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"DON'T ASK, DON'T TELL" POLICY: IS IT TIME TO TALK?

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USAWC STRATEGY RESEARCH PROJECT

"DON'T ASK, DON'T TELL" POLICY: IS IT TIME TO TALK?

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“DON’T ASK, DON’T TELL” POLICY: IS IT TIME TO TALK?

Once considered a private taboo, homosexuality has impacted the American culture tremendously in recent years. The openly gay[1] lifestyle has become a mainstream in today’s society. Along with gay parents coming “out of the closet”, children are labeling themselves as ‘gay’ at much younger ages.[2] The entertainment industry consistently integrates the gay theme within its scripts, celebrating and rewarding actors that portray homosexuality in a positive light.[3] A few States have made concessions for same-sex marriages as more local and state-level courts acknowledge gay unions.[4] Certain segments of the American religious establishment endorse the homosexual agenda as gay clergy occupy the sacred pulpit.[5] The Gay Rights Movement has been effective in slowly but methodically moving the American populace to embrace their cause. The U.S. military, as a mirror of the society, is no exception.

The Department of Defense (DOD) has a ‘Don’t Ask, Don’t Tell’ policy that governs homosexuality within the Armed Forces. In simple terms, the policy allows persons with a homosexual “orientation” to enlist or stay in the military as long as they do not say they are gay. Military leadership is not allowed to question these individuals regarding their sexual orientation without probable cause. Implemented 15 years ago, the number of troops affected by this policy is unclear since the military cannot ask; however, activist groups estimate 65,000 gays serve on active and reserve duty, as well as one million veterans.[6] Opponents of the policy argue that it has had a negative impact on America’s national security because the military continues to discharge gay personnel with critical skills during a time of war.[7] Proponents of the ban against

homosexuals in the military suggest the current policy is necessary to maintain morale and unit cohesion.

On February 28, 2007, the Military Readiness Enhancement Act was re-introduced as a bill that could change the laws and policies governing homosexuality in the military.[8] With no Senate sponsorship, the bill currently has 149 co-sponsors in the House of Representatives, mostly Democrats.[9] Leading up to his inauguration, President Barack Obama consistently stated he wants to repeal the laws that ban gays from serving openly within the all-volunteer force.[10] He believes the issue of gay rights is too often used as a divisive measure, stating "… at its core, this issue is about who we are as Americans. It's about whether this nation is going to live up to its founding promise of equality by treating all its citizens with dignity and respect."[11]

This paper argues it is time to repeal the DADT policy by demonstrating how it is incompatible with current laws and contradicts existing military values. Discourse begins with an overview of Title 10 law concerning homosexuality and its inconsistency with established policy. It highlights the strategic challenges of maintaining a policy that runs counter to U.S. military values. The paper then examines issues at the heart of the debate over gays in the Armed Forces. The dissertation does not contend whether homosexuality is morally right or wrong, nor is there direct inference to whether gays should serve openly in the military. The author primarily probes whether or not military policy, military law, and military values should mesh harmoniously if service members are expected to fully comply with strategic directives related to homosexuality. Finally, the paper concludes with some key points of consideration as the military moves forward in dealing with policy changes related to this very sensitive issue.

The Policy versus The Law

Rules and regulations have historically been used to exclude gays from military service. However, for the first time in 1993, the U.S. Congress passed legislation making the ban on homosexuality a federal law. Public Law 103-160 and U.S. Code Title 10, Chapter 37, Section 654, paragraph (a) (13) states, "the prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service."[12] According to the law, the military should not condone homosexual conduct within its ranks and the law codifies the grounds for discharge.

In an attempt to keep his campaign promise while compromising with senior military leaders, then-President Bill Clinton pressured Congress to include a clause in the law that supported his prior interim policy to suspend DOD's ability to ask potential recruits questions about homosexuality.[13] Resulting from this clause, current DOD policy states that gay personnel can serve in the military as long as their sexual orientation is disguised and they abstain from homosexual conduct throughout their military career. Considered a personal and private matter, DOD should not ask about sexual orientation and military personnel are not to tell, hence the 'Don't Ask, Don't Tell' (DADT) label was given to the policy,[14] and it is often inappropriately applied to the law.

The DADT policy is often lauded as a reasonable compromise that creates a win-win scenario for both gays and the military. DADT implies that gays are welcome to serve if they avoid discussions about sexual orientation, which can be vague and loosely interpretive. However, Title 10 law establishes that prohibition is based on conduct, evidenced by actions or statements, and it insinuates that gays need not apply. The law affords potential recruits the opportunity to reconcile differences between

military standards and their personal sexual preferences *before* they take an oath. Once commissioned or enlisted, personnel are fully expected to comply with military law. Is it possible to firmly uphold this law without asking potential recruits and military personnel about their sexual orientation? Consider its statutory language:[15]

- The bond of *trust* among service members (unit cohesion) is one of the most critical elements of combat capability.
- Military members involuntarily accept living and working conditions that are often characterized by forced intimacy with little or no *privacy*.
- People *inclined to or intent upon* engaging in homosexuality would create an unacceptable risk to the military.
- Military members will be separated from the Armed Forces if they have willingly engaged in or attempt to engage in homosexuality, based on *admission or observation*.
- The Secretary of Defense will ensure that the military does not enlist or appoint members who engage in homosexual acts. Congress acknowledges that routine inquiries about homosexuality can be reinstated *at any time*.

There is an apparent disconnect between the law and the policy, and the military may be at fault. DOD indicates homosexual orientation "is not a bar to continued service … unless manifested by homosexual conduct…"[16] Many service members erroneously interpret this to mean the law only applies if and when a person is "caught in the act".[17] However, the law and the policy both articulate separation is warranted if a service member *states* he or she is gay or bisexual.[18]

In a 1996 ruling upholding the constitutionality of the law, the U.S. Court of Appeals for the Fourth Circuit highlighted the DADT policy was inconsistent with the statute that Congress actually passed.[19] This point was further underscored by Representative Steve Buyer (R-IN), then-Chairman of the Housing Armed Services Committee Personnel Subcommittee, in a 1999 memorandum that stated:

> Although some would assert that section 645 of Title 10, US Code….embodied the compromise now referred to as "Don't Ask, Don't Tell," there is no evidence to suggest that the Congress believed the new law to be anything other than a continuation of a firm prohibition against military service for homosexuals that had been the historical policy….The prospect of a homosexual openly serving in the military was never contemplated by the Congress and any policy that suggests that the military should be receptive to the service of homosexuals is in direct violation of the law.[20]

The DADT policy puts the majority of the risk on the Armed Forces to assume that an individual with who time, training, and education is invested, is not gay. When homosexuality is exposed, the military loses a highly skilled veteran and the individual loses a military career. Since 1993, more than 12,000 service members have been dismissed under the DADT policy.[21] According to a Government Accountability Office (GAO) report completed in 2005, the military released nearly 800 "mission critical" troops to include Arabic linguists, medics, pilots, and intelligence analysts.[22] The replacement costs of discharging and replacing gay service members between 1994 and 2003 was estimated at approximately $190.5 million. A non-governmental "Blue Ribbon Commission" sponsored by the Center for the Study of Sexual Minorities in the Military (CSSMM) estimated the real costs around $363 million. The CSSMM is a key activist organization of gays serving openly in the military.

The pendulum swings back and forth on appropriate measures to eliminate the cost associated with homosexuality in the military. Critics complain that discharges are

foolish and wasteful after so much has been invested in military personnel, and removing the ban would eliminate those costs. Proponents of the ban suggest that enforcement of the law by asking the question at induction would drastically reduce the financial losses to near-zero. According to Elaine Donnelly, President of the Center for Military Readiness, "It is bad policy to enforce a regulatory policy …. which misinforms potential recruits about the conditions of eligibility and encourages people to be less than honest about their homosexuality – only to be subject to discharge later."[23] While both alternatives are flawed with assumptions, one thing is clear: the DADT policy is not value added in terms of reducing the cost of gays in the military. Fortunately, compared to other discharges such as drug offenses, weight standards, pregnancy, and serious crimes, homosexuality amounted to only 0.37% of discharges for all reasons in the GAO report.[24]

Policy application during wartime has also proven to be problematic. With the onset of Operation Iraqi Freedom and Operation Enduring Freedom, the number of discharges under DADT fell precipitously since 2001.[25] Opponents claim the Armed Forces' willingness to turn a blind eye towards gays in the military during wartime – when morale and unit cohesion matters most – proves the military is no longer interested in policy enforcement.[26] Military leaders contend extreme caution is required to ensure personnel do not abuse the policy to curtail their service obligation. Army Reserve components, consisting of National Guard and Ready Reserve units, play a significant role in on-going operations supporting the Global War on Terrorism. In 2005, the Army Reserve Unit Commander's Handbook was updated to include postponement of discharge for homosexual Soldiers whose units are scheduled for mobilization. An

Army spokesperson stated, “Some people are using sexual orientation to avoid deployment. So in this case, … if a Soldier ‘tells,’ they still have to go to war and the homosexual issue is postponed until they return to the U.S. and the unit is demobilized.”[27] A policy that provides loopholes for erroneous discharge and gives the impression of selective application will consistently produce an environment of nepotism and vexation.

To make matters worse, DOD Instruction 1332.38, titled *Physical Disability Evaluation*, identifies homosexuality as a “mental disorder” of a developmental nature.[28] The medical community ceased its classification of homosexuality as a mental disorder when the American Psychiatric Association announced its findings in 1973.[29] Nevertheless, DOD reaffirmed its labeling as recently as July 2006. The military’s willingness to maintain a policy that supports gay personnel within its rank after labeling homosexuality as a mental health condition reflects a strategic failure in leadership. It is time to eliminate the DADT policy due to its incongruity with existing laws and other policies related to gays in the military.

DADT Policy Impact on Military Values

In the early 1980’s, social psychologist Edgar Schein wrote, “Values constitute the basis for making judgments about what is right and what is wrong, which is why they are also referred to as a moral or ethical code. Because values are used as standards for making judgments, they are often associated with strong emotions.”[30] In his paper entitled *Values Based Organizations: How Does the Army Stack Up*, Army Officer David Brooks goes on to say, “Core values must be enduring. Core values must transcend any aspect of organizational behavior. Companies that enjoy success have core values

that remain fixed while their business strategies and practices endlessly adapt to a changing world."[31]

The U.S. Armed Forces is a value-based organization – although each of its Service components expresses those values somewhat differently. The Army's seven core values are Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage (LDRSHIP).[32] The Air Force's values are Integrity First, Service Before Self, and Excellence in All We Do.[33] For the Navy and Marine Corps, their core values are Honor, Courage, and Commitment.[34] Integrity is embedded in the Navy and Marine Corps' definition of honor. Unlike most organizations, the U.S. Armed Forces fully expects its service members to adhere to its values 24-hours-a-day, from the moment they are indoctrinated into the military. There are no exceptions, regardless of whether on or off post or in and out of uniform.

It is critical to examine the DADT policy's consistency with existing military values. During this analysis, Army values are used since they are extensive and generally encapsulate the values espoused by all other Services. FM 6-22, titled *Army Leadership*, states "Army values consist of the principles, standards, and qualities considered essential for successful Army leaders."[35] These values are restated as: [36]

- Loyalty (To bear true faith and allegiance to the U.S. Constitution, the Army, your unit, and other Soldiers),
- Duty (To fulfill your obligations),
- Respect (To treat people as they should be treated),
- Selfless Service (To put the welfare of the Nation, the Army, and subordinates before your own),

- Honor (To live up to all the Army values),
- Integrity (To do what's right, legally and morally), and
- Personal Courage (To face fear, danger, or adversity).

Based on the oath administered at enlistment or commission, members of the Armed Forces are obligated to be loyal and faithful to the military institute. At the unit level, loyalty involves a two-way commitment between leaders and subordinates.[37] This sense of bonding is not only critical in combat, but is also essential in day-to-day operations. Loyalty is strengthened over time as individuals get to know and trust each other.

The secrecy inherent with the DADT policy stifles loyalty from taking root at the deepest levels of commitment. In 1999, an Army survey found widespread harassment and use of anti-gay comments, prompting then Secretary of Defense William Cohen to direct the implementation of a DOD-wide Anti-Harassment Action Plan.[38] In 2003, Congress asked DOD to re-issue a directive in light of continued reports of anti-gay harassment. Critics suggests the military Services have done very little to hold those accountable that harass service members on the basis of their sexual orientation.[39] According to attorney Sharon Terman, "it is conceptually incoherent to enforce a ban on [anti-gay] harassment while simultaneously enforcing the discriminatory Don't Ask, Don't Tell policy."[40]

Military loyalty is further damaged when gay personnel "experience distress, depression, isolation, mood problems and suicidal ideation, and are reluctant to seek military mental health resources because they cannot be assured of confidentiality."[41] Only those who have served under this cloud of secrecy can accurately articulate how

difficult it is to remain loyal to an institution and, in some cases, leaders and peers who view their lifestyle as incompatible with military service. Retired Lieutenant General Claudia Kennedy, the first female three-star officer in Army history, articulated the Army violates its credo "no Soldier is left behind" as it relates to gays serving in uniform.[42] She goes on to say, "When we ask people to hide something important about their identity, it is a challenge to their integrity…it is also disrespectful to them and to those with whom they serve."[43]

While the concept of duty involves a fulfillment of one's military obligations, it extends beyond mere orders and regulations with the goal of doing what is legally and ethically right. In performing their duty, military personnel are expected to exercise initiative by "anticipating what needs to be done before being told what to do."[44] Though DADT implies it is acceptable for gays to serve, "duty" demands that military personnel look beyond the policy to remain in harmony with the law. Additionally, when leaders and peers become aware (through verbal or non-verbal communications) that an individual might be gay, "duty" mandates that leaders seize the initiative to investigate. A 'Don't Ask' mentality often causes leaders and peers to become co-conspirators, as many fail to uphold the law by looking the other way.[45]

In a *60 Minutes* interview conducted in December 2007, Army Sergeant Darren Manzella claimed his commanders did not discharge him after Manzella admitted he was gay and provided abundant evidence of homosexual conduct.[46] A combat medic with two tours in Iraq, Sergeant Manzella was very open with his Army peers about his homosexual lifestyle. Even while going beyond the call of duty and earning a combat medal for bravery, his open behavior demonstrates a failure in duty to adhere to DADT

policy and his commander's failure to uphold the law. Manzella was honorably discharged in June 2008, only after embarrassing the military by going public with his sexual orientation.

The DADT policy not only allows gays in the military to deceive in regards to their sexual orientation, but it also allows heterosexual military personnel to demean unknown gays serving in the ranks – a violation of the core value of "respect".[47] Respect involves treating all people with a degree of dignity and worth as human beings. Officers and enlisted personnel are expected to value each other's worth and effective teamwork is achieved when mutual respect is paramount. Regardless of an individual's ethical view on homosexuality, the military considers gay jokes and gay bashing as disrespectful. However, the DADT policy forces gays to be "invisible" in the ranks and speaking negatively about them is often condoned behavior under the assumption that gays are not present. Consequently, many gays are subjected to harsh language about homosexuality with no means of protest without fear of exposure.

Selfless service entails doing what is right for the Nation, the Armed Forces, the unit, and subordinates while avoiding self-neglect that could weaken one's spirit or performance. The idea is "giving up self-interest for the good of the whole."[48] DADT dictates a form of self-neglect through consistent abstinence from homosexual conduct for gay personnel. Many gays view this expectation as unfair and narrow-minded since heterosexuals are not generally required to put their sex life on pause. Consequently, a failure to abstain from homosexual activity can be viewed as self-serving and a violation of law, policy, and military values.

Within the military tradition, “honor” is the single value that strings all the other core values together. It serves as “the moral compass for character and personal conduct.”[49] Honor’s ideal of going beyond what is expected is reflective in the military’s highest award, the Medal of Honor. This military value implies that the service member will live up to all the other core values. If the DADT policy violates the principles of integrity and respect, by default its application also contradicts the value of honor. However, this failure extends further. According to Brooks’ study on values-based organizations, a positive environment is established when values are linked together in a congruent manner.[50] The internal environment creates a situation of organizational alignment where an individual’s personal values are in harmony with the organization’s values. Furthermore, the organization’s espoused values are also congruent with the in-use values. “Congruent values between the individual and the organization are critical to the development of a committed and dedicated work force.”[51] Honor demands putting military values above personal values and beliefs when these individual convictions are in conflict with positive organizational climate and morale. Is it possible for gays to truly embrace the values of an organization that views their sexual orientation as immoral and incompatible? Many gays admit to the friction between their personal values and those of the military establishment.[52]

Is it reasonable or even practical to think that gays will not engage in homosexual conduct during their enlistment or obligation period, possibly for an entire 20-year career? Strongly influenced by a previous DOD policy implemented in 1981, current laws operate “on the logical conclusion that as a class, homosexuals engaged in or were likely to engage in homosexual activity.”[53] The laws’ intent is to drastically reduce,

if not eliminate, homosexual behavior within military units. The DADT policy grants gays the privacy to maintain an incompatible sexual orientation and secretly engage in illegal behavior as long as they do not openly talk about it. Such rhetoric runs counter to the military value of integrity which requires service members to do what is *legally* and *morally* right at all times. Derived from the Latin *integras*, integrity implies wholeness between what is seen and unseen.

The conflict between policy, law, and military values often gets further thwarted during application. In her research on this issue, Josie L. Curtis suggests the conflict with the military's core values "could rob military authorities of shared guidelines on which to base decisions for policy and procedure. Accordingly, implementation of DADT may be inconsistent, causing subsequent ritual and information exchange to become ambiguous and possibly unfruitful in meeting the goals of this [military] organization."[54] Using a random survey of military personnel, Curtis concluded that the military's values of integrity and respect were tremendously impacted by the DADT policy. Military leaders are placed in the difficult position of discerning how best to enforce the policy in light of maintaining a positive command climate and mission readiness. As part of a recent study panel on the issue, retired Navy Vice Admiral Jack Shanahan said he was struck by the loss of personal integrity required by individuals to carry out the current policy. He concluded that "everyone was living a big lie – the homosexuals were trying to hide their sexual orientation and the commanders were looking the other way because they did not want to disrupt operations by trying to enforce the law."[55]

According to FM 6-22, there are two forms of personal courage: physical and moral courage.[56] Overcoming personal fears of bodily harm is the idea behind physical

courage, while moral courage involves a willingness to stand on principles and convictions at all cost. Having a DADT policy that circumvents the existing laws has a negative impact on both. This perception was further promulgated by the killing of PFC Barry Winchell in 1999 as a result of his intimate involvement with another male soldier.[57]

Many gays are frustrated by the silence that the policy imposes and the law demands. While they have found the courage to share their sexual orientation with family members and friends, DADT does not allow them the freedom to openly justify their choice as being morally acceptable.[58] Coupled with the law, the policy's concept of silence generates a fear of being wrong, of being discovered, and of being injured. Lifting the ban on gays in the military may not produce a huge "coming out" party, as was evident in a study of foreign militaries where gays serve openly.[59] However, a change in policy and law could allow gay individuals to be themselves without fear of retribution or personal harm.

Several other retired general officers spoke publicly regarding the failures of the DADT policy. Brigade Generals Keith H. Herr and Virgil A. Richard, both of the Army, and Rear Admiral Alan M. Steinman of the Coast Guard, were the first flag officers to expose their homosexuality after serving their institutions in secrecy for over 30 years. They collectively state, "the policy had been ineffective and undermined the military's core values: truth, honor, dignity, respect, and integrity."[60]

The Heart of the Matter

In 1993, high morale and unit cohesion was the centerpiece of the debate on homosexuals in the military. Proponents of the ban claimed that gays serving openly

would harm unit performance over time. It is very doubtful this argument prevails during the next round of debates. Very little research suggest that gays cannot perform their job as well as or better than heterosexuals, even within the context of the military. Activists suggest no one should care what gays do in their private life as long as they can complete the mission.

In a 2008 *Military Times* survey, 71% of respondents indicated they would continue to serve in the military if gays were allowed to serve openly.[61] Based on analysis of experiential data from other foreign militaries, Aaron Belkin, Director of CSSMM, claims that lifting the ban against gays would not undermine military performance.[62] Domestically, gays have the freedom to serve openly in most governmental agencies including the Central Intelligence Agency, National Security Agency, Federal Bureau of Investigation, Drug Enforcement Agency and numerous police and fire departments.[63]

Allowing gays to serve openly also aligns U.S. Armed Forces with over 24 foreign militaries around the world that lifted their bans on gays in uniform, including many NATO and Allied partners.[64] Ironically, many retired Admirals and General Officers are now asking for abolition of the existing ban, stating "as is the case in Britain, Israel, and other nations which 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."[65] This list of distinguished officers includes retired Army General John Shalikashvili, former chairman of the Joint Chiefs of Staff.

Perhaps the issue with gays serving in the military is less about performance and more about character – a quality that is the cornerstone of effective leadership. In fact,

character is so important to the military that accused service members, unlike civilians, are allowed to introduce evidence of their "good military character" during the guilt phase of a court-martial.[66] Webster defines character as "a composite of good moral qualities typically of moral excellence and firmness blended with resolution, self-discipline, high ethics, force, and judgment."[67] The Army defines character as a person's moral and ethical qualities that determine the essence of who they are and their behavior.[68]

Each recruit enters the military with his or her own set of personal values that influence their character. The Armed Forces expect to shape personnel character through the integration (and sometimes replacement) of personal values with military values. Over time, such integration produces military character that binds the fighting force and earns the trust of the American people. A 2008 Gallup Poll indicated the U.S. military maintained the highest confidence (71%) of any American institution.[69] Sexually-related incidents such as the Navy's Tailhook scandal, the Army's Aberdeen Proving Grounds incident, the Air Force Academy rape cases and, most recently, infamous photos of Abu Ghraib were met with tremendous public outcry largely because those personnel involved did not display the principles and standards inherent to and expected of the military service.

When military leaders are caught engaging in unacceptable sex-related behavior, they are usually discharged. Why? After all, they could have been the best platoon leader, squad leader, commander, tanker, marksman, and/or pilot in the organization. They are discharged because their character has been tarnished and their espoused and demonstrated values are incongruent. They still have the ability to perform their

individual job well but once their character is called into question, they can no longer lead effectively. Since the law states homosexuality is incompatible with military service, it is instinctive for leaders to question the character of anyone who engages or has engaged in such behavior.

It is also important to consider the impact character has on military polling. In the aforementioned *Military Times* survey, 58% of military troops oppose gays serving openly while 14% had no opinion.[70] Claiming the polling is skewed by participants who are older and higher in rank, critics argue that a majority of junior enlisted personnel believes the ban should be removed.[71] While no empirical data supports such a claim, it is no surprise the younger generation of recruits and troops are more comfortable with gays in the ranks. FM 6-22 acknowledges that, since people join the military with pre-shaped "character" from life experiences, "Becoming a person of character and a leader of character is a career-long process…. When an organization's ethical climate nurtures ethical behavior, people will, over time, think, feel, and act ethically. They will internalize the aspects of sound character."[72] Consequently, junior personnel may lack the experience and judgment to rationalize the long-term strategic impacts of an openly gay military.

The on-going debate also centers on morals, a term included in the definition of character. According to Webster's dictionary, the word "moral" relates to the principles of right and wrong in behavior, as defined by generally accepted norms and customs of a society or group.[73] Perhaps this is what former Chairman of the Joint Chief of Staff General Peter Pace had in mind when he stated his opposition to letting gays serve

openly in the military because he believes homosexuality is “immoral”, and is similar to adultery.[74]

Critics believe there is no room for public expression of personal beliefs within the military ranks. President Obama stated that he wants military leaders that “make decisions based on what strengthens our military and what is going to make us safer, not ideology.”[75] However, as noted in the case of *Anderson v. Laird*, religion plays a vital role in the Armed Forces’ heritage and culture, long recognized as critical in developing military personnel’s character and morality.[76] Military members’ religious freedoms are protected under the First Amendment and the Religious Freedom Restoration Act of 1993,[77] and the military has its own Chaplains to assist in matters of faith and religion. As such, “religious men and women need not shed or hide their religious beliefs upon entering the military.”[78] To articulate that people of faith should leave their religion at the door when reporting for duty illustrates a superficial understanding of matters of the heart related to personal conviction and belief.

Most denominations within Christianity, along with other major world religions, traditionally views homosexuality as immoral or wrong based on the teachings of the Bible. This perception was also foundational in the 1993 statute by those who saw the issue in moral terms but used secular language to emphasize military discipline.[79] Opposition groups argue this is why the ban needs to be eliminated. Conversely, in her testimony to Congress, activist Elaine Donnelly accurately stated, “Duly enacted laws – including prohibitions against lying, stealing, and murder – should not be repealed just because they coincide with religious principles and moral codes such as the Ten Commandments.”[80] If gays are to serve openly in the military, DOD leadership must

determine how to effectively blend such a lifestyle with troops of various faiths and do so without frequent instances of prejudice, repulsiveness, and separatism.

Even if common ground is found on the morality of homosexuality, the strategic challenge of an openly gay military certainly involves the issue of personal privacy. Heterosexuals will be required to live in forced cohabitation with professed (not discreet) gays. “Stated in gender-neutral terms, forced cohabitation in military conditions that offer little or no privacy would force *persons* to live with *persons* who might be sexually attracted to them.”[81] Heterosexuals may strongly object to sharing bathrooms, shower facilities, and close sleeping quarters with known gays. Critics argue they already share these amenities with gays. However, they do so unknowingly. The dynamics of the relationship can change when sexual orientation is exposed. This does not imply that all gays are attracted to every person of their same sex. Nevertheless, in American culture, males do not have the freedom to publicly shower with females due to sexual tensions that could ensue from being seen by someone that *could be* attracted or aroused sexually. This same logic under modesty rights could apply to hetero-homosexual encounters in public facilities. Many studies reflect the power that human sexuality has on individual and collective behavior. Therefore, privacy is not a trivial issue to be taken lightly.

Activists are quick to point out that most military personnel are comfortable around gays and lifting the ban will not increase sexual disclosure for gays.[82] Such assumptions should have little impact on measurements to respect the privacy of all service members. In 2007, Senator Larry Craig was arrested for lewd gay conduct in a Minneapolis airport restroom when he allegedly solicited an undercover police officer.[83]

Following a public outcry and political pressure, Senator Craig decided to leave his Senate seat at the end of his term in office. Radio host Michael Medved later stated, “If preventing public sex in airport men’s rooms is important enough to justify the deployment of undercover cops, isn’t it similarly significant to avoid, at all costs, sexual encounters in military latrines?”[84]

As the DADT policy is revisited, it is important to briefly visualize what is meant by an openly gay military. Oftentimes, the image of gays in uniform is confined to the duty environment where all personnel are limited in intimacy-related behavior. Leaders may feel rather comfortable with such constrained images. Consider gays publicly kissing at promotion and retirement ceremonies or getting intimate on the tarmac when units redeploy from Iraq or Afghanistan. Consider gays dancing together at unit social functions and holding hands at the annual picnic. Consider gays shopping together in the Commissary and Post Exchange or sitting together at the post movie theater. Consider gays as the little league coach, chapel Sunday School teacher or in a local newspaper photo attending a gay rights rally.

These considerations are not offered as a form of homophobia – they illustrate realistic encounters with openly gay military personnel. If the military decides to lift the ban on gays serving openly while regulating their behavior beyond that of heterosexual personnel, it would merely be another form of discrimination. Gays must be extended the same full rights and privileges governing relationships, housing, health care, religious support, advancement and leadership positions. To do otherwise would be to reincarnate a version of the current policy.

Moving towards an openly gay military could also introduce other challenges for military leadership. How will leaders handle cases of sexual harassment involving members of the same sex? How will leaders manage living quarters when a heterosexual does not want to be roommates with a homosexual? What is appropriate if gay personnel want to get a sex change? Additionally, a gay friendly military could open the door for personnel to challenge disciplinary actions and the Uniformed Code of Military Justice (UCMJ) related to other sexual offenses such as adultery and sodomy.

Moving Forward Cautiously

Strategic military leaders must continually assess the fairness in implementing the current DADT policy while simultaneously analyzing the cultural and ethical impacts of a policy change. In light of the aforementioned challenges at the heart of the debate, military service is not a normal form of societal employment. Troops do not have the luxury of quitting or putting in a two-weeks notice when they do not agree with company policy or management decision. Under military law, they are required to simply conform until their service obligation expires. Furthermore, many service members are subject to stop-loss and military recall to active duty.[85] For these reasons, it is very critical to ascertain the second and third order effects of implementing social changes. Going forward, this paper offers three points of consideration.

First, the military must determine if social norms should affect military policy and perception. Given its established model of a warrior/citizen, the U.S. Armed Forces is faced with a challenge of determining who is best suited to define what is morally and ethically acceptable for military service, its members or society at large. This is

particularly significant of an all-volunteer force that spans across the Baby Boomers, “X” and “Y” generations.[86]

A 2007 poll revealed that 82 percent of adult Americans labeled themselves as Christians.[87] Conversely, during the same year, a CNN survey found that 79 percent of American believes gays should be allowed to serve openly in the military.[88] Overlooking the inherent fallacy of poll results, these numbers indicate a shift from traditional views of homosexuality. What is driving the change? A Brooking Institute study indicates that television has been the key factor in shaping public attitudes towards gays. The study director, Mr. P.W. Singer, wrote that “the average youth of the generation joining the military today will have spent more than 20,000 hours watching TV. Importantly, the content of these shows they were watching has changed, and with it the public acceptability of gays.”[89] Moreover, heterosexuals regularly engage in the same sexual pleasures as homosexuals. Today, oral and anal sex are viewed as a normal and healthy part of heterosexual relationships.[90] Such sexual behavior de-sensitizes most Americans to the traditional belief that homosexuality is an abnormal or deviant form of sexuality. It is extremely hard to criticize a particular group for their sexual behavior when society as a whole performs the same sexual acts. Consequently, critics claim a double standard exist between heterosexuals and homosexuals.

What are the implications for the U.S. military? Researchers conclude that American culture has slowly drifted away from the belief systems of its forefathers and there exist a huge gap between military values and the values of today’s youth.[91] Ultimately, the institution must either conform to the norms of its citizenry or continue

transforming its recruits for a higher calling. America must also consider the type of Armed Forces to which it wants to entrust the lives of its sons and daughters.

Commentators contend that as long as the behavior does not infringe upon the rights and safety of others, people should be allowed to do what brings them enjoyment. This viewpoint loses its luster when used to justify drugs, prostitution, and polygamy. Furthermore, such notion seems to run counter to a war fighting institution whose bedrock is discipline. Since the 'hollow military' of the post-Vietnam era, the fighting force strives to maintain the moral high ground with uncompromising leadership and elevated ethical standards. Agreeably, today's society is more tolerant of homosexual behavior but existing laws still states, "there is no constitutional right to serve in the armed forces" and that military life is "fundamentally different from civilian life."[92] Gays can serve their nation by using their skills as civilian employees with federal agencies or as government contractors.

Secondly, politicians and policy makers would be wise to avoid comparing the homosexual issue to that of integrating African Americans and women into the military ranks. Retired General Colin Powell, the first African-American to serve as Chairman of the Joint Chiefs of Staff and Secretary of State, articulated in Congressional correspondence that:

> 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 conditions of military service.[93]

Since gays do not have immediately observable traits such as skin color or gender which allow others to instantly identify them, they have the ability to selectively

conceal their sexuality. As an editor for *The New Republic*, Andrew Sullivan points out, "gay people are not uniformly discriminated against; *openly* gay people are."[94] His point is the politics of homosexuality are different from those of race or gender. Unlike African-Americans and women, homosexuals have not been unified historically by obvious political or economic goals.[95]

Currently, there is much debate surrounding whether an individual is born gay or if homosexuality is a personal choice. Several medical institutions suggest that sexual orientation is derived from genetic, hormonal, and environmental influences.[96] The previously mentioned CNN poll reflected that the majority of Americans (61%) still view sexual orientation as a choice, albeit down from 87 percent during a 1977 poll.[97] Regardless of the position taken, individuals can and do change their sexual orientation. Furthermore, many people engage in homosexual behavior but do not consider themselves as gay. Ted Haggard, the former President of the National Association of Evangelicals, makes such claim.[98] For this reason, stating "I am gay" should not have the same identity connotation as "I am black" or "I am a female".

To treat gays in the military as a civil rights issue could certainly open the door for "recruiting quotas for gay personnel, the offer of enlistment to those previously denied, retroactive promotions, and financial settlements for persons claiming past discrimination."[99] President Obama indicated his intent to invite previously discharged gay personnel back into uniform.[100] Under affirmative action measures, military promotion boards could be instructed to favorably consider a percentage of homosexuals for advancement.[101] Subsequently, would activists also demand that gay

personnel be recognized and celebrated for their service in the same way that other minority groups and women are recognized routinely by the military?

Finally, sponsorship for change could prove to be the deciding factor on the future of gays in the military. During his campaign, President Obama was quite vocal about eliminating the existing ban on homosexuality.[102] The President should be very selective about how and when he decides to deal with the DADT policy. Regardless of his desired end-state, he will have to build consensus. Learning from former President Clinton's experience, this delicate issue could drag down the President early in his administration and cause a major backlash from both sides of the issue.

The pending Military Readiness Enhancement Act was introduced by congressional Democrats.[103] Many people believe Congress should take the lead on any policy change and subsequent changes in the laws regarding gays in the military. During a recent interview with Fareed Zakaria on CNN's "Global Public Square", retired General Powell stated it is definitely time to re-evaluate the DADT policy. Serving as Chairman of the Joint Chiefs of Staff when the policy was implemented, Powell goes on to say "it has been 15 years and attitudes have changed. It is time for Congress, since it is their law, to have a full review of it and I'm sure that is what President-elect Obama would want to do."[104] Speaking at the West Point graduation ceremony in 2008, Admiral Mike Mullen, current Chairman of the Joint Chiefs of Staff, expressed his willingness to have Congress decide if the policy governing homosexual conduct in the military is still appropriate.[105] He previously stated, "If the American people want to change this policy and change this law, bringing it up through Congress and changing that policy and

changing the law is the right answer….it's got to change through the Congress and the government."[106]

In retrospect, if DADT is a bad policy, the military does not have to wait on the President or Congress to take action. President Obama, along with many who serve in the U.S. Congress, do not have military experience and may not fully understand or appreciate the culture that is unique to the Armed Forces. While numerous retired General Officers have recently spoken out against the ban on gays, they no longer have to live with nor deal with the consequences of an openly gay military. In his research on this subject, Lieutenant Colonel Robert Bartholet states, "it would be easy for the military's strategic leaders to hide behind the cloak of federal statutes and insist that any change is beyond their control and in the hands of Congress."[107] As strategic thinkers, senior military leaders have an inherent responsibility to take the initiative and drive change within DOD when the current policy is failing. If a change in military law is required, Congress certainly has a role to play; however, military leaders should "take the point" to ensure that new standards are not viewed as being forced on the troops by civilian policymakers.

Conclusion

It is amazing the DADT policy has survived for 15 years. Its original military sociologist author, Dr. Charles Moskos, believed the policy would be eliminated within 5 to 10 years from its implementation.[108] The policy's longevity, as was its wording, is an indication of the deep convictions on both sides of the debate and the difficulty of reconciling the differences. Nevertheless, the basic fact that many troops acknowledge knowing gay members and are comfortable looking the other way despite being

inculcated in the military value system is a clear indication that the policy is a strategic failure.[109]

In early 2008, an Army spokesman claimed the policy is being enforced and he goes on to say, "It is not illegal to be gay in the military … as long as a service member keeps quiet."[110] The law which undergirds the policy states exactly the opposite: it is illegal. For this reason as well as societal acceptance of homosexuals, DADT has run its course and it is time for change based on its incompatibility with the law which leads to disjointed implementation and execution. Observed military values are not congruent with a policy that encourages dishonesty, denial and disrespect.

As in the past, it will take a trained and ready military force to defend U.S. national interests and execute the National Military Strategy. When dealing with the issue of gays in the military, the President's administration and DOD should seek a strategy that enhances readiness and maintains unit morale and cohesion while providing a degree of privacy and respect for all service members, regardless of their sexual orientation or religious beliefs. This strategy should also complement existing military values and ethics while reflecting shared national values.

Endnotes

[1] In contemporary terminology, the word "gay" usually refers to men and the word "lesbian" is more predominantly used in referring to women. Throughout this document the words "homosexual" and "gay" are both used as gender neutral terms and relates to Gays, Lesbians, Bisexual and Transgender (GLBTs).

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