

**Appendix of Evidence in
Support of Log Cabin Republican's
Opposition to Defendants'
Motion for Summary Judgment**

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Discussions with Experts

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- Dr. Richard Moreland, University of Pittsburgh, on small group behavior
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- Dr. Brian Mullen, Syracuse University, on group cohesion
- Dr. Steven Neuberg, Arizona State University, on stereotyping
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Nonconforming Sexual Orientations and Military Suitability

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**Nonconforming Sexual Orientations
and Military Suitability**

Theodore R. Sarbin, Ph.D.
and
Kenneth E. Karols, M.D., Ph.D.

Summary

Background and Issue

This study of the suitability of homosexuals for military service was prepared in the context of our continuing search for connections between personal history items and the potential for security violations. If homosexuality is unrelated to job performance (including the observance of security regulations), then the central issue is the validity of DoD's long-time practice of denying military employment to homosexuals solely on the basis of their sexual orientation.

Objectives

The research objective was to write a paper that reviews (1) changing folkways and court decisions, (2) the current scientific status of atypical sexual orientation, and (3) the history of changing social constructions of nonconforming sexual behavior. These reviews provide the background for an examination of current personnel practices.

Approach

From current scientific publications, legal studies, and social science literature, we abstracted findings pertinent to the issue of whether homosexuals are suitable for military service, and by extension, suitable for security clearance. The authors bring to the task different but overlapping frameworks: social psychology and forensic psychiatry.

Results

The product of our efforts is a scholarly document that examines public attitudes, recent legal decisions, and the findings from biological science. The development of

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Introduction

Given continuing manpower needs in the armed forces and also social pressures to remove traditional barriers that exclude homosexual men and women from military service, it is timely to review current perspectives on homosexuality. As context for this review, we examine three kinds of relevant information: (1) judicial trends and shifting folkways, (2) contemporary scientific contributions, and (3) historical and current social constructions of homosexuality.

Inferences drawn from these formulations will serve as a background for examining the currency of existing military codes and for considering the potential outcomes of maintaining or modifying these codes.

It is a common practice to employ the concept of sexual preference in discussions of same-gender and opposite-gender issues. The use of "preference" is misleading except for persons who are bisexual, that is, those to whom either gender is acceptable as a sex partner. For most other cases, the gender choice of sex partner is not a matter of "preference." The desired gender of the sex partner is fixed or at least firmly conditioned by biological preparation and habits laid down early in life. Embryological events and the subsequent reinforcement history of gender-related acts create a condition that might better be labeled sexual orientation or sexual status.

Judicial Trends and Shifting Folkways

It is beyond the scope of this paper to review in detail the numerous decisions handed down by the courts in recent years that demonstrate the effects of social movements dedicated to advancing civil rights (Barnett, 1973). Such decisions, together with legislative acts in various jurisdictions, have signalled a breakthrough in the conceptual reconstruction of persons whose sexual orientations are nonconforming to majority custom and expectations. A celebrated case was that of Norton v. Macy (1969). The plaintiff had been fired on the grounds of immorality because he had engaged in homosexual conduct. The court ruled that alleged or proven immoral conduct is not grounds for separation from public employment unless it can be shown that such behavior has demonstrable effects on job performance. Judge David Bazelon's decision included a statement that has softened discriminatory employment practices, and may have influenced more recent decisions affecting personnel in the military services. He said (in part):

The notion that it could be an appropriate function of the federal bureaucracy to enforce the majority's conventional codes of conduct in the private lives of its employees is at war with elementary concepts of liberty, privacy, and diversity (1969).

Other judicial decisions since Norton have propelled society to acknowledge that discriminatory practices toward homosexuals are not consonant with constitutional guarantees of individual autonomy and equal protection. A case that drew national media attention in 1975 is that of Sergeant Leonard P. Matlovich ("Homosexual Sergeant", 1975). Matlovich was dismissed from the Air Force with a less than honorable discharge after he voluntarily admitted that he was a homosexual. A 12-year veteran who served in combat in Vietnam, he had been awarded Bronze Star and Purple Heart medals and had an exemplary performance record up to the time he was dismissed. The bases for his separation from military service were the codified Department of Defense and Air Force regulations that persons who admitted to homosexual orientation or conduct could not serve in the Air Force. In 1978, the United States Court of Appeals in Washington, DC, ruled that the Air Force had acted improperly in discharging Sergeant Matlovich without specifying appropriate reasons other than being homosexual. In 1981, the same court awarded him back pay and a retroactive promotion (Guevarra, 1988).

The more recent case of Sergeant Perry Watkins (Henry, 1988) may have profound implications for future legal challenges. Watkins entered the service in 1967 at age 19, admitting on a preinduction medical form that he had homosexual tendencies. At that time, the Army discharged soldiers for engaging in homosexual acts, but not for "homosexuality." The distinction between homosexual acts and homosexuality is difficult to draw. The authors of the regulation probably employed a notion that was

Since law and custom tend to influence each other, it is instructive to note shifts in social practice in dealing with discrimination against homosexuals. In 1977, the U.S. Commission on Civil Rights took jurisdiction of cases in which discrimination on the basis of sexual orientation had been alleged, such as police harassment of homosexual men and women (1977). The Civil Service Commission in 1975 and 1976 amended its regulations so that no person would be denied Federal employment on the basis of sexual orientation (see Singer v. Civil Service Commission, 1975, 1977). The National Security Agency has recently moved to grant homosexuals sensitive compartmented information (SCI) security clearances (Rosa, 1988), one of the highest classifications for access to sensitive information. In June 1988, the Veterans Administration (VA) modified its rules with regard to benefits for veterans discharged for homosexuality. Those discharged prior to 1980 had as a rule been given a less than honorable discharge characterization which resulted in denial of most benefits. The VA has now upgraded those discharges. "The new rule was proposed as a matter of fairness" (Maze, 1988).

In 1978, it was reported that nearly a quarter of America's largest corporations on the Fortune 500 list had instituted policies to guarantee equal opportunity to homosexual employees (Vetri, 1980). Another sign of the changing folkways is the granting of recognition to political groups supporting equal rights for homosexuals (Vetri, 1980). Many universities have adopted nondiscriminatory policies in hiring, housing, and opportunities for advancement. Municipalities by the score have adopted nondiscrimination ordinances. In the State of California, municipalities and counties are no longer using the category of sexual orientation in the hiring of police officers. This appears to be the outcome of the current legal and social climate. Sexual orientation is not (in California at least) considered a legitimate BFOQ (bonafide occupational qualification) and few, if any, employers are willing to risk legal challenge by discriminating against homosexuals. Although there is no specific State legislation in California prohibiting employment discrimination on the basis of sexual orientation, discrimination based on sexual orientation in services is prohibited by the Unruh Civil Rights Act, and in other areas by Civil Code sections 51.7, 52 and 52.1, as well as by Penal Code section 422.6-422.9 and 1170.75. California Attorney General Van de Kamp has also interpreted the labor code as protecting homosexuals from discrimination.

A recent Supreme Court decision, which addressed another aspect of the rights of persons who hold nonconforming sexual orientations, may be seen as a further indicator of change. In Webster v. Doe, (1988), the Court held that it is legitimate for courts to review the constitutionality of the CIA's dismissal of employees. In 1982, "John Doe," described as a covert electronics technician, voluntarily told an Agency security officer that he was a homosexual. The Agency conducted a thorough investigation, including a polygraph examination designed to uncover whether he had disclosed classified information. Although Doe passed the test, he was dismissed by then director William J. Casey on the grounds that he was a national security risk. The effect of this Supreme Court decision is that Doe can now appeal to the Federal courts to sustain

Scientific Status of the Homosexuality Concept

For nearly a century, sexuality has been an object of intensive scientific study. In the past two decades, with the advent of advances in biotechnology, psychology, ethnology, and methods of social analysis, numerous systematic researches have yielded findings relevant to the formulation of law and public policy.

The emergence of scientific medicine in the nineteenth century brought with it the practice of assigning medical causes to conduct that had earlier been construed as sin or crime. In this context, scientific theories were formulated to explain homosexual behavior in terms of heredity and degenerative disease of the central nervous system. The pioneers in the scientific study of sexuality, Richard von Kraft-Ebing (1880/1922) and Havelock Ellis (1915) argued that homosexuality was an inborn condition. An alternate view was advanced by Sigmund Freud (1905/1938) and other psychoanalytic writers who traced the cause of homosexual conduct to faulty psychosocial development resulting in an arrest or a fixation at an early stage. The power structure of the family, typically a dominant but seductive mother and a weak father, was offered as the major cause of nonconforming sexual orientation. Thus, from the beginnings of scientific inquiry, theories of sexuality reflected different emphases: biological vs. psychosocial, or nature vs. nurture. Contemporary theories reflect these contrary orientations (Kolodny, Masters, and Johnson, 1979).

In the 1920s, with advances in endocrinology and biochemistry, new theories appeared that related sexual behavior to levels of sex hormones. Little solid evidence has been presented, however, to support a hypothesized link between homosexual conduct and circulating hormone levels in adults.

Advances in methodology stimulated a renewed interest in genetic research. The study of twins has been a fruitful source of genetic hypotheses. Kallman (1952) reported a concordance rate of 100 percent for "homosexuality" for 40 pairs of identical twins. That is, when one of a pair of identical twins was identified as homosexual, the other was also found to be homosexual. This occurred even when the twins had been raised apart. The author of the study cautioned that the data are not conclusive in supporting the genetic hypothesis--the twins may have responded to the same socializing influences. In this connection, Marmor (1975), a well-known psychiatrist, claimed that the "most prevalent theory concerning the cause of homosexuality is that which attributes it to a pathogenic family background."

Perhaps the most thorough research undertaken to advance the frontiers of knowledge about sexuality was that of Alfred Kinsey (Kinsey, Pomeroy, & Martin, 1948; Kinsey, Pomeroy, Martin, & Gebhard, 1953). A zoologist, Kinsey organized his research program along ethological and epidemiological lines. The variable of interest for Kinsey was sexual acts. The raw data for his studies were obtained through structured

population, regardless of social tolerance, as in the Philippines, Polynesia and Brazil, intolerance as in the United States, or repression as in the Soviet Union (Mihalek, 1988). This constancy in the face of cultural diversity suggests that biological factors may be the fundamental source of homosexual orientation.

From these observations, as well as intensive analysis of more than 300 research reports, Ellis and Ames (1987) have advanced a multi-factorial theory of sexuality, including same-gender attraction. They conclude that current scientific findings support the view that hormonal and neurological variables operating during the gestation period are the main contributors to sexual orientation. For the ultimate formation of sexual identity, the Ellis-Ames theory does not exclude psychosocial experience as a potential modifier of the phenotypical expression of biological development.

From their review of current research, Ellis and Ames propose that sexuality be studied through the consideration of five dimensions. These are: genetic (the effects of sex chromosomes, XX and XY, and various anomalous karyotypes); genital (effects of internal and external genitalia, the male-female differentiation, which begins in the first month of embryonic life); nongenital morphological (effects of secondary sex characteristics--body build, voice, hair distribution); neurological (male and female brain differentiation and associated sex-typical actions--social influences and the formation of sex-typed roles). Most of the events shaping the developing organism's sexuality along these dimensions occur between the first and fifth months of intrauterine life. These events are controlled by the interaction of delicate balances between the various male and female hormones and their associated enzyme systems. Development of the embryo can be influenced by several factors affecting the internal environment of the mother, such as genetic hormonal background, pharmacological influences and immunological conditions, not to mention the psychophysiological effects arising from the social environment. Disturbances in any one or any combination of these factors can result in alterations in sexual development called inversions. These inversions are failures of the embryo to differentiate fully in any of the other sexual dimensions (genital, morphological, neurological, or behavioral) according to chromosomal patterns. These anomalies of embryonic development are central to the later development of sexual orientation and behavior such as same-sex attraction, bisexuality, and other nonconforming patterns. As support for their theory, Ellis and Ames cite various experiments with animals in which permanent changes in sexual behavior have been induced by glandular and other treatments. The changes noted in these experimental animals are similar to those in humans with known anomalies of endocrine and enzyme systems.

Adult sexual orientation, then, has its origins, if not its expression, in embryonic development. Ellis and Ames conclude that:

The Social Construction of Sexual Deviance

The foregoing account summarizes the current scientific knowledge about sexual orientation and conduct. The most obvious conclusion emerging from this review is variability in sexual orientation, role, identity, life style, and conduct. The recognition of such variability dictates that we construct our beliefs and our policies on the recognition of gradations of continuous dimensions, rather than on the notion of discrete categories. To use an overworked metaphor, black and white are anchoring points for an achromatic color dimension, and between these anchoring points are innumerable shades of grey. Other dimensions come into play when considering chromatic stimuli, such as hue, saturation, brightness and texture. Similarly, the multidimensional concept of sexuality is contrary to the assertions of earlier generations of theologians, moralists, and politicians whose construal of sexuality was achieved under the guidance of two-valued logic in which narrowly defined heterosexual orientation and conduct were assigned to the category, "normal," and any departures from the customary were assigned to the category, "abnormal."

We have already alluded to the research of Alfred Kinsey (1948, 1953), a turning point in the history of the social construction of sexuality. After detailed analysis of the sexual histories of thousands of people, Kinsey (1948) concluded that the class "human beings" does not represent two discrete populations, heterosexual and homosexual, and that the world:

is not to be divided into sheep and goats....It is a fundamental of taxonomy that nature rarely deals with discrete categories. Only the human mind invents categories and tries to force facts into separate pigeonholes. The living world is a continuum in each and every one of its aspects. The sooner we learn this concerning human sexual behavior the sooner we shall reach a sound understanding of the realities of sex (p. 639).

The observations of historians (see, for example, Bullough, 1976) and the reports of ethnographers (see, for example, Ford and Beach, 1951; Marshall & Suggs, 1971; and Devereaux, 1963) support the notion that the constructions placed on same-gender sexuality are social. As Kinsey remarked, "only the human mind invents categories." At certain times, and in many societies, most variations in the expression of sexuality have been regarded as normal. It is the application of moral rules and legal statutes that determines whether same-gender orientation and conduct is classified as acceptable, tolerable, offensive, or criminal. Such rules and statutes are the products of custom, supported by the power vested in authority. As the historical record shows with abundant clarity, forms of authority change. In early times, moral rules were enforced by men and women enacting priestly roles. Later, ruling classes imposed

held that sex served only one purpose: procreation. This doctrine was supported by the claim that such was God's intention in creating the world of nature. Therefore, sex for pleasure was suspect, especially same-gender sex, since this is obviously non-procreational. The appellation, "sins against nature," appears frequently in doctrinal arguments (Bullough, 1976). Since same-gender sex was nonprocreative, it clearly was a sin against nature.

In the Judeo-Christian traditions, Good and Evil are the categories that provide the background for declaring value judgments on sexual nonconformity. Arising from primitive taboos, the powerful image of "sin" was employed to define the unwanted conduct. Fundamentalist preachers who take the Scriptures as the literal revealed Word of God are contemporary advocates of the belief that nonconforming sexual behavior is sinful. The attribution of sinfulness carries multiple meanings: among some groups, sin is explained as voluntary acceptance of Satanic influence; among others sin is believed to produce a flawed or spoiled identity. Societal reactions to sin include ostracism, corporal punishment, imprisonment and in more draconian times, torture, stoning, hanging, burning at the stake, and even genocide.

Sin is an attribution, a construction made by others or by oneself. Its force lies in its attachment to entrenched religious doctrine. Like taboos, the concept of sin is acquired by people before they reach the age of reflection. The argument that sin is a social construction is nowhere better illustrated than in the debates of theologians who have puzzled over the criteria for sinful conduct: under what conditions should an action be regarded as a venial sin or as a mortal sin?

The Legal Construction--Sexual Deviance as Criminal Behavior.

Arising from religious precepts, legislative acts were introduced to control nonprocreative sexual behavior. Ruse (1988), commenting on the relationship of laws designed to control sexual behavior to Judeo-Christian religious teachings says:

the very terms used for anal intercourse show their origins in a philosophy which intertwines law and Judaean-Christian morality. "Sodomy" obviously comes from the name of the doomed city of the plain, and "buggery" is a corruption of "bougrerie," named after so-called "Bulgarian" heretics who were guilty of a form of Manichean heresy, Albigensianism. They believed that physical things are evil, and thus refused

the banning of nonprocreational sex acts, life-long celibacy would have to be construed as "unnatural" and therefore sinful behavior.

according to laws and principles constructed through observation and experiment. At the present time, the legal concept, "crimes against nature," is defensible only as a rhetorical device to control nonprocreative sex. It has no scientific status.*

The Sickness Construction--The Medicalization of Deviance

The nineteenth century witnessed the social construction of deviant conduct as sickness. Although the medical model of deviance had its origins in the sixteenth century, it was not until the growth and success of technology and science in the nineteenth century that medical practitioners created elaborate theories to account for unwanted conduct. Many of the fanciful early theories of crime and craziness were given credibility because they were uttered by physicians and, therefore, presumed to be scientific. The prestige conferred upon the practitioners of science and technology blanketed the medical profession. It was during the latter half of the century that medical scientists initiated the movement to "medicalize" not only poorly understood somatic dysfunctions, but all human behavior. Conduct that in the past had been assigned to moralists or to the law now came under the purview of medical authority. Deviant conduct of any kind became topics of interest for doctors. The brain had already been given its place as the most important coordinating organ of the body, and the "mind" was somehow located in the brain. Therefore, any item of behavior that was nonconformant with current norms could be attributed to faulty brain apparatus, flawed mental structures, or both. In the absence of robust psychological theories, the observation and study of nonconforming behavior led physicians to assimilate theories of social misconduct to theories of somatic disease. The creation and elaboration of disease theories was based upon the all-encompassing notion that every human action could be accounted for through the application of the laws of chemistry and physics. In this context, homosexuality and other nonprocreative forms of sexual conduct were construed as sickness. To be sure, the medicalization of nonconforming sexual conduct failed to replace entirely the older moral and criminal constructions, and in many cases persons suffering from such illnesses continued to be punished.

It is interesting to note that the term, "homosexuality," itself did not appear in English writings until the 1890s. Like most medical terms, it was created out of Greek and Latin roots. Prior to that time, labels for nonconforming sexual conduct in the English language had been free of medical connotations, as, for example, the words sodomy, buggery, perversion, corruption, lewdness, and wantonness. One outcome of the medicalization of nonconforming sexual conduct was the inclusion of homosexuality in textbooks of psychiatry and medical psychology. Homosexuality was officially listed

*This is not to gainsay the use of this metaphor to connote such events as nuclear war and the pollution of our atmosphere and our rivers, lakes and oceans.

homosexuality per se implies no impairment in judgment, stability, reliability or general social or vocational capabilities. ...The Association deplors all public and private discrimination in such areas as employment, housing, public accommodation, and licensing....The Association supports and urges the enactment of civil rights legislation...that would offer citizens who engage in homosexuality the same protections now guaranteed to others on the basis of race, creed, color, etc.

Substantially the same resolution was enacted by the American Psychiatric Association in 1976.

The available data on the psychological functioning of persons identified as homosexuals lead to an unambiguous conclusion: that the range of variation in personal adjustment is no different from that of heterosexuals (Ohlson, 1974). A review of 14 major studies, beginning with Hooker's in-depth investigation (1957, 1965), gave no support to the hypothesis that same-gender orientation was a sickness (Freedman, 1976). Employing various adjustment criteria, the studies uncovered no correlations that would support a mental illness construction. Siegleman (1978 & 1979), in two studies comparing psychological adjustment of homosexual men and women and heterosexual men and women in Britain, found no significant difference between the homosexual and heterosexual groups, substantially replicating the results of earlier studies in the U.S. The conclusion had been stated earlier in the famous Wolfenden Report of 1957, the basis for the repeal of sodomy statutes in England:

homosexuality cannot legitimately be regarded as a disease because in many cases it is the only symptom and is compatible with full mental health (p. 32).

The Minority Group Construction--Homosexuals as a Non-Ethnic Minority Group.

The civil libertarian movements of the 1960s and 1970s paved the way for an alternative construction of homosexual conduct. We have already noted that the earlier work of Kinsey and his associates (1948) had received wide publicity. This work helped to strengthen the notion that sexual status and behavior could not be sorted into a simple two-valued model of normal and abnormal. The recognition that perhaps at least 10 percent of the adult population consistently adopted nonconforming sexual roles (i.e., homosexual behavior) was instrumental in formulating a construction of same-gender sexuality as the defining property of a nonethnic, nonracial minority group. Individuals came together to support each other in their choice of life style. They

Regulatory Policies in the Military

In the previous pages, we have provided an overview of changing folkways, of scientific findings, and of variations in the social construction of nonconforming sexuality. Our intention was to lay the groundwork for examining current policies that pertain to the suitability for military service of men and women who are not exclusively heterosexual.

In our examination of current policies, we are constrained to use language that is not consonant with our conclusion that sexuality is a multidimensional concept. If we were writing a scientific treatise on sexuality per se, we would make precise distinctions and note differences between biological role, gender identity, sexual practices, and sexual-social role. From such a perspective, the use of two broad classes, heterosexual and homosexual, would be extremely arbitrary. Because our objective is to illuminate the dark corners of sexuality for a particular policy purpose, we must make use of the language currently employed. Unless qualified in the text, when we employ the words "homosexual" and "heterosexual," we are complying with the more common current legalistic, categorical usage.

The Office of the Secretary of Defense formulated a concise summary of official policy (Department of Defense, 1982) as follows:

Homosexuality is incompatible with military service. 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 the members; to ensure 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 military services; to maintain the public acceptability of military services; and, in certain circumstances, to prevent breaches of security.

Appendix A reproduces DoD Directive 5200.2.R, which contains the current policy regarding granting clearances to homosexual men and women.

Since homosexuality is an abstract term (not unlike "heterosexuality"), the policy can only be implemented if positive criteria are formulated. Such criteria are to be found in the Uniform Code of Military Justice (UCMJ), set forth in the Manual for Courts

Both the sodomy and the indecency articles are applicable to heterosexual as well as to homosexual acts. The sodomy article, as written, proscribes heterosexual nonvaginal intercourse. For example, oral-genital contact would be a criminal offense subject to severe punishment. The article does not distinguish between married and unmarried partners. As currently used in military law, the sodomy charge is employed far more often in cases of heterosexual behavior, and the total number of such charges is small. For example, in the U.S. Army during fiscal years 1987 through April of FY 1988, there were 178 sodomy charges, 174 offenders were male and 127 victims were female, 54 of those cases being consensual (W. S. Fulton, U.S. Army Clerk of Court, personal communication, May 1988).

A review of contemporary authorities on sexology, marriage, and family relations would raise questions about the UCMJ's criminalization of oral-genital sex play, especially since this is practiced by a large percentage of the general population (Katchadourian & Lunde, 1975). Since military personnel are drawn from the general population, it is reasonable to assume that large numbers of military men and women, married and unmarried, are in violation of the sodomy statute. If enforced, Article 125 would lead to punitive actions, including courts-martial, for an untold number of military personnel.

Recent DoD statistics on separations from the armed services for "homosexuality" provide an empirical basis for reconsidering traditional policies (Appendix B). We have assembled data for the fiscal years 1985, 1986, and 1987 for the various services. The data are not strictly comparable to the data extensively reported by Williams and Weinberg (1971) because of different record-keeping methods. Nevertheless, looking back over the past 20 years or more, it is incontrovertible that there has been a dramatic decrease in the rate of punitive discharges for homosexuality.

For the Army, during the three-year period, 829 enlisted men and 11 officers were separated administratively for homosexuality. During the same period, 354 enlisted women and 3 officers were separated. More revealing and more useful for policy decisions are the percentages: for men, .046 percent (less than 5 in 10,000); for women .17 percent (17 in 10,000).

For the Navy, the numbers are higher. For the three-year period, 1825 enlisted men and 30 officers were separated. All were handled administratively except for one enlisted man and one officer who were subject to courts-martial. For women, 382 enlisted and 4 officers were separated. When reduced to percentages, .127 percent of males were administratively separated (almost 13 in 10,000), and .27 percent of women (27 in 10,000).

The Marine Corps, being a smaller service, reported 213 separations of enlisted men and 6 separations of officers. For women, 90 enlisted were separated. The

women are performing their military roles satisfactorily and that their sexual conduct does not come to the attention of their commanders.

To account for the large discrepancy between the actual number of separations and the expected number of men and women who have same-gender orientation, several hypotheses may be entertained.

(1) Men and women who identify themselves as homosexual do not enter military service. This hypothesis is difficult to sustain. Harry (1984) found that homosexual and heterosexual men were equally likely to have served in the military. Homosexual women were more likely than heterosexual women to have had military service. Weinberg and Williams in a sworn affidavit state: "the vast majority of homosexuals in the Armed Forces remain undiscovered by military authorities, and complete their service with honor" (see Gibson, 1978). Ruse (1988) wrote:

Many soldiers, sailors and airmen are homosexual--and actively so. They do not get caught or prosecuted because they are discreet or lucky, or because authorities turn a blind eye. But the rules do exist, and every now and then some unfortunate gets enmeshed in the net (p. 240).

These statements imply that a large number of homosexuals serve in the Armed Forces.

(2) Men and women with same-gender interests inhibit the expression of sexuality during their tenure in the Armed Forces. This hypothesis is without foundation when we consider the age group involved and the increasing lack of celibacy among young adults.

(3) Men and women who enter military service continue to express their sexual interests. This applies to those who are exclusively heterosexual, those who are exclusively homosexual, and those who make up Kinsey's intermediate groups. They do not come to the attention of

"There is the continually nagging question of the definition of "a homosexual." Do a few homosexual acts, or even one, make an otherwise heterosexual person a homosexual? Conversely, most would agree that a few heterosexual acts by an otherwise exclusively homosexual person do not make this person a heterosexual. It seems inescapable that the persons labelled "homosexual" by the military services represent all degrees of homosexual orientation and have in common only the fact of being identified by the military as engaging in some form of homosexual behavior.

As a result of the co-dependency fostered by training requirements, space sharing, commensalism, common goals, and mutual trust and respect, the relationships among members of combat teams are like those of primary groups. Informal covenants, rather than orders, bond the members of the group. It has been commonly assumed that the existence of deep-seated prejudice against homosexuals as a class would be a barrier to the creation and development of attitudes that would foster cohesive relations.

Although not well-publicized, the available data all point to the conclusion that preservice background characterization and subsequent job performance of homosexuals in the military is satisfactory (Williams & Weinberg, 1971; McDaniel, 1989; Zuliani, 1986; Crittenden Report, 1957). Whether the presence of men or women identified as nonconforming in sexual orientation actually influences such features of military life as discipline, group morale, integrity, etc., can be set out as a hypothesis and tested directly and indirectly. Direct testing would involve integrating men who identify themselves as holding nonconforming sexual attitudes with men who are unselected for discriminatory attitudes. The same design can be used for women. Such testing would be similar to the testing carried out by research teams when black soldiers were integrated into formerly all-white platoons, battalions, or regiments. The intensity of prejudice against homosexuals may be of the same order as the prejudice against blacks in 1948, when the military was ordered to integrate.

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true. Social science specialists helped develop programs for combating racial discrimination, so that now the military services are leaders in providing equal opportunity for black men and women. It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.

Indirect evidence to establish whether homosexuals could be satisfactorily integrated can be derived from retrospective accounts of honorably discharged men and women who were homosexuals at the time of their service. In a 1967 study conducted by the Institute of Sex Research at the University of Indiana, of 458 male homosexuals, 214 had served in the military, of whom 77 percent received Honorable Discharges. A later study reported that of 136 homosexuals who had been in the military services, 76 percent received honorable discharges (Williams and Weinberg, 1971). Another study (Harry, 1984) analyzed interview data on 1,456 respondents, men and women, who had served in the military. Homosexual and heterosexual men were equally likely to have served in the military, while homosexual women were more likely than heterosexual women to have served. Nearly 80 percent of the homosexual personnel in these samples received honorable discharges.

The current status in the Sheriff's Department is that sexual orientation is not an issue for hiring or continued employment. Statistics are no longer kept on the sexual orientation of personnel. It is estimated that 40 to 50 (about 10 percent) of the Sheriff's Department may be classified as homosexual. About a quarter of the force is made up of women, of whom about 10 percent are assumed to be homosexual (R. Dyer, personal communication, April 27, 1988).^{*} The San Francisco Police Department initiated a similar nondiscrimination policy in 1979, as has the Los Angeles Police Department^{**}. Most if not all law enforcement agencies in California are now hiring without regard to sexual orientation. Many believe that they are mandated by law to do so, as we pointed out on page 5.

Resistance to Change

In the foregoing analysis, we have tried to make the case that the military services should prepare for a shift in legal and public opinion on discrimination against homosexuals. Such a change in a time-honored practice is not likely to be accepted without active resistance. In the absence of compelling reasons, bureaucracies resist change. The first line of such resistance is the invocation of the concept of tradition. In general, the arguments against change contain declarations of the necessity for preserving such abstract qualities as integrity, morals, morale, pride, fidelity, and so on.

One of the more powerful reasons for rejecting change has to do with the idealized imagery of the combat soldier. Although unsupported by evidence, the belief is widely held that men must be rugged, tough, and macho to achieve success in battle. In the belief system of current traditional military authorities, homosexual men cannot be rugged, tough, and macho.^{***} The stereotype of homosexual men, as we mentioned earlier, centers on the feminized male who is unable to perform masculine tasks. It is interesting to note that this stereotype continues to flourish even though

^{*}San Francisco Sheriff's Department

^{**}Although the Los Angeles Police Department (LAPD) has an official policy of nondiscrimination against homosexuals and such discrimination is also forbidden in employment by the Los Angeles Municipal Code, a pervasive anti-homosexual bias is alleged to exist in the LAPD. Mitchell Grobeson, a homosexual former police sergeant claims in a five million dollar suit against the LAPD that he was discriminated against, abused, intimidated and had to resign because he feared for his life (Stewart, 1988).

^{***}In Classical Greece homosexuality and homosexual bonds between soldiers were considered an asset to the performance of the fighting man in terms of patriotism and military courage.

Most of the issues raised by Major Webb, which reflect traditional anti-homosexual arguments, are reminiscent of the issues raised when black athletes (then called Negro athletes) were first allowed to participate in professional baseball. Webb's concerns are also reminiscent of the arguments advanced against the 1948 order to desegregate military establishments, and the later arguments that sought to minimize the role of women in the Armed Forces. Despite its early resistance to change, it is important to repeat that the military establishment is now looked upon as a model for racial and gender integration.

In his list of problems that would be created if homosexuals were freely admitted into the services, Major Webb failed to mention potential security risks. This has been one of the main reasons given for screening out homosexual men and women from the military, and from jobs requiring a security clearance. The argument goes that they would be candidates for blackmail if a foreign agent learned that they were homosexuals. This argument is somewhat blunted when we remind ourselves that blackmail is also an option for foreign agents who acquire knowledge about heterosexual men or women secretly engaged in adultery. Also, decriminalizing homosexual behavior has done much to decrease the danger of blackmail.

Historical support for the notion that security concerns about homosexuals are exaggerated is contained in the 1957 Crittenden Report, officially labelled Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals (Gibson, 1978). The Report contains the following remarks:

The concept that homosexuals pose a security risk is unsupported by any factual data. Homosexuals are no more a security risk, and many cases are much less of a security risk, than alcoholics and those people with marked feelings of inferiority who must brag of their knowledge of secret information and disclose it to gain stature. Promiscuous heterosexual activity also provides serious security implications. Some intelligence officers consider a senior officer having illicit heterosexual relations with the wife of a junior officer or enlisted man is much more of a security risk than the ordinary homosexual.... The number of cases of blackmail as a result of past investigations of homosexuals is negligible. No factual data exist to support the contention that homosexuals are a greater risk than heterosexuals.

In the 30 years since the Crittenden report was submitted, no new data have been presented that would refute its conclusion that homosexuals are not greater security risks than heterosexuals.

others and privately convincing himself of his highly valued masculinity (Weinberg, 1973).

Those who resist changing the traditional policies support their position with statements of the negative effects on discipline, morale, and other abstract values of military life. Buried deep in the supporting conceptual structure is the fearful imagery of homosexuals polluting the social environment with unrestrained and wanton expressions of deviant sexuality. It is as if persons with nonconforming sexual orientations were always indiscriminately and aggressively seeking sexual outlets. All the studies conducted on the psychological adjustment of homosexuals that we have seen lead to contrary inferences. The amount of time devoted to erotic fantasy or to overt sexual activity varies greatly from person to person and is unrelated to gender preference (Kinsey, Pomeroy, and Martin, 1948; Hooker, 1965; Freedman, 1976; Williams and Weinberg, 1971). In one carefully conducted study, homosexuals actually demonstrated a lower level of sexual interest than heterosexuals (Bell, 1973).

Homosexuals are like heterosexuals in being selective in their choice of partners, in observing rules of privacy, in considering appropriateness of time and place, in connecting sexuality with the tender sentiments, and so on. To be sure, some homosexuals are like some heterosexuals in not observing privacy and propriety rules. In fact, the manifold criteria that govern sexual interest are identical for homosexuals and heterosexuals, save for only one criterion: the gender of the sexual partner.

Age, gender, kinship, class membership, marital status, size and shape, social role, posture, manners, speech, clothing, interest/indifference signalling, and other physical and behavioral criteria are all differentiating cues. They serve as filters to screen out undesirable or unsuitable potential sex partners. With such an array of cues, many (in some cases, all) potential objects of interest are rejected. For most people, only a small number of potential partners meet the manifold criteria. Whether in an Army platoon or in a brokerage office, people are generally selective in their choice of intimate partners and in their expression of sexual behavior. Heterosexuals and homosexuals alike employ all these variables in selecting partners, the only difference being that the latter include same-gender as a defining criterion, the former include opposite-gender.

In recent years, traditionalists have pointed to the AIDS crisis as a cogent reason for maintaining the discriminatory policies. Clearly all responsible persons are concerned about AIDS as a critical health problem, whether in government, in the military, or in the private sector. AIDS is a serious public health problem. When the disease was first identified in 1981, it was often called the "homosexual disease" and the "gay plague." Because no preparatory information had been given the public, the belief quickly spread that AIDS was exclusively a disease of homosexuals (Quaddland and Shattes, 1987). Subsequent research and observation has confirmed that everyone is

Summary and Implications

An examination of recent social and political history points to the fact that the courts are slowly moving toward eliminating discrimination on the basis of nonconforming sexual orientation. Active citizen groups and lobbies provide support for advocates of nondiscrimination. Our studied conclusion is that the military services will soon be asked by the courts or the Congress to reexamine their policies and practices regarding recruitment and retention of men and women whose sexual interests deviate from the customary. This will become a burning issue if it is necessary to resort to drafting young persons for military service because of a decreasing supply of volunteers. Under prevailing social conditions, a public admission of homosexuality carries less stigma than in earlier times, and is no legal bar to most employment. Thus, unless the military is willing to adopt nondiscriminatory policies, a mere claim of homosexuality, whether true or false, would excuse any person who wants to avoid military service.

Our analysis directs us to regard people with nonconforming sexual orientation as a minority group. Our nation has a long history of successfully dealing with minority groups, particularly ethnic minorities. In the recent past, we have also learned how to integrate racial and other minority groups, notably women, into nearly every aspect of political and social life. The suggestion that we perceive homosexual men and women as a minority group follows from our analysis of contemporary scientific social and legal observations. The social construction of homosexuals as minority group members is more in tune with current behavioral science theory than the earlier constructions: "sin," crime, and sickness. Our digest of the available body of scientific knowledge led to another implication: that the uncritical use of binary categories does violence to the findings reported by scientific observers. The rigid categories, heterosexual and homosexual, although necessary for certain purposes, are inadequate to reflect the complexity of the multidimensional antecedents of sexual status. Constructing a catalog of the variety of biological and socio-sexual types is less important than finding answers to questions of this form: Does atypical sexual orientation influence job performance? Studies of homosexual veterans make clear that having a same-gender or an opposite-gender orientation is unrelated to job performance in the same way as is being left- or right-handed (Williams & Weinberg, 1971).

For the purpose of military organization, however, quality of job performance may be less important than the effects of homosexuals (minority group members) on that important but ephemeral quality: group cohesion. The important question to be raised in future research must center on the claims that persons with nonconforming sexual attitudes create insurmountable problems in the maintenance of discipline, group cohesion, morale, organizational pride, and integrity.

In our study of suitability for military service, we have been governed by a silent assumption: that social attitudes are historically conditioned. In our own time, we have

In the spirit of a heuristic model, the categories are suggestive, not precise. The large rectangle embraces conduct in general, the interior rectangle represents sexual conduct. The horizontal line and the vertical line are boundaries between classes of conduct. The lines are broken to indicate permeability. That is to say, classification of social acts, under certain conditions, can be moved through the boundary from one cell to another.

The horizontal line separates customary ("normal") social acts from acts that are not customary, ("different"). The term "different" is superordinate to the often-used "deviant." Our current speech conventions give "different" its meaning from the notion of relative frequency. "Deviant" adds a pejorative value judgment to the meaning. "Customary" and "different" should be perceived as regions on a dimension. Some acts are more "different" than others. In the interest of simplicity, however, we write of "customary" and "different" as discrete classes. Political, economic, and moral conditions influence the sorting of social acts as customary or different.

The vertical boundary is also permeable; it separates lawful and unlawful acts. At time₁, certain acts are lawful but different (Cell III). Ordinary language terms to denote such acts are "attention-getting," "eccentric," and "far-out." An example would be flagpole-sitting. Because of hazards in connection with traffic control of curious drivers, a municipality enacts an ordinance making flagpole-sitting a misdemeanor. At time₂, then, flagpole-sitting has been reclassified to Cell IV, different and unlawful. Judicial decisions and legislative acts provide the criteria for reclassifying any particular social act along the horizontal axis (lawful-unlawful).

Cell I contains most of our everyday acts. We conduct ourselves according to custom and according to law. Cell II is populated by social acts that are widely practiced but unlawful, such as exceeding speed limits, jaywalking, tax evasion, driving "under the influence," etc. Cell III is populated by social acts which are currently lawful, but not widely practiced, such as flagpole-sitting, alligator-wrestling, and wearing "outlandish" costumes. In the 1930s women took to wearing trousers when trousers were considered properly part of men's attire. At that time, such "eccentric" acts were classified in Cell III, different but not unlawful. In earlier times, cross-dressing had been assigned to Cell IV. In New England, as late as the nineteenth century cross-dressing was a crime. The contents of the criminal code had been formed from Scriptural injunctions, among them:

A woman shall not wear anything that pertains to a man nor shall a man put on a woman's garment; for whoever does these things is an abomination to Yahweh your God (Deuteronomy 22:5).

It should be emphasized that although the vertical boundary is permeable, it is not permeable to all acts. Sexual acts that involve children, violence, or public indecency, i.e., criminal offenses, are not likely to be reclassified. Such offenses tear the very fabric of social order.

Our purpose in presenting this model is to make clear that the values that any society places on social acts are subject to change. The model is consistent with an underlying premise that we live in an ever-changing dynamic world. The lessons of history tell us that the legitimacy of our behaviors, customs, and laws is not permanently resistant to change. Custom and law change with the times, sometimes with amazing rapidity. The military cannot indefinitely isolate itself from the changes occurring in the wider society, of which it is an integral part.

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- A. The Legal Status of Homosexuality
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 - C. Statistical Data on Homosexuality
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-

APPENDIX A

**The Legal Status of
Homosexuality**

A-0

OSD P&R 007354

The Legal Status of
Homosexuality

This appendix summarizes current DoD laws and regulations which address homosexuality and homosexual behavior. There is also a brief overview of current civilian criminal law concerning homosexuality.

The appendix is organized as follows:

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Article 80 - Attempts

Text

An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

Elements

- (1) That the accused did a certain overt act;
- (2) That the act was done with specific intent to commit a certain offense under the code;
- (3) That the act amounted to more than mere preparation; and
- (4) That the act apparently tended to effect the commission of the intended offense.

Explanation. To constitute an attempt there must be a specific intent to commit the offense accompanied by an overt act which directly tends to accomplish the unlawful purpose. Preparation consists of devising or arranging the means or measures necessary for the commission of the offense. The overt act required goes beyond preparatory steps and is a direct movement toward the commission of the offense.

Maximum punishment

A person found guilty of an attempt shall be subject to the same maximum punishment authorized for the commission of the offense attempted, except that in no case shall the death penalty or confinement exceeding 20 years be adjudged.

Article 134 - Assault with Intent to Commit Sodomy

Elements

- (1) That the accused assaulted a certain person;
- (2) That, at the time of the assault, the accused intended to commit sodomy; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Explanation. Assault with intent to commit sodomy is an assault against a human being and must be committed with a specific intent to commit sodomy. Any lesser intent, or different intent, will not suffice.

Maximum punishment

- (1) Dishonorable discharge, total forfeiture of pay & allowances, fine, confinement at hard labor for 10 years
- (2) Other cases: Dishonorable discharge, total forfeiture of pay & allowances, fine, confinement at hard labor for 5 years

Article 134 - Indecent Acts with Another

Elements

- (1) That the accused committed a certain wrongful act with a certain person;
- (2) That the act was indecent; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Explanation. "Indecent" signifies 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.

Maximum punishment

- (1) Dishonorable discharge, total forfeiture of pay & allowances, fine, confinement at hard labor for 5 years

**EXTRACT FROM DOD DIRECTIVE 1332.14 - Jan. 28, 1982
ENLISTED ADMINISTRATIVE SEPARATIONS**

Homosexuality (Part 1, Section H)

1. Basis

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

b. As used in this action:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts; and

(3) A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

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

EXTRACT FROM DOD DIRECTIVE 1332.30 - Feb. 12, 1986
SEPARATION OF REGULAR COMMISSIONED OFFICERS FOR CAUSE

DEFINITIONS

Bisexual. A person who engages in, desires to engage in, or intends to engage in both homosexual and heterosexual acts.

Homosexual. A person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.

Homosexual Act. Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. A commissioned officer shall be separated under this provision if one or more of the following findings is made:

a. ~~The officer has engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act or acts, unless there are further findings that:~~

- (1) Such conduct is a departure from the officer's usual and customary behavior;
- (2) Such conduct under all the circumstances is unlikely to recur;
- (3) Such conduct was not accomplished by use of force, coercion, or intimidation by the officer during a period of military service;
- (4) Under the particular circumstances of the case, the officer's continued presence in the Service is consistent with the proper discipline, good order, and morale of the Service; and
- (5) The officer does not desire to engage in or intend to engage in homosexual acts.

C. Service Regulations

The individual Service Regulations concerning homosexuality are as follows:

1. U.S. Army - U.S. Army Regulation 635-200
2. U.S. Navy - SECNAVINST 1900.9C (Policy for members of naval service involved in homosexual conduct.)
 - SECNAVINST 1920.4A (Enlisted Administrative Separations)
 - SECNAVINST 1920.6A (Administrative Separations of Officers)
 - NAVMILPERSCOMINS 1910.1C
 - MILPERSMAN 3630400 (Separation by reason of homosexuality)
3. U.S. Marine Corps
 - Marine Corps Separation and Retirement Manual, 1900-16C, paragraph 6207 (Officers & Enlisted)
4. U.S. Air Force
 - Air Force Regulation 39-10 (Administrative discharge of Airmen), Chapter 5, Section 6
 - Air Force Regulation 36-2 (Separation of Officers), Chapter 3, paragraph 4
5. U.S. Coast Guard - Personnel Manual Articles:
 - 12-B-16 discharge for unsuitability
 - 12-B-18 discharge for homosexuality
 - 12-B-33 discharge processing

The service regulations, although they differ somewhat in wording, substantially repeat the DoD regulations on which they are based. For that reason they are not reproduced here.

EXTRACT FROM DEPARTMENT OF DEFENSE PERSONNEL SECURITY
PROGRAM REGULATION, DoD 5200.2-R - 16 Dec 1986

APPENDIX I

ADJUDICATION POLICY
GENERAL

The following adjudication policy has been developed to assist DoD adjudicators in making determinations with respect to an individual's eligibility for employment or retention in sensitive duties or eligibility for access to classified information. Adjudication policy relative to access to sensitive compartmented information is contained in DCID1/14.

While reasonable consistency in reaching adjudicative determinations is desirable, the nature and complexities of human behavior preclude the development of a single set of guidelines or policies that is equally applicable in every personnel security case. Accordingly, the following adjudication policy is not intended to be interpreted as inflexible rules of procedures. The following policy requires dependence on the adjudicator's sound judgment, mature thinking, and careful analysis as each case must be weighed on its own merits, taking into consideration all relevant circumstances, and prior experience in similar cases as well as the guidelines contained in the adjudication policy, which have been compiled from common experience in personnel security determinations.

Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis being placed on the seriousness, recency, frequency and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future. The listed "Disqualifying Factors" and "Mitigating Factors" in this set of Adjudication Policies reflect the consideration of those factors of seriousness, recency, frequency, motivation, etc., to common situations and types of behavior encountered in personnel security adjudications, and should be followed whenever an individual case can be measured against this policy guidance. Common sense may occasionally necessitate deviations from this policy guidance, but such deviations should not be frequently made and must be carefully explained and documented.

The "Disqualifying Factors" provided herein establish some of the types of serious conduct under the criteria that can justify a determination to deny or revoke an individual's eligibility for access to classified information, or appointment to, or retention

h. Adultery that is recent, frequent and likely to continue and has an adverse effect on good order or discipline within the workplace (e.g., officer/enlisted, supervisor/ subordinate, instructor/student).

i. Conduct determined to be criminal in the locale in which it occurred.

j. Deviant or perverted sexual behavior which may indicate a mental or personality disorder (e.g., transexualism, transvestism, exhibitionism, incest, child molestation, voyeurism, bestiality, or sodomy).

2. The conduct has been recent.

3. The conduct increases the individual's vulnerability to blackmail, coercion or pressure.

4. Evidence that the applicant has intention or is likely to repeat the conduct in question.

Mitigating Factors (circumstances which may mitigate qualifying information):

1. Sexual misconduct occurred on an isolated basis during or preceding adolescence with no evidence of subsequent conduct or a similar nature, and clear indication that the individual has no intention of participating in such conduct in the future.

2. Sexual misconduct was isolated, occurred more than 3 years ago, and there is clear indication that the individual has no intention of participating in such conduct in the future.

3. The individual was a minor or was the victim of force, or violence by another.

4. The individual has successfully completed professional therapy, has been rehabilitated and diagnosed by competent medical authority that misconduct is not likely to recur.

5. Demonstration that the individual's sexual misconduct can no longer form the basis for vulnerability to blackmail, coercion or pressure.

- g. Alcohol abuse
- h. Illegal drugs and drug abuse
- i. Emotional and mental disorders
- j. Record of law violations
- k. Security violations
- l. Involvement in outside activities

Adjudicative actions concerning the foregoing items are examined in greater detail below.

SEXUAL CONSIDERATIONS

DCID 1/14 requires that, to be eligible for SCI access, individuals must be stable, of excellent character and discretion, and not subject to undue influence or duress through exploitable personal conduct.

Sexual promiscuity, prostitution, and extramarital relations are of legitimate concern to the SCI adjudicator where such conduct reflects a lack of judgment and discretion or when the conduct offers the potential for undue influence, duress or exploitation by a foreign intelligence service.

Deviant sexual behavior can be a relevant consideration in circumstances in which it indicates flawed judgment or a personality disorder, or could result in exposing the individual to direct or indirect pressure because of susceptibility to blackmail or coercion as a result of the deviant sexual behavior. Such behavior includes, but is not limited to, bestiality, fetishism, exhibitionism, necrophilia, nymphomania or satyriasis, masochism, sadism, pedophilia, transvestism, and voyeurism. Homosexual conduct is also to be considered as a factor in determining an individual's judgment, discretion, stability and susceptibility to undue influence or duress.

In examining cases involving sexual conduct of security significance, such as those described above, it is relevant to consider the age of the person, the voluntariness, and the frequency of such activities, the public nature and the recency of the conduct, as well as any other circumstances which may serve to aggravate or mitigate the nature or character of the conduct. A recommendation for disapproval is appropriate when, in view of all available evidence concerning the individual's history of sexual behavior, it appears that access to SCI could pose a risk to the national security.

The laws of the German Democratic Republic towards homosexuals are the most liberal of the communist bloc. In spite of the extremely tolerant official attitude toward homosexuality, employing homosexuals in the police force or army of the GDR is not under consideration (Brzek & Hubalek, 1988).

B. U.S. State Criminal Law

The first U.S. state to decriminalize adult homosexual activities was Illinois in 1962. At that time each of the other 49 states had sodomy laws on the books. Forty-five also penalized adultery, 37 states penalized fornication and 15 states penalized cohabitation. Hefner (1964) noted that even though Illinois had decriminalized consenting adult sodomy it retained laws against adultery and fornication, creating the curious situation of permitting certain "homosexual (and other) perversions" while prohibiting some "normal" heterosexual activities. Hefner observed, "We are free in a voting booth, in a stockholders' meeting, a union hall or a house of worship, but we are not free in bed."

The next six states to join Illinois in removing criminal laws against private consenting adult homosexual acts were Colorado, Delaware, Oregon, Hawaii and Ohio (Geis et al, 1976). By 1977, homosexuality was illegal between consenting adults in only 31 states (Bell & Weinberg, 1978). Currently (1988) there are no so-called sodomy laws in 25 states. Adult consenting homosexual behavior is legal in:

| | |
|--------------|---------------|
| Alaska | Illinois |
| Hawaii | Indiana |
| California | Oklahoma |
| Oregon | West Virginia |
| Washington | Pennsylvania |
| Wyoming | New York |
| Colorado | Delaware |
| New Mexico | New Jersey |
| Nebraska | Connecticut |
| South Dakota | Vermont |
| North Dakota | New Hampshire |
| Iowa | Maine |
| Wisconsin | |

Clearly the trend is toward liberalization of the law.

In 25 states and the District of Columbia, however, sodomy laws remain in force. In some of these, such as Texas, Arkansas, Kansas, Montana and Nevada, homosexual acts between males are specified for prohibition. In most other state laws, sodomy is spoken of in broader terms as "crimes against nature" and can be applied equally to

As has been pointed out, the UCMJ Article 125 definition of sodomy is particularly broad and covers homosexual acts as well as heterosexual acts even within marriage. Theoretically a large percentage of DoD military personnel might be criminals under it. In practice, it is used almost exclusively to punish acts which involve force and/or a minor or nonconsenting partner. The larger percentage of such prosecuted acts are heterosexual.

C. U.S. Federal Criminal Law

With the exception of the UCMJ and certain laws pertaining to Indian reservations, Federal law does not proscribe homosexual behavior.

APPENDIX B

**Military Service Separation
for Homosexuality**

B-0

OSD P&R 007367

Military Service Separation for Homosexuality

Data are given for Fiscal Year 85, 86 & 87 separations for homosexuality for all four of the DoD military services.* It is difficult to compare these data to those of earlier years, such as those reported in the Williams and Weinberg study (1971), because of differences in methods of recording and reporting data. Williams and Weinberg were unable to get exact data on the numbers and types of discharges for homosexuality for any of the armed services. It does appear that the total number of discharges for reasons of homosexuality and other sexual deviations may have decreased, and there is a remarkable decrease in the number of punitive discharges for homosexuality for all services.

*John Goral, Defense Manpower Data Center, 1988, unpublished data.

U.S. Marine Corps Discharges for Homosexuality

| | | FY 85 | | FY 86 | | FY 87 | |
|------------------------------|---|---------|-------|---------|-------|---------|-------|
| | | M | F | M | F | M | F |
| Enlisted Personnel (E) | | 168,809 | 9,041 | 169,369 | 9,246 | 170,338 | 9,140 |
| Officer Personnel (O) | | 19,521 | 654 | 19,556 | 643 | 19,398 | 649 |
| Administrative Separations | E | 87 | 33 | 59 | 26 | 67 | 31 |
| | O | 2 | 0 | 2 | 0 | 2 | 0 |
| Courts Martial Separations | E | 0 | 0 | 0 | 0 | 0 | 0 |
| | O | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Homosexual Separations | E | 87 | 33 | 59 | 26 | 67 | 31 |
| | O | 2 | 0 | 2 | 0 | 2 | 0 |
| % Personnel Separated | E | 0.05 | 0.37 | 0.03 | 0.28 | 0.04 | 0.34 |
| | O | 0.01 | 0 | 0.01 | 0 | 0.01 | 0 |
| Number of NIS Investigations | E | 177 | 77 | 120 | 84 | 137 | 47 |
| | O | 1 | 4 | 4 | 2 | 7 | 2 |

U.S. Air Force Discharges for Homosexuality

| | | FY 85 | | FY 86 | | FY 87 | |
|------------------------------|---|---------|--------|---------|--------|---------|--------|
| | | M | F | M | F | M | F |
| Enlisted Personnel (E) | | 431,017 | 57,586 | 433,972 | 60,694 | 432,578 | 62,666 |
| Officer Personnel (O) | | 96,473 | 11,927 | 96,671 | 12,377 | 95,013 | 12,665 |
| Administrative Separations | E | 201 | 81 | 249 | 68 | 194 | 71 |
| | O | 15 | 3 | 13 | 2 | 13 | 2 |
| Courts Martial Separations | E | 0 | 0 | 0 | 0 | 0 | 0 |
| | O | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Homosexual Separations | E | 201 | 81 | 249 | 68 | 194 | 71 |
| | O | 15 | 3 | 13 | 2 | 13 | 2 |
| % Personnel Separated | E | 0.04 | 0.10 | 0.05 | 0.10 | 0.04 | 0.10 |
| | O | 0.01 | 0.02 | 0.01 | 0.02 | 0.01 | 0.02 |
| Number of OSI Investigations | E | 177 | 80 | 132 | 51 | 142 | 52 |
| | O | 15 | 4 | 21 | 7 | 20 | 5 |

APPENDIX C
Statistical Data on Homosexuality

C-0

OSD P&R 007370

Statistical Data on Homosexuality

No one knows how many homosexuals there are. The reason for this is twofold. First, there is the problem of definition, which has been discussed in the text. While it is relatively simple to define a homosexual act, it is not so with the definition of a homosexual person. Most definitions include some aspect of preference for or indulgence in homosexual acts. But how much preference, and how many acts? Along with authorities on human sexuality, we categorically reject the notion that participation in a single homosexual act defines homosexuality. An acceptable definition of homosexuality needs to contain two elements, one behavioral, the other self-definitional.

1. The person concerned prefers homosexual acts exclusively or significantly over heterosexual acts.
2. The person concerned identifies (at least privately) with being homosexual.

Second is the problem of locating homosexuals. Save for those who publicly announce their sexual orientation and those who are occasionally apprehended for homosexual conduct, there is no way to conduct population studies. Because of the social stigma traditionally attached to being homosexual, many (perhaps most) homosexuals remain hidden and are not identified except in special research studies. As a result, the data cited in any research investigation are not true population estimates. We can only construct estimates based on available data and social and demographic theory.

Kinsey (1948) rated his subjects on a 0-1-2-3-4-5-6 scale (which was described on page #638*) from exclusively heterosexual (0) to exclusively homosexual (6). Some of Kinsey's significant conclusions with regard to homosexuality are summarized in the following table:

*and in Appendix D, p. D-2.

persons who rate 2's or 3's who, in terms of the number of contacts they have made, may have had more homosexual experience than many persons who rate 6, and the clinician, the social worker, court officials, and society in general are not infrequently concerned with persons who rate no more than 2's or 3's. Many who rate only 1 or 2 are much disturbed over their homosexual experience, and they are frequently among those who go to clinicians for help.

With regard to bisexuality, Kinsey stated that nearly 46 percent of the general population engages in homosexual conduct or reacts to persons of both sexes in the course of their adult life.

Kinsey's data can be confusing, especially with regard to specific rates, because he excludes pre-adolescent homosexual experiences from many of his conclusions and presents such a wealth of numbers. The following conclusions, however, stand out:

- Only 50 percent of the population is exclusively heterosexual throughout adult life.
- Only 4 percent of the population is exclusively homosexual throughout adult life.

- Of the white male population, 10 percent is more or less exclusively homosexual between ages 16 and 65.
- Throughout adult life, 46 percent have some homosexual contact.

The Kinsey data are complicated, largely due to the fact that sexual behavior patterns are not fixed, but change with age. This is probably best reflected by the following two graphs, also taken from Kinsey's work:

No study since Kinsey has been as comprehensive or thorough, and most subsequent work leans strongly on that of Kinsey.

The Wolfenden report (1957) also cites Kinsey's conclusions and states that findings in Great Britain might be similar. The Wolfenden report also alludes to data from Sweden concluding that 1 percent of all men were exclusively homosexual, and 4 percent had both homosexual and heterosexual impulses.

The Canadian Forces Study on Homosexuality (Zuliani, 1986) stated that 10 percent of the general Canadian population was "non-exclusively heterosexual." This study also estimated that 10 percent of males and 5 percent of females in the general population were exclusively homosexual for at least 3 years between ages 16 and 55. Williams and Weinberg (1971) do not give any estimates of total numbers of homosexuals in the military, but state "...there must be a considerable number of homosexuals. At the least, this number must be greater than the 2000-3000 discharges per year for homosexuality" (p. 59).

In the data reported by Harry (1984), homosexual men and heterosexual men seem equally likely to have served in the military. Lesbians are more likely to have served than heterosexual women.

No hard data have been advanced to counter the conclusion that the percentage of male homosexuals in the military is significantly different from that in the general population. On the data available it is reasonable to conclude that the percentage of female homosexuality in the military is higher than in the general population.

APPENDIX D

Bisexuality

D-0

OSD P&R 007374

Bisexuality

The ancient Greek concept of organic bisexuality was revived with the science of embryology and the apparent early hermaphroditic characteristics of the human embryo (Marmor, 1975). Freud used this concept in formulating some of his psychoanalytic theories, and believed that there is a biologic bisexual predisposition, and that all persons go through a homoerotic phase as part of normal maturation.

Up to now there has been little consideration of bisexuality as a possible separate category. Bisexuality, that is erotic response to both sexes, has been generally included with homosexuality. This becomes clear if one considers most laws and rules concerning homosexual behavior: participation in a single homosexual act is enough to label a person a homosexual (Kinsey, 1948). The converse, however, is not true; a homosexual does not become heterosexual by engaging in sexual behavior with the opposite sex.

The Kinsey data, that 4 percent of men are exclusively homosexual, and 63 percent are exclusively heterosexual (after adolescence) leaves a very large percentage, .33 percent, who could be considered bisexual, as they exhibit varying degrees of erotic response to either sex.

In terms of military discharges for homosexuality, it seems likely that many of those individuals discharged as homosexuals are probably bisexual (and could be completely heterosexual except for one incident).

At present this issue is not addressed in military law or regulations. No distinction is made between homosexuality and bisexuality.

The bisexual capability exists in a large percentage of persons (perhaps 37 percent of males or more) and is probably the explanation for much of such "situational homosexuality" as is seen in prisons and other restricted environments where there is no access to members of the opposite sex. In most cases, persons participating in homosexual acts under such circumstances do not consider themselves homosexual, and return to heterosexual behavior when this becomes possible.

GAO

United States General Accounting Office
Report to Congressional Requesters

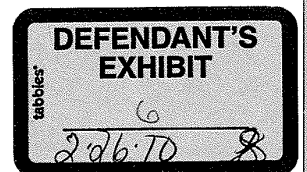
June 1992

**DEFENSE FORCE
MANAGEMENT**

**DOD's Policy on
Homosexuality**



GAO/NSIAD-92-98





United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-247235

June 12, 1992

The Honorable John Conyers, Jr.
The Honorable Gerry E. Studds
The Honorable Ted Weiss
House of Representatives

This report responds to your joint request that we review the Department of Defense's (DOD) policy of excluding homosexuals from serving in the armed forces. Also, as you requested, our supplemental report Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S) contains statistical information such as the number of service personnel expelled for homosexuality as a result of DOD's exclusion policy.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from its issue date. At that time, we will send copies to interested committees; other Members of Congress; and the Secretaries of Defense, the Air Force, the Army, the Navy, and the Marine Corps. We will make copies available to other parties upon request.

Please contact the Director for Defense Force Management Issues, Paul L. Jones, on (202) 275-3990, if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix V.

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

In response to a request from Representatives John Conyers, Jr., Ted Weiss, and Gerry E. Studds, GAO examined certain aspects of the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces. Specifically, GAO was asked to

- compile and analyze statistics on the separation of homosexuals from the military services between 1980 and 1990, including the number of personnel by service, race/ethnicity, gender, rank, and occupational category;
- determine the cost of replacing personnel separated under this policy and the cost of investigating allegations of homosexuality;
- identify and analyze the evidence that has been developed by DOD, the military services, or nondefense sources and cited as support for the current policy on homosexuality; and
- obtain information on the general public's attitudes, other nations' military forces policies, and other organizations' views on the compatibility of homosexuality with the military or other work environments.

Background

According to DOD officials, U.S. forces have had policies prohibiting homosexuals from serving in the military since the beginning of World War II. DOD's current policy on homosexuality was formalized in 1982 and specifically states that:

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

According to DOD, a homosexual is "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

Results in Brief

On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair, and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well as disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.

GAO also found that

- recent polls suggest that the public has become more accepting of homosexuality and of homosexuals' serving in the military;
- some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and
- police and fire departments in several major U.S. cities have removed employment restrictions without adverse effects on mission.

GAO Analysis

Number of Discharges

During fiscal years 1980 through 1990, approximately 17,000 servicemen and women (an average of about 1,500 per year) were separated from the services under the category of "homosexuality." Approximately 1,000 military personnel were discharged in 1990. No determination that their behavior had adversely affected the ability of the military services to perform their missions was required. In terms of rank, gender, and race/ethnicity, the majority were enlisted personnel; most were men; and most were white. However, some groups were consistently discharged at a rate higher than their representation in the total active force or individual service. For example, between 1980 and 1990, the Navy, representing 27 percent of the active force, accounted for about 51 percent of the discharges; and women, representing 11 percent of the total active Navy force, accounted for 22 percent of those discharged.

Cost of Policy

Limited cost information associated with the administration of DOD's policy was available. Basically, only the costs of recruiting and training the personnel needed to replace those discharged for homosexuality could be readily estimated. In fiscal year 1990, recruiting and initial training costs associated with the replacement of personnel discharged for homosexuality were estimated to be \$28,226 for each enlisted troop and \$120,772 for each officer. The total cost of replacing personnel discharged for homosexuality, however, would need to include other factors such as out-processing and court costs.

The services' investigative agencies could not provide specific information on the costs of investigating alleged cases of homosexuality. However, during fiscal years 1986 through 1990, DOD investigative agencies conducted a total of 3,663 such investigations. In 1990, a total of about 472 investigations were conducted. These figures are approximate because the services can administratively handle investigations involving homosexuality under other categories, and the investigative agencies had to estimate the number of such cases. In addition, Navy investigations are simultaneously categorized as more than one offense, such as sodomy and indecent assault; again, the Navy adjusted its figures to account for this policy.

Studies of Homosexuality in the Military

DOD and the services have commissioned two major efforts that focused on whether homosexuals were more of a security risk than heterosexuals and concluded that there was no factual data to substantiate that premise. The Navy's 1957 Crittenden Report¹ (which did not question the underlying premise of DOD's policy) stated, "A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." A more recent draft report, prepared by DOD's Defense Personnel Security Research and Education Center (PERSEREC), commented that the DOD policy prohibiting homosexuals from serving in the military was based on the same rationale used to limit the integration of blacks.² Specifically, it stated:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

The PERSEREC effort, initiated in 1986, has been packaged as several interim products with the final report issued in late 1991.

In addition, national organizations such as the American Psychiatric Association and the American Psychological Association, familiar with the extensive research conducted on homosexuality in the general population and with military veterans, disagree with DOD's policy and the policy's implied characterization of homosexuals.

In testimony before the House Budget Committee, the Secretary of Defense in July 1991 and the Chairman of the Joint Chiefs of Staff in February 1992 backed away from security concerns as a major basis for DOD's policy. However, both officials continued to support the policy on the basis of their belief that it is needed to maintain good order and discipline.

¹Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, Mar. 15, 1957.

²Presidential Executive Order 9981, July 26, 1948, required the integration of blacks into the armed forces. Congress also passed the Women's Armed Services Integration Act in 1948 to institutionalize career opportunities for women in the military.

**Attitudes Toward
Homosexuality**

General public attitudes in the United States about homosexuality appear to be changing. GAO reviewed three recent national polls, conducted by Gallup and Penn and Schoen Associates, Inc., which indicated that more Americans now say they believe that homosexuals should be allowed to participate in various occupations, including the armed forces. A Gallup survey conducted in March 1991 of a cross section of the American population of adults aged 18 and over showed that 69 percent of those interviewed felt that homosexuals should be allowed to serve in the armed forces, whereas only 51 percent felt that way in 1977.

**Selected Police/Fire
Department Policies**

Additionally, since the early 1970s, a number of police and fire departments have adopted policies prohibiting discrimination on the basis of sexual orientation and have hired homosexuals into their work forces. Officials from all eight of the departments that GAO contacted stated that they had not experienced any degradation of mission associated with these policies. Most department officials did not identify major problems related to retaining homosexuals in a work force, but a few pointed out isolated cases of problems indirectly involving homosexuals.

**Other Nations' Policies on
Homosexuals in the Military**

The policies regarding homosexuals serving in the military forces of 17 selected nations—predominantly members of the North Atlantic Treaty Organization and other U.S. allies—ranged from policies very similar to that of the United States to no stated policy addressing homosexuality as either a legal or a military personnel issue.

Four of the 17 countries, or about 24 percent, had policies that appear to have been designed to prevent homosexuals from entering military service and to separate from service or preclude retention beyond an existing service obligation those active duty personnel identified as homosexual. While 13 countries did not exclude homosexuals from entering their armed forces, several had policies requiring separation if an individual's homosexuality was disclosed later or if an individual's behavior was found to be aggressive, harassing, or disruptive. During the past 10 years, at least two countries have dropped their exclusion policies. One of the four countries that now exclude homosexuals is reviewing its policy—it expects to rescind the existing restriction in the near future.

Recommendations

On May 19, 1992, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While GAO is making no recommendations in this report, GAO's analysis should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces.

Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others. DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that GAO correctly notes that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that GAO erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that is, that homosexuality is incompatible with military service - - and GAO's report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, GAO recognizes that this study went beyond its directed task. However, GAO believes that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, GAO suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduced on this matter, GAO has deleted its suggestion.

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Abbreviations

| | |
|----------|---|
| AIDS | Acquired Immune Deficiency Syndrome |
| DMTAG | Design, Methodology, and Technical Assistance Group |
| DOD | Department of Defense |
| GAO | General Accounting Office |
| PERSEREC | Personnel Security Research and Education Center |

Background

According to Defense officials, the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces is based on the professional military judgment that the policy promotes overall combat effectiveness.

Although the language and administration of the military's policy on homosexual orientation has changed since 1941, the current policy has, according to both scientific researchers and DOD officials, evolved from the one adopted during the mobilization for World War II. Exclusion was then grounded on (1) prevailing sodomy statutes that viewed homosexuality as a criminal offense and (2) the psychiatric belief that homosexuality was a mental disorder. At that time, the rationale was that the psychiatric screening of recruits for mental disorders (including homosexual orientation) would enhance the psychiatric profession's prestige, as well as be less costly to the government over the long term. That is, it was anticipated that such screening would reduce the patient load of veterans' hospitals after the war. Many psychiatrists also felt that it was more humane to screen out homosexual recruits from the draft and separate homosexual persons already in the military services rather than imprison them under military sodomy regulations.

Definitions and Population Projection

Under present policy, DOD defines a homosexual as "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." The limited data currently available (largely Kinsey Institute studies) suggests that the primary sexual orientation of between 5 and 10 percent of the general U.S. population is homosexual.¹

In commenting on a draft of this report, DOD questioned the predictive value or relevance to today's military of earlier studies conducted by the Kinsey Institute. It stated that we had failed to point out that DOD's exclusion policy—which involves an initial screening out process and a lack of acceptance of homosexuality in the military environment—tends to limit the number of homosexuals in the military.

¹Based on a DOD military population of approximately 2 million, the number of homosexual personnel would range from about 100,000 to 200,000 personnel using these percentages.

DOD is correct in stating that a solid estimate of the military homosexual population is not available. However, a number of studies done after the Kinsey efforts clearly suggest that (1) there are considerably more homosexuals serving in the military and completing their terms of service than are being caught and discharged and (2) the limiting effects of the exclusion policy (for example, the screening processes) may not be particularly effective.²

Current DOD Policy

DOD's guidance on homosexuality is contained in Directives 1332.14, "Enlisted Administrative Separations," and 1332.30, "Separation of Regular Commissioned Officers for Cause." The first directive was officially revised on January 28, 1982; the second on February 12, 1986. Specifically, the guidance states that:

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

Prior to 1982, DOD directives did not require the initiation of separation processing or provide grounds for the possible retention of personnel involved in or suspected of homosexual behavior. Accordingly, the regulations of the military services differed substantially in how these and other matters were addressed. According to DOD officials, these differences resulted in substantial difficulties in responding to legal challenges in the courts.

According to DOD officials and documents, the primary reasons for the 1982 and 1986 policy revisions were to (1) establish uniform policies and procedures for all the services and (2) provide a stronger basis for defending the policies and procedures in the courts. Specifically, the new

²These studies include the Navy's Crittenden Report of 1957; a 1967 study by the Institute of Sex Research at the University of Indiana; *Homosexuals and the Military*, C.J. Williams and M.S. Weinberg, 1971; *Homosexual Men and Women Who Served Their Country: Journal of Homosexuality*, J. Harry, 1984.