

Thursday, October 22, 1992

3:06 pm — to — 4:56 pm

Washington, D. C.

Statement by R.D.⁶¹
Ray

1 decisions accordingly.

2 Thank you very much.

3 CHAIRMAN HERRES: Okay. Thank you, Tom.

4 Commissioner Ray.

5 COMMISSIONER RAY: Thank you, Mr. Chairman.

6 I think that -- let me echo what Tom said -- a lot
7 of things he said about love in combat. Greater love hath no
8 man than this that he lay down his life for a friend, and we
9 know that, those of us who have gone in harm's way.

10 I think it goes without saying that we have had an
11 extraordinary experience for the last seven or eight months
12 among us and between us. And I think it's important to note
13 that nothing that is said or done in this Commission should
14 in anyway reflect other than great credit upon the women who
15 have served and are now serving in the United States
16 military.

17 And we've got three on this Commission, and I think
18 that some people have been very quick to find comments that
19 have been made, arguments that have been addressed that has
20 reflected adversely on military women, and nothing could be
21 further than the truth, that their patriotism, their love of
22 country, their capability, I think we have all seen a great
23 deal of that here, and I think it's important that we, as
24 Commissioners, then, echo our appreciation for what they've
25 brought to the military -- or bringing to the military and

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1 will continue to bring to the military.

2 You know, I like Lewis Grizzard. I guess I like
3 philosophy and sometimes it needs to be homespun philosophy.
4 In his latest book, if you haven't had a chance to read it,
5 you ought to read it, because I feel that I -- it applies to
6 me anyway. He said, "I haven't understood anything since
7 1962." And that's the title of his book.

8 In 1980, the House and the Senate agreed in
9 rejecting draft registration for women, and this is what they
10 said: "In 1980, Congress, again, addressed the role of women
11 in combat. President Carter decided to reactivate
12 registration for the draft under the Military Selective
13 Service Act and recommended that Congress amend the MSSA to
14 permit the registration and conscription of women, as well as
15 men. Congress rejected the proposal, after discussing the
16 proper role of women in combat."

17 The bill, which was adopted in 1980 by both houses,
18 stated, quote, "The principle that women should not
19 intentionally and routinely engage in combat is fundamental
20 and enjoys wide support among our people. It is universally
21 supported by military leaders who have testified before the
22 committees and forms the linchpin for any analysis of this
23 problem."

24 "History gives examples of women who fought alone
25 and with men during past periods of strife. Women have

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1 defended themselves against attack, and have been
2 inadvertently drawn into combat activities in defense of
3 their country.

4 Although such examples exist, throughout history
5 women have not regularly participated in combat and no
6 society has ever relied on conscription of women primarily
7 for combat roles. Registering women for combat assignment to
8 combat or assigning women to combat positions in peacetime
9 would leave the actual performance of sexually mixed units as
10 an experiment to be conducted in war with unknown risk, a
11 risk that the committee finds militarily unwarranted and
12 dangerous."

13 I was reading last night a review of an imminent
14 military historian's book, Michael Howard, who we all should
15 be indebted to in the military service, because he and one of
16 his students, Peter Parrot, gave us the definitive
17 translation of Clausewitz on war, and Clausewitz always
18 studied war in the context of broader, intellectual, social,
19 political forces. That's why the thing has been so powerful.

20 And he said his interest is not so much in the
21 study of war as in those deeper processes of historical
22 change. And what have been these deeper processes of
23 historical change since 1962 when I thought I understood some
24 things about the world?

25 He goes on to say that to do consideration of those

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1 deeper processes full justice, the historian must discipline
2 himself by remembering not to generalize from false premises
3 based on inadequate evidence, and to keep in mind that the
4 past is a foreign country. There is very little we can say
5 about it until we have learned its language and understood
6 its assumptions.

7 These are the fundamental ground rules for the
8 historian's attempt to understand the past and to identify
9 the beliefs and assumptions that holds societies together,
10 and to determine those activities at the level of high
11 politics.

12 We are at the level of high politics. And we have
13 to ask ourselves what are our beliefs? What are our
14 assumptions? What are these deeper societal processes that
15 have been going on in this country in the last 30 years?
16 What are our first principles, and by what standard shall we
17 judge the extremely important issues before us?

18 And it was to this end that Commissioners Cockerham
19 and O'Beirne and I wrote to the Chairman and the letter that
20 was distributed to everybody earlier this week. It was dated
21 October the 8th, but it was -- it wasn't put out until
22 earlier.

23 And let me say that my experience has been -- since
24 the Marine Corps on active duty, has been as an equal
25 opportunity attorney. I have practiced over 20 years in the

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1 area of Title 7 of the Civil Rights Act, employment.
2 opportunities in the civilian world, and I didn't know until
3 six weeks ago -- and I've been in the military 32 years and a
4 lawyer over 20 -- I did not know that Title 7 of the Civil
5 Rights Act did not apply to the uniformed military services
6 and all of its decisions.

7 To find that was a revelation to me, because it
8 looked like it applied to the military services, because it
9 looked like for the last 15 or 16 years we have been guided
10 in assignment policies, particularly regarding women, as if
11 the equal opportunity standard applied.

12 So what is this historical process we've been
13 talking about? There are a lot of them. We've had a sexual
14 revolution in the last 30 years. We've had every kind of
15 liberation movement in the last 30 years, women's liberation,
16 certainly the back drop of the Equal Rights Amendment needs
17 to be looked at, and I went back and read those, debates
18 particularly. It was clear in the '70s everybody assumed the
19 Equal Rights Amendment would have passed, so perhaps planners
20 and policy makers began to move forward on that assumption.

21 But the American people rejected the Equal Rights
22 Amendment in the late '70s, and by 1982, primarily because
23 they were concerned about seeing women in combat, some of the
24 very issues that we have heard. They did not want to see
25 single mothers separated from their children. They did not

1 want to see our women subjected to indecent assault; rape,
2 prisoners of war, and those kinds of things.

3 And yet, just a year and a half ago on television,
4 they saw the images flashed on the TV screen of what they
5 thought in a huge 12 year national debate had been rejected.
6 The Equal Rights Amendment apparently has existed in The
7 Pentagon for all these years.

8 Let me just quote from the Supreme Court a little
9 bit, and say that the answer that we do need to answer, why
10 we do what we do. Everything in the Department of Defense is
11 on the table. It's a new world now. The Cold War is over.
12 A huge draw-down in military services. All the roles and
13 missions of the services are on the table. Guard and reserve
14 are being substantially cut back. If there was ever a time
15 when it's appropriate to go back to your first principles,
16 now is the time.

17 The Supreme Court has given great deference to the
18 military, because the military stands in the preservation of
19 our society and our way of life. If they have operated from
20 the "why," if the answer of the "why" is military necessity
21 or military requirement, they give great deference. If some
22 other standard -- if we're doing something for another
23 reason, that deference may not be granted.

24 The Supreme Court in 1986 gave a resounding
25 affirmation of military necessity in Goldman verses

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1 Weinburger, and it's probably the best rendition. The
2 Supreme Court said, "We have repeatedly held that the
3 military is, by necessity, a specialized society from
4 civilian society. The military must insist upon a respect
5 for duty and discipline without counterpart in civilian life,
6 in order to prepare for and perform its vital role. Our
7 review of military regulations challenged is far more
8 deferential than constitutional review of similar laws or
9 regulations designed for civilian society. The essence of
10 military service is the subordination of the desires and
11 interests of the individual to the needs of the service."

12 Now, there are many cases cited. This is one of
13 the most consistent constitutional principles going back to
14 the prize cases in the Civil War, yet -- I'm out of time, Mr.
15 Chairman.

16 I would say to you that one last thing, the Supreme
17 Court held that sometimes the grossest discrimination can lie
18 in treating things that are different, as though they were
19 actually alike.

20 Thank you, sir.

21 CHAIRMAN HERRES: Okay. Thank you, Commissioner
22 Ray.

23 As you can see, Sam, we're in the process of
24 Commissioner's comments. We've been around the table once.
25 Commissioner Clarke has yet to -- and some deferred for the

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"Don't Ask, Don't Tell...Don't Work"

Washington, D.C.
May 31, 1993
Memorial Day

A retired admiral in Mobile Alabama said recently: "The Armed Forces of the United States face a greater crisis than any which they've faced since the nation was founded in 1776."

Sam Nunn's compromise "don't ask, don't tell" which the Joint Chiefs appear willing to accept "don't work." The compromise by its very nature is a breach of legal principle and is contrary to the current law that requires military officers to "guard against...all dissolute and immoral practices...and to take all necessary and proper measures...to safeguard [those] under their command." (See 10 U.S.C. § 5947) Anything short of a return to a full screening out of homosexuals strikes a fatal blow to the heart and animating spirit of American military service and destroys the legal and moral foundations of our armed services. Fidelity, special trust and self-sacrifice cannot compromise with promiscuity, deception and self-gratification.

*rights/v. obligation
duty
honor
character*

I first became aware of the homosexual movement through my involvement in two well-known Kentucky cases involving homosexuals; one in Federal Court in Louisville in 1983, and the other in the Kentucky Supreme Court in 1991, regarding the constitutionality of Kentucky's criminal sodomy statutes. Those cases prompted further research into the origin of this revolutionary movement, gave insight into the true nature of homosexuality's defining behaviors, its intensely ideological basis and the social, sexual and political goals of this movement that encourages a reckless perverse behavior and a predacious sexual promiscuity. There is little public awareness of the medical, financial and societal effects of this destructive life style or "death style." We are paying now and will continue to pay in the future for the consequences of their behavior. Even in the face of AIDS, which is 100% fatal, research clearly shows that homosexuals refuse to stop their deadly sexual behaviors, but rather recruit and encourage others to join them.

David Horowitz, a former anti-war, anti-American 60's radical, has asserted that the reasons for forcing women into the combat arms and forcing homosexuals openly into the armed forces is to further subvert, undermine and "deconstruct" the last of America's remaining traditional institutions. Unlike the EEO civilian standard, military judgments throughout history have been based upon the fixed and unyielding battlefield standard that the Supreme Court has termed "military necessity."

First, as part of their overall strategy, the homosexual movement moves forward through deliberate disinformation. Homosexuals even ^{anonymously} proclaim sexual promiscuity as a civil right despite enjoying income, political power and privilege well beyond the national average. In 1961, sodomy and homosexual behavior were vices and crimes in all 50 states. Seeds were planted in 1948 whereby sodomy and sexually transmitted diseases were intentionally and artfully converted into "civil rights" issues. In 1993, only half of the states retain laws banning homosexual behavior. Those who oppose this promiscuous sexual behavior are attacked as "bigots" and unjustly accused of "discrimination."

Although man-to-man sex and illegal drug use account for 87% of all AIDS cases in America, this death-oriented "lifestyle" and promiscuous behavior are being encouraged throughout our society. It is even beginning to be included in our public school curricula in the elementary grades. The political climate is such that the advocates of this "alternative lifestyle" are now invading our nation's defense and military institutions.

Secondly, deception creates acceptance of homosexual and media myths, such as the "10% lie." By most credible studies, homosexuals comprise only 1% of our nation's population. "Gay rights" activists have been successful in their deceptive propaganda and media "disinformation" by claiming to comprise 10% or more of the population. These activists, representing less than 2% of the population, are willing to endanger the military institution, and the well-being of America to achieve their 45-year-old goals.

Thirdly, fraudulent scientific studies support their deception. The Kinsey reports have been demolished, but sex education in our schools is based on their findings. Even so-called Pentagon studies of the issue are inaccurate. Much of the data and "social science" is incomplete and misleading. Some former Pentagon officials were misled regarding the true nature of sodomy and homosexual behavior, and the real "HARM" factor to our soldiers and national security. Elected officials and senior military leaders are wavering and willing to compromise under intense pressure from the homosexual movement. This "special interest" group has a complete "agenda" for their vision of an America free of all moral limits (see the enclosed Homosexual Agenda). They refuse to change or give up their perverted sexual behavior even though it kills them at very young ages.

Finally, our Military leaders are "gagged," censored and defenseless. This battle will not be won without a strong stand. We cannot expect or depend on our politicians or those within the military institution to defend against the relentless attack. They are, unfortunately, increasingly willing to compromise after severe waves of "politically correct" pressures and threats. One thing is certain: homosexuals will move rapidly forward in their quest for "official" and legal acceptance if the military ban is lifted or compromised which will unnecessarily place uniformed personnel at serious risk, driving many of our best out of the military. This is a much greater threat than any in recent or past military history. They certainly need our support and encouragement to turn the tide. **Most of all, they need the power of the truth and useful information as ammunition against this domestic enemy.**

An informed senior military leadership and the persistent efforts of the American people are the key to maintaining the ban. If the joint chiefs AND the people are informed and stand firm, congressional intervention could ensure that moral principle and common sense prevail. We must act now or this grave wrong will happen with enormous consequences for our military and the larger American society.

In conclusion, I call you to immediate action. As a Marine Reserve Colonel, attorney and father of four beautiful children, I was moved to make a case in support of the ban against homosexuals in the military I have so proudly served for over 32 years. I wrote a book, Military Necessity & Homosexuality. Today, I would ask you also write to your senators, your congressman and state and local leaders and representatives in support of the ban urging them not to compromise regarding this issue. Encourage our service chiefs to refuse any compromise. Ask them all what steps they are taking to preserve the ban. Your support of the ban is crucial.

America and its military leadership must not be overtaken by deception or any unwise compromise unaware of the devices of this immoral and dissolute movement that threatens our nation's very foundations. Pass the word: No Compromises! **Remember "Don't Ask, Don't Tell, Don't Work."**

Semper Fidelis,

Ronald D. Ray
Colonel, USMCR

1100 words

Combatting Moral Decline

reviewed by Capt Franz Gayl

VALUES FOR A NEW MILLENNIUM: Activating the Natural Law to Reduce Violence, Revitalize Our Schools, Promote Cross-Cultural Harmony. By Dr. Robert L. Humphrey, WIN Publications, Maynardsville, TN, 1992, 412 pp., \$15.00. (Member \$13.50)

Are you still fuming over those mandatory sexual harassment classes? Did the touchy-feely aspect of our past human relations training turn your stomach? Are you concerned about the moral crisis that remains in light of all those failed "solutions"? Well, there's hope after all. Dr. Robert L. Humphrey has documented his life's work, which successfully applied new principles of education in warfighting and society, in an effort to turn around our cultural decline. Being a Marine himself, Humphrey's techniques should appeal to most Marines. Despite the audience to which his book is targeted, its lessons pertain to the Armed Forces perhaps more so than any other segment of society.

From his experiences as a rifle platoon commander on Iwo Jima to his service as the chief ideologist for the combined action platoon (CAP) and joint riverine operations programs in South Vietnam, the author chronicles a wealth of personal research that leads him to identify the common denominator of all mankind. He calls it the balanced life value, which states that all members of all cultures value their own lives, and the lives of their loved ones as deeply as any member of any other culture. Scientifically, it states that man's preservation drive (altruism) is stronger than his self-preservation drive, a refreshing conclusion for any Marine.

Humphrey describes ethical relativism as a perverted interpretation of American freedom, which has undermined our educational system and artificially distracted our attention from that basic equality in mankind (also known as the natural law). The result has been arrogance and elitism, at home and abroad, with an accompanying increase in anti-Americanism, economic losses, and violence world-wide.

But what does this book on sociolo-

gy have to offer our Marine Corps? Everything! No nation's armed forces span the globe as widely today as those of the United States, and no service in the U.S. military is as expeditionary as our Corps. We probably forge more fresh international contacts on a regular basis than any other institution in the world. We are often the sole visual image that foreigners receive of Americans. Humphrey stresses cross-cultural conflict resolution training for the military for just those reasons. Much of his research was done with and while in the Service. Most significantly he has analyzed the most destructive causes of anti-Americanism. There are several, but one of the more illuminating and pertinent subjects for our peacetime Corps is entitled "Women, Sex, and Military Matters."

In this chapter, Humphrey opens up a dark dimension in our conduct towards other cultures, which demonstrates the severe impact that inconsideration or exploitation of impoverished women can have on our national security. Our collective behavior during port visits to Third World nations might deserve some attention on this issue. We are, after all, dealing with fellow men and women, not economic creatures. The issue of foreign women relates directly to the author's central theme of human respect.

Equal respect as human beings (not freedom or economic equality) was the primary desire of foreign host nations discovered by Humphrey in his many successful efforts to fight cross-cultural fires. "Cross-cultural detective work" was his main tool for cutting through myths and stereotypes to find this source of conflict. He provides the reader several outstanding examples and an outline with which any leader can mediate an inter-group rift. In this sense, the book serves as a lesson plan as much as it does professional reading. His chapter titled "Human Nature's Guidelines for Low-Intensity Warfare" can be quoted word for word as a detailed instructor's outline. Humphrey's thorough understanding of human conflict resolution in low-intensity conflicts serves as a sensible alternative to purely military solutions.

Of key interest to Marine leaders will be the author's successes in experimental education techniques. In our

search for a sound ethical model and a means of instilling values in young adults, the Corps still needs improvement. In his book, Humphrey tells of the human relations program that he implemented in the Corps in the late 1960s to battle racial strife. The physical/moral aspect of his model was a hand-to-hand combat training system, which stressed close in, full-contact hitting skills as a means for individuals to build self-confidence and overcome fear of speaking up for what is right. Receiving the acronym of STRIKE, it was removed from the approved program by a reluctant Commandant. Instead, what remained was referred to as the dreaded HumRel program. Fortunately, ever since warrior training was instituted into basic training, many of the author's fighting tools have been rediscovered. Perhaps today, with the Commandant's stress on ethical leadership and training, we again have the opportunity to incorporate hand-to-hand combat training as the key to achieving mutual individual respect.

There is much more to this book than I could possibly review while doing it proper justice. I must, however, point out that throughout his career, Humphrey has been dogged by people's fear of change. From one perspective, this involves the suspicion that he has a hidden ideological (religious) agenda or that, from another perspective, his reliance on empirical research and human behavioral studies have caused him to be labeled everything from a Darwinist to a Third World apologist. Admittedly, many of his conclusions are highly thought provoking. Nevertheless, Dr. Humphrey is an inspiring humanitarian. As a combat Marine, he needles us hard because he sees in his Corps a moral/ethical institution more capable than any other to change a nation experiencing a moral crisis. Though not a religious book, one ideological quote reappears throughout: "Greater love hath no man than this, that a man lay down his life for his friends." This altruism, voiced by Christ in the New Testament, is the driving force of the book and the stronger half of Humphrey's balanced life value. Humphrey saw it expressed during the fighting on Iwo Jima as Marines routinely gave their lives for others. It is certainly the guiding principle of my Marine existence and that of all the Marines I know. As an ideology it should, therefore, be acceptable to a general Marine readership.

I criticize the book in only two areas: First, I believe the material is worthy of three or four separate volumes. Humphrey himself admits how difficult it was to document research for practical educational application, while keeping the book readable. Perhaps several shorter, subject-oriented books would have helped the book's organization. Second, I feel that Dr. Humphrey unfairly stereotypes the rich as obsta-

cles in a quest for a more democratic world. Wealth can, but does not necessarily, corrupt. I believe that the balanced life value exists in the rich as well.

In conclusion, *Values for a New Millennium* is one of the most important books I have ever read. Nothing since the Bible has caused me to reflect so deeply on my personal attitudes and behavior, especially in the context of

being a Marine and an American. It is written by a Marine for fellow Marines, whether or not he intended to target us specifically. It is also based completely on objective, contemporary research, not idle philosophical speculation.



>Capt Gayle is currently serving as the commanding officer of Weapons Company, 2/4.

A Lack of Leadership in High Places

reviewed by LtCol Donald F. Bittner, USMCR(Ret)

THE CANADIAN ARMY AND THE NORMANDY CAMPAIGN: A Study of Failure in High Command. By John A. English. Praeger, New York, 1991, 347 pp., \$49.95. (Member \$44.95)

The Canadian Army and the Normandy Campaign is an unusual and unexpected book. Written by LtCol John A. English, Princess Patricia's Canadian Light Infantry, who is better known to Marines for his *On Infantry* (1981), the work is an analysis of the Canadian Army's performance in the Normandy campaign from the D-Day landing to the end of the Falaise Gap operations. It is based upon superb research and sophisticated analysis with clear and striking interpretations. It should also be stated what this book is not—a history of the Canadian Army in World War II. As English noted, that story has been superbly written by others.

What, then, is the focus of this history? LtCol English strives to answer the question of why the Canadian Army

in the Normandy campaign did not perform as well as it could have. To him, it had the opportunity to play a role similar to that of the Canadian Expeditionary Force in World War I, i.e., spearhead the crucial attack that led to victory over the Germans. Instead, opportunities to end the war quickly were lost in the Normandy campaign. But this was not for want of trying and at a high cost in human casualties. The question is why.

To English, the fault lay with the Canadian high command. He disagrees with the myth that the Canadian Army overtrained in Britain from 1939 to 1944 or that the Germans had better material, were better soldiers, or were more motivated than their Canadian counterparts. In postulating these views, English analyzes not only what the Canadians did in preparing for Normandy, but also what the Canadian Army did as a whole in the inter-war years. In those decades, this small Army fought for survival, becoming immersed in bureaucratic politics, citizenship/social programs, and strategic

concerns. Its senior leadership, some of whom later served in World War II, was wedded to a technical view of soldiering (artillerymen and engineers were favored), which, fused with the citizen-soldier myth exemplified in the militia regiments, caused them to be concerned with matters other than developing warfighting skills. English concludes:

the professional tradition established by the CEF [the Canadian Expeditionary Forces in World War] was largely usurped during the post-war years by an older entrenched militia tradition that perpetuated the illusion of citizen-soldier superiority and the game of political patronage.

In the midst of this, English's major charge against the senior leadership is that it forgot "... that the chief purpose of an Army ... is to fight its country's wars and fight them well." In peacetime, he stresses, any force can be diverted from this basic goal. With a glance at the current Canadian involvement in peacekeeping operations, he comments that the British Army had years of such duty in the Empire (especially India), but concludes that "peacekeeping then as peacekeeping today in no way en-

Canadian bicycle troops land at Juno Beach during the Normandy campaign.



hanced the capability of a professional army to wage war effectively against a first-class enemy."

To English, the Canadian Army's leadership did nothing to prepare it for a major war and once in it, it further wasted the opportunity to adequately prepare troops for operations against the Germans. He continually stresses that the troops and regimental officers were of superb quality and were not to blame, frequently quoting Field Marshal Bernard L. Montgomery's assessments of men, units, and commanders. Rather, for him, the fault lay with the generals who themselves did not develop an army for modern war, and who were personally unprepared to lead troops into combat, especially in combined arms operations at the corps, army, and division levels. Furthermore, these senior officers, English asserts, could not adjust to a war of rapid changes, where lessons of combat proved hopelessly diverse—from the deserts of North Africa to the mountainous terrain of Italy to the varied conditions of Northwest Europe. Personality conflicts, different approaches to soldiering, lack of professional military education, a lingering reliance on the tactics of World War I, too much emphasis on "battle drill," and service politics, all contributed to lack of success on the battlefield. For English, this is the Canadian heritage of World War II and the legacy of the largest military force Canada ever deployed abroad.

In developing these themes, English deftly moves between the operational and tactical levels of war, addressing with ease issues such as the maneuver and firepower schools of soldiering—his approach being slightly more balanced regarding the latter. As for how the author handles problems of higher

command, he postulates that the Canadian Army's senior leadership ultimately had only a limited ability to plan, and to foresee and resolve problems. A further complicating factor, he notes, was the intense personality conflicts that existed between senior officers. He also claims that too few senior officers properly understood the concept of supporting arms coordination, including too much reliance on rigid adherence to preplanned artillery and air support plans—at all levels. This will remind Marine officers of the emphasis Gen Louis H. Wilson, the 26th Commandant, placed on this subject in the mid-1970s, particularly in regard to the needless casualties that often occurred because commanders did not know how to, or could not, properly use and coordinate their supporting arms. In reading English's account of the Canadian Army's Normandy operations, the inflexibility of, and adherence to, air and artillery plans by unit commanders brings to mind Martin van Creveld's work regarding time-table warfare.

This is a meaningful and serious book for Marines to read and upon which to reflect. However, several cautions must be raised. First, it is necessary to be familiar with the British Army staff system to truly appreciate the book. Chapter 4 gives a good accounting of the British Army's staff college at Camberley. This is must reading, possibly the first part of the book to read after the superb prologue that addresses the various sources historians use and oftentimes misuse. Second, English has provided a much needed list of abbreviations; American readers will use this often. Third, familiarity with Canadian military personalities is necessary. A general World War II biographical reference

work will be helpful to readers not familiar with that country's major World War II-era commanders. Similarly, some knowledge of the organization of Canadian divisions and regiments in the war is essential. Appendices A and B from the condensed official history of the Canadian Army in World War II (C. P. Stacey, *The Canadian Army 1939-1945*) are helpful. Careful study of the box diagrams that English has provided is also quite helpful.

Although English has had the advantage of both research and leading four Canadian Land Force Staff College staff rides on this terrain, the photographs and maps in the volume provide only limited assistance to a reader unfamiliar with the operational area in which Canadian forces fought. For one unfamiliar with the localities, further maps or photographs are necessary for a better understanding of the tactical operations. This part of the volume will require not only careful reading but also additional effort. Stated another way, it is not an easy read.

The work is the result of a superb research effort. English has used the official records in Canadian and British archives, personal papers of senior and junior leaders, appropriate memoirs and secondary works, and professional journals. The latter is particularly noteworthy, as he has read and digested the key articles written by professional officers in the inter-war years.

This is a blunt and candid history, written without any "mythic glow" of the after-effects of victory. It is superbly researched and well written, with clear but controversial interpretations. This could have been two books (pre-war history, followed by a second volume on the Canadian Army's performance in the war), but English chose to produce one volume, thus further emphasizing his analysis. If his assessment is correct, then the Canadian regimental soldier and officer were placed in the worst kind of situation that anyone in combat could confront. English illustrates this by recounting the view of LtCol Dave Stewart, who opined that he always tried to protect his unit from "two enemies, the Germans and our higher command." It is the task of senior leadership to prevent such situations from ever arising again.



>LtCol Bittner is a professor of history at the Marine Corps University, Quantico.

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**PRELIMINARY DRAFT
FOR DISCUSSION PURPOSES ONLY**

**Constitutional, Legal and Military Standards
for maintaining the
Ban on Homosexuals in the Military
by Ronald D. Ray**

During hearings before the Presidential Commission on the Assignment of Women in the Armed Forces, it was established without challenge that there were "adequate numbers of men" to meet military needs now and in the future; and that there is no "military necessity" for increasing the number of women in our military services or for assigning them to combat units. Many senior military leaders expressed some confusion or differences over the proper standard governing military assignment policies. The Chairman, General Herres, said, "If military effectiveness is not eroded, if military capabilities are not compromised, I'm all for equal opportunity." Others contended that those, who are advocating the greater utilization of women, must prove that "military effectiveness" is not eroded or readiness adversely affected. Then and only then can concept of equal opportunity come into use in formulating military personnel assignment policies for service women including the combat arms. Other witnesses unequivocally urged the use of the military or battlefield standard historically termed "military necessity" by the courts. Dick Cheney clarified this matter earlier this year when he said:

It is important for us to remember that what we are asked to do here in the Department of Defense is to defend the nation. The only reason we exist is to be prepared to fight and win wars. We're not a social welfare agency. We're not an agency that's operated on the basis of what makes sense for some member of Congress' concern back home in the district. This is a military organization. Decisions we make have to be based upon those kinds of considerations and only those kinds of considerations.

*Secretary of Defense Richard Cheney
March 26, 1992*

Many Commissioners noted this confusion concerning the proper standard to apply on the part of many witnesses before the Commission. I hope that the following analysis helps to clarify the critical importance of weighing any modifications of military assignment policies in light of military necessity rather than civilian concepts of equal opportunity. Advocates for women in the combat arms and homosexuals in the military are confused or are trying to impose the civilian standard of equal opportunity upon the military society. Shirley Sagawa, an attorney with the National Women's Law Center, demonstrates this by saying: "What the military does to women would be patently illegal in the civilian world. If the person is qualified for the job, she should be allowed to do it. If she is not qualified, then she shouldn't get the job, and then we do won't have to worry about it."

We agree, of course, that "equal opportunity" is an important concept that has been and should be guaranteed for civilian employment by Title VII of the Civil Rights Act of 1964, but the courts have repeatedly recognized the stark differences between civilian society's "jobs" and the extraordinary demands of military duty and service and have always allowed the service to be governed by military necessity not equal opportunity.

MILITARY NECESSITY

The federal courts are uniform in rejecting any legal or constitutional right to serve in the armed forces or any right to a military career or to continue to serve. There is simply no legal "right to fight" nor is there any legal right to avoid such service once it has been so ordered. Service in the military is a privilege that can be terminated at any time based on the changing needs of the services and military necessity. No better synopsis of the doctrine of military necessity can be found than Justice Rehnquist's very brief majority opinion in *Goldman*, in which the following appears:

...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 discipline without counterpart in civilian life." Schlesinger v. Councilman, supra, at 757, in order to prepare for and perform its vital role. See also Brown v. Glines, 444 U.S. 348, 354 (1980).

Our review of military regulations challenged on First Amendment grounds is far from deferential than constitutional review of similar laws or regulations designed for civilian society. The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps.. See, e.g., Chappell v. Councilman, 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 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.

These aspects of the military life do not, of course, render entirely nugatory in the military context the guarantees of the First Amendment. See, e.g., Chappell v. Wallace, supra, at 304. But "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

on religiously motivated conduct, 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, quoting Warren, The Bill of Rights and the Military, 37 N.Y.U.L. Rev. 181, 187 (1962), but the military authorities have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy. [J]udicial deference...is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged." Rostker v. Goldberg, 453 U.S. 57, 70 (1981). [Goldman v. Weinberger, 475 U.S. 503, 506-508].

There has been four thousand years of military history which clearly shows that among armies of the world, victors and vanquished, all have been made up of men. The only three nations, who by virtue of "military necessity" threw women into any sort of combat roles did so only because their national survival, not security, but survival was at stake: They are Israel, in its War of Independence in 1948; Germany and the Soviet Union, in the later days of World War II. All three nations rescinded this drastic and extraordinary action as soon as there was no longer any military necessity to do so. There is of course no military necessity to put American women into combat and the military necessity standard has been the reason or purpose for decisions affecting the military and, of course, is still the strongest defense against homosexuals serving in the military.

RACIAL INTEGRATION OF THE ARMED FORCES

Proponents of homosexuals in the military and women in combat have consistently attempted to appropriate moral capital from the black civil rights movement: They begin by conveniently comparing the racial integration of the armed forces (1948-1955) to increasing the assignment of women in the military (1973-1983) women in the combat arms(1987-1992) with the current attempts to force the services to remove the ban on homosexuals (1992).

The three situations, integration of black men, women and homosexuals, are historically and factually quite different specifically from a military perspective. According to Morris J. MacGregor's definitive work Integration of the Armed Forces 1940-1965, (1981), the racial integration of the military occurred primarily because of the manpower shortages that became acute during the Korean War, or military necessity. Further racial integration involved no alteration of any military or physical standard as has been necessary to accommodate women and the rather extreme physical differences between the sexes. Black men have a long and successful history as warriors and soldiers in each of America's wars and throughout world history. General Colin Powell said it best when he rejected the comparison, "*Skin color is a benign human characteristic, non behavioral characteristic. Sexual orientation, is perhaps the most profound of human behavioral characteristics. Comparison of the two is a*

convenient but invalid argument. " Simply stated black men and white men fought together successfully as soldiers in Korea, Vietnam and in recent expeditions. The assignment of women in the military has been, for self evident reasons, restricted to non-combatant roles; and homosexuals have been for compelling medical, military and moral reasons excluded from the armed forces.

EQUAL OPPORTUNITY, THE SIXTIES & GENDER-BASED ASSIGNMENT POLICIES

History shows that throughout the 50's and 60's less than 2% of the services were made up of women, including the Vietnam years. The Women's Armed Services Integration Act of 1948, Pub. L. No. 80-625, 62 Stat. 356 (1948) established a 2% ceiling on women in the services. This ceiling was never met. In 1967, Congress passed legislation lifting the ceiling in its Act of November 8, 1967, Pub. L. No. 90-130, 81 Stat 374 (1967). In 1973, beginning with the all volunteer force, the basis for advancing women from 2% to 11% was essentially driven by a gender affirmative action program based upon a civilian equal opportunity standard and fueled by the efforts to pass the Equal Rights Amendment.

EQUAL OPPORTUNITY & EQUAL PROTECTION

If the federal Equal Rights Amendment had been ratified ten years ago things might have been different. It is an historic fact that proponents, opponents, and constitutional authorities agreed, that ERA would impose equal military obligations on young women; this was one of the key reasons that the amendment was defeated after 12 years of intense debate in state legislatures across the land.

Federal Equal Opportunity laws and federal cases setting the equal opportunity standards do not apply to the uniformed military. There is also significant legal and statutory difference with respect to civilian employment laws which require equal opportunity for the private sector and even for law enforcement/paramilitary organizations such as city and state police departments, county sheriff's offices, state highway patrol organizations, the FBI, the U.S. Marshall's Service, and the Customs Service. Title VII of the Civil Rights Act of 1964, which developed concepts of equal opportunity for the world of civilian employment, as amended, is applicable to these groups by virtue of the 1972 amendments that widened Title VII's scope to cover local, state, and federal government agencies generally. (Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 2(1), 11, 1972; U.S. Code Cong. & Admin. News (86 Stat. 103) 122, 133. See, e.g., Horace v. City of Pontiac, 624 F.2d) Virtually without exception, courts have construed the term "military departments" to exclude military personnel, so as to extend Title VII protection only to civilian personnel employed by the military. Equal career opportunity concepts of hiring, promotion, retention, termination, etc., are primarily civilian in nature. As General Cavazos, USA (ret.) a veteran of three wars puts it: "*Charging machine guns is not much of a career opportunity.*" Personnel assignments, recruiting and retention in the armed forces have

traditionally been governed by military standards of good order and discipline referred to as "military necessity." Since the implementation in 1973 of the all-volunteer force, there has been some confusion and overlap as women's liberation groups have urged greater consideration of equal opportunity, career and promotional considerations which focus more on the individual interest and career than on the military unit where "military necessity" and combat standards should be paramount. This confusion over which standard should govern military assignment policies regarding women brought America to consider openly homosexual persons for the military services. Politicians may want it both ways but that does not make it right or workable.

As things stand today, the U.S. Constitution does not require identical treatment of men and women who are not similarly situated, particularly for combat duty. The Supreme Court put it this way in Janness v. Fortson, 403 U.S. 431, 442 (1971):

"Sometimes the grossest discrimination can lie in treating things that are different as though they were actually alike."

This passage was cited again by the Fourth Circuit Court of Appeals only a few days ago in the VMI decision, which sets out the constitutional equal protection standard properly:

*The obvious appeal to fairness in requiring the equal application of law too often becomes entangled with generalized notions of equality as referred to in Lincoln's Gettysburg Address [*13] n4 and, before that, the Declaration of Independence, n5 and these generalizations tend to overwhelm the difficult task of deciding what is meant by equal protection. We recognize that all persons are in many important respects different and that they were created with differences, and it is not the goal of the Equal Protection Clause to attempt to make them the same. To apply law to different persons with a mind toward making them the same might result, among other things, in the unequal application of the law. Thus, no one suggests that equal protection of the laws requires that all laws apply to all persons without regard to actual differences. See Janness v. Fortson, 403 U.S. 431, 442 (1971) ("Sometimes the grossest discrimination can lie in treating things that are different as though they were actually alike...").*

*U. S. v. Commonwealth of Virginia, et al
No. 91-1690, U. S. Ct. of App (4th Cir. 1992)*

BURDEN OF PROOF & ADVERSE EFFECT UPON COMBAT EFFECTIVENESS

Combat readiness is primarily a unit level consideration and is not on a par with military necessity that is a higher standard driving the military's overall decision making, which in turn serves our national security interests. Additionally, many contend that the burden of proof as to why America should depart from its long standing position on these issues is rightly placed on the proponents of any change.

The first principles or standard by which findings are made, issues framed and conclusions drawn must be adopted. The gulf between the opponents of any sort of EO standard, who are cautious and even skeptical of changing thousands of years of military history, policy and tradition, by opening the combat arms to women in the absence of any compelling military necessity is completely at odds with the proponents, who refuse to see the impact on the military being wrought by fully integrating the sexes into the military. Women's liberation and homosexual liberation are trying to force a political ideological or social point, while opponents are trying to preserve America's military capability. There must be agreement first or at least appreciation of the standard to govern the decision-making process.

The clarification of the primary standard of judgment will ensure that the very best view possible of each position will be presented to the President and the Congress. To fail to establish a first principle or military standard upon which such decisions can be made will only mean that at best the Congress or the Executive Branch can only hope to yield a series of random relative truths. There has already been gender affirmative action within the military without regard for an adverse effect on combat readiness and without a legal mandate from the Congress or the American people. Today outstanding men with long service are losing their place in the military and yet there are pressures to insure that quotas for women are met and that related affirmative action policies are enacted. Now the President-elect wants to make good on his campaign promise to remove the ban on homosexuals in the military. By what standards should the Congress and DOD make these crucial judgments as the military is cut by 30%? By military standards of course!

*"Decisions on what roles women should play in war
must be based on military standards, not women's rights"*
Norman Schwarzkopf

The gradual use or adoption of equal opportunity as the primary standard of review places America's military on a track that diverts attention from the primary mission of fighting and winning our nation's wars. Military necessity considers the needs and good of the services as paramount. If this new Administration is determined to travel down the EO track, then with all due respect we cannot, in good conscience, go along. Proper consideration must be given to the military necessity standard that exists to preserve readiness and national security.