

1. SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY:
POLICY OPTIONS AND ASSESSMENT

STUDY OVERVIEW

INTRODUCTION

On January 29, 1993, President Clinton signed a Memorandum directing the Secretary of Defense to "submit . . . prior to July 15, 1993, a draft of an Executive Order ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces." The Presidential Memorandum also directed that the recommendation by the Secretary be one that could be "carried out in a manner that is practical and realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain."¹ In issuing his directive, the President was acting on a campaign pledge to end the prohibition on homosexuals serving in the United States military. Changing policy to permit homosexuals to serve is controversial, and the change is opposed by many in the public and in Congress. The Chairman of the Joint Chiefs of Staff and other senior military leaders have indicated that they believe permitting known homosexuals to serve in the military would undermine unit cohesion and performance.

A series of Congressional hearings, held during the spring of 1993, revealed a broad range of opinion on the subject. Many senior military officials, such as retired Army General Norman Schwarzkopf, stated that they believed current policy banning homosexuals should remain unchanged. Other current and former members of the military supported permitting homosexuals to serve. Expert witnesses and social scientists voiced divided opinions on the issue.

The absence of a political consensus, in Congress or in the country as a whole, combined with divided expert opinion and conflicting views among military personnel, makes the search for an acceptable solution difficult. The Secretary of Defense subsequently asked RAND to provide

¹Memorandum for the Secretary of Defense, Ending Discrimination on the Basis of Sexual Orientation in the Armed Forces, January 29, 1993.

information and analysis that would be useful in helping formulate the required draft Executive Order.

Study Approach

RAND's National Defense Research Institute initiated this effort on April 1, 1993. An interdisciplinary team of researchers considered a wide range of topics potentially relevant to the issue of acknowledged homosexuals serving in the military. Staff members visited military organizations in seven foreign countries and police and fire departments in six American cities, seeking insights and lessons from analogous experiences of other organizations and institutions. The team considered the historical record, focusing on the integration of African-Americans and on the development of the current policy that prohibits homosexuals from serving in the military. It reviewed public opinion data and the data concerning the views of current active-duty military personnel. It also reviewed the scientific literature on group cohesion, sexuality, and related health issues. It examined a number of legal and enforcement issues, as well as the literature that deals with implementing change in large organizations. This chapter brings together the results of the team's research, which is reported more fully in subsequent chapters of the report.

The "Not Germane"/Conduct-Based Policy

In light of this research, the team examined a range of potential policy options. Most of the options were judged to be inconsistent with the President's memorandum, internally contradictory, or both. Only one policy option was judged consistent with the findings of this research and the criteria of the Presidential memorandum, and to be logically and internally consistent. That policy would consider sexual orientation, by itself, as not germane to determining who may serve in the military. The policy would establish clear standards of conduct for all military personnel, to be equally and strictly enforced, in order to maintain the military discipline necessary for effective operations. The option requires no major changes in other military personnel policies and no change in current law. The "not germane" option could be implemented without any changes to the administrative guidelines for prosecutions

under the Uniform Code of Military Justice (UCMJ). However, several considerations lead us to conclude that the policy would be more legally defensible and less costly and cumbersome to implement if the guidelines were revised to exclude private sexual behavior between consenting adults. This policy option is described in greater detail later in this overview.

Introducing a change of this type in the military requires careful attention to implementation issues. The prevailing attitudes of both the leadership and many military personnel are hostile to any change. Based on the historical experiences of adaptation to change in the military and the research literature on change in large organizations, several key elements of an implementation strategy are identified and discussed.

This overview synthesizes the results of the RAND research and functions as a "road map" to the chapters and appendixes that follow. It begins with a review of the history of U.S. military policy toward homosexuals and of the applicable provisions in DoD regulations and military law that have restricted homosexuals from serving.

U.S. MILITARY POLICY ON HOMOSEXUALITY AND SODOMY

Since World War I, homosexuals have been restricted from serving in the Armed Forces of the United States through either personnel regulations or the application of the sodomy provisions of military law. Sodomy was defined as anal or oral sex between men or between a man and a woman. At the end of World War II, the legal definition was changed to include sexual relations between women as well.

Homosexuality and the Military, 1916 to 1940

Early attempts to regulate homosexual behaviors within the Armed Forces were sporadic and inchoate. The Articles of War of 1916 went into effect on 1 March 1917. As the first complete revision of military law in over 100 years, this new codification was the first legal document to address the incidence of sodomy within the military population. The first mention of sodomy in military law was in Article

93, which prohibited assault with the intent to commit sodomy.² In their 1920 revision, the Articles of War included sodomy as a separate offense.³ This statute did not change until 1951.

Between the two World Wars, the military attempted to screen and exclude homosexuals from service by utilizing contemporary biological theories about the causes and manifestations of homosexuality. In 1921, for example, the Army's "stigmata of degeneration" included men who appeared overly feminine, with sloping shoulders, broad hips, and an absence of secondary sex characteristics, including facial and body hair. Also among the exclusion criteria was the degenerative characteristic of "sexual psychopathy," which included sexual relations between men.⁴

During the interwar period the military discharged homosexuals administratively more frequently than they formally court-martialed them, despite the official stance that sodomists had to be court-martialed under the Articles of War. Individuals suspected of homosexual acts were released under a "Section VIII" discharge for unsuitability. While in theory these could be honorable discharges, in cases of psychopathic behavior, the discharge was normally less-than-honorable, or "blue."

World War II: 1941 to 1946

In an attempt to rationalize policy concerning homosexuals in the months preceding America's entry into World War II, the Army Judge Advocate General tried to assess how existing policy was being applied in the field. In the absence of aggravating factors, the Army removed

²The Manuals for Court-Martial, 1917, defined sodomy as anal penetration of a man or woman by a man; both parties involved were equally guilty of the offense. In these regulations, penetration of the mouth did not constitute sodomy. In the regulations that accompanied the revision of the Articles of War in 1920, however, The Manuals for Courts-Martial redefined sodomy as anal or oral copulation between men or between a man and a woman (Jeffrey S. Davis, "Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives." *Military Law Review* 131, 1991, p. 73).

³Ibid. and Manual for Courts-Martial, United States, 1921, para. 443.

⁴Army Regulation 40-105, 1921.

most sodomists from service through administrative proceedings. Court-martial was indicated, however, in those cases where force was employed, when minors were involved, or when the sexual partner was incapable of consent due to intoxication or other impairing condition.

During World War II, a lively debate took place among military authorities concerning the policies and practices regulating homosexual activity and the exclusion of homosexuals in the Armed Forces. Within the Army alone, for example, there were twenty-four separate revisions of regulations concerning homosexuality between 1941 and 1945, compared with eleven revisions before the war and seventeen between the end of the war and the passage of the Uniform Code of Military Justice in 1950. This debate had several causes. First, there was widespread variance in the treatment of individual cases within the military. Second, military authorities seemed increasingly willing to consult with and accept the recommendations of medical and psychiatric personnel with regard to homosexuals. The American Psychiatric Association's Military Mobilization Committee helped develop the procedures that would be used to evaluate the more than 18 million men who would be examined for induction during the course of the war. By the beginning of the war, Army and Navy Departments, along with Selective Service, had determined that overt homosexual behavior could be used to deny entry into the military.⁵

During World War II, the prewar practice of separating homosexuals from service through the use of the administrative discharge was continued and articulated as part of Army regulations. By the end of the war, military policy concerning homosexuality had undergone several important changes. First and most important, the "homosexual" had replaced the "sodomist" as the focal point of legal concern, although the criminal aspects of same-sex behaviors had been neither eliminated nor elucidated in any clear manner. People who engaged in same-sex behaviors could be separated from the service through their resignation or by administrative discharge. Even if no sexual activity had occurred, a growing body of policy supported the view that a homosexual

⁵Alan Bérubé, *Coming Out Under Fire: The History of Gay Men and Women in World War Two*, New York: The Free Press, 1990, pp. 10-18.

personality could readily be identified, and that such persons were to be barred from military service at induction or separated from the service upon discovery.

The Cold War Era: 1946 to 1956

Immediately after the war, in 1946, the Army liberalized policies toward homosexual personnel by increasing the likelihood of their receiving an honorable discharge (AR 615-360). Attitudes shifted soon afterward, however, and, in 1948, the provision for honorable discharge was deleted.⁶ On 11 October 1949, the Department of Defense issued a memorandum that unified military policy toward homosexual behavior:

Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Services in any capacity, and prompt separation of known homosexuals from the Armed Forces be made mandatory.

The Eisenhower Administration, with the signing of Executive Order 10450 in 1953, codified "sexual perversion" as grounds for dismissal from federal jobs. By some estimates, dismissals from federal employment increased tenfold. In the military, the number of discharges for homosexuality remained about the same as it had been during World War II--roughly 2000 per year--but from the much smaller post-war force of 1.4 million. The rate of discharge in the military, therefore, was also approximately ten times greater than it had been during the war.⁷

The Military and Homosexuality in the 1960s and 1970s

Within the military, the separation of homosexuals proceeded unchallenged throughout the late 1950s and early 1960s. DoD policy was

⁶However, those men and women with good service records were to be separated from the service with a general, rather than a dishonorable, discharge.

⁷Unfortunately, there are no consistently reliable statistics of separations for homosexual behavior across the different branches of the Armed Services, nor are there any internally consistent statistics for any one service over the entire postwar time period. While many analysts make the logical assumption that most separations for moral charges were indeed for homosexual behavior, unfortunately, medical, legal, and administrative statistics within the armed forces were not tabulated carefully enough to be certain.

revised in 1959, with the issuance of the first version of DoD Directive 1332.14 on the subject of Administrative Discharges. Section VII.I of that directive indicated that among the reasons for discharge for "unfitness" was "sexual perversion," including homosexual acts and sodomy. This remained the policy of the Department throughout the 1960s. (When Directive 1332.14 was revised in 1975, the language was slightly altered to describe "homosexual acts or other aberrant sexual tendencies" as the grounds for determining unsuitability for military service--section G.3).

The 1965 DoD directive revised the regulations surrounding the separation of homosexual personnel. Members facing a less-than-honorable discharge were allowed the chance to present their cases before administrative discharge boards and to be represented by counsel. By liberalizing the rights of service members, the 1965 separation directives marked a turning point in the legal history of homosexuals in the services. Before the 1965 directive, most service members accused of homosexuality cooperated without protest in order to protect others or to avoid more severe punishment.⁸ Inconsistency in the standards, in the documentation required, and in administrative procedures, however, led to a review during the Carter Administration of the policy and procedures for discharge.⁹

The results of the review were reflected in the new edition of DoD Directive 1332.14, issued on January 16, 1981. In a memorandum accompanying the new directive, outgoing Deputy Secretary of Defense Graham Claytor, noting that his revision "contains no change in policy," explained that the enclosure on homosexuality (a new Enclosure 8 to the 1976 version of Directive 1332.14) had been completely revised. The

⁸Colin J. Williams and Martin S. Weinberg, *Homosexuals in the Military: A Study of Less Than Honorable Discharge*, New York: Harper and Row, 1971, p. 102. The procedures of interrogation are outlined on pp. 100-114.

⁹The directive was issued in response to numerous court challenges, such as *Matlovich v. Secretary of the Air Force*, 591 F.2d 852, D.C. Cir. 1978, questioning why some open homosexuals were discharged while others were retained. The 1981 directive removed the military's discretion in deciding whether to retain an open homosexual, making such discharge mandatory.

purpose of the new enclosure was to make it clear that, based on an investigative finding that a person "engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act," discharge was mandatory.

The revised enclosure in 1981 also for the first time stated that "Homosexuality is incompatible with military service" and provided the following explanation for the exclusion of homosexuals:

The presence of such members [homosexuals] adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to insure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security.

The revision also affected policy on discharges by making it clear that homosexuality alone did not require a *misconduct* discharge. In the absence of other actions (such as violence), the discharge could be under honorable conditions. As promulgated by Deputy Secretary Claytor, DoD Directive 1332.14 and its provisions concerning homosexuality remain the policy governing enlisted separations today. (Directive 1332.14 was reissued in 1982 and the enclosure regulating homosexuality is now numbered 3H, but the language remained unchanged. Identical language in a separate directive governs officer personnel.)

The Recent Past: 1981 to 1991

The armed services' policies concerning the exclusion and separation of homosexual personnel came under increasing legal challenges after the new DoD policies went into effect in 1981: among the most publicized were *Secora v. Fox*, *Pruitt v. Cheney*, *Steffan v. Cheney* and *Watkins v. United States Army*. In each case, different aspects of the new regulations were contested in federal court.

Between 1980 and 1991, according to a report compiled by the General Accounting Office, there were 16,919 discharges for homosexuality within the Armed Services. These discharges comprised 1.7

percent of all involuntary discharges in the Department of Defense for this period.¹⁰ Like all involuntary separations during these years, the numbers of homosexual-related discharges peaked in 1982 and declined for the remainder of the decade. On average, however, over 1,400 service personnel were separated per year.

During the early 1990s, homosexuality in the military entered into the mainstream of American political debate. In 1992, Governor Bill Clinton became the first presidential candidate to pledge to end discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces of the United States.

Military Law: Homosexuality and Sodomy

The sodomy provisions of the Uniform Code of Military Justice (UCMJ, Article 125) have also been used as the basis for removing homosexuals from the service. Some have argued that a policy allowing homosexuals to serve would be inconsistent with this provision of military law.¹¹ In fact, DoD Directive 1332.14 and Article 125 of the UCMJ do not use the same definition or standard, nor do they attempt to regulate precisely the same behaviors. Directive 1332.14 defines a homosexual as one who engages in or desires to or intends to engage in homosexual acts. These acts, in turn, are described as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

A review of the research on sexual behavior suggests that there are many people who call themselves heterosexual, and who are predominantly heterosexual in behavior, who also engage in homosexual acts.¹² Some may experiment with homosexual behavior once or twice. Others may occasionally act on their attraction to people of the same sex, even if

¹⁰United States General Accounting Office, *Defense Force Management: DoD's Policy on Homosexuality*, Washington, D.C.: U.S. Government Printing Office, 1992. These figures are calculated from statistics in a supplement to the report, *Statistics Related to DoD's Policy on Homosexuality*, pp. 22-30.

¹¹In the *Ben-Shalom* case the court moved toward equating status as a homosexual with conduct proscribed under Article 125.

¹²For a more complete discussion, see Chapter 2 on sexuality, as it pertains to the DoD directive and the UCMJ.

they call themselves heterosexual. Still others may recognize their attraction to others of the same gender, but they establish a heterosexual public persona and refrain from acting on these attractions or revealing their orientation to others. Finally, there are people who consider themselves to be "homosexual" or "bisexual" who, for whatever reasons (e.g., health concerns, religious convictions, or simply lack of opportunity), refrain from homosexual activities.

Article 125 of the Uniform Code of Military Justice states that a person engaging in "unnatural carnal copulation" with members of the same or opposite sex is guilty of sodomy. The UCMJ does not define what is meant by "unnatural" carnal copulation in statutory language. This definition is left to the explanation provided in the Manual for Courts Martial (MCM), where the proscribed behavior is defined as oral or anal sex (or sex with an animal). The distinctions between the two regulations governing the sexual behavior of military personnel can be summarized as follows: the DoD directive forbids virtually any type of homosexual conduct; the UCMJ forbids a narrower set of behaviors, regardless of whether they are performed by homosexuals or heterosexuals.

Under military law, the act itself is forbidden under all circumstances, regardless of the nature of the partners to the act. Consequently, heterosexual sodomy is proscribed as well as homosexual sodomy. Contemporary surveys indicate that oral sex, as defined and prohibited by the UCMJ/MCM, is widely practiced by both homosexuals and heterosexuals.¹³

REVIEW OF ANALOGOUS INSTITUTIONS AND EXPERIENCES

To understand the possible effect of changing policy to permit homosexuals to serve and to examine how other institutions have instituted similar changes, members of the RAND team visited a number of

¹³For example, the 1991 National Survey of Men, a nationally representative study of 3,321 males age 20 through 39 years of age (Billy et al., 1993) reports that 75 percent have performed and 79 percent have received oral sex. Among those currently married, the numbers were slightly higher. Similar results are reported for homosexual males, e.g., the Pittsburgh Men's Study (Silvestre et al., 1993; see bibliography for Chapter 2).

foreign militaries and domestic police and fire departments. None of these organizations is an exact model for the U.S. military, of course, but the comparisons can be instructive for assessing proposed changes in U.S. military personnel policy. Besides these analogous institutions, analogous situations such as the experience of racial integration of the American military were also studied for potentially instructive insights.

The Experience of Foreign Militaries¹⁴

Policy toward homosexuals serving in the military varies widely among countries. A number of countries were selected, representing the range of policies toward homosexuals from affirmative advocacy of homosexual rights (the Netherlands) to a ban on service similar to the current U.S. policy (United Kingdom). In addition, researchers visited Canada, France, Germany, Israel, and Norway. In each country researchers interviewed key government officials and, where possible, held discussions with other experts and observers. In some instances, the findings and conclusions reported here (and by the General Accounting Office in its June 1993 report) appear to be at variance with testimony before the Senate Armed Services Committee and with often-recited, commonly held opinion about foreign practices.¹⁵ Every effort was made to elicit from the foreign governmental officials their explanation for these discrepancies.

Each of the militaries visited exists within and reflects its own society and culture, and policies vary accordingly. France, Germany, Israel, the Netherlands, and Norway have conscript forces. Norway essentially trains recruits to serve as a militia that can be mobilized for territorial defense should future situations require it. Norway also contributes forces to international peacekeeping missions. The Netherlands is changing policy to end conscription and will rely on a

¹⁴See Chapter 3 for a more comprehensive treatment of foreign militaries.

¹⁵Concurrent with this inquiry, the General Accounting Office also sent teams to Canada, Israel, and Germany. Their findings are reported in *Homosexuals in the Military: Policies and Practices of Foreign Countries*, GAO/NSIAD-93-215, June 1993.

volunteer force in the future. Both Norway and the Netherlands follow a nondiscrimination policy with respect to homosexuals serving.

The French policy on homosexuals is not to have an official policy. Unofficially, the issue of homosexuality is dealt with in the general category of medical/psychological issues. Homosexual status is not automatically disqualifying for conscription, but in practice homosexuals are excused from service if they so desire. Among the career force, flagrant homosexual conduct can be the proximate but unofficial cause for separation. In general, the French approach is that private sexual conduct is not relevant to performance of military duties.

Israel, like these European countries, relies on conscription, although in Israel's case the term of service is longer (36 months vs. an average of 10 months in Europe). Like Norway, the ethic in Israel is that all should serve and everyone should remain available for mobilization to defend the country, but Israel goes beyond that purely military notion to include the use of military service as an instrument of national socialization. It is an obligation and a duty to serve in the Israeli military, and the ethic is thus one of inclusion rather than exclusion--the Israeli military will make every effort to permit recruits to serve, accepting some who might otherwise be disqualified on purely military grounds.

Israel has recently (June 11, 1993) reaffirmed its policy of nondiscrimination, removed the requirement that homosexuals undergo a mental examination, and no longer automatically prohibits them from holding top-level security clearances. Israeli officials directly refuted the commonly made assertion that homosexual men are not permitted to serve in combat units, or are treated like women and given clerical jobs and allowed to live at home, stating that all such decisions are made on a case-by-case basis. The recently issued standing order makes it clear that no automatic restrictions will apply to homosexuals and that all members of the force will be judged by the same criteria. Because of the ethic of inclusion in the Israeli military and the concept of citizen-soldier that guides Israeli service, there is a well-developed system of support from counselors,

psychologists, and social workers to assist military leaders in dealing with service members' problems of adjustment to military service.

Like the United States, Canada and the United Kingdom do not rely on conscription. Canada maintains a relatively small military that, in addition to its NATO responsibilities, is oriented primarily toward the role of international peacekeeper. In late 1992, Canada's policy was changed to eliminate the ban on homosexuals serving in its military, following court rulings that prohibited discrimination on the basis of sexual orientation in all areas of federal jurisdiction. The Canadian Forces then implemented a new policy that permitted acknowledged homosexuals to serve while prohibiting inappropriate sexual misconduct and personal harassment by all service members.¹⁶ This new policy received strong endorsement and support from the leadership of the Canadian Forces. Thus far, the Canadian Forces report no detrimental effects resulting from the policy change.

The United Kingdom remains the only country of those visited to retain an absolute ban on homosexuals serving. It is the only country visited that will conduct investigations of alleged homosexuality and will expel known homosexuals from the service.

In all of the countries visited, sodomy has been decriminalized in the civil law. The military law then followed suit in all countries other than Britain, where the Queen's Regulations still forbid homosexual acts. Even in Britain, however, the policy in practice is to expel homosexuals under provisions of a general administrative discharge, not to charge them with a violation of military law.

Like Britain, Germany will exclude known homosexuals from service. For homosexuals already in the military, German policy tends to be more variable. Conscripts are likely to be expelled if discovered to be homosexual. (Since Germany does not actively investigate these matters, discovery would almost always be associated with an actual incident of conduct, an adjustment problem, or a self-declaration.) In the professional force, an individual who has served less than four years may be expelled, depending on other factors. Individuals would not

¹⁶The Canadian regulations on personal harassment, sexual misconduct, and sexual harassment are contained in Appendix E.

automatically be expelled if other factors indicated satisfactory performance on the job. After four years of service, the individual almost certainly would *not* be separated, although it is very possible he would be transferred to a job that is not in a "leadership" position. In Germany these decisions, which are infrequent, are made on an individual basis, and the outcome depends on a variety of factors. Indeed, the best summary characterization of German policy in this regard is the frequently heard explanation "it depends."

While it is generally accepted that homosexuals serve in all of the militaries examined for this study, few serve openly (and none, of course, can be open in the United Kingdom). RAND researchers were frequently told that if a meeting on this subject had not been requested by the visiting Americans, there would be no occasion to have a meeting to discuss the issue. Despite tolerance for homosexuality in the society and the decriminalization of homosexual acts, in none of these societies is homosexuality widely accepted by a majority of the population.¹⁷ (The trend in society at large, however, is toward the expansion of legal rights of homosexuals.) In the Netherlands, easily the most tolerant and encouraging environment for homosexuals to serve, fewer than 1 percent of the men in the Dutch military identified themselves as "predominantly homosexual" on a questionnaire; 3.5 percent of women indicated that they were homosexual; and 4.8 percent of the men stated that they had had homosexual experiences at some time in their lives.

In four of the countries that have policies of complete nondiscrimination (Canada, Israel, the Netherlands, and Norway), no serious problems were reported concerning the presence of homosexuals in the force. While an occasional episode of ridicule or violence has occurred (reported mainly in Norway), these incidents have been sufficiently infrequent that no special measures were taken to prevent future incidents. In Canada, since the ban was lifted in 1992, no member of the Canadian Forces has declared himself or herself to be homosexual, and no incidents of violence against homosexuals or

¹⁷See Appendix D for survey results concerning attitudes toward homosexuality in Canada, the United States, and the United Kingdom.

disruption in units have been reported. In the Netherlands, no serious problems have been reported. No effects on recruitment or retention were identified in these militaries.

Generally, the pattern in each of these organizations is to deal with homosexuals as individuals, treating any issues or difficulties that arise on a case-by-case basis. The Netherlands departs from this standard in providing sensitivity training for troops and making active efforts to ensure that homosexuals are integrated into the force. The affirmative action policies and the special status thus accorded to homosexuals as a category distinguish policy in the Netherlands from that in the other countries examined.

None of the militaries studied for this report believe their effectiveness as an organization has been impaired or reduced as a result of the inclusion of homosexuals. With the exception of the Netherlands, no special resources have been expended or programs created to deal with the presence of homosexuals. The Dutch assessment of their own policy has led to the conclusion that the program of promoting open acceptance has not been as successful as they desired. While each of these militaries has a different role to play in its social context, the key finding is that, in all cases where a decision has been made to include homosexuals in the force, the organization's leaders believe that the force's organizational performance is unaffected by that presence.

The Experience of Domestic Fire and Police Departments¹⁸

Unlike the foreign militaries, domestic police and fire departments function in the *American* cultural and societal context. Police and fire departments share a number of characteristics with the U.S. military that make them the closest domestic analog. They are hierarchically organized, with a well-defined chain of command. Members work together as teams. A substantial proportion of job time is spent training for short, intense periods of hazardous activity. An inherent feature of the job is putting one's life at risk. They are markedly different,

¹⁸See Chapter 4 for a more comprehensive treatment of selected domestic police and fire departments.

however, in that only the military deploys its members on ships, or routinely engages in field exercises of extended length. Police officers and firefighters return to their homes after periods on duty; they often train and work in smaller units than the military; and they interact with the community at large to a much greater degree--indeed, as a central aspect of the job.

RAND researchers visited six U.S. cities that have policies of nondiscrimination in place: Chicago, Houston, Los Angeles, New York, San Diego, and Seattle. They focused on two main issues: (1) What were the behavioral responses at the individual level of both homosexuals and heterosexuals to the presence on the force of homosexuals? (2) What were the organizational strategies and policies put into place to implement the nondiscrimination policies? Geographic distribution was sought, and cities with atypical cultural climates with respect to homosexuals (e.g., San Francisco) were excluded. Cooperation from the local departments was generally good, although in Houston the police department and in Los Angeles the fire department declined to participate in the research effort. In addition to review of relevant documents and newspaper articles, RAND researchers also interviewed high-ranking leaders, personnel and equal opportunity officers, trainers, unit commanders, recruiters, and counselors. They also interviewed heterosexual rank-and-file members of the force and homosexual members, both alone and in groups ranging in size from three to twenty.

Based on the assessments of the experience in these six cities, it is possible to make some generalizations about the likely behaviors of homosexual members of the force. Virtually all homosexuals who join police and fire departments conform to the norms and customs of the organization they are joining. These individuals do not fit stereotypes that are inconsistent with the organization--those who join police departments, for example, wish to be "cops," not "homosexual cops." Homosexuals (male and female) declare their homosexuality gradually, and the numbers remain small (see Table 1-1), despite the existence of policies that codify their right to serve.

Table 1-1
Numbers and Percentages of Open Homosexuals in Selected Police and Fire Departments

Institution	City	Total Force Size	Number of Open Known Homosexuals	Estimated Prevalence
Police	Chicago	12,209	7	0.06%
	Houston	4,100	0	0.00%
	Los Angeles	7,700	7	0.09%
	New York	28,000	~100	0.36%
	San Diego	1,300	4-5	0.25%
	Seattle	1,300	2	0.15%
Fire	Chicago	4,700	0	0.00%
	Houston	2,900	0	0.00%
	Los Angeles	3,200	0	0.00%
	New York	11,300	0	0.00%
	San Diego ^a	845	1	0.12%
	Seattle ^a	975	5	0.51%

^aAll openly homosexual firefighters in these cities were women.

Many more homosexuals were known to each other and to their colleagues than were known to their departments. Some of these individuals were members of confidential homosexual fraternal organizations. In one department, for instance, only seven individuals were known to the department, but more than forty belonged to a homosexual fraternal organization of department members. Moreover, in every city, homosexual officers knew of other homosexual members of the force who had opted not to join such groups, either for fear of being identified as homosexual or for lack of interest.

The number who publicly acknowledge their homosexuality and the pace at which they do it are strongly influenced by the perceived tolerance or hostility of the organizational environment, both in terms of leadership policies and attitudes and in terms of the attitudes and behaviors of fellow members of the force. Anti-homosexual attitudes are widespread within these organizations, and the process of making one's sexual orientation known is thus self-regulating to a large extent. Even in New York City, where the number of homosexuals on the force is highest and where the climate is generally more tolerant than in the other cities visited, fewer than half of the homosexuals belonging to

the Gay Officers Action League are known to be homosexual by their supervisors or by the department.

Because of the general desire to conform to the norms of the organization and to "prove one's worth" as a member of the organization, homosexuals seldom engage in behaviors that challenge those norms or that are designed to shock or offend fellow members of the organization. Just as the process of making one's sexual orientation known is self-regulating, most other behaviors also conform to general expectations. Not a single case of an acknowledged homosexual male sexually harassing a heterosexual male was reported. Occasional hearsay reports, usually by commanding officers, were offered of homosexual women harassing heterosexual women, but these, too, were recognized as being rare, far less frequent than incidents of heterosexual men harassing women.

Heterosexual members of these departments often voice sentiments hostile to homosexuals. These opinions did not necessarily result in overtly hostile behavior. Some people reported that their opinion of homosexuals shifted after having served with them: Usually the homosexual officer had been known first in the role of policeman or policewoman, and only later as homosexual. Some instances of homosexual officers facing ostracism or being "framed" by fellow officers (e.g., planting false, incriminating evidence) were reported. While this was not a universal experience, it is not unheard of and concerns the leadership of the departments. Acknowledged homosexual members of the departments felt that they had generally been able to manage the hostility, especially if the decision to be open about their sexual orientation was their own. Those who had been exposed as homosexuals by others often experienced more difficulty.

Heterosexuals often voice a fear of AIDS, and the fear is often based on views that would not be supported by scientific data on the nature of the disease and the mechanisms for its transmission. Such attitudes have not been eliminated despite educational efforts regarding the disease. Notwithstanding the presence of concerns or fears over AIDS, no actual incidents where officers refused to work with or come to the aid of a homosexual colleague were reported to the research team.

Among heterosexuals there is widespread fear that homosexuals will be given special treatment or that efforts will be made to "educate" heterosexuals and change their attitudes toward homosexuals. Sensitivity training, special programs for homosexuals, or elements of affirmative action aimed at homosexuals foster deep resentments among the heterosexual members of these departments. Leaders emphasized the importance of controlling behaviors, not attitudes. It is possible for heterosexuals to work with a homosexual, but to ask them to alter fundamental moral or religious beliefs about homosexuality is to ask too much.

The departments visited report that, overall, the effectiveness of the organization has not been diminished by the presence of homosexuals on the force. Morale and discipline have been maintained, and recruitment and retention rates appear to be unaffected by the presence of known homosexuals in the department. Very few formal complaints of harassment are lodged, due in part to the relative rarity of such events but due also to the strong norms in these organizations to work out problems at the unit level--good cops do not "rat" on their fellows, and good units do not expose their problems to outsiders.

In order for a nondiscrimination policy to be implemented effectively, leaders in these departments suggested that the message that a new policy was in place needed to be clear and simple, and it needed to be communicated and enforced consistently. Since anti-homosexual attitudes are present among the rank and file and since sensitivity training and similar programs usually provoke resentment rather than tolerance, the emphasis on training is more successfully focused on leaders. Strict standards of professional conduct and behavior are important. Likewise, it was felt that education on the issues related to AIDS could be effective in helping to overcome some of the fears expressed by heterosexuals.

A final observation on implementation that applied to all departments studied is that the process of implementation unfolds gradually. Homosexuals reveal their sexual orientation over time, in a process calibrated in part to the perceived readiness of the

organization to tolerate open acknowledgment. The organizational tolerance, in turn, evolves over time partially in response to the behavior of the members. Because the number of open homosexuals remains small, both as a percentage of the total force and as a percentage of the total number of homosexuals on the force, there is little need for policies "regulating" the behavior of acknowledged homosexuals on the force--the behaviors are self-regulating. The self-regulating and evolutionary nature of the process provides time for organizations to adapt to members as well as for members to expand, in a gradual fashion, the boundaries of the organization's tolerance.

The History of Racial Integration in the United States Military¹⁹

Our review of the military's experience with integrating blacks and women shows that racial integration is the more applicable analogy: women are still largely excluded from combat and, therefore, in a very fundamental way, are treated as a special class. The process of racial integration, begun in the late 1940s, required many years of effort in order to achieve the relatively successfully integrated fighting force of today. While a decision to permit homosexuals to serve is not directly comparable to this historical example, racial integration can serve as a source of potential insights into how the military as an organization has adapted to changing policies on a controversial social issue. The lessons of this experience may prove valuable in devising a practical and realistic implementation plan for changes in the future.

The main theme of those opposed to racial integration in the post-war period centered on the fact that whites were hostile toward serving with blacks. This argument was often accompanied by rhetoric similar to that surrounding the issue of homosexuals serving today. Integration was said to be inconsistent with prevailing societal norms and likely to create tensions and disruptions in military units and to impair combat effectiveness. The effect on combat effectiveness was put to an early test during the Korean War. Spurred in part by critical manpower needs and in part by a concern that the all-black units were not as combat-capable as required in the theater, the Army fielded integrated units

¹⁹See Chapter 5 for a more detailed discussion.

for the fighting. The actual experience of these units indicated that the integrated units performed at a standard equal to the all-white units (and much better than the all-black units).

The initial positive experiences in the wartime environment of Korea were followed by further rapid and complete integration of the Armed Forces by the mid-1950s. Until the early 1960s, the military seemed to be moving ahead of civilian society in progress toward integration. Black reenlistment rates were high, and many blacks perceived the military as providing opportunities in some ways more attractive than those provided by civilian society.

This veneer of racial harmony was shattered in the late 1960s. The civil rights movement and the rise in racial tensions throughout the country during the 1960s were reflected in the military. For example, difficulties experienced by black troops in finding off-base housing in certain areas of the country created a significant challenge for the Department of Defense. The Vietnam war added an additional layer of racial tension. Initially, blacks volunteered in disproportionately high rates for combat duty in Vietnam and performed effectively. But as many civil rights leaders began to be vocal in their opposition to the war, many also began to question whether the draft calls and the casualty rates were falling disproportionately on black Americans from the inner cities. Racial tensions and, ultimately, race riots broke out in all four services. The military was forced to recognize that much still remained to be done to achieve integration and that the level of racial tensions threatened to interfere with mission accomplishment.

By the end of the Vietnam war a vigorous effort to improve the racial situation in the military had been launched. Aggressive support for equal opportunity accompanied the post-Vietnam drawdown and the development of the all-volunteer force (AVF). Renewed attention from senior leaders and efforts to vigorously enforce policies forbidding discrimination resulted in the integrated, all-volunteer force of today.

While these historical examples can be instructive, they are not directly comparable to the issue of known homosexuals serving in the military. For example, in contrast to the issue of sexual orientation,

there were compelling operational reasons favoring integration of blacks into the military. During World War II, many military leaders had begun to recognize that operational effectiveness was impaired by continued segregation in the force. Thus, elements of the military itself began examining ways to utilize black troops more effectively. In contrast, the argument for permitting homosexuals to serve is based on ending discrimination, not on compelling operational advantages.

Although a majority of Americans did not favor racial integration of the military in the late 1940s, public opinion changed over time. The wartime experience and the growing civil rights movement increased the pressure on the military to change. This pressure was a constant and growing factor for change throughout the 1950s and 1960s. Today, public opinion is more favorable to allowing homosexuals to serve than was public opinion favorable to racial integration of the military in the late 1940s.²⁰

These distinctions must be kept in mind in evaluating the lessons suggested by the experience of racial integration of the military, but several points are nonetheless pertinent: The experience of integrating the races in the military suggests that civilian and military leadership can effectively overcome the initial resistance to change and can minimize the worst fears of opponents about the damaging effects on unit performance. Despite the presence of racial tensions, fighting performance did not suffer. The experience also suggests that military adaptation to social change does not occur overnight, and that constant monitoring and a clear commitment from top leadership over a substantial period of time will be required. The experience of racial integration also illustrates the length of time often required to put a change in policy into actual practice. Further, the integration of the workplace and the ability to accomplish the mission at hand does not automatically translate into social integration. Off-base and off-duty, blacks and whites customarily associate with members of their own race.

²⁰See Chapters 5 and 6 for more discussion of these public-opinion issues.

CURRENT AMERICAN ATTITUDES TOWARD HOMOSEXUALS SERVING

The historical lesson of racial integration clearly shows the importance of both general public opinion and the attitudes of service personnel toward homosexuality and toward homosexuals serving in the military.

Attitudes in the General Population²¹

Currently, the American public is divided on the question of whether homosexuality is acceptable as a "lifestyle," with a majority believing that it is not acceptable. Roughly 40 percent of Americans are willing to consider homosexuality as either not a moral issue or as an acceptable alternative lifestyle, a percentage that has remained relatively unchanged over the past decade. If a slightly different question is asked, such as whether homosexuality is "wrong," nearly three-quarters of the American public answer affirmatively. There is no trend toward greater acceptance of homosexuality discernible in these opinion data, either. For the past two decades, 70-75 percent of the public has responded that homosexuality is wrong.

While a majority of the public cannot be said to approve of homosexuality or a homosexual "lifestyle," opinion toward the civil rights of homosexuals is more favorable. Roughly 80 percent believe that homosexuals should not be discriminated against in the workplace (despite a personal preference of half the population not to have to work with a homosexual). On other issues of homosexual rights, such as homosexual marriage or child rearing rights, only about one-third of the American public supports extending such rights to homosexual couples.

On the question of service in the military, the American public is again divided. In a variety of polls, the percentage that favors lifting the ban on service varies from slightly more than 40 percent to slightly more than 50 percent. In the most recent poll, the *Wall Street Journal*/NBC News poll, published June 11, 1993, only 21 percent of registered voters opposed allowing homosexuals to serve under any circumstances. Thirty-eight percent favored service as long as sexual

²¹See Chapter 6 for a more detailed treatment of American public opinion. Survey results are presented in Appendix F.

orientation was kept private, and 40 percent were in favor of homosexuals serving openly (but following the same rules of conduct as all military personnel while on base). While the opinions on removing the restriction on homosexuals in the military more closely resemble opinions toward workplace and employment issues than opinions on "lifestyle" and morality, no strong consensus emerges from the data in favor of permitting homosexuals to serve. The American public remains divided on this issue.

Attitudes in the Military²²

The popular press and recent Congressional hearings have provided a window into the military perspective on ending discrimination on the basis of sexual orientation in the military. Whether in opinion surveys or in group discussions the military members who have chosen to speak out on this subject have been overwhelmingly opposed to removing the restriction. However, this opposition has not been universal. Some military members have advocated allowing homosexuals to serve and some have expressed willingness to go along with whatever is decided, while some are strongly opposed to making any changes at all. Some have predicted the demise of the military if the ban is lifted and others have expressed their belief that the military would adjust to this change, as it has adjusted to changes in the past.

Two sources of information on military opinion were consulted by the study team: surveys and focus group interviews. While neither source provides a statistically representative view, together, they provide a reasonably comprehensive picture of contemporary military opinion.

Surveys. The two surveys of military opinion on this topic are by the *Los Angeles Times*, a survey of 2,346 enlisted men and women (E-1 through E-9) during February 11-16, 1993, and by Charles Moskos and Laura Miller, sociologists from Northwestern University. While these surveys are limited in scope and use convenience sampling methods rather than probability sampling to select respondents, they provide a source of information about a diverse sampling of military members.

²²See Chapter 7 for a more detailed discussion.

The survey results indicate that three-fourths of males and about half of females in the military are opposed to permitting homosexuals to serve. A substantial minority of respondents in the *Los Angeles Times* poll, about 16 percent of males and 35 percent of females, approved of removing the ban; and 17 percent of males and 44 percent of females participating in the Moskos and Miller survey approved of removing the ban.

Those opposing homosexuals in the *Los Angeles Times* poll indicated that they feared sharing quarters with homosexuals, that they viewed homosexuality as immoral and contrary to their religious beliefs, and that they were concerned that homosexuals contribute to the spread of AIDS.²³ An overwhelming majority expressed the opinion that homosexuals would be subject to violence if restrictions on them were removed. Those Army personnel responding to the Moskos and Miller survey indicated that, while homosexuals were not generally considered to be desirable unit members, an overwhelming majority of respondents (72 percent of males and 87 percent of females) felt that private sexual behavior was none of their business. Fewer, about 38 percent of males and 29 percent of females, felt that heterosexuals would be subject to sexual advances by homosexuals. However, the ban on homosexuals is not the only important concern of military personnel. The *Los Angeles Times* survey found that while 48 percent rated removing the ban as the most important problem facing the military, 52 percent picked downsizing of the force and 66 percent felt that attention to removing the ban was "draining attention from other more important issues."

Focus Groups. RAND researchers also conducted 18 focus group discussions as part of this study. These focus groups provided a rich source of information on the diversity of military opinion and on how military members think about the issues and explain their views. Focus groups were conducted with Army, Air Force, and Marine participants at three California installations and with Army and Air Force participants from several installations near Frankfurt, Germany. The interview protocol used was designed to lead gradually into the topic of

²³For a discussion of AIDS in the military see Chapter 8.

homosexuals in the military, in order to understand that issue in the larger context of opinion on other aspects of military life. To understand how conflict is managed in the military's working environment, questions were asked about how differences in race and gender might cause problems and how these problems were resolved.

While there was diversity in opinions, some common elements emerged. First, military members felt that they had dealt successfully with racial integration in the military and were proud of it. They seemed to feel that racial integration had strengthened the military's ability to perform its mission. They also seemed to deal well with the low-level interpersonal conflict that happens in the barracks and on the job. Soldiers viewed it philosophically as the price for diversity, which they seemed to value. Officers viewed dealing with it as part of the job they were trained to do and an area that provided considerable challenge.

Most acknowledged that the integration of women into the military was still causing problems, in part because it was incomplete. Still, most group participants viewed women as there to stay and were confident that problems would eventually be worked out to a tolerable degree.

When the issue turned to homosexuals in the military, focus group participants' level of confidence in their ability to cope dropped sharply. While some could view the change with equanimity, many had difficulty imagining the consequences and viewed the problem in stark terms. Concerns centered around fears of special treatment of homosexuals, fears that homosexuals will band together and discriminate against heterosexuals, fears of being subjected to unwelcome sexual advances, and fears about their families and themselves being confronted by evidence of a lifestyle they regard as immoral. These concerns were particularly strong against a backdrop of downsizing and cutbacks in military benefits. Many perceived their own opportunities to be shrinking and resented what they see as extending rights and benefits to an unworthy group that is using the military for political and social advantage. Many predicted violence against homosexuals would result; this was expressed both in the surveys and in the focus groups.

They were unable to see how the conflict management skills they had learned in response to other problems could apply to this new situation, although this was in direct opposition to the "can do" attitude they had articulated earlier in the group sessions. In addition, while they had (for the most part) incorporated the presence of minorities and women into their image of the military, they had much more difficulty seeing how homosexuals could fit into that picture without changing it beyond recognition, compromising the military's ability to carry out an effective national defense.

ISSUES OF CONCERN: VIOLENCE AND AIDS

Focus groups with active-duty personnel, surveys of military personnel, testimony at Congressional hearings, and media reports have raised concerns about anti-homosexual violence and the possibility that AIDS would increase among military personnel if acknowledged homosexuals are allowed to serve.

Violence²⁴

The evidence on anti-homosexual violence is almost exclusively restricted to its occurrence in the civilian population and is of limited quality. However, there is sufficient evidence to conclude that it occurs with some regularity in the civilian community. It also occurs in the military under current policy, although there are no data on the relative frequency of that occurrence. Experience in the civilian sector shows that there is a high rate of failure to report anti-homosexual violence. The ban on allowing homosexuals to serve, with the significant penalties for discovery, provides a further disincentive for victims to report anti-homosexual violence or threats of violence.

To the extent that changes in policy resulted in changes in the number of acknowledged homosexuals in the military, the rate of anti-homosexual violence might change, since acknowledged homosexuals are more readily identified targets for such violence. The experience of

²⁴See Chapter 9 for a fuller discussion of anti-homosexual violence.

foreign militaries and domestic police and fire departments suggests that if leaders make it quite clear that violence will not be tolerated and stern action will be taken, violence can be kept to a minimum.

HIV Transmission and AIDS²⁵

DoD's testing program for Human Immunodeficiency Virus (HIV) almost entirely prevents the entry of HIV-infected individuals into the military. Therefore, the only way a change in policy permitting homosexuals to serve could significantly affect HIV infection rates in the military is by increasing the number of service members who are infected while serving. It is not possible to predict whether there would be an increase, much less to estimate its magnitude. However, if there were an increase, it would have little effect on military effectiveness. All military personnel whose health is seriously affected by HIV are discharged. Further, all service personnel must be tested before deployment and those who test positive cannot be deployed. Given the accuracy of HIV testing, very few HIV-infected personnel would ever deploy or serve in combat, the military blood supply would remain safe, and there would be virtually no danger from contact with blood on the battlefield.

Regardless of whether homosexuals are permitted to serve, the military could experience higher HIV infection rates in the future. Available evidence on sexual risk behavior and rates of sexually transmitted diseases among all service personnel suggests the potential for increased HIV transmission under conditions that place personnel in greater contact with infected populations.

UNDERSTANDING UNIT COHESION²⁶

Concern about the effect that an acknowledged homosexual would have on "combat effectiveness and unit cohesion" has dominated the debate. It also provides the basic rationale for the current policy that

²⁵Chapter 8 contains a more comprehensive discussion of health issues, risk behavior, and the military blood supply.

²⁶See Chapter 10 for a more comprehensive treatment.

"Homosexuality is incompatible with military service."²⁷ Most military leaders who have spoken publicly on the issue in recent months argue that introduction of a known homosexual into a unit, no matter how discreet his or her behavior might be, would seriously undermine the cohesiveness of that unit. Unfortunately, opinion on this issue is intuitive or based on anecdote. There has been no systematic study of this subject, and no controlled experiments or other research bear directly on this issue.

There is a large body of potentially related empirical research in the fields of industrial organization, social psychology, sports psychology, and group behavior, a significant amount of which was sponsored by the military. Other potentially relevant material can be found in the ethnographic and biographical military literature. The principal conclusion from an extensive review of this literature is the commonsense observation that it is not necessary to like someone to work with him or her, *so long as members share a commitment to the group's objectives*. This conclusion was also borne out in the review of racial integration in the military, as discussed above.

"Cohesion" is a concept with many definitions and sources. While military researchers sometimes refer to "horizontal" cohesion, meaning the bonding of members of a group, and "vertical" cohesion, referring to the bonds between leader and members, these concepts are not widely used in the research literature. Leadership is recognized as an important aspect of military performance (and can have an effect on cohesion), but "cohesion" is generally used to refer to the forces that bond individuals together as a group. This notion of cohesion, in turn, can be generally divided into two important types: social cohesion (intra-group attraction) and task cohesion (commitment to shared goals and objectives). Cohesion can thus also be distinguished from other concepts such as morale, a concept more meaningfully applied to individual attitudes toward a larger group.

Research has shown that many factors can produce social and task cohesion. Simply being assigned to the same unit predisposes the group

²⁷Department of Defense Directive 1332.14, *Enlisted Administrative Separations*, Enclosure 3H.

members to at least a moderate level of cohesion. Length of time together, a history of success experiences, and a sense of shared fate or interdependence all enhance a unit's cohesion. Sharing similar traits or values enhances social cohesion, but it is not necessary for task cohesion, so long as the individuals share a commitment to the group's mission.

In general, research has identified a positive, though not strong, association between cohesion and performance. However, the relationship between cohesion and performance is not a straightforward one. First, the effect of successful performance on cohesion appears to be stronger than the effect of cohesion on successful performance. Second, it appears that the positive association of performance and cohesion is almost entirely due to the influence of task cohesion, not social cohesion. Indeed, excessive social cohesion sometimes interferes with the successful completion of the group's assigned mission.²⁸

The lack of direct evidence makes it difficult to confidently predict the effect of the presence of a known homosexual on the performance of the group. Sexual orientation is one dimension on which group members would be dissimilar, and this could reduce social cohesion. However, members would share other traits, and the precise effect of the presence of a known homosexual on social cohesion is uncertain.²⁹ While the effect on social cohesion may be negative, the presence of a known homosexual is unlikely to undermine task cohesion, provided that the individual demonstrates competence and a commitment to the unit's mission. Task cohesion, not social cohesion, appears to be what drives successful performance.

Given the high levels of hostility toward homosexuals present in the military ranks today, a range of responses is possible to the introduction of a known homosexual into the group, including ostracism.

²⁸Examples where excessive social cohesion could undermine group performance include socializing among the workforce, "rate busting," groupthink, and mutinies.

²⁹Acceptance of known homosexuals in police departments appears to be much greater, for example, if the individual is recognized as a "good cop," rather than a "gay cop." See the discussion in Chapter 4 on this topic.

At least initially, heterosexuals might be reluctant to cooperate or work with homosexuals. However, the reduction in social cohesion would not necessarily lead to the breakdown of the unit. In circumstances where disruptive behavior occurs or where standard leadership techniques are insufficient for preventing dysfunction in the unit, it may be necessary to provide additional resources to the unit leader, such as counseling support or expert assistance. It may also be necessary to remove individuals (heterosexual or homosexual) from units if their behavior continues to disrupt the unit.

IMPLICATIONS OF THE RESEARCH

Homosexuals serve in all of the foreign militaries and in each of the domestic police and fire departments visited by RAND researchers. They serve with varying degrees of openness, however, and in most of these organizations the number of homosexuals known to the organizations was estimated to be a small fraction of the total number of homosexual members. A variety of factors explain this, including the generally hostile attitudes of many heterosexuals toward homosexuals. In these circumstances, homosexuals tend not to advertise their sexual orientation but rather conform to the mores and norms of the organization in which they serve. These organizations found that incorporating homosexuals into the force created relatively few problems. They experienced virtually no loss of organizational effectiveness or impairment in performance. Few disruptive incidents or examples of outright hostility were reported. The inherent gradualism of the process of integration accounts in part for the absence of negative effect, as do some of the strategies adopted by the organizations for assuring successful implementation.

Among the strategies for achieving successful implementation of a nondiscrimination policy, those that signaled clear leadership support and insistence on maintaining high standards of professional behavior resulted in relatively few problems. In the opinion of most officials interviewed, the resistance of heterosexuals to the process was dealt with more effectively through leadership training (throughout all levels of the chain of command) than through affirmative action or sensitivity

training for the rank and file. Dealing with potential cases of incompatibility or disruptive behavior--as they arose--was generally preferred over special class protections for homosexuals.

It is difficult to predict how including known homosexuals in the military would affect unit cohesion, but some resistance can be expected from heterosexuals, given the current state of opinion among service personnel. Research suggests that, at least in the short term, the possible negative effects on social cohesion would not necessarily have a negative effect on task performance or on unit effectiveness. Further, the research indicates that there would be sufficient time for military leadership to use the tools available to enforce discipline and foster task cohesion: As discussed above, the process of integrating acknowledged homosexuals is gradual and self-regulating. The experience of foreign militaries and domestic fire and police departments suggests that few homosexuals would acknowledge their orientation and that they would do so only when they felt the group context was tolerant.

The research conducted by RAND provides evidence that homosexuals can be successfully integrated into military and public security organizations. It also revealed, however, that hostile opinion toward homosexuals is prevalent in the American military and that any effort to introduce a change in current policy must confront the challenges posed by this unique environment. In developing a policy option consistent with the President's criteria (ending discrimination in a way that can be implemented practically and realistically), issues of implementation must, therefore, be examined carefully. An option consistent with the findings of the research and satisfying those criteria is identified and assessed in the following section. A discussion of implementation issues follows the description of the option.

A POLICY THAT ENDS DISCRIMINATION BASED ON SEXUAL ORIENTATION

In light of this research, the team examined a range of potential policy options. In the past and in foreign militaries, policies to end discrimination have generally taken one of two forms:

1. Treat homosexuals as a protected class, with the special treatment or affirmative action such status implies, attempting to change majority attitudes to become more tolerant of the discriminated class.
2. Consider homosexuals on an individual, case-by-case basis, using existing, universally applicable rules and regulations in making personnel decisions.

The first policy of treating homosexuals as a protected class characterizes the experience of integrating blacks in the American military and policies toward homosexuals followed by the Netherlands. A variety of factors suggest, however, that the second approach is likely to be more successful for the American military in this case. First, there is no legal requirement to provide protected class status to homosexuals at the present time. In fact, most courts, at both the state and federal level, have refused to recognize such status. Legislative change is not likely in the near term, and, in recent state and local elections, voters have either turned down or preempted such status. Second, the research reported here consistently suggests that such status, and the special treatment it implies, would clearly foster resentment and arouse hostility toward homosexuals in the very organizations that would be implementing a nondiscrimination policy. By drawing special attention to the issue of sexual orientation, such a policy would in effect place more emphasis on sexual orientation than the current exclusionary policy does. A policy that does not create special class status for homosexuals is likely to be received with less hostility and, therefore, to be easier to implement. Ultimately, however, a decision not to grant protected class status to homosexuals must rest on the ability of other, less drastic policies to end discrimination, the stated goal of the change in policy.

A policy based on the principle that sexual orientation is not germane to military service thus emerged as the most promising option for achieving the President's objectives. This option ends discrimination on the basis of sexual orientation while assuring the requirement that military order and discipline be maintained. It

implies no endorsement of a "gay lifestyle," nor does it require any special accommodations to homosexuals, who would be considered as individuals, not as a special class of people. This policy incorporates strict standards of personal conduct, applicable to all members of the force and designed to remove matters of sexual orientation from the professional environment.

A policy based on these premises could be built around the following basic elements:

- A single, gender- and orientation-neutral standard of professional conduct.
- Strict rules governing personal and sexual harassment, designed to remove such actions from the professional environment.
- Elimination of prohibitions in DoD directives on private, consensual sexual behavior among adults, and adjustment of investigative and enforcement practices accordingly.
- No changes in other military rules and regulations.

An illustrative *Standard of Professional Conduct* was designed as part of the research project, with the overarching objective of maintaining the order and discipline essential for an operationally effective military organization.³⁰ Similar standards have been used effectively in other organizations and foreign militaries³¹ and are analogous to the "good order and discipline" and "conduct unbecoming" provisions in military law that have been used effectively by the U.S. military for years. Four features of this standard are central:

- A requirement that all members of the military services conduct themselves in ways that enhance good order and discipline. Such conduct includes showing respect and tolerance for others. While heterosexuals are asked to tolerate the presence of known homosexuals, all personnel, including acknowledged homosexuals,

³⁰Appendix A contains such a *Standard of Professional Conduct*.

³¹See Appendix E for the Canadian regulations.

must understand that the military environment is no place to advertise one's sexual identity or orientation.

- A clear statement that inappropriate personal conduct could destroy order and discipline, and that individuals are expected to demonstrate the common sense and good judgment not to engage in such conduct.
- A list of categories of inappropriate conduct, including sexual harassment, fraternization, personal harassment (physical or verbal conduct toward others, based on race, gender, sexual orientation, or physical features), abuse of authority, displays of affection, and explicit discussions of sexual practices, experience, or desires.
- Application of these standards by leaders at every level of the chain of command, in a way that ensures that effective unit performance is maintained.

Strict standards of professional conduct and an environment free of personal harassment are critical to the successful implementation of this nondiscrimination option. The conduct-based standard provides military leaders with the necessary frame of reference for judging individual behaviors, just as it provides individuals with clear guidelines. Under this standard, behaviors that impeded the effective functioning of the unit (i.e., that undermine task cohesion) would not be tolerated.

The "not germane"/conduct-based policy does not require extensive revisions to existing military rules and regulations or to personnel policy. On issues such as recognizing homosexual marriages or conferring benefits on homosexual partners, there is no reason for the Department of Defense to change current policy or to become the "lead" federal agency in these areas.

Concerns about privacy are often cited by those who oppose permitting homosexuals to serve in the military. A survey of military facilities shows that in many newer military facilities there is greater privacy in showers and toilet areas today than was common twenty years

ago.³² However, members of the military often find themselves in situations where very little personal privacy is available, such as aboard ships or on field maneuvers. In situations where physical privacy is impossible, standards of conduct to foster personal privacy have already been developed: Individuals act in ways that do not intrude upon and are not offensive to others. For this reason, a strong emphasis on professional conduct conducive to good order and discipline is the key to dealing with privacy issues as well. Freedom from personal harassment and uniform standards of conduct are the best guaranties of privacy.

Legal Issues Regarding a "Not Germane"/Conduct-Based Policy³³

The legal implications of adopting and implementing the "not germane"/conduct-based policy were also examined. This policy could be adopted and implemented by the President under his authority as Commander-in-Chief of the Armed Forces and would probably be upheld by the courts as an exercise of executive authority. This policy, including implementing the *Standard of Professional Conduct* and revising the Manual for Courts Martial to exclude private, consensual sex between adults, is entirely legally defensible.

However, from a legal perspective implementing the illustrative *Standard of Professional Conduct* raises several potential issues. First, is the standard itself sufficiently specific to withstand a void-for-vagueness challenge? Second, how specific must a *Standard of Professional Conduct* be to provide adequate notice that certain behavior violates good order and discipline? Third, would the code's lack of specific examples make it susceptible to challenges based on unequal enforcement in similar situations? And fourth, if specific examples were to be included, would the standard be susceptible to an equal protection challenge? For the reasons discussed below, we conclude that the *Standard of Professional Conduct* would likely be upheld against these potential challenges. That is, the *Standard of Professional*

³²Appendix B discusses the RAND survey of military facilities.

³³See Chapter 11 for a more comprehensive discussion of the legal issues concerning such a standard.

Conduct as drafted would provide sufficient specificity to satisfy pre-notice requirements, but more specific provisions could also be sustained.

The Supreme Court has consistently upheld Articles 133 (conduct unbecoming an officer and a gentleman) and 134 of the UCMJ (the General Article, makes punishable ". . . all disorders and neglects to the prejudice of good order and discipline in the Armed Forces . . .") against challenges that they were "void for vagueness" and hence provided no notice of what would be punishable conduct. Although the court ruled that military law need not be as precise as civilian criminal statutes, in most instances, adequate notice has been provided by military custom, rules, and regulations.

Under the *Standard of Professional Conduct* it is inevitable that the same behavior in different circumstances would be treated differently. Commanders would likely respond differently to certain behavior and might view the consequences to morale and discipline of a particular act differently. Commanders would likely vary in how they would weigh the time, place, circumstances, and purpose of an action relative to its consequences. Thus, some degree of differential enforcement of the *Standard of Professional Conduct* should be expected, but this alone would not render the standard unenforceable. The result of providing maximum discretion to commanders, which already exists under Article 134, is that not all commanders treat the same situations alike, a result also likely under the *Standard of Professional Conduct*.

As noted above, the time, place, circumstances, and consequences of the conduct determine if an act would be punishable as disruptive conduct. The same standards would apply whether the conduct takes place on or off base. Thus, the *Standard of Professional Conduct* would be applicable to behavior that is disruptive to morale or unit cohesion regardless of where the behavior takes place.

If sexual orientation is regarded as not germane in determining who may serve, Enclosure 3H of the DoD regulations concerning administrative separations (DoD Directive 1332.14) should be rescinded. The most problematic regulatory and legal scenario would be to end discrimination without revising portions of the Manual of Courts Martial (MCM) relating

to Article 125 (Sodomy) of the Uniform Code of Military Justice (UCMJ).³⁴ Those portions of the MCM have historically been applied differentially to heterosexuals and homosexuals. Retaining them after rescinding Enclosure 3H would weaken the "orientation-neutral" principle of the "not germane" policy.

A practical approach to dealing with this issue would be to revise the MCM to prosecute only non-consensual sexual behavior or sexual acts with a minor.³⁵ No changes would be necessary in the sodomy article of the UCMJ itself, because that code does not specify the sexual acts that are illegal. The definition of the offense is in the MCM, an administrative document.

In sum, an option that regards sexual orientation as not germane to military service, accompanied by the *Standard of Professional Conduct* and revisions to administrative enforcement of Article 125, is legally supportable.

IMPLEMENTATION OF A POLICY THAT ENDS DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION³⁶

A policy for ending discrimination on the basis of sexual orientation will present implementation problems that go beyond those created by more usual structural or organizational changes. Like the racial integration, admitting acknowledged homosexuals represents a *social* change that touches not only on deeply held social attitudes, but on moral beliefs as well. For many, it makes no difference if they come into contact with a serving homosexual; just changing the policy alters

³⁴From the perspective of a homosexual member of the armed services, the policy choice would have both positive and negative consequences. A positive outcome would be the ability to serve openly in the military. But a negative consequence could be that if 1332.14 is repealed without changing Article 125, the only way for the military to discharge a homosexual would be through an Article 125 prosecution. Under current policy many homosexuals are given administrative discharges and are not usually prosecuted under Article 125. By not removing or modifying Article 125, homosexuals would be at greater risk of an Article 125 prosecution.

³⁵Appendix C contains an example of such a revision.

³⁶See Chapter 12 for a more detailed discussion. The research team also examined the potential effects of a change in policy on recruitment and retention. These findings are discussed in Chapter 13.

their perception of their organization in very fundamental ways. For these people, the primary issue is not unit cohesion, but morality. Some may leave the organization. For those who stay, the challenge will be to implement the change in ways that preserve essential task cohesion and organizational effectiveness.

The manner in which policy change is implemented could have a decisive impact on whether these problems are managed with minimal disruptions or undermine the effort to change. Based on the research conducted in this study, key elements of an implementation strategy can be identified:

- The message of policy change must be clear and must be consistently communicated from the top. Given the fact that senior leaders of the military are on record as opposing any change, it will be necessary, if policy is changed, for these and other leaders to signal their acceptance of the change and their commitment to its successful implementation. It must be clear to the troops that behavioral dissent from the policy will not be permitted.
- The option selected should be implemented immediately. Any sense of experimentation or uncertainty invites those opposed to change to continue to resist it and to seek to "prove" that the change will not work.
- Emphasis should be placed on behavior and conduct, not on teaching tolerance or sensitivity. For those who believe that homosexuality is primarily a moral issue, such efforts would breed additional resentment. Attitudes may change over time, but behavior must be consistent with the new policy from the first day.
- Leadership must send messages of reassurance to the force. The military is currently undergoing a variety of other stressful experiences, e.g., declining budgets and the drawdown in the force. In such an atmosphere, it is important to signal that the change in policy will not have markedly disruptive effects and that it is not intended as a challenge to traditional

military values. This climate of psychological safety is conducive to acceptance of the change.

- Leaders at all levels should be empowered to implement the policy, and some special training or assistance for leaders may be a useful device for ensuring that the change is understood and occurs rapidly.
- A monitoring process should be established to identify any problems early in the implementation process and to address them immediately.

The option assessed here, a conduct-based set of standards applied under the premise that sexual orientation, as such, is "not germane" to military service, appears to meet the President's criteria and to be consistent with empirical research and historical experience. By following this implementation strategy, the Department of Defense should be able to increase the probability that a policy that ends discrimination based on sexual orientation can be implemented in a practical and realistic manner and that the order, discipline, and individual behavior necessary to maintain cohesion and performance are more likely to be preserved.