

NAVIGATING THE REPEAL OF "DON'T ASK, DON'T TELL"

BY

COLONEL RICHARD D. FOX
Illinois Army National Guard

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U.S. Army War College, Carlisle Barracks, PA 17013-5050

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USAWC STRATEGY RESEARCH PROJECT

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by

Colonel Richard D. Fox
Illinois Army National Guard

Colonel Kenneth J. Lassus
Project Adviser

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U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

ABSTRACT

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The U.S. military is a microcosm of the United States and contains many different groups and subgroups. Over the years, the U.S. military successfully integrated all of these different categories, except for non-heterosexuals. They serve in the U.S. Armed Forces now and they will continue to serve in the future. Legal integration certainly raises issues for the Department of Defense, but it is not a wicked problem. There is no reason to assert that non-heterosexuals cannot display the U.S. military’s core values of loyalty, dedication, respect, selfless service, honor, integrity and personal courage like any other service member. This paper submits that non-heterosexuals should not be denied military membership based upon sexual orientation. This paper provides a regulatory and statutory background concerning the “Don’t Ask, Don’t Tell” policy and the Repeal Act of 2010, an analysis of the Repeal Act of 2010, a summary and analysis of the *Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell”* and its *Support Plan for Implementation*, a theoretical approach to organizational change communication, and recommendations that may add more credibility and transparency to the repeal process.

NAVIGATING THE REPEAL OF “DON’T ASK, DON’T TELL”

Introduction. The U.S. military is a microcosm of the United States and contains many different groups and subgroups. A shortlist includes, but is not limited to: men, women, couples, singles, Caucasians, African-Americans, Hispanics, Asians, the young, the not so young, Christians, Jewish, Muslims, agnostics, atheists, heterosexuals, bisexuals, and homosexuals. This shortlist can be boiled down to sex, race, religion, ethnicity, age and sexual orientation. Over the years, the U.S. military successfully integrated all of these different categories, except for bisexuals and homosexuals (hereinafter referred to as “non-heterosexuals”). Non-heterosexuals serve in the U.S. Armed Forces now, in the past, and they will continue to serve in the future. Full legal integration certainly raises some thorny issues for the Department of Defense (hereinafter referred to as “DoD”), but it is not a wicked problem that cannot be solved. There is no logical reason to assert that non-heterosexuals cannot internalize and display the U.S. military’s core values of loyalty, dedication, respect, selfless service, honor, integrity and personal courage just like any other service member (hereinafter referred to as “SM”).

This paper submits that non-heterosexuals should not be denied military membership based solely upon sexual orientation and that Congress did the right thing by repealing that portion of the United States Code that prohibits military service based upon such orientation. DoD must move on and focus on our nation's enemies, not the continual legal, social, religious and political bickering concerning non-heterosexuals in the military. In support of this position, this paper provides a regulatory and statutory background concerning the “Don’t Ask, Don’t Tell” policy (hereinafter referred to as

“DADT”) and the DADT Repeal Act of 2010, an analysis of the DADT Repeal Act of 2010, a summary and analysis of the *Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell”* and its *Support Plan for Implementation*, a theoretical approach to organizational change communication, and recommendations that may add more credibility and transparency to the repeal process.

Background of the DADT policy and the DADT Repeal Act of 2010. It is clear that the U.S. Armed Forces always maintained a long-standing policy prohibiting homosexuality in the military. In 1982, the Secretary of Defense (hereinafter referred to as “SecDef”) issued DoD Directive 1332.14 pertaining to enlisted administrative separations.¹ This directive stated: “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.”² The directive went on to state that “...A member shall be separated if...(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts...(2) The member has stated that he or she is a homosexual or bisexual... [or] (3) The member has married or attempted to marry a person known to be of the same biological sex...”³ In 1986, SecDef published DoD Directive 1332.30 pertaining to officer separations. The non-heterosexual separation language noted in Directive 1332.30 is similar to Directive 1332.14, except that the provisions apply to commissioned officers.⁴

During the 1992 presidential campaign, candidate Bill Clinton indicated his belief that non-heterosexuals should be allowed to openly serve in the U.S. Armed Forces.

Shortly after his inauguration as President of the United States, the U.S. Congress passed the National Defense Authorization Act (hereinafter referred to as “NDAA”) of 1994. Section 571 of the 1994 NDAA essentially codified the non-heterosexual provisions contained in DoD Directive 1332.14⁵ by amending title 10 United States Code at 10 U.S.C. § 654(b).⁶ Section 654(b) states:

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.⁷

This was the first time in U.S. history that federal law actually prohibited non-heterosexuals from openly serving in the U.S. Armed Forces based upon non-heterosexual conduct, statements and/or status.

On the other hand, the “References in Text” section included at the end of 10 U.S.C. § 654 specifically notes that § 571 of the 1994 NDAA included a “Sense of Congress” provision at the time of its passage. The relevant and operative language states:

Section 571(b)–(d) of Pub. L. 103–160 provided that:

(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act [Nov. 30, 1993], the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

(c) SAVINGS PROVISION.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a), may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

(d) SENSE OF CONGRESS.—*It is the sense of Congress that—*

(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the interim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a)...⁸

In response to the legislation (and arguably as a compromise for signing the 1994 NDAA), the Clinton Administration repealed and revised DoD Directive 1332.14 in December 1993. This new directive (DoD Directive 1332.14 (1993)), complies with 10 U.S.C. § 654(b) in that non-heterosexual statements and conduct provide a basis for administrative discharge; however, non-heterosexual ‘status,’ in and of itself, does not

provide a basis for discharge without evidence of non-heterosexual statements or conduct.⁹ The commander is the only individual authorized to initiate a non-heterosexual inquiry, and only if based upon credible information concerning non-heterosexual statements and/or conduct.¹⁰ Therefore, if there is no admission and no evidence of non-heterosexual conduct, there is no need or authority to initiate an inquiry. Finally, the Clinton Administration also produced DoD Directive 1304.26 which prohibits asking military applicants about sexual orientation.¹¹ Together, 10 U.S.C. § 654 and DoD Directives 1332.14 and 1304.26 created the DADT policy. If a non-heterosexual applicant/SM is not asked about sexual orientation and the same applicant/SM does not tell anyone about his/her sexual preference, then said applicant/SM could actively serve in the U.S. Armed Forces, albeit not openly.

During the 2008 presidential campaign, candidate Barack Obama expressed his belief that DADT should be repealed and that non-heterosexuals should be allowed to openly serve in the U.S. Armed Forces. In December 2010, the U.S. Congress passed the 2011 NDAA which included Senate Amendment 4023 (S. 4023) known as the “Don’t Ask, Don’t Tell” Repeal Act of 2010” (hereinafter referred to as the “DADT Repeal Act”). President Obama signed the legislation on December 22, 2010. However, the DADT Repeal Act does not immediately repeal 10 U.S.C. § 654(b). The relevant provisions of the DADT Repeal Act state:

(a) Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. 654-

(1) IN GENERAL- On March 2, 2010, the Secretary of Defense issued a memorandum directing the Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. 654 (section 654 of title 10, United States Code).

(2) OBJECTIVES AND SCOPE OF REVIEW - The Terms of Reference accompanying the Secretary's memorandum established the following objectives and scope of the ordered review:

(A) Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.

(B) Determine leadership, guidance, and training on standards of conduct and new policies.

(C) Determine appropriate changes to existing policies and regulations, including but not limited to issues regarding personnel management, leadership and training, facilities, investigations, and benefits.

(D) Recommend appropriate changes (if any) to the Uniform Code of Military Justice.

(E) Monitor and evaluate existing legislative proposals to repeal 10 U.S.C. 654 and proposals that may be introduced in the Congress during the period of the review.

(F) Assure appropriate ways to monitor the workforce climate and military effectiveness that support successful follow-through on implementation.

(G) Evaluate the issues raised in ongoing litigation involving 10 U.S.C. 654.

(b) Effective Date- The amendments made by subsection (f) shall take effect 60 days after the date on which the last of the following occurs:

(1) The Secretary of Defense has received the report required by the memorandum of the Secretary referred to in subsection (a).

(2) The President transmits to the congressional defense committees a written certification, signed by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, stating each of the following:

(A) That the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations contained in the report and the report's proposed plan of action.

(B) That the Department of Defense has prepared the necessary policies and regulations to exercise the discretion provided by the amendments made by subsection (f).

(C) That the implementation of necessary policies and regulations pursuant to the discretion provided by the amendments made by subsection (f) is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

(c) No Immediate Effect on Current Policy- Section 654 of title 10, United States Code, shall remain in effect until such time that all of the requirements and certifications required by subsection (b) are met. If these requirements and certifications are not met, section 654 of title 10, United States Code, shall remain in effect.

(d) Benefits- Nothing in this section, or the amendments made by this section, shall be construed to require the furnishing of benefits in violation of section 7 of title 1, United States Code (relating to the definitions of 'marriage' and 'spouse' and referred to as the 'Defense of Marriage Act').

(e) No Private Cause of Action- Nothing in this section, or the amendments made by this section, shall be construed to create a private cause of action.

(f) Treatment of 1993 Policy-

(1) TITLE 10- Upon the effective date established by subsection (b), chapter 37 of title 10, United States Code, is amended--

(A) by striking section 654; and

(B) in the table of sections at the beginning of such chapter, by striking the item relating to section 654.

(2) CONFORMING AMENDMENT- Upon the effective date established by subsection (b), section 571 of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 654 note) is amended by striking subsections (b), (c), and (d).¹²

Analysis of DADT Repeal Act. Essentially, the DADT Repeal Act does not take effect until 60 days after the President transmits to Congress a written certification signed by the President, the SecDef and the Chairman of the Joint Chiefs of Staff (hereinafter referred to as the "Chairman") that all three have considered the report of the comprehensive review on the implementation of a repeal of 10 U.S.C. § 654 and its support plan (discussed below), that DoD has created the necessary policies and regulations to support implementation of the repeal, and that implementation of said

policies and regulations is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the armed forces.

This certification process is flawed. First, one should ask why the Congress, the President and the SecDef need a senior military official (the Chairman) to certify that the elements of Section (b)(2) of the DADT Repeal Act have been met and are, *in essence, true*. There is a problem. The Army Chief of Staff¹³, Air Force Chief of Staff¹⁴ and the Marine Corps Commandant¹⁵ all recently testified before Congress. As a group, they essentially testified that DADT should not be repealed in this time of war because it would impose an extra burden on the leadership, an extra level of stress on the force, a potential disruption of combat forces, and it may be more difficult to implement than suggested. They all recommended that the repeal should be considered at a later time. The Chairman is certainly within his authority to certify per Section (b)(2)(C) above, but in doing so, he must reject three sincere service chief level recommendations.

Second, DoD instructions/directives, federal statutes and presidential executive orders govern military service prohibitions and/or entrance. The SecDef has inherent authority to issue directives to the military such as DoD Directive 1304.26 (no questions to applicants concerning sexual orientation). These directives are lawful and binding civilian commands issued to the armed forces. Likewise, federal statutes such as 10 U.S.C. § 654 and the DADT Repeal Act are lawful and binding congressional enactments that govern military service. Similarly, the President has inherent authority to issue executive orders concerning the armed forces. Executive orders have the same effect as a direct order. The U.S. military, by its very nature of subordination to civilian authority, has always and will continue to follow all lawful directives, statutes and

orders. Elected officials should take complete statutory responsibility for the DADT Repeal Act, to include any follow-on directive(s) issued to the military. There is no need to have the Chairman certify anything. If DADT is repealed by statute or directive, the military must comply.

If the senior U.S. military official certifies the process, then it is possible that critics of the current DADT policy, elected officials or senior civilian leaders can (and may), at a later time, claim that “the military is on board with the DADT Repeal Act because the Chairman of the Joint Chiefs of Staff *certified* the statute or process for us, *or agreed with passage.*” The implication is that if there are problems with implementation of the DADT Repeal Act, the U.S. military may incur responsibility for these problems merely because the Chairman was essentially required to certify the process. This paper does not suggest that non-heterosexuals should not be allowed to serve, but the military may be used as a heat shield to deflect or absorb problems and criticism that should be directed or absorbed by those individuals/entities that actually demanded the change. Bottom line, if elected officials or civilian leaders desire change, they should direct it. The Chairman should not be asked to certify elements of a policy or statute that is clearly already set in motion for eventual passage.

Third, the SecDef and Chairman are both directly appointed by the President. While not probable, if either refuses to certify, they can be removed and replaced with a new individual that will certify. It should also be noted that the President,¹⁶ SecDef¹⁷ and the Chairman¹⁸ all previously publicly stated or testified that DADT should be repealed. Overall, the process lacks the credibility of an unbiased certification.

The DADT Repeal Act will have some major overall impacts (for good or bad) that not only relate to the military, but the public as well. These impacts relate to three areas: awareness, change, and implementation issues. When the U.S. military integrated minorities and females into its ranks, it finally adopted, elevated and recognized equality as one of the intrinsic concepts truly necessary for any American organization. This integration, not unlike the integration soon to be required by the DADT Repeal Act, re-enforced U.S. constitutional rights and liberties and created a level of awareness around the world that the U.S. military clearly supported civilian control and supported equal rights. The DADT Repeal Act will have the same type of effect. When non-heterosexuals are openly integrated into the services, DoD should say to its ranks and citizens that it accepts the proposition that openly non-heterosexuals share similar rights as heterosexuals and can exhibit the traits of loyalty, dedication, respect, selfless service, honor, integrity and personal courage just like any other SM.

On the other hand, many will claim that the U.S. military is being inappropriately used as a platform for social change. This argument fails since the U.S. military is not really the initial platform for non-heterosexual integration. There are many other U.S. governmental agencies, foreign militaries and private industries that have previously and successfully integrated non-heterosexuals. These successful integrations are discussed in more detail below in *Summary of Comprehensive DoD Working Group Report*. The bottom line is that non-heterosexual integration will require a major cultural shift within the armed forces. For many years, non-heterosexuals were barred or removed from military service based solely upon their sexual orientation. The military

culture said “we don’t accept you.” When the DADT Repeal Act takes effect, there will be an immediate requirement that non-heterosexuals must be integrated into the ranks.

This cultural shift will require some accommodation and acceptance. The DADT Repeal Act clearly allows non-heterosexuals to serve, but there may be painful problems implementing the Act based upon administrative, legal, historical, social, personal and religious considerations. These considerations are discussed in more detail below in *Summary and Analysis of the Support Plan for Implementation*. The bottom line is that enactment of the DADT Repeal Act only starts the process for integration. There will be numerous implementation details concerning: 1) training and dialogue, 2) statutory revisions, 3) regulatory revisions, 4) standards of conduct, 5) billeting and restroom issues, and 6) benefits.

Summary of Comprehensive DoD Working Group Report. On March 2, 2010, the SecDef appointed the Honorable Jeh Charles Johnson, General Counsel of the Department of Defense, and General Carter F. Ham, Commander, U.S. Army Europe, (hereinafter referred to as the “Co-Chairs”) to “stand up an intra-Department, inter-service working group (hereinafter referred to as the “Working Group”) to undertake a comprehensive review of the impacts of repeal (should it occur) of Title 10 U.S.C § 654. In this effort, they employed a team of 49 military and 19 civilian personnel from across the DoD. Their assignment from the SecDef was two-fold: 1) assess the impact of repeal of DADT on military readiness, military effectiveness, unit cohesion, recruiting, retention, and family readiness; and 2) recommend appropriate changes, if necessary, to existing regulations, policies, and guidance in the event of repeal. The Working Group produced its findings in its “*Report of the Comprehensive Review of the Issues*

Associated with a Repeal of Don't Ask, Don't Tell" (hereinafter referred to as the "Report"), dated 30 November 2010. The Secretary also directed the Co-Chairs to develop a plan to support implementation of a repeal of DADT (discussed in the following section). The Secretary directed the assessment and recommendations to be delivered to him by December 1, 2010.¹⁹

Over a nine month period the Working Group: 1) solicited the views of nearly 400,000 active duty and reserve component SMs with an extensive survey, which prompted 115,052 responses; 2) solicited the views of over 150,000 spouses of active duty and reserve component SMs, and received 44,266 responses; 3) created an online inbox for SMs and their families to offer their views, which prompted a total of 72,384 entries; 4) conducted 95 face-to-face "information exchange forums" at 51 bases and installations around the world, and the Working Group interacted with over 24,000 SMs; 5) conducted 140 small focus group sessions with SMs and their families; 6) solicited the views of the service academy superintendents and faculty, service chiefs of chaplains, and service surgeons general; 7) solicited and received the views of various members of Congress; 8) engaged RAND to update its 1993 study, *Sexual Orientation and U.S. Military Personnel Policy*; 9) solicited and received the views of foreign allies, veterans groups, and groups both for and against repeal of the current law and policy; 10) solicited and received the comments of the Secretaries of the Army, Navy and Air Force, and the chiefs of each service, and 11) solicited the views and experiences of current and former SMs who are non-heterosexual. The Co-Chairs personally interviewed former SMs who are non-heterosexual, including those who had been separated under the DADT policy. To reach those currently in the military, they hired a

private company to administer an on-line survey. The company was obligated to protect the identity of service members and did not reveal identifying information to the Working Group. Through the confidential communications mechanism used, the company was able to engage a total of 2,691 service members, 296 of whom self-identified as non-heterosexual, in interactive online conversations about their experiences.²⁰

The Working Group reviewed hundreds of relevant laws, regulations, and DoD and service department policies and issuances (directives, instructions, and memoranda) and evaluated various policy options. The Co-Chairs claimed that the breadth, depth and extent of its nine-month review and engagement of the force were the largest and most comprehensive in the history of the U.S. military concerning personnel-related matters. The Co-Chairs admit that a repeal of DADT will likely bring about some short term limited and isolated disruption to unit cohesion and retention, but they do not believe the disruption will be widespread or long-lasting. They believe that if there is a sustained commitment to the core values of leadership, professionalism, and respect for all, they are convinced that the U.S. military can adjust and accommodate this change just like any other change it faced.²¹

The Report took into account the fact that the Nation is at war and the military has faced the stress and demands of frequent and lengthy deployments, and concludes that repeal can be implemented now, provided it is done in a manner that minimizes the burden on leaders in deployed areas. The primary concern is the added requirement that will be created by the training and education associated with repeal.²²

The Report relied on some history. Though there are differences between race, gender, and sexual orientation, the U.S. military's prior experiences with racial and

gender integration are relevant. In the late 1940s and early 1950s, the U.S. military took on the racial integration of its ranks. By 1953, 95% of all African-American soldiers were serving in racially integrated units.²³ The story is similar concerning gender integration. In 1948, women were limited to 2% of active duty personnel. Currently, women make up 14% of the force, and are permitted to serve in 92% of the occupational specialties.²⁴

The Report also included the experiences of foreign allies. In recent times, a number of other countries transitioned to policies that permit non-heterosexuals to openly serve. They include the United Kingdom, Canada, Australia, Germany, Italy, and Israel. Likewise, the Report included the experience of various municipal and federal agencies. The CIA, FBI, USAID, and the State Department all have personnel who serve alongside the U.S. military personnel in deployed areas. Reportedly, in those agencies, integration of non-heterosexuals did not negatively affect institutional or individual job performance.²⁵

Finally, the overall assessment is based on a risk assessment conducted by a panel of military personnel and DoD career civilians drawn from across the services. The panel used a standard military decision support process recommended by the J-8, Directorate of the Joint Staff. After reviewing the survey results and other information gathered by the Working Group, the panel members used their own professional judgment to assess the risk resulting from a repeal of DADT as it relates to military readiness, unit effectiveness, unit cohesion, recruiting, retention, and family readiness. Using the panel's determinations, the Co-Chairs concluded that the risk resulting from repeal as it relates to overall "military effectiveness" was low.²⁶

Summary of the Report's Recommendations. First, successful implementation of any repeal of DADT will require a strong clear message and proactive education concerning leadership, professionalism and respect. Second, it is not necessary to establish an extensive set of new or revised standards of conduct. Third, no service member's views should be downplayed or dismissed and special attention should also be given to address the concerns of military chaplains. Fourth, creating a new category for bathroom facilities and living quarters would be a logistical nightmare, expensive, and impossible to administer. Fifth, sexual orientation should not be placed alongside race, color, religion, sex, and national origin as a new class eligible for various diversity programs, tracking initiatives, and complaint resolution processes under the Military Equal Opportunity Program.²⁷

Sixth, due to current law, particularly the Defense of Marriage Act,²⁸ there are a number of benefits that cannot legally be extended today to non-heterosexual SMs and their same-sex partners, even those who are lawfully married in states that permit same-sex marriage. Therefore, DoD should a) inform SMs about those benefits that are already available to any person of a SM's choosing (which would include a same-sex partner), b) review those benefits that may, where justified from a policy, fiscal, and feasibility standpoint, be revised by a change in regulation to become a "member-designated" benefit in order to give the SM the discretion to designate any beneficiary, and c) not, at this time, revise their regulations to specifically add same-sex committed relationships to the definition of "dependent," "family members," or other similar term in those regulations, for purposes of extending benefits eligibility, but that this particular

issue be revisited as part of a follow-on review of the implementation after any repeal of DADT.²⁹

Seventh, SMs previously separated under DADT should be permitted to apply for reentry into the military pursuant to the same criteria as others who seek reentry. However, SMs who apply for re-accession after having been separated under DADT should not be given any type of credit for the time out of service, subject to any actions a board for the correction of military records may take.³⁰

Eighth, the Report supports the pre-existing proposals to repeal Article 125 of the Uniform Code of Military Justice (hereinafter referred to as the “UCMJ”) to remove private consensual sodomy between adults as a criminal offense. They believe this change is warranted irrespective of whether DADT is repealed in order to resolve any constitutional concerns about the provision in light of the Supreme Court’s decision in *Lawrence v. Texas*,³¹ and the Circuit Court of Appeals for the Armed Forces’ decision in *U.S. v. Marcum*.³² They also support revising offenses involving sexual conduct or inappropriate relationships to ensure sexual orientation neutral application. For example, the offense of adultery defined in the *Manual for Courts-Martial* (hereinafter referred to as “MCM”) should be revised to apply equally to heterosexual and homosexual sex that is engaged in by or with a married person. Finally, the Report recommends that one year after any repeal of DADT, DoD should conduct a follow-on review to monitor the implementation of repeal and to determine the adequacy of the recommended actions that are adopted.³³

Analysis of the Report and its Recommendations. Overall, the Report and its recommendations provide for a comprehensive review of the issues surrounding any

proposed repeal of DADT. The report surveyed thousands of SMs and spouses, solicited the views of civilian and military leaders, conducted face-to-face forums and small focus group sessions, solicited and received the views of foreign allies and veteran's groups, solicited the views of current and former non-heterosexual SMs, and reviewed hundreds of laws, regulations and policies. The Report and its collateral Support Plan for Implementation (discussed below) produced 343 pages of formal reference material and recommendations. The Report will provide the Chairman, SecDef, and the President a good start point to begin analyzing the potential effects and impact of the DADT Repeal Act. The Co-Chairs' overall assessment is generally supported by the Working Group's extensive work. However, there is a difference between a report that is comprehensive and a report that is thorough. The Report can certainly be considered comprehensive since it covered so many areas, but it lacks some thoroughness in three areas.

First, the SM surveys were submitted to 200,000 active component SMs and 200,000 reserve component SMs. The surveys were voluntary and approximately 115,000 SMs responded (approximately a 29% response rate out of 400,000 SMs). The surveys should have been mandatory and submitted to all active component and reserve component SMs. DoD requires its SMs to complete several mandatory surveys and/or training items on a *yearly* basis. For example, sexual assault awareness, motorcycle safety, suicide prevention, law of land warfare, and information awareness/safety. This training is also mandatory for deployed SMs. There is no reason not to require all SMs to participate in the Working Group DADT surveys. If the survey responses required additional time to obtain and tabulate, the Co-Chairs could

have easily asked for a time extension from the SecDef. DADT is an issue that evokes national concern and is important to SMs, families, civilian leaders, military leaders, the public, Congress and the President. The survey responses given by 115,000 SMs out of a total force that exceeds 2.5 million SMs should not be the final basis to draw conclusions concerning SM attitudes towards non-heterosexual military service and the impact(s) of any proposed repeal of DADT.

Second, the Working Group's surveys included 103 questions. Some of the questions also included several sub-questions. The questions were designed to measure the pulse of the force. However, the surveys failed to ask each SM the most obvious question: "At this time, do you feel that DADT should be repealed and non-heterosexual SMs should be allowed to openly serve in the U.S. Armed Forces." It is possible that the Co-Chairs and/or the Working Group did not want to ask the most obvious question since those SM responses might be viewed as a military *referendum* on DADT. Clearly, the final decision rests with Congress and the President, not SMs. On the other hand, there were many survey questions concerning personal background, race, ethnicity, marital status, number of children, opinions concerning general unit readiness, cohesion, performance, morale and the unit's ability to work together in combat and noncombat areas. There were also many questions concerning serving alongside non-heterosexuals, particularly as it relates to housing, restroom facilities, leadership, performance, unit cohesion, unit morale, unit trust, personal conduct, good order and discipline, mission accomplishment, unit socializing, personal and unit readiness, unit motivation, unit training, pay and benefits, and DoD's ability to implement any new policy.

Many of the questions are phrased to assume that DADT will be repealed and asks each SM his/her thoughts concerning the level of impact that repeal will have on each of the above-noted topics (e.g. unit cohesion, good order and discipline, unit morale...). These types of questions can also be construed as a referendum on DADT. As long as SMs are advised that responses are provided for informational use only, there is no reason not to ask every SM whether or not DADT should be repealed. SM opinions concerning any potential repeal are relevant and should be considered like the answer to any other question in the survey. Frankly, there may have been a fear that SM responses to a direct question on repeal might override the answers to other survey questions.

The U.S. military generally prides itself on asking SMs about their attitudes and opinions on lots of different topics. For example, command climate surveys specifically request soldiers to provide pointed opinions concerning feelings about unit cohesion, morale, performance, and the command's treatment of unit members. Command climate surveys *are* used as a SM referendum concerning individual beliefs about a command's overall effectiveness. If a majority of SMs indicated that DADT should not be repealed, the Chairman might have a harder time certifying the process required in the DADT Repeal Act. The U.S. military prides itself on the education level and intellect of its SMs and senior leaders, and also prides itself on training both groups to ask and respond to the hard questions. The Co-Chairs and/or Working Group failed to ask the hard question and ignored the obvious.

Third, the Co-Chairs' overall assessment was certainly based on the entire body of information contained in the Report, but was mainly based on the "staff assessment"

conducted by the “panel” of military officers, senior non-commissioned officers, and DoD career civilians. As discussed above in the *Summary of Comprehensive DoD Working Group Report* section, the “panel” used a “standard military decision support process” recommended by the J-8, Directorate of the Joint Staff. The J-8 staff directorate is the section that handles *resource management* issues. It is certainly possible that this “standard military decision support process” is used by many different commanders, leaders, staffs, and other working groups. However, the Report does not define or explain this process or any of its methodologies; only that the process was used by DoD to support the new Cyber Command location and the Afghan National Security Force size and mix.³⁴ The Co-Chairs also did not explain how or why the particular overall assessment “panel” members were selected. The reader is apparently expected to accept that: 1) the “standard military decision support process” is sufficient and appropriate to use as a tool to assess whether or not the risk of any proposed repeal of DADT is low, moderate or high, and 2) that the “panel” members were appropriately selected for this task. The report does not state whether the “panel” members were selected from within the Working Group or were selected independently. They are not identified. Bottom line, the “panel” members used their own professional judgment to assess the risk of any proposed repeal of DADT as it relates to military readiness, unit effectiveness, unit cohesion, recruiting, retention, and family readiness. The Co-Chairs’ lack of clarity in describing the overall assessment process may leave a reasonable reader with the impression that there is no real overall assessment process and only opinion.

Summary and Analysis of the Support Plan for Implementation. As stated above in the *Summary of Comprehensive DoD Working Group Report* section, the SecDef appointed the Co-Chairs to stand up a Working Group to undertake a comprehensive review of the impacts of any repeal of DADT. At the same time, the SecDef also directed the Co-Chairs to provide a plan to support the implementation of any repeal of DADT. In response, the Co-Chairs submitted (contemporaneously with the Report), the “*Support Plan for Implementation - Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell”*”³⁵ (hereinafter referred to as the “Support Plan”).

The Support Plan has three stages: pre-repeal, implementation and sustainment. The pre-repeal stage begins at the direction of the SecDef. This paper submits that the pre-repeal stage began when the SecDef directed the Co-Chairs to prepare the Report and the Support Plan. This stage ends and the implementation stage began when DADT was repealed by statute. The sustainment stage will begin after new policies are put into effect and there is a continuing review and monitoring process.³⁶

The following summary and analysis provides a review of each stage, but it reviews the pre-repeal stage and implementation stage recommendations together as essentially one phase. This is due to the fact that the DADT Repeal Act is already passed but is not yet effective, the recommendations in each of those two stages are very similar, and because the DADT Repeal Act was enacted only 22 days after the Support Plan was submitted to SecDef. Therefore, the pre-repeal stage (planning) and implementation stage may have to bleed together, almost into one stage, out of necessity.

Pre-Repeal Stage. DoD will need to prepare for repeal in four key areas. First, it will need to focus on preparatory legal, policy, and regulatory Issues. This includes reviewing and preparing for revision of necessary policies, regulations, instructions, UCMJ, MCM, and studying the fiscal impact and timing of repeal. Second, it will need to draft initial education and training documents. This includes training specialty areas such as judge advocates, chaplains, medical personnel, recruiters, as well as leaders and SMS. This training includes, but is not limited to, familiarization with frequently asked questions, leader toolkits, vignettes, manuals, websites, social media, lesson plans, professional schools and other educational forums, sexual assault prevention programs and informational materials appropriate for distribution to military spouses, supporters, and families. Third, DoD will need to develop a plan for leadership communications. This includes, but is not limited to, articulating a clear leadership vision, preparing memoranda to be issued by senior DoD and service officials, preparing press releases and senior leader talking points to inform the force, the public and retired military personnel concerning the Report and the Support Plan. Fourth, DoD will need to plan for an implementation assessment by identifying and preparing appropriate monitoring mechanisms to measure the success of follow-through on repeal.³⁷

The four pre-repeal preparation steps noted above will require strategic, organizational, and tactical level leaders to provide a sincere, thoughtful and effective vision and communications process. Neither SMS, nor the public, will buy-in to any proposed new policy unless military leaders lead by example. Leadership is the key. The U.S. Army War College Strategic Leadership Primer lays out the basic concept.

“Strategic leadership is generally a team sport that requires a strategic leader visioning process to create the alignment between the organization’s strengths and weaknesses and the anticipated demands of the future external environment.”³⁸

Even simple discussions concerning DADT can create volatility, uncertainty, complexity and ambiguity (VUCA) among political, public, and military audiences. Leaders at all levels must be the change agents for any policy to repeal DADT. Once the vision is laid out, the communication and reinforcement plan must be centralized so all leaders communicate the same ideas. However, the leaders must also be agile because every written communication, group session or individual conversation will generate different thoughts and comments. The leader must be able to discuss the strategic vision while empathizing with all parties. In order to effectively accomplish this mission, the leader must exhibit conceptual competencies, technical competencies, and interpersonal competencies.³⁹ The leader will be responsible to provide SMs with frames of reference, problem management, future envisioning, systems understanding, social competence, and be able to build a consensus.⁴⁰

In order to successfully convey the DADT Repeal Act message, DoD must swiftly begin leader and professional corps training and education now so these individuals can intelligently discuss the Act and its basis *before* it becomes effective. The leader will be responsible for setting the dialogue stage and providing a confident message to subordinates that the Act is appropriate, reinforces American values, and should have little impact upon unit morale, effectiveness, readiness and cohesion. In order to accomplish this, the leader must emphasize the basic message that non-heterosexuals serve now, in the past, and will continue to serve in the future just like any other SM.

The only difference now is that the law has changed and non-heterosexuals are no longer required to remain silent concerning their sexual orientation. The start point begins by introducing SMs to the new law and reinforcing the concepts of equality, military bearing and treating others with respect. The leader should conduct his/her dialogue, education and training along with judge advocates, medical personnel and chaplains. The judge advocate helps provide technical legal expertise and the SMs should be introduced to the medical personnel and chaplain personnel just in case counseling is desired.

From a theoretical standpoint, this paper submits that W. Warner Burke provides a good model for Army leaders to follow during a planned organizational or cultural change. Under his model, in order for any message to stick, the leader must find ways to change the context so that the message becomes a reality and goals become attainable.⁴¹ Burke actually cites author Malcolm Gladwell's book, *The Tipping Point*, for the preceding and following principles. Effective and organizational change requires a message pre-launch, message launch, message post-launch, and sustainment of the change.⁴² Prelaunch provides the initial message virus concerning purpose and direction; launch spreads the message and facilitates memory; post-launch provides message repetition; and sustainment deals with unanticipated unforeseen consequences of initiatives and interventions.⁴³ In essence, leaders must let SMs know that change is coming, provide a thoughtful and credible message product, reinforce that message over a long period of time, and be prepared to sustain communications and programs to ensure success.

Implementation Stage. During this stage, DoD will need to focus on four areas as well: 1) update and publish new policies (legal, policy and regulatory action items), 2) communicate the changes, 3) provide the education and training prepared in the pre-repeal stage, and 4) re-emphasize the key messages of leadership, professionalism and respect.⁴⁴ The pre-repeal stage and implementation stage analyses include fifteen (15) different legal, policy and regulatory action items recommended to DoD and summarized as follows:

1) *Separation Policy.* Publish new versions of DoD Instruction 1332.14, Enlisted Administrative Separations (March 29, 2010), and DoD Instruction 1332.30, Separation of Regular and Reserve Commissioned Officers (March 29, 2010), reflecting the elimination of non-heterosexual conduct as a basis of separation, and publish regulations eliminating the separation code for non-heterosexual conduct and provide guidance on how to interpret DD-214s.⁴⁵

2) *Standards of Conduct.* Make no revisions to existing standards of conduct policies/regulations. DoD should only issue general guidance that all standards of personal and professional conduct should apply uniformly without regard to sexual orientation and that each separate service provide adequate guidance concerning public displays of affection, dress and appearance, unprofessional relationships and harassment.⁴⁶

3) *Moral and Religious Concerns.* Current policies allow SMs to freely exercise their religious beliefs and there should be no new policies with respect to SMs' religious practices. DoD should reiterate the principle that chaplains, in the context of their religious ministry, are not required to take actions inconsistent with their religious beliefs, but must continue to care for all SMs.⁴⁷

4) *Equal Opportunity.* DoD should issue guidance on the prevention of discrimination, harassment, or abuse based on sexual orientation and that sexual orientation may not be used as a factor in accession, promotion, or other personnel decision-making. Non-heterosexual SMs shall be evaluated only on individual merit, fitness, and capability. The Military Equal Opportunity Program should not be used to investigate "discrimination" claims based upon sexual orientation. Such claims should be handled through the chain of command, inspector general or other means.⁴⁸

5) *Collection and Retention of Sexual Orientation Data.* DoD should continue its policy against collecting or retaining information on SMs' sexual orientation.⁴⁹

6) *UCMJ*. DoD should proceed with the Joint Service Committee (JSC) proposals to seek repeal of Article 125 of the UCMJ in its entirety and to amend Article 120 of the UCMJ to include forcible sodomy and sodomy offenses against children. DoD should also proceed with the JSC's related proposal to amend the MCM to include other aspects of Article 125 not barred by Federal court decisions (e.g., sodomy that is service discrediting) in the punitive offenses section of the MCM under Article 134. JSC should continue to review all other UCMJ offenses involving sexual conduct or inappropriate relationships to ensure sexual orientation-neutral application, and take actions as appropriate.⁵⁰

7) *Privacy and Cohabitation*. DoD should issue guidance prohibiting the designation of separate bathroom, bathing and billeting facilities based on sexual orientation, except that commanders have the authority to accommodate privacy requests on an individualized, case-by-case basis, in the interest of maintaining morale, good order, and discipline, consistent with performance of mission.⁵¹

8) *Benefits*. Where it is permissible to do so under existing statutory definitions and where justified by policy, fiscal, and feasibility considerations, DoD should redefine the eligibility for benefits and/or support resources to allow SMs to designate a beneficiary or supporter of their choosing. DoD should continue to study extension of benefits in accordance with the law.⁵²

9) *Medical Policy*. In the event of repeal, there will be no change in the safety of the blood supply and no significant change in overall HIV prevalence. Consistent with the letter provided to the Working Group by the Surgeons General of the military departments, there should be no new policies or modifications to existing medical policies.⁵³

10) *Duty Assignments*. DoD should not, at this time, rewrite regulations to specifically accommodate same-sex committed relationships for purposes of duty assignments. DoD should develop and implement appropriate guidance on lawful and unlawful behaviors for individual countries for pre-departure briefings when SMs are traveling to OCONUS assignments.⁵⁴

11) *Accessions and Recruiting*. All recruiting and accession instructions should be changed to remove references to non-heterosexual conduct as a basis for administrative separation or for denial of entry into military service. Recruiter training should continue to include a section addressing the prohibition on requesting or collecting information regarding applicants' sexual orientation. Recruiters should be prepared to answer questions about repeal that they will inevitably receive from potential recruits and in public venues. Language pertaining to administrative separation for non-heterosexual conduct should be removed from briefings given to applicants for enlistment and appointment.⁵⁵

12) *Release from Service Commitments*. DoD should communicate to the force that no new procedures will be developed for the early separation of SMs, to

include chaplains, based on opposition to repeal or to serving and living with non-heterosexual SMs. SMs may request to be voluntarily discharged under a Service Secretary's plenary authority, which will be granted only when the Secretary has determined the early separation would be in the best interest of the Service.⁵⁶

13) *Family Readiness*. Publish and distribute electronic media and printed materials concerning repeal to family support organizations, counseling centers, pediatric clinics, family practice clinics, and other areas frequented by military families. Ensure family support staff, including counselors and military chaplains, are prepared to assist SMs and families in discussing issues related to repeal.⁵⁷

14) *Re-Accession*. Prior service personnel who meet all qualifying conditions and were discharged solely on the basis of non-heterosexual conduct under 10 U.S.C. § 654 should have the same opportunity for reentry as other similarly qualified prior SM. The fact that the basis of the separation was non-heterosexual conduct should not be considered to the detriment of the applicant. DoD should coordinate with the Department of Veterans Affairs to determine if any veteran benefits for SMs separated under 10 U.S.C. § 654 need to be reinstated.⁵⁸

15) *Follow-On Review*. Establish a program of ongoing review of the implementation of repeal, to include reviewing and updating policy related to same-sex partner benefits when appropriate.⁵⁹

The above-noted action items are appropriate and logical in light of the fact that the DADT Repeal Act will, most likely, be certified and eventually become effective. In addition, the standards of conduct regulations will need to be slightly modified to provide that public displays of affection may be shown in uniform, but must be simple, discreet, and never vulgar. The problem will rise during those military functions where some sort of public display of affection is normally exchanged. DoD should assume that non-heterosexual SMs will exchange simple public displays of affection during normal personal greetings, promotion and retirement ceremonies, or upon redeployments, just like heterosexuals. These sorts of public displays of affection are common, but many heterosexual SMs *may* feel uncomfortable seeing non-heterosexuals share public displays of affection. If senior and subordinate leaders take the time to sit down with

their units and candidly discuss the law, equality and respect, then SMs may understand such public displays of affection are inevitable, and provide no direct threat. On the other hand, non-heterosexuals must also consider their own actions while in uniform and conduct themselves in a professional manner.

Moreover, although military chaplains face non-heterosexual issues now, they are likely to see an increase in non-heterosexual issues as part of their ministry and counseling responsibilities once DADT is repealed. However, chaplains are well trained and want to minister to and counsel their flocks. Several chaplains may not agree with repeal, but they will not be confused. They are educated, experienced, and motivated. Just because non-heterosexuals may openly serve in our ranks, does not mean that chaplains accept or condone a non-heterosexual lifestyle. They should be free to openly discuss their religious faith from the pulpit and during private counseling sessions, but at the same time, there may be problems if chaplains challenge the new policy from the pulpit. For example, if a chaplain consistently preaches (from the pulpit) about the “sins of non-heterosexuality or that the new policy may lead to moral degradation,” the command may be forced to choose between discussing the situation with the chaplain, asking him/her not to preach in a certain way, or taking no action. This scenario pits free speech and freedom of religion versus good order and discipline. There is no easy answer or standard policy that easily solves this sort of dilemma. Chaplains will only need to accept the fact that non-heterosexuals can openly serve in uniform, just as they can in any other profession. Frankly, the risk is probably low and the chaplain corps may be our greatest asset in resolving tensions and disputes.

Lastly, there may be personal, social, political, religious and moral reservations, whether rational or irrational, that may cause some minor breakdown in unit cohesiveness. Some SMs may voice strong public opposition to the new policy. Some SMs may refuse to serve with non-heterosexuals, attempt to resign or choose not to reenlist. This sort of breakdown can pose a distinct danger to military preparedness, effectiveness and readiness. The question is how much breakdown may DoD face, if any? The agile leader needs to recognize the early signs of discontent or breakdown and directly attack the problem. Soldiers have no choice but to serve alongside one another, so the leader must first determine if the problem is personal in nature or whether there is some sexual orientation neutral issue involved. Once the crux of the problem is correctly identified, the leader must then administer appropriate counseling, education, training and/or discipline. If the breakdown is not solved or reduced, then unit readiness suffers. Commanders will have to act quickly to ensure that these types of problems do not escalate. The real danger is that DoD may not be able to accurately assess the risk until the DADT Repeal Act takes effect.

Sustainment Stage. In this final stage, DoD will need to: 1) identify and monitor policies and regulations in those areas that will be the greatest barometers of implementation success, 2) devise and employ a follow-on review strategy that will help the services adapt and refine the policies and training approaches for greater implementation success, and 3) adapt education and training tools to better implement repeal and continue to reduce potential impact to unit cohesion, effectiveness, and readiness.⁶⁰ This process must apply to all recommendations noted in the Report as well as the specific action items noted in the Support Plan.

Recommendations. Even though the Report and Support Plan are comprehensive and will provide the Chairman, SecDef and the President a good start point to begin analyzing the potential effects and impact of the DADT Repeal Act, this paper submits the following recommendations, not to attack the Report or the DADT Repeal Act, but as a measure to shore up shortfalls in the Report and provide more credibility and transparency to the Report and the DADT Repeal Act:

- 1) Congress should eliminate the Chairman's role in the certification process currently required by §(b)(2) of the DADT Repeal Act;
- 2) Congress should immediately hold bi-partisan joint committee hearings concerning: a) the Report's limited SM survey process, and b) how the Co-Chairs arrived at their overall assessment using the "J-8, Directorate of the Joint Staff's "Standard Military Decision Support Process"; and
- 3) SecDef should require the Co-Chairs to: a) re-conduct the Working Group's SM survey and require all active and reserve component SMs to participate, b) add the following question to the new survey: "At this time, do you feel that DADT should be repealed and non-heterosexual SMs should be allowed to openly serve in the U.S. Armed Forces," and c) publicly release all documents, memoranda and results associated with the Report and the Support Plan, except personally identifiable information.

Conclusion. In sum, sexual orientation alone should not be a basis to deny enlistment or continued military service. As written now, the law essentially provides that non-heterosexual status, in and of itself, is a basis to prevent enlistment and/or continued service in the U.S. Armed Forces. As previously stated, this paper rejects the premise that non-heterosexuals are any less capable concerning loyalty, dedication, respect, selfless service, honor, integrity or personal courage. If non-heterosexual status (by itself) can be used as a basis to prevent enlistment and continued military service, then there is no reason not to apply the same rationale to any other employment, private or public. Even though there are differences between military and

non-military employment, the concept of equality should control. This does not mean that any individual, politician, military service or leader accepts, adopts, or condones any sort of personal private non-heterosexual lifestyle. It merely means that non-heterosexual status alone should not be a basis to deny military service/employment. If a non-heterosexual SM is professional, shows military bearing, is a patriot, and is willing to defend this country, its citizens and U.S. allies, then sexual orientation should not be an issue. Many serve now. The President, SecDef, our elected officials, and strategic military leaders at the national level share the responsibility for conveying this message to the public and the military. The statutory and regulatory revisions will face challenges. However, U.S. SMs are the finest, most effective, smartest and most lethal fighting force the world has ever known. They will adapt and overcome all obstacles. Leaders at all levels are the key change agents for success or failure. The message and how it is presented will be the key to success.

Endnotes

¹ Defense Directive 1332.14: Enlisted Administrative Separations. Department of Defense. January 28, 1982.

² Ibid., (Part 1, Section H)(1)(a).

³ Ibid., (Part 1, Section H)(1)(c).

⁴ Defense Directive 1332.30: Separation of Regular Commissioned Officers. Department of Defense. February 12, 1986.

⁵ National Defense Authorization Act for Fiscal Year 1994, Public Law 103 -160, 103rd Cong., (October 1, 1993).

⁶ 10 U.S.C. § 654(b) (Effective November 30, 1993).

⁷ Ibid.

⁸ Ibid.

⁹ Defense Directive 1332.14: Enlisted Administrative Separations. Department of Defense. December 21, 1993.

¹⁰ Ibid.

¹¹ Defense Directive 1304.26: Qualification Standards for Enlistment, Appointment, and Induction. Department of Defense. December 21, 1993.

¹² National Defense Authorization Act for Fiscal Year 2011, Public Law 111-321, 111th Cong., (December 13, 2010).

¹³ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61951>, (accessed February 3, 2011).

¹⁴ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61947>, (accessed February 3, 2011).

¹⁵ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61945>, (accessed February 3, 2011).

¹⁶ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61898>, (accessed February 5, 2011).

¹⁷ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61924>, (accessed February 5, 2011).

¹⁸ US Department of Defense Homepage, <http://www.defense.gov/news/newsarticle.aspx?id=61893&461893=20101130>, (accessed February 5, 2011).

¹⁹ Hon. Jeh Charles Johnson and General Carter F. Ham *et al.*, *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell,"* (Washington, DC: U.S. Department of Defense, November 30, 2010), 1.*

²⁰ Ibid., 1-2.*

²¹ Ibid., 3.*

²² Ibid., 7.*

²³ Ibid., 7-8.*

²⁴ Ibid., 8.*

²⁵ Ibid., 8-9.*

²⁶ Ibid., 9.*

²⁷ Ibid., 10-14.*

²⁸ 28 U.S.C § 1738C (1996); 1 U.S.C. § 7 (1996).

²⁹ Johnson and Ham *et al.*, *Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell,”* 142.*

³⁰ *Ibid.*, 16.*

³¹ 539 U.S. 558 (2003).

³² 60 M.J. 198 (C.A.A.F. 2004).

³³ Johnson and Ham *et al.*, *Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell,”* 16.*

³⁴ *Ibid.*, 9.

³⁵ Hon. Jeh Charles Johnson and General Carter F. Ham *et al.*, *Support Plan for Implementation -- Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell,”* (Washington, DC: U.S. Department of Defense, November 30, 2010).

³⁶ *Ibid.*, 2-3.*

³⁷ *Ibid.*, 13-14.*

³⁸ Stephen J. Gerras., ed. *Strategic Leadership Primer*, 3rd Edition (Department of Command, Leadership and Management, United States Army War College, 2010), 7.

³⁹ *Ibid.*, 28-34.

⁴⁰ *Ibid.*

⁴¹ Burke, W. Warner. “Organizational Change: Epidemics, Integration, and Future Needs,” pp. 28-50. *Organization change: Theory and Practice*. Thousand Oaks, CA: Sage Publications, Inc., 2002.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Johnson and Ham *et al.*, *Support Plan for Implementation, Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell,”* 29-30.

⁴⁵ *Ibid.*, 30.

⁴⁶ *Ibid.*, 30-31.

⁴⁷ Ibid., 31.

⁴⁸ Ibid., 31-32.

⁴⁹ Ibid., 32.

⁵⁰ Ibid.

⁵¹ Ibid., 32-33.

⁵² Ibid., 33.

⁵³ Ibid., 22.

⁵⁴ Ibid., 33. See also Johnson and Ham *et al.*, *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell,"* 148.

⁵⁵ Ibid., 22.

⁵⁶ Ibid., 33.

⁵⁷ Ibid., 34.

⁵⁸ Ibid., 23.

⁵⁹ Ibid., 34.

⁶⁰ Ibid., 39.

* (These particular notes signify a paragraph or portion of a paragraph that is noted as a partial abstract of the source material)