

The Homosexual and the Military

Last fall I found myself back in a college classroom after nearly eight years of service in the armor and aviation branches of the U.S. Army. In the Daily Pennsylvanian I was reading editorials protesting the alleged evils of the Department of Defense (D.O.D.) as manifested through the Reserve Officer Training Corps. The editorials accused D.O.D. of "discrimination, obstinacy and an historic injustice" while a headline announced, "Dartmouth College to expel R.O.T.C.". One of my classmates, a graduate of Dartmouth, commented favorably on the headline while I shook my head in disgust. The discussion that ensued is the motivation for this paper. While my classmate referred to equal rights, non-discrimination, and moral justice, I replied that although her points were appropriate for the civilian world, she did not understand that the military is different and that admitting homosexuals would be detrimental to the military's mission. Although my arguments meant nothing to her, I sat smugly in the realization that I was right. The purpose of this paper is to transform my smug realization to a reasonable, thoughtful, and defensible argument. In part one of this paper I will outline the Department of Defense position on homosexuality and several court cases upholding the policy. In part two I will present the various arguments against the D.O.D policy. In the third section I will then defend the policy in terms of these arguments.

PART ONE: THE DEPARTMENT OF DEFENSE POLICY

The Department of Defense classifies a person as homosexual if he or she satisfies any one of the following three criteria: a person who has engaged in homosexual activity; a person who desires homosexual activity; or a person who professes to be a homosexual. In other

words, a soldier or enlistee who admits to participating in a homosexual act or admits a desire to engage in a homosexual act or admits to being a homosexual is subject to the provisions of Army Regulation 635-200, Chapter 15, paragraph 15-1a, 15 Jan 1985:

Homosexuality is incompatible with military service. The presence in the military environment of persons who, by their statements, demonstrate a tendency to engage in homosexual conduct, seriously impair the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among members; to insure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security.

This policy has been upheld by several federal circuit courts of appeal, including the Fifth, the Tenth and the District of Columbia. For the most part, the cases heard by these courts have tried to establish that the policy discriminates against homosexuals in violation of their equal rights. The decisions handed down provide interesting and valuable insights into the issue. For example, in Ben-Shalom v. Marsh (881 F.2d 454 7th Cir. 1989), the Seventh Circuit Court of Appeals upheld the policy, and further review by the United States Supreme Court was denied. In regard to this case, where a female non-commissioned officer admitted she was a lesbian and was denied reenlistment, the court found as follows:

The military establishment is very different from civilian life. When

necessary, the military must be able to protect and defend the United States. That is a most important government mission, a difficult, demanding complex one. It requires a trained professional force of reliable, loyal, and responsive soldiers of high morale, with respect for duty and discipline, soldiers who can work together as a team to accomplish whatever mission they may be given by their commanders. Civilian society is not subject to those sometimes harsh and specialized military demands, and fortunately need not because our civilian society can depend on the military, which is... Congress and the Supreme Court "have found that the special character of the military requires that the civilian authorities accord military commanders some flexibility in dealing with matters that affect internal discipline and morale"... We are directed to be careful not to circumscribe the authority of military commanders to an extent not authorized by Congress... The Army should not be required by this court to assume the risk, a risk it would be assuming for all citizens, that accepting admitted homosexuals into the armed forces might imperil morale, discipline, and the effectiveness of our fighting forces. The Commander-in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with the direct responsibility for our armed forces. If any change to any policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge. We as judges, although opponents of prejudice of any kind, should not undertake to order such a risky change with possible

consequences we cannot safely evaluate."

In a second case involving a naval officer, Woodward v. U.S. (871 F.2d 1068 [Fed. Cir. 1989]) the policy was again upheld by the Court of Appeals for the Federal Circuit Court and denied review by the Supreme Court. The court concurred with the conclusion of the Court of Appeals for the District of Columbia in Dronenburg v. Zech, which stated:

The Navy's policy requiring the discharge of those who engage in homosexual conduct serves legitimate state interests which include the maintenance of "discipline, good order and morale, ... mutual trust and confidence among service members... insuring and retaining members of the naval service... and... preventing breaches in security.... We believe that the policy requiring discharge for homosexual conduct is a rational means for achieving those legitimate interests... The unique needs of the military, "a specialized society separate from civilian society,"... justify the Navy's determination that homosexual conduct impairs its capacity to carry out its mission. 1

Colonel Magers, Staff Judge Advocate of TRADOC (Training and Doctrine Command), clarifies the previous ruling in an information paper entitled, Department of Defense Policy on Homosexuality and the Princeton ROTC Program:

Government regulations are generally presumed to be valid under an equal protection analysis as long as the classification drawn by the regulation rationally furthers some legitimate, articulated state purpose. The Army regulation was held to satisfy that standard "without any difficulty." "We do not believe that the concerns set forth in the military policy and regulation can be... dismissed as mere prejudice... The new regulation, we find, clearly promotes a legitimate

government interest sufficient to survive rational basis scrutiny (3).

This section has summarized the policy in question as well as two decisions in court cases challenging the policy. There are additional cases that have challenged the policy; however, the rulings were similar to those in the examples provided.

PART TWO: THE ARGUMENTS AGAINST THE POLICY

The basic argument being voiced in the major publications across the country is that homosexuals are no different from other persons and are entitled to equal rights protection under the law. Consider one view of David M. Smith, public information director of the Los Angeles Gay and Lesbian Community Services Center, in the August 21, 1991 issue of the L.A. Times, in an article subtitled, "Rights: Even the Army will see that narrow stereotypes don't justify discrimination.":

Being lesbian or gay is not an abnormality, as the American Psychological Assn. affirmed in 1973, the year homosexuality was removed from its list of mental disorders. Many people vehemently disagree, because the discussion cuts right to the core of beliefs that are ingrained by centuries of moral doctrine misinterpreted from the Bible. (4)

Smith writes that, although homosexuals are in every demographic category "substantial change will not happen until public consciousness gets hip to the fact that the gay and lesbian community is massive in scope..." (4)

This basic argument has led to a multifaceted attack on the Defense Department by several writers who point out that the military is the final obstacle in the recognition of the equality of homosexuals. Allan Berube,

author of Coming Out Under Fire, reviews the history of homosexuals in the military during World War II and concludes in his work that "the military's policy remains staunchly antihomosexual while many other bureaucracies, from federal agencies to private corporations, have abandoned similar stands and even adopted policies of nondiscrimination." (276)

There is very little scholarly research to be found on this issue. A majority of the information appears in the form of articles and editorials. Most of these articles combine several arguments with the basic denial of equal rights in order to weaken the basis of the military policy. In this part of the paper I am presenting the appropriate sections of several articles with a minimum of comment. My purpose is to acquaint the reader with the complexity of the issue without bias or prior interpretation on my part. The major arguments against the policy include: prejudice and discrimination on the part of D.O.D.; an inconsistency with the policy exhibited by the employment of homosexuals in the D.O.D. but not the armed forces; a comparison of racial and gender integration to sexual preference integration; soldiers with good performance records having later been discovered to be gay; and a dissatisfaction with the judicial interpretation of the phrase "incompatible with military service."

In the 1 September 1991 edition of the New York Times an editorial entitled "Gay Soldier Good Soldier" describes the military policy as, shortsighted prejudice...to ban homosexuals and to discharge those discovered in its ranks." It further states that Defense Secretary Cheyney "showed little appetite for the task" of explaining why homosexuals are "incompatible with military service". The editor claims

this reluctance is due to the opinion that, the ban "deprives the armed forces of talent and the discharges damage thousands of careers and lives. All for a policy without a shred of hard evidence to support it." The editorial goes on to note that "women have been successfully accommodated, and they performed valiantly in the Persian Gulf war." The editorial also presents the point that one of Secretary Cheney's aides is a homosexual, and that this is a double standard: "Homosexuals are allowed to serve in civilian jobs, even at the highest and most sensitive levels, under civil service rules that outlaw sexual orientation as a criterion for employment." The final point of the editorial states that "the most emotional reason for excluding homosexuals is that service members, in contrast to civilians in the Defense Department, "frequently must live and work under close conditions affording minimal privacy." The author implies that the issue boils down to straight soldiers fearing that "they would be propositioned in the showers". Then counters that this "possibility could be managed with regulations proscribing sexual harassment". An important point that I will address in the next section is the last line of the editorial, "And what consenting adults do on their own time is their own business, not the military's." (10)

In the 21 August 91 editorial of the Los Angeles Times, entitled "Another Wall of Prejudice Starts to Fall", there is a correlation between the situations of black and female soldiers and that of homosexual soldiers:

Although black soldiers have fought with distinction in every American war, official military policy long kept them in separate units with second class treatment and pay. Not until 1948 did President Harry S. Truman issue an executive order that began to

dismantle formal segregation in the armed forces. Women have also long served in the military but were restricted to duties considered ancillary, such as nursing... Similarly, the Army's exclusion of openly gay men and lesbians springs from undisguised homophobia.(6)

The Washington Post editorial on 8 August 1991 continues this argument:

It was once unthinkable that blacks and whites could ever serve together in the armed forces. The mere idea suggested a threat to discipline, good order and morale. So, out of deference to the temper of the times, racial segregation was rigidly enforced throughout most of the military. That is, until President Truman issued his bold executive order in 1948 establishing a policy of equality of treatment and opportunity for everyone in the armed forces. The collapse of the armed services feared by the segregationists never occurred. Nor did a recalcitrant public rise up in arms. Instead the military eventually rose--as the President had hoped it would--to the highest standards of American democracy and began to move toward an integrated service. The same result is occurring today with respect to women in the armed forces. And now, similar demands are being pressed on the Defense Department by gay groups and their supporters. They deserve a well thought out answer.(18)

William A. Henry III, in an article entitled "To "Out" or not "Out", which appeared in the August 19, 1991 edition of Time, and concerns the discovery that a top civilian Pentagon official is gay states, "The activists had an arguable point about the apparent double standard within the Pentagon."(17) Michalangelo Signorile, an author for the now defunct New York City gay magazine OutWeek, is quoted in the same article as

saying, "The fact that a top Pentagon official is gay presents a double standard."

Colbert I. King in a Washington Post column dated 22 Dec 91, comments strongly on the expulsion of a gay midshipman from the U.S. Naval Academy:

This is wrong. The treatment of gays by the military keeps company with racism. The Defense Department's policy on gays approves the subordination of men and women, not on the basis of their ability to perform as sailors, soldiers, Marines or in the Air Force, but solely because of an invidious distinction—their sexual orientation. Fifty years ago, it was skin color that allowed the military to "lawfully" mark certain Americans as fair game for contemptible treatment and exclusion. Today's policy allows the military to cater to prejudice against gays, as illustrated by the midshipman's forced resignation.(7)

The numerous arguments presented here are worthy of thoughtful consideration and deserve to be addressed. My goal is to identify misconceptions that the opponents of the D.O.D. have concerning the military, as well as to inform and educate the rational opposition as to the complex nature of the military organization insofar as it applies to this issue.

PART THREE: JUSTIFICATION OF THE D.O.D. POLICY

The very first point that must be firmly established, and which has been briefly noted in the first section of this paper, is that the military is not simply another place of employment. Colonel Anthony Hartle and Lieutenant Colonel Paul P. Christopher in a paper entitled, "AIDS

Victims And Military Service" have noted that:

...the military has long been considered a special case under the law. The Supreme Court enunciated its unique status in a 1974 decision; "Parker v. Levy", which recognized that the military is a separate society that has a clear set of social norms both well established and peculiar to it. The services have their own criminal code and their own courts system."... "In the Parker decision the Court noted that "while military personnel are not excluded from First Amendment protection, the fundamental necessity for obedience, and the consequent necessity for discipline, may render permissible within the military that which would be constitutionally impermissible outside it".2

This paper also maintains that, "A long list of court decisions in the United States has upheld this status and the legality of regulatory actions that follow from it."3

Furthermore, The Army Officers Guide, a book read by every officer cadet, in Chapter 24, "Rights, Privileges and Restrictions", makes it clear that the military is not just another employment opportunity:

A citizen who enters the military service undergoes at once a change in legal status...The military service can not be "democratic" in operation. It can not be managed, led or directed efficiently if the whim of each individual is to be honored...Military efficiency requires the imposition of restrictions...There is a sufficient case also for the imposing of restrictions upon military people, especially officers, which are not borne by civilians. The Government must insist upon full service of its officers and thus is justified in defining and prohibiting improper outside activities of individuals.(397)

The critics of the Department of Defense are treating the military as they would IBM or Boeing. Every accusation of discrimination and prejudice described in the prior section fails to consider the uniqueness of a military career. By evaluating the military as a "separate society" a reasonable observer can see that the Department of Defense is generally a fair and impartial organization. This leads into the argument that the Department of Defense is applying a double standard of the policy by allowing homosexuals to work in the department but not in the armed forces that fall under its control. In an article in the Washington Post dated August 19, 1991, Lynne Duke quotes the Defense Secretary and his assistant on this point, "In congressional testimony and in a television interview, Defense Secretary Richard B. Cheney defended the policy, saying he did not think it 'fundamentally wrong for us to make a distinction between civilian and military personnel.'" (1)

There is no double standard, the policy was written by the Department of Defense as a regulation for the armed forces. The civilian members of the Department of Defense hold civil-service positions. Although they direct the policy and actions of the armed forces they are not themselves members of the armed forces. Soldiers wear a uniform and pledge an oath. Soldiers live, train and fight in "the military environment" to which the policy applies. Civilian members of the Department of Defense, even career members, wear a suit, typically work in an office, and are not subject to "frequently having to live and work under 'close conditions affording minimal privacy.'" Most important soldiers live by a specific code, which will be discussed shortly, to the provisions of which civilians are not held.

Several of the arguments against the policy are quick to point out the

integration of blacks and of women into the military and demand that if we did it then why can't we do it now. Assistant Defense Secretary for Force Management and Personnel Christopher Jenn is quoted in the same article as Secretary Cheney, pointing out the inconsistency in this comparison:

Opening the military to homosexuals would represent a more radical, a bigger change, a more momentous change in policy than the racial-integrating the military did in 1948." But, he said, comparing the homosexual policy to past policies on blacks is "misleading." Blacks were treated differently because of what they were; homosexuals are treated differently because of what they do." "This is a situation where their behavior, the behavior of homosexuals, the behavior that they do not deny, contradict or argue with in any way, is viewed by a large portion of the population as not just distasteful but immoral, sinful. The Old Testament refers to it as an 'abomination'" said Jenn, citing a verse out of Leviticus. He said the fact that homosexual activity is outlawed in more than half the states supports his characterization of American popular opinion. (1)

Charles Moskos, well-known military sociologist, in his regular column in the Army Times, comments on this argument:

"Proponents of lifting the gay ban are quick to draw an analogy between the current exclusion of homosexuals and the earlier resistance to racial integration in the armed forces. This is a nice debating point, but the comparison does not stand."

Moskos makes the key and conclusive point that "A racial category is not a behavior category." As such there are several more difficulties to overcome than were involved with the integration of blacks and women. 4

Another argument that these articles make is that thousands of

talented homosexuals have served and are currently serving in the military efficiently and without difficulty. In light of these "good soldiers" the ban on homosexuals is thus unfounded. It is important to note that I have found no current argument stating or implying that a homosexual is incapable of performing any specific task. However, that is not the point; what is pertinent is that these homosexual soldiers generally hid their homosexual behavior and, as far as their fellow soldiers were concerned, were heterosexuals. By a soldier admitting his homosexual tendencies he is shedding light on a characteristic he had previously misrepresented to fellow soldiers and to the military command. This single characteristic greatly affects the dynamics of individual as well as group relations. It is the very fact that the individual is homosexual which makes him "incompatible" for military service.

Charles Moskos makes an important distinction, "What is at issue is allowing declared gays and lesbians into the military. This is an entirely different kettle of fish from the service of discreet homosexuals in uniform." He remarks that, "all are not that discreet, since nearly 1,000 homosexuals are discharged from the military each year." He further acknowledges the distinction between declared and closet homosexuals and notes one of the problems professed homosexuals create, "Of course there are concealed homosexuals in the military who function just fine. But that is the point. Closet gays do not cause feelings of invasion of privacy precisely because they are covert."

The military is a cross-section of American society; and, as William P. Snyder and Kenneth L. Nyberg have noted in the Journal of Political and Military Sociology, "Public attitudes towards homosexuals are unfavorable." Moreover, "the emergency of 'liberal pockets of tolerance'

in urban areas in recent years has not caused any significant change in overall public attitudes." (81)

Lieutenant Colonel David Carraway, Professor of Military Science at Temple University, makes the point well:

Just as the presence of a physically or mentally disabled soldier would jeopardize the effectiveness of military units in defense of this nation, so too would the presence of professed homosexuals have a similar effect on the effectiveness of military units so long as the membership of those units reflect the prevailing attitudes of the society they defend, including homophobia.

Snyder and Nyberg amplify the point of "effectiveness of military units": "Given the strong focus on camaraderie, military authorities believe that the effectiveness of units that depend upon the close interpersonal relations and small group cohesion would be seriously impaired by the inclusion of homosexuals." They list several impairments to organizational effectiveness, which also apply to the previous point concerning closet and professed gays. For example, "close interpersonal relations are unlikely to develop between gays and straights. Thus the necessary 'buddy' relationships prevalent in successful military units, and especially critical to combat units, would be less likely to exist." They further explain that which every drill sergeant strives for: "Cohesion requires compliance with the mores of the group; by definition, gays do not conform to the dominant orientation that largely characterizes military organizations." (82)

This idea of military effectiveness, although well understood by every experienced officer and NCO (non-commissioned officer), must be a puzzling concept to critics outside of the military. Snyder and Nyberg attempt to

relay the most important part of its meaning by quoting S.L.A. Marshall in Men Under Fire:

...the thing which enables an infantry soldier to keep going...is the near presence or the presumed presence of a comrade. The warmth which derives from human companionship is as essential to his employment of arms with which he fights as is the finger with which he pulls the trigger... The other man may be almost beyond hailing or seeing distance, but he must be there within a man's consciousness or onset of demoralization is almost immediate...It is far more than a question of the soldier's need of physical support from other men. He must have at least some feeling of spiritual unity with them..Should he lack this feeling for any reason, whether it is because he is congenitally a social misfit or because he has lost physical contact or because he has been denied the chance to establish himself with them, he will become a castaway in the middle of the battle and as incapable of effective offensive action as if he were stranded somewhere without weapons.(73)

A continuation of the efficiency argument involves basic privacy, one of the most practical arguments for maintaining the ban on homosexuals and that most relatable for the civilian population. Although, as Army Regulation 635-200 notes, there is not much privacy, there is still a basic rule that is not intentionally violated. In the December 10, 1991 edition of the New York Times, Judge Oliver Gasch of the United States District Court for the District of Columbia in regard to a case upholding the homosexual ban is quoted as follows: "The quite rational assumption in the Navy is that with no one present who has a homosexual orientation, men and women alike can undress, sleep, bathe and use the bathroom without

fear or embarrassment that they are being viewed as sexual objects."(19)

A further analysis is provided by Charles Moskos who argues:

The proper analogy between homosexuals and heterosexuals is that between men and women. Sexual orientation is, after all sexual orientation. Erotic urges are powerful human drives and recognized as such. Sex between service members does undermine order, discipline and morale. So does invasion of sexual privacy. That is why the military separates the living quarters of men and women. Even in the field conditions, the privacy of men and women is maintained to the maximum degree possible. Nowhere in our society are the sexes forced to endure situations of undress in front of each other. Should we have "empirical research" on the effects on military efficiency of mixed male/female bathing? Most women--and many men--dislike being stripped of all privacy before the opposite sex. Similarly, most heterosexual men and women dislike being exposed to homosexuals of their own sex. If feelings of privacy for women are respected regarding privacy from men, then we must respect those of straights with regards to gays. Anybody who wants to allow homosexuals into the military must make the same argument for breaking down privacy barriers between the sexes. One could argue that homosexuals can be accommodated in today's military by rearranging living areas as we already do for men and women. We could have separate homosexual and heterosexual living quarters...In any event, gay rights advocates have never seriously pushed for this option. Separate living arrangements for homosexuals is clearly a non-starter... Most feminists would not advocate forced intimate living between the sexes. Likewise, enlightened gay advocates should not argue for compulsory intimacy

among persons of openly different sexual orientations. 4

"The Army's Judge Advocate General, Major General Hugh J. Clausen, further defended the Army's position on these grounds in 1982:

Due to the uniqueness of military service...Soldiers are required to live and work under entirely different conditions than civilians. They must often sleep, eat and perform personal hygiene under conditions affording minimal privacy. The presence of homosexuals in such an environment tends to impair unit morale and cohesion as well as infringing upon the right of privacy of those service members who have more traditional sexual preferences. Furthermore, homosexual conduct is a crime in the military. The exclusion of homosexuals from the armed forces is a practical means of precluding from military service a group of individuals who have a natural proclivity to violate the Uniformed Code of Military Justice.(Stiehm 127)

In his final sentence Major General Clausen brings me to the last point of my discussion. Regardless of the greater acceptance of homosexuality in our society, it is still deemed wrong by most religious groups in society, most states in the union, a considerable number of countries in the free world (see Tab 1), and by the Uniform Code of Military Justice.

A majority of the soldiers in the military, although some might not practice a religion regularly, have been brought up within, and hold to, the Judaeo-Christian system of ethics. At this point I am not arguing that homosexuality is wrong because of any verse in the Bible. Rather, I am arguing that a large number of American soldiers look at the Bible as the basis for their moral code and therefore look upon homosexuality as wrong. John J. Mc Neill, in his work The Church and the Homosexual, outlines

three traditional beliefs held by moral theologians concerning homosexuality. "The first is the traditional belief that the homosexual condition, and subsequently all homosexual activity, is contrary to the will of God." McNeill goes on to explain the second traditional thesis is developed from the first, "Granted that the homosexual condition is contrary to the will of God, the presence of the homosexual in the human community is a menace to that community, and especially a threat to the values of the family." The last thesis states "that the love which unites two homosexuals in a sexual union is a sinful love which separates them from the love of God and places them in danger of eternal damnation."
(213)

The Bible, from which America's Judaeo-Christian sense of morality is derived, implies that there is a moral difficulty with homosexuality. In the Old Testament we can look at Genesis 19:4-11, the story of Sodom, and Leviticus 18:22 and 20:13, where the Holiness Code indicates that homosexuality is considered a crime punishable by death. In the New Testament Saint Paul condemns homosexuality in 1 Corinthians 6:9-10, 1 Timothy 1:9-10, and Romans 1:26-27.

In reference to the Uniform Code of Military Justice, Snyder and Nyberg note:

The policies of the military departments regarding homosexuals are consonant with criminal codes in the United States. There are important differences between military law and criminal law applicable to civilians, but the Uniformed Code of Military Justice views homosexual acts in much the same way as federal or state criminal codes: homosexual acts are criminal offenses. Two articles of the Uniform Code of Military Justice apply: Article 125, Sodomy and

Article 134.(76)

Article 125 holds a maximum punishment of dishonorable discharge, forfeiture of all pay and allowances and confinement for five years for cases of sodomy that do not involve "force without consent" or "a child under the age of 16 years" (IV-90). Article 134, the general article, covers "all disorders and neglects to the prejudice of good order and discipline in the armed forces" and "all conduct of a nature to bring discredit upon the armed forces"(IV-109). Of particular interest within Article 134 is paragraph 90, which concerns "indecent acts with another". The elements of this article include; "that the act was indecent" and indecent is explained to signify "that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations."(IV-131)

A third article that Snyder and Nyberg do not consider is Article 133, Conduct Unbecoming an Officer and Gentleman. A consideration I found no trace of in my research is the damage that would be caused to the essence of the military officer by removal of the ban on homosexuals.

The Officers Guide is a book that every officer cadet is required to read as part of the commissioning process. The essence of the military officer for centuries is described early in the guide:

Honor is the hallmark of officer like conduct. It is an outgrowth of character. ...The meaning of honor, in the sense used herein, includes the narrower term of "ethics." As part of honor in service of country, the officer is expected to lead a decent life. An officer does not lie, cheat, steal or violate moral codes...Those who do not live by its standards earn first the scorn of their associates, and if the

offenses are more than trivial, they stand a fine chance of trial for conduct unbecoming an officer and gentleman or lady. The code requires all officers to live and conduct all their activities so that they may look all persons squarely in the eye knowing that they are honorable individuals associating themselves with other honorable individuals.

(10)

The Armed Forces Officer is another of the basic books that every officer cadet is required to read as part of the commissioning process. On the first page of Chapter One, "The Meaning of your Commission", a cadet learns:

The traditional esteem of the average citizen for the military officer is a major ingredient, indeed a prerequisite, of the national security ... Should that faith flag and finally fail, the citizenry would be reluctant to commit its young people to any military endeavour, however grave the emergency. The works of goodwill by which leaders of our military seek to win the trust and approval of the people are in that direct sense a preservative of our American freedoms. By the same reasoning, high character in the military officer is a safeguard of the character of the nation. Anything less than exemplary conduct is therefore unworthy of the commission.(1)

Major General M. B. Stewart, in the 9th edition of the Officers Guide, explains the practical importance of high moral character when he writes: Whether or not we are decent and clean in our own lives, we invariably respect the man who is. We recognize that he is right. We credit him with more strength of character than we have. We unconsciously envy him and in time, if there is any good left in us, we gradually emulate him. The officer by virtue of his position is

responsible for regulating within limits, the moral life of those under him. On occasions, he is called upon to punish them for moral lapses. He cannot do this honestly and justly if his own moral character is no better than theirs. Finally, he has been trained and educated with the idea of making him an example of all things military and manly. (487)

Finally, I turn to one of the greatest military officers in American history in an attempt to relay my concern. In 1962 General of the Army Douglas MacArthur addressed the Corps of Cadets at West Point with these words--"Duty, Honor, Country":

Those three hallowed words reverently dictate what you ought to be, what you can be, what you will be. They are your rallying points...The unbelievers will say they are but words, but a slogan, but a flamboyant phrase. Every pedant, every demagogue, every cynic, every hypocrite, every trouble maker, and I am sorry to say, some others of an entirely different character, will try to downgrade them even to the extent of mockery and ridicule... The code which those words perpetrate embraces the highest moral laws and will stand the test of any ethics or philosophies ever promulgated for the uplift of mankind. Its requirements are for the things that are right, and its restraints are from the things that are wrong. (Officers Guide, pvi)

The Officers Guide on the first page reads:

The code of the Army officer is the beacon which guides his or her course of action. Each officer applies this code as a first essential step in the performance of official responsibilities. Officers follow its principles in their relations with other people, military or civilian, on or off duty. It is part of the development of officers

throughout their careers, and is one of the standards by which they are compared and evaluated.(1)

The ideas in this section may sound like romantic idealism, and if one perceives the soldier's life as a merely a job, like any other, perhaps they are. But the soldier's life is not merely a job. The soldier practices his profession in war and peace, and lives by a code; a code that is honorable and worthy of respect. I have noted the Bible, the Uniform Code of Military Justice, and a few lines of prose to point out these things we hold dear. To allow individuals who regularly and without hesitation violate moral, religious and legal standards to wear the uniform of a soldier is to tarnish the ideals of honor and respect that the uniform has come to represent. This particular point may have little effect on my opposition; however, I hope it has great effect on the ambivalent within my own ranks.

As a final note, I can imagine that one day homosexuality will gain complete acceptance in American society. However, in light of the arguments contained in this paper, the Department of Defense is taking the correct action by currently banning homosexuals from the armed forces. 5

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Tab 1

ADDITIONAL INFORMATION CONCERNING HOMOSEXUALS
IN OTHER COUNTRIES

The October 11, 1991 edition of the New York Times reports that Canada is ending its prohibition of homosexuals in the military. Additionally, Britain excludes homosexuals from its armed forces and the Soviet Union's criminal code, which applies to members of the military as well as civilians, provides that sexual relations of a man with another man "shall be punished by deprivation of freedom for a term not exceeding five years." Homosexuality is not a reason for exclusion in Japan, although it may be used as grounds for discharge if a soldier is impaired or fails to "maintain military dignity.

The March 9, 1989 edition of The Washington Post, provides more information concerning homosexuality in the Soviet Union, "The chief sexual pathologist in Leningrad hospitals, Boris Malenkov, recently told the evening newspaper Vecherni Leningrad, that he thought all homosexuals should be registered by the state so that "they can be treated." Only recently has the soviet press printed statistics about the extent of homosexuality in the country. According to pathologist Dr. Victor Zhdanov, "between 2 percent and 5 percent of Soviet males and 1 to 3 percent of females are purely homosexual."

An article in the Journal of Homosexuality (Vol. 21(4) 1991) entitled, "Military Policies Regarding Homosexual Behavior: An International Survey" by Stanley E. Harris MD, reports of research concerning other nations. The report is summarized as follows:

The military attache's of 110 non-Communist embassies in Washington,

DC, were surveyed from 1982-1984 regarding their countries' military policies about homosexuality. Of the 57 that responded, 37% reported policies excluding persons who engage in homosexual behavior from military service, 14% reported policies that accepted homosexual and bisexual persons, and 49% reported having no policies about homosexual behavior. Cultural factors appear to be related to the military policies. Military policies appear to be related to prevailing cultural, legal, medical, and religious factors. What factors perpetuate the exclusive U.S. policy? Though homosexuality is no longer classified as an illness, dominant religious institutions consider it sinful and one half of the states maintain sodomy laws. The origin of sodomy law can be traced to Emperor Justinian's 6th century A.D. Corpus juris civilis, in which the sin of homosexuality was codified as crime for the Judaeo-Christian world.

RESPONDING COUNTRIES'S MILITARY POLICIES REGARDING HOMOSEXUAL BEHAVIOR

Countries Reporting Policies Excluding Persons Who Engage in Homosexual Behavior from Military Service:

Argentina 1,3,6,7	Greece 3	New Zealand 1,3
Australia 1, 4	Guatemala 1	Pakistan 1,2,4
Canada 1,3,4	India 4,6	Portugal 1,3,4
Columbia 1,3,4	Iraq 1,4	Spain 1,4
Cypruss 1	Italy 3	Trinidad & Tobago 1,4
Finland 3	Jamaica 1,4	Turkey
Great Britain 1,3,4	Lebanon 1,2,3	United States 1,4

Countries Reporting Policies Allowing Persons Who Engage in Homosexual Behavior to Serve in their Militaries:

Austria 7	Netherlands 7
Belgium 3,4	South Africa 1,3
Denmark	Sweden 7
Norway	Switzerland 3,4

Countries Reporting No Exclusive Military Policies Regarding Homosexual Behavior:

Bangladesh 1,2,4	Ghana 5	Madagascar	Nigeria 5,7
Barbados	Grenada 1	Malawi 1,5,7	Philippines
Benin	Indonesia 1236	Malta	Qatar 1,2,5
Botswana 4,6	Israel	Mauritius	Sri Lanka 7
Cameroon 5	Japan 5,7	Morocco 1,2	Tunisia
Cape Verde	Liberia	Nepal 1,3,4,5	Uganda 1
Egypt 2,3,4,6	Kenya 1	Nicaragua	Zambia 1,5

Additional Volunteered Information:

1. Respondent reports cultural disapproval for at least some form of homosexual behavior (47%).
2. Respondent reports religious disapproval of homosexual behavior (12%).
3. Respondent reports that homosexual behavior is considered a psychiatric problem (28%).
4. Respondent reports that some form of homosexual behavior is a punishable offence (32%).
5. Respondent denies existence of homosexual behavior in the military (14%).
6. Respondent minimizes existence of homosexual behavior in the military (9%).
7. Respondent reports that there are no problems related to homosexual behavior in the military (14%).

NOTES

1. I am indebted to LTC Jerry Warnament for his assistance in obtaining this information.
2. I am indebted to LTC. Paul Christopher for the use of his paper and the legal information in footnotes two and three. In delivering the opinion of the Court in Parker v. Levy, 417 U.S. 743, Mr. Justice Rehnquist wrote:
This Court has long recognized that the military is, by necessity a specialized society separate from civilian society. We have also recognized that the military has, again by necessity, developed laws and traditions of its own during its long history. The difference between the military and civilian communities result in the fact that "it is the primary business of armies and navies to fight or be ready to fight should the occasion arise." United States ex rel. Toth v. Quarles, 350 U.S. 11, 17 (1955)
3. See Burns v. Wilson, 346 U.S. 137, 140 (1953): "the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty..." See also Orloff v. Willoughby, 345 U.S. (1953); United States ex rel. Toth v. Quarles, 35 U.S. (1955); In re Grimley, 137 U.S. (1890); Schenk v. United States, 249 U.S. (1919); Dennis v. United States, 341 U.S. (1951); and United States v. Priest, 21 USCMA 564, 45 CMR 338 (1972).
4. I am indebted to LTC Carraway for this information from Charles Moskos. However, his copy did not carry a dateline which is why this piece of information is absent.
5. I would like to thank Dr. Sidney Axinn of Temple University for his many helpful discussions and criticisms on this paper.

WORKS CITED

- "Another Wall of Prejudice Starts to Fall." Los Angeles Times. 21 Aug 1991: B6.
- Armed Forces Information Service. The Armed Forces Officer. Washington: Department of Defense, 1975
- Berube, Allan. Coming Out Under Fire. New York: The Free Press, 1990.
- Carraway, LTC. David, Personal Interview. 27 April 1992.
- Crocker, Lawrence. The Officers Guide (42nd edition). Harrisburg; Stackpole Books, 1983.
- Duke Lynne. "Military's Last Social Taboo." Washington Post 19 Aug. 1991: A1.
- Farnsworth, Clyde H. "Canada Ending Anti-gay Army Rules." New York Times 11 Oct. 1991. late ed.: A3.
- "Gay Soldiers Good Soldiers" New York Times 1 Sep. 1991. night ed.: E10.
- Hartle Anthony E. and Paul Christopher. AIDS Victims and Military Service. Unpublished Essay, West Point, New York.
- Henry, William A. "To "Out" or Not to "Out" Time 19 Aug. 1991: 17.
- King, Colbert I. "The Military's Prejudice Against Gays" Washington Post 22 Dec 1991: C7
- Harris, Scott. "Gay Activists Hail Ruling on Military Policy." Los Angeles Times 21 Aug. 1991: A3.
- "Judge denies bias." New York Times 14 April 1991. night ed.: 13.
- Magers, Colonel. Department of Defense Policy on Homosexuality and the Princeton ROTC Program. TRADOC Information Paper. 28 Dec 1989.
- McNeill, John J. The Church and the Homosexual. Boston: The Beacon Press, 1988.
- Military Service Publishing Co. The Officers Guide. (ninth edition). Harrisburg, Pa., 1942.
- Remnick, David. In the Age of Glastnost, Homosexuality still Taboo in Soviet Union." Washington Post 9 Mar. 1989: A27.

"Revisiting the Ban on Gays." Washington Post 8 Aug. 1991: A18.

Schmitt, Eric. "Citing AIDS, Judge Backs Ban on Gays Serving in Military." New York Times 10 Dec. 1991. night ed.:A19.

Smith, David M. "Gays are Marching in the Mainstream." Los Angeles Times 21 Aug. 1991: B7.

Snyder, William P. and Kenneth L. Nyberg. "Gays and the Military: An Emerging Policy Issue." Journal of Political and Military Sociology 8 (1980): 71-84.

Stiehm, Judith. Arms and the Enlisted Woman. Philadelphia: Temple University Press, 1989.

United States . Department of Defense. Manual For Courts-Martial. Washington:GPO, 1984