

Should homosexuals
be permitted to serve
in the armed forces



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The growing conflict concerning the status of gay men and lesbians in the armed forces has become a focal point in the long, slow struggle toward equal rights for this stigmatized and oppressed segment of American society. The issue is a metaphor for the position long occupied by gay men and lesbians. Although it is well known that thousands of homosexuals serve in the armed forces, as long as they hide their sexual orientation, as long as they neither name it nor claim it, everyone can pretend they are not there, that they don't exist.

It appears that it is not being gay or lesbian that brings wrath down on service personnel, but voicing it (Belkin & McNichol, 2000-01). Colin Powell, who has led the fight against President Clinton's commitment to eliminate discrimination against gays in the armed forces, claims that the president's position is very different than that of Truman when he ended the policy of racial segregation in the armed forces 45 years ago. In this situation, Powell argues, it is a question of behavior (Schmitt, 1993).

The military's right to have an on-duty behavioral code for all service personnel, however, is not being challenged. The issue is not behavior, it is disclosure; it is the threat and the challenge posed when people disclose their secret. There is no better way to subjugate human beings than to silence them. There is nothing more oppressive than denying another's reality. Until the Stonewall demonstration and the birth of the gay liberation movement, lesbians and gay men survived through secrecy--and most still do. The cost was and continues to be great.

As murdered gay sailor Allen Schindler poignantly wrote in his diary, " If you can't be yourself, then who are you? "(" Diary," 1993). Forced to be invisible, without rights or protections, gay men and lesbians have been personally and politically disempowered. In his book, *Gays/Justice*, Mohr (1988) explored the relationship between invisibility, powerlessness, and social change. He wrote, Only when the government protects gays against discrimination in housing, employment, and public accommodation will gays have first amendment rights as powers. For all potentially effective political strategies involve public actions.

More specifically, all the actions protected by the first amendment are public actions (speaking, publishing, petitioning, assembling, associating). Now, a person who is a member of an invisible minority and who must remain invisible, hidden, and secreted in respect to her minority status ... is effectively denied all political power.... (p. 173) Thus, for gays and lesbians to become politically active and to fight for their rights and protection, they must be safe enough to become visible; they are only safe to do so if those rights and protections are already in place--an immobilizing paradox.

The same situation exists in the personal world. The closeted condition of gay men and lesbians blocks understanding. " Social reality is such that many people ... think they do not know any gay people firsthand. Such widespread ignorance is a breeding ground for vicious stereotypes" (Mohr, 1988, p. 176). Such invisibility and powerlessness made it possible for Chief Justice Warren Burger to say, after the Supreme Court decision upholding the Georgia sodomy laws, that he had never personally known a gay person (Sedgwick, 1988, p. 4).

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The best way to change heterosexuals' views about gay men and lesbians is for them to interact personally with openly gay people. "Coming out," then, is an enormously powerful personal and political act. Every social revolution that redistributes power that challenges deeply held beliefs, and that presses for attention to subjugated knowledge will be met with resistance and backlash. This social revolution has been launched in a context that is at best lukewarm, at worst viciously hostile.

American opinions on this issue, as polls have shown, are both deeply divided and ambivalent. Although a recent poll found that 80 percent of Americans believe that lesbians and gay men should have equal employment opportunities and 57 percent felt they should be free to serve in the military, only 38 percent thought that homosexuality was an acceptable alternate lifestyle, and only 38 percent believed that homosexual relations between consenting adults should be legal (Schmalz, 1992, p. 1).

The message is clear: Homosexuals may work and serve but they may not love. Should Homosexuals Be Permitted To Serve In The Armed Forces? One point can not be overemphasized-the military should and must take whatever measures necessary to prevent and remedy substantial threats to good order, morale, and discipline. If in the judgment of Congress, the President, and the military, homosexual acts pose a substantial threat to good order and discipline, then the threat must be alleviated.

If in the judgment of Congress, the President and the military, homosexual statements pose a substantial threat to good order and discipline, then the threat must be alleviated. If in the judgment of Congress, the President, and

the military, homosexual marriages pose a substantial threat to good order and discipline, then the threat must be alleviated. Given the critical importance of military mission to the protection and survival of the country, no other conclusion is defensible (Devilbliss, 1994). How the threat should be alleviated, however, is the subject of some discussion.

Given the current rationale for the administrative discharge policy, there are at least two groups responsible for the threat to good order and discipline—individuals who engage in homosexual conduct and military members who object to this behavior. To illustrate the dual nature of the threat to good order and discipline, it may be helpful to examine the case of *Ethredge v. Hail*. The disruption caused by homosexual conduct is a product of two groups—those members who engage in homosexual conduct and those members who object to such conduct.

If the military is no longer taking any independent position on homosexual conduct and all other things being equal, then the military should be ambivalent as to whether homosexual conduct is prohibited or military members are no longer disrupted by the behavior. Of course, all other things may not be equal and one solution may be preferable to the other. It may be easy to identify the members who engage in homosexual conduct but extremely difficult to modify the attitudes, behaviors, or tolerance levels of other military members who object to the conduct.

Even if it were possible to modify the attitudes, behaviors, or tolerance levels, it may require a great expenditure of scarce time and resources to implement a program aimed at making these military members more

tolerant of homosexual conduct. Even if a toleration program were implemented, it may be impossible or extremely difficult to make the program succeed (Lever & Kanouse, 1994). On the other hand, courts and policymakers may be especially sensitive to the issues surrounding homosexual behavior because of the constitutional protections that are typically implicated.

There also may be a benefit to a toleration program on the military's efforts at combating other forms of intolerance and discrimination. In this regard, a more tolerant force might be preferable to a less tolerant force. Perhaps most importantly, efforts to minimize the reactions of military members to homosexual conduct might provide the military a weapon to combat political assaults on the policy within political arenas, including Congress. The military could respond to the demands of advocacy groups by showing a good faith effort to minimize the reaction of heterosexual members to homosexual conduct.

These efforts may not ultimately achieve the level of toleration necessary to change the current policy or represent the most aggressive effort possible. It may provide, however, at least some evidence of the military's attempt to resolve the threat to good order and discipline as well as the difficulty of changing the opinions and reactions of heterosexual members. The question that remains, therefore, is what type of program could be aimed at alleviating the members' reaction to homosexual conduct (MacCoun, 1996).

It is possible, however, that an antidiscrimination program could supplement existing programs without offending the observations of these combat

officers. Quite simply, an antidiscrimination program could merely advocate the toleration of individuals who engage in homosexual conduct. Such a program would not seek to convince heterosexual members to accept homosexual orientation or conduct, nor would it seek to change the way members think or feel about homosexual behavior.

Instead, it would merely advise members that regardless of their personal feelings on the matter, members should not discriminate against or allow the presence of homosexuals to impact their work performance. So fashioned, an antidiscrimination program could be added to the current programs which prohibit discrimination based upon race, color, religion, sex, or national origin. These programs, administered primarily by Military Equal Opportunity, do not require that members accept a certain religion, believe in gender equality, or actively support race initiatives.

Instead, the guidelines prohibit members from discriminating against other members based upon these factors, characteristics, or attributes. What a member accepts thinks, or feels is left to his or her judgment (McFeeley, 2000). Given the recent Executive Order that added sexual orientation to the list of categories that may not form the basis of discrimination by the Federal Government, it seems appropriate for military personnel who supervise or interact with civilian employees to receive instructions on this issue.

It would also appear that instructions would be appropriate for personnel who interact with other groups of individuals that may include homosexuals, such as dependents or the even the general public. If instructions are given that discrimination or intolerance of these groups is to be discouraged then

the question may become why personnel shouldn't be instructed that discrimination against other military members who may be suspected of being homosexual is also to be discouraged. It may be that a toleration program could not be initiated so long as the current policy is in place.

Moreover, it is uncertain whether supplementing the current program would ultimately succeed in alleviating some or much of the intolerance displayed toward homosexual conduct and homosexuals. The more important issue, perhaps, is whether it should at least be tried (Davis, 1991). Conclusion The issue of homosexual conduct in the armed forces continues to spark a good deal of debate and controversy, both within the military community and the public at large. The military regulates homosexual conduct through the application of two distinct but related provisions.

The first set of prohibitions is contained in the criminal provisions of the UCMJ that are facially neutral with regard to homosexual and heterosexual conduct. The second set of prohibitions is contained in the current administrative discharge policy, codified at 10 U. S. C §654. Premised upon the need to remove members who engage in or have a propensity to engage in homosexual conduct in order to preserve unit cohesion and good order and discipline, the discharge policy has been subjected to numerous constitutional challenges in the federal courts.

The Second Circuit entertained the latest challenge in *Able v. United States*, and ultimately upheld both the act prohibition and the statement presumption of the policy against Equal Protection and First Amendment challenges. Similar to when it takes personnel actions against civilian

government employees, the military is permitted to discharge service members who pose potential disruptions to good order and discipline. The relevant inquiry is whether homosexual conduct is detrimental to the accomplishment of the military mission, and not whether it should provoke such a reaction within the units.

Although advocates may present evidence to refute the necessity for the discharge policy, the courts typically grant the military substantial deference in the exercise of its professional judgment. Consequently, the military can discharge a member if he or she engages in or has a propensity to engage in homosexual conduct so long as the potential disruption to military readiness is present. The more controversial issue is whether the military should continue to discharge members who engage in homosexual conduct.

Undoubtedly, the military should and must take whatever corrective action necessary to preserve unit cohesion, good order and discipline, and the readiness of the armed forces. Since the policy is based upon the reaction of other military members, the disruption can be alleviated by the removal of the homosexual members. It could also be alleviated if the remainder of the force displayed an apathetic, if not tolerant, demeanor towards homosexual members in the unit.

Including sexual orientation in the current antidiscrimination and tolerance program may accomplish this goal. Given the recent Executive Order, a program would appear to be necessary for those members who supervise or interact with civilian employees. It may also display a good faith effort on the part of the military to dispel the disruption through alternative means. While

supplementing the current toleration efforts may never be successful, perhaps it should at least be tried.