

DON'T ASK, DON'T TELL: TIME FOR CHANGE

BY

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USAWC CLASS OF 2009

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Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 30 MAR 2009		2. REPORT TYPE Strategy Research Project		3. DATES COVERED 00-00-2008 to 00-00-2009	
4. TITLE AND SUBTITLE Don't Ask, Don't Tell: Time for Change				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Irene Glaeser				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College ,122 Forbes Ave.,Carlisle,PA,17013-5220				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT see attached					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 26	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

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1. REPORT DATE (DD-MM-YYYY) 02-02-2009		2. REPORT TYPE Strategy Research Project		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Don't Ask, Don't Tell: Time for Change				5a. CONTRACT NUMBER	
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6. AUTHOR(S) Lieutenant Colonel Irene V. Glaeser				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Stephen Gerras Department of Command, Leadership, and Management (DCLM)				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution: A					
13. SUPPLEMENTARY NOTES					
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15. SUBJECT TERMS Army Policy, Gay, Lesbian					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UNLIMITED	18. NUMBER OF PAGES 26	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code)

USAWC STRATEGY RESEARCH PROJECT

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ABSTRACT

AUTHOR: Lieutenant Colonel Irene V. Glaeser
TITLE: Don't Ask, Don't Tell: Time for Change
FORMAT: Strategy Research Project
DATE: 02 February 2009 WORD COUNT: 5,045 PAGES: 26
KEY TERMS: Army Policy, Gay, Lesbian
CLASSIFICATION: Unclassified

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DON'T ASK, DON'T TELL: TIME FOR CHANGE

President Obama is faced with a host of pressing issues related to the economy and national security as he assumes office this year. One that has repeatedly surfaced is that of gays and lesbians serving openly in the military. Recently the "Don't Ask Don't Tell" policy has gained momentum in the news. It is a policy that the forty-fourth president will be asked by Congress to address, one that is controversial in its wording and intent, and in need of a fresh look.

History of United States Laws Regarding Homosexuals in the Military

Gays and lesbians have served honorably in uniform throughout the history of the United States Armed Forces. Current data indicates that there are about 65,000 gays and lesbians serving in the military today.¹ The question of whether or not they should be permitted to serve openly is one that has captured the nation's attention over the last thirty years, gaining momentum in recent years.

Up until World War II there were no specific laws or military regulations on the subject and gays caught engaging in homosexual conduct were punished or separated using laws targeting unacceptable or antisocial conduct. During World War II military regulations decriminalized homosexuality, determining instead that it was a psychological disorder. Individuals with "homosexual tendencies" were considered unsuitable for military service unless they were "treatable," in which case they were required to undergo rehabilitation to remain in the military.²

Application of the existing laws during that time and over the next several decades was neither clear nor consistent. Some servicemembers were discharged honorably, and some dishonorably for the same offense.³ A string of court cases in the

1970's and 1980's brought to light the fact that gays and lesbians were being dealt with in an inconsistent manner across the services. Between 1980 and 1990, a total of 16,919 people, an average of 1,500 per year, were discharged from the military under the exclusion policy of that time.⁴

Towards the end of President Carter's administration, DoD Directive 1332.14 removed the discretion commanders had in dealing with the issue of gays serving in their units.⁵ The new policy stated that homosexuality is incompatible with military service. It gave the rationale that "the presence of such members adversely affects the ability of the armed forces to maintain good order and discipline and unit cohesion; to foster mutual trust and confidence among service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security."⁶

When President Clinton took office the issue of whether or not gays and lesbians should be allowed to serve was at the forefront of the nation's conscience. President Clinton had made the promise in his campaign to overturn the existing laws and allow gays and lesbians to serve openly in the Armed Forces. While it had been his full intent to do so, when he came into office he suspended the policy outright. He had not anticipated the strength of his opposition from both Congress (particularly Sam Nunn) and his service Chiefs, to include the Chairman, Joint Chiefs of Staff. Congress held hearings over the next six months and the result was President Clinton's compromise: the policy that became known as "Don't Ask, Don't Tell" (DADT).⁷

Under DADT changes from the outright ban resulted from House Resolution 2401 of the National Defense Authorization Act of 1994 which amended Chapter 37, Title 10 of the United States Code. The amendment states that “a service member will be separated if the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, or the member has stated that he or she is a homosexual or bisexual, or words to that effect, or if the member has married or attempted to marry a person known to be of the same biological sex.”⁸

Under DADT the military does not question if a member is gay upon enlistment or commissioning, but it does stipulate that if a member admits to being gay, they are subject to dismissal. The primary rationale for implementation of DADT is unit cohesion. The presumption as in past history is that unit cohesion and morale will disintegrate with the inclusion of gays and lesbians. Each service developed implementing guidance. For example, on 26 July 1999 the Secretary of the Army signed Army Regulation 600-20, Army Command Policy. Chapter 4-19 deals with DADT and challenges Soldiers to comply with the law while “respecting the privacy and dignity of every Soldier.”⁹

The policy in the Army was implemented using a chain teaching program that was fielded to every organization under the Department of Defense. The Army was careful to add “Don’t Harass” into the language of the instruction, making harassment of homosexuals an offense as well. Commanders were told to “take appropriate action” if harassment of homosexuals occurred in their unit.¹⁰ One argument was that this was a loophole. How could a Commander take appropriate action against a unit member

harassing a gay or lesbian in their unit, without exposing that individual? How can dignity and privacy be protected in the face of harassment?

That loophole is not the only controversial aspect of DADT. One of the seven Army values is integrity, a quality expected of any public servant, not just those serving in the military. DADT requires that a gay or lesbian service member not make known the truth about themselves. By not telling the truth about themselves, they are in essence being forced to live a lie.

One RAND study found no scientific evidence that the presence of open homosexuals bore an impact on a unit's effectiveness or cohesion. The study concluded that "it is not necessary to like someone to work with him or her, so long as members share a commitment to the group's objectives."¹¹

Recent studies support the timeliness of reexamining the DADT policy. The gathering momentum of recent news headlines demonstrates that public support for a revision of DADT has increased, and the demand for qualified applicants to the Armed Forces has also increased. To support their own demands, foreign militaries with which the U.S. has had longstanding relationships have in some cases recently transitioned to allowing gays and lesbians to serve with little fanfare or subsequent adverse reaction.

Changes in Society

In the latter half of the 20th century, first blacks and then women were integrated into the Armed Forces. A comparison of these groups of people with homosexuals is flawed in the sense that not everyone agrees about whether or not sexuality is a choice (preference vs. predetermination), while race and gender indisputably are not. It bears mentioning, however, that these two groups of minorities fought hard opposition when

they were first integrated in the services and change did not occur overnight. First there was strong opposition to integrating blacks into the military over 50 years ago. The arguments sounded much like the arguments heard today against allowing gays and lesbians to serve. A Secretary of the Navy's committee reported in 1942 that enlistment of blacks aboard ships would undermine morale and lead to disruption.¹² Lt. General Thomas Holcomb, USMC, testified before the General Board of the Navy in 1942 that blacks should not serve in the infantry because that branch required the utmost character and degree of morale.¹³

During the debate to establish the Women's Army Corps, a New York representative stated that America's manhood was in question when we have to call on women to do the work of men and that in essence it was a humiliation.¹⁴ A former Marine Corps Commandant stated in 1982 that war is man's work, that women in uniform trample men's egos and that the manliness of war must be protected.¹⁵ Today, the vast majority of the hundreds of occupational specialties in the Army are open to women. The point is not to extol the victories of blacks and women resulting from integration in the Armed Forces, but to draw a parallel to the ability of our services to adjust their deep seated beliefs with time and the influence of changing legislature.

Studies on DADT after it was placed into effect are exhaustive and point to the fact that the nation is still somewhat divided on this topic. However, more recent reports indicate an increased acceptance in American society for gays and lesbians. According to one Gallup poll, 91% of young adults say that gays and lesbians should be allowed to serve openly.¹⁶ Younger generations have for the most part been more inclusive than

previous ones in modern history. However, it is generally not the younger generations that are making and changing the laws that govern our country.

Most recently and somewhat contrarily, Gallup's 2008 Values and Beliefs poll determined that the nation is sharply divided over the morality of homosexual relations, with 48% considering them morally acceptable and 48% saying they are morally wrong. In spite of this, the majority (55%) accepts the alternative lifestyle and believes that homosexual relations should be legal.¹⁷ In essence this equates to "Do what you will with your choices in your private life, but don't ask me to endorse them." The same poll, which has been tracking American public attitudes about homosexuality and gay rights for the past twenty-five years, concludes that a general trend exists in the increased acceptance of homosexual relations which first reached a peak, and then a plateau in 2007.

More significantly, the recent elections in the United States resulted in new leadership that has been clear about its intent to allow gays and lesbians to serve. When Senator Obama visited Colorado Springs in September of 2008, he spoke of "rocking the boat" in terms of controversial proposals for the military. He stated that he wants to allow gays and lesbians to serve openly in the military. "Equity and fairness are part of the reason for lifting the ban on acknowledged homosexuals serving in the military," Obama said, "but there are practical reasons, too — like getting 'all hands on deck' when the nation needs people in uniform."¹⁸ Senator Obama did indicate that he intended to tread carefully if elected, however. "...I believe that the way to do it is make sure we are working together through a process, getting the Joint Chiefs of Staff clear in terms of what our priorities are going to be," he stated later in an interview with the

Philadelphia Gay News.¹⁹ Without a doubt the Senator, a self-proclaimed consensus builder, has no intention of encountering a repeat of Bill Clinton's experience of acting first and encountering fierce opposition later.

Even more recently, more than 100 retired generals and admirals made headlines when they called for a repeal of DADT. The officers wrote that "...other nations...allow gays and lesbians to serve openly...our service members are professionals who are able to work together effectively despite differences in race, gender, religion, and sexuality."²⁰ Admiral Charles Larson, the retired four star who was among the signers of the document, has a lesbian daughter and believes that there is a generational shift in attitudes that will result in making a repeal of the policy workable. "There are a lot of issues they will have to work out," he stated in an interview, "but I hope this would be one of the priority issues in the personnel area."²¹

Emerging Military Doctrine

Today's battlefield does not resemble that of just two decades ago when Desert Storm demonstrated the strength of America's conventional force-on-force capability resulting in a quick win for our Armed Forces. Our nation has entered an era of persistent conflict, one in which the enemy is not always recognizable, nor will it employ predictable tactics, techniques and procedures. The dangers and challenges of old have been joined by new forces of instability and conflict.²² Today's Army leaders are tasked to be broad-minded and agile enough to adapt whenever necessary.²³ Emerging doctrine calls for military leaders who strive for the willing cooperation of multinational military and civilian agency partners, and who develop cultural awareness in Soldiers through leading by example.²⁴ Sanctioned intolerance and misunderstanding of a

subculture present today in our own Armed Forces does not lend itself well to tolerance of cultures outside of our own. Prejudice and fear are not desirable qualities in leaders operating in today's strategic environment.

This is not an insignificant point. When isolated instances of cultural insensitivity or ignorance are publicized for the world to view, our allies' opinions of the United States as a world superpower are influenced. One example of this is the Guantanamo Bay detention facility, which has become a symbol to the world of the United States' inability to make our actions fit our words of a well established tradition of justice and liberty. While our constitutional rights call for a speedy trial, representation by council to face accusers and have access to evidence presented against an alleged offender, the detainees there have not experienced those rights. Held after seven years without formal charges, most have had limited access to an attorney or the evidence presented against them. The world watched and formed an opinion, and each day Guantanamo remains open serves as a reminder of our hypocrisy. Recently, President Obama made the decision to close this facility and to begin to heal the scars it has left on our image.

Today's emerging doctrine emphasizes the criticality of joint warfare and the irrelevance of legacy stove piped operations, comprised of one service or agency. We seek multinational partners to share the burden of our role in all aspects of the spectrum of operations. So what happens, for example, if we enter coalition agreements and serve alongside openly gay and lesbian British and Canadian servicemembers? Will the intolerance that some of our leaders currently have for gays and lesbians in the military stand in the way of good relations with our western partners? It could. Again, operating environments of today require adaptive, culturally sensitive leaders.

Public display of affection among gay and lesbian servicemembers is discouraged just as it is among heterosexuals, because it is considered unprofessional and it can impact unit morale. The United States has thousands of troops serving in Iraq and Afghanistan today, where homosexuality is illegal. Displays of homosexual affection are considered illegal and offensive there and elsewhere in Muslim countries. Acceptance by the U.S. Armed Forces of homosexuality needs to accompany prudence in order to maintain discipline, particularly when troops are deployed.

While military leaders today are provided schooling in the latest doctrine, those same leaders are becoming aware of the growing delta between supply and demand for leaders that is happening today. DADT, among other factors, has had an impact on access to the qualified young people needed to fill the services, young people who are the next generation of America's leaders.

College Access, Recruiting and Demand

Colleges and universities around the country have made national news by not allowing military recruiters or the Reserve Officer Training Corps (ROTC) programs on their campuses in protest of DADT. In 2005 thirty-one law schools (including most of the Ivy League) collectively protested the U.S. Armed Forces ban on openly gay members. They called themselves "Forum for Academic and Institutional Rights" and believed that the military was practicing a form of discrimination.²⁵ The schools forbade all military activities on their campuses. The Solomon Amendment adopted in 1994 threatened the protesting schools with loss of federal funding. The Amendment was fought at the Supreme Court level (*Rumsfeld v. FAIR*). The court held that the law violates the First Amendment by restricting the schools' right of expressive association

and by compelling the law schools to assist in the expressive act of recruiting.²⁶ It was eventually overturned but today, a number of colleges and universities to include Yale, Harvard, Columbia and Brown still do not allow ROTC or military recruiters on campus.

Reporting in the Wall Street Journal recently, a gay student argued for public support to return Navy ROTC to Columbia University. He cited that General Eisenhower had served as university president, and that the institution has a long and proud history of military service. "As elite institutions, we could help bring balance to our military, which is underrepresented in the northeast and among the wealthy," he further stated.²⁷

All of this comes during a time when the military is faced with ever increasing demands on its resources, primarily manpower. The nation is in its eighth year of war in the Middle East. The Global War on Terror has in part led to transformation of the military. Through its demands, the war has forced leadership to examine the structure of the various services to determine how to make them more efficient. This must be done to face the challenges presented by the demands of persistent conflict. The Army for example, has recently undergone a complete restructuring, resulting in modular units that can deploy rapidly and sustain themselves in any theater of operations. At the same time, the demand for qualified Soldiers, Sailors, Airmen and Marines has risen dramatically.

In January 2007, President Bush requested from Congress a 74,200 Soldier increase in Army end strength across the Active, Guard and Reserve components.²⁸ As of October 2008, 151,000 troops remain in Iraq — 25,000 more than before the buildup began in early 2007. In Afghanistan, there are 32,000 U.S. troops, and commanders

there are seeking four more brigades.²⁹ The commander of U.S and NATO troops there, General David McKiernan, has stated that troop levels need to be increased to about 60,000 from that number in order to accomplish the mission of getting the Afghan army and police to a point where they can provide for their own security of their people.³⁰

Recent studies show that less than three out of ten youth today qualify for military service.³¹ This number decreases further when the percentage of overweight youth is factored in. To counter this, the military has begun to relax recruiting standards. In fact, a recent study indicates that from 2003 to 2006, the military allowed 4,230 convicted felons to enlist under a program allowing for certain waivers. In addition the same study indicates that 43,977 individuals convicted of misdemeanors were also permitted to enlist.³² These figures beg the obvious question: how does a convicted felon present a better candidate for service to our nation as a member of the Armed Forces than a law abiding open gay or lesbian? When presented this way, DADT is difficult to defend.

Throughout this period of critical demand, discharges of gay and lesbians continue at a steady rate. Servicemembers Legal Defense Network (SLDN) is a non-partisan, non-profit watchdog and policy organization dedicated to ending discrimination against, and harassment of, military personnel affected by DADT.³³ The numbers it reports are staggering. The Pentagon has discharged over 12,500 service members since the implementation of the law. And while the numbers reached a peak of 1,273 in 2001 and have steadily declined to 627 in 2006, that decline is not a cause for hope. In fact over 60 Arabic linguists and a handful of Farsi linguists have joined the ranks of those discharged who were serving in mission critical positions.³⁴ Between 2003 and

2005, the Pentagon has spent over \$200 million to replace these discharged service members, according to one report by the General Accounting Office.³⁵

In addition, the discharged military members are disproportionately young and female. Data suggests that while young adults aged 18-25 comprise 42% of the Armed Forces; they comprised 83% of the discharged gay and lesbian numbers. While women comprise 15 % of the Armed Forces, their discharges were numbered at approximately 36% in 2005.³⁶

The nation is facing a shortage of qualified applicants to serve in the Armed Forces, all the while discharging trained and qualified servicemembers who admit to their sexual orientation or have it otherwise discovered while serving. All the while our allies have been quietly changing their laws and policies in order to allow gays and lesbians to serve openly in their Armed Forces.

Gays Serving Successfully in Foreign Militaries

In 1993 when DADT was first placed into effect Les Aspin, the Secretary of Defense at that time, requested RAND's National Defense Research Institute provide a comprehensive analysis of the issues involved in the debate concerning gays and lesbians serving in the military.³⁷ One area of the study provided an analysis of policies of other countries' military forces as well as police and fire departments in six American cities. What follows are some of the results of that study.

Researchers for RAND visited Canada, France, Germany, Israel, the Netherlands, Norway and the United Kingdom. These countries were selected based on their wide range of policies regarding gays and lesbians in their services. Some had

a policy of not making homosexuality known (as in DADT), some had a nondiscrimination policy and one had an active program to encourage openness³⁸.

The study drew a few conclusions. In countries where homosexuality was permitted, gay and lesbian servicemembers were careful not to call attention to themselves, and were circumspect in carrying out their duties. None of the countries reported any issues in their military forces resulting from the presence of gays and lesbians.³⁹ When the policy changed recently in the United Kingdom, gays and lesbians entered the military with very little fanfare and no discernable impact. Reports from London stated that "lifting the ban on gays in the British Army has not affected troops' morale" and that lifting the ban had been "a solid achievement."⁴⁰ As of July 2007, 24 nations allow gays to serve in the military.⁴¹

The Netherlands was the first country to allow gays and lesbians to serve in the Army; their prohibition was lifted in 1974. According to a research report of the Dutch Sociaal Cultureel Planbureau (SCP), 90% of the Dutch military accept homosexuals in the Army.⁴² One Dutch military officer stated in an interview that while homosexuality is accepted, "no one is allowed to show it."⁴³ In other words public displays of affection are discouraged but there do not seem to be any related issues. Dutch gay and lesbian soldiers on foreign missions are cautioned about disclosing their sexual inclination as well.⁴⁴

Gays in Police and Fire Departments

Service in domestic police and fire departments can be compared with U.S. military service in several ways to include hierarchical chain of command structure, teams training together to serve under often hazardous conditions, stress,

uncontrollably long duty hours, and public service in support of our nation. A difference lies in the deployments inherent in military service.⁴⁵ Hiring discrimination based on sexual orientation has been banned in federal law enforcement agencies. While hiring qualifications for many state and local agencies (depending on the position) often specify age and physical fitness requirements, many have nondiscrimination policies that allow for qualified applicants regardless of race, color, creed, national origin, religion, gender, marital status, or sexual orientation.

One study of gays in police and fire services determined that effectiveness of these organizations was not diminished by the presence of gays and lesbians. However, most homosexuals did not acknowledge their orientation openly. In addition, most homosexuals did not challenge the norms and customs of their organization.⁴⁶ In conclusion, gays and lesbians can serve openly in many police and fire departments, but generally tend to keep their orientation private when they do.

In spite of this, many urban police departments across the country are actively recruiting gays and lesbians, particularly in California and New York.⁴⁷ Support networks such as the Gay Officers Action League (GOAL-NY), established in New York in 1982, address needs of gay and lesbian law enforcement officials. GOAL-NY is now a robust organization with chapters located in cities across America. Its mission statement contains, "While the Gay Officers Action League is a positive force within the gay and lesbian community, it is also instrumental in attempting to change homophobic attitudes in the workplace and in the community at large."⁴⁸ While gays in police and fire departments admit to encountering some anecdotal friction at times, in general they

serve peacefully and honorably side by side with their straight counterparts, dedicated to achieving the mission for which they were hired to accomplish.

Repeal and the Future

I have discussed the history of how DADT came about, based on President Clinton's campaign promises. I have discussed how DADT impacts military readiness in terms of manpower, and how allowing gays and lesbians to serve in foreign militaries have resulted in no impact. These arguments support the premise that DADT needs to be revised and lifted. The following is a discussion of that recommendation and implementing suggestions for a new policy.

On February 28, 2007, Representative Martin Meehan (D-MA) introduced HR 1246, the Military Readiness Enhancement Act of 2007. This bill amended Title 10 of the U.S. Code to enhance the readiness of the Armed Forces by replacing DADT with a policy of nondiscrimination on the basis of sexual orientation.⁴⁹ The bill drew 149 co-sponsors but sat unactioned in the House subcommittee on Military Affairs.

The issue is one at the forefront of President Obama's agenda. Differing opinions are turning up in news media as to how long the president should wait as he tackles high profile issues such as the economy and the wars in Iraq and Afghanistan. Clearly, the data all point to the fact that the newly elected president will be prudent to take action to lift the ban.

If the ban is lifted, a new message should be consistently and clearly communicated from the top. Senior leaders who have publicly opposed the ban should begin by publicly accepting the change.⁵⁰ Leadership must reassure the force, and strongly convey the message that individual beliefs will not be challenged by this

change. Emphasis should be placed on the fact that good order and discipline will prevail and that no deviation will be tolerated.

The Department of Defense should develop a chain teaching packet to be immediately and expeditiously fielded to all services. This is necessary for all training to be consistent throughout. An office at the top levels of all services should be established in conjunction with the personnel departments, whose primary purpose is over watch of implementation of the new policy. Emphasis from leadership that harassment in any form will not be tolerated is critical to successful implementation.

When servicemembers are deployed in foreign countries, they are tasked to exercise sensitivity toward local culture and are advised of behaviors that the inhabitants of that country would find offensive, which in some cases can even be illegal there. Homosexuality is illegal under Islam, and this is a topic that must be addressed in any policy resulting from repeal of DADT. Open displays of affection must be carefully avoided as is the Dutch policy when deployed overseas; this is common sense and a leadership responsibility to enforce.

Allowing gays and lesbians to serve openly in the Armed Forces will by no means serve as an end to the issues currently experienced by gays and lesbians in our society. At a recent panel discussion at the Army War College, a student questioned how the inability of gay and lesbian partners not serving in the Armed Forces to receive Defense Enrollment Eligibility Reporting System (DEERS) enrollment would serve to open up challenges for gay servicemembers. DEERS enrollment is the first step in obtaining a wide range of benefits for legal military dependents. Gay and lesbian partners will not be eligible for base housing, for example. Partners will not have

access to military health care, or even be able to drive onto a military base without accompaniment by their servicemember partner. Even more significantly, death gratuities cannot be received by a partner due to the lack of recognized legal status of the relationship.

The Uniform Code of Military Justice (UCMJ) maintains that most homosexual acts are illegal under Chapter 125, Sodomy. A careful examination of the UCMJ reveals that some sexual acts among consenting heterosexuals are also illegal. Should gays and lesbians be permitted to serve, another review of the UCMJ is the next logical step.

All of these issues are complex enough to conclude that permitting gays and lesbians to serve openly is really the first hurdle for a community all too familiar with the challenges of the race ahead. The change will be viewed by many as a victory, and will open doors that were in the past sealed shut. However, it will also bring into the spotlight some of the many challenges ahead for gay and lesbian servicemembers.

In addition, gay and lesbian servicemembers will probably not experience an immediate cultural change of popular opinion resulting from a repeal of DADT. Many will still hide their sexuality, but the important point is that they will no longer be required to by law and policy. Revealing sexual orientation will not be a reason for discharge. American society may not be evenly in favor of lifting the ban; as large and diverse as the country is, many communities still exist in pockets of this nation that are not at all receptive toward lifting the ban, nor open to becoming more diverse. In fact the military is generally a more conservative segment of society than society at large, but surveys suggest that these attitudes are changing with the younger generation of recruits. Gays

and lesbians will still encounter isolated incidences of hate and prejudice, which should through skilled leadership be addressed swiftly and emphatically, resulting in fewer incidences over time.

Looking back to recent history, we can marvel at the vast scope of the societal changes that have occurred in a relatively short period of time in our nation's history. Sometimes laws must change first in order for societal attitudes and expectations to follow. As an illustration, Washington, D.C. had Jim Crow laws legally separating blacks from whites until 1965, and today our nation has elected its first African-American president. Former Defense Secretary William Cohen recently stated, "...we're hearing from within the military what we're hearing from within society, that we're becoming a much more open, tolerant society for diverse opinions and orientation."⁵¹ Change happens over time, and it must begin somewhere. I would argue that the place and time is here and now.

Endnotes

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