosexuals. In 1979, the National Board of Health and Welfare removed homosexuality from the Classification of Illnesses Handbook.

In 1978, Parliament established a commission to study homosexuality in Swedish society. In its 1984 report, the commission concluded, "The only certain difference between homosexuals and heterosexuals is that homosexuals are emotionally attracted to persons of the same sex. In light of this background, it is obvious that homosexuals should not be discriminated against." This report, Swedish officials said, led to passage of the 1987 anti-discrimination and cohabitation laws providing rights and protection to homosexuals. The anti-discrimination law makes it a criminal offense for commercial establishments to refuse services to homosexuals or for individuals to make derogatory remarks based on a person's homosexuality. The cohabitation law provides each cohabiting individual the right to half of the jointly-owned home and household goods when cohabitation ceases.

At the time of our review in April 1993, two other issues concerning homosexuals were under review in Parliament. The first was a proposal to establish registered partnerships, which would provide homosexual couples basically the same rights as heterosexual couples, but would not include the right to adopt children. If one partner were to die, for instance, the surviving partner would be able to receive insurance, pension, and inheritance benefits. The second issue was a proposal to include homosexuals as a protected category under the Act to Counteract Ethnic Discrimination. Officials we interviewed anticipate parliamentary approval of the registered partnership legislation and inclusion of homosexuals under the act by the spring of 1994.

Homosexuals Permitted to Serve in the Military With No Restrictions

Under Swedish military policy, homosexuals are permitted to serve in the Swedish armed forces. The current policy, established in 1984, states that since homosexuality is increasingly accepted by society, it is not a reason, by itself, for treating an individual differently in the military.

Prior to 1976, a medical diagnosis of homosexuality during the enrollment process was supposed to result in an automatic exemption from military service. According to Swedish Defense officials, however, this exemption was not strictly imposed, as most enrollment officers treated homosexuality on a case-by-case basis. In 1976, the Manual for Medical Personnel in the Armed Forces was revised to eliminate the automatic exemption for homosexuals. And in 1979, when the National Board of Health and Welfare removed homosexuality from the Classification of Illnesses Handbook, the military no longer diagnosed homosexuality as an illness. However, the military continued to maintain records of those individuals identified as homosexuals. This practice was halted in 1984, the same year that the commission on homosexuality issued its report stating that homosexuality must not disqualify an individual from serving in the armed forces.

Also in 1984, the Supreme Commander of the Swedish Defense issued a policy statement on homosexuals in the military. This policy, which is currently in effect, states that what is essential is the individual's ability to cope with his or her sexuality. If an individual has reached the level of maturity where homosexuality is an accepted or controlled part of his or her personality, there is no basis for treating this individual differently than others in the armed forces.

Under the current policy, as part of the routine psychological interview during enrollment, conscripts are asked if they have any problems that would interfere with their ability to fulfill military service, but they are not specifically asked if they are homosexual. They have the liberty and opportunity to disclose their homosexuality but are not pressured to do so. Individuals who believe they will have problems due to their homosexuality may be excused from their military obligation. If they choose to complete their military service, no record is kept of their homosexuality. There are no additional steps or follow-up tests required if conscripts declare their homosexuality.

Sweden's 1987 anti-discrimination law, which prohibits discrimination against homosexuals, also applies to the military. No separate military policies address assignments or promotions for homosexuals.

Practices Appear to Be Consistent With Policy

Our discussions with military personnel indicated that military practices are consistent with the policy on homosexuals. Senior officials and unit personnel told us that the armed forces do not make an effort to identify homosexuals, do not discriminate against homosexuals in the enrollment process, and do not formally place restrictions on the assignment and promotion of homosexuals.

Representatives of two homosexual advocacy groups said they are satisfied with the current policy of accepting homosexuals into the military, but the groups had differing opinions about discrimination in the military's promotion and assignment processes. Representatives of the Swedish Federation for Gay and Lesbian Rights believe that, despite the military's policy, homosexual officers may be denied career opportunities or promotions. However, they could provide no supporting evidence. The President of the Gay Conservatives of Sweden did not believe homosexuals were discriminated against in the military.

Few Problems Concerning Homosexuals Have Occurred

Sweden has not studied the impact of admitting homosexuals into the armed forces, but military officials said few problems concerning homosexuals have occurred. For instance, the officials said that the inclusion of homosexuals had not adversely affected unit readiness, effectiveness, cohesion, or morale. Most of the unit personnel we interviewed agreed with the Swedish policy of admitting homosexuals, and few of these personnel knew of any problems concerning homosexuals. We frequently heard the comment that the important issue was whether the person could do the job.

Representatives of Parliament's Human Resource Council of the Swedish Defense and the Central Council of Conscripts[1] told us that homosexuality is not an issue in the military. The Human Resource Council makes several visits a year to various military installations to discuss personnel issues with military officials, unit-level officers, and conscripts. The Vice-Chair told us that in her 12 years on the council, homosexuality has never been raised as an issue. Likewise, the Chairman of the Central Council of Conscripts said issues related to homosexuality have never been raised to the organization.

Military personnel and others know of few open homosexuals in the military. For example, of the 42 unit personnel we interviewed, only 3

[1]The Central Council of Conscripts of Sweden is a group of conscripts elected by their peers to represent their interests in dealings with the Swedish Defense Force.

knew for sure that they had served in the military with a homosexual. Ten other unit personnel "suspected" that certain unit personnel may have been homosexual. Further, the four commanders at Air Force, Army, and Navy facilities we visited did not know of any homosexuals among the approximately 2,400 conscripts they commanded. A psychologist said that, at most, 10 conscripts a year disclose that they are homosexual during enrollment, out of approximately 12,000 conscripts that are processed through that enrollment office.[2]

Many military officials believe that openly homosexual individuals could experience some adverse impact on their careers. For example, the officials discussed two cases where homosexual officers had been reassigned. In one case, they said, the officer's homosexuality was believed to present a security risk. In the other case, the officer "was exerting his homosexuality in a bad way." Further, military officials and unit personnel said openly homosexual individuals could face harassment and other negative treatment from their peers, and possibly subtle discrimination in the assignment and promotion process. Some military personnel and others said that when individuals choose to be open about their homosexuality, they tend to reveal their sexual orientation to those in their immediate unit that they know well and trust.

Significant Factors in the Swedish Experience

A significant factor in Sweden's ability to integrate homosexuals may be the private nature of sexuality in Sweden and the virtual silence surrounding homosexuality. We were told that few homosexuals in the armed forces are open about their sexual orientation, but that those who are could face harassment from peers and subtle discrimination.

Three other factors may contribute to Sweden's success in integrating homosexuals into the military.

First, Swedish conscripts serve only a short time—5 to 17 months—and are permitted frequent visits home. Thus, they are not isolated from their private lives for long periods.

Second, Sweden's strong commitment to human rights is reflected in civilian as well as military policies regarding homosexuals.

[2]This is one of six enrollment offices in Sweden.

Finally, many homosexual conscripts at the age of 18 or 19 may not yet be fully aware of their sexuality or homosexual tendencies and therefore tend not to make their sexual orientation publicly known.

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"TAKE THE LEAD"

By [Commander Eugene T. Gomulka,] Chaplain Corps, U.S. Navy

In my role as the Deputy Chaplain of the Marine Corps, I am asked to comment almost daily on a myriad of issues which impact on the morale and welfare of military personnel. When asked to comment on the Department of Defense (DOD) policy on homosexuality, I realized that my response would require some research.

While I was not aware of the specific aspects of the DOD policy,[1] my initial thoughts on the matter were: "Perhaps the policy should be changed." I was inclined to think this way for two reasons. First, I have friends who are homosexuals whom I would not want to offend. Secondly, as a Catholic priest whose faith group believes that homosexual behavior is immoral, neither I nor my Church believes that a homosexual person needs anything less than respect, understanding and support to live a moral life despite one's sexual orientation. I wondered if military regulations made the same distinction.

As I undertook my research which I thought would lead to a recommendation to change the policy, I began to discover some interesting facts. The first discovery was that the DOD policy does not address amorphous concepts of sexual tendencies, orientation, or preference. The primary concern on the part of the military is not with "status" or "orientation," but rather with *behavior*.

Over the past ten years, some 15,000 homosexuals were separated from the military. As I reflected upon those cases in which I was personally involved, and as I examined transcripts of proceedings involving others, I could not find one case where a person was separated who denied homosexual conduct on his or her part. The great majority of those discharged were either involved in solicitation or were caught engaging in homosexual acts.[2] Those who were separated as a result of a public disclosure of homosexuality, when confronted about homosexual behavior, never denied having engaged in homosexual conduct.

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[1]DOD Directive 1332.14 reads: "Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct, or who, by their statements, demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order and morale; foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security." **Note** that the DOD definition of homosexuality is concerned with sexual "conduct" and does not mention "orientation." The policy presumes that those who "come out" by "their statements" engage in homosexual conduct. Discharging personnel based upon their admission of homosexuality avoids the necessity for intrusive investigations and inquiries into the individuals' sexual practices.

[2]William F. Buckley, Jr., "Answers locked in the military closet," The Washington Times, 1 December 1992, p. F-1. Mr. Buckley perceptively questions the media's portrayal of homosexuals being discharged from the military merely because of their status. In questioning why one would "go to the lengths of signing up in the military in order to declare yourself disqualified to serve once you got in," he concludes that the "15,000 discharges have got to be homosexuals who were caught engaging in activity forbidden by the military and punished by expulsion."

When I spoke with friends assigned to recruit training, I learned that a number of recruits identify themselves as homosexuals in order to be released from their service contracts. Only after an investigation is undertaken which proves homosexual *conduct* on their part are they separated.

It seems to me that the military has been unjustly portrayed as involved in wide-ranging witch hunts for closeted homosexuals and preoccupied essentially with a person's "sexual orientation." For example, one national magazine reported: "Gay men and lesbians expelled from U.S. military each year because of sexual *orientation*: 1,000."[3] A major city newspaper identified that "In 1990, 899 homosexuals were discharged from the military because of their sexual *orientation*."[4] DOD critics do not even obliquely suggest any course of action for homosexuals caught soliciting or engaging in sodomy. Homosexuals who were discharged after being "caught in the act" or accused of solicitation by fellow service members are not the ones who are invited to appear on talk shows or are getting most of the press coverage.

It became clear that I was not the only one who misjudged the military for its position on homosexuality. As a Catholic chaplain on the Commandant's staff, I was informed by the Staff Judge Advocate of the Marine Corps that some Catholic university law schools were excluding military recruiters from their campuses because of the DOD homosexual exclusion policy. One Catholic university president defended his law school's actions by asserting that one should not "discriminate on the basis of sexual *orientation*, because that would be unjust."[5] I have since written to the university presidents of those Catholic law schools with the hope of demonstrating that the military is concerned with *behavior* and not, as some may lead them to believe, with one's "sexual orientation."

Unless the Catholic universities are able to identify military personnel who have been discharged for homosexuality without actually having been involved in homosexual *conduct*, I have requested that they revise their policies which, in my opinion, unjustly discriminate against the military. I was pleased to hear from one law school recently which informed us that "on review and reconsideration" it is revising "its policy concerning recruiting by the military services."[6]

A recent GAO report, Defense Force Management: DOD's Policy on Homosexuality, presented statistics regarding the number of homosexuals who have been discharged from the military.[7] Opponents of the current DOD policy like to quote this report, arguing as one columnist did in a recent article that "16,919 military personnel were discharged [between 1980 and 1990] because of

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[3]James D. Wilson, "Gays Under Fire," Newsweek, 14 September 1992, p. 39.

[4]Sally Jacobs, "Canada to let gays serve in forces; impact eyed on US ban," The Boston Globe, 28 October 1992, p. 1.

[5]Paul Locatelli, S.J., President of Santa Clara University, in a letter to Chaplain Gomulka, 3 August 1992. The other Catholic universities which discriminate against military recruiters are: Georgetown University, the University of San Francisco, Loyola University-Chicago, the University of Dayton, Gonzaga University-Spokane, and St. Mary's University-San Antonio.

[6]Ralph J. Rohner, Dean of the Columbus School of Law, The Catholic University of America, in a letter to Brigadier General G. L. Miller, the Staff Judge Advocate to the Commandant of the Marine Corps, 9 September 1992.

[7]U.S. General Accounting Office. Defense Force Management: DODs Policy on Homosexuality, (Washington, DC), 12 June 1992, pp. 16-26.

homosexuality at an annual cost of $25 million to $ 30 million."[8] Upon reading this and other similar articles, one gets the impression that thousands of military personnel are being hunted down merely because of their "orientation," and that millions of dollars "could be used for far better purposes"[9] if only these hard working, dedicated homosexuals could be left alone by ruthless investigators and homophobic commanders.

Such a misinterpretation is grounded in the belief that orientation and not behavior is the reason for discharging an average of four homosexuals a day. However, *behavior*, not "orientation," is the key issue. If in fact homosexuals are being separated because of their behavior and not merely because of their "sexual orientation," is it not logical that there will be an *increase* in homosexual conduct if *acknowledged* homosexuals are allowed to enlist? Consequently, it would also seem logical that the amount of money spent on separating people because of homosexual behavior and the amount of time commanders spend in dealing with problems involving homosexuality would not decrease, but would *increase* if the DOD policy was changed.

In concluding that the DOD policy should be maintained, I identified three effects that would occur if the policy were changed.

One, in light of research which shows that homosexuals are generally discharged as a result of their behavior, and not simply because of a revelation of their orientation, a change in the current policy would result in more behavioral problems in the area of homosexuality.

Secondly, I also called attention to the impact a policy change could have on recruitment and retention. I based this concern on the unique living conditions of military life in which heterosexual men and women would be forced into involuntary intimate arrangements. I found support for my concern among many service men and women, particularly among Marines and sailors who routinely deploy at sea for up to six months at a time. A San Diego based sailor expressed the concern of many shipmates when he wrote the following to Navy Times: "What gives someone the right to say I have to sleep and shower with a gay person, when it is common knowledge that a gay man has a sexual preference for me (a man)? If you tell me that a gay person can sleep with a person of the same sex without any sexual thoughts, then I will tell you that I can sleep with a heterosexual woman without any sexual thoughts."[10]

Opponents of the ban dismiss this concern of military personnel for privacy by drawing invalid comparisons with other foreign militaries. Unlike full-time active duty U.S. Forces, many foreign militaries function more like our reserve units. While a reservist who lives in a civilian community may not be so concerned that a member of his or her reserve unit is a homosexual, active duty personnel, who do not have a choice of roommates in barracks or aboard ships, will be far more concerned about his or her roommates' sexual preferences. It is for this reason that I concluded that the acceptance of homosexuals would do much more to violate the privacy of heterosexual military personnel than it would to promote the rights of homosexuals.

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[8]Clarence Page, "The military's ban on gays definitely is on its way out," The Chicago Tribune, 25 November 1992, p. 13.

[9]Editorial Page, "The Best People Gay or Straight," The Sun (Baltimore, Maryland), 6 December 1992, p. 26.

[10]David Zinkgraf, GMM1, USN, "Mr. Clinton, we don't want gays!", Navy Times, 7 December 1992, p. 36.

The third potential problem I identified centers around the controversial AIDS epidemic. In Steffan vs. Cheney the court held: "There is another justification for the policy of excluding homosexuals from service in the United States Armed Forces...far and away the highest risk category for those who are HIV-positive...is homosexual men."[11] My concern about the threat of AIDS stemmed from the results of research which painted a very different picture from that of one newspaper which reported that "There is no evidence to support the notion that homosexuals are more promiscuous than other people."[12]

A recent University of Chicago survey revealed that for the U.S. population as a whole, the estimated number of sex partners since age 18 is 7.15 (8.67 for those never married).[13] These numbers stand in striking contrast to the results of a major study by the Kinsey Institute which revealed that 43% of the homosexual men surveyed estimated that they had sex with 500 or more partners; 28% with 1,000 or more partners.[14] In the same study, 79% of the white male homosexuals surveyed said that more than half of their partners were strangers.[15]

Since the onset of AIDS, there does not appear to be a significant decrease in homosexual behavior. In one study, the number of different partners fell from 70 to 50 per year; in another study, the number was reduced from 76 to 47 per year.[16] According to a recent survey, despite the threat of AIDS, 46% of male homosexuals between 18 and 25 [military age], within a month of the survey, engaged in anal intercourse without a condom.[17]

Homosexual activists are calling for an end to mandatory pre-induction and in-service testing for the AIDS virus in the military. While the annual cost of treating HIV-infected military personnel has averaged a little over 60 million dollars, the FY 92 cost of HIV/AIDS testing was $17.9 million dollars.[18] Military personnel found to be HIV-positive may remain on active duty as long as

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[11]Steffan vs. Cheney, 780 F.Supp. 1,13 (D.D.C. 1991)

[12]Editorial Page, "Nonsense can't justify military gay ban," The Milwaukee Journal, 2 September 1992.

[13]Tom W. Smith, Adult Sexual Behavior in 1989: Number of Partners, Frequency and Risk, presented to the American Association for the Advancement of Science, February, 1990, published by NORC, University of Chicago.

[14]Alan P. Bell and Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women, (New York, Simon and Schuster, 1978), p. 308.

[15]Ibid., pp. 308-309.

[16]S. A. Stewart, USA Today, 21 November 1984; L. McKusick et al., "AIDS and Sexual Behavior Reported by Gay Men in San Francisco," American Journal of Public Health, 1985, pp. 493-496.

[17]Dick Thompson, "A Losing Battle With Aids," Time, 2 July 1990, p. 43.

[18]Joyce Price, "Gay activists protest HIV testing in military," Washington Times, 1 December 1992, p. 1. Before the military introduced mandatory drug testing (urinalysis), the incidence of drug abuse posed a serious threat to the strength and integrity of our armed forces. If mandatory HIV testing which is undertaken to protect service members were eliminated, a similar and possibly more dangerous threat could arise.

they can perform their functions. Once a person is determined to be 30 percent disabled from his condition, he qualifies for medical retirement with benefits.[19]

In so far as two-thirds of all AIDS cases are directly attributable to homosexual conduct,[20] I concluded that admitting homosexuals would bring about an increase in the number of AIDS cases and would put additional financial and personnel burdens on an already strained military medicine program.

Many chaplains, like our civilian counterparts, are hesitant to address this controversial issue. One chaplain recently commented: "You're unwise for speaking out. After all, President-elect Clinton will soon take office, gays will be admitted, and then where will you be?" My response: "Given our 'job description' as 'principal advisors to the command on moral matters,' are we not called to 'take the lead' by speaking the truth? Or, should we be more concerned about being 'politically correct'?"

In "taking the lead" on this issue, I am painfully aware that many have and will accuse me of pastoral insensitivity and homophobia. Rather than attacking my person, I only ask that consideration be given to the specific concerns that my research disclosed.

Ultimately, I respectfully ask the new Commander in Chief to consider: Will a policy change 1) result in more homosexual behavioral problems; 2) prove detrimental to recruitment and retention; and 3) place additional burdens on an already strained military medicine program? These and other concerns expressed by military leaders demand an honest and thorough hearing. For the welfare of millions of military personnel today and tomorrow, I pray to God they receive it.

Commander Gomulka is the Deputy Chaplain of the U.S. Marine Corps. His previous assignments have included the 2d Marine Division, the U.S. Naval Academy, the U.S. Sixth Fleet, and the battleship USS WISCONSIN (BB 64).

The views expressed in this article
are those of the author and do not reflect
the official policy or position of
the Department of Defense
or the U.S. Government

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[19]Ibid.

[20]"The HIV/AIDS Surveillance Report," Department of Health and Human Services, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS, January, 1992, p. 9.

POSITION PAPER ON

THE DOD POLICY ON HOMOSEXUALITY

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15 July 1992

Definition of Terms

Homosexuality is generally defined in two ways: 1) "the manifestation of sexual desire toward a member of one's own sex," and 2) "erotic activity with a member of one's own sex."

In the definition of a homosexual, the distinction between the inclination toward (orientation) and the practice of homosexuality (behavior) is essential to keep in mind throughout this paper.

Current Question

Secretary of Defense Richard B. Cheney and other governmental and military leaders have been under pressure to change the current policy which excludes homosexuals from military service.[1] For example, The News Tribune of Tacoma, Washington published a story on 5 June 1992 concerning Seattle Mayor Norm Rice's criticism "equating the military's ban on homosexuals with racial segregation." In a written response to Mayor Rice, General Colin Powell perceptively distinguished between race as an uncontrollable factor relating to personhood and homosexual behavior as a controllable factor relating to conduct. General Powell wrote: "Skin color is a benign, non-behavioral characteristic.... Comparison of the two is a convenient but invalid statement."

Flawed Argumentation

The fundamental flaw found in the argumentation of allowing homosexuals to serve in the military is the failure to distinguish correctly and to recognize the relationship between "sexual orientation" and "sexual behavior." Supporters of a change in the current DOD policy enjoy arguing that just as blacks and women experienced discrimination in the past, so too are homosexuals discriminated against today by being excluded from military service. In advancing this argument, however, they fail to acknowledge that being black or a woman relates to personhood which is an uncontrollable trait quite distinct from homosexual behavior. Even if someday it may be shown that some homosexuals have an orientation which they have not chosen, it is fair to state that homosexual

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[1]Colbert I. King, "Debunking the Case Against Gays in the Military," The Washington Post, 7 July 1992, p. 19. The argument in this and so many other articles, attempts to define the DOD ban as primarily concerned with *sexual orientation*. The article cites presidential candidates who are swayed by this attempt to portray the military as preoccupied with orientation vice the negative affects that homosexual behavior would have upon military good order, morale and discipline: "Bill Clinton has already said....if denied the right [to serve in the military], it should be on the basis of *behavior*, not *status*." Given the high degree of sexual compulsion on the part of male homosexuals, the defective presumption is that people with a homosexual orientation (i.e. "status") will remain celibate on ships, in barracks, etc. and not actualize their orientation through homosexual behavior.

behavior is, in fact, a "choice", and one which most people do not view as normal conduct either for themselves or their sons and daughters in or out of the military.[2]

More frequently today, practicing homosexuals do not consider their orientation a private matter, but are inclined to seek public affirmation for their lifestyle. It can be argued that the deliberate manifestation by word or deed of one's homosexual orientation marks the beginning of behavioral change because the announcement itself is the demand for a social infrastructure to support the behavior.[3]

While the military does not seek to discriminate unjustly, it believes for a number of sound reasons[4] that persons with a homosexual orientation would experience serious difficulty in controlling their behavior in light of the unique circumstances of military life. Unlike living conditions in most civilian circumstances, private moments are few, or nonexistent, on a ship or in a deployed status. As Secretary Cheney has noted on previous occasions, the line between public and private for those who wear the uniform is very small indeed.[5]

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[2]Henry Robinson, "They Came to Reclaim Asheville," Asheville Citizen Times, 27 June 1992, p. 5B. When 1,500 people participated in a Gay Pride March, a counter demonstration in support of family life and values was organized the following week which drew over 20,000 marchers. Lawmakers sensitive to their constituents' feelings should take note that the current DOD policy mirrors the fact that most Americans strongly disapprove of homosexual behavior which they do not view as an acceptable alternative to marriage and family life.

[3]Steve Scott, "Gay church wants its clergy to be chaplains," Dallas Morning News, 3 July 1992, p. 36. This article demonstrates a provision for a "social infrastructure" in a religious body which does not perceive the behavior as morally or socially reprehensible.

[4]The numerous reasons for excluding homosexuals from military service are contained in DOD Directive 1332.14 H(1) which reads: "Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct, or who, by their statements, demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order and morale; foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security."

[5]In Steffan vs. Cheney, the United States District Court for the District of Columbia ruled on 19 December 1991 in favor of the Secretary of Defense. The judge noted that "In the Military Establishment...the policy of separating men and women while sleeping, bathing and 'using the bathroom' seeks to maintain the

Serious Questions to Consider

Critics of the current DOD policy question the validity of the arguments used by the military to justify the exclusion of homosexuals from its ranks. These same critics (most of whom are civilians) who downplay the behavioral aspects of homosexuality, should be prepared to answer some questions which might be raised by military personnel whose lives would be affected by a policy change.

1. It appears ironic to military personnel that some lawmakers who have been outspoken in regard to problems of sexual harassment in the military are, in some cases, the same lawmakers who endorse homosexuals serving in those same armed forces. Would these lawmakers be comfortable with having a 17 year old son billeted in a three-man barracks room with two homosexuals for a four year tour of duty? How might the son himself feel about this arrangement?

2. Given the uniquely close living and working conditions of military life (e.g. shipboard living, barracks life, etc.), how would the admission of acknowledged homosexuals into the military affect recruitment and retention?

3. The military services, with its predominantly young male population, would pose a major challenge to gay men who might wish to arrest their behavior. On the other hand, would the military not be an attractive occupation for homosexuals who see no reason to restrict that same behavior?

4. In light of what some would argue is an "innate orientation," would it be wise for a liquor store manager to hire an alcoholic who does not see that condition as a problem and, therefore, is not working toward recovery?

5. How might we expect a heterosexual to behave if he/she occupied a small room with an attractive person of the opposite sex on a ship deployed at sea for six months?

6. If homosexuals were allowed to serve in the military and occupy the same quarters, how does a commanding officer respond to the charge that, by allowing homosexuals to room together, he is discriminating against heterosexuals if he denies them as unmarried men and women the similar right of sharing the same quarters?[6]

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privacy of officers and the enlisted while in certain cases of undress. The embarrassment of being naked as between the sexes is prevalent because sometimes the other is considered to be a sexual object. The quite rational assumption in the Navy is that with no one present who has a homosexual orientation, men and women alike can undress, sleep, bathe, and use the bathroom without fear or embarrassment that they are being viewed as sexual objects."

[6]Charles Moskos, "Why banning homosexuals still makes sense," Navy Times, 30 March 1992, p. 27. Rather than drawing an analogy between homosexuality and racism, the writer argues that the more correct analogy is between homosexuality and heterosexuality. He perceptively writes: " Anybody who wants to allow homosexuals into the military must make the same argument for breaking down the

Unfortunately, these are but a few questions which opponents of the current DOD policy do not wish to consider.

Statistics

The number of homosexuals in society is questionable. Estimates vary between 5% and 10%. The 10% claim goes back to Alfred Kinsey's 1948 book, Sexual Behavior in the Human Male, in which it was stated that "10 percent of the males are more or less exclusively homosexual for at least three years between the ages of 16 and 55." On the same page, however, Kinsey states that, "4 percent of the white males are exclusively homosexual throughout their lives after adolescence." More recent objective estimates in the United States project an incidence of 5% among males and less among females.[7] The bottom line, however, is that whether it is 5% or 10% does not matter. Figures tend to be exaggerated by many homophiles because they believe that in numbers there is legitimacy.

A recent GAO report, Defense Force Management: DOD's Policy on Homosexuality, noted statistics regarding the number of homosexuals that have been discharged from the military.[8] Opponents of the current DOD policy like to quote this report in regard to the amount of money reported to have been expended in discharging homosexuals. DOD critics give the impression that homosexuals are separated simply because of a discovered non-threatening orientation. However, many separation cases involve homosexual behavior which will only be increased if homosexuals are allowed to enlist. Consequently, the amount of money expended on separating people because of homosexual behavior would not decrease, but would increase if homosexuals were admitted. The GAO report should move those concerned with finances to think twice before endorsing a policy that would result in separation costs far greater than are currently expended.

There were a number of other statistics that the GAO report did not include. The following are but a few that should be considered in this current discussion:

1. Statistics give evidence of widespread sexual compulsion among homosexual men. A recent University of Chicago survey revealed that for the U.S. population as a whole, the estimated number of sex partners since age 18 is 7.15 (8.67 for those never married).[9] These numbers stand in striking contrast to the results of a major study by the Kinsey Institute which revealed that 43% of the

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barrier between the sexes."

[7]Tom W. Smith, Adult Sexual Behavior in 1989: Number of Partners, Frequency and Risk, presented to the American Association for the Advancement of Science, February, 1990, published by NORC, University of Chicago.

[8]U.S. General Accounting Office. Defense Force Management: DODs Policy on Homosexuality, (Washington, DC), 12 June 1992, pp. 16-26.

[9]Smith, op. cit.

homosexual men surveyed estimated that they had sex with 500 or more partners; 28% with 1,000 or more partners.[10] In the same study, 79% of the white male homosexuals surveyed said that more than half of their partners were strangers. 70% said more than half of their sexual partners were men with whom they had sex only once.[11]

2. Homosexual men are six times more likely to have attempted suicide than are heterosexual men.[12]

3. Studies indicate that between 25 and 33% of homosexual men and women are alcoholics.[13]

4. In a survey reported in the American Public Health Association, 78% of the gay respondents reported that they had been affected by a sexually transmitted disease at least one time.[14]

5. The latest figures available from the Centers for Disease Control show that of the AIDS cases reported among males through August 1991, 59% of all adults and adolescents were exposed to HIV because they were men who had sex with other men.[15] One does not need a medical degree to recognize that admitting homosexuals into the military would bring about an increase in the number of AIDS cases and would put additional financial and personnel strains on military medicine which must contend with a declining military budget and the challenge of recruiting and retaining sufficient medical personnel.[16]

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[10] Alan P. Bell and Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women, (New York, Simon and Schuster, 1978), p. 308.

[11] Ibid., pp. 308-308.

[12] Ibid., Table 21.12.

[13] Robert J. Kus, "Alcoholics Anonymous and Gay American Men," Journal of Homosexuality, Volume 14, No. 2 (1987), p. 254.

[14] Enrique T. Rueda, The Homosexual Network, (Old Greenwich, Conn., The Devin Adair Company, 1982), p. 53.

[15] Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS, "HIV/AIDS Surveillance," September 1991, Table 4, p. 9.

[16] Steffan vs. Cheney, op. cit., p. 28. The health and welfare threat of AIDS was a factor in ruling in favor of the current DOD policy. The judge wrote: "There is another justification for the policy of excluding homosexuals from service in the United States Armed Forces...far and away the highest risk category for those who are HIV-positive, a population who will with a high degree of medical certainty one day contract AIDS, is homosexual men."

Conclusion

American society is experiencing the contradictory phenomena of increasing sensitivity regarding human rights accompanied by growing rejection of sexual morality. The movement to approve homosexual conduct as an acceptable life style is not surprising in an age that promotes sex without marriage, sex without responsibility, sex without fidelity, and sex without restraint. Is it any wonder that events surrounding the Tailhook Convention and incidents of sexual harassment are surfacing today?

In this period of history when militant homosexuals not only reveal their liaisons and lifestyles, but actively and articulately promote the homosexual relationship as a morally acceptable alternative to marriage, legislation which would require the military to accept homosexuals would do much more to violate the rights of heterosexual military personnel than it would to promote the rights of homosexuals.

At the present level of scientific knowledge, it is still debated whether one chooses one's sexual orientation or not. Even if it were shown that some persons may be inclined toward homosexuality from birth (orientation), the fact remains that a number of homosexuals admit to being led into homosexuality by the influence or the example of others (behavior). Military leaders influence the formation of attitudes in their subordinates, and not only their words but their example (lifestyle) can profoundly affect the direction and lives of those whom they lead. This fact was articulated by General Lejeune, the 13th Commandant of the Marine Corps, who noted that "a large portion of those enlisting are under twenty-one years of age" and "are in a very formative period of their lives. We owe it to them, to their parents, and to the nation, that when discharged from the services they should be far better physically, mentally, and morally than they were when they enlisted." Today when more militant and vocal homosexuals are advocating that homosexuality should be included in sex education courses as an acceptable alternative to marriage, military personnel themselves and parents of young service men and women cannot help but be concerned about this matter. Legislators and military leaders have a legitimate role to play in checking the spread of homosexual behavior, especially among young people whose minds and characters are in formative stages, thus preventing physical and/or psychological harm that could injure many innocent persons.

To sum up, in response to those who fail to distinguish properly between homosexual orientation and behavior by arguing on the basis of civil rights based on race or sex, let it be acknowledged that a person's race or sex cannot threaten the rights of others. Consequently, race and sex do not bar a person from military service. While opponents of the current DOD policy prefer to avoid the behavioral aspect in favor of presenting homosexuality as a non-threatening orientation, the fact is that lifelong, or even career-long celibacy among those with a homosexual orientation is a rare exception rather than the rule. In the unique, intensely close environment of the military, homosexual conduct can threaten the lives, including the physical (e.g., AIDS) and psychological well-being of others. Consequently, legislation which would threaten the rights of military personnel by allowing acknowledged homosexuals into the military should not be enacted.

FILE
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POSITION PAPER ON THE DOD POLICY ON HOMOSEXUALITY

By CDR E. T. Gomulka, CHC, USN
Deputy Chaplain, U.S. Marine Corps

Introduction

In my role as the Deputy Chaplain of the Marine Corps, I am asked to comment almost daily on a myriad of issues which impact on the morale and welfare of military personnel. When asked to comment on the Department of Defense (DOD) policy on homosexuality, I realized that my response would require some research.

While I was not aware of the specific aspects of the DOD policy,[1] my initial thoughts on the matter were: "Perhaps the policy should be changed." I was inclined to think this way for two reasons. First, I have friends who are homosexuals whom I would not want to offend. Secondly, although the Catholic Church believes that homosexual behavior is immoral, neither I nor my Church believes that a homosexual person needs anything less than respect, understanding and support to live a moral life despite one's sexual orientation. I wondered if military regulations made the same distinction.

Research

As I undertook my research which I thought would lead to a recommendation to change the policy, I began to discover some interesting facts. The first discovery was that the DOD policy does not address amorphous concepts of sexual tendencies, orientation, or preference. The primary and overriding concern of the military is not with "status" or "orientation," but rather with *behavior*.

There are two directives that govern the military's policy on homosexuality. DOD 6130.3 applies to accessions. In paragraph 2-34 it reads: **The causes for rejection for appointment, enlistment and induction are --**

a. <u>Homosexual Behavior</u>. This includes all homosexual activity except adolescent experimentation or the occurrence of a single episode of homosexual behavior while intoxicated.

Note that the directive does not address homosexual "orientation." Rather, it clearly focuses on homosexual "behavior."

The second directive governs separations. DOD 1332.14 which deals with "Homosexuality" states that a person may be separated for three reasons:

(1) The member has engaged in, attempted to engage in, or solicited to engage in a homosexual act or acts.

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[1]DOD Directive 1332.14 reads: "Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order and morale; foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security."

(2) The member has stated that he or she is a homosexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person of the same biological sex.

While reasons one and three are clearly "behavioral" issues, some critics have argued that the second reason (which involves a statement of being a homosexual) constitutes discrimination based on one's "status" or "sexual orientation." However, military personnel separated as a result of a public disclosure of homosexuality, when confronted about their sexual behavior, have never denied homosexual conduct on their part. A classic case of admission of homosexuality involves a midshipman who was separated from the Naval Academy shortly before graduation. After his dismissal, he appealed his case arguing that he was dismissed merely because he admitted to being a "homosexual," and not because of any conduct violations. However, when the judge asked him if he ever engaged in homosexual acts while at the academy, he refused to answer on the grounds that his response might prove self-incriminating. Had he denied that he "engaged in, attempted to engage in, or solicited to engage in a homosexual act or acts," I believe that the former midshipman would be on active duty today.

The current policy presumes that "those who claim they are homosexuals will engage in the conduct that defines the class."[2] Is this a valid presumption? For example, if a person publicly identifies himself as a pilot, is it valid to presume that he flies fixed wing or rotary aircraft? While it is the height of bigotry to assume that individuals will engage in conduct merely because they are members of a particular racial group, the courts have upheld that the DOD policy does not classify homosexuals based merely upon their "status," but upon "reasonable inferences" about their "probable conduct in the past and in the future."[3] Discharging personnel based upon their statements of homosexuality avoids the necessity for intrusive investigations and inquiries into the individuals' sexual practices.[4]

Over the past ten years, some 15,000 homosexuals have been separated from the military. As I reflected upon those cases in which I was personally involved as a military chaplain, and as I examined transcripts of proceedings involving others, I could not find one case where a person was refused admission or separated from the military who denied having "engaged in, attempted to engage in, or solicited to engage in a homosexual act or acts."[5]

It seems to me that the military has been unjustly portrayed as preoccupied essentially with a person's "sexual orientation." For example, one national magazine reported: "Gay men and lesbians expelled from U.S. military each year because of sexual *orientation*: 1,000."[6] Another publication reported: "More than

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[2]William A. Woodruff, "The DoD Homosexual Policy: Illegal Discrimination or Legitimate Personnel Policy?", 20 October 1992, p. 7.

[3]BenShalom v. Marsh, 881 F.2d 454, 464 (7th Cir. 1989).

[4]Woodruff, op.cit.

[5]DOD 1332.14 which deals with "homosexuality" identifies three reasons for separation: (1) The member has engaged in, attempted to engage in, or solicited to engage in a homosexual act or acts; (2) The member has stated that he or she is a homosexual unless there is a further finding that the member is not a homosexual or bisexual; and (3) The member has married or attempted to marry a person of the same biological sex.

[6]James D. Wilson, "Gays Under Fire," Newsweek, 14 September 1992, p. 39.

20 sailors...were court-martialed or discharged for homosexuality, although only two of them were found to have committed a homosexual act upon a ship."[7] After reading this, one is given the impression that some 18 homosexuals were separated merely because of their homosexual orientation. However, when I read the legal transcripts of these particular cases, I learned that seaman apprentice "A" admitted to engaging in acts of sodomy on four occasions with seaman "B;" that seaman "C" admitted to engaging in acts of oral and anal sodomy with seamen "D," "E," "F," "G," and petty officers "H" and "I;" that officer "J" was found to have engaged in numerous homosexual acts with enlisted personnel; etc. The facts of these cases described a behavioral picture very different from that suggested in The New Republic article.

DOD critics do not even obliquely suggest any course of action for homosexuals found soliciting or engaging in homosexual acts. Homosexuals who are discharged after having engaged in sodomy or accused of solicitation by fellow service members are not the ones who are invited to appear on talk shows or are getting most of the press coverage. More frequently today, practicing homosexuals do not consider their orientation a private matter, but are inclined to seek public affirmation for their lifestyle. It can be argued that the deliberate manifestation by word or deed of one's homosexual orientation marks the beginning of behavioral change because the announcement itself is the demand for a social infrastructure to support the behavior.[8]

Critics who liken the DOD policy to the past exclusion of blacks and women and call for an end to "discrimination," fail to acknowledge that being black or a woman relates to personhood which is a non-behavioral trait quite distinct from homosexual behavior. Even if it may be shown that some homosexuals have an orientation which they have not chosen, it is fair to state that homosexual behavior is, in fact, a "choice", and one which most people do not view as normal conduct either for themselves or their sons and daughters in or out of the military.[9]

The DOD policy on homosexuality is designed to preserve, promote and protect legitimate military interests which include the personal privacy rights of service members. Discussions with active duty personnel whose lives would be affected by a policy change give evidence that recruitment of avowed homosexuals could erode morale and have a negative impact on recruitment and retention. I base this concern on the unique living conditions of military life in which heterosexual men and women would be forced into involuntary intimate arrangements. I found support for my concern among many service men and women, particularly among Marines and sailors who routinely deploy at sea for up to six months at a time. A San Diego based sailor expressed the concern of many shipmates when he wrote the following to Navy Times: "What gives someone the right to say I have to sleep and shower with a gay person, when it is common

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[7]Article in The New Republic quoted by William F. Buckley, Jr., "Answers locked in the military closet," The Washington Times, 1 December 1992, p. F-1.

[8]Steve Scott, "Gay church wants its clergy to be chaplains," Dallas Morning News, 3 July 1992, p. 36. This article demonstrates a provision for a "social infrastructure" in a religious body which does not perceive the behavior as morally or socially reprehensible.

[9]Henry Robinson, "They Came to Reclaim Asheville," Asheville Citizen Times, 27 June 1992, p. 5B. When 1,500 people participated in a Gay Pride March, a counter demonstration in support of family life and values was organized the following week which drew over 20,000 marchers. Lawmakers sensitive to their constituents' feelings should take note that the current DOD policy mirrors the fact that most Americans strongly disapprove of homosexual behavior which they do not view as an acceptable alternative to marriage and family life.

knowledge that a gay man has a sexual preference for me (a man)? If you tell me that a gay person can sleep with a person of the same sex without any sexual thoughts, then I will tell you that I can sleep with a heterosexual woman without any sexual thoughts."[10]

Opponents of the ban dismiss this concern of military personnel for privacy by drawing invalid comparisons with other foreign militaries. Unlike full-time active duty U.S. Forces, many foreign militaries function more like our reserve units. In Israel, for example, homosexuals are not allowed in combat units or forward base areas, but are assigned to "open" bases, i.e. bases where soldiers commute to their homes at night.[11] While a reservist who lives in a civilian community may not be so concerned that a member of his or her reserve unit is a homosexual, active duty personnel, who do not have a choice of roommates in barracks or on board ships, will be far more concerned about his or her roommates' sexual preferences. It is for this reason that I concluded that the acceptance of homosexuals would do much more to violate the privacy of heterosexual military personnel than it would to promote the rights of homosexuals.

Serious Questions to Consider

Critics of the current DOD policy question the validity of the arguments used by the military to justify the exclusion of homosexuals from its ranks. These same critics (most of whom are civilians) who downplay the behavioral aspects of homosexuality, should be prepared to answer some questions which might be raised by military personnel whose lives would be affected by a policy change.

1. Given the uniquely close living conditions of military life, if heterosexuals are forced to compromise their privacy and be looked upon by some homosexuals as sex objects, how might this impact on recruitment and retention?

2. The military services, with its predominantly young male population, could pose a major challenge to gay men who might wish to arrest their behavior. On the other hand, could the military not be an attractive occupation for homosexuals who see no reason to restrict that same behavior?

3. In light of what some would argue is an "innate orientation," would it be wise for a liquor store manager to hire an alcoholic who does not see that condition as a problem and, therefore, is not working toward recovery?

4. How might we expect a heterosexual to behave if he/she occupied a small room with an attractive person of the opposite sex on a ship deployed at sea for six months?

5. If homosexuals were allowed to serve in the military and occupy the same quarters, wouldn't it be discriminatory for an unmarried heterosexual couple to be denied permission to share quarters in barracks, base housing, or even at sea?[12]

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[10]David Zinkgraf, GMM1, USN, "Mr. Clinton, we don't want gays!", Navy Times, 7 December 1992, p. 36.

[11]Charles Moskos, "Homosexuals in the Israeli and German Armed Forces," letter to General Gordon R. Sullivan, 7 December 1992.

[12]Charles Moskos, "Why banning homosexuals still makes sense," Navy Times, 30 March 1992, p. 27. Rather than drawing an analogy between homosexuality and racism, the writer argues that the more correct analogy is between homosexuality and heterosexuality. He perceptively writes: " Anybody who wants to allow

6. It is ironic that some lawmakers who have been outspoken in regard to sexual harassment in the military also endorse homosexuals serving in those same armed forces. Would these lawmakers be comfortable having a 17 year old son billeted in a three-man barracks room with two homosexuals for a four year tour of duty? How might the son himself feel about this arrangement?

Unfortunately, these are but a few questions which opponents of the current DOD policy do not wish to consider.

Statistics

The number of homosexuals in society is a debated question. Alfred Kinsey's 1948 publication of Sexual Behavior in the Human Male has led many people to believe that homosexuals make up 10% of the population. While Kinsey wrote that "10 percent of males are more or less exclusively homosexual for at least three years between the ages of 16 and 55," he also reported that "4 percent of white males are exclusively homosexual throughout their lives after adolescence." For political reasons, gay-rights activists prefer to quote the 10% over his 4% statistic. Since the publication of Kinsey's work, the accuracy of his survey has been questioned by many researchers.[13] A more recent survey of more than 10,000 persons by the National Center for Health Statistics indicates that homosexuals and bisexuals combined amount to less than 1.5 percent of the American population.[14]

A recent GAO report, Defense Force Management: DOD's Policy on Homosexuality, noted statistics regarding the number of homosexuals that have been discharged from the military.[15] Opponents of the current DOD policy like to quote this report in regard to the amount of money reported to have been expended in discharging homosexuals. DOD critics give the impression that homosexuals are separated simply because of a discovered non-threatening orientation and that millions of dollars will be saved if the homosexual policy is changed. However, separations are the result of the military's concern with homosexual behavior which will only be increased if homosexuals are allowed to enlist. Consequently, the amount of money expended on separating people because of homosexual behavior would not decrease, but would increase if homosexuals were admitted.

There were a number of other statistics that the GAO report did not include. The following are but a few that should be considered in this current discussion:

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homosexuals into the military must make the same argument for breaking down the barrier between the sexes."

[13]Judith Reisman & Edward W. Eichel, Kinsey, Sex and Fraud: The Indoctrination of a People (Lafayette, LA: Huntington House Publishers, 1990), pp. 23-24.

[14]Deborah Dawson, "AIDS Knowledge and Attitudes for January-March, 1990, Provisional Data From the National Health Interview Survey"; Joseph F. Fittl and Marcie Cynamon, op. cit. for April-June 1990; Pamela F. Adams and Ann M. Hardy, op. cit. for July-September 1990, in Advance Data Nos. 193, 195, and 198, National Center for Health Statistics, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services, p. 11 in all three documents.

[15]U.S. General Accounting Office. Defense Force Management: DODs Policy on Homosexuality, B-247235 (Washington, DC), 12 June 1992, pp. 16-26.

1. Statistics give evidence of widespread sexual compulsion among homosexual men. A recent University of Chicago survey revealed that for the U.S. population as a whole, the estimated number of sex partners since age 18 is 7.15 (8.67 for those never married).[16] These numbers stand in striking contrast to the results of a major study by the Kinsey Institute which revealed that 43% of the homosexual men surveyed estimated that they had sex with 500 or more partners; 28% with 1,000 or more partners.[17] In the same study, 79% of the white male homosexuals surveyed said that more than half of their partners were strangers. 70% said more than half of their sexual partners were men with whom they had sex only once.[18]

2. Since the onset of AIDS, there does not appear to be a significant decrease in homosexual partnering behavior. In one study, the number of different partners fell from 70 to 50 per year; in another study, the number was reduced from 76 to 47 per year.[19]

3. Homosexual men are six times more likely to have attempted suicide than are heterosexual men.[20]

4. Studies indicate that between 25% and 33% of homosexual men and women are alcoholics.[21]

5. In a survey reported in the American Public Health Association, 78% of the gay respondents reported that they had been affected by a sexually transmitted disease at least one time.[22]

6. According to a recent survey, despite the threat of AIDS, 46% of male homosexuals between the ages of 18 and 25 [military age], within a month of the survey, engaged in anal intercourse without a condom.[23]

7. High rates of dangerous sexual behavior have contributed to the reduced life expectancy of homosexual men. According to a recent study[24] of 5,246 obituaries in homosexual newspapers from coast to coast, the average age of men dying from

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[16]Tom W. Smith, Adult Sexual Behavior in 1989: Number of Partners, Frequency and Risk, presented to the American Association for the Advancement of Science, February, 1990, published by NORC, University of Chicago.

[17]Alan P. Bell and Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women, (New York, Simon and Schuster, 1978), p. 308.

[18]Ibid., pp. 308-309.

[19]S. A. Stewart, USA Today, 21 November 1984; L. McKusick et al., "AIDS and Sexual Behavior Reported by Gay Men in San Francisco," American Journal of Public Health, 1985, pp. 493-496.

[20]Ibid., Table 21.12.

[21]Robert J. Kus, "Alcoholics Anonymous and Gay American Men," Journal of Homosexuality, Volume 14, No. 2 (1987), p. 254.

[22]Enrique T. Rueda, The Homosexual Network, (Old Greenwich, Conn., The Devin Adair Company, 1982), p. 53.

[23]Dick Thompson, "A Losing Battle With Aids," Time, 2 July 1990, p. 43.

[24]Paul Cameron, William I. Playfair, and Stephen Wellum, "The Homosexual Lifespan," Family Research Institute, Inc., Washington, DC, 1992.

AIDS is 39. The average age of homosexuals dying from all other causes is 41. Less than three percent of homosexuals surveyed are over the age of 55.[25]

8. Homosexual activists are calling for an end to mandatory pre-induction and in-service testing for the AIDS virus in the military. While the annual cost of treating HIV-infected military personnel has averaged a little over 60 million dollars, the FY 92 cost of HIV/AIDS testing was $17.9 million dollars.[26] Military personnel found to be HIV-positive may remain on active duty as long as they can perform their functions. Once a person is determined to be 30 percent disabled from his condition, he qualifies for medical retirement with benefits.[27]

9. While some homosexual activists contend that "a person's private sex conduct is not a matter for military inquiry," others would argue that "sexual conduct is a matter of command concern" because HIV-infected personnel are non-deployable overseas which forces others to "take up the slack."[28] Currently, some 1,700 military personnel are non-deployable to places like Somalia because of their HIV status.

In so far as two-thirds of all AIDS cases are directly attributable to homosexual conduct,[29] I concluded that admitting homosexuals would bring about an increase in the number of AIDS cases and would put additional financial and personnel burdens on an already strained military medicine program.

Conclusion

American society is experiencing the contradictory phenomena of increasing sensitivity regarding human rights accompanied by growing rejection of sexual morality. The movement to approve homosexual conduct as an acceptable life style is not surprising in today's permissive society.

Military leaders influence the formation of attitudes in their subordinates, and not only their words but their example (lifestyle) can profoundly affect the direction and lives of those whom they lead. This fact was articulated by General John Lejeune, the 13th Commandant of the Marine Corps, who noted that "a large portion of those enlisting are under twenty-one years of age" and "are in a very formative period of their lives. We owe it to them, to their parents, and to the nation, that when discharged from the services they should be far better physically, mentally, and morally than they were when they enlisted."

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[25]Gary L. Bauer, "Sexual Disorientation," Family Policy, June 1992, p. 6.

[26]Joyce Price, "Gay activists protest HIV testing in military," Washington Times, 1 December 1992, p. 1. Before the military introduced mandatory drug testing (urinalysis), the incidence of drug abuse posed a serious threat to the strength and integrity of our armed forces. If mandatory HIV testing which is undertaken to protect service members were eliminated, a similar and possibly more dangerous threat could arise.

[27]Ibid.

[28]David Evans, "Truth and consequences on gays," The Chicago Tribune, 11 December 1992, Section 1, p. 21.

[29]"The HIV/AIDS Surveillance Report," Department of Health and Human Services, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS, January, 1992, p. 9.

Today when more militant and vocal homosexuals are advocating that homosexuality should be included in sex education courses as an acceptable alternative to marriage, military personnel themselves and parents of young service men and women cannot help but be concerned about this matter. Legislators and military leaders have a legitimate role to play in providing positive, acceptable role models, especially for young people whose minds and characters are in formative stages. As one chaplain commented: "Encouraging Americans raised in a Judeo-Christian culture to accept and respect acknowledged homosexuals who engage in homosexual acts (even if only in private) is tantamount to encouraging wives to accept and respect married men who commit adultery."

Many chaplains, like our civilian counterparts, are hesitant to address this controversial issue. Before the inauguration, one chaplain remarked: "You're unwise for speaking out. After all, President-elect Clinton will soon take office, gays will be admitted, and then where will you be?" My response: "Given our 'job description' as 'principal advisors to the command on moral matters,' are we not called to 'take the lead' by speaking the truth? Or, should we be more concerned about being 'politically correct'?"

In addressing this issue, I am painfully aware that many have and will accuse me of pastoral insensitivity and homophobia. Rather than attacking my person, I only ask that members of the executive and legislative branches give serious consideration to the specific concerns that my research has disclosed. These and other concerns expressed by military leaders demand an honest and thorough hearing. For the welfare of millions of military personnel today and tomorrow, I pray to God they receive it.

The views expressed in this article
are those of the author and do not reflect
the official policy or position of the
Department of Defense or the U.S. Government.

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"A CASE FOR CONTINUING TO ASK"
BY
ROBERT LEE MAGINNIS

Congressman Barney Frank (D-Mass.) said, "We can get a compromise that improves the situation but doesn't make it perfect and leaves us free to fight again."[1] Frank and the homosexual community will fight until they completely overturn the military's gay ban. Their campaign must be stopped before it wins further concessions.

The president endorses a policy that accepts status but punishes homosexual misconduct. Senator Nunn will accept the "interim policy" of not asking. And as some have pointed out, the devil will be in the details.

Unfortunately the most important aspect of the ban has already been given away: the question. We no longer ask new recruits about their homosexual history. The question should be a critical part of any future compromise.

Asking the question is critical because it puts recruits on notice that homosexuality is incompatible with military service. Even the American Red Cross sanely asks potential blood donors whether they have had sex with another man since 1977 or if female, if they have had sex with a man who in turn has had sex with another man since 1977. The Food and Drug Administration (FDA) requires this question with ample justification. Why shouldn't the military ask the same?

There are compelling legal and medical reasons to keep the question. Legally, not asking the question opens the military to unnecessary discipline problems. Medically, homosexuals are a category of people more subject to blood born diseases.

Critics like Mr. Frank argue "gay men and lesbians are not the ones who will misbehave: the fear is the reaction by the straight majority....the problem has been historically, people have gotten kicked out because, after hours, they have been seen with a lover of the same sex, they have been in a bar, they have been snooped upon."

Using Mr. Frank's argument the Defense Department would never had investigated Tailhook. After all, it took place off post in a hotel in Las Vegas. However, as most would agree, one's off-post conduct has military consequences.

The courts made the military establish an off-post/off-duty policy which failed. We winked at off-post drug use, even cases involving fraternization. The courts eventually overturned the ruling. Such off-post conduct had serious military consequences.

A study of 100 recent adjudicated courts-martial involving charges of sodomy against army soldiers point out the necessity

to keep the question and not compromise on the off-post conduct.

The courts-martial records are only the tip of the iceberg. For example, in 1992 the army conducted 618 sodomy investigations which included 116 multiple offenses. Some of those cases were dismissed for insufficient evidence. Others were resolved by disciplinary discharges. Only about one in ten went to courts-martial. In the same year 120 soldiers were administratively discharged for homosexuality. No one knows what part of the army's in-the-closet homosexual community these figures represent.

The courts-martial cases paint a telling picture. Most (85%) of the cases involved nonconsenting victims. Half of the victims were children. Fraternization was involved in 63% of the soldier cases.

It's a myth that homosexual service members only express their sexuality off-post. The study reveals 81% of the soldier cases took place in the barracks setting.

Five of the cases involved HIV-positive offenders. Consider one of the HIV cases.

An HIV positive sergeant ordered a trainee to accompany him to the sergeant's room. Inside, the sergeant grabbed the trainee's genitals and demanded that the trainee lay on him. The trainee fled, locked himself in the bathroom, and wrote "help" on the bathroom window. When the sergeant threatened the young man with an unauthorized absence, the private opened the door, only to discover the sergeant fully naked. The trainee tried to leap from the window as the sergeant grabbed him by his neck and genitals. Six other trainees pulled the sergeant from the trainee after hearing the screams for help.

The Army has 466 HIV positive soldiers as of may 1993. The evidence suggests that most of these soldiers contracted HIV from same-sex encounters. A 1990 investigation provides some telling information about these HIV positive service members.

LTC William D. Strampel, an Army medical doctor testified concerning his interviews with HIV positive soldiers. One 22 year-old service member said he had sex with 750 different partners over a five year period. The colonel interviewed about 50 HIV positive soldiers and most claimed to have had more than 500 sex partners each in a five year-period.[2]

The analysis of the HIV positive soldier court-martial rate for homosexual offenses was higher than the Army-wide rate for all offenses. This indicates HIV positive soldiers are more of an indiscipline problem than non-HIV positive soldiers. They are also, as evidenced above extremely promiscuous.

Twelve of the 100 courts-martial cases took place off-post.

One of the cases involved a colonel who was a female impersonator.

The colonel was notorious within the gay community, where he frequently dressed in women's' clothing, to include performing at various gay bars. All of his activities occurred off-post during non-duty time. His case came to light during a security check. Although the colonel apparently used a variety of illicit drugs and had "flashed" ladies at a laundromat while dressed in women's clothing, he was not convicted of those offenses. He was convicted of conduct unbecoming an officer although all crimes of which he was convicted occurred off duty and were consensual.

Off-post conduct by soldiers cannot be ignored. It has implications for unit morale, discipline, and cohesion.

Four of the courts-martial cases involved male scout leaders who sexually abused boys in their troops. This contributes to the concerns expressed by military parents concerning changes to the homosexual ban.

Even the consensual acts were also problematic. They typically involved fraternization, HIV positive soldiers, public displays or were associated with violence. These actions also undermine unit morale.

Whether in the closet or not homosexuals still have a negative impact. The administrative and disciplinary problems created by this category of people is completely disproportionate to their numbers. Any increase in their numbers made by a change in policy will seriously degrade morale, cohesion, and good will in the military and civilian communities.

The question is also necessary for medical reasons. The red cross asks questions about homosexual conduct (not preference) to identify people-at-risk. They reject blood donations from those answering yes. This rejection is without knowing whether the individual has a blood born disease. The military should do the same.

There are many credible, scientific studies in reputable medical journals documenting homosexual disease rates.[3] They account for 80 percent of the most serious sexually transmitted diseases (STD) in this country. The high STD rate is most often attributed to extreme promiscuity (as many as 100 partners annually). They are thousands of times more likely to contract HIV than heterosexuals. They comprise two-thirds of all aids cases reported to the center for disease control.

According to Dr. Robert Root-Bernstein in Rethinking AIDS the homosexual is far more likely to contract HIV because of key co-factors.[4] These co-factors include the presence of diverse antiviral antibodies, active infections, a history of syphilis, sexual promiscuity, unprotected anal intercourse, and use of

multiple street drugs.

The most pronounced risk for AIDS appears to be immunologic exposure to semen and fisting (insertion of fingers or hand into the rectum). A number of studies indicate that most gay men engage in co-factor receptive and insertive anal intercourse. Anal forms of intercourse are associated with vastly increased disease transmission and AIDS risks. A minority of homosexual men engage in fisting.

The use of co-factor street drugs is not uncommon in the gay community. Some say it is common to take a few antibiotics and sniff an ampule or two of amyl nitrite on the way to the baths or bars for a round of anonymous sex. Amyl and butyl nitrites cause methemoglobinemia, a condition in which the drug causes the hemoglobin to be unable to bind oxygen. The problem is often treated with blood transfusions.

A 1991 survey by the lesbian and gay substance abuse planning group found that almost 40 percent of gay and bisexual men reported substance abuse at levels considered by experts to be indicative of chemical dependence or addiction. Another survey found that 95 percent of gay men regularly used inhalant nitrites; over 90 percent smoked marijuana; 60 percent used cocaine; about 8 percent used heroin and more.

The co-factors of promiscuity, the improper use of drugs, anal sex, frequent and multiple STDs promote the high incidence of STD infection in the homosexual community.

In conclusion, the military should keep asking recruits about their homosexual history. People who create more indiscipline problems and whose sexual practices have clear and dangerous medical liabilities should not serve. It makes sense and it's a good business practice. Keep the question!

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HOMOSEXUALITY IN THE ARMY'S FUTURE?

BY

LTC ROBERT L. MAGINNIS

I : INTRODUCTION

Military leaders are mute to attacks by congressmen, media pundits, and special interest groups who advocate the rescission of the Department of Defense (DoD) Directive 1332.14 which bans homosexuals from the military services.[1] The Army subscribes to the DoD directive concerning the exclusion of homosexuals. DoD bases the policy upon the considered judgment of military professionals who understand how to create an effective fighting force. This inherently subjective basis is not supported with empirical research. Rather, it contends that the integration of homosexuals will adversely impact good order, discipline, and morale.

The military ban on homosexuals is a contentious issue which deserves examination. The current course of political and social events suggests pressure will continue to mount until either the military persuasively argues its case against integrating homosexuals or homosexuals gain admittance.

This article discusses homosexuality from a social, political, scientific, and legal perspective. Then, the integration of homosexuals is considered from six organizational perspectives and how each might impact combat readiness. Finally, the article recommends a course of action for Army leaders.

II: SOCIAL AND POLITICAL PRESSURES

First, consider the growing social and political tolerance

and pressure to legitimize homosexuality. A recent Gallup poll indicates 69% of Americans believe homosexuals should be integrated into the military.[2] However, 74% of Americans consider homosexuality always wrong.[3] This sends a conflicting message. Likely when pressed, many of those who favor the integration of homosexuals into the military would not favor sharing barracks rooms, showers, latrines, and foxholes with acknowledged homosexuals or requiring their own sons and daughters to do so. This seems to imply that Americans think it is okay to use the military as America's sociological laboratory as long as it does not personally involve me and mine. That is human, normal, and when it involves our armed forces, quite dangerous.

Considerable political pressure has built to rescind the current policy banning homosexuals from the military. House Resolution 271 and Senate Resolution 236 both call for the President to rescind the DoD policy.[4] The 102d Congress recently presented House of Representatives Bill 5208, The Military Freedom Act of 1992 which prohibits discrimination by the Armed Forces on the basis of sexual orientation.[5] This bill has 35 cosponsors.

Several Congressmen tasked the Government Accounting Office (GAO) to study DoD's policy on homosexuality.[6] GAO's 1992 report falls just short of recommending the rescission of the DoD policy. The study entitled "Defense Force Management: DoD's Policy on Homosexuality" points out: the policy needs review; several NATO countries already permit homosexuals in their

military forces; many police and fire departments accept homosexuals; homosexuals are no longer considered a security risk; and changing the policy on homosexuals would not entail condoning inappropriate behavior. The study fails to address the uniqueness of the military society and the impact the accession of homosexuals might have for combat readiness. These oversights make the GAO study flawed.

Many national associations have passed resolutions promoting the "homosexual" cause. For example, civil libertarians and organizations such as the American Psychological Association (APA) and the Association of American Universities have called for the President to rescind the policy. The media also actively opposes this policy as discriminatory and homophobic.[7]

The media is promoting the full acceptance of homosexuality as an alternative life style. This will, no doubt, influence the political decision makers who have the power to maintain or rescind the military's ban on homosexuals. Specifically, television news and popular programs are desensitizing Americans to homosexuality. For example, ABC's "20/20" reporter, John Stossel, matter-of-factly asked his ex-homosexual guest, "Why not marry a man?"[8] Phil Donahue hosted a show where two men were married on the air.[9] Recent episodes of the television series, "Golden Girls" and "Dear John" promoted the "marriage" of two men and the idea that a character's wife left him for a lesbian lover. These programs and others endorse a homosexual agenda. Their numbers are growing.

The printed media also sanctions the legitimacy of homosexual

life styles. Numerous newspapers publish notices of homosexual "commitments" on their wedding announcement pages and obituaries list "significant others" or "companions" as "next-of-kin." Additionally, the tone of media articles often reflects a growing endorsement of homosexuality as a legitimate and alternative life style. Even the Army Times recently endorsed the immediate accession of homosexuals. It said, "Discrimination based on sexual preference is no more legitimate than that based on race, gender or religion."[10]

III: HOMOSEXUALITY AND SCIENCE

Second, consider homosexuality from a scientific perspective. There is no clear and widely accepted reason for the incidence of a homosexual orientation. The homosexual's argument for legitimacy hangs in the balance. Consider the following explanations. Some people are temporarily homosexual because of the absence of the opposite sex. For people more permanently disposed to homosexuality, there are other explanations. There are proponents for behavior based sexual orientation selection. The homosexual individual presumably elects a homosexual life style because of reinforcing events from that person's background.[11] Others promote the view that homosexuality is genetically based. Recent research suggests homosexual men are 5 times more likely to have bisexual or homosexual brothers than heterosexual men.[12] Another view attributes a proclivity to homosexuality to the size of the hypothalamus, a part of the brain which regulates sex drive. The preoptic anterior nucleus of the hypothalamus is twice as large in men than in women.

Early research suggests that this area is several times larger in heterosexual men as in homosexual men who died from acquired immune deficiency syndrome (AIDS).[13] The cause of homosexuality remains a riddle.[14]

IV: HOMOSEXUALITY AND THE LAW

Third, advocates for homosexual rights seek legal protection as a legitimate minority group.[15] For example, at least 6 states already ban employment and other discrimination on the basis of "sexual orientation."[16] San Francisco has an ordinance recognizing homosexual marriage. Other cities are actively considering similar laws. The District of Columbia recently passed a landmark domestic partnership bill that allows city workers to purchase health insurance for his or her "same-sex" partner, just as married heterosexuals can do for their spouses.

The changing political climate confronts laws which prohibit homosexual conduct. As a class, homosexuals define themselves by their propensity and desire to engage in conduct that society generally finds repugnant. Homosexual sex carries criminal sanctions in almost half the United States, the District of Columbia, and in the Uniform Code of Military Justice. Additionally, there are numerous federal and state legal decisions including recent Supreme Court decisions which deny the homosexual life style legitimacy.[17]

In spite of these legal sanctions, the political community is evidently sensitive to the demands of the homosexual community. The political inroads made by this minority are significant. Homosexuals may eventually succeed in overturning the DoD ban on

homosexuals.

The landmark Supreme Court Decision of Parker v. Levy acknowledges the uniqueness of the military.[18] In that 1974 decision the court said the military has long been recognized as "a specialized society separate from civilian society. . . The differences between the military and civilian communities result from the fact that 'it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.'"[19]

The combat effectiveness of this "specialized society" would be weakened by the integration of homosexuals. Consider six threats to combat readiness should homosexuals be allowed in the Army.

First, homosexual soldiers will endanger the Army's walking blood supply and reduce overall efficiency. The homosexual is often aggressive in seeking sex partners. A pro-homosexual study reveals that 43% of homosexuals estimated that they had had sex with 500 or more partners; 28% with 1,000 or more partners.[20] Additionally, the homosexual media is replete with examples of accounts of homosexuals seeking gratification without regard for the age of the sex partner or without first establishing a relationship.[21]

This level and nature of sexual activity invariably increases the probabilities of contracting sexually transmitted diseases (STD). The more sex partners (especially those engaging in anal intercourse, with its attendant greater chance of tissue damage and bleeding) the better chance one has of contracting an STD--

the homosexual's STD rate is 20 to 50 times that for heterosexuals.[22] For example, as a result of homosexual activity in San Francisco, the venereal disease rate in that city is now 10 times that of the national average.[23]

The current level of STDs in the Army has plateaued.[24] However, should homosexuals freely join the military, the STD rate will invariably increase. This increase will include an increased incidence of the deadly human immunodeficiency virus (HIV) infections- the precursor to the acquired immune deficiency syndrome (AIDS).

There are approximately 220 new HIV infections each year among active duty soldiers. There is insufficient data to speculate about the number of HIV infections among the military's closet homosexual community.

Current Army policy directs HIV testing of active and reserve members no less than every 2 years, or within 6 months of events such as deployments or overseas assignments. The identification is necessary to insure individual and collective readiness. Soldiers testing positive for HIV may not be physiologically, physically, or psychologically fit-to-fight. Noteworthy is the prospect that an HIV positive soldier may be unable to respond properly to a vaccine and is more susceptible to infections. Since all soldiers are expected to be available for transfusions in combat, HIV positive soldiers also endanger the Army's "walking blood bank."[25]

Lifting the ban on homosexuals will almost certainly result in increased incidence of HIV in the military. This will

significantly increase medical costs and will reduce the overall efficiency of the force.

An ongoing test of HIV-positive male soldiers reveals that 42% admitted to recent sex with a male partner. Seven percent of these personnel admitted to having sex with an HIV infected partner. This study also suggests that the following characterizes the soldier at high risk to contracting HIV: prior incidence of an STD, sexual intercourse that causes bleeding (most often anal intercourse), and heterosexual intercourse with high-risk parties.[26]

About 580 HIV-infected soldiers are in the Army today. Soldiers identified as HIV-positive are retained on active duty. They are assigned tasks which will not put them at risk nor jeopardize fellow soldiers. Once HIV-infected soldiers become clinically ill, they are medically retired.[27]

The evidence is clear: homosexual soldiers are potentially more susceptible to STD's than their heterosexual counterparts.[28] Accession of homosexuals will likely increase the Army's incidence of the HIV and other STDs. Thus the accession of homosexuals poses significant danger for soldier health and readiness.

Second, the accession of homosexuals has broad implications for soldier privacy. As homosexuals crusade for their individual rights, the Army must also consider the privacy rights of the heterosexual soldier forced to share a room and latrine with an acknowledged homosexual. The thought of someone becoming sexually aroused watching you dress or shower is disconcerting.

Sexual advances and the fear of such advances under these circumstances will damage morale.

Issues of soldier privacy also include considerations of homosexual marriage. Army leaders must decide whether acknowledged homosexual soldiers can share barracks rooms and even be assigned to the same squad or team. For eligible homosexual soldiers, government quarters must be offered. How might the homosexual "couple" integrate into the Army community? Many Army families will view homosexuality as aberrant behavior which provides the wrong influence for their children. This issue could further segment Army families in government housing areas. It may also influence the sense of community which supports the Army mission during periods of deployment.

Will the Army defend the homosexual couple's rights to off-post housing? Commanders should be prepared to place property off limits if the landlords discriminate against homosexuals.[29]

Alternatively, the Army might consider separate housing for avowed homosexuals and lesbians. This alternative will protect the privacy rights of the heterosexual soldiers and certainly be safer for the homosexual soldier. Such an alternative might also promote homosexual relations and sustain their morale. Theoretically, the Army could eventually have five types of housing: male heterosexual, female heterosexual, male homosexual, female homosexual, and family housing (both heterosexual and homosexual). This is potentially a very expensive option.

Resolution of the privacy issue is important. At present the Army does not require female and male soldiers to sleep in the

same rooms and share the same shower facilities. Conversely, heterosexual soldiers should not be expected to share similar facilities with homosexuals. The assignment of heterosexuals and homosexuals to the same barracks rooms threatens morale and team cohesion, which are essential ingredients of combat readiness.

Third, the introduction of homosexuals will create discipline problems. Many heterosexual soldiers will likely reject the integration of homosexuals. Discipline problems in the barracks and at training sites will result. This could become very explosive.

Homosexual soldiers will introduce other discipline problems for Army officials. Homosexuals are six times more likely to attempt suicide than heterosexual men.[30] This will certainly present a leadership and discipline challenge for Army leaders. In spite of such information the APA does not categorize homosexuality as a mental disorder.[31] Rather, society is blamed for stigmatizing homosexuals. Society's rejection of the homosexual allegedly fosters guilt within the homosexual which eventually leads to suicide. How then should the Army treat the suicidal homosexual soldier if same sex orientation is not a factor in the attempted suicide?

Studies indicate that between 25 and 33% of homosexual men and women are alcoholics.[32] The abuse of alcohol is linked with discipline problems. Such problems will inevitably lead to an increase in the number of disciplinary discharges. It may also cost the Army more resources in terms of increased medical treatment and damaged equipment.

The potential for violence among homosexual and heterosexual soldiers, the homosexual community's higher suicide rate, and the incidence of homosexual alcoholics might undermine organizational discipline. This will detract from unit readiness.

Fourth, many heterosexual soldiers have well established and contrary beliefs about homosexuals. These beliefs must be overcome before the homosexual can be fully integrated. To overcome these beliefs Army leaders must mount a massive reeducation campaign to sensitize heterosexual soldiers to the rights of homosexuals. The reeducation campaign must include sensitivity training and will require routine assessments concerning the integration of homosexuals in Army units.

The aforementioned changes promote the integration of the homosexual. They simultaneously jeopardize future heterosexual retention. Heterosexual soldiers who view homosexuality as an aberrant or sinful behavior might seek alternative careers. Their parents and families may also discourage them from remaining in the Army.

Fifth, the Army's image with the American people will suffer with the open accession of homosexuals. Americans have long accepted the Army as a discriminating organization. They supported discrimination believing the nation's political and military leaders know what was best for this "specialized society." For example, for the sake of national defense, the Army routinely discriminates against whole categories of individuals. It routinely discriminates against the physically handicapped, the too tall or short, those outside certain age

limits, single parents with custody of a child, the overweight, the mentally handicapped, those without a high school education, and those who cannot meet other physical and mental requirements. These are necessary precautions to ensure the Army is fit to fight.

The ban on homosexuals is not "anti-gay" anymore than the educational requirements are "anti-high school dropout." This policy and other discriminating policies seek to ensure that the Army recruits and maintains a force capable of performing the mission.

The Army historically discriminates against avowed homosexuals. Their numbers have not been well documented.[33] The best indication of the prevalence of homosexual orientation among soldiers is reflected in their discharge rates. For example, the Army separated about 800 soldiers per year during the 1960s for homosexuality.[34] The rate of discharges for homosexuality has declined in recent years. In FY91, 230 enlisted soldiers were discharged for homosexuality.[35]

Finally, the elimination of the current ban will likely create special legal problems. Specifically, the Army should anticipate a surge of former homosexual soldiers seeking reinstatement. Others who were administratively discharged for homosexuality will file civil liability suits seeking restitution for lost wages. The litigation will go on for years.

There are other legal implications. The Army must prepare to sanction homosexual marriages with the rights and privileges afforded the heterosexual couple. Once married, the chain of

command may require a member of a homosexual couple to transfer to other units as is currently the policy for married heterosexual couples. The Army must also consider the legal rights of professed homosexuals to adopt children or in the case of lesbians give birth or adopt and raise children.[36]

The preceding six implications for the Army should homosexuals gain access provide a complex set of challenges. Each challenge will have a yet to be determined impact on combat readiness.

RECOMMENDATION

The Army must take the offensive and defend the current ban, and yet simultaneously prepare for the possible accession of homosexuals. The Army must aggressively defend the current policy using a combat readiness and unique organizational defense. The aforementioned implications provide a starting point for this defense. Army leaders must carry this defense to the Congress, the media, the Total Army, and the American people.

CONCLUSION

In conclusion, the Army has changed dramatically over the past few decades. Weapon technologies, tactics, doctrine, organizational structure, uniforms, have changed in order to refocus the organization on the realities of the modern battlefield and fiscal constraints. There have also been sociological changes.

Whether future sociological changes include the accession of homosexuals is to be determined. In the past, the Army led the way in sociological change, especially in the integration of racial minorities and women. The integration of peoples of

different races and sex into the organization is a different sphere than the integration of people with same-sex orientations. Our nation's combat readiness is at stake. Political and social pressures must not force change which undermines national security. The Army is not a laboratory for social experimentation; it should not be required to assume the risk that homosexuals will be detrimental to morale, unit cohesion, good order and discipline, and mission accomplishment.

FOOTNOTES

[1] Department of Defense Directive 1332.14, "Enlisted Administrative Separations," Jan 28, 1982 states, "Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers to ensure the integrity of the system of rank and command; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security."

[2] United States General Accounting Office, "Defense Force Management: DOD's Policy on Homosexuality," GAO/NSLAD-92-98, June 1992, p.39.

[3] Richard G. Niemi, Trends in Public Opinion (NY: Greenwood Press, 1989), p.195.

[4] Senate Resolution 236 (102d Congress, 1st Session) dated Nov 26, 91, "Expressing the sense of the Senate that the President rescind DoD Dir 1332.14, Section H.1, which bans gay, lesbian, and bisexual Americans from serving in the Armed Forces of the United States." REP Barbara Boxer introduced a resolution on Nov 6, 1991 entitled "Rescission of DoD Dir 1332.4- Banning Gays and Lesbians from the U.S. Military." It became House Resolution 271.

[5] This is a two sentence bill. The first sentence prohibits discharging homosexuals based on sexual orientation: "(a) No member of the Armed Forces, or person seeking to become a member of the Armed Forces, may be discriminated against by the Armed Forces on the basis of sexual orientation." The second sentence says, "(b) Nothing in subsection (a) may be construed as requiring the Armed Forces to modify any rule or policy regarding sexual misconduct or otherwise to sanction or condone sexual misconduct, but such rules and policies may not be applied in a manner that discriminates on the basis of sexual orientation." This is cited from a letter to the editor, The Washington Post, September 5, 1992, page A28 from Patricia Schroeder, Member, Committee on Armed Services, U.S. Representative (D-Colo.).

[6] The GAO study was requested by The Honorable John Conyers, Jr., The Honorable Gerry E. Studds, and the Honorable Ted Weiss.

[7] Organizations promoting homosexuality argue that homosexuals are an oppressed, disadvantaged minority, much like African-Americans and Hispanics, and they deserve special legal status and privileges. Joint Chiefs of Staff Chairman, General Colin Powell said in the July 1992 edition of The Retired Officer (p.16), "Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two, racial and sexual discrimination, is a convenient but invalid argument." Dr. Anthony Evans, Executive Director, The Urban Alternative said "The equation of homosexuality with the noble history of civil rights in this country serves only to dilute, distort and denigrate true civil rights."

[8] ABC News "20/20" interview, April 24, 1992.

[9] The marriage of Wayne P. Watson and Michael S. Marlowe was televised on May 16, 1991.

[10] "End Gay Ban," Army Times, Aug 24,1992, p.23.

[11] Psychoanalyst Sigmund Freud opined homosexuality is not an illness. It is a variation of the sexual function and not something to "be ashamed of." This is cited in a April 9, 1935 letter by Freud. The American Psychological Association (APA) publicized the following resolution in 1975: "Homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." There are conflicting studies which testify to homosexuals discarding their homosexuality and returning to heterosexual life styles.

[12] Michael Drew, "Study Says Brain Node May Guide Male Sex Orientation," The Washington Post, Aug 30, 1991, p. A13.

[13] The research study by biologist Simon LeVay at San Diego's Salk Institute for Biological Studies examined 41 brains of homosexual and heterosexual subjects who died between ages 26 and 59. He found that the hypothalamus was found to be about the same size in homosexual men and heterosexual women. Most of his subjects died of AIDS.

[14] "The genetic theory of homosexuality has been discarded today... Despite the interest in possible hormone mechanisms in the origin of homosexuality, no serious scientist today suggests that a simple cause-effect relationship applies." This is cited from Master, Johnson and Kolodny, Human Sexuality, Boston: Little, Brown & Co, 1984, p.319. Dr. Judd Marmor, a past President of the APA said in his 1982 book Homosexual Behavior: A Modern Reappraisal, "No one has ever found a single, replicable genetic, hormonal or chemical difference between heterosexuals and homosexuals."

[15] Attorney Roger Magnuson, in "Are Homosexual Rights Right?" [Multnomah Press, Portland, 1990, p.73] raises the question, should homosexuals gain protected class status which is generally predicated by protected status "unrelated to behavior, traditional perceptions of moral character or public health ... One's racial inheritance, for example, created a true class status. Race tells us nothing about a person's life style or behavior." The issue for homosexuals is should their life style alone compel governments to grant them fully recognized and legally sanctioned protected class status?

[16] Vermont recently became the sixth state to ban employment and other discrimination on the basis of sexual orientation. Connecticut, Hawaii, Massachusetts, New Jersey, and Wisconsin have similar statutes.

[17] In 1986, the U.S. Supreme Court (in the case of Bowers v. Hardwick) was asked to overturn Georgia's sodomy statute and recognize the homosexual as a distinct class protected under "right of privacy." The Court ruled that Georgia's sodomy statute did not violate the fundamental rights of homosexuals and the Federal Constitution does not confer a fundamental right upon homosexuals to engage in sodomy. Chief Justice Burger wrote for the majority saying, "To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching." The 9th Circuit U.S. Court of Appeals ruled in the 1990 case of High-Tech Homosexuals v. Defense Industrial Security Clearance Office that "Homosexuality is not an immutable characteristic; it is behavioral and hence is fundamentally different from traits such as race, gender, or alienage... The behavior or conduct of such already recognized classes is irrelevant to their identification."

[18] Parker v. Levy (417 U.S. 755, 1974).

[19] Ibid.

[20] Alan P. Bell and Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women, (New York, Simon and Schuster, 1978) p. 308. These figures represent total sex partners over the respondents lifetime.

[21] "Child Molestation and Homosexuality," The British Journal of Sexual Medicine, April 1987. The report cites survey results which indicate the mean age of homosexuals' first sexual encounters with other males as 15 years and one month. The homosexual is 18 times more likely to engage in sexual practices with minors than heterosexuals.

[22] Ibid. Another study says male homosexuals are 14 times more likely to have had syphilis than heterosexuals. They are eight times more likely to have had hepatitis A or B, and hundreds of times more likely to have had oral infection by STDs through penile contact. This is cited from Jaffe and Keewhan, et. al., "National Case-Control Study of Kaposi's Sarcoma, etc. in Homosexual Men; Part 1, Epidemiologic Results," Annals of Internal Medicine, 1983, 99(2), pp. 145-157. The U.S. Centers for Disease Control reported in a 1991 study, "CDC Gepatitis A among homosexual men- United States, Canada, and Australia," MMWR, 1992:41:115-64) that 50% of San Francisco cases, 56% of Toronto cases, 66% of New York cases, and 26% of Melbourne, Australia cases were among homosexuals.

[23] Ibid. Another survey in San Francisco indicates that homosexuals between the ages of 18 and 25 reported that 46% of those polled admitted having engaged in anal intercourse without a condom during the past month. The same report stated that 43% of young homosexual men ages 17-19 were currently engaging in condom-unprotected anal intercourse. This is cited from a Time magazine (July 2, 1990), article, "A Losing Battle With AIDS."

[24] Data from the U.S. Army Surgeon General dated April 1992 indicates the following about the incidence of STDs in the Army. The incidence of STDs among U.S. Army soldiers is highest among young, sexually active soldiers. The overall incidence of STDs declined from 1985 to 1989 and now appears to be flat. Black male soldiers appear to experience the highest incidence rates of STDs.

[25] Ibid.

[26] Ibid.

[27] Robert R. Redfield et. al., "A Phase I Evaluation of the Safety and Immunogenicity of Vaccination with Recombinant gp160 in Patients with early Human Immunodeficiency Virus Infection," The New England Journal of Medicine, June 13, 1991, VOL 324, No. 24, p. 1. The Army is cooperating in clinical trials on 140 HIV positive soldiers. The "AIDS vaccine", gp160 appears to retard the on-set of AIDS.

[28] Established sexual habits are difficult to alter through education and or coercion. The Army might not successfully control or modify promiscuous behavior of homosexual soldiers. These soldiers would be at greater risk of contracting STDs.

[29] The Armed Forces Disciplinary Control Boards (AFDCB) may place certain areas or landlords off-limits.

[30] Bell and Weinberg, Homosexualities, p.308.

[31] The homosexual community garnered the "normality status" in 1973, when the APA removed homosexuality from its DSMII listing of psychological disorders. Sixty percent of APA members voted in favor of the decision while under enormous intimidating pressure from disruptive and confrontational homosexual activist. A homosexual sympathizer, Ronald Bayer describes the setting for the APA vote in his 1981 book Homosexuality and American Psychiatry: The Politics of Diagnosis (pp. 98-99). "The purpose of the protest was no longer to make public a point of view, but rather to halt unacceptable activities. With ideology seen as an instrument of domination, the traditional willingness to tolerate the views of one's opponents was discarded."

[32] Robert J. Kus, "Alcoholics Anonymous and Gay American Men," Journal of Homosexuality, Vol 14, No.2(1987), p.254.

[33] The Alfred Kinsey studies suggest upward to 10% of the U.S. population is homosexual. (Kinsey,A., Pomeroy, W., & Martin, C. (1948). Sexual behavior in the human male. Philadelphia: W.B. Saunders.) A 1954 study by the American Statistical Association entitled Statistical Problems of the Kinsey Report (William G. Cochran et. al., American Statistical Association, p. 39) states that "in numerous instances their words go substantially beyond the data presented and thereby fall below standard for good scientific writing." Another study entitled Kinsey, Sex and Fraud, by Dr. Judith A. Reisman and Edward W. Eichel (1990) stated that Kinsey's survey sample was not random and included up to 25% of incarcerated sex offenders. Conflicting materials suggest the incidence of homosexuality is much lower. Tom W. Smith cites in his study "Adult Sexual Behavior in 1989: Numbers of Partners, Frequency and Risk" that "Overall...less than 1% [of a full probability sample of the adult U.S. household population] has been exclusively homosexual." A 1990 National Center for Health Statistics and U.S. Centers for Disease Control survey of about 10,000 subjects reports less than 3% of men as saying they have had sex with another man since 1977, even one time.

[34] Jeffrey S. Davis, "Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives," Military Law Review, VOL 131, 1991, p. 65. The Army separated 6139 soldiers for homosexuality during the period 1960-1967. The Navy separated 1087 sailors per year during the period 1950 to 1965.

[35] The separations for homosexuality under Chapter 15, AR 635-200 ranged from 394 in 1983 to 491 in 1986 to 219 in 1990. (This information is cited from page 22, the 1992 GAO study supplement, "Statistics Related to DoD's Policy on Homosexuality.") These figures do not include homosexual people discharged for other reasons (UCMJ, Chapters 10, 13, 14 and 16). The true incidence of homosexual soldiers is not well documented. The FY91 statistic is provided by DCSPER, HQDA.

36 The National Organization for Women (NOW) argues a woman should be free to choose either a man or a woman for a sexual partner. NOW opposes the traditional heterosexual marriage as the basis for family life and childbearing. It argues "the end of the institution of marriage is a necessary condition for the liberation of women. Therefore it is important for us to encourage women to leave their husbands and not live individually with men. We must build alternatives to marriage." (George A. Rekers' Shaping Your Child's Sexual Identity (Baker Book House, 1982, pp. 3-4). The lesbian can be artificially inseminated and then like other single parent soldiers deliver in an Army hospital.

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A CONTRARY AGENDA

by

Robert L. Maginnis

The contentious issue of gays in the military has caused considerable pre-inauguration debate. The topics include military readiness, civil-rights, homosexual causation, and what our military allies do with gays. The battlelines are drawn.

President-elect Clinton's options to answer the debate include: rescind the gay ban by executive order, direct an administrative halt to gay discharges, establish a commission to study the issue, authorize the military to study the issue, or leave the ban intact.

Before Governor Clinton decides he should review the evidence. He must consider the gays' public agenda and life-style. What do gays want and how do they conduct themselves?

Let the homosexual media and the scientific community provide the evidence, then decide for yourself.

In 1972, the "National Coalition of Gay Organizations" adopted a "Gay Rights Platform."[1] It includes nine specific demands.

First, it amends all civil rights laws to prohibit discrimination on the basis of sexual orientation. The recent gay victories in California and Oregon and their defeat in Colorado point out growing gay activism.[2]

Second, it permits homosexuals to serve in the military. Gays heavily contributed to Clinton's election coffers and actively participated in his campaign.[3] They expect him to lift

the ban.[4]

Third, it allows the immigration and naturalization of homosexual aliens. Governor Clinton already announced human immunodeficiency virus (HIV) positive Haitians can immigrate.[5]

Fourth, it demands federal encouragement and support for pro-homosexual sex education courses in public schools. Public schools and universities are under widespread assault from gay education advocates.

Fifth, it demands federal funding for homosexual advocacy groups. Many college gay groups already receive federal support.

Sixth, it demands the immediate release of all sex offenders now incarcerated for crimes related to sexual orientation.

Seventh, it decriminalizes private sex acts between consenting "persons." This demand does not read "adults." Gay activists include many pedophilia advocates. They want children free to engage in sex with adults.

Eight, it repeals all laws governing the age of consent. This supports some gays' predatory appetite for boys.[6]

Finally, it repeals any legal restrictions on the sex or number of persons entering into a marriage unit. Cities like San Francisco and Washington, D.C., already condone homosexual relationships.

The gay community is serious about these demands. Some gay activists claim the following statements come from a parody by a fictious self-proclaimed homosexual activist, Michael Swift. Judge for yourself. "Swift" says in the February 1987 Gay Community News, "All laws banning homosexuality will be revoked.

Instead, legislation shall be passed which engenders love between men." He goes on to say, "If you dare cry faggot, fairy, queer at us, we will stab you in your cowardly hearts and defile your dead, puny bodies." He says, "We shall sodomize your sons ... we shall seduce them in your schools, in your dormitories, in your gymnasiums, in your locker rooms, in your sports arenas, in your seminaries, in your youth groups, in your movie theater bathrooms ... your sons will do our bidding. They will be recast in our image. They will come to crave and adore us."[7]

This is revolutionary talk. He's not alone. Jason Del Maris writes in The Advocate, a mainstream homosexual magazine an article entitled "How to Seduce a Straight Man."[8] This is a detailed account of how a gay sexually entraps a straight male.[9]

A 1987 gay article, "The Overhauling of Straight America" outlines how gays plan to use the media to desensitize America to homosexuality.[10] Judge the six-part plan for yourself.

First, talk about gays and gayness as loudly and as often as possible. Why? This will eventually numb sensitivities about homosexuality.

Second, portray gays as victims, not as aggressive challengers. Use symbols which reduce the mainstream's sense of threat, lower their guard.

Third, give gay protectors a just cause. Cast the gays as society's victims and encourage straights to be their protectors. Hitch the gay cause to some principle of justice or law.

Fourth, make gays look good.[11] Portray them as everyman, pillars of society. Undermine the straight's message that gays

are "queer people, shadowy, lonesome, frail, drunken, suicidal, and child-snatching misfits."[12]

Fifth, make the straight victimizers look bad. Give the public images of these victimizers associated with the Ku Klux Klan, bigoted and hysterical ministers, skinheads, menacing punks, and convicts. Show pictures of Nazi concentration camps where gays were tortured and gassed.[13]

Finally, solicit funds to support the media campaign. The gay's income is twice the national average. Gays demonstrate their convictions with their wallet.

How successful has the gay community used the media? Three out of every four news articles on homosexuality favor the gay agenda. Many situation comedies and dramas picture gay life-styles as just "different" not wrong. Talk-shows treat gays as normal people.[14]

Gay advocates are desensitizing straight America. They distort the truth about the gay life-style by changing our vocabulary, our images, and our thinking patterns as they relate to homosexuals.

What are the truths about homosexuals? Where does one go to find the truth? Here is what scientific studies say.

Gays are extremely promiscuous.[15] They often have as many as 100 sex partners each year.[16] The average homosexual will have sex with at least 600 partners by the time he is 30 years old.[17] Nearly 28 percent have had sex with more than 1,000 partners.[18] Many of these encounters are anonymous.

They engage in sexual activities in many public locations.

Their favorite places are gay bars, parks, public toilets (or "tearooms"), and gay theaters and bathhouses.[19]

A gay bathhouse is a place for sex orgies. They check their clothing at the door and then parade around among hundreds of almost naked people seeking partners. Once they find a partner they go into private or group sex rooms and perform sex acts either one-on-one or in groups.[20]

Medical literature describes these settings as health traps. They are contaminated with fecal droppings because many gays can't control themselves due to a condition called "gay bowel syndrome." They exhaust their anal sphincter muscles by repeated sodomy thus resulting in incontinence.

AIDS studies describe the floors of some of these gay hangouts as covered with urine and semen. Gays often use semen to lubricate during anal intercourse.

Many homosexuals favor a sexual activity called "fisting." This is the insertion of the fist and forearm, as far as the elbow into the rectum of one's partner. This frequently damages the anus, intestines, liver, and spleen.

Another common homosexual practice is "rimming." This is the licking around and insertion of the tongue into their partner's anus. Fellating (oral masturbation of one's partner) is closely associated with "rimming." Little doubt these acts lead to ingesting semen and fecal matter. This contributes to the widespread incidence of disease.[21]

Many homosexuals participate in "golden showers" and "scat."[22] These practices involve urinating on your partner and

eating or rubbing his fecal material on your body. Some gays roll in fecal matter, called "mud rolling."

Homosexuals also "enjoy" sadomasochism. This is the deliberate infliction of pain for sexual pleasure.[23] This practice often involves Nazi like insignia and the use of whips and chains.

Gays practice sex enemas, using fecally contaminated nozzles in group sex settings. Some even insert tubes into their anus and force gerbils into the intestinal track. This allegedly promotes pleasure.

These practices are documented in gay literature and in authoritative scientific journals. They are commonplace. Straight America rarely hears about this in the media.

Gays rely on drugs and alcohol to curb the pain associated with these practices. Little wonder substance addiction is called the second key health problem after AIDS in the gay culture.

Studies say possibly one-third of gays are addicted to alcohol and many are part of the underground drug culture.

Gay sex and drug practices makes them especially vulnerable to disease. They account for 80 percent of the sexually transmitted diseases (STD) in this country.[24] They are thousands of times more likely to contract HIV than heterosexuals.[25] Nearly 80 percent have had hepatitis B and most have had syphilis. They are hundreds of times more likely to have had oral infections from STDs than are heterosexuals.

Their diseased life-style makes them especially vulnerable to

illnesses such as tuberculosis, pneumonia, and staph infections.

Homosexuals are also a threat to young Americans. Gays are 18 times more likely to engage in sexual practices with minors than are heterosexuals.[26] Crime statistics reveal that at least one-third of all child molestations involve homosexual activity (even though gays are less than 2 percent of the American population).[27]

Between 10 and 20 percent of the advertisements appearing in The Advocate have blatantly solicited child/teen entrapment.[28] Nearly 58 percent of the personal ads in that magazine are for prostitution, many solicit boys.[29] The gay media also advertises guide books to help gays find young boys for sexual pleasure.

The gay community includes members of the North American Man-Boy Love Association (NAMBLA) an organization that promotes pedophilia.[30] So-called scholars like DR. John Money, a retired professor of medical psychology and pediatrics at Johns Hopkins University and former adviser to Forum, a Penthouse publication openly endorse sex with children. He told Paidika: The Journal of Pedophilia, a Dutch and American publication, that intergenerational sex can be most rewarding for both partners.[31]

Homosexuals recruit in public schools. One of the most striking examples of such recruiting takes place in the Los Angeles Unified School District.

Called "Project 10," this program began in numerous high schools in 1984. The aim: to counsel students by offering "emotional support, information, resources and referral to young

people who identify themselves as lesbian, gay or bisexual or who want accurate information."[32]

The project offers counseling, books, and lectures on the homosexual life-style. Gay counselors encourage teenagers to explore their homosexual urges.

The gay assault is evident elsewhere. Their objective is to incorporate homosexual textbooks such as Heather Has Two Mommies, Daddy's Roommate, Gloria Goes to Gay Pride, and One Teenager in Ten. Queens, New York is a recent battleground.

Are we numb to the gay agenda? Are we desensitized to gay marriages, gay education materials, gay recruiting practices, gay sexual practices, and gay demands for special civil-rights? Are we willing to change the moral direction of this country? I hope not.

Gays are often extremely egotistical and childish. They want to change our view of their life-style, our vocabulary as it applies to them, and most of all they want our endorsement. They want us to endorse their incredibly destructive life-style: a life that so often includes depression and suicide, drugs, no stable relationships, rampant disease, and premature death.[33]

Too many people believe homosexual conduct is limited to holding hands. The facts don't bear this out. The gay life-style is radically different than "straight" America. The gay agenda promotes this life-style. Is this what you want for the military? Decide!

END NOTES

[1] "1972 Gay Rights Platform," drawn up by 200 homosexuals in Chicago at a meeting of the National Coalition of Gay Organizations.

[2] Gays have an activist agenda and often model their actions after the Nazi party.

ACT UP/D.C. founder, Eric M. Pollard says in "First Person," Washington Blade (D.C.'s homosexual tabloid) (January 31, 1991): "I have helped to create a truly fascist organization... We conspired to bring into existence an activist group that ... could effectively exploit the media for its own ends, and that would work covertly and break the law with impunity ... Under the influence of powerful, illicit drugs, its really seemed like a good idea...." The group subscribes to consciously "subversive modes, drawn largely from the voluminous Mein Kampf [by Adolf Hitler], which some of us studied as a working model."

Adolf Hitler's "inner Circle," and the key men who recruited for the party, and who lead the party, including the most brutal military brigades, the Storm Troopers, (SA) and the Infantry School - were homosexual: Ernst Rohem, Rudolf Hess and Gerhard Rossbach, while the infamous Goring was also said to be a type of transvestite. Walter Langer writing in The Mind of Adolf Hitler (1972) noted that Rudolf Hess "was generally known as 'Frulein Anna.' There were also many other [gays close to Hitler] and it was supposed, for this reason, that Hitler too belonged in this category." See Berthold Hinz, Art in the Third Reich (Pantheon Books: New York, 1979) in a display of brazenly homosexual Nazi male imagery and concepts, and see especially S. William Halperin, writing in Germany Tried Democracy: A Political History of the Reich from 1918-1933 (Norton Books: New York, 1946). Here, Halperin describes the role of public homosexual activists within Hitler's Nazi party, even to major posts of import.

Lesbian writer, Donna Minkowitz in "Recruit, recruit, recruit!," The Advocate (Dec 29, 1992) says, "Tell America how much it can gain by emulating us.... Provoke the Right." Earlier in that article she described how Queer Nationals "zapped" Jerry Falwell's speech to the Virginia delegates to the Republican convention. Outside the meeting they chanted, "Ten percent is not enough! Recruit, recruit, recruit!" Inside, whenever Falwell said anything against homosexuals, "air sirens would go off and ACT UP members ... would start yelling..."We are your families, and you are killing us!"

[3] The Advocate is generally recognized as a "mainstream" publication in the homosexual subculture. A recent Advocate poll reported average annual income of its readers as about $62,000. According to 1988 surveys by Simmons Market Research Bureau Inc., the average household income of the readers of the top eight homosexual newspapers is $55,430, compared to $32,144

for all Americans. The survey also found that 59.6 percent of homosexuals are college graduates and 49 percent are professionals and managers. This report is cited in the July 18, 1991, Wall Street Journal article, entitled "Overcoming Deep-Rooted Reluctance, More Firms Advertise to Gay Community."

[4] ACT-UP (AIDS Coalition to Unleash Power) member, Bob Wingate sent a letter to the Superintendent, United States Military Academy, on November 26, 1992. In the letter he said, "We intend to sue in Federal Court as soon as the ban is lifted to insure compensatory representation in the service academies. In particular, we intend to get a ruling mandating a set number of places for homosexuals in the Air Force Academy, the Naval Academy and West Point.... Furthermore, we intend to see any official of a military school charged in a civil rights violation if they attempt to harass homosexuals...."

[5] Daniel T. Bross, executive director of the AIDS Action Council said in a Washington Times article, "Gay activists protest HIV testing in military," (December 1, 1992), "Someone's HIV status shouldn't be a determining factor for a job, and the military is a job."

[6] Gene Abel et al, "Self-Reported Sex Crimes of Nonincarcerated Paraphiliac," Journal of Interpersonal Violence. Vol 2, No. 1, March 1987, 5-25. Abel found gay pederasts sexually molest young boys with an incidence that is occurring from five times greater than the molestation of young girls. These nonincarcerated child molesters admitted to from 23.2 acts to 281.7 acts per offender. Their targets were boys.

[7] Michael Swift, "Gay Revolutionary," Gay Community News, Feb 15-21, 1987.

[8] This article appeared on pages 38 to 41. The 1991 circulation of The Advocate according to The Standard Periodical Directory, 14th Edition (1991) was 70,000 (35,000 subscription and 35,000 newsstand sales).

[9] Jason Del Maris, "How to Seduce a Straight Man," The Advocate, Mar 28, 1989, pp. 38-41. This is entrapment step-by-step. The author explains, "You must fight these feelings, sniping them as they appear...Scientists say that let alone, the average man is bisexual...When he stops struggling, yank another piece of apparel off his body...Once he's stark naked...maneuver him into your favorite position and go to town."

[10] Marshall K. Kirk & Erastes Pill, "The Overhauling of Straight America," Guide Magazine, Nov 1987, pp. 7-14.

[11] Donna Minkowitz, a lesbian writer in The Advocate said in "Recruit, recruit, recruit!," (Dec 29, 1992) "we ought to advertise our potential to change straight society in radical, beneficial ways. Hets have much to learn from us: first and

foremost, the fact that pleasure is possible (and desirable) beyond the sanctions of the state. Another fact gleaned from gay experience - that gender is for all intents and purposes a fiction - also has the potential to revolutionize straight lives."

[12] Ibid., p. 9.

[13] Up to 5 percent of The Advocate glamorizes Nazi features and costume while the prevailing "gay" tough guy culture (i.e., "thoughts, emotions, manners, tastes, habits, skills, art" [Webster, 1979]) fits the key features of a fascist culture." This is cited from "A Content Analysis of Two Decades of The Advocate and The 1991 Gayellow Pages," The Institute for Media Education, Arlington, VA, June 1991, p. 57.

[14] For example, ABC's 20/20 reporter John Stossel matter-of-factly asked his ex-homosexual guest, "Why not marry a man?" Phil Donahue hosted a show where two men were married on the air. Recent episodes of Golden Girls and Dear John promoted the "marriage" of two men and the idea that a character's wife left him for a lesbian lover. The popular drama, Life Goes On has a straight character with AIDS. He works in a hospice with homosexuals who are portrayed as nice, clean cut, and well spoken people. They are likeable. The antagonists are portrayed as homophobes and unenlightened.

Donna Minkowitz, a lesbian an regular contributor to the Village Voice writes in The Advocate an article, "Recruit, recruit, recruit!," (Dec 29, 1992) where she explains her agenda for going on the Montel Williams show. She said, to "talk about children, sexual choices, and the reasons we need pro-gay curricula in our public schools.... I wanted to go on the show to argue the morality of teaching kids that gay is OK even if it means that some will join our ranks."

[15] A.P. Bell, M.S. Weinberg and S.K. Hammersmith, Sexual Preference (Bloomington, Indiana University Press, 1981) indicated that 3% of homosexuals had fewer than 10 lifetime sexual partners. Only about 2% of homosexuals could be classified as monogamous or semi-monogamous (10 or fewer lifetime partners). Another study (Corey, L. and Holmes, K.K., "Sexual transmission of hepatitis A in homosexual men, " The New England Journal of Medicine, 1980, 302:435-438), the number of annual sexual partners was nearly 100 for those in the homosexual study. In Haverkos's report, The Epidemilogy of [AIDS] Among Heterosexuals, 260 J.A.M.A. 1922-29 (1988) ("homosexual men ... reported a median of 1,160 lifetime sexual partners, compared with ... 81 for Haitian men ... and 40 for male heterosexual intravenous drug users"); Collier, Cytomegalovirus Infection in Homosexual Men; Relationship to Sexual Practices, Antibody to Human Immunodeficiency Virus, and Cell-Mediated Immunity, 82 Am. J. Med. 593-601 (1987) ("[t]he homosexual men had significantly more sexual partners in the preceding one month, six months, and

lifetime (median 2, 9, and 200 partners, respectively"); Ostrow, Sexually Transmitted Diseases and Homosexuality, 10 Sex. Trans. Diseases 208-15 (1983) (the "median number of lifetime sexual partners of the [more than] 4,000 [homosexual] respondents was 49.5. Many reported ranges of 300-400, and 272 individuals reported 'over 1,000' different lifetime partners"); Guinan, Heterosexual and Homosexual Patients with the Acquired Immunodefiency Syndrome, 100 Annals Internal Med. 213-18 (1984) ("[h]eterosexual patients from all risk groups reported considerably fewer sexual partners than did homosexual men, both for the year before onset of illness and lifetime. ... Homosexuals has a median of 68 partners in the year before entering the study, compared to a median of 2 for heterosexuals. ... Homosexuals in the study had a median of 1,160 lifetime partners, compared to a median of 41 for heterosexuals in the study"); Gold, Unexplained Persistent Lymphadenopathy in Homosexual Men and the Acquired Immune Deficiency Syndrome, 64 Med. 203-13 (1985); (in a study of 93 homosexuals, the "mean number of estimated lifetime sexual partners was 1,422 (median, 377, range 15-7,000).

[16] Ibid.

[17] A 1984 study by the American Psychological Association's Ethics Committee, reported in USA Today (November 21, 1984) indicates that fear of AIDS had lowered homosexual promiscuity rate from 70 different partners a year in 1982 to 50 partners per year in 1984. Even at this "safe sex" rate, a homosexual would still total over 600 sexual partners from his 18th to his 30th year.

[18] Bell and Weinberg, Homosexualities, A Study of Diversity Among Men and Women (New York, Simon and Schuster) 1978, pp. 308-309. This study says 42% of homosexuals had 500 or more lifetime sex partners; 75% had 100 or more partners; 28% had 1,000 or more lifetime sex partners; 79% said more than half their partners were strangers; 70% said more than half their sexual partners were men with whom they had sex only once.

[19] Stephen C. Joseph, Dragon Within the Gates (Carroll & Graff, 1992) p.98.

[20] Ibid. p. 107.

[21] "Sexual transmission of hepatitis A in homosexual men." In this study homosexual participants reported fellating 106 different men and swallowing 50 of their seminal ejaculations. The same study says, homosexuals ingest, on the average, the fecal material of 23 different men each year. The New England Journal of Medicine (1980, p. 302) indicates homosexuals ingest, on the average, the fecal material of 23 different men each year." Ingestion of feces is implicated in the transmission of cancer in Beral's article, "Risk of Kaposi's sarcoma and sexual practices associated with faecal contact in homosexual or bisexual men with AIDS," Lancet, 1992:339:632-35.28.

[22] "Golden showers" or "water sports" are practiced by one-fourth of homosexual males and eight percent of lesbians. This is cited from "Murder, Violence and Homosexuality," Institute for the Scientific Investigation of Sexuality, 1987. A September 27, 1991 article entitled "About Water Sports," appears in OutFront, a Denver, Colorado homosexual newspaper. The article says, "The fact is that just about every boy I have been with in the past 15 years or so was either actively seeking [urine] or readily willing to take it, one way or another...What other people call waste water, is only considered waste by some of us if it is discarded before it is shared. [Urine] can be a reward: 'You can't have my [urine] till you prove you deserve it."

[23] One-third of homosexuals and one-eighth of lesbians admit to practicing sadomasochism. This is cited in "Murder, Violence and Homosexuality," Institute for the Scientific Investigation of Sexuality, 1987.

[24] H.W. Jaffe, and C. Keewhan, et al, "National Case-Control Study of Kaposi's Sarcoma and Pneumoncystis Carinii Pneumonia in Homosexual Men; Part 1, Epidemiological Results," Annals of Internal Medicine, 1983, 99(2) pp. 145-157.

[25] Ibid.

[26] "Child Molestation and Homosexuality," The British Journal of Sexual Medicine, April 1987. The report cites survey results which indicate the mean age of homosexuals' first sexual encounters with other males as 15 years and one month. Another study, "Victimization of Boys," Journal of Adolescent Health Care, (1985, 6, 372-376) says, boys who were sexually victimized are 7 times more inclined to identify themselves as homosexuals or bisexual than those not victimized. This is a primary means for homosexual recruiting.

[27] According to Psychological Reports, 1986, #58, pp. 327-337, at least one-third of all child molestations involve homosexual activity. "...results show that 98.4 percent of sexually active adults reported that they were exclusively heterosexual during the year preceding the survey." This is cited from Tom W. Smith, "Adult Sexual Behavior in 1989: Number of Partners, Frequency of Intercourse and Risk of AIDS," Family Planning Perspectives, Vol. 23, No. 3, May/June 1991, p. 104.

[28] "A Content Analysis of Two Decades of The Advocate and The 1991 Gayellow Pages," The Institute for Media Education, Arlington, VA, June 1991, p. 18.

[29] Ibid.,p. 1.

[30] David Thorstad, a founding member of NAMBLA and former president of the Homosexual Activist Alliance of New York wrote: "The issue of man/boy love has intersected the homosexual

movement since the late nineteenth century ..." Thorstad says pedophilia is being swept under the rug by homosexuals "to facilitate its [homosexuality's] entrance into the social mainstream." This is cited from "Man/Boy Love and the American Homosexual Movement," Journal of Homosexuality, 20, 1990, pp. 251-252.

[31] Michael Ebert, "Pedophilia Steps Into the Daylight," Citizen, Nov 16, 1992, p. 6.

[32] Manley Witten, "Project 10: What Schools Teach Children about Gay Sex," Valley Magazine, August 1988, cited from Kinsey, Sex and Fraud, J.A. Reisman et al, (Lochinvar, Inc, 1990), p. 227.

[33] Bell and Weinberg, Homosexualities, p. 308. Homosexuals are six times more likely to attempt suicide than heterosexual men.

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THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301-1200

HEALTH AFFAIRS

MAR 3 0 1993

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Medical Implication of Homosexuals in the Military

During the past several weeks, Health Affairs has been requested to comment on the medical implications of allowing homosexuals to serve in the military. The attached statement has been used as the basis of our response. I am providing it to you for your information and use.

Edward D. Martin

Edward D. Martin, M.D.
Acting Assistant Secretary of Defense

Enclosure
As Stated

Homosexuality was once medically defined as an aberrant sexual behavior. However, years of medical, psychologic and sexual research consistently failed to demonstrate the presence of any specific biologic marker, clinical syndrome and/or psychosocial profile in practicing homosexuals of either sex.

By 1975, the American Psychological Association no longer considered homosexuality an aberrant sexual behavior. By 1976, the American Psychiatric Association enacted the same resolution and removed homosexuality from its Diagnostic and Statistical Manual. Shortly thereafter, the American Medical Association adopted the same position.

It is important to note that high-risk behavior of any kind, such as substance abuse, chemical addiction, drunk driving, sexual promiscuity or domestic violence, is clearly associated with specific human pathology, high-cost medical interventions, uncertain rehabilitation, and long-term social, economic and political consequences.

Great caution is required, however, when identifying high-risk behaviors as the cause of a variety of problems found in different social groups. In fact, from an epidemiological point of view, specific risk-behavior incidence can be statistically related to various racial, economic, geographic, ethnic, religious or other groups, and clearly is often not causal.

We are not aware of any scientific evidence that individual sexual preferences, in and by themselves, be they homosexual, heterosexual or bisexual, affect work productivity, scholastic aptitude, disease incidence, medical costs or crime rate in the population at large. In conclusion, since homosexuality, per se, cannot scientifically be characterized as a medical issue, DoD policies related to homosexual or heterosexual behavior should be based upon military personnel, unit and mission concerns and considerations.

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HOMOSEXUALITY AND THE LAW: TOLERANCE AND CONTAINMENT II*

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with
*John P. Ellington****

I. Introduction.

All the conflict about family values versus gay rights that was ignited by the 1992 campaign and election[1] will have been useful if it leads everyone, straights and gays alike, to think more deeply about the place of homosexuals in American society. The rhetoric will not have been wasted if it inspires legislators, judges and public officials to take a fresh look at whether they should be doing more or doing less to protect society generally and its homosexual members.

The presidential and state campaigns and their aftermath have underscored how far apart respectable people and institutions are on the subject of homosexuality. At one extreme, liberal newspapers like the New York Times have continually printed articles and editorials approving homosexuality as an alternative lifestyle and urging legal measures supportive of gays and lesbians.[2] At the other respectable extreme, a substantial minority (44%) of the voters in Oregon cast referendum ballots for an anti-gay, state constitutional amendment. The amendment would have condemned homosexuality as "perversion", required state and local governments to discourage it and forbade any law which might treat gays as a special minority entitled to protection from discrimination. Although the Oregon amendment was defeated, the

opinion of 44% of the voters cannot simply be dismissed as gay-bashing or uninformed -- The Philadelphia Inquirer's facile explanation.[3]

The middle ground between polar views like those of the Oregon minority and the New York Times deserves to be explored. There are intermediate positions that should be articulated: positions that come closer to accommodating the diverse views of traditionalists and libertarians, moralists and hedonists, the political right and the politically correct. There is one post-election development that promises to explore the possibilities of compromise. That is President Clinton's decision to allow openly gay men and lesbians to serve in the armed forces. The president agreed with congressional leaders that he would withhold a definitive executive order until July 15, 1993: Congress and the Defense Department will have time to consider how the military can best accommodate acknowledged homosexuals. A general debate and Senate hearings are anticipated that are likely to sharpen public understanding of the whole subject of homosexuality and public policy.[4]

One public policy approach to homosexuality that has not been given the attention it deserves is a policy of tolerance and containment. That policy will be sketched in this article. It may turn out to be just what is needed in a state where the majority want to do right by their homosexual fellow citizens but are reluctant to take away all legal constraints. Many people feel strongly that homosexuality, if unchecked, will add to the

problems of an already troubled society. They fear that the number and influence of gay men and lesbians might get out of hand if public policy seems to endorse their way of life. They see full-time and part-time homosexuals and their apologists as subverting what little remains of the old moral consensus and the institutions of marriage and family. They do not necessarily want to return to the corsetted conformity of the 1950's but are nevertheless unhappy with the more feckless changes in mores that began in the late '60's.

In this article, we approach the subject of homosexuality[5] and the law from a public policy rather than a constitutional perspective because we believe that the problem is essentially one of competing values, conflicting opinions and political choice. To the extent that the place of homosexuals in American society is determined by law, that law should be made largely by legislatures and not by judges. And state legislatures, not Congress, should do most of the law-making. Generally speaking, Congress ought to confine itself to legislating in the areas where only it has power: for example, legislating about gays in the military and federal employment of homosexuals.

II. Public Policy and Sodomy Statutes

The first thing that state legislatures ought to examine is how their criminal codes treat voluntary sodomy, consensual oral or anal intercourse, between persons of the same sex.[6] The most convenient and direct way for a state to express public policy towards homosexuality, whatever that policy may be, is through

its sodomy law. (We are concerned only with consensual sodomy in this article. Involuntary sodomy is a crime and should continue to be one everywhere.)

At the present time nearly half the states retain traditional kinds of sodomy statutes that prohibit same-gender intercourse without regard to the sexual orientation of the parties.[7] (Many old sodomy statutes lump "deviant" acts between man and woman and bestiality with homosexual sodomy.[8] These essentially different activities should be treated separately when deciding whether they should be criminalized.) In some of these states the crime is a felony potentially punishable by long imprisonment.[9] Traditional sodomy laws reflect a desire to suppress homosexuality, or at least to compel homosexuals to be discreet and remain in their closets. Although nowadays whatever deterrent and educative effects such laws have come mainly from their being on the books rather than from rigorous enforcement, their existence troubles the lives of active homosexuals and may tend to fuel official and private discrimination. Sodomy laws are frequently cited by the bodies which make and administer civil law to justify treating homosexuals adversely. Some courts, for instance, routinely deny homosexual individuals the right to adopt children because their way of life is inconsistent with state criminal codes.[10]

In a little more than half the states, the old sodomy statutes have been repealed by legislatures or ruled unconstitutional by courts. This decriminalization of sodomy

occurred for the most part during the 1970's when advocates of privacy, gay rights and sexual liberation made concerted attacks on sodomy laws.[11] The public policy communicated by decriminalization may range from a message of tolerance, through neutrality, to unqualified approval of same-sex carnal acts and the homosexual lifestyle. Some of the legislatures and courts that decriminalized sodomy did so believing that their state laws violated the United States Constitution.[12] This particular rationale was undercut by a 1986 decision of the United States Supreme Court. In Bowers v. Hardwick, the Supreme Court declared that Georgia could apply its sodomy statute to consensual intercourse between two homosexuals in the privacy of the home.[13] Quaere, do the state court decisions which use their state constitutions to invalidate sodomy statutes rely on grounds that totally preclude their legislatures from criminalizing homosexual sodomy? At least one high court decision, Commonwealth v. Bonadio, seems to leave its legislature (Pennsylvania's) free to write a new and effective statute to punish same-gender sodomy.[14]

Between the extremes of retaining a traditional statute and decriminalizing sodomy there is a compromise approach -- one that may appeal to legislators who feel their state's current position is either too harsh or too permissive. It is to enact a sodomy statute that expresses a policy of tolerance and containment.

III. Proposed Sodomy Statute and Its Rationale

This kind of statute is meant to strike a fair and humane balance between the state's concerns and the individual's autonomy and privacy interests. It gives due weight to competing social, moral, psychological and political considerations. The statute would say: A person who has consensual oral or anal intercourse with someone of the same sex is guilty of a crime (a misdemeanor, not a felony) with one major exception. That person is not guilty if he or she and the other party are true homosexuals or if he or she is a true homosexual and reasonably but mistakenly believes that the partner is of similar persuasion. A "true homosexual" is defined as an individual whose sexual orientation is predominantly toward individuals of the same sex.[15]

A society which enacts the proposed statute announces that heterosexuality is one of its core values -- a preferred moral and social characteristic of both men and women and of the family.[16] The homosexual lifestyle is not a desirable alternative for anyone who is substantially free to avoid it. Homosexual acts should be kept within bounds -- confined to persons for whom, depending upon one's viewpoint, such conduct is natural and right, an unfortunate compulsion or merely a tolerable evil.[17] Homosexuals are told not to seduce straight or potentially straight individuals. The sexually uncertain, the curious and the libertine are warned not to experiment with homosexual behavior. The bisexual is directed to make a choice.

He lives among people who are more judgmental than Alfred Kinsey or Phil Donahue.

The proposed statute does not try to deny anyone all opportunity to express his or her sexuality. The only people whom the statute inevitably frustrates are those (rare?) bisexuals who are powerfully, equally attracted to both men and women -- the truly "double gaited" in Damon Runyon's phrase.[18] But as the majority of the justices recognized in Bowers, a state may define and proscribe deviant behavior in its pursuit of secular morality.[19] A state may frustrate a bisexual's desire for homosexual intercourse just as it may frustrate any adult's libidinal hankering for a fifteen year old Lolita, a close adult relative, a prostitute or a willing animal.[20] Arguably statutory rape (of a worldly young person) incest, prostitution and bestiality laws may serve some utilitarian purpose - deter or punish some actual or threatened harm to others - even when the conduct is consensual. But the utilitarian purpose is often no more compelling than the utilitarian justification for consensual sodomy laws. The lawmaker's real reason for criminalizing the conduct is because it has traditionally been deemed contemptible or degraded, i.e., immoral.

The proposed statute is tailored for a state where sexual permissiveness, hedonism and the pieties of the politically correct have not dominated the culture -- for a people not ready to go along with the many psychiatrists, psychologists, and even some religious leaders, who believe that same-gender intercourse

and the homosexual lifestyle are equivalent to heterosexual behavior in every relevant way.[21]

One great lesson of Bowers v. Hardwick is that in our federal system there is no compelling need for a uniform national policy regarding sodomy. The majority of the Supreme Court, speaking through Justice White, refused to read into the Constitution a fundamental right to commit homosexual sodomy: that behavior had been condemned in America for too long, and was still condemned too widely, to be a fundamental right.[22] The Georgia statute had only to meet a rational basis test to satisfy Fourteenth Amendment due process. Justice White found a rational basis in the "presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable."[23] A fortiori, a wisely calibrated sodomy statute, like the one proposed with its thoughtful "true homosexual" exception, should pass the rational basis test. Finally, in our opinion, the statute does not deny anyone his or her U.S. Constitutional rights to equal protection of the laws[24] and to be immune from cruel and unusual punishment.[25]

A. More About the Philosophical and Moral Bases of the Proposed Statute

Bowers illustrates the point that in our federal, democratic republic state legislatures are given the primary governmental responsibility for translating their people's morality into law. State courts when confronted with troublesome issues of morality ought to exercise restraint and try to interpret their own

constitutions to require considerable deference to the legislature's views.[26]

A state legislature's task, however, is not an easy one, especially when dealing with a controversial matter like sodomy. Legislators whose thinking goes beyond catering to interest groups and the politics of expediency will find themselves confronted with perplexing questions of moral and political philosophy, facts and semantics. How are lawmakers to decide whether their constituents' or their own opinions that sodomy is a bad thing amount to moral or ethical beliefs rather than personal prejudices? More fundamentally, how and by whom is morality defined: what are its nature, sources and methodology? Should legislators simply espouse and act on what they perceive to be the collective moral and ethical norms of a majority of the electorate? As elected representatives how free are they to rely on their own understanding of morality? And where does the First Amendment come in: how do the lawmakers untangle moral theology from the kind of secular moral beliefs (ethics) that constitutionally can be enacted into law? There are probably no comprehensive, unequivocal answers to any of these difficult questions. Legislatures and their more thoughtful members just have to cope with them as best they can.

Legislators might go about determining whether the proposed sodomy statute expresses, i.e., is consistent with, the moral and ethical values of a majority of the voters in many different ways. One sensible approach is for the legislators to interpret

public opinion in the light of their own understanding of morality. The legislators could do this by adopting the statute if they found that a majority of the voters would favor it regardless of the voters' reasons, and if the legislators themselves believed that the position taken by the statute was a moral one. When evaluating the moral character of the statute, conscientious legislators would try to purge their thinking of personal prejudice and venality. Legislators could easily find that the position taken by the statute was moral in nature. The statute can readily be defended using the rhetoric of morality loosely, the way it is so often used today, to describe a "high-minded", subjective conviction that the statute prescribes "good" or forbids "evil." The statute can also be defended by more structured, objective arguments which correspond to recognized theories of morality or ethics. For example, a natural law type of analysis could be used to justify the statute. The analysis might begin with the premise that God (the non-sectarian God in whom our nation trusts) or Darwin has endowed man and woman with bodies and natures that are different and complementary in important respects. Reasoning from this premise, and taking into account current lay and scientific knowledge about human variation and the strength and persistence of the homosexual drive in some individuals, the argument would ultimately conclude that the proposed statute is consistent with natural law.[27]

The statute should be immune from First Amendment attack. The statute's condemnation of same-gender sodomy, except between

true homosexuals, has no counterpart in the plain language of any Biblical text. The Old and New Testament passages quoted most often by religious people decry all homosexual sodomy as sin and an abomination. Lord knows, we were not blessed with any divine revelation: the idea for the statute came to the senior author years ago while preparing to teach a criminal law class. To the extent that the statute embodies the traditional Judeo-Christian religious and moral disapproval of homosexual behavior,[28] that attitude is tempered in the statute's true homosexual exception by substantial deference to other contemporary views about morality, privacy, individual autonomy and human sexuality.[29] In short, if a state legislature adopts our proposed statute to express the moral and ethical beliefs of a majority of its citizens, the morality expressed is secular rather than religious and is carefully tailored for a pluralist society.[30]

B. More About the Utilitarian and Practical Bases of the Proposed Statute

The majority in Bowers v. Hardwick tell us that a state can criminalize homosexual sodomy simply because the state finds the conduct to be immoral. The proposed statute however can be justified on utilitarian and practical grounds as well as moral. If enacted and enforced sensibly, the statute may help to preserve the family as an effective institution, slow the spread of AIDS and other sexually transmitted diseases, and promote societal unity and peace.

Prudent legislators will not insist on expert, empirical or other proof that the statute is certain to have these beneficial

effects. Common sense and common experience suggest quite strongly that the statute will have a positive effect on marriage and the family and on public health and harmony. The possibility of such benefits - and the risk that without legislation the social order will sink into even greater disarray than exists today -- along with the moral basis of our proposed statute are reasons enough to adopt the statute.

The political philosophy that underlies our utilitarian arguments is closer to classical conservatism than classical liberalism. Our arguments are grounded in a reluctance to stray too far from the traditional wisdom which condemns sodomy between persons of the same sex unless it can be demonstrated that a liberal, "sexual freedom" approach causes no unjustified risks of short-term or long-term harm to society. In any utilitarian reckoning of how to achieve the greatest good for the greatest number, or in any other type of cost-benefit analysis, the burden of persuasion should fall on those who would license all consenting adults to engage in homosexual acts.[31]

So far as the family is concerned, no doubt children can be happy and turn out well when raised by one or more persons in a great variety of "family" arrangements. But is there much question that, all other things being equal, children generally are better off when raised in a good home environment by model mother and father figures - a loving, stable heterosexual couple?[32] With regard to marriage, to whatever extent the statute restrains homosexual and bisexual behavior by a spouse or

prospective spouse it will eliminate one factor that may disrupt or inhibit his or her marriage.

Today HIV/AIDS is much more prevalent among homosexual than heterosexual men. The sexual intercourse forbidden by the proposed statute includes intercourse between gay or bisexual and straight males and between gay and bisexual males. The spread of HIV/AIDS will surely be slowed if this prohibition is observed. While this is a good reason for adopting the statute, it does not justify spending large sums on enforcement. It is probably more cost-effective to expend resources on educating the public and on pursuing measures precisely tailored to curb every sort of risky sexual behavior regardless of the gender or orientation of the parties. Promiscuous and condomless sex in sex clubs, gay bathhouses, and bars are examples; prostitution is another.[33]

Police, prosecutors and courts can administer the proposed statute without creating difficulties for the public or themselves if they administer it the way they should: even-handedly and with only a modest effort appropriate for a misdemeanor which (apart from possible spread of disease) does not entail immediate, tangible injury. For the most part, police, prosecutors and courts should rely on the occasional complainant and the witnesses he or she supplies to identify offenders and to prove their crimes rather than on aggressive and intrusive tactics.[34] In the relatively few instances where the statute is invoked, the suspect will usually be able to establish the defense available to true homosexuals -- if he is one -- by

his own assertions. He can describe his own pattern of sexual arousal and behavior and tell what he knew about the other fellow, or what there was about the encounter itself, which made him believe that person was also a true homosexual. Some homosexuals might choose to carry a membership card in a gay or lesbian group in order to identify themselves to attractive strangers or inquisitive police. The message of the statute will retain its credibility, even if the law is seldom invoked, as long as it is administered fairly whenever someone does happen to be accused of sodomy.

In many states, religious fundamentalists are girding their loins and gay activists are hitching up their designer jeans. In some states the battle may be waged over the presence or absence of a sodomy statute. In even more states, the dispute will concern the civil law treatment of homosexuals. A modus vivendi must be found if endless warfare like that over abortion is to be averted. Our proposed sodomy statute and the general policy of tolerance and containment which it embodies will not please everyone. But once firmly established in a state, the statute and policy may be acceptable to most people and may even curb the more extravagant demands and outrageous behavior of gay extremists and the immoderate counter-attacks of desperate conservatives and devout gay bashers.[35]

IV. Homosexuality and Other Laws

The debate about family values versus gay rights involves many other legal issues besides the question of whether

homosexual sodomy should be a crime. Some of the civil law issues are: Should civil rights laws or regulations treat homosexuals as a minority entitled to special protection against physical abuse or against discrimination in housing and employment or to special advantages like affirmative action? Should an individual's homosexuality ever be counted when he or she wants to adopt a child or be a teacher? What should public schools teach, with or without parental consent, about homosexuality and in what grades?[36] Should homosexual relationships be assimilated to marriage and carry similar rights and benefits?[37]

For most of these questions, a policy of tolerance and containment does not dictate one inevitable answer. Other relevant and possibly countervailing policies may have to be taken into account. Furthermore, there is an inherent tension between the idea of tolerance and the goal of containment: the policy is more evocative than concrete. We suggest that it be interpreted to require generally that state and local law treat homosexuals the same as everyone else: ideally, they ought to be subject to, and protected by, the same rules as the majority of the people. Naturally, if there is a rash of skinhead assaults on gays the police should be made to concentrate on preventing and solving these crimes. Special laws to punish violence are not needed when the police do their job. The containment element of the policy would militate against any change in civil laws or any official action that is likely to increase the incidence of

homosexuality and same-sex carnal behavior or which seems to endorse homosexuality as a desirable lifestyle.

Let's consider a few examples of how the policy might apply. Marriage laws ought not to be amended or interpreted to permit issuing wedding licenses to gay or lesbian couples. Homosexual pairs probably ought not to be allowed to adopt children as couples. Private employers who provide medical insurance to the spouses of their employees probably should not be required by law to extend the coverage to their employees' homosexual partners. All of these things, i.e., marriage, adoption of children and extension of insurance coverage, presumably would entail changes in civil law norms and imply state approval of homosexual unions. Over the long term, this kind of state endorsement could lead to an increase in homosexual behavior.[38]

On the other hand, a gay man or lesbian woman should not be disqualified from individually adopting a child merely because he or she is homosexual. In a state where true homosexuality is tolerated, other factors will generally be more important in deciding the basic question -- what's good for the child.[39] Of course, if a lesbian were fiercely determined to raise an adoptive baby girl as a lesbian, no matter what, her attitude should ordinarily preclude giving her the baby. But then, a court should be reluctant to allow a couple to adopt a child if the judge believes they are so homophobic they are likely to force the child into a straight mold whatever its natural inclination.

Let us consider a more difficult problem: how should a state legislature respond to reports that private employers and landlords are discriminating against gay men and lesbians in their employment and housing practices?[40] The problem is difficult because it first requires the legislators to find out what is going on across their state regarding practices that are often ambiguous or hidden. Then the legislators have to apply the rather amorphous concepts of tolerance and containment to the facts which they find. We offer the following observations on how a legislature might proceed:

1. The legislators should try to discover, or at least get a sense of, the nature, scope and causes of the discrimination: What forms does the discrimination take? How frequently does it occur and how much hardship does it cause? Is it happening across the state or only in particular municipalities? What motivations seem to underlie the discrimination: to what extent are the motives rational or irrational (e.g., homophobia, religious or moral beliefs, business considerations, reaction to lewd, freakish or militant deportment by the homosexuals involved)?

2. The legislature should recognize that if it enacts any law banning discrimination, or allows any of its political subdivisions to do the same, it will be restricting the freedom of some of its citizens, landlords and employers, and will be intervening in the cultural and economic markets that help shape public beliefs about the morality of homosexual behavior. On the

other hand, the fact that prospective or current employees and lessees are gays or lesbians, assuming they are not obnoxious individuals, has no relation to their fitness to be employees or tenants except in unusual situations. Examples of unusual situations include a religious organization that has a doctrinal objection to employing homosexuals and the resident owner of a tiny apartment house who does not want to share his property with a homosexual.

3. Earlier we suggested that the policy of tolerance and containment should be interpreted to require generally that state and local law treat homosexuals the same as everyone else and that ideally they ought not to be protected by special rules. We here suggest that at some point, which we will not try to pin down, the amount of discrimination against gays and lesbians and its consequences can become so egregious that human decency, if not constitutional equal protection, calls for legislative relief. In effect the policy of tolerance and containment should require not only that the state itself tolerate homosexuality, but that it try to prevent unconscionable levels of private intolerance.

4. The state legislature should treat problems of discrimination against homosexuals as sui generis and not analogize them to discrimination against racial, religious or other minorities. If people are to be protected against discrimination because of their homosexual orientation it should be done by separate legislation rather than by amending civil

rights laws. The latter course, which would lump homosexuals with protected classes whose group behavior is not morally questionable, looks too much like official approval of the homosexual lifestyle.

5. Protection granted to true homosexuals against discrimination should not extend to bisexuals and the sexually undiscriminating.

V. Conclusions

The proposed sodomy statute, and the policy of tolerance and containment that it embodies, are wise choices for state legislators who recognize the needs of their homosexual constituents yet truly believe that homosexual behavior, if unchecked, will threaten their society. Although we have emphasized our sodomy statute as the hallmark of a policy of tolerance and containment, obviously that compromise policy can be employed in a state which chooses not to criminalize sodomy. The legislature can still be guided by a policy of tolerance and containment when evaluating all legislative initiatives that relate to homosexuality.

In our federal system, the United States Constitution does not require, and Congress should not try to mandate, a uniform national policy with respect to homosexuality. The existence of more than one reasonable policy response counsels against Congress extending national civil rights protection to gay men and women. So far as it decently can and so far as the

constitutional allocation of power permits, Congress should leave all the hot civil law issues to the states.

Ultimately, the status of homosexuals in America is determined by the interaction of many factors including secular morality, religion, social and cultural influences, economics, politics, law, and the common sense and good manners of private individuals whatever their sexual orientation. Unfortunately, there is now so little consensus among private institutions and individuals that government must play a large role in determining where homosexuality fits in our society. The government which plays the major role should be state government; the branch which takes the lead ideally should be the state legislature.

APPENDIX A

This is one version of the proposed statute. Possible variations include changing the crime to a petty offense, altering the maximum authorized punishment and, in paragraph (2), placing the burden of disproving the defense beyond reasonable doubt upon the prosecution once the defense is raised by the accused.

§ -- Voluntary Deviate Sexual Intercourse

(1) Any person who engages in sexual intercourse by mouth or by anus with another person of the same sex under circumstances not covered by Section ____ of this title (relating to involuntary deviate sexual intercourse) is guilty of a misdemeanor punishable by imprisonment for not more than one year, by a fine of not more than $1,000 or by both.

(2) It is a defense that the accused was a true homosexual and the other person was also, or reasonably believed by the accused to be, a true homosexual. The accused has the burden of proving this defense by a preponderance of the evidence.

(3) For purposes of this section, a "true homosexual" means a person whose sexual orientation is predominantly towards persons of the same sex as himself or herself. Any relevant, admissible evidence may be considered in determining a person's predominant sexual orientation including evidence of patterns of sexual arousal or activity

and the opinions of psychologists or other experts who have evaluated the person.

APPENDIX B

OREGON: MEASURE NO. 9 TO AMEND CONSTITUTION

This referendum measure, which was defeated in the general election, November 3, 1992, included the following proposed amendment to the Oregon constitution:

Be it Enacted by the People by the State of Oregon:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by creating a new section to be added to and made a part of Article I and to read:
SECTION 41 (1) This state shall not recognize any categorical provision such as "sexual orientation," "sexual preference," and similar phrases that includes homosexuality, pedophilia, sadism or masochism. Quotas, minority status, affirmative action, or any similar concepts, shall not apply to these forms of conduct, nor shall government promote these behaviors.
(2) State, regional and local governments and their properties and monies shall not be used to promote, encourage, or facilitate homosexuality, pedophilia, sadism or masochism.
(3) State, regional and local governments and their departments, agencies and other entities, including specifically the State Department of Higher Education and the public schools, shall assist in setting a standard for Oregon's youth that recognizes homosexuality, pedophilia, sadism and masochism as abnormal, wrong, unnatural, and perverse and that these behaviors are to be discouraged and avoided.
(4) It shall be considered that it is the intent of the people in enacting this section that if any part thereof is held unconstitutional, the remaining parts shall be held in force.

Secretary of State, Official 1992 General Voter's Pamphlet, p. 93.

COLORADO: INITIATIVE AMENDMENT TO CONSTITUTION

This measure, which was approved by the voters in the general election November 3, 1992, reads:

Be it Enacted by the People of the State of Colorado:

Article 2, of the Colorado Constitution is amended by the addition of Section 30, which shall state as follows:

NO PROTECTED STATUS BASED ON HOMOSEXUAL, LESBIAN OR BISEXUAL ORIENTATION.
Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

Copy furnished to authors by Legislative Council, State Capitol, Denver, Colorado.

FOOT
~~END~~NOTES

* **This article is a greatly expanded version of an essay which will be included in a reader on military policy and social change to be published by the U.S. Army War College.**

** **Professor Emeritus, The Dickinson School of Law.**

*** **Member, Class of 1993, The Dickinson School of Law.**

[1] See Lance Morrow, Family Values, **Time**, Aug. 31, 1992, at 22. See also articles cited infra note 35.

[2] See Craig Dean, Legalize Gay Marriages, **N.Y. Times**, Sept. 28, 1991, at Op. Ed. 15; Marvine Howe, Gay Center a Hub to Share and Care, **N.Y. Times**, Oct. 22, 1992, at B 3; The Case for the Colorado Boycott, **N.Y. Times**, Dec. 21, 1992, at A 16 (editorial); No Wavering on Gay Soldiers, **N.Y. Times**, Jan. 20, 1993, at A 22 (editorial).

[3] Gay Bashing at the Polls, Phila. Inquirer, Nov. 7, 1992, at A 6 (editorial). See Appendix B infra for text of the defeated Oregon Amendment.

[4] See Michael Duffy, Military Obstacle Course, **Time**, Feb. 8, 1993, at 27; Given Ifill, Clinton Accepts Delay in Lifting Military Gay Ban, **N.Y. Times**, Jan. 30, 1993, at 1.

[5] We use the terms "homosexuals," "homosexuality," "gays" and "lesbians" in this article to refer to sexually active homosexuals: we are not concerned with latent or celibate homosexuals.

[6] To keep this article short we shall say nothing about

how the criminal law should treat other forms of same-gender lewdness/lovemaking, e.g., mutual masturbation.

[7] See Developments in the Law - Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1519 & n.2 (1989) [hereinafter Developments in the Law] (identifying the code provisions of 24 states and the District of Columbia that prohibit same sex sodomy). This enumeration of states in the sodomy law camp is not quite current. In 1992, the Kentucky Supreme Court ruled that the Kentucky statute violates its state constitution. Commonwealth v. Wasson, _____, 1992 W L 235412 (Ky. Sept. 24, 1992). The constitutionality of the Texas sodomy statute is before the state's high court. Mary Ann Dadisman, Gay Activists Seek Rights State by State, 19 Human Rights 18 (Winter 1992).

[8] See, e.g., Pennsylvania Crimes Code, section 3124, proscribing voluntary deviate sexual intercourse which is defined by section 3101 as "sexual intercourse per os or per anus (sic) between human beings who are not husband and wife, and any form of sexual intercourse with an animal." 18 Pa. Const. Stat. Ann. §§ 3101, 3124 (1983). On the current status of voluntary sodomy as a crime in Pennsylvania see infra note 14. An argument which relies on history and public health considerations can be made that sex between women should be dealt with separately from sex between men. See Developments in the Law, supra note 7 at 1525, 1529.

[9] See, e.g., **Ga. Code Ann.** § 16-6-2 (Harrison 1990)

(voluntary sodomy is punishable by imprisonment for not less than one nor more than 20 years).

[10] On the adverse civil-law treatment of homosexuals, which is especially likely to occur in states where sodomy is a crime, see Sylvia A. Law, Homosexuality and the Social Meaning of Gender, 1988 **Wisc. L. Rev.** 187, 190-92 (1988).

[11] See supra note 7. Decriminalization was accomplished by legislative repeal in 23 states. Developments in the Law, supra note 7 at 1536.

[12] See, e.g., Commonwealth v. Bonadio, 415 A.2d 47,50 (Pa. 1980) (relying on both U.S. and Pennsylvania constitutional rights to equal protection).

[13] Bowers v. Hardwick, 478 U.S. 186, 195-96 (1986).

[14] Section 3124 of the Pennsylvania Crimes Code, which was struck down in Bonadio, punished intercourse per os or per anum "between human beings who are not husband and wife". 18 **Pa. Const. Stat. Ann.** §.3101 (1983) (defining deviate sexual intercourse). The deviate actors in Bonadio were an unmarried man and woman. The rationale of Justice Flaherty's lead opinion is expansive: it invalidates the statute not only because it violates the right to equal protection by making an unjustified distinction between married and unmarried people, but also because it exceeds the permissible limits of the Commonwealth's police powers by regulating the private conduct of consenting adults. Bonadio, 415 A.2d at 50-52. The concurring opinion of the three justices, who with Justice Flaherty made up the

majority, is Delphic in its brevity and ambiguity. They "concur in the result" because "convinced the statute violates the constitutional rights of equal protection." Bonadio, 415 A.2d at 52. Because the deviant pair in Bonadio were of opposite sex and not married to each other, it makes sense to read the four-line concurring opinion narrowly. It speaks only to heterosexual sodomy and does not deny the Pennsylvania legislature power to enact a new sodomy law limited to homosexual sodomy.

[15] This definition of "true homosexual" is simple, functional and a familiar one to psychologists. See e.g. Claude Millman, Sodomy Statutes and the Eighth Amendment, 21 **Col. J. L. & Soc. Probs.** 267, n. 193 and n. 179 (1988).

[16] Society's preference for heterosexuality is deeply embedded in the structures of our culture and law. It shapes the outlook, choices and lives of millions of Americans who are not homophobic, i.e., who do not have a pathologic or unreasoning antipathy for homosexuals. It assumes that men and women are not in every way identical and interchangeable. See Law, supra note 10 at 195-96. Professor Law while acknowledging this pervasive cultural phenomenon criticizes it and labels it "heterosexism".

[17] The conception of homosexual orientation and whether it is viewed negatively, positively or neutrally has evolved in America from colonial times to the present. It has been said that there are four major conceptions and that they came to be recognized in this sequence: homosexuality is (i) a sin, (ii) an illness, (iii) a neutral difference (normal human variation) or

(iv) a social construct. The more recent conceptions did not displace the earlier: they all share an uneasy existence in America today. Developments in the Law, supra note 7 at 1511-18. For a somewhat different account of evolving concepts of homosexuality, and a critique of the understanding of the subject displayed by the majority and dissenters in Bowers, see Anne B. Goldstein, History, Homosexuality, and Political Values: Searching for the Hidden Determinants of Bowers v. Hardwick, 97 **Yale L.J.** 1073, 1079-91 (1988).

[18] On the strength, persistence and origins of homosexual orientation and the more problematic bisexual orientation/preference see C. Millman supra note 15 at 295-99; Ansastasia Touflexis, Bisexuality - What Is It?, **Time**, Aug. 17, 1992, at 49.

[19] Notes 22 and 23, infra, and accompanying text.

[20] Forty years ago, the senior author had to render an opinion on whether a soldier who slathered his penis with hamburger and let an eager stray dog lick it off had violated the Uniform Code of Military Justice. Someday, legislatures may be asked to outlaw or regulate higher tech forms of self indulgence. "Teledildonics" are in the works - virtual reality, sexual intercourse with a phantom or with a real person at the other end of a telephone line, accomplished through a computer-generated image and a bodysuit that provide electronic visual and tactile stimulation. This apparatus has been lauded as LSD without the chemicals by the old drug guru, Timothy Leary. Philip Elmer

DeWitt, Cyberpunk!, **Time**, Feb. 8, 1993, at 58, 63-64. It has also been likened to LSD by a conservative writer who scathingly describes it as coming to a West that is "morally bankrupt, materialistic and utilitarian. . . . [whose] popular culture is saturated with unbridled sexuality, violence and maudlin wish fulfillment. . . . [and whose] high culture is dominated by nihilism, minimalism and alienation." Gregory Wolfe, Worlds Within Worlds: The Advent of Virtual Reality, 28 **Intercollegiate Rev.** 19, 24 (Fall, 1992).

[21] Professor Sylvia Law has described the liberal bent of much contemporary psychological and religious thinking about homosexuality. Law, supra note 10 at 212-17.

[22] Bowers, 478 U.S. at 191-94.

[23] Id. at 196.

[24] The rationale of Bowers - there is no fundamental right to commit homosexual sodomy and majority morality is a rational basis for proscribing sodomy - seems to forestall any successful equal protection challenge to statutes that prohibit or, like ours, regulate sodomy. Some lawyers for gay activist groups and some commentators concede that Bowers practically settles the U.S. constitutionality of sodomy laws and now advise a strategy of mounting state constitutional law attacks on sodomy statutes. See Dadisman, supra note 7 at 18; Paula A. Brantner, Removing Bricks from a Wall of Discrimination: State Constitutional Challenges to Sodomy Laws, 19 **Hastings Const. L.Q.** 495, 497 (1992). Other commentators, who are unwilling to accept the

implications of Bowers, continue to argue that sodomy laws violate the U.S. Constitution's guarantee of equal protection. E.g., Developments in the Law, supra note 7 at 1525-31. For a broader, feminist argument that all legal censure of homosexuality violates constitutional norms of gender equality, see Law, supra note 10 at 188, 221-35 (1988).

[25] Our proposed statute's treatment of homosexual sodomy as a misdemeanor, or even a petty offense, punishable by no more than a moderate fine or relatively short imprisonment (see infra Appendix A), addresses the reservations that Justice Powell expressed when concurring in Bowers. Justice Powell said of the Georgia statute's authorized maximum of 20 years imprisonment, "In my view a prison sentence . . . certainly a sentence of long duration - would create a serious Eighth Amendment issue." Bowers, 478 U.S. at 197. One commentator has argued that it is cruel and unusual to punish homosexuals for engaging in private consensual acts of sodomy because the acts are elemental to their homosexual status. Claude Millman, Sodomy Statutes and the Eighth Amendment, 21 Colum. J. L. & Soc. Probs. 267 (1988). The argument is irrelevant to the proposed statute which makes an exception for acts of sodomy committed by "true homosexuals." The "true homosexual" exception seems to encompass fairly what Millman means by acts "elemental to a homosexual's status." Id. at 284-91. The "true homosexual" exception would likewise seem to defeat any equal protection argument that our sodomy statute discriminates against a discrete and insular minority. See

_____, Sin, Stigma & Society: A Critique of Morality and Values in Democratic Law and Policy, 38 **Buff. L. Rev.** 859, 887-93 (1990).

[26] Chief Justice Burger, concurring in Bowers, observed that the regulation of sodomy is essentially a question of the legislative authority of the state and that nothing in the Constitution deprives a state of the power to enact a statute like the Georgia statute which forbids all homosexual sodomy. Bowers, 478 U.S. at 197. When the American people are divided on an important political or moral issue, as they are presently divided on the morality of homosexual conduct, legislatures, not the courts, should resolve the issue. The responses of the elected branches possess virtues and benefits - such as achieving compromise, slowing unwelcome change and diluting absolutisms - that the "principled" and elite reactions of activist courts may lack. See, e.g., Robert H. Bork, The Tempting of America, 8-9, 16-17, 352-55 (1990).

[27] For a concise description and critique of contemporary philosophical theories of morality, i.e., various forms of utilitarianism, deontology (ethics) and natural law, and of the confused semantics of popular moral discourse see John Haas, Thinking Ethically about Technology, 28 **Intercollegiate Rev.** 5 (Fall 1992).

[28] Condemnation of homosexual practices is "firmly rooted in Judeao-Christian moral and ethical standards." Bowers, 478 U.S. at 196 (Burger, C.J., concurring).

[29] Justice Blackmun expressed those other views eloquently in his Bowers dissent at 478 U.S. 199, 203-08.

[30] For an extensive treatment, from a pro-gay rights perspective, of the relation of religion and morality to sodomy laws and criticism of how those matters were dealt with by the Supreme Court in Bowers, see _____, Sin, Stigma & Society, supra note 25 at 866-73, 877-86, 892-93.

[31] See Anne B. Goldstein, History, Homosexuality and Political Values: Searching for the Hidden Determinants of Bowers v. Hardwick, 97 Yale L.J. 1073 (1988). Professor Goldstein astutely observes that Bowers reflects a battle between two competing, incompatible, political philosophies, classical conservatism and classical liberalism. Justice White's majority opinion, with its emphasis on following tradition, resembles the conservatism of Edmund Burke and Fitz-James Stevens. While Justice Blackmun's dissent implies that an individual's right to behave as he chooses may be limited only to prevent him from causing harm to others - a view reminiscent of the classical liberalism of Jeremy Bentham and John Stuart Mill. Id. at 1091-92. The resolution of any dispute (like the decriminalization of sodomy) that pits liberty against tradition requires striking a balance between potential anarchy and potential tyranny. Id. at 1099-1100. The Goldstein article includes a nice treatment of the celebrated H.L.A. Hart-Lord Devlin dialogue on the relation of morality to the criminal law. Id. at 1093-98.

[32] But see Daniel Galeman, _____, N.Y. Times, Dec. 2, 1992 at C14. According to Mr. Galeman several recent studies challenge the long held view of some mental health specialists and even more judges, that being raised by gay or lesbian parents is damaging to a child's social, emotional and sexual development. According to the studies, the major problem such children are likely to face is teasing or ridicule by their peers during their early teen years.

[33] During the year ending Sept. 30, 1992, 39,564 new cases of AIDS were reported among males over the age of 13 in the United States and 6,134 among females over 13. Of the males, 60% were "men who have sex with men". **Center for Disease Control, U.S. Dept. of Health and Human Services, HIV/AIDS Surveillance,** 8 (Oct. 1992) Promiscuous and unsafe sexual practices of gay men not only spread venereal diseases, e.g., gonorrhea and syphilis, but also hepatitis and various intestinal and other illnesses. Randy Shilts, And the Band Played On: Politics, People and the AIDS Epidemic, 18-20 (1987). A 1991 outbreak of hepatitis A among gays has been attributed to feces ingested during tongue to anus contacts. N.Y. Times, Mar. 6, 1992, p. B2. For a description of what goes on in New York City's commercial sex establishments and the city's efforts to regulate high risk behavior see Mireya Navarro, In the Age of AIDS, Sex Clubs Proliferate Again, **N.Y. Times**, Mar. 5, 1993, at B 1. For a brief, sympathetic account of the experience of the gay community

with AIDS and the gay response see William A. Henry III, An Identity Forged in Flames, **Time**, Aug. 3, 1992, at 35.

[34] Other situations where it may be appropriate to charge or convict an offender for voluntary sodomy include (i) when a police officer comes across an offender in flagrante while the officer is performing unrelated police duties (this happened in Bowers) or (ii) when an offender is tried for involuntary sodomy and the evidence fails to prove compulsion beyond a reasonable doubt. Some AIDS experts now believe that the AIDS epidemic can be virtually halted by concentrating prevention efforts in 25 to 30 neighborhoods across the country where high risk groups are present and HIV/AIDS is rampant. Gina Kolata, Targeting Urged in Attack on AIDS, **N.Y. Times**, Mar. 7, 1993, at 1. If a "neighborhood" strategy were to be adopted, public health authorities might find it useful to have the police step up and target enforcement of any sodomy law that is on the books.

[35] The following items reflect the growing scope and intensity of the conflict between advocates of gay rights and defenders of traditional values: John Woestendick, For Gay Americans, new visibility and new worry, **Phila. Inquirer**, Nov. 22, 1992, at C 1; Jeffrey Schmalz, For Gay People a Time of Triumph and Fear, **N.Y. Times**, Mar. 7, 1993, at 37; Dirk Johnson, Rise in Christian Right Divides a City, **N.Y. Times**, Feb. 14, 1993, at 24 (referring to Colorado Springs). The narrow issue of whether a gay and lesbian group can march under its own banner in New York's Saint Patrick's Day parade has been the subject of

tenacious politicking and litigating for the past three years. Richard Perez-Pena, Another Irish Parade Sequel, **N.Y. Times**, Mar. 1, 1993 at B 3. For a sampling of columns by well-known journalists that urge turning off the rancor and seeking accommodation, see Henry Grunwald, The Conservatives Morning After, **Time**, Nov. 30, 1992, at 82; George Will, Respect OK, Not Indifference, Sentinel (Carlisle, Pa.), Dec. 7, 1992, at B3; Andrew Sullivan, Gay Values, Truly Conservative, **N.Y. Times**, Feb. 9, 1993, at A23.

[36] See Richard Lacayo, Jack and Jack and Jill and Jill, **Time**, Dec. 14, 1992, at 52; _____, Fernandez Suspends School Board in Curriculum Battle, **N.Y. Times**, Dec. 2, 1992, at A1; Will supra note 35. As Mr. Will puts it, "Decency toward homosexuals is compatible with social policies regarding. . . curricula that avoid communicating societal indifference or moral equivalence to children of unformed sexuality."

[37] For a longer list of legal issues and discussion of them from a pro-gay rights perspective see Developments in the Law, supra note 7.

[38] Almost as problematic as marriage is the nascent trend among cities of establishing registries of domestic partnerships and issuing certificates similar to marriage licenses. Homosexual couples who register are usually entitled to some or all of the spousal rights and benefits controlled by the city. See James Bennet, Registry for Gay Couples Holds Benefits and Risks, **N.Y. Times**, Jan. 11, 1993, at B3; Jonathan P. Hicks, A

Legal Threshold is Crossed by Gay Couples in New York, **N.Y. Times**, Mar. 2, 1993, at A1.

[39] Best interests of the child should always be the touchstone; the risks to which a child is exposed with a homosexual parent should be assessed and weighted realistically. See Developments in the Law, supra note 7 at 1644-46. See also Galeman, supra note 32 and accompanying text.

[40] A few states and a number of local governments have adopted laws or regulations that prohibit, inter alia, this sort of discrimination. The New York State Assembly recently voted to extend the state's civil rights law to bar discrimination, on the basis of sexual orientation, in employment, housing, public accommodation and credit. At the time of this writing, the measure is pending in the New York Senate where its fate is uncertain. See Developments in the Law, supra note 7 at 1582-83, 1667-68; Kevin Sack, Passage Seen for [NY] Measure on Gay Rights, **N.Y. Times**, Jan. 28, 1993, at B1; Kevin Sack, Gay Rights, GOP National Issue in Albany, **N.Y. Times**, Feb. 6, 1993, at 23. The conservative and religious opponents of anti-discrimination laws had their greatest, recent triumph in Colorado in last November's election. By a 54% to 46% margin the voters approved a constitutional amendment which mandated "no protected status based on homosexual, lesbian or bisexual orientation". The amendment voided laws in Denver, Boulder and Aspen that prohibited bias in jobs or housing based on sexual orientation. Gay rights supporters are attacking the amendment in the Colorado

courts and pushing an economic boycott to compel voter repeal. See Richard Corliss, Colorado's Deep Freeze, **Time**, Dec. 14, 1992, at 54. See also Appendix B infra for text of Colorado amendment.

FILE
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Murphy, Arthur A.
Homosexuality and the law, tolerance and containment, II
Dickinson Law Review, vol.97, Summer 1993.

Locn: 3-6 Legal
Desc: Policy Ban Tolerance Containment
Note: Article is an attachment to the cover letters written by Arthur A. Murphy (Lt. Col. U.S. Army Retired) to Les Aspin, Secretary of Defense, 18 May 1993 and Senator Sam Nunn, 17 May 1993. This is a pre-publication copy of the article.

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THE DICKINSON SCHOOL OF LAW

May 18, 1993

Honorable Les Aspin
Secretary of Defense
The Pentagon
Washington, D.C. 20301-1000

Dear Secretary Aspin:

In March, Senator Nunn invited me to submit my views about Defense Department policy regarding homosexuals to his Armed Services Committee. Enclosed is a copy of the letter that I just mailed to Senator Nunn.

In my letter I propose and sketch a policy of tolerance and containment that would allow known homosexuals to serve honestly, honorably and without anxiety. The policy, in my opinion, would maintain the quality and effectiveness of the armed forces equally well or better than the current "don't ask - don't tell" policy, while being fairer to gay and lesbian Americans who want to serve their country.

Please pass my letter and enclosures along to the DOD Committees that are studying the issue of gays in the military if you think them potentially useful.

I wish you success in finding a wise and enduring compromise for this very difficult issue.

Sincerely yours,

Arthur A Murphy

Arthur A. Murphy
Professor Emeritus
(Lt. Col. U.S. Army Retired)

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Encl.
AAM:lkw

P.S. I am also enclosing a copy of the soon-to-be published Dickinson Law Review article that I sent to Senator Nunn with my letter. The second article referred to in my letter to the Senator appears in 24 Md. L. Rev 97 (April, 1964)

150 SOUTH COLLEGE STREET, CARLISLE, PENNSYLVANIA 17013-2899 (717) 243-4611

THE DICKINSON SCHOOL OF LAW

May 17, 1993

Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington, D.C. 20510-6050

RE: DOD POLICY REGARDING HOMOSEXUALITY

Dear Senator Nunn:

On January 27, 1993, I sent you a copy of an essay that I had written with John Ellington entitled Homosexuality and the Law: Tolerance and Containment. In your reply of March 5th you invited me to submit my views about Defense Department policy regarding homosexuality.

At the outset, let me compliment you and your Committee on the even-handed and thorough inquiry that you are making into the issue of gays in the military. I have been following your Committee hearings in the newspapers and have occasionally caught them on C-SPAN, including the sessions in which Professor Moskos and General Schwartzkopf testified.

About my credentials - I have split the last fifty years about evenly between the military and law school teaching. I graduated from West Point in 1946 and served in the Corps of Engineers until 1949 when the Army sent me to Harvard Law School. After graduating, I served in the Army's Judge Advocate General's Corps in a variety of assignments in the United States, Germany and Korea. My last tour of duty was as a military trial judge.

Since my military retirement in 1967, I have been teaching at The Dickinson School of Law; my subjects have included criminal law and procedure (taught for 24 years) and federal jurisdiction (taught for about 10 years). I became an emeritus professor in 1992

when I formally retired and reduced my teaching to a single course. For the last 25 years, besides teaching, I have been the reporter for a committee appointed by the Pennsylvania Supreme Court that produced, and tries to keep current, a manual of pattern jury instructions for criminal trials. This latter task makes me especially conscious of the difficulty of writing laws and regulations that are not only wise but easily understood and administered.

I will skip over my experience with homosexuality in the Army - my anecdotes go back a long way and could add little to the information you have already gathered. The two law review articles that I am enclosing should be more useful than anecdotes. Even though neither directly addresses the problem facing your Committee, I believe that both are very relevant. The articles supplement the observations and suggestions that I sketch in this letter. The first enclosure, Homosexuality and the Law, Tolerance and Containment II, is an expanded, documented version of the essay I sent you last January; it will be published in the Summer issue of the Dickinson Law Review. I wrote the second enclosed article, The Soldier's Right to a Private Life for the Military Law Review in 1964 while still in the Army. Some of the particulars are out-of-date, but I think that the fundamental concepts are timeless and important (see e.g., pp. 97-102, 122-24).

Getting down to business, these are my views:

1. For a great many reasons, a homosexual orientation is a handicap in America's relatively small, all-volunteer, armed forces. Furthermore, it is undesirable for any service member to engage in sexual activity with someone of the same sex, regardless of whether the member's orientation is entirely homosexual, entirely heterosexual or something in between (e.g., bisexual, undiscriminatingly hedonistic, ambivalent or confused). However, it is possible for homosexuals to manage their lifestyle and behavior (without remaining celibate for thirty years) so that they do not adversely affect their value to the service. Similarly, my generalization that same-sex sexual activity is undesirable needs to be qualified. The circumstances under which the activity occurs may so negate or attenuate its connection or threat to service interests that the activity should be regarded as private, excusable or de minimis.

2. Allow me to suggest a compromise approach that I believe (i) would make it possible for known gays and lesbians to serve, (ii) would not appreciably degrade the quality and effectiveness of the armed forces and might even have a net beneficial effect from the fact that the services and homosexuals would be dealing candidly with each other, and (iii) would not be unduly difficult to put into place and to administer. The approach I am proposing can be characterized as a policy of tolerance and containment. It would require some changes in the current policy of "don't ask - don't tell."

3. As I understand the current policy, one object is to make it easier for homosexuals to enter and remain undetected in the armed forces. The services, and their agents, do not aggressively seek out homosexuals but if certain unequivocal indications of an individual's homosexual orientation come to official notice, he or she is subject to administrative separation. The current policy involves a gamble for both the armed forces and homosexual members: the policy is fair in the sense that voluntary choice and mutual risk make gambling fair. But the policy may be unfair in other ways and have undesirable costs and consequences, to both the forces and the homosexual member. For example, in the accession process the armed forces lose some of their ability to screen out homosexuals who are unlikely to fit into service life. Also, prospective officers and enlistees, even when told about the current policy, are likely not to foresee or fully appreciate the risks, dilemmas, dissembling and stress that twenty years, or three years, of living in the closet may entail. They may misjudge their own capacity to endure, much less thrive in, such a precarious existence. The ultimate hard case, under current and former policy, is one in which an otherwise exemplary soldier, who has served many years but is not eligible to retire, is summarily discharged because his homosexuality comes to light.

4. Under the policy of tolerance and containment that I propose the services (i) would ask prospective officers and enlisted persons about their sexual orientation - they would be expected to give honest answers, (ii) would screen out individuals who seem clearly incapable of complying with service requirements for managing their lifestyle and conduct, (iii) would screen out individuals who are clearly pathological homophobes, (iv) would allow admitted and known homosexuals to enter and remain in the service, (v) after an individual enters the service, would treat the member's homosexuality as a matter of very limited official concern and something the member should keep to himself or herself and (vi) would regulate same-sex sexual conduct, and the kind of behavior that is associated with a homosexual lifestyle, to the very substantial extent necessary for a first-rate American armed forces.

5. Although "known" homosexuals would be allowed to serve, their homosexuality should be kept as private as possible. Official information about an individual's homosexuality should be disclosed only on a very strict "need-to-know" basis: for example, when relevant to a military or civilian criminal investigation or if the individual is a candidate for one of a few particularly sensitive assignments, or when an individual who has had trouble managing his homosexuality is being considered for promotion. Homosexual members would be made to understand that they must manage their homosexuality so that it does not adversely affect their own performance of duty, the discipline, cohesion, esprit and effectiveness of their units, and the morale and tranquility of other service members. If they compromise their value to the forces by engaging in forbidden or imprudent behavior their careers will suffer or may be cut short. Homosexuals should be told to be circumspect in

choosing the people to whom they admit their homosexuality. Gay pride has to be muted: reticence is the norm.

6. On the other hand, a gay or lesbian should not be held accountable for a problem which he or she played no culpable role in creating. A homosexual member should not have to sacrifice self-respect to avoid conflict provoked by someone else. For example, a gay sailor should not have to lie about his sexual orientation, unless he prefers to do so, to placate a bullying shipmate. The effect of the approach that I advocate would probably be to keep most gays and lesbians pretty much in the closet - the outcome that gay advocates predict would follow if each individual were free to decide for himself how "open" to be about his gayness. My policy would officially, and more surely, inhibit gays and lesbians from "coming out" in a destructive way. It would nevertheless allow them to serve honestly, honorably, and without anxiety, under substantial constraints that are imposed for the good of the armed forces.

7. Some new legislation and executive orders, and quite a few new service regulations and directives, would be needed to implement the policy of tolerance and containment that I am describing. A manual for leaders and a handbook for homosexual service members could be very helpful. <u>These laws, directives and manuals</u>:

a. When read together, should constitute a candidly stated, comprehensive implementation of the policy of tolerance and containment. (Avoid ambiguity, don't leave troublesome issues unresolved and to be worked out later.)

b. Should treat homosexual conduct separately from heterosexual whenever appropriate. (Recognize that the problems can be different, e.g, the "house rules" for on-post family quarters, bachelor apartments, and guest houses probably should forbid same-sex sexual intercourse but be silent regarding unmarried, male-female intercourse.)

c. Should make a clear distinction <u>between</u> rules of conduct that subject violators to punitive, administrative or other formal sanctions <u>and</u> ethical norms and rules of etiquette for which there are no sanctions or only informal sanctions. (This, of course, is a drafting problem when writing any official pronouncement intended to influence behavior. It is likely to be extra troublesome when dealing with matters that involve morality.)

d. Should define the acts of voluntary sodomy and other lewd conduct by a member with another person of the same sex that are criminal because committed under circumstances likely to prejudice good order and discipline or to bring discredit upon the armed forces, e.g., chain of command, barracks or shipboard sex.

e. Should define and authorize punitive or administrative sanctions for sexual harassment by, or of, a homosexual service member. (Be careful of this one!)

f. Should forbid or discourage homosexuals from engaging in any lewd, romantic, militant or freakish conduct or speech (i.e., behavior that is a manifestation of a gay or lesbian lifestyle and likely to offend straight service men and women) if the conduct occurs under circumstances likely to have an appreciable, adverse effect on the interests of the armed forces. Particularly egregious kinds of conduct that are likely to prejudice good order and discipline or discredit the armed forces should be made criminal and subject to punishment.

8. With particular reference to sodomy and the UCMJ - All the acts of voluntary sodomy that are referred to in 7d. above are already punishable, or could be made punishable, by armed forces regulations under the existing Articles 92, 133 or 134. Article 125, the current sodomy statute, would need to be amended. I suggest that Congress consider the following factors when revising 125, regardless of how the gays-in-the-military issue is resolved.

a. Involuntary sodomy, voluntary sodomy with a person of the same sex, voluntary sodomy with a person of opposite sex, and bestiality ought to be dealt with separately.

b. The proscription of voluntary, <u>opposite sex</u> sodomy under Article 125 should probably be eliminated. Such conduct would then be punishable only in certain specified circumstances under Articles 92, 133 or 134 (compare para. 7d, above).

c. The two best ways in which Article 125 could treat voluntary <u>same-sex</u> sodomy are <u>either</u> to

(1) Eliminate it as a crime, thus permitting same-sex sodomy to be punished only under Articles 92, 133 or 134.

or

(2) Retain it as a universal proscription (i.e., applicable everywhere, at all times) by adding a section to Article 125 comparable to the voluntary, same-sex sodomy statute that I describe in my enclosed Dickinson Law Review piece. In essence, the amendment to Article 125 would generally make it a crime for a person subject to military law to engage in voluntary same-sex sodomy. It would be a defense, however, if an accused member proved that he or she was a true homosexual and that the other person was either a true homosexual, or reasonably believed by the accused to be one. The rationale for this kind of sodomy article would be that it is consistent with the traditional and current moral values of military personnel, and furthers the pragmatic interests of the forces (e.g., promoting discipline, the service's image and AIDS control) while being fair to those members whose homosexual conduct may be regarded, depending upon one's viewpoint, to be natural and right for them or to be an unfortunate but tolerable shortcoming.

9. With the exceptions described above, homosexuals should be governed by the same rules and entitled to the same protection, benefits and treatment as their straight counterparts - no more and no less. They should be treated like, and made to feel like, part of one team. Disobedience and disrespect to gay or lesbian superiors as well as violence, harassment or gross incivility towards any service member because he or she is homosexual should be punished or corrected as appropriate. The services should not provide separate clubs or other separate facilities for gays and lesbians; nor should the services provide on-post housing and other benefits to the partner of a gay or lesbian service member. In my curbstone opinion, the fear that the armed forces will have to provide quarters, PX privileges and other on-post benefits to a gay member's mate if the marriage is valid under state law, is unfounded. Congress could constitutionally exempt the armed forces from providing those benefits that would be harmful to good order and discipline. In short, the armed forces should not go beyond tolerance and should do nothing special that might encourage, or be construed to endorse, homosexuality as an alternative way of life for military personnel.

10. I believe that the kind of tolerance and containment policy sketched above is really no more complex and has no more inherent difficulties than the current policy of "don't ask - don't tell." Actually the two have a lot in common: current policy could be labeled a policy of "tacit tolerance and containment," while my policy could be described as

"don't ask much - don't flaunt." Much of the action required for implementing my policy would have to be taken to implement the cryptic "don't ask - don't tell" approach (.e.g., drafting comprehensive laws, regulations and guidance like those described in paras. 7 and 8 above). The special advantages of my suggested policy - both for the armed forces and for the gay or lesbian individual who wants to serve our country - are advantages that come from the policy's emphasis on candor and fairness.

11. I can envisage variants of my particular policy of tolerance and containment: my policy could be blended in some fashion with the current compromise. For example, a policy of "don't ask - don't tell" could apply to the accession process and the first three years of a homosexual's service. After that period (during which the member could, in effect, demonstrate the ability to manage conduct and lifestyle), a policy of tolerance and containment would apply. The member would not be subject to a discharge merely because he or she disclosed homosexuality to officials or it came to official attention.

Although I could say a lot more, my letter is already too long. In the words of an old service friend, Russell Fenn from Sopchoppy, Georgia," You asked for a drink of water and I gave you the hose in the face."

Best wishes for the success of your Committee in dealing with this critical issue.

Sincerely yours,

Arthur A. Murphy

Arthur A. Murphy
Professor Emeritus
LTC U.S. Army (retired)

Encls.

AAM:lkw

cc: President of the United States
Chairman, House Armed Services Committee
Secretary of Defense
Chairman, Joint Chiefs of Staff
TJAG, U.S. Army

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these, judges are expected to "do justice" and to "make the law," updating old legal principles to meet changing circumstances.

But Supreme Court justices play a very different role. Their most important duty is to interpret the Constitution, not to find pragmatic solutions to disputes between private parties. They are authorized to strike down the acts of democratic legislatures only when the acts conflict with the text and history of the Constitution, not with the justices' sense of equity and good policy. And it is worth noting that previous attempts to apply common law techniques to constitutional adjudication have raised serious questions of democratic legitimacy.

Llewellyn, for example, was a disaster as a constitutional theorist. In a 1934 article, he compared judges who focus on constitutional text and history, modestly averting their eyes from "real life," to "some Victorian virgin tubbing in a nightgown." And the ignominious culmination of his constitutional realism was his opposition to *Brown* v. *Board of Education*, which he thought insufficiently sensitive to settled social practices. In "What Law Cannot Do for Inter-Racial Peace" (1957), Llewellyn argued "that the process of having 'Other' kinds of folk, 'Different' folk, 'Outsiders,' in the team of your working outfit is a *slow* process." He then offered an ugly cost-benefit analysis of the comparative social tension that might result from desegregating hotels, restaurants, bars, beaches and schools. Llewellyn's blinkered realism shows the dangers of entrusting constitutional interpretation to justices who are inclined to balance constitutional principles against their own pragmatic sense of what society can bear.

Would Cuomo, steeped in common law pragmatism on the New York Court of Appeals, be such a justice? His answer to the question about capital punishment is not reassuring. Instead of focusing on the textual and historical evidence that the people who ratified the Eighth Amendment, and the people today, never intended to ban the death penalty in all circumstances, Cuomo wants to be pragmatic: "I would need to know the facts, I would need to know the particular circumstances.... You need to practice law for a little while." Certainly, facts and circumstances are relevant to every death penalty appeal; and there is a serious argument that capital punishment may be unconstitutional in practice, if not in theory, because it is administered against blacks much more frequently than whites. But unless Cuomo can unequivocally reject the position of Thurgood Marshall and William Brennan—that capital punishment is, always and everywhere, a form of cruel and unusual punishment—it is hard to be confident of his ability to separate his moral judgments from his constitutional ones.

The conversations also raise concern about Cuomo's temperament. Like Antonin Scalia, he has the manner of an intellectual bully; and his combative debating style, with its barrage of legalistic—and at times sophistic—distinctions, runs the risk of alienating those who are otherwise inclined to be sympathetic to his arguments. As Scalia's experience shows, bullying is the surest way to drive away the cautious swing justices, Sandra Day O'Connor, Anthony Kennedy and David Souter. If Clinton is genuinely concerned about building a new majority, he might do better with a less volatile personality.

It is not clear, finally, that Cuomo is prepared to carry out the overriding tasks of the next justice: challenging Scalia on his own terms, and changing the terms of debate for the entire Court. (See "The Next Justice," TNR, April 12, 1992.) Even before he issued the same un-Shermanesque disclaimers about the Court that he had indulged about the presidency, his candidacy raised a series of doubts. With his hypercombativeness, hard-headed pragmatism, legalistic intelligence and lack of overriding vision, ironically, Cuomo might still become a justice, and in the manner of Byron White. More eloquent, warmhearted, charismatic and liberal, presumably, but another lonely realist in the end. •

Cohesion vs. combat effectiveness.

ONLY CONNECT?

By Gerald J. Garvey and John J. DiIulio Jr.

In the hearings on Capitol Hill and in the debate around the country, the case against allowing gays to serve openly in the military has come down to a core argument: that homosexuals who are allowed to brace, shower and generally soldier alongside straight comrades-in-arms will undermine unit cohesion and therefore harm fighting effectiveness. What this argument assumes is that a clear connection exists between "cohesion" and "combat effectiveness." Unfortunately there isn't one. The empirical evidence for the link is completely inconclusive.

In the Senate hearings, three meanings of unit cohesion have already been conflated. But in our view, they are quite distinct. Unit cohesion evokes, first, the relationship between small-group integrity and combat performance; second, a military philosophy about the kind of training that best prepares recruits for combat challenges; and third, assumptions about day-to-day unit discipline, particularly in the noncombat circumstances that are the norm.

Like most Americans watching the Senate hearings, we are noncombatants—neither gay nor presently in the military. One of us (DiIulio) favors a repeal of the

an: the other (Garvey) opposes a repeal. We do not, n the end, see much chance to find a middle ground. ut we think it's possible to get a better understanding f unit cohesion figures in the military's position.

In its first formulation, unit cohesion is all about morale, esprit de corps, motivation and the will to fight. Soldiers fight for their pals, not for God, country or principle. They fight for the good opinion of their peers, to avoid the primary-group shame or embarrassment that failing to act under pressure might bring or to avenge the death of a fallen buddy. Thus, soldiers fight hardest, longest and best when they belong to cohesive units. As J. C. T. Downey wrote in a 1977 study, "An armed force is a body of men organized to achieve its ends irresistibly by coordinated action. Cohesion is therefore the essence of its being." And in the words of a 1978 study by Richard A. Gabriel and Paul L. Savage, cohesion is what enables a military unit "to perform its assigned orders and mission irrespective of the situation and its attendant risks."

Books and movies can help the layperson appreciate the acute mental and physical deprivations of combat, but not even the most artful or graphic depictions can substitute for lived experiences. There are many ways in practice to internalize combat goals: inspired leadership; resocialization through boot camp and in-service training; prayers before battle; medals; heroes' funerals (remember Pericles' famous oration?). Then too, there are ways to coerce soldiers into doing what they're supposed to do: confinement to base; withdrawal of furlough privileges; imprisonment or execution of deserters; firing at retreating troops. All military organizations, past and present, have relied on some mix of inducements and coercive instruments.

In their 1991 study of ancient armies, Richard A. Gabriel and Karen Metz found more continuity than change in the history of warfare. The psychology of combat in the Peloponnesian Wars resembled more closely that in the Seven Years' War more than two millennia later than it did the psychology of the modern military era. But in the next 200 years, technology fundamentally changed the nature of warfare, making what William D. Henderson in a 1985 study termed "the human element in combat" more, not less, vital. As Frederick J. Manning and David H. Marlowe argued in 1990:

> The heavy casualties among the assault troops during World War I made it painfully clear ... that modern weapons had rendered obsolete the formations and tactics that had sustained soldiers and armies for 2,000 years or more.... The phalanx, square and line could not survive the accuracy of cannon fire, rifled barrels and the machine gun. The resulting emphasis on smaller, more independent, maneuverable units, culminating in today's fire teams of three or four soldiers, gave increasing importance to these units as goads, guides and supports for soldier performance in combat.

World War I and II studies focusing mainly on the British, American and German experiences have been read as reinforcing the current conventional wisdom about conventional warfare—namely, that combat performance depends crucially on unit cohesion. These studies, however, simply don't prove what their exponents claim they do. Indeed, many of the texts in this literature would merit a twist on Mark Twain's definition of a classic: much praised but generally misread.

One of the most widely cited studies is the 1948 article by Edward Shils and Morris Janowitz, "Cohesion and Disintegration in the Wehrmacht in World War II." Their findings—published not in a military affairs journal but in *Public Opinion Quarterly*—are more complicated and tentative than many subsequent references suggest. Essentially, Shils and Janowitz found that Wehrmacht soldiers were committed to their military mission in proportion to their officers' dedication and political orientation. In units where both (a) the officers were Nazis and (b) the troops included the officers in their informal relations, the troops were more highly committed to combat goals than otherwise comparable units where neither (a) nor (b) obtained. Alas, these eminent and influential sociologists provided no systematic evidence to show that units in which troops were highly committed to combat goals actually outperformed otherwise comparable units where such commitment was less pronounced.

Likewise, the famous 1949 study *The American Soldier* reported the results of survey research conducted during World War II by Samuel Stouffer and others. The data in these volumes clearly show that cohesion was a byproduct of primary-group relations, and that it mattered to how soldiers defined their missions. But it did not even begin to show that, ceteris paribus, more cohesive units outperform less cohesive ones in actual combat engagements.

The same can be said more pointedly for S. L. A. Marshall's enormously influential 1947 book *Men Against Fire*. Marshall counted among "the simplest truths of war that the thing which enables an infantry soldier to keep going with his weapon is the near presence or the presumed presence of a comrade." This dictum by Marshall quickly achieved sacred status among military experts. It continues to be quoted authoritatively today. But Marshall offered no systematic evidence that the propensity of soldiers to fire (or otherwise fight) varied directly with the cohesiveness of their units. (And his much-cited finding that only 25 percent of soldiers ever fired their weapons in the typical World War II combat engagement has now been challenged as based on fudged or faked data.) Whatever, he proved nothing except that primary-group relations mattered greatly to soldiers in combat—but not that soldiers to whom it mattered greatly actually fought better.

Manning and Marlowe pointed out that "U.S. troops [in Korea] fought well, despite the introduction of an individual rotation system which, though well-intentioned, did much to undermine the sustaining power of group identification." It's unclear what formed the basis of their notion of "sustaining power." They also could have noted that some of the most highly decorated combat units in Korea were recently

desegregated ones. There is no evidence that these units were more cohesive than otherwise comparable (and racially less diverse) units that didn't achieve distinction in battle.

For a while it seemed as if the military itself doubted the efficacy of cohesion and the importance of the human factors. America's postwar military posture developed a high-technology base, indeed depended upon it for our comparative advantage over the Soviets and the Chinese, who could mobilize "hordes" of conscripts. All our nation's high-tech forces needed, it was argued, were sophisticated managers, an elaborate R&D base and a ramifying procurement system, not buddies in the foxhole.

The most influential attack on this developing idea of the military came from James Fallows, who offered a defense of the unit cohesion thesis in his best-selling *National Defense* (1981). Fallows argued that the costs and complexity of high-tech weaponry made for budgetary prodigality, maintenance snafus, ruinous equipment breakdowns and man-machine systems loaded with "feedback loops" and "critical paths." By downgrading old-fashioned unit cohesion, the military had lost its way. Many in the military's labor-intensive branches such as special forces and infantry resonated to Fallows's call for a return to leadership, esprit and cohesion. But many in the Air Force dismissed his call. They knew that better avionics, not Homeric *aidos*, wins dog fights.

Shortly after the Fallows book appeared, Martin Van Creveld backed him up by comparing the "fighting power" of the U.S. and German armies during World War II. Titled *Fighting Power: German and U.S. Army Performance, 1939-1945*, Van Creveld argued that the typical soldier on either side fought "for the reasons that men have always fought: because he felt himself a member of a well-integrated, well-led team...."

But even in Van Creveld's work, there is rich enough historical detail to support alternative hypotheses that emphasize weaponry, leadership, even the bounce of chance, in the German and U.S. armies. At most he teased out what was implicit in Fallows's thesis: that unit cohesion is no more than one of several variables in the equation of an effective fighting force. Likewise, Henderson's 1985 book comparing the Israeli, North Vietnamese, Soviet and U.S. armies used a simple check-list methodology—a sort of multivariate regression analysis by hand—to rank U.S. units well below their North Vietnamese counterparts in terms of cohesiveness. Henderson, who testified in Senator Sam Nunn's hearings, concluded that the "organization and practices within the Army deny the U.S. soldier the degree of social support from his fellow soldiers provided in other armies and necessary to build cohesive units."

But as our military leaders have been right to remind us, American forces bested the North Vietnamese in every major combat engagement, including the Tet Offensive. Moreover, if the cohesion-combat theory holds, one might have predicted that in caught-off-guard engagements such as the Tet Offensive, combat units that were pasted together at the last minute would perform less well than units that had trained together, gone "in country" together and had previously faced fire together. Yet there's no systematic evidence that they did. In a 1987 study T.N. Dupuy, the dean of social scientific military analysts, said he knew "of no systematic effort to understand" the effect of morale and other factors relevant to cohesion on combat performance. His own work, which consists of efforts to "identify and quantify the effects of behavioral considerations on military performance and battle outcomes," is no exception.

What, then, of the second meaning of unit cohesion, which evokes tested doctrines within the U.S. military about the kind of training that best prepares recruits for the combat challenges they may eventually have to face? Here the point is not that cohesion and military effectiveness are linked, but that cohesion and basic training (and therefore combat effectiveness) are. Cohesion, as a requirement of effective training, may be less relevant in combat, but it is critical to ready individuals *for* combat.

The behavior of soldiers under stress depends on habits they have developed in training. Boot camp is bayonet drill till the arms almost fall off. It's two-mile jogs with rifles at high port. It's "courage tests" in which recruits master challenges not even imagined in their prior civilian experiences. Many will recall—indeed will never forget—the terror of the leap from the crow's nest of a telephone pole to what appears a tiny distant breeches buoy; the reward isn't the trip down the guy wire to safety, it's the approval of the group, unit that sets standards, shouts encouragement—and yes, threatens ostracism to the non-performer.

The cohesion-combat theory, then, might be superseded by the cohesion-training theory as a "rational basis" for maintaining a gay ban. But supporters of are also skating on empirical thin ice. For one thing, several studies have suggested, the military has o multiple, vague and contradictory ways of measuri combat readiness, and so would be in no position prove the case. For another, the military's eclectic b tery of personnel measurements and leadership pot tial evaluations bear little—if any—clear connection its professed views of what matters in combat. Many the measurements are purely academic; many oth test individual skills that seem more relevant to the World War II military. As Henderson concluded 1990 study, the poor state of many Army units direct result of irrational "manpower, personnel training (MPT) organization and practices." Likewise a 1989 volume on military personnel measures, Ro Vintner and John Joyner noted correctly that "absence of combat-related activity in the peace military" makes "it difficult to define a criterio acceptable performance even for a (combat) sit tion." In any case, it's hard to suppose that a contro study of gay versus straight performance on the

tary's objective training measures would settle the case for or against lifting the ban.

But because the effect of unit cohesion in the training process influences military discipline and esprit more generally, the second sense of unit cohesion transforms imperceptibly into the third, the one that is centered on military leaders' assumptions about the requirements of *non*-combat unit order. Concerns about the impact of openly gay soldiers, sailors and airmen on day-to-day order and discipline are in the forefront of these leaders' thinking. And they are the most plausible concerns involved.

The most difficult day-to-day problems will be diffuse, subtle, often unreported and perhaps pervasive. The argument that there are, and always have been, gays in uniform is no doubt true. But today's uniformed gays are a self-selected bunch, and they have self-selected with foreknowledge of the ban on open declarations of homosexuality or conspicuous engagement in homosexual lives. (Undoubtedly, self-selection has also skewed the population of individuals who have chosen to remain both in the closet and in service.) Throughout the force structure, soldiers are already wondering how they'll handle a bonding process that full gay participation in units may make problematic in the mind, even if never in the event. They're wondering how to react to feared homosexual propositions from peers, let alone from superiors. After all, it's not the Uniform Code of Military Justice that maintains day-to-day discipline and morale; it's cohesion.

The military is characterized, too, by the kinds of internal social patterns—the scuttlebutt, the barracks bull sessions, constant interunit competition—that make for community when all is well, but amplify any trouble. Malcontents will appear in the services—cliques bent on sabotaging the integration of gays. Adjutants here and there will get what purport to be "mass resignations." Gay bashers in the ranks will cause special problems. Still, one suspects that in combat, everyone—gay or straight—will have his or her mind exactly where everyone else's is: on staying alive. If there is, alas, any "rational basis" for the military's fears about how repealing the ban would damage unit cohesion, those fears should be proved first in the barracks, second on the training grounds and last and least on the battlefield.

There is, of course, a response to our contention that the cohesion-combat nexus is unsubstantiated by systematic evidence: Who needs systematic evidence? Common sense, attitudinal surveys, combat diaries, literal war stories and the gut feelings and testimonials of experienced military people may be the only reliable way to penetrate the "fog of war." It's argued that social scientists or statisticians do not have the capacity to generalize beyond a limited threshold about such mysterious and complicated human endeavors. As a 1990 study by Charles A. Cotton put it:

> There is a danger inherent in the systematic analysis of commitment in military settings: we may find that our cherished assumptions are not grounded in fact, that commitment does not really matter or that it cannot be controlled. Analysis is a rational process, yet commitment and combat motivation may be irrational.

Gabriel and Savage suggest that in the military, "operating procedures and norms are 'arational' in that they come to be valued for themselves far more than for the contribution they make to the product." For the military, cohesion is not just a bare, lean instrument for achieving combat objectives. Rather, it is an intrinsic value, a mirror of military culture itself.

That is why rights-based arguments ring hollow to military leaders. In a 1975 book Martin Blumenson and Jane L. Stokesbury quoted General Dwight D. Eisenhower on the subject of relieving a combat leader. The question, asserted Eisenhower, is not one of "academic justice for the leader, it is of concern for the many and the objective of victory." In the present case, those willing to weigh "academic justice" for gays against the real or perceived requirements of unit cohesion are thereby beyond the military's cultural pale. By the same token, asserting that gays will be under the same code of military justice as straights cuts no mustard with most people in uniform. Culturally, the argument is tantamount to saying that gays will perform as well in combat as straights because both know the penalties for desertion.

The cohesion-combat theory is the military's first line of defense in this debate not because the systematic evidence for it is overwhelming, and not because any military leader really believes that a soldier has to be straight to shoot straight. Rather, it holds sway because many military leaders believe that the sexual orientation of gays, whatever their ideological bent, personal character or politics, makes them incapable of participating in the meaning of the military. That gays may be every bit as capable as straights of feeling non-sexual love for their foxhole pals and behaving accordingly in combat is irrelevant. By military cultural definition, a soldier can't be gay and be a part of all that is best or most cherished in military life and lore. In a 1986 study Arthur T. Hadley observed that those "inside the Other America of Defense, the 'military' and their families, live in separate enclaves, they shop at company stores, they speak a company language, they attend company schools, where they study policies alien to most of us," and they live by "an ethic markedly different from that in other parts of America."

Within that culture lies the military's real objection to lifting the gay ban: not that it will keep them from winning future battles, but that it will change the meaning of who they are. And that is an objection that is as powerful as it may be unpersuasive.

GERALD J. GARVEY, a former Air Force officer, is a professor of politics at Princeton University. JOHN J. DIULIO JR., professor of politics and public affairs at Princeton, is researching a book about combat effectiveness.

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SHOUTS AND MURMURS

POLITICAL SCIENCE

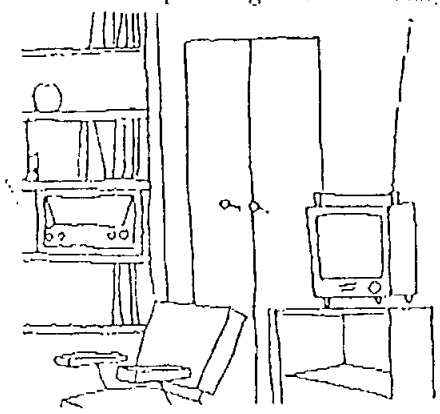
BY DAVID SHAFFER

Most of the issues that military spokesmen have raised about allowing open homosexuals into the armed forces concern privacy and, in General Colin Powell's words, "good order and discipline." Some critics of gays in the military, moreover, have claimed that homosexuals commit suicide far more often than heterosexuals do, and they argue that this could seriously affect "good order." There is a sad irony to this, for in recent years gay activists, too, have cited an allegedly greater risk of suicide among homosexuals—as evidence of the effects of discrimination and to argue for greater tolerance.

Gay activists and Pentagon homophobes alike have often cited a statement in a 1989 report by the government's Task Force on Youth Suicide that gay adolescents may account for as many as thirty per cent of youth suicides each year. In my psychiatric practice I have found that the "government" statistics so frequently cited were not prepared by the government and are not statistics. They are estimates based on a projection in a paper prepared for the task-force report. The paper was never subjected to the rigorous peer review that is required for publication in a scientific journal, and contained no new research findings. The estimate that as many as thirty per cent of youth suicides are gay was based on the results of several studies that reported high rates of suicidal feelings and behavior by gays and on Kinsey's conclusion that gays make up ten per cent of the population. A Guttmacher Institute study released two weeks ago supports studies dating back to 1977 which conclude that the actual figure may be much lower than ten per cent.

Solid figures about suicide are extremely difficult to come by, because it is a relatively uncommon cause of death (among teen-age boys, the rate is one in every five thousand) and a large number of teen suicides must be studied in order to draw valid conclusions. The procedure used in studying the characteristics of suicide is called the psychological autopsy, and involves interviewing the victim's relatives and friends and obtaining his medical, school, or police records.

My colleagues at Columbia University and I recently carried out such a study on teen-agers and children in the New York area. Patterns of sexual orientation are fluid in the teens, and experimentation is common, but nevertheless, only three of a hundred and twenty (2.5 per cent) were unquestionably known to be homosexual. Four others showed some behavior that could have been indicative of homosexuality. If all of the suicides who showed any evidence of homosexual behavior were indeed gay, then we would have had a total of six per cent gays in our study. Two other such studies have been done: in 1959, Eli Robins, in St. Louis, found no homosexuals in a group of a hundred and thirty-three suicides, and in 1986 Charles Rich, at the University of California, San Diego, found a homosexuality rate of seven per cent among suicides under thirty (the age group most likely to be in the military). No one can say with certainty whether these studies undercount or overcount the percentage of suicides that are gay, but by any measure it is clear that the figure of thirty per cent is far too high.



Where did the idea that gay suicide is very common come from? Possibly from a series of reports on suicide attempts among unusual groups of gays. These studies, some of which the task-force report cited, provide an excellent example of how it is that certain kinds of research can provide misleading conclusions, which come to be accepted as fact. All these studies were based on what are called "convenience samples"—that is, subjects who are easy to find rather than representative or random samples. Among the studies that indicated a high suicide-attempt rate were some that included men recruited in bars; troubled youths in drop-in centers; and psychiatric patients. No such group is likely to be representative of gays in general, of course, and all such groups, because of their members' other problems, can be expected to have high rates of suicide attempts.

As I have focussed my professional life on the mental state—the thoughts and feelings—of suicidal teen-agers over the years, I have been struck by the fact that teen-age suicide victims do not represent a cross-section of the population. Rather, they fall into a small number of groups. The largest is a group of unpredictably aggressive, hotheaded males, who lose control with very little provocation. A second group is quite different: teen-agers who are chronically and irrationally anxious, and who may commit suicide just before some feared event. A third group consists of teen-agers who are simply clinically depressed; they see no good in themselves, and feel hopeless about the future.

Suicide is usually a story of misperceptions and misunderstandings, of feelings of despair and lack of control; it cannot be attributed simply to having a difficult life. And it has no place on anyone's political agenda, no matter how worthy. ♦

HERVOU VAN DOORNEN

NEW YORKER, MAY 3, 1993
p. 116

FILE
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NCOA

Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virgina 22314 • Telephone (703) 549-0311

00030

STATEMENT OF

FORCE MASTER CHIEF CHARLES R. JACKSON, USN, (RET)

PRESIDENT AND CHIEF EXECUTIVE OFFICER

BEFORE THE

00030

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

FIRST SESSION, 103D CONGRESS

REGARDING

HOMOSEXUALS IN THE ARMED FORCES

00030

MAY 4, 1993

Mr. Chairman, I am Force Master Chief Charles R. Jackson, U.S. Navy (Retired), President and Chief Executive Officer of the Non Commissioned Officers Association of the United States of America (NCOA). NCOA sincerely appreciates the opportunity to appear today in opposition to the lifting of the long-standing policy of the Armed Forces of the United States to deny service to homosexuals in the uniformed components of the Army, Navy, Marine Corps, Air Force, and Coast Guard. NCOA is a federally-chartered organization representing 160,000 enlisted members of the Armed Forces of the United States; active, guard, reserve, retired, and veteran. The testimony offered today represents the unanimous view of the NCOA membership; 80 percent of whom serve on active duty. The message of the association's testimony is to voice disappointment with the interim policy compromise issued by the President on January 29, 1993. NCOA has expressed dissatisfaction that the action was taken without hearing the concerns of the active duty enlisted community, the group that is most affected in terms of degradation of morale and good discipline when implementing such a drastic change in policy.

COMMITMENT

In compliance with a Resolution passed by unanimous consent of the membership at the 1992 NCOA Annual meeting held in Reno, Nevada, in July 1992, this association is and will remain committed to the active opposition of legislation, regulation or Executive Order directing the recruitment and retention of homosexuals in the Armed Forces. Therefore, the issue of allowing admitted homosexuals the opportunity to serve as members of the armed

forces is not one where NCOA will consider compromise or "trade-offs" that would demonstrate support for any change in the previous Department of Defense policy whatsoever. In this regard, this association has and will continue to support any or all efforts by Members of Congress to hold hearings on the issue or to enact legislation that would ban homosexual recruiting and retention.

DISCRIMINATION AND EQUAL OPPORTUNITY CONCERNS

In the face of discrimination and equal opportunity arguments, NCOA suggests to this Committee that the recruitment and retention of homosexuals in the U. S. Armed Forces is not a situation analogous to the full integration of African-Americans into military service. That action corrected a racial inequity based on an inert, benign characteristic, skin color. Homosexuality is a behavioral characteristic. Recruiting and retention of homosexuals would force upon others tolerance of a lifestyle many consider abnormal and totally unacceptable. Neither is the situation analogous to the recruitment of women. Again, it is an attempt to equate an inert physical characteristic to an active behavioral one. There can be no doubt that any change in traditional DoD policy would only serve to disrupt the good order and discipline of the services.

MORALE

Military service is not a job as suggested by many. It is, in fact, a way of life with many

fundamental differences. Service in the armed forces is a unique calling. Military men and women must be prepared to live anywhere, fight anywhere, and yet maintain high morale and combat efficiency under frequently adverse and difficult conditions. They are asked to undergo frequent exposure to risk, long hours, periodic relocations and family separations. In doing so, military members willingly accept some abridgment of their freedom of speech, their right to privacy, and control over their living and working conditions. These are all personal prices paid on a daily basis. Further erosions in these rights, particularly in the area of privacy and living conditions, to accommodate the enlistment of homosexuals will be devastating. Morale in the armed forces is a fragile asset. It can be instantly destroyed even by those acting with the best of intentions. History has proven that the degradation of morale quickly leads to the erosion of discipline, diminished performance, poor retention, readiness reduction and recruiting difficulties.

NCOA submits to the committee that President Clinton's compromise to the previous policy has already caused recruiting difficulties and caused tremendous unrest within the ranks. Some "fixes" suggested to accommodate homosexuals in the military services have been to restrict them from combat duty and duty aboard ships and provide separate living facilities. NCOA is appalled that such unfair assignment policies would even be considered. Today's armed forces are being drastically reduced to levels where any rationale American should reasonably expect troop readiness levels to match "boots on the ground" war fighting capabilities. NCOA has continually insisted that there has been no evidence that the addition of homosexuals to military ranks will improve the quality of the forces. The mere suggestion

of separate assignment policies, conflicting rotational requirements, and living facilities to accommodate their presence confirms the position.

LEGAL RAMIFICATIONS

Not withstanding the recent compromise in recruiting and retention policy, sodomy remains a felony under the Uniform Code of Military Justice (UCMJ) punishable by up to 25 years at hard labor. Additionally, twenty-six states have laws against sodomy. Accordingly, this association is compelled to suggest to the committee that permitting homosexuals to serve in a military capacity would place the services in a position to further micro-manage a force where world-wide deployability requirements of its members are questionable. Therefore, NCOA suggests to the committee that prior to any further changes in current policy, efforts must be redirected to making homosexual conduct legal in all states and foreign countries before imposing tolerance of it on members of the armed forces. Just as it would not be reasonable to force the FBI to hire agents ineligible for service in all states, it is not reasonable to expect the military to recruit people who are not eligible for duty throughout the United States and the rest of the world.

INSTITUTIONAL INTEGRITY

The armed forces of the United States are not a cauldron of social experimentation or change that should be mixed and stirred to satisfy personal opinions or political debts. In this regard,

NCOA simply does not understand this obvious "rush to judgement" especially when such action is contrary to the advice of the military service chiefs who collectively possess years of experience in handling morale and disciplinary problems. Historically, when critical decisions affecting the armed forces are necessary, the advice of our top military leaders is sought and virtually always heeded. However, in the issue regarding homosexuals in the military, their advice was sought and has been all but ignored. These military professionals are this Country's foremost authorities in matters relating to what is best for the armed forces. They are responsible for making decisions that are in the best interests of the members of their respective services. Consequently, military members depend on them to make leadership recommendations and decisions that protect the institutional integrity of the armed forces.

NCOA suggests that the President's administrative compromise succeeds only to permit the use of the armed forces for the purpose of social experimentation and has served only to disrupt and degrade the institution recognized as the very best in the world. Again, the relaxation of the traditional DoD policy has resulted in no quality and ability improvements being experienced within the armed forces. To the contrary, it has served to cause unrest and a loss of leadership confidence by military members.

FRAUD, WASTE, AND ABUSE

One particular item of rationale used to support the President's compromise of the previous policy has been the high cost of recruiting, training and assigning service members, only to

discharge them when their homosexuality is acknowledged or determined. NCOA agrees that such a procedure is costly; however, the separation of individuals for homosexuality should not be of primary concern in terms of financial loss. During the period 1980 through 1990, DoD reports that 16, 919 were separated for homosexuality, the majority of which were directly related to personal misconduct. The remainder were fraudulent enlistment matters in which the individuals concerned received some level of training and compensation. What is not discussed is that DoD involuntary separated 996,925 personnel during the same decade or an average of 90,630 people a year for failure to meet minimum behavioral or performance criteria. This Association suggests that to change previous policy using monetary loss to the government as the incentive is not substantiating justification. Military readiness demands such discrimination to insure the quality of people in America's profession of arms. The cost of maintaining a fighting force of the desired caliber is inconsequential when compared to loss of lives, lost battles, or a lost war.

EFFECTS OF CHANGE

The compromise in the previous policy to deny military service to homosexuals has obviously caused the military services to entirely reevaluate the ways in which they currently conduct business. Besides having to deal with the integration of homosexuals into the military ranks and the associated problems of peer acceptance, NCOA envisions a whole litany of other problems or situations that are soon to develop or simply surface simultaneous with any final decision to enlist and retain homosexuals in the armed forces. Some of the obvious problems

might range from increased numbers of disciplinary actions for violations of the UCMJ to unrest and skepticism within the ranks and inequitable assignment policies. In time, however, NCOA suggests that the military services may very well be forced to address such problems as homosexual/lesbian marriages, housing assignment policies, separate living quarters, homosexual clubs and service centers, and the fear of HIV contamination.

NCOA is of the opinion that action to permit homosexuals to serve in the military services must inevitably include the acceptance of their lifestyles and sexual practices. That, in turn, means concessions to that lifestyle. Those concessions must inevitably include providing housing, military and veteran health care, survivor, and other dependent benefits to "life partners" of homosexuals. NCOA believes this is too high a price to pay for social experimentation.

BUDGET AUTHORITY

The consideration to introduce homosexuals into the military demands a thorough review of budget requirements to support institutional change determined necessary for their accommodation in the military. Military health care and more importantly Veterans Health Care provided by the Department of Veterans Affairs are areas of specific budget concern. Health risks associated with homosexual behavior must be calculated into health care budget process. If this nation determines to accommodate the homosexual and their practices in military service, it must be prepared to provide medical support as required.

The Department of Veterans Affairs AIDS Patient Registry dated September 30th, 1992 reports a cumulative total of 14,080 veterans patients at VA Medical Centers (VAMCs) across the United States. Current trends indicate approximately 200 new AIDS cases a month at VAMCs for a projected annualized growth of 2,400 patients. Moreover, most patients report that they contradicted AIDS through homosexual misconduct. Annual cost of treatment of one AIDS patient is in excess of $25,000. The answer to the previously addressed question of military "Service Connection" for AIDS infected personnel may also present a significant budget implication for disability compensation and later burial/survivor benefits. These factors have tremendous budget implications for a nation attempting to resolve a national fiscal deficit. In the professional judgement of NCOA, there is no fast answer to any of these questions.

The nation's future National Health Care Proposal must also include consideration of fiscal implications of health care for delivery to significant others exposed to AIDS by their military "partners". These people are all at significant health risk and must be considered in any national health care proposals.

CONCLUSION

It seems once again some must be reminded that the purpose of the armed forces is to defend the nation, not to serve as a laboratory for social engineering. Service in the military is a privilege. It is not a right as some proponents of lifting the previous ban contend. If it were

a right then the military would not decline to accept the services of those who fail to qualify mentally or physically or those with criminal records or histories of illegal drug abuse.

It is the opinion of NCOA that those seeking enlistment of homosexuals in the armed forces are looking for a short-cut to validation of the homosexual lifestyle. The President's compromise permitting homosexual recruiting is an instant victory for those seeking validation.

RECOMMENDATION

NCOA appreciates this committee's efforts to conduct hearings on this issue and hopefully provide its counsel on the matter highlighting the potentially long-term effects on the All-Volunteer Force. This is not a simple matter of rescinding a long-standing policy in a rush to judgement bid that implies that all will be well. It is in real terms a situation that goes much deeper with anticipated problems that must be addressed prior to directing any type of change. It has taken this nation many years to develop a well educated, quality force of dedicated men and women that comprise the best military organization in the world. It is appropriate that the new Administration proceed with caution only after considering the opinions of the noncommissioned and petty officers of the armed forces who have to implement any changes in policy. They should know better than anyone if the addition of homosexuals to the ranks is necessary and in the best interests of this Nation's downsized military fighting forces.

Thank You

MILITARY SERVICE
A PRIVILEGE, NOT A RIGHT

Historically, when national governments emerge, they have done so under the authority, implicitly or explicitly, vested in it by its citizens. This is demonstrated through a written document which can be a social compact, or, in the instance of the United States, a Constitution. This agreement typically states the most basic of rights which are guaranteed by the government. These rights are available to everyone by the mere fact that they are citizens.

A further delineation of the rights guaranteed by the United States government is in the Amendments. The first Ten Amendments were ratified on December 15, 1791:

- Amendment I
  - Freedom of religion
  - Freedom of speech
  - Freedom of the press
  - Freedom of Assembly
- Amendment II
  - Right of the people to keep and bear Arms
- Amendment III
  - No Soldier, in time of peace, will be quartered without the consent of the Owner
- Amendment IV
  - Secure in persons, houses, papers and effects against unreasonable searches and searches
- Amendment V
  - Due process of law guaranteed, "except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."
- Amendment VI
  - Right to trial by jury, criminal offenses.
- Amendment VII
  - Right to trial by jury, civil controversy.
- Amendment VIII
  - No excessive fines, bail nor cruel and unusual punishment shall be inflicted
- Amendment IX

- Constitutional rights shall not be construed to deny or disparage others retained by the people. (Bill of Rights)

- Amendment X
  - Establishment of States Rights

As the United States evolved, additional Amendments were added to the Constitution. The most significant for this discussion is Amendment XIV which was ratified in July of 1868.

Section 1 "...No State shall make nor enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

All of the Constitutional Amendments have had their day in court. Those who have had the opportunity to study Constitution law have been privy to the debates which have occurred, even among the Justices of the Supreme Court, and have read of the intellectual, moral and social balancing which occurs among the nine justices. The weight of the decision, as it sets legal principles and guidelines for the nation, is underscored by the rulings and dissents of this Court. During the last twenty years, many of these Amendments have also been tested within the courts by the homosexual community, stating that the military violates its Constitutional and civil rights.

The Constitution is a valuable source document not only for the identification of Constitutional and civil rights, but for the historical underpinnings of the relationship of the military to the government and citizens of the United States. Military service, in the United States, has never been stated as a Constitutional right nor has it ever been characterized as a civil right. Ironically, it is not even a right to refuse to serve if called upon.

Fortunately, the United States has traditionally had the luxury of a volunteer military, guided by a structured civilian leadership which ultimately presides over the military leadership. Primarily, power over the military is vested in Congress, whose powers, as stated in Article 1, Section 8 of the Constitution include:

- To declare War
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years.
- To provide and maintain a Navy
- To make Rules for the Government and Regulation of the land and naval forces.
- To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States

All three branches of the government intersect with the military. The Legislative, by the powers vested in Congress, the Executive since the President is the Commander in Chief of the Armed Forces, and the Judicial because of the legal review. The military is exposed to a scrutiny of its policies and regulations unlike any other government organization. It has even found itself accused of violating the very Constitutional rights it is entrusted to protect.

One of the more significant recent tests occurred in a 1986 case, *Bowers v. Hardwick,* which was decided on a substantive due process analysis, which requires the establishment of fundamental right. When historical and legal analyses were performed, the Chief Justice found:

"Proscriptions against [sodomy] have ancient roots...[T]o claim that a right to engage in such conduct is 'deeply rooted in this Nation's history and tradition' or 'implicit in the concept of ordered liberty' is at best facetious...To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching."

Another more recent substantive due process claim, testing again the homosexual due process claims occurred in *Beller V. Middendorf,* in which the court decided that substantive due process of a government regulation would require a case by case balancing. Even using this higher tier of scrutiny or "*heightened solicitude*" the court still did not find that the exclusion policy did not violate the substantive due process.

These most basic of rights guaranteed in our fundamental documents that embody the fundamental principles upon which this country was founded, are subsumed by the needs of the military to provide for the welfare and national security of the United States. Overwhelmingly, the courts have deferred to the needs of the military in the interests of national security.

The military has traditionally discriminated on a variety of bases: handicapped individuals, transsexuals, conscientious objectors, medically compromised, poor dental health, poor vision, convicted felon, abuser of substance, age, weight, height, physical and mental ability and even a single parent. The military also discriminates between individuals that have strong potential for successful careers in the military and those who do not. Most importantly, these discriminatory judgements are made by Congress, by the Secretary of Defense or by the service secretaries. It is their duty to guarantee a strong, combat-ready, and effective armed forces that will serve at the will of Congress.

In today's All Volunteer military, citizens of the United States, knowingly and willfully give up their rights to privacy, religious practices,
and even the most basic of personal freedoms, all guaranteed to them by the Constitution, twenty-four hours a day, for the duration of their service in the military. They move to locations that are remote and demanding, sometimes separated from their families. They endure hardships that can include the inability to communicate to the "outside world." Their moral, physical and emotional

stamina is tested. Ultimately, they willingly go into "harm's way." Yet all of this is done within an all Volunteer military.

Underscoring this volunteerism and personal sacrifice is trust. It weaves among the soldier and his contemporaries, the soldier and his leader, the soldier and his service and ultimately the soldier and his country. It is a trust that the nation will train him, equip him, will place him in a unit that is cohesive and effective in combat when called upon, and an ultimate trust that this nation will not unnecessarily place him in danger and unnecessarily risk his life, as he unquestionably performs all that is asked of him. As he and his fellow soldiers guarantee all of our Constitutional and civil rights, it is all that he asks in return. This then is the "compact" between the soldier and his nation.

Those who have supported a lifting of the ban, to allow homosexuals in the military, have often stated that the current military policy is a violation of civil rights, which have their roots in the Constitutional foundation of the United States. However, upon reviewing the historical, Constitutional and legal underpinnings concerning the rights of the individual and the policies of the military, one must conclude that the privilege to serve in today's military is exactly that--a privilege and not a right.

MAJOR ISSUES
CONCERNING HOMOSEXUALS IN THE MILITARY
AND WHY THE BAN MUST REMAIN

COHESION Considered to be one of the most important elements for an effective fighting force. Literature as well as recent testimony has confirmed that open integration of homosexuals into the military will have a significant impact on cohesion. Retired flag officer survey also confirmed that cohesion is the major consideration of this issue.

CIVIL RIGHTS Constitutional and legal analysis does not support assertion that under the restrictive policy, which would include asking the question, homosexuals are denied any constitutional or civil right.

HISTORY OF THE BAN The policy developed under the Carter Administration and implemented by the Reagan Administration was the result of a historical and legal evolution spanning the entire history of the United States.

ON/OFF BASE Service in the military requires that the member be available for duty at all times. It is not a traditional job in which one can easily separate job from personal lifestyle. It is, in reality, a twenty-four hour job during which one is held responsible for actions at all times.

MEDICAL COSTS Recent studies have confirmed rising medical costs within the military and the VA to treat HIV/AIDS patients. Outlays for the DoD for AIDS treatment, prevention and research in FY 92 and 93 were $129.8 million and $160.1 million respectively. VA budget requirements are $364.5 million for FY 92 and $404 million for FY 93.

INTERNATIONAL The experience of other countries, many of whom have mandatory conscription policies, supports the United States' military policy concerning homosexuals. Many countries do not give homosexuals security clearances, forbid access to classified documents, do not assign them to front line combat units. In Israel, they are sent home at night.

RELIGION A significant majority of religious leaders of all denominations have expressed concern of this proposed policy change. A major consideration is the potential conflict which military chaplains would face by supporting a policy that contradicts their religious training.

MILITARY EXPERIENCE In all surveys conducted on this issue, there is no military leadership support for the proposed change. Results of a recent survey of retired flag officers of all services, representing over 93,000 years of military experience, demonstrates overwhelming opposition to any change in the policy which existed prior to February 1, 1993.

THE HISTORY OF THE MILITARY AND THE BAN ON HOMOSEXUALS

During the current debate surrounding the military's ban on homosexuals, the question and whether it stays, the Nunn Compromise and now the Barney Frank Compromise, it is important to review the history of the military's policy on homosexuals and why it is necessary to maintain the ban as well as the question.

Historically, the military did not concern itself with discriminatory issues, including that of homosexuality. Rather, it relied upon a self-selection process, for a standing military which was traditionally small and not considered as a career by most U.S. citizens. Even the Army that existed between the two World Wars was less than 200,000, enlisted and officers, and the Navy was barely 100,000, relying on the Royal Navy to defend the Atlantic waterways. Equipment for both services were World War I vintage or surplus.

It was during World War I that the punishment of homosexual soldiers was first codified into American military law. The Articles of War of 1916, which became effective in 1917, included assault with the intent to commit sodomy as a felony crime. A further revision occurred three years later, which stated that sodomy itself was a felony, whether consensual or involving assault. The military then dealt with sodomy as a criminal act. This was the prevailing military policy until the outset of World War II.

As early as 1940, the American public began to consider the necessity for America to once again help its European Allies. In September of 1940, Congress passed the nation's first peacetime conscription act and set the ceiling for the number of draftees at 900,000. As a result, 16 million men now had to register for the draft, and the Selective Service officials established strict qualification standards for service in the military. The screening process included a psychiatric evaluation as well as a physical evaluation for the first time. Ultimately, 16 million men and women enlisted in the military and 10 million of these were draftees. The requirement for mental as well as physical screening became increasingly critical to maintain a well trained, effective fighting military.

The two most influential psychiatrists in the campaign for "Selective Service psychiatry" were Harry Stack Sullivan and Winfred Overholser. Sullivan, who specialized in interpersonal psychiatry, drafted the first proposal and served as consultant to Selective Service Director, Clarence Dykstra. Overholser, who advocated that the military recognize homosexuality as an illness, was the chairman of the National Research Council Committee on Neuropsychiatry. Both men served on the American Psychiatric Association's Military Mobilization Committee., One of the prevailing arguments for the establishment of this policy was that the military had spent over a billion dollars treating the psychiatric casualties of World War I. This would enable a selection out of those who might not be able to cope with the trauma of the battlefield.

The initial program appointed over 30,000 local board examiners who could conduct psychiatric interviews, and six hundred Medical Advisory Boards, to include one psychiatrist each. Initial guidelines for screening, Medical Circular No 1, listed five, later expanded to 8, psychiatric categories of handicap. In January, 1941, the Navy issued its own directive for elimination, including those "whose sexual behavior is such that it would endanger or disturb the morale of the military unit." In May of 1941, the Army Surgeon General's Office issued its directive to induction stations, which included "homosexual proclivities" as disqualification for induction. Much of the work done during this period provided the basis for the military's ban on homosexuals for the next three and a half decades, as the military issued a series of subsequent clarification directives in this new area of psychiatric screening. A few of the more prominent were:

- 1942 Army mobilization regulations included a new paragraph "Sexual Perversions" which established the Army's antihomosexual screening procedures for the rest of the war.

- January, 1943, Secretary of War Henry L. Stimson, issued a new Army directive, "Sodomists."*

- January, 1943, Secretary of Navy, Frank Knox, issues a confidential letter to all ships and stations, "Procedure for the Disposition of Homosexuals Among Personnel of the U.S. Naval Service."*

- January, 1944, the 1943 Army and Navy directives were amended, to further clarify discharge policy for homosexuality. Emphasis shifted from imprisonment to medical treatment and/or discharge.

This era also provided the basis for the political tension between the military, the homosexuals, psychiatrists and the government, which became more pronounced during the late 1940's and early 1950's. This was the McCarthy era, characterized by a national paranoia of Communists. In 1950, antihomosexual hearings were initiated in the Senate. The national security issue was introduced by Secretary of State, John Peurifoy, who testified that most of the ninety-one employees dismissed as security risks were homosexual. Through these hearings, the military policies of discharge for homosexuality were extended to every federal employee, under the rubric of security risk. The military did not support this position and considered the issue solely restricted to the political domain.

The national security issue, which had originated in the political and civilian domain, spread into the military: In June of 1950, responding to direct pressure from the Senate committees, the Army extended its antihomsexual policies to all civilian employees and the secretary of Defense and the Civil Service Commission established new internal procedures to prevent reemployment of "sexual perverts" in any government job. In 1951 the Uniform Code of Military Justice was passed, with legal procedures focused on sodomy, emphasizing the military's discharge policy rather than imprisonment for homosexuality. In 1951 and 1952 national registration laws for homosexuals were proposed in Congress.

- Constitutional rights shall not be construed to deny or disparage others retained by the people. (Bill of Rights)

- Amendment X
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November 16, 1992

Dear [redacted],

You asked to borrow my copy of the recently released Vietnam War remembrance, *We Were Soldiers Once ... and Young*. I sat down this evening to pen a quick cover note to you, but my memories took over and these pages are the result. Please indulge me for just a few minutes.

The book was co-authored by LTG Harold G. Moore, USA (Ret.), and Joseph L. Galloway. It recounts four days of incredibly intense and desperate combat between the U.S. Army's 1st Cavalry Division (Airmobile) and three regiments of North Vietnamese infantry in the Ia Drang valley of Vietnam's Pleiku Province in November 1965. Then-Lieutenant Colonel Hal Moore commanded one of the division's battalions—the 1st Battalion, 7th Cavalry—whose saga is recalled in the first part of the book. Joe Galloway, a young UPI war correspondent, was on the ground with Moore. Moore's sister battalion, the 2/7 Cavalry, is the focus of most of the second half of the story, beginning with the section titled "Albany." Elements of several other cavalry regiments were involved, as well. All told, in four days of action, 234 young Americans lost their lives. The 2/7 alone had 155 killed in just six hours. But together, these two battalions killed perhaps ten times as many as they lost.

This is one of the most painstakingly researched, lovingly created, vividly descriptive, and important first-person accounts of infantry combat ever written. Over the years, I have read widely in this genre from across the expanse of military history. Many of these selections were skillfully and even inspirationally rendered by soldiers and scholars of deserved renown. But none of it surpasses what Moore and Galloway have achieved here. It is absolutely stunning—even riveting.

Please excuse the many underlines and marginal comments. Some are rather personal and, I must say, not always measured. But I never expected that anyone else would ever see what I had added.

Experiencing this book (and that is really the best way to put it) was an intense personal catharsis for me. I have deliberately avoided Vietnam, when I could, for almost 25 years now. I have read very little about it and have seen none of the movies that featured it. I guess I have just been waiting all of these years for something to happen that would cause me to say, finally: "It is ended. Those of us who served so loyally and sacrificed so greatly in Vietnam, only to return to suffer ignominiously under the harsh sting of unfair and mean-spirited criticism and vilification from our fellow citizens, at last have been fondly remembered and richly memorialized with genuine deep feeling and ennobling dignity." My wait has been rewarded in full measure.

I have never visited the Vietnam memorial on the Mall. I have no plans to go there—ever. Many (certainly not all; perhaps not even most) of my buddies—largely the former rifle platoon leaders and company commanders who led the infantry units that did most of the hard ground fighting in Vietnam—feel the same way, albeit for many different complex reasons. But, profoundly moved by Moore and Galloway's immense and touching labor of love, we have talked a great deal in recent days. We believe that this inspired creation is a truly fitting memorial to the thousands of soldiers who served, bled, suffered, were maimed, and died on the field of battle in Vietnam, and for those who continue to wage that war in their minds ... because they cannot forget. This splendid written remembrance graphically tells their story and poignantly eulogizes and honors their gallantry, heroism, and appalling sacrifice as no sculpted stone monolith ever could.

In the fall of 1965, Vietnamese and American soldiers were fighting hard to prevent the forced cleaving of South Vietnam down Route 19 through the Central Highlands by the Viet Cong (VC) (both guerrilla and main force units) and their recently-arrived allies from the People's Army of North Vietnam (PAVN). Thousands more PAVN soldiers were then streaming down the Ho Chi Minh Trail through Laos and Cambodia toward South Vietnam. The war had reached a major turning point, and we knew it.

I was a first lieutenant and the executive officer and then commander of an airborne infantry rifle company (B2/502) in the 1st Brigade, 101st Airborne Division. Our battalion was involved in a number of sharp actions during the two months prior to the bloody campaign recounted in this book. Even though they had just arrived in country and were not yet well established, elements of the 1st Cavalry Division (Airmobile) nonetheless supported us and even came to our relief on several occasions.

Although my battalion was already committed elsewhere when the hellish battles in the Ia Drang were raging that November, I personally knew many of the officers and men who were involved, including their families. I had gone to college, to the Infantry Officers Basic Course, and to Airborne and Ranger School with some of them. Others had worked with or for me in earlier assignments. Many more I would meet years later.

One was a fine young infantry lieutenant who, a decade hence, became a faculty colleague at the U.S. Military Academy at West Point and a dear friend. He died tragically only a year ago, just a few days after we had enjoyed lunch together. My profound sadness at his loss is only heightened by the realization that his premature death prevented him from seeing the publication of this book, in which his and his buddies' selflessness and suffering are so heart-rendingly chronicled. In short, this work recalls for me—and for many others, I am sure—a gut-wrenching personal family experience of truly epic proportions.

Let me hasten to add that the only real differences between the historic combat actions described in this volume and many others that we participated in before and since were the size of the forces engaged and the magnitude of the resulting carnage. Battles between smaller units can be equally horrendous and profoundly mind-altering and life-changing to those who experience them. The notion of "Hell in a Very Small Place" (the title of a superb book by Bernard Fall on the French defeat at Dien Bien Phu, which I read many years ago) is an apt metaphor for life in the infantry in time of war. And for all too many, the hell never ends.

The often sanguinary passages of Moore and Galloway cry out for public attention. I hope they prompt no small measure of soul searching by America's citizenry, and most especially here in our nation's capital, at this time of major political change.

Washington, D.C., is full of people whose interest in national security, and whose passion in seeking to right all manner of perceived injustices throughout the world, stops well short of putting on the uniform themselves—much less laying their life on the line day in and day out in combat—for what they say they feel so strongly about. Neither of America's major political parties occupies the moral high ground here. Indeed, some highly visible "hawks" and other reputedly stout pillars of American society on both sides tend to be the biggest hypocrites on this matter.

It is those who have been well removed from the reality of war their entire lives who usually are the first to talk glibly (in classic depersonalized "policy-wonkese") about "applying the military instrument," when unfortunate and even grotesquely inhuman things happen abroad that they judge can only be redressed by force of American arms. Such often ill-advised impetuosity seldom is heard from those who have experienced and survived a terrifying baptism under fire, who have borne the awesome responsibility for the lives of others in battle, who have filled body bags with the dismembered remains of those close to them, and who therefore know first-hand what really is involved when it comes to going in harm's way. Regrettably, and all too regularly, Erasmus has been proven correct: *Dulce bellum inexpertis* ("War is delightful only to those who have no experience of it.").

Perhaps more to the point, many policy people of the kind just described, at virtually all levels in Washington, seem far too quick to argue earnestly for sending others, including no small number of those who essentially are economic draftees, to distant lonely places to fight, suffer, and die. And they do this even for vague and ill-conceived policies, however well intentioned, that senior political leaders often cannot even articulate adequately—whether in terms of vital national interests at risk or desired outcomes—and that the American people, as a direct consequence, have not bought into. As we now know only too well, and as this book reminds us, this is what happened in the case of Vietnam.

It is thus disturbing that many of these otherwise well informed people, along with some others who should know better, find the combat wizened soldier's insistence on receiving reasonably clear and militarily actionable political objectives prior to commitment to battle to be a downright nuisance, if not a practical impossibility. How can this be? Even if Clausewitz had

not lived long enough to complete as much of his seminal work, *On War,* as he did, we should have learned the fallacy—indeed, the moral bankruptcy—of such thinking in scores of wars and smaller actions throughout our two-centuries-long national history. This includes, tragically, no few that occurred after the war in Vietnam had officially ended and the lessons learned had been finely distilled, generously decanted, and widely distributed for public consumption. The words of Moore and Galloway give us reason here for pause.

It is also those who would use the American military establishment as a test bed for all manner of social experiments (as are increasingly in vogue these days) who need to understand what 1st Cavalry Division (Airmobile) "sky troopers" experienced in the Ia Drang. And they need to understand it clearly because, in the full context of world history, what happened there is only a variation on a theme: It is what today's fighting men risk having to go through, as well, when next they are committed to battle. No amount of political and technological change that we are likely to see in our lifetime will significantly alter this basic situation.

This heart-breaking yet incredibly inspiring book by Moore and Galloway breathes fulsome life into the concept of "unit cohesion" in a way that no government policy paper, academic treatise, or military field manual could even approach. It shows how critical, how precious, and—perhaps most importantly—how fragile it truly is. That a unit as superbly organized, trained, led, experienced, and tight-knit as Hal Moore's could hover so close to utter destruction for so many horrifying hours and days, yet survive not only to recover but also to fight equally ferociously again just a few days later, should be both a lesson and a warning to those who would tinker, even at the margin, with the basic fabric of the military institution, the profession of arms, and the warrior ethic as we have come to know it in the United States.

Our colleague Dudley Tademy, a retired field artillery colonel, was the fire support coordinator for the commander of the 3rd Brigade (then-Colonel Thomas W. "Tim" Brown), whose battalions were chopped up in the actions recounted in this book. He can tell you moving stories about the desperation, frustration, and intense feeling of guilt he and others confronted while circling overhead trying to deliver fire support effectively, yet safely, to the 2/7 Cavalry, which was trapped near Landing Zone Albany. In the dank shadows under a thick jungle canopy, these men desperately fought for their lives and against complete annihilation in almost unimaginable conditions, including the most primitive and vicious sort of hand-to-hand

combat. Dudley was strongly affected by his experience, as were so many others.

Dudley and I served together in the 1st Cavalry Division (Airmobile) G-3 section during our second Vietnam tour (1968-69). From July to December 1968, I was assistant division operations officer and the division commander's operations briefer; Dudley was G-3 Air (involved in planning B-52 strikes, etc.). I volunteered to take command of my second rifle company (A2/5 Cavalry) in January 1969. Three months later, Dudley was on duty at division headquarters when my company—the lead unit of our battalion—air assaulted into a "hot" landing zone north of Saigon near the Cambodian border, in an action not too unlike the one described in Moore and Galloway's book.

But there were some differences that are worth recalling. Because we had learned from the experiences of others, and because the terrain, weather, and tactical situation permitted, we promptly and effectively brought to bear almost every kind of modern fire support available, including mortars, tube artillery, aerial rocket artillery, helicopter gunships, and USAF fighter-bombers. Also, the division was able to pile on quickly, inserting almost a full brigade by helicopter. By the end of the day, we had overwhelmed and destroyed a North Vietnamese regiment, albeit at considerable cost to ourselves. My company sustained heavy casualties. I spent most of the next year in the hospital, and several more thereafter recovering.

Still, some things never change. Leading edge technology, world-class combat systems, and new and innovative organizational and operational concepts have served to make our military more effective than we were back then. But it also has made war more intense and the task of the ground combat solder potentially more deadly. Much of what the members of the 1st Cavalry Division (Airmobile), I, and other soldiers experienced in combat in Vietnam, then, easily could recur tomorrow—and for many of the same reasons. Neither the end of military history, nor the vital role that mere mortals must play in its often painfully costly and not infrequently disastrous unfolding, is close at hand.

Today is November 16, 1992. The actions described in this book took place during the period November 14-17, 1965—exactly 27 years ago.

I was going to close by saying that I hope you enjoy reading this book. But it really is not something to be enjoyed. Far from it. Rather, it is to be experienced, thoughtfully reflected upon, remembered ... and then cherished ... as an inspiring example of victory of the human spirit in the face of overwhelming odds. This we should do in the hope that we will learn from what *We Were Soldiers Once ... and Young* has to tell us and be made wiser for our effort.



UNIT COHESION

Young American citizens volunteering to enter the Armed Services do so for a variety of reasons. Each, however, does so realizing the today's conflicts and even tommorrow's wars are likely to be a part of his or her future. He will participate in that environment as part of a unit or team. Individually, today's military is physically stronger and more intelligent than it has ever been. Selective stringent standards for recruitment based on physical capability and fitness, education and intellect, as well as morality and conduct have produced a military which is above the average of the American public whose security and way of life it defends. By the very nature of its mission, which relies on the strength of its parts working together, the military must have a standard that is not compromised. In times past, an American public which remembered real threats to its very existence, acknowledged and endorsed that standard.

This well established practice of selective recruitment is then combined with intense, specialized training to produce American fighting men and women who are commonly characterized by courage, strength, the ability to perform, and loyalty. It is this last quality that binds the group of individuals into a cohesive unit, upon which our very tactics and strategy of not only ancient but modern and future wars relies. Ironically, this most critical of qualities for the military is often the most elusive. Although those on the outside of the unit may sense its presence, it is not tangible. It cannot be quantified. It is seldom observed. It is only felt.

S.L.A. Marshall lists the following as factors that promote cohesion in a unit:

1. Members share common values and experiences;
2. Individuals in the group conform to group norms and behavior in order to ensure group survival and goals;
3. Members lose their personal identity in favor of a group identity;
4. Members focus on group activities and goals;
5. Unit members become totally dependent on each other for the completion of their mission or survival; and
6. Group members must meet all standards of performance and behavior in order not to threaten group survival.

Cohesion does not just address the horizontal nature of the group structure, it also affects the vertical or command structure. The impact of cohesion and the ability to lead go hand in hand. The senior/subordinate relationship relies on the same trust and confidence as the horizontal structure.

In the prologue of his book We were Soldiers Once... And Young, Lt. Gen. Harold Moore,USA(Ret.) describes the cohesion found by the men who fought in the Ia Drang valley of Vietnam;

> "We discovered in that depressing, hellish place, where death was our constant companion, that we loved each other. We killed for each other, we died for each other, we wept for each other. And in time we came to love each other as brothers. In battle our world shrank to the man on our left and the man on our right, and the enemy all around. We held each other's lives in our hands and we learned to share our fears, our hope, our dreams as readily as we shared what little else good came our way."

Like technology and the underpinning strength of our political philosophy, cohesion is a combat multiplier. Introducing homosexuals into our units will significantly detract from the imperative development of cohesion. Lifting the ban will lead to the mutual confidence of the unit, the commonality of the experiences throughout the group, the equitable treatment, and unit oriented motivation.

THE IMPACT OF HOMOSEXUAL INTEGRATION INTO THE ARMED FORCES AND ITS MEDICAL CONSEQUENCES

ISSUE: What are the possible medical costs and considerations if the military ban on homosexuals is rescinded or significantly modified.

BACKGROUND: The initial decision to lift the ban on homosexuals serving in the military was primarily motivated by political considerations. Clinton's political strategists determined that the homosexual vote was important for him to secure the Democratic nomination. The accessibility of the military and its ultimate chain of command, makes it vulnerable to the implementation of political decisions. Unfortunately, important issues, to include the current as well as projected medical costs, were not strong considerations for this decision. Since the election and the proposed signing of an Executive Order on July 15, 1993, to change the military's restrictive policy, there have been numerous studies, conferences as well as additional research to better determine whether the military could fulfill its obligation to provide safe medical treatment to its members.

Seemingly, the US military, its mission, status, and long honored traditions are on a collision course with this proposal when one considers the dramatic budget cuts, the elimination of facilities, as well as the manpower cuts, which will include the medical branches. Although much of the current budget debate is centered on procurement and R&D budgets, the O&M account, which includes medical care, will be severely impacted as well. Important consideration should be given to this dimension of the issue since expansion of the O&M account to accommodate additional medical requirements will have to come from procurement and R&D monies.

CONCLUSION: It is well documented that many diseases such as HIV/AIDS and Sexually Transmitted Diseases (STDs), are statistically higher in the homosexual community. Therefore, it is predicted that an increase of homosexuals serving in the military will increase the requirement for additional treatment of these diseases be provided by the military. Logistics, deployability issues as well as morale could also impact the military's readiness and combat effectiveness.

The medical ramifications of allowing homosexual men and women into the military is disconcerting when a review of the numerous medical, psychological and scientific studies is done. These well researched studies and documents, unemotionally and accurately identify the medical issues for consideration.

DISCUSSION

Outlays for the Department of Defense for AIDS treatment, prevention and research in FY 92 and FY 93 were $129.8 million and $160.1 million respectively.[1]

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[1] Office of the Assistant Secretary of Defense for Health affairs. 3 December 1992.

As of October,1992, there were 1717 active duty personnel who were HIV positive out of 2.1 million total active duty. When this is broken down on a case by case incident rate, one report notes that over a ten year period approximately $208,000 will be required for each individual who has HIV/AIDS. The Department of the Navy estimates that its cost over a twelve year period will be $226,000.[2] It is estimated by the year 2000, the cost will sharply increase to $ 386,000 per HIV/AIDS infected patient and by the year 2008 almost double to $639,000.[3] These figures include the projected total cost for treatment until death of a person who has AIDS. Average life of a homosexual, with AIDS, is currently 39-41 years.

OTHER DISEASES

The other Sexually Transmitted Diseases (STDs) that typically are associated with a more promiscuous lifestyle, especially in the homosexual community, are a factor as well. Often homosexuals are over represented in many of these diseases. Although the homosexual population has been recently estimated to be only 2.3% of the total US population, the rate of STDs among homosexuals reported to public health officials is 80% of all STDs reported in this country.[4] Another report on the STD rate in the homosexual population estimates the rate of infection to be 20 to 50 times greater than in the heterosexual population.[5] Of further concern is that these rates continue to increase and have not yet stabilized or tapered off.

Other diseases related to the homosexual practices, now known as the Gay Bowel Syndrome, has increased the alarm within the public health community. High incident rates of Hepatitis A and B are reemerging with homosexual men after a brief decline. The American Liver Foundation recently reported that there are 300,000 new cases of hepatitis B per year and another 12,000 health workers infected with hepatitis B each year. This disease became a concern within the homosexual community in the early 1980's, since their vulnerability to this disease paralleled AIDS.

Other maladies such as Amebiasis, Giardisis, and Shingellasis, which typically are intestinal parasite, are also being reported as increasing almost exclusive within the homosexual community, by US health officials. The sexual practices of oral to anal intercourse, scatting (handling and ingestion of fecal matter), and fisting (insertion through the anus of the fist/forearm) are the primary means of contracting these diseases.[6] A history of receptive anal intercourse, related to homosexual behavior, was

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[2] Burrelli, David. *Armed Forces and Society*/ Summer 1992. p. 464.

[4] Jaffe, H.W. and Keewhan C., et al, " National Case-Control Study of Kaposi's Sarcoma and Pneumoncystis Carinii Pneumonia in Homosexual Men; Part 1, Epidemiological Results, " *Annals of Internal Medicine*, 1983, 99(2)pp. 145-157.

[5] *The British Journal of Sexual Medicine 1987*

[6] Quinn, Thomas C., The Polymicrobial Origin of Intestinal Infections in Homosexual Men, The New England Journal of Medicine, Sept. 8, 1983. p. 576

strongly associated with the occurrence of anal cancer.[7] It is reported that homosexual men, on the average, have had intercourse with as many as 1000 partners.[8]

Besides the physical disease considerations, the potential psychological strains placed on our service members is also of concern. It is noted in two separate studies dealing with this subject matter, that homosexuals have a behavioral pattern for self-destruction. These two studies further point out that the alcoholism rate among homosexuals is 25% and 33% higher than for heterosexual men and women respectively.[9] One study states that homosexuals are twenty times more likely to commit suicide than heterosexuals.[10]

Another paramount concern for the Congress to address in its debate, is the propensity for homosexuals to molest minors. Although this subject has not yet surfaced as a major part of the issue, since many parents, children and the homosexuals, wish not to discuss it, it is, nonetheless, a tragic occurrence that our society must consider. Today, there is an increasing development of organizations whose stated purpose is to abolish minor consenual laws so as to have sex with boys and girls. Organizations such as the North America Men Boy Love Association is one such advocacy group. Two studies, one done in 1979, and the other completed in 1986, emphasize the importance of this concern. In one study, 73% of homosexual men surveyed responded that they had sex with boys 16-19 years of age or younger.[11] While a second found that 31% of children younger than thirteen, claim to have been molested by men, were homosexually assaulted[12]

Concerning the more elusive considerations of cohesion and morale, one must ask whether heterosexuals could or should serve with an openly admitted homosexual or even with a service member that may be an HIV high risk? The majority of the responses to this important question can only speculate. However, it is worthwhile to consider the recent tragic circumstances of the basketball star Magic Johnson. Although his contact with the HIV came, admittedly, from prostitutes, and despite the acceptance and professional respect which he has, from his own team members and

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7 Daling, Janet R., et al, Sexual Practices, Sexually Transmitted Diseases, and The incidence of Anal Cancer, The New England Journal of Medicine, Oct. 15, 1987. Vol. 317

8 Wexner, Steven, M.D., "Sexually Transmitted Diseases of the Colon, Rectum and Anus, The Challenge of the Nineties," Paper Delivered at 1990 meeting in St. Louis, MO. American Society of the Colon and Rectal Surgeons.

9 Kus, Robert J., "Alcoholics Anonymous and Gay American Men," *Journal of Homosexuality*, Vol. 14, No. 2 (1987), p. 254.

10 Cameron PhD., Paul, et al, *The Homosexual Lifespan*, (Washington, DC. Family Research Institute, revised 14 February 1992). p.5.

11 Jay, Karla and Young, Allen, The Gay Report: Lesbians and Gay Men Speak Out About Sexual Experiences and Lifestyles, New York: Summit Books, 1979. p. 275.

12 "Child Molestation and Homosexuality," Institute for the Scientific Investigation of Sexuality, 1987.

throughout the NBA, the tragic realization became apparent: No one on the basketball court wanted to be near him after his first cut drew blood during a game. Ultimately Magic Johnson was forced to retire from basketball.

Considering the operational tempo of the military, the requirement for realistic combat training, that unfortunately, on occasion, results in injuries and sometimes even death, and finally the chaos of the battlefield, all of which expose service personnel to the danger of another's bodily fluids, one must appreciate the mental as well as the physical concerns which those who must participate in those environments have. Just as Congress and this nation have the responsibility not to expose the military to unnecessary harm from an external enemy, these same criteria must be applied to a potential enemy within.

DEPARTMENT OF THE ARMY
OFFICE OF THE SURGEON GENERAL
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3258

REPLY TO ATTENTION OF

DASG

29 APR 1993

MEMORANDUM FOR Office of the Deputy Chief of Staff for Personnel
ATTN: BG T.C. Jones, Director of Human Resources)

SUBJECT: Potential Medical Implications of Homosexuality in the Military

1. This correspondence is in response to your memorandum of 12 April 1993 concerning the above subject.

2. The Army Medical Department (AMEDD) concurs that DoD policies related to homosexual or heterosexual behavior should be based upon military personnel, unit, and mission concerns and considerations. The AMEDD has participated actively with the Office of the Deputy Chief of Staff for Personnel in evaluating the implications of homosexuality in the Army, including the impact on readiness and on the Army health care system.

3. The Army Medical Department has assessed the impact of rescission of the ban on military service by open homosexuals on the medical care system. It should be noted that the focus of the positions in the AMEDD response is upon the behavior associated with homosexuality, not sexual preferences, per se, which was the focus of the OASD(HA) statement. Homosexuality, with its propensity for male-to-male sex, increases the incidence of HIV (and other) infections and increases medical costs.

4. Enclosed are answers to questions raised in your memorandum dated 9 April 1993 to the Director, OSD Working Group.

5. My points of contact are COL Tomlinson and MAJ Patton, (703) 756-0135.

Encl
as

ALCIDE M. LANOUE
Lieutenant General
The Surgeon General

MEDICAL RISK
BLOOD SUPPLY AND OCCUPATIONAL EXPOSURE TO BLOOD

Question: What are the risks to the blood supply and what would be the risks of occupational exposure to blood?

Answer: Homosexual male-to-male sex has a negative impact on the safety and adequacy of the blood supply and increases the risk of occupational exposure to HIV-infected blood.

Supporting evidence:

The Food and Drug Administration (FDA), Public Health Service, Department of Health and Human Services, recognizes the risk of homosexual behavior as a threat to the safety of the country's blood supply.[3] The FDA mandates that any male donor who has had sex with another man since 1977, even once, is ineligible to donate, and is to be placed on a permanent deferral list. This exclusion applies in both civilian and military blood banks.

Thousands of surgical patients and hemophiliacs have been infected with HIV and have AIDS from transfusions of blood and blood products donated by HIV-infected individuals prior to availability of the laboratory test for HIV infection. Even with the ability to test for HIV infection, males who have had sex with another male continue to be excluded because they are a high risk population and because of the "window" of time between infection and development of a positive test.[4]

The Army Medical Department is dependent on active duty soldiers for much of its blood supply. In fact, 84% of donated blood in the Army blood program in the 4th quarter 1992 came from military donors. Homosexual males who have had sex with another male since 1977 are ineligible to donate blood in peacetime as well as in war.

Adequate amounts and safe blood for transfusion are critical in both peace and war. To maximize safety of the blood, it is routinely tested for the HIV virus and hepatitis B and C viruses, as well as the presence of syphilis. Each donor is also asked a series of questions designed to assess the risk of the donor's blood being tainted by these and other pathogens. One of the exclusions mandated by the Food and Drug Administration and enforced by military and civilian blood banks is that any male donor who has had sex with another man since 1977, and any female donor who has had sex with a man who in turn has had sex with another man since 1977, may not donate blood.[5] Again, these people are placed on permanent deferral lists. This is based upon the scientifically valid reason to minimize risk of HIV transmission.

In the militarily unique requirement for blood for transfusion on the battlefield, blood may be needed urgently and collected locally without the benefit of the usual testing and exclusion of high risk donors. Every deployable hospital as part of its basic load has 180 blood bags intended for emergency blood collection and transfusion in the field.

Finally, the risks of infection of blood-borne pathogens, notably HIV and Hepatitis B virus, through occupational exposure, are well known. OSHA has recently issued an extensive regulation designed to minimize the occupational risk of exposure to blood and body fluids.[4] Significantly, the OSHA blood-borne pathogen standard is extremely difficult to maintain and apply to the military while in a mission deployed status. The potential for exposure to blood from non-battle injuries as well as on the battlefield is obvious and threatens both military first aid providers in line units as well as medical personnel.

Open integration of homosexuals into the military will increase the likelihood of bringing in members of the group with the very highest risk of acquiring HIV: male homosexuals. Because of the documented and recognized risk of HIV infection in this group, their blood is unacceptable for donation, and these soldiers would not be available as blood or plasma donors. Furthermore, they pose a risk to others in the field during training or actual operations, through exposure to their blood resulting from accidents or injury.

Conclusion: The military setting provides unique requirements for safety in executing the Army blood transfusion program and for preventing the transmission of bloodborne pathogens (especially HIV and hepatitis B) in the field setting. Homosexual males would comprise a pool of ineligible blood donors and as a group are at high risk of infection by HIV and Hepatitis B, both significant blood-borne pathogens which can infect other soldiers through exposure to blood in peace and war.

MEDICAL RISK
SEXUALLY TRANSMITTED DISEASES

Question: What effect would lifting the exclusion policy have on Sexually Transmitted Disease (STD) rates?

Answer: Rescission of the ban on military service by open homosexuals would have a negative impact on the Army's efforts to reduce the incidence of HIV infection and other STDs.

Supporting evidence:

Several factors help to explain higher rates of STD in homosexual men: 1) Homosexual men have significantly more sexual partners than heterosexual men. Kinsey et al. have estimated that the average homosexual man has approximately 1000 partners in his lifetime. 2) Many partners are anonymous sexual contacts, making it difficult to interrupt disease transmission through contact tracing. 3) Homosexual men have additional potential sites of primarily asymptomatic infection, serving as silent reservoirs of disease. 4) Homosexual men may be more reluctant to seek medical care due to fear over revealing their sexual preference.[16]

If a greater proportion of homosexual males comprises the force, this addition of a known high risk population for HIV prevalence and transmission will increase the incidence of HIV infection (occurrence of new cases) in the Army.[17]

Male homosexuals and bisexuals are at increased risk of acquiring sexually transmitted diseases.[1,2,7,8,9,11,12,13,14,15,16] Compared with heterosexual men, homosexual men experience significantly greater rates of gonorrhea, syphilis, and type B viral hepatitis. Other significant STDs resulting from receptive anorectal intercourse practices in homosexual/bisexual men include anorectal venereal warts, herpes simplex, and chlamydial proctitis.

Conclusion: HIV and other STD rates will increase to the extent that the proportion of homosexual males in the Army increases because homosexual/bisexual men are allowed to enter and remain in the Army.

MEDICAL RISK
READINESS AND DEPLOYABILITY

Question: What effect would lifting the homosexual exclusion policy have on readiness and deployability from a medical standpoint?

Answer: Rescission of the ban on military service by open homosexuals would have a negative impact on readiness and deployability.

Supporting evidence:

Readiness and deployability are unique to the military and are vital to the defense of the country.

There are a number of medical conditions which would prevent any soldier from deploying. Most are temporary, a few are permanent. Readiness suffers when soldiers are nondeployable. Homosexuals are more likely to be nondeployable for health reasons, either because of HIV or high rates of sexually transmitted diseases.

Male homosexuals are at higher risk for acquiring HIV infection, as well as other sexually transmitted diseases (STD), as a consequence of their male-to-male sexual practices within the high risk civilian and military homosexual male populations. By DoD policy, HIV-infected soldiers are non-deployable and are assigned to CONUS units.[19] However, by current Army policy, these soldiers may be assigned to TOE units.[20] When these units deploy, the HIV-infected soldiers must remain behind, and replacements must be found to take their places in the deployed unit. Of the approximately 461 HIV-infected soldiers currently serving on active duty, approximately half are in TOE positions. Non-deployable HIV-infected soldiers are problematic in making assignments and cause an imbalance in distribution if only assigned to nondeployable units.

In addition to HIV and AIDS, male homosexuals are at disproportionately higher risk for a variety of other sexually transmitted diseases, with a wide spectrum of morbidity and mortality. Several of these diseases are severe enough to require hospitalization and convalescence, especially if simultaneously infected with more than one, which would preclude deployment.

As the force structure is reduced, the impact on deployability by each new HIV-infected soldier is magnified, even at current rates of infection. Moreover, the rate of infection can be expected to increase if the exclusion policy is lifted and the proportion of male homosexuals soldiers comprising the force increases. HIV-infected soldiers are not deployable in

compliance with DoD policy. There are currently approximately 461 soldiers on active duty who cannot deploy overseas even in an emergency.

Costly preventive measures such as increased frequency of HIV screening may be necessary to reduce the risk to the Force of HIV transmission. Resources to accomplish this must be found or diverted from other medical programs, decrementing readiness.

Preventive measures will not reduce the HIV and STD rates to zero. Soldiers in general and homosexuals in particular will continue to require medical care. Once again, resources to provide this care must be provided, at the expense of other medical programs. The costs involved can be staggering. A GAO report in 1990 on the "Effects of AIDS in the Military" projected a range of costs to DOD over a ten year period of $1 to $10 billion, assuming various incidence rates of HIV infection.[21]

Readiness suffers when the blood supply is threatened and the pool of eligible donors is reduced. All male homosexuals who have had sex with another male since 1977 will be ineligible to donate blood.[3]

Conclusion: A male homosexual soldier is significantly likelier than a heterosexual soldier to be nondeployable for medical reasons related to HIV infection. If HIV-infected, the soldier will be permanently nondeployable. Male homosexuals are more likely to acquire sexually transmitted diseases which can render them nondeployable, such as gonorrhea, syphilis, and hepatitis B.

Readiness from a medical standpoint will suffer if the restriction is lifted. The impact would be felt at the unit level, when the homosexual soldier cannot train and deploy for health reasons. Likewise, the impact would be felt Army-wide in terms of the military blood program and of the burden placed on the Army health care system.

MEDICAL COSTS

Question: What effect would rescission of the ban on military service by open homosexuals have on the cost to the Army health care system?

Answer: Homosexual male-to-male sex has had a profound effect on increasing medical costs within the United States and within the U.S. Army.

Homosexual male-to-male sex is the practice most responsible for the AIDS epidemic within the United States.[1,3,6,10] Homosexual male-to-male sex and intravenous drug abuse are the two practices most responsible for transmission of HIV within the United States.[4] The homosexual male and the intravenous drug abuse populations form the reservoir of HIV infection from which HIV infection is spread to the pediatric and heterosexual populations of the United States.

HIV/AIDS Surveillance Report, issued February 1993 by the Centers for Disease Control and Prevention (CDC), Public Health Service, U.S. Department of Health and Human Services, reports on the total 249,199 adult/adolescent cases of AIDS in the United States from the onset of the AIDS epidemic through December 1992. Of the total, 142,626 (57%) were in the exposure category "men who have sex with men"; 57,412 (23%) were in the exposure category "injecting drug use"; and 15,899 (6%) were in the exposure category "men who have sex with men and inject drugs". In the exposure category "heterosexual contact" were 16,254 (7%), the majority being in two sub-categories, "sex with injecting drug user" and "sex with bisexual male".[4]

In the U.S. Army, epidemiologic studies have found the greatest risk factor for HIV infection to be male-to-male sex.[17]

Medical costs are in terms of money, personnel, supplies and equipment, education, surveillance, investigations, and other infection control measures.[21]

The U.S. Army and the Army Medical Department have been in the forefront of the fight against AIDS, with a scientific, compassionate, and comprehensive program to interrupt the chain of HIV transmission and to protect the uninfected soldier. Any Army or DoD policy which fosters in any way homosexual male-to-male sex resulting in an increased incidence of HIV infection in soldiers with its resulting increase in costs will have a negative impact on military readiness and on the U.S. Army health care system.

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11. Collier AC, Meyers JD, Corey L, et al. Cytomegalovirus Infection in Homosexual Men. The *American Journal of Medicine.* 1987;82:593-601.

12. Quinn TC, Stamm WE, Goodell SE, et al. The Polymicrobial Origin of Intestinal Infections in Homosexual Men. *The New England Journal of Medicine.* 1983;309:576-582.

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CARDINAL'S OFFICE
1011 FIRST AVENUE
NEW YORK, NY 10022

May 4, 1993

Dear Admiral Moorer,

Many thanks for your letter of 16 April, regarding the present Administration's effort to lift the ban on homosexuals in the military. In the interest of time, I enclose herein copies of the statements made by Archbishop Joseph Dimino, Bishop of Military Services, with which I completely concur.

Know that I will remember you in my prayers. Please, pray for me as well.

With best wishes and

Faithfully in Christ,

John Cardinal O'Connor

Archbishop of New York

Admiral Thomas Moorer, USN (Retired)
Chairman
Defense Readiness Council
P.O. Box 15351
Alexandria, VA 22309

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Office of the Archbishop

April 16, 1993

Dear Father,

It is our understanding that there is a great deal of discussion taking place at military installations concerning the lifting of the ban against homosexual persons serving in the armed forces. We know that our publicized letter on this subject to President Clinton elicited many comments, from all over the United States.

In order to clarify our position for our Catholic military chaplains we have formulated the enclosed statement. We are grateful to the members of an ad hoc committee of our Presbyteral Council for their assistance in preparing and refining the statement. It is our hope that you will find our comments helpful.

We are very proud of the manner in which our Catholic chaplains are upholding and proclaiming the truths of our Faith - in all parts of the world. As priests of Jesus Christ and loyal followers of the Apostles, our chaplains are proving themselves to be true shepherds of the Church.

It is a joy and a consolation to be associated with you in this magnificent apostolate to the members of the armed forces of the United States. May God continue to provide you with courage and strength. Oremus pro invicem!

Fraternally in Our Lord,

+J. T. Dimino

+Joseph T. Dimino
Archbishop for the Military Services

JTD/wls
Enclosure

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CONCERNING THE ADMITTANCE OF HOMOSEXUAL PERSONS TO MILITARY SERVICE

INTRODUCTION

"The God who is at once truth and love calls the Church to minister to every man, woman and child with the pastoral solicitude of our Compassionate Lord."

On the Pastoral Care of Homosexual Persons
Congregation for the Doctrine of the Faith(CDF),1986

1. In my letter of 27 January 1993 to President Clinton the position of the Military Archdiocese on the admittance of homosexuals into the military was made clear. We oppose such action. This statement is intended to provide our Catholic chaplains with a clarification of our position.
2. Within the Catholic Church the Archdiocese for the Military Services USA bears a unique responsibility for the spiritual well being of all Catholics serving in our armed forces. It is also concerned with the spiritual welfare of those who wish to apply for military service.
3. The current controversy over admitting homosexually oriented persons to military service presents the Military Archdiocese with a unique occasion to reaffirm consistent Catholic moral teaching on human sexuality and the rights belonging to all human persons.

4. The Catholic Church teaches that the virtue of chastity is to be practiced both by those who are married and by those who are single. Neither heterosexual activity outside of marriage nor homosexual activity under any circumstances is ever morally permissible. Both are against the law of God and His Church. This teaching must be reemphasized to our people.

5. Persons, military or civilian, who come to us for assistance, advice, counseling on any matters whatever, including heterosexual or homosexual problems, must always be treated with kindness, charity and with the highest degree of confidentiality.

COMMON GOOD and INDIVIDUAL GOOD

6. Various reasons have been brought forward in opposition to the admittance of homosexually oriented persons to military service. This opposition is based largely on preservation and promotion of the common good, for example, the maintenance of military discipline and esprit de corps, and the impact that homosexually oriented persons in the military would have on service recruiting efforts.

7. Many who oppose lifting the ban on admitting homosexually oriented persons to military service have indicated concern over other dimensions of the common good. They argue that, if homosexually oriented persons should be accepted in the military, other issues may be expected to arise: affirmative action for homosexuals; homosexual quotas at the military academies; housing arrangements for homosexuals; acceptance of

homosexuality as an appropriate alternate lifestyle within the armed forces.

8. While this Archdiocese is also concerned with the common good and agrees that serious and harmful consequences, such as those noted above, could well result from the admittance of homosexually oriented persons into the military services, the Archdiocese bases its argument on and is motivated primarily by the Catholic Church's consistent teaching on the individual good, the moral and spiritual welfare of the individual person, namely, the right and concomitant obligation of every person to strive to live virtuously in pursuit of eternal happiness.

9. We are well aware that certain heterosexual conduct in the military reflects our present national attitudes towards morality and can seriously challenge an individual's heterosexual chastity. This is a reality that we hope will continue to be addressed by our military leaders to the extent possible for them to do so. However, we do not see the wisdom of compounding the problem at this time by lifting restrictions on the homosexually oriented serving in the military, and thereby subjecting these persons to undue temptations against chastity by requiring them to live daily, often over long periods of time, in intimate proximity to others of the same sex, in close quarters aboard ships at sea or in military barracks.

10. In stating this, we, as members of the Catholic Church, continue to affirm the innate value of all persons and to advocate respect for the intrinsic human rights of all persons, regardless of sexual orientation.

> It is deplorable that homosexual persons have been and are the object of violent malice in speech or in action. Such treatment deserves condemnation from the Church's pastors wherever it occurs. It reveals a kind of disregard for others which endangers the most fundamental principles of a healthy society. The intrinsic dignity of each person must always be respected in word, in action and in law. (CDF 1992,#7)
>
> Homosexual persons, as human persons, have the same rights as all persons, including the right of not being treated in a manner which offends their dignity. (CDF1992,#12)

11. However, in its belief that human sexuality must always be intrinsically linked to the primacy of family life, the Catholic Church clearly teaches that the homosexual orientation is in itself an objective disorder. The orientation in any given individual is in itself not sinful, but may not be used to justify homosexual activity which is sinful.

12. As is well known, for various physical, mental, emotional and psychological reasons certain persons are refused admittance into specific occupations, e.g., piloting airplanes, performing surgical procedures, operating dangerous machinery.

13. This is not unjust discrimination, nor is it a violation of anyone's human rights. It is just and proper - because it seeks to protect the common good of society and the security and safety of the individual persons involved. This matter was put into clear perspective by the Vatican's Congregation for the Doctrine of the Faith in its statement of July 1992:

> There are areas in which it is not unjust discrimination to take sexual orientation into account, for example, in the placement of children for adoption or foster care, in employment of teachers or coaches and in military recruitment. (CDF 1992, #11)

14. Therefore, it would not be an abridgement of human rights to deny homosexually oriented persons admittance to the armed forces for their own moral safety and for the sake of military readiness and accomplishment of the mission assigned.

INTERNATIONAL ISSUES CONCERNING HOMOSEXUALS IN THE MILITARY

The issues concerning the admittance of homosexuals in the military are not only being confronted in the United States, but in other countries as well. Many of these countries are important Allies to the United States and represent significant factors in the compilation of US national security. Interestingly, the debate is actually focused within the Western World, not in the Far East nor the Middle East. Whether it is the result of the advancement of the Western World, the diversity of the populations or social and political agendas is not the focus of this paper.

The danger of comparisons is that underlying premises may be different, causing inaccuracies. In comparing the policies of the US military to those of other countries, there are three critical differentials to keep at the forefront:

> Some of the policies and regulations concerning members of the military have their roots in the social and moral values of that society which has entrusted its preservation to the military. No society is the mirror image of another.
>
> There is not another military like the United States in the terms of its size and its unrelenting global responsibilities. Smaller militaries, with less national security tensions may have greater flexibility concerning the establishment of priorities. (e.g. length of cruises for most other navies is typically two weeks to a month)
>
> The United States does not have conscription but rather has pursued an all volunteer force for almost two decades. Thus, today the military is encouraged to select the best of the volunteers for voluntary military service, not mandatory duty in the United States military.

As this emerges as an issue, the resulting studies for policy makers follow. One study concerning NATO Allies, completed by SHAPE, was released in the Fall of 1992. It found the following:

> Canada, Denmark, Luxembourg, the Netherlands and Norway have the most liberal policies concerning homosexuals.
>
> - Canada just recently changed its policy (1992) as a result of a court case charging discrimination. It also has a powerful Equal Rights Panel which influences policy concerning discrimination.
>
> - Norway, at present, is the only country which recognizes homosexual relationships and grants benefits to the non-military

member.

- Denmark is considering a change in entitlements to partners, like Norway, but would require an exclusionary relationship statement.

In contrast, Germany, prohibits homosexual enlistees and conscripts, and if their orientation is discovered during the first four years of service, they are discharged. After the four years, they are disciplined for improper behavior. Belgium's military is governed by Royal Decree which regards homosexuality "as a psychological anomaly inconsistent with military service."

France and Italy deal with homosexuals on a case by case basis, although France does not allow any homosexual conscripts while Italy retains them on an eligibility list for potential service.

A more expansive survey done by the Department of Defense Gay and Lesbian Task Force, which looked at western countries, including Russia, found that:

Nine countries have no restrictions concerning homosexuals serving in the military:

Australia, Canada, Denmark, Luxembourg, Netherlands, Norway, Spain, Sweden and Switzerland

Six Countries maintain a ban:

Greece, New Zealand, Portugal, Russia, Turkey and the United Kingdom

Nine countries, some of which have conscription, maintain a restrictive policy which may include denial of security clearances, access to classified documents, exclusion from leadership positions, no utilization in a front line or combat unit, duty assignments are confined to administrative support. These include:

Austria, Belgium, Finland, France, Germany, Iceland, Israel, Italy, Japan

ISRAEL

Much of the debate concerning foreign militaries and their comparison to the United States has focused on Israel. There are some significant differences which must remain at the forefront:

- Israel has a mandatory conscription policy for all of its citizens, including women. It is truly a "Garrison State" in which all of its citizens participate in and have some knowledge of the military. Women (with some exceptions granted for religion or

motherhood) serve for two years, men for three. Everyone may be recalled for service when deemed necessary.

- Everyone begins his/her military service as enlisted. There are not ROTC nor military academies for selection to officer. This is done from within the enlisted ranks, and only a small percentage are selected for a professional military career.

- Denial of military service is significant, and in some instances even those who are handicapped, and would be excluded, may appeal and serve in a support capacity.

- Military service is viewed as a springboard into a civilian career. Those who have not served are typically not accepted into this community.

- Israel maintains a constant state of readiness and alert. It is surrounded by neighbors who far outnumber it from a sheer manpower status.

- Israel's policy excludes homosexuals from the front line, combat units, and intelligence units. After identification and psychological testing, a restrictive indicator remains in the personnel file.

- Israel does not assign homosexuals to units which require close living conditions, and when possible, sends them home at night. This is done in the interest of cohesion and unit effectiveness.

The review of the experience of other countries and their policies concerning homosexuals actually underscores the policy of the United States and why it is important to maintain the ban. Most of the countries which do not exclude homosexuals from serving also have a conscription policy. To accommodate both dimensions, these countries establish separate assignment policies, promotion and career tracks, and perform additional psychiatric testing.

THE ROBERTSON GROUP

RETIRED FLAG OFFICER SURVEY

REGARDING THE HOMOSEXUAL BAN IN THE MILITARY

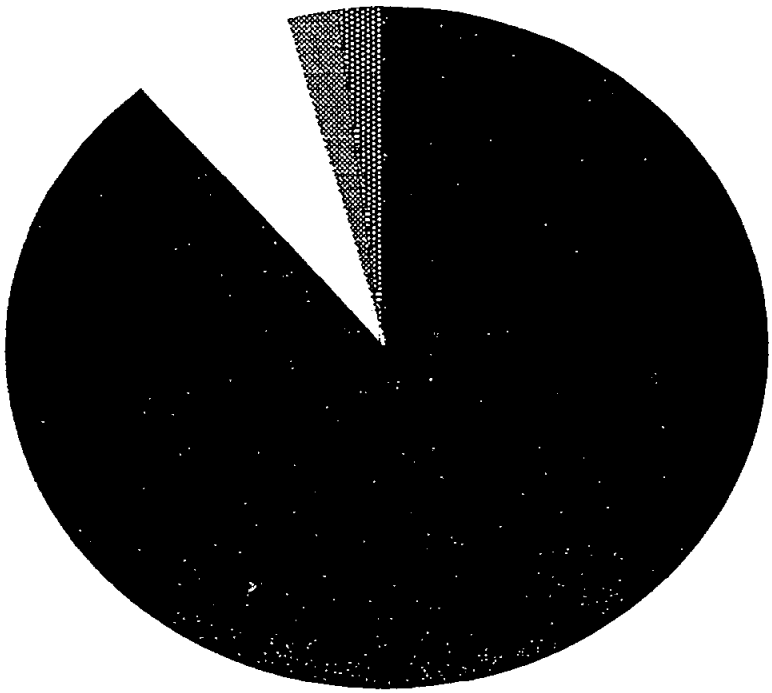
PRODUCED FOR

THE DEFENSE READINESS COUNCIL

June 3, 1993

ADVANCE COPY

National Policy Allows The Military To Selectively Discriminate. This Policy Should:



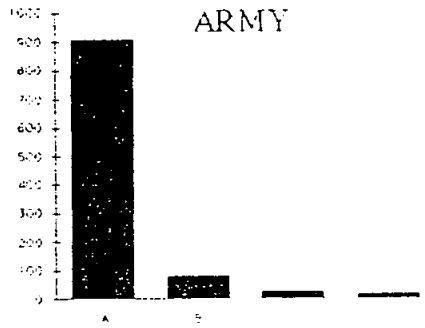
SERVICE WIDE

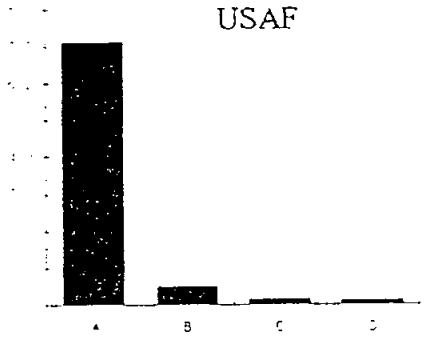
89% A Remain Unchange

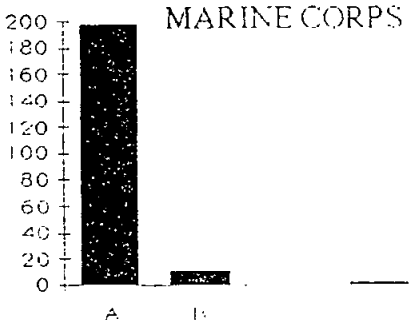
7% B Be Reviewed

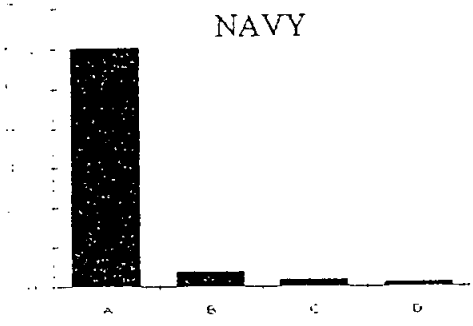
2% C Be Modified

2% D Place Greater emphasis on the individual right to serve.

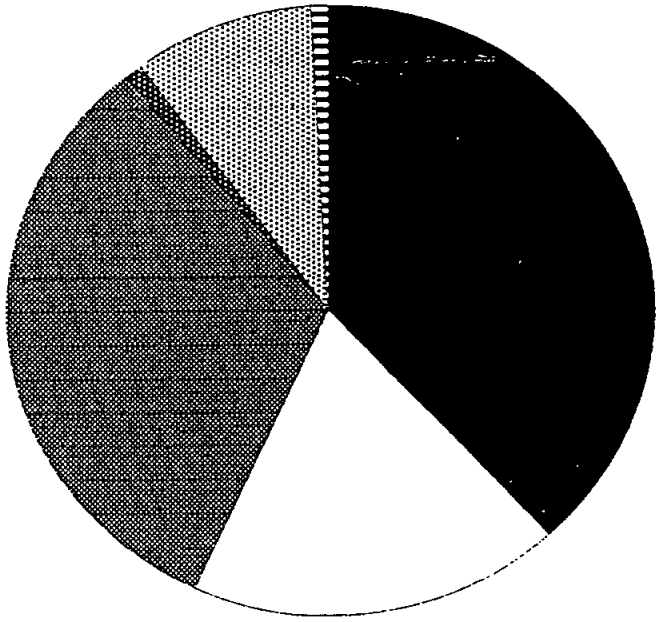






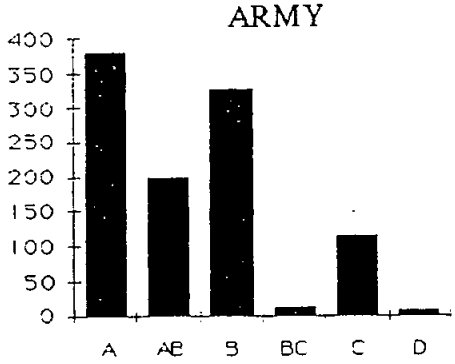


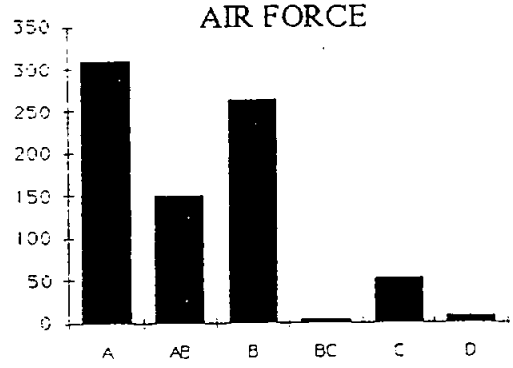
The Question
During Recruitment, Candidates Should Be:

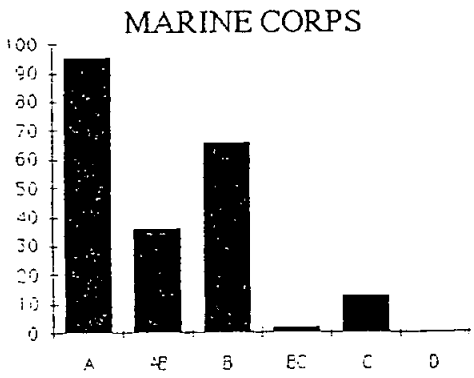


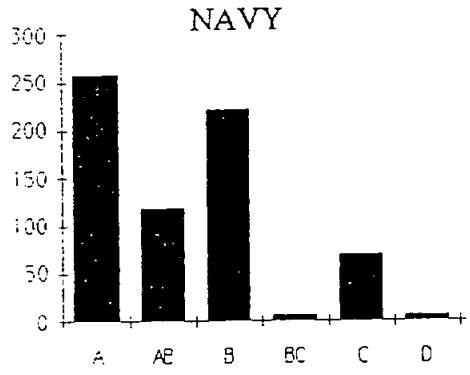
SERVICE WIDE

38% A Asked if They Are Homosexual
19% AB
32% B Briefed on the UCMJ
1% BC
9% C Not Asked
1% D Undecided

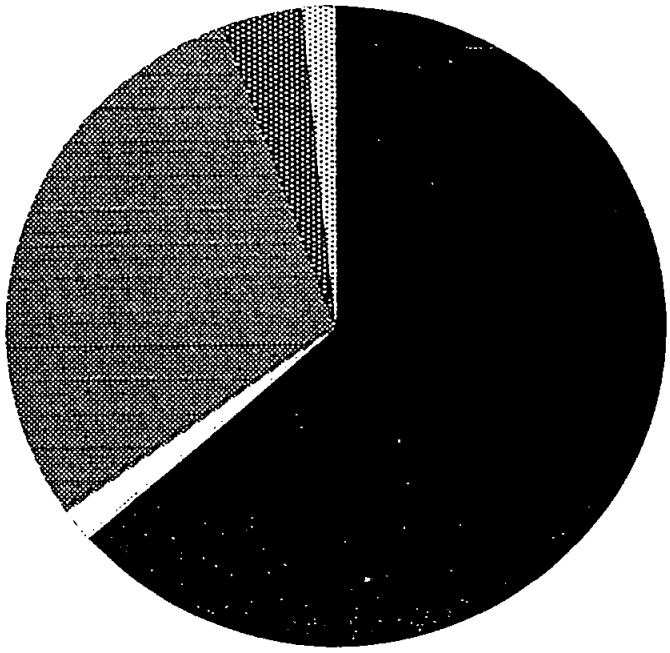






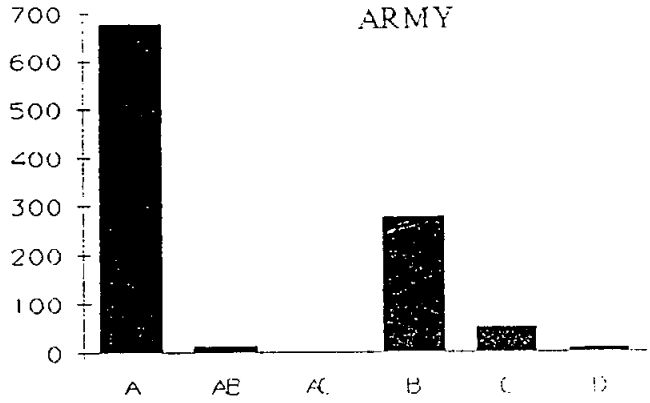


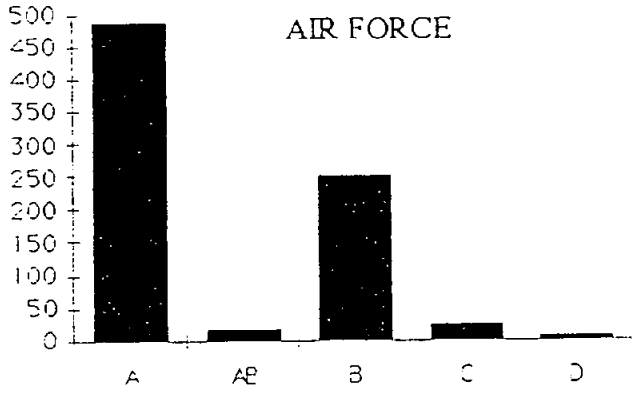
If Homosexuals Are Permitted To Serve, What Would Be The Likely Impact On Combat Effectiveness?

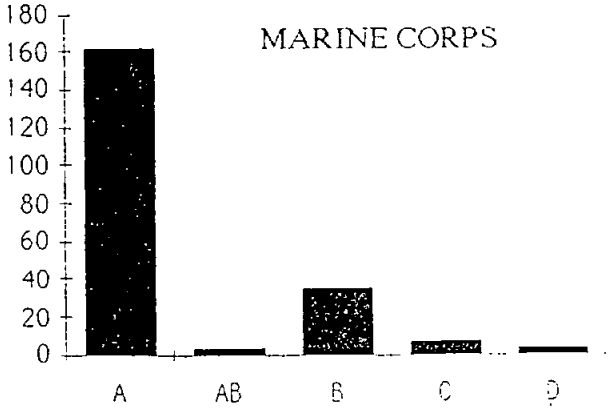


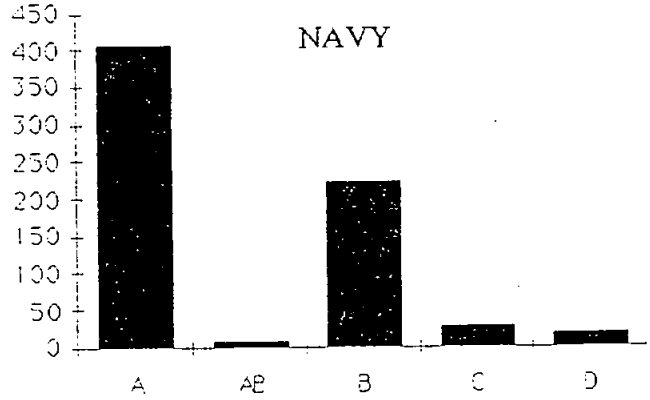
SERVICE WIDE

- A 64% - Seriously Impact Effectiveness
- AB 2%
- B 29% - Degrade/ Lessen Effectiveness
- C 4% - No Impact
- D 1.5% - Undecided



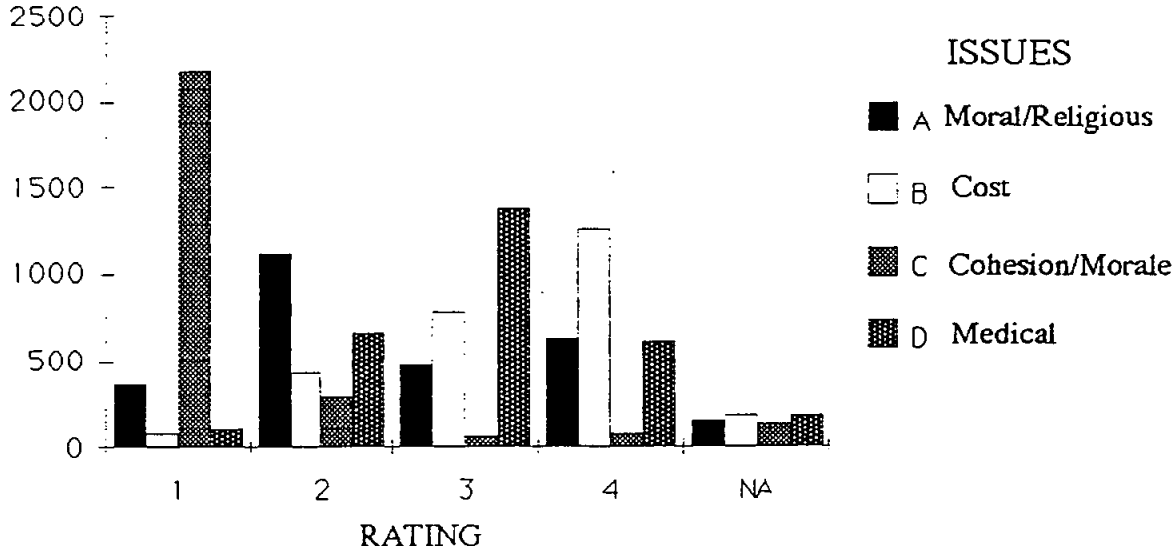






Rating Of Issues Based On Flag Officer's Branch Of Service

SERVICE WIDE



ARMY

ISSUE

RATING	A	B	C	D
1	130	22	840	33
2	442	159	110	261
3	195	283	23	463
4	223	521	25	228
NA	68	73	60	73

MARINE CORPS

ISSUE

RATING	A	B	C	D
1	27	6	178	10
2	103	27	23	48
3	35	59	3	101
4	42	113	3	46
NA	9	10	8	10

NAVY

ISSUE

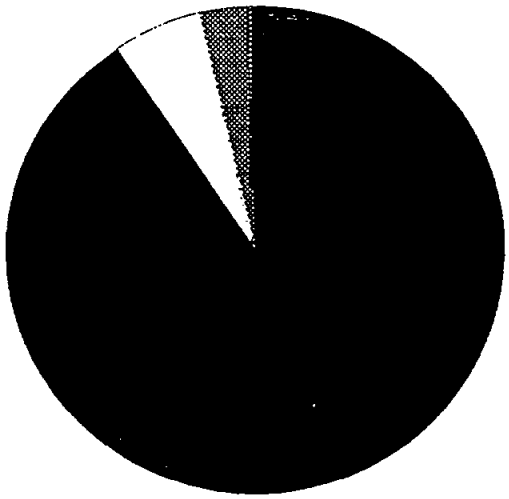
RATING	A	B	C	D
1	106	30	528	30
2	267	98	76	167
3	116	195	19	278
4	154	306	27	156
NA	46	60	39	58

AIR FORCE

ISSUE

RATING	A	B	C	D
1	101	26	632	31
2	315	156	86	191
3	125	245	18	537
4	214	324	21	184
NA	41	45	39	44

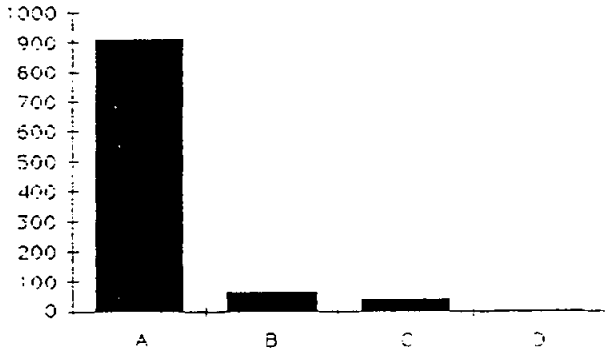
Position Regarding Ban On Homosexuals In The Military



SERVICE WIDE

- A Retain Ban - 90.77%
- B Modify Ban - 5.72%
- C Lift Ban - 3.03%
- D Undecided - 0.49%

ARMY



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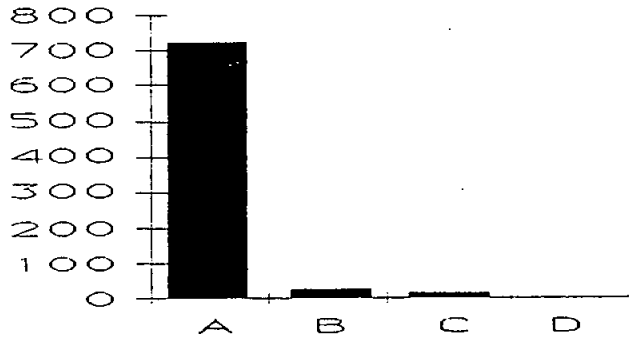

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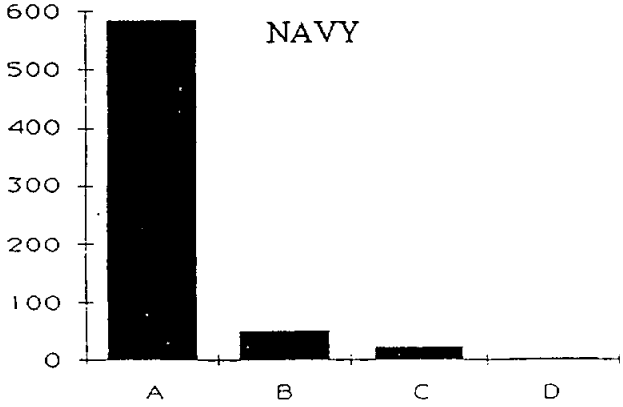
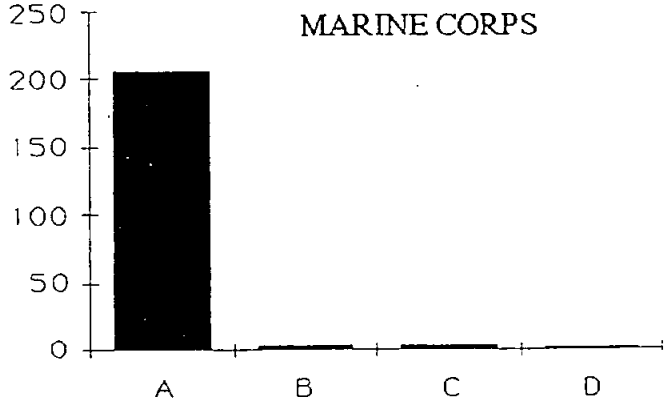


MARINE CORPS



FILE
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THE ANNOTATED *MEINHOLD*:

NOTES ON THE OPINION IN THE "GAY SAILOR'S CASE"

March 26, 1993

by Lincoln C. Oliphant,

Counsel to the U.S. Senate Republican Policy Committee

On January 28, 1993, United States District Judge Terry J. Hatter, Jr., held that the military's policy of excluding homosexuals was unconstitutional. *Meinhold v. United States*, 808 F. Supp. 1455 (C.D. Calif. 1993). This paper reprints Judge Hatter's opinion together with the author's notes. The text of the opinion is printed in black boxes. When necessary, a paragraph of the opinion is repeated on consecutive pages so that the reader will always have at the top of the page that paragraph which corresponds to the notes on that page. Of course, the bracketed asterisks and letters within the text of the opinion (e.g., "[*a]") were added by the author and correspond to his notes. The attached letter from annotator Lincoln Oliphant to Republican Policy Committee Chairman Don Nickles summarizes his concerns with the *Meinhold* decision.

The author gratefully acknowledges the research assistance of Catherine Edwards, BA Hillsdale College 1994. The assistance of others is appreciated, as well. The annotations, however, are the responsibility of the author alone.

DON NICKLES
CHAIRMAN

KELLY D. JOHNSTON
STAFF DIRECTOR

United States Senate
REPUBLICAN POLICY COMMITTEE
RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-7064
202-224-2946

March 26, 1993

Honorable Don Nickles, Chairman
Republican Policy Committee
United States Senate
Washington, District of Columbia

RE: ANNOTATED OPINION IN MEINHOLD V. UNITED STATES, THE "GAY SAILOR'S CASE"

Dear Mr. Chairman:

If Federal district judges are going to govern America they're going to have to do a whole lot better job than did the judge who struck down the Navy's ban on homosexuals. If Congress, the President, and the appellate courts are going to let a district judge tell the country how best to create a military that can fight and win wars, then they had better be certain that the judge's order is up to the mark and satisfactorily explained. The opinion in Meinhold v. United States, 808 F. Supp. 1455 (C.D. Calif. 1993), fails both tests.

On January 28, 1993, District Judge Terry J. Hatter, Jr., held that the Navy's ban on homosexuals violated the plaintiff's right to the equal protection of the laws. He permanently enjoined the Secretary of Defense "from discharging or denying enlistment to any person based on sexual orientation in the absence of sexual conduct which interferes with the military mission of the armed forces." The Department of Justice filed an emergency motion for a stay pending appeal (which the Ninth Circuit already has denied) and will appeal.

Accompanying this letter is the text of the Meinhold opinion together with my own annotations. The idea for an annotated opinion was conceived when I read the opinion and then set out to find the original materials that are quoted therein. The results of my search will disturb everyone who cares about the way we govern ourselves.

When I first read Meinhold, I had access to only one of the sources cited by the court, the General Accounting Office's Defense Force Management: DoD's Policy on Homosexuality (June 1992). Consequently, when the judge quoted that GAO report I got it out -- and I was astounded by what I found: To begin with, the judge cited the wrong volume. His quotations were inaccurate. He combined sentence fragments from the original with his own parentheticals to form statements that cannot be found in the original and that cannot be fairly derived from the original. Finally, he yanked the quotations from their context so that the original meaning was lost and a contrary meaning introduced. In short, in the one source I had at hand, I discovered that the

opinion miscited, misquoted, mishandled, and misrepresented the original material. Further investigation revealed that other sources were treated in like manner: Meinhold is a thicket of misinterpretation and misinformation.

Virtually every source of "facts" in Meinhold was misused somehow, often in several ways. The law wasn't so much misused as ignored -- I mean the law of the United States; the laws of Canada and Australia were given force.

The opinion was issued in a week when the military's policy on homosexuals was in the headlines daily. It was issued the day before the President of the United States ordered the Department of Defense to modify its policies pending a six month review. I find this timing suspicious; the opinion appears to have been rushed forward so that the judge could be a "player" in the national debate. The poor quality of the work seems to confirm my suspicion.

Originally, judges were not ordained to be "players." "The judiciary," said Alexander Hamilton in Federalist no. 78, "has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever." Hamilton believed that a judge should be an umpire, not a player. Today, to the nation's detriment, many believe that Hamilton's position is out-of-date.

Every successful enterprise has to be steered by competent decisionmakers. Vast republics are no exception. If Federal district court judges are going to govern the United States by playing their "trump card" of unconstitutionality against an acquiescent Congress and President, then we can but hope that the judges will couple virtue and wisdom with highly competent decisionmaking. The decision in Meinhold v. United States is not, however, encouraging. Frightening, yes, but not encouraging. When bogus "facts" and make-believe premises can be cobbled together and pronounced to be "constitutional law," then it is doubtful that district judges can be entrusted with the governance of the vast American enterprise.

The Senate is about to begin hearings on homosexuals in the military, and the Pentagon has its own review under way, as the President directed. The full Senate visited the issue shortly after the President's order and will probably do so again this summer. Perhaps by then the district court's opinion in Meinhold v. United States will have gained the reputation and influence it so richly deserves, and Congress and the President will be able to address this issue free from the fog emitted by that peculiar piece of work.

Sincerely,

Lincoln C. Oliphant

Lincoln C. Oliphant,
Counsel

attachment

United States District Court
Central District of California

VOLKER KEITH MEINHOLD,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF DEFENSE, *et al.*
Defendants

CV 92-6044 TJH (JRx)

Amended Opinion

Background
[PARAGRAPH 1] In 1980, at the age of 17, Volker Keith Meinhold enlisted in the United States Navy. Over the last twelve years, Meinhold has established a reputation for being a dedicated and disciplined sailor. As such, he earned his position as a Naval airborne sonar analyst and instructor. He has consistently received outstanding evaluations and has never been the subject of disciplinary action.[*a]

Missing Testimony on Homosexuality's Effects on Unit Morale

NOTE 1 a. What Judge Hatter means, of course, is that Petty Officer Meinhold had never been the subject of disciplinary action before becoming the subject of the disciplinary action that is now before the court. Judge Hatter doesn't want to count the discharge for homosexuality because he thinks this policy is illegal, immoral, and even irrational. If the discharge for homosexuality is not counted, then Meinhold has never been in serious trouble with the Navy. The question is, can Meinhold's open homosexuality be ignored?

Judge Hatter gives a favorable report of Meinhold's service record. The judge supposes that Meinhold's homosexuality is irrelevant to that record. The Navy's position, on the other hand, is that a sailor's homosexuality cannot be detached from his military record. In part, this difference is attributable to the judge's emphasis on the autonomous individual and the Navy's emphasis on the disciplined unit. The Navy must emphasize the unit because wars are not fought — or at least they are not won — by mobs of autonomous individuals. Successful war-making requires disciplined units made into armies. **In recounting Meinhold's record, the opinion omits the testimony of Meinhold's commanding officer who says that Meinhold's open homosexuality has had an adverse effect on unit efficiency and morale:**

> "Generally, AW1 Meinhold's presence in [Patrol Squadron 31] has reduced morale, efficiency, and mission focus within the command. . . . His reenlistment has struck a discordant note with the troops. Some instructors have stated that they would not fly with AW1 Meinhold and some students have expressed their reluctance to be taught by him.

Background
[PARAGRAPH 1 REPEATED] In 1980, at the age of 17, Volker Keith Meinhold enlisted in the United States Navy. Over the last twelve years, Meinhold has established a reputation for being a dedicated and disciplined sailor. As such, he earned his position as a Naval airborne sonar analyst and instructor. He has consistently received outstanding evaluations and has never been the subject of disciplinary action.["a]

"Although sailors within [the squadron] have voiced deep seated religious and moral objections to a change in armed forces policy towards homosexuals, we have been successful in avoiding confrontations. To a large extent, lack of confrontation is a measure of the intense leadership focus placed on this issue and the professionalism of our sailors. It is not an indicator of squadron-wide acceptance of AW1 Meinhold in [the squadron]." Declaration of Capt. G. Markwell, U.S.N. (Commanding Officer, Patrol Squadron 31, Naval Air Station, Moffett Field, Calif.) paras. 5 & 14 (executed Jan. 14, 1993), *Meinhold v. United States.*

Also, the Navy informed the Court that one of Meinhold's students, Barry W. Grabenstein, had complained of "unprofessional" conduct involving Meinhold's homosexuality. **The opinion does not mention the Grabenstein incident. Of course, both Grabenstein and Markwell (see statement above) have to be ignored for Judge Hatter to describe Meinhold in the terms he used.** In its Statement of Uncontroverted Facts, the Navy explained the incident as follows:

"On December 11, 1991, Plaintiff [Meinhold] was 'counseled' by the Navy about an incident that allegedly had taken place between himself and Antisubmarine Warfare Aviation Apprentice ('AWAA') Barry W. Grabenstein, a student in one of the classes that Plaintiff had been teaching.

"According to the Navy's counseling report, the incident had consisted of the following: 'After an informal counseling with AWAA Grabenstein, P[etty] O[fficer] Meinhold made an assumption that the student may have "mixed sexual orientation" and in an effort to put the student at ease told him he wanted [him] to come over for Thanksgiving dinner along with the rest of the class. At which time he told AWAA Grabenstein that he was gay.'

"On December 20, 1991, AWAA Grabenstein submitted a class-critique form to the Navy pertaining to the class that Plaintiff had taught.

"In the critique form, AWAA Grabenstein said: 'I was counseled by a senior petty officer during training in the most irregular and unprofessional way. * * * * I don't understand where any instructor has the authority or audacity to approach a student and ask him over for dinner and make him aware of the fact that his instructor is "gay." ' " Defendants' Statement of Uncontroverted Facts and Conclusions of Law, paras. 3-6 (dated & lodged with the court Nov. 2, 1992) (bracketed words added by annotator; citations to record omitted), *Meinhold v. United States.*

[PARAGRAPH 2] In 1992, Meinhold was discharged from the Navy and deprived of his career after he announced on an ABC television news program that he was gay.[*a] Meinhold was discharged not because he engaged in prohibited conduct,[*b] but because he labeled himself as gay.[*c] Meinhold filed this action in response to his discharge. Previously, this Court issued a preliminary injunction ordering the Navy to reinstate Meinhold pending a final resolution of this case.[*d]

Was He Asked? — and More Missing Testimony

NOTE 2 a. Meinhold might have preferred that the Court use the word "is" rather than "was" since most homosexuals today maintain that they are homosexual, that they always have been homosexual, and that they always will be homosexual because homosexuality is immutable. However, it is not possible to tell, on the evidence available to us, whether Meinhold himself claims that he has always been a homosexual and, therefore, that he was a homosexual when he joined the Navy.

While Judge Hatter accepted Meinhold's allegations that he was not asked about his sexual orientation at enlistment or reenlistment, the allegations are disputed by the Navy. Hatter said in his preliminary injunction, "At no time during Meinhold's naval career did the Navy ever ask him to identify his sexual orientation." Findings of Fact & Conclusions of Law, Finding no. 2, *Meinhold v. United States*, 1992 U.S. Dist. LEXIS 17813 (Nov. 10, 1992).

The Navy, on the other hand, asserts that Meinhold's claims "simply are not true."

> ". . . When Plaintiff enlisted in the Navy in 1980 — and when he reenlisted in 1985 — he was asked by the Navy whether he had 'ever engaged in homosexual activity (sexual relation with another person of the same sex);' whether he possessed 'homosexual tendencies;' and whether he engaged in 'homosexuality.' To all of these questions, Plaintiff responded in the negative. As a result, the record does not support Plaintiff's claim that, '[d]uring my twelve years in the Navy, I was never formally asked to declare my sexual status.'
>
> "Likewise, the record does not support Plaintiff's claim that he was never told by the Navy that homosexuality was a ground for involuntary separation. When Plaintiff reenlisted in the Navy in 1985, he was sent to the NAVET indoctrination course . . . [where] the Navy 'explained' art. 125(a) of the Uniform Code of Military Justice (the 'UCMJ'), 10 U.S.C. 925(a), to Plaintiff — the provision of the UCMJ making sodomy among servicemembers a criminal offense. . . ." Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment at 15, *Meinhold v. United States* (citations to declarations and some internal quotation marks omitted).

Meinhold's history is important because applicants who do not honestly answer the military's admissions questions or the military's medical questions may be discharged for their dishonesty, never mind their homosexuality. "[I]n gay cases specifically, it should be noted that concealment of homosexual activity prior to enlistment constitutes fraudulent enlistment. Therefore, discharge may be based on the element of concealment rather than the actual activity. . . ." K. Bourdonnay, "Military and Veterans," sec. 6.03, n. 23, in Roberta Achtenberg (ed.), *Sexual Orientation and the Law* (1985).

[PARAGRAPH 2 REPEATED] In 1992, Meinhold was discharged from the Navy and deprived of his career after he announced on an ABC television news program that he was gay.["a] Meinhold was discharged not because he engaged in prohibited conduct,["b] but because he labeled himself as gay.["c] Meinhold filed this action in response to his discharge. Previously, this Court issued a preliminary injunction ordering the Navy to reinstate Meinhold pending a final resolution of this case.["d]

"Being Gay" and "Doing Gay" in the Navy

NOTE 2 b. Judge Hatter writes, "Meinhold was discharged not because he engaged in prohibited conduct, but because he labeled himself as gay." This clever sentence does not say that Meinhold has not engaged in prohibited conduct; it says that Meinhold was discharged for publicly declaring his homosexuality and that the declaration alone was sufficient without any additional evidence of homosexual conduct.

For naval purposes, a homosexual is "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts[,]" and a homosexual act is "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." Navy Military Personnel Manual 3630400, paras. 1.a. & 1.c. Therefore, when a male sailor openly declares his homosexuality he is openly declaring (1) that he has engaged in, and/or (2) that he desires to engage in, and/or (3) that he intends to engage in bodily contact with another man to satisfy his sexual desire.

There may be celibate homosexuals in the Navy, though perhaps Judge Hatter would take judicial notice that their numbers are not large. In the vast, vast majority of cases, there is a high correlation between "being gay" and "doing gay." This case, and the "gay rights movement," is not about opening the Navy to celibate homosexuals.

Even apart from "doing gay," just "being gay" can affect unit morale:

> "The adverse effect on unit morale of members who admit that they are homosexual, but do not admit to homosexual acts, is indistinguishable from those who admittedly engage in homosexual conduct. Requiring commanding officers to enforce personnel policy protecting admitted, but purportedly celibate homosexuals but excluding admittedly active homosexuals would be unworkable." Declaration of Rear Admiral S. Frank Gallo, U.S.N., para. 9 (executed Jan. 14, 1993), in *Meinhold v. United States*.

Even if there is a distinction between "being gay" and "doing gay," between "status" and "conduct," it is a mistake to conclude that in public affairs only the latter counts or can be allowed to count. For example, suppose an employer is looking for a trustworthy employee, which question is the more relevant, "Has the applicant ever taken anything that didn't belong to him?" or "Is he honest?" The second question asks about "status," not "conduct," but it seems easily the more important question.

For more on the distinction (if any) between "status" and "conduct," see Notes 3 b, 5 a, and 15 a, *infra*.

Are Homosexuals "Gay"?

NOTE 2 c. Judge Hatter says that Meinhold "labeled himself as gay." This seems a curiously passive way of describing Meinhold's public declaration of his homosexuality on a network television news show that is seen by millions of viewers. " 'Yes, I am in fact gay,' said Petty Officer Meinhold. 'There's a time when you have to stand up for what you think is right. And that's what I am doing.' " ABC News, "World News Tonight With Peter Jennings," May 19, 1992 (NEXIS transcript).

*[PARAGRAPH 2 REPEATED] In 1992, Meinhold was discharged from the Navy and deprived of his career after he announced on an ABC television news program that he was gay.[*a] Meinhold was discharged not because he engaged in prohibited conduct,[*b] but because he labeled himself as gay.[*c] Meinhold filed this action in response to his discharge. Previously, this Court issued a preliminary injunction ordering the Navy to reinstate Meinhold pending a final resolution of this case.[*d]*

Publicly identifying oneself as "gay" is regarded within the "gay community" as a courageous political statement, and it is not at all the same as passively acknowledging one's homosexuality. "The term 'homosexual' denotes people who have a sexual orientation and emotional attraction for others of the same sex. 'Gay' and 'lesbian' describe people who identify themselves — whether to themselves alone or, in varying degrees, to others — as having such homosexual orientation." Paul & Weinrich, *Homosexuality: Social, Psychological and Biological Issues* 23 (1982), quoted in Brief Amici Curiae of Lambda Legal Defense & Education Fund, *et al.*, at n. 7, *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Judge Hatter did not distinguish between "gay" and "homosexual". The distinction is sometimes essential.

Abandoning Bill of Attainder Ruling

NOTE 2 d. In his preliminary injunction of November 10, 1992, Judge Hatter concluded that the Navy's regulations deny the equal protection of the laws and constitute a bill of attainder. 1992 U.S. Dist. LEXIS 17813. The bill of attainder ruling was not restated in this opinion.

[PARAGRAPH 3] The Court, now, decides this case on the merits based on the cross motions for summary judgment. The parties are in agreement on the relevant facts, and the Court finds that there are no genuine issues of material fact to preclude the rendering of a decision based on the law of the land. Fed. R. Civ. P. 56(c).[*a] While Meinhold, also, attacks the administrative discharge procedures used by the Navy, the key issue presented to the Court is whether the United States Department of Defense may ban, from the armed forces of the United States, gays and lesbians who do not engage in prohibited conduct.[*b]

Judgment "As a Matter of Law" Even Though All the Law Was Against Him

NOTE 3 a. The Federal Rules require that a motion for summary judgment be granted if "there is no genuine issue as to any material fact" and if the moving party "is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Judge Hatter held that Meinhold was entitled to judgment as a matter of law even though all of the law was against him.

We are not aware of *any* case in which the military's policy on homosexuals failed the test of equal protection. *Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990) (no equal protection violation; no evidence of homosexual conduct), *reversing* 703 F. Supp. 1372 (E.D.Wisc. 1989); *Steffan v. Cheney*, 780 F. Supp. 1 (D.D.C. 1991) (no equal protection violation; no evidence of homosexual conduct) (on appeal); *Woodward v. United States*, 871 F.2d 1068 (Fed. Cir. 1989), *cert. denied*, 494 U.S. 1003 (1990) (no equal protection violation; no evidence of sexual conduct); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984) (no equal protection violation; evidence of homosexual conduct); *Rich v. Sec. of the Army*, 735 F.2d 1220 (10th Cir. 1984) (no equal protection violation; evidence of homosexual conduct).

Status versus Conduct, Continued

NOTE 3 b. This is a modified version of a similar statement that was discussed at Note 2 b, *supra*. As we said there, when Judge Hatter writes of "gays and lesbians who do not engage in prohibited conduct" we must not suppose that he is writing of the celibate. Additionally, Judge Hatter himself abandons his own formulation by the time he gets to paragraph 16 where he permanently enjoins the Department of Defense "from discharging or denying enlistment to any person based on sexual orientation in the absence of sexual conduct *which interferes with the military mission*. . . ." (Emphasis added.) By the end of his opinion, Hatter wants proof, not only of homosexual conduct but of homosexual conduct that interferes with the military mission.

For more on the distinction (if any) between "status" and "conduct," see Notes 2 b, 5 a, and 15 a.

> Discussion
> Exhaustion of Administrative Remedies
> [PARAGRAPH 4] While it is clear to this Court that there were numerous procedural errors committed by the board of Naval officers convened for Meinhold's administrative discharge hearing, it is also undisputed that a new hearing would result in the same decision. Namely, Meinhold would, again, be discharged based on his status as a homosexual. Thus, requiring Meinhold to exhaust his intraservice remedies would be futile. *See, Watkins v. U.S. Army*, 875 F.2d 699, 705 (9th Cir. 1989) (*en banc*), *cert. denied*, — U.S. —, 111 S. Ct. 384 (1990).[*a] Therefore, this Court will proceed to the merits of Meinhold's claims.

Missing the Lessons of Watkins III

NOTE 4 a. Of all the reasons to cite *Watkins*, Judge Hatter has probably chosen the least important.

The *Watkins* case at 875 F.2d 699 is "*Watkins III*"— the third time that that case had been before the Ninth Circuit. (And on that third effort, the case was before the entire court [i.e., *en banc.*]) *Watkins I*, 721 F.2d 687 (9th Cir. 1983) is not especially important here, but the relationship between *Watkins II*, 847 F.2d 1329 (9th Cir. 1988), and *Watkins III* is most interesting.

In *Watkins II*, a majority of a panel of the Ninth Circuit held that "the Army's regulations violate the constitutional guarantee of equal protection of the laws because they discriminate against persons of homosexual orientation, a suspect class, and because the regulations are not necessary to promote a legitimate compelling governmental interest." 847 F.2d at 1352. The opinion in *Watkins II* was written by Judge Norris and joined by Judge Canby.

The opinion in *Watkins II* did not stand, however. Upon rehearing by the full court, the opinion in *Watkins II* was "withdrawn." 875 F.2d at 705. The *en banc* court did not decide the case on constitutional grounds, but Judge Norris, 875 F.2d at 699 (Norris, J., concurring), and Judge Canby, 875 F.2d at 731 (Canby, J., concurring), restated their views that the Army's regulation violated equal protection requirements because homosexuals are a constitutionally suspect class and because the Army was unable to demonstrate a compelling governmental interest for its policy. None of the nine other judges on the *en banc* court agreed with Norris and Canby.

The important lesson of *Watkins III* — which Judge Hatter fails to convey — is that the United States Court of Appeals for the Ninth Circuit sitting *en banc* "withdrew" the equal protection opinion of the *Watkins II* panel. Judge Hatter cites *Watkins III* only to make a point about exhausting administrative remedies.

The *Watkins III* saga continued the next time we heard from Judge Canby. Canby wrote the opinion for a unanimous panel in *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1992) (see Note 5 d, *infra*). In *Pruitt*, Canby had to abandon his equal protection jurisprudence from *Watkins II* and *Watkins III*. He could no longer claim that homosexuals are a suspect class and that the Army's regulations must be justified by a compelling governmental interest. Instead, in *Pruitt*, Canby held that the regulations must be "rationally related to a permissible governmental purpose." 963 F.2d at 1167. In short, from *Watkins II* to *Pruitt*, Judge Canby had to give up the idea that homosexuality is entitled to the highest level of judicial scrutiny and had to adopt the idea that homosexuality is entitled to the standard level of scrutiny, the "rational basis" test.

Equal Protection
[PARAGRAPH 5] To survive Meinhold's claim that the Department of Defense's policy banning gays and lesbians based merely on status, and not conduct,[*a] violates the Equal Protection clause of the Fifth Amendment,[*b] the Department of Defense must establish, through a factual record, that its policy is rationally related to its permissible goals. *Pruitt v. Cheney*, 963 F.2d 1160, 1166-67 (9th Cir. 1991),[*c] *cert. denied*, — U.S. —, 113 S. Ct. 655 (1992).[*d] In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy — the Court must consider the factual basis underlying the "military judgment." *Pruitt*, 963 F.2d at 1166-67.[*e]

Can "Status" and "Conduct" Be Separated?

Note 5 a. Judge Hatter repeats here his insistence that homosexual "status" can be separated from homosexual "conduct." The military is not so sure, and it appears that its rationale is that "status" — especially one's sexual "status" — denotes "conduct." This common sense view was expressed as follows by the district court in *Pruitt*:

> "In light of the [Army's] policy, it makes little difference whether a person has committed homosexual acts, or would like to do so, or intends to do so. A person in one of the last two categories could reasonably be deemed to be just as incompatible with military service as one who engages in homosexual acts. Certainly, the morale factor could reasonably be considered the same, and the Army understandably would be apprehensive of the prospect that desire or intent would ripen into attempt or actual performance." *Pruitt v. Weinberger*, 659 F.Supp. 625, 627 (C.D.Cal. 1987), aff'd in part & rev'd in part *sub nom.*, *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1992), *cert. denied*, — U.S. —, 61 U.S.L.W. 3418 (Dec. 7, 1992) (U.S. no. 92-389).

The Seventh Circuit also doubted that "status" and "conduct" can be distinguished as Judge Hatter would prefer. That court said:

> "It is true that actual lesbian conduct has not been admitted by plaintiff on any particular occasion, and the Army has offered no evidence of such conduct. Judge Gordon [in the district court] found no reason to believe that the lesbian admission meant that plaintiff was likely to commit homosexual acts. We see it differently. Plaintiff's lesbian acknowledgement, if not an admission of its practice, at least can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct. Such an assumption cannot be said to be without individual exceptions, but it is compelling evidence that plaintiff has in the past and is likely to again engage in such conduct. To this extent, therefore, the regulation does not classify plaintiff based merely upon her status as a lesbian, but upon reasonable inferences about her probable conduct in the past and in the future. The Army need not shut its eyes to the practical realities of this situation, nor be compelled to engage in the sleuthing of soldiers' personal relationships for evidence of homosexual conduct in order to enforce its ban on homosexual acts, a ban not challenged here. Plaintiff does not deny that she has engaged or will engage in homosexual conduct.

Equal Protection

*[PARAGRAPH 5 REPEATED] To survive Meinhold's claim that the Department of Defense's policy banning gays and lesbians based merely on status, and not conduct,[*a] violates the Equal Protection clause of the Fifth Amendment,[*b] the Department of Defense must establish, through a factual record, that its policy is rationally related to its permissible goals.* Pruitt v. Cheney, *963 F.2d 1160, 1166-67 (9th Cir. 1991),[*c]* cert. denied, *— U.S. —, 113 S. Ct. 655 (1992).[*d] In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy — the Court must consider the factual basis underlying the "military judgment."* Pruitt, *963 F.2d at 1166-67.[*e]*

> Plaintiff has admitted that she has a homosexual desire, but not necessarily that she intends to commit homosexual acts. The Army need not try to fine tune a regulation to fit a particular lesbian's subjective thoughts and propensities." *Ben-Shalom v. Marsh*, 881 F.2d 454, 464 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004.

Judge Hatter wants to discount the common sense view that "gay" status implies "gay" conduct. However, this distinction between status and conduct is not always favored by homosexual litigants. For example, in the most important "gay rights" case that has ever come before the Federal courts (*Bowers v. Hardwick*, challenging Georgia's sodomy law) several prominent "gay rights" organizations made the following argument:

> "For gay people, sexuality and their sexual orientation play an especially central role in the definition of self, in the identification with others, and in the acceptance of being different from the majoritarian model. . . . Laws such as Georgia's thus impose an added burden on gay people, blocking their sense of self as well as their sexual fulfillment. . . . [S]tate regulation of same-sex behavior constitutes the total prohibition of an entire way of life. . . ."
>
> Brief Amici Curiae of Lambda Legal Defense & Education Fund, et al., text at n. 28 & n. 28, *Bowers v. Hardwick*, 478 U.S. 186 (1986).

"Status" and "conduct" are not distinguished in the brief. **Indeed, a law against conduct (sodomy) is said to block a "sense of self" and prohibit "an entire way of life." Conduct *is* status, according to this view, and to ban one is to forbid the other.**

Professor Laurence Tribe, who unsuccessfully argued *Bowers v. Hardwick* before the United States Supreme Court, writes in his highly influential book that a state can no more criminalize sodomy to punish the "involuntary condition" of homosexuality than it can criminalize sneezing to punish catching a cold. Tribe says:

> "Justice Powell filed a concurring opinion [in *Bowers v. Hardwick*] in which he stated that there would be a serious eighth amendment issue if anyone were actually to be given a prison sentence, especially a long one, for an act of consensual, adult sodomy in 'the private setting of a home.' . . . But surely consideration of whether criminalizing homosexual conduct constitutes cruel and unusual punishment cannot be thought to require actual imprisonment. *For it is the very criminalization of an involuntary condition*, not the terms of any specific sentence imposed, *that violates the Constitution.* The eighth amendment 'imposes substantive limits on what can be made criminal,' *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). Just as '[e]ven one day in prison would be a cruel and [un]usual punishment for the "crime" of having a common cold,' *Robinson v. California*, 370 U.S. 660, 667 (1962), so even a day in jail for *engaging in sexual intimacies inherent in a homosexual orientation* might violate the eighth and fourteenth amendments. Cf. *Powell v. Texas*, 392 U.S. 514, 548 (1968) (White, J., concurring in the result) (under *Robinson* it cannot be a crime 'to yield' to 'an irresistible compulsion'). . . ." L. Tribe, *American Constitutional Law* 1424 n. 32 (2d ed. 1988) (emphasis added). See also, e.g., W. Barnett, *Sexual Freedom and the Constitution* 7 (1973) ("act" of sodomy is "merely the manifestation" of "condition" of homosexuality).

Equal Protection

*[PARAGRAPH 5 REPEATED] To survive Meinhold's claim that the Department of Defense's policy banning gays and lesbians based merely on status, and not conduct,[*a] violates the Equal Protection clause of the Fifth Amendment,[*b] the Department of Defense must establish, through a factual record, that its policy is rationally related to its permissible goals.* Pruitt v. Cheney, *963 F.2d 1160, 1166-67 (9th Cir. 1991),[*c]* cert. denied, *— U.S. —, 113 S. Ct. 655 (1992).[*d] In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy — the Court must consider the factual basis underlying the "military judgment."* Pruitt, *963 F.2d at 1166-67.[*e]*

Judge Hatter treats a distinction between "status" and "conduct" as though it were self-evident. In other cases, however, the ostensible distinction is treated as a chimera. Which is it? It depends on the litigation strategy.

Senator Sam Nunn, the Chairman of the Senate Armed Services Committee, recently commented on the "status-conduct" distinction (or pseudo-distinction), and he seems to have captured the essentials of the issue for declarations of "sexual status":

> "[W]hen you declare your status, you are describing your behavior. And to try to draw a line between those two in this case is entirely — is very — very difficult. It's not like a declaration of race. It is a description of behavior when you give your status." *NBC*, "Meet the Press" With Sen. Sam Nunn, Mar. 21, 1993 (NEXIS transcript).

Misciting the Constitution

NOTE 5 b. The 5th Amendment to the Constitution of the United States does not contain an "Equal Protection *clause*." It does have a Due Process Clause which has been interpreted as having an equal protection component. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Technical Error — Evidence of Undue Haste?

NOTE 5 c. The amended opinion in *Pruitt* that Judge Hatter cites, 963 F.2d 1160 (amended op. on denial of rehearing & rehearing *en banc*), was filed on May 8, 1992, not in 1991. There was a 1991 opinion in *Pruitt*, 943 F.2d 989 (9th Cir. 1991), but that opinion was superseded by the 1992 opinion.

Pruitt *Distinct From* Meinhold

NOTE 5 d. Captain Dusty Pruitt was a captain in the U.S. Army Reserve who was discharged (following a hearing) after she admitted in a newspaper article that she is a lesbian and that she had twice gone through a "marriage ceremony" for homosexuals. She sued, alleging a violation of her rights to free speech (i.e., claiming that she was discharged for what she had *said* to the newspaper). The district court granted the Army's motion to dismiss (under Rule 12(b)(6), "failure to state a claim upon which relief can be granted"). *Pruitt v. Weinberger*, 659 F.Supp. 625 (C.D.Cal. 1987) (this is the same judicial district in which Judge Hatter sits).

On appeal, the Ninth Circuit affirmed with respect to the First Amendment, but remanded to the district court to consider Pruitt's rights under equal protection analysis — even though "she did not articulate an equal protection claim" (p. 1164) in her complaint. *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1992), *cert. denied*, — U.S. —, 61 U.S.L.W. 3418 (Dec. 7, 1992) (U.S. no. 92-389). Upon remand, the district court was instructed to determine if "the Army's discrimination is rationally related to a permissible governmental purpose." *Id.* at 1167. The district court also was reminded to defer to military judgment. *Id.* at 1166. See Note 5e.

Equal Protection
*[PARAGRAPH 5 REPEATED] To survive Meinhold's claim that the Department of Defense's policy banning gays and lesbians based merely on status, and not conduct,[*a] violates the Equal Protection clause of the Fifth Amendment,[*b] the Department of Defense must establish, through a factual record, that its policy is rationally related to its permissible goals.* Pruitt v. Cheney, *963 F.2d 1160, 1166-67 (9th Cir. 1991),[*c]* cert. denied, *— U.S. —, 113 S. Ct. 655 (1992).[*d] In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy — the Court must consider the factual basis underlying the "military judgment."* Pruitt, *963 F.2d at 1166-67.[*e]*

Pruitt was remanded because the district court had dismissed under Rule 12(b)(6), failure to state a claim. That is, Pruitt lost because the district court held that *even if* what she alleged was true she was not stating a legal claim against the Army. *Meinhold*, on the other hand, was decided on cross motions for summary judgment under Rule 56(c). See Note 13a.

No Deference to Military Judgment — Though the Law Requires It

NOTE 5 e. Unfortunately, Judge Hatter neither quoted the relevant text from the circuit court nor adhered to it. **The judge in his opinion gives no deference whatsoever to military judgment, but the law requires that he must.** The 9th Circuit said:

> "[T]he Army urges that we should defer to the military judgment. We readily acknowledge, as we must, that military decisions by the Army are not lightly to be overruled by the judiciary. See, e.g., *Rostker v. Goldberg*, 453 U.S. 57 (1981) [upholding male-only draft registration against an equal protection challenge]; *Goldman v. Weinberger*, 475 U.S. 503 (1986) [upholding a military rule prohibiting the wearing of a yarmulke against a free exercise challenge]. That admonition, however, is best applied in the process of judging whether the reasons put forth on the record for the Army's discrimination against Pruitt are rationally related to any of the Army's permissible goals. We have no doubt that the district court will remain aware of the proper respective roles of the military and the judiciary in entertaining further proceedings in this case." 963 F.2d at 1166 (phrases in brackets added).

In its emergency appeal of Hatter's decision, see Note 16a, *infra*, the Department of Justice said accurately:

> "[T]he district court applied an improper standard of review to the constitutional issue. In *Pruitt*, this Court [i.e., the Ninth Circuit] held that the military must offer a rational basis in the record to support its homosexual policy, and the district court must then apply a deferential standard in determining whether the 'reasons put forth on the record . . . are rationally related to [the military's] permissible goals.' 963 F.2d at 1166. Instead of examining with deference the reasons put forth by the military in several declarations to determine whether the policy was rational, the court invalidated the policy solely on the basis of criticism in the record of that policy." Emergency Motion Under Circuit Rule 27-3 for a Stay Pending Appeal of the Injunctive Order to the Extent it Confers Relief on Persons Other Than Plaintiff, p. 11 n. 4, *Meinhold v. United States*, U.S. Ct. of App., 9th Cir., no. 92-56439.

[PARAGRAPH 6] The Navy contends that its ban against gays and lesbians is rationally related to its goals of maintaining discipline, good order and morale; fostering mutual trust and confidence among servicemembers; the need to recruit and retain servicemembers; and maintaining public acceptability of the Navy. Navy Military Personal Manual 3630400(1).[*a] Security concerns, once generally raised by supporters of the ban, however, are no longer a rationale, since gays and lesbians are not a security risk to the military, according to former Secretary of Defense Richard Cheney. *Meet the Press* (NBC television broadcast, Dec. 6, 1992).[*b]

It's Not "Personal," Judge

NOTE 6 a. It is the Personnel Manual, of course, and not the Personal Manual, and it is worth quoting:

> "Homosexuality is incompatible with naval service. The presence in the naval environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the naval mission. The presence of such members adversely affects the ability of the Navy to maintain discipline, good order, and morale; foster mutual trust and confidence among servicemembers; ensure the integrity of the system of rank and command; facilitate assignment and world-wide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; recruit and retain members of the Navy; maintain the public acceptability of the Navy; and prevent breaches of security."
> Naval Military Personnel Manual 3630400.1.

Note the Manual's emphasis on *conduct*. Nevertheless, Judge Hatter finds the Navy's rationale not just inadequate but irrational.

Selectively Quoting the Secretary of Defense

NOTE 6 b. In the television interview Judge Hatter cites, Defense Secretary Cheney said that the exclusion of homosexuals on security grounds can no longer be justified, but he also said that the exclusion of homosexuals on grounds of morale and combat effectiveness is still justifiable. Judge Hatter embraced the former statement and ignored the latter. On what principled basis does Judge Hatter pick and choose among the Secretary's statements? Why is the concession on security judicially important but the restatement of the rationale for morale and effectiveness judicially useless? It appears that the opinions of the Secretary of Defense on national defense are not given any weight unless they happen to coincide with the opinions of Judge Hatter.

In his "Meet the Press" interview, former Secretary Cheney said:

> "Mr. [Tim] RUSSERT: We're back with the Secretary of Defense, Dick Cheney. Mr. Cheney, another issue confronting President-elect Clinton, gays and lesbians in the military. Governor Clinton quotes you as saying that that's a quaint little rule. What does that mean?

*[PARAGRAPH 6 REPEATED] The Navy contends that its ban against gays and lesbians is rationally related to its goals of maintaining discipline, good order and morale; fostering mutual trust and confidence among servicemembers; the need to recruit and retain servicemembers; and maintaining public acceptability of the Navy. Navy Military Personal Manual 3630400(1).[*a] Security concerns, once generally raised by supporters of the ban, however, are no longer a rationale, since gays and lesbians are not a security risk to the military, according to former Secretary of Defense Richard Cheney.* Meet the Press *(NBC television broadcast, Dec. 6, 1992).[*b]*

"Sec. CHENEY: The Governor misquoted me. What I've said previously was the notion that gays constituted a security threat was, I believe I used the phrase, an old chestnut, a bit of an old chestnut.

"I've looked at the question with respect to gays in the military. The policy that I inherited is the one that basically says an overtly gay lifestyle is incompatible with military service and having looked at it, I concluded that the best way to proceed was to leave the policy in place.

"I think with respect — ordinarily to gays, that peoples' private lives are their own business. The way I run the civilian side of the Pentagon is in accordance with that principle. But the military's different because you have forced association. People don't have choices about who they associate with. It's difficult to separate out your private life from your professional life in the uniformed military, and it's the judgment of our senior military commanders, which I concur in, that to force gays leading an overt, openly gay lifestyle into our military units would have a detrimental impact upon the cohesiveness of the units and our combat capabilities.

"I think that's the correct judgment. Obviously Governor Clinton disagrees.

"Mr. RUSSERT: But you don't think that gays per se are a security risk?

"Sec. CHENEY: No. . . ." NBC, "Meet the Press" With Dick Cheney, Secretary of Defense, Dec. 6, 1992 (NEXIS transcript).

Judge Hatter counts Secretary Cheney's "no" but discounts the 150-or-so previous words — but on what possible, principled basis?

[PARAGRAPH 7] The factual record placed before the Court by the Department of Defense is sparse.[*a] The Navy rests solely on a report produced by the United States General Accounting Office in June of 1992.[*b] General Accounting Office, *Defense Force Management: Statistics Related to DoD's Policy on Homosexuality* (1992).[*c] However, that report concludes nothing more than what the Department of Justice has already told the Court — the rationale for the policy banning gays and lesbians from the military is "not capable of being determined authoritatively by scientific means or proven studies." *Defense Force Management*, p. 69.[*d] The GAO reached the conclusion that the policy is based on "military judgment [which is] inherently subjective in nature [and not susceptible to] scientific or sociological analysis. *Defense Force Management*, p.56.[*e] However, the military has, indeed, obtained scientific and sociological analyses upon which to base its decisions regarding gays and lesbians in the military.

"Sparse" Does Not Mean Nonexistent

NOTE 7 a. "Sparse" comes from a Latin root that means to scatter. "Sparse" does not mean nonexistent. There is not an English dictionary on earth that defines "sparse" as the absence of being. According to Judge Hatter himself, therefore, there *was* a factual record. The law requires him to apply that record to this case. Unfortunately, later in his opinion (in paragraphs 13 &14) Judge Hatter said there was no factual basis for the military's regulation. As to whether the record was indeed sparse, see the following Note.

It's "Sparse" Only if You Ignore It

NOTE 7 b. The record is not so sparse as the judge would lead readers to believe. The Navy did *not* "rest solely" on the GAO report.

We do not have access to the entire record in this case (or even a substantial portion of it), but we do have in our files copies of three declarations (made pursuant to 28 U.S.C. 1746) in which three expert witnesses set forth facts and expert opinions in support of the military's policy. These three declarations were executed on January 13 and 14 of 1993 and were made specifically for the Meinhold case. They were filed with the Court on January 15, 1993. The first declaration was executed by Assistant Secretary of Defense (for Force Management and Personnel) Christopher Jehn and is reprinted in part in Note 14 a, *infra*. Jehn's declaration is Document no. 83 on the docket for the Meinhold case. The second declaration was executed by Rear Admiral Frank Gallo, the Deputy Chief of Naval Personnel, and excerpts from it are reprinted at Note 14 b, *infra*. Gallo's declaration is Document no. 86. The third declaration was executed by Captain Gregory A. Markwell, Meinhold's commanding officer, and excerpts from that declaration are reprinted at Note 1 a, *supra* and Note 14 a, *infra*. Markwell's declaration is Document no. 84. Judge Hatter's opinion mentions none of this material. (On January 19, Meinhold's lawyer moved to strike the declarations of Gallo, Markwell, and Jehn. On January 20, the Navy filed a memorandum in opposition to the motion to strike.

*[PARAGRAPH 7 REPEATED] The factual record placed before the Court by the Department of Defense is sparse.[*a] The Navy rests solely on a report produced by the United States General Accounting Office in June of 1992.[*b] General Accounting Office,* Defense Force Management: Statistics Related to DoD's Policy on Homosexuality *(1992).[*c] However, that report concludes nothing more than what the Department of Justice has already told the Court — the rationale for the policy banning gays and lesbians from the military is "not capable of being determined authoritatively by scientific means or proven studies."* Defense Force Management, *p. 69.[*d] The GAO reached the conclusion that the policy is based on "military judgment [which is] inherently subjective in nature [and not susceptible to] scientific or sociological analysis.* Defense Force Management, *p.56.[*e] However, the military has, indeed, obtained scientific and sociological analyses upon which to base its decisions regarding gays and lesbians in the military.*

Apparently, Judge Hatter never ruled on the issue. A week later, of course, he decided the Meinhold case on the merits without mentioning the declarations.)

Even if the Navy had "rested solely" on the GAO report, pages 56 through 77 of that report (constituting about 30 percent of the whole) contain facts, comments, arguments, and justifications written by the Department of Defense, not GAO. There was plenty of DoD evidence in the GAO report.

Miscitation Suggests Haste, Again

NOTE 7 c. Here, Judge Hatter cites the wrong book: In June of 1992 the General Accounting Office issued a report titled, *Defense Force Management: DoD's Policy on Homosexuality* (GAO/NSIAD-92-98), and a supplement titled, *Defense Force Management: Statistics Related to DoD's Policy on Homosexuality* (GAO/NSIAD-92-98S). As might be expected, the *Statistics* volume (which Judge Hatter cites) contains statistics; it does not contain any of the quotations attributed to it by Judge Hatter.

A Quotation Misstated and Misused

NOTE 7 d. This quotation, like so many of Judge Hatter's quotations, has a minor problem and a major problem. The minor problem is that he misstates the quotation by leaving out the word "by" between "proven" and "studies". This omission is not, by itself, important. Normally, indeed, such a trifle would not be worth mentioning at all, but this little error is one in a long line of errors that call into question the soundness of this opinion.

The major problem is that Judge Hatter misuses the quotation. **The original statement does <u>not</u> imply that the military's position is not defensible because it cannot be verified scientifically.** The original statement says merely that lots of things in the military (as in life) cannot be verified by science so the judgment of those who know best is relied upon. The paragraph from which Judge Hatter plucks a fragment conveys a meaning quite different from that which his opinion implies. That paragraph is contained in GAO's report, but it was written by DoD:

> "The DoD is concerned the GAO statement that the professional Military judgement underlying the exclusionary policy on homosexuals is 'primarily anecdotal' in nature could be interpreted to imply professional Military judgement is not a valid basis for Military personnel policies. It is important to emphasize the DoD depends upon the professional judgement of Government officials to make many and various important decisions that are not capable of being determined authoritatively by scientific means or proven by studies. The Military homosexual exclusion policy is one of those types of decisions." GAO, *Defense Force Management: DoD's Policy on Homosexuality* 69 (1992).

*[PARAGRAPH 7 REPEATED] The factual record placed before the Court by the Department of Defense is sparse.[*a] The Navy rests solely on a report produced by the United States General Accounting Office in June of 1992.[*b] General Accounting Office,* Defense Force Management: Statistics Related to DoD's Policy on Homosexuality *(1992).[*c] However, that report concludes nothing more than what the Department of Justice has already told the Court — the rationale for the policy banning gays and lesbians from the military is "not capable of being determined authoritatively by scientific means or proven studies."* Defense Force Management, *p. 69.[*d] The GAO reached the conclusion that the policy is based on "military judgment [which is] inherently subjective in nature [and not susceptible to] scientific or sociological analysis.* Defense Force Management, *p.56.[*e] However, the military has, indeed, obtained scientific and sociological analyses upon which to base its decisions regarding gays and lesbians in the military.*

Another Quotation Misstated and Misused

NOTE 7 e. Here, Judge Hatter commits his minor and major errors again, only worse. His minor errors multiply: He begins by misquoting the actual language: He prefers the singular over the plural (he substitutes "analysis" for the original "analyses" and drops the "s" from "judgments"). He omits an essential part of the original sentence — namely, that militarily essential detail about "overall combat effectiveness". He then adds two parenthetical phrases to turn the original to his own purposes. One of those parentheticals ("not susceptible to") cannot be derived from the original.

The original paragraph does not — by any stretch of the imagination, even the judicial imagination — say what Hatter says it says. Here is the original:

> "The GAO correctly notes that the DoD policy is based upon Military judgment. In fact, the DoD policy is based upon a series of carefully considered, professional Military judgments and almost 50 years of experience by a succession of civilian and Military leaders. The GAO also appropriately emphasizes that Military judgments about overall combat effectiveness are inherently subjective in nature, and that scientific or sociological analyses are unlikely to ever be dispositive." Letter from Hon. Christopher Jehn, Asst. Sec. of Defense for Force Management and Personnel to Mr. Frank Conahan, Asst. Comptroller General (Apr. 17, 1992), reprinted at GAO, *Defense Force Management: DoD's Policy on Homosexuality* 56 (1992).

[PARAGRAPH 8] In 1957, the Secretary of the Navy commissioned a report regarding the revision of its policies, procedures and directives dealing with homosexuals. *Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuality*[*a] (Mar. 15, 1957) ["Crittenden Report"]. The Crittenden Report stated that there was no "visible supporting data [to support the conclusion that gays and lesbians] cannot acceptably serve in the military." *Crittenden Report*, p.5.[*b] In 1976, the Chief of Navy Personnel stated that "no empirical proof exists at this time [to support the Navy's contention that] homosexuality has an adverse effect upon the completion of the [military] mission." Memorandum from Chief of Naval Personnel to Judge Advocate General (Aug. 2, 1976).[*c]

Another Miscitation, More Haste

NOTE 8 a. The correct title uses the word "Homosexuals" not "Homosexuality".

Now, What Did the Crittenden Report *Say?*

NOTE 8 b. Here we have an alleged quotation with 17 words between the quotation marks. Eight of those words, however, are placed in brackets to indicate editorial additions. It looks like the original source is just being used as so much millinery to dress up the author's own opinions. Here is the original, without Judge Hatter's brackets:

> "One concept which persists without visible supporting data, but which can not be disproved at this time because of the absence of data, is the idea that homosexual individuals and those who have indulged in homosexual behavior cannot acceptably serve in the military. As has been mentioned above, there have been many known instances of individuals who have served honorably and well, despite being exclusively homosexual. An Army witness before this Committee reported on 75 individuals who had reported themselves as having homosexual tendencies and who nonetheless were continued on duty. Of these, 50% gave very poor service and were discharged prior to the completion of their enlistment. These figures seem to indicate that homosexuals cannot effectively serve in the Army, but it must be remembered that this is a highly selected group. These individuals had reported themselves under category III of the Army directive, and had expressed a willingness to take an undesirable discharge to get out of the Army. Obviously, they were having adjustment difficulties which may or may not have had something to do with their homosexuality. From this study it can *only* be said that a homosexual cannot serve acceptably if his drives are so strong that he turns himself in and requests discharge." "Rept. of the Bd. Appointed to Prepare and Submit Recommendations to the Sec. of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, 21 Dec. 1956 - 15 Mar. 1957" at 5 ["Crittenden Report"].

[PARAGRAPH 8 REPEATED] In 1957, the Secretary of the Navy commissioned a report regarding the revision of its policies, procedures and directives dealing with homosexuals. Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuality[*a] (Mar. 15, 1957) [*Crittenden Report*]. *The Crittenden Report stated that there was no "visible supporting data [to support the conclusion that gays and lesbians] cannot acceptably serve in the military."* Crittenden Report, *p.5.[*b] In 1976, the Chief of Navy Personnel stated that "no empirical proof exists at this time [to support the Navy's contention that] homosexuality has an adverse effect upon the completion of the [military] mission." Memorandum from Chief of Naval Personnel to Judge Advocate General (Aug. 2, 1976).[*c]*

Judge Hatter said that the Crittenden Report said, "there was no 'visible supporting data [to support the conclusion that gays and lesbians] cannot acceptably serve in the military.'" What the Report actually said was, "One concept which persists without visible supporting data, but which can not be disproved at this time because of the absence of data, is the idea that homosexual individuals and those who have indulged in homosexual behavior cannot acceptably serve in the military." **These two statements are quite different: Judge Hatter leads his readers to believe that Crittenden demonstrated something. In fact, Crittenden said data was lacking.** (A similar problem is discussed in Note 8 c.)

Additionally, both DoD and GAO say the Crittenden Report does *not* criticize DoD policy. In its comments to GAO, the Department of Defense said, "The Crittenden report clearly supports the [military's] policy.... The premise that homosexuality is incompatible with Military Service was the foundation for the study, and the report did not question that premise." GAO, Defense Force Management: DoD's Policy on Homosexuality 71 (1992). The GAO itself concurred in that judgment. Id. at 7 ("DoD correctly states that the Crittenden report did not question the premise of DoD's exclusionary policy").

Another Misquote — And Look What Was Left Out

NOTE 8 c. What the Chief of Naval Personnel actually wrote was, "No such empirical proof is known at this time." (Emphasis added.) Perhaps Judge Hatter does not wish to maintain the distinction between what exists and what is known to exist, but that is no excuse for misquoting the source.

Judge Hatter uses the words of the Chief of Naval Personnel to buttress his conclusion that the Navy's policy is irrational, but after reading the original script in context, can it be truthfully said that he treated this source honestly? The memorandum of the Chief of Naval Personnel was written in question-and-answer format. Judge Hatter misquoted and used the answer to question "(m)". He neglected the immediately preceding questions, "(k) Why is homosexual conduct misconduct?" and "(l) Why do homosexual tendencies make one unfit?" which are reprinted below.

> "(k) Why is homosexual conduct misconduct?
> "Homosexual conduct is misconduct because it is prohibited by Articles 125 [sodomy], 133 [conduct unbecoming an officer and a gentleman], 134 [general article against all acts contrary to good order and discipline] of the Uniform Code of Military Justice and by the laws of most states [today about one-half of the States make homosexual sodomy a crime].
>
> "(l) Why do homosexual tendencies make one unfit?
> "Technically the term 'unfit' is not correct. Since 1 Apr 1975 the term 'unfit' is no longer applied with respect to discharges. However, in the more normal use of the word 'unfit,' the following factors would render such an individual unfit for naval service:

[PARAGRAPH 8 REPEATED] In 1957, the Secretary of the Navy commissioned a report regarding the revision of its policies, procedures and directives dealing with homosexuals. Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuality*["a] (Mar. 15, 1957) ["Crittenden Report"]. The Crittenden Report stated that there was no "visible supporting data [to support the conclusion that gays and lesbians] cannot acceptably serve in the military."* Crittenden Report, *p.5.["b] In 1976, the Chief of Navy Personnel stated that "no empirical proof exists at this time [to support the Navy's contention that] homosexuality has an adverse effect upon the completion of the [military] mission." Memorandum from Chief of Naval Personnel to Judge Advocate General (Aug. 2, 1976).["c]*

"(1) An individual's performance of duties could be unduly influenced by emotional relationships with other homosexuals which would interfere with proper command relationships.

"(2) Such an individual would be liable for court martial or civil punishment as a result of manifestations of homosexual tendencies.

"(3) Such individuals might force their desires on others resulting in sexual assaults.

"(4) Additionally, an officer or senior enlisted person who exhibits homosexual tendencies will be unable to maintain the necessary respect and trust from the great majority of naval personnel who detest/abhor homosexuality. This lack of respect and trust would most certainly degrade the officer's ability to successfully perform his duties of supervision and command.

"(m) Does the Navy have any empirical proof that homosexuality among its members has an adverse effect upon the completion of its mission[?]
"No such empirical proof is known at this time." Memorandum from Chief of Naval Personnel (Pers-8) to Judge Advocate General (Code 14L), "Subj: Litigation involving the Navy's homosexual discharge policy," (dated 2 Aug 1976[?]) (bracketed phrases added).

The memorandum from the Chief of Naval Personnel points out in paragraph (k) that homosexual sodomy is illegal in many States. It must be added that the Assimilative Crimes Act, 18 U.S.C. 13 (1982), imposes on persons within the special maritime and territorial jurisdiction of the United States the laws of the State in which the Federal property is located. (State laws apply only to those acts or omissions not made punishable by any enactment of Congress.) Therefore, a person who commits homosexual sodomy on Federal property that is within a State where homosexual sodomy is illegal is subject to prosecution because Congress has not enacted a general sodomy statute. The fact that the Uniform Code of Military Justice (UCMJ) makes sodomy illegal for military personnel does not appear to change the result for sailors, soldiers, and airmen. The Ninth Circuit (and several other circuits) have held that the special provisions of the UCMJ do not remove a crime from the scope of the Assimilative Crimes Act. *United States v. Debevoise*, 799 F.2d 1401 (9th Cir. 1986).

Can it be irrational for the Navy to rely on the fact that homosexual sodomy is a criminal offense in a substantial part of the United States?

[PARAGRAPH 9] Moreover, in 1988, the Department of Defense commissioned a study of homosexual veterans which concluded that "having a same-gender or an opposite-gender orientation is unrelated to job performance in the same way as being left- or right-handed." Theodore R. Sarbin & Kenneth K. Eoyang,[*a] *Nonconforming Sexual Orientation and Military Suitability*, p.33 (1988).[*b] In 1989, another Department of Defense-commissioned study investigated the suitability of gay men and lesbians for military service, and found that "homosexuals more closely resemble those who successfully adjust to military life than those who are discharged for unsuitability. . .[and that] homosexuals show pre-service suitability-related adjustment that is as good or better than the average heterosexual." Michael A. McDaniel, *Preservice Adjustment of Homosexual and Heterosexual Military Accessions*, p.19 (1989).[*c]

Misciting Authors — Still More Haste?

NOTE 9 a. The history and context of the 1988 study are outlined in the next note. That work was prepared by researchers Theodore R. Sarbin, Ph.D., and Kenneth E. Karols, M.D., Ph.D., and released by Carson K. Eoyang. PERSEREC, "Nonconforming Sexual Orientations and Military Suitability," title page (Dec. 1988) (PERS-TR-89-002). Hatter's opinion says there is someone named Kenneth K. Eoyang. If there is, he didn't work on this project.

More of the Same — Confusion and Omissions

NOTE 9 b. **According to the Department of Defense, the 1988 study that Judge Hatter quotes and seems to attribute to DoD is not a DoD document.** Here is the way DoD explains the study's history:

> "[I]n 1988, the Personnel Security Research and Education Center submitted a draft entitled—*Nonconforming Sexual Orientation and Military Suitability*. That draft document represented an abandonment of the tasking that had been given to the Center — instead, focusing on the Military homosexual exclusion policy. The authors of the draft did not discuss their research with those in the DoD most knowledgeable about the policy. As a result, they misunderstood the policy and its basis, and their subsequent 'analysis' was flawed. The opinions expressed in the draft document were solely those of the authors, and did not and do not reflect those of the Department of Defense. It is, therefore, not accurate to refer to the Personnel Security Research and Education Center 1988 draft as a DoD report, or to consider its tentative findings, as they relate to the Military homosexual exclusion policy, to be authoritative." GAO, *Defense Force Management: DoD's Policy on Homosexuality* 71 (1992).

At the time that the 1988 draft was sent to the Pentagon, DoD made it absolutely clear that the product was professionally unacceptable:

[PARAGRAPH 9 REPEATED] Moreover, in 1988, the Department of Defense commissioned a study of homosexual veterans which concluded that "having a same-gender or an opposite-gender orientation is unrelated to job performance in the same way as being left- or right-handed." Theodore R. Sarbin & Kenneth K. Eoyang,["a] Nonconforming Sexual Orientation and Military Suitability, *p.33 (1988).["b] In 1989, another Department of Defense-commissioned study investigated the suitability of gay men and lesbians for military service, and found that "homosexuals more closely resemble those who successfully adjust to military life than those who are discharged for unsuitability. . .[and that] homosexuals show pre-service suitability-related adjustment that is as good or better than the average heterosexual." Michael A. McDaniel,* Preservice Adjustment of Homosexual and Heterosexual Military Accessions, *p.19 (1989).["c]*

"Wholly aside from PERSEREC's lack of authority to conduct research into the military suitability area, we found PERS-TR-89-002 to be technically flawed, to contain subject matter (Judeo-Christian precepts) which has no place in a Department of Defense publication, to reflect significant omissions with respect to relevant court decisions concerning personnel security, and to suggest a bias which does justice neither to PERSEREC nor the Department." Memorandum for Director DoD Personnel Security Research & Education Center from C. Alderman, Jr., Deputy Under Sec. of Defense (Policy), p. 1 (18 Jan. 1989) (Subject: PERS-TR-89-002, "Nonconforming Sexual Orientations and Military Suitability"), reprinted in K. Dyer (ed.), *Gays in Uniform* 101 (1990).

As with other quotations in this opinion, it is most enlightening to see the quotation in its context. In this case, it is not clear whether the researchers Sarbin and Karols are making the statement attributed to them, or whether it was made by Williams and Weinberg in their 1971 book, *Homosexuals and the Military* (Harper and Row). The entire sentence from which Judge Hatter pulls his quotation is set out below together with the paragraph that follows that sentence. **The paragraph omitted by Judge Hatter shows that what he would like to believe is conclusive — that homosexuality does not interfere with group cohesion — is still a lingering question.**

". . . Studies of homosexual veterans make clear that having a same-gender or an opposite-gender orientation is unrelated to job performance in the same way as is being left- or right-handed (Williams & Weinberg, 1971).

"For the purpose of military organization, however, quality of job performance may be less important than the effects of homosexuals (minority group members) on that important but ephemeral quality: group cohesion. The important question to be raised in future research must center on the claims that persons with nonconforming sexual attitudes create insurmountable problems in the maintenance of discipline, group cohesion, morale, organizational pride, and integrity." "Nonconforming Sexual Orientations and Military Suitability," *supra* at 33.

Using Sentence Fragments from an Irrelevant Study

NOTE 9 c. This quotation is from the McDaniel report and the first part of it does indeed appear on page 19 as it is cited, but the second part does not. After surveying the entire document to find where Judge Hatter might have found the remainder of his quotation, we can report that those words appear on page iii and again on page 21. **The judge's opinion gives no indication that he is quoting sentence fragments from two different pages; nor does the opinion give any indication that the missing parts of the sentences are absolutely necessary to an honest understanding of the quoted fragments.** And this is all aside from the fact that the McDaniel study is irrelevant to the matter before the Court.

*[PARAGRAPH 9 REPEATED] Moreover, in 1988, the Department of Defense commissioned a study of homosexual veterans which concluded that "having a same-gender or an opposite-gender orientation is unrelated to job performance in the same way as being left- or right-handed." Theodore R. Sarbin & Kenneth K. Eoyang,[*a]* Nonconforming Sexual Orientation and Military Suitability, *p.33 (1988).[*b] In 1989, another Department of Defense-commissioned study investigated the suitability of gay men and lesbians for military service, and found that "homosexuals more closely resemble those who successfully adjust to military life than those who are discharged for unsuitability. . .[and that] homosexuals show pre-service suitability-related adjustment that is as good or better than the average heterosexual." Michael A. McDaniel,* Preservice Adjustment of Homosexual and Heterosexual Military Accessions, *p.19 (1989).[*c]*

Here is the complete sentence from page 19:

"Except for preservice drug and alcohol use (and homosexual males adjustment on the Felonies scale), homosexuals more closely resemble those who successfully adjust to military life than those who are discharged for unsuitability." M. McDaniel, "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability" p. 19 (PERS-TR-89-004) (Jan. 1989).

Also, the McDaniel study is irrelevant: here's how the author described his work.

"The objective of the present study was to determine whether homosexuality is an indicator that a person possesses characteristics, separate from sexual orientation, that make one unsuitable for positions of trust. Specifically, this paper attempts to answer the question: How do homosexuals differ from heterosexuals in background characteristics relevant to security suitability?" *Id.* at ii.

Since the Meinhold litigation is not about security clearances, and since it certainly is not about Petty Officer Meinhold's "characteristics, separate from [his] sexual orientation," why does Judge Hatter quote it?

[PARAGRAPH 10] Further, Vice Admiral Joseph S. Donnell, the Commander of the Surface Atlantic Fleet has stated that "[e]xperience has . . . shown that the stereotypical female homosexual in the Navy is hardworking, career-orientated, willing to put in long hours on the job and among the command's top professionals." Administrative Message from Commander, Naval Service Fleet, Atlantic, to the Naval Surface Fleet, Atlantic (July 2, 1990).[*a]

A Quote Wildly Out of Context and Thoroughly Misleading

NOTE 10 a. This quotation is accurate so far as it goes; however, it is yanked violently from its context. Judge Hatter has either missed Admiral Donnell's point or frankly refused to restate it.

Judge Hatter's quotation is taken from paragraph 3 of the Admiral's message. The Judge does not set out the entire paragraph so we have done so in the Appendix, together with all of the Admiral's other paragraphs. From his first paragraph ("We must recognize that enforcement of the Navy's policy towards homosexuality in the service is important because, for sailors in their berthing and work spaces, overt or covert homosexual activity impacts in a very negative way on morale") to his seventh paragraph ("Homosexuality is incompatible with naval service and impairs mission accomplishment"), Admiral Donnell firmly supports the Navy's policy.

Unlike the Judge, the plaintiff treated Admiral Donnell's message with a measure of faithfulness. After quoting the relevant portion of the message, the plaintiff added, "Ironically, the Vice-Admiral thereafter urges his subordinates to increase their vigilance in identifying and discharging lesbians." Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment, or, In the Alternative, for Summary Adjudication of Claims on the First Amended Complaint at 25 n. 18 (dated Dec. 31, 199[2]). *Meinhold v. U.S. Department of Defense.*

[PARAGRAPH 11] Additionally, of all the countries in the North Atlantic Treaty Organization ["NATO"], only the United States and Great Britain ban gays and lesbians from their armed forces.[*a] On October 27, 1992, Canada's military leaders rescinded Canada's policy of banning gays and lesbians from the Canadian Forces, albeit as a result of a court order.[*b] In explaining why the ban was rescinded, General A.J.G.D. de Chastelain, Canada's Chief of the Defence Staff, reported that the military leadership was "satisfied that the policy no longer serves the best interests of the CF and its members." *National Defence News Release* (Oct. 27, 1992). On November 23, 1992, Australia lifted its ban against gays and lesbians in the Australian Defense Force.[*c] Prime Minister P.J. Keating, *Australian Defence Force Policy on Homosexuals* (Nov. 23, 1992). In support of lifting the ban, Australia's Prime Minister stated that "the decision will not have the adverse effect on morale and cohesion predicted by some." *Id.*

Not Just Wrong, Astonishing

NOTE 11 a. The statement about NATO is both false and misleading.

To begin with, the GAO report that Judge Hatter had in his hand shows that, in addition to the United States and the United Kingdom, another NATO country, Portugal, "specifically exclude[s]" homosexuals. GAO, *Defense Force Management: DoD's Policy on Homosexuality* 54 (1992). Also, NATO members Greece and Turkey ban homosexuals and a third NATO member, Iceland, places restrictions on them.

The GAO report also says that NATO countries Belgium, France, and Germany "allow homosexuals to serve in their armed forces [but] place certain restrictions on homosexuals. These restrictions include (1) limiting their access to confidential documents; (2) excluding them from certain tasks, such as officer and recruiting training; (3) excluding them from leadership roles; and (4) relieving them from duty if the behavior becomes disturbing to other service members." *Id.* note "a".

In a survey of 21 countries that was conducted by the *Army Times*, nine countries were said to prohibit the enlistment of homosexuals (Greece, Italy, Portugal, Turkey, United Kingdom, Egypt, New Zealand, Republic of Korea, and Saudi Arabia); three countries were said to allow homosexuals but to discriminate with respect to them (Belgium, Germany, and Israel); eight countries were said to permit homosexuals (Canada, Denmark, Luxembourg, The Netherlands, Norway, Spain, Australia, and Japan); and one country (France) was said to permit homosexuals unless "inappropriate behaviors are displayed." *Army Times*, (Jan. 11, 1993), reprinted at 139 *Cong. Rec.* S 1288 (daily ed. Feb. 4, 1993).

If international comparisons are relevant to interpreting the Constitution of the United States, why limit the comparison to NATO countries? Why omit some NATO countries? (Note that the only NATO countries omitted were ones that disproved Hatter's point.) Why skip important nuances about some NATO countries (Belgium, France, Germany) even though they appear in the GAO report? And finally, even if the opinion is going to be unreasonably selective in the alleged "facts" that it uses, why can't it get even those accurate?

[PARAGRAPH 11 REPEATED] Additionally, of all the countries in the North Atlantic Treaty Organization ["NATO"], only the United States and Great Britain ban gays and lesbians from their armed forces.["a] On October 27, 1992, Canada's military leaders rescinded Canada's policy of banning gays and lesbians from the Canadian Forces, albeit as a result of a court order.["b] In explaining why the ban was rescinded, General A.J.G.D. de Chastelain, Canada's Chief of the Defence Staff, reported that the military leadership was "satisfied that the policy no longer serves the best interests of the CF and its members." National Defence News Release *(Oct. 27, 1992). On November 23, 1992, Australia lifted its ban against gays and lesbians in the Australian Defense Force.["c] Prime Minister P.J. Keating,* Australian Defence Force Policy on Homosexuals *(Nov. 23, 1992). In support of lifting the ban, Australia's Prime Minister stated that "the decision will not have the adverse effect on morale and cohesion predicted by some."* Id.

Finally a Fact, But Totally Irrelevant

NOTE 11 b. What Canada does is interesting but not relevant to an interpretation of the Constitution of the United States. However, there may be a clue here as to how our own courts govern America: Since the national government of Canada removed its ban on homosexuals in response to a decision by a lower court, perhaps our own district court was intrigued by the possibility of exercising that same kind of power here in the United States.

If Judge Hatter had been interested in what the Constitution of the United States means, he might have focused his gaze not on Canada but on the Motherland, England, which, he correctly says, bars homosexuals from its military. The laws of England, unlike the laws of Canada, might be relevant to an understanding of the laws of the United States.

A Selective Fact, But Still Totally Irrelevant

NOTE 11 c. It is impossible to discover a principled reason that would lead Judge Hatter to cite Australia but not, for example, its neighbor, New Zealand. The GAO report that Judge Hatter had in his hand shows that New Zealand "specifically exclude[s]" homosexuals from its military. GAO, Defense Force Management: DoD's Policy on Homosexuality 54 (1992). Why is Australia's experience helpful in understanding the Constitution of the United States but not New Zealand's? If Australia can teach us anything about the meaning of the Constitution of the United States it ought to be that lifting the ban on homosexuals in the military is a decision for the prime minister, the cabinet, and the parliament, not the courts.

[PARAGRAPH 12] Finally, Dr. Lawrence J. Korb, the former Assistant Secretary of Defense who was responsible for approving and implementing the present policy banning gays and lesbians, has declared "that there is no longer any justification for the armed services' current ban on homosexuals serving in the military . . . [that] each of the justifications offered in support of this policy is without factual foundation . . . [and, therefore,] there is no longer any rational basis [for it]."[*a] Meinhold's Exhibit 12, p.874, paras. 4 & 7.

Picking Military Experts: Why Korb and Not Cheney?

NOTE 12 a. Mr. Korb's views are interesting, of course, but why do his views constitute important and probative evidence for Judge Hatter while the opposing views of Secretary Cheney (Note 6 b) and Assistant Secretary Jehn (see Note 14 a) and many others do not? The apparent answer to this question is this: Hatter agrees with Korb.

[PARAGRAPH 13] As the Ninth Circuit has held, so, too, does this Court hold that deference to "military judgment," in the absence of a factual basis for such judgment, would result in the denial of judicial review. *Pruitt*, 963 F.2d at 1166-67.[*a]

There Is a Factual Basis, and Military Judgment Should Prevail

NOTE 13 a. **This case is *not* one where there is an "absence of a factual basis for . . . judgment."** Judge Hatter has already, in this very opinion, confessed that there is indeed a factual record. See paragraph 7 of the opinion ("factual record . . . is sparse") and Note 7 a ("sparse" does not mean nonexistent). Even if Judge Hatter hadn't himself acknowledged it, no objective observer can look at the GAO report (which Judge Hatter had in his hand) or the declarations that were filed with his court (see Note 7 b) or the very documents that Hatter himself quotes (see, e.g., the Appendix) and say that there are no facts.

Remember, the Ninth Circuit had remanded *Pruitt* so that the district court could make factual findings because the district court had dismissed under Rule 12(b)(6), failure to state a claim. See Note 5 d. If there was an "absence of factual basis" in *Pruitt* it was because of the procedural posture of that case. *Meinhold*, on the other hand, came to Judge Hatter on cross motions for summary judgment: the facts were in the record. Judge Hatter was obliged to apply those facts, giving due deference to military judgment. See Note 5 e.

[PARAGRAPH 14] Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity and loyalty.[*a] The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes.[*b] These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.[*c]*[*d]

One Homosexual Versus Many; Hidden Homosexuality Versus Open

NOTE 14 a. Loyal service of individual homosexuals probably does not tell us very much about what military policy ought to be service-wide. First, open homosexuality will present quite different problems from hidden homosexuality and second, much homosexuality will present quite different problems from little homosexuality. Relatively few "closeted" homosexuals will affect a fighting force in quite a different way than relatively many open homosexuals. Consider the following testimony in this case:

> "In my opinion, AW1 Meinhold's presence in [Patrol Squadron 31] provides little insight into the integration of open homosexuals into the Navy in general. [Patrol Squadron 31] is a shore-based, non-deployable training squadron, manned by a large population of senior personnel. The circumstances of this case and the fact that the Navy's policy on homosexuality has not been changed have been communicated throughout the command. Obviously, AW1 Meinhold has been treated as a special case and is effectively isolated at work and on liberty. He lives off-station and by his own choice avoids interaction on the hanger deck." Declaration of Capt. G. Markwell, U.S.N. (Commanding Officer Patrol Squadron 31, Naval Air Station, Moffett Field, Calif.) para. 13 (executed Jan. 14, 1993), in *Meinhold v. United States Dept. of Defense.*
>
> "... I am concerned about the effect that assimilation of homosexuals into the military would have on the implementation of personnel policies designed to prevent fraternization, sexual harassment, and other sexual misconduct. Servicemembers must live and work under close conditions affording minimal privacy, sometimes for extended periods of time. Simply providing separate sleeping and toilet facilities for men and women is one practical means of implementing these policies. *Significant complications and added practical difficulties would be created in enforcing these policies if the sexual propensity of servicemembers was not determinable by their gender alone.* My experience as a policy maker has shown me that these issues present real and significant problems for the military services now. The addition of known homosexuals to the mix would complicate significantly this already difficult and sensitive area of personnel management." Declaration of Christopher Jehn, Asst. Sec. of Defense (Force Management & Personnel), para. 5 (executed Jan. 13, 1993), in *Meinhold v. United States Dept. of Defense* (emphasis added).

*[PARAGRAPH 14 REPEATED] Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity and loyalty.[*a] The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes.[*b] These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.[*c][*d]*

Do Sociologists Deal in "Facts" While Admirals Deal in "Myths"?

NOTE 14 b. Judge Hatter can't see any facts to justify the Navy's policy. He sees only myths and false stereotypes. **What Judge Hatter wants, apparently, is a "study" by social scientists, who according to this view, deal in "facts" while admirals and generals deal in "myths."**

In this very case, Admiral Frank Gallo, the Deputy Chief of Naval Personnel, filed a declaration citing his "experience" and what he has "observed" and his "review" of the policies of other nations. Judge Hatter did not cite Gallo's declaration. Perhaps Gallo's problem is that he is not a sociologist — merely an aeronautical engineer, a naval aviator, and a flag officer of the United States Navy. Here is what Admiral Gallo declared:

> "Homosexual conduct is objectionable and inconsistent with the needs of the Armed Forces. This view is shared, in my experience, by the majority of naval personnel as a product of their own practical knowledge. Known homosexuals are rejected by both peers and subordinates. I am aware of instances where shipboard esprit and discipline were seriously undermined by the presence of admitted homosexuals within the crew. The impact of their presence on morale, good order, and unit cohesion was highly damaging. I have reviewed the report entitled "Special Report: Gays in Foreign Militaries" appearing in the issue of the *Navy Times* for January 11, 1993. The problems identified in that report that have resulted, e.g., from the presence of homosexuals in the Israeli military, are similar to problems I have observed during my [35-year] career in the American military. I would envision similar such problems for the American military if the current policy on homosexuality is altered or abolished.
>
> "The adverse effect on unit morale of members who admit that they are homosexual, but do not admit to homosexual acts, is indistinguishable from those who admittedly engage in homosexual conduct. Requiring commanding officers to enforce personnel policy protecting admitted, but purportedly celibate homosexuals but excluding admittedly active homosexuals would be unworkable." Declaration of Rear Admiral S. Frank Gallo, U.S.N., paras. 8 & 9 (executed Jan. 14, 1993), in *Meinhold v. United States*.

Is Homosexuality Analogous to Race?

NOTE 14 c. **General Colin Powell doesn't agree that the military's policy against homosexuality is equivalent to racial discrimination.** Course he's just the Chairman of the Joint Chiefs of Staff and not a district judge, so perhaps he's not well informed on military affairs. General Powell said in a letter to Congresswoman Schroeder:

> "I am well aware of the attempts to draw parallels between this position [excluding homosexuals from the service] and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

*[PARAGRAPH 14 REPEATED] Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity and loyalty.[*a] The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes.[*b] These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.[*c][*d]*

"Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument." Letter to Hon. P. Schroeder from Gen. Colin Powell, May 8, 1992, reprinted at Congressional Research Service, "Homosexuals and U.S. Military Personnel Policy" 25-26 (rept. no. 93-52F) (Jan. 14, 1993).

Professor Thomas Sowell also rejects an analogy between homosexuality and race. He said:

"The last refuge of the advocates of admitting gays into the military is to analogize the military's resistance to their past resistance to the racial desegregation of the armed forces. But such analogies are strained, and they certainly do not prove that military leaders are always wrong and politicians are always right. Are we prepared to bet young people's lives, or the effectiveness of our armed forces, on the presumption that Pat Schroeder knows better than Colin Powell?" T. Sowell, "Homosexuals in the Military," *Forbes* magazine, reprinted at 139 Cong. Rec. S 1292 (daily ed. Feb. 4, 1993) (two paragraphs combined).

Amended Opinion Adds Only a Footnote

NOTE 14 d. On the day after the original opinion was issued, Judge Hatter issued an amended opinion. Despite the original opinion's many and serious flaws, the only substantive change in the amended opinion is the addition of the following footnote at the end of paragraph 14:

"* For a particularly insightful and thorough analysis of the Department of Defense's ban against gays and lesbians, see Kurt D. Hermansen, Comment, 'Analyzing the Military's Justification for its Exclusionary Policy: Fifty Years Without a Rational Basis,' 26 *Loy. L. A. L. Rev.* 151 (1992)."

[PARAGRAPH 15] Gays and lesbians should not be banned from serving our country in the absence of conduct which interferes with the military mission.[*a] Hopefully, our military leaders will come to realize that "[w]e are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellant practice because the same tolerant impulse protects our own idiosyncracies." *Michael H. v. Gerald D.*, 491 U.S. 110, 141, 109 S. Ct. 2333, 2351, 105 L. Ed. 2d 91, 117 (1989) (Brennan, J., dissenting).[*b]

Inventing a New Test That Casts Doubt on the Uniform Code of Military Justice

NOTE 15 a. As stated at Note 3 b, this is a different formulation than Judge Hatter started with. Under this new rule invented by Judge Hatter, the military must prove (a) conduct and (b) that the conduct interferes with the military mission. Under this new rule, proof of sodomy alone would not be sufficient for punishing a sailor; the Navy would have to show that the act also interfered with the military mission. This formulation may cast doubt on the constitutionality of several laws, including Article 125 of the Uniform Code of Military Justice (10 U.S.C. 925) which makes punishable by court-martial the act of sodomy without requiring any showing that the act interfered with the military mission.

"Status" Gives Way to "Practice"

NOTE 15 b. Judge Hatter finally gets around to invoking a Supreme Court case, but it doesn't do him any good. He quotes from a dissent from a case that doesn't involve the military and that doesn't involve equal protection and that doesn't involve homosexuality. **In short, if it weren't for the facts, the law and the result, this quotation might have been useful to this opinion.**

Observe in this telling line that Judge Hatter borrows from Justice Brennan that tolerance for mere "status" or "condition" or "orientation" is no longer the standard: we are now informed that it is the "unfamiliar or even repellant *practice*" that must be tolerated. This is surprising only for its forthrightness, which is probably accidental.

Judge Hatter quotes Justice Brennan who praises pluralism, which is pretty much mandatory in some circles today. The word "pluralism" was once uttered in praise of America's ethnic, religious, and political diversity. Today, "pluralism" often means moral nihilism. Richard John Neuhaus put it this way:

> "In recent decades, 'pluralism' has become something of a buzzword. It is variously employed. Often it is used to argue that no normative ethic, even of the vaguest and most tentative sort, can be 'imposed' in our public life. In practice this means that public policy decisions reflect a surrender of the normal to the abnormal, of the dominant to the deviant." R. Neuhaus, *The Naked Public Square* 146 (1984).

[PARAGRAPH 16] Therefore, Meinhold's motion for summary judgment is granted, and the Department of Defense's motion for summary judgment is denied. The Department of Defense is permanently enjoined from discharging or denying enlistment to any person based on sexual orientation in the absence of sexual conduct which interferes with the military mission of the armed forces of the United States. Meinhold's discharge from the United States Navy is rescinded.[*a]

Justice Department Seeks Emergency Stay; Will Appeal

NOTE 16 a. This paragraph summarizes the order that accompanies Judge Hatter's opinion. The order purports to permanently enjoin the Department of Defense from enforcing its current policy against any person.

On February 12, 1993, the Department of Justice applied to Judge Hatter for a clarification, an alteration, an amendment, or a stay pending appeal. He denied the application on February 17. On March 3, 1993, the Department of Justice authorized an appeal in *Meinhold*.

Also on March 3, the Department of Justice filed with the Ninth Circuit an emergency motion for a stay pending appeal. The Department argues that Hatter's order was far too broad because it purports to apply to all persons even though Meinhold's suit was not a class action suit. The Department said:

> "If the district court had conferred injunctive relief only on Meinhold, the Government would not be appearing before this Court on an emergency basis. However, the court improperly ordered injunctive relief that extended beyond Meinhold, and this aspect of the court's order warrants an immediate stay. As we show, the broad injunction limiting implementation of the President's interim policy, entered in a suit brought by a single individual, is a plainly improper exercise of the court's equitable authority and contrary to comity among the branches and separation of power principles." Emergency Motion Under Circuit Rule 27-3 for a Stay Pending Appeal of the Injunctive Order to the Extent it Confers Relief on Persons Other Than Plaintiff, p. 7, *Meinhold v. United States*, U.S. Ct. of App., 9th Cir., no. 92-56439.
>
> "Moreover, the broad injunctive order presents an additional error with respect to the court's remedial authority. Under controlling Ninth Circuit precedent, the court exceeded its authority in conferring injunctive relief on persons other than Meinhold.
>
> "This Court has squarely held that district courts may not extend injunctive relief to non-parties where no class action has been sought or certified, except in the narrow circumstance where such relief is incidentally necessary to give the named parties relief. . . ." *Id. at 11*.

On March 19, the Ninth Circuit denied the Department's emergency motion for a stay pending appeal. The appellate court acknowledged "a legitimate dispute" about the scope of Hatter's order but said the issue could be addressed in the appeal. "Bid to restore military gay ban fails," *Sacramento Bee*, pg. B5 (Mar. 13, 1993) (NEXIS transcript).

[PARAGRAPH 17] It is so Ordered.

Date: January 29, 1993[*a]

[s] Terry J. Hatter, Jr.
United States District Judge

Suspicious Timing — An Opinion Written in Haste?

NOTE 17 a. The original opinion was issued on January 28, 1993, in the heat of a national debate on homosexuals in the military. The following day Judge Hatter issued an amended opinion, see Note 14 d, *supra*. On that next day, January 29, the Commander-in-Chief instructed the Department of Defense to modify its procedures and to report back to him within six months. The President's instructions represent a temporary compromise between the President, the Congress, and the American people. This opinion gives every evidence of having been rushed to print.

5. More important than any misperception concerning tolerance for female homosexuality is the clearly adverse impact homosexual activity or behavior has on the men and women who must live and work in close proximity to the homosexual and each other. Particularly for our young, often vulnerable, female sailors, subtle coercion or outright sexual advances by more senior and aggressive female sailors can be intimidating and intolerable, impacting negatively on work performance and mental state.

6. We must recognize that women who are targets for female homosexuals experience a unique form of sexual harassment which can be even more devastating and difficult to cope with than the more traditional harassment from men. We must do everything we can to put a stop to sexual harassment of any type.

7. The Navy standard is clear and gender neutral. Homosexuality is incompatible with naval service and impairs mission accomplishment. Homosexual conduct must be dealt with evenly and firmly. Likewise sexual harassment in any form will not be tolerated. Women must be assured they do not have to exist in a predator-type environment. They should not have to experience improper advances from either sex.

8. It is all well and good to restate these maxims, but for the young sailor who faces sexual harassment, homo or heterosexual, the words are empty without an open and accessible chain of command. Take a close look at the chain of command within your organization. Is information freely flowing, both up and down? Review the sexual make-up of the chain of command with an eye towards the type of problems I have just discussed. Use I[?]-division classes as a forum for discussion of sexual harassment and homosexuality. Be up front and open about the issues. Emphasize the right of our sailors to be free from sexual harassment, which includes their ability to report such incidents without fear of reprisal. Demonstrate equality in the treatment of male and female homosexuals. The problem won't just go away, so we must deal with it sensibly, and fairly, with due regard for the privacy interests of all. Best regards.

[NOTE: Capitalization was added because the original message appears in one-size print. Some letters on our copy are indistinct; material in brackets was added.]