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## HOUSE COMMITTEE ON ARMED SERVICES

*U.S. House of Representatives*

Washington, DC 20515-6035

ONE HUNDRED ELEVENTH CONGRESS

January 20, 2010

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ERIN C. CONATON, STAFF DIRECTOR

The Honorable Robert Gates  
Secretary of Defense  
1000 Defense Pentagon  
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Admiral Michael Mullen  
Chairman of the Joint Chiefs of Staff  
9999 Joint Staff Pentagon  
Washington, D.C. 20318-9999

Dear Secretary Gates and Admiral Mullen:

The debate on whether or not to repeal section 654, title 10, U.S. Code, concerning the service of gays and lesbians in the armed forces, has begun in earnest. As you, Secretary Gates, recently emphasized while visiting the Army War College, any change in the law "must be done very, very carefully," and if changes are to be made, "we must do it in a way that mitigates any downsides, problems associated with" such a change. I fully concur with you, Mr. Secretary. Moreover, I see nothing that leads me to believe that a change in law is necessary and I am concerned that the debate and potential implementation of a repeal of section 654, while our country is fighting two major wars, would be detrimental to those wartime efforts.

I understand through media reports that some in Congress have asked you to update the study conducted by RAND in 1993, entitled, "Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment." I believe that study had significant shortfalls, not the least of which was that it did not examine whether a change in law should occur. I have attached a detailed expert assessment from 1993 about the study's shortcomings in order to illustrate the range of our concerns about the RAND study. Those concerns lead me to conclude that any current review, not only must avoid those pitfalls, but also must be a more detailed comprehensive analysis than is suggested by just an update of the 1993 report.

While some will argue that much has changed since 1993 and the current law is no longer relevant or needed, one thing has not changed in those 16 years. As it was in 1993, I strongly believe that the question of whether the law should be changed must ultimately rest on the matters of military readiness, cohesion, morale, good order and discipline.

Ultimately, one responsibility of this committee is to ensure that legislation enacted improves the readiness of the Armed Forces. No action to change the law should be taken by the Administration or by this Congress until we have a full and complete understanding of the reasons why the current law threatens or undermines readiness in any significant way, whether a change in law will improve readiness in measurable ways, and what the implications for and effects on military readiness, cohesion, morale, good order and discipline are entailed with a change in law.

Such information must come from the detailed, objective assessment of the current law by the military services, as well as the implications attendant on a repeal of section 654, title 10, U.S. Code, on the active and reserve components. I do not believe any overall assessment effort should be contracted out or delegated to a so-called independent commission. Rather, the assessment must capture the views, perspectives and judgments of those who would be most affected by a change in law: military personnel of all ranks and their families and potential members of the all-volunteer military.

Moreover, our military leaders have the responsibility for due diligence before any change as significant as the repeal of section 654 can be made; and must present the Congress with the evidence, in depth, of that due diligence (studies, surveys, access to witnesses of all ranks), so that Congress can judge: 1) whether retaining the current law is advisable from a readiness standpoint; and 2) the ramifications and potential impact any change may have on the readiness of our military and family members. Without the evidence of the Department of Defense's due diligence and without providing Congress the opportunity to hear from a broad spectrum of currently serving members of all ranks, the issue cannot be decided objectively.

In order for this committee to assess whether section 654 should be retained, amended, or repealed, we will require from the military services and the Department of Defense information on the following matters:

- To what extent do the findings contained in section 654, title 10, U.S. Code, remain valid today?
- To what extent has the current law hindered the military's ability in a measurable way to recruit and retain qualified personnel to meet service manpower requirements?
- To what extent has the current law hindered the ability of the Army and Marine Corps to expand?
- To what extent does the discharge of personnel under section 654 create a measurable impact on readiness of the force? How do the numbers of personnel discharged under section 654 compare to the total number of personnel discharged since the enactment of section 654?
- To what extent would the repeal of the current law effect military readiness, cohesion, morale, good order and discipline? What is the nature of the effects that might be expected upon repeal? Would these effects be of short duration or an extended duration?
- To what degree and how would repeal of the current law improve military readiness?
- Would a repeal of current law improve military family readiness?
- What effect would a repeal of current law have on recruiting and retention? Would repeal of the current law significantly improve the military's ability to attract and retain personnel to meet service manpower requirements?
- What effect would a repeal of current law have on the propensity of prospective recruits to enlist and on the propensity of influencers (parents, coaches, teachers, religious leaders, for example) to recommend military service?
- Assuming a repeal of the current law, what benefits (for example health care, military housing and pay and other benefits provided currently to married couples and families) would be provided to the domestic partners, spouses and dependents of gay and lesbian personnel? Would those benefits be any different than those now provided to military spouses and dependents? If so, should they be different?
- Other than a repeal of section 654, what changes to other federal statutes (including those regulating the Department of Veterans Affairs), the Uniform Code of Military Justice, and Department of Defense and Department of Veterans affairs policy would be required if section 654 were repealed and for that repeal to be effective in promoting readiness, morale, and cohesion?
- Current legislation, H.R. 1283, introduced in the House to repeal section 654, also would prohibit discrimination based on sexual orientation? Assuming repeal of section 654, would such a non-

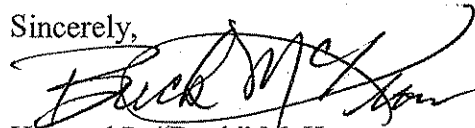
discrimination statute be necessary or desirable? If the non-discrimination policy set out in H.R. 1283 were enacted into law, given the proposed statutory definition of sexual orientation, what implementation challenges would there be? What measures would be required to overcome those challenges?

- H.R. 1283 would not require dependent benefits to be provided if such provision would be in violation of the Defense of Marriage Act. Such a prohibition would seem to extend to any Federal benefit for which married military personnel are eligible. Knowing that family readiness is a major factor in maintaining the all-volunteer force, evaluate this limitation on benefits contained in H.R. 1283 in terms of its effect on cohesion, morale and good order and discipline? Would enactment of this limitation create a wide diversity of benefits between legally married heterosexual couples and families and legally married gay couples and families? If so, how would this diversity of benefits affect family readiness, morale and cohesion? To effectively implement a repeal of section 654 in a manner that does not create disparities between in the military between legally married heterosexual couples and legally married gay couples, would the Defense of Marriage Act have to be repealed or amended?
- What would be the projected costs of a repeal of section 654? To what extent would military barracks, housing policies, and construction have to change to accommodate various sexual orientations and what would be the projected cost of that?

The ability of Congress to make a fully informed judgment about whether section 654 should be repealed is heavily dependent upon its ability to obtain credible, substantive, comprehensive and objective data and information. Many voices have entered their opinions about the need for change. However, this committee and Members of Congress also have a duty to hear directly from the Department of Defense.

Thank you for your attention to this matter, I look forward to your response.

Sincerely,



Howard P. "Buck" McKeon  
Ranking Member

Cc: Chairman Ike Skelton, HASC

MEMORANDUM FOR Congressman Jon Kyl

FROM: Prof. W. A. Woodruff

DATE: September 9, 1993

SUBJECT: RAND Study on Sexual Orientation and U.S. Military Policy

I have reviewed the report published by RAND's National Defense Research Institute, a federally funded research and development center supported by the Office of the Secretary of Defense and the Joint Staff entitled Sexual Orientation and U.S. Military personnel Policy: Options and Assessment. The following paragraphs, which generally follow the organization of the study, contain my observations and comments. Page references to the study appear in brackets.

General Comments:

The study was conducted at the request of the Secretary of Defense to help him draft an executive order "ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces." [xvii] The Secretary's request was prompted by a January 29, 1993, directive from the President. The President ordered the Secretary to provide the executive order by July 15, 1993. President Clinton's directive to the Secretary said that the executive order should be "practical and realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain." [Id.]

It is apparent from the outset that the study was not concerned with whether the homosexual exclusion policy should be changed; rather, its focus and purpose was to develop recommendations on how a changed policy should be implemented. The President's directive to the Secretary and the Secretary's request of the RAND assumes the ultimate question. The President had decided to change the policy, he was only asking the Secretary and RAND to develop the new policy and an implementation scheme. Whether the former policy was good, bad, useful, useless, legal, illegal, right, wrong, wise, unwise, contributed to unit cohesion and combat effectiveness, or detracted from effectiveness was not part of the mission. The national debate, however, has been centered over the ultimate question of whether the policy should be changed in the first place. Thus, the RAND study does not directly address the real issue in the national debate.

In conducting its study and reporting the results, RAND reviewed available literature, sampled public opinion, and

consulted various professionals and experts. Generally speaking, it approached the problem as an academic exercise to develop background material and information that would support its recommended policy. Analysis of the collected information was approached from the perspective of how it supported the recommended policy. In this regard, the report ignores significant data that leads one to question the underlying assumption that the old policy will be eliminated and new policy instituted.

## Chapter 2. Sexual Orientation and Sexual Behavior

This chapter of the RAND study dealt with three basic questions: (1) the prevalence of homosexual behavior in the U.S. and military populations, respectively; (2) whether status and conduct are synonymous; and (3) the prevalence of proscribed sexual activities among heterosexuals and homosexuals.

To its credit, RAND acknowledged that "literature on sexual attitudes, knowledge, and behavior is riddled with serious problems, most of them unlikely to be resolved in the near future, if ever" [41] RAND also admitted that they "cannot offer precise answers to the questions framed." [63] If the questions are important to policy development, one would think that policy changes that could adversely impact upon combat effectiveness would wait until "precise answers" are found or until it becomes clear that the questions are not important. "Ball park estimates" [42] may be appropriate for counting the number of people attending a Washington march, but certainly do not add any scientific certainty to the conclusions contained in the report. In fact, several of the study's conclusions support the old policy rather than the recommended policy.

First, RAND attempts to show that homosexual "orientation" or status is not the same as homosexual "behavior." Since President Clinton ordered a policy that does not discriminate on the basis of "orientation," it is important for the study's authors to separate status from conduct. The study notes that the DoD policy creates a "rebuttable presumption that homosexual status equals conduct . . ." [50] and implies that this presumption is somehow invalid or unfair. In fact, RAND's own results support the reasonableness of the presumption.

RAND concludes that "there is a strong correlation between status and conduct, [but] they are not synonymous." [51] That is precisely why the current DoD policy is a rebuttable presumption. Every soldier processed for discharge for claiming to be a homosexual is permitted the opportunity to establish that he or she is not a homosexual whose homosexuality is manifested by or is likely to be manifested by homosexual behavior. While RAND cites a survey [54] revealing that almost three-quarters of the young men who identified themselves as homosexual or bisexual had not engaged in any homosexual activity as support for the status-

conduct dichotomy, the inapplicability of this study to the military's policy is ignored. In operation, the discharge of a soldier for homosexual "status" only comes into play when the soldier has openly admitted or claimed to be a homosexual. There is a significant difference between an anonymous answer to a national survey and telling your boss you are homosexual. The definition of homosexual in the DoD directive is tied inextricably to homosexual conduct. There may well be some type of "homosexuality" that does not involve homosexual conduct; if so, the military policy doesn't reach it or deal with it. In any case, the rebuttable nature of the presumption of conduct from an admission or claim to be homosexual is both reasonable and fair. Even RAND's data supports this.

Perhaps RAND's difficulty with this issue stems from the President's misunderstanding of the policy. In his July 19, 1993, speech announcing his revised policy, the President admitted that when he was first questioned about the military policy and decided that it should be changed, he had never read it, thought about it, or discussed it with anyone. Having committed to change a policy that he knew nothing about, it is understandable that those charged with implementing the change would have to create the dichotomy that did not exist under the old policy in order to satisfy the President's directive that the policy not discriminate based upon orientation.

Perhaps the ultimate irony of this aspect of the debate is not that critics did not understand the DoD policy, it is that homosexual activists are not interested in a policy that permits orientation but forbids conduct. They understand the reality of the situation; they do not want the opportunity to "be" homosexual without the opportunity to "do" homosexual. In the final analysis, it seems that the only people who make the argument that homosexual orientation is separate and distinct from homosexual behavior are heterosexuals who wish to avoid addressing the issue of whether homosexual behavior is a legitimate alternative lifestyle that government policy should recognize and support to the same degree it recognizes and supports heterosexual marriage.

### Chapter 3. Analogous Experience of Foreign Military Services

A consistent argument throughout the national debate over this issue has been that foreign armies have integrated homosexuals without problems, therefore the U.S. military should abandon its policy of excluding homosexuals. RAND surveyed the experience of seven other nations and concluded that a change in policy would be manageable and would not be disruptive.

The introductory paragraph in the chapter notes the similarities and differences between the foreign militaries and the U.S. Armed Forces. While all countries visited, like the U.S., share a common concern for military effectiveness, the well-being

of its soldiers, and minimizing stressors within the ranks, there are significant differences. As RAND notes,

"[t]he U.S. military is -- by virtue of its size, missions, force structure, and world-wide deployment -- different from the militaries of all other nations; indeed, each nation's military is uniquely its own. Moreover, each country's social milieu is unique, so that the context of its military and attitudes toward homosexuality will differ from that of the United States." [65]

Despite these differences, RAND believes the "policy and implementation difficulties" of the other countries, as well as their "successes" can serve as "guidelines for U.S. policy formulations." [65] While noting the differences, RAND makes no attempt to quantify those differences or to assess whether the differences warrant different conclusions. This is understandable, since RAND's mission was not to study whether the policy should be changed, but to help write an executive order to change the policy. Accepting as a given the directive to change the policy, it was not unreasonable for RAND to look at the experience of other armies to see how to implement a changed policy.

The shortcoming, however, is that the differences between the U.S. Armed Forces and the foreign militaries are still significant and RAND makes no serious attempt to account for those differences even in policy implementation.

For example, RAND recognizes that each nation's military is a reflection of societal attitudes and recognizes the inadvisability of making the military the engine of social change [102]. After paying lip service to this principle, RAND ignores its application to the question at hand. A fundamental difference between US and foreign nations is our in-bred emphasis on individual rights. No other country visited has the same history and tradition of individual rights and "equality" as the US. The reassuring statements that even in armies like the Netherlands very few homosexuals actually make public statements ignores the situation in our country. None of the other nations has an active, vocal, and well-funded homosexual political organization like that in the US. We must remember that the largest single fund-raiser for the President's election campaign was the homosexual community. Furthermore, the role of the national media and its tendency to dig up and overplay "sensational" issues creates an environment in this country totally different than the countries visited. RAND noted that the French media did not inquire into private conduct of elected officials; certainly not the prevailing norm here.

Our history of recognizing, affirming, promoting, and protecting individual rights will create an entirely different situation. Most, if not all, of the countries visited reflect

something less than the "not germane" policy recommended for the U.S. by RAND. For example, the Germans treat conscripts and volunteer homosexuals different. Furthermore, they do not usually permit homosexuals to serve in leadership positions. Thus, career opportunities are limited for homosexuals in the Bundeswehr. Similarly, RAND found in the French military "that sexual orientation can make a difference, both for conscription and career military service." [81] In Norway, discrimination against homosexuals in the military is "a fact of life." [97] Even in the Netherlands, the country that has taken the most aggressive steps to fully integrate and accommodate homosexuals in the military, "the position of homosexuals in the Dutch military is still far from ideal." [94] Canada and Israel have recently changed their policies to allow homosexuals, but the climate is apparently still hostile and very few homosexuals have come out.

I recount the actual situations in foreign armies to illustrate the principle that our traditions have generally been that when we announce an official policy we put the coercive force of law and command authority behind it. Indeed, the RAND study itself recognizes this as fundamental if their policy recommendation is to succeed at all. This being the case, we cannot announce one policy -- a policy that claims sexual orientation is "not germane" to military service -- and permit an unofficial policy that permits discrimination. We learned through the troubled years of striving for racial integration and equality that mixed messages compounded the difficulties. While other societies may be able to claim one policy and actually implement another, our tradition of civil rights, media oversight of government, and politically influential activist groups that continually monitor activities of interest to their constituents forecasts a different environment. Thus, claiming comfort from the lack of problems in foreign armies ignores the fundamental differences between American society and others. The lack of problems in other armies may very well be due to the "unofficial" discrimination that still occurs and that is tolerated by the leadership. We cannot formulate and implement a policy that claims that sexual orientation is not germane to military service, yet that relies upon an unofficial understanding that one must conceal his "not germane" characteristic in order to serve successfully and avoid disruption and impair military effectiveness.

RAND's foreign country experience indicates that homosexuality in foreign armies is not a problem when homosexuals conceal their sexual proclivities and do not come "out of the closet." That is the situation that US policy has required. The existence of the policy fostered such a situation. The debate in this country is not over whether closeted homosexuals can serve; everyone knows that they do. The existence of the DoD policy required homosexuals to conceal their sexual proclivities and conform to the group identity. The debate is over whether open homosexuals can be integrated into US military units, their sexual practices accepted



or tolerated by others in the unit, and whether the obvious privacy invasion resulting from billeting homosexuals and heterosexuals under conditions normally found in military units will hinder military effectiveness and unit cohesion. RAND's data indicates that we must rely upon the modesty of homosexuals, who have waged a very public campaign to gain recognition as a minority group under U.S. law, and their reticence to reveal their homosexuality to achieve the level of success of foreign armies. Promulgating a policy that depends upon the homosexual's voluntary cooperation in concealing his or her sexual proclivity for its success seems rather naive and short sighted. Homosexual activists and those challenging the DoD policy are not interested in the right to serve in the closet.

#### Chapter 4. Analogous Experience of Domestic Police and Fire Departments.

In an effort to identify and weigh the unique aspects of American society and overcome the obvious limitation on the use of the foreign experience, RAND looked to analogous American institutions. [106] RAND concluded that domestic police and fire departments were significantly different than the U.S. Armed Forces, but that they were still the closest analogous institutions and review of their experiences with accommodating homosexuals would help clarify the issue for the military. Again, the purpose of reviewing the experience of fire and police departments was to learn how to best implement a new policy, not to determine whether the old policy should be changed.

As RAND notes on page 107, the differences between fire and police departments and the military are fundamental. While both have hierarchical organizations and depend upon training and teamwork, police and fire departments do not send their members on deployments or missions away from home; they generally work 8-hour shifts and are free to pursue whatever they wish in their off-duty time; they are not required to share crowded berthing facilities on navy ships or two-man pup tents in field exercises. Despite noting these fundamental differences, RAND still considers police and fire departments as useful analogies. If the RAND study were concerned with whether to change the policy, perhaps it would have given more weight to these important differences. But, as noted, that was not their mission.

In reviewing the internal climate in police and fire departments, RAND found "strong anti-homosexual attitudes" [117] and examined the methods employed by department leaders to overcome these attitudes and facilitate the accommodation of homosexuals. One method used in all but one of the cities visited was the recognition of homosexual fraternal organizations. The most notable was the New York Gay Officers Action League (GOAL). [117] In addition to serving as a support group for homosexual officers, GOAL serves as an "established political presence . . . serving as

an advocate for homosexual police officers . . . ." [118] RAND notes the existence of these groups but does not quantify their contribution to the departments ability to successfully accommodate homosexuals.

The failure to consider this aspect is astounding. If homosexual advocacy and support groups are needed to successfully implement a policy allowing homosexuals to serve, this changes the structure of the debate considerably. The military has never permitted soldier unions. Soldiers do not negotiate better treatment or more fringe benefits with their commanders. Furthermore, the presence of such advocacy groups illustrates the political/individual rights mentality prevalent in our culture generally but expressly excluded from the military society. Military culture encourages conformity and the subordination of individual aspirations for the good of the organization and the mission. Advocacy groups in the military like GOAL, which the RAND study implies are useful in avoiding and resolving implementation problems, is antithetical to military efficiency and effectiveness. While such a lobby group or union may be permissible and even desirable in a civilian setting, it is simply not appropriate in a military unit.

RAND surveyed police behavior and noted that the vast majority of homosexuals respect the environment in which they work and do not overtly display their homosexuality by bringing their partners to social functions, etc. [129-130] They realize that it would be offensive to the others. The RAND recommendations, however, seem to create an environment that actually encourages homosexuals to participate to the same extent as heterosexuals. For example, it is not against societal norms for a heterosexual officer or soldier to lead his girl friend by the hand to the dance floor in the club. Applying the same rules to homosexuals, this should be acceptable conduct, even though it offends many others. In other words, one of the things that makes the non-discrimination policy work in the police department - self-regulating behavior to comply with the groups norms - would be altered by establishing the so-called code of conduct that applies equally to heterosexuals and homosexuals. The code of conduct would either have to either forbid traditionally acceptable heterosexual behavior or permit homosexuals to engage in the conduct to the same extent as heterosexuals. This further destroys any semblance of usefulness that police department experience may have on the issue.

The RAND study draws confidence from the experience of police departments even while acknowledging that the impact of non-discrimination on the ability to perform the mission "had not received an adequate test in any of the departments examined." [141] This statement clearly reveals the experimental nature of the recommended policy.

RAND is quick to accept and accredit the opinions and professional experience of fire and police leaders on the impact of various aspects of homosexuality on their units, but is unwilling to accept the opinions and professional experience of military leaders. For example, GEN Schwartzkopf testified before the SASC that in every instance where open homosexuality was evident in a military unit, the morale, cohesion, and effectiveness was disrupted. His expertise is far more relevant to the question at issue than extrapolating from a police chief in New York or Seattle.

RAND emphasized the need for strong and effective leadership to effectively implement non-discrimination policies. The report cites a police chief who terminated his department's association with the Boy Scouts and who marched in the city's gay pride parade as example of effective leadership in setting the tone for the department. [147] I doubt seriously if the American people generally, and the military community specifically, want our military to abandon support for an institution such as the Boy Scouts in order to make homosexuals feel more accepted in the military. If this is the example of leadership that will be required to make the RAND recommendation work, the recommendation is out of touch with reality.

Similar to the experience of foreign armies, RAND found that a climate of discrimination, contrary to the official policy, kept many homosexual police officers from declaring their homosexuality [144]. This, in turn, reduced the numbers of open homosexuals and thus reduced the problems with implementing a policy. Certainly RAND is not suggesting that we need to announce a policy of non-discrimination but allow, or even encourage, intolerance so to keep the numbers down and thus reduce the magnitude of problems. The fallacy is that this further undermines the value of the experience of police departments in trying to predict the impact the recommended policy will have on the military.

Probably the most significant aspect of the RAND study of police and fire departments is the experience of the fire departments. RAND viewed the fire departments as a closer analogy to the military than police departments because of the communal living arrangements typically found in fire houses and the need for close coordination and teamwork among firefighters battling a common enemy, the fire. Their theory seemed to be that by studying the accommodation of homosexuals in this setting, more insight can be gained into how to integrate homosexuals into the analogous military environment.

The results of their investigation, however, revealed that in the six cities they visited no male fire fighter on any force acknowledged his homosexuality, in spite of the existence of non-discrimination policies. [122] Thus, the impact of open homosexuality on the forced living conditions and lack of privacy

found in the military can not be determined. RAND doesn't know what the impact on military morale, discipline, and unit effectiveness would be if their policy recommendation is implemented. This, again, underscores the experimental nature of the RAND recommendations.

Apparently, RAND thinks that the phenomenon of remaining "in the closet" will continue and few homosexuals will announce their sexuality even if the policy changes. With few homosexuals "coming out" the actual problems will be few, they reason. Enlightened leadership will certainly be able to deal with the few problems that do arise. While this scenario may be comforting in the confines of RAND's academic setting, there is no assurance that these assumptions will become reality in the field. Furthermore, it ignores the political activity and interest that has surrounded this issue. While some homosexuals will remain closeted for any number of personal reasons, we simply do not know what will happen and there is no reliable way to predict what will take place. Remember, we had a number of soldiers "come out" based purely on the President's promise to lift the ban. If RAND's rosey picture does not come to pass, we find our military engaged in a social war at the expense of preparing to fight a real war.

#### Chapter 5. Potential Insights From Analogous Situations: Integrating Blacks Into the U.S. Military

RAND concludes that the problems and difficulties with racial integration serve as a useful guide to the integration of homosexuals. [158] The report acknowledges the argument that racial classes and sexuality are very different aspects of a person's identity. But the study also concludes that racially integrating the military was so difficult that it does provide a useful history lesson in the effort to permit homosexuals to serve. Somewhat contrary to the rather easy and trouble-free experiences of foreign armies and domestic police and fire departments, the RAND study finds "any assertion that racial integration was inherently less problematic than the integration of homosexuals today must be viewed with skepticism." (160) Thus, RAND uses racial integration analogy as a guide for implementing change, not determining whether change is valid, needed, or appropriate.

Interestingly, RAND points to "strong leadership" as the key to making it work. In point of fact, most of the evidence of "strong leadership" amounts to affirmative action type programs and directives that set minorities apart for special treatment and protection -- the very types of programs that fire and police experience found to increase resentment and which RAND then says are not necessary.

One major difference between the racial situation and the homosexual problem not addressed by RAND is that the armed forces already allowed blacks. The problem was one of integration, not

exclusion. In fact, the segregation that existed actually created problems that effected military readiness and combat capability. It is faulty logic to use the example of moving from segregation to integration to justify the move from exclusion to integration. The two are fundamentally different. If anything, the problems will be greater and there is not the underlying military benefits that will be achieved. Moving from a racially segregated to a racially integrated military actually improved the efficiency of the service. The best one can say at this point on the homosexual issue is that permitting homosexuals to serve may not reduce combat effectiveness over the long-term. No one has made a serious argument that inclusion of homosexuals has any real military justification.

On page 189, RAND emphasizes that the focus on race relations in the military was to change behavior, not attitudes, and that the same process should be followed re: homosexuals. The problem with this conclusion is that it ignores the specifics of the programs that the military used to control behavior. Race relations classes were required of all members in the mid 70's. I attended these classes as a lieutenant; I conducted race relations training for my soldiers. The objective of the training was to change attitudes. Certainly, overt behaviors were dealt with under existing laws and will continue to be handled that way. But the thrust of the classes and race relations seminars was clearly to change attitudes and to foster trust, cooperation, and cohesion between and among racial groups.

Separating behavior from attitudes can be done on one level, but like orientation and conduct, at another level one leads inextricably to the other. The military spent millions of dollars and countless hours reforming racial attitudes. The military still trains race relations counsellors at the DoD race relations institute in Florida. The whole idea behind the training is to produce counsellors who can return to units and help create a better working environment by helping to change attitudes toward minority groups, women, and others. In fact, this school was featured in a recent television report as the premier example of race relations improvement techniques in the country.

RAND's conclusion that integrating homosexuals will be at least as difficult as integrating the races is true; it may be a classic understatement. If racial integration is a useful model as RAND believes, then it follows that the same methods used to achieve racial harmony must be followed to achieve the accommodation of homosexuals. The racial harmony ultimately achieved in the military came about through a concerted effort to change racial attitudes and stereotypes. RAND's claim that leaders only need to address behavior and not attitudes ignores the very history that RAND claims is so instructive.

#### Chapter 6 & 7. Relevant Public and Military Opinion

While RAND repeatedly stresses that behavior, not attitudes are the real hinderance to homosexuals serving, the opinions of enlisted men raised in the focus groups suggest otherwise. For example, even those who were willing to accept homosexuals in the work group ("task cohesion") "knowledge of a homosexual's sexual orientation was widely thought to be disruptive; in general, known homosexuals would not enjoy the trust and respect of their fellow soldiers and would, therefore, be unable to function effectively." [231]

To alter this situation and create a climate that will allow the homosexual to "function effectively," you have to change the soldier's attitude towards homosexuality. Apparently, RAND wishes to downplay this salient fact in order to maintain the impression that permitting homosexuals to serve is not an endorsement of homosexual behavior or lifestyle.

Recent court decisions have emphasized that policies based upon negative attitudes of the majority toward the minority cannot be sustained. In other words, if the disruption that results from integrating a certain minority group is caused by the negative attitudes of the majority towards the minority, the policy cannot stand and the majority must change its attitude. Frequently, proponents of this argument cite racial integration as an example of this principle. When the group-identifying characteristic is a benign factor, like skin color, this principle will usually apply. When the group-identifying factor is conduct related, however, the principle does not apply. Excluding convicted felons who have served their prison sentences from serving is, in part, based upon assumptions that other soldiers may not trust, cooperate, or feel they can rely upon one who has been convicted of a crime. The individual may have "paid his debt," but the presence of the conviction still creates a bar to service. To my knowledge, no one has made a serious argument that excluding convicted felons who have served their sentences is improper because it is based upon the prejudice of others. Proponents of the "private bias" argument refuse to acknowledge that homosexuality has anything to do with conduct. In reality, homosexuality has everything to do with conduct.

#### Chapter 8. Issues of Concern: Effect of Allowing Homosexuals to Serve in the Military on the Prevalence of HIV/AIDS

RAND concludes that due to testing at the MEPS "allowing homosexuals to serve would not lead to an increase in the number of HIV-infected military accessions." [254] They admit, however, that "it is not possible to accurately estimate the likely effects on HIV infection rates among military personnel of allowing homosexuals to serve." [255] Again, we are embarking upon an experiment in which most of the important variables are unknown.

The paragraph on page 271 is incredible! Claiming that an increase in HIV infection rates would have little influence on military effectiveness because the HIV infected soldier would not deploy illustrates an incredible lack of understanding of teamwork and unit ("task" cohesion) mission dynamics. Replacing the HIV-infected soldier at the last minute before deployment certainly disrupts the unit's ability to function in the way they have trained. You must bring in a new member who has not trained with the unit and you will experience some reduced effectiveness until the new member gets up to speed on his or her responsibilities. True, other factors can and do remove soldiers from their units at the last minute. Certainly combat casualties will remove soldiers and necessitate replacements who have not been part of the team. But these situations do impact unit effectiveness. It still takes time to get the replacement "up to speed." Unless there is a valid military reason to inject another possible disruptive influence on the unit's ability to function, it should be avoided.

**Chapter 10. What is known About Unit Cohesion and Military Performance.**

Page 283 says it all:

At present, there is no scientific evidence regarding the effects of acknowledged homosexuals on a unit's cohesion and combat effectiveness. Thus, any attempt to predict the consequences of allowing them to serve in the U.S. military is necessarily speculative.

The RAND study does NOT produce any information, evidence, or policy reasons for embarking upon such a social experiment. This, of course, stems from their charter not to determine if the policy should change, but to determine how to change the policy.

RAND notes that various experts have differing opinions on the issues. The study refers to the views of Henderson, Marlowe, and Moskos and those of Korb, Segal, and Steihm and implies that they are of equal weight. In weighing expert opinion, the qualifications, background, training, and experience of the expert is critical. RAND does not discuss the professional qualifications of the various witnesses. Indeed, Dr. Korb is scholar with the Brookings Institute and a politician with experience in military personnel matters at the senior policy level. Steihm is a professor who has championed gay rights in her writings. Segal is a sociologist, but apparently has not made the military culture the area of specialization in his professional work like Dr. Moskos. Marlowe and Henderson, like Moskos, have devoted almost their entire professional lives to the study of the military culture and its sociological implications. To imply equal weight to the various opinions is a convenient way to avoid dealing with the real issues.

In fact, RAND seems to discount the actual experience of military leaders like GEN Schwartzkopf, and rely instead upon the more academic approach to the issue. This fails to appreciate that the policy must be implemented in the real world; in military units that must live, train, and ultimately fight together. While classroom discussions are interesting, they are in the final analysis only theories. Even RAND acknowledges that it cannot predict, much less guarantee, that its theories will actually work under the stress of military operations.

The chapter repeatedly stresses that there is no scientific evidence on the effects of homosexuality on unit cohesion. RAND also implies that any adverse effect will be minimum because few people will actually acknowledge their homosexuality. We are now asked to embark upon this experiment, not knowing the potential adverse results for national security and are comforted by the statement that it won't be too bad because homosexuals won't really join or reveal their homosexuality. In other words, the chapter seems to argue that the presence of homosexuals who are closeted will not harm cohesion. That is what the current policy fosters.

If the fact that the numbers of open homosexuals who actually serve will be very limited and because of that self-limitation unit cohesion will not suffer, why does the RAND report make recommendations to create a more tolerant atmosphere for homosexuals in the military? If the atmosphere becomes more tolerant, one would expect more open homosexuals to serve and the unknown effects on unit cohesion would come to pass.

Despite the study's repeated claim that only behavior control is necessary to fully integrate homosexuals, the discussion seems to stress that attitudes toward homosexuality must and will change. Furthermore, if the policy change is implemented, the military will put the full force of law and its coercive authority behind it.

The study's separation of task and social cohesion is interesting. While I am not a sociologist, I find it interesting that apparently few of the military experts who have studied this area seem to think breaking cohesion down into "task" and "social" in the military context is useful. Unlike other groups that social scientists may study, the military unit is not just a work group or a social group; it is both and more. Extrapolating outside studies and applying them to the military is problematic at best and is a poor method to develop personnel policies that should be designed to enhance national defense. Overall, the chapter on unit cohesion acknowledges that there are some real problems with allowing homosexuals to serve [329]. Ultimately, it will take considerable attention, time, effort, and resources to insure that this "experiment" is successful. To what end? No one has yet made a cogent argument that changing the policy will enhance combat effectiveness.



## Chapter 11. Sexual Orientation and the Military: Some Legal Considerations

The RAND study ultimately concluded that ending the ban on homosexuals was a policy choice, not a legal requirement. In other words, the DoD policy did not violate the constitution and that Federal courts are not likely to substitute their judgment for that of the military.

The "not germane" policy recommended by the RAND is similar to the "sexual orientation is not a bar to service" policy proposed by Secretary Aspin on July 19. RAND, however, recognizes the inherent difficulties with trying to separate orientation and conduct and, unlike the Secretary's policy, recommends changing the military's long-standing rules on sodomy. Basically, RAND recommends adopting a policy that does not punish or condemn private consensual sexual activity and offers a way to accomplish this without going through Congress to change the UCMJ.

Such a fundamental change in military law, while perhaps within the President's legal authority, seems unwise as a matter of policy. Societal attitudes toward certain behaviors are usually reflected in the governing criminal code. If societal attitudes have changed sufficiently to support a change in the law, the law-making branch of government should perform its constitutional function. It seems rather presumptuous for a single individual, even if he is the Commander-in-Chief, to make the policy choice to change the criminal nature of certain conduct.

An interesting aspect of the RAND study is its treatment of heterosexual privacy rights. [363] This has long been one of the fundamental questions in the national debate. Many of the problems associated with service by homosexuals stem from the invasion of privacy that occurs when the underlying presumption that sexual opposites attract is invalid. This is not to say that all homosexuals are predatory and will attack heterosexuals in the shower. We still segregate males and females to provide a modicum of personal privacy. We do this, not because all males will sexually assault females, but because we have recognized that one should have some degree of control over the exposure of their body in the presence of one who might find them sexually attractive.

Strangely enough, the \$1.3 million of taxpayer's money spent on the RAND report did not even address this issue. The study devotes just slightly more than one page out of 518 to this problem and offers no analysis or insights into the problem. While RAND acknowledged "an important policy consideration is to balance the privacy rights of member of the military who object to homosexuality with the principle that sexual orientation is not germane to military service" [363] it simply neglected to conduct any analysis of the issue.

The RAND study treats this as a legal issue and concludes that a court might allow a heterosexual out of his military obligation if his objection to sharing close quarters with a homosexual was sufficiently compelling. Ultimately, RAND concludes that heterosexuals have no legitimate privacy interests worthy of consideration. They dispose of the entire problem with the solution that "flexible command policy . . . and flexibility in sleeping and bathroom facilities, where feasible," will be sufficient. [363] This approach essentially says that heterosexual privacy interests must give way to the interests of homosexuals in serving in the military. Interestingly, the RAND study does not go into any analysis of these competing interests. It merely picks one over the other. [363] Appendix B, however, fully supports the problem of privacy in the military context. It documents and concludes that "members are required to live in close proximity in environments that provide little privacy." [417] Despite the obvious analogy between gender segregation and privacy rights, the RAND study did not address this aspect.