

**U.S MILITARY POLICIES CONCERNING HOMOSEXUALS:
DEVELOPMENT, IMPLEMENTATION AND OUTCOMES**

**Report Prepared For:
The Center for the Study of Sexual Minorities in the Military
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I. EXECUTIVE SUMMARY

Throughout the U.S. military's history, its treatment of sexual minorities has varied both as medical and popular understandings about homosexuality have shifted and as the needs of the armed forces themselves have changed. Military regulations have moved increasingly away from criminal prosecution to the discharge of homosexual service members in response to changing views among medical professionals about the root causes of homosexuality. The U.S. armed forces presently maintain a complete ban on the service of sexual minorities, regardless of conduct or performance.

Within an institution that has officially prohibited the service of sexual minorities since the 1940s, however, the actual implementation of the prohibition has fluctuated across time and branch of service, as well as among commanders.

Purges and investigations of entire bases have coexisted with the experiences of homosexual service members whose sexual orientation was known to fellow service members and even to commanding officers without incident. And as societal attitudes toward homosexuality have in general become more tolerant, there has been increasing evidence of acceptance among many heterosexual military personnel as well.

Rates of discharge have fluctuated relative to the manpower needs of the service. During periods of sustained conflict, when the need for good unit function and operational effectiveness is at its zenith, the numbers of discharges for homosexuality decrease. Further, the policy is not uniformly implemented even in times of peace; some homosexual service members face a lesser chance of discharge than others because of gender, branch of service, or place of duty. Researchers have catalogued scores of examples from the last fifty years of service members who have served openly and with the support and respect of their colleagues.

Department of Defense officials now acknowledge that many homosexual service members have served honorably and well, and they have discarded the unsupported belief that gays and lesbians are a threat to national security. They do, however, continue to express concern that removing the ban on homosexuality would lead to declines in morale, unit cohesion, and operational effectiveness.

Review of military, governmental, scholarly, and non-profit research indicates that sexual orientation does not affect service performance and does not impact national security concerns. Evidence from foreign militaries and domestic fire and police departments reveal that sexual minorities can be successfully integrated into military and paramilitary organizations.

This study also contains additional qualitative evidence that supplements more quantitative data. The report examines the case studies of four service members who publicly challenged the military's ban through court cases or administrative review. The four personnel were exemplary service members before the initiation of their cases. They include a Navy petty officer with twelve years of service who had previously been recognized as "Aircrew Instructor of the Year"; a graduate of the naval academy with twelve-years experience and a commendation medal for her service during the Gulf War; a decorated nuclear sub officer with thirteen years of service; and a first lieutenant who served as an second-in-command of a company in the Army Reserves.

These service members were able to continue serving pending the outcome of their cases. Because their cases received considerable media attention, their sexual orientation was widely known among colleagues during their challenges. The experiences of these service members, who collectively

served openly for more than 18 years, supplement other research findings that homosexuals can be successfully integrated into military organizations. These service members maintained collegial relationships with co-workers, received outstanding evaluations, won awards, and received promotions during their periods of open service. They also maintained high levels of responsibility, managing personnel, overseeing military budgets, and commanding troops.

IV. INTRODUCTION

Throughout the U.S. military's history, its treatment of sexual minorities has varied both as medical and popular understandings about homosexuality have shifted and as the needs of the armed forces themselves have changed. Military regulations have moved increasingly away from criminal prosecution to the discharge of homosexual service members in response to changing views among medical professionals about the root causes of homosexuality. Within an institution that has officially prohibited the service of sexual minorities since the 1940s, however, the actual implementation of the ban has fluctuated across time and branch of service, as well as among commanders. During periods of war, rates of discharge have declined as manpower needs have increased. Numerous examples exist of gay and lesbian military personnel who have served with the knowledge of other colleagues and even commanders. Further, not only does a service member's chance of being discharged vary by branch of service, but female service members also comprise a disproportionate number of those separated under the policy. Department of Defense officials have acknowledged in the past decade that the ban on homosexual service members has not resulted in the complete removal of gays and lesbians from the military and that many sexual minorities have served honorably in the U.S. armed forces. However, they continue to maintain that a removal of the ban would negatively affect morale, unit cohesion, and operational effectiveness within the U.S. military.

This report examines the development of, and reasoning behind, U. S. military policies restricting the service of homosexual men and women. It further analyzes scholarly, military, and governmental data concerning gay and lesbian service members and their effects on military operations. Studies of homosexual military personnel, foreign militaries, and domestic police and fire departments have consistently indicated that gay and lesbian service members can be successfully integrated into military and paramilitary organizations. This report then examines in detail the case studies of four service members who openly challenged the military's ban while continuing to serve in the military. Collectively, they have served more than 18 years as openly homosexual military personnel. While these

cases offer additional examples of exemplary service by homosexual service members, they also detail the responses of heterosexual personnel to extended service with openly homosexual military officers. Such case studies are meant to add nuance and detail to the quantitative research that has been established over the last fifty years, which have failed to measure any negative effect of the service of sexual minorities on the morale, unit cohesion, or operational effectiveness of military units. These service members in the four case studies maintained collegial relations with their co-workers, and they received promotions, medals and commendations, exemplary evaluations, and continued high levels of responsibility during their periods of open service.

III. METHODOLOGY

Information collected for this report was systematically gathered from publicly available primary and secondary sources concerning the historical development of the U.S. military's policy on homosexuality. In addition, this report draws extensively upon military, governmental, and scholarly research relevant to understanding outcomes associated with homosexual military service. Such research includes assessments by the military, the government, and non-profit organizations on the policy and its implementation, as well as studies on homosexual service members and veterans, foreign militaries, and domestic fire departments that have established non-discrimination policies for sexual orientation, unit cohesion and inter-group relations, sexual behavior, issues of privacy and personal modesty, sexual orientation, attitudes among military personnel, and military discharge statistics. Independent observations from multiple sources were compared to draw out common findings that are consistent among researchers in different sectors (e.g., military, academic, non-governmental). The citations and bibliographies from sources were used as additional resources to ensure the broadest possible inclusion of relevant research material.

This report further draws upon legal, military, governmental, scholarly, and journalistic sources relevant for understanding the development of court and administrative cases challenging the military's policy over the last decade. Content analysis was done of Lexis/Nexis search retrievals for news articles

and wire service dispatches relating to administrative and court challenges in the past decade (n=137). Present and former sexual minority participants and colleagues were also interviewed (n=7), and these interviews were supplemented with court transcripts and public comments found in newspaper accounts (n=121).¹ The cases detailed in this report involve service members who continued to serve pending the outcomes of their challenges. Such cases are meant to add qualitative depth and nuance to the findings of quantitative research related to outcomes associated with homosexual military service. The case studies were chosen because they represent cases in which, due to the high levels of media interest, the sexual orientation of the challenger was widely known by colleagues throughout the contestation of their discharges.

IV. A BRIEF HISTORY OF MILITARY POLICIES CONCERNING SEXUALMINORITIES

MILITARY POLICY PRIOR TO WORLD WAR II

Prior to World War I, the U.S. military did not maintain specific regulations addressing homosexuality among its service members. Instead, individual commanders retained considerable discretion over the control and discipline of soldiers under their command. Evidence exists of both the participation of gay military personnel and of discharges for homosexuality as far back as the revolutionary war (Shilts, 1993; Katz, 1992).² While documents concerning same-sex sexual behavior from this time are scarce, it is believed that not all reported cases were prosecuted (Katz, 1992). The Articles of War of 1916 addressed the issue of homosexual conduct for the first time, although prohibition was limited to assault with the intent to commit sodomy.³ In the 1920 revision of these regulations,

¹ Of these sources, 105 are also counted among the Lexus/Nexis search.

² See also Devilbliss (1994). For accounts of military discharge for homosexuality prior to World War II, see Katz (1992). For accounts of the military service of gay and lesbian personnel during World War II, see Berube (1990).

³ The Articles of War of 1916 became effective March 1, 1917 (Burrelli, 1994).

consensual sodomy was listed as criminal behavior and made punishable by imprisonment (Shilts, 1993; National Defense Research Institute, 1993).⁴

Following World War I, psychiatrists favoring personality development models persuaded Army officials that they could identify and screen out men with personality disorders, thereby minimizing the psychological casualties of war. While the psychiatrists who framed the standards drew upon personality development theories, however, the Army embedded the screening protocols they developed in the language of degeneration. Human beings were ranked according to hierarchical categories of characteristics, and the Army excluded those who were deemed inferior. In 1921, the Army issued standards that disqualified men who displayed “the stigmata of degeneration” (Berube, 1990, p. 13). Those with a “degenerate physique” included men with female physical characteristics, which were defined to include sloping shoulders, broad hips, an absence of facial and body hair, and a lack of secondary sexual characteristics (Berube, 1990, pp. 13-14; National Defense Research Institute, 1993). A young man with a “scant and downy beard” or a “female figure” was to be closely observed for indications of “internal glandular disturbances” (Berube, 1990, p. 14). In addition to classifying physical characteristics, the Army standards established the broad category of “sexual perversion,” which included oral and anal sex among men, as one sign of “functional” degeneracy. Finally, the screening list detailed “sexual psychopathy” as a “constitutional” psychopathic state, which indicated a biological problem of a psychiatric nature that made a person unable to adjust to civilized society (Berube, 1990, p. 14).

During the inter-war period, however, a shortage of volunteers and a lack of pressure from psychiatrists meant in practice that the Army’s screening standards were rarely implemented (Berube, 1990). Although the Articles of War listed sodomy as a court-martiable offense, service members who were determined to have engaged in sodomy were more frequently discharged administratively under a “Section VIII” discharge for unsuitability (National Defense Research Institute, 1993). Such discharges

⁴ The Manuals for Court-Martial from 1917 defined sodomy as anal penetration of either a man or a woman by a man; oral sex did not constitute sodomy. After the 1920 revision, however, the Manuals for Court-Martial redefined sodomy to include oral and anal penetration between two men or between a man and a woman (RAND, 1993).

were generally classified as less-than-honorable, or “blue”.⁵ However, imprisonment for homosexual conduct did continue to occur (Shilts, 1993; Jennings, 1994); for example, the Army convicted 34 soldiers for sodomy and related offenses from July 1938 to May 1941 (Berube, 1990). While psychiatric developers of World War II screening plans would discard the outdated categories of “anatomical and functional stigmata of degeneration,” this terminology would continue to be used by the Army and Navy through the Second World War. Army and Navy officials would persist in describing homosexuality as a “constitutional psychopathic state” and to diagnose gay and lesbian service members as “sexual psychopaths” (Berube, 1990, p. 14).

WORLD WAR II POLICIES

During World War II, military leaders engaged in substantial debate about the policies and practices related to homosexuality in the armed forces, and considerable revision of regulations occurred throughout the services.⁶ World War II required a mass mobilization unlike any previously seen in U.S. history; the Selective Training and Service Act of 1940 resulted in the immediate registration of more than 16 million men (D’Emilio, 1998).⁷ Debate concerning homosexual policies stemmed both from the widespread variation in the handling of individual cases and the U.S. government’s reliance on the psychiatric establishment to assist in weeding out soldiers who were considered unfit to serve (National Defense Research Institute, 1993; Jennings, 1994). By November 1940, the Selective Service issued a memorandum to volunteer physicians at local draft boards that explained in lay terms five psychiatric “categories of handicap” and concluded with a list of miscellaneous “deviations” that physicians should be alert for (Berube, 1990, pp 11-12). Homosexuality was not included in the first circular. By mid-1941, however, the Army and Selective Service would include “homosexual proclivities” among the list

⁵ “Blue discharges,” so termed because of the blue paper on which they were printed, were characterized as neither honorable nor dishonorable. Such discharges stripped service members of their honors and denied them access to GI benefits (McGarry and Wasserman, 1998). See also RAND (1993).

⁶ For example, the Army instituted twenty-four separate revisions of its policy concerning homosexuals between 1941 and 1945 (RAND; 1993).

⁷ 18 million men would eventually be registered during the course of the war (RAND, 1993).

of disqualifying “deviations” (Berube, 1990, p. 12). The Navy by this time had issued its own directive precluding the induction of those “whose sexual behavior is such that it would endanger or disturb the morale of the military unit,” but it did not explicitly mention homosexuality (Berube, 1990, p. 12). Psychiatric leaders involved in establishing the guidelines would push for treatment of homosexuality as a mental illness, rather than as a crime that demanded imprisonment.

In 1942, Army leaders advanced the first regulations that differentiated between homosexual and “normal” individuals, provided signs of homosexuality, and clarified the procedures for the exclusion of gay service members. Those who “habitually or occasionally engaged in homosexual or other perverse sexual practices” were not to be inducted (Berube, 1990, p. 19; Shilts, 1993). The regulations detailed three possible signs for identifying gay men: “feminine bodily characteristics,” “effeminacy in dress and manner,” and a “patulous [expanded] rectum” (Berube, 1990, p. 19).⁸ The Army, Navy and Marine Corps did not initially develop screening procedures for women, instead basing their protocol on the standards established for men. In October 1944, after most of the WAC recruiting had been completed, the WAC would finally establish standards for women that explicitly included homosexuality as a reason for disqualification (Berube, 1990).

In 1943, new Navy regulations focused on “homosexuals” rather than “sodomists”.⁹ Criminal penalties for sodomy were not, however, actually eliminated (National Defense Research Institute, 1993). Those who engaged in same-sex sexual behavior were either to be administratively discharged or allowed to resign, unless their behavior was violent or involved a minor.¹⁰ The Navy directive also noted that the policy applied to the Women’s Reserve, as well. Under Army regulations, those who were not “confirmed perverts” and who were considered to possess a “salvage value” were to be returned to duty after appropriate disciplinary action (Berube, 1990, p. 140). By 1944, the medicalization of

⁸ Late in the war, Army psychiatrists would also suggest that homosexuals lacked a gag reflex as a result of committing fellatio (Berube, 1990).

⁹ The army directive continued to use the term “sodomist” until 1944 (Berube, 1990).

¹⁰ The number of men convicted of sodomy by the Army was 52 in September 1943 and only eleven by July 1944. The judge advocate general at the time believed the decline was a result of the new standards (Berube, 1990).

homosexuality was complete. The Army circular broadened the category of offenders who might be reclaimed from those who had gone astray to the “true or confirmed homosexual[s]” whose “cases reasonably indicate the possibility of reclamation” (Berube, 1990, p. 142). The Navy’s 1944 circular introduced for the first time in that military branch the concept of those who have homosexual “tendencies” and stated that even if no sexual contact actually occurred, those with homosexual tendencies were to be identified and prohibited from serving in the military or discharged upon discovery (Berube, 1990, p. 142; RAND, 1993).

POLICIES CONCERNING HOMOSEXUALITY AFTER WORLD WAR II

In 1949, the Department of Defense distributed a memo unifying the military services’ regulations relating to homosexuality. Unlike the wartime policy, there was to be no “rehabilitation” of gay and lesbian personnel. The memo stated:

[H]omosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Services in any capacity, and prompt separation of known homosexuals from the Armed Forces is mandatory. (Cited in Berube, 1990, p. 261)¹¹

The memo urged more careful investigations of suspected homosexuals and the establishment of better communication between the military branches to facilitate the exchange of information concerning homosexuals. The Department of Defense also recommended that each branch of the military give lectures about homosexuality modeled on existing venereal disease lectures (Berube, 1990).

In 1950, Congress replaced previous military judicial statutes with the Uniform Code of Military Justice (UCMJ) to increase civilian control of military disciplinary actions.¹² The UCMJ, which was designed to protect the due process rights of service members, standardized the criminal statutes, court-martial procedures, and appeals processes across the armed forces (Berube, 1990). The Uniform Code of Military Justice remains in effect today. Article 125 of the UCMJ prohibits sodomy, which it defines as “unnatural carnal copulation” (Cited in Lever and Kanouse, 1996, p. 28). Although the article does not

¹¹ See also National Research Defense Institute (1993).

¹² The UCMJ actually went into effect on May 21, 1951 (Berube, 1990).

explain “unnatural carnal copulation” in greater detail, the Manual for Courts Martial defines the phrase to include anal or oral sex or sex with an animal; Article 125 applies to both same-sex and opposite-sex conduct (Lever and Kanouse, 1994; National Defense Research Institute, 1993).¹³ While prosecutions of heterosexuals under the sodomy statutes have occurred (Jacobson, 1996), military officials continue to view homosexuals categorically as potential sodomites (Lehring, 1996). The illegality of sodomy under the UCMJ has been used as justification for the prohibition on homosexual service (Lever and Kanouse, 1996). The maximum penalty for consensual sodomy under Article 125 is five years at hard labor, forfeiture of pay, and dishonorable discharge (D’Amico, 1996).

Widespread fears of subversives at the height of the Cold War led to crackdowns on sexual minorities throughout the military and government in the 1950s. In 1953, President Eisenhower signed Executive Order 10450, which made “sexual perversion” grounds for dismissal from federal employment. It is estimated that dismissals from federal jobs increased tenfold in the wake of Eisenhower’s order (National Defense Research Institute, 1993).¹⁴ The rates of discharge as a percentage of total number of military personnel grew ten-fold in the armed forces as well in response to Eisenhower’s order (National Defense Research Institute, 1993). Separations further increased another 50% by the beginning of the 1960s (D’Emilio, 1998).

The policy of the Department of Defense concerning discharge for homosexuality was further amended in 1959 and 1965. In 1959, Section VII.I of 1332.14 on administrative discharges listed “sexual perversion,” including homosexual conduct and sodomy, as indications of “unfitness” meriting discharge. Procedures for discharge under less-than-honorable circumstances were liberalized in 1965 to allow service members to challenge their discharges in front of administrative discharge boards and to have

¹³ The full text of the Manual on Courts-Martial on sodomy reads as follows:

It is unnatural carnal copulation for a person to take into the person’s mouth or anus the sexual organ of another person or of an animal; or to place that person’s organ in the mouth or anus of another person or an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation with an animal. (Cited in Sarbin and Karols, 1988, p. 20)

¹⁴ For a discussion of the treatment of gay men and lesbians during the McCarthy period, see Faderman (1991), Franzen (1996), D’Emilio (1992), Shilts (1993) and Berube (1990).

legal counsel present (National Defense Research Institute, 1993). Continuing inconsistencies in standards, required documentation, and administrative hearings led, however, to a further review of the policy during the Carter Administration. The Department of Defense issued Directive 1332.14 on January 16, 1981, in response to court rulings that had questioned inconsistencies in the way the prior policy had been implemented (National Defense Research Institute, 1993). The purpose of Directive 1332.14 was to make clear that discharge would be mandatory for any service member who “engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act” (Cited in RAND, 1993, p. 8). The new policy voided all clauses in military regulations that had permitted the retention of homosexuals (Shilts, 1993); prior to the development of the new directive, final decisions about the separation of service members had been left to the discretion of individual commanders (Korb, 1994). Directive 1332.14 also stated that, in the absence of aggravating circumstances, a gay or lesbian service member was to receive a discharge under honorable conditions.¹⁵ The 1981 directive would remain in effect until President Clinton’s efforts to remove the ban in 1993 (Burrelli, 1994).

THE CREATION OF A NEW POLICY UNDER PRESIDENT CLINTON

During the 1992 presidential campaign, then-candidate Clinton vowed to “lift the ban” on sexual minorities serving in the military (Burrelli, 1994, p. 20). Clinton’s vow created a firestorm of opposition among the Joint Chiefs of Staff, Armed Services Committee Chair Sam Nunn, and other members of Congress, and opponents mobilized immediately to block the president’s efforts (McFeeley, 2000).¹⁶ On January 29, 1993, President Clinton instructed the secretary of defense to draft an “Executive Order ending discrimination on the basis of sexual orientation in determining who may serve in the Armed

¹⁵ In 1975, a review of pending gay discharges from the Navy determined that the Chief of Naval Personnel had downgraded the discharge recommendations of administrative panels in four out of five cases. All of the cases involved service members who had been rated as “excellent” or “outstanding” (Shilts, 1993, p. 216). While the percentage of honorable discharges for homosexuality would increase after the implementation of the 1981 regulations were implemented, commanders would continue to issue less-than-honorable discharges for homosexual status (Shilts, 1993).

¹⁶ See also Rayside (1996); Rimmerman (1996); and Halley (1999) for detailed descriptions of the behind-the-scenes political battle surrounding efforts to remove the ban.

Forces of the United States” (Cited in Jacobson, 1996, p. 39). Congress held a series of hearings on the matter in the spring of 1993. While the issue was being debated, the Clinton Administration established an interim policy that prevented military officials from asking recruits about their sexual orientation and placed those in the process of discharge on stand-by reserve (Halley, 1999; Burrelli, 1994).

The final policy, termed “don’t ask, don’t tell, don’t pursue,” was intended to be a compromise that would ease restrictions against homosexual service members without leading to an outright removal of the ban. The military would be prohibited from asking a service member about his or her sexual orientation, but it would still be able to discharge service personnel on the basis of credible investigative information, or if the service members voluntarily admitted his or her orientation. Unlike the old policy, which expressly prohibited both homosexual conduct and homosexual status, the new policy was supposed to distinguish between homosexual orientation, which would not be a bar to service, and homosexual conduct, which would be (Halley, 1999). In February 1994, the Department of Defense issued its directive implementing the new policy. The Department of Defense declared, “A person’s sexual orientation is considered a personal and private matter and is not a bar to service unless manifested by homosexual conduct” (Cited in Burrelli, 1994, p. 28). The directive also stated:

The Department of Defense has long held that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy. Nevertheless, the Department of Defense also recognizes that individuals with a homosexual orientation have served with distinction in the armed services of the United States.

Therefore, it is the policy of the Department of Defense to judge the suitability of persons to serve in the armed forces on the basis of their conduct. Homosexual conduct will be grounds for separation from the military services. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct. (Cited in Department of Defense, 2000)

By the time that the Department of Defense issued its implementing regulations, however, Congress had already passed legislation that weakened the proposed distinction between conduct and status. On November 30, 1993, the new policy was codified into law by congressional passage of the Defense Authorization Act. The Act reiterates the earlier view that homosexual service members constitute an “unacceptable risk to the high standards of morale, good order and discipline, and unit

cohesion” (National Defense Authorization Act for Fiscal Year 1994, 1993). It lists the grounds of discharge as engaging in, attempting to engage in, or soliciting another to engage in homosexual acts; stating one is homosexual or bisexual; or marrying or attempting to marry a member of the same sex (National Defense Authorization Act for Fiscal Year 1994, 1993). The act emphasizes that homosexual conduct is forbidden at all times, regardless of whether one is off-duty or off base. The legislation also expressly allows for the reinstatement of enlistment questions concerning sexual orientation (Rayside, 1996). Service members may challenge their separation by, among other things, demonstrating that they do “not have a propensity or intent to engage in homosexual acts” (National Defense Authorization Act for Fiscal Year 1994, 1993).¹⁷ Finally, the amendment omits the Clinton Administration’s objective of enforcing sodomy laws equally for heterosexuals and homosexuals (Rayside, 1996).

In 1999, the Defense Department issued two policy memoranda clarifying the application of the policy on sexual minorities. The memoranda emphasized that the report of harassment or threats because a service member is perceived to be homosexual do not themselves constitute credible information justifying the initiation of an investigation into the sexual orientation of the member in question (Office of the Under Secretary of Defense, 1999).

V. APPLICATION OF THE MILITARY’S BAN ON HOMOSEXUAL SERVICE MEMBERS

Although the U.S. armed forces has maintained an official policy of excluding known homosexuals since World War II, the actual implementation of the ban on sexual minorities has been considerably more varied and complex. Because colleagues may respect the privacy of homosexual service members and individual commanders have had a certain amount of control over the decision to pursue investigations and discharges, the actual execution of the military’s ban on sexual minorities has varied both over time and across the armed forces. Purges and investigations of entire bases have coexisted with the experiences of homosexual service members whose sexual orientation was known to

¹⁷ For a detailed look at the specifics of the National Defense Authorization Act as it applies to homosexual

fellow service members and even to commanding officers without incident. Further, rates of discharge have fluctuated relative to the manpower needs of the service. In times of war, the number of official discharges has consistently declined.

No accurate figures exist of the number of homosexual and bisexual service members who have completed their military service without being discharged. It is widely agreed, however, that the number of soldiers separated for homosexuality is far smaller than the total number of gay, lesbian, and bisexual military personnel that serve. While approximately one in every 2,000 soldiers gets dismissed for homosexuality,¹⁸ survey data indicate that two to eight percent of men and one to six percent of women acknowledge engaging in same-sex sexual behavior (Office of the Under Secretary of Defense, 1998; Shower, 1995; National Defense Research Institute, 1993).¹⁹ Research on sexual behavior that included military status suggests that men who are veterans have same-sex sexual experience at the high end of the general population (National Defense Research Institute, 1993). Further, research of homosexual men indicates that they are at least as likely as heterosexual men to have served in the military (Shower, 1995). In its discussion of the discrepancy between the actual number of separations and the expected number of homosexual service members, the military's own PERSEREC report cited Ruse (1988), who 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. (Cited in Sarbin and Karols, 1988, p. 23)

For the vast majority of homosexual soldiers and sailors in the U.S. military, sexual orientation has been a closely guarded secret within the service that is shared, if at all, only with other gay and lesbian service members or a few trusted heterosexual military friends. The sanctions against

service members and the Department of Defense regulations, see Halley (1999).

¹⁸ Since 1990, discharges for homosexuality have ranged from 4 to 7 per 10,000 service members (Office of the Under Secretary of Defense, 1998).

¹⁹ These studies are, however, all subject to the problem of underreporting (Rand, 1993). More than one researcher has estimated that as many as 40% of all men have had at least one same-sex sexual experience. Kinsey's *Sexual Behavior in the Human Male*, which was first published in 1948, reported that 37% of men surveyed had had at least one post-adolescent homosexual experience, same-sex eroticism predominated for at least three years for 12.5% of the male sample, and 4% were exclusively homosexual throughout their adulthood (Shilts, 1993; D'Emilio, 1998). For a discussion of the problems associated with evaluating

homosexuality, including the potential loss of one's military career, have acted as a powerful deterrent to disclosure. Even with such discretion, however, homosexual service members have been highly vulnerable to interrogation, discharge, and even imprisonment through sweeps of bases and widespread investigations. Service members have been interrogated extensively about the most intimate details of their sex lives, threatened with imprisonment if they did not provide the names of other homosexual personnel, charged as lesbians for rebuffing the sexual advances of male colleagues, subjected to searches of personal letters and diaries, and investigated for not fitting traditional gender norms. Military personnel have been investigated after reporting harassment for suspected homosexuality and jailed for consensual same-sex sodomy (Shilts, 1993). Intelligence services have posted personnel outside of gay bars to write down license plates and see who exited. Investigations have used wiretaps, mail surveillance, and confidential counseling sessions with base chaplains, psychiatrists and doctors (Shilts, 1993; Barnett and Jeffrey, 1996).

Not only has the 1994 policy not led to a decrease in the number of service members discharged for homosexuality, but the number of separations has actually increased by approximately 70% since the new policy was implemented (Sobel et al., 2000).²⁰ The attempted compromise to distinguish between conduct and status failed; indications of a homosexual orientation are presumed to presuppose conduct and are investigated. The Service Members Legal Defense Network, which has assisted more than 2,900 military personnel facing discharge since 1993 (Sobel et al., 2001), has documented thousands of violations of the policy. Service members are routinely asked about their sexual orientation in direct violation of the policy. They continue to be investigated after asking commanders for assistance in cases of harassment and as a result of conversations with health care professionals. They are harassed for suspected homosexuality without intervention or protection from military officers (Sobel et al., 2001).²¹

percentages of people who have engaged in homosexual sexual activity generally, and of Kinsey's study in particular, see National Defense Research Institute (1993).

²⁰ The U.S. military discharged 617 service members in 1994 and 1046 personnel in 1999 for homosexuality (Sobel et al., 2001).

²¹ In its 1998 report on the application of the military's policy, the Office of the Under Secretary of Defense reviewed selected investigations files and records of administrative discharge hearings. The report would

VARIATION IN ENFORCEMENT

Both statistical data and recorded accounts of homosexual service members indicate that the policy has varied considerably across the armed forces as well as over time. Discharge statistics consistently show that women are disproportionately targeted under the policy. Although women comprised 14% of the active forces in 1999, for example, they represented 31% of those discharged for homosexuality (Sobel et al., 2000). In addition, while male service members are usually investigated on a case-by-case basis, women are more likely to be scrutinized for homosexuality as a result of a mass investigation. Many have suggested that the gender gap in discharge rates stems in part from continued resistance to female military service more generally (Benecke and Dodge, 1996; Shilts, 1993). Studies of the breakdown of discharges by branch of service further suggest that the policy has been implemented differently across armed forces. Prior to the 1994 policy change, Navy separations for homosexuality consistently comprised a disproportionate amount of the total number of such discharges. Navy service members accounted for approximately 27% of all military personnel from 1980-1990, but Navy discharges accounted for 51% of the total number of separations for homosexuality during the same period. The Air Force, which also represented 27% of total active forces during this time, accounted for only 18% of the discharges for homosexual orientation (GAO, 1992).²² Since the implementation of the new policy, the statistical breakdown of homosexual separations has shifted. The Army, the largest branch by troop strength with 37% of the total active forces, has consistently discharged fewer sexual minorities than either the Navy or the Air Force. In 1999, for example, the Army represented only 25% of total discharges for homosexuality. The Navy also reduced its numbers of separations both in absolute terms and as a percentage of total homosexual discharges; it accounted for just 30% of all homosexual

conclude that the policy has, “for the most part, been properly applied and enforced.” (Office of the Under Secretary of Defense, 1998, p. 13) The authors did, however, recommend that the Department of Defense issue guidance on the initiation of investigations, fully train all those charged with implementing the policy, and make it clear that harassment is unacceptable (Office of the Under Secretary of Defense, 1998).

discharges by 1999 (Sobel et al., 2000). The Air Force had represented an increasing proportion of gay and lesbian discharge cases, accounting 33% of all such cases by 1999 (Sobel et al., 2000; GAO, 1992).²³

No exact figures exist on the numbers of homosexual men and women who have served in the U.S. armed forces with the knowledge of their commanders, or of at least some of their unit members. Journalists, social historians, and other scholars have, however, documented scores of cases in which sexual minorities served openly or semi-openly. Berube's *Coming Out Under Fire* (1990) and Shilt's *Conduct Unbecoming* (1993), which together detail gay and lesbian military service from World War II through the onset of the Persian Gulf War, provide the most thorough accounts of the experiences of homosexual service members.²⁴ Combined, the two authors interviewed more than 200 former gay and lesbian personnel, as well analyzed letters, diaries, personnel records, and official government documents relating to gay and lesbian service. While such stories provide only a partial picture of the total experience of gay and lesbian service personnel, they do indicate that some homosexual service members have been able to serve openly and collegially with heterosexual colleagues.

In his research on homosexual military service during World War II, Berube (1990) determined that many psychiatrists, classification officers, and military leaders found ways to manage homosexuality within the military routine and integrate sexual minorities in military life.²⁵ He includes the accounts of a number of men who were able to be fairly open about their sexual orientation during the Second World War. Many of the gay veterans he interviewed reported that they “‘got more flak’ for being New Yorkers, Southerners, Jews, or blacks than for being gay” (1990, p. 52). Berube cites the Army's official history of psychiatry in World War II, which reported that commanders in the Thirty-Eighth Division

²² The Army, which represented 37% of the active forces, accounted for 25% of all homosexual discharges. The Marines, with 9% of total armed service forces, accounted for 6% of all discharges for homosexuality (GAO, 1992).

²³ Marine Corps discharges for homosexuality in 1999 accounted for 9% of all such separations (Sobel et al., 2000).

²⁴ For accounts of lesbian and gay service members, see Faderman (1991); Shilts (1993); Berube (1990); Cammermyer and Fisher (1994); Webber (1993); Shawer (1995); D'Emilio (1998).

²⁵ In a well-publicized story from World War II, General Eisenhower requested that his assistant, WAC Sergeant Johnnie Phelps, determine the lesbians in her battalion for removal. Sergeant Phelps responded that she would be happy to provide him a list of names, but that he should know that her name would be at

simply transferred those soldiers who made unwelcome passes at other men to other regiments (Berube, 1990). He also recounts the words of one major, who was a proponent of excluding homosexuals from service before he was stationed in a remote combat area in Alaska. After reflecting on the harsh conditions in which his men lived, he decided that: “it is doubtful if morale is served by evacuating homosexuals.... Each man seems to identify himself with the person who is fortunate enough to go back to the United States, regardless of cause” (Berube, 1990, p. 181). Berube also learned from gay combat service personnel that a “live and let live attitude” and even respect could be forged in a context of strong camaraderie fostered by the common experience of fighting battle after battle together (p. 186). As one gay veteran of Iwo Jima recalled, “There was a war on. Who in the hell is going to worry about this shit?” (Berube, 1990, p. 180). Berube adds:

Even gay soldiers who looked and acted “queer” could fit well into combat units. Many outfits had at least one flamboyant soldier who did his job especially well, was protected by a superior officer, and, despite the talk behind his back and the joking and teasing, won respect from the other men. Gay veterans tell many stories about these men. (1990, p. 184)

Shilts (1993) also recounts scores of stories up through the late 1980s in which homosexual personnel, including submarine and battleship sailors, Navy SEALs, and Army combat infantry personnel, served with the knowledge of their colleagues and even commanding officers. His book includes multiple accounts of heterosexual co-workers who attempted to protect gay and lesbians under investigation by attesting to their heterosexuality. At the 1976 discharge hearing of his son, Navy Commander Vernon Berg Jr. testified, “Homosexuals that I have known in the military have done extremely well, getting to extremely high ranks after I first met them.” He stated that he knew homosexual men who had reached the rank of commander, captain, and rear admiral (Shilts, 1993).

Shilts (1993) determined that by the late 1970s, large networks of gay communities had grown up within the military, mirroring the establishment of a broader gay community in civilian life. Some military commanders of battleships and bases refused to permit investigations under their authority (Shilts, 1993). Conversations with scores of gay military personnel also yielded numerous stories of gay

the top of the list, along with the names of all of the file clerks, the section heads, most of the commanders,

sailors or soldiers who tried to get out of service by acknowledging to their commanders they were gay. More often than not, commanders told the malingerers to continue working. The USS LaSalle was known in the late 1970s to have the largest percentage of gay personnel of any air base, naval installation and Army post; it was estimated that at least 60% of the five-hundred-member crew was homosexual.²⁶ The intelligence ship, which was the flagship for the Commander of Middle East Forces and was permanently ported in the emirate of Bahrain, was one of the most continuously decorated vessels in the modern U.S. Navy (Shilts, 1993). By the late 1980s, increases in acceptance of sexual minorities in society more generally resulted in greater tolerance among military personnel, as well:

Although the late 1980s saw a great number of people expelled from the military, it also saw the beginning of an even more significant countertrend: the acceptance of gay soldiers and sailors by large numbers of military field commands. Much of the gay military subculture was now only slightly under cover, when it was hidden at all. (Shilts, 1993, p. 532)

Shilts would find the trend most pronounced outside the Southern U.S., particularly in Southern California, “where local commands seemed to adopt the live-and-let-live California outlook and only enforced gay regulations when it was absolutely necessary” (Shilts, 1993, p. 532).

Because of the continued official restrictions against homosexual service, however, those gay and lesbian personnel who found acceptance from heterosexual colleagues and commanding officers were still vulnerable to crackdowns as a result of changes in personnel or by being named in the investigations of service members in other units or on other bases. Shilts discusses the precariousness of accepting environments in the military:

At any time, a change in command could transform an accepting environment into a hostile one. The leniency of some segments of the military reflected the reality that decisions about pursuing gay investigations were generally made at the field command level. Like their civilian counterparts, growing numbers of these commanders were simply not as antagonistic toward gays as their predecessors had been. However, a large share if not a majority of commanders remained opposed to gays in uniform, which meant that one officer’s transfer or promotion could be the harbinger of malicious crackdowns and purges. (Shilts, 1993, pp. 538-9)

and the motor pool. General Eisenhower rescinded the order (Faderman, 1991).

²⁶ No one knew why the percentage was so high; one hypothesis was that, because no families were allowed to accompany the servicemen, few married sailors wanted to be assigned to the ship. The crew

DIFFERENTIAL RATES OF DISCHARGE OVER TIME BASED ON MANPOWER NEEDS

From the time that prohibitions against homosexual orientation in the U.S. armed forces were first implemented, the enforcement of those regulations and the subsequent discharge of gay and lesbian service members have also fluctuated according to the manpower needs of the military. During periods of heightened conflict, from World War II to the Persian Gulf, evidence exists of both military directives and discharge statistics that highlight differential enforcement of the prohibition as a result of increased manpower requirements. When service personnel are greatly needed and concerns about blocking the avoidance of service increase, the military consistently relaxes its implementation of the ban. But the logic behind such action does not lessen the contradiction it creates. Such differential behavior draws into question the military's argument that gay and lesbian service members compromise the morale, cohesiveness, and operational effectiveness of their units, since it is during periods of conflict that morale, cohesiveness, and operational effectiveness are most vital.

Shortly after the U.S. entry into World War II, the adjutant general ordered the commanding general of the West Coast Air Corps Training Center at Moffett Field to review cases of convicted homosexuals "to determine their respective availability for military service" with "the view of conserving all available manpower for service in the Army" (Cited in Berube, 1990, p. 179). In printed Sex Hygiene lectures, officers in the Women's Army Corps were specifically advised that they should be sympathetic to the close friendships that might develop between women under wartime conditions and that such friendships might even "eventually take some form of sexual expression" (Cited in Faderman, 1991, p. 123). They were to take action "only in so far as its manifestations undermine the efficiency of the individual concerned and the stability of the group" (Cited in Faderman, 1991, p. 123). If the officer believed that a romantic involvement between two women from the same unit was causing disruption, the Sex Hygiene lectures recommended that the two be administratively split up. Discharge was to occur

also drew heavily from highly specialized areas of military intelligence, a job category that has historically had a large gay contingent (Shilts, 1993).

only as a last resort (Faderman, 1991).²⁷ Sex Hygiene lectures also informed WAC officers that homosexual tendencies, if channeled, could lead a trainee to become an exemplary soldier. An officer could use her influence to “bring out in the woman who had previously exhibited homosexual tendencies a definite type of leadership which can then be guided into normal fields of expression, making her a valued member of the corps” (Berube, 1990, p. 50).

The January 1943 War Department circular on sodomy stated that “the Army will be serving during the period of the war in many parts of the world where the standards of morality may be at variance with our own,” and therefore that some service personnel “will submit to unnatural practices.” At least one medical officer took the directive to signal that, “particularly for soldiers overseas ... homosexual relationships should be tolerated” if they did not injure the morale of the unit (Berube, 1990, p. 180). In 1945, when the Army faced manpower shortages during the final European offensive, Secretary of War Harry Stimson ordered a review of all discharges for homosexuality during the previous two years. He encouraged the re-induction of gay soldiers who had not committed in-service homosexual acts. Orders also went out to military commanders to “salvage” homosexual soldiers for service whenever necessary (Shilts, 1993, p. 70). A study by two psychiatrists during the war would conclude that the military maintained an unofficial policy of permitting nearly all homosexual personnel to remain in the service (Berube, 1990).

During the peacetime period from 1947 to early 1950, however, the number of discharges per 100,000 troops climbed to three times the number of wartime separations (Berube, 1990).²⁸ Prior to the onset of the Korean War, the Navy typically discharged 1,100 sailors a year for homosexuality. In 1950, at the height of the Korean War, that number dropped to 483. In 1951, only 533 gay sailors were expelled from the Navy. In 1953, when the Armistice was signed, the number of naval discharges for

²⁷ See also D’Emilio (1998). In contrast, officers in the Navy WAVE in 1952 were advised in “Instructions for Committee on Indoctrination and Education” that “homosexuality is wrong, it is evil ... an offense to all decent and law abiding people, and it is not to be condoned on grounds of ‘mental illness’ any more than any other crime such as theft, homicide or criminal assault” (Cited in Faderman, 1991, p. 151).

homosexuality jumped to 1,353 (Shilts, 1993). The end of the shortages during World War II that provided opportunities for women in the military resulted in particularly substantial purges of lesbians in the post-war years. By the mid-1950s, Navy officials would privately admit that the discharge rate for homosexuality had become “much higher for the female than the male” (Cited in Berube, 1990, p. 263).

During the Vietnam War, changes in discharge levels became apparent as early as 1966. Gay activists reported that the Pentagon issued a directive to local draft boards requiring that draftees claiming to be gay submit evidence of their sexual orientation. The Defense Department later stated that a search of its files uncovered no evidence of such a letter. Nevertheless, from 1966 on, gay draftees were required to submit either signed affidavits from same-sex sexual partners or a sworn statement for a psychiatrist attesting to the draftee’s sexual orientation (Shilts, 1993).²⁹ Within a month of the Tet Offensive in 1968, the draft standards appeared to fall again. A gay activist working in Los Angeles at the time declared that at least twelve openly gay men were drafted or classified A-1 in the LA area alone during a two-month period (Shilts, 1993). The most famous case of a gay man being drafted during the Vietnam War involves Perry Watkins, who acknowledged that he was gay both to his draft board and to the psychiatrist during induction. The psychiatrist wrote on his evaluation form, “This 19 year old inductee has had homosexual tendencies in the past. ... Patient can go into Military service – qualified for induction” (Shilts, 1993, p. 63). Watkins, who was inducted into the Army in May of 1968, would go on to serve as an openly gay soldier and re-enlist four times (Shilts, 1993).

Not only did the military relax its restriction on gay draftees during the Vietnam War, but it also appears that it discharged fewer gay and lesbian service personnel as well. In the three years prior to 1966, the Navy discharged between 1,600 and 1,700 sailors each year for homosexuality.³⁰ From 1966 to 1967, the numbers dropped from 1,708 to 1,094. In 1968, gay discharges fell again to 798, and they

²⁸ While rates of discharge for homosexuality had averaged approximately 1,000 per year in the late 1940s, an average of 2,000 service members were discharged in the early 1950s, climbing to 3,000 per year in the beginning of the next decade (D’Emilio, 1992). See also Jennings (1994).

²⁹ Shilts (1993) points out that obtaining such affidavits from sexual partners was complicated by the fact that same-sex sexual acts constituted a felony in forty-nine states.

³⁰ The Navy is the only service for which such statistics are available during the Vietnam War.

dipped to 643 at the peak of the military build-up in 1969. In 1970, the Navy discharged only 461 sailors for homosexuality. This decline in the number of discharges for homosexuality occurred during a period when the Navy's membership was larger than at any other time after the Second World War (Shilts, 1993). After the cessation of the Vietnam conflict, U.S. armed forces faced new manpower shortages due to the abolition of the draft. The military therefore promoted a policy of minimizing the number of people discharged unnecessarily. During 1974, the armed forces as a whole discharged only 875 service members for homosexuality. Discharge levels began slowly to increase in 1975 and became a definite trend by 1977 (Shilts, 1993).

In 1991, the Wall Street Journal reported evidence that once again the military had relaxed the implementation of its ban on sexual minorities as a result of the Persian Gulf War. Although the Pentagon insisted at the time that there had been no change in policy, at least fourteen gay and lesbian reservists were cleared by their commanders to serve in the Persian Gulf after they announced they were homosexual. The reservists, who told their commanders they were homosexual but still wanted to serve in the Persian Gulf, were further informed that discharge proceedings would be initiated after their return from the Gulf.³¹ Gay-rights attorneys argued that the inclusion of these reservists was due to the military's "stop loss" policy, which allowed commanders to delay the discharge of personnel whose services are needed. A Pentagon spokesman who was interviewed at the time stated that the stop-loss policy "has nothing to do with gays being in, or with putting them out of, the military. Manpower needs have nothing to do with retaining gays" (Lambert, January 24, 1991, p. B1). He added that the decision to begin processing a soldier for homosexuality lay with the unit commander; the commander could decide to begin proceedings immediately or postpone them to a later date (Lambert, January 24 1991). It was later determined, however, that the Army had circulated a "Commander's Handbook" prior to deployment in 1990 that declared no discharges for homosexuality would be authorized once a unit had been placed

³¹ At the time of the original story, gay veterans groups and gay-rights groups informed reporters that approximately half of the reservists had been deployed.

on “alert notification” (Lambert and Simon, July 30 1991, p. B 6).³² In its section on “personnel actions during the mobilization process,” the handbook stated in cases of homosexuality, “if discharge isn’t requested prior to the unit’s receipt of alert notification, discharge isn’t authorized. Member will enter AD [active duty] with the unit” (Lambert and Simon, July 30 1991, p. B 6).

In *Conduct Unbecoming*, Shilts (1993) describes the case of Army reservist Donna Lynn Jackson, who was told that her unit would be deployed to Saudi Arabia by the end of December 1990. While Specialist 4 Jackson was at Fort Ord awaiting deployment with her unit, she told her colonel that she was a lesbian. According to documents later filed in federal court, the colonel replied, “Don’t worry about it—it’s no big deal” (p. 730). When Jackson explained this response to an Army lawyer, he informed her that she would be allowed to serve in the Persian Gulf but would be discharged when she returned. An assistant to Congressman Gerry Studds looked into Jackson’s case and found that, “Her commander interpreted stop-loss to apply to gay discharges. He said he just didn’t have time to deal with that, and they would take her with them” (Lambert, January 24 1991). After Specialist 4 Jackson went public with the case, she received an honorable discharge without being deployed (Shilts, 1993).

VI. RATIONALES FOR THE EXCLUSION OF SEXUAL MINORITIES FROM U.S. MILITARY SERVICE

As has been touched upon in the section on the historical development of U.S. military policy concerning sexual minorities, the primary rationale for prohibiting the service of homosexual men and women has changed over time as attitudes and beliefs about the causes of same-sex sexual behavior have shifted. Even as new justifications emerge, however, old views are not entirely abandoned (Lehring, 1996). Exclusions prior to the 1950s were based largely on judgments that sexual minorities as a group were inadequate soldiers or sailors. Earlier views of such behavior as a function of physiological criminality, to be lumped together with “habitual and confirmed intemperance, or solitary vice” (Burrelli,

³² A unit may be deployed overseas from ten days to approximately two months after notification (Lambert and Simon, July 30 1991).

1994, p. 18),³³ gradually gave way to the conception of homosexuality as a sign of psychological illness. Homosexuality was then thought to reveal a mental infirmity that would make one unable to withstand the rigors of military life. In both cases, same-sex sexual behavior was viewed as the outward manifestation of an internal problem that would lead to inadequate military service. During the anti-communism of the McCarthy era, concerns about national security were added to worries about psychological health (Jennings, 1994; Faderman, 1991; Shilts, 1993).³⁴ Military leaders feared that gay and lesbian personnel would be vulnerable to blackmail because of the social stigma attached to their sexual orientation.

More recently, the rationale for the exclusion of homosexual men and women from military service has shifted again. Military leaders now express concern primarily about the effect of openly gay service personnel on their heterosexual colleagues. The rationale for the exclusion of sexual minorities now focuses less to their ability to do their job capably than on the disruption their presence might cause. The 1981 directive provides the most succinct encapsulation of the rationale for the continued exclusion of sexual minorities from military service.³⁵ Even though the regulation itself has been supplanted, its language is still used to justify continued exclusion of homosexual service members:

The presence of such members [homosexuals] adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to insure 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 the public acceptability of military service; and to prevent breaches of security. (Cited in GAO, 1992, p. 11)

Military leaders have expressed concern that the presence of homosexuals will interfere with the bonding of personnel and therefore with the formation of cohesive units. They worry that heterosexual soldiers

³³ This quote is taken from the 1860s Manual of Instruction for Military Surgeons as reasons for rejection of enlistment and discharge.

³⁴ Even at the time, however, the Senate report on homosexuality in government first reason for excluding homosexual men and women from government service was that “they are generally unsuitable” (Cited in Jennings, 1994, p. 155), because homosexuality “is so contrary to the normal accepted standards of social behavior, that persons who engage in such activity are looked upon as outcasts by society generally” (Cited in Jennings, 1994, p. 156).

³⁵ For detailed discussions of arguments against the inclusion of gay and lesbian soldiers, see Ray (1994) and Miller (1994). See also Korb (1994).

will be uncomfortable serving with openly gay soldiers or sharing facilities with them and that those who disapprove of homosexuality for religious or moral reasons may be unwilling to work with sexual minorities. Underlying such apprehension is a belief that unit cohesion and morale, and therefore operational effectiveness, will subsequently decline.³⁶ Military officers also express concern that hostility toward gays and lesbians will lead to violence and a break down in command (GAO, 1992; Herek, 1996).

VII. EVIDENCE RELATED TO RATIONALES FOR THE EXCLUSION OF SEXUAL MINORITIES FROM THE U.S. MILITARY

The Department of Defense stated in 1992 that its policy prohibiting the service of homosexuals is based not on scientific or empirical data, but on the reasoned judgment of its military leaders and civilian policymakers (GAO, 1992). Social scientific evaluations are therefore not considered sufficient to warrant changes in the policy. Both the Department of Defense and Congress have, however, commissioned multiple studies relating to the issue of homosexuality. In addition to providing their own research, several of the studies thoroughly review social science literature relevant to discussions of homosexual service. None of the research has provided any evidence that homosexual service members are less competent than their heterosexual colleagues. They have shown that sexual minorities do not pose a threat to national security. Multiple studies involving foreign militaries and domestic fire and police departments have also indicated that homosexual service members can be successfully integrated into military and paramilitary organizations without compromising unit cohesion, morale, or operational effectiveness.

Considerable evidence of the accomplished and honorable service of a number of homosexual military personnel has been established since World War II. The Army's official history of psychiatry in World War II concluded:

³⁶ For reviews of the social science literature discussions on unit cohesion and morale, see RAND (1993); MacCoun, (1996). See also Herek (1996a) and Shawer (1996) for discussions about disclosing orientation and issues of modesty as they relate to the military debate.

The problem of homosexuality was not conspicuous in most combat divisions. There were undoubtedly a great many homosexuals throughout the military services, but, for the most part, they carried out their assignments conscientiously and exercised sexual restraint. (Berube, 1990, p. 181)

Brigadier General William Menninger declared after the war that some of the “most efficient and admirable women” in the Women’s Army Corps were lesbian (Berube, 1990, p. 34). Throughout World War II, psychiatrists privately acknowledged that gay men had become vital members of the armed forces. A 1945 National Academy of Sciences study of gay servicemen found that they served throughout the military and their jobs

varied a good deal, covering many phases of wartime activity from that of gunnery officer aboard a destroyer, or air combat intelligence work, to labor relations work in factories making munitions. Some individuals were in the most active part of the fighting fronts, several did their whole service in the United States. (Berube, 1990, p. 58)

In a leaked memo from 1990, Vice Admiral Joseph Donnell, commander of the Navy surface Atlantic Fleet, admitted that lesbians may be “among the command’s top professionals” (Cited in Shilts, 1993, p. 720; see also Adam, 1994).

A 1992 GAO report also provides information on seven federal court cases in which gay and lesbian service members contested their discharges and more generally challenged the constitutionality of the U.S. military’s prohibition on gay service. The authors of the GAO report use the seven cases as examples of discharges in which performance clearly was not an issue. The cases include a 12-year Air Force veteran who received a Bronze Star for his service in Vietnam, a 16-year veteran and recipient of the Air Force Commendation medal and the National Defense medal, a 9-year Navy linguist and cryptographer with a top security clearance, and an Army reserve officer with a 15-year outstanding record whose promotion to major was suspended pending the discovery of her homosexuality (GAO, 1992).

In 1957, the U.S. Navy commissioned a report on the Navy’s policies and directives related to homosexuality, including security risk implications. The study, entitled the *Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of*

Policies, Procedures and Directive Dealing with Homosexuality, could find no indication that

homosexuals posed a greater risk to national security than heterosexuals. Its authors concluded:

The concept that homosexuals pose a security risk is unsupported by any factual data... 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. (Cited in Lehring, 1996, pp. 272-3)

The Crittenden report, as it became popularly known, did not challenge the underlying rationale of the U.S. military's exclusionary policy (GAO, 1992). Its authors did, however, state, "One concept which persists without visible supporting data ... is the idea that homosexual individuals and those who have indulged in homosexual behavior cannot acceptably serve in the military" (Cited in Shilts, 1993, p. 282).

The report's authors pointed out that many homosexual service personnel have served honorably and argued that the screening process was ineffectual and "usually serve[d] to eliminate only the more flagrant and exhibitionistic of the confirmed homosexuals" (Cited in Shilts, 1993, p. 282).³⁷

In a memorandum from the Chief of Naval Personnel to the Judge Advocate General in 1976, the Chief defined the rationale for exclusion as follows: 1) emotional relationships among service personnel could interfere with proper command relationship; 2) gay service members could be liable for court martial or civil punishment; 3) homosexual service members could be involved in sexual assaults; and 4) homosexual officers or senior personnel would not be able to maintain respect or trust from subordinates. The memo went on to pose a rhetorical question: "Does the Navy have any empirical proof that homosexuality among its members has an adverse effect upon the completion of its mission?" The Chief of Naval Personnel then replied, "No such empirical proof is known at this time" (Shilts, 1993, p. 281).³⁸

In 1988, the Department of Defense commissioned a second study on the possible risks of homosexuals to national security. Undertaken by the Defense Personnel Security Research and Education Center (PERSEREC), this report determined, "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

³⁷ The Navy suppressed the publication of the study. It would be forced by court order to release the report twenty years after it was originally submitted (Lehring, 1996).

³⁸ The memo was made available to the public under the Freedom of Information Act (Shilts, 1993).

security risks than heterosexuals” (Sarbin and Karols, 1988, p. 29). The authors then proceeded beyond the issue of national security and addressed the likelihood of suitability for service more generally. Sarbin and Karols (1988) stated, “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” (p. 33). PERSEREC was informed that its report exceeded its authority, and it was asked to submit another report limiting its focus to the issue of personnel security.³⁹ In the second report, the author more narrowly tailored the report to determine whether sexual minorities differ from heterosexual men and women in characteristics relevant to security concerns. The report concluded that homosexuals display “preservice suitability-related adjustment that is as good or better than the average heterosexual” (McDaniel, 1989, p. iii).⁴⁰

In 1992, the U.S. General Accounting Office conducted a general review of the Department of Defense’s policy of excluding homosexual persons from military service. The GAO authors were careful to make no explicit recommendations concerning the policy; they suggested, however, that the report could be of assistance in evaluating a legislative initiative to prohibit discrimination by the armed forces on the basis of sexual orientation. The report analyzed discharge figures and costs, studies on homosexuality in the U.S. military, social science research on homosexuality, the policies of foreign militaries, and the experiences of domestic police and fire departments that had adopted non-discrimination policies. It restated earlier military findings that evidence did not substantiate the preconception that national security would be compromised by homosexual service. The GAO researchers also reported, “Major psychiatric and psychological organizations in the United States disagree with DOD’s policy and believe it to be factually unsupported, unfair, and counterproductive” (GAO, 1992, p. 3). They added:

³⁹ In 1992, Department of Defense officials would argue that the PERSEREC draft did not address issues of morale, discipline and other factors, and therefore its analysis was flawed (GAO, 1992).

⁴⁰ The PERSEREC report would not be made public until Congressman Studds and Congresswoman Schroeder received anonymous copies of the first report and released it to the press in October 1989 (Lehring, 1996).

Further, many experts believe that the military's policy ... has no validity according to current scientific research and opinions; and appears to be based on the same type of prejudicial suppositions that were used to discriminate against blacks and women before these policies were changed. (GAO, 1992, p. 37)

The GAO researchers noted that 13 Western allied countries allow homosexual men and women to serve in the military without restrictions and officials from the domestic departments that had prohibited discrimination of sexual minorities reported, "they had not experienced any degradation of mission associated with these policies" (GAO, 1992, p. 6).⁴¹

In 1993, Secretary Aspin commissioned a study from RAND to provide analysis useful for the implementation of President Clinton's order to remove the ban on sexual minorities in the military.⁴² The RAND study, which ran more than 500 pages, found, "There is no evidence, and no compelling reason to believe, that homosexuals are inherently less capable of performing military tasks than are heterosexuals" (National Defense Research Institute, 1993, p. 284). Its authors acknowledged that hostile opinions concerning homosexuality were prevalent within the American military, but they concluded that evidence suggested, "[H]omosexuals can be successfully integrated into military and public security organizations" (National Defense Research Institute, 1993, p. 32). In reviewing research related to the issues of unit cohesion and operational effectiveness, RAND found:

[H]omosexuals who serve in the military are committed to the military's core values, which Henderson (1990, p. 108) lists as "fighting skill, professional teamwork, physical stamina, self-discipline, duty (selfless service) and loyalty to unit. (National Defense Research Institute, 1993, p. 312)

The researchers used the sizable literature on unit cohesion more generally to extrapolate the likely effects of open homosexuality on unit cohesion and operational effectiveness. The RAND researchers concluded that potential problems could be overcome with effective leadership, and stated, "[T]here is ample reason to believe that heterosexual and homosexual military personnel can work together effectively" (National Defense Research Institute, 1993, pp. 329-330).

⁴¹ The 1992 report would not, however, assess the effects of military policies allowing homosexuals to serve (GAO, 1992).

⁴² RAND's National Defense Research Institute, which completed the report, is funded by the Department of Defense (RAND, 1993).

The RAND study also reviewed the experiences of foreign militaries, as well as domestic fire and police departments that had instituted non-discrimination policies. For those foreign militaries that had liberalized their policies on homosexual service, RAND researchers found no problems for conscription, recruitment, or retention. Military personnel, members of advocacy groups, and social scientists told researchers, “[T]here was no significant threat to unit cohesion or organizational performance created by the presence of homosexuals in their militaries” (National Defense Research Institute, 1993, p. 104). With respect to domestic fire and police departments, the authors found that there was a “shared consensus” among leaders of domestic departments “that a policy of non-discrimination had in no way compromised their ability to perform their mission” (National Defense Research Institute, 1993, p. 141). The authors of the RAND report recommended the implementation of a conduct-based policy that would establish clear standards of behavior for all service personnel, regardless of sexual orientation, and would not consider sexual orientation, by itself, as germane (National Defense Research Institute, 1993).

As a result of the congressional debate over President Clinton’s intention to remove the military’s ban on homosexuals, Senator Warner also requested a GAO review of the military policies concerning homosexuality in twenty-five countries in 1993 (GAO, 1993). During this same period, the Army Research Institute commissioned reports on the practices of eight European countries.⁴³ The GAO report briefly reviewed military regulations for each country and then focused on the experiences of the armed forces in Canada, Israel, Sweden, and Germany in greater detail.⁴⁴ The GAO authors concluded for those countries studied in-depth, “[T]he presence of homosexuals in the military is not an issue and has not created problems in the functioning of military units” (GAO, 1993, p. 3). The study also found that for military leaders from the highlighted countries “the inclusion of homosexuals in the military is not a problem and has not adversely affected unit readiness, effectiveness, cohesion, or morale” (GAO, 1993, p. 4). In a more general review of the available literature on foreign militaries, including the Army Research

⁴³ The reports covered Belgium, Canada, Denmark, France, Germany, Italy, the Netherlands, and the United Kingdom. See Gade et al (1996).

Institute's report, Gade et al. (1996) determined that the trend among Western nations was toward removing restrictions on service based on sexual orientation.⁴⁵ Gade et al. (1996) found no evidence of "problems with cohesion, morale, recruiting, and retention" (p. 126) for those countries that had eliminated bans to service, even in nations where disruption had been predicted prior to the removal of such prohibitions.

Since the RAND and GAO studies were published in 1993, several other studies on foreign militaries that have removed all restrictions on homosexual service have been completed. In the cases of Canada and Israel, such studies provide long-term assessments that add to the RAND and GAO analyses of what at that time were short-term changes. Researchers have also analyzed the outcome of Australia's 1992 removal of its ban and the more recent policy change in the U.K. In the case of Canada, Belkin and McNichol (2000-2001) found that the eradication of prohibitions against homosexual service "had no impact on military performance, readiness, cohesion, or morale" (p. 74). While the removal of the ban was not universally popular with heterosexual soldiers, it was universally accepted and successfully implemented. Despite concerns of resignations, violence, and refusals to work with homosexual service members prior to the policy change, officials saw no such actions once the policy went into effect. The authors stated:

Officials, military scholars, non-governmental and political leaders, and gay soldiers all concur that the removal of the ban had had, to their knowledge, no perceptible negative effect on the military. The issue of gay and lesbian soldiers in the Canadian Forces has all but disappeared from public and internal military debates. (Belkin and McNichol, 2000-2001, p. 87)

Prior to Australia's removal of restrictions against homosexual service in 1992, military officials worried that the policy change would jeopardize recruitment, unit cohesion, and combat effectiveness while encouraging the spread of AIDS and predatory sexual behavior. In research conducted in 2000, however, the policy change was described by an ADF official as a "non-event" in terms of its effect on recruitment and retention. Belkin and McNichol (2000) found that it has led to no perceptible decrease in

⁴⁴ At the time, Israel, Sweden and Canada had no restrictions against homosexual service, while Germany did impose restrictions on homosexual volunteers. Canada and Israel had only recently lifted all of their restrictions on the service of homosexuals (GAO, 1993).

military performance, operational effectiveness, or unit cohesion for the Australian Defense Forces.⁴⁶

The study's authors also found, "Senior officials, commanders, and military scholars within the ADF consistently appraise the lifting of the ban as a successful policy change that has contributed to greater equity and effective working relationships within the ranks" (Belkin and McNichol, 2000).

While Israel has never officially barred sexual minorities from serving in the military, it retained restrictions on their service in intelligence positions until 1993. Restrictions of gay and lesbian service members stemmed from concerns about blackmail; homosexuality was not viewed by military leaders as a threat to either the success of military operations or the cohesiveness of military units. In their study of the long-term effect of the official removal of all restrictions against homosexual service in intelligence positions, Belkin and Levitt (2000) found no evidence that the policy change had in any way harmed operational effectiveness, combat readiness, unit cohesion, or morale in the Israeli Defense Forces:

Further, the scholars, former and present military personnel, and representatives of gay and lesbian organizations interviewed for this report indicated that they had not heard any intimations that IDF performance had been compromised by the inclusion of openly gay and lesbian soldiers. In this security-conscious country, where the military is considered to be essential to the continued existence of the nation, there has been no public debate or expressions of concern about possible harm to IDF rates of success by sexual minorities. (Belkin and Levitt, 2000)

Finally, Belkin and Evans (2000) found that Britain's removal of its ban in January 2000 had "been hailed as a solid achievement" by the British Military of Defense's own classified study undertaken six months after the policy change was implemented. While it was too early to determine what the long-term effects of the eradication of the prohibition on homosexual service will be, the short-term response to the policy change was characterized by a "marked lack of reaction" among service members, according to the Department of Defense's report (Cited in Belkin and Evans, 2000). Despite advance fears of potential damage, the authors found no indication of any initial effect of the ban's elimination on recruitment, retention, harassment, morale, or the operational success of the British Defense Forces (Belkin and Evans, 2000).

⁴⁵ See also individual country chapters in Moskos (2000).

⁴⁶ Problems within individual units were successfully handled through normal management procedures (Belkin and McNichol, 2000).

In the past decade, military leaders have generally come to accept that sexual minorities can perform military duties as well as heterosexual colleagues and many gay and lesbian military personnel have served honorably even with the ban (GAO, 1992). Senior military commanders now acknowledge that tens of thousands of homosexuals serve ably but privately in the 1.4 million-member military (Schmitt, December 25 1999). In his 1992 congressional testimony, General Colin Powell, then Chairman of the Joint Chiefs of Staff, made it clear that the motivation behind the ban “is not an argument of performance on the part of homosexuals who might be in uniform, and it is not saying they are not good enough” (Herek, 1996, p. 3). Senator Strom Thurmond, a leading supporter of the ban on homosexual service members, acknowledged the “dedicated and heroic service by many gays in the ranks of our armed services” in testimony before the Armed Services Committee in 1993 (Cited in Adam, 1994, p. 106). The issue of national security has also fallen by the wayside. Secretary of Defense Dick Cheney stated in Congressional testimony in 1991 that with respect to homosexual service members the national security issue was an “a bit of an old chestnut” (Cited in Lehring, 1996, p. 273; see also GAO, 1992). The numerous studies involving foreign military and domestic paramilitary organizations notwithstanding, officials argue the problem is not that homosexual service members do exist, but that they would undermine morale and discipline if allowed to serve openly. 76% of senior military officers continue to oppose sexual minorities openly participating in the U.S. military (Schmitt, December 25 1999).

VIII. CASES OF HIGHLY VISIBLE GAY AND LESBIAN SERVICE MEMBERS

Beginning with Technical Sergeant Matlovich in 1975, a number of gay and lesbian service members have challenged their discharges and the military’s policy concerning sexual minorities more generally, in both federal court and administrative appeals.⁴⁷ While several have won either lower court rulings or individual cases, the constitutionality of the military’s ban on sexual minorities has ultimately

been upheld. Federal courts continue to provide the armed forces with considerable latitude and deference on matters relating to military service, organization, and personnel. The Supreme Court ruled in *Rostker v. Goldberg* (1981) that “[j]udicial deference ... is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged” (Cited in Jacobson, 1996, p. 45). Civilian courts have given the armed forces such latitude out of a conviction that military life inevitably involves fewer privacy expectations and the relinquishing of some constitutional rights (National Defense Research Institute, 1993; Jacobson, 1996).

However, the cases involving challenges of discharges for homosexuality are worth studying for other purposes than mere legal precedent. As was indicated by GAO researchers in 1992, the suits bring records of exemplary conduct by gay and lesbian military personnel to public attention. In addition, many of these cases also provide examples of open service by homosexual service members. Even among those who had not previously made their sexual orientation known to military colleagues, their participation in high-profile challenges effectively has meant that military co-workers were made aware of their homosexuality. And because of injunctions against discharge pending case outcomes, a number of those who fought their discharge board recommendations continued to serve in the military while their cases made their way through the federal court system or through the military’s appeals process. In 1995, 17 military personnel continued to serve openly despite efforts to discharge them for homosexuality (Mills, January 1 1995).

In the following section, we examine four recent cases in which military personnel continued to serve with the U.S. armed forces while they fought their pending discharges. The segments draw from newspaper accounts, court records, interviews with the service members themselves, and statements by their co-workers and superior officers. The cases were chosen precisely because of their high-profile nature and the length of time the service members served openly. Even though such cases could be presumed to increase the feelings of fellow officers, since they involved the public challenge of military

⁴⁷ Shilts (1993) extensively details federal court cases related to the military’s ban on homosexual service members through the 1980s. For additional information on the case of Leonard Matlovitch, the first service

policy, service members discussed in this section continued to have exemplary careers. Collectively, they served more than 18 years as openly homosexual service members. During that time, they received outstanding evaluations, promotions and expanded responsibilities, and awards, as well as experienced collegial relationships with co-workers. The minor problems they encountered were effectively resolved through normal military procedures. Such cases add further qualitative nuance and depth to quantitative information about the actual implementation of the ban and the experiences of foreign militaries and domestic paramilitary organizations.

THE CASE OF PETTY OFFICER KEITH MEINHOLD

Background on the Case

Petty Officer Keith Meinhold, a sonar operator and trainer on P-3 Orion aircraft,⁴⁸ had served with the Navy for twelve years when he disclosed that he was gay on ABC Nightly News in May 1992. Meinhold, who flew missions throughout the Pacific and Indian Ocean and the Persian Gulf,⁴⁹ was an exemplary sailor who had received high performance evaluations throughout his career. He consistently graduated at the top of his classes and had been certified as a Master Training Specialist, an honor bestowed upon the top 10% of instructors. Meinhold supervised a team of 32 Navy instructors and had previously been recognized as “Aircrew Instructor of the Year” (Meinhold, 2001). He was prompted to come forward after hearing about an alleged witch hunt against gay sailors in Japan, in which more than 50 service members were investigated (Turner, May 23 1992). As a result of his public statement, Meinhold’s commanding officer initiated discharge proceedings. The administrative board unanimously agreed that Meinhold should be discharged under honorable conditions on June 30, and he was separated from the Navy in August 1992 (Turner, July 1 1992; Lempinen, November 7 1992).

member to challenge the regulation in court, see Dubermen, (1991).

⁴⁸ The P-3 Orion is an anti-submarine warfare plane. Petty Officer Meinhold was based at Moffett Field in California at the time of his statement.

⁴⁹ Petty Officer Meinhold had at this time accumulated over 3,500 flight hours (Keith Meinhold’s Biography, Found at: members.aol.com/kmeinhold/bio.htm).

Meinhold challenged the discharge in federal court in Los Angeles, arguing that the hearings were improperly and unfairly conducted and that the ban on homosexual service members was unconstitutional (Lempinen, November 7 1992). His lawyers asked for and received a restraining order in Nov 1992 reinstating him pending the outcome of the case. Meinhold's first efforts to return to work were rebuffed; officials told him that they needed direct approval from the Pentagon to reinstate him. Meinhold was subsequently returned to work with his squadron after the judge issued a second order. U.S. District Judge Hatter ruled in Meinhold's favor in January 1993, stating that the Navy had "no justification" for discharging Meinhold (Cited in Marcus and Dewar, January 29 1993). Hatter further ruled that the military's ban on sexual minorities was unconstitutional and permanently denied the military from "discharging or denying enlistment to any person based on sexual orientation in the absence of sexual conduct which interferes with the military mission of the armed forces of the United States" (Marcus and Dewar, 1993, p. A1). The Justice Department of the Clinton Administration, which at the time was in the process of completing its review of the military's policy on sexual minorities, filed an appeal of Judge Hatter's decision with the Ninth Circuit Court of Appeals. While the Administration opposed the ruling out of fears that it would impede the long-term efforts to lift the ban, President Clinton praised Hatter's decision, stating, "It makes the practical point I have been making all along" (Schmitt, March 5 1993).

A federal appeals court upheld Meinhold's reinstatement and ruled that the armed forces could not discharge sexual minorities based solely on their own statements that they are gay. The appeals court did, however, overturn the military-wide prohibition against barring homosexual men and women from serving. Because Meinhold only sued on his own behalf and not as part of a class-action suit, the court ruled that the decision would affect Meinhold alone (*Chicago Sun-Times*, August 31 1994).⁵⁰ The U.S.

⁵⁰ For discussions of the legal challenges of the U.S. military's ban on sexual minorities, see Sawyer (April 27, 1993); Sandalow (September 20, 1993); Boxall (October 1, 1993). For greater detail about Meinhold's legal case, see Biskupic (October 30 1993); *Chicago Sun-Times* (August 31 1994); and Johnston (October 17 1994).

government decided not to appeal the decision to the Supreme Court (Labaton, November 20 1994).⁵¹ Meinhold was told by military personnel, however, that he would be discharged under the new policy if he repeated that he was gay (Labaton, November 29 1994). He re-enlisted in the Navy on December 16, 1993.

In his final Navy tour with Patrol Squadron 46, Meinhold was recognized for photographic intelligence quality with two Lens Master and one Golden Lens awards. His crew won the 1995 ASW rodeo and was honored as the most combat effective P-3 crew in the Pacific Fleet as both the “Crew of the Quarter” and “Crew of the Year”. Meinhold continued to serve until he retired from the Navy in March 1996, after 16 years of service. He retired with full military honors and was awarded the Navy Achievement Medal for his service with Patrol Squadron 46 (Meinhold, 2001).

In Their Own Words: The Experience of Meinhold and His Colleagues

At the time of his statement of ABC News, Meinhold explained his decision to publicly announce his sexual orientation as follows: “Primarily, the reason was my own personal integrity. I am an honest person, and not saying anything didn’t make me feel good.” (Turner, May 23 1992) Like other service personnel publicly challenging the military’s ban on homosexuality, Meinhold had to cope both with the issue of sexual orientation within an institution that was officially hostile and with the fact that he was publicly criticizing the Navy. He made a conscious decision to include the media in his case, in part to ensure his own safety and ensure that the military handled his case in a manner that was above-board.⁵² “I knew that as long as the media was paying attention to my case, the Navy would never try to do anything unseemly,” Meinhold stated (Personal Communication, June 4 2001). It was still difficult for him, however, to witness the Navy’s tactics during the discharge process. After twelve years of receiving 4.0 evaluations, Meinhold’s commanders dramatically dropped his performance rating.⁵³ They

⁵¹ Meinhold would later win payment of his legal bills from the government; the federal judge ordered the government to pay \$440,000 in court costs for him (*The New York Times*, July 20, 1995).

⁵² See Shilts (1993) for detailed accounts of investigative procedures concerning homosexual personnel.

⁵³ This was out of a 4.0 scale.

interviewed the induction doctor from twelve years earlier in an unsuccessful effort to show that Meinhold had been deceitful about his sexual orientation during his induction. Finally, they attempted to portray Meinhold's Thanksgiving dinner invitation to a student as inappropriate behavior.⁵⁴ Meinhold explained, "It's interesting there's a lot of character assassination. And this was not done by the people I worked with. That's done by the legal team" (Personal Communication, June 4 2001).

During his discharge hearing, four colleagues testified that Meinhold was an "outstanding sailor" and expressed their wish to continue to work with him. One would state that many of his co-workers knew he was gay before his public announcement and had shielded him from exposure.⁵⁵ Two subordinates also testified that his sexual orientation was not a problem for them (Meinhold v. U.S. Department of Defense, 1993). When he was asked if the retention of Meinhold would "frustrate the performance of the command," superior officer Senior Chief Yates replied, "No I think ah, if he were retained, and put back in instructor duty, we would benefit from his instructor ability" (Meinhold v. U.S. Department of Defense, November 30, 1992, p. 4). Another officer apologized for any inadvertent prejudice and said he had changed his opinion about homosexuals after working with Meinhold (Gross, November 13 1992). The Navy's attorney would state that Meinhold's conduct was irrelevant; regulations mandated the separation of all homosexual service members (Meinhold v. U.S. Department of Defense, 1993).

An acoustic operator student at the time of Meinhold's statement later reflected:

I was actually assigned Keith as my tac phase instructor. This was during the time he "came out." I never got to have a single event with Keith as the instructor since the day after his TV appearance they assigned my partner and I a new instructor. It wasn't until later, after I had served with Keith in another command that I realized how inferior the replacement instructor was. (Personal Communication, June 4 2001)

⁵⁴ In recommending that Meinhold be discharged, the Navy's convening authority would state to the Chief of Naval Personnel that Meinhold's sexual orientation had "adversely affected his performance of duty and adversely affected the good order and discipline," even though the administrative panel had made no such findings (Meinhold v. U.S. Department of Defense, CV92-6044-TJH, 1993).

⁵⁵ It was determined during Meinhold's federal court case that he had been open about his sexual orientation to superior officers, including one base commander (Meinhold v. U.S. Department of Defense, CV92-6044-TJH, 1993).

When Meinhold returned back to work after the judge mandated his reinstatement, he was told by a base official that everyone had been instructed to show him no disrespect. One aviation electronics technician who had previously worked with Meinhold predicted at the time that “the people that he works with will be receptive” and added admiringly that “he turned out to be a real strong-willed individual” (Gross, November 13 1992). He did receive an icy stare from one base official who refused to shake his hand, and some people kept their distance, but those were the worst reactions he received (Gross, November 13 1992). Meinhold would later add, “What happened when I actually started walking on the hanger deck, instead of people giving me dirty looks, saying things or whatever, people actually came to shake my hand and congratulated me.” Meinhold had been assigned a bodyguard by the military; the bodyguard went to the commanding officer after lunch and said that there didn’t seem to be any danger. The bodyguard was immediately reassigned (Meinhold, Personal Communication, June 4 2001).

Meinhold was reinstated as an instructor for acoustic sonar training for anti-submarine aircraft. While naval officials knew they had to comply with the federal order, they were unsure how to handle the situation. Meinhold explained:

They came up with a scheme that if I was going to be teaching students in flight that the commander officer or the executive officer would the day before bring the entire crew in to ask them if they felt comfortable flying with a avowed homosexual and they would also ask my students before I went to teach or lecture a class. Every day, the chief in charge of the shop would enter the classroom and ask if everybody comfortable flying with a known homosexual (Personal Communication, June 4 2001).

After being asked the same question each day for more than a month and responding that they did not have a problem, the students finally went to the commanding officer and requested that the questions stop.

According to Meinhold, the students told him:

They learn more from me in a day than from other instructors in a month. Now that’s what the students said. Whether it’s true, I don’t know. But clearly they wanted me as the instructor because they learned something from me. And that’s rather, I think—the surprising part to me and to the chief was that these were young military people. They were not, had not been there for a long time. They were not seniors, they were, you know, 18-23 years old, to have the balls to go to the chief and say, “We wanted him to teach our class.” I thought that was pretty interesting. (Personal Communication, June 4 2001)

While Meinhold did not receive negative feedback from his co-workers during his transition back, and in fact received positive support, he would hear later from colleagues that some people had been upset about his stand and his return. Meinhold felt that some resented him taking on the military policy because he had made the military look bad by publicly challenging it. In the military, “a rule is a rule, and you just follow it” (Meinhold, Personal Communication, June 4 2001). Yet he had no problems with his colleagues in terms of professional relationships, harassment, capacity to work together, or negative comments (Meinhold, Personal Communication, June 4 2001). Any problems he had during the period when his case was still pending came from the Navy brass:

I think one of the things that we can look at, at least from my perspective that was somewhat poignant, the difference between official military response and personal response of military personnel. I found that, I can't say necessarily dramatic, but it was interesting to see the official military response was one of caution but also tactically they were trying to do everything they could, of course, to get rid of me. What that did, that caught my commanding officer and my supervisors sort of between me and the court, well saying there was a gay person staying in the military and the officials at the Pentagon putting pressure on the commanding officer to sort of get rid of me or do something to me. (Personal Communication, June 4 2001)

Those who testified on his behalf at his hearing declined further public comment during the remainder of the court case. One Moffett Field aircrew instructor admitted, “There’s a lot of pressure (to keep silent), both overt and some very subtle” (Turner, April 9 1993).⁵⁶ A student in the squadron later recalled:

It was rough at the squadron then as all the students were basically locked down and instructed to follow some strict rules. One of them was that if any of us were approached by the press we were to make no comments. It was made clear by the squadron’s Commanding Officer (CO) that anything other than “no comment” would result in us not passing training and not continuing on to our fleet squadrons. (Whitmire, Personal Communication, September 6 2001)

After the questions to his students stopped, things settled down to normal. Other than continued media exposure, which could be a disruption, everyone settled back into a routine. Meinhold explained, “[F]or the most part, I would say it was pretty much forgotten after the first couple of months and people

⁵⁶ In court papers filed, Moffett Field Captain Gregory Markwell argued that Meinhold’s presence “has reduced morale, efficiency and mission focus” and “struck a discordant note with the troops” (Tuller, January 28, 1993). Markwell would further argue that officers spent “in excess of 100 man-hours dealing with issues related to” his return (Tuller, January 28, 1993). Meinhold’s attorney would counter, “There was an implied effort to encourage people to express some dissatisfaction to his presence.” (Tuller, January 28, 1993, p. A3).

not having to be asked at all. For the most part, people don't think about it. They didn't go, Oh, that's a gay guy. Exactly." He added:

I think one of the things I had trouble with the media is that they never reported that everything went okay. There's no controversy after that basically other than the court case. There's no controversy. I didn't have confrontations. I went to work. I did my job, and I went home. (Personal Communication, June 4 2001)

Meinhold's sexual orientation receded into the background as he went about doing his job. He did find, however, that heterosexual sailors wanted to ask him questions about sexual orientation issues and homosexuality in general. A couple of people tried to set him up on dates, including one colleague who had a gay brother. He was also approached by other gay sailors offering support:

There're some folks who sort of came up to me later on separately where, you know, out of sight and said, "Hey, look, I realize you're doing this for me." I remember one time the duty office that the unit that I was working in was staffed by four people: the driver, the duty officer, the messenger, and myself as the assistant duty officer. At one time, all four people staffing the front office were gay. (Personal Communication, June 4 2001)

Meinhold always knew there were other gay sailors in the Navy, including the colleague that he first confided in about his sexual orientation, although he did not realize it at the time. But once he became a public figure, he became aware of many more. Flipping through his old naval yearbook, he said, "[Y]ou can go right through the book—1, 2, 3, 4, 5, 6, 7, 8, 9, gay" (Gross, November 13 1992).

Because Patrol Squadron 31 was decommissioned in 1993 as a result of the closing of the Moffett Field Naval Air Station, Meinhold was temporarily transferred to a job doing database financial work for the comptroller overseeing the budgetary issues related to the shut-down. The comptroller had lost his assistants due to the impending closure, and Meinhold worked directly for him on the budget. Although he had no training in finance, Meinhold was recommended for a commendation medal by the comptroller for the outstanding work he performed on the budget. Meinhold was also given perfect scores on his yearly evaluation in November 1993. He was recommended for advancement to chief petty officer and was described by superiors as "a skillful administrator, an accomplished instructor ... [who] performed his duties demonstrating competence and superb technical expertise" (Cited in Meinhold,

December 16 1993). Soon after his yearly evaluation, Meinhold wrote in an op-ed piece for *The New York Times*:

Since my reinstatement as an openly gay man, the only discrimination I have encountered is that of the Navy's policy. I have not been the target of discrimination by individuals. The Joint Chiefs, Senator Sam Nunn and others have greatly underestimated American service people. In my experience, the troops are not consumed with hatred and prejudice, but are just interested in doing a good job. (Meinhold, December 16 1993)

After his tour of duty was completed in 1994, Meinhold was transferred to Patrol Squadron 46 (VP-46) for work once again as an acoustic station operator and instructor. It was around this time that his case was also successfully resolved. When Meinhold was transferred to unit VP-46, the news of his impending arrival preceded him. The Navy command implemented anti-discrimination training, and a number of those who did not already know Meinhold expressed concern and anger about his arrival. Petty Officer William Whitmire, an E-5 Senior Acoustics Operator in Patrol Squadron 46 who had already worked with Meinhold, found that differences in attitude split in part between those who knew Meinhold personally and those who did not. For those who already knew the Petty Officer, his arrival would be "something of a homecoming" (Personal Communication, September 6 2001). Whitmire explained what the mood was like before Meinhold's arrival:

It was late 1993 when we got news that Keith had orders to VP-46. At that time the popular response by those who did not know Keith was to proclaim his being in the squadron much less the Navy as wrong. Most don't [sic] want to see him come and made it clear that they would make his life miserable and be as un-cooperative with him as possible....

It was a tense moment when he finally did check in. The senior folks were walking on eggshells. Those in different job ratings from mine and Keith's were skiddish [sic], almost like Keith was a celebrity. For the AW's, there was a variety of reactions. All of the AW's that were around my rank and higher had very little concern over it. I guess we were more interested in the reactions of the others. The junior AW's had been assured by us that it would be fine. They were probably a little stand-offish at first, but after they got to know him they realized there was little to be concerned with.

I can't really recall any threats to Keith even after all the boastful comments made prior to his checking in. As time went on it became apparent to all that Keith was a Normal person and while I'm sure there had to be those who were uncomfortable around him most treated Keith as just another person. (Personal Communication, September 6 2001)

Whitmire felt that the commanding officers were overly worried about how the men would respond to Meinhold's presence. He described an operational meeting that occurred before Meinhold's arrival:

Usually this meeting was devoted to the operational abilities of the crew-members in order for a balanced group of crews to be formed throughout the squadron. To this day it still amazes me the lengths the Training Department folks went through to ensure the crew Keith was on “could handle it.” This meeting normal[ly] takes about half a day but we spent nearly a week in there trying to organize a crew list that would work. Finally the crew list came out and Keith’s crew was loaded with mainly senior, married guys on it. He was also put on the Skipper’s crew, I guess to keep a better eye on him....

Later on, like everything else, these restrictions or worries were lost as folks began to realize that Keith was just a normal human being. As a result, by the time we deployed, Keith had an unqualified Nugget Airmand [sic] like the rest of us. (Personal Communication, September 6 2001)

Meinhold was on guard for situations that might be problematic, but people treated the situation with humor. He said, “There was a lot of banter around my being gay. And there’s banter around anything in the military. And I don’t know, the people I worked with just loved ribbing me – that’s always been the case, it just doesn’t have to be around gay issues” (Personal Communication, June 4 2001). Meinhold’s crew created joke patches for themselves that read “All the Queen’s Men” (Simpson, May 2 1996). He added, “Somebody would say, ‘So, Keith, what do you think about that Jess Smith’—take a name out of the hat—there’s no Jess Smith. And then there seemed like a pretty good silence to me and then everyone would go, ‘Ho, ho, ho!’” A colleague remembers an incident soon after Keith arrived and the response of the commanding officer:

One of the guys who had been in several other commands with Keith and had known him for quite some time held the door open for us. As Keith walked through the door he thanked Brian (the other guy) and Brian simply replied, “Ladies first.” We all laughed about this. Keith has a great sense of humor and this was the perfect ice-breaker for some who didn’t know Keith all that well. The Skipper, still hidden and taking everthing [sic] in, was not amused at all and later spoke to Brian and I about the incident although I doubt he ever said anything to Keith about it. That’s how scared the senior folks were of Keith at that time. Not so much scared of him as they were scared of making a mistake in the way they handled “the situation.” (Whitmire, Personal Communication, September 6 2001)

During his service with Patrol Squadron 46, Meinhold worked as Leading Petty Officer for the Tactics Department and for the squadron Operations Department. During his two years with the unit, he supervised a staff of 12 and managed 140 flight personnel for more than 6000 hours of flight operations annually (Meinhold, 2001). As an airborne sensor systems operator with VP-46, Meinhold was deployed both overseas and stateside with the squadron. Working on crews of 10-12 people on eight- or nine-hour

missions, he was responsible for searching for and analyzing acoustic signatures of ships and submarines, and determining tactical information from them. Because of his sensor operation skill, Meinhold was one of three sailors Navy-wide picked to be a “Special Project” operator, a job that involved the operation of specialized signature collection equipment installed on an aircraft deployed to the Persian Gulf. The average missions lasted eight to nine hours and also involved three-hour preflight and two-hour post-flight routines. Because the work is so technical and crews always include junior personnel who need to be qualified, training remains a significant component of the squadron’s duties. Meinhold explained:

What happens is once you go on deployment, you come back after six months, a lot of people leave the unit at that time. You got to start rebuilding your squadron.... When we were home, the home stay is generally nine months, maybe a year long, depending on how the cycle—sometimes as short as six months—depending on the cycle worked. And so we spent a lot of time in simulators, a lot of time flying, doing emergency drills, taking lectures, classes, getting up to speed on new tactics or intelligence or whatever it is. And also actually flying missions on the West Coast, because part of maritime patrol requires keeping an eye on what’s happening household not just worldwide. (Personal Communication, June 4 2001)

While attrition and illness inevitably lead to crew changes, the Navy tries as much as possible to keep crews together, since, as Meinhold stated, “They believe that keeping the crew together helps people to work together better.” Particularly when units are deployed overseas, sailors spend most of their time with members of their own crew. Meinhold remembered his crew as being tight-knit and popular for replacements when spots opened up:

So you would eat and sleep together for six months. Especially when you are deployed overseas, you are pretty much stuck with the same people for six months. Saw them everyday. And we became very close as a result. We had a great crew. Some crews click and some don’t. A lot has to do with leadership on the crew itself, in the makeup of the individuals. There are a lot of reasons why people do not get along on crews. Some of it has to do with competence. In other words, there were a lot of people who wanted to get on our crew, on crew 1, because we were one of the best. (Personal Communication, June 4 2001)

During this time, Meinhold also continued work as a technician on research and development projects for the Department of Defense. Among other projects, Meinhold was hand-picked to work with researchers at Johns Hopkins University on a new sonar system being developed by the Navy. They operated the sonar sweep electronics and tactics to determine its effectiveness and deployment potential. While such projects had to be done in addition to his regular duties, Meinhold was happy to take on

research projects, stating, “My own reason for doing a special project is the dedication to the Navy” (Personal Communication, June 4 2001).

One colleague described Meinhold as “easily in the top ten” operators he has worked with and characterized him as “professional at all time.” He declared that Meinhold’s orientation “never affected our ability to perform as a squadron” and added:

Keith was an asset. Every year there is an Anti-Submarine Warfare (ASW) contest held in Hawaii. This contest’s participants consist of all the U.S. Pacific Fleet squadrons and units from Australia, Japan, and Canada. Our squadron was represented by Keith’s crew, and they won it easily and in no small part due to Keith’s ability as an ASW operator. (Personal Communication, September 6 2001)

Meinhold decided to retire from the military in 1996. He declared at the time, “If I’d left it up to my heart, I don’t know if I’d ever leave the Navy. But I’m 33 years old, and it’s the perfect time in my life to start a new career” (Tuller, March 29 1996). His retirement included naval band music, a 60-foot American flag and the Navy honor guard (Simpson, May 2 1996). He summed up his experiences as an openly gay petty officer: “I think a lot of people underestimated the professionalism of sailors in the Navy. The majority are much more tolerant than they’re given credit for” (Tuller, March 29 1996).

THE CASE OF LIEUTENANT ZOE DUNNING

Background on the Case

On January 16, 1993, at a rally outside of Moffett Field Air Base organized by Keith Meinhold, Lieutenant Maria Zoe Dunning publicly announced that she was a lesbian. She and two other service members declared their homosexuality at the rally in an effort to maintain pressure on the incoming Clinton Administration to keep his campaign pledge to eliminate the ban (Murdoch, February 8 1993; *The Arizona Republic*, June 11 1993). Dunning, a graduate of the U.S. Naval Academy with twelve years of service as a supply officer, had been on active duty for six years and had received a Navy Commendation Medal for her service during the Gulf War. She had resigned from active duty in 1991 to attend business school at Stanford University (Fimrite, May 6 1993; *The Arizona Republic*, June 11 1993), but she had continued her military service as a reserve officer. At her next drill with her unit, Dunning was informed

a week after the rally that the Navy had initiated discharge proceedings. She was placed on unpaid reserve status, which she successfully fought (Murdoch, February 8 1993; Sawyer, April 27 1993).⁵⁷

Dunning was then returned to reserve duty with her unit, pending discharge, after three months of unpaid leave (Sawyer, April 27 1993).

Dunning received an administrative hearing in June 1993. It was the first discharge proceeding in California since the judge in Meinhold's case had ruled the ban unconstitutional and enjoined the military from enforcing it. Former Assistant Secretary of Defense Lawrence Korb testified at Dunning's hearing that given the recent ruling in the Meinhold case, it would be illegal for the Navy to separate her (Tuller, June 10 1993). The administrative board did, however, rule unanimously that Dunning should be discharged under honorable conditions. The board also issued a statement saying they were "bound to follow" military policy because "the final act" of discharge, rather than the intermediate decision of the administrative panel, "is the only action that is clearly proscribed by Meinhold" (Tuller, June 11 1993, p. A3).

Dunning continued to serve with her unit, and her discharge was delayed, pending review due to the possibility of improper influence of the administrative panel by Navy authorities (Tuller, June 19 1993).⁵⁸ In July 1993, Clinton announced the new military policy concerning homosexuality and declared that those presently in pending status would receive new discharge hearings under the "Don't Ask, Don't Tell" regulations. Dunning was one of only a handful of military personnel to receive a second administrative hearing. While waiting for the administrative panel to meet, Dunning was selected for promotion to lieutenant commander in November 1994 (Herscher, November 30 1994). At the end of that same month, the second administrative board met. Dunning's attorney argued that her statement "I am a lesbian" related to status rather than conduct and acknowledged her sexual orientation and not her intent to engage in same-sex sexual conduct. In an unprecedented ruling, the administrative panel found that Dunning's statement did not prove she would engage in homosexual acts and therefore did not violate

⁵⁷ See also Boxall (April 21, 1993).

the conduct component of the new policy (Herscher, December 2 1994; *The Washington Post*, December 2 1994). The Navy dropped all further efforts to discharge Dunning and did not take the case to federal court (Holding, June 16 1995). The ruling was limited in its effect, however, since appeals courts were ruling on similar cases during the same period (Holding, December 3 1994).⁵⁹ Almost seven years after her hearing victory, Dunning continues to serve. Dunning has been promoted to commander and has received a Navy Achievement Medal since she won her case (Herel, December 8 2000).

In Their Own Words: The Experience of Dunning and Her Colleagues

While she was fighting to return to reserve duty pending the outcome of her case, Dunning commented:

If they really took into account the lesbians who are in the service right now, how successful they are, I think a lot of the arguments would just fall apart. I know personally for my ship, of the lesbians I knew on board, if you took all of us off, that ship would not have been able to get under way (Boxall, April 21 1993, p. B3).

At the time of her reinstatement, Dunning declared, “I’m one of thousands who want to serve our country with pride and without shame. This shows there is hope” (Fimrite, May 6 1993, p. A21). An officer who later worked with Dunning commented on the general feeling among his Navy colleagues at the time:

The gauge was,⁶⁰ is that, this supply corps officer, female, that was having to go on trial for all this, was getting kind of a raw deal because apparently, she was a good officer. And everybody said that. And it was like, that’s just too bad that they’re having to worry about this, because this is a good officer. (Alaga, Personal Communication, August 2 2001)

During Dunning’s first discharge hearing, her executive officer testified on Dunning’s behalf and called her performance with the unit “outstanding” (Proceedings of a Board of Inquiry, 1993, p. 48).

When asked how he would feel if Dunning were discharged from his unit, Commander Petro replied:

I think we’ve already suffered a loss in the unit because everybody worked very well with Zoe. Everybody liked her. And we’ve already basically noticed the loss ... she’s a part of the group,

⁵⁸ At this time, the interim policy was already in effect, and Dunning’s discharge had to be approved by the chief of naval operations and the attorney general (*The Arizona Republic*, June 11 1993).

⁵⁹ Two appeals courts had recently reached opposing conclusions about the constitutionality of the ban (Holding, December 3 1994).

⁶⁰ “Gauge” is military slang for the inside story or scoop (Alaga, Personal Communication, September 24, 2001).

and it's a small—it's about 17 people, and we work very closely together, so it'll be a loss to the unit, both from a personal and a profession standpoint. (Proceedings of a Board of Inquiry, 1993, p. 50)

Commander Petro was also asked in considerable detail about his reaction and the reaction of other personnel in his unit to Dunning's public statement that she was homosexual. He stated that he and other members were surprised that she was a lesbian, but he heard no negative comments, no requests for reassignment, and no complaints about having to work with Dunning. He said that there had been no change in the performance or the interpersonal relations of the unit in the immediate aftermath of her statement. When asked how he would feel about working with her again if given the opportunity, Commander Petro replied, "We'd welcome her back" (Proceedings of a Board of Inquiry, 1993, p. 50).

Another co-worker testified in person on Dunning's behalf, and other members of her unit and people who had worked with her previously sent in written comments. Dunning was praised by all in the highest professional and public terms. She was described as a top performer, "clearly one of the best junior officers" on her old ship, and a person of the highest integrity (Proceedings of a Board of Inquiry, 1993, p. 79). The defense attorney specifically asked about the issue of Dunning's effect on unit cohesion and morale, and she summarized their statements concerning the potential effect as follows:

And in terms of unit cohesion, you heard what Lieutenant Jones said. She feels there would be no detrimental effect in retaining Lieutenant Dunning. Commander Robberson, also formerly from the unit, said that he would welcome her as a part of his team anytime. Lieutenant Krasnow from the unit said that he does not feel that the knowledge of Lieutenant Dunning's status affected anyone's job in the unit. Commander Erhardt said that if it were up to him, he would retain her. And Commander Tredennick commented about working with gays and lesbians in the past and that it caused no problems in his opinion and that he would also retain Lieutenant Dunning if he could make the decision. And then Lieutenant Coetzee, who was one of—who roomed actually with Lieutenant Dunning at the Naval Academy submitted a declaration on her behalf saying that in her opinion she does not think that someone's status affects performance or unit cohesion. (Proceedings of a Board of Inquiry, 1993, p. 80)

When asked if there had been any negative comments in the unit, Lieutenant Jones described the reaction of its members to the news about Dunning's statement:

No, not really. Everybody was a little surprised. Some were shocked. Basically, they just wondered how this would affect her being in the Navy, whether she would be able to remain in the unit, what was going to happen to her. Everybody's kind of—I'd say worried that she might not be with us. (Proceedings of a Board of Inquiry, 1993, p. 77)

Lieutenant Jones also declared that she had shared a room in the past with Lieutenant Dunning without incident and would have no concerns about sharing a room with her again in the future.⁶¹ She added, “As a matter of fact, I sent a message to her through another member of the unit for a trip that we’re going on this coming weekend to Washington, D.C., in hopes that we could share a room again” (Proceedings of a Board of Inquiry, 1993, p. 78).

The prosecutor called Dunning a “fine officer,” but stated that her qualifications were irrelevant, since military regulations required that she be separated from the Navy (Tuller, June 10 1993, p. A11). The administrative panel voted unanimously that she be honorably discharged. Dunning stated soon after her first discharge hearing, “What struck me at the board was I didn’t want to be kicked out; my unit didn’t want me to be kicked out, and the board didn’t want it. They were compelled to do this by a regulation, and it’s forcing what no one wants” (Howlett, July 15 1993, p. 7A).

While she was awaiting her second discharge hearing, Dunning was informed that she had been selected for promotion to lieutenant commander. She was quoted at the time as saying, “On the one hand, they’re promoting me and saying, ‘You’re doing a wonderful job,’ and on the other, they’re trying to get rid of me. This reflects how this is really an insane policy” (Herscher, November 30 1994, p. A19).

Dunning testified at her second hearing to the response of her colleagues to her initial public statement. While the situation was an unusual one in the Navy, her unit adapted well. Dunning declared that the experience had actually brought them closer together as a unit:

This is not something we deal with or encounter every day in the Navy. I think that as I communicated to them that I was approachable, that it was not something to be afraid of, that I was willing to discuss it with them, that it would not affect my performance, they realized that that was true; and they have grown to be very confident, as you have seen today, of my performance and very supportive and if anything, I think the unit has rallied around me and my case, and I have not seen any adverse effect. In fact, I would say that my opinion is that it has had a positive impact on the unit cohesiveness and morale. (Board of Inquiry, 1994, p. 234)

⁶¹ Other female also testified that she would have no problem rooming with Lt. Dunning (Proceedings of a Board of Inquiry, 1993, p. 80).

Dunning also stated, however, that her actions angered the commanding officer of the Naval Air Reserve of Alameda, and he had her commanding officer downgrade Dunning on her fitness report during the period her case was under review. Dunning explained:

Definitely the commanding officer of the Naval Air Reserve for Alameda, who was my commanding officer's boss, was very, very upset. Actually he ordered my commanding officer just to give me a bad fitness report. And he tried to, and I kind of came back and challenged him a little bit, kind of asked him why he downgraded me. I can tell my commanding officer's heart was not into the grade, it was the pressure from above and so, like for instance, he gave me a D in judgment. And after I had conversation with him, he actually initiated and sent a letter to the record people to change the grade to an A. (Personal Communication, August 2 2001)

In his final evaluation covering the period from October 1992 to October 1993, during which time Dunning made her public statement, Captain Kraft, her commanding officer, wrote, "Lieutenant Dunning's performance has been outstanding, far exceeding expectations." He added:

Lieutenant Dunning is an exceptional officer. Extremely intelligent with superb technical and interpersonal skills. She exhibits unlimited potential for increased responsibilities and growth. Lieutenant Dunning has my highest recommendation for early promotion to lieutenant commander. (Board of Inquiry, 1994, p. 46)

The captain subsequently testified at Dunning's second hearing that he would rank her as the top lieutenant in her unit. He stated that he had seen no changes in her performance, no complaints from unit members, and no problems relating to her sexual orientation since her public statement. When asked how he would feel if she were discharged, Captain Kraft replied, "I feel that the Navy would be losing a superb officer. I think it would be a mistake" (Board of Inquiry, 1994, p. 164).

At her second hearing, several additional colleagues testified in person or sent affidavits, as well. Commander Graves stated that Dunning was "an outstanding naval officer" who "always performed excellently" (Board of Inquiry, 1994, p. 164). When asked how he would feel if Dunning were discharged, Commander Graves replied:

Well I would feel bad that the Navy would lose an excellent officer. I think Zoe has proven herself with outstanding performance. She has been fully integrated into both reserve and active duty forces and has left a positive impact on unit cohesiveness, morale, and readiness. I think the Navy needs men and women like Zoe who have honor, integrity, dedication, and courage and who want to serve their country. I am proud to [sic] serve with her now and I would be proud to serve with her in the future and I hope I get that opportunity. (Board of Inquiry, 1994, p. 165)

Lieutenant Wolfley, who was junior to Dunning, was asked what the feeling within the unit was regarding her possible discharge. She replied:

I personally would feel that wold [sic] be a loss to our unit. We have a lot of turnover and movement, and if you get somebody that's good and stable and does a good job, it makes the unit more cohesive, and losing Zoe would do that for us, would hurt our unit that way, I believe. (Board of Inquiry, 1994, p. 153)

Lieutenant Commander Olsen also stated that knowledge of Dunning's orientation had no effect on others' willingness to work with her. He further declared that her sexual orientation "has no relevance to her performance and what she does at the unit" (Board of Inquiry, 1994, p. 157). When asked specifically about the issue of unit cohesion, he replied that there had been no detrimental effect at all (Board of Inquiry, 1994).

The board subsequently found in Dunning's favor in an unprecedented ruling. Although the case was a great personal victory, however, legal scholars acknowledged that the case would likely have little impact on the policy more generally (Holding, June 16 1995). Two district appeals courts had recently reached opposite conclusions about whether someone who merely stated they were gay could be kicked out, and the issue was likely to reach the Supreme Court. In the wake of her victory, Dunning proclaimed:

My case is obviously an aberration. It is the only case in which the military has kept someone (who is homosexual), but this does not mean that the military is any more lenient. I was just very fortunate to have an outstanding attorney, a spotless record, and an open-minded board. (Holding, June 16 1995, p. A16)

After the ruling, Dunning said that the Department of Defense issued a statement declaring that taking the stand and saying your declaration was one of status only and not of conduct was not sufficient to overcome the assumption that status implies conduct. Dunning explained:

So [the Department of Defense] sent out a memorandum that basically said, look, I know we haven't given you a whole lot of guidance on what or what doesn't rebut the presumption, but we will tell you this much, tell you that taking the stand and saying that your statement was one of status only is not sufficient to rebut the presumption. So, what they practically did was close the avenue to anyone else to subsequently use that strategy. I opened up the barn door. I've already heard the barn door close behind me. (Personal Communication, August 2 2001)

Once the hearing was over, Dunning's life returned to normal. She continued her work with her unit handling the supply needs for the Naval Aviation Depot in Alameda and supporting those who handled aviation maintenance. She received congratulations from her unit members and from other sailors dealing with their own discharge cases. And while there was considerable media interest in the outcome of her case, she prevented the media from coming into her unit's workspace and tried to minimize its impact on their work. She remembered that it quickly became "business as usual," but one incident in particular stood out in her memory:

I remember one radio interview⁶²—it's on the parking lot in front of the legal office on Treasure Island. And this car kind of like pulled up and stopped—I think about 15 yard from me. Out jumped a sailor in full uniform. He kind of comes running up to me and he just salutes me. I saluted him back, and he just sort of turned and went back to his car and drove off. I still don't know who that guy was. I was really touched by that. (Personal Communication, August 2 2001)

Since the Alameda air base was slated for closure, Dunning's unit helped handle inventory and the transition for the shut down. She would then be transferred to another unit as a supply officer. In October 1995, Lieutenant Commander Dunning jumped at the opportunity to join a unit that handled global insurgency work as a supply corps leader. The Mobile Inshore Undersea Warfare Unit, which provided surveillance of inter-coastal waterways, was quite unusual for the Navy Reserves. It had no active duty equivalent, must be ready to deploy within 48 hours, and spent most of its annual trainings overseas. Once or twice a quarter, the sailors camped out and went through drills and training. The job specialties were also less administrative and more combat-oriented than many reserve units. Dunning supervised six people and oversaw a budget. She appreciated the opportunity to do interesting work and make a real contribution.

As has been the case each time Dunning has switched units, she wondered how aware her new colleagues were of her case and her sexual orientation. Dunning has assumed widespread knowledge and has just tried to focus on doing her work well:

Through the next seven years, it's kind of weird. When I go into a unit, I am not quite sure who knows and who doesn't know. But you go in and assume everyone knows. It's a weird, awkward

⁶² The interview, which was live, occurred immediately following her second administrative hearing (Personal Communication, November 3, 2001).

scenario every time when I walk into a unit. Who knows? Who doesn't know? What do they think about it? I just try to go in there, put my nose down and do my job as best as I know how. (Personal Communication, August 2 2001)

One of her fellow officers, Commander Quast, did know of Dunning's circumstances through *Navy Times* articles before she came into the global insurgency unit. But it was his sense that not everyone in her unit knew either about the case or her sexual orientation. He explained:

[D]id people talk and ask behind her back or anything like that? Not that I'm aware of, and I certainly didn't participate in that ... you know, the general man or person in the unit, I would say probably less than half of the unit actually knew that she was a lesbian. (Personal Communication, August 24 2001)

Dunning was involved in two annual trainings in the Middle East—an amphibious assault exercise in the United Arab Emirates and handling security for a Middle East Economic Conference in Qatar. Dunning was one of the only women involved in both trainings. She described the experiences:

We were in the Middle East, forming security for Middle East Economic Conference where Madeline Albright was at. The conference had ended and we were sort of doing our last watch—you know, in our radar sonar surveillance trailer. I was the officer in charge of the group who had the last watch. We had to break down the van and put it on a fleet tug and actually ride the ship from Qatar back up to Bahrain. I was the only woman in the group and I was the officer in charge. So, it's me and like 20 guys ... I slept in this open bay, bunk area with 20 guys ... So, it's kind of cool, being able to do that. (Personal Communication, August 2 2001)

In the United Arab Emirates, foreign personnel kept mistaking her for a female translator. She had the honor of participating in a traditional lunch at the officer's club, only to discover that she was the first woman who had ever dined there. Dunning explained:

Again, they had a post-exercise sort of briefing and then a big traditional Arabic lunch, and I was invited to come along cause I was the third-ranking officer of the unit. I got there, and I was the only woman ... They've got officers from all of the different Middle Eastern countries that participated in this joint exercise. Again, most of them think I was a translator ... And it's a traditional meal and you eat it with your right hand. Afterward, I wanted to go and wash my hand; there's no female bathroom—we're at the officers' club at the army base. Never had a woman dined there before. Basically they had to clear all the men out of the men's room ... In my experience as an officer, I had broken barriers on the sexual orientation front. But probably I had far more experiences trying to break barriers as just a woman. (Personal Communication, August 2 2001)

One commander from this unit agreed, "I thought she blended in really well, as she's had to do throughout her career in a male-dominated organization. And, you know, we're all the better for having her with us" (Quast, Personal Communication, August 24 2001).

Another colleague from the unit was impressed by Dunning's professionalism, and by the fact that she encouraged other people to treat her as just another one of the team:

Never brought it up. And, you know, because she never did, we all kind of respected her more for it. She was always—accept me for what I am, a naval officer, don't give me any special breaks for this, don't worry about this, or anything like that; we're all in the navy together, we're all a bunch of sailors, let's treat each other the same way. And it always, it was just always that way. (Alaga, Personal Communication, August 24 2001)

He added, however, that working with Dunning had made him more sensitive to reflexive homophobia. For example, she commented on his use of the term "fag" to jokingly denigrate someone, "And I thought 'woah.' I had no idea. Gee, you know, I'm sorry. And after that, I became a little more sensitive to it and didn't do it" (Alaga, Personal Communication, August 24 2001).

After Dunning moved on to another unit, she went back to a dining-in night with the members of her old unit. Dining-outs are very formal military dinners with guests, spouses, and boyfriends or girlfriends in attendance. Dunning was invited, and she decided to bring a guest, Erin. One of Dunning's former colleagues described his response to Dunning and her guest's attendance:

And, you know, it was absolute pure class. Erin was perfect, just really dressed up very nice, and they were just, they don't put on an air like—oh, we're gay, so you have to treat us differently ... And, you know, you get around them, and you're just comfortable, absolutely comfortable around them. And it's great. (Alaga, Personal Communication, August 24 2001)

Another colleague in attendance concurred:

And I'm just really glad that they made the decision they did, but I just think that's one of those example of kind of the courage it takes to sort of not completely, I don't know, not ask or not tell, or whatever. Kind of maybe help the rest of us in some way or another kind of move along, move beyond this sort of process, or sort of thumb your nose at it. You know. I just think of it as the exact, the absolute right move. (Quast, Personal Communication, August 24 2001)

For Dunning's next assignment, she worked for two years with a unit that specialized in contract administration. The unit handled the oversight of civilian contractors involved in supplying to forward deployed areas during periods of conflict, such as Bosnia or Kosovo. Her business degree and contracting work made her well suited for the job, much of which involved trying to make the military purchasing system more professional. When Dunning was promoted to commander, she was required to transfer units. She was transferred to another unit that assists the commander-in-chief of the Pacific Fleet, where

she still presently serves. The unit operated as a think tank of officers with high-tech and consulting experiences and provided analysis and recommendations for improving organizations and processes. Dunning has worked with the unit for the past year and has recently put her name in to command her own unit.

Commander Dunning feels some regret that most people do not know about the successful resolution of her case. Many who heard about her initial struggle assume that she was discharged. She has tried to balance her privacy and her career concerns with a desire to inform people that, while her case was unique, her continued success in the Navy belies the arguments used to justify the ban:

And I think you know with the Congress and everyone else basically justifying the policy on the basis that the presence of open homosexuality ruins unit cohesion and morale. I mean that's all hypothetical. They have no proof of that and, in fact, we have proof to the contrary—me. (Personal Communication, August 2 2001)

Commander John Quast, who served with Dunning for two years, recognized the rare opportunity he had in getting to work with an openly homosexual service member. For him, it was a learning experience, and he feels privileged to have been able to get to know Dunning and to work with her (Personal Communication, August 24 2001).

THE CASE OF LIEUTENANT RICHARD WATSON

Background on the Case

Watson enlisted in the Navy in 1981 and was selected to participate in the Enlisted Commissioning Program, under which highly qualified enlisted service members may become officers. He obtained a bachelor's degree in mathematics through this program in 1986, earning his commission as a Navy ensign in the process. He subsequently completed officer candidate school, naval nuclear power school, and the submarine officer basic course, which provided advanced training in nuclear engineering (Watson v Perry, 918 Supp. 1403, 1996). Watson then joined the crew of the U.S.S. Henry M. Jackson in 1988, a trident nuclear submarine based in Bangor, Washington. Watson began his career on the Henry M. Jackson as an engineer officer in charge of reactor controls (Haines, January 18 1996; Personal

Communication, August 24 2001). He would serve on seven strategic deterrent patrols and would work in engineering, missile, and tactical systems capacities. Lieutenant Watson received many honors during this period, including a Letter of Commendation from the Commanding Officer of his submarine, the National Defense Service Medal for Service on Active Duty, the Navy Achievement Medal for “Professional Achievement in the Superior Performance of His Duties”, and a Gold Star in lieu of a second Navy Achievement Medal (Watson v Perry, 918 Supp. 1403, 1996).

In October 1994, Watson was working as an ROTC professor at Oregon State University and had received orders to become a department head aboard a nuclear submarine. The department head position in military hierarchy aboard a submarine is in the 3rd echelon of command. To prevent possible blackmail, Watson submitted a letter to his commanding officer stating that was gay. His commanding officer began discharge proceedings, and his transfer to assume another job assignment aboard a nuclear submarine was put on hold (Haines, January 18, 1996). The administrative hearing board met in March 1995 and ruled unanimously that he should be discharged honorably. Watson then took the case to federal court. A federal judge ordered that the Navy could not discharge Watson until he issued a final ruling in the case and agreed to hear arguments about the constitutionality of the policy. In issuing the preliminary injunction, Judge Zilly declared that the “Don’t Ask, Don’t Tell” policy was “based on prejudice” (Haines, August 9, 1995).

In hearing arguments on the case, Judge Zilly asked the military attorney how the new policy differed from the previous policy, which he had ruled unconstitutional in 1994. The attorney replied that the new rules allowed sexual minorities to rebut the presumption that they would engage in homosexual conduct. Watson issued a signed affidavit stating that he had never had sex while on military duty, on any military installation, or with any service member or military student. He also denied that he had any “intent or propensity to engage in” sex while on military duty, on any military installation, or with any service member or military student (Watson v Perry, 918 Supp. 1403, 1996; see also *The Phoenix Gazette*, January 19 1996). Because he refused to promise never to engage in any sexual conduct with men during his off-duty time away from base, however, the judge ruled that it was reasonable to assume

gay conduct and found against Watson (Haines, March 8, 1996; Rocky Mountain News, March 8 1996).

In his ruling, the judge wrote:

The Court's decision to grant the Government's motion for summary judgment should not be interpreted as an endorsement of the military's "Don't Ask, Don't Tell" policy or the way it has been applied in general. Regrettably, enforcement of the existing policy has resulted in the expulsion from the armed forces of many outstanding men and women who served their country with honor and dignity. This court may not, however, question the wisdom of the policy. (Watson v. Perry, 918 F. Supp. 1403, p. 2)

At the same time that Watson's case was being decided, another district court ruled in favor of a gay California National Guardsman. The government appealed the California case, and Watson appealed his case. The two cases were consolidated by the 9th U.S. Circuit Court of Appeals, which split two to one in ruling that the military was within its right to discharge the officers. The appeals court argued that the two had failed to prove that they did not engage, or intend to engage, in homosexual acts. Lieutenant Watson was honorably discharged from the Navy on September 1, 1998. The case was then appealed to the Supreme Court, which refused to hear the case. It was the fifth time since 1996 that the high court refused to take a case relating to the military's policy concerning homosexual service members (Chiang, January 12, 1999; Eng, July 9, 1997).⁶³

In Their Own Words: The Experience of Watson and His Colleagues

Prior to making his sexual orientation known to his commanding officer, Watson had kept his sexual orientation "closely held" on the job (Gershick, 2001). He knew that his admission could cost him his job, and he prepared for that possibility by contacting the Service members Legal Defense Network (SLDN) and a lawyer before submitting his statement. He wanted to understand the process and his rights before triggering an investigation. While he realized that he was putting his career on the line, however, Watson continued to hope that somehow discharge could be averted:

I'm a pragmatist. I knew what the eventual outcome would be, but I had hopes. Grethe Cammermyer was doing it.⁶⁴ Keith Meinhold was doing it. I had a relationship that didn't go well, and I was threatened with outing. I was going to beat him to the punch. I thought, "Hey, I'm

⁶³ For more information about the Appeals Court case, see *The Washington Post* (September 6, 1997).

⁶⁴ For a full account of Cammermyer's case, see Cammermyer and Fisher (1994).

an exemplary officer, there's an outside chance." There was no inkling of homosexuality. If they'd based their review on my record and fitness report and professionalism, there'd be no problem. (Gershick, 2001)

When Watson went to speak with his commanding officer about the matter in October 1994, his superior officer initially tried to prevent Watson from submitting his statement:

So I gave the folder to my executive officer, he opened it up and then read the subject line—all military memos have a capitalized top line—that said statement of orientation in the case of Lieutenant Richard J. Watson. He closed the envelope and threw it back at me, and he said "Rich, you don't want me to read this." And I said, "Well, XO, I think you do." He says, "Rich, this is going to change your career." And I said, "You need to read it XO." (Personal Communication, August 24 2001)

Watson's commanding officer would initiate discharge proceedings the next week. Because he had already learned about the process through SLDN, Watson helped guide his superior officers through the process. While Watson waited for the administrative hearing, he continued to work as a professor of naval education and training at Oregon State, where he had been nominated for an excellence in counseling award. He taught naval engineering and management classes, as well managed a team of 15-20 students in training to become nuclear power officers. His transfer to his new tour of duty was put on hold, as was his promotion to Lieutenant Commander. Watson and his superior officers tried to keep the issue low profile, although his replacement, who had arrived before the discharge process had been initiated, soon learned the details of the delay (Watson, Personal Communication, August 24 2001).

Watson's discharge hearing occurred in March 1995. Lieutenant Commander Scott Wolfe, who roomed with Watson aboard a nuclear submarine, said in an affidavit, "He is precisely the type of officer you want standing next to you in the heat of wartime battle" (Cited in *Phoenix Gazette*, January 19 1996, p. B1). Watson recalled the attitude of the naval lawyers:

Even during my first board of inquiry back in March of 1995, when the government's attorneys were getting ready to process me, they came up to me and said, "You know lieutenant, I wish I had the record that you had. And, I'm sorry, but this is my job—I've gotta do this." (Personal Communication, August 24 2001)

He was recommended for honorable discharge. Watson was prepared to accept a discharge under honorable circumstances until he learned that he would only receive 50% of his severance pay. It was then that he decided to fight his discharge in federal court. Watson won an initial ruling barring the Navy

from discharging him until the judge could decide the merits of the case, and Watson's odyssey as an openly gay service member in the media spotlight began.

Because Watson was being discharged under the new policy and was therefore unaffected by the Meinhold ruling, the naval injunction against dismissing him did not mandate that he be maintained in his present capacity. Watson's lawyer argued unsuccessfully that he should be allowed to continue to his next posting aboard a submarine while the case was pending, and Watson was instead transferred to a job as the Assistant Family Service Manager at Bangor Submarine Base. He taught computer classes to the spouses of Navy service members and performed a wide variety of administrative functions. Although the job was not one that he had trained for, he aspired to do the best job that he could. Watson explained:

Gretta Cammermyer, my mentor, she pretty much told me how it has to be. No matter what job they gave you, whether it be, you know, mop boy, or copy boy, or sit-in-the-office-and-don't-do-anything boy, which they tried to do, and I was able to get better jobs, but each time they gave you that job, you just needed to do the best you can do, and prove to them they're wasting talent and money. And that's what I did. (Personal Communication, August 24 2001)

At Bangor, Watson served as base auditor for a major safety inspection that the base had previously flunked. Under his administration, the base passed the inspection with "zero discrepancies" (Gershick, 2001). He also helped the Family Service Center pass its tri-annual accreditation with the highest rating (Gershick, 2001).

One interaction while he worked at the Family Service Center particularly stood out. A female colleague was regularly picked up after work by her husband, who was, in the words of Watson "an old salty bowsman's mate." As was often the case, the husband wondered what a nuclear submarine officer was doing working there, and he asked his wife about it. Knowing that her husband did not approve of homosexuals serving in the military, she told him that he did not want to know the answer. He continued to observe Watson over time, however, and he recognized that Watson was obviously a competent service member. Finally, after continuing to question his wife about the matter, she told him the reason and received no reply. She heard nothing more on the subject for the next few months:

And about three or four months later, he told his wife, "You know, he's a pretty sharp guy—maybe it's not such a bad thing after all." And she told me that when I departed, and she just said "Hey, changing attitudes one person at a time is probably no great achievement in the larger

scheme, but it's probably significant in slowly changing the policy for the better." I took that, and that was pretty important. (Personal Communication, August 24 2001)

After working at the Family Service Center for several months, Watson sent a letter to the admiral of the Pacific Northwest fleet stating that his skills could be put to better use in another capacity. Watson was then transferred to Everett, Washington in November 1995, where he became the construction project manager for a twenty million dollar recreation complex. He managed the main contractor and 27 subcontractors, in addition to overseeing a procurement budget. Watson oversaw the construction from start to finish over nine months of construction. The project was completed on time and under budget. He described the contradiction between the trust the military placed in him while it was fighting to discharge him:

[As the project manager for the recreation complex], the Navy sent me to a trade show to purchase over \$850,000 in equipment, giving me sole signing authority. It was an incredible amount of responsibility they gave me, an officer who's being discharged for being 'unfit.' (Gershick, 2001)

As he had found at the Family Service Center, he found for the most part that his sexual orientation was rarely an issue during the daily rhythm of work life. Watson generally deflected questions about why he was there. He explained:

My life was pretty much routine. I took care of my business, was always professional. My private life was my private life, my professional life was my professional life, and the men and women that I led and the officers that supervised me knew that they could count on Rich Watson to get the job done. And after a while, it became a non-issue. For the sailors, the men and women in the fleet that do the job, they don't care as long as you come to work and do your job and do it well, and even, hey, if you do it really well, take the load off of them. If you can do that, then the bottom line is that orientation is not really an issue. (Personal Communication, August 24 2001)

But he also added, "There was not a day that didn't go by that someone quietly would say 'way to go, good luck'" (Personal Communication, August 24 2001).

While Watson was working as the construction project manager, he did experience one troubling incident related to his sexual orientation. A chief bowsman's mate, who at the time was not aware that Lieutenant Watson was gay, asked him if he would re-enlist a sailor that worked for Watson. When he found out about Watson's status, the chief petty officer complained vociferously to the commanding

officer about being assigned a gay officer to his staff. His commanding officer told the chief petty officer Watson's orientation was not his concern, and that he needed to address any professional problem with Watson directly. Watson explained his subsequent interaction with the man:

So, and we did chat, him and I about that, and I said, "Listen chief"—he said, "I don't know if you should re-enlist the sailor." I said, "Well, let's ask the sailor that. Because you've worked with me now for a while—you know what I do, and I'm pretty professional." The sailor chose to have me enlist them.

And towards the end of that tour of duty, he came up to me, the chief petty officer, and said, "You know, probably one of the biggest mistakes in my career was challenging your professionalism based on something that's not my business. And you know, I'm sorry, and if there's anything I can do to make that up, let me know." I said, "Well, you know, there's nothing really you can do, just continue to perform and make our division look good." (Personal Communication, August 24 2001)

When the recreation complex was completed, the chief petty officer recommended Watson for an end of tour award.

After the completion of the construction project in October 1996, Watson became the administration and personnel officer for a large naval station in Puget Sound. He handled personnel issue for approximately 350 Navy staff members (Gershick, 2001). The staff included a large number of people who were in transition—those who were no longer posted to their ships due to injury, pregnancy, or transfer. Watson saw his job as taking, "this motley crew and creat[ing] some type of strong admin support program for the commanding officer" (Personal Communication, August 24 2001).

When Watson first arrived, the commanding officer made it abundantly clear that he did not approve of Watson's challenge of the policy or his continued service in the Navy. The commander told Watson that he was there only because there was a definite need and given Watson's reputation, the commander would give him a chance to fill that need. Watson was therefore particularly satisfied when, months later, the Navy quickly moved to discharge Watson after he lost his appeal in federal court. As he and his lawyer struggled to obtain an injunction before he was discharged, Watson informed the commanding officer that he might be gone within 24 hours. Watson described his commanding officer's response:

The commanding officer of the naval station at that time said, “Rich, you have nothing to worry about. We’ll hire you as a civilian on the spot the next day.” So, you know, and this was a staunch supporter of the policy. Because he saw how I worked and what I did for the station, you know, there’s a total turnaround—a senior naval officer, a captain, a surface warfare officer, who’s willing to hire back a civilian, oh by the way, who has protections, because the civil service has protections against anti-discrimination. So it’s pretty ironic. (Personal Communication, August 24 2001)

While they were able to obtain an injunction, Lieutenant Watson eventually lost his case and was discharged. The captain and the admiral of the Pacific Northwest held a retirement party for Watson.

Watson described the party as “probably the most poignant event in my career” and went on to explain:

And I can remember the ceremony pretty clearly. The staff, who I supervised for those two years, read a special poem and it had something to do with, you know, taking care of people that no one else wanted, and how you made this a home for us. And if anything was going to choke me up, it was that. It was pretty clear that they had cared a lot, cause I had cared a lot back. It made my time there really special. (Personal Communication, August 24 2001)

Watson was honorably separated from the Navy on September 1, 1998. He was awarded a Navy Commendation medal by the admiral for the Pacific Northwest command at his discharge (Gershick, 2001). He continued his court battle until January 1999, when the Supreme Court refused to hear his case. Watson was awarded full VA benefits but only 50% of his separation pay. He is now suing for full separation pay (Gershick, 2001).

THE CASE OF LIEUTENANT STEVE MAY

Background on the Case

Steve May was a Republican member of the Arizona Legislature and a lieutenant in the Army on inactive reserve when he made statements on the floor of the Arizona assembly that referred to his homosexuality. The remarks were in response to proposed legislation that would prohibit the use of public funding for domestic partner health benefits (Sterngold, August 26 1999).⁶⁵ While May had been open about his sexual orientation and was a member of the Log Cabin Republicans, the remarks received considerable press attention (Sterngold, August 26 1999). Nearly a month after making his statements on the floor, May was called back into active duty as a result of the growing conflict in Kosovo. Lieutenant

May, who as an active duty officer had been trained in nuclear, chemical, and biological warfare defense and had also qualified as a paratrooper, would become second-in-command of the 348th Transportation Company (Moeser, December 12 1999; Moeser, August 13 1999).

One month after May returned to active service in the Army Reserves, a front-page story was published about him in a free Phoenix paper. One of the soldiers in his unit who read the article, in which his sexual orientation was discussed, reported the matter to the commanding officer. An investigation into Lieutenant May's homosexuality was initiated in July 1999, and May subsequently faced an administrative panel in September 2000 (Sterngold, August 26 1999; Moeser, August 13 1999; Sherwood, September 18 2000). While military attorneys had requested that May receive a general discharge, the panel ruled that he be discharged under honorable conditions (*The New York Times*, September 18 2000).⁶⁶ May appealed his discharge to the commanding general of his unit and included a letter signed by 108 members of Congress urging Clinton to overrule the discharge. The letter emphasized May's "exemplary record of service in the military" (Cited in Scutari, November 15 2000, p. B5; Bacon, November 16 2000). The general upheld the honorable discharge, which was then appealed to the secretary of the Army. Throughout the appeals process, May continued to serve with his company. A final decision in the case came when Clinton's Chief of Staff, John Podesta, brokered an agreement in January 2001 between Army command representatives and May's attorney. The Army agreed not to discharge May in exchange for May's pledge not to re-enlist when his term expired (Sherwood and Scutari, January 16, 2001; Sherwood April 11, 2001; *The Arizona Republic*, January 17, 2001). Lieutenant May finished out the rest of his service with his company and retired from the Army on April 11, 2001 (Sherwood, April 11, 2001).

⁶⁵ See also Fischer (September 28 2000).

⁶⁶ The Army asked that May be discharged under less-than-honorable conditions. Army lawyers would argue that May lacked the integrity of an officer because he had been untruthful on *Larry King Live* about the circumstances of his recall, stating that he was called back to serve in Kosovo. They would also allege that May had been disloyal to the Army and was intentionally embarrassing the Army for political gain. The *Larry King Live* was replayed at the discharge hearing, and it was shown instead he said he was called up at the time of the Kosovo Conflict. The board would unanimously rule that May be discharged under honorable conditions (*The New York Times*, September 18 2000; Wolf, October 9 2000; May, Personal Communication, September 6 and November 20 2001).

In Their Own Words: The Experience of May and His Colleagues

When Lieutenant May was on active duty, he trained troops to protect themselves from nuclear, biological, and chemical weapons.⁶⁷ He also won the Silver Dolphin award after spending 63 days underwater in a Trident submarine (Murdock, October 1 2000). May says that friends of his in the service were aware at the time that he was gay, “and they always treated me very well” (Personal Communication, August 13, 2001). While he enjoyed being an active duty soldier—he was an officer in a mechanized infantry battalion by the end of his term of service—May originally left the service as a result of the armed forces’ policy against sexual minorities. He explained, “Many people just leave quietly,” rather than put up with the

hypocrisy and live deceitful lives. On the one hand, you are supposed to be honest in everything you do as a soldier; on the other, you are required to lie. On Monday morning, the guys would share their weekend exploits with their girlfriends but you either can’t talk about it or have to change pronouns. (Kralev, July 22, 2000, p. 3)

May was surprised when he was called back to active duty in the reserves, since his high profile as an openly gay legislator seemed to preclude his return to service. When the Kosovo conflict heated up, however, he received notice to report to the 348th Transportation Company. May recalled his confusion at the time:

What am I supposed to do? Am I supposed to send the Army a letter that says ‘Hey, haven’t you read the newspapers. I’m homosexual?’ Or, at a time when I thought we were going to war, am I supposed to take my uniform out of the closet so to speak and report for duty? Well, I think the only honorable thing to do is when ... your country calls, you respond. And so I did. (Personal Communication, August 13 2001)

May was made the executive officer of a transportation company comprised of two hundred soldiers. Because he was a public figure and an openly gay legislator in the district in which his company was based, some of the soldiers in his unit were aware of his sexual orientation when he first reported for duty. His primary duty was to plan training sessions and oversee their execution. During trainings, he was responsible for getting troops into the field and manning the company command post. Lieutenant

May also supervised junior officers and supported the commander, including taking over the commander's functions in his absence. He worked to strengthen the physical training regimen of his company and maintain basic soldier combat skills, including weapons qualification. May described one aspect of his reserve work:

What my soldiers loved doing the most was just driving their vehicles—their big rigs. If you've ever seen a big fuel rig out on the road, that's what these guys drive. And they love doing that. So, what I tried to do was get them what we call "stick time"—I'd try to appropriate the maximum amount of time for them to take their vehicles out on the road. And that means making sure that the vehicles are running, making sure that we have the time, allotted for them to do this. Making sure that we have the fuel and the money to get them out on the road. You get them on the road, you put them with mentors, or driver trainers, and get them trained. (Personal Communication, August 13 2001)

When Lieutenant May made the cover story in the free Phoenix paper, the article was widely passed around and discussed by members of his unit:

So I go to drill, and my soldiers are all passing this around, talking about it, and coming up to me asking me about it. But it was really interesting in that no one would mention the gay thing. They would talk about everything else in the article, but no one would say anything about the gay part. It was almost surreal. (Personal Communication, August 13 2001)

Once Major Norton was contacted by a soldier in May's platoon about the article, she stated that she had no choice but to initiate action to higher headquarters.

In his August 1999 evaluation, which was written after the investigation had been initiated, his commanding officer wrote, "Lt. May is an intelligent and effective officer. Put in company command as soon as possible" (Murdock, October 1 2000). In a sworn deposition for the investigation, Captain Stephen Sherbondy wrote, "May's performance as an officer under my command has been nothing less than outstanding since he joined the unit" (*The Washington Post*, December 12, 1999). Lieutenant Jeffrey Clark added, "I do not believe that this knowledge [of his homosexuality] has in any way been detrimental to the morale of my troops or the morale of the troops directly under Lt. May's command" (Moeser, December 12, 1999). In the investigative report to the commanding officer, the investigating officer concluded:

⁶⁷ He was stationed at Fort Riley, Kansas from 1993 to 1995 where he was a nuclear, biological, and chemical defense officer (Shaffer, December 19, 1999).

It is my recommendation that each commander in Lt. May's chain of command ... take into consideration Lt. May's outstanding military performance ... and his unlimited potential to be an outstanding asset as a future officer and leader in the Army Reserves. (Cited in Moeser, December 12 1999⁶⁸)

As Lieutenant May publicly fought the policy, the discharge proceedings began, and the soldiers in the unit began discussing the process with him. As was the case with Meinhold and Dunning, May's soldiers struggled with how to handle the issue of going against a military directive and making the military look bad:

I think they were struggling to understand, because they had to reconcile this internal conflict. Soldiers all want to follow the rules; we're trained to follow the rules. We believe we just do what we're told, and so there was this rule they knew about—"don't ask, don't tell"—but there's also a guy that they liked and knew individually as a person. And so they were trying to reconcile these two issues. (Personal Communication, August 13 2001)

May said that everyone was supportive of him personally, although he heard from others that some said things behind his back. He was approached by heterosexual soldiers who offered their encouragement:

And soldier after soldier came up to me privately to say, "I support you". Or, "the guys are all talking about it, and we support you, and we like you, and you're a great leader." Or they'd say things like "even though homosexuality is a sin, we support you"—stuff like that. So at that time, everything I heard was unanimous support. (Personal Communication, August 13 2001)

May also had a number of soldiers who were gay come up to him privately to get his advice. They worried that they would end up going through a discharge procedure, as well, and would lose their college benefits, or family members who did not know would find out about their sexual orientation. Since May's case got press coverage, he was also contacted by gay and lesbian service members from other parts of the country:

I get letters or e-mails from gay service members who are scared and don't know what to do. And I'm sure a number of them have gotten out. I don't think the military knows how much this policy damages them because there may be 1,200 people who get kicked out, but there are tens of thousands who leave and never say a word. (Personal Communication, August 13 2001)

While Lieutenant May's sexual orientation made him an obvious resource and source of support for gay soldiers, it did not interfere with his relationship with his heterosexual colleagues. May said that

⁶⁸ The Arizona Republic misattributes this quote to Major Norton, Lieutenant May's commanding officer. The quote actually comes from an investigative officer in a report to Major Norton (May, Personal Communication, November 20 2001).

his relationship with his fellow officers was quite good. They included him in their banter and joking, and they all socialized together as well:

I did have all my fellow officers over at my house all the time; we'd go out drinking; we were pretty close ... We'd go out drinking, and they'd talk about looking for chicks, and then, "We've got to find someone for Steve," and they all made jokes. We went out one night—all the officers, we went out to an Irish pub, and then they all wanted to go to a gay bar with me. So we all went to a gay bar. And a bunch of my gay friends came up to me and said, "don't bring your Army friends here anymore—they're too cute." (Personal Communication, August 13 2001)

One of the frustrations that May faced related not to the issue of sexual orientation, but to his discharge case itself. For a year and a half, May and his fellow officers were unsure about whether he would be able to continue to serve with the unit. Not only did the case create disruptions for his superior officers, but it also made it more difficult for them to coordinate plans for the unit:

From month to month, we never knew if I was going to be there. And so here I am, the executive officer trying to plan training, and we didn't know if I'd be there. We're planning three months out, and we would never assign me to be the trainer, because we didn't know if I'd be there. (Personal Communication, August 13 2001)

May also experienced one troubling incident related directly to the case. After his discharge hearing, in which the board had recommended that he be discharged, one particularly insubordinate sergeant who had a long history of causing trouble told May that he would not talk to him without his lawyer being present. May described his response:

I made him stand at attention, and I said, "I want you to look at your collar and I want you to look at my collar." I said, "I might be gay, but I outrank you. And you're going to do what you're told to do, or you're going to leave the Army." He stood there for a minute, and he said, "Yes, sir." It was awful! I've never in my life had to like pull rank like that ... I wasn't going to stand for it, and I fixed the problem, and that was it. And from that point until the end, which came for me in April, he was compliant. (Personal Communication, August 13 2001)

A year after the discharge process was initiated, May was made acting commander for his unit during the annual two-week training in the absence of the commanding officer. May commented, "So here they are trying to kick me out, but they make me acting commander. That's just the Army." The contradictions between the military's official policy and the reality of a unit functioning with an openly gay officer also made for some other odd juxtapositions. In the early months of 2000, the Army mandated retraining on the military's policy on homosexuality. Each unit was given briefing slides and a

lecture to read. The officers decided that the first sergeant, rather than May, should be the one to give the briefing. May, however, had to stand at the front of the drill hall with other officers. He described the discomfiting experience:

But I was standing up in front, which is where I'm supposed to be ... and I'm looking, and soldiers are rolling their eyes ... "The Congress has found that homosexuality..." or that "Homosexuality is incompatible with military service—it undermines good order" and blah, blah, blah. And people are looking at me. And I'm just standing there, trying to look really professional and not make any facial gestures or anything, but people are making faces at me.

And one guy from another company at the end of this got up—we'd never met this guy before—he stood up, and he said, "Homosexuals shouldn't be in the Army, there are none in the Army, they're just not here!" And everybody from our company kind of looked around, and they didn't know what to say. It was pretty strange, and it made me really uncomfortable. Everybody from our company came up to me afterwards and said, "Who was that guy?" (Personal Communication, August 13 and November 20 2001)

In the wake of the Winchell murder, all units were also required to conduct "Consideration of Others" trainings once a quarter. May's company received word from the battalion commander that they had to complete their training by a specific date, and May's commanding officer chose him to lead the trainings for his unit. The commanding officer sat in on May's classes, which covered gender issues, race, and sexual orientation. May described the process and students' responses to the training:

And people talked about [gender issues, race and homosexuality]. All very supportive that you don't have to like someone—it's that you don't have to like them to get along with them, or be professional. And we all wear the same uniform, all in the same Army - we all have the same mission. And we have to treat people with respect. And I asked people—say to a black sergeant—"Have you ever been discriminated against?" "Yes." ... "Has a soldier been insubordinate to you because of your race?" "Yes." "Well, what happened?" We'd talk about it. "Well, how do you handle that situation?" You know, and then we'd say, and I had to say—"Do you know anyone who's gay?" People would also say, "Oh, my brother, my sister." "I know gay people." "I work with gay people." The other thing that's different about these reservists from active duty members—most of them work with gay people in their regular jobs. So it's just not that big of a deal. (Personal Communication, August 13 2001)

While May's case was being appealed to the Secretary of the Army, Army officials delayed making a final decision about how to handle such a high-profile case. May learned that Army leadership was unsure how to proceed:

The Army was flat out embarrassed by this. And I know this because I talked to the general counsel to the secretary of the army, and he told me what the four-star generals at the Pentagon were telling him. They were embarrassed about it; they were upset about it. They felt I was being disloyal to the Army by making it a public issue. But the reality is I love the Army; I'm trying to

help them. I'm trying to make it better in the long-term. (Personal Communication, August 13 2001)

May's attorney ran into Clinton's Chief of Staff and talked about trying to work together on a solution.⁶⁹ Podesta organized a meeting at the White House with May's attorney and Army officials, and they came up with the compromise of allowing May to finish out his tour of duty. Once the offer was on the table, May and his lawyer had to decide whether to accept the compromise as a partial victory or continue to fight more broadly in court. May worried that a legal case might set a bad legal precedent or be narrowly decided on the basis of Arizona law that protects the speech of legislators in public debates. He explained, "So the problem was, even if I won in court, which we didn't think we would, it would be such a narrow victory—it would be for state legislators in the reserves. How many are there?" (Personal Communication, August 13, 2001). May decided that it was best to consider the offer a success, since the Army had not previously ruled to let an openly gay soldier finish out his term. He continued to serve with his company until April 11, 2001, when he finished his term of service.

Lieutenant May's experience fighting the military's policy on homosexuality had a postscript when several months ago he and his partner attended the wedding of an Army friend and were joined there by a few other army colleagues. One of them presented May with a unit coin from his old colonel, who knew the officer would see May at the wedding. May described his Army friends as being "very supportive" and accepting of his partner. One conversation, with an infantry commander, was particularly striking to him. The commander had previously been fully in favor of the ban on homosexual service, but he had modified his opinion in the wake of learning that May was gay:

He said "I talk to my guys about you all the time, because whenever there's a story in *The Army Times* about you, they ask me, because they all know that I know you, and we worked together." ... And he said, "I always tell people that if I had to go to war, I'd want to go to war with you." (Personal Communication, August 13 2001)

⁶⁹ For greater detail on political maneuvering on the military's ban at the time, see Schmitt (December 25 1999).

While the infantry commander had changed his mind about fighting with gay soldiers, however, he still believed that openly gay service members should not live on base with other service members' families.

May describes his own reaction to the commander's comments:

I thought, now that's interesting. He's come to the point where he says you can fight with me, but what he said exactly was, "but I don't want to have to explain to my daughter what your relationship is with your partner." I thought, well that's really interesting. A guy who I think really is one of those guys in the middle that we have to influence, and he told me that he used to be a big supporter of the gay policy and all that kind of stuff, but he came around after he saw me. Because he had known me—he never knew that I was gay—he knew me just as an officer. (Personal Communication, August 13 2001)

IX. CONCLUSION

The prohibition of the service of sexual minorities since the 1940s has not led to their elimination from the U.S. military. Many service members do not know they are homosexual when they enlist; others do not consider themselves to be homosexual, even though their behavior fits the military's strict definition. Some who do identify as sexual minorities join anyway, because they want to serve their country or because of the job opportunities the military provides. Most serve in relative silence, telling only other gay and lesbian service members or a few trusted heterosexual colleagues, if they tell anyone at all. While military investigations have led to the discharges of more than 100,000 service members since the 1940s (Berube, 1990; Sobel et al., 2000), experts agree that many more have served without being separated. And as societal attitudes toward homosexuality have in general become more tolerant, there has been increasing evidence of acceptance among many heterosexual military personnel, as well. But the official policy mandates removal of all known homosexual service members, regardless of conduct and regardless of their record. Even those personnel members who experience acceptance from their colleagues remain in danger that a change in command, an unreciprocated advance, or the hostility of one individual could result in the end of their military careers.

Department of Defense officials now acknowledge that many homosexual service members have served honorably and well, and they have discarded the unsupported belief that gays and lesbians are a threat to national security. They do, however, continue to express concern that removing the ban on

homosexuality would lead to declines in morale, unit cohesion, and operational effectiveness. In spite of considerable evidence to the contrary from foreign militaries and domestic fire departments, and despite the opinions of social scientists that study group cohesion and interpersonal relations, U.S. military officials continue to deem sexual minorities as inherently threatening to the good working order of the military. The most compelling evidence against such fears comes from what scholars and researchers have learned about the actual service of sexual minorities in the U.S. military. During periods of sustained conflict, when the need for good unit function and operational effectiveness is at its zenith, the numbers of discharges for homosexuality decrease. Further, the policy is not uniformly implemented even in times of peace; some homosexual service members face a lesser chance of discharge than others because of gender, branch of service, or place of duty. Researchers have catalogued scores of examples from the last fifty years of service members who have served openly and with the support and respect of their colleagues.

The cases of individuals who continued to serve while conducting challenges against the military's policy provide additional qualitative detail to the empirical studies conducted by military, governmental, academic, and non-profit researchers. The experiences of these service members, who collectively served openly for more than 18 years, underline the RAND report conclusion that, "homosexuals can be successfully integrated into military and public security organizations" (National Defense Research Institute, 1993, p. 32). These service members maintained collegial relationships with co-workers, received outstanding evaluations, won awards, and received promotions during their periods of open service. They also maintained high levels of responsibility, managing personnel, overseeing military budgets, and commanding troops. Further, they did so while operating within an institution that officially fought to discharge them. Their conduct, records of service and professional accomplishments reflect what they struggled so hard to obtain—the right to be recognized as exemplary service members first and foremost.

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Dunning, Zoe. Commander, U.S. Navy. August 2 and November 3, 2001.

Meinhold, Keith. Chief Petty Officer, U.S. Navy (Retired). June 4 and November 9, 2001.

May, Steve, Lieutenant, U.S. Army (Retired). August 13 and November 20, 2001.

Quast, John. Commander, U.S. Navy. August 24, 2001.

Watson, Richard, Lieutenant, U.S. Navy (Retired). August 24 and November 5, 2001.

Whitmire, William. Petty Officer. U.S. Navy. September 6, 2001.