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THIS WEEK'S NEWS FROM

Inside Washington

On Gays in Military

Legal Scholars Agree Aspin Dead Wrong

Secretary of Defense Les Aspin, in an effort to pressure the Joint Chiefs of Staff into ending their opposition to homosexuals serving in the military, warned on last week's "Face the Nation" TV show that "sooner or later" the federal courts will overturn on constitutional grounds the long-time ban against homosexual service members.

But when HUMAN EVENTS asked noted conser-



ASPIN



FEIN

vative constitutional scholar Bruce Fein whether or not Aspin was correct, he told us:

"Les Aspin may have credentials in some matters, but constitutional interpretation is not his strong suit. Various cases decided in both the D.C. Court of Appeals and the Supreme Court suggest that there is not an iota of support for Aspin's view. Given the current composition of the court, Aspin's view is downright hallucinatory.

"In *Bowers v. Hardwick*, decided in 1986, for example, the Supreme Court ruled that states could criminalize homosexual sodomy just because the people view it as immoral.

"If you can—constitutionally—make homosexual sodomy a crime, you can certainly exclude anyone committing the crime from the armed forces."

What about arguments that the equal protection clause of the 14th Amendment is violated by the current ban? we asked.

"The Supreme Court has rejected that view already in *Bowers v. Hardwick*. . . . If you can make homosexual sodomy a crime and not violate the equal protection clause, how could a refusal to permit homosexuals to serve in the armed forces be unconstitutional?"

Fein predicted that if President Clinton successfully lifted the ban it would make it easier for liberals to alter the 1964 Civil Rights Act to include homosexuals, which would, in turn, open the door to same-sex marriages.

"Lifting the ban would send a message," explained Fein, "that if we don't mind a gross departure from our moral traditions in the military—which is charged with making sure that our society survives—then how could anyone continue to argue that homosexual marriages should be banned?"

"Or, if we entrust the safety of the nation to homosexuals, why not entrust them to rear young children as foster parents, etc.? Indeed, how could you even retain preferences for heterosexual couples seeking to adopt children?"

Fein said he could also foresee legal problems for insurance companies that, for purposes of establishing premium rates, defined a family as a married couple, rather than two people living together.

Having noted some of the consequences of lifting the ban, Fein took some comfort in recalling that "it is doubtful that President Clinton has the legal authority to prohibit the Uniform Code of Military Justice from making homosexual sodomy an offense and attaching the punishment of discharge to that offense.

"He would have to exercise, on a case-by-case basis, his commutation power. That would probably lead to chaos, since reinstated homosexuals would commit the same crime again and get discharged again, and so on *ad infinitum*."

Fein told us that he suspects that "Given the character that Clinton has shown so far, and Aspin being a creature of Congress—meaning a creature of timidity—they will throw this whole crown of thorns back into Congress and say, 'Tell us what we can and cannot do.'"

Surprisingly, for once, even pro-homosexual liberal scholars seem to agree with Fein's assessment of Aspin's claim that the courts will soon overturn the ban if the executive and Congress do not.

Paula Ettelbrick, legal director of the Lambda Legal Defense and Education Fund, told reporters last week, "It is absolutely untrue that the courts are on the verge of striking down this policy."

Ettelbrick added that if Clinton's lifting of the ban were to be delayed, she would have to rethink whether or not to pursue lawsuits brought by discharged homosexuals fighting for reinstatement.

"We have to think about whether we want to push these [cases] in the courts," said Ettelbrick. "We don't want to, because we don't think we are going to win."

Similarly, Kathleen Gilberd, who co-chairs a San Diego homosexual advocacy group called the Military Law Task Force, maintained, "The Supreme Court is a serious obstacle [for us]."

Boy Scout-Basher Achtenberg

HUD's New Enforcer For Civil Rights?

By JUSTIN RAIMONDO

Before the Clinton transition team called, Roberta Achtenberg was a San Francisco gay-rights activist, a member of the city council and an open lesbian. Most recently she attracted attention for having introduced a resolution in the city council to withdraw city funds from the Bank of Amer-

ica on the grounds that it is anti-gay.

The Clinton transition has picked her to be the Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development headed by Henry Cisneros. If confirmed by the Senate, she will be in charge of enforcing our nation's housing anti-discrimination laws and affirmative-action requirements. U.S. housing policy does not currently bar discrimination against homosexuals, but given her interest in lesbian political organizing, she will probably try to change that policy.

According to the Associated Press, Miss Achtenberg currently lives with her "partner," Mary Morgan, presiding judge of the San Francisco Municipal Court. And together, they have a 2-year old son, but won't say which is the biological mother.

If confirmed, she will assume one of eight assistant secretary positions, which the federal government classifies as "ES IV." That entitles her to a salary of \$115,700, plus health and pension benefits, courtesy of the U.S. taxpayer. She will rule over a legion of 158 bureaucrats.

In the world view of Miss Achtenberg, if you oppose "gay rights," you're a bigot. Her experience with the Bank of America is a case in point. The San Francisco school board banned the Boy Scouts from the public schools on the grounds that they discriminate against gays and atheists. The resolution, introduced by school board member Tom



CISNEROS

Ammiano, passed with only a single dissenting vote. Mr. Ammiano, a professional comedian, proclaimed this a victory for "gay rights."

In solidarity with the city council, the United Way, Bank of America, and Levi Strauss withdrew their financial support from the Boy Scouts. And organized gays thought they had scored a victory.

But then the phone started ringing off the hook at Bank of America. The message from callers was overwhelming: stop discriminating against traditional values, or face a boycott from irate parents. Support for the Boy Scouts included 50 congressmen, and they weren't all Republicans. Even candidate Bill Clinton, touted by gay Democrats as their salvation, weighed in and said that the

Mr. Raimondo is a San Francisco journalist and a media fellow of the Ludwig von Mises Institute.

affection that are otherwise permissible while in uniform, such as dancing at a formal event?"

Other questions to be explored by Nunn, which will be awkward for Clinton since they anticipate the direction that many of Clinton's homosexual activist supporters want policy to go, include:

- "Should homosexual couples receive the same benefits as legally married couples? For example, nonmilitary spouses now are entitled to housing, medical care, exchange and commissary privileges, and similar benefits. Military spouses also benefit from policies that accommodate marriages, such as joint assignment programs."

- "If homosexual couples are given such benefits, will they also have to be granted to unmarried heterosexual couples?"

- "If discrimination is prohibited, will there be a related requirement for affirmative action in recruiting, retention, and promotion to compensate for past discrimination?"

- "If discrimination is prohibited, will there be a need for extensive sensitivity training for members of the armed forces?"

- "If the policy is changed, what accommodation, if any, should be made to a heterosexual who objects to rooming or sharing bathroom facilities with a homosexual?"

- "If the current exclusionary policy is changed, what will be the effect on the tens of thousands of past cases, particularly in terms of claims for back pay, reinstatement, promotions, and similar forms of relief?"

Washington Switchboards Swamped with Opposing Calls

Republicans are encouraged in their opposition by a strong showing of public support for maintaining a ban on open homosexuals in the military. Though polls suggest public ambivalence toward rooting out closeted gays, the latest Gallup survey taken for *Newsweek* on January 21 and 22 showed the public against any move by Clinton "to allow gays in the military" by a 53 per cent to 35 per cent margin.

Even more dramatic, congressional offices were being flooded with angry telephone calls denouncing any change in the ban and demanding that Congress do something to stop it. Switchboards at the White House and the Pentagon were similarly being deluged.

While the congressional switchboard usually receives about 80,000 to 85,000 calls per day, it was taking many times that number last week. On January 27, for example, the Senate sergeant-at-arms' office reported that the lawmakers received 434,104 incoming calls. And nearly all of them, according to various senators and representatives, were against the Clinton policy.

Sen. John Warner (R.-Va.) received a total of 1,700 calls opposing the Clinton policy and 56 favoring it during a two-day period.

Sen. Dole's office took 976 calls against dropping the ban on homosexuals and only 36 calls in favor on January 25 alone.

The Pentagon, meanwhile, received 1,353 calls from the public on the issue on January 25, with all

but 55 of these calls expressing opposition to any change.

"That was the largest number of calls we've ever received in a single day," said a Pentagon spokesman, Lt. Col. Doug Hart. "It was larger than anything out of Desert Shield or Desert Storm."

Though the military is heavily against changing the homosexual exclusion, Hart stressed that the Pentagon was not encouraging public opposition. "We're not asking people to call or not to call," he said.

The Brass Dissent

By ROWLAND EVANS
And ROBERT NOVAK

President Clinton has now learned from Gen. Colin Powell what advisers should have told him long ago about admitting gays to the military: that the issue has nothing to do with patriotism or esprit de corps on the battlefield but everything to do with life in and around the barracks.

One two-star general, a close friend of the Joint Chiefs chairman, accurately mirrors the brass'



POWELL

anger over gay culture being imposed on the military by political edict when he confides that Gen. Powell should quit to "let the President know how we feel." Such bitterness in the Pentagon over a homosexual lifestyle intruding into the ranks reflects the mood throughout the military.

But Powell is not about to quit. Nor are the chiefs of the Army, Navy, Air Force or Marine Corps contemplating such a sniveling rupture of the line of command that starts with Commander in Chief Clinton. They will fight, not quit. The nonsense warnings Clinton got from Powell and his phalanx of chiefs Monday, January 25, sounded an alarm bell that reinforces warnings from Congress, the final arbiter.

Adding to the Pentagon's general sense of impending crisis is the Navy's strong opposition to John Holum, a partner in Secretary of State Warren Christopher's law firm who is under consideration for secretary of the Navy.

Holum was defense adviser to former Sen. George McGovern, who pushed meat-ax Pentagon cuts during his disastrous 1972 presidential campaign. Holum also served in President Carter's Department and later advised former Sen. Gary Hart on national security matters.

Although Holum told us he played no role in Clinton's 1991 pledge at Harvard to open the military to homosexuals, he had responsibility for handling the details of the proposal and fleshing it out during the campaign. Republican failure to make it a major campaign target gave Clinton a false sense of confidence.

Now the gays-in-the-military issue has spilled into every corridor of the Pentagon and is producing strong reactions in Congress. Top Navy officers privately cite Holum's role with Clinton as an explanation for the Navy's opposition to him as civilian leader.

On Capitol Hill, Sen. Sam Nunn, chairman of the Senate Armed Services Committee, whose forthright outburst against Clinton's pledge may have cost him a Cabinet job offer, told us he will hold thorough hearings starting in March.

They could run for weeks, and they are aimed, in the words of a Nunn intimate on the committee, "at getting answers to a lot of questions that haven't even been asked, much less thought through."

For Clinton, the Nunn hearings could be devastating. The issues the senator's staff is worried about go to the core of the cultural question: whether gays can be admitted to the military without also bringing their lifestyle onto the base and into the barracks. Those are precisely the questions that seem most worrisome to the men and women in uniform.

Should the same-sex "spouse" of an Army man be provided with joint living quarters on the base? Should same-sex spouses be given equality in pension and survivor benefits, which could add high costs to the Pentagon's shrinking budget? Should gays have equal rights with non-gays to dance in the officers' club or hold hands in the enlisted Marines' sloop chute?

Judging from what Defense Secretary Les Aspin has said, and from still-private opinions on Capitol Hill, those responsible for fashioning a workable system to permit fulfillment of Clinton's pledge are not close to deciding these hard-core issues.

Their current thinking is limited: that Clinton should simply terminate the requirement for declaring sexual orientation. Then, once in uniform, gays would be expected to act like everyone else, with unacceptable behavior (sodomy has always been forbidden by the Uniform Code of Military Justice) carrying the same punishment for gays as for non-gays.

But it would be surprising if the gay lobby does not have other, quite different ideas. For them, equality in the military may not mean simple removal of the requirement to declare sexual orientation at time of enlistment. Indeed, the President may discover that the right to serve is only the first of many rights that the gay community will expect him to supply.

Creators Syndicate

Furor Over Gays in the Military

GOP Readies Counterattack

Despite the apparent compromise between the Clinton White House and Senate Armed Services Committee Chairman Sam Nunn (D-Ga.), Republicans on Capitol Hill seem resolved to block any modification of the current policy of excluding homosexuals from the military.

As HUMAN EVENTS went to press, President Clinton still had not announced the precise details of the compromise reached with Nunn, but it is



NUNN

widely expected to consist of two elements: an end to the asking of a recruit's sexual orientation and a directive to military authorities to stop investigating cases of possible homosexuality.

These conditions would obtain for six months during which time congressional hearings on the matter would be held. Following the hearings, Clinton would implement a formal executive order altering the present ban.

At a January 28 press conference, Republican Senators Bob Dole (Kan.), Dan Coats (Ind.) and Strom Thurmond (S.C.) offered a different deal to Clinton: They will not make any legislative counterattack if the President freezes all current policies in place until after the hearings.

Argued Sen. Coats, it makes no sense to stop inquiring about the sexual orientation of recruits since any homosexual who enlists now would be subject to dismissal if the outcome of the present controversy is the retention of the ban.

HUMAN EVENTS was told by Senate sources that on Tuesday, February 2, if Clinton has not ac-

cepted their deal, Senate Republicans will seek to attach an amendment to legislation—probably the Family Leave Act—that, if passed, will nullify any tinkering with the status quo by legally codifying the present Uniform Code of Military Justice. Currently the UCMJ criminalizes homosexual sodomy as a felony and requires that those convicted of it be discharged, but it does not mandate investigative policies. The new codification, we are told, would do so.

Republicans are fairly confident that they have the votes to pass their amendment and that they may also have enough votes to override Clinton's anticipated veto.

Republicans are eager to go ahead with their challenge because it is clear that they have overwhelming public support. Indeed, the Capitol switchboard registered just under 500,000 phone calls on January 27, almost all of them against lifting the ban.

Another reason they wish to press the matter is that they know that 22 Senate Democrats must stand for re-election in 1994. How each of the 22 votes may determine whether or not he is re-elected.

Republican success or failure will partially depend on how much pressure Nunn can exert on this group of 22 to go along, at least temporarily, with Clinton. Nor is it clear how hard Nunn, who is said to be personally unhappy with the treatment he has received from the White House, will work on behalf of the new President.

"Much will depend on just how co-opted Senator Nunn has been by the Clinton Administration," one Senate source told us.

"I can't see how Nunn, coming from a state as conservative as Georgia, can get away with saying 'I'm going to wait for the March hearings to make up my mind' and then go on to impede Republican efforts to keep the ban in place. Politically speaking, he'd wind up hanging from his thumbs.

"Though Nunn, at the moment, seems to have genuine moral objections to homosexuality," our source continued, "it's worth recalling that he was once pro-life and changed that position when it seemed to him that only by flip-flopping could he have any chance of getting the Democratic presidential nomination."

There are counterpressures, however. Observers of Georgia politics were noting last week that as recently as this past November a coalition of Peach State evangelicals and military voters from Ft. Benning, Ft. Gordon and Ft. Stewart provided newly elected Republican Senator Paul Coverdell with his margin of victory. Coverdell made his opposition to homosexuals serving in the military a focus of his attack on former Sen. Wyche Fowler, who supported lifting the ban. Nunn has not forgotten.

Clinton Rescinds Anti-Abortion Directives

Just two days after his inauguration, as up to 250,000 pro-life activists massed in Washington to protest the 20th anniversary of the Supreme Court's *Roe v. Wade* decision allowing abortion on demand, Bill Clinton signed five separate orders undoing directives by Presidents Reagan and Bush that had the government siding against death for unborn children.

With the stroke of his pen—and while actually claiming he wants fewer abortions—Clinton required federal agencies to:

- Eliminate a rule prohibiting the encouragement of abortions by federally funded family planning clinics.
- End a 1988 ban on federal funding of research using fetal tissue resulting from non-therapeutic abortions.
- Investigate the possibility of allowing the importation of the French abortion pill, RU-486.
- Overturn the 1988 directive forbidding abortions in overseas military facilities.
- Reverse the policy that had barred U.S. funding to international organizations that perform or promote abortions.

All of this on the date when, for the past 12 years, U.S. Presidents had welcomed March for Life demonstrators to the Nation's Capital.

Nunn's Searching Questions About Clinton's Policy Change

Whatever Nunn's real beliefs, he put himself on a collision course with Clinton by saying he agrees with Gen. Colin Powell, chairman of the Joint Chiefs of Staff, that, in view of the unique conditions of military service, active and open homosexuality by members of the armed forces would, in Nunn's words, "have a very negative effect on military morale and discipline."

Nunn also released an exceedingly detailed set of questions that he said would be explored in depth at his intended hearings: questions that could only undermine the President's proposed change and highlight the imprudence—even recklessness—of Clinton's having committed himself to such a change without exploring its myriad ramifications.

While supporters of the Clinton policy have argued that damage to the military could be limited by imposing strict rules governing conduct that would apply equally to heterosexual and homosexual activities, one question raised by Nunn pointed to the inherent limitations of such a "solution":

"What restrictions, if any, should be placed on conduct between members of the same sex? Should such restrictions apply in circumstances in which such conduct would not be prohibited if engaged in between members of the opposite sex"—for example, "displays of