

**This an excerpt of a book chapter by CMR President Elaine Donnelly titled “Defending the Culture of the Military,” published in May 2010 by the Air Force University Press as part of a book titled *Attitudes Are Not Free: Thinking Deeply about Diversity in the U.S. Armed Forces*. Footnotes are in sequence but different from the original text, which begins on page 249. The chapter is available at <http://books.google.com/books?id=5FnvJEclewC&lpg=PP1&pg=PA249#v=onepage&q&f=false>.**

## **An LGBT Law or Policy for the Military: Impact on Morale**

The primary sponsor of legislation to repeal the 1993 law, H.R.1283, is Rep. Patrick Murphy (D-PA). The original Murphy bill, which would apply retroactively, would forbid discrimination based on “homosexuality or bisexuality, whether the orientation is real or perceived.”

If Congress approves Congressman Murphy’s new lesbian, gay, bisexual, transgender (LGBT) law, or allows the Defense Department to enforce the same policies with administrative regulations, commanders, mid-level career officers, and noncommissioned officers (NCOs) would be required to determine how the open-ended “real or perceived” concept would apply. Federal courts asked to interpret the new “nondiscrimination” paradigm are likely to extend it to all sexual minorities, including transgendered individuals perceiving themselves to be persons of the opposite sex.<sup>1</sup>

## **“Forced Intimacy” Unlike the Civilian World**

The new LGBT law would govern the lives of men and women in all military branches and communities, including Army and Marine infantry battalions, special operations forces, Navy SEALs, and submarines. Unlike civilians, in these communities military personnel do not return home at night after work. They must accept living conditions involving what the 1993 Eligibility Law describes as “forced intimacy,” offering little or no privacy.

A law mandating the inclusion of professed (not just discreet) homosexuals and bisexuals in this high-pressure environment, 24/7, would be tantamount to forcing female soldiers to share private living quarters with men. Such a situation would be unacceptable to the majority of military women even if actual assaults never occurred. Stated in gender-neutral terms, the military would require military *persons* to accept exposure to *persons* who may be sexually attracted to them.

We want and need women in our military, and personnel policies work best when they encourage discipline rather than indiscipline. This is why the military separates men from women in close quarters where there is little or no privacy, to the greatest extent possible. Sexual tension or misconduct of any kind is inherently disruptive whether it occurs on the romantic end of the behavioral spectrum or on the other end where harassment or sexual assaults occur.

The new nondiscrimination law requiring cohabitation with homosexuals or bisexuals, “whether the orientation is real or perceived,” would disregard what we know about men and women in the military. The imagined “gender-free” culture desired by theorists exists nowhere on Earth, except in Hollywood’s social science fiction movies.

Some advocates of gays in the military argue that modern military facilities provide more privacy than older ones, and even if people are exposed to sexual minorities in the field, younger people are used to it, and this is not a big deal.<sup>2</sup>

But the armed forces are not a *Will & Grace* world, created by television sitcom writers for laughs. The issue involves sexuality and the normal human desire for personal privacy and modesty in sexual matters. Elitist arguments equating sexual differences with skin-deep, irrelevant racial differences stand in stark contrast with commonsense customs that are culturally routine.<sup>3</sup>

Consider, for example, a typical family-oriented community recreation center that has separate locker rooms for men and women. Inside the entrance of the women’s locker room, a sign clearly states that boys of any age are not permitted. A similar sign regarding girls is posted in the men’s locker room.

The signs are there not as an affront to young boys (or girls). They are there because the community respects the desire for sexual modesty in conditions involving personal exposure to others using the same facility. This is so even though people using the recreation center visit for only an hour or two; they do not live and sleep there for months at a time.

Signs mandating racial segregation in the same community center would never be acceptable. Racial segregation has no rational basis; separation by gender does. Military volunteers deserve the same consideration.

### **Predictable Sexual Misconduct**

If repeal of the law forces the military to disregard basic human psychology, risks of demoralizing misconduct will escalate to include male/male and female/female incidents, in addition to those that already occur. Predictable tensions ensuing from this unprecedented and provocative social experiment would constantly increase the stress of daily life and generate the full range of emotional turmoil, accusations, and legal jeopardy that undermines individual and unit morale.<sup>4</sup>

Some advocates of repeal try to end objective debate by accusing anyone concerned about these issues of somehow insulting the troops. The attempt at intimidation fails due to logic. Various types of sexual misconduct occur in the military because men and women are human and therefore imperfect. It is not an affront to anyone to state a simple fact: Human beings are not perfect, and homosexuals are no more perfect than anyone else.

### **Equality in Elevated Risks**

Activists demanding repeal of the law dismiss concerns about sexual misconduct by claiming that existing regulations against heterosexual misconduct can and will be equally applied to misconduct involving openly gay personnel. This is an unrealistic, elitist argument, which was addressed in a House Armed Services Committee Report:

The committee . . . heard a recommendation that the department should, as a matter of policy, enforce the Uniform Code of Military Justice [UCMJ] equally on heterosexuals and homosexuals. . . . The committee believes that such an eventuality is neither conducive to justice nor discipline. Violations of the [UCMJ] ought to be prosecuted on their individual merits, without an effort to compel the department to equalize prosecutions among groups of people, offenses, or artificially comparative categories.<sup>5</sup>

Reliance on “equal” prosecutions after the fact of harassment or worse would be small comfort to personnel forced to live in conditions that encourage inappropriate, passive/aggressive behavior conveying an unwelcome sexual message. Many women, both civilian and military (including this author), have experienced such behaviors, which are disturbing but do not involve physical assault that would spark disciplinary intervention or prosecution.

Members of Congress who have investigated and expressed outrage about such behavior when it involves women in the military should be among the first to anticipate and try to prevent predictable problems. Despite constant professional training and “leadership,” unwelcome sexual tension occurs and causes division in groups that need to be cohesive in order to be effective.

Brian Maue, PhD, an Air Force major and instructor at the Air Force Academy, addressed this issue in the *New York Times*. Dr. Maue pointed out that a sexual preference-mixed atmosphere in the military would create conditions comparable to what feminists describe as a “hostile work environment”:

Consider that the U.S. military does not allow swimsuit calendars in its workplaces because they can negatively affect the morale of female military members. . . . For example, if a female soldier was sexually uncomfortable with the way a male soldier looked at her, she or anyone who witnessed the situation could file a complaint, even if the man thought that his glance was not done in a sexually aggressive manner. . . .

Thus, if the morale of a heterosexual female military member can be negatively affected by a swimsuit calendar or by the behavior of a male soldier with no sexual interest in her, could she lodge a similar “hostile environment” complaint if she was forced to share a bathroom, a locker room or a bedroom (say, in a tent or in the barracks) with a lesbian soldier who has no sexual interest in her?

The military has traditionally prevented unnecessary privacy violations and complaints by separating men and women wherever privacy issues could arise. . . .

. . . Combining sexual preferences (i.e., lesbians with heterosexual women) would challenge American military commanders with privacy violations and dignity infractions that would reduce unit effectiveness.<sup>6</sup>

Any attempt to “equalize” regulations between heterosexuals and sexual minorities would lead to constant inconsistencies, persistent doubts about appropriate sexual expression, and an incremental erosion of personal discipline standards.

### **Equal Enforcement and the Lt Col Victor Fehrenbach Case**

It is significant to note that many of the most outspoken advocates of gays in the military also demand the repeal of what they call “antiquated” provisions of the UCMJ that impose higher standards of personal conduct than exist in the civilian world.<sup>7</sup> The highly publicized case of Air Force Lt Col Victor Fehrenbach, an 18-year F-15 weapons systems officer,<sup>8</sup> demonstrates how “equality” might work to erode and eventually lead to the repeal of personal conduct sections of the UCMJ.

Colonel Fehrenbach became a public figure when he protested an honorable discharge resulting from his admission of homosexual conduct, which had been revealed by someone else. An investigative report in the 23 August 2009 *Idaho Statesman* revealed a more distasteful story relevant to the national debate.<sup>9</sup>

Prior to the *Statesman* report, supporters tried to generate sympathy for Fehrenbach because he had been “outed” by a third party. That person turned out to be Cameron Shaner, a criminal justice student who told the Boise police that he met Victor Fehrenbach through a gay Web site. Shaner reportedly went to the aviator’s home on 12 May 2008, after Fehrenbach invited him with a text message and “stud” photographs.

According to the *Statesman*, Shaner did not explain why he “got naked” with Fehrenbach in a hot tub, but at 3:00 a.m. he called Boise police to report a sexual assault. Fehrenbach asserted that the encounter was consensual and was cleared of the rape charge, but his admission of homosexual conduct triggered discharge proceedings. Under the 1993 Eligibility Law, persons who engage in homosexual conduct at any time, on- or off-base, are not eligible for military service.

Colonel Fehrenbach deserves respect for participating in the 2003 liberation of Baghdad. The fact remains that despite provisions of the UCMJ (Article 131) that impose higher standards for “officers and gentlemen,” Fehrenbach showed very poor judgment.

One of Fehrenbach’s lawyers claimed that if his accuser had been a woman, “he’d have gone back to work with no further issue.” Dozens of former naval aviators whose

careers were ruined by the 1991 Tailhook scandal, some even without evidence of misconduct, certainly would disagree.<sup>10</sup>

Consider what would happen if a military officer posted nude photographs of himself and used Craigslist to obtain sex from an unknown woman who subsequently accused him of rape. Even if assault never happened, under the UCMJ that man's career would be over. Fehrenbach and his allies are demanding special treatment just because his conduct was homosexual rather than heterosexual. "Equal" enforcement would lower standards, weaken discipline, and vitiate the culture of the military.

If Rep. Barney Frank (D-MA) and other homosexuals successfully repeal what they call "antiquated" rules governing personal sexual conduct and make the UCMJ consistent with the proposed LGBT law, a wide range of personal conduct regulations would become a thing of the past. Special treatment for Fehrenbach, effectively permitting admitted misconduct if it is consensual, would define discipline down.

Regulations do not allow unmarried heterosexuals to live and sleep with persons of the opposite sex in military close quarters. How would it work if gays and lesbians get to share close quarters with "significant others," but heterosexual colleagues are denied the same comforts? Unit cohesion weakens when people pair off in sexual relationships, causing others to wonder where their primary allegiance lies.

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These commentaries provide additional background on this issue:

- **Patrick J. Buchanan:** [Don't Tell – On Rep. Massa](#)
- **Richard H. Black:** [Danger to Discipline](#)
- **Peter Sprigg,** Family Research Council: [Sex Matters in the Military](#)
- **Maj. Gen. Patrick Brady, USA (Ret.):** [Don't Stress the Military With Quad-Sexual Units](#) (Maj. Gen. Brady was awarded the Medal of Honor for his service in Vietnam.)
- *Human Events:* [The Fehrenbach Case: Defining Military Discipline Down](#)

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<sup>1</sup> According to its own *LGBT News* Web site and newsletters, the British Ministry of Defence meets regularly with LGBT groups advocating transgender rights. See [www.lgbt.mod.uk](http://www.lgbt.mod.uk). The Behavioral Sciences and Leadership Department at the US Military Academy at West Point invited a formerly male graduate and transgender activist to address classes on 4 November 2008. The Michael D. Palm Center, formerly the Center for the Study of Sexual Minorities in the Military, has posted on its Web site an article titled "Transgender People in the U.S. Military." In another July 2009 article titled "Self-Inflicted Wound," the Palm Center complains that proposed legislation, H. R. 1283, would "do nothing for transgender service members," signaling an intent to expand that agenda during or after the current legislative process (27 July 2009, p. 6). The list of expectations from the transgender faction would include military housing access and medical coverage for pre- and post-gender reassignment surgery.

<sup>2</sup> Aaron Belkin and Melissa Sheridan Embser-Herbert, "A Modest Proposal," *International Security* 27 (Fall 2002): 178.

<sup>3</sup> In a presentation opposite Nathaniel Frank, PhD, of the Palm Center, in Chicago on 17 June 2009, Air Force Academy instructor Brian Maue, PhD, speaking for himself only, noted that in the Air Force, body-touching measurements to determine waist size and personal fitness are done only by persons of the same sex. Respect for sexual privacy also is apparent at every commercial airport, where female security workers perform more extensive body searches of women. Fleeting risks of dignity discomforts are minimized by reasonable practices that respect sexual differences and sensitivities. Maue added that men and women in the military, who must share close quarters on a constant basis, deserve the same respect.

<sup>4</sup> Andrew Tilgham, *Navy Times*, "Why So Many Skippers Get Fired," 14 September 2009, 18. The article reports that "personal misconduct is by far the most significant cause of CO firings. Some 45, or 35 percent of the firings during the past 10 years, were due to misbehavior rather than a significant mishap, command performance, or a troubled command climate."

<sup>5</sup> See House Report 103-200, 103rd Cong., 1st sess., NDAA for FY 1994, Report of the Committee on Armed Services on H.R. 2401, 30 July 1993, 290.

<sup>6</sup> Brian E. A. Maue, PhD, "The Locker Room Issue," in "In the Barracks, Out of the Closet," Room for Debate, *New York Times*, 3 May 2009. Dr. Maue's opinions were identified as his own.

<sup>7</sup> William H. McMichael, "Report: Outdated Sodomy Law Should be Repealed," *Navy Times*, 16 November, 2009, 12. Previous reports by this private commission, headed by retired military judge Walter T. Cox III and by a 1998 Task Force on Good Order and Discipline that was appointed by then-Defense Secretary William S. Cohen in 1997, have issued several proposals for revising manuals for courts-martial on several sexual offenses, including adultery.

<sup>8</sup> Some reports described Lt Col Fehrenbach, a WSO, as an F-15 pilot whose training cost \$25 million. DOD figures provided to the 1992 Presidential Commission on the Assignment of Women in the Armed Forces estimated training costs for fighter or bomber pilots to be \$3.1 million. See Commission Report, Finding #2.6.1GH, p. C-93.

<sup>9</sup> Dan Popkey, "Gay Boise Air Force Pilot 'Outed' by False Accusation," *Idaho Statesman*, 23 August 2009. SLDN lawyers representing Fehrenbach did not contest the Boise Police Report, DR#813-786.

<sup>10</sup> Col W. Hays Parks. "Tailhook: What Happened, Why, and What's to be Learned," US Naval Institute *Proceedings*, September 1994, 89-102.