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**REVIEW OF THE DOD PROCESS FOR AS-
SESSING THE REQUIREMENTS TO IM-
PLEMENT REPEAL OF DON'T ASK,
DON'T TELL**

HEARING

BEFORE THE

MILITARY PERSONNEL SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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[There were no Questions submitted during the hearing.]

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[There were no Questions submitted post hearing.]

REVIEW OF THE DOD PROCESS FOR ASSESSING THE REQUIREMENTS TO IMPLEMENT REPEAL OF DON'T ASK, DON'T TELL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY PERSONNEL SUBCOMMITTEE,
Washington, DC, Wednesday, March 3, 2010.

The subcommittee met, pursuant to call, at 2:45 p.m., in room 2118, Rayburn House Office Building, Hon. Susan A. Davis (chairwoman of the subcommittee) presiding.

OPENING STATEMENT OF HON. SUSAN A. DAVIS, A REPRESENTATIVE FROM CALIFORNIA, CHAIRWOMAN, MILITARY PERSONNEL SUBCOMMITTEE

Mrs. DAVIS. Good afternoon everybody. Today the subcommittee will hear testimony about the Department of Defense's process for implementing a repeal of Don't Ask, Don't Tell. The President has made clear that this fundamental injustice should not be tolerated.

Now, Secretary Gates and Admiral Mullen have set in motion a study group to determine what needs to be done to implement repeal of this law, and they have called for a comprehensive examination. And this issue deserves no less. When it comes to repeal, the question is not whether, but how and when.

The President and our civilian and military leadership in the Pentagon have stated the need for repeal. A majority of Americans now see repeal as not only in our national security interest, but also in standing with the principles of America. I would ask those who oppose repeal to join us on the right side of history.

I understand and support the position of our civilian and military leadership that comprehensive analysis should accompany any decision of this importance, to include outreach to service members and their families, to ensure we understand all perspectives on the issue.

The purpose of this hearing is for the witnesses to help the subcommittee understand what you want to learn and how you plan to become better informed about any possible challenges surrounding repeal of Don't Ask, Don't Tell. Since the Department does not customarily poll service members before making these tough personnel decisions, we need to know what type of information you are seeking that will allow the Department to craft and implement a policy that will be successful.

While I appreciate the intent of this review, I believe the evidence would suggest a quicker solution is possible and, indeed, necessary. Public opinion supporting repeal is strong, and as the public's tolerance for open service grows, so too do the financial and

readiness costs of the policy that removes members of the volunteer force, many with critical skills, at a time when other service members are seeing repeated deployments to Iraq and Afghanistan.

Additionally, our North Atlantic Treaty Organization (NATO) allies serving beside us in Afghanistan and other nations have moved to accept the service of openly serving men and women, and have experienced no loss in unit cohesion and combat readiness.

And finally, the 1993 RAND study on the strategy needed to successfully implement repeal provides a blueprint that can be quickly updated to fit today's environment. In my view, part of this blueprint should include a moratorium on discharges while the Department decides how to implement repeal.

I was disappointed that the Secretaries of the military departments and the service chiefs viewed a moratoria on separations during the study process as potentially disruptive, and I believe that there is a way to stem the tide of these painful and unnecessary discharges, especially those instigated by third parties, and avoid subjecting the force to confusion about the direction of this policy. Sound, positive leadership can and will be the key to bringing an end to the separation of gay men and lesbians and ensuring that readiness and unit cohesion do not suffer as a result.

To assist us in understanding the repeal process, we are fortunate to have the top personnel official at the Department of Defense (DOD) and co-chairs of the working group tasked with the responsibility to fulfill Secretary Gates' call for a comprehensive study.

I would like to introduce our panel today. Secretary Clifford L. Stanley, the Under Secretary of Defense for Personnel and Readiness; General Carter F. Ham, United States Army Commanding General, U.S. Army Europe; and Honorable Jeh C. Johnson, General Counsel of the Department of Defense.

Welcome to each of you, and I want to thank you for being here. We recognize the difficulty of your presence here today and that you really have not had a chance to embark on this study, but it is important, and I think it will be helpful for us to hear from you, but also perhaps for you to hear the views of the members of this subcommittee.

[The prepared statement of Mrs. Davis can be found in the Appendix on page 35.]

Mrs. DAVIS. Mr. Wilson, do you have some opening remarks.

STATEMENT OF HON. JOE WILSON, A REPRESENTATIVE FROM SOUTH CAROLINA, RANKING MEMBER, MILITARY PERSONNEL SUBCOMMITTEE

Mr. WILSON. Yes, Madam Chairwoman Davis, I join you in welcoming our witnesses, all three of whom are appearing before us for the first time. Unlike most hearings when we receive testimony from task forces and study groups at the completion of their work, this time we will have the opportunity to examine and assess the objectives and scope of the work of the study group just beginning its efforts. This also gives us the opportunity to shape the group's work effort.

We have heard clearly from the senior leadership of the Department of Defense and each of the military services of the importance

of this study and the necessity of doing nothing to repeal, change, or suspend current law until this group study completes its work. I fully support such an approach.

Furthermore, I believe until this committee and Congress have had the opportunity to review and assess the recommendations of the study group and those of the Department of Defense, which we expect at some point after December 2010, we should not rush suddenly into action. I am sure our witnesses know Ranking Member McKeon wrote the Secretary of Defense and Chairman of the Joint Chiefs of Staff in January setting out a series of issues to be examined, as well as requirements for evidence to be presented to Congress before Congress could make an informed judgment about the repeal of section 654, title 10, U.S. Code. I ask unanimous consent that the letter and the attachment be entered into the record. Thank you.

[The information referred to can be found in the Appendix on page 49.]

Mr. WILSON. Further, I ask the staff now to distribute copies of Mr. McKeon's letter to members of the subcommittee, some of whom may not be familiar with it, and to the witnesses.

The central focus of the letter is the fourth paragraph, reflecting the fact that the responsibility for deciding this issue rests with Congress, not the President, the Secretary of Defense, or the Chairman of the Joint Chiefs.

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

Given its mandate from the Secretary of Defense, I am concerned the study group will focus its efforts solely on the third requirement, the implications of change, and not present Congress with evidence to decide the first two fundamental issues: one, why current law threatens or undermines readiness in any significant way; and two, whether repeal of the current law would improve readiness in measurable ways. If the study does not address these issues, then its overall credibility and usefulness for the congressional decision-making process will be significantly undermined.

I would ask during the course of this hearing for Mr. Johnson and General Ham to commit to us that they are fully and objectively to explore the first two fundamental issues raised by Mr. McKeon and present the evidence of that examination in their final report. Secretary Stanley, this is a tough issue to break in on, but it is one that your predecessors have had to deal with.

As you know, a central argument of the proponents for the repeal of section 654 is that repeal is a military necessity, because in time of war the military services need every willing and able person to serve, and the discharge of more than 13,000 people because of section 654, since 1993, has hurt military readiness.

Your predecessor, Dr. David Chu, addressed this issue in July 2005, in the fourth year of the global war on terrorism, when he testified before this committee. "It, the loss of personnel due to section 654, is not, speaking frankly, a significant factor in our attrition experience, and the loss generally occurs early in someone's service."

I would like to hear from you today whether you agree or disagree with Dr. Chu's assessment, and whether you agree with the advocates for repeal of section 654 that repeal is a military necessity.

Further, I would like to hear from you whether the discharge of personnel under section 654, especially during the time of war, has negatively impacted the readiness of our military services in any measurable or significant way.

Based on the data recently provided to this committee by the Department of Defense and military services, I would guess your objective assessment would be that you would agree with Dr. Chu.

For example, during fiscal year 1999 through fiscal year 2008, 8 of those years being wartime years, the military service separated more than 1.9 million people; 8,300 of those, less than one-half of 1 percent, were as a result of section 654. That is about 800 people being discharged per year. And unless you contradict me, that is not a significant loss from an overall DOD manpower perspective.

Moreover, your Department's own data shows that the discharge of personnel under section 654 has not affected the ability of the military services to recruit or retain high quality people in numbers that meet or exceed Department requirements. According to the Department data, fiscal year 2009 was the best year for recruiting in the active duty, national guard and reserve forces in the history of the all volunteer force.

Nor has section 654 inhibited the ability of the Army, Marine Corps, and the Army National Guard to increase manpower significantly while fighting two wars and at rates of annual growth exceeding expectations.

Furthermore, the Department's own data undercuts the assertion that section 654 must be repealed because in time of war this nation needs to attract and retain all the qualified people it can who want to serve.

For example, both the Navy and Air Force have made significant manpower reductions during the last 10 years, totaling some 77,000 personnel. To achieve such reductions the services used measures not only to reduce the numbers of new recruits, but also to entice or force people to leave the service. In short, both services, in time of war, for reasonable and justified good of the service reasons, have denied service to tens of thousands of persons who otherwise qualified to serve and wanted to serve. Such actions, it seems to me, only reinforce the congressional finding in 1993 that there is no constitutional right to serve in the military.

Dr. Stanley, taken as a whole, the Department's own data over the last 10 years refutes the argument that repeal of section 654 is a military necessity, and supports General Conway's statement that current law appears to be working well. If you disagree with regard to the conclusions drawn from the Department's data, we would like to hear from you today on this point.

Before closing, I would like to come back to some critical questions raised by Mr. McKeon's letter and ask for assurances from Mr. Johnson and General Ham that the study committee will address them in detail.

A critical area that needs to be examined by the study group is the impact of a repeal of section 654 on military family readiness. As our Chairman, Ike Skelton, frequently points out, "If mama ain't happy, nobody is happy." Family readiness today equates to military readiness. How families feel about military service has a direct impact on retention, and repeal of section 654, that will have a direct impact on military family culture.

Tied closely to the potential impact on military family readiness and culture is the issue of eligibility for benefits. Specifically, Mr. Murphy's bill, H.R. 1283, to repeal section 654, would not require dependent benefits to be provided if such provision would be in violation of the Defense of Marriage Act. Such a prohibition would seem to extend to any federal benefit, such as veterans benefits, for which married military spouses and dependents or survivors of military personnel are eligible.

Knowing that family readiness is a major factor in maintaining the all volunteer force, Mr. McKeon asked for an evaluation of the limitation of benefits created by the Defense of Marriage Act in H.R. 1283. In terms of its effect on cohesion, morale, good order and discipline, would enactment of this limitation create a wide diversity of benefits between legally married couples and families, regardless of their orientation? If so, how would this diversity of benefits affect family readiness, morale and cohesion? To effectively implement a repeal of section 654 in a manner that does not create disparities between the benefits of legally married couples, regardless of their orientation, would the Defense of Marriage Act have to be repealed or amended?

Finally, a key element of Mr. McKeon's request is the need for credible, substantive, comprehensive and objective data and information from the Department of Defense. I am concerned the Department of Defense may be creating actual or perceived obstacles to achieving that objective. Specifically, we understand the study group considering has contracted with RAND to carry out on a potential repeal of section 654. If accurate, I believe the study group will prejudice from the outset the perceived credibility and objectivity of the results and recommendations. I say this because RAND's 1993 effort raised significant concerns about its comprehensiveness and objectivity.

More recently, RAND's prejudgment, as well as lack of original work, was evident in a November 2009 report that used data collected by the Palm Center to support, not surprisingly, the repeal of section 654. We understand RAND is a well-recognized and competent research entity in many areas. However, given RAND's history on this issue, I believe even if RAND were able to produce a product that was comprehensive and objective in the study group's view, it will never be seen as such by others and will ultimately poison the overall perception of the study group's efforts.

To help minimize potential criticism that the group study's survey methods and instruments were designed to cook the books to support the President's desires, I would strongly recommend the

Department rely primarily, if not exclusively, on its own significant in-house survey and study capabilities; that any external survey, polling or studies not done by the Department be carried out by reputable organizations that have not previously done study polling, survey, or analysis work on this issue; and that you engage both proponents and opponents of section 654 to help shape the survey and study questions.

I appreciate the patience of the witnesses and my colleagues for this longish opening statement, but given our limited ability to question the service chiefs, I thought it was necessary to get some of the more critical issues out on the public table in order to ensure this study group and the Department of Defense could address them in this hearing. And I look forward to your testimony.

Mrs. DAVIS. Thank you, Mr. Wilson.

[The prepared statement of Mr. Wilson can be found in the Appendix on page 38.]

Mrs. DAVIS. And Secretary Stanley, do you want to begin? Once again, thank you to all of you for being here.

STATEMENT OF DR. CLIFFORD L. STANLEY, UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, U.S. DEPARTMENT OF DEFENSE

Dr. STANLEY. Absolutely. Good afternoon, Chairwoman Davis, Mr. Wilson, other members. I am, first of all, honored to be here to represent the men and women in uniform who are serving today, and their families. I have been on the job now for just about two weeks. I have to assure you I hit the ground running, and this being the first hearing, and I am looking forward to your questions. We have prepared a joint statement that I believe you have—myself, Mr. Johnson, and General Ham.

[The joint prepared statement of Dr. Stanley, Mr. Johnson, and General Ham can be found in the Appendix on page 45.]

Dr. STANLEY. And at this time I will turn it over to them for at least the opening comments here.

STATEMENT OF HON. JEH C. JOHNSON, GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE, CO-CHAIR OF THE DON'T ASK, DON'T TELL WORKING GROUP

Mr. JOHNSON. Thank you very much. My name is Jeh Johnson. I am general counsel for the Department of Defense. As Secretary Stanley pointed out, you have our prepared written statements.

I would just like to say, in summary, that Secretary Gates has appointed General Ham and me to co-chair this working group. The goal of our working group is to assess the impacts of a repeal of 10 U.S.C. 654, should the Congress decide that is the course of action that it should take, and to develop an implementation plan for repeal—should there be repeal—and to understand all of the issues associated with the repeal of 10 U.S.C. 654.

We are at the outset of that process. We are just beginning at this stage. General Ham and I both are committed to conducting an objective, thorough, and comprehensive assessment of the repeal of 10 U.S.C. 654. Some of the guiding principles that we have set for the working group are as follows:

One, that we should enlist the views and the opinions of a broad array of people within the service as well as, as Congressman Wilson has pointed out, military families. We believe that is important. I know Secretary Gates believes that is important. And we have asked working group members to set aside their personal opinions regarding repeal or not repeal and to go about their work in an objective, comprehensive fashion, because, frankly, that is in my experience the best way in which members of the U.S. military go about their work, if we are all asked to set aside our personal opinions and do the best we can as an objective, thorough analysis.

We intend to solicit the views of organizations and groups that are familiar with the issue, not just within the active duty force, but organizations that have spent a considerable amount of time studying policies, studying the potential for repeal of the policy. And that includes groups that have a diverse range of opinions on the issue. We are determined to do that.

We are also determined to conduct our review in a way that minimizes any disruption to our activities on the front lines. We are engaged in two wars right now. So that is one of the guiding principles Secretary Gates has given to us, among others. So, I think we all look forward to your questions.

[The joint prepared statement of Mr. Johnson, Dr. Stanley, and General Ham can be found in the Appendix on page 45.]

**STATEMENT OF GEN. CARTER F. HAM, USA, COMMANDING
GENERAL, U.S. ARMY EUROPE, CO-CHAIR OF THE DON'T ASK,
DON'T TELL WORKING GROUP**

General HAM. Chairwoman Davis and Congressman Wilson, members of the committee, thanks for allowing us to come here today. When I was informed that Secretary Gates had selected me to co-lead this working group along with Mr. Johnson, I will admit to feeling humbled, honored and, frankly, a little bit nervous all at the same time. I would also tell you that I feel a strong obligation, consistent with our terms of reference, to ensure we have broad representation and engagement of the force and of their families.

To that end, we have built a team that includes a wide variety of ranks, ages and military specialties. All services, to include the Coast Guard, are included. We have members from the national guard and from the service reserves. Key in our effort is to ensure the enlisted force has a prominent role.

Seated behind me is Fleet Master Chief Scott Benning, United States Navy, who is the senior enlisted leader for the DOD working group. He reports to no one but Mr. Johnson and myself, and has full access to all that we do. All of us in uniform who are privileged to participate in this effort understand the special trust and confidence placed in us by you, by our Department senior leaders, and most importantly, by our fellow service members and their families.

We shall do our very best every day to merit that trust. Thank you.

[The joint prepared statement of General Ham, Dr. Stanley, and Mr. Johnson can be found in the Appendix on page 45.]

Mrs. DAVIS. Thank you very much. I certainly appreciate your opening comments. And I know we have a number of members here. We are going to go to the five-minute rule. And we are cer-

tainly hoping to have two rounds if we can. I am sure we are going to be interrupted by votes along the way as well, but we will do the best we can.

And I understand, I believe, Mr. Johnson, you have a 4:00 stop; is that correct?

Mr. JOHNSON. I have an invitation from the Senate Armed Services Committee to come see them at 4:30.

Mrs. DAVIS. At 4:30. Okay. Thank you so much for that.

First, I wanted to just clarify the objective of the working group. The Secretary of Defense memorandum to the co-chairs of the comprehensive review infers that the objective of the working group may not be to facilitate repeal when it states, "the assessment of the implications of such a repeal, should it occur."

I am just wondering, what does that say to you? I think that, you know, you really did try to clarify it, Mr. Johnson. But I am just wondering, is there anything you want to add to that in terms of clarifying what you believe the objective of this study is?

Mr. JOHNSON. Well, Secretary Gates said a month ago in his testimony that the question is, in terms of the guidance we have from the President, the issue is not whether but how best. And I know Secretary Gates believes that if the Congress and the President determine that repeal of the law is appropriate, we should go about that in a careful, deliberate fashion and think through the issues associated with repeal.

And that is what he has appointed us to do, should repeal occur. So I hope I have answered your question.

Mrs. DAVIS. What aspects of the military environment that Secretary Gates and Admiral Mullen consider critical to the successful implementation of repeal that require research, study and collection of information, can you clarify what aspects require that?

And then I think, really, my basic question is, you know, what do you want to know, and how are you going to find out?

Mr. JOHNSON. The aspects that come to mind immediately are some of the things you seem to make issue of in the terms of reference that were made public, I think, yesterday.

First of all, readiness, impact on readiness. We are engaged in two conflicts right now. I know Secretary Gates would like to know, and I know our leaders would like to know, and I assume the Congress would like to know what the impact, if any, either way, would be on recruiting and retention. As I mentioned earlier, we are interested in assessing the impact on what we call family readiness, our military families and unit cohesion.

So the way I would sum it up is to say the impact on readiness, impact on family readiness, and the effects, if any, on recruitment and retention.

Mrs. DAVIS. Have you all had a chance to think through—and again, I know that this may be premature—how you intend to get that information? We all can anticipate that there might be some surveys, but I also would wonder about face-to-face interviews that might be helpful as well.

We know that we have all had, you know, the discussions here around post-traumatic stress disorder (PTSD), for example, and the questions that are asked of returning troops, which may or may not be valid down the line.

And I am just wondering, you know, whether there is an anticipation of a lot of face-to-face discussion, whether it would be done more under surveys, and how we reach out to families. What do you think is likely going to be a good vehicle for this?

General HAM. Madam Chairman, I think the issues that you have addressed are exactly what we are thinking about. We in principle—what Mr. Johnson and I are envisioning at the direction of the Secretary of Defense is wide outreach to get a wide variety of views. In that effort, we envision a survey instrument of the force and of their families to get their sense on the issues that are outlined in the terms of reference.

We absolutely agree with you that that survey must be enriched by personal contact, focus groups, if you will, some of them specifically targeted to specialized groups and families within the Department of Defense, active, reserve and national guard. We think that personal interaction is very important.

And thirdly, we envision outreach through social media, so that a wide variety of individuals, both within the Department of Defense and without, who will have views on this matter have an opportunity for their voice to be heard.

Mrs. DAVIS. Do you anticipate that—focusing on whether or how, or a combination perhaps of both?

General HAM. It really is on “how.” As you indicated, Madam Chairman, we don’t poll the force on difficult decisions of should we do this or should we not do that. In this regard, it is much more important for us to, as we survey the force and conduct these focus groups and reach out to groups, is to understand the implications of repeal, should it occur, so that necessary policy adjustments, if required, can be foreseen and envisioned. So it is “how.”

Mrs. DAVIS. Thank you. Mr. Wilson.

Mr. WILSON. Thank you, Madam Chairman. Again, thank all of you. And first time here, good luck.

And Mr. Johnson and General Ham, I am concerned that the direction given to you by the Secretary of Defense will not result in your study group examining two fundamental questions: whether current law threatens or undermines readiness in any significant way; and two, whether repeal of current law would improve readiness in measurable ways.

Would the two of you commit to us today that you will examine these two questions as part of your study and provide the Secretary of Defense with your data, findings, and recommendations regarding them?

And General Ham, in your personal view, do you believe these questions should be examined? If examination of these two issues is not in your current charter, would you object to them being added, either by the Secretary of Defense or by Congress?

Mr. JOHNSON. I think, Congressman, let me start. I think that if we do a comprehensive and thorough job, a necessary component of that would be to look at the two questions you raised.

Mr. WILSON. Thank you.

General HAM. Congressman, I would agree. It was again clear to me in the terms of reference and in our discussion with the Secretary of Defense that military readiness and effectiveness must retain primacy here; that is, that is what you expect of us, that is

what the nation expects of us, and we will clearly examine that as directed in the terms of reference.

Mr. WILSON. And in looking at both of your backgrounds, I am very impressed, and so I am not surprised at the high integrity that you both just indicated. Thank you very much.

Dr. Stanley, taken as a whole, the Department's own data over the last 10 years with regard to recruiting, retention, and end strength, as well as practices of the Navy and Air Force to reduce manpower levels in wartime, refutes the argument that repeal of section 654 is a military necessity, and supports General Conway's statement that current law appears to be working.

Do you agree with this assessment? Why or why not?

Dr. STANLEY. Well, in my opening statement I said that I have been here for a couple of weeks, but I am not new to this discussion. As I joined the Secretariat, my marching orders were pretty clear. I am open-minded. The Secretary of Defense has given me some orders here that basically lay out exactly what we are expected to do, which is to study, make an assessment, and do a review to look into the questions or the issue that you are raising right now. So agreeing or disagreeing with General Conway would actually be part of, at the end of the day, the process of exactly what do we have in the assessment.

Mr. WILSON. And again, your background is such that I take what you say very accurately. And General Ham, I would like to have your personal views on, one, whether the repeal of section 654 is a military necessity; and two, whether you agree with General Conway that current law, that section 654 is working.

General HAM. Congressman, my personal view is that we should carefully study the implications of repeal, should that occur, before we make change. And I believe that is precisely what Secretary Gates has charged Mr. Johnson and myself with doing.

Mr. WILSON. Thank you. And Dr. Stanley, based on the data provided by your Department, discharge of people under section 654 does not seem to have had any effect on the quality, ability of the military services to recruit and retain high-quality people in numbers that meet or exceed Department and service requirements. Moreover, section 654 has not inhibited the Army, the Marine Corps or national guard from rapidly expanding their manpower levels, while fighting two wars, at rates of growth that exceeded expectations. Do you agree with the assessment that section 654 is no significant barrier to successful recruiting, retention, and end strength growth in wartime?

Dr. STANLEY. Congressman, I hope that the assessment or the review that we are going to be doing will be able to answer that question. I can't answer that question right now, but I will say that I know that as we go forward we will be able to answer more accurately in the future. I am sure we will.

Mr. WILSON. Again, thank all of you for your effort. I wish you well as you pursue this issue. And I yield the balance of my time.

Mrs. DAVIS. Thank you. Dr. Snyder.

Dr. SNYDER. Thank you, Madam Chairman. And thank you for doing this hearing. Gentlemen, thank you for being here. I appreciate your work at this important time in our history. I want to as-

sure you, I think your work is not only important, but it will be used.

I know that there are people who are opposed to changing this policy. The policy will be changed. I mean, even some of those people who are opposed to the change recognize it will be changed. There is a generational thing going on here. America is changing, the world is changing, and your work will be put to good use. Whether it will be this month, this year, next year, the following year, I don't know. But if you do a good job, you will provide guidelines to your country and your military. And we appreciate your work.

I wanted to ask, Mr. Johnson, you probably heard this question I have asked about 17 times, and you and I have had some discussions about the split of authority between the Ninth Circuit and the First Circuit. And when I hear people say, as Senator McCain has said, and my good friend, the Commandant has said, that the current policy is working well, I have to ask what their definition of working well is.

When you have different sections of the country under different legal opinions about exactly what the reach and authority of that law is, that is not my definition of working well.

My question is: How have you and the military responded in the Ninth Circuit? What are you doing differently now in the States of California, Idaho, Oregon, and Washington, in light of the Ninth Circuit opinion which is not being appealed?

Mr. JOHNSON. Dr. Snyder, as you and I have discussed in the past, the decision in *Witt v. Department of the Air Force* in the Ninth Circuit creates what we lawyers call a split in the circuits. The rule of law there is different than the rule of law in all the other circuits. We in the Department of Justice have been very actively working through how that split in the circuits should be applied and implemented throughout the force. We have put out guidance to our lawyers to inform them of the decision. I certainly have. And we continue to work through how to address whatever pending cases exist within the Ninth Circuit versus the other circuits. So it is something we are actively looking at right now with the Department of Justice.

Dr. SNYDER. One of the service Secretaries made a comment here at this committee last week, full committee, that they were applying the law nationally the same, consistently. And when I said, are we ignoring the Ninth Circuit, there was a little bit of backpedaling. But it is a terrible problem, I think, for you to be in.

Now, the second part of that question is: What are you doing with regard to—not at the legal level. I mean, you can certainly take every case to the courts and lose at the District Court level who will cite the Ninth Circuit over and over and over again to States, or you can send direction to commanders and legal authorities throughout those States that say there is now a category of gay and lesbian service members that, if they meet these following criteria, they indeed can serve, even though we know they are gay and lesbian.

Now, have you made those kinds of statements?

Mr. JOHNSON. Well—

Dr. SNYDER. Otherwise, you are going to just have a series of litigations, are you not?

Mr. JOHNSON. Well, the *Witt* case, as you know, Congressman, requires an intermediate level of constitutional scrutiny to the policy. We have to balance that against applying the law as the Congress has given to us. We say consistently within the Department of Defense that we apply the law, we faithfully implement the law in as fair and as balanced a way possible. We have got to balance that against the rule of law that *Witt* has created for us in the Ninth Circuit. It is a complex exercise that we are working through right now with the Department of Justice. I have had discussions with them as recently as yesterday on this very topic.

Dr. SNYDER. So at this time, there have been no different directions given to base commanders, Judge Advocate General (JAG) officers, that a certain number of cases meeting certain criteria, there is no reason to move ahead with those cases because they would be overturned in the Ninth Circuit.

Mr. JOHNSON. Not right now, in any formal way, but it is something I am actively thinking about.

Dr. SNYDER. I will ask one quick question in my 13 remaining seconds. In your terms of reference, you say, "Recommend appropriate changes of any of the Uniform Code of Military Justice (UCMJ)." Is one of those provisions under consideration, the sodomy section that prohibits oral sex between married men and women?

Mr. JOHNSON. We are undertaking a comprehensive review of the UCMJ, and I would imagine that that would be one of the provisions we would focus on. But the UCMJ is a focus of our review.

Dr. SNYDER. I understand. Thank you.

Mrs. DAVIS. Thank you. Mr. Murphy is next.

Mr. MURPHY. Thank you, Mrs. Chairman. Thank you for everybody on the group today. Mr. Johnson, General Stanley—and General Stanley, I know you are two weeks, and this is your first hearing. So congratulations. And General Ham, I know, General Ham, you mentioned that you were nervous a little serving as co-chair. I am sure you were nervous as an 18-year-old infantryman, or I should say paratrooper in the 82nd Airborne Division, but we are not going to be asking you to jump out of any perfectly fine airplanes today or in the future. But we do appreciate your service to our country. We understand this is an issue that the American people and our military care deeply about.

And I want to echo what Chairwoman Davis said, in that be very clear that what we are talking about today is that this is a hearing—it is not to discuss if we are going to repeal Don't Ask, Don't Tell, because it has been pretty clear that President Obama, Admiral Mullen, and Secretary Gates have already made it very clear that we are going to repeal the law.

The discussion today, though, is how the services will implement repeal in a way that will ensure that there is no disruption in our force. I am grateful that you volunteered to co-chair the Don't Ask, Don't Tell working group. We should move forward with care. And we should also understand that this review, though, cannot be an excuse for delay. Repeal must be a dual-track process. The working group and the services must figure out how to implement the

changes, but it is the Congress' duty to change the law. There is no reason why these two processes cannot happen simultaneously.

The 2010 Defense Authorization Act did not become law until October 28, 2009. The 2009 Defense Authorization Act became law on October 14, 2008. My point is that if we attach repeal of Don't Ask, Don't Tell in the fiscal year 2011 defense bill, it will not likely become law until at least seven months from today.

Secretary Gates stated that the working group, your working group, will have finished its work by December 1 of this year, 2010. So Congress could put repeal language in this year's Defense Authorization Act with a delayed date of enactment, which is how it is written currently. So the statute would be changed at the end of this year, but full repeal would not take effect until sometime in 2011.

Would you agree that this would give your group, your working group, ample time to complete its study and prepare the services for implementation of its findings?

Mr. JOHNSON. Congressman Murphy, I think that the approach you have just outlined, there are some aspects of it that we should carefully consider. I think there are some intriguing aspects to it. I want to be sure that in our review, we hit all of the right issues, make all the adequate, thorough assessments. I would think that our review might inform what this Congress wants.

So our work is due to the Secretary of Defense on December 1. That may well touch upon how the Congress decides to go about repeal. So I want to think about and carefully study the approach you have outlined. But as I see it, our work would not just be relevant to any implementing regulations, but it may well be relevant to how you fashion a legislative approach.

Mr. MURPHY. But Mr. Johnson, you would agree that at the same time that you are working on the working group, the Congress can get busy in looking at the repeal and have the debate about finally repealing the law.

Mr. JOHNSON. I would not undertake to tell the Congress about what to do with their timetable.

Mr. MURPHY. So you do not oppose Congress taking such action.

Mr. JOHNSON. I am not here to oppose or support any particular congressional action. We are here to do an exhaustive, thorough, comprehensive review of the impact of repeal of the policy.

Mr. MURPHY. Okay. Anybody else?

Opponents of the repeal argue that allowing open service members would harm morale and unit cohesion. Yet my experience in the Army and the stories that I hear from our young American heroes point to the exact opposite.

You know, one company commander who happened to be gay, currently serving his second deployment in Afghanistan, wrote me a letter recently that exemplified how Don't Ask, Don't Tell harms unit cohesion. He discussed how his repeated deployments since 9/11 have broken up his relationship with his partner, but also how Don't Ask, Don't Tell made it impossible for him to confide in his battle buddies. He had thought of suicide, but had no one to turn to because of fear of losing his job.

He wrote to me. He said, and I quote, "Gay soldiers should have the right to go to a commander, a first sergeant, or a battle buddy,

and not have to worry about the ramifications of Don't Ask, Don't Tell. The Don't Ask, Don't Tell policy shackles the hands of leaders like me. It prevents us from giving our all to our troops and a supportive leadership that they deserve." The Don't Ask, Don't Tell policy throws up walls between battle buddies.

There are an estimated 66,000 gays and lesbians currently serving, and they are the ones who are most impacted by Don't Ask, Don't Tell. How is the working group going to take into account the experiences and views of gay service members, like this officer, without violating Don't Ask, Don't Tell?

Mrs. DAVIS. I hope we can get that response in as we continue, and perhaps you can ask it again later. Okay, thank you. Mr. Fleming. Dr. Fleming.

Dr. FLEMING. Yes, thank you, Madam Chairman. Just a comment before I ask questions. I realize that the President wants this policy, but he is not a king. We will have to vote on that. So I don't think that our President can decide unilaterally that we will repeal Don't Ask, Don't Tell.

My question to the three panel members, first, is: Is the primary purpose of our military to stand ready to protect Americans or to be a force for social change? I would like to hear from each one of you.

Mr. JOHNSON. The primary purpose of the United States military is to defend the nation.

Dr. FLEMING. Okay. Yes, sir.

Dr. STANLEY. I concur. The primary purpose is to defend our nation.

General HAM. Absolutely agree.

Dr. FLEMING. Yes, sir. Thank you.

I am not sure who is best able to answer this question, but I am sure among the three of you, someone will be able to. How well are we meeting recruiting goals at this point, or certainly in the year 2009?

Dr. STANLEY. We are not only meeting but exceeding in the active, national guard and reserve, our goals across the board.

Dr. FLEMING. Okay. So that would certainly imply—I certainly infer from that that our current policy doesn't appear to be hurting our recruitment abilities at this point. How many service members were removed as a result of Don't Ask, Don't Tell policy in 2009?

Mr. JOHNSON. 428.

Dr. FLEMING. 428.

Mr. JOHNSON. That is the number that I have, 428.

Dr. FLEMING. And that is for the year 2009?

Mr. JOHNSON. I could be off by a couple, but I think it is 428.

Dr. FLEMING. Right. And what is the total size of our military?

Mrs. DAVIS. Excuse me, Mr. Johnson, if you could just make sure that we hear you. Bring your mike—just put it a little closer to you. That would be great.

Mr. JOHNSON. The number I mentioned was 428.

Dr. FLEMING. Okay.

Dr. STANLEY. Counting the approximate with national guard, reserve and active, because it is hard to separate total force, we are about 3 million.

Dr. FLEMING. Okay. So less than 500 out of 3 million. So it seems to be certainly not a lot of people are being affected one way or another, service members, at least being removed, I think we could all agree percentage-wise, and I would just really open the floor to what do you see, from your standpoint, what have you seen in terms of the current policy and how it is adversely affecting readiness for our military?

Mr. JOHNSON. Congressman, I will let General Ham answer that. I will just at the outset say that we are at the beginning of the process and that is one of the things that we are—

Dr. FLEMING. Well, I am just asking you to draw on your experience. You know, to begin with, as I understand it, this—what we are doing is pivoting off of a 1993 RAND study that studied not whether to implement this policy, but how best to implement the policy, and that we are going to try to I guess update the study. Am I correct about that?

General HAM. Yes, Congressman, that is one of the things that Secretary Gates has directed us to do.

Dr. FLEMING. Right. So I was just asking your personal opinions and observations with your exposure to the military, what have you seen, what observations have you made in which our current policy has harmed our ability in terms of readiness and the ability to defend the Nation?

General HAM. It is clear to me, as a long-serving soldier, that our military is clearly the best military in the world. The challenge to us, and the task passed to Mr. Johnson and myself, is to assess the impact on that standing, should the current law be repealed. So that is what we shall endeavor to do.

We have not yet decided exactly how to do that. But we know at the beginning of this process, that that is foundational to our work, is to assess the impact on readiness, should the law be repealed.

Dr. FLEMING. Any other gentlemen?

Mr. JOHNSON. Congressman, if I could just go back to your first question. The primary mission of the United States military, as I said, is to defend the nation. Having said that, I think that the U.S. military is proud of the fact that it is one of the most diverse institutions in America, and we have a track record for being a diverse institution.

Somebody once told me—and I don't know whether this is, in fact, true—but somebody once told me that the United States military is the community where interracial marriage is most prevalent. It wouldn't surprise me if that were, in fact, the case. But we are very proud of our racial and cultural diversity of people who are all dedicated to a common mission once they have been given their orders to do something.

Dr. FLEMING. But you would agree that the primary purpose is not to invoke social change, but to be ready for war, which we do frequently around here, as you know.

So, thank you gentlemen.

Mrs. DAVIS. Thank you. Mr. Johnson.

Mr. JOHNSON OF GEORGIA. Thank you, Madam Chairman, for holding this hearing. I am in full support of and a cosponsor of H.R. 1283, which my colleague, Patrick Murphy of Pennsylvania

had the courage to introduce. And I am also in favor of doing right by the people who are called, who give of themselves to protect the rights that we hold dear. And whether or not they are gay, lesbian, straight, bisexual, transgendered individuals, makes no difference.

If you were to cut people open, to dissect them, after you looked at them, you would see that they have got eyes, ears, nose, mouth, teeth, legs, two legs, two arms. They have, you go inside—I'm not going to talk about what else I could see from the outside, but you go inside, everybody's got a brain, thyroid, heart that hurts when you get discriminated against. Everybody's got, you know, an intestinal system, respiratory system. We are all the same people regardless of the color, regardless of nationality, regardless of sexual identity. That is just a basic fact.

And so, when we talk about defending freedom in this country, it is hypocritical for us to have a government-sponsored discrimination set up. And it really needs to change. And Mr. Murphy, I admire your courage, being a military man yourself, the classic sergeant, as far as I am concerned. And now you have become a general in my mind as far as prosecuting this war on discrimination in the military. To do a study and to—so, in other words, the point I am making, let's go ahead and pass H.R. 1283 now, and then during the transition period, we can look into all of the complicated issues that you all need to look into. No question about it.

But let's change the policy so that we send a message to those who would be surveyed under your policy that, let's, you know, let's not send the wrong message as we go out and talk to people, servicemen and women and their families, and hear what their thoughts are on the process.

What you are going to find is some people are polarized. Some people don't like gays, and other people do. And that is just going to be the end of it. The question is: What kind of policy is the United States Government going to have? Is it going to allow this discrimination or is it going to ban it and then expect the men and women in service for this country to abide by the change? And I believe that those men and women will, if they have got a problem.

And so having said that, are we sending a message with our current policy that we have in place, are we sending a message when we go out and survey men and women in the military insofar as their personal opinions about removal of this policy which is evidenced in section 654?

Mr. JOHNSON. We, Congressmen, intend to do a comprehensive, methodical study of the assessments of repeal, which I expect will include some form of survey.

Mr. JOHNSON OF GEORGIA. Why can't it be done after passage of the legislation?

Mr. JOHNSON. Well, that depends in large part on what type of legislation, if any, the Congress chooses to adopt. As I said earlier to Congressman Murphy, the Secretary of Defense believes that we should go about repeal in a careful, methodical way and first study the impact, all of the impacts of repeal of the current policy. I would think that the Congress would like to hear from us first before undertaking to consider repeal of section 654 of title 10 U.S.C. I suspect many in Congress would ask for the results of our study before taking this issue up.

But as I said to Congressman Murphy, in effect a two-track approach is one that I think we will have to consider in some form. I am not ruling that out or ruling it in. We are at the beginning of this process, and the Congress on its own, in its wisdom, could choose to undertake legislative action in this area, irrespective of what we do. But I would think that Members of Congress would like to go about this being informed by our work.

Mrs. DAVIS. Thank you. Ms. Tsongas.

Ms. TSONGAS. I would like to sort of follow a track that we sort of have been hearing a little bit here. And the reason is, as you see the questions we have, we tend to break down by our party and our view of whether or not we should go forward with the repeal of Don't Ask, Don't Tell. And given our fundamental belief, it guides us in our questions and our views of how things should proceed.

And given your very important role in developing an approach should Congress repeal this policy, I just would like to ask you each of you personally how you feel about it, because I think as you have seen in all of us, it has guided our view and the questions we ask. I think really the goal is to see how you craft up a process that is fair and open to repeal or not, but somehow is guided by the very conflicting views that understanding that should we repeal it, you have to move forward.

I would like to ask each of you your personal views on repealing Don't Ask, Don't Tell.

Mr. JOHNSON. Well, without a doubt I am a member of the Obama administration. The President has said he would like the Congress to repeal. So I am part of his administration. Having said that, my assignment and General Ham's assignment is to do an objective, comprehensive review of the implications of repeal of the policy. And what General Ham and I are really trying to do here in recruiting people to our working group and soliciting views from the force is to, within our working group, not solicit personal opinions and not have people take sides on what is a very emotional issue so we can gather information in an objective, thorough way and encourage people to tell us what they think about the impact of repeal.

So I am trying very hard to approach this in an objective, thorough, comprehensive fashion and create an environment conducive to others within the force telling us what they think the impact of repeal would be. But I am without a doubt a member of the Obama administration, but I am trying to approach my assignment like a lawyer, as for me, to gather information in an objective and thorough way.

Ms. TSONGAS. Doctor.

Dr. STANLEY. Congresswoman, as the Under Secretary of Defense for Personnel and Readiness, as soon as I assume that responsibility, knowing that I am a part of the Obama administration, and knowing exactly what the intent was with regard to repeal, my job immediately became obviously to be not only open-minded and objective, but to be ready if Congress actually repealed the law. So, I mean, literally the whole issue of readiness is center, it is like my plumb line, and the working group that I am not an active part of, but have—you know, working with them, is something that I

am very focused on because I have to make sure that we are ready in the Department of Defense if, in fact, Congress repeals the law.

Ms. TSONGAS. General.

General HAM. Congresswoman, as stated, my personal view is that I think it is very important that we understand the impacts of repeal should it occur, and that is where I am personally. I really want to have a better understanding of what the impacts may be before repeal occurs. That is, frankly, why I am honored to be a part of this effort, because I think that is exactly the question we are going to answer.

Ms. TSONGAS. As you crafted and put together the working group, what is the mechanism by which you find balance? I think there is a variety of views here. What is the mechanism by which you make sure as you are bringing others into the group that you find a balanced approach so that we can move forward?

Mr. JOHNSON. Well, to be sure, in reaching out to bringing people to the working group, we haven't asked their personal views about the policy. We want objective, thoughtful people. We have endeavored to get working group members from all four services, from a cross section. Secretary Gates believes that the enlisted force, hearing from the enlisted force in particular, is very important, and the group consists of civilian and military. When we sit around a conference table with our working group leaders, most of the people at the conference table are in uniform. And I think that that is essential in conducting this.

Ms. TSONGAS. It will eventually go back to Congressman Murphy's question, too, about how you are going to solicit the opinion of gays and lesbians currently serving without putting them at risk so you get that full, balanced view of those actively serving today.

Mr. JOHNSON. That is something we want to do, and we are looking at mechanisms for doing that.

Ms. TSONGAS. Thank you.

Mrs. DAVIS. Thank you.

Ms. Sanchez.

Ms. SANCHEZ. Thank you, Madam Chairwoman. And thank you for having this hearing.

I think it is very important. I wish we could just get this done and move on as some—many other militaries have. At least 28 other countries, including Great Britain, Australia, Canada and Israel, already allow open service by gay and lesbian service members. And the experiences of these countries show that open service works, and that implementation of open service has been—historically been uneventful in those countries.

So my question to you will be are you going to look at the experiences of these other countries that have led with open service during your review of Don't Ask, Don't Tell? And what would you expect to learn from these experiences? How would you expect to use that in your deliberations and your report?

General HAM. Congresswoman, I will start off. It is an important part of our study, in two particular ways. First, we have been directed by Secretary Gates to update the 1993 study performed by RAND, which did look at what are called analogous institutions, which included the foreign militaries. So an updating of that, I think, is required by the study, and so we shall do.

Secondly, both Mr. Johnson and I have already met with senior leaders, both military and civilian, from other nations' militaries. Last week I was in Israel. I have scheduled visits to other European nations upcoming in the near future. We will have the opportunity to engage with their senior leadership, both military and civilian, to discuss precisely the matters that you address: How did they implement? What were the challenges, if any, that they encountered? In some cases after an initial period of implementation, were there other manifestations that affected sometime after laws or policy changes? So I think we have a good way ahead to look at foreign militaries.

Having said that, we must understand that our military is our military, and we have a uniquely American culture and approach to how we do things. But I believe that our effort, and certainly this working group's effort, will be informed by the experience of others.

Mr. JOHNSON. I agree, Congresswoman. I think it is relevant information. We intend to look at that issue, recognizing that the United States military is unique in its size and its scope. There is no perfect comparator to the United States military, but I think it is relevant information.

Ms. SANCHEZ. I would agree, I think it is relevant information, especially when you look at all the work that we do on the interchangeability of our military working with other militaries, whether it is with respect to NATO, for example, or just—I sit on Western Hemisphere Institute for Security Cooperation (WHINSEC), where we work with Latin American countries to teach their military about the way we work and to get them to work more in a civilian to military standpoint, for example. So I think that is important, especially when you look at, for example, the NATO lines, which I believe has only two countries right now that do not have openly gay members serving, if you will. That would be the United States and Turkey.

My next question is the military currently has strict regulations regarding sexual assault, fraternization and other illegal or inappropriate conduct. Nothing about open service seems to indicate that these rules would not be able to be applied directly or in an equal manner to gay and straight service members. So why would the repeal of Don't Ask, Don't Tell require a change to the current code of conduct? And shouldn't gay and straight members be held to the same strict standards that we have, standards that already exist in our code?

Mr. JOHNSON. Congresswoman, I don't know that a repeal of a policy would require any changes to the rules on fraternization or otherwise. It is one of the things we are going to look at, but I don't assume that it would or it wouldn't. There are many who believe what you just said.

Ms. SANCHEZ. Thank you. Thank you, gentlemen. In the interest of time, I will yield back.

Mrs. DAVIS. Thank you very much.

I think we are going to try and do another round quickly. I am going to ask one or two questions, and then Dr. Fleming. I think some Members would certainly like to come back. I know, Mr. Johnson, you are not able to.

Secretary Stanley and General Ham, can you come back? We have about maybe as much as 40 minutes. Is that going to be a problem for you? You can come back?

Dr. STANLEY. I can come back.

General HAM. I can come back.

Mrs. DAVIS. Great. Thank you very much.

Quickly, I wanted to get to the issue that has been posed, and I think that Secretary Gates had said that something should be done about third-party outings, and suggested that perhaps by mid-March that you would have had a chance to look at seeing if the policy could be done in a fairer manner. And actually it was suggested that this could be done by mid-March. Can you confirm that the working group will be prepared to look at those possible changes? And do you believe that Congress should have an opportunity as well to look at those proposed changes?

Mr. JOHNSON. What Secretary Gates has directed me to do is to review the implementing regulations and look to see whether within the confines of the existing law, and that is the key, within the confines of the existing law, the regulations can be revised in a way to make them fairer and more appropriate. That he asked me to do, and that is separate and apart from the working group's assessment. And he has put me on a 45-day track, which would mean that my recommendation to him is due on or about March 19th. And that is something that is under way. We are doing that right now. We are getting comprehensive input from the services on that topic, and I expect that we will meet our 45-day timeline.

Mrs. DAVIS. I believe that Mr. Murphy had asked earlier, and I cut him off, how you are going to get the views of service members who are gay and lesbian that are serving without any sense of retribution. Do you have anything else you would want to add to that statement?

Mr. JOHNSON. We think that is something we should do, and we are looking at mechanisms for doing that within the confines of the law.

Mrs. DAVIS. And finally, just from this question, women tend to be separated proportionally greater than men. Have you had a chance to look at that issue? Is that something that you think you will be taking a look at? And why that is the case, and how would it impact what you are doing?

General HAM. Madam Chairwoman, I think it is obvious to all of us the statistics tell us that. And I think as part of our review is to try to gain an understanding as to why that is; are there some underlying causes for that disparity to occur. And again, keeping military readiness and effectiveness foremost in our minds as we look toward how policies might change should the law be repealed, I think that would be an important consideration, the gender difference.

Mrs. DAVIS. Thank you.

I am going to turn to—Mr. Wilson, I believe, is going to defer to Dr. Fleming.

Dr. FLEMING. Thank you, Madam Chairwoman.

One quick question. This report that you are going to do is due in December; is that correct? December of this year.

Mr. JOHNSON. December 1st.

Dr. FLEMING. Have you looked at or are you considering what other laws, rules, policies that this may impact that are not directly related to this?

Mr. JOHNSON. Our mandate is to look at the impact of a repeal of section 654 of title 10 U.S.C. I do not construe our mandate to make recommendations about the repeal or amendment of any other law.

Dr. FLEMING. Are you going to study the impact that that might have on others, unintended? I mean, obviously if this repeal were to occur, we could get unintended consequences that no one would be happy with. Certainly we should look out into the horizon to see if there might be others. And I am just asking if that is something the panel would be looking at.

Mr. JOHNSON. I would say that that is part of our mandate, consequences.

Dr. FLEMING. I would certainly ask that if it is not planned, that you do plan to do that, to take a look at what the unintended consequences might be for repealing section 654.

And with that I yield back.

Mrs. DAVIS. Thank you.

So we will come back in about 30 to 40 minutes, and really appreciate your hanging around with us this afternoon. Thank you very much.

Mr. Johnson, good luck. We thank you for saying yes. We know this was a volunteer activity of sorts, but we know what that is like.

Mr. JOHNSON. You are assuming it was voluntary.

Mrs. DAVIS. We appreciate it very much. We will be back. I certainly encourage Members to come back.

[Recess.]

Mrs. DAVIS. Okay. Thank you very much for waiting during that voting period. We are going to begin again. We will begin with Dr. Snyder.

Dr. SNYDER. Thank you, Madam Chair.

And thank you for being here.

I want to visit this issue that we have talked on and touched on already today about how do you get input from lesbians and gays that are already serving? Mr. Murphy mentioned the problem of gays and lesbians that are serving being able to share with—I guess the term was “battle buddies,” some of the joys and sorrows of life.

I was talking with a lesbian colonel a week or two ago. She described to me a situation that she knows has happened where somebody serving in Iraq on Skype was able to watch in real time the birth of his child. Sitting right next to him was a lesbian woman who had a partner back home who was pregnant, and she knew she would not be able to do that same thing; that she put herself at risk for losing her job and the ability to support her family, her growing family. Those are the kinds—just one narrow example—the kind of risks that gays and lesbians in the service feel. So I don’t see how you gather the kind of information, have the kind of exchanges you want.

General, describe that for me. I suspect since you have been appointed, you have already had people come up to you,

heterosexuals, express views back and forth against repeal. My guess is you haven't had full-bird colonels or general officers come up to you and say, I want you to know that I am lesbian or gay, and I really think this policy should be repealed. They would be foolish to have that kind of exchange with you; it puts their career at risk.

So how are we going to do this to gather the kind of information you want when you talk about readiness issues? I consider the situation I described a readiness issue. That woman will not be able to view the birth of her child the way that her partner could.

General HAM. Congressman, you ask a great question, and today we don't have a great answer for you. Other than the fact that Mr. Johnson and I both agree that we must find a way for the views of homosexuals who are currently serving in the military to have their voice heard without triggering the separation actions which are currently required by law. I am not sure how we are going to go do that just yet, but we are looking for ways.

A way that we know we can do it is there is a third party conducting a focus group or conducting interviews that would be outside of the Federal Government, outside of the Department of Defense, and not obliged to pass that information that—prohibited from passing that information, personalized information, to myself or Mr. Johnson such that would trigger separation action under the current law. We will work for ways to do that.

It is also important for us, as I mentioned at the outset, as we endeavor to explore opportunities to use social media as an opportunity for individuals to report anonymously their concerns.

So we share with you the concern and the absolute necessity to reach out and hear from homosexuals who are today serving in the force. We don't yet know how to do that, but my pledge to you is that we will find a way, and we will do that. We know that we have an opportunity to engage those who have been separated under this current law. We think that would be instructive to us, but those who are currently serving as a special group and require special attention as to how we gain their insights, again without triggering separation action.

Dr. SNYDER. I asked General Casey a week or so ago, I think I kind of rudely phrased my question, why do I have more confidence in your leadership skills than you do? And my point being that I have no doubt, given all the challenges the military has faced over the last couple decades, the level of training, the level of professionalism, my experience as an Armed Services Committee member for almost 14 years now, that whatever this Congress decides, that you all will be able to carry it out at all levels of leadership.

So my question for you, General Ham, is should we follow the recommendation of Mr. Murphy and do the repeal, recognizing that it will be several months, if not longer, before it would be fully implicated, do you have any doubt of the leadership skills of the military today to be able to carry out that policy in an effective way?

General HAM. Congressman, when I enlisted as a private and served in the 82nd Airborne Division, I took an oath, and as a general I took an oath. And that oath begins that I will support and defend the Constitution of the United States. That means we obey the law, and we follow the law in all that we do. And if the law

changes, there is no doubt in my mind that the leadership within the Department of Defense and in the uniformed services will follow the law as required and with full energy.

Dr. SNYDER. Thank you.

Mrs. DAVIS. Thank you.

Mr. Murphy.

Mr. MURPHY. Thanks, Madam Chair.

And, General Ham, thank you for that opening statement. And I couldn't agree more. And that was a great honor not just to serve in the 82nd Airborne Division, but also to teach what that Constitution stands for to the next generation of military leaders when I taught firsties at West Point for a few years, and then deployed with those young second lieutenants in two deployments after 9/11.

I know there will be a lot of facts and studies thrown your way as you go about your due diligence. I applaud you, and I am praying for you, as everyone else in the country is, because it is important work.

I am sure there is no doubt that you have either already or will read a few months ago the Joint Force Quarterly, titled "The Efficacy of Don't Ask, Don't Tell," by Colonel Prakash from the United States Air Force. And for those who are not aware, Joint Force Quarterly is published for the Chairman and the Joint Chiefs of Staff by the National Defense University. The Colonel obviously spoke in his article and giving a balanced view of the debate within the military community. And while I encourage everyone to read that article, which I thought was very well done, also I would like to point out several of the most striking quotes that I thought were worth noting. And I quote, "There are potential lessons to learn from other countries that have lifted the ban on homosexuals serving openly. There was no mass exodus of heterosexuals, and there was [also] no mass 'coming out' of homosexuals. Prior to lifting their bans, in Canada 62 percent of the servicemen stated they would refuse to share showers with a gay soldier, and in the United Kingdom, two-thirds of males stated that they would not willingly serve in the military if gays were allowed. In both cases, after lifting their bans, the result was 'no-effect.' In a survey of over 100 experts from Australia, Canada, Israel and the United Kingdom, it was found that all agree the decision to lift the ban on homosexuals had no impact on military performance, readiness, cohesion, or ability to recruit or retain, nor did it increase the HIV rate among troops."

He concluded his article by saying, Don't Ask, Don't Tell "has been costly both in personnel and treasure. In an attempt to allow homosexual Servicemembers to serve quietly, a law was created that forces a compromise in integrity, conflicts with the American creed of 'equality for all,' places commanders in difficult moral dilemmas, and is ultimately more damaging to the unit cohesion its stated purpose is to preserve. Furthermore, after a careful examination, there is no scientific evidence to support the claim that unit cohesion will be negatively affected if homosexuals serve openly. In fact, the necessarily speculative psychological predictions are that it will not impact combat effectiveness. . . . Based on this research, it is not time for the administration to reexamine the issue;

rather, it is time for the administration to examine how to implement the repeal of the ban.”

And I know you are going to look at as far as how it affects gay and lesbian soldiers, and marines, and airmen in showers in our military. And I understand we have kicked out 13,000 in the past almost 17 years. I also understand the estimate is there are 66,000 gays and lesbians currently serving in our military that are, frankly, willing to take a bullet for every single one of us in this room, and for the Americans in our country.

But I also think that when we look at not just those 66,000, it is also those 13,500 units out there that they are a part of, and the fact that when you rip out one of those, when you initiate a chapter 15 hearing just because there is a SAM, a statement, act, or marriage, that means that you are having an administrative hearing to determine whether someone is gay or someone is straight. I have seen cases and I heard of soldiers that they were actually straight and had to go prove and get women to testify that they slept with them, that they were really straight. And when our country is at war right now—and I am not trying to lecture you, I am just very passionate about it, so please don’t take it against you. But when you understand that there was 3,000 innocent Americans that were killed, that were murdered on 9/11, that we are fighting against people that want to still kill us today, and we are fighting against al Qaeda that are doing all they can to go into Pakistan to get their hands on their nuclear weapons, we need to focus energy on capturing and killing the enemies of the United States of America, not to have hearings to determine whether or not they are gay or straight and how it affects the 13,500 units that are all working as one team, no matter what their race is, their color, their creed, or their sexual orientation.

Gentlemen, I appreciate what you are doing for our country, and I yield back the balance of my time.

Mrs. DAVIS. Thank you.

Ms. Tsongas.

Ms. TSONGAS. I think Congressman Murphy has said it so well about the concerns we have. And as we have asked so many times how you are going to protect gay and lesbians service members as you do the work going forward, and when you hear that huge number of 13,000-plus, I would hate to see that in the course of your doing this work any single member separated because they are willing to come forward and talk to you. And as you talk about the hoops you are going to have to jump through to solicit their opinion to put in place third-party people who don’t have the same responsibility, it just seems to me a more appropriate way to go forward was simply to put in place a moratorium so that you can do your work, do it well, get the full range of opinions without anybody fearing reprisal, and go on from there.

So I welcome your thoughts on something that is a moratorium, a straightforward, simple, but sounds to me like it is going to become so layered in the interest of getting all the appropriate opinions that you need. And related to that, too, General Ham, you talk about soliciting information from families. I am just also curious as to how you define a family. Is it parents, spouse, siblings? And how

as well you would get the opinions from gay and lesbians' family members.

General HAM. Congresswoman, again, I think it is vitally important that we seek the opinions and the views and the effects on readiness that homosexuals who are currently serving can express to us. Again, I am not certain yet how to do that. I am confident we will find a way to be able to do that without triggering the separation actions that are required by the current law. As we work our way through this, I am confident that we would keep you informed as to how we might be able to do that.

With respect to your question about families, it is not further defined in our terms of reference. And so I think Mr. Johnson and I have some degree of latitude in how we reach out to the families that are supporting our servicemen and women in the force today.

Again, we are very early in this process, and so we haven't crafted yet the precise mechanisms to do that, but I would assure you that we will find a way to seek a wide range of views and opinions on this very important matter.

Ms. TSONGAS. And what would be the purpose of soliciting families' input? What would you be looking to?

General HAM. We know, Congresswoman, that the families have a direct relationship on civilians' willingness to enlist, service members' willingness to reenlist or to extend their service. We know that service members' commitment to the service and to the mission is affected by the way in which their families are cared for. That is particularly notable in this time where we require so many of our service members to deploy into remote areas. The assurance that their families are well cared for while they are deployed has a direct contribution to readiness, and therefore I agree wholeheartedly with Secretary Gates' direction to us that we must consider that in our review.

Ms. TSONGAS. Doctor, would you like to comment at all?

Dr. STANLEY. Actually I don't have much to add to that.

Ms. TSONGAS. Thank you. I yield back.

Mrs. DAVIS. Thank you.

I wonder if you could try and map out for us just a little bit. I know there are going to be several working groups, and I don't know about how many people are going to be in each of those groups. Just let us know how you see this—when you are, say, in the middle of this process, how do you see that working? And do you expect to call on individual contractors who could be helpful in terms of whether it is surveys or face-to-face contact, whatever that may be? Do you have any sense of that at this point, how this is going to be playing out?

General HAM. Madam Chair, we do have a reasonable sense of how we are going to proceed. We have an organizational framework upon which we are building the teams. The leadership of those teams is pretty well decided. The functional teams for this review are four. There is a team that we call the survey team that is focused on answering the first questions of what does the force believe will be the impacts of repeal should that occur, again, reaching out to family members as well and to other interested parties in this process.

A second group is focused on the legislative and legal aspects of this. Not surprisingly, that team is comprised mostly of civilian and military judge advocates general to look at the aspects of the laws outlined in the terms of reference to us.

A third team looks at the policy, and this is perhaps the core of the effort, what policies would be affected by a potential repeal of the law. So first is to determine what that body is, and then to assess and make recommendations as to how policy might have to change or would appropriately change if the law were changed.

And then finally, the fourth team we call education and training, and that is essentially how you promulgate change. Should repeal occur and policies are changed, how do we in a coherent and consistent manner ensure the force in being today and those who join the force from top to bottom are adequately trained and informed as to these changes so our service members of all ranks, our commanders at all levels are applying new law and policy consistently.

Secretary Gates also directed that our effort be very closely aligned with the individual service efforts in this regard. To that end, he has formed what we call an executive committee, comprised of Secretary Stanley, the service under secretaries, the service vice chiefs, the chief of the National Guard Bureau, to provide linkage between the DOD working group effort and the effort of the individual services who, if the law is repealed and policy changes, would necessarily be those who would implement such changes. So in broad term that is how we are organized, Madam Chair.

Mrs. DAVIS. Do you anticipate seeking the help or the input from our recruiters out in the field, and how would you use them?

General HAM. Yes, ma'am, we would again seek a broad range of inputs. Recruiters of all services and all components would certainly have interesting insight into this to answer the specific question as to what effect, what impact might be on recruiting if the law were repealed. Similarly we will reach out to the service academies, for example, to the Reserve Officer Training Corps programs to get their assessment of what the impact of repeal might be. So again, a broad range of inputs.

Mrs. DAVIS. One of the issues that is difficult to get a handle on, and I suspect that in the past there has been some effort to do this, I think what you are focusing on, and quite appropriately, is the here and now, the people that are serving today. But we know that 20 percent or so of men and women in this country are eligible for service, and for a number of reasons they choose not to apply, not to be part of the service.

Many people are concerned that one of the things that is very important right now is to say to young people, we want you to think about being in the Army, the Marines, what have you. We want you to even think about some of the specialties within our services that take graduate and further education. How do we get at trying to ascertain the extent to which people who happen to be gay or lesbians choose very early on that this is not something that they care to do because of the inability to serve openly? Are you interested in any way trying to get at that issue? Because national security is primary here. That is what we are all about. And the ability to have every person in this country who chooses to serve their country do that is very, very important.

And I am wondering if there is some way that you can also get a handle on that issue, because I am certain that there are people who would suggest that maybe they don't want to be in the service anymore. We have a lot of people who may choose to be, but today, quite honestly—and I have met a number of them who come up and say, you know, I want to go on to further training in medicine, I have been asked to have a scholarship in the service, but I am not sure I want to do that. Can you help me with that? How are we going to get a handle on that issue? And do you think it is important to your work?

General HAM. I will try first, Madam Chair, and the Secretary can add on.

We do have a task to seek the assessment of influencers. And I think that gets to the group perhaps that you are addressing, educators, employers, groups of individuals who do exert an influence on particularly young people who may be considering military service. Again, early in this process, I am not sure how we will do that, but we will find a way, and I think it is an important group for us to listen.

Dr. STANLEY. Actually I was listening to your question, Chairwoman Davis, because I actually thought that you were going to go at it from a different way, because I was actually thinking that some of what our assessment would be would be to really get to the root of some of that, because there are people who would not join, as well as people who would join, and that becomes a readiness impact issue, which is something I hope the assessment, the review would bring out.

As I was looking at it, that is actually one of the kind of things I was looking at, because I am thinking now 10, 15 years down the pike. The issue of readiness is a critical issue. It deals with the armed forces, and the primary mission as mentioned by the Congressman is a question that was asked early on. We know what that mission is, and it is very important that that mission not be compromised. It is critical, vital that mission not be compromised.

So I am just joining at a certain level the working group, but the bottom line is that central, again, is readiness, and hopefully the review will give us what we need to get that question from a number of perspectives.

Mrs. DAVIS. Thank you, because if we approach it recognizing that there are certainly a pool of people out there, and we certainly want to make certain that they at least can consider the services, I think that is going to be very important as well.

We really appreciate your being here. Are you okay to take a few more questions?

Mr. Wilson, no?

Dr. Snyder.

Dr. SNYDER. I had three questions. Does the study envision learning from other parts of our government in deployed situations? I don't know, the classic myth or metaphor of the shower. Well, we already have civilian contractors, we have U.S. civilian employees that don't have policies of Don't Ask, Don't Tell. Are you planning to learn from folks that you already serve with and use the same facilities of other branches of the U.S. Government other than the military? Is that your intent, General Ham?

General HAM. It is, Congressman. One that comes immediately to mind is the United States Agency for International Development (USAID) and organizations like that. I think certainly our effort would be well informed by reviewing how they are conducting business today.

Dr. SNYDER. Particularly since they are conducting business in the same environment with the same facilities that your soldiers are serving in.

The second one is the point has been made more than once that recruiting is good. Our memories are not so frail that we forget we went through some problems with recruiting several years ago. In fact, the Army was changing standards in terms of raising ages, and stop-loss policy, and change educational standards for recruiting, and recruiters were having to work at it real hard. And so that is part of the history of this, too, not just what it is today, but what can it be at times when unemployment rate is 3½ percent, and it is a lot harder to get people to come in the military as it was several years ago.

How are you going to process the issue—you all have done a good job of putting the study together. At some point I think there is something to be said—or maybe that is the congressional role rather than your role to step back and say, this is about America being America. And there is such an unfairness when we aggressively encourage—and I do it, too. Just a couple weeks ago I held an academy fair in my district and had representatives of all the services there. We aggressively recruit 16- and 17-year-olds to start thinking about the military, and you all aggressively recruit 17-, 18-, 19-year-olds to enlist in the military. And if you talk to folks and spend some time with folks as they go through this process of discovering what their sexual orientation is—I mean, there is a lot of confusion whether you are homosexual or heterosexual when you are 16, 17 and 18. That can be kind of a volatile period.

This unfairness of where we aggressively target people to sign up at a young age and then pretty aggressively tell them that they can't serve. The comment was made earlier that, well, there was this many that had been—13,000 or whatever—put out since 1993, but most of them were in the earlier years of their service, as if they are, what, throwaways? I mean, we went after them at that young age. How does that fit in with the whole idea of fairness towards young people that we aggressively recruit at a time when folks are trying to sort out the most intimate aspects of their personality?

Dr. STANLEY. Well, Congressman, again, I am not trying to sound like a broken record, but I am hoping that the review, the assessment that is ongoing, just started, will be addressing what you are talking about. When I joined the military now over almost 40 years ago, those issues of fairness, equity, they were with me then, and they are with me today. I left for a few years; I am now back in a different capacity. But the issues of fairness and equity, I would go without saying they are absolutely important.

Again, the vital role of readiness, our nation and where we are—and that is where the assessment comes in, because there are some unknowns, and there are some hypotheticals that we don't know right now, and the assessment and review will give us the answers.

I will go as far as to say, which I hope will be obvious, that we are looking forward to working very closely with you.

Dr. SNYDER. I think most of us—I should say Patrick and Ms. Davis and I are convinced that ultimately this country will conclude that not only is our country better off, but our military is better off, that our Army is better off, that our grunts on the ground are better off by having the kind of leadership and dynamic within the military amongst those young people, those 18-, 19-, 20-year-olds that are serving overseas today, that recognize that gays and lesbians can openly serve, that America becomes a better America; that this is not about doing favors to gays and lesbians, it is about recognizing this is a step of America being a better America. Thank you for your service.

Mrs. DAVIS. Thank you.

Mr. Murphy.

Mr. MURPHY. I would just like to echo that, gentlemen, I do think our country and, most importantly, our military will be better off, and that it will help our national security not to throw out 13,000 troops who are willing to fight for us to keep us safe, and also among them some of the best Arabic, Farsi translators, some of our fighter pilots, some of our infantry officers, some of our mechanics.

Secondly, the American taxpayers will be better off. There are studies that show this wrongful policy is costing the American taxpayer \$1.3 billion.

So it kind of goes back to Mr. Snyder's earlier comments in his first question in that, you know, when we all took an oath as either a Marine officer or an Army officer, you know, that special trust and confidence that our government put in us, in our leadership ability. And I would just say that we should have special trust and confidence in these young American heroes. And we should have a special trust and confidence in the non-commissioned officer (NCO) corps and also the officer corps to do the right thing.

And when you are doing your study, I would just say make sure we are cognizant of the fact that—to put in the historical context; that when we were in the middle of the Korean War, when we lost tens of thousands of our young Americans over there, the fact is, is that when half of our country was still segregated between black and white, and we had colored water fountains, and colored bathrooms, and colored restaurants, the fact is, is that we said that we were going to desegregate our military because we all wore green, we all took that oath, we all picked up the rifle and defended our country overseas.

And that same challenge is going today in both Iraq and Afghanistan, and I do think that when you make your decision that not to be so cautious, so meticulous; to realize that at the end of the day, it goes back to the goodness of our country, and it is that young GI, the young man or woman who is willing to take the same oath that we all took.

And of course, General Ham, I am going to have to give you another shout out with the 82nd Airborne Division real quick because when I was there in division, you know, when I was there in 2003 in the middle of Baghdad when it was 138-degree heat, I think the greatest thing that I got to witness as a captain was that you would get these paratroopers, and if you grabbed an 18-year-old

paratrooper in the 82nd Airborne Division, you could say, paratrooper, I am going to give you one week to learn how to fly the space shuttle. By God darn it, that paratrooper would help make it happen somehow. If we just go and just say we have a non-discrimination policy because we all take the same oath, and we are all different colors in our military, we are all different races, and we are all different religions, and we all have, frankly—some of us have different sexual orientation, but the fact is that we are focused on keeping America safe and taking that oath to support and defend the Constitution.

So thank you, gentlemen. I appreciate it. God bless you, and God bless our military. Thanks.

Mrs. DAVIS. Thank you. We really do appreciate your coming at this stage of your work.

One of the things I would just add, because I would suspect that there may be some differences as you begin to reach out that you find regionally. Urban, suburban, rural, you know, there really are differences, but I don't think that we ask our young men and women who join the services today to do anything different depending upon where they come from. And so the expectations should all be the same, and I think that as we work to try and develop the very, very best process that you can, we need you to take that certainly into consideration.

I would ask and wonder if you could commit to us that perhaps, you know, as you get under way, and whether it is halfway through or three-quarters the way through the process, that perhaps you might come back to the committee, let us know how things are going, is there anything that you need from us, and to give us a sense of where you are, how tough has this been, where have you found some roadblocks that you have been surprised by. What is it that has been very different than what you expected as you take this journey? And we certainly would be very pleased if you could do that, and I am wondering, General Ham, if you might commit for your side if that would be a possibility.

General HAM. Madam Chair, Secretary Gates felt strongly enough about this that he included it in the terms of reference. It is a specific direction to Mr. Johnson and myself to engage with the Congress and keep you advised. So we look forward to doing just that.

Mrs. DAVIS. Great. Thank you very much.

And to you, Secretary, welcome again. We know we are going to be working very closely with you, and I look forward to that. Thank you very much.

[Whereupon, at 5:22 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 3, 2010

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 3, 2010

**Chairwoman Davis Opening Statement
Military Personnel Subcommittee Hearing
Review of the DOD Process for Assessing the Requirements to Implement
Repeal of Don't Ask, Don't Tell
March 3, 2010**

Today the Subcommittee will hear testimony about the Department of Defense process for implementing a repeal of Don't Ask, Don't Tell.

The President has made clear that this fundamental injustice should not be tolerated. Now, Secretary Gates and Admiral Mullen have set in motion a study group to determine what needs to be done to implement repeal of this law. They have called for a comprehensive examination, and this issue deserves no less. When it comes to repeal, the question is not whether – but how and when. The President and our civilian and military leadership in the Pentagon have stated the need for repeal. A majority of Americans now see repeal as not only in our national security interest but also in standing with the principles of America. I would ask those who oppose repeal to join us on the right side of history.

I understand and support the position of our civilian and military leadership that comprehensive analysis should accompany any decision of this importance, to include outreach to service members and their families to ensure we understand all perspectives on the issue.

The purpose of this hearing is for the witnesses to help the Subcommittee understand what you want to learn and how you plan to become better informed about any possible challenges surrounding repeal of Don't Ask, Don't Tell. Since

the Department does not customarily poll service members before making tough personnel decisions, we need to know what type of information you are seeking that will allow the Department to craft and implement a policy that will be successful.

While I appreciate the intent of this review, I believe the evidence would suggest a quicker solution is possible, and indeed necessary. Public opinion supporting repeal is strong. Yet, as the public's tolerance for open service grows, so to do the financial and readiness costs of a policy that removes members of the volunteer force, many with critical skills, at a time when other service members are seeing repeated deployments to Iraq and Afghanistan. Our NATO allies serving beside us in Afghanistan and other nations have moved to accept the service of openly serving men and women and have experienced no loss in unit cohesion and combat readiness. Finally, the 1993 Rand study on the strategy needed to successfully implement repeal provides a blueprint that can be quickly updated to fit today's environment.

In my view, part of this blueprint should include a moratorium on discharges while the Department decides how to implement repeal. I was disappointed that the Secretaries of the Military Departments and the Service Chiefs viewed a moratorium on separations during the study process as potentially disruptive. I believe there is a way to stem the tide of these painful and unnecessary discharges, especially those instigated by third parties, and avoid subjecting the force to confusion about the direction of the policy. Sound, positive leadership can and

will be the key to bringing an end to the separation of gay men and lesbians, and ensuring that readiness and unit cohesion do not suffer as a result.

Rep. Joe Wilson – Opening Remarks
Military Personnel Subcommittee Hearing
DOD Study Group to Examine the Possible Repeal of the Bar on Military Service by Openly
Gay Personnel
3 March 2010

Mrs. Davis, I join you in welcoming our witnesses, all three of whom are appearing before us for the first time. Unlike most hearings when we receive testimony from task forces and study groups at the completion their work, this time we will have the opportunity to examine and assess the objectives and scope of work of a study group just beginning its effort. This also gives us the opportunity to shape the group's work effort.

We have heard clearly from the senior leadership of the Department of Defense and each of the military services of the importance of this study and the necessity of doing nothing to repeal, change, or suspend current law until this study group completes its work. I fully support such an approach. Furthermore, I believe until this committee and Congress have had the opportunity to review and assess the recommendations of the study group and those of the Secretary of Defense, which we expect at some point after December 2010, we should not rush suddenly into action.

As I am sure our witnesses know, Ranking Member McKeon wrote the Secretary of Defense and the Chairman of the Joint Chiefs in January setting out a series of issues to be examined, as well as requirements for evidence, to be presented to Congress before Congress could make an informed judgment about the repeal of section 654, title 10 U.S. Code. I ask unanimous consent the letter and its attachment be entered into the record.

Further, I ask the staff now to distribute copies of Mr. McKeon's letter to members of the subcommittee, some of whom may not be familiar with it, and to the witnesses.

The central focus of the letter is in the fourth paragraph, reflecting the fact that the responsibility for deciding this issue rests with the Congress - NOT the President, the Secretary of Defense, or the Chairman of the Joint Chiefs. The fourth paragraph reads:

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

Given its mandate from the Secretary of Defense, I am concerned this study group will focus its efforts solely on the third requirement – the implications of change, and not present Congress with evidence to decide the first two fundamental issues: 1) Why current law threatens or undermines readiness in any significant way, and 2) Whether repeal of current law would improve readiness in measurable ways.

If the study does not address these issues, then its overall credibility and usefulness for the Congressional decision-making process will be significantly undermined. I would ask during the course of this hearing for Mr. Johnson and General Ham to commit to us they will fully and

objectively explore the first two fundamental issues raised by Mr. McKeon and present the evidence of that examination in their final report.

Secretary Stanley, this is a tough issue to break in on, but it is one that your predecessors have had to deal with. As you know, a central argument of the proponents for the repeal of section 654 is that repeal is a military necessity, because in time of war the military services need every person willing and able to serve, and the discharge of more than 13,000 people because of section 654 since 1993 has hurt military readiness.

Your predecessor, Dr. David Chu, addressed this issue in July 2005 – in the fourth year of the Global War on Terror – when he testified before this subcommittee: “It [the loss of personnel due to section 654] is not, speaking frankly, a significant factor in our attrition experience, [and the loss] generally occurs early in someone’s service.”

I would like to hear from you today whether you agree or disagree with Dr. Chu’s assessment and whether you agree with the advocates for repeal of section 654 that repeal is a military necessity.

Further, I would like to hear from you whether the discharge of personnel under section 654, especially during the time of war, has negatively impacted the readiness of our military services in any measurable or significant way.

Based on the data recently provided to this committee by the Department of Defense and the military services, I would guess your objective assessment would be you agree with Dr. Chu. For example, during fiscal year 1999 through fiscal year 2008 – eight of those years being wartime years-- the military services separated more than 1.9 million people. 8,300 of those –

less than one half of one percent -- were as a result of section 654. That's about 800 people discharged per year, and unless you contradict me, it's not a significant loss from an overall DOD manpower perspective.

Moreover, your department's own data shows the discharge of personnel under section 654 has not affected the ability of the military services to recruit or to retain high quality people in numbers that meet or exceed department requirements. According to the Department data, fiscal year 2009 was the best year for recruiting in the active duty, National Guard, and reserve forces in the history of the all-volunteer force.

Nor has section 654 inhibited the ability of the Army, Marine Corps, and the Army National Guard to increase manpower significantly while fighting two wars, and at rates of annual growth exceeding expectations.

Furthermore, the department's own data undercuts the assertion that section 654 must be repealed because in time of war this nation needs to attract and retain all the qualified people it can who want to serve. For example, both the Navy and Air Force have made significant manpower reductions during the last ten years, totaling some 77,000 people. To achieve such reductions the services used measures not only to reduce the numbers of new recruits, but also to entice or force people to leave the service. In short, both services in time of war, for reasonable and justified "good-of-the-service" reasons, have denied service to tens of thousands of people who were otherwise qualified to serve and who wanted to serve. Such actions, it seems to me, only reinforce the Congressional finding in 1993 that there is no Constitutional right to serve in the military

Dr. Stanley, taken as a whole, the Department's own data over the last ten years refutes the argument that repeal of section 654 is a military necessity, and supports General Conway's statement that current law appears to be working well. If you disagree with regard to the conclusions drawn from the Department's data, we would like to hear from you today on this point.

Before closing, I would like to come back to some critical questions raised by Mr. McKeon's letter and ask for assurances from Mr. Johnson and General Ham that the study group will address them in detail.

A critical area that needs to be examined by the study group is the impact of a repeal of section 654 on military family readiness. As our chairman, Ike Skelton, frequently points out, "If Momma ain't happy, nobody is happy." Family readiness today equates to military readiness. How families feel about military service has a direct impact on retention and a repeal of section 654 will have a direct impact on military family culture. Tied closely to the potential impact on military family readiness and culture is the issue of eligibility for benefits.

Specifically, Mr. Murphy's bill, H.R. 1283, to repeal section 654, would not require dependent benefits to be provided if such provision would be in violation of the Defense of Marriage Act. Such a prohibition would seem to extend to any Federal benefit, such as Veterans benefits, for which married military spouses and dependents or survivors of military personnel are eligible.

Knowing that family readiness is a major factor in maintaining the all-volunteer force, Mr. McKeon asked for an evaluation of the limitation on benefits created by the Defense of Marriage Act and H.R. 1283, in terms of its effect on cohesion, morale, good order, and

discipline. Would enactment of this limitation create a wide diversity of benefits between legally married couples and families, regardless of their orientation? If so, how would this diversity of benefits affect family readiness, morale, and cohesion? To effectively implement a repeal of section 654 in a manner that does not create disparities between the benefits of legally married couples, regardless of their orientation, would the Defense of Marriage Act have to be repealed or amended?

Finally, a key element of Mr. McKeon's request is the need for credible, substantive, comprehensive, and objective data and information from the Department of Defense. I am concerned the Department of Defense may be creating actual or perceived obstacles to achieving that same objective.

Specifically, we understand the study group is considering or has contracted with RAND to carry out work on a potential repeal of section 654. If accurate, I believe the study group will prejudice from the outset the perceived credibility and objectivity of its results and recommendations. I say this because RAND's 1993 effort raised significant concerns about its comprehensiveness and objectivity. More recently, RAND's prejudgement, as well as lack of original work, was evident in a November 2009 report that used data collected by the Palm Center to support, not surprisingly, the repeal of section 654.

We understand RAND is a well recognized and competent research entity in many areas. However, given RAND's history on this issue, I believe even if RAND were able to produce a product that was comprehensive and objective in the study group's view, it will never be seen as such by others, and will ultimately poison the overall perception of the study group's efforts.

To help minimize potential criticism that the group's study, survey methods, and instruments were designed to cook the books to support the President's desires, I would strongly recommend the Department rely primarily, if not exclusively, on its own significant in-house survey and study capabilities; that any external survey, polling, or studies not done by the Department be carried out by reputable organizations that have not previously done study, polling, survey, or analysis work on this issue; and that you engage both proponents and opponents of section 654 to help shape survey and study questions.

**Prepared Joint Statement of the Hon. Clifford Stanley,
Hon. Jeh Charles Johnson
and General Carter Ham
Before the House Armed Services Subcommittee on Military Personnel
“Review of the DOD Process for Assessing the Requirements to
Implement Repeal of Don't Ask, Don't Tell”**

March 3, 2010

Madame Chair and Congressman Wilson, thank you for the opportunity to appear here today.

As you know, on February 2, 2010, Secretary Gates announced the formation of a Department of Defense Working Group to assess the implications of a repeal of 10 U.S.C. § 654, should that occur, and develop an implementation plan for any new statutory mandate. The Comprehensive Review Working Group will identify the impacts to the force of a repeal of 10 U.S.C. § 654 in areas that include military readiness, military effectiveness, unit cohesion, recruiting/retention, and family readiness, and recommend actions that should be taken in light of such impacts.

The Working Group is at the outset of its endeavor, so we do not have a great deal of information to report at this stage.

However, yesterday we made available to Congress the Terms of Reference which provide the Secretary's guidance to us, as well as the methodology for the Working Group's assessment. As required by the Terms of Reference, we will deliver a written report of our assessment to the Secretary no later than December 1, 2010.

The Working Group has now been assembled, and consists of four substantive teams: (1) a Survey team; (2) a Legislative, Regulatory and Legal team; (3) a Policy Development team; and (4) an Education and Training team. Each team is co-led by civilian and military leaders within the Department of Defense, and we endeavored to pair co-leads from different services to ensure a cross-section of service participation. We are happy to provide greater detail about the intent of each team. (A separate working group is now actively considering revisions to the regulations implementing Don't Ask Don't Tell, as the Secretary directed, to consider

whether, within the confines of the existing law, the policy can be implemented in a fairer and more appropriate manner.)

Here are the key principles that we believe should guide the Working Group's assessment:

First, the Working Group is firmly committed to soliciting the views of a wide array of individuals from the different services, including, as the Secretary has directed, military families. Over the course of the next eight months members of the Working Group will meet with a wide array of individuals of all services, rank, age and assignment, officers and enlisted, to seek their advice, opinions and concerns regarding a repeal and how it should be implemented. Likewise, the Working Group will seek to hear from the many responsible voices of those individuals and groups with diverse views on this important matter.

Second, we will engage Members of Congress throughout this process.

Third, as Secretary Gates has also stated, the assessment will be conducted without disrupting the war efforts, and with minimal intrusion in forward-deployed areas.

Fourth, Mr. Johnson and General Ham, the two co-chairs, are asking all members of the Working Group to be neutral and objective in conducting this assessment. We are mindful that this is an emotional subject, the topic of intense debate, and that almost everyone familiar with the issue has an opinion about it. Mr. Johnson and General Ham are committed to leading this Working Group in an objective and thorough manner, and will provide the Secretary with their best assessment of the impact of repeal, regardless of what that may be, to permit the Secretary to determine, as he said in his testimony, how best to prepare for implementation of a Congressional repeal.

Thank you again for the opportunity to appear here today and we look forward to your questions.

DOCUMENTS SUBMITTED FOR THE RECORD

MARCH 3, 2010

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

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

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

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


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

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

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

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

Sincerely,



Howard P. "Buck" McKeon
Ranking Member

Cc: Chairman Ike Skelton, HASC

MEMORANDUM FOR Congressman Jon Kyl

FROM: Prof. W. A. Woodruff

DATE: September 9, 1993

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

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

General Comments:

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

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

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

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

Chapter 2. Sexual Orientation and Sexual Behavior

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

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

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

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

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

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

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

Chapter 3. Analogous Experience of Foreign Military Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6 & 7. Relevant Public and Military Opinion

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

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

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

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

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

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

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

Page 283 says it all:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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