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Gays-in-Military Hearing Obscures 'Devil in Details' of DoD Report

The **Senate Armed Services Committee (SASC)** yesterday held the first of two hearings scheduled to hear testimony on the report of the Pentagon's **Comprehensive Review Working Group (CRWG)** on repeal of the law regarding homosexuals in the military. Elaine Donnelly issued the following statement in response to yesterday's testimony:

"Secretary of Defense Robert Gates and Chairman of the Joint Chiefs of Staff Admiral Mike Mullen rolled out the same arguments that gay activists have recycled for many years, but they failed to make the case for repealing the law making homosexuals ineligible for military service, frequently mislabeled **'Don't Ask, Don't Tell.'**"

"Secretary Gates spoke only in terms of *'mitigating risks'* associated with repealing the law, never once citing a *benefit* to the military to be realized from repeal. He also argued that the law should be repealed to avoid *'disruption'* that would occur from a sudden decision by federal courts to overturn it. This was disingenuous justification at best, since inaction by his own counsel and CRWG co-chair, **DoD General Counsel Jeh Johnson**, created the problems he now is pushing repeal to solve."

"As we explained in our [December 1 news release](#), Secretary Gates' claim that congressional action is needed to head off precipitous court orders does not qualify as a positive argument—in fact, those comments suggest that DoD General Counsel Johnson forgot to tell his boss about a problem that other legal experts recognize. The rogue ruling of San Diego **U.S. District Judge Virginia Phillips** in the [Log Cabin Republican](#) case challenging the constitutionality of the current law, [Section 654, Title 10, U.S.C.](#), is being appealed and likely will be overturned by the **Supreme Court** if not by the **Ninth Circuit Court of Appeals**.

"The Secretary of Defense and the DoD General Counsel asked Congress to cave in to what amounts to judicial coercion or blackmail: Repeal the law now or the courts will do it for you! The Obama Defense Department, in effect, has become a mouthpiece for a rogue judge who aspires to become the **'Supreme Judicial Commander of the Military.'**

"But Congress is not obligated to take precipitous action to satisfy or deter a federal judge who has exceeded her authority. **In fact, if Congress does rush to repeal the law, all appeals will cease and the San Diego Judge's precedent will stand within the Ninth Circuit.** Such a result would cause the very legal turmoil that Secretary Gates fears."

Commenting on the testimony of Admiral Mullen, Donnelly added, "Once again Adm. Mullen sanctimoniously deplored ['Don't Ask, Don't Tell.'](#) which he constantly confuses with the actual 1993

law. CMR agrees with Admiral Mullen that the 'Don't Ask, Don't Tell' *administrative policy*, which Congress never voted for, fosters institutional dishonesty. But there is nothing about the [actual law](#), Section 654, Title 10, U.S.C., which requires anyone to be dishonest.

"The option to be truthful or dishonest is an individual choice---no one is 'forced to lie' to enter or remain in the U. S. military. The problem continues to be misunderstandings about eligibility to serve. These misunderstandings are encouraged by 'Don't Ask, Don't Tell' enforcement regulations, put in place by Bill Clinton, which have always been in conflict with the actual law stating that homosexuals are not eligible for military service.

"These arguments by Secretary Gates and Admiral Mullen track all-too-closely with typical gay activist misinformation, which we have heard many times before. They reflect gay-activist tactics that could be described as '**mitigate, litigate, and prevaricate.**' Despite the tiresome rhetoric, findings in the actual law, which have been recognized as constitutional by federal courts many times, remain valid.

"Furthermore, statements about 'minimal risk' heard yesterday diverted attention from long-term consequences of repealing the law. [The CRWG Report](#) **contains many devils in the details.** Any effort to 'train' or 'program out' the normal human desire for modesty and privacy in sexual matters, for example, would be an inappropriate mission for the military and unlikely to succeed.

"Unlike yesterday's witnesses, the individual military service chiefs (Army, Navy, Air Force, and Marines) who will testify during today's hearing have statutory authority for personnel over their respective services. Each has previously registered with the SASC his reservations about the wisdom of repealing the law. We trust that their responsibility for the airmen, sailors, soldiers and Marines under their charge will yield some measure of reality conspicuously absent from yesterday's session."

To schedule a Washington, D.C.-area interview on this subject, please contact CMR President **Elaine Donnelly** and Executive Director **Tommy Sears**, Washington office number **202/347-5333**

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