

“Don't Ask, Don't Tell, Don't Purse”, Don't Discriminate

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Ethics Paper Assignment

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In 1994 a policy change in the Department of Defense forever changed the way that gays and lesbians would be treated while serving in the military. The new policy essentially lifted the ban on homosexuals but kept the ban on homosexual activity. The initial dispute was that homosexuality presents an unacceptable risk to morale, cohesion and discipline; however, many believed the military was being discriminatory and losing well-trained members by kicking out homosexual service members. Now, over a decade later, where nearly all branches of the military have been engaged in the Global War on Terror, the policy effective or does it short the military of skilled members? Is the policy now increasingly important because being a 'brother in arms' is fundamentally important for this tempo or it inconsequential?

The history of the policy, more commonly known as the "don't ask, don't tell" got its start in 1992 when then presidential hopeful Bill Clinton promised he would lift the ban on gays and lesbians in the military if elected President. This was in response to the 1981, Department of Defense policy which stated "that homosexuality is incompatible with military service (DOD Directive 1332.14, January 28, 1982, Part 1, Section H)." (University of California, Davis) Then a report in 1992 by the Government Accounting Office (GAO) revealed that nearly 17,000 men and women were discharged under the category of homosexuality in the 1980s. The findings along with several highly politicized gay bashings spurred on Clinton's push to have a new policy instituted if elected. The move garnered the support of many ousted from the ranks for being either gay or lesbian, like former Army colonel, Margarethe Cammermeyer. Clinton saluted Cammermeyer once in a town hall meeting as he addressed the problem with the ban.

Holding true to his word, in early 1993 the new law came into effect. In July of 1993, President Clinton revealed the “don't ask, don't tell, and don't pursue.” The policy faced challenges because of the insertion of the ‘don't pursue’, more specifically, the part about stating one is gay or lesbian being grounds for dismissal or investigation. “The inclusion of ‘don't pursue’ seemingly created a contradiction in the President's policy. On the one hand, it maintains the notion of military necessity and privacy as found in the congressional compromise of ‘don't ask, don't tell,’ and then appears to prevent efforts to enforce regulations and laws by limiting the military's role in the “don't pursue”. After some flip-flopping by then Secretary of Defense, Les Aspin, statements made by military members were found to be grounds for investigations and possibly discharge and in November of the same year, the act was signed into law.

President Clinton didn't stop there. He went on to sign an Executive Order that removed “sexual orientation” as grounds to disapprove a security clearance. The rules on security clearances is that if an individual reveals or conceals their sexuality they are considered to be a threat risk, however, under “don't tell” that person can omit that information from their security clearance and if there is no obvious proof suggesting otherwise, the clearance is granted.

The newly enacted policy faced heavy criticism from homosexual rights groups and constitutional challenges from ousted service members soon after the order was given to begin enforcing the guidelines. Reports in the media suggested the number of cases discharged increased and military organizations were on witch hunts.

The majority of the court cases were brought on by members who felt they were wrongly put out of their respective service, based on the content of the “Don't ask, don't tell, don't pursue.” The cases dealt largely with the distinction of an act of homosexuality or statement of

homosexuality. It was argued that by merely stating one is gay or lesbian and the subsequent action to that admission is a violation of civil rights. One example of a case that shows how subjective the content, is the 1996 case of *Thommasson v. Perry*. The U.S. Fourth District Court of Appeals upheld the lower circuit court's decision that the policy was constitutional. It was asked to overturn the lower courts decision because an even lower district court found the law unconstitutional. The chief judge wrote in his opinion the reason for upholding the military's rule is due to the "unique role the national defense plays in a democracy." He further added the government had a legitimate purpose for excluding these persons since there are certain dangers from a person who engages in homosexual acts or has the propensity to.

It is those cases that ask the question of how effective is this policy. From 1980-1993 there were 19,288 service members kicked out of the military for being homosexual. A 1997 study reported the numbers since the implementation of the policy moving in an upward trend. In 1997, it was found that 80 percent of discharged cases were "statement" cases as opposed to acts or marriages. It is assumed that the majority of these who voluntarily identified themselves as homosexuals to their supervisors or peers. Furthermore it was determined the most common cases were among junior enlisted soldiers with less than a year in service. The reason for this is not currently known but speculated that it has to do with applicants no longer being asked at the time of enlistment. A startling find was that women made up 29 percent of those cases. It was first reported that women were falsely accused of being a lesbian after reporting a sexual harassment case but upon closer investigation, it was shown that very few cases were indeed retaliatory.

This report done in 1997 by the Under Secretary for Defense Personnel concluded that for the most part, the investigations that were initiated were done so properly and the reports of abuse of policy were not substantiated. The report also concluded that overall, the concerns over harassment of homosexuals were also not substantiated, but also noted the low incidences could be from fear of an investigation.

Then in July in 1999, an incident at Fort Campbell Army Post forced President Clinton and the Pentagon to review the policy in depth. PFC Barry Winchell, a 21-year old soldier assigned to the post, was taken out of his room and beaten to death with a baseball bat by one of his fellow Soldiers; Winchell's roommate was an accomplice. Upon investigation, it was found that Winchell had been the victim of abuse regarding his sexuality by his killer and other men in his company without any attempt from anyone in his chain of command to curb the harassment. Furthermore, it was found the earlier report from 1997 was not accurate and PFC Winchell was not the only victim. It was then determined the problem was that the policy didn't allow for training or guidance in investigating claims. The investigations were turning into witch hunts forcing service members to give information about others. Soon after, the Pentagon issued new guidelines intended on reducing the worst abuse. One of the elements were requiring all troops to attend anti-gay seminars throughout their military careers and beginning in basic training. "Reforms further aim to prevent people who complain of being taunted over their perceived homosexuality from actually becoming targets of investigations. The new rules also aimed to supply better protection from verbal and physical harassment for troops after an investigation has been launched or an admission of same-sex orientation made. The Army now admits that PFC Winchell's death was a hate crime and sexuality was a major contributing factor in his murder

but still denied Winchell's mother's \$1.8 million claim. Winchell's mother sued on the basis of on the Military Claims Act, an administrative procedure that allows service members or civilians to seek damages from the military for injury, death or loss of property. She blamed the Army for not protecting her son in an anti-gay environment.

After the incident, President Clinton stated this was proof as to why the 1993 policy needed to happen, however it was intended to stop these types of incidences. One senior Clinton official told The Times: "I think they realize at the Pentagon that this can't just be swept under the rug." He then added in reference to the Winchell case and others. "There's recognition there that this problem of gay harassment is worse than they thought." Of 71,570 soldiers surveyed, 80 percent said they had witnessed abuse towards a fellow Soldier for allegedly being gay. In October of that same year, President Clinton signed an executive order that increased the penalty for hate crimes in the military, which came after his proposed plan to allow gays and lesbians to serve openly in the military was denied by Congress.

President Clinton's policy is now over 14 years old and the question still remains, how effective is it? Between the years of 1994 to the end of 2007, the military discharged more than 8,800 service members. The current administration still upholds the argument that gays and lesbians serving in the military impairs unit cohesiveness and consequently military effectiveness. Activists for the equal treatment of gays and lesbians dispute that claim and claim the military is losing vital resources by discriminating against homosexuals.

"America prides itself on being a nation of liberty and tolerance yet permits its military to remain a bastion of discrimination against gays and lesbians," said Jamie Fellner, director to the

US Program of Human Rights Watch. She and others in her organization believe the military is losing service members that are skilled, trained and ready to fight the war on terrorism. This claim shows evidence in the case of Brian Hughe. He was an Army Ranger that was part of the task force that rescued Jessica Lynch. The Ranger regiment is an elite unit of the Army that is highly skilled and trained. Hughe took time off from Yale to serve his country. The Army has spent thousands of dollars training Hughe to be part of this elite branch but is ready to be rid of him because of his sexuality. He proved to be an exceptional Soldier but a detail the Army isn't interested in.

On September 15th of 2004 a new study released assessed the impact of the gay ban on service members. The study took an in depth look at how well the U.S. military effectiveness in the Middle East. The study concluded that homosexuals serving openly report a greater success, increased morale, professional advancement, commitment, and retention. Additionally, gays and lesbians did not jeopardize cohesive nor did they risk the mission. Also important to note is the study done on NATO members and many U.S. allies, allow homosexuals to serve under the same guidelines as heterosexuals. These countries report that this is done without impairing any military effectiveness.

These findings along with the Pentagon's failure to adequately monitor the policy and its real effectiveness support a lift on the ban. With education, service members can learn to work side by side with gays and lesbians, just as civilians do. These men and women join the Armed Forces with the same sense of duty and knowledge of commitment as heterosexual men and women do. Additionally, when it comes to war and a 'brother in arms' mentality, it isn't

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important if the Soldier on the street is straight or gay, it is important that he or she is upholding the same constitution and is prepared to sacrifice their life for our great country.