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**THE PRESIDENT, FACTIONS, AND 'THE INVITATION TO STRUGGLE':
LIFTING THE GAY BAN IN THE UNITED STATES MILITARY**

CORE COURSE III ESSAY

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Introduction

Candidate Bill Clinton promised that, as President, he would promulgate an Executive order to remove the prohibition on homosexuals serving in the United States military. A year after President Clinton's inauguration, the Department of Defense (DoD) issued its new guidance on homosexuals serving in the military, which, in essence, simply substituted the words "homosexual conduct" for "homosexual." The guidance fell far short of candidate Clinton's campaign promise. This paper will analyze how a supposedly firm campaign promise failed to materialize and why Commander-in-Chief Clinton did not issue an Executive order "forcing" the military to accept gays openly. To do this, it will follow the issue from the 1992 campaign to the December 1993 issuance of DoD directives implementing the new policy on homosexuals.

The paper will examine how "new" homosexual policies emerged out of competition among numerous players on the political scene, including the President, members of Congress, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff (JCS), the service chiefs, the courts, and interest groups on both sides of the issue. It will illustrate that this policy demonstrates traits of both Graham Allison's "bureaucratic politics" and his "organizational process" conceptual models of how a nation's policy makers behave.¹ Indeed, far from being an autonomous actor with the ability to make rational policy choices, the President is "hostage" to pressures and tensions from not just the other two branches of government but from within the Executive Branch and outside government altogether.

¹ The Organizational Process Model postulates that organizations avoid uncertainty and act according to routines or standard operating procedures. Organizations are parochial and develop relatively stable propensities concerning priorities, perceptions and issues. The Bureaucratic Politics Model postulates that leaders who sit on top of organizations are not a monolithic group. Bargaining is the name of the game in this model. Individuals share power and those individuals differ concerning what must be done. The power and skill of proponents and opponents of an action determine how policy is made.

The Campaign Promise

It is crucial to determine just what Bill Clinton's campaign promise was and why he made it. If we can ascertain his motivations, then we may have clues as to some of the reasons he was so susceptible to organizational and bureaucratic pressures to change his promise. The 1992 Democratic platform pledged to provide "civil rights protection for gay men and lesbians and an end to Defense Department discrimination."² By contrast, the Republican party declared, "unlike the Democratic Party and its candidate [Clinton], we support the continued exclusion of homosexuals from the military as a matter of good order and discipline."³ On the campaign trail, Clinton vowed that once he was President, he would immediately repeal the prohibition against homosexuals serving in the military: "I don't think [sexual] status alone, in the absence of some destructive behavior, should disqualify people [from military service]"⁴

While Clinton's words may have been indicative of a sincere belief in the "rightness" of his proposal, other factors contributed greatly to his stance. In 1992, homosexual groups were more organized politically than they had ever been. Furthermore, homosexuals tended to be wealthier and more politically active than the population at large. A 1991 survey found that 85 per cent of homosexuals voted in the 1988 presidential election. The group Access Now for Gay and Lesbian Equality (ANGLE) identified 172,000 homosexual voters in Los Angeles County alone.⁵ California was a critical state for Clinton's election prospects as well as a vulnerable state: in 1988, George Bush had won California by only 300,000 votes.⁶ Promising to repeal the so-called "gay ban" put money in Bill Clinton's campaign coffers. It also put a crucial voting bloc squarely in his corner on

² Morrison, David C , "Endgame for Military's Gay Ban?" *National Journal*, 26 Sep 92, 2225.

³ *Ibid*, 2225

⁴ Wall, James M , "Gays and the Armed Forces," *Christian Century*, 2 Dec 92, 1091

⁵ *The Economist*, "To the Tolerant, the Money," 3 Oct 92, 30.

⁶ *Ibid.*, 30

election day, and gave the already politically active members of that bloc--homosexuals and their supporters--a powerful incentive to vote.

Post-Election Crisis

After his election in November 1992, President-elect Clinton quickly began to realize the President of the United States is not an autonomous actor. Now that his election was a reality, those "factions" that opposed repealing the gay ban came out in force. In fact, opposition to his campaign promise was so vociferous it precipitated the first crisis of his Presidency, even before he was inaugurated. Part of the crisis was surely caused by Clinton's failure to grasp, or at least effectively deal with, how to garner broad-based support for a promise to a *relatively* isolated campaign faction. A November 1992 Gallup poll showed that 49 per cent of Americans supported allowing gays to serve in the military, while 45 per cent opposed allowing them to serve.⁷ However, another November 1992 Gallup poll commissioned by the Retired Officers Association indicated that 83 per cent of its 382,000 members opposed lifting the ban.⁸ The plurality in the electorate at large was very slim. The poll also did not ask people how to lift the gay ban. It is apparent that when issues of morale, good order and discipline, and privacy were interjected forcefully into the debate, people reconsidered exactly what they meant by supporting the lifting of the ban. Clinton was learning that the imperatives that drove campaigns differed from those of the Presidency.

Interest Groups

After the election, threatened military advocacy groups went into action immediately. During the winter 1991 meeting of the Reserve Officers Association in Washington, DC, the

⁷ Saad, Lydia, The "The Jury is Out and Clinton's 'Mandate for Change,'" *Gallup Poll Monthly*, No 326, November 1992, 19

⁸ Morrison, David C , "Gay Groups Were Left In the Dust," *National Journal*, 6 Feb 93, 344

association's members began lobbying Congress to ensure the ban remained. The Retired Officers Association issued pleas to its members to call and write their representatives and senators to take action against lifting the ban. By contrast, gay and lesbian groups were slow to see the threat to this particular issue. Their lobbying plans for the beginning of the year centered around an over-all federal gay civil rights bill, not the lifting of the military's homosexual ban. Openly gay Representative Barney Frank characterized their relative lethargy as "an understandable euphoria . [After the election, gay groups] felt that Clinton's action was a given They were deciding on dessert before we had cooked dinner."⁹ This slow start cost them dearly. In December, Senate minority leader Bob Dole promised to introduce legislation pre-repealing any anti-discrimination order Clinton might sign, and President-elect Clinton was already waffling on his campaign promise¹⁰ Clinton maintained he still intended to sign an anti-discrimination order within days after inauguration; however, he would not issue an implementation order, instead leaving execution to a "top-level" commission to study the matter.¹¹

The Chairman

Clinton got to this point not just because lobbyists had effectively geared up against him. The struggle between factions raged within the Executive Branch and between the Legislative and Executive branches as well. General Colin Powell, Chairman of the JCS, publicly opposed Clinton's stand, maintaining it would undermine morale and preoccupy commanders.¹² As a result of the Gulf War, Powell was an unusually visible and highly respected Chairman, whose influence extended beyond the beltway to the American people. While he was criticized in some quarters for

⁹ *Ibid.*, 343-344.

¹⁰ *The Nation*, "Nervous Service," 7 Dec 92, 688

¹¹ *Ibid.*, 687.

¹² *Congressional Quarterly Weekly Report*, "Campaign Promise, Social Debate Collide on Military Battlefield," 30 Jan 93, 228

MacArthur-like insubordination, and prejudice, his tactics were much more widely interpreted as resulting from a profound concern for the morale and readiness of the United States military. Thus, many “forgave” his decision to publicly oppose his Commander-In-Chief, especially a Commander-in-Chief perceived as having evaded military service and being completely unfamiliar with military requirements and life. Thus, General Powell’s stance added credibility to and mainstreamed a debate that might otherwise have been reduced to a war between extremist factions on both ends of the political spectrum.

The Congress, Part I

In his first week in office, Clinton’s Defense Secretary, Les Aspin, was faced with quelling the military opposition and presenting a plan of action on the issue that would be acceptable to Congress. He indicated in a memo that the administration planned to lift the ban on gays in the military in six months. In the memo, he recognized that the repeal faced strong Congressional opposition--perhaps only 30 senators supported repealing the ban.¹³ The memo was leaked to Congress, and furious Republican senators threatened to pass legislation as early as February preserving the ban. Democratic Senator Sam Nunn, powerful Chairman of the Senate Armed Services Committee (SASC), was also adamantly opposed to the plan. Nunn had close ties to the military and was a conservative Southern Democrat. While Nunn’s political base in Georgia seemed secure--he had run unopposed in 1990--the Republican party in his state was surging, supported partly by well-organized, conservative coalitions of fundamentalist Christians.¹⁴ As Allison’s bureaucratic process model would suggest, Nunn had powerful personal and professional incentives to assert his and Congress’ authority on this issue.

¹³ *Ibid.*, 229-30

¹⁴ *Ibid.*, 229-30

The First Compromise

The gay ban debate was marring Clinton's first days in office. It kept political attention on contentious campaign issues of family values and Clinton's lack of military service. In the midst of this, he was forced to withdraw Zoe Baird's nomination for Attorney General. The administration and Congress negotiated for several days, and Clinton agreed to a greatly reduced plan, largely keeping the current policy. Recruits would not be questioned about their sexual orientation, but dismissal proceedings would continue against service members charged with homosexual conduct. After agreeing to this compromise, Clinton directed Aspin to review the ban and prepare a draft Executive order based on that review by July 15, 1996. A lack of votes in Congress, military opposition, and other events showing him as ineffective, had forced Clinton to compromise in hope of keeping some credibility and preserving a semblance of his promise.

The President

President Clinton's memo to the Secretary of Defense directed that any recommendation be "carried out in a manner that is practical and realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain."¹⁵ In April, Secretary Aspin commissioned RAND Corporation and the services to give him proposals for the required Executive order consistent with the above guidance.¹⁶ The guidance already reflected compromise from the campaign promise. Aspin may have commissioned two groups simply to have different perspectives on the issues. Conversely, it may have been a savvy political move to ensure that the military didn't stonewall the issue of letting gays serve openly. Whatever his motivation, the

¹⁵ U S President Memorandum. "Ending Discrimination on the Basis of Sexual Orientation in the Armed Forces," 29 Jan 93

¹⁶ The over two months time between the compromise and the standing up of the working groups perhaps reflects the hopes the issue would go away as well as the difficulty of a huge bureaucracy acting swiftly to make policy

recommendation of the RAND study was extremely close to the DoD working group's eventual recommendation, "a *conduct-based* (emphasis mine) set of standards applied under the premise that sexual orientation, as such, is 'not germane' to military service."¹⁷

Whatever Aspin's concerns were, the DoD working group members took their charter seriously. There were considerable differences in each service's point of view, largely reflecting the different conditions under which their members worked. "Internal" DoD interference in the working group was minimal. According to one general officer, once they received their charter, no one told him what policy to come up with. Interference from factions outside the government was also minimal, perhaps because the group assiduously avoided leaking what they were doing, wore civilian clothes, and worked away from the Pentagon.¹⁸

Anticipating the Judiciary

One major concern with any proposed policy was whether it would hold up in the courts. In July, DoD and service lawyers reviewed the working group's proposed policy, which based dismissal on conduct, not orientation. The lawyers added what came to be known as the "rebuttable presumption." If military members stated they are homosexual, they were presumed to engage in homosexual conduct, unless they could prove otherwise. This change allowed the services to consider statements of homosexuality as conduct, and strengthened the ability of the services to expel homosexuals and meet subsequent court challenges.¹⁹ The proposed policy was actually considered an *improvement* in its ability to allow the Executive Branch to withstand court challenges from homosexual members who were discharged from the services.²⁰ Thus, curtailing

¹⁷ RAND, *Sexual Orientation and U S Military Personnel Policy Options and Assessment*, 1993, xxviii

¹⁸ Both members of the DoD working group who I interviewed were willing to speak frankly, but preferred anonymity

¹⁹ Information about the DoD working group is based on interviews with members of the group

²⁰ Interviews with members of the DoD working group

the ability of the third branch of government, the Judiciary, to “interfere” with the Executive’s proposal was a major consideration in formulating the policy.

The Announcement

President Clinton announced the new policy on homosexuals on July 19, 1993, in a speech at the National Defense University. First, service men and women would be judged based on their conduct, not their sexual orientation. Second, the military would not ask about sexual orientation in the enlistment procedure. Third, an open statement by service members that they are homosexual would create a rebuttable presumption that he or she intends to engage in prohibited conduct, but the service member would be given the opportunity to rebut that presumption. Fourth, all provisions of the Uniform Code of Military Justice would be enforced. Elimination of asking recruits if they were homosexuals, and the need for “credible information” before commanders could launch criminal investigations, were small victories for “gay rights.”²¹ Clinton noted that the policy was “not identical with some of my own goals .. [But lifting the ban] would have faced certain and decisive reversal by the Congress.”²² The new policy became known as, “Don’t ask, don’t tell.”

The Congress, Part II

Clinton was correct; Congress was not about to let the Executive Branch determine the new policy on homosexuals in the military. Both the Senate and the House held hearings on the subject. The Committee on Armed Services in the House of Representatives held two days of hearings in May, and three days of hearings in July, after Clinton announced his new policy. The SASC held hearings in March, April, May, and also in July after announcement of the policy. The hearings

²¹ Credible information essentially requires articulable facts that a person has engaged in homosexual conduct, not just a belief or a suspicion.

²² *Congressional Quarterly*, “Clinton Announces Compromise on Gays in Military,” 24 July 93, 1976

allowed members of Congress to assert their authority, and gay and military interest groups, military members, and others to express their opinions. The July testimony of General Powell and the service chiefs before the SASC and before the Committee on Armed Services' Subcommittee on Military Forces and Personnel was probably the most critical. For example, Senator Strom Thurmond asked their *personal* opinions of the new policy: "Is the policy which the President announced yesterday what you agreed to?"²³ If members of Congress had detected any military disagreement toward the policy, they surely would have passed legislation to undermine the new policy as announced. However, all military leaders indicated agreement with the policy

In any case, Congress was determined to have the last word. The Fiscal 1994 Defense Authorization Act set into law policy concerning homosexuality in the armed forces. In the first paragraph of the law, Congress reminded the Executive that "Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for government and regulation of the land and naval forces."²⁴ While Congress beat its collective chest, the law essentially reiterated the policy announced by President Clinton in July.

Conclusion

In December 1993, Secretary Aspin finally issued guidance to implement the new policy DoD directives were to be effective in February 1994, over a year after President Clinton's inauguration. People in the armed forces would be judged on their conduct and no one would be asked about sexual orientation as part of the accession process. However, homosexual conduct

²³ U S Congress Senate Committee on Armed Services *Hearings on Policy Concerning Homosexuality in the Armed Forces*, Jul 93, 713.

²⁴ Public Law 103-160, Div A, Title V, 571(a)(1), 30 Nov 1993, 107 Stat 1670, 256

remained a basis for rejection for enlistment, appointment and induction.²⁵ This “honorable compromise” fell far short of Clinton’s campaign promise to provide civil rights protection and end discrimination against gays and lesbians

The Final Irony

Clinton had discovered that Presidential authority did not allow him to act unilaterally. He did not even control his own branch of government. Secretary Aspin had to work hard to bring the Chairman of the JCS and the chiefs of the services around to the new policy. They had believed the existing policy served their organizations well. Demonstrating the parochialism of the organizational process model and the bargaining elements of the bureaucratic policy model, they were resistant to any changes and fought against them. While the DoD working group took Clinton’s charter seriously, much of the compromise had already been struck before they began. In the end, they *strengthened* the ability of the new policy to withstand challenges in the courts.

Military advocacy groups had been quick to respond to the effort to eliminate the gay ban and were quite effective in lobbying Congress. By contrast, gay rights groups misunderstood the potency of the issue, and did not have mainstream support for a wholesale change. Members of Congress, in particular Sam Nunn, successfully strove to assert their authority over the new President. President Clinton recognized the crisis early; however, he could not allow it to appear that Congress or the military was dictating policy to him. In the end, the evolution of the new homosexual policy demonstrates a classic struggle showing that policy making, far from being the rational, collective judgment of wise men and women within the government, is a struggle for power among those men and women and the organizations they represent.

²⁵ Department of Defense Memorandum “Implementation of DoD Policy on Homosexual Conduct in the Armed Forces,” 21 Dec 1993

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