

A HOLISTIC APPROACH TO REPEALING DON'T ASK DON'T TELL

BY

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USAWC STRATEGY RESEARCH PROJECT

A HOLISTIC APPROACH TO REPEALING DON'T ASK DON'T TELL

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ABSTRACT

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Homosexuals currently serve in the Armed Forces under the Don't Ask, Don't Tell (DADT) policy, but gays, lesbians, and others throughout the United States (US), to include President Obama, believe that policy is discriminatory. Polls and trends reveal America's increasing acceptance of homosexual orientation which indicates it may be time to change the law and repeal DADT. Governor Clinton campaigned in 1992 to end the gay-ban and permit homosexuals to serve openly in the Armed Forces. His efforts culminated with the passage of the current law and the DADT policy. Senator Obama pledged to repeal DADT during the 2008 Presidential campaign. In anticipation of the repeal, senior civilian and military leaders should begin to review related issues regarding DADT and allow open homosexual service. To support this effort, this paper addresses the history of homosexual service in the Armed Forces and also considers cultural diversity, professional studies and surveys, the Military Readiness Enhancement Act of 2009, and other DADT related issues. In addition, it addresses repealing DADT through a holistic approach with a comprehensive strategy and a one-year implementation plan to support an expected new law and policy regarding open homosexual service in the Armed Forces.

A HOLISTIC APPROACH TO REPEALING DON'T ASK DON'T TELL

During his presidential campaign in 1992, Governor William Clinton stated he wanted to “lift the ban” preventing homosexuals from serving in the Armed Forces.¹ Upon taking office, President Clinton set out to accomplish what he promised, but his initiatives met with a barrage of resistance from Congress, the Joint Chiefs of Staff, and the public.² During a period of Congressional unease, President Clinton made an interim compromise to allow Congress additional time to review Constitutional matters regarding this issue, and to allow the Department of Defense time to review the issue and “draft an executive order” to end discrimination in the Armed Forces based on “sexual orientation.”³ President Clinton did not succeed in lifting the ban on homosexual service and the compromise became what we know today as the Don’t Ask, Don’t Tell (DADT) policy.⁴ Under the current DADT policy, an individual’s sexual orientation is kept private.⁵ To allow homosexuals to ‘serve openly’ in the Armed Forces simply means to serve without judgment based on an individual’s sexual orientation.

Senator Barrack Obama campaigned in 2008 to allow homosexuals to serve openly in the Armed Forces by repealing the Clinton-era law and policy.⁶ Once in office, President Obama received opposition, albeit less than President Clinton, from both civilian (religious and congressional) and military communities. Regardless, he affirmed he will fulfill his political campaign promise to repeal DADT during his Human Rights Campaign dinner speech in October 2009.⁷ He did so again during the State of the Union speech in January 2010.⁸

The issue of homosexual service in the Armed Forces is relevant and requires the attention of senior civilian and military leaders. To achieve maximum success,

senior civilian and military leaders should use a holistic approach, a comprehensive strategy, and a one-year implementation plan to address issues related to changing the law and repealing the DADT policy.

This research reviews the history of homosexual service in the Armed Forces and also considers cultural diversity, professional studies and surveys, the Military Readiness Enhancement Act of 2009, and other issues related to homosexuals serving openly in the Armed Forces. It addresses repealing DADT through a holistic approach, a comprehensive strategy, and a one-year implementation plan to support an expected new law and policy regarding open homosexual service in the Armed Forces. The proposed one-year implementation plan provides the Department of Defense (DOD) with the vital time required to change policies and regulations across all branches of service, develop new required sensitivity/cultural understanding training, and provides the time to address other issues identified during the transition period. To better understand the issues, it is important to know the definition of homosexuality and the law related to DADT.

Definition and the Law

The concept of homosexuals serving openly affords service members the right to admit their sexual orientation without an enlistment denial or fear of separation from the Armed Forces. Under current DADT policy service members cannot disclose their homosexuality. Homosexuality is defined in U.S. Code, Title 10, Chapter 37, Section 654, as “a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts and includes the terms gay and lesbian.”⁹ The Fiscal Year 1994 National Defense Authorization Act legally banned homosexuals from military service through Public Law 103 – 160. This

was codified in U.S. Code, Title 10, §654, specifically describing homosexuality as unacceptable.¹⁰ While a President can change policy through an Executive Order, to repeal DADT Congress must send new legislation to the President to change the law related to the DADT policy. Such legislation exists in H.R. 1283, The Military Readiness Enhancement Act of 2009, but this legislation lacks sufficient Congressional support in order for it to be sent to the President.

History and the Development of DADT

Homosexuals serve in large numbers in today's Armed Forces. While the numbers cannot be validated, some estimates claim over 65,000 homosexuals serve today.¹¹ To remain in the Armed Forces these service members hide their true sexual orientation (homosexuality); this is considered discrimination by many critics of the DADT policy, to include President Obama.¹² The history of homosexuals serving in the Armed Forces dates back to the Revolutionary War. Sodomy was considered a criminal offense and homosexual behavior was considered a moral issue. During the Revolutionary War, General George Washington discharged Lieutenant Gotthold Enslin, a Soldier in the Continental Army, for sodomy.¹³ By World War II, the U.S. military had changed its view of homosexual behavior and psychiatrists regarded it as a medical condition. During the war Army mobilization regulations defined both homosexuals and "normal persons" and included guidance on rejecting gay draftees.¹⁴ Interestingly, as the war continued and personnel shortages emerged, the military loosened its screening restrictions and allowed gays to serve. However, by the end of the war homosexuals were again involuntarily separated.¹⁵

This anti-homosexual position of the military continued into the 1950s and 1960s. During this period, acknowledging a homosexual orientation barred individuals from the

Armed Forces.¹⁶ The civil rights movement continued to expand during the 1960s and by the 1970s, the movement included issues relating to homosexual rights. Civil rights activists directed attention to the wide dispersion between military commanders and their inconsistent enforcement of the Armed Forces existing homosexual policy.¹⁷ The DOD enacted new policy through Directive 1332.14 (January 1982) which noted “homosexual orientation was incompatible with military service.”¹⁸ According to a General Accounting Office report, an estimated 17,000 members of the Armed Forces were separated under this policy during the 1980s.¹⁹ However, a number of homosexuals began to legally challenge their military discharges which helped establish the early momentum for a change in policy in the late 1980s. As a result, President Clinton attempted to uphold a 1992 campaign pledge to overturn DOD’s current stance under Directive 1332.14. His campaign pledge regarding open homosexual service was, if elected, he would “lift the ban.”²⁰ Upon taking office, President Clinton’s initiative drew intense backlash from Congress, the Joint Chiefs of Staff, and from segments of the U.S. population.²¹ Under pressure, he compromised and directed the DOD to study the issue and “draft an executive order” that would end discrimination based on “sexual orientation”.²²

President Clinton’s interim compromise in 1993 also provided Congress with the time to further review the homosexual service issue by reviewing their constitutional charter, specifically Article I, Section 8, Clause 14: “To make rules for the government and regulation of the land and naval forces.”²³ The interim compromise, still in effect today, set ground rules for DOD by restricting recruiters from asking potential recruits about their sexual orientation. During this period, current service members who stated

they were homosexual would be assigned to a non-active duty status in the Standby Reserve of the Armed Forces.²⁴ Congress held extensive hearings regarding homosexuals serving in the Armed Forces. The Senate Armed Services Committee chairman, Sam Nunn, coined the discussion as the “don’t ask, don’t tell” approach.²⁵ With this approach, recruiters could not ask potential recruits about their sexual orientation and recruits and enlistees would be required to remain silent regarding their sexual orientation. If service members openly admitted their homosexuality, they would be separated. Likewise, admitted homosexuals would be denied entry into the Armed Forces.²⁶

President Clinton introduced the policy with these specific provisions: 1) Service members would be judged on conduct, not sexual orientation; 2) Recruiters would continue to not ask about potential recruits’ sexual orientation; 3) If a service member stated that he or she was homosexual, it would be presumed that the person intended on conducting a homosexual act, but that service member would be afforded the opportunity to dispute the presumption; and 4) the Uniform Code of Military Justice would be applied uniformly across the services.²⁷ Political debate continued into early 1994 on both terminology and the policy itself. The definition of sexual orientation was “A sexual attraction to individuals of a particular sex,” but DOD, under the leadership of then, Secretary of Defense Perry, amended DOD regulations and the definition changed.²⁸ The premise was that a person’s sexual orientation was private and not a bar to service unless their orientation led to homosexual conduct. The new DOD definition became “An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.”²⁹

During the 2008 Presidential campaign, Barack Obama promised to lift the Clinton-era ban on homosexual service.³⁰ Specifically, asserting that “it is time to turn the page on the bitterness and bigotry that fill so much of today’s Lesbian, Gay, Bisexual, Transgender, (LGBT) rights debate.”³¹ Five months into his Presidency, President Obama held a LGBT White House reception where he again pledged his support for civil rights for the gay community. While indicating he would push to overturn the DADT policy, he further stated his intent to repeal the federal Defense of Marriage Act, a law he feels also restricts the rights of homosexuals. He told the assembled crowd that he would be their friend, an ally and a champion that would fight for them.³² This White House event marked a significant milestone and a change from previous administrations, but more importantly, it might also reflect how far U.S. culture has come in accepting equal rights for homosexuals. The LGBT reception, the first of its kind at the White House, sharply contrasted from President Bush’s position on homosexual issues. President Bush never issued a LGBT proclamation during his presidential tenure. Pro-family groups criticized President Obama’s homosexual political agenda as “unprecedented” and claimed that it disrupts the “moral and social order.”³³

More recently, President Obama reiterated his commitment to the LGBT community during the Human Rights Campaign Dinner held in Washington, D.C. in October 2009.³⁴ President Obama again addressed his desire to provide equal rights and protection to the gay community by ending the DADT policy, repealing the Defense of Marriage Act, signing a comprehensive Hate Crimes bill, and passing a Domestic Partners Benefits and Obligations Act.³⁵ Some consider these efforts a holistic approach to support his gay and lesbian agenda. However, with over a year in office President

Obama has not signed new legislation into law permitting open homosexual service in the Armed Forces. To assist senior civilian and military leaders with issues related to DADT they should look at cultural diversity within the U.S. and review studies and surveys to discover pertinent information related to homosexuals and potential issues that will impact the Armed Forces once a new law is enacted.

Understanding Today's U.S. Culture

An understanding of U.S. cultural trends coupled with multiple information sources can assist leaders in making decisions that affect individuals and organizations. This is why it is important to address the possible repeal of DADT through sources of information such as surveys, studies, and interviews. Through the conduct of specific studies and surveys, researchers can collect and process data and provide the public with detailed information regarding current trends, opinions, and facts. Culture includes the norms, beliefs, values, and assumptions of an organization that its members follow. Culture helps determine how individuals act within an organization and may influence both personal and group behavior. Cultural influence may assist or impede organizational change based on an individual's past experiences because culture sets and defines personal and organizational boundaries of behavior. Civilians entering the military bring their personal cultural perspectives with them upon entering initial military training, but as service members, they will learn a specific service culture.³⁶ This is important to understand because culture is a critical factor when considering the repeal of the DADT. As U.S. society becomes more diverse and more tolerant of homosexual behavior, more pressure is exerted on the Armed Forces to allow open homosexual service. President Obama's understanding of cultural change reflects his approach to what he believes best represents society and his personal position on ending a policy

that discriminates against gays and lesbians in the U.S.³⁷ To achieve this, President Obama must shape the country and Congress to embrace his gay and lesbian agenda, but he must do so while maintaining the trust and confidence of those impacted. This may include aligning the religious community and other conservative organizations with his position.

Nathaniel Frank supports the President's position in *Unfriendly Fire*, in which he describes the gap between society and the military. He states that hostility towards the gay ban prevented many from entering into the Armed Forces. Frank further contends this tension proves that the gay ban is contributing to a widening gap between civilian and military cultures and alienating many young people from interest in joining or supporting the military.³⁸ Frank argues that because U.S. society views the gay ban and the DADT policy as discriminatory, Americans believe the Armed Forces are out of touch. Frank further contends the military is a bureaucratic institution that cannot change to meet the current times.³⁹ This sense of being out of touch with U.S. society has a negative impact on the Armed Forces recruiting mission. Military recruiters need community "influencers" to support recruiting and encourage young people to join. Because four-fifths of Americans are opposed to discrimination in the military, DADT has prevented many influential members of the community from supporting the Armed Forces' recruiting efforts.⁴⁰ However, this anger is misplaced. The military expends tremendous energy to eliminate discrimination. The Armed Forces obey laws and executes policy set forth by the President and Congress. If the President and Congress change the law and repeal the DADT policy, the Armed Forces will comply and adapt.

Studies and Surveys Pertinent to DADT

Environmental scanning is a comprehensive approach to collecting information and civilian and military leaders can employ it as a forward-looking technique to spot trends or changes in society and cultural conditions.⁴¹ A way of gathering information is by commissioning a study or surveys to obtain polling data obtained from those in the affected population. The environmental scanning of foreign armed forces can identify possible impacts of homosexuals serving openly in the U.S. Armed Forces. Also, a review and analysis of police and fire departments (military-like organizations) across the U.S. can help the DOD anticipate some of the cultural impacts of allowing homosexuals to serve openly in the Armed Forces. The military is a product of society. Although it does not represent a perfect demographic match, many believe the Armed Forces should represent the social fabric of the society it serves.⁴²

The RAND Corporation studied a number of foreign countries including Canada, France, Germany, Israel, Netherlands, Norway, and the United Kingdom to determine how they handled open homosexual service in their armed forces. Germany's policy regarding homosexual service is similar to DADT. The French view sexual orientation as irrelevant to military performance and operate without an official policy. If someone displays homosexual behavior, the French regard it as a medical or psychological issue. The other countries have nondiscriminatory policies. In this study, the RAND team found that in countries allowing homosexuals to serve, the number of openly serving homosexuals was small. However, the true number of homosexuals serving may be larger since many keep their sexual orientation private. Therefore, it appears homosexuals do not call attention to themselves in order to avoid pressure or career challenges.

A significant finding revealed that none of the countries which allowed open homosexual service reported a reduction in military performance.⁴³ However, further review reveals all is not perfect. Openly serving homosexuals in the Israel Defense Forces do not serve in either intelligence or elite combat units, and many live at home rather than in the barracks. Also, homosexuals do not hold command positions.⁴⁴ Furthermore, problems exist when comparing armies on a global scale. Definitions of homosexuality vary, as do definitions regarding sexual orientation. Finally, policy regarding homosexual service in Europe may not be acceptable to Americans. In Germany, open homosexuals may not be treated equally in promotion decisions.⁴⁵ Clearly, ending discrimination based on sexual orientation is the intent of repealing DADT.

The RAND study also reviewed procedures and behavior in the police and fire departments of six cities – Chicago, Houston, Los Angeles, New York, San Diego, and Seattle. Police and fire departments have similar structures and organizational behavior as the Armed Forces, such as discipline, a strong sense of duty, working as a team, and a familiar chain of command. The RAND study specifically addressed two questions: “How do heterosexuals and homosexuals behave in response to the presence of homosexuals on the forces? And what were the organizational strategies used to implement the nondiscrimination policies?”⁴⁶ The study findings revealed similar results to those in the foreign military service report. Under the new policy, homosexuals did not make their sexual orientation widely known, and even if they did, their behavior rarely challenged the traditions of the organization. Although tensions arose between heterosexuals and homosexuals, acceptance was better than expected. Most

importantly, the organizations did not suffer in overall effectiveness, nor did employing homosexuals impact recruitment or retention of personnel. Keys to successful implementation included a consistently delivered policy and strict enforcement through strong organizational leadership.⁴⁷

Surveys provide information regarding U.S. culture in which service members live and serve. What is important about the information provided within these surveys is that they detail the trends that may help persuade politicians to deal with contentious gay issues facing America. For example, an *Army Times* article “Most Troops Comfortable with Gays, Poll Finds” reported survey data regarding homosexual service.⁴⁸ This 2006 survey of 545 service members revealed that 73% of the military members answering the survey were comfortable with homosexuals; and also, 23% knew of a currently serving homosexual within their unit.⁴⁹ The survey data also indicated that while Soldiers may be comfortable with homosexuals serving, only 26% agreed they should be allowed to serve. A significant difference exists between the 26% “allowed to serve” response and the 73% reported comfort factor. Thirty-seven percent said they should not be permitted to serve, and 32% were neutral.⁵⁰ Soldiers with less than four years in service were more likely to support open homosexual service. While the survey population included 545 Soldiers who had all served at least one tour in Iraq or Afghanistan, the total Army has over one million Soldiers. It would be hard to measure or determine the attitudes of service members with such a small sample.⁵¹

Another survey showing a positive trend of acceptance toward homosexuals was released in July 2008. *The Washington Post* article “Acceptance of Gay People in Military Grows Dramatically” reported an increase in public acceptance of homosexual

orientation.⁵² This survey revealed that 75% of the 1,119 participants in the random national sample said gay people should be allowed to serve openly in the Armed Forces which is up from 62% in 2001 and 44% in 1993.⁵³ The survey showed significant improvement in political tolerance as well. Similarly, Republicans approval of repealing the DADT policy increased from 32% to 62% since 1993, and more than 80% of Democrats supported homosexuals serving openly.⁵⁴ However, the survey did not reveal if those polled had ever served in the Armed Forces.

A Gallup poll released on 5 June 2009, further confirmed a trend that U.S. society is more accepting of homosexual behavior. This survey noted a six percent increase (63% to 69%) in the opinion that homosexuals should be permitted to serve in the Armed Forces compared to a survey taken in 2004.⁵⁵ Those surveyed included various political parties and members of the religious community. Sixty percent of churchgoers, 58% of conservatives, and 58% of Republicans now favor open service. This trend is consistent with the increased number of people lobbying for the legalization of gay marriage. A key survey statistic revealed the largest group supporting open homosexual service was Liberals (86%) and Democrats (82%) followed by young Americans in the age bracket 18 – 29 years (78%), a nine point increase since 2004.⁵⁶

Lastly, environmental scanning should include the review of opinions and direction from key leaders within an organization. Rick Maze from the Army Times interviewed newly appointed Secretary of the Army, the Honorable John McHugh, on 26 October 2009. Secretary McHugh was asked, but did not offer, his personal opinion about the repeal of the DADT policy. However, Secretary McHugh did say that he felt

repealing the DADT policy would not disrupt military operations as others have predicted.⁵⁷

Comprehensive Strategy to Repeal DADT

While Congress may ultimately send required legislation to President Obama to repeal DADT, it should not be done haphazardly. There are many related issues, as addressed later in this paper, which require Congressional and DOD attention in conjunction with DADT policy and federal law. The DOD should be proactive and support Congress in their review of related issues impacting homosexuals while Congress develops a holistic approach to repealing DADT. For example, there is growing momentum in Congress to support the Military Readiness Enhancement Act of 2009 (H.R. 1283) which is the proposed legislation to end DADT.⁵⁸ Representative Ellen Tauscher (D-CA) proposed this legislation on 3 March 2009, and has the backing of 187 co-sponsors, but the bill requires 218 co-sponsors before Congress can forward it to the President.⁵⁹ When signed into law, H.R. 1283 would repeal current U.S. Code, Title 10, section §654, and its related subsections. It would add a new section, §656, establishing a policy of nondiscrimination based on sexual orientation.⁶⁰ The new law under H.R. 1283, would end discrimination based on sexual orientation and would uphold good order and discipline through DOD-directed policy and regulations, but would prohibit service members previously separated for homosexual misconduct from returning to the Armed Forces. Finally, it would prevent the award of damages due to DADT in order to prevent law suits from those seeking financial compensation.⁶¹

Proponents recently shared their opinion on this legislation regarding the Repeal of DADT. In an interview by Diversity Inc's President, Luke Visconti in October 2009, Representative Patrick Murphy (D-PA) is certain H.R. 1283 will pass and that President

Obama will sign the bill into law.⁶² Representative Murphy, a veteran of the U.S. Army, personally saw Soldiers separated upon returning from Iraq due to their homosexuality, but not for sexual misconduct. Senate Majority Leader Harry Reid (D-NV) also believes it is time to end the DADT policy. He sees this as a national security issue because the current policy separates service members with critical skills simply because they are homosexuals. His letter to President Obama addressed these concerns regarding the discharge of qualified personnel and the equal treatment of all service members.⁶³

While H.R. 1283 is comprehensive, legislators should consider making two major adjustments. First, it directs the Secretary of Defense, not later than 90 days and the Secretary of each branch of service not later than 180 days after the new law is enacted, to revise DOD regulations. However, the DOD should act now in anticipation of the repeal of DADT while H.R. 1283 is working through Congress. This means DOD could establish a draft policy that is ready for final adjustments once H.R. 1283 becomes law. As written, H.R. 1283 may not provide enough time for DOD to change related policies, regulations, or establish new human diversity training. Second, an adjustment is required because H.R. 1283 does not support benefits related to the Defense of Marriage act.⁶⁴ President Obama was clear in his desire to repeal both DADT and the DOMA.⁶⁵ This legislation, as written, does not support this initiative. If President Obama is successful in repealing DOMA, it is contrary to the current verbiage in H.R. 1283 and may cause confusion or future problems for DOD in implementation. Therefore, a holistic approach is needed to address President Obama's gay and lesbian agenda, and why the federal government and DOD should address issues covered in

this paper prior to enacting a new law regarding homosexual service in the Armed Forces.

Practical Considerations for Senior Military and Civilian Leaders

DOD's senior leaders should address multiple issues now before any legislation is finalized because if not addressed now, second and third order affects will impact the military's ability to adapt to a change in law. Arron Belkin, of The PALM Center during an address to students at the Army War College in September 2009 claimed "research shows that repealing the ban will improve military readiness, and to the extent that that is the goal, it is hard to understand the case for delay."⁶⁶ He made a strong case for why DADT is unjust and how the country is ready for the transition to open homosexual service. While this may be true, related issues require immediate attention before the implementation of a new law. For example, some related issues include: The Defense of Marriage Act (DOMA), TRICARE health insurance, spouse and survivor benefits, housing (barracks and family), the Uniform Code of Military Justice, DOD training, and an implementation plan to support open homosexual service.

The Defense of Marriage Act (DOMA). Long before his dinner speech to members of the Human Rights Campaign (HRC) in 2009 as a Presidential candidate Senator Obama stated he wanted a repeal of the DOMA and DADT, claiming that "federal law should not discriminate in any way against gay and lesbian couples."⁶⁷ DOMA defines marriage as a legal union between one man and one woman for purposes of all federal laws and benefits, but provides states need not recognize a marriage from another state if it is between persons of the same sex.⁶⁸ However, if one regards DADT as a law and policy of discrimination, then what happens once

homosexuals serve openly in the Armed Forces, but cannot marry legally? This is important because in the U.S. marriage is under the jurisdiction of the States.

Since President Obama advocates repealing DOMA and DADT, does repealing DADT and not DOMA lead to future inconsistencies within DOD? If Congress repeals both will this mean same-sex couples will receive federal benefits even if they cannot marry? This is why the President and Congress should use a holistic approach to address related laws and policies impacting America's GLBT community. At present, DOMA prohibits extending federal benefits to federal employees in a same-sex marriage. Currently, only five states - Iowa, Vermont, Maine, Massachusetts, and Connecticut - recognize same-sex marriages, but in addition to the federal DOMA, 37 states have a related DOMA law reinforcing federal law.⁶⁹ These laws send a strong message about how states regard heterosexual marriages. Therefore, to preclude discrimination for spousal benefits, it would appear that repealing DOMA and DADT should happen simultaneously. For example, if DOMA is repealed, could federal benefits afforded to heterosexual service member spouses (health care, survivor benefits, and family housing) be afforded to same-sex couples serving on active duty? This could also mean if DOMA is not repealed in conjunction with DADT, homosexuals serving in the Armed Forces who marry (or obtain a civil-union) would be precluded from a federally recognized marriage and could claim discrimination for denial of benefits.

Health Care and Survivor Benefits. The DOD provides spouses of active duty service members with unique benefits. Health care coverage and survivor benefits are two that may be impacted repealing DADT. Again, it is important now for DOD to

consider potential healthcare coverage issues for same-sex couples should DADT be repealed. While serving on active duty, service members and their legal family members receive health care benefits; however, without federal recognition of same-sex marriage, same-sex couples would be denied TRICARE. For a family member (spouse or other dependent) to receive health care benefits through TRICARE, service members must provide legal documentation to enroll them in the Defense Enrollment Eligibility Reporting System. Therefore, a holistic approach which addresses potential issues now is important because denial of TRICARE benefits would be a reason for homosexual service members to claim discrimination. Likewise, if the federal government does not recognize same-sex marriage, then other benefits, such as surviving spouse benefits, would also be denied to same-sex couples. Although, homosexual service members would be able to list a partner as a beneficiary using the Service Members Group Life Insurance program to provide some financial relief in the event of death as current service members do.

Housing - Barracks and Family Quarters. Most military training is already gender integrated throughout the initial entry process. It is during initial entry training, where service members learn basic mutual respect, their particular service culture and their service values. Also, in a mixed gender training environment male and female service members can live in the same barracks, but on different floors. The DOD should assess what would happen when DADT is repealed. Should homosexuals serving openly be separately housed from heterosexuals? What about the Navy's sleeping arrangements when deployed at sea? Already, the integration of gender, race, and religious beliefs supports the long-term goal of improving cultural diversity, awareness, and tolerance

within the Armed Forces. Therefore, a new law permitting homosexuals to serve openly may require changes to regulations governing barracks or single service member living arrangements and should be studied now.

Another area for DOD to consider is living in government quarters or family housing. Hypothetically, when homosexuals are permitted to serve openly and DOMA is changed so homosexual service members could marry and receive federal benefits, then they could live in family housing on a federal installation. However, issues could arise about the rights of those who live next door to homosexual couples and specifically those whose personal beliefs about the morality of marriage conflict with the reality of two men or two women living together. DOD must consider what rules and regulations to review and update about living in family quarters on federal installations. A logical question is if the DOMA is not adjusted, should DOD allow same-sex couples to live in family housing? DOD should address this issue now and consider developing a standardized DOD family housing policy to help installation commanders and housing offices support a smooth transition after the repeal of DADT.

The Uniform Code of Military Justice (UCMJ). As part of a holistic approach to repealing DADT, DOD should review relevant articles within the UCMJ now to prepare for a new law allowing homosexuals to serve openly. For example, the Articles of War defined sodomy as a criminal act in 1916. By 1950, the UCMJ included Article 125, which “described the behavior and penalties for engaging in homosexual behavior.”⁷⁰ Article 125 also states “Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.”⁷¹ As

a result, Article 125 established the current concept for prosecuting homosexual behavior; therefore, Article 125 should be changed before DOD must implement a new law allowing homosexuals to serve openly. Allowing Article 125 to stand after implementation of open homosexual service may cause confusion throughout the Armed Forces. The revised UCMJ should require specific language addressing the boundaries of homosexual and heterosexual conduct and service members expected behavior. It should also provide specific language protecting service members from harm. This may also require the Supreme Court to review and provide its opinion on federal law regarding sodomy.

Implementation Plan

Paramount to a successful transition to permitted homosexual service is a detailed implementation plan. Implementation of a new homosexual service policy should address training, establish parameters on the reinstatement (re-accession as stated in H.R. 1283) of separated homosexuals, and provide a comprehensive review of individual personnel files to support reintegration into the promotion and pay system. Senior leaders throughout the Armed Forces have vital experience in efficiently and effectively implementing new training programs. This experience in implementing new training programs will support the successful implementation of a training program required with a new law allowing homosexual to service openly.

Training and Education. The DOD must provide standardized diversity training regarding homosexuality which should include practical applications and scenarios that reinforce training objectives. Current service members should be trained on the specific details of the new law and DOD's policy permitting homosexuals to serve openly, new UCMJ Article 125 guidelines, barracks housing regulations and procedures, and

scenarios that depict anticipated issues. Training the current force should begin three to four months prior to the implementation date of the new law and policy. Because this paper recommends the new law be implemented one-year after signing, the services should train new recruits during their initial entry training and all service members (to include the Reserves and National Guard) to ensure they understand the law and acceptable behavior in a culture where homosexuals are permitted to serve openly. The training program must ensure service members know they should treat everyone with dignity and respect, regardless of sexual orientation.

It may be feasible for the Defense Equal Opportunity Management Institute (DEOMI) to redesign or develop a DOD diversity training program addressing permitted homosexual service. With the mission to optimize combat readiness by promoting human dignity through a variety of training and education, DEOMI appears to be the appropriate DOD activity for this training development.⁷² One method of training a large number of service members quickly is the military's Chain-Teaching program. This program is specifically designed to inform, educate, and implement a new policy or program expeditiously. By conducting a comprehensive and aggressive training program, the Armed Forces could mitigate potential misunderstandings, conflicts or violence against known homosexuals, and help prevent a homosexual-related death similar to the 1999 murder of Private Barry Winchell at Fort Campbell, KY.⁷³

Re-Accession. H.R. 1283 provides the Armed Forces with the ability to re-access or reenlist service members previously separated due to their sexual orientation under DADT. In compliance with H.R. 1283, DOD should not consider re-accession for separations due to homosexual misconduct. DOD should now consider how to return

service members, discharged specifically for their sexual orientation, back onto active duty. Waiting for a new law allowing open homosexual service before developing a comprehensive plan to re-access personnel will lead to delays and negative publicity. A re-accession plan could include the following: 1) accession back onto active duty for those interested; 2) a permanent change of station move (if required); 3) a clothing allowance for enlisted personnel; 4) necessary reintegration training as required by the branch of service; 5) promotion point reviews or an adjusted year-group as applicable to support eligibility for future promotions.

A recommended re-accession population could focus on service members separated under DADT between the years 2006-2009 since during this time the services separated at least 1881 personnel.⁷⁴ For service members re-accessed, the services may require training to ensure they are ready to assimilate back into the service. Also, should they enter into a new occupational specialty they would attend the prescribed training program. In addition, the services should review each returning service member's personnel file to determine whether they require a year-group adjustment to establish a new promotion path (officers), or other administrative adjustment to ensure rank, pay, and promotion points (enlisted) are correct. Finally, to comply with H.R. 1283 and remain cost neutral, DOD should not financially compensate those separated under DADT or those electing not to return because of this change in DOD policy.

Implementing Lessons Learned

When preparing to implement new law allowing open homosexual service, DOD's senior leaders should consider the relevant and detailed information in the RAND study regarding open homosexual employment in U.S. fire and police

departments.⁷⁵ The RAND study found that upon open homosexual employment in fire and police departments, homosexuals did not announce “I’m gay.”⁷⁶ Very few said anything. Those who admitted their sexual orientation were not likely to challenge the culture of their organizations where they had already served for some time. While some heterosexuals did not welcome the open service policy, homophobic attitudes were not elevated in either fire or police departments. Other key findings included the effectiveness of the organization. While the DADT policy addressed concerns about unit cohesion, the RAND study observed no loss of effectiveness in the fire or police departments.⁷⁷ In addition, the ability to retain and recruit new personnel was not affected. Most importantly, as with the foreign armed services, leadership was the critical element in the implementation of the open homosexual policy in the fire and police departments. Organizations that implemented the new policy without a lot of special attention and with consistent focus and training on the policy did not have significant issues. However, others’ concerns about AIDS did not diminish just because they received sensitivity training. Therefore, a DEOMI training package should address information about AIDS for civilian employees and service members. Lastly, leaders and those providing the sensitivity training to the fire and police employees received special advance training on the issue of open homosexual service.⁷⁸

Updating Regulations and Policy. Once H.R. 1283 becomes law, it should not take effect for one-year to allow time for DOD and the services to update manuals, regulations, and complete training related to the repeal of DADT. Examples of Army manuals or regulations requiring adjustment include: 1) Army Regulation (AR) 635-200, Active Duty Enlisted Administrative Separations, specifically Chapter 15, Discharge for

Homosexual Conduct, 2) Training Circular (TC) 26-6, Commander's Equal Opportunity Handbook, and 3) AR 600-20 Army Command Policy. Because TC 26-6 provides detailed guidance and training scenarios to assist commanders in addressing issues of cultural diversity, an updated manual should add new scenarios to address tensions that may arise when a service member does want to serve in the same squad or aircrew or live in the same room with a known homosexual.

Conclusion

Homosexuals currently serve in the Armed Forces by keeping their sexual orientation private, however President Obama is calling for Congress to repeal DADT and allow homosexuals to serve openly in the Armed Forces. To support President Obama's initiative, Congress must obtain the 218 co-sponsors required to forward H.R. 1283 to the President. Therefore, DOD should act now to prepare for the repeal of DADT and the issues addressed here. Since Congress can repeal DADT without simultaneously repealing the DOMA, the Armed Forces must prepare for potential confusion and claims of discrimination. To achieve success, DOD should be proactive and develop a comprehensive strategy while Congress addresses President Obama's initiative to repeal DADT. Repealing DADT under H.R. 1283 should be adjusted to include a one-year implementation plan prior to enacting a new law permitting open homosexual service. It is not if, but when DADT is repealed, and now is the time for DOD and the Armed Forces to assess its potential impact. What happens in anticipation of the DADT repeal is critical to the overall success and a smooth execution of a new law throughout the Armed Forces.

Endnotes

¹ David F. Burrelli, *Homosexuals and the U.S. Military: Current Issues* (Washington DC: Congressional Research Service, Updated July 18, 2008), 1.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid., 2

⁶ Rowan Scarborough, "Advisers see consensus building before lifting ban on gays," November 21, 2008 linked from *The Washington Times*, at "Obama to delay „don't ask, don't tell," <http://www.washingtontimes.com/news/2008/nov/21/obama-to-delay-repeal-of-dont-ask-dont-tell> (accessed January 22, 2010).

⁷ President Obama, "Text: President Obama's Speech at HRC dinner," October 11, 2009, linked from *Human Rights Campaign* at "HRC Back Story", <http://www.hrcbackstory.org/2009/10/text-president-obamas-speech-at-hrc-dinner> (accessed October 14, 2009).

⁸ Associated Press, "State of the Union speech text," January 27, 2010, linked from *The Boston Globe* at "News-National," http://www.boston.com/news/nation/washington/articles/2010/01/27/state_of_the_union_speech_text (accessed January 30, 2010).

⁹ Cornell University Law School, "U.S. Code, Title 10, Section 654, Policy concerning homosexuality in the armed forces," http://www4.law.cornell.edu/uscode/search/display.html?terms=homosexual&url=/uscode/html/uscode10/usc_sec_10_00000654----000-.html (accessed September 15, 2009).

¹⁰ David F. Burrelli, *Don't Ask, Don't Tell: The Law and Military Policy on Same Sex Behavior*, (Washington DC: Congressional Research Service, August 14, 2009), 3.

¹¹ Gordon Lubold, "Most Troops Comfortable with Gays, Poll Finds," *ArmyTimes*, December 19, 2006, <http://www.armytimes.com/legacy/new/1-292925-2434249.php> (accessed September 9, 2009).

¹² President Obama, "Speech at HRC dinner," October 11, 2009

¹³ University of California, Davis, "Lesbians and Gay Men in the U.S Military: Historic Background," http://psychology.ucdavis.edu/rainbow/htm/military_history.html, (accessed September 20, 2009).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ David F. Burrelli, "96029: Homosexuals and U.S. Military Policy: Current Issues," Updated December 12, 1996, linked from *Federation of American Scientist* at "Congressional Research Service Reports", <http://www.fas.org/man/crs/96-029.htm> (accessed September 23, 2009).

²¹ University of California, Davis "Lesbians and Gay Men in the U.S Military: Historic Background."

²² Burrelli, Congressional Research Service Reports, *96029: Homosexuals and U.S. Military Policy: Current Issues*.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Burrelli, Congressional Research Service Reports, *Don't Ask, Don't Tell: The Law and Military Policy on Same Sex Behavior*, 1.

²⁸ Ibid., 4.

²⁹ Ibid.

³⁰ Scarborough, "Obama to delay „don't ask, don't tell'."

³¹ Floyd and Mary Brown, "Obama's ‚gay' agenda for the military," January 17, 2009, linked from *WorldNetDaily* at "WorldNetDaily Commentary", <http://www.wnd.com/index.php?fa=PAGE.view&pagelid=86328> (accessed October 3, 2009).

³² Natan Black, The Christian Post, "Obama Pledges Allegiance to Homosexual Agenda," *Dakota Voice Online*, June 30, 2009, <http://www.dakotavoice.com/2009/06/obama-pledges-allegiance-to-homosexual-agenda> (accessed October 3, 2009).

³³ Ibid.

³⁴ President Obama, "Text: President Obama's Speech at HRC dinner," October 11, 2009.

³⁵ Ibid.

³⁶ Colonel Stephen Shambach, *Strategic Leadership Primer*, 2nd Edition (US Army War College, Department of Command, Leadership, and Management, Carlisle, PA, 2004), 32.

³⁷ President Obama, "Text: President Obama's Speech at HRC dinner," October 11, 2009.

- ³⁸ Nathaniel Frank, *Unfriendly Fire* (New York: St. Martin's Press, 2009), 237.
- ³⁹ *Ibid.*, 249.
- ⁴⁰ *Ibid.*, 251.
- ⁴¹ Shambach, *Strategic Leadership Primer*, 12.
- ⁴² *Ibid.*, 16.
- ⁴³ Bernard D. Rostker, et al., RAND Research Brief, "Changing the Policy Toward Homosexuals in the U.S. Military," 2000, http://www.rand.org/pubs/research_briefs/RB7537/index1.html (accessed October 3, 2009).
- ⁴⁴ The Palm Center, "Homosexuality and the Israel Defense Forces," <http://www.palmcenter.org/node/554> (accessed October 17, 2009).
- ⁴⁵ Burrelli, "Homosexuals and the U.S. Military: Current Issues," 38.
- ⁴⁶ Rostker et al., "Changing the Policy Toward Homosexuals in the U.S. Military"
- ⁴⁷ *Ibid.*
- ⁴⁸ Lubold, "Most Troops Comfortable with Gays, Poll Finds"
- ⁴⁹ *Ibid.*
- ⁵⁰ *Ibid.*
- ⁵¹ *Ibid.*
- ⁵² Kyle Droop and Jon Cohen, "Acceptance of Gay People in Military Grows Dramatically," *Washington Post*, July 19, 2008.
- ⁵³ *Ibid.*
- ⁵⁴ *Ibid.*
- ⁵⁵ Lymari Morales, "Weekly churchgoers also show double-digit increase in support from 2004," June 5, 2009, linked from *Gallup* at "Conservatives Shift in Favor of Openly Gay Service Members," <http://www.gallup.com/poll/120764/Conservatives-Shift-Favor-Openly-Gay-Service-Members.aspx?CSTS=alert> (accessed October 3, 2009).
- ⁵⁶ *Ibid.*
- ⁵⁷ Rick Maze, "McHugh's focus is on 'where we fall short,'" *ArmyTimes*, October 26, 2009.
- ⁵⁸ Ellen Tauscher, "House of Representative 1283, Military Enhancement Readiness Act of 2009", linked from *Open Congress*, *H.R. 1283 Military Enhancement Readiness Act of 2009 Home Page* at "Bills", http://www.opencongress.org/bill/111-h1283/show#bill_list (accessed October 14, 2009).

⁵⁹ The Library of Congress, Thomas, "H.R.1283" linked from the *Servicemembers Legal Defense Network*, at "List of Cosponsors of the Military Readiness Enhancement Act (HR 1283)," <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR01283:@@@P> (accessed January 23, 2010).

⁶⁰ Ellen Tauscher, Text of the "House of Representative 1283, Military Enhancement Readiness Act of 2009", linked from *Open Congress, H.R. 1283 Military Enhancement Readiness Act of 2009 Home Page*, at "Bills," <http://www.opencongress.org/bill/111-h1283/text> (accessed October 14, 2009).

⁶¹ Ibid.

⁶² DiversityInc, "DiversityInc Exclusive: Congressman Says 'Don't Ask, Don't Tell' Will Be Repealed," July 28, 2009, http://www.diversityinc.com/content/1757/article/6084/?DiversityInc_Exclusive_Congressman_Says_Dont_Ask_Dont_Tell_Will_Be_Repealed (accessed October 14, 2009).

⁶³ DiversityInc, "Sen. Harry Reid Pushes to End 'Don't Ask, Don't Tell'," October 2, 2009, <http://www.diversityinc.com/content/1757/article/6230/?> (accessed October 14, 2009).

⁶⁴ Ellen Tauscher, Text of the "House of Representative 1283, Military Enhancement Readiness Act of 2009"

⁶⁵ President Obama, "Speech at HRC dinner," October 11, 2009

⁶⁶ Arron Belkin, Don't Ask, Don't Tell," lecture, U.S. Army War College, Carlisle Barracks, PA, September 25, 2009, cited with permission of Mr. Belkin.

⁶⁷ Ruth Marcus, "A Daring Test Case for Marriage," *Washington Post*, pg. A. 15, (March 4, 2009), in ProQuest (accessed August 24, 2009).

⁶⁸ DOMAwatch.org, "DOMA Watch, Your Legal Source for Defense of Marriage Acts Information," <http://www.domawatch.org/index.php> (accessed October 11, 2009)

⁶⁹ Ibid.

⁷⁰ Andrea Lafferty, The Traditional Values Coalition: "Obama Administration's Pro-Gay Policy Undermines Military," <http://www.traditionalvalues.org/read/3688/obama-administrations-progay-policy-undermines-military/> (accessed October 15, 2009).

⁷¹ Uniform Code of Military Justice, "X. Punitive Articles," linked from *Uniform of Military Justice*, <http://www.ucmj.us/uniform-code-of-military-justice/sub-chapter-10-punitive-articles.shtml#925>. ART. 125. SODOMY (accessed January 23, 2010).

⁷² Defense Equal Opportunity Management Institute, Mission, <http://www.deomi.org/AboutDEOMI/Mission.cfm> (accessed December 12, 2009).

⁷³ Burrelli, "Homosexuals and the U.S. Military: Current Issues" updated July 18, 2008, 23.

⁷⁴ Burrelli, "Don't Ask, Don't Tell:" The Law and Military Policy on Same-Sex Behavior," 5.

⁷⁵ Rostker, et al., "Changing the Policy Toward Homosexuals in the U.S. Military"

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.