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BACKGROUND
OCTOBER 17, 2010

Federal Judge Oversteps Clear Constitutional Boundary on “Don’t Ask Don’t Tell”

U.S. District Court Judge on October 12, 2010 ordered Pentagon enforcement of “Don’t Ask, Don’t Tell” stopped. Judge Virginia Phillips of California stepped out of her constitutionally ordered judicial role and became a super legislator from the bench by halting any enforcement of the so-called “Don’t Ask Don’t Tell” statute passed by Congress in 1993 and which repeatedly confirmed that “homosexuality is incompatible with American military service.” (See 10 U.S.C. § 654 entitled “Policy Concerning Homosexuality in the U.S. Armed Forces”.) The ruling is truly revolutionary and more than extraordinary, because the U.S. Constitution explicitly states in Article 1, Section 8 that not the judiciary, but **“Congress shall have Power To make Rules for the Government and Regulation of the land and naval Forces.”**

Congress, Not the Judiciary, Makes Military Rules and Regulations

The President has limited authority as “Commander in Chief,” which includes an inherent power over military services, but the President’s exercise of power cannot be contrary to the express will of Congress which constitutionally “makes the Rules for Government and the regulation for the land and Naval forces.” Additionally, whenever the President or members of the Executive Branch (such as the Secretary of Defense, the service secretaries, etc.) are acting pursuant to powers delegated to them by Congress, such actions also must not be contrary to the Constitution (Article 1, Section 8) and expressed congressional intent. See *Chappell v. Wallace*, 462 U.S. 296, 300-301 (1983) and *U.S. v. Symonds*, 120 U.S. 46, 49-50 (1886). This is true by virtue of the Constitution, and Congress’ plenary power in Article 1, Section 8 which trumps all contrary executive action. Even if the President had or were to issue an Executive Order to admit those choosing to be homosexual or engaging in such practices into military service, this would be unlawful because the action would be contrary to the express intent of Congress as set forth in the above statutes. For additional insightful instruction of this point, see *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 634-638 (1952) (Jackson, J., concurring).

By virtue of their commissions as officers of the U.S. military, they are also legally bound to execute their orders from the President, DOD officials, or senior officers but only in strict accordance with the Constitution, regulations and the law as directed within Title 10. U.S. military officers are not authorized to execute orders “contrary to the Constitution, [or] the laws of the United States.” See, UCMJ, Articles 92(1)(c) & 90c(2)(a)(ii); 10 U.S.C. § 892.

This judicial usurpation of power for political purposes is a glaring exercise of what the distinguished Harvard professor Raoul Berger called **“Government by Judiciary”** and Arthur

Kilgore referred to as “**Judicial Tyranny.**” This instance of such usurpation and tyranny is remarkable, particularly while thousands of body bags are being returned to our nation which is involved in two foreign wars.

Under Long Settled “Military Necessity” Doctrine Judiciary Defers to Considered Military Judgment

Such extraordinary and extra-judicial action boldly in violation of the Constitution has never been done by a judge before in War Time. Under the Judicial Doctrine of “Military Necessity,” the U.S. supreme Court has repeatedly over a century deferred action in military cases, which deference was summarized in the supreme Court case *Goldman v. Weinberger*, 475 U.S. 503 (1986), in which Chief Justice Rehnquist declared that:

“...we have repeatedly held that ‘the military is, by necessity, a specialized society from civilian society.’ *Parker v. Levy*, 417 U.S. 733, 743 (1974). See also *Chappell v. Wallace*, 462 U.S. 296, 300 (1983); *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975); *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953)). “[T]he military must insist upon a respect for duty and a discipline without counterpart in civilian life,” *Schlesinger v. Councilman*, *supra*, at 757, in order to prepare for and perform its vital roles. See also *Brown v. Glines*, 444 U.S. 348, 354 (1980).

In reading Justice Rehnquist’s passage, one is struck by the number of precedents cited, their recency, and the explicitness of their phraseology. We are not dealing with unexplored territory or dim penumbra here, but with clearly established legal precedent. One can fairly conclude that there are few constitutional doctrines on firmer ground than the doctrine of “Military Necessity.” The military doesn’t need studies to confirm their position on such matters as homosexuals serving openly when their laboratory is war; the supreme Court’s reliance upon the mere perception of a military judgment that a practice detracts from the military’s ability to accomplish its crucial national defense mission is enough for the courts. The surveys to the right span many years of

“Military Necessity” & Considered Military Judgment

Fox News, October 15, 2010

Marine Corps Commandant General James Conway in a Fox News interview reported as many as 95 percent of Marines would be uncomfortable serving alongside openly gay troops. Gen. Conway reported that a majority of his men and women think a repeal of the “Don’t Ask, Don’t Tell” policy barring gays from serving openly will be problematic, so he has to believe that, too. “When we take a survey of our Marines, by and large, they say that they are concerned that it will cause potential problems with regard to their order and discipline -- that it will impact their sense of unit cohesion,” Conway said. And wartime, he said, is “probably not the time” to change the military’s policy on gays.

July 1993, National Security Report

Two surveys were taken of the entire community of active duty and retired flag and general officers on the subject of removing the disqualification from homosexual service in the armed forces. A confidential survey of 1,040 serving Generals and Admirals was taken between June 7, and 21, 1993 by the Military Personal Task Force of the House Republican Research Committee with the statistical analysis prepared by the American Security Council. Of the 621 respondents, 96.9 percent supported retaining the ban on homosexuals in the military.

USA Today, 3 June 1993

The Survey of all retired Flag and General officers with 50 percent or 2,800 responding, 90 percent opposed lifting of the ban.

American commissioned general officer service. Their sound military judgment, as to homosexuals openly serving in the military, was a resounding NO.

To accomplish its mission the military must foster instinctive uniformity and subordination requiring obedience, unity, commitment, and esprit de corps. See, e.g., *Chappell v. Wallace*, *supra*, at 300; *Greer v. Spock*, 424 U.S. 828, 843-844 (1976) (POWELL, J., concurring); *Parker v. Levy*, *supra*, at 744. **The essence of the military service “is the subordination of the desires and interests of the individual to the needs of the service.”** *Orloff v. Willoughby*, *supra*, at 92.

“Within the military community there is simply not the same [individual] autonomy as there is in the larger civilian community.” *Parker v. Levy*, *supra*, at 751. In the context of the present case, when evaluating whether military needs justify a particular restriction, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest. See *Chappell v. Wallace*, *supra*, at 305; *Orloff v. Willoughby*, *supra*, 93-94. The Court notes that military regulations inherently demand uniformity, restrict individuality and require personal sacrifices which is at the heart of the profession of arms and military life.

Uniformity in all aspects of military life among military personnel builds cohesion and military team work and properly subordinates individual desire, expression and preference to military necessity, no proof is required – no scientific studies, no historical examples, no exhaustive arguments to make this fact a fact. Even expert testimony to the contrary is not enough to contradict the military’s “considered professional judgment.” Clearly Congress and the Courts have allowed the military very broad authority to restrict even fundamental constitutional rights of its members in the interest of “Military Necessity” and combat effectiveness.

The refusal of this District Judge, the lowest level of the Federal Judicial System, to defer to considered military judgment and refusal to follow her constitutional oath or even mention this long settled body of fundamental constitutional law under “Military Necessity,” reveals this opinion and sweeping order as a blatant political decision.

Teaching and Enforcing “Exemplary Conduct” to Prevent All Military Misconduct

Long before “Don’t Ask Don’t Tell” in 1993, Exemplary Conduct was the historical principle embraced by John Adams in 1775 for the good order and discipline of a newly organized military charged with defeating the most powerful military force in the world, the British army and navy. In 1775, Adams wrote the Exemplary Conduct standard for the Navy and Marine Corps, “Rules for the Regulation of the Navy of the United Colonies of North America:”

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and

immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them...10 U.S.C. §5947

In 1956, these standards were enacted by and broadened Congress and codified in Title 10, United States Code §5947. Then in 1997, Congress adapted and legislated these same 235 year old principles for the Army and Air Force (10 U.S.C. §§ 3583 and 8583). As recently as 1997, the Congress rightly noted again the standards of “virtue, honor and patriotism” have applied to Naval and Marine Corps officers since they were first drafted by John Adams and approved by the Continental Congress in 1775. The current statutory mandate holds for military leaders to the highest standard of personal responsibility and behavior-both on and off duty (10 U.S.C. § 933).

More significantly overarching powers are ceded via Article 1, Section 8, clause 14 of the U.S. Constitution to Congress, which had previously enacted in 10 U.S.C. § 925 and § 5947, the “Don’t Ask Don’t Tell” statute and three other statutes requiring military virtue and honor in order “to guard against and suppress dissolute and immoral practices” in the Navy, Marine Corps, Air Force and the Army.

Steffan v. Perry, D.C. Cir. Ct. of App, En Banc, (Nov. 22, 1994)

Glaringly the Judge failed to cite the decision of the **second highest court in America**, *Steffan v. Perry* 41 F. 3d 677 (D.C.Cir., en banc 1994), which held (8 to 3) after Congress passed “Don’t Ask, Don’t Tell, that homosexual behavior is “inseparable from homosexual orientation” and rejected the broad legal challenge to “Don’t Ask Don’t Tell” and the sodomy statutes going back in the U.S. Armed Forces to 1775. *Steffan* was an historic decision; it was not appealed by the Clinton Administration to the U.S. supreme Court; and represents a definitive and well-thought out statement regarding the incompatibility of homosexuality, sodomy, or other “dissolute and immoral practices” with U.S. military service, again, by the second highest court in the land.

Conclusion: The Real War & “The Media Monopoly”

With a US media tyranny, or as H. Ben Bagdikian termed it in his seminal book, *The Media Monopoly*, a new “communications cartel” operated for great profit by only five multi-national news operations controlling this country’s information flow, this boundless broad judicial edict in *Steffan* would not have escaped serious notice. Whether this judge is embarrassingly ignorant of her constitutional limits or more likely is just simply a bald revolutionary, her ignorance or inclinations are to the liking of the US media monopoly for her decision and sweeping order is being trumpeted across the country. Someone needs to inform this misguided jurist that the second highest federal court in the land found, after the passage of Don’t Ask, Don’t Tell, in *Steffan* that homosexuality was incompatible with military service and separated a Naval midshipman from the Naval Academy weeks before graduation.

Virtue

*The First Principle of American Military Service Since 1775
Surrendered in 1993: A Casualty of the 50 Year Old Sexual Revolution*

By COL Ronald D. Ray, USMCR

The opinions in this article are the author's and do not necessarily reflect those of ANA.

COL Ray, a Kentucky attorney who represented the Naval Aviation Foundation (NAF) (no connection to ANA) in Steffan v. Perry, is the author of Military Necessity and Homosexuality and a highly decorated combat veteran of the Vietnam War. He has served as a Deputy Assistant Secretary of Defense, a Marine historian and as a Commissioner on several Presidential Commissions.

A great victory was obtained on November 22, 1994, when America's first military principles of virtue, honor and patriotism were upheld by the D.C. Circuit Court of Appeals *en banc* (all the judges). The Court's much anticipated decision (7-3); after rehearing the well-publicized *Steffan V. Perry* case, decided that self-identified homosexual Joe Steffan would not be reinstated at Annapolis, or graduated, commissioned and promoted. Further, the Court declared Steffan's 1987 discharge from the U.S. Naval Academy (USNA) entirely proper. His dismissal from the USNA had been overturned in 1993 by three Federal Appeals Judges who characterized Steffan's declaration of homosexuality as a civil rights issue and a matter of discrimination, rather than historic disqualification from military service. In early 1995, the attorneys for Steffan declared there would be no appeal to the U.S. Supreme Court.

The NAF participated in Steffan's case by submitting a Friend of the Court brief. The mission of the brief was twofold: to inform the judges of the historic origins of high moral character required of naval officers and to bring current scientific research from the Institute for Media Education (IME) to support the disqualifying nature of homosexual orientation.

The NAF joined with IME in presenting a multi-disciplined Steffan brief, emphasizing science and history, as well as law. Some of the brightest attorneys ever fielded by the "gay rights" movement tried to block

the NAF/IME brief, but the brief was permitted and the Court eventually confirmed the primary finding of IME research found in *The Reisman & Johnson Report*: that it is not possible to separate homosexual orientation from homosexual behavior. Separating orientation from behavior, (which has been successful disinformation for the homosexual movement) has been the primary legal strategy of the homosexual legal team since 1986. The D.C. Circuit court of Appeals in *Steffan* rejected this homosexual contention holding that:

The military may reasonably assume that when a member states that he is a homosexual, that member means that he either engages or is likely to engage in homosexual conduct.

The legal fiction of separating orientation from behavior also underlies the "Don't ask, don't tell" policy which is a compromise of historic naval standards and is, at best, built upon an abstraction and at worst, a deception and a lie. These lies are no more apparent than in the case of Steffan's claim against the USNA.

In *Steffan*, the Federal Appeals Court judges ordered Steffan reinstated because they claimed from the legal record that his performance was "untarnished by even a scintilla of misconduct." Steffan's case, on appeal, thus turned on the crucial, but false, understanding that Steffan never engaged in homosexual sex while at the USNA, and Steffan's legal team persuaded three liberal judges that a homosexual was no more likely to engage in criminal sodomy than other midshipmen.

In the lower Court, Steffan refused to answer questions about his homosexual behavior, but the NAF/IME brief presented the Court with an earlier oral history found in Mary Ann Humphrey's 1990 gay prize winning book of homosexual military oral histories, *My Country, My Right to Serve*, which carried a first-person account given by Steffan, describing his homosexual behavior while at the USNA. In Humphrey's book, Steffan stated:

So I basically wasn't involved much during my Academy years, mainly by my own choosing. I did have a few experiences...very, very secretive...In my case, the situations I did encounter tended to be with older midshipmen in non-Academy surroundings. It was just too risky. You could sort of tell by how someone looked at you or how long they made eye contact. I think men are

very sensitive to that, especially if you don't know them. You start to pick up little truths like that. It was something that just happened, non-verbally, and in most cases, it never happened again with that individual, because of the risk factor involved.

Anonymous, promiscuous, uncommitted sex is classic homosexual behavior, according to the Reisman & Johnson Study. According to *My Country, My Right to Serve*, Steffan admitted homosexual acts as a midshipman, and was fully prepared to mislead the Academy Superintendent:

I've done nothing wrong, I've been an exemplary midshipman.

Steffan followed through on his intention and lied in his statement before officials of the Academy board stating:

I've been a good midshipman. I haven't done anything wrong. It's true that I am gay, I'm gay, but I wasn't involved with anybody, nor has it affected my performance.

Steffan's admission provides much more than a "scintilla" of evidence that homosexual orientation was inseparable from his homosexual behavior, and reflects a truly qualifying disorder. The "honor bound" Steffan and his attorneys manipulated the Court during discovery, and misled the three-judge panel, with widespread media cooperation. Steffan apparently sees nothing wrong in lying, deception, felonious acts or false and misleading official statements.

American Naval History teaches that homosexuality and homosexual orientation are inseparable and indeed totally incompatible with military service. These felonious acts have resulted in disqualification from the USNA and from American military service since before the founding of the American Navy in 1775. An excerpt from *Naval Customs, Traditions and Usage*, quotes Charles Richard Williams as follows:

"It ought to give any young man entering the Naval Service a certain thrill of elation that he became the heir of a long and glorious tradition, and that, studying the Articles controlling that Service, he is familiarizing himself with regulations, some of which, couched in almost exactly the same words, were obeyed by John Paul Jones and were read to the ship's company of the 'Bon Homme Richard.'

As the USNA approaches its 150th anniversary, it would be well to consider the origins of American Naval character as it defends its founding virtue. In 1775, John Adams chaired the Marine Committee, which created the American Navy. Adams personally compiled the original regulations for the new American Naval forces, which contained "the keynote of the animating spirit of the naval service." On November 28, 1775, the Continental Congress adopted Adams' regulations. Virtue, the "keynote" within the first article, entitled *Commander's Duties of Supervision and Correction*, consisted of John Adams' simple mandate:

The commanders of all ships and vessels belonging to the thirteen United Colonies are strictly required to show in themselves a good example of honor and virtue to their officers and men, and to be very vigilant in inspecting the behavior of all such men, and to discountenance and suppress all dissolute, immoral, and disorderly practices, and also such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same, according to the usage of the sea.

The definitions from the original Naval Regulations of "dissolute" and "immoral" are from Noah Webster's 1828 *First American Dictionary*, and virtue, as Adams would have intended, is as follows:

VIRTUE: 3. Moral goodness; the practice of moral duties and the abstaining from vice, or a conformity of life and conversation to the moral law. In this sense, *virtue* may be, and in many instances must be, distinguished from *religion*. The practice of moral duties merely from motives of convenience, or from compulsion, or from regard to reputation, is

virtue, as distinct from *religion*.

John Adams' 1775 mandate remains fully intact today, and was reenacted by Congress in 1956 (10 U.S.C. §. 5947) as the "Requirement of Exemplary Conduct," which is much broader in scope than its 220-year-old predecessor. The statute now includes "others in authority in the naval service" and confirms the duty to:

guard against...all dissolute and immoral practices...and to take all necessary and proper measures...to promote and safeguard the morale, the physical well-being, and the general welfare...[of those] under their command or charge.

"Requirement of Exemplary Conduct," is not optional; the statute burdens those in authority with a *positive duty* to take action, which must include screening out homosexuals. To not regard the homosexual lifestyle as "dissolute and immoral" would essentially eviscerate the law from its plain meaning. More conspicuous is the fact that Congress, two centuries ago, determined homosexuality to be "dissolute and immoral," by enacting the "Sodomy Statute" (10 U.S.C. § 925, [Article 125 U.C.M.S.]).

George Washington, when serving as the nation's first Commander-in-Chief, developed rules and regulations similar to Adams' for the Continental Army. Washington faithfully executed the regulations and ordered the discharge of a lieutenant for attempting sodomy and lying about it, "with abhorrence and detestation of such infamous crimes," on March 10, 1778.

The United States and the Navy both derive their guiding moral order from the Ten Commandments and the writings of those such as Blackstone, Locke and the authors of the *Federalist Papers*. These sources, inextricably woven into the law and social fabric of our American Republic,

point to an objective moral law order outside of man obligating him to respect authority other than himself, behave morally and accept responsibility without complaint.

In conclusion, Mr. Steffan acknowledged his deception and violation of felony statutes, not to mention the USNA honor code, when he admitted homosexual acts while he was a midshipman. Steffan is a true adherent to the homosexual lifestyle, for he is like Harry Hay, the founder of the modern homosexual political movement (who boldly declared in 1951 that, "A homosexual has no one to whom he must account, and in the end...he must decide everything for himself"). Our military cannot operate on the anarchy of each man as a law unto himself.

The real issue to be decided in the military services is whether or not to defend or abandon the first principles of American service, which still have Congressional authority. The NAF took the lead in the Steffan brief in order to defend the first American Naval principle because it must not be surrendered to a special interest group which seeks to subvert Naval character and the military institution under the guise of civil rights, equal opportunity or privacy. Homosexuals serving openly in the military has *never* been about "discrimination" or a non-existent "right" to military service. It is about upholding the founding moral standards of the Navy which has historically disqualified homosexuals from military service for legions of reasons.

To obtain a copy of the Steffan v. Perry brief filed on behalf of the Naval Aviation Foundation or to obtain more information on The Reisman & Johnson Study, please call 1-800-837-0544 or write P.O. Box 1136, Crestwood, KY 40014.

Help Save the USS Cabot!

Information on the USS Cabot which appeared on page 59 of the Spring 1995 issue of *Wings of Gold* is incorrect. Please disregard it. Anyone interested in helping to save the Cabot, please send a self-addressed, stamped envelope to:

USS Cabot (CVL-28)
Association
c/o Bill Anderson
430 Fort Pickens Rd.
Pensacola Beach, FL 32561

SHOULD WE LIFT THE MILITARY'S GAY BAN?

As the President prepares a final decision, two combat colonels debate the issue: Is the ban against homosexuals a question of civil rights or military preparedness?

THE DEBATE over homosexuals in the military began during the first week of the new administration when President Clinton announced he planned to lift the ban on homosexuals in the Armed Forces.

Clinton says on July 15 he will issue an executive order permitting open homosexuals in the military. In the meantime, new military recruits are not being asked about their sexual orientation, and known homosexuals on active duty are no longer being separated from the service. Instead, they are being transferred to the standby Reserves.

As the July deadline approaches, the heated debate in Congress and the country is expected to grow. To better understand the issues, THE AMERICAN LEGION magazine brought together two combat veterans on opposite sides of the controversy for a face-to-face exchange.

Retired Marine Col. Ronald D. Ray, 50, saw combat in Vietnam. He received two Silver Stars, a Bronze Star with a combat "V," and Purple Heart. He was a deputy assistant Secretary of Defense in the Reagan administration. A practicing attorney and law professor, Ray also was a member of the Presidential Commission on the Assignment of Women in the Armed Forces and is author of *Military Necessity & Homosexuality*.

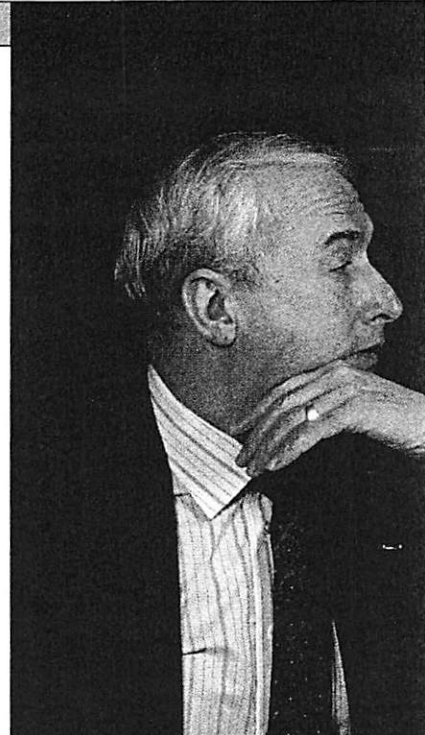
Retired Army Lt. Col. Charles F. "Chuck" Magness, a homosexual, has 20 years of service that included tours in Vietnam as a helicopter pilot and company commander. His awards include the Legion of Merit, Bronze Star and Air

Medal. Magness, 53, who comes from a military family, graduated from Georgetown University's School of Foreign Service. Today, Magness is an active volunteer with several homosexual rights groups.

AMERICAN LEGION MAGAZINE: President Clinton says "patriotic Americans should have the right to serve the country as members of the Armed Forces without regard to sexual orientation." What's wrong with that?

RONALD D. RAY: Homosexuality is incompatible with military service. Those who advocate the removal of the ban make no military case for doing so. There is no constitutional or legal right to serve your country.

We have a military selection process that historically classifies individuals according to the type of men we want on the battlefield. The criteria include age, mental aptitude, physical and psychological characteristics, and character and



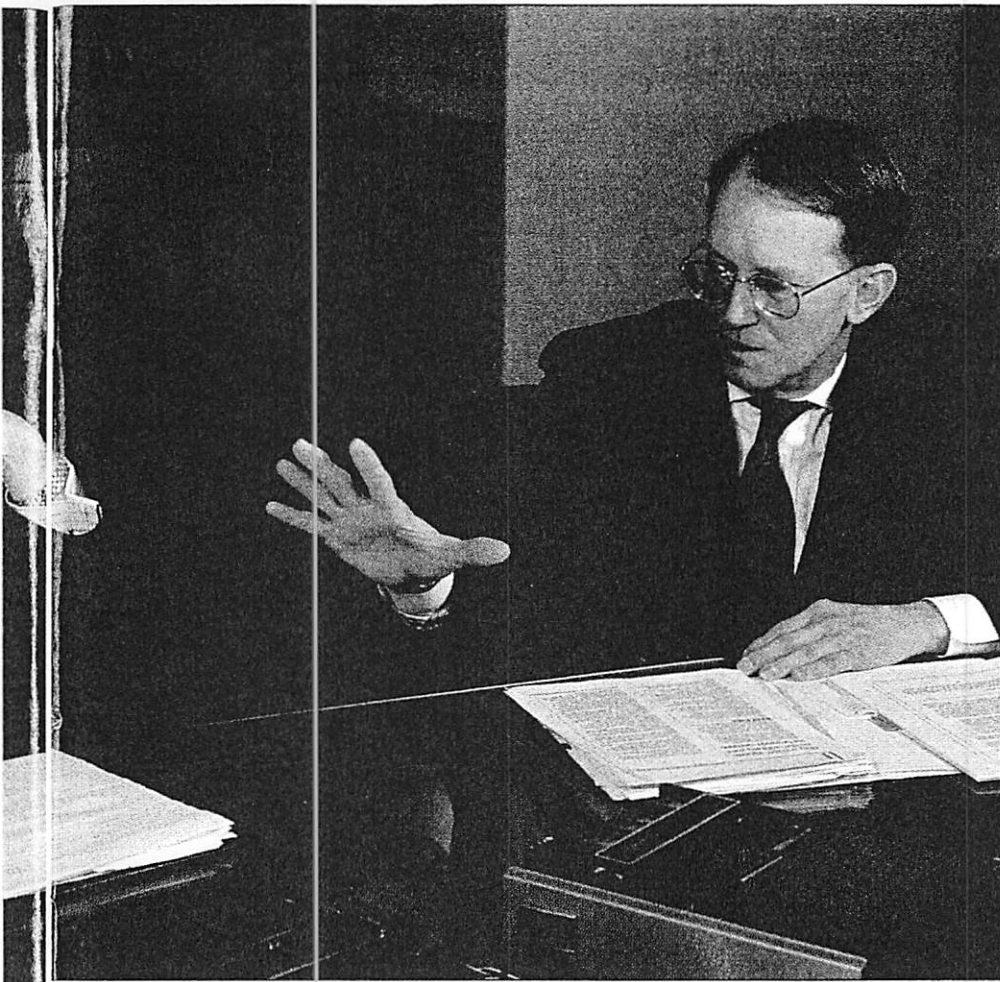
HIGHLIGHTS

Charles Magness on...

Military gays: "It's a question of civil rights. You are discriminating against a class of people because of their sexual orientation, not behavior."

Schwarzkopf: "He said an openly gay person in the foxhole breaks down unit cohesion. Where's the proof?"

Gays at O clubs: "They should certainly be able to bring their partners to the clubs."



A CHRONICLE PICTURE GROUP

HIGHLIGHTS

Ron Ray on...

Excluding gays: "The experts say that in classifying people as suitable for military service, the group they would recruit from last is homosexuals."

Promiscuity: "Studies of homosexuals show that after they come out of the closet, their promiscuity becomes much more rampant."

Sexual expression: "It is encouraged in the homosexual community."

FACE-TO-FACE—Retired Army Lt. Col. Magness and retired Marine Col. Ray debate the ban.

conduct. The experts say that in classifying people as suitable for military service, the group they would recruit from last is homosexuals.

Q. Many ex-military homosexuals, including Chuck Magness, are living proof that homosexuals have served their country, and served it well.

RAY: We have all kinds of people who have excellent records but then we discover they had a problem, like alcoholism. Once it becomes known that someone possessed a characteristic which we would screen out ordinarily, that changes our assessment of the individual's worth entirely. He ceases to be a readiness asset for our nation's Armed Forces.

Q. Don't people like Chuck, who served honorably and faithfully, prove the President is right when he says you have to distinguish between orientation and conduct?

RAY: We are screening individuals on the basis of a classification system for military standards. Uniformity is what we are looking for.

I haven't seen Chuck's service record, but I have no doubt that he has a fine record, that he loves his country as much as I do, and that he served ably and well. It means we are screening him out because we are trying to have the most combat-ready force.

Q. Gen. Colin Powell, chairman of the Joint Chiefs,

Gen. Norman Schwarzkopf, Gulf War commander, and Adm. William Crowe, former chairman of the Joint Chiefs and a backer of Clinton during the presidential campaign, oppose lifting the ban on homosexuals. A *Los Angeles Times* poll found that 74 percent of military people today also oppose lifting the ban. Col. Magness, why do you think you are right and all those people are wrong?

CHARLES F. MAGNESS: Gen. Schwarzkopf said that when you have a person who is openly gay in the foxhole, unit cohesion breaks down. Where is the proof for that? We didn't have open homosexuals in foxholes during the years I was a commissioned officer. I challenge anybody to present facts and figures supporting Schwarzkopf's claim. They just don't have them.

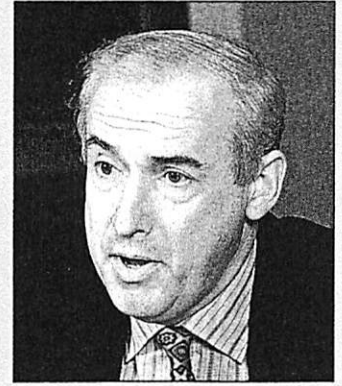
Q. David Hackworth, who is described as the most decorated living American veteran, says he witnessed "countless examples of inappropriate morale-busting behavior by homosexuals in the military." He cites a case of a gay soldier who could not keep his hands off other soldiers in his squad, a personnel major who had affairs with teenage soldiers in exchange for jacking up their test scores, and a gay commanding officer who gave combat awards to his lovers who had never been on the line. Won't the admission of open homosexuals and their promotion to higher ranks lead to more such cases?

MAGNESS: You have to prove what Mr. Hackworth is saying

PHOTOS BY CANDALL PICTURE GROUP



RAY:
 "If Congress listens to the people, it will pass a ban on homosexuals in the military."



MAGNESS:
 "The military has yet to come up with any facts why Clinton shouldn't lift the ban."

is correct. The rules say he would have had to discharge homosexuals. Did he just watch unit cohesion go down? I don't know if he is making them up or whether he was a well-decorated, lousy commander who didn't enforce the rules.

Q. Another Vietnam veteran, columnist William Hamilton, has raised other fears. "How can we in good conscience order our warriors to share the battlefield with the highest risk group for AIDS?" he asks. What if homosexual GIs gave blood to fellow soldiers?

MAGNESS: There wasn't an instance of it happening in the Gulf War. We don't transfuse people with other people's blood under those circumstances because it is dangerous, and not just because of AIDS, but because of hepatitis B and other diseases that might be in their blood. You have to have pure blood.

Q. But aren't homosexuals more prone to all of those other diseases?

MAGNESS: Homosexuals are the largest category of people infected with HIV and who have AIDS. But the homosexual community has tapered off in the rate of infection. Meanwhile, the rate of infection among heterosexuals is skyrocketing.

THE LEGION'S POSITION

THE American Legion has called on the President to abandon his plan to lift the ban on homosexuals in the military.

"The purpose of our military is to defend our country, not serve as a laboratory for sociopolitical experimentation," says National Commander Roger A. Munson.

The Legion supports the Department of Defense (DoD) position opposing homosexuals in military service. This support was reaffirmed during the 1992 Fall Meeting when the National Executive Committee passed Res. 25, which states, "that The American Legion go on record as being in total support of the DoD position that homosexuality is incompatible with military service." □

Q. But, surely you can understand why heterosexual soldiers would fear having homosexual soldiers at their side? Look at basketball star Magic Johnson, who is infected with the AIDS virus. He was forced to retire from the sport a second time after fellow basketball players were alarmed to see him bleeding during a game.

MAGNESS: I understand that. But if we accept the low number of 2 percent homosexuals in the country, are we going to be immobilized because of that? And have you heard of Wilt Chamberlain, another basketball player, who said in his book that he has had sex with 20,000 partners? The issue is promiscuity.

RAY: Yes, and studies of homosexuals show that after they come out of the closet, their promiscuity becomes much more rampant. The average homosexual who doesn't have AIDS has had over 500 partners and those who do have AIDS have had over 1,000 partners. And it is the open homosexual that we are saying cannot serve in the military. The homosexual who has his sexuality under control is for all military intents and purposes not a homosexual.

MAGNESS: I talk with a lot of people who are very concerned about the lack of leadership in the military today because of the heterosexual misconduct that goes on. The Tailhook scandal was very damaging.

Q. Won't you compound the problem of sexual misconduct by allowing open homosexuals in the military?

MAGNESS: If I tell you I'm a homosexual, are you worried right now that I'm going to run up your leg with my toes?

RAY: It is a felony in the military.

MAGNESS: Have you ever heard of the felony called adultery? Maybe you ought to go to Korea and see how many heterosexual soldiers conduct themselves. Married troops stationed in Korea without their wives are living with Korean women. Where is the cry that we should put these people out of the service?

Please turn to page 60

GAYS IN THE MILITARY

A QUESTION OF HEALTH

AIDS and many other diseases are prevalent among homosexuals. Their poor health, would cost billions and threaten the nation's security.



By Ronald D. Ray

THE MILITARY ban against homosexuals rests historically and legally upon government deference, particularly by Congress and the U.S. Supreme Court, to the judgment of military leaders on the basis of "military necessity." The military's singular mission is, as stated by the Secretary of Defense, on March 26, 1992, "to fight

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WARNING

The following article contains sexually explicit language that may be offensive to some people and it should not be read by minors without parental guidance. The information contained herein is presented for the sole purpose of ensuring honest debate on the prudence of lifting the ban against homosexuals serving in the Armed Forces of the United States.

and win our wars," to defend America from enemies foreign and domestic. Anything or anyone who interferes with or inhibits the military's ability to accomplish that high calling with the fewest casualties threatens America's national security.

The military is entirely separate and apart from the civilian society it defends and is necessarily governed by different rules and standards. Soldiers are recruited and selected from classified groups. These classifications,

HIGH-LEVEL DEBATE—President Clinton and the Joint Chiefs discuss the ban on homosexuals in the military.

based upon military selection criteria, have been developed over time and proven on the battlefield.

First and foremost, the battlefield demands that young recruits between the ages of 18-26 be able-bodied. The military for the good of the services selects certain classifications of people and excludes classifications with characteristics shown to be unfit for military service such as convicted felons; non-high school graduates; drug users; physically disabled, etc. This is especially true when the military is reducing forces and ample numbers of able-bodied men are available for combat service. The extraordinary physical demands of combat on land, sea and air are unchanging and are still critically important in war. Military leaders declare that the battlefield has not become less demanding because of today's advanced technology, but rather more lethal.

GAYS

In its effort to adhere to this standard and keep combat readiness at peak efficiency, service chiefs have consistently determined that there are no military reasons for allowing open homosexuals to serve in the Armed Forces. Among the many significant military reasons cited for maintaining the ban are sagging morale and cohesion, lack of privacy, fraternization, favoritism, sexual harassment and unnecessary disorder. While these are important considerations, any decision to allow homosexuals to serve is fundamentally flawed for one primary reason: Homosexuals as a group are simply not able-bodied.

DEFINING HOMOSEXUAL BEHAVIOR

"It is very difficult for me to make love, even safely; when the very act is now so inextricably bound up with death." —Larry Kramer¹

"In the first place, these people are in-

The media has put the nation at risk by protecting gays' deadly activities with the shield of "civil rights."

.....

involved in what I consider to be a filthy, disease-ridden practice . . ."—Admiral Thomas H. Moorer, USN (Ret.), former Chairman of the Joint Chiefs of Staff

* * *

Without some understanding of what homosexuals actually do, a valid appraisal of the serious dangers homosexuals present to themselves, to others and to America is not possible.

AIDS AND VA

MORE than 30,000 veterans—mostly homosexuals or drug users—have been treated for HIV and AIDS at VA hospitals and clinics since 1983.

VA says the demographics of its AIDS patients mirror that of the U.S. population as a whole. As of September 1992, veterans being treated for AIDS in VA facilities were:

- 98 percent male.
- 48 percent homosexual or bisexual.
- 27 percent intravenous drug users.
- 7 percent homosexual drug users.
- 3 percent heterosexual.

According to VA, 3.5 percent got AIDS from tainted blood transfusions and 12 percent contracted the disease from unknown causes. Although women represent 4 percent of the veterans' community, less than 1 percent of VA's AIDS patients are female.

VA says the average age of a veteran diagnosed HIV positive is 43; average age that AIDS occurs is 54.

Both these figures are 10 years older than the national average.

In 1992, more than 37,500 new cases were reported nationwide. In spite of massive educational campaigns conducted by VA and other government and private health agencies, AIDS cases are on the rise.

Last year, VA treated 16,205 veterans as being HIV positive or having AIDS, compared to 14,947 in 1991, and 12,469 in 1990. In 1988, VA treated only 4,919 HIV/AIDS patients. Currently, HIV/AIDS treatment costs VA an average of \$29,000 per patient.

Veterans receiving care at VA facilities account for 6 percent of the nation's adult male AIDS patients, making VA the largest single source of AIDS treatment. According to VA, an average of 190 new AIDS cases are diagnosed each month at its facilities.

VA eligibility for treating veterans with HIV/AIDS is no different than the eligibility requirements for any other medical problem. Veterans

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Many homosexuals engage in sexual practices that are virtually unknown among heterosexuals. Almost all homosexuals engage in sexual practices involving degradation or humiliation that are rarely practiced by heterosexuals.² Furthermore, study after study indicates that homosexual men are extraordinarily promiscuous, which only aggravates their medical risk to the military.

A 1981 study found that only 2 percent of homosexuals could be considered monogamous or semi-monogamous (having 10 or fewer lifetime partners).³ Larry Kramer, a homosexual and AIDS activist, put it this way: Those with AIDS may be described sexually as the "genuinely promiscuous and the nearly monogamous."⁴

A 1983 study that required homosexuals to keep a diary of their sexual experiences found that the average male homosexual, in one year, 1) fellated 106 different men and swallowed seminal fluid 50 times, 2) experienced 72 penile penetrations of the anus, and 3) ingested the fecal matter of 23 different men.⁵

Despite the onset of AIDS, many male homosexuals, particularly younger men of military age, are still very promiscuous and have merely cut back on the number of partners: in one study, from 70 different partners per year to 50; in another study, from 76 different partners per year to 47.⁶ This is in contrast to a study published in 1990 which reported that for the U.S. population as a whole, the estimated number of sex partners since age 18 is seven to nine.⁷

IN ADDITION, most homosexuals still engage in unsafe sex. A study of 823 homosexual and bisexual males in 1989 found that 64 percent had engaged in at least one unsafe sexual practice during the previous two months. Only 9 percent claimed to consistently practice safe sex. Almost one quarter reported having unprotected anal intercourse during the previous two months.⁸

A compilation of recent health studies⁹ shows that homosexuals account for 80 percent of America's most serious sexually transmitted diseases, and that they account for less than 2 percent of the total American population.

Youths engaging in homosexual behavior are 23 times more likely to contract a sexually transmitted disease



BETTMAN

IN THE HEADLINES—Les Aspin, Secretary of Defense, right, and Sen. Sam Nunn, the Senate Armed Services Committee Chairman, speak to the press after a meeting with President Clinton about gays in the military.

than strictly heterosexual youths. Lesbians are 19 times more likely than heterosexual women to have had syphilis, twice as likely to suffer from genital warts, and four times as likely to have scabies.

Male homosexuals are 14 times more likely to have had syphilis than male heterosexuals. They are also thousands of times more likely to contract AIDS. According to the Centers for Disease Control, at least two-thirds of all AIDS cases in the United States are directly attributable to homosexual conduct.¹⁰

Even more ominous than this blasé attitude towards promiscuity and sexually transmitted diseases, leaders of the homosexual/"gay rights" movement have consistently been willing to sup-

press data concerning the direct link between promiscuous homosexual behavior and AIDS in an effort to preserve public acceptance and empathy, or at least public neutrality and apathy."

The "cultural elites," including the media, have presented the matter entirely as a "civil rights" issue and have succeeded in concealing from the public their deadly activities while putting

the nation at risk. An informed public would be outraged at the truth and would undo all the gains that homosexuals have made in the name of "gay rights."

THE MEDICAL FACTS OF AIDS

Among the most obvious dangers homosexuals pose for the military is the
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OPENING DEBATE—President Clinton delayed his campaign pledge to lift the ban by assigning Defense Secretary Aspin to write a new policy by July 15.



SANDERSON PICTURE GROUP

POOR HEALTH

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threat of AIDS, which would undoubtedly increase for all military members if homosexuals were openly admitted to the services.

Once relieved of the necessity to restrain their sexual behavior in order to suppress or hide their homosexual tendencies, homosexual and bisexual service members themselves would be more likely to contract and spread the AIDS virus while in the service.

Heterosexual service members would also be more likely to contract the AIDS virus through peacetime training injuries or from the blood supply during wartime, when there may not be the opportunity to test blood before battlefield transfusions. Recent studies have shown these blood tests to be ineffective where infection has recently occurred and significant symptoms have not manifested themselves.¹²

At present, AIDS in the military remains almost exclusively a homosexual phenomenon. As noted earlier, according to an Army survey, 80 percent of soldiers who tested positive for the HIV virus admitted to contracting the virus through homosexual contact.¹³

We may assume that many of the remainder contracted the virus in the same way, though they would not want to admit it for personal reasons. Some claim that virtually all AIDS cases in the military are the result of homosexual behavior.¹⁴ All the same, AIDS is a product of promiscuous sexual behavior, behavior which the military has a demonstrated and compelling interest in proscribing.

With an increase in AIDS cases among homosexual members, the military can expect a dramatic increase in personnel costs related to medical care and personnel turnover. At present, HIV-positive service members are deemed "non-deployable."

Sodomy is still a crime under the Uniform Code of Military Justice, and scarce military resources should be better utilized. At present, each AIDS patient costs the military a total of about \$250,000 in medical care alone. In 10 years at the present rate of infection, the military will spend about \$3 billion in AIDS treatment — enough money to buy three Aegis cruisers.¹⁵

In the absence of the ban on homosexuals, there are solid reasons to fear — and anticipate — that the military's

generous medical benefits would provide an incentive to increase the number of homosexuals entering the military.

Homosexual apologists, in fact, argue that the military is the best place to get AIDS on account of their efficient diagnostic procedures, treatment programs and facilities, and comprehensive medical coverage. Homosexuals would be expected to seek admittance into the military on this basis alone, thereby straining an already burdened health-care delivery system.

Homosexual behavior, however reckless or restrained, has shown itself to be a greater threat than even drug addiction. Homosexual behavior presents the greatest risk for passing or contracting the AIDS virus.

One report describes AIDS as follows:

"AIDS is a breakdown of the natural immune mechanism of the body. In patients with AIDS, the immune system breaks down and the body can no longer effectively fight infection. Organisms normally resisted by healthy persons invade the body and cause serious diseases (opportunistic infections).

"In the early stages the condition is characterized by weight loss, fever, thrush (especially of the throat), diarrhea and swollen lymph glands. Unusual forms of herpes, cytomegalovirus, TB and toxoplasmosis may develop. Invasion of the brain by organisms usually never found there can occur. A previously rare form of cancer (Kaposi's sarcoma) may develop; eventually most patients will contract *Pneumocystis carinii* pneumonia.

"For many of the infections afflicting AIDS victims there is no treatment. Where drug treatment can be used, it proves less effective and more toxic. The fatality rate appears to be 100 percent. No one has ever recovered."¹⁶

Furthermore, *Time* magazine stated in 1985:

"They [homosexual men suffering from AIDS] had other infections as well: *Candida albicans*, a fungus that cakes the mouth and throat, making it difficult and painful to speak or eat; herpes, not the garden variety of sores, but ulcerating infections of the mouth, genitals or anus that raged for months. The patients fell prey to exotic bugs seen more often in animals than humans, like *Toxoplasma gondii*, and *Cryptosporidium*, which causes diarrhea."¹⁷

OTHER MEDICAL PROBLEMS

AIDS aside, homosexuals present a substantial medical risk to themselves,

AIDS AND VA

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who are rated mandatory — service-connected veterans and veterans who fall below the minimum income limits — are eligible. Other veterans may be treated on a space available basis.

While all VA hospitals can treat veterans with AIDS, VA has specialized units in New York, Miami, West Los Angeles and San Francisco, where 21 percent of its AIDS patients are cared for. In addition, VA facilities at Houston; New York; Durham, N.C.; Baltimore; San Diego; and San Francisco serve as AIDS research centers. □

to others and to the military, owing to their promiscuous and generally reckless lifestyle. An Army study of male soldiers found dramatically higher rates of morbidity among soldiers infected with the AIDS virus in the years prior to their diagnosis.¹⁸ These soldiers were:

- 41 times more apt to have contracted syphilis;
- 32 times more apt to have had enlarged lymph nodes;
- 10 times more likely to have had hepatitis B;
- 5 times more likely to have contracted other sexually transmitted diseases and hepatitis A;
- 4 times more likely to have had disorders of the anal/rectal region;
- twice as apt to have had acute pharyngitis and mononucleosis;
- 6 times more apt to have had urethral scarring and acute bronchitis;
- and 8 times more likely to have had herpes zoster.¹⁹

Though morbidity rates for these soldiers declined as they became aware of the AIDS threat, they continued to suffer "lifestyle-related" infections and disorders nearly four times more often than male soldiers without the AIDS virus.²⁰

There is more, as reported by Patrick J. Buchanan and J. Gordon Muir in their article, "Gay Times and Diseases" in *The American Spectator*, August 1984.

"The 'Gay Bowel Syndrome,' [is] a group of rare bowel diseases, previously considered 'tropical,' now epidemic in urban gay communities....

"The main conditions normally con-

sidered under the GBS are amebiasis,²¹ giardiasis,²² shigellosis,²³ and hepatitis A.²⁴ From a public health viewpoint there are several alarming features in these diseases: the rapidly expanding pool of infection in the homosexual community; the ease of spread to the wider public; the tendency for persons to be infected with two or more organisms at once; the difficulty of laboratory diagnosis; the difficulty of clinical diagnosis (they all have common symptoms); the likelihood of active homosexuals repeatedly reinfesting themselves; and the fact that nearly all the GBS groups of diseases have symptomless carrier states....

"Hepatitis A is also common in homosexuals. Among gay men attending a venereal disease clinic in Seattle there was evidence of previous hepatitis A infection in 30 percent. The yearly attack rate was about 22 percent....

"Finally, gonorrhea is also rampant in the homosexual community. In one large survey of U.S. gays, 40 percent reported known infection with gonorrhea.

Common homosexual varieties of this disease (oral and rectal) are also more difficult to detect and treat. Antibiotic-resistant gonococci are now making an appearance; the pharmaceutical industry is only about one drug ahead of these strains, and there is no guarantee it will remain so.

"Syphilis, an old disease that was in decline, is also making a comeback. In the same gay survey, 13.5 percent reported a previous infection with syphilis. Among gays attending saunas in Amsterdam there was evidence of old or recent syphilis in 34 percent; only half the men were aware of their infection...."

In summary, and as one gay writer told *The Washington Post* (emphasis added): "You can take away AIDS and you're still looking at a community that happens to be a diseased community. I'm sorry. The bulk of your venereal diseases now reside within the gay community. The bulk of enteric (intestinal) diseases is now within the gay community."²⁵

In weighing the incompatibility of homosexuality with military service, the military must therefore consider:

- 1) the added cost of medical care incurred by homosexuals for infectious venereal diseases and serious injuries;
- 2) the added burden on strained military and VA hospitals;
- 3) risk of injury, illness and infection of other military personnel caused by

the incubation of rare diseases in homosexual carriers;

4) the personnel cost of aggravated attrition and "workarounds" caused by temporary medical disability; and

5) the loss of unit effectiveness caused by the absence of key personnel due to injury or medical disability.

The evidence shows plainly that homosexuals are a terrible and unnecessary medical risk especially for a military reducing its forces. If America's elected officials permit homosexuals to openly serve in the military with America's sons and daughters, knowing full well that homosexuals carry, in overwhelming numbers, a disease more deadly than war's killing fields, they will answer to America's families.

In view of the fact that homosexuals, as a classification of people, are not able-bodied, there is no military necessity to place American servicemen and women at risk by lifting the ban against homosexuals openly serving in the Armed Forces. □

¹ Larry Kramer, *Reports from the Holocaust: The Making of an AIDS Activist* (1989), p. 227.

² Lorraine Day, M.D., *AIDS: What the Government Isn't Telling You*; Palm Desert, Calif.: Rockford Press, 1991, pp. 106-136.

³ A.P. Bell, M.S. Weinberg, et al., *Sexual Preference* (Bloomington, Ind.: Indiana University Press, 1981), pp. 308-309.

⁴ Larry Kramer, *Reports from the Holocaust: The Making of an AIDS Activist*; 1989.

⁵ T.C. Quinn, "The polymicrobial origin of intestinal infection in homosexual men," *New England Journal of Medicine*, vol. 309, 1983, pp. 576-582.

⁶ See e.g., S.A. Stewart, *USA Today*, 21 November 1984; L. McKusick et al., "AIDS and Sexual Behavior Reported by Gay Men in San Francisco," *American Journal of Public Health*, 1985, pp. 493-496.

⁷ Gomulka, *supra* p. 4, citing Tom W. Smith, *Adult Sexual Behavior in 1989: Number of Partners, Frequency and Risk*, presented to the American Association for the Advancement of Science, February 1990, published by NORC, University of Chicago.

⁸ Joyce Price, "High-risk sex acts still common among gays, bisexuals," *The Washington Times*, Dec. 28, 1989.

⁹ H. W. Jaffe, and C. Keewhan, et al., "National Case-Control of Kaposi's Sarcoma and Pneumocystis Carinii Pneumonia in Homosexual Men; Part I, Epidemiological Results," *Annals of Internal Medicine*, 193, 99 (2) pp. 145-157; H. H. Hansfeld, "Sexually Transmitted Disease in Homosexual Men," *American Journal of Public Health*, 9, 1981, pp. 989-990; Karla Jay and Allen Young, *The Gay Report*, Summit, New York, 1979; Janet E. Gans, et al., "America's Adolescents: How Healthy Are They?" American Medical Association, 1990, p. 31.

¹⁰ "The HIV/AIDS Surveillance Report," U.S. Department of Health and Human Services, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS, January, 1992, p. 9.

¹¹ Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic*, New York: St. Martin's Press, (1987)

¹² Day, *supra*.

¹³ *Family Research Report*, October-December 1991, pp. 3-4.

¹⁴ See e.g., Rehyansky, *supra*.

¹⁵ *NBC Nightly News*, Thursday, 12 March 1992.

¹⁶ Patrick J. Buchanan and J. Gordon Muir, "Gay Times and Diseases"; *The American Spectator*, August 1984, p. 17.

¹⁷ *Time*, August 12, 1986, p. 41.

¹⁸ Philip O. Renzullo, et al., "Inpatient Morbidity among HIV-Infected Male Soldiers prior to Their Diagnosis of HIV Infection," *American Journal of Public Health*, October 1991.

¹⁹ *Family Research Report*, October-December 1991, pp. 3-4.

²⁰ Renzullo, *supra*.

²¹ Amebiasis: a disease of the colon caused by parasites. Causes dysentery and sometimes liver abscesses. Usually picked up from contaminated food.

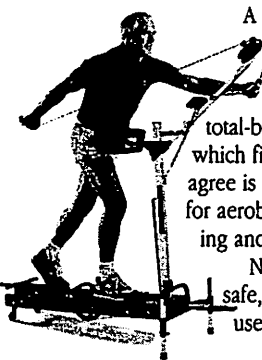
²² Giardiasis: a parasitic bowel disease causing diarrhea. Spread in a similar way to amebiasis.

²³ Shigellosis: a bacterial bowel disease which can cause severe dysentery. In children, can be fatal. Contaminated food is the usual cause.

²⁴ Hepatitis A: a viral liver disease (less serious than B or non-A, non-B) spread by fecal contamination: e.g., food, water, and close person-to-person contact.

²⁵ Quoted by Buchanan and Muir, *supra*, p. 18, also noting that "[t]he general public has been grossly deceived about the gravity of this homosexually engendered public health menace. Hollywood and the media under the tutelage of the Gay Task Force have done their part... [Of the movie *Making Love*, Richard Schickel wrote], 'the people who made this picture are determined to prove that 'nice boys' do, that homosexuals can be as well-adjusted and as middle-class as anyone else.'"

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