

Research Note Assessing “Homosexuals and U.S. Military Policy: Current Issues,” a Congressional Research Service Report for Congress

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Overview

A report released by the Congressional Research Service (CRS) reaches several conclusions about the current status of gay service members in the U.S. military serving under the “don’t ask, don’t tell” policy. The report, entitled “Homosexuals and U.S. Military Policy: Current Issues,” addresses the recent history of the current policy on gay service members, legal challenges, public opinion, violence against gays, recruitment, discharges and foreign military experience.¹ This research note describes and assesses several of the most important conclusions: those evaluating the policy’s effect on overall discharge rates for homosexuality; those regarding a pattern of reduced discharge rates during wartime; those relating to the distinction between status and conduct; and those discussing the latest statistics on public opinion about gays in the military. It finds that, in many cases, the report draws misleading conclusions about the policy, its effects or the status of gay service members.

Minimization of the policy’s impact

Pentagon statistics show that annual discharge rates for homosexuality conformed to a clear pattern after the passage of “don’t ask, don’t tell.”² In six out of the first seven years following the 1994 passage of the law, discharges of gays and lesbians increased, raising discharges from a low of 617 in 1994, to a high of 1,227 in 2001. Then, following the September 11 attacks, discharges declined every year for the past three years reaching a low of 653 in 2004. The pattern can be visualized as an upside-down “V,” rising then falling.

The CRS attributes this clear pattern to “random fluctuations” in the data.³ But CRS arrives at its conclusion about the random nature of the data via a statistical sleight of hand. In particular, the CRS report *combines* the rising discharge figures from the first seven years of the policy with the falling discharge figures from the most recent three years, thus focusing on the average number of discharges since the passage of “don’t ask, don’t tell” rather than the clear trend described above. The combination of the rising rates with the falling ones yields an average discharge rate that is roughly comparable to the old, pre-Clinton average discharge rate in the same number of years before the passage of “don’t ask, don’t tell.” As such, “don’t ask, don’t tell” seems to have the same impact on the rate of gay discharges as its predecessor.

As will be explained below, however, the past three years of falling discharges are the result of a practice of troop retention that has followed from the wars in Afghanistan and Iraq. As was the case with every other war since World War II, the rate of gay and lesbian discharges has declined as a result of the current war.

1 David F. Burrelli and Charles Dale, “Homosexuals and U.S. Military Policy: Current Issues,” CRS [Congressional Research Service] Report for Congress, May 27, 2005. Available at www.gaymilitary.ucsb.edu. Hereafter the report will be cited as CRS-X, with X denoting the page number.

2 Servicemembers Legal Defense Network publishes discharge rates, compiled by the Pentagon, in its annual reports, available at www.sldn.org.

3 CRS-12.

In short, the CRS report relies on *average* discharge rates to conceal two clear trends which show that discharges first climbed after “don’t ask, don’t tell” became law, and only fell once the U.S. went to war and began to struggle with troop shortfalls. The effort to conceal the trends by taking the average of the pre-9/11 and post-9/11 discharge rates, and to dismiss the pattern as the product of “random fluctuations in the data,” appears to misconstrue the unavoidable conclusions of the evidence—that “don’t ask, don’t tell” correlated with a significant climb in discharge rates, and that, during wartime, discharge rates fell.

Disavowal of an embarrassing pattern

Scholars have found that gay discharges have fallen during wartime for every American war since World War II, the first time records were kept.⁴ Supporters of gays in the military argue that this pattern is hypocritical in light of the Pentagon’s claim that allowing gays and lesbians to serve openly would undermine unit cohesion. According to this position, if gays undermined unit cohesion, no effort would be made to retain higher numbers of them during wartime, when cohesion is most important. The fact that discharge figures always go down during wartime, supporters argue, reflects an understanding among military commanders that gay service members are valued when the requisites of military effectiveness are at their most critical—during combat.

The CRS report disputes the argument that the declining number of discharges during wartime is attributable to a military practice of retaining troop strength by suspending the discharge of known gays. Their reasoning is this: The discharge figures were declining prior to this war, and apparently continued to decline after its completion. According to the CRS report, if the military were intentionally trying to retain gays during the war, “we would have expected to see a drop in the wartime discharge rate followed by an increase following the crisis.” Such an increase, it concludes, “is not evident in these data.”⁵

The first Gulf War lasted approximately six weeks. The discharge data provided by the CRS report is annual and does not break down discharges by week or month. It is therefore not possible to determine from the provided data whether or not there was a drop in the discharge rates immediately following the war. In fact, however, the *Wall Street Journal* reported finding a set of instructions informing commanders that they should stop firing gays during the conflict, and which also reported that the military resumed discharging known gay troops after the return of peacetime.⁶ According to the military’s own documentation, then, its practice was the same during the first Gulf War as in all other wars: the military retains gays during wartime, and fires them during peacetime.

The CRS’s current denial of the practice of retaining known gays during wartime is

4 Rhonda Evans, “U.S. Military Policies Concerning Homosexuals: Development, Implementation and Outcome,” October, 2001, available at www.gaymilitary.ucsb.edu.

5 CRS-12.

6 Wade Lambert and Stephanie Simon, “US Military Moves to Discharge Some Gay Veterans of Gulf War,” *Wall Street Journal*, July 30, 1991.

difficult to reconcile with the 1993 Congressional testimony of the report's principal author, which acknowledges this practice. It states, in part: "The situation that arises during a time of deployment place[s] homosexuals in a no-win situation. They are allowed or ordered to serve at the risk of their own lives with the probability of forced discharge when hostilities end if their sexuality becomes an issue. By deploying suspected homosexuals with their units, the services bring into question their own argument that the presence of homosexuals seriously impairs the accomplishment of the military mission."⁷

Mischaracterization of what the law punishes

The CRS report mischaracterizes what "don't ask, don't tell" punishes so as to make the policy seem more tolerant of homosexual identity. The report claims that "don't ask, don't tell" in its statutory form is "based on conduct," while making "no mention of 'orientation.'" It says that individuals who "choose" to make their sexual identity public will be discharged.⁸ The implication is that gay people who opt to conceal their sexual orientation can continue to serve so long as they do not engage in misconduct.

In truth, the current regulations are not based solely on conduct, but also punish people for having a gay or lesbian identity, even if they remain celibate. Those whose homosexual orientation becomes known, i.e. whether or not they choose to reveal it, must be discharged from the military, even if they do not engage in misconduct. Not only are service members discharged simply for saying they are gay, even if such statements are not accompanied by evidence of same-sex sexual conduct, but they are also discharged if, while not choosing to come out, they are outed by other people or by the surfacing of evidence such as romantic photos, letters, etc.⁹

Contrary to the assertion of the CRS report, the law makes clear that it targets people who have a gay or lesbian identity, not just those who engage in homosexual conduct. It stipulates that a service member will be discharged if he or she engages in same-sex sexual conduct *unless* "such conduct is a departure from the member's usual and customary behavior" and it is "unlikely to recur," i.e. the person is straight.¹⁰ Thus heterosexual people are allowed to engage in same-sex sexual conduct on a one-time basis, while gay people are not only punished for any same-sex sexual conduct, but are banned from service simply for being gay, whether or not they engage in sexual conduct.

By insisting that "don't ask, don't tell" targets conduct, the authors of the CRS report imply that anyone who is fired under the policy has willingly chosen to violate the rules. In reality, many service members are fired because of their sexual identity, even when

7 Statement of David F. Burrelli, Analyst in National Defense, Foreign Affairs and National Defense Division, Congressional Research Service, Library of Congress, in "Policy Concerning Homosexuality in the Armed Services," Senate Armed Services Hearings, 103d Cong, Mar. 29, 1993, pp17-18.

8 CRS-4/5.

9 See Nathaniel Frank, "Perverse," *The New Republic*, November 18, 2002; USC, Sec. 654, "Policy Concerning Homosexuality in the Armed Forces."

10 USC, Sec. 654, "Policy Concerning Homosexuality in the Armed Forces."

they have done nothing wrong.

Omission of polls showing strong support for gays

Public opinion has shifted in recent years toward greater support for the open service of gays and lesbians. The CRS report notes this trend, pointing out that such support has increased from 40% in a 1993 poll to 63% in a 2004 poll.¹¹ The report, however, does not mention two polls showing a significantly higher approval percentage. A Gallup poll from December 2003 and a poll conducted by the University of New Hampshire Survey Center in May 2005 both found that 79% of the public favors letting gays serve openly in the military.¹²

The CRS report says that only 25% of active duty military personnel support letting gays serve openly, and that these figures are “generally consistent with independent polling on the issue over the last decade or so.”¹³ Neither of these conclusions yields an accurate depiction of military attitudes. The poll cited is drawn from subscribers to the “Military Times,” a group of self-selected military personnel who are not representative of the military population, and who, in the same poll, identify themselves as 54% conservative and only 7% liberal.¹⁴ A more accurate figure comes from a 2004 National Annenberg Election Survey, a poll which was based on a random sample and which found that 42% of military personnel support letting gays serve openly. For the first time, a slim majority of 50% of junior enlisted personnel support letting gays serve openly, compared to 43% who oppose it. This is significant because the rationale for the gay ban emphasizes the attitudes of junior enlisted personnel as those most affected by the presence of gay troops.¹⁵ Yet the CRS report does not mention these polls.

In addition, opinion within the military has not remained constant over the past decade. Rather, anti-gay sentiment has declined. In two surveys completed in 1993, one by Dr. Laura Miller, a military sociologist, and the other by the Los Angeles Times, 16% of male service members said that gays and lesbians should be allowed to serve. The fact that 42% of the military now believes that gays should serve openly represents a significant shift.¹⁶

11 CRS-6.

12 The Gallup Organization; “Gay Soldiers and Teachers,” *New York Times*, April 2, 2004; Scott S. Greenberger, “One Year Later, Nation Divided on Gay Marriage” *Boston Globe*, May 15, 2005.

13 CRS-6/7.

14 http://militarycity.com/polls/2004_chart3.php.

15 http://www.annenbergpublicpolicycenter.org/naes/2004_03_2military-data_10-16_pr.pdf. The Annenberg survey is the first to use state-of-the-art, scientific procedures to measure military attitudes on the gay ban. Rather than relying on a nonrandom “mall intercept” approach, the survey used a scientific procedure in which phone numbers are randomly selected from a complete list of active residential telephone exchanges across the country, and then military respondents are separated from civilians to generate findings.

16 Laura L. Miller, “Fighting for a Just Cause: Soldiers’ Views on Gays in the Military,” in Wilbur J. Scott and Sandra Carson Stanley, eds., *Gays and Lesbians in the Military: Issues, Concerns and Contrasts* (New York, 1994), 70.

Other surveys echo this trend. A March 2000 study by Major John W. Bicknell of the Naval Postgraduate School in Monterey, CA found that between 1994 and 1999, the percentage of U.S. Navy officers who "feel uncomfortable in the presence of homosexuals" decreased from 57.8% to 36.4%.¹⁷ Between 1992 to 1998, the percentage of U.S. Army men who said they "strongly disagree" with letting open gays serve in uniform dropped from 63% to 36%. The percentage of army women who felt this way dropped nearly in half, from 31% to 16%.¹⁸ The effect of the CRS report's discussion of public opinion, therefore, is to underreport both the support for letting gays serve openly (both outside and within the military) and the recent evolution of that support toward greater tolerance.

Conclusion

The CRS report on current issues relating to gays in the U.S. military minimizes the impact of "don't ask, don't tell" by asserting that the increase in gay discharges that followed the passage of the policy was a result of random fluctuations in the data; disavows an embarrassing pattern in which the rate of gay discharges always declines during wartime, when cohesion matters most; mischaracterizes what the policy punishes so as to make it seem more tolerant of homosexual identity; and underreports the degree of public and military support for letting gays serve openly in the military.

17 John W. Bicknell, Jr., "Study of Naval Officers' Attitudes Toward Homosexuals in the Military," Submitted for the degree of Master of Science in Management, Naval Postgraduate School, Monterey, California, March, 2000.

18 "Miller/Moskos Nonrandom Surveys of Army Personnel," Charles Moskos, Northwestern University, 1998, reported in "Conduct Unbecoming: The Fifth Annual Report on 'Don't Ask, Don't Tell, Don't Pursue,'" Servicemembers Legal Defense Network, available at www.sldn.org; "1998 Third Quarter Report," cited by Elizabeth Kier in "author reply," *International Security*, Summer, 1999.