



# REPORT OF THE GENERAL/FLAG OFFICERS' STUDY GROUP

*Hugh Aitken*  
*Robert Gard*

*Minter Alexander*  
*Jack Shanahan*

## Executive Summary

A bipartisan study group of senior retired military officers, representing different branches of the service, has conducted an in-depth assessment of the “don’t ask, don’t tell” policy by examining the key academic and social science literature on the subject and interviewing a range of experts on leadership, unit cohesion, and military law, including those who are training our nation’s future military leaders at the service academies. The Study Group emphasized that any changes to existing personnel policy must not create an unacceptable risk to the armed forces’ high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

The Study Group has made ten findings, including:

**Finding one:** *The law locks the military’s position into stasis and does not accord any trust to the Pentagon to adapt policy to changing circumstances.*

**Finding two:** *Existing military laws and regulations provide commanders with sufficient means to discipline inappropriate conduct.*

**Finding three:** *“Don’t ask, don’t tell” has forced some commanders to choose between breaking the law and undermining the cohesion of their units.*

**Finding four:** *“Don’t ask, don’t tell” has prevented some gay, lesbian, and bisexual service members from obtaining psychological and medical care as well as religious counseling.*

**Finding five:** *“Don’t ask, don’t tell” has caused the military to lose some talented service members.*

**Finding six:** *“Don’t ask, don’t tell” has compelled some gay, lesbian, and bisexual service members to lie about their identity.*

**Finding seven:** *Many gays, lesbians, and bisexuals are serving openly.*

---

This essay is a 2008 report issued by four retired general and flag officers for the Palm Center at the University of California, Santa Barbara.

**Finding eight:** *“Don’t ask, don’t tell” has made it harder for some gays, lesbians, and bisexuals to perform their duties.*

**Finding nine:** *Military attitudes towards gays and lesbians are changing.*

**Finding ten:** *Evidence shows that allowing gays and lesbians to serve openly is unlikely to pose any significant risk to morale, good order, discipline, or cohesion.*

On the basis of these findings, the Study Group offers the following four recommendations:

**Recommendation 1.** Congress should repeal 10 USC § 654 and return authority for personnel policy under this law to the Department of Defense (DOD).

**Recommendation 2.** The Department of Defense should eliminate “don’t tell” while maintaining current authority under the Uniform Code of Military Justice (UCMJ) and service regulations to preclude misconduct prejudicial to good order and discipline and unit cohesion. The prerogative to disclose sexual orientation should be considered a personal and private matter.

**Recommendation 3.** Remove from Department of Defense directives all references to “bisexual,” “homosexual,” “homosexual conduct,” “homosexual acts,” and “propensity.” Establish in their place uniform standards that are neutral with respect to sexual orientation, such as prohibitions against any inappropriate public bodily contact for the purpose of satisfying sexual desires.

**Recommendation 4.** Immediately establish and reinforce safeguards for the confidentiality of all conversations between service members and chaplains, doctors, and mental health professionals.

## Rationale

All policies that affect the military must be designed to promote readiness, and must be evaluated in terms of how well they measure up to that standard. The military, cultural, and political landscapes have shifted significantly in the years since the “don’t ask, don’t tell” (DADT) policy was adopted in 1993. As a result, Professor Charles Moskos, one of the principle authors of DADT, said in October 2007 that the time is ripe for “a bi-partisan Commission [to] look at the whole issue of homosexuals in the military. This should involve the consultation of prominent Americans who are known to be pro-military and have respected national reputations.”<sup>1</sup>

The Study Group agrees that a reasoned conversation on this subject requires the counsel of former military officials who have the institutional experience and perspective to offer sound recommendations to Congress and to the public concerning whether and how the current policy should be reformed.

As senior retired military officers, representing different branches of the service, we came into the process with open minds. We were supportive of the policy and felt that it was important at this time, on the eve of its 15th anniversary, to give considered thought from a military perspective to the policy’s current contribution to its stated goal: preserving military effectiveness. In our view, three

conditions form the necessary foundation from which any re-examination of DADT should proceed: first, respect for military policy that maintains the armed forces' high standards of morale, good order and discipline; second, a willingness to examine the policy's present relationship to military effectiveness; and third, the ability to engage controversial issues through sustained, rational inquiry and fact-finding.

In 1993, when DADT was drafted, the policy was intended by DOD as an interim measure.<sup>2</sup> The policy was the result of political compromise in the aftermath of a presidential campaign promise. Military and political leaders viewed DADT as a stopgap measure.<sup>3</sup> While DADT was the right solution at the time it was enacted, the statute and the policy have remained in force for years with almost no significant change. This fact alone goes against the original intent of the statute and signals the importance of resuming an informed civil-military conversation. It stands to reason that after such a significant lapse in time, it is now appropriate and necessary to assess the effectiveness and goals of the statute and the policy.

On 28 February 2007, former Rep. Martin Meehan (D-MA) and a bipartisan group of 109 original cosponsors reintroduced the Military Readiness Enhancement Act in the House of Representatives to amend 10 USC § 654 to enhance the readiness of the armed forces by replacing the current policy concerning homosexuality in the armed forces with a policy of nondiscrimination on the basis of sexual orientation. The immediate prospects of this bill's passage are uncertain. But the perspective of senior military leaders ought to be consulted in this dialogue, and the Study Group offers this report as a small step in that direction.

The aims of the Study Group are (a) to review the DOD DADT policy and the law 10 USC § 654, Policy Concerning Homosexuality in the Armed Forces, to see if, over time, these two instruments are continuing to serve the best interests of the armed forces; (b) to provide objective, knowledgeable military judgment about the effects of the DOD policy and the law over time; and (c) to consider what steps, if any, should be taken by the military and Congress. It is not the intention of the Study Group to craft a new policy or to resolve questions raised by the possible continuation of the current policy. Rather, it has been the goal of the Study Group to review all available data and to hear and consider expert opinion in order to make recommendations on the overall current state of the DOD policy and law and their present impact on military personnel, leadership, and effectiveness.

This report is funded by the Palm Center at the University of California, Santa Barbara. The Palm Center's rigorous research has been published by distinguished military journals including *Parameters*, the official journal of the Army War College, and has been cited in major news venues around the world. As a think tank engaged in controversial social science research, Palm has also reached conclusions that are critical of military policy and that have, themselves, been critiqued by scholars with different opinions. In order to ensure the impartiality of this project, the Study Group insisted, and the Palm Center agreed,

that as a condition of participation, the Study Group conclusions would be their own, and would be reported unmodified by Palm researchers or staff.

The Study Group has focused on two key areas concerning the policy on homosexuality in the military: (1) the “unacceptable risk” standard established in 10 USC § 654 and (2) DOD’s policy of “don’t ask, don’t tell” implementation of the law through implementing regulations, in particular DOD Directive 1332.14. During meetings at the Army Navy Club in Washington, DC in August and September 2007, the Study Group heard testimony and comment from a wide array of experts and interested parties including architects of the 1993 policy; scholars of military personnel issues and military psychology; military commanders; service members discharged under the current policy; experts on foreign militaries and integration; foreign military commanders; and constitutional law and other legal experts. The Study Group carefully sought out expert opinion representing all viewpoints, including supporters and detractors, advocates and critics of the current policy.

The Study Group reviewed materials from the 1993 Congressional hearings and met with architects of the statute and the policy. The group examined in detail the language of the law with the help of lawyers and legal scholars. Finally, the Study Group reviewed the relevant policies in the Uniform Code of Military Justice (UCMJ) and discussed the relationship of the statute, the policy, and the UCMJ with military commanders who had experience implementing them in Iraq and elsewhere.

The Study Group examined the key academic and social science literature on the subject. This included the most recent quantitative information (polling data) available on military opinion and civilian attitudes; the most up-to-date research on unit cohesion and military psychology; and comparative work on foreign militaries. The group heard from academic experts on the history of sexual minorities in the military and on the history of DADT. The group spoke with and sought out the opinion of those who are training the nation’s future military leaders at the service academies.

The study group was saddened that not a single expert who opposes gays in the military was willing to meet or talk with us in person. For each expert, the group offered to take written and/or in-person testimony, and offered to arrange and subsidize transportation to Washington, DC or to arrange videoconferencing or teleconferencing facilities. The group also asked experts who oppose gays in the military to provide additional names of experts who might participate. Because not a single one of these experts was willing to participate in person or to provide additional names of people who would, therefore the group devoted particular and extensive effort to the study of their published work and any written comments they were willing to submit for consideration.

## **History of “Don’t Ask, Don’t Tell”**

The question of whether gays and lesbians should be allowed to serve in the US military has surfaced several times in the history of the United States. Up

until World War II, homosexuals were not specifically named in military regulations. Those caught engaging in homosexual conduct were punished or separated—albeit inconsistently—under regulations proscribing certain kinds of sexual behaviors or under policies targeting socially disreputable conduct or social types. By the end of World War II, all services banned homosexuals and homosexual conduct, although enforcement continued to be unevenly applied.

A string of court cases in the 1970s and 1980s challenged inconsistencies in how the homosexual exclusion policy was being implemented. In response to some of these legal challenges, and in deference to political considerations, the Carter administration initiated the first Pentagon-wide ban on gays and lesbians in uniform. Implemented at the end of President Carter's term, DOD Directive 1332.14 effectively removed any discretion that different services or individual commanders previously enjoyed.<sup>4</sup> The new policy modified the language that had regarded gay people as "unsuitable for military service" stating instead that "homosexuality is incompatible with military service." The rationale given was that

the presence of such members adversely affects the ability of the armed forces to maintain discipline, good order and morale; to foster mutual trust and confidence among 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 armed forces; to maintain the public acceptability of military service; and to prevent breaches of security.<sup>5</sup>

In the late 1980s, the homosexual exclusion policy came under increasing public scrutiny. A purge of suspected lesbians at the Parris Island Marine training center in South Carolina added to the momentum of critics of the gay ban, and new gay, lesbian, and bisexual advocacy groups joined civil rights organizations, legal aid groups, and members of Congress to raise awareness of the consequences of the policy. After the first Gulf War, the press reported allegations that the military had sent known gays and lesbians to war, only to discharge them upon their return. The confluence of ongoing legal challenges to the policy and growing opposition in the court of public opinion, particularly on college campuses, where the presence of ROTC was routinely protested, caught the attention of lawmakers and candidates for office in the early 1990s.<sup>6</sup>

In October 1991, Gov. Bill Clinton, a Democratic contender for the White House, was asked during a speech at Harvard's John F. Kennedy School of Government about his position on the ban on gay service members. He answered that he opposed it and would lift it if he became president. Clinton framed his position in terms of "meritocracy," saying the nation could not afford to exclude capable citizens from helping their country even if some citizens did not like them. In contrast, those opposed to lifting the gay ban, including many members of the military and of religious and other socially conservative organizations, cast the issue as one of "national security" and "military readiness," arguing that such a change would put lives needlessly at risk by compromising the high standards of discipline, morale, and unit cohesion on which a strong military relies.<sup>7</sup>

After Clinton won the election in November 1992, his campaign promise on gays in the military dominated the news cycle for months. Opposition from the military was fierce, as was resistance from other sectors of American society. Senator Sam Nunn, chairman of the Senate Armed Services Committee, and General Colin Powell, chairman of the Joints Chiefs of Staff, insisted that homosexual conduct must not be permitted in the military, and they pointed out that the Uniform Code of Military Justice, which bans certain sexual acts such as sodomy which are commonly associated with homosexuals, could only be changed by an act of Congress. President-elect Clinton argued that a person's status—as opposed to his or her conduct—should not be a bar to service. He continued to assert his intention to lift the ban outright and to allow gay, lesbian, and bisexual Americans to serve their country without concealing their identity.<sup>8</sup>

In January 1993, just days after Clinton's inauguration, the new president came to a compromise with the Joint Chiefs of Staff and members of Congress to suspend certain aspects of the homosexual exclusion policy while studying the issue for a six-month period. The most notable change for the interim period was that recruits would no longer be asked if they were homosexual as a pre-condition for enlistment. But investigations of homosexuality would continue, and, if found out, gays and lesbians would be transferred into the "standby reserves," where they would receive no pay or benefits.<sup>9</sup>

President Clinton then ordered his secretary of defense, Les Aspin, to study how best to reform the policy in a way that would end discrimination on the basis of sexual orientation while remaining consistent with the standards of discipline and order necessary to maintain military readiness. Policy options were supposed to take the Uniform Code of Military Justice into consideration.

Secretary Aspin ordered two major studies that spring. One study was by a panel of general/flag officers called the Military Working Group (MWG), which Aspin appointed and instructed to deliver a report by July 1993. The RAND Corporation's National Defense Research Institute, a private think tank created by members of the military following World War II, commissioned the other study. The two organizations delivered competing proposals, with the MWG suggesting a policy that retained the finding that "homosexuality is incompatible with military service," and RAND concluding that sexual orientation should be considered "not germane" in determining who should be allowed to serve.<sup>10</sup>

While military experts were preparing their reports, Congress separately held hearings on the matter, led by Senator Nunn. The hearings, both in the House and Senate, took place over several months and invited testimony of numerous parties, including national security experts, legal scholars, sociologists, members of Congress, and current and former members of the armed forces. The Senate also conducted field hearings to discuss the matter with enlisted personnel on ships and submarines.<sup>11</sup>

On 19 July 1993, the Clinton White House announced its policy: "don't ask, don't tell, don't pursue." In a Ft. McNair speech, Clinton made permanent the temporary suspension of asking potential recruits if they were gay or lesbian. In a memo signed by Secretary Aspin, the Department of Defense di-

rected that applicants for military service “not be asked or required to reveal their sexual orientation.”

The policy called for the separation of service members “for homosexual conduct,” which was defined to include “a statement by a service member that demonstrates a propensity or intent to engage” in homosexual acts. Acts are defined as “any bodily contact” between members of the same sex undertaken “for the purpose of satisfying sexual desires” or which a “reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts.” The policy explained that “an open statement by a service member that he or she is a homosexual” would be taken to demonstrate a “presumption that he or she intends to engage in prohibited conduct.” Therefore, both statements to that effect and the prohibited conduct itself would result in separation.<sup>12</sup>

Congress debated and then voted on a variety of versions of Clinton’s policy, finally passing a version in September that hardened the language by making a number of changes. In particular, the new Senate language did not mention “don’t pursue” and did not echo the Clinton policy’s assertion that “sexual orientation is considered a personal and private matter and homosexual orientation is not a bar to entry or continued service unless manifested by homosexual conduct,” while it did call gays an “unacceptable risk” to the military, and allowed the secretary of defense to re-instate “asking” if deemed appropriate. The Senate version required the separation of service members found to have engaged in or attempted to engage in homosexual acts, defined to include statements that they are gay or bisexual.<sup>13</sup> The House passed an identical measure by a vote of 301 to 134, and, in November 1993, President Clinton signed the legislation (the National Defense Authorization Act of fiscal year 1994) into law. Over the next several months, the Pentagon wrote implementing regulations that updated prior Department of Defense directives, and the statute and regulations were implemented in February 1994.

## Study Group Findings

**Finding one:** *The law locks the military’s position into stasis and does not accord any trust to the Pentagon to adapt policy to changing circumstances.*

As a result of the way in which the DADT law is written, the Defense Department is restricted from adjusting its policy to suit military needs or readiness. The Study Group finds that it is the practical and everyday flexibility of military commanders that leads some to mistakenly assume that DADT is working. However, the policy is not working; rather, it is the flexibility of military leaders, often ignoring or violating the policy, who are making the system work. The Defense Department needs the latitude to develop and adapt a policy that meets its needs. The framing of the current law does not recognize military flexibility or accord the Pentagon the authority to adjust its policies. The justification for the restrictions on homosexuals found in 10 USC § 654 is contained

in the 15 Congressional findings provided in the beginning narrative of the statute. The last finding sets the rationale for the law: "The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability." The "unacceptable risk" standard was carefully established by Congress in 1993 based on expert testimony from trustworthy military leaders. The basis for their advice to Congress lies in the attitudes toward homosexuality by members of the armed forces serving at that time or earlier. Witnesses confirmed to us that attitudes of the members of the armed forces concerning homosexuality have changed since 1993. The Study Group was informed that only about 20 percent of those serving in 1993 when the law was passed remain in the service today. If DOD needed to adjust the policy because of the changing attitudes, it would be unable because of the specificity of the law. The Study Group believes that Congress should return the authority to the Defense Department to establish personnel policies that meet the needs of the military.

**Finding two:** *Military laws and regulations provide commanders with sufficient means to discipline inappropriate conduct.*

Many types of conduct are not appropriate for military settings. The Uniform Code of Military Justice, as well as Pentagon regulations, provide commanders with numerous and sufficient means for disciplining inappropriate public displays of affection, fraternization, adultery, or any other conduct which is prejudicial to the maintenance of good order, discipline, morale and unit cohesion. In addition, the Defense of Marriage Act prevents the federal government from recognizing same-sex marriages for any purpose, even if recognized by any particular state.

**Finding three:** *DADT has forced some commanders to choose between breaking the law and preserving the cohesion of their units.*

The Study Group was concerned to learn that DADT puts some commanders in a double bind in their everyday workplace, as they weigh the need to follow the law against the importance of keeping their teams together.

The Study Group heard from a heterosexual officer who returned recently from a tour of duty in Iraq. He told the group that one of his best noncommissioned officers was probably a lesbian, and that if he had been presented with credible evidence of her homosexuality, he would have been forced to choose between following the law and keeping his unit intact. For this officer, unit cohesion was marked by the need to retain a qualified, meritorious lesbian service member. When asked which choice he would have made, he said that he would have opted to break the law. Experts in military law attested, "The statute makes it mandatory to follow up if told." Yet, a former noncommissioned officer confirmed, "There were times I should have said something. I didn't. I helped people manage their career." He acknowledged, "I was breaking the law myself."

Related to this issue, legal and military experts confirmed that even though DADT requires commanders to take action upon learning of a subordinate's

homosexuality, “no commander has been admonished for not following up.” Therefore, in practice, because many reported cases are based only on rumors or unobserved behavior, commanders can have a great deal of discretion about whether to launch an investigation into someone’s sexual orientation. This is one factor that can lead to uneven and sometimes arbitrary enforcement. One noncommissioned officer told us, “You get accustomed to being ‘open’ at one duty station, then you’re transferred to another, stricter, more conservative environment, and there you have problems.” For gay, lesbian, and bisexual service members, the unpredictability of enforcement can add a burden to their ability to perform their duties.

**Finding four:** *DADT has prevented some gay, lesbian, and bisexual service members from obtaining psychological and medical care as well as religious counseling.*

The Study Group was surprised to learn about the lack of confidentiality accorded gay, lesbian, and bisexual service members in conversations with doctors, chaplains, counselors, and other professionals in whom heterosexual military members can freely confide.<sup>14</sup> The policy also creates ethical dilemmas for professionals attempting to balance their obligation to obey federal law and their obligation to professional ethics.

Despite the general supposition that conversations with clergy are supposed to be confidential in the military, gay, lesbian, and bisexual service members have been investigated and discharged when chaplains reported the contents of their private conversations to commanders. Professor Tobias Barrington Wolff published a study on this topic that found that in 2000 “the Pentagon actually instructed gay soldiers to speak with clergy if they had questions about the policy, implicitly suggesting that confidentiality would be respected. But this instruction provided little security, as the military has continued to initiate discharge proceedings against gay soldiers when chaplains report the statements that the soldiers make during counseling sessions.” He adds, “some military commanders instruct doctors and therapists that they are required to report any soldier who speaks about being gay during treatment.”<sup>15</sup> Vincent Patton, former Master Chief Petty Officer of the Coast Guard, confirmed that confidentiality in the Chaplains Corps is a serious issue. He indicated that gay, lesbian, and bisexual service members might have more need of clergy support, since they may have less family support, but that confiding in the chaplaincy can prompt a discharge.

In the case of doctors and mental health practitioners, there is no formal pretense of general confidentiality, and gay, lesbian, and bisexual service members incur risk when they speak about their sexual identities to healthcare professionals. One service member, Rhonda Davis, a former noncommissioned officer who was discharged from the Navy for being gay, told us, “As an E-6, I had become a leader, and as a leader, troops came to me for advice and guidance. I had many gay troops working for me, and some of them I saw suffer a great deal because of this policy. One gay troop had a sexually transmitted disease and he asked what he should do about it. I advised him, of course, to see a doctor, but he called it to my attention that if he did, he could be kicked out of the Navy.

Another troop was having a relationship problem with her girlfriend—she threatened committing suicide—and I told her to see a counselor or chaplain, but then I realized that wasn't a good idea because talking about her girlfriend would violate the 'don't ask, don't tell' policy. No matter what I told these troops, nothing was the right answer and I felt like a hypocrite."

False accusations can also threaten the career or well being of heterosexual service members and can produce a generalized atmosphere of fear and suspicion. "In one remarkable incident in 2001, an Air Force airman sought the assistance of a military psychiatrist after a civilian raped him. The psychiatrist announced that the airman must be gay if he allowed himself to be raped, and he threatened to out the soldier to his command if he spoke about being gay during their therapy session."<sup>16</sup>

A February 2007 report of the American Psychological Association (APA) called attention to the increasing mental health needs of all military personnel and their families. The report found that many service personnel and their family members are going without mental health care because of the limited availability of such care and because of barriers to accessing that care. According to the APA, more than 30 percent of all service members who have been deployed to the Iraq and Afghanistan theaters meet the criteria for a mental disorder but less than half of those with mental health concerns seek help. According to Col Thomas Kolditz, a psychologist who chairs the Behavioral Sciences and Leadership Department at the US Military Academy at West Point, "Insofar as DADT makes it less likely for gay, lesbian, and bisexual service members to seek treatment, it exacerbates this [existing] problem." Not only are service members prevented from seeking healthcare, but also health professionals are prohibited from doing their job.

By inhibiting access to religious, medical and psychological services, DADT poses a risk to the well being of some service members. In addition, this denial of confidentiality raises serious questions of professional ethics and constitutional protections. Therefore, confidentiality for such professional consultations should be returned to gay and lesbian service members.

**Finding five:** *DADT has caused the military to lose some talented service members.*

To meet President Bush's goal of adding 95,000 new service members over the next five years, the military needs to add more than 18,000 new troops each year. According to Dr. Jan Laurence, who retired recently from her position as director of research in the Office of the Undersecretary of Defense for Personnel and Readiness, personnel shortages are so serious that "we're looking at converting positions to civilian because we need people." She emphasized that "we are in dire straits." Given Dr. Laurence's professional background, the Study Group places special emphasis on her conclusions.

In response to such shortages, the number of convicted felons who enlisted in the US military almost doubled in the past three years, rising from 824 felons in fiscal year 2004 to 1,605 in fiscal year 2006. The data indicate that from 2003 through 2006, the military recruited 4,230 convicted felons to enlist un-

der the “moral waivers” program, which enables otherwise unqualified candidates to serve. In addition, 43,977 individuals convicted of serious misdemeanors such as assault were recruited to enlist under the moral waivers program during that period, as were 58,561 illegal drug abusers.

At the same time, according to a report prepared by the Government Accountability Office, nearly 800 people with skills deemed “mission-critical” by the Pentagon have been dismissed under DADT. This figure includes 268 in intelligence, 57 in combat engineering, 331 in medical service delivery, and more than 322 language experts, at least 58 of whom specialized in Arabic.<sup>17</sup> It is counterproductive to military readiness to discharge qualified gay, lesbian, and bisexual service members at the same time that we are filling ranks with service members brought in under the moral waivers program.

A recent UCLA Law School study found that had DADT not been instituted in 1994, approximately 4,000 lesbian, gay and bisexual military personnel would have been retained each year. Of that group, an average of 1,000 men and women were discharged each year as a direct result of the policy, and 3,000 would likely have stayed in the military if they could have served openly and without fear of discharge.

By contrast, 2 percent of presumably heterosexual service members who responded to a recent Zogby poll said that they would not have joined the military if gays and lesbians were allowed to serve openly, a total that would amount to about 4,000 lost recruits per year across the 14 years the policy has been in effect.

If all of these statistics are to be taken at face value, then the repeal of DADT would be a wash in terms of recruiting and retention, with 4,000 heterosexuals refraining from joining the military each year, and 4,000 gays, lesbians, and bisexuals joining and remaining in the force.

These statistics, however, must be read critically. Approximately two-thirds of service members in the Canadian and British forces said that they would not work with gays, but when gay bans were lifted in both of those countries, recruiters reported no mass resignations and no increased difficulties, and even reported slightly enhanced recruiting and retention performance. According to several studies including official Ministry of Defence analyses, less than a handful of service members resigned from the British armed forces after the repeal of the British ban, despite the fact that two-thirds of British service members had previously told survey researchers that they would not work alongside gays.<sup>18</sup> The vast literature on retention and enlistment propensity in the United States does not even include the lifting of the gay ban as a potential determinant in its research. However, the Zogby poll, which did include this factor in a list of motives for joining and staying in the military, found that out of 10 possible motives, the repeal of DADT was ranked 10th in importance.

In the worst case scenario, if it turns out to be true that the numbers cancel out and 4,000 heterosexuals refrain from enlisting, while 4,000 gays, lesbians, and bisexuals do enlist, the group nevertheless points to the many official military pronouncements about the importance of building and maintaining a di-

verse force to represent the values of a free, pluralist democracy. Building and maintaining a diverse force is a central component to winning the war on terror because the diversity of the armed forces can serve as a living example to peoples living under authoritarian rule, and demonstrate that pluralism and tolerance offer a better way of life.<sup>19</sup>

**Finding six:** *DADT has compelled some gay, lesbian, and bisexual service members to lie about their identity.*

The Study Group was concerned to discover that DADT encourages dishonesty for some gay, lesbian, and bisexual service members. While some are able to serve in silence and refrain from saying anything about their sexual orientation, many are forced to assert a false identity. According to Professor Tobias Wolff, an expert in constitutional law who has done extensive research on DADT, "It is impossible to be 'agnostic' about one's sexual identity in the course of normal interaction. Rather, a presumption of heterosexuality pervades most settings."<sup>20</sup> Imagine, for example, whether it would be realistic for a married, heterosexual service member to never admit that she has a husband. While theoretically possible, in practice such concealment could be a difficult pretense to maintain given the constant banter and genuine concern for loved ones that takes place among service members.

Several noncommissioned officers who met with us confirmed that while they were never officially asked about their sexual orientation, dating was a topic that came up frequently in informal settings. To escape suspicion in such circumstances, they often felt that they had to lie. One noncommissioned officer who served for 20 years in the Air Force, including a tour in Afghanistan, said that whenever he was asked, "I lied." He added forcefully: "I did not like lying."

The policy puts some gay, lesbian, and bisexual service members in a quandary and undermines the personal integrity essential to honor and trust.

**Finding seven:** *Many gays, lesbians, and bisexuals are serving openly.*

Despite the fact that DADT causes many gay, lesbian, and bisexual service members to lie about who they are, many others do serve openly. An estimated 65,000 gay, lesbian, and bisexual persons are currently serving on either active or reserve duty, and it is estimated that there are another one million gay, lesbian, and bisexual veterans.<sup>21</sup> A 2006 Zogby poll of troops who served in Iraq and Afghanistan found that nearly one in four US troops (23 percent) say that they know for sure that someone in their unit is gay or lesbian. Of those who say they know for certain that they serve with a gay or lesbian service member, 59 percent said they learned about the person's sexual orientation directly from the individual. More than half (55 percent) of the troops who know a gay peer said that the presence of gays or lesbians in their unit is well known by others. One of the most distinguished academic experts on the military in the country told us, "One thing I have been disabused of is that gays survive by being in the closet. If there are large numbers of gays completely in the closet, I haven't seen it."

As one noncommissioned officer told us, "Of course, I never walked into a room and announced 'I'm a lesbian,' but people aren't stupid, and they always

picked up on the fact I didn't have a boyfriend or husband or kids—and eventually, when we were all hanging out at the Enlisted club bonding as friends and shipmates—my secret would come out. As my friends spoke casually of their husbands and wives, I often spoke of some girl I was dating at the time.” She concluded, “The reason I could be honest with my Navy friends is because I generally found that people respected me for my work ethic, my integrity, and for my character. I am a good person, and a workaholic—and they could see that.”

**Finding eight:** *DADT has made it harder for some gays, lesbians, and bisexuals to perform their duties.*

Those who do choose to adhere to the policy and lie about their identity sometimes become the target of suspicion or scorn from their peers and this can impact individual and unit performance. As a noncommissioned officer told us:

I had two gay friends while I was stationed in Spain. One man, E., was very open [about being gay], like me. The other one, T., followed the “don't ask, don't tell” policy nearly to the letter of the law. T. told me that he was gay, but to his co-workers he lied about having girlfriends. But everyone hated him. I asked the guys at work why they harassed T. when none of them harassed E. or me. They said the problem wasn't the fact T. was gay, the problem was he was a liar. And to them, that meant he was a coward. They were personally insulted that he lied to them. In this case, DADT is a dual-edged sword: if you follow it, you're mistrusted; if you don't, you play Russian roulette every day with your career.

Stories such as this suggest to us that service members may be more disturbed about serving with dishonest peers than about serving alongside gays and lesbians. It places young professionals, homosexual and heterosexual, in an unworkable situation.

For those who are open about their sexual orientation, however, other risks present themselves. One former service member told us, “Don't ask, don't tell” had only been around a little more than a year by the time I enlisted . . . but that didn't stop me from being honest with most of my fellow shipmates about my sexual orientation.” However, she explained, this meant

the guy in the office down the hall who had asked me out on a date, only to find out later that I'm a lesbian, could have ended my career. My troop whom I yelled at constantly for being late—who knew I'm a lesbian—could have ended my career. Any number of people, at any time, could have had the power to end my career. Even when I felt comfortable with people, it was always in the back of my mind that anyone at anytime could turn on me and turn me in. My Navy career was always somewhat at their mercy, and that was an incredible burden to bear. Many people know you're gay, but look the other way because they know you're a good sailor.

The Study Group finds that the policy can produce an atmosphere of uncertainty and suspicion for all concerned.

**Finding nine:** *Military attitudes towards gays and lesbians are changing.*

The existing law and DOD DADT policy on homosexuals serving in the armed forces are based on the attitudes of service members. In 1993, 40 percent of the public supported allowing “openly gay men and lesbian women” to serve in

the military.<sup>22</sup> Civilian and military opinion has shifted in the intervening years, indicating much more acceptance for gays and lesbians serving. Recently, national polls have been administered by at least five different polling organizations that have asked members of the public whether gays and lesbians should be allowed to serve openly. All survey results show that between 58 and 79 percent of the public believe that gays and lesbians should be allowed to serve openly.

One conservative polling organization hired by Fox News found that 64 percent of the public, including 55 percent of Republicans, believe that gays and lesbians should be allowed to serve openly, and other pollsters have confirmed that a majority of Republicans now believe that gays and lesbians should be allowed to serve openly.<sup>23</sup> A majority of regular churchgoers say that gays and lesbians should serve openly.

Gallup found that 91 percent of young adults say that gays and lesbians should be allowed to serve openly. Of course, as Moskos pointed out in a message to the Study Group, "Public opinion is not what counts. Attitudes of soldiers does." While it is impossible to know with certainty when a change of attitude of "soldiers" will occur, it seems implausible, given where military and public opinion stands, to imagine that DADT will continue in perpetuity.

**Finding ten:** *Evidence shows that allowing gays and lesbians to serve openly is unlikely to pose any significant risk to morale, good order, discipline, or cohesion.*

The justification for DADT is contained in 15 Congressional findings which establish the rationale for the law, and which conclude that "the presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability." While this may have been true in 1993, there are indications that this may no longer be the case. In 1993, the finding of "unacceptable risk" was based on the views of currently serving service members and military leaders, and on the experiences of foreign militaries. However, the group was not able to find any evidence to suggest that the finding of unacceptable risk remains valid.<sup>24</sup>

Colonel Tom Kolditz, chairman of the Department of Behavioral Sciences and Leadership at the US Military Academy at West Point, is one of the Army's top experts on leadership and cohesion. He served 18 years as a Field Artillery officer including two years of battalion command and seven years as a professor at West Point. From 1995 through 1997, he worked in the Human Resources Directorate of the Army G-1, where Army policy related to DADT is managed. He completed service as one of four doctoral level researchers supporting the Secretary of the Army's Senior Review Panel on Sexual Harassment following the Aberdeen Proving Ground scandal. And he is the author of a number of well-received studies on leadership and cohesion, including a Strategic Studies Institute monograph titled "Why They Fight," and a book released this past June titled *In Extremis Leadership: Leading as if Your Life Depended on It*.

Colonel Kolditz told us, "Cohesion is important to Army leaders, especially in combat. Current Army leadership doctrine, FM 6-22 requires Army leaders to 'build high-performing and cohesive organizations.' Among the principal issues in cohesion research is the relative contribution of task cohesion (the ability for individuals to work in teams to accomplish tasks) versus social cohesion (personal relationships among team members)." Kolditz emphasized that there is a current emphasis on training cross-cultural skills in concert with a tolerance for diversity among soldiers and leaders to enable US success in current missions around the world. He elaborated that

I've taught a course in cross cultural leadership and diversity for the Eisenhower Leader Development Program, a graduate program taught to Army Captains at West Point in concert with Columbia Teachers' College, and most recently adapted the course as an extended lecture in the Yale School of Management. A core instructional element of that course is that people can develop cross cultural leadership skills not only by being in foreign cultures, but by practicing their skills and abilities at home, across diversity areas, such as race, gender, class, age, religious affiliation, physical ability, and sexual orientation. I introduce the concept by saying that people who have a hard time communicating and working with, say, Amish people in Lancaster County, Pennsylvania, will certainly have a difficult time working with Sunni Muslim police administrators in Baghdad.

He added, "I could just as easily substitute an example based on sexual orientation." Kolditz emphasized that he is unaware of any evidence suggesting that heterosexuals cannot form bonds of trust with gays, lesbians, and bisexuals.

A scholar at the RAND Corporation who is a leading academic expert on unit cohesion confirmed that "I do not know of any evidence" that suggests that gays undermine cohesion. A heterosexual officer who returned recently from Iraq explained that the friction resulting from the prosecution of service members found to be gay is far greater than the friction that results from simply knowing a gay person. And retired Master Chief Petty Officer Vincent Patton confirmed that service members have told him that "we had unit cohesion till this [gay] person was kicked out."

Given the differences between foreign armed forces and the US military, the Study Group does not place too much stock in lessons learned from overseas. That having been said, it is worth noting that the British Ministry of Defence has completed two official studies of the repeal of the British gay ban and that while some units did experience minor friction, overall the policy transition posed no serious challenges whatsoever. The Study Group heard testimony from top uniformed and academic experts on gays, lesbians and bisexuals in the Israeli and British militaries who confirmed that they were not aware of any detriment to morale, good order, discipline or cohesion that followed from allowing gays, lesbians, and bisexuals to serve openly. In fact, Britain has recently begun actively recruiting gay, lesbian, and bisexual men and women for service in the Royal Navy.<sup>25</sup>

While polls show that a majority of American service members say that they would prefer that DADT remain in place, only a small minority of those

polled say that they are personally uncomfortable interacting and working with gays and lesbians. This represents a major shift from 1993. General Wesley Clark confirms that the “temperature of the issue has changed over the decade. People were much more irate about this issue in the early ‘90s than I found in the late ‘90s, for whatever reason, younger people coming in [to the military]. It just didn’t seem to be the same emotional hot button issue by ‘98, ‘99, that it had been in ‘92, ‘93.”<sup>26</sup> In 2005, a West Point Cadet received an award for writing the best senior honors thesis in his department for a study arguing that DADT is inconsistent with the military’s emphasis on fairness and equal treatment.<sup>27</sup> And former chairman of the Joint Chiefs of Staff John Shalikashvili publicly announced that despite his original support for DADT, he no longer believes that the policy serves the military’s interest. In a January 2007 *New York Times* op-ed, he noted, “I now believe that if gay men and lesbians served openly in the United States military, they would not undermine the efficacy of the armed forces.”<sup>28</sup>

Finally, a new statistical analysis of 545 service members returning from Iraq and Afghanistan finds that there is no correlation between knowing a gay unit member and the level of readiness or cohesion in the unit.<sup>29</sup>

## Recommendations

**Recommendation 1.** Congress should repeal 10 USC § 654 and return authority for personnel policy under this law to the Department of Defense.

**Recommendation 2.** The Department of Defense should eliminate “don’t tell” while maintaining current authority under the Uniform Code of Military Justice and service regulations to preclude misconduct prejudicial to good order and discipline and unit cohesion. The prerogative to disclose sexual orientation should be considered a personal and private matter.

**Recommendation 3.** Remove from Department of Defense directives all references to “bisexual,” “homosexual,” “homosexual conduct,” “homosexual acts,” and “propensity.” Establish in their place uniform standards that are neutral with respect to sexual orientation, such as prohibitions against any inappropriate public bodily contact for the purpose of satisfying sexual desires.

**Recommendation 4.** Immediately establish and reinforce safeguards for the confidentiality of all conversations between service members and chaplains, doctors, and mental health professionals.

***Return authority to DOD.***

## Notes

1. Personal correspondence with Prof. Charles Moskos, 6 October 2007.
2. "I would not say that the policy that we are implementing here today is the policy that will be forever." "I would not say that this is going to be forever." News conference, Secretary of Defense Les Aspin and Jamie Gorelick, general counsel, Department of Defense, Regarding the Regulations on Homosexual Conduct in the Military, 22 December 1993.
3. John Holum confirmed this in his comment to the Study Group, stating that "don't ask, don't tell" was "not meant to be long term" and "doesn't make sense as a long term policy."
4. US Department of Defense Directive (DODD) 1332.14, *Enlisted Administrative Separations*, 28 January 1982, 1:H: "Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the military services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and world-wide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the military services; to maintain public acceptability of military service; and to prevent breaches of security."
5. National Defense Research Institute, *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessments* (Santa Monica, CA: RAND Corporation, 1993).
6. Randy Shilts, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military* (New York: St. Martin's Press, 1993).
7. Curtis Wilkie, "Harvard Tosses Warmup Queries to Clinton on Eve of New Hampshire Debate," *Boston Globe*, 31 October 1991.
8. *Policy Concerning Homosexuality in the Armed Forces, Hearings before the Committee on Armed Services*, US Senate, 103rd Cong., 2nd sess., US Government Printing Office, 1994.
9. Thomas Friedman, "Compromise Near on Military's Ban on Homosexuals," *New York Times*, 29 January 1993.
10. Office of the Secretary of Defense, "Summary Report of the Military Working Group," July 1993; and National Defense Research Institute, *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessments* (Santa Monica, CA: RAND Corporation, 1993).
11. *Policy Concerning Homosexuality in the Armed Forces, Hearings before the Committee on Armed Services*, US Senate, 103rd Cong., 2nd sess., US Government Printing Office, 1994.
12. Office of the Secretary of Defense, "Policy on Homosexual Conduct in the Armed Forces, Memorandum for the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chairman, Joint Chiefs of Staff," *Weekly Compilation of Presidential Documents*, vol. 29, 19 July 1993.
13. 10 USC 654, Policy Concerning Homosexuality in the Armed Forces.
14. In October 2003, the APA Board of Directors established the Task Force on Sexual Orientation and Military Service to address issues including a) confidentiality for military service members within military mental health systems, b) the education of service members regarding federal law and military mental health services, c) the training of military psychologists, d) consultation with military mental health providers, and e) the DOD implementation of the Policy Concerning Homosexuality in the Armed Forces (1993) and specifically "don't ask, don't tell."
15. Tobias Barrington Wolff, "Political Representation and Accountability," *Iowa Law Review* 89 (2004): 7.
16. *Ibid.*
17. Bryan Bender, "Gays' Ouster Seen Leaving Gap In Military," *Boston Globe*, 24 February 2005: 1; and Government Accountability Office (GAO), *Financial Costs and Loss of Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be Completely Estimated*, GAO 05-299 (Washington, DC: GAO, February 2005).
18. Ministry of Defence, *Tri-Service Review of the Armed Forces Policy on Homosexuality and Code of Social Conduct*, December 2002; and Ministry of Defence, *A Review on the Armed Forces Policy on Homosexuality*, 20 October 2000.

19. Remi Hajjar, "A New Angle on the US Military's Cultural Awareness (CA) Campaign: Connecting In-Ranks' Diversity to CA" (paper prepared for the Meetings of the Inter University Seminar on Armed Forces and Society, Chicago, IL, 26–28 October 2008).
20. Amici Brief, 9.
21. Gary Gates, "Gay Men and Lesbians in the U.S. Military: Estimates from Census 2000," Urban Institute, 28 September 2004.
22. See David Burrelli and Charles Dale, *Homosexuals and U.S. Military Policy: Current Issues* (Washington, DC: Congressional Research Service, March 2006): 6, citing a July 1993 NBC/*Wall Street Journal* poll.
23. Dana Blanton, "Majority Opposes Same-Sex Marriage," *Fox News*, 26 August 2003.
24. Aaron Belkin, "Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity," *Parameters*, Summer 2003, 108–19; GAO, *Homosexuals in the Military: Policies and Practices of Foreign Countries*, GAO/NSIAD-93-215 (Washington, DC: GAO, June 1993); and "What Is Known about Unit Cohesion and Military Performance?" in National Defense Research Institute, *Sexual Orientation and US Military Personnel Policy: Options and Assessment* (Santa Monica, CA: RAND, 1993). RAND's report was begun at the request of US Secretary of Defense Les Aspin sometime after 29 January 1993 and completed before 19 July 1993.
25. Sarah Lyall, "Gay Britons Serve in Military with Little Fuss, As Predicted Discord Does Not Occur," *New York Times*, 21 May 2007, A: 1, Foreign Desk.
26. NBC *Meet the Press*, transcript, 15 June 2003.
27. Cadet Alexander H. Raggio, "Don't Ask, Don't Tell, Don't Be: A Philosophical Analysis of The Gay Ban in the US Military" (honors thesis, Department of English, US Military Academy at West Point, April 2005).
28. John M. Shalikashvili, "Second Thoughts on Gays in the Military," op-ed, *New York Times*, 2 January 2007.
29. Zogby International, 2006.