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**“A Modest Proposal: Privacy as a Flawed Rationale for the Exclusion of Gays and Lesbians from the U.S. Military”**

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## **Abstract:**

The justification for excluding acknowledged homosexuals from the U.S. military is the unit cohesion rationale, the notion that lifting the gay ban would undermine combat performance. As a growing body of evidence has challenged the plausibility of this argument, the ban's supporters increasingly have justified exclusion by the preservation of heterosexual privacy in the barracks and showers. We argue that lifting the gay ban will not undermine heterosexual privacy. Heterosexual service members already shower with known homosexuals, and lifting the ban is unlikely to increase the number of open gays significantly. Few heterosexual service members are extremely uncomfortable around homosexuals, and discomfort that does exist will diminish after lifting the ban. Finally, same-sex sexual encounters would occur even if all homosexuals were eliminated from the military. We conclude that the ban itself enables systematic invasions of heterosexual privacy. Hence, experts who seek to protect heterosexual privacy should advocate its removal.

## **Aaron Belkin and Melissa Sheridan Embser-Herbert**

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Efforts to promote racial, ethnic, religious, and gender diversity in the U.S. armed forces have often provoked controversy between civil rights advocates and those who fear that integration could undermine organizational effectiveness. Recent debates over sexual orientation have been no less divisive.<sup>1</sup> When President Bill Clinton attempted to overturn Department of Defense regulations that prohibited gays and lesbians from serving in the military, congressional opponents formulated a new policy on homosexuality that became part of the 1994 National Defense Authorization Act, the first congressional statute to include a gay ban.<sup>2</sup> The Defense Department then drafted implementing regulations known as "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" that exclude open homosexuals from the services. According to these regulations, military recruiters are no longer supposed to ask enlistees if they are homosexual, but service members who disclose that they are homosexual are subject to dismissal.

Although the subject of gays and lesbians in the military has received less attention since terrorist attacks in the United States on September 11, 2001, it remains a hot-button issue that reemerges frequently as the focus of highly charged partisan debates. Democratic Presidential candidates Bill Bradley and Al Gore both promised to lift the ban during the 2000 primary, but opponents forced Gore to retreat immediately when he proposed that appointees to the Joint Chiefs of Staff would be required to adopt his position. Despite Gore's reversal, future contenders for the Democratic nomination will likely be obliged to oppose the ban as they seek to attract gay and lesbian voters during primary campaigns. Conversely, although President George W. Bush and his administration support the current policy, influential members of the Republican Party advocate tightening the law by returning to the previous system in which military recruiters asked enlistees if they were homosexual.<sup>3</sup>

The official justification for the gay ban is the unit cohesion rationale, which holds that combat performance would decline if open gays and lesbians were permitted to join the military.<sup>4</sup> According to this perspective, heterosexual service members dislike gays and lesbians and cannot trust them with their lives.<sup>5</sup> As a result, lifting the gay ban would complicate units' ability to function by allowing gays and lesbians to reveal their sexual orientation to their peers.<sup>6</sup> Despite the intuitive plausibility of this argument, a growing body of scholarly evidence has undermined the validity of the unit cohesion rationale. None of the twenty-three foreign militaries that allow gays and lesbians to acknowledge their sexual orientation has reported a deterioration in unit cohesion. Moreover, hundreds of studies now show that whether a unit's members like each other has no impact on its performance.<sup>7</sup>

In response to the diminishing plausibility of the unit cohesion rationale, proponents of the ban on gays and lesbians have turned increasingly to an emphasis on privacy to justify their position.<sup>8</sup> They claim that the ban is necessary for preserving the modesty rights of heterosexual service members who would be exposed in showers and living quarters if open gays and lesbians were allowed to serve in the armed forces.<sup>9</sup> As one

proponent explained, "I should not be forced to shower with a woman. I shouldn't be forced to shower with an open gay. ...I would not want to fight for a country in which privacy issues are so trampled upon."<sup>10</sup>

This article is among the first studies to question the plausibility of the argument that gays and lesbians must be excluded from the armed forces to preserve the privacy rights of heterosexuals.<sup>11</sup> We argue that the ban on gays and lesbians does not preserve privacy for heterosexual service members and that lifting the ban would not undermine heterosexual privacy. Because the ban itself compromises heterosexual privacy, we contend that its elimination would enhance the privacy of many heterosexual service members. Below, we define the privacy rationale and explain its importance as a justification for the ban on gays and lesbians; examine the relationship between privacy, morale, and military effectiveness; identify five logical flaws in the privacy rationale; and conclude with recommendations for policy makers.

### *The Privacy Rationale and Its Significance*

The privacy rationale depends on two premises. One is that service members deserve to maintain at least partial control over the exposure of their bodies and intimate bodily functions. Service in the military entails numerous personal sacrifices and responsibilities that restrict speech, appearance, and behavior. Although members of the armed forces are not entitled to many prerogatives of civilian life, at least they deserve a degree of control over who sees their naked bodies. Second, the privacy rationale assumes that observation of same-sex nudity arouses sexual desire when the observer is homosexual, and only when the observer is homosexual. According to Melissa Wells-Petry of the Family Research Council, the exposure of bodies and intimate bodily functions does not violate privacy rights when heterosexuals are segregated in all-male or all-female settings. When homosexuals observe naked bodies or intimate bodily functions, however, they violate the privacy as well as the civil rights of heterosexuals. Wells-Petry says that the homosexual gaze expresses sexual yearning and that heterosexuals do not want to be the objects of homosexuals' sexual desire.<sup>12</sup> She concludes that soldiers should not be "stripped unwittingly of their right to choose to whom they reveal themselves in a sexual context. Once this happens, the harm is done. As a matter of law, the privacy violation does not depend on any acting out of sexual attraction toward others. It is complete the moment privacy is breached."<sup>13</sup> In other words, the injury takes place the moment that an open homosexual sees the naked body of a heterosexual peer.

Concerns for heterosexual privacy are widespread. A search of the Lexis/Nexis database reveals that during the debate over President Clinton's proposal to lift the gay ban, 179 newspaper articles and 50 television transcripts addressed the issue of privacy in the military.<sup>14</sup> A 1993 letter to the editor of the *Seattle Times* was typical of the items in our search results:

"The exposure of your nude body, in circumstances you have no control over while serving in the military, could occur on a daily basis; people in the armed forces take showers regularly, and private dressing rooms are not provided to most enlistees. ...[It] is not farfetched to think that a homosexual could be attracted to someone of the same sex who is not homosexual and that that attraction or potential attraction could make a heterosexual feel embarrassed and vulnerable while nude."<sup>15</sup>

In addition to its prominence in popular discourse, the privacy rationale appears frequently in official debates and regulations. In 1991, D.C. Circuit Justice Oliver Gasch invoked the privacy rationale to justify his unwillingness to reinstate a gay sailor, Joseph Steffan, who had been discharged from the military after acknowledging his homosexuality. Gasch said that "with no one present who has a homosexual orientation, men and women alike can undress, sleep, bathe, and use the bathroom without fear or embarrassment that they are being viewed as sexual objects."<sup>16</sup> Indeed, the congressional statute that codifies the ban on gays and lesbians reflects a concern for heterosexual privacy in noting that "members of the armed forces [often must] involuntarily...accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy."<sup>17</sup> Former Chairman of the Joint Chiefs of Staff Colin Powell argued in 1992 that "to introduce a group of individuals who—proud, brave, loyal, good Americans—but who favor a homosexual life-style, and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive, put them in close proximity, ask them to share the most private of their facilities together, the bedroom, the barracks, latrines, the showers, I think that's a very difficult problem to give the military."<sup>18</sup> At the time of Powell's remarks, 63 percent of service members who opposed lifting the gay ban explained their position in terms of not wanting to share facilities and quarters with homosexuals.<sup>19</sup>

Even when not stated explicitly, concerns about heterosexual privacy often seem to lurk beneath the surface of arguments invoked to justify the ban on gays and lesbians, in particular the notion that predatory homosexual service members use seduction or coercion to manipulate or compel heterosexual peers into having sex. Many opponents of gays and lesbians in the military do not believe that predatory homosexuals pose a problem for the armed forces, but others cite this issue as a justification for exclusion. In explaining his opposition to gays and lesbians in the military during testimony before the Senate Committee on the Armed Services, General Norman Schwarzkopf said that "I am aware of instances where heterosexuals have been solicited to commit homosexual acts, and, even more traumatic emotionally, physically coerced to engage in such acts."<sup>20</sup> During the same hearings, Major Kathleen Bergeron of the U.S. Marine Corps told the senators, "I have seen what happens when lesbian recruits and drill instructors prey on more vulnerable recruits, and take advantage of this exposed environment."<sup>21</sup> Such concerns are not new. One World War II veteran, for example, said that his "Navy ship...had five 'aggressive

homosexuals' who stroked his leg at night and exposed themselves to him. 'All homosexuals aren't rapists,' he wrote. 'But in this closed male society, with its enforced communal living, unchecked homosexual appetites wrought havoc.'"<sup>22</sup> These and other opponents of gays and lesbians in the military do not claim that sexual intimidation is equivalent to the concern for privacy, but they do seem to imply that observation and predatory behavior are separated by a fine line.

Skeptics may question the importance of analyzing the privacy rationale given that opponents of gays in the military could invoke another justification for exclusion if the privacy argument is found to be implausible. Indeed, the justification for excluding gay and lesbian service members has changed several times during the past fifty years as military officials formulated new rationales whenever evidence undermined the plausibility of old justifications.<sup>23</sup> Opponents of homosexuals in the military, however, no longer have unlimited flexibility to articulate new justifications for the ban. To begin, media attention to the issue increased dramatically after President Clinton's attempt to lift the ban, and as mentioned above, the rationale for exclusion now is articulated in congressional law rather than administrative regulation.<sup>24</sup> Officials who altered the rationale for homosexual personnel policy during the Cold War could do so without attracting much media attention, but the same is not true today. In addition, recent polls show for the first time that a majority of the public believes that gays and lesbians should be allowed to serve openly in the military.<sup>25</sup> Because the public no longer supports the gay ban, officials cannot assume that they have a blank check to substitute new justifications when old ones come to be seen as implausible. To the extent that experts and the public come to believe that the privacy rationale is implausible, Congress may face additional pressure to lift the ban rather than simply substituting another justification for exclusion.

Given the widespread use of privacy concerns to justify the exclusion of acknowledged homosexuals from the military, it is useful to consider whether the gay ban preserves heterosexual privacy and whether lifting the ban would erode privacy. Before addressing this issue, however, we examine the relationship between privacy, morale, and military effectiveness.

### *Privacy, Morale and Military Effectiveness*

As described above, most articulations of the privacy rationale emphasize heterosexual service members' civil liberties. Concerns about privacy, however, can be expressed in terms of military effectiveness as well as civil rights. Recently, for example, senior Pentagon officials identified service members' quality of life as "the main factor in retention," and argued that meeting the Defense Department's readiness targets therefore depends on "providing more privacy and amenities."<sup>26</sup> According to this perspective, protecting privacy is necessary for maintaining morale, which in turn drives retention, recruitment and other elements of military effectiveness. Indeed, a 1992 tri-service survey reported that increasing privacy was the second

most frequently mentioned factor when respondents were asked to identify which improvement in the barracks that would have the greatest impact on enlisted retention.<sup>27</sup>

When surveys pose specific questions about living conditions, service members often indicate that they would like more privacy. That said, several factors suggest that concerns about privacy are not important determinants of retention and recruitment. To begin, privacy does not have an indirect causal relationship to retention and recruitment through morale. Margaret Harrell and Laura Miller, for example, surveyed personnel throughout the U.S. armed forces with an open-ended question about “why they thought their morale and their units’ morales were the way they were.” Of the 805 written replies they received, only 6 mentioned living conditions while 17 mentioned quality-of-life and family considerations.<sup>28</sup> Frederick Manning’s comprehensive review of the literature on the origins of military morale does not mention privacy. Rather, scholarship on morale stresses physical factors such as “good health, good food, adequate rest and sleep, clean dry clothes, washing facilities and protection from the elements”; psychological factors including confidence and a sense of personal goals and role fulfillment; and group factors such as common experiences, clear group missions, and trust in leadership.<sup>29</sup> An inventory of nineteen causes of military morale does not include privacy.<sup>30</sup> And a statistical analysis of morale among 11,000 separatees from the U.S. Navy found that submariners (who enjoy little privacy) had the highest morale out of seven different occupational specialties.<sup>31</sup> Because privacy is not a major contributor to morale, it seems unlikely that privacy could have an indirect causal relationship to retention and recruitment through morale.

In addition, even after morale is eliminated as a mediating variable, it is not clear that privacy does not seem to be directly causally related to retention and recruitment. Scholars have identified factors such as pay, promotion timing, education, and civilian unemployment rates as being much more important determinants of successful retention and recruitment than quality-of-life considerations such as housing and privacy.<sup>32</sup> As the General Accounting Office concluded, “There is little evidence to support DOD’s assumption that improved barracks will result in improved readiness and higher enlisted retention rates. ...Further, information collected from members that do not reenlist has shown that factors other than housing, such as pay and promotion opportunities, are usually cited as the reasons members leave the military.”<sup>33</sup> Although some studies do argue that the quality and availability of military housing can influence reenlistment decisions, a close look at the data reveals that the desire for privacy does not seem to be a major determinant of dissatisfaction with housing.<sup>34</sup> For example, junior enlisted Marines who are married express almost as much dissatisfaction with military housing as those who are single.<sup>35</sup> Given that married enlisted quarters provide more privacy than bachelor enlisted quarters, it seems unlikely that the desire for privacy is a driving factor behind dissatisfaction with housing.

Finally, even if scholars demonstrated a theoretical causal relationship between privacy, retention, and recruitment, a new military housing construction program should dispel concerns. By the end of the decade most junior enlisted personnel who live on Air Force, Army, and Navy bases will be provided with their own bedrooms as well as bathrooms to share with one other individual.<sup>36</sup> As the *Army Times* reported recently, the “Army is spending billions of dollars on a barracks face-lift plan that’s giving more and more soldiers their own rooms and making the ‘gang latrine’ a thing of the past.”<sup>37</sup> One soldier remarked that “the privacy is great. [You] have your own personal bathroom you get to share with one person instead of 60 to 80 people.”<sup>38</sup> Service members will have to sacrifice their privacy during basic training and in some field and combat situations, but most enlisted personnel will soon have access to private bedrooms and showers most of the time.

### *Flaws in the Privacy Rationale*

There are five reasons why the ban on gays and lesbians in the military does not preserve heterosexual privacy in the showers and the barracks and why lifting the ban would enhance rather than undermine heterosexual privacy.

### *Heterosexuals Already Shower With Known Homosexuals*

The privacy rationale is premised on the assumption that known gays and lesbians do not already serve in the U.S. armed forces. This assumption is an important premise of the privacy rationale because if known homosexuals already serve in the U.S. armed forces, then lifting the ban will not decrease heterosexual privacy (unless numerous gays and lesbians come out of the closet after they are allowed to do so, a possibility that we address below).

Anecdotal and statistical data suggest that known gays and lesbians do serve in the U.S. armed forces. Consider, for example, Melissa Sheridan Embser-Herbert’s (hereinafter cited as Herbert) testimony:

“One day my drill sergeant called me into his office. And he called me in with another woman in my unit, whom I had been dating on the weekends. He said, ‘I know what’s going on. This is the Army, and you two have got to be more discreet.’ End of conversation. He was not a bleeding heart liberal, and by all accounts he was heterosexual, as well. But he knew. As did most of the women in Bravo Company, Tenth Battalion. They might not have liked it—that is a different question—but they knew.”<sup>39</sup>

Statistical data seem to confirm that this anecdote does not reflect an isolated case. For example, a recent study of 368 officers and enlisted personnel in the U.S. Navy and Marine Corps found that 20.1 percent personally know a homosexual service member; another 22.3 percent are unsure as to whether they know a homosexual service member.<sup>40</sup> If these



figures are extrapolated to the entire armed forces, then approximately 301,500 service members personally know a homosexual peer, and approximately 334,500 service members are unsure as to whether they personally know a homosexual peer. Although this small study may not represent overall trends, it seems to suggest that many service members already bunk and shower with people who they know to be gay or lesbian. Indeed, a 1995 study includes an eight-page list of gays and lesbians who served openly in the U.S. military and a 2001 report offers four case studies of gay and lesbian service members whose sexual orientation was well known by all members of their units.<sup>41</sup>

In the early 1990s, Herbert collected survey data on women's experiences in the U.S. military from 394 female veterans and active-duty service members.<sup>42</sup> She asked women who identified as heterosexual for any part of their military career to respond to the statement, "I knew military women who were lesbian/bisexual." Seventy-nine percent of the women responded yes. Then, Herbert asked respondents who identified as lesbian or bisexual during any part of their military career to indicate "definitely not true," "probably not true," "uncertain," "probably true," or "definitely true" to these statements:

1. Women whom I believe were heterosexual knew that I was lesbian/bisexual.
2. Men whom I believe were heterosexual knew that I was lesbian/bisexual.
3. Some of my supervisors knew that I was lesbian/bisexual.

Of the 111 women who responded, 64 percent indicated that it was "definitely true" or "probably true" that women whom they recognized as heterosexual knew that the respondent was lesbian or bisexual. Fifty-one percent indicated "definitely true" or "probably true" that men they believed to be heterosexual recognized them as lesbian or bisexual. And 56 percent indicated "definitely true" or "probably true" with regard to their supervisors.

Herbert then asked respondents who answered "probably true" or "definitely true" to any of the three items listed above what led them to believe that others thought they were lesbian or bisexual. Of the 86 open-ended responses to this question, slightly more than half were a variation of "I told them." Others provided a range of examples of how co-workers and supervisors came to know that they were lesbian or bisexual. For example, one private first class wrote, "Some just outright asked and I told. Others just had gay-dar I guess." Another wrote, "I told a supervisor who was trying to get me to date him." Some women felt that they had to be honest with supervisors whose help they needed. An enlisted woman in the Army wrote, "I told my supervisor because I was breaking up an eight year relationship with my lover. I needed time off and he supported me a hundred percent." And an army captain offered, "Due to a difficult situation which arose, I informed my commander because I needed his help."

Skeptics might respond that known gays and lesbians do not serve in combat units, and we acknowledge that the survey results presented above do not distinguish between women who served in combat areas and those who did not. That said, statistical evidence from foreign militaries may be relevant to determining whether known gays serve in U.S. combat units. In 2000, Kaplan and Belkin asked 194 combat soldiers in the Israel Defense Forces (IDF) if they knew a gay peer in their unit.<sup>43</sup> They found that 21.6 percent of respondents knew a gay peer in their unit, and an additional 19.6 percent may have known a gay peer in their unit. The claim that no known gays serve in U.S. combat units may not have any more validity than the claim that none serve in Israeli combat units.

### *Lifting The Ban Will Not Significantly Increase The Number Of Open Gays And Lesbians*

The privacy rationale is based in part on the mistaken premise that numerous gays and lesbians will reveal their sexual orientation after the lifting of the gay ban. If, however, few gays and lesbians reveal their sexual orientation after they are allowed to do so, then the privacy rationale is flawed because little if anything will change in the shower and the barracks after the lifting of the ban even if open homosexuals do undermine heterosexual privacy.

Even though many known gays and lesbians already serve in the U.S. armed forces, the data indicate that few additional homosexuals will reveal their sexual orientation after the lifting of the ban. Four recent studies of gays and lesbians in the Australian, British, Canadian, and Israeli forces found the same pattern: In all four cases, the authors discovered that prior to the lifting of the ban, some gay and lesbian soldiers already were known by their peers to be homosexual, but that few additional homosexual soldiers revealed their sexual orientation after the lifting of the ban.<sup>44</sup> In Australia, a 1996 report found that three years after the lifting of the ban, only thirty-three homosexual soldiers were willing to identify themselves to the authors of the study.<sup>45</sup> In Canada, the Department of National Defence received only seventeen claims for medical, dental, and relocation benefits for homosexual partners in 1998, six years after the lifting of the Canadian ban. Given the Canadian military's own estimate that 3.5 percent of its personnel are gay or lesbian, the low figure suggests that service members may hesitate to out themselves by requesting benefits.<sup>46</sup>

In practice, the presence or absence of a ban on gays and lesbians has little to do with disclosure rates.<sup>47</sup> Rather, the culture of the unit is the primary determinant of decisions to reveal sexual orientation: Gay and lesbian service members reveal their sexual orientation only when it is safe to do so. For example, a study of American police departments that allow acknowledged homosexuals to serve identified 7 open gays and lesbians in the Chicago Police Department and approximately 100 in the New York Police Department.<sup>48</sup> Several factors may account for the variation in disclosure

rates, but scholars who have compared police and fire departments believe that much if not most of the variance reflects the fact that personal safety is the primary determinant of Americans' decisions to reveal their sexual orientation. Because individual safety varies from organization to organization depending on whether leaders express clear messages in support of integration, disclosure rates vary as well. Paul Koegel claims that "perhaps one of the most salient factors that influences whether homosexual police officers or firefighters make their sexual orientation known to their departments is their perception of the climate. ...The more hostile the environment, the less likely it was that people publicly acknowledged their homosexuality."<sup>49</sup> Similar variance can be found in the U.S. military: A recent study found that while 21.2 percent of naval officers know a gay sailor, only 4.1 percent of U.S. Marine officers know a gay marine.<sup>50</sup> It seems likely to us that this difference results from the fact that closeted gays believe that it is safer to reveal their homosexuality in the U.S. Navy than in the Marine Corps: indeed, the same study found attitudes of personnel in U.S. Navy to be more tolerant toward homosexuals than those of the Marines.<sup>51</sup>

Advocates of the privacy rationale sometimes draw a sharp distinction between "open" and "known" gays. According to some proponents of the gay ban, known gays are known by friends to be gay but, unlike open gays, their sexual orientation is not known by everyone in a unit. Proponents argue that lifting the ban will increase the number of open gays in the military, and that the presence of open gays will undermine privacy in the shower. The data suggest, however, that few additional homosexuals will reveal their sexual orientation after they are allowed to do so. Thus, even if open homosexuals undermine heterosexual privacy, lifting the gay ban will have little or no impact on conditions in military living quarters.

#### *Few Heterosexual Service Members Are Extremely Uncomfortable Around Gays*

Proponents of the privacy rationale mistakenly assume that many heterosexual service members are extremely uncomfortable around gays and lesbians and that they will remain so after the lifting of the ban. Although statistical surveys indicate that most U.S. service members oppose showering with homosexuals and lifting the ban, studies indicate that discomfort has diminished considerably and that heterosexual dislike of gays and lesbians is less extreme than advocates of the privacy rationale assume. For example, between 1992 and 1998, the percentage of U.S. Army men who strongly opposed allowing gays and lesbians in the military dropped from 67 percent to 36 percent, while the percentage of army women strongly opposed dropped from 32 percent to 16 percent.<sup>52</sup> Seventy-one percent of naval officers in a recent survey agreed or strongly agreed that "compared with my peers, I consider myself more tolerant on the issue of homosexuals in the military," and 64 percent disagreed or strongly disagreed that they

“feel uncomfortable in the presence of homosexuals and have difficulty interacting normally with them.”<sup>53</sup> Armando Estrada, a psychologist at the Naval Postgraduate School, measured male marines’ attitudes toward homosexuals in a 1999 study and found that on a scale of 0 to 100, the marines’ average score was 47.52.<sup>54</sup> The specific number is less meaningful than the fact that the average score fell roughly in the middle of the scale, thus indicating mild dislike rather than widespread hatred. Although some people in the military may hate gays and lesbians or be extremely uncomfortable around them, on average one seems to find mild dislike.

Relatedly, the privacy rationale is premised on the assumption that heterosexual service members who are extremely uncomfortable around gays and lesbians will remain so after the lifting of the ban. According to the contact hypothesis, however, this assumption may not be valid. The contact hypothesis, a robust finding that has been confirmed in numerous social scientific experiments, posits that discomfort “can be reduced by personal contact between majority and minority groups in pursuit of common goals.”<sup>55</sup> The consensus in the literature is that heterosexual discomfort toward gays and lesbians tends to diminish after personal interaction with homosexual individuals.<sup>56</sup>

Evidence from foreign militaries seems to indicate that heterosexual discomfort does tend to diminish after the lifting of a gay ban. In 1995, for example, the British Ministry of Defence surveyed 13,500 service members and found that 66 percent would not willingly serve if the ban were lifted. In Canada, a 1985 survey of 6,580 male service members found that 62 percent would refuse to share showers, undress, or sleep in the same room as a gay soldier. Despite these findings, only three service members resigned after Britain lifted its gay ban in 2000. An official from the British Ministry of Defence noted that the “media likes scare stories – about showers and what have you. A lot of people were worried that they would have to share body heat in close quarters or see two men being affectionate, and they would feel uncomfortable. But it has proved at first look that it’s not an issue.”<sup>57</sup> In Canada, a survey of 3,202 service members that followed the lifting of the gay ban in 1992 found that 67.7 percent of respondents were neutral or satisfied about the policy change.<sup>58</sup> Lessons from foreign forces that lifted their bans seem to cast some doubt on the assumption that the minority of heterosexual U.S. service members who are extremely uncomfortable around gays and lesbians will remain so after the lifting of the ban.

### *A Flawed Analogy: Men And Women In The Shower*

Privacy rationale advocates often claim that just as the military does not require men and women to shower together, heterosexuals should not have to shower with open gays. According to this perspective, the presumption that every service member in the shower is heterosexual is a useful fiction.

Although men and women use the same facilities in some field environments, the armed forces do maintain separate quarters for them in most settings.<sup>59</sup> In permanent deployments including assignments at sea, for example, men and women typically do not share living quarters or facilities. Moreover, in 1998 Congress required the Defense Department to “provide separate and secure housing for male and female recruits with separate entrances and with sleeping and latrine areas separated by permanent walls.”<sup>60</sup>

Despite the military’s efforts to maintain separate facilities for the sexes, however, the analogy fails to capture that heterosexuals showering with open gays is much less of a departure from the norms of civilian society than men showering with women. If men and women showered together in prisons, gyms, summer camps, university dorms, high school and college locker rooms, and professional changing areas in hospitals, courthouses, and fire and police stations, then perhaps it would seem reasonable for men and women to shower together in the military. Men and women do not, however, shower together in any of these civilian settings. Open gays and heterosexuals, by contrast, shower together in all of these settings. In addition, the analogy is premised on the flawed assumption that communal showers typify military practice. As noted above, by the end of the decade most junior enlisted personnel will be housed in private bedrooms with a bathroom to share with one other individual.<sup>61</sup>

### *Lifting The Ban Will Enhance Heterosexual Privacy*

We have argued throughout this article that the ban on gays and lesbians in the U.S. military does not protect heterosexual privacy and that lifting the ban will not undermine heterosexual privacy. Indeed, because the ban enables a systematic invasion of heterosexual privacy, lifting it would enhance the privacy rights of heterosexual service members. To begin, the ban undermines heterosexual privacy when military investigators inquire into the sexual behavior of spouses, partners, friends and relatives of service members suspected of being gay. Questions posed by military investigators can be quite vulgar and intrusive, and a 1995 memorandum from U.S. Air Force headquarters instructs military lawyers to interview parents, siblings, school counselors, educational advisers, school officials, school career development officers, roommates, close friends, and romantic partners of service members who say that they are gay.<sup>62</sup>

In addition, the gay ban can undermine the privacy of heterosexual service members who feel compelled to demonstrate their heterosexuality. For most heterosexual service members, of course, sexual orientation is transparent and no effort is required to avoid being labeled a homosexual. For others, however, in particular men, whose gender identity does not reflect traditional notions of masculinity and women who do not conform to stereotypical understandings of femininity, the effort to avoid being labeled as a homosexual can entail a loss of privacy. Twenty-one percent of

participants in a study of how military women manage perceptions of gender and sexuality indicated that they consciously employ strategies aimed at ensuring that others do not perceive them to be lesbian or bisexual. Of those 21 percent, 35 percent were heterosexual.<sup>63</sup>

Gender management strategies can entail minor as well as significant privacy compromises for heterosexual service members. Some women revealed details of their private lives with peers, including those with whom they might not otherwise share such intimacies. One heterosexual woman mentioned “talk[ing] about guys” to avoid the perception that she was lesbian or bisexual while another described “always having a boyfriend.” One in five survey respondents indicated that they dated men to prove their heterosexuality while one in five got married for strategic reasons, in particular the desire to be seen as heterosexual.<sup>64</sup> Marriages of convenience among gays and lesbians are neither surprising nor new, and it is likely that some service members would continue to take steps to avoid being labeled as homosexual even if the ban were lifted. But, to realize that for some heterosexual women at least part of their motivation to marry is to avoid being perceived as lesbian or bisexual is an indication of the impact of the gay ban on heterosexual privacy.<sup>65</sup>

### ***Conclusion***

The argument that gays and lesbians must be excluded from the armed forces to preserve the privacy rights of heterosexuals has become an increasingly important basis for the banning of open homosexuals from the U.S. armed forces at the same time that the plausibility of the unit cohesion rationale, the ban’s other justification, has greatly diminished. Even if the logic of the privacy rationale were sound, its validity would be undermined by a new housing program that is providing most junior enlisted personnel with their own bedrooms and a bathroom to share with one other person. But the logic of the privacy rationale is not sound. The rationale is premised on the assumptions that heterosexual service members do not serve with peers who they know to be homosexual, that lifting the gay ban will significantly increase the number of open gays and lesbians, and that the minority of heterosexuals who are extremely uncomfortable around gays and lesbians will remain so after the lifting of the ban. All of these assumptions are required to establish the plausibility of the privacy rationale, yet none of them are valid. Ironically, the gay ban does more to undermine heterosexual privacy than to enhance it when military investigators inquire into the sexual behavior of spouses, partners, friends, and relatives of service members who are suspected of being gay and when heterosexuals feel compelled to prove their sexual orientation by dating members of the opposite sex or engaging in marriages of convenience.

Because neither the privacy rationale nor the unit cohesion rationale provide compelling justifications for excluding service members who acknowledge that they are homosexual, congressional leaders should

reappraise the necessity of the gay ban. If Congress does decide to lift the ban, five steps would ensure a smooth transition, preserve organizational effectiveness, and minimize cost and disruption.<sup>66</sup> First, Congress should replace Section 571 of the 1994 National Defense Authorization Act with a nondiscrimination pledge concerning sexual orientation and gender identity.<sup>67</sup> Because the gay ban is articulated in law, congressional action is required to eliminate it. Second, the Defense Department should annul implementing regulations associated with the “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” policy and adopt a new code of professional conduct that defines unacceptable behaviors without regard to sexual orientation.<sup>68</sup> Third, senior military leaders should declare publicly that they support integration and that they will discipline individuals who violate the new code of conduct. As studies of organizational diversity have found, successful integration depends on leadership’s forceful commitment to inclusion.<sup>69</sup> Fourth, Congress should follow the May 2001 recommendation of the Cox Commission, a panel of experts on military law sponsored by the National Institute of Military Justice, and repeal the prohibition against heterosexual and homosexual sodomy included in Article 125 of the Uniform Code of Military Justice.<sup>70</sup> Finally, fifth, the Defense Department should ensure that diversity-training programs explain the new policy thoroughly and that they are consistent across the various branches and commands. Although some may fear these steps, the experiences of other military and paramilitary organizations that lifted their gay bans show that cohesion, morale, recruitment, retention, and privacy will be preserved or even enhanced by allowing individuals who acknowledge their homosexuality to serve in uniform.

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<sup>1</sup> Studies on diversity in the U.S. military include Charles C. Moskos, "Toward a Postmodern Military: The United States as a Paradigm," in Moskos, John Allen Williams and David R. Segal, eds., *The Postmodern Military: Armed Forces after the Cold War* (Oxford: Oxford University Press, 2000), pp. 14-31; Peter D. Feaver and Richard H. Kohn, eds., *Soldiers and Civilians: The Civil-Military Gap and American National Security* (Cambridge, Mass.: MIT Press, 2001); Joshua S. Goldstein, *War and Gender* (Cambridge: Cambridge University Press, 2001); Sherie Mershon and Steven Schlossman, *Foxholes and Color Lines: Desegregating the U.S. Armed Forces* (Baltimore, Md.: Johns Hopkins University Press, 1998); and Mary Fainsod Katzenstein, *Faithful and Fearless: Moving Feminist Protest inside the Church and Military* (Princeton, N.J.: Princeton University Press, 1998). For reviews, as well as references to previous studies, see the essays on race, gender, and ethnicity in John W. Chambers II, ed., *The Oxford Companion to American Military History* (Oxford: Oxford University Press, 1999). For Britain's military, see Christopher Dandeker and David Mason, "The British Armed Services and the Participation of Minority Ethnic Communities: From Equal Opportunities to Diversity?" *Sociological Review*, Vol. 49, No. 2 (May 2001), pp. 219-235.

<sup>2</sup> For accounts of Clinton's attempt to lift the ban, see Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Anchor Books, 1995), pp. 148-177; Janet E. Halley, *Don't: A Reader's Guide to the Military's Anti-Gay Policy* (Durham, N.C., Duke University Press, 1999), pp. 1-26; Craig A. Rimmerman, "Promise Unfulfilled: Clinton's Failure to Overturn the Military Ban on Lesbians and Gays," in Rimmerman, *Gay Rights, Military Wrongs: Political Perspectives on Lesbians and Gays in the Military* (New York: Garland, 1996), pp. 111-126; and Lawrence J. Korb, "The President, the Congress, and the Pentagon: Obstacles to Implementing the 'Don't Ask, Don't Tell' Policy," in Gregory M. Herek, Jared B. Jobe, and Ralph M. Carney, eds., *Out in Force: Sexual Orientation and the Military* (Chicago: University of Chicago Press, 1996), pp. 290-302.

<sup>3</sup> For Gore's retreat, see Katharine Q. Seelye, "Gore, In Reversal, Shuns Litmus Test over Gay Troops," *New York Times*, January 8, 2000, p. A1. For Bush's position, see "Excerpts from the Debate among G.O.P. Candidates," *New York Times*, January 7, 2000, p. A15.

<sup>4</sup> For the importance of unit cohesion, see William Darryl Henderson, *Cohesion, the Human Element in Combat: Leadership and Societal Influence in the Armies of the Soviet Union, the United States, North Vietnam, and Israel* (Washington, D.C.: National Defense University Press, 1985); Edward Shils and Morris Janowitz, "Cohesion and Disintegration in the Wehrmacht in World War II," *Public Opinion Quarterly*, Vol. 12, No. 2 (Summer 1948), pp. 280-315; S.L.A. Marshall, *Men against Fire: The Problem of Battle Command in Future War* (New York: William Morrow, 1947); and Samuel A. Stouffer, Arthur A. Lumsdaine, Marion Harper Lumsdaine, Robin M. Williams, Jr., Brewster Smith, Irving L. Janis, Shirley A. Star, and Leonard S. Cottrell, Jr., *The American Soldier*, Vol. 2, *Combat and Its Aftermath* (Princeton, N.J.: Princeton University Press, 1949).

<sup>5</sup> U.S. Code 654 (codifying National Defense Authorization Act for Fiscal Year 1994), Pub.L. 103-160 571, 107 Stat., 1547 (Washington, D.C.: Government Printing Office, 1993). See also Laura L. Miller and John Allen Williams, "Do Military Policies on Gender and Sexuality Undermine Combat Effectiveness?" in Feaver and Kohn, *Soldiers and Civilians*, pp. 386-429. Polls were conducted by Princeton Survey Research Associates. For additional information on methodology see Appendix,



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Feaver and Kohn.

<sup>6</sup> George Grant, ed., *Gays in the Military: The Moral and Strategic Crisis* (Franklin, TN: Legacy Communications, 1993); Ronald D. Ray, "Military Necessity and Homosexuality," in *Gays: In or Out? The U.S. Military and Homosexuals: A Sourcebook* (New York: Brassey's, 1993). As retired Lieutenant Colonel Robert Maginnis of the Family Research Council explains, "Cohesion is the glue that holds small units together. In Ranger school we would wrap a poncho liner around us when we were cold. So you're sharing body heat. If there is any perception of inappropriate behavior that you think might result from that, you have to have total trust that not only are they going to pull your wounded body off the battlefield but that they won't do anything untoward." *Sixty Minutes*, "Don't Ask, Don't Tell," December 12, 1999. For studies that question the claim that lifting the gay ban would undermine unit cohesion see n. 7.

<sup>7</sup> Elizabeth Kier, "Homosexuals in the U.S. Military: Open Integration and Combat Effectiveness," *International Security*, Vol. 23, No. 2 (Fall 1998), pp. 5-39; "What is Known About Unit Cohesion and Military Performance?" in National Defense Research Institute, *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment* (Santa Monica, Calif.: RAND, 1993), pp. 283-331; Aaron Belkin and Melissa Levitt, "Homosexuality and the Israel Defense Forces; Did Lifting the Gay Ban Undermine Military Performance?" *Armed Forces and Society*, Vol. 27, No. 4 (Oct. 2001), pp. 541-565; Aaron Belkin and Jason McNichol, "Homosexual Personnel Policy in the Canadian Forces; Did Lifting the Gay Ban Undermine Military Performance?" *International Journal*, Vol. 56, No. 1 (Winter 2001), pp. 73-88; Frank Pond, "A Comparative Survey and Analysis of Military Policies with Regard to Service by Gay Persons," in Policy Concerning Homosexuality in the Armed Forces, Hearing Held by Senate Armed Services Committee. 103<sup>d</sup> Cong., 2<sup>d</sup> Sess. (Washington, D.C.: Government Printing Office, 1993); and General Accounting Office, *Homosexuals in the Military: Policies and Practices of Foreign Countries* (Washington, D.C.: General Accounting Office, 1993).

<sup>8</sup> Nathaniel Frank, "What's Love Got to Do with It? The Real Story of Military Sociology and 'Don't Ask, Don't Tell,'" *Lingua Franca*, Vol. 10, No. 7 (October 2000), pp. 71-81.

<sup>9</sup> Charles Moskos, Jr., "From Citizens' Army to Social Laboratory," *Washington Quarterly*, Vol. 17, No. 1 (Winter 1993), pp. 83-94; Melissa Wells-Petry, *Exclusion: Homosexuals and the Right to Serve* (Washington, D.C.: Regnery Gateway, 1993), pp. 127-130; Ray, "Military Necessity and Homosexuality," p. 64; David Ari Bianco, "Echoes of Prejudice: The Debates Over Race and Sexuality in the Armed Forces," in Craig A. Rimmerman, ed., *Gay Rights, Military Wrongs: Political Perspectives on Lesbians and Gays in the Military* (New York: Garland, 1996), pp. 58-59.

<sup>10</sup> Charles Moskos, as quoted in Frank, "What's Love Got to Do with It?" p. 76. See also Lois Shawver, *And the Flag Was Still There: Straight People, Gay People, and Sexuality in the U.S. Military* (New York: Harrington Park Press, 1995) p. 158.

<sup>11</sup> The other studies that address the privacy rationale are Shawver, *And the Flag Was Still There* and Lois Shawver, "Sexual Modesty, the Etiquette of Disregard, and the Question of Gays and Lesbians in the Military," in Herek et. al., *Out in Force*, pp. 226-244. Shawver argues that same-sex nudity in the shower is not erotic for homosexual service members. While we agree that in many instances, same-sex nudity in the showers and in the barracks is not necessarily erotic, we believe that in some cases same-sex nudity in military living quarters can be erotic for homosexual service members. See Shawver, *Sexual Modesty*, p. 227.

<sup>12</sup> Wells-Petry, *Exclusion*, p. 128.

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<sup>13</sup> Ibid., pp. 129-130.

<sup>14</sup> More specifically, we searched to determine the number of articles in which the word "shower" occurred in close proximity to the words "military" and "gay." Our search terms were (gay! or homosex!) with 25 (military or soldier!) with 15 (shower!) and our search period was late 1992 through the end of 1994.

<sup>15</sup> Linda Jordan, "Not Homophobic," *Seattle Times*, March 21, 1993, p. 5.

<sup>16</sup> Cited in Shawver, *And The Flag Was Still There*, p. 158.

<sup>17</sup> U.S. Congress, 10 U.S. Code 654.

<sup>18</sup> Cited in Shawver, *And The Flag Was Still There*, p. 25.

<sup>19</sup> Melissa Healy, "The Times Poll: 74% of Military Enlistees Oppose Lifting Gay Ban," *Los Angeles Times*, February 28, 1993, p. A1.

<sup>20</sup> Gen. Norman Schwarzkopf, testimony before the Senate Committee on the Armed Services, in Policy Concerning Homosexuality in the Armed Forces, p. 598.

<sup>21</sup> Maj. Kathleen Bergeron, testimony before the Senate Committee on the Armed Services, in *ibid.*, p. 605.

<sup>22</sup> Cited in Bianco, "Echoes of Prejudice," p. 50.

<sup>23</sup> C. Dixon Osburn, "A Policy in Desperate Need of a Rationale: The Military's Policy on Lesbians, Gays, and Bisexuals," *University of Missouri-Kansas City Law Review* 64 (1995), pp. 204-212.

<sup>24</sup> For statistics on media coverage of gays and lesbians in the military, see Women, Men and Media, *Military Women in the TV News Spotlight*, (Colton's Point, MD: Communication Research Associates, 2000).

<sup>25</sup> Miller and Williams, "Do Military Policies on Gender and Sexuality Undermine Combat Effectiveness?"

<sup>26</sup> Secretary of Defense William J. Perry, quoted in Joshua Gotbaum, "Housing and Quality of Life," *Defense Issues*, Vol. 10, No. 44 (1995); Former Acting Deputy Under Secretary of Defense for Installations Randall A. Yim in General Accounting Office, *Military Housing: Status of the Services' Implementation of the Current Barracks Design Standard* (Washington, D.C.: General Accounting Office, 1999), p. 21.

<sup>27</sup> Gotbaum, "Housing and Quality of Life," [www.defenselink.mil/speeches/1995/t19950404-gotbaum.html](http://www.defenselink.mil/speeches/1995/t19950404-gotbaum.html), p. 1.

<sup>28</sup> Margaret C. Harrell and Laura L. Miller, *New Opportunities for Military Women: Effects Upon Readiness, Cohesion, and Morale* (Santa Monica, Calif.: Rand Corporation, 1997), pp. 71-72.

<sup>29</sup> Frederick J. Manning, "Morale, Cohesion, and Esprit de Corps," in Reuven Gal and A. David Mangelsdorff, eds., *Handbook of Military Psychology* (Chichester, UK: John Wiley and Sons, 1991), p. 459.

<sup>30</sup> Frank M. Richardson, *Fighting Spirit: A Study of Psychological Factors in War* (New York: Crane, Russak and Company, 1978) p. 171.

<sup>31</sup> Edwin Charles Asman, *A Study of Some of the Factors Affecting the Morale of Separates from the United States Navy*. Masters Thesis in Science of Public Administration (Columbus: Ohio State University, 1950).

<sup>32</sup> For reviews of the literature on retention and recruiting, see John T. Warner and Beth J. Asch, "The Economics of Military Manpower," in Keith Hartley and Todd Sandler, eds., *Handbook of Defense Economics*, Vol. 1 (Amsterdam: Elsevier, 1995), pp. 348-398; and Bruce R. Orvis and Beth J. Asch, *Military Recruiting: Trends, Outlook, and Implications* (Santa Monica, Calif.: Rand Corporation, 2001).

<sup>33</sup> General Accounting Office, *Military Housing: Status of the Services' Implementation*, pp. 8-9.

<sup>34</sup> Douglas W. Edwards, "Impact of Quality of Life on the Reenlistment Intentions of Junior Enlisted Marines," master's thesis, Naval Postgraduate School, 2002; and

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Elyse W. Kerce, *Assessment of USMC Quality of Life (QOL) Program Contributions to Readiness, Performance, and Retention/Design and Methodology* (San Diego, Calif.: Navy Personnel Research and Development Center, 1998).

<sup>35</sup> Edwards, "Impact of Quality of Life on the Reenlistment Intentions of Junior Enlisted Marines," p. 57. In addition, statistical analysis of the relationship between quality of housing and reenlistment decisions may suffer from methodological bias. See, for example, Edwards's coding rules for his military housing variable. Marines who seek to leave the military due to concerns about housing are included in the same category with those whose decisions are not influenced by housing.

<sup>36</sup> General Accounting Office, *Military Housing*, pp. 5-6. As of the late 1990's, the Marine Corps had initiated a barracks renovation program to house personnel in pay grades E-1 to E-3 in two-person rooms and to provide private rooms for higher grades.

<sup>37</sup> Matthew Cox, "Breathing Room: A \$9 Billion Barracks Face Lift Includes Private Bedroom and Eliminates 'Gang Latrines,'" *Army Times*, July 29, 2002.

<sup>38</sup> *Ibid.*, p. 15.

<sup>39</sup> Melissa Sheridan Embser-Herbert cited in Aaron Belkin and Geoffrey Bateman, eds., *Don't Ask, Don't Tell: Is the Gay Ban Based on Prejudice or Military Necessity?* (Boulder, CO: Lynne Rienner, forthcoming). Her remarks were made December 9, 2000 at the Commonwealth Club of California.

<sup>40</sup> The study of 368 officers is John W. Bicknell, Jr., *Study of Naval Officers' Attitudes toward Homosexuals in the Military* (Monterey, Calif.: Naval Postgraduate School, 2000). See also Healy, "The Times Poll."

<sup>41</sup> Osburn, "A Policy in Desperate Need of a Rationale," pp. 215-223; and Rhonda Evans, *U.S. Military Policies Concerning Homosexuals: Development, Implementation and Outcome* (Santa Barbara, Calif.: Center for the Study of Sexual Minorities in the Military, 2001).

<sup>42</sup> Melissa S. Herbert, *Camouflage Isn't Only For Combat: Gender, Sexuality, and Women in the Military* (New York: New York University Press, 1998).

<sup>43</sup> For details, contact Aaron Belkin at [Hbelkin@polsci.ucsb.edu](mailto:Hbelkin@polsci.ucsb.edu).

<sup>44</sup> Belkin and McNichol, "Homosexual Personnel Policy in the Canadian Forces"; and Aaron Belkin and Jason McNichol, "Effects of the 1992 Lifting of the Restrictions on Gay and Lesbian Service in the Australian Defense Forces" (Santa Barbara, Calif.: Center for the Study of Sexual Minorities in the Military, 2000); Aaron Belkin and Rhonda Evans, "Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the British Armed Forces: Appraising the Evidence" (Santa Barbara, Calif.: Center for the Study of Sexual Minorities in the Military, 2000); Belkin and Levitt, "Homosexuality and the Israel Defense Forces."

<sup>45</sup> U.K. Ministry of Defence, *Report of the Homosexuality Policy Assessment Team* (London: Ministry of Defence, 1996).

<sup>46</sup> Belkin and McNichol, "Homosexual Personnel Policy of the Canadian Forces."

<sup>47</sup> This paragraph is based on Belkin and Levitt, "Homosexuality and the Israel Defense Forces."

<sup>48</sup> Paul Koegel, "Lessons Learned from the Experience of Domestic Police and Fire Departments," in Herek, Jobe, and Carney, *Out in Force*, p. 137.

<sup>49</sup> *Ibid.*, p. 138.

<sup>50</sup> Bicknell, *Study of Naval Officers' Attitudes towards Homosexuals in the Military*, p. 176.

<sup>51</sup> *Ibid.*

<sup>52</sup> Laura L. Miller, "Fighting for a Just Cause: Soldiers' Attitudes on Gays in the Military," in Wilbur J. Scott and Sandra Carson Stanley, eds., *Gays and Lesbians in*

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*the Military* (New York: Aldine de Gruyter, 1994), pp. 69-85; and Elizabeth Kier, "Rights and Fights: Sexual Orientation and Military Effectiveness," *International Security* Vol. 24, No. 1 (Summer 2000) 194-201.

<sup>53</sup> Bicknell, *Study of Naval Officers' Attitudes toward Homosexuals in the Military*, pp. 170; 173.

<sup>54</sup> Armando X. Estrada and David J. Weiss, "Attitudes of Military Personnel Toward Homosexuals," *Journal of Homosexuality* Vol. 37, No. 4 (July 1999), pp. 83-97. A score of 0 indicated complete lack of acceptance of homosexuality and a score of 100 indicated full acceptance.

<sup>55</sup> Gregory Herek, "Why Tell If You're Not Asked? Self-Disclosure, Intergroup Contact, and Heterosexuals' Attitudes toward Lesbians and Gay Men," in Herek, Jobe, and Carney, *Out in Force*, p. 213.

<sup>56</sup> Gregory Herek and John P. Capitanio. "'Some of My Best Friends': Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes toward Gay Men and Lesbians," *Personality and Social Psychology Bulletin* Vol. 22, No. 4 (April 1996), pp. 412-424.

<sup>57</sup> Belkin and Evans, "Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the British Armed Forces," pp. 41-42.

<sup>58</sup> Belkin and McNichol, "Homosexual Personnel Policy of the Canadian Forces."

<sup>59</sup> For an account of a combat-support unit in which women said that they wanted to sleep in a tent with their male unit-mates, see Charles Moskos, "Army women," *Atlantic Monthly* August 1990, pp. 71-78.

<sup>60</sup> General Accounting Office, *Military Housing: Costs of Separate Barracks for Male and Female Recruits in Basic Training* (Washington, D.C.: General Accounting Office, 1999), pp. 1-2.

<sup>61</sup> Relatedly, advocates of the privacy rationale argue that some colleges do not force heterosexual students to share dormitory rooms with homosexuals, and that the military should not be compelled to follow residential procedures that are more liberal than policies in the civilian sector. Although some colleges do allow heterosexuals to switch dorm rooms if they are uncomfortable with homosexual roommates, three qualifications deserve consideration. First, in contrast to military policy, some colleges allow students to switch dorm rooms for any reason (such as discomfort with the politics, race, or religion of a roommate). Second, colleges allow numerous privileges concerning dress, speech, and behavior that are not available to military personnel. Hence it seems questionable to cite the civilian sector as precedent for determining privileges that the military should accord. Third, colleges are not universally willing to allow heterosexuals to switch dorm rooms if they are uncomfortable with gay and lesbian roommates. These claims are based on a survey that we conducted of residential dorm policies at fifty-one randomly selected colleges and universities. For complete results of the survey, contact the authors at Hbelkin@polsci.ucsb.eduH or Hembserherbert@gw.hamline.eduH. See also David Segal as cited in Belkin and Bateman, *Don't Ask, Don't Tell*.

<sup>62</sup> HQ USAF/JAG, "Memorandum for All Staff Judge Advocates and Military Judges re Commander Inquiries on Members Stating That They Are Gay," in Stacey L. Sobel, Jeffery M. Cleghorn, and C. Dixon Osburn, eds., *Conduct Unbecoming: The Seventh Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass,"* (Washington D.C.: Servicemembers Legal Defense Network, 2001), Vol. 2, exhibit 36; and Randy Shilts, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military* (New York: Fawcett Columbine, 1993), p. 664.

<sup>63</sup> Herbert, *Camouflage Isn't Only for Combat*.

<sup>64</sup> Ibid.

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<sup>65</sup> Ibid., p. 125.

<sup>66</sup> For discussion of whether foreign military experiences are relevant for determining what would happen if the United States lifted its ban, see Belkin and Levitt, "Homosexuality and the Israel Defense Forces."

<sup>67</sup> For a copy of Section 571, see <http://dont.stanford.edu/regulations/pl103-60.pdf>.

<sup>68</sup> For a description of the British code of professional conduct, see Christopher Dandeker's remarks in Belkin and Bateman, *Don't Ask, Don't Tell*.

<sup>69</sup> See the contributions in Herek, Jobe, and Carney, *Out in Force*, in particular Gail I. Zellman, "Implementing Policy Changes in Large Organizations: The Case of Gays and Lesbians in the Military," pp. 266-289.

<sup>70</sup> Section III, part D., National Institute of Military Justice, *Report of the Commission on the 50th Anniversary of the Uniform Code of Military Justice* (Alexandria, Va.: National Institute of Military Justice, 2001).