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AT THE UNIVERSITY OF MICHIGAN

ROTC restrictions are necessary and legal

By William J. Gregor

Normally, I permit the Daily's editorial remarks about the Army or ROTC to pass without comment. However, I believe it is important that I respond to the Daily's call for our expulsion; not because I believe expulsion is likely, but because, as an academic unit of this university, it is sometimes necessary to school the students in subjects they scrupulously avoid.

The Constitution of the United States grants the Congress the sole power to raise and support armies and to make rules for the government and regulation of the land and naval forces. Although the power to appoint officers of the militia (national guard) was reserved to the states, the militia are governed by the discipline prescribed by Congress.

Consequently, the recruitment, education, and training of officers is exclusively a federal matter. This is an important fact to note, because the recruitment policies of the United States vary from time to time according to manpower requirements and national security needs.

When manpower needs were high and conscription the means of recruiting, avowing homosexuality did not exempt individuals from induction — see the movie *Biloxi Blues*. This was true for a number of reasons, not the least of which is claiming homosexual tendencies would be too convenient a dodge from military service. In those circumstances a pattern of homosexual sexual conduct had to be shown for a recruit to escape induction.

Many of the recent court cases dealing with homosexuals in the military have involved servicemembers who first enlisted under a similar rule. However, as manpower requirements and defense budgets shrink, the Army and the armed forces in general become more selective, routinely restricting enlistments. The ancient term for this is *delectus*, from the Latin *deligo*, to choose, select. The policy concerning

the eligibility of homosexuals is just one manifestation of this principle.

Modern armies succeed in generating combat power through a combination of specialized training and discipline. Individual genius is superfluous to overall performance. That is why a liberal society, which focuses on the individual, finds military organizations so hostile. In evaluating recruits, the Army is not simply concerned with physical and mental skills and fitness, but also, suitability, a disposition to the discipline. Under this rubric fall all those disorders and neglects prejudicial to good order. In an organization which holds a monopoly on violence, care must be taken to ensure proper restraint. Offenses involving sexual conduct are of particular concern.

Military commanders are frequently called upon to deal with matters arising from sexual conduct. In ages when religious precepts and public values shaped behavior, the commander could rely on a considerable amount of self-discipline to

are going to be involuntarily separated from active duty, there is little need to tap this very limited pool of manpower. The policy is expedient.

In a similar vein, the policy of recruiting officers from public and private universities is expedient. The Congress and the states find it important to ensure officers have an undergraduate college education and that they bring with them whatever particular qualities are gained by training on those campuses. Whether this policy is prudent or not is a matter of speculation, but in terms of raising an army it is clearly not essential. For example, most of the officers who fought in World War II were raised from the ranks and received their commissions from officer candidate school. Nevertheless, the cadets and midshipmen at the University of Michigan are proud, competent, patriotic, disciplined individuals not to be confused with the low-income, mercenary wimps described in a Daily editorial.

From the preceding discussion it

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prevent disorder. However, Americans are increasingly less discreet in their sexual behavior and flaunt what heretofore was private. Consequently, commanders have had to rely on military law rather than moral restraint to maintain order.

In this context, it is fortunate that society still permits a reasonable amount of formal separation between the sexes. Commands maintain detailed policies on fraternization to prevent both the abuse of office and incidents of sexual harassment. Despite command scrutiny, however, incidents occur which have a corrosive effect on units and occupy command attention.

Homosexual offenses have a similar effect, but no such formal separation is possible. Though individual homosexuals may be amenable to military discipline and able to live discreetly in military units, there is no compelling reason to invite disorder. At a time when over 20,000 qualified soldiers and hundreds of officers

should be clear that the real issue is not military discrimination against homosexuals. Homophobia does not animate recruiting criteria. The real issue is political. Campus activists have couched the argument in "moral" terms to mask their hostility toward military institutions and their autonomy in setting entrance standards. No one can seriously support the induction of homosexuals out of a general concern that by excluding homosexuals the armed forces lacks sufficient combat power to perform its national security missions.

Military policy, especially in a republic, is almost always driven by expedience. It is also clear from recent court decisions that the policy barring homosexuals from the military is both lawful and constitutional. The question for the student body, therefore, is not whether ROTC goes or stays. It is broader. If a university unit can be expelled because its policies are lawful and constitutional, is any unit or anyone protected?

Gregor is a lieutenant colonel in the U.S. Army, and chair of the University's Army Reserve Officer Training Corps (ROTC) program.

MEMORANDUM

TO: University of Michigan Civil Liberties Board

FROM: LTC William J. Gregor

DATE: November 7, 1990

SUBJECT: Student Eligibility for Army ROTC Enrollment

The Army Officer Education Program is organized under the terms of a contract between the Board of Regents and the Secretary of the Army. Bylaw 13.03 of the Bylaws of the Board of Regents addresses the Officer Education Program. The Senior Reserve Officer Training Program is also governed by Army Regulation 145-1 which sets the basic policy governing the program and by regulations and instructions published by US Army Cadet Command and Headquarters, 2d ROTC Region.

Because the Army Officer Education Program is both a University of Michigan academic unit and a federal commissioning program care has been taken to insure that students of the university have access to the military science courses regardless of their eligibility for receipt of a federal commission. Army Regulation 145-1 specifically states:

All categories of ineligibles (including homosexuals) who meet the requirements set by school authorities may take Army ROTC classes for all 4 years for academic credit only.

This policy exceeds the standard set in the Bylaws of the Board of Regents. Bylaw 13.03 states:

Courses of study shall be recommended by the Military Officer Education Committee, and suitable opportunity shall be given students of the University to pursue them.

It is important to note that the Constitution of the United States grants Congress exclusive powers to raise and regulate the armed forces. In particular instances, the Congress shares with the President the power to appoint officers of the United States. Consequently, all eligibility criteria used by the Army ROTC program to select cadets for the commissioning program is derived from federal statute or through discretionary powers granted to the President and Secretary of Defense by federal statute. Any University which intends to make available to its students access to a federal commission must accept, as a

precondition, that federal, not state or university rules will apply.

As stated earlier no student at the University of Michigan is denied access to academic instruction in military science courses in the Army ROTC program. Those who are ineligible are immune from military service. Immunity is granted under the powers of Congress, and may be, and is in fact often modified by Congress. In 1987, in response to the Supreme Courts ruling in the case of Goldman v. Weinberger, 106 S. CT. 1310 (1986), Congress amended 10 U.S.C., 774 and granted members of the military the privilege of wearing an item of religious apparel while wearing the uniform of the member's armed forces, with some exceptions. Even with the change in statute, religious persons, e.g., Sikhs, who must scrupulously wear religious apparel that does comport with Army regulations still may not be enrolled as cadets, but may enroll as university students. Though it was argued by the plaintiff in Goldman v. Weinberger, that Air Force uniform regulations violated the free exercise clause of the First Amendment, the Supreme Court found the government's claim of military necessity more compelling. Though this ruling in effect extends to certain citizens an immunity from military service, immunity from such service has never been comprehended as a deprivation of liberty.

The first step in determining the eligibility of any student for enrollment as a cadet is an interview. This interview is conducted before enrollment, before contracting the student into the Advanced Course, and annually to ensure continued eligibility. There are numerous ineligibility criteria of which homosexuality is but one. There is no administrative reason for distinguishing between homosexuality and any other disqualifying criteria; e.g., conscientious objection. However, some criteria are less subjective and may subsequently be discovered either through a records check or medical examination. After entering the program as a cadet, if the cadet becomes ineligible, the procedure to be followed for disenrollment depends more on the nature of his enrollment than the disqualifying factor.

I have enclosed copies of the applicable portions of Army regulations as well we copies of interview forms, Army ROTC contracts, and Department of Defense policy. The administrative policies of the Army differ from those of the other services. However, in the case of homosexuals, the policy is set by the Department of Defense and does not vary between services.

During my tenure as the chair of the Army program I have always had one or two students enrolled who have been ineligible for commissioning for various reasons. I have even proposed to LSA a course in military sociology in the hope of attracting more interested students. Army

recruitment policies do not stand in the way of enrolling students. What discourages most students is the fact that LSA grants no degree credit for these courses. As reductions in the Army have been announced, the eligibility criteria have become more stringent and some students who might have been eligible two years ago are no longer eligible. This year the Army imposed a ceiling on the number of cadets who may advance from the basic course to the advanced course. By 1995, I am confident that many fully qualified basic course cadets will be unable to advance to the advanced course and receive a commission because there will be no service need. In that context access to academic courses in military science is all the Army or the University can guarantee.

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MEMORANDUM**TO: Dr. Robert S. Holbrook****FROM: LTC William J. Gregor***William J. Gregor***DATE: 12 November 1990****SUBJECT: UW-M Task Force on Discriminatory Policies in ROTC**

To begin let me state that the views expressed in this memorandum are my own and do not represent those of either the Department of Defense, Department of the Army, or US Army Cadet Command.

I do not believe the University of Michigan, or any university for that matter, has a strong reason to engage in a political effort to influence federal officer recruitment policies. This is especially true at both UW and UM because the colleges have placed major academic obstacles in the way of students seeking federal commissions. However, the armed forces are at an especial disadvantage in arguing their policy position because as subordinates they must support the policies established by the Congress and the President, whether they reflect the military views or not. This means that during public debate, when antagonists point out contradictions in policies, the serving officer is frequently unable to respond because a cogent response requires him to take issue with his military or civilian superiors. Though I choose to provide my personal observations, I do so with a very clear view of the political-professional boundary.

Although the UW task force alleges a general interest in discriminatory recruitment practices, the content of Resolution 5399 is focused solely on the political claims of homosexuals. If the UW task force were truly interested in expanding the access of students to federal commissions, the task force could have identified other simpler measures that would result in a much more dramatic increase in eligible officer candidates, for example, age limitations. Title 10 USC specifically authorizes the armed forces to commission individuals up to 35 years of age. However, under current policy a student may be no older than 25 at time of commissioning or 30 if a veteran. Annually, I turn away reservists, veterans, and other older students because they exceed the age limit. In this case the exclusion is not a matter of either

constitutional or statutory law, but merely the convenience of the government. Yet, no issue is raised; why not?

The UW-M resolution also pays no attention to recruitment criteria that impinge on rights expressly granted by the Constitution. The First Amendment specifically states that Congress will not limit the "free expression" of religion, but Sikhs are barred because their religious practices are at odds with armed forces appearance standards. Yet, history shows that you can raise whole regiments of Sikhs and the US Army permitted their enlistment from 1953 until 1982. Nevertheless, the prohibition against Sikhs was upheld by the Supreme Court; *Sherwood v. Brown*, 619 F. 2d 47 (9th Cir), cert. denied, 449 US 919 (1980).

I could cite other criteria more attractive for university attention than the bar to homosexuals. However, I have focused on age and religious criteria to illustrate a point. How can a university realistically pretend to protect a homosexual's right to seek a federal commission; a right that does not exist in federal constitutional or statutory law, when the university is indifferent to the plight of students whose complaint has an established basis in federal statute or the Constitution? Before even inquiring into the rational basis for the Department of Defense policy, I would advise SACUA that the effort is quixotic. I would also be inclined to see the UW-M initiative as a political effort whose real purpose is masked by its public posture. My personal judgment is that the campaign does not seriously intend to influence armed forces policy, but instead is designed to maintain a vehicle for raising the issue of the military on campus.

From a federal constitutional perspective, the UW-M resolution is without merit. Military service has never been adjudged a civil right. Immunity from military service has never been defined as a deprivation of liberty. Similarly, despite the urging by numerous plaintiffs, the Supreme Court has refused to apply federal employment precedents to military service cases. To do so would place a restriction on Congress' power to raise and regulate the armed forces. The Supreme Court has instead repeatedly stated, "Judicial deference is at its apogee when legislative action under congressional authority to raise and support armies and make rules and regulations for their governance is challenged," *Rosker v. Goldberg* 101 S. Ct. 2646. Consequently, any attempt to argue for a policy change must be done in practical terms as well as philosophical terms. On this score, the UW-M and UM faculties don't appear well suited to argue how this action will improve federal

efforts to recruit officers, enhance discipline, or increase the combat capabilities of the armed forces.

In practical terms UM policies make it more difficult to recruit students, especially minorities and women. Access to incoming freshmen is strictly controlled and counsellors do not trouble to explain, even to ROTC scholarship winners, how ROTC will fit into their program. The absence of degree credit makes it difficult for freshmen to enroll and has an adverse impact on many students; particularly students who must combine work with study. With the notable exceptions of the School of Nursing, Natural Resources, and Engineering, participation in ROTC is discouraged by a large portion of the faculty. If you ask me, I think the Congress would have serious reason to doubt the UM faculty's concern for military recruiting and the civil rights of its students. The record is not inspiring.

In sum, I find the UW-M invitation unattractive from a political standpoint. If, however, SACUA wants a way to express hostility towards US military policy in the middle east or a way to open a discussion about ROTC's presence on campus, I can't find a more convenient vehicle. It has little prospect for success; it is certain to last for years; and the university's students are not subject to conscription so they will not notice a drop in ROTC enrollments. It's a marvelous vehicle for expressing outrage and dissent, and provides a sop to campus activists.

I have devoted too much time to this subject, so I won't delve into the rational basis of the recruiting policy, save to suggest, that the incidence of sexual disease among homosexuals and the cost of AIDs testing and treatment make it unlikely Congress will agree to directing the services to recruit homosexuals. Secondly, Congress will also be concerned that the change in policy will injure recruiting for an all-volunteer force. The cost in organizational terms may be far too expensive in an era when Congress wants to shrink the budget.