



Chiefs: Don't repeal gay ban during war

Commandant tells lawmakers to keep 'don't ask, don't tell'

By William H. McMichael

bcmichael@militarytimes.com

March 8, 2010

When the four-star service chiefs appeared before Congress last week for the first time since Joint Chiefs Chairman Adm. Mike Mullen said Feb. 2 that he supports repealing the ban on open service by gays, the first days of testimony had a distinct similarity.

They didn't agree with Mullen, but they also were not dead-set in opposition: Study the issue, don't halt enforcement of the law while doing so and don't make such a change during a time of war.

Commandant Gen. James Conway shattered that template Feb. 25 during his second Capitol Hill appearance in two days.

"My best military advice to this committee, to the secretary and to the president would be to keep the law such as it is," Conway told the Senate Armed Services Committee, breaking ranks with the other chiefs, none of whom expressed personal opinions about open military service by gays, which President Obama has called for and which Mullen and Defense Secretary Robert Gates said they support.

Conway and his Army and Air Force counterparts, Army Gen. George Casey and Air Force Gen. Norton Schwartz, all said during their hearings — ostensibly called to discuss the fiscal 2011 defense budget — that repealing the ban on open service by gays in a time of war would be disruptive.

If that advice were followed, it would kick repeal well down the road, given the likelihood of continued fighting in Afghanistan at least through 2011 and probably beyond — underscoring the challenges that Obama will face in seeking to carry out his campaign promise.

"This is not the time to perturb the force that is at the moment stretched by demands in Iraq and Afghanistan and elsewhere without careful deliberation," Schwartz told the House Armed Services Committee on Feb. 24.

Only Chief of Naval Operations Adm. Gary Roughead did not discuss repeal in terms of ongoing combat. But all the chiefs, including Conway, expressed support for an 11-month study of the issues that repeal would raise, launched earlier this month by Defense Secretary Robert Gates.

That study will examine every policy that repeal could affect, such as service member benefits, base housing and fraternization. Gates said it will also examine the potential impacts repeal could have in areas such as recruiting and retention, and will develop ways to counteract potential problems.

All four chiefs said they oppose a "freeze" on enforcement of "don't ask, don't tell," as recently suggested by Sen. Carl Levin, D-Mich., chairman of the Senate Armed Services Committee.

"I would recommend against it," said Casey. "Aside from the legal issues that the secretary mentioned, it would

complicate the whole process that Secretary Gates had laid out. We would be put in a position of actually implementing it while we were studying implementation. And I don't think that would be prudent."

Unmentioned at any of the hearings was Gates' separate 45-day review of Pentagon policy, aimed at producing recommendations to, in his words, "enforce this law in a fairer manner" while Congress deliberates repeal.

That study will examine the legal conclusions of Defense Department lawyers that Gates has the authority, within existing law, to make some policy changes without further approval from Congress to:

- "Raise the bar on what constitutes credible information" to initiate an investigation of whether a service member is gay.
- Limit the initiation and conduct of such investigations to higher-level officers.
- Reduce instances in which a gay service member is "outed" by a third party.

Together, those actions could effectively slow discharges under "don't ask, don't tell."

The testimony of the service chiefs makes clear in hindsight why Mullen was so emphatic when he told the Senate on Feb. 2 that he was "speaking for myself and myself only" when he said, "It is my personal and professional belief that allowing homosexuals to serve openly would be the right thing to do."

The other chiefs' opinions came as no surprise to Mullen, said his spokesman, Navy Capt. John Kirby.

"The chairman, as a former service chief himself, respects and recognizes the need for each service chief to form and articulate their views for their services in their own ways," Kirby said. "The degree to which they agree or disagree with any policy or program is really for them to determine."

Nor did Mullen regard any of the comments as a rebuke to his Feb. 2 stance, Kirby said.

A senior defense official who asked not to be named said that the unanimity of the chiefs in support of Gates' longer-term study came as no surprise.

"Some people ... truly need to have their minds made up by this study," the official said. □

Staff writers Philip Ewing, Michael Hoffman, Matthew Cox and Dan Lamothe contributed to this report.