

**STRATEGY
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**RELATIONSHIPS BETWEEN MILITARY
MEMBERS OF DIFFERENT RANK:
ONE STANDARD FOR ACTIVE AND RESERVE COMPONENTS**

BY

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RANK: ONE STANDARD FOR ACTIVE AND RESERVE COMPONENTS**

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ABSTRACT

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The Army policy on relationships between soldiers of different rank changed dramatically on 2 March 1999 in response to the Secretary of Defense's order to prohibit certain relationships between officer and enlisted members that up until that time had not been proscribed by the Army. The new policy, which restricts relationships between officers and enlisted soldiers, even if not in the same chain of command, brings Army policy into line with those of the other Services. The new Army policy is flawed in that it explicitly provides broad exceptions for part-time Reserve soldiers; as a result, they are treated differently from other Army personnel. This difference in treatment is inimical to Total Force integration and good order and discipline. Reserve soldiers should be subject to the same rules, with few exceptions, as Active soldiers.

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RELATIONSHIPS BETWEEN MILITARY MEMBERS OF DIFFERENT RANK: ONE STANDARD FOR ACTIVE AND RESERVE COMPONENTS

To prepare for and perform its vital role, the military must insist on a respect for duty and a discipline without counterpart in civilian life. *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975).

— Mr. Justice Powell

On 29 July 1998 Secretary of Defense William S. Cohen directed the Services to "by policy, prohibit personal relationships such as dating, sharing living accommodations, engaging in intimate or sexual relations, business enterprises, commercial solicitations, gambling and borrowing between officer and enlisted regardless of their Service".¹ His rationale for issuing this order was that it would eliminate as many differences among the Services in disciplinary standards as possible. He wanted the Services to implement uniform and clear policies since they organize, deploy, and fight predominantly as a unified force.

Each Service was required to modify its policy to meet the Secretary's mandate, but the Army faced the most drastic changes to comply with his order. On 2 March 1999 the Army significantly changed its policy on relationships between soldiers of different rank - but only for one of its three components.² The new policy constitutes a fundamental change for the Active Army, but possibly little or no change for the United States Army Reserve (USAR) and Army National Guard (ARNG). This paper describes how

this change came about, why changing the Army's policy is a good idea, and why the Army's shrinking from applying the policy fully to the Reserve components is a bad idea. This paper advocates a policy that is consistent across Services and their respective components and proposes a model that will enable commanders to maintain good order and discipline in the Total Force by providing one set of rules for both Active and Reserve members while allowing exceptions where appropriate.

SCOPE OF PAPER

To explain the climate and impetus that led to the Army's new policy, this paper presents a short history of fraternization in the American military and a description of previous high-level attempts to implement a consistent policy across the Services. In addition, the relationship between the regulatory standard of relationships between members of different rank and the criminal offense of fraternization is described. A comparison is offered of the Army's prior and new policies and a description of how the new policy will detrimentally impact an integrated or joint environment is put forth. Finally, this paper presents an argument for a workable Total Force policy that differentiates minimally between Active and Reserve members.

Presentation of the issues of sexual harassment, adultery, same-sex romantic relationships, and officer-officer/enlisted-enlisted relationships³ are beyond the scope of this paper. For the purpose of distinguishing among military members in this

paper, Active Guard/Reserve members (AGRs) are included when the terms "Active members" or "full-time members" are used.

Reference to "Reservists" or "part-time members" includes the majority of the members of the Reserve components - the citizen-soldiers - who do not routinely serve on extended active duty.

CONCISE HISTORY OF FRATERNIZATION IN THE AMERICAN MILITARY

The custom against fraternization between officers and enlisted personnel in the military can be traced to Roman military law⁴ and to the feudal era of William the Conqueror and King Gustavus Adolphus of Sweden.⁵ The British custom against fraternization was based on long standing class distinctions and the recognized need to avoid undue familiarity so as to enhance good order and discipline. The U.S. Army adopted the British custom during the Revolutionary War. Although the word "fraternization" itself was not used during these early periods, the conduct addressed was that which we today refer to as "fraternization."⁶

Military members who violated the custom against fraternization often faced criminal prosecution by their respective Service. Reported criminal fraternization cases in the United States military increased steadily until enactment of the Uniform Code of Military Justice (Code or UCMJ) in 1951. There were no reported cases prior to 1820, more than 100 cases in the nineteenth century, and more than 200 cases in the first half of this century.⁷ Since enactment of the Code, prosecutions

have rarely involved "pure" fraternization, that is, consensual relationships between unmarried officer-enlisted couples of different sex without aggravating circumstances.

Insofar as criminal prosecutions under the Uniform Code of Military Justice were concerned, until approximately the time of the Vietnam War, most prosecutions for fraternization involved consenting homosexual activities between officer and enlisted personnel or adultery.⁸

Since the Vietnam War, the focus has been on cases with aggravating circumstances. At the same time, a shift occurred in the justification for prosecution from social class differences to maintenance of discipline and order. Convictions were pursued as conduct prejudicial to good order and discipline, rather than conduct unbecoming an officer and gentleman.⁹ The rationale behind the shift is illustrated in this summary from a military criminal law primer.

Undue familiarity, most especially among members of the same command, tends to create disharmony and distrust. The subordinate member of the association may expect or actually receive favorable treatment. At a minimum, the rest of the command may perceive that the intimate association has resulted in favoritism at the expense to others similarly situated.¹⁰

For the past several years the Navy, Marine Corps, and Air Force have had similar, although not identical, policies that prohibit most familiar officer-enlisted relationships. These policies apply to their Active and Reserve components. The Army grappled with its policy from World War II until the mid-1980s. When the Army finally established a comprehensive policy, it was far more lenient than that of the other Services.

1984 was a pivotal year for fraternization for two reasons. First, in August the 1984 Manual for Courts-Martial acknowledged for the first time a specific offense of fraternization for certain officer-enlisted relationships. Second, on 23 November 1984 the Army published Headquarters, Department of the Army, Letter 600-84-2, and ended the era of conflicting interpretations of the Army's administrative fraternization policy.¹¹

This letter presaged the 1988 Army Command Policy regulation by providing that "when the senior does not have direct command or supervisory authority over or the capacity to exercise official influence regarding the lower ranking member, relationships between soldiers are not inherently improper and normally need not be regulated."¹² It strongly urged restraint on social, commercial, and duty relationships for soldiers in the same chain of command.¹³ This policy applied to the Army's Active and Reserve components.

**RELATIONSHIPS BETWEEN MILITARY MEMBERS OF DIFFERENT RANK IS A
TIMELY ISSUE, BUT NOT A NEW ISSUE**

Secretary Cohen's direction to the Service Secretaries to bring their policies in line is not the first time Congress or a Secretary of Defense has wrestled with the idea of implementing a uniform or at least consistent policy on fraternization or relationships between members of different rank.

After the conclusion of hostilities in World War II, Lieutenant General James H. Doolittle was appointed to lead a six-man commission to study the current state of relations between officers and enlisted men. This board constituted the most well known and formalized attempt to revise fraternization policy.¹⁴

The Doolittle Board's recommendations dealing with the issue of fraternization ultimately had little impact on Service policy.

It took more than two decades before Congress questioned the differences in the fraternization policies of the Services. There was great discussion during the Hearings on Women in the Military regarding the viability of implementing a uniform policy, but little action.¹⁵ Another decade later, in 1988, Representative Byron introduced specific legislation calling for a Department of Defense (DOD) fraternization policy.¹⁶ This legislation noted that a uniform policy was lacking and "the very reason that one is required is to enforce good order, discipline, and high morale."¹⁷

The bill did not pass, but a working group was formed and DOD interest in the subject was renewed.¹⁸ The Office of the Assistant Secretary of Defense for Force Management and Personnel noted that "without a standard DOD definition, regulation, and specific policy guidance, confusion and disagreement will continue to exist as to what constitutes fraternization - and when a relationship is inappropriate."¹⁹ The working group ultimately recommended against a DOD-wide policy on fraternization, concluding that it would have to be vague and general and would confuse an already complex issue.²⁰ The Services fervently desired to maintain the status quo and "vigorously resisted imposition of a DOD policy."²¹ Given the

forces working against it, a comprehensive DOD policy did not emerge.

Secretary Cohen has now achieved a more consistent policy across the Services, but not a consistent policy for all military members. An all-Service, all-component policy is probably inevitable, and certainly desirable, given the increasingly joint and multi-component environment of the military. If the Army revises its policy to eliminate the exceptions for the USAR and ARNG, or else construes the exceptions very narrowly, Secretary Cohen's ultimate goal - uniform and clear policies - will be attained.

**THE CRIMINAL OFFENSE OF FRATERNIZATION DEPENDS ON THE
ADMINISTRATIVE POLICY OF RELATIONSHIPS BETWEEN MEMBERS OF
DIFFERENT RANK**

Violating a Service's policy governing relationships between members of different rank is not necessarily a criminal offense. Criminal prosecutions, however, frequently have their genesis in such a violation. The offenses of Fraternization (Art. 134) and Conduct Unbecoming an Officer (Art. 133) are commonly prosecuted in response to an aggravated violation of a Service's policy. Whether a situation involving members engaged in an improper relationship is handled administratively or as a criminal matter depends on the facts, circumstances, and discretion of the commanders involved.

A Service's policy on relationships between members of different rank, as described in Service regulations, memoranda,

or other official documents, provides evidence of the custom of the service. The Manual for Courts-Martial explains the difference between the offense of fraternization and policies governing conduct between officers and enlisted personnel.

- (1) *In general.* The gist of this offense is a violation of the custom of the armed forces against fraternization. Not all contact or association between officers and enlisted persons is an offense. Whether the contact or association in question is an offense depends on the surrounding circumstances. Factors to be considered include whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale. The acts and circumstances must be such as to lead a reasonable person experienced in the problems of military leadership to conclude that the good order and discipline of the armed forces has been prejudiced by their tendency to compromise the respect of enlisted persons for the professionalism, integrity, and obligations of an officer.
- (2) *Regulations.* Regulations, directives, and orders may also govern conduct between officer and enlisted personnel on both a service-wide and a local basis. Relationships between enlisted persons of different ranks, or between officers of different ranks may be similarly covered. Violations of such regulations, directives, or orders may be punishable under Article 92.²²

Military courts may use the customs of the Service to determine if a military member understands the standards to which he or she is expected to adhere.

COMPARISON OF THE ARMY'S PRIOR AND NEW POLICIES

The Army's prior policy was essentially a policy tolerant of human relationships that sought to regulate these relationships only if they actually caused problems. The policy permitted most

relationships outside the chain of command and applied to the Army's Reserve components without embedded exceptions. Applying the policy to the Reserve components as it was applied in the Active component was not difficult.

Unlike the Army's previous policy, which only regulated the conduct of soldiers with other soldiers, the new policy applies to relationships between soldiers and sailors, marines, or airmen, as well as other soldiers. The new policy also includes a significant change in that it directly prohibits soldiers from engaging in particular relationships. The old policy was much less forceful: it directed commanders and supervisors to take specific actions if relationships caused certain negative effects in the unit. The new policy explicitly addresses the potential adverse effects of relationships on the chain of command. In addition, it provides that appearances and perceptions can lead the Army to prohibit certain relationships.

The new policy addresses business relationships between officers and enlisted personnel and generally prohibits them. However, exceptions for landlord-tenant relationships, one-time sales of personal property, and ongoing financial and business relationships between military members married prior to 1 March 2000 are permitted. The policy provides a grace period until 1 March 2000 for businesses that were previously authorized, but are now prohibited, to wind up their affairs. In addition, the policy provides for specific situations for Reserve component

personnel: "[i]n the case of Army National Guard or United States Army Reserve personnel, this prohibition does not apply to business relationships that exist due to their civilian occupation or employment."²³

The new policy prohibits dating, shared living accommodations other than those directed by operational requirements, and intimate or sexual relationships between officers and enlisted personnel. While prohibiting new relationships, the policy contains an exception for marriages entered into before 1 March 2000; a grace period until 1 March 2000 for relationships outside of marriage that predate the effective date of the policy; and an exception for situations in which a relationship which complies with the policy would move into non-compliance due to a change in status of one of the members (for example, when one member of an enlisted-enlisted married couple becomes an officer). Another exception is provided for personal relationships outside of marriage between members of the Reserve components "when the relationship exists due to civilian acquaintanceship, unless the individuals are on active duty (other than annual training) or Full-time National Guard duty (other than annual training)."²⁴ Similarly, but with different language, an exception is provided for relationships between members of the Regular Army and members of the Reserve components "when the relationship primarily exists due to civilian association and the reserve component member is not on

active duty (other than annual training) or full-time National Guard duty (other than annual training)."²⁵

The new policy appears to create two standards. Active component soldiers have a *per se* prohibition on most personal and business relationships with either officers or enlisted members. That is, they are wrong if they enter into a proscribed relationship regardless of whom, if anyone, knows about the relationship. The issue of whether or not the relationship affects good order and discipline is not reached.

Reserve soldiers, however, in effect, are free to engage in the relationships forbidden to their Active counterparts - so long as these relationships do not negatively come to the attention of their military superiors. If a relationship does attract attention, the soldiers engaged in the relationship will undoubtedly maintain that their relationship is due to their civilian occupation, acquaintanceship, or affiliation. The burden will then be on the Army to show that the relationship is detrimental to good order and discipline. This is a very different result from that involving Active soldiers; it is a very unfortunate result for soldiers serving side-by-side to have such different standards.

THE ARMY'S POLICY SHOULD BE AN ALL-COMPONENT POLICY

On the surface, it does not seem unreasonable to have different rules for soldiers who serve part-time. This could, perhaps, have worked in the past, when Reservists were called

infrequently to active duty; but today the character of reserve service is quite different. Frequent deployments and multi-component, composite, and hybrid units bring Active soldiers and Reserve soldiers into frequent side-by-side contact.

Based on recent experience and intelligence projections, the demand for smaller-scale contingency operations is expected to remain high over the next 15 or 20 years. . . . [T]hese operations will still likely pose the most frequent challenge for U.S. forces through 2015 and may require significant commitments of forces, both active and Reserve.²⁶

In addition to increased contact during deployments, Active and Reserve soldiers are serving together in day-to-day operations more than ever before. This trend shows every sign of continuing and increasing, as multi-component units become commonplace. "Creating multi-component units will be a key enabler in building the Total Army leaders and agile, dynamic forces we will need in the 21st Century. This will fundamentally change the way we do business."²⁷ "In the future, we will continue to expand the integration of Reserve and Active component leaders at all levels."²⁸ "As the Force XXI process works toward building the Army After Next (AAN), the redesigned Army for 2025 and beyond, we must embed multi-component units into all our organizations."²⁹

The Reserve Forces Policy Board recently conducted a series of symposia entitled "Total Force 2010." They examined the cultural and structural barriers affecting integration between the Army's components. Their conclusions are consistent with

those of the Secretary of Defense and the Chief of Staff of the Army. While Reserve forces were truly "in reserve" during the Cold War, their role has changed: they are no longer the "force of last resort."³⁰

The political necessity of the post-Cold War era has forced us to think anew of the roles of our Reserve forces. Today, Reservists and National Guard members are serving with their active-duty counterparts around the world . . . Reservists and National Guard members total 1.5 million men and women and represent half of the Total Force - a half that is growing in importance. Reservists today are total players in the Total Force and are vital to our national security—we simply can't get the job done without them.³¹

Given this clear trend, is there any justification for having two sets of rules - one for Active soldiers, but a different set for their Reserve colleagues?

An integrated Total Force means the ability to use National Guard members, Reservists, and active-duty personnel interchangeably across the complete spectrum of missions from the smallest unit on up. On the other hand, it also means that in order to achieve this goal, we must have a corresponding elimination of cultural biases and stigmas, which have been associated with service in a Reserve component.³²

The Board concluded that Total Force integration is not just a nice thing to do, but that it is absolutely essential from an operational standpoint.³³ The existence of a different standard for one component of one Service detracts from, rather than enhances, Total Force integration.

Similarities Between Active And Reserve Soldiers Are More Salient Than Differences

Active and Reserve soldiers have a common military commitment. They have taken an oath to support and defend the Constitution. They are dedicated and professional. They are fundamentally different from civilians in that they can be ordered, on short notice, to leave their families and fight for their country. "The Reserve components . . . are bound by a full-time commitment but are limited by part-time service."³⁴ Standards that are different should be thoroughly scrutinized to ensure that the differences are justified and do not adversely impact good order and discipline. Rules governing relationships that vary, depending on a soldier's current component, do not pass the test.

The Significance of Off-Duty Conduct

Both Active and Reserve soldiers are subject to adverse administrative action for off-duty conduct. Such action may be taken if that conduct affects good order and discipline and is detrimental to unit morale, or even if there is only the perception of others that the conduct adversely affects good order and discipline. Adverse action is taken because the off-duty conduct affects the soldier's on-duty status. For example, an officer removed from command because he has been accused of child molestation is not removed because his superiors suspect he may engage in like conduct while on duty. He is removed because his conduct has adversely affected good order and discipline in

the unit. His soldiers no longer have confidence in him as a leader.

When an officer-enlisted couple date, it is the relationship, and the actions or perceptions that may result from that relationship, that threaten morale and unit cohesion. The actual or perceived favoritism is what undermines good order and discipline. It is immaterial whether the date occurs at the on-post club or on a drill weekend. When other soldiers know of the relationship, good order and discipline are jeopardized. This is as true in Reserve units as it is in Active units.

Is It Reasonable for Part-Time Soldiers to Have Full-Time Rules Governing Their Personal Relationships?

Some would argue that Reservists should not have to conduct their personal and social lives as if they were full-time soldiers. They choose to serve their country part time, rather than full time, and that should be considered when policies are made. The disruptions for citizen-soldiers to their civilian affiliations and associations should be kept to a minimum. Many would concede that it is reasonable to proscribe certain relationships between Reserve soldiers in the same chain-of-command since they clearly interfere with good order and discipline. However, many believe that the Army's new, more restrictive policy that forbids personal relationships even outside the chain of command should have an exception for part-time soldiers.

I disagree. While the argument for exceptions for Reservists appears to have some merit, on closer examination, it fails the reasonableness test. As described above, soldiers are frequently assigned to work with members from other Services and other components and it does not make sense for the rules to be different depending on one's Service or current component. An Active soldier, an AGR soldier, a soldier on an 11-month Active Duty for Training (ADT) tour to attend the Army War College, a soldier on a 179-day Active Duty for Special Work (ADSW) tour at the Pentagon, a soldier on a 21-day Annual Training tour supporting a warfighting CINC exercise, and a soldier on an Inactive Duty for Training weekend all wear the same uniform, are all subject to the UCMJ, and should all follow the same policy for relationships between members of different rank. Good order and discipline are clearly enhanced when all soldiers follow the same rules.

Off-duty Actions are Essential to Reserve Unit Readiness

The Army recognizes the importance of morale and *esprit de corps* for the Reserves as it does for the Active component. "The USAR requires the same impartial leadership as the Active Army. Morale and unit cohesion require sound judgment at all levels of command in every component of the United States Army."³⁵ All members took the same oath to support and defend their nation. Since Reserve units exist to be mobilized and deployed when needed, they should be as ready as the nation can afford to make

them, including in the vital areas of morale and unit cohesion. It is not asking too much to require Reservists to follow a policy designed to ensure good order and discipline for all.

A policy governing relationships that applies to Reservists even when they are not on duty would not be very much different from existing requirements. As Terrence M. O'Donnell, Chairman, Reserve Forces Policy Board, says, "This commitment makes [the lives of part-time soldiers] more complicated and requires continued personal sacrifice each and every day."³⁶ Reservists regularly spend off-duty, unpaid time maintaining their military status, readiness, and proficiency. For example, Reservists routinely exercise military courtesy when not on duty. They say "sir" and "ma'am" when talking to their military superiors between drills. They maintain equipment and uniforms at home. They study, complete correspondence courses, and read professional literature when off duty to advance in proficiency and rank when on duty. They attend staff and training meetings, make numerous phone calls, and send many e-mail messages to conduct business and prepare for drills and Annual Training. In addition, they take actions to maintain physical fitness and meet weight control standards throughout the year. In short, Reservists routinely conduct themselves appropriately between drills so as to be in compliance with Army standards when they attend drill.

DIFFERENCES IN POLICIES ARE DETRIMENTAL TO JOINT UNIT COHESION

Restrictive policies in all components of the Navy, Marines, Air Force, and the Active Army, but a lenient policy for the Army's Reserve components, result in situations that cannot be justified in today's military environment. Consider a joint staff with every Service and every component represented. Navy, Marine Corps, and Air Force personnel understand that they are prohibited from certain familiar relationships between officers and enlisted members. Active Army personnel, however, must inquire about the exact military affiliation of a potential date or roommate or business partner to determine whether a relationship is permissible. The new policy provides loopholes that almost completely abrogate the rules for Reservists. If the exceptions are not construed narrowly, this will result in military members serving side-by-side who are subject to different standards. This situation can only invite confusion and a tendency for commanders to dilute or ignore enforcement of the policy.

In his 29 July 1998 memorandum, Secretary Cohen described variations in the Service's differences in treatment of the issue as "antithetical to good order and discipline" and "corrosive to morale, particularly so as we move towards an increasingly joint environment."³⁷ Major David Jonas, in his exhaustive study of fraternization, questions "the need for the services to regulate the same concern differently, when the goal of good order and

discipline is identical."³⁸ He concludes that there is no logical basis to support different policies and no need for them.³⁹

There are obstacles to overcome and distractions to deal with when operating in multi-component and joint environments, but "[t]he missions of the services are ultimately the same - to win wars. Joint missions support a single standard."⁴⁰ Although his ultimate argument is for a relaxation of standards by the Navy, Marine Corps, and Air Force, and the adoption of a common military-wide standard that permits most relationships outside of the chain of command, MAJ Jonas' argument for a common policy has merit.

Ultimately, however, all services require that orders be obeyed expeditiously. The logical conclusion is that, while fraternization regulations are valid and advance a legitimate military goal, there is no need for substantially different regulations among the services, *regardless* of their customs and traditions.⁴¹

Clearly, having standard rules governing relationships for similarly situated military members will enhance cohesion and performance, just as having different rules will tend to degrade good order and discipline. We now have policies that are consistent across the Services, but not consistent across Army components. As such, they do not enhance mission accomplishment in either single-Service or joint environments. It is untenable to have consistent policies apply across all components of three Services, but only the Active component of the Army.

PROPOSAL FOR A CONSISTENT ALL-SERVICE, ALL-COMPONENT POLICY

1. Decriminalize Fraternalization

Eliminate Fraternalization as a violation of Article 134 of the UCMJ. Allow Service policies alone to regulate relationships between ranks. Most of the Articles in the UCMJ have civilian criminal counterparts. A few do not, as "the military is, by necessity, a specialized society separate from civilian society"⁴² according to the Supreme Court. The military needs some specific methods of discipline that have no civilian equivalent, but improper relationships that rise to the level of "pure" fraternization need not be treated as criminal offenses.

All of the sanctions for violating a Service's policy regarding relationships between members of different rank should be administrative, with the least severe being oral counseling and the most severe being separation from the Service. Between the extremes are written counseling, reprimand, order to cease, adverse comment on evaluation report, relief from command, reassignment, and bar to reenlistment. Commanders would handle instances of inappropriate relationships administratively, just as they now handle other disciplinary problems administratively. Instances of sexual harassment, adultery, and other offenses could still be handled through criminal channels.

2. Amend the Nepotism Statute to Include the Uniformed Services

The Nepotism Statute limits the actions a public official may take in furtherance of the career of a relative who is also a

public servant.⁴³ For example, the senior official may not appoint, promote, or advocate favorable personnel actions for relatives. "Relative" is defined broadly to include in-laws; step-relations; and aunts, uncles, and cousins, in addition to immediate family members. Interestingly, it does not include grandparents or grandchildren. By amending the Statute to include the uniformed Services and military positions, it would provide a mechanism for commanders to mitigate the effects of relatives serving in the military.

The amended statute would serve as the authority for regulations providing for non-punitive transfers or recusals if related military members are assigned to the same chain of command. In these situations, the commander would determine which member should be transferred to another chain of command. In extenuating circumstances, if the Service would benefit from both members remaining in place, the senior member would recuse himself from decisions affecting the junior member. Conflicts involving both Active and Reserve military members would be solved with this approach.

3. Assess Military Status At Inception of Relationship

In determining whether military members are violating policy or what action, if any, to take, commanders should consider the status of the parties at the time the relationship began. If there was no violation at the inception of the relationship, but subsequent events resulted in a violation, a commander should

determine whether a minor correction would bring the members into compliance. In the alternative, he should consider granting an exception if the circumstances so warrant.

If Active SGT X works for Active CPT Y during the duty day and they are co-workers while moonlighting in a civilian workplace, arguably there is no violation of policy. If SGT X becomes the supervisor of CPT Y in the civilian workplace, the battalion commander could reasonably order them to change their civilian relationship since the military is their primary responsibility.

Suppose Ms. X is the godmother of Ms. Y's child and the women have been close friends since childhood. Then they become 2LT X and PVT Y. Since their relationship predated their military affiliation, their commanders could allow them to continue their friendship, but ensure they are not in the same chain of command. They should be counseled not to flaunt their status or take other actions that might tend to disrupt good order and discipline. In short, their relationship could be sanctioned so long as they remain circumspect in the manifestation of the relationship.

4. Construe the Exceptions for Reservists Narrowly and Provide Commanders Tools to Deal with Likely Scenarios

The current policy exceptions for relationships involving members of the USAR and ARNG, described by the phrases "due to civilian acquaintanceship" and "due to civilian association" are so vague as to be almost meaningless. In essence, Reservists are

categorized as civilians for purposes of the policy. If the civilian connection results in an actual or perceived problem in the Reserve unit, a commander is in a very weak position to take action to ameliorate the situation. Any dating couple, for instance, will insist that their military affiliation is only coincidental and that they maintain their relationship by engaging in activities while off duty. Surely the Army does not want commanders to interpret the policy by ascertaining when and where a couple met or whether they were in uniform or civilian clothes at the time. In addition, the phrase "not on active duty (other than annual training)" leaves in question the status of soldiers serving on short or long ADT and ADSW tours. It is arbitrary to draw a line, for instance, between Reservists who serve on 30-day ADSW tours and those who serve on 139-day ADSW tours. To apply the exception for Reservists to the soldier on a 30-day tour, but not the soldier on a 139-day tour is untenable. Soldiers would be forced to move in and out of relationships as they came on and off tours of duty if they were to actually comply with the Army policy.

The language of the new policy directing commanders to ensure that personal relationships emanating from civilian careers do not adversely influence training, readiness, or personnel actions does not offer commanders an enforcement mechanism. Amending the Nepotism Statute would provide commanders the tools they need with respect to relatives.

Drafting regulations allowing commanders to use transfers and recusals to deal with civilian career relationships between other-than-relatives would complete their tool kit in this regard. The latter would be particularly helpful for scenarios likely to emerge for Reserve members. For example, if SGT X and CPT Y from the workplace example above were Reservists, it would be reasonable for their battalion commander to offer one of them a non-punitive military transfer, in lieu of ordering them to alter their civilian business relationship. The business and employment arena is the only one in which Active and Reserve soldiers are not similarly situated; allowing a limited exception for Reservists is reasonable.

5. Permit Exceptions for Relatives

Some exceptions to the overall policy are desirable. If the Services had strict prohibitions against officer and enlisted family members serving simultaneously, some individuals would be precluded from joining the military or would be forced to leave prematurely. The Services would lose some motivated, talented individuals. Consider a sergeant major's daughter who applies to a military academy. Consider a sergeant married to a sergeant and one of them becomes a warrant officer (explicitly allowed by policy in each Service). Then there is a lieutenant colonel's son who enlists in the Reserves for the college benefits. Think about two brothers - one of whom enlists, while the other enrolls in ROTC and earns a commission. Exceptions to cover scenarios

such as these are not hard to implement and are worth having. Indeed, in many families, children choose a military career because of the family history of service to the country as military members. In the present state of recruiting difficulties, the Services might encourage such legacies.

THE BOTTOM LINE

The Secretary of Defense has unequivocally stated his intention to forge a unified military. "I want to emphasize the increasing reliance on the Reserve Components which has occurred since the end of the Cold War and request that DoD leaders recognize and address any remaining barriers to achieving a fully integrated Force."⁴⁴ Likewise, the Chief of Staff of the Army is totally committed to removing impediments to an integrated force. "We must have a level playing field - one clear, consistent standard for the Army."⁴⁵

The Army's current and planned programs will serve as our bridge to the future, a future that moves Total Army integration from coordinating three components to building one seamless 21st Century Force, a common culture based on common training, doctrine, experience, and shared knowledge.⁴⁶

A consistent policy across all Services and components is essential for good order and discipline. It is also workable. Warfighting commanders care about operational effectiveness - they want a team of military members who adhere to the same standards. "All elements of the Total Force must be able to work together smoothly. Success on the battlefield will depend on the

operational and tactical synergy of fully integrated, agile Service forces."⁴⁷

Reservists are soldiers, sailors, marines, and airmen 365 days a year, regardless of how many of those days are "paid" days. They must follow the rules regarding relationships between members of different rank on off-duty days so that good order and discipline will prevail on duty days. The Services should expect no less. Reservists may, in some cases, have to make tough choices - choosing between altering a personal or business relationship or continuing their military career. As citizen-soldiers (sailors, marines, and airmen) they have already made the toughest choice - to serve their country while simultaneously pursuing a civilian career. To expect them to follow vital rules, necessary for good order and discipline, is not too much to demand.

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ENDNOTES

¹ Secretary of Defense William S. Cohen, "Good Order and Discipline," memorandum for Secretaries of the Military Departments, Washington, D.C., 29 July 1998.

² Department of the Army, "Revised Policy on Relationships Between Soldiers of Different Rank," message to all U.S. Army representatives and activities, (Washington, D.C: Department of the Army, 1998). The title of the new policy that regulates the personal contact between officers and enlisted members is "Relationships between military members of different rank." The word "soldiers" was changed to "military members" to reflect the fact that the new policy applies across the Services.

³ The new policy does not prohibit relationships between senior officers and junior officers nor between non-commissioned officers and enlisted soldiers. Such relationships, however, are discouraged if they result in actual or perceived favoritism, partiality, preferential treatment, or exploitation.

⁴ Major Kevin W. Carter, "Fraternization," Military Law Review 113 (Summer 1986): 62.

⁵ Lieutenant Colonel Aaron D. Glover, "Fraternization: One Policy Fits All," Army War College Strategy Research Project, 1998, 5-6.

⁶ The first recorded use of the term "fraternization" occurred in *United States v. Bunker*, 27 B.R. 385 (1943); quoted in *United States v. Johanns*, 17 M.J. 862, 880 (C.M. A. 1983).

⁷ Carter, 67, 74.

⁸ Frederic I. Lederer, Military Law: Cases and Materials, (The Marshall-Wythe School of Law, 1993), 243.

⁹ *United States v. Bunker*, 27 B.R. 385 (1943).

¹⁰ David A. Schlueter, Military Criminal Justice: Practice and Procedure, 4th ed. (Charlottesville, VA: Michie, 1996), 93.

¹¹ Carter, 61.

¹² Major General Robert M. Joyce, "Fraternization and Regulatory Policy Regarding Relationships Between Members of

Different Ranks," memorandum for See Distribution, Washington, D.C., 23 November 1984, 1.

¹³ Ibid.

¹⁴ Major David S. Jonas, "Fraternization: Time for a Rational Department of Defense Standard," Military Law Review 135 (Winter 1992): 108.

¹⁵ Congress, Women in the Military Hearings, 96th Cong., 1st Sess. 145 (1979); quoted in Major David S. Jonas, "Fraternization: Time for a Rational Department of Defense Standard," Military Law Review 135 (Winter 1992): 112.

¹⁶ Congress, 100th Cong., 2d Sess., 379 (1988); quoted in Major David S. Jonas, "Fraternization: Time for a Rational Department of Defense Standard," Military Law Review 135 (Winter 1992): 112.

¹⁷ Jonas, 112.

¹⁸ Ibid., footnote 365.

¹⁹ Office of the Assistant Secretary of Defense, Force Management and Personnel, "Fraternization," memorandum for Secretaries of the Military Departments, Washington, D.C., 23 January 1989; quoted in Major David S. Jonas, "Fraternization: Time for a Rational Department of Defense Standard," Military Law Review 135 (Winter 1992): 112-113.

²⁰ Jonas, 113, footnote 338.

²¹ Ibid., 113.

²² U.S. Government Printing Office, Manual for Courts-Martial (1998 Edition) (Washington, D.C.: U.S. Government Printing Office, 1998), IV-108.

²³ Department of the Army, "Revised Policy on Relationships Between Soldiers of Different Rank," message to all U.S. Army representatives and activities, (Washington, D.C: Department of the Army, 1998).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Department of Defense, Report of the Quadrennial Defense Review, (Washington, D.C.: U.S. Department of Defense, May 1977), 11.

²⁷ Dennis J. Reimer, Chief of Staff, One Team, One Fight, One Future, (Washington, D.C.: Department of the Army), introduction.

²⁸ Ibid., 12.

²⁹ Ibid., 20.

³⁰ "ROA National Security Report," The Officer (February 1999): 132.

³¹ Ibid.

³² Ibid.

³³ Ibid., 133.

³⁴ Ibid., 132.

³⁵ DA PAM 600-35, 7 December 1977, 2-15.c.

³⁶ "ROA National Security Report," 132.

³⁷ Cohen, "Good Order and Discipline," 1.

³⁸ Jonas, 102.

³⁹ Ibid.

⁴⁰ Ibid., 104.

⁴¹ Ibid., 104-5.

⁴² *Parker v. Levy*, 417 U.S. 733, 743, 94 S.Ct. 2547, 2555, 41 L.Ed.2d 439 (1974).

⁴³ Government Organization and Employees, U.S. Code, vol. 5, sec. 3110 (1994).

⁴⁴ Secretary of Defense William S. Cohen, "Integration of the Reserve and Active Components," memorandum for HQDA, DoD, and USAR Leadership, Washington, D.C., 4 September 1997.

⁴⁵ Reimer, 17.

⁴⁶ Ibid., 21.

⁴⁷ William S. Cohen, Secretary of Defense, Annual Report to the President and the Congress (Washington, D.C.: Department of Defense, 1998), 82.

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