

**ARE MILITARY ADULTERY STANDARDS
CHANGING? WHAT ARE THE IMPLICATIONS?**

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, RESTRUCTURING, AND
THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
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WEDNESDAY, OCTOBER 7, 1998

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING,
AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:01 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Sam Brownback, Chairman of the Subcommittee, presiding.

Present: Senator Brownback.

OPENING STATEMENT OF SENATOR BROWNBAC

Senator BROWNBAC. Good afternoon. The hearing will come to order. I would like to welcome everyone here today. I appreciate our distinguished panel of witnesses who took the time to be here with us and look forward to your testimony.

I would note for the record that we are starting only 1 minute late, which is about 10 minutes early by Senate standard time, so we are going to be going a little bit faster than normal. We may have a vote here fairly soon and we will have to take a short recess.

At the end of July, the Secretary of Defense announced that he was directing the services to clarify the Manual for Courts Martial (MCM) provisions relating to adultery. I was immediately concerned because in the Pentagon's effort to clarify, I believed that they might instead muddy the waters for those commanders who would eventually have to use these guidelines in making real-life determinations of misconduct.

America's military is the best in the world. Just last week, the Senate passed a \$250 billion appropriation bill for the Department of Defense. We try to give the military the best technology and resources available. However, dollars and cents cannot buy the qualities most needed in our soldiers. Those are honor, integrity, and self-sacrifice.

Our soldiers voluntarily subject themselves to unique hardships and duties. The demands placed upon them require a level of trust, fidelity, and responsibility that far surpasses that of civilian society. When our armed forces are in harm's way, the moral authority of the commanding officer and the trust of his or her troops is literally a matter of life and death.

Therefore, proposals that punishment for adultery be reserved for cases in which adultery is "directly prejudicial to good order and

discipline” are, I believe, misguided. Meting out punishment based not on the act of adultery but on others’ response to the act sends the dishonorable message that as long as infidelity is secret, it is OK.

When these new standards were first promulgated, we were told that they were introduced in part to address a perception that enlisted troops may be subjected to different standards in the enforcement of the military prohibition against adultery than officers. Certainly, enforcement of the prohibition against and the punishment of adultery must be equitable and consistent. There should not be—indeed, there must not be—distinctions drawn on the basis of rank, race, gender, or any other grounds. But I am thus concerned that the proposed changes to the Manual for Courts Martial make the possibility of favoritism and double standards in enforcement more likely rather than less.

These new guidelines leave enforcement open to subjective judgments about which cases of infidelity disrupt good order and discipline and which do not. Such false distinctions are, by nature, discriminatory. They shift the focus of military discipline from whether adultery occurred to the manner in which those responded to its occurrence. Decisions should be made by the rule of law and the weight of the evidence, not by reaction, rumor, or public opinion.

Back in August, I let Secretary Cohen know my concerns with the proposed changes to the Manual for Courts Martial through conversations and correspondence. He assured me that these proposed changes are not designed or expected to make it more difficult to prosecute at court martial those cases of adultery that warrant disposition at that level.

Today, I want to take a closer look at those guidelines. I want to examine what these guidelines mean in a practical sense, what they mean to the commanders who will have to enforce them, what they mean to the officers and enlisted folks who will have to live by them. Are these changes clarifying or do they, in fact, make it easier for a commander to let someone off because the effects of the offense were on immediate, obvious, and measurably divisive. Will the popularity of the officer or the reaction of his colleagues to the act of infidelity bear more weight in determining justice than the facts of the case? Will these new rules be used as a technical tool for lawyers to prove why certain violators cannot be prosecuted because their conduct did not indirectly or remotely impact order and discipline? Is the military’s new policy on adultery that of “no harm, no foul”?

We serve no one by allowing our military standards to become arbitrary or subjective. In matters of duty, honor, and country, the best standards are the simplest. Our goal must be to seek the fair enforcement of the high military standards of commitment and fidelity. I believe it is imperative for us to examine these questions before these guidelines are permanently adopted by the Department of Defense and I look forward to exploring these questions with our witnesses here today.

We have a distinguished panel and I look forward to hearing your comments. Joining us today for our panel are Ms. Elaine Donnelly, Dr. Daniel Heimbach, and Colonel Robert Maginnis.

Ms. Donnelly is a former member of the Defense Advisory Committee on Women in the Services and was also appointed to serve as a member of the Presidential Commission on Women in the Armed Forces. She is currently serving as President of the Center for Military Readiness, an independent education organization that concentrates on military personnel issues.

Dr. Heimbach is the former Deputy Assistant Secretary of the Navy for Manpower. He is a 1972 graduate of the U.S. Naval Academy and a Vietnam War veteran. He is currently a professor of ethics.

Lieutenant Colonel Robert Maginnis retired from the Army in 1993 after an assignment in the Pentagon, where he served as an Inspector General. He was an Airborne Ranger, infantry officer, with an assignment history that includes Korea, Germany, and others. He currently serves as the Director for the Military Readiness Project at the Family Research Council.

I thank you all for being here and I look forward to your testimony. I think with that, Ms. Donnelly, we will start with your testimony. You can summarize if you would like. We can put your full statement into the record. Please proceed however you would like, and we thank you very much for joining us.

TESTIMONY OF ELAINE DONNELLY,¹ PRESIDENT, CENTER FOR MILITARY READINESS, AND FORMER MEMBER OF THE DEFENSE ADVISORY COMMITTEE ON WOMEN IN THE SERVICES (DACOWITS) AND THE PRESIDENTIAL COMMISSION ON WOMEN IN THE ARMED FORCES

Ms. DONNELLY. I have a shorter version of my statement, and thank you very much. I appreciate your opening statements also, Chairman. Your comments are well taken.

The proposed changes that we are seeing now that are in the *Federal Register* for public comment do not appear to be a radical departure from the previous standard and the previous rules that were in effect, but my organization, the Center for Military Readiness, remains concerned. CMR, by the way, is an independent public policy organization and we specialize in military personnel issues.

We are concerned that expectations have been raised that the rules regarding adultery have been or will be relaxed. Without some firm steps to counter that perception, it will become a self-fulfilling prophesy. Our concerns are heightened by several circumstances and current events.

I became aware recently by means of a Freedom of Information Act request, a FOIA request, that in the process of formulating this policy, the Pentagon official responsible for organizing statements on it, General Counsel Judith Miller, solicited advice from outside groups. I just had a hunch that perhaps this was happening and that is why I filed the FOIA request. I only recently got a response.

What we have here is a collection of feminists, homosexuals, and extremely liberal organizations, such as the ACLU, the National Organization for Women, the National Women's Law Center, and the Service Members Legal Defense Network. All of them were in-

¹The prepared statement of Ms. Donnelly appears in the Appendix on page 23.

vited to formulate policy on this sensitive issue of adultery. The tax-funded DACOWITS Committee, of which I am a former member, was also invited to have a meeting with the Task Force on Good Order and Discipline.

Now, on the ideological spectrum, these groups go all the way from A to Z. Judging from the statements they filed, all of these groups are—well, they are nearly unanimous in recommending that the adultery rules either be scrapped or weakened significantly. Most were outspoken supporters of the former Air Force Lieutenant Kelly Flinn, who lied and disobeyed orders to end an affair with the husband of an enlisted woman. That was the big controversy of last year, of course.

None of them appear to be representative of the many military women who were appalled by Kelly Flinn's behavior. Nor do they represent the military families who expect official support during long separations from their spouses. Virtually all of them recommend adoption of civilian codes of conduct and enforcement procedures, even though most of their recommendations would undermine the commander's authority under the Uniform Code of Military Justice.

Instead of soliciting the views of people who actually send their sons and daughters to serve in the military, the Defense Department has turned for advice to a post-modern "get real" crowd, if you will. This is an elitist bunch and they almost uniformly believe that the Pentagon should lighten up on antiquated rules, as they put it, and endorse the view that private sexual behavior, including, I might add, homosexual behavior, is no one else's business. To this group of people, consensual extramarital relationships in the military, or in the Oval Office, for that matter, are no big deal. All that matters, they say, is that people perform their jobs.

Conspicuously missing from the list are major women's groups, veterans' and public policy organizations that support the laws designed to preserve good order and discipline in the military. I am talking about the American Legion, the Veterans of Foreign Wars, Independent Women's Forum, the Family Research Council, Concerned Women for America, the Heritage Foundation, and my own organization, the Center for Military Readiness. We do not even have the professional societies here, the Association of U.S. Army, the Naval Institute, the Air Force and National Guard Associations, Navy and Marine Corps Leagues. None of them were specifically invited to participate in this process before the proposal was finalized.

The question becomes, why? Why would we have people saying nothing is going to change, after they originally said they were going to change, and yet these groups have been involved in the process all along? My concern is that because of this insider influence within the Pentagon, what is important is not so much the actual words of the proposal, the law itself or the Manual for Courts Martial. What really matters is who decides what the words mean, and we have seen this process before on the issue of homosexuals in the military.

It is the kind of thing that is very disturbing because you cannot really put your finger on it. It is hard to find out what is going on. It appears that this exercise is not just about adultery. It is about

an agenda. Avatars of the sex without consequences revolution should not be in a position to set policy on an exclusive insider basis. We have some people who do not even know what the word “is” is, so words matter. And if people can change the meaning of words at will, it is very disturbing for the future of the military, which brings me to the example set by the Commander in Chief.

There has been a lot of talk about this lately. The outcome of Congress’ debate on impeachment will have a direct and profound effect on disciplinary rules and the culture of the military. The reason is that the President is not subject to the UCMJ but he is the ultimate role model for troops under his command. He is responsible for enforcing the military law. He signs the order when somebody is disciplined. If the President’s behavior is considered acceptable by Congress, it would set a new, lower precedent for everyone in uniform.

One of the cases cited in the Manual for Courts Martial, called *United States v. Butler*, suggests that military standards of conduct are tied to shifting public opinion and declining civilian morals. In a statement sent to me by Professor William Woodruff of Campbell University that analyzes this opinion, he says, “Parts of the judge’s decision makes it clear that what makes adultery service discrediting is not the fixed star of a permanent moral standard but a comparison with current values and morals of the larger civilian community. This suggests that the phrase ‘service discrediting’ lies in the eye of the beholder, with the beholder in this case being larger society. The implication is that what brought discredit upon the military in the past may no longer do so today or tomorrow.”

So Congressional tolerance of the President’s behavior could, and probably would, be cited as credible evidence that the civilian morals have shifted downward. From there, it is a very short step to say that the military should follow the trend set by the Commander in Chief. That would have a devastating effect on discipline, which is the basis of military culture. Such an outcome is virtually certain if outside liberal groups, such as the ones that I have mentioned—the sex without consequences crowd—are given the exclusive opportunity to interpret the meaning of the law.

This would be consistent with a goal that we are hearing an awful lot about in military press and academic circles. That is the idea that the military should become more like the civilian world. It is a phrase that is coming up more and more frequently lately.

Back in July, you may recall the front-page story about this issue in the Sunday *New York Times*. This was a major trial balloon. Something does not appear on the front page of the Sunday *Times* unless somebody wants it there. In this case, the *Times* quoted unnamed Defense Department sources. According to this story, the task force was going to come out with a proposal saying that penalties for adultery should be reduced and DoD should recognize that the military world should not really be that different from the civilian.

Well, the trial balloon drew immediate fire, not just from my organization. The Marine Corps and many columnists joined in. Many people, including myself, said it looks like President Bill Clinton is about to impose his peculiar moral code on the armed forces. This obvious double standard between the behavior of the

President and the troops under his command is a thorn in the side of the White House. But no one expected that an attempt would be made to close the “misconduct gap,” if you will, by bringing the armed forces down to the President’s level.

Fortunately, the trial balloon was shot down. DoD pulled back. The proposal they came out with was not as extreme as we feared. They did not recommend changes in the actual law but just in the Manual for Courts Martial. The new elements of proof which enforce the UCMJ, would have new elements added to them.

Senator BROWNBACK. Ms. Donnelly, I am going to have to leave in about 2 minutes, if there is a way you could maybe summarize at this point and then we will go into a short recess while I go over to vote and then I will be coming back.

Ms. DONNELLY. OK. That will be fine.

Under these factors that are added, there are at least nine factors in determining the level of discipline. As you said, does it actually make things clearer or does it muddy the waters? I would suggest it would probably muddy the waters, because with that very specific language, adultery will not be punished unless it brings major discredit, unless it causes major disruption.

How is a commander supposed to prove that if the case of Kelly Flinn was treated as if it was something different, when it really was not? That should have been an open and shut case. But the Air Force lost in the court of public opinion because they allowed a media circus to ensue. There was a public relations firm involved. They led people to believe that there was something unusual or something special about Lt. Flinn’s lying about an affair with another officer. If commanders think they have to meet that same standard before they even begin procedures, I think we have raised the bar quite a bit.

Another case is Syracuse, which is described in my statement. The “Boys from Syracuse”, a New York National Guard F-16 unit, was virtually destroyed because of an adulterous relationship involving a female pilot and one of her instructors, a superior officer. Later, a romance between the two was admitted, but it was very disruptive in that unit, and when the commander tried to enforce the rules, guess what? He was punished. Eleven others were punished. The woman involved was not punished. It was so outrageous that the men involved put 150 medals on the steps of the U.S. Capitol here earlier this year to protest their shabby treatment.

If that kind of a situation was not subject to the rules as they are or as they are supposed to be, well, what are future commanders supposed to do?

Questions about Major David Hale also raise some issues that I think we need to look at, and statements made by Secretary Cohen on television when he was asked three times by Tim Russert—what about the comparison of the President’s behavior with the troops—and the Secretary of Defense could not even answer those questions. He could not give a straight answer regarding any general involved in similar relationships with junior women or a single junior woman, comparable to a President with an intern. Why did he not just say that is wrong and say that that is the way the rules should be seen in the military? Instead, he hemmed and hawed. The transcript is in my statement.

Is it any surprise that we already have a Marine sergeant writing to the President and saying, “Yes, I am convicted of adultery and fraternization as a junior Marine, but look, I am asking for a Presidential pardon, Mr. President. My situation is just like yours.”

We are already seeing a lowering of the standard. Regardless of how that particular case is settled, just the fact that questions are being raised now shows, as you said earlier, that we need to say something and we need to say it firmly so that the issue is cleared up.

I have several suggestions that I have in my statement. Perhaps when you come back we can go into those.

Senator BROWNBACK. Let us do those when I come back. There will be a 15-minute recess while I go over to the floor and back, so we will resume at about 2:35. If I can get back sooner, we will start sooner.

We are in recess until about 2:35. Thank you.

[Recess.]

Senator BROWNBACK. Thank you all for your patience while I was gone. I apologize for having to leave to go vote, but it is the sort of duty we are called to and I hate to miss any votes.

Let us go on, then, Ms. Donnelly. I think we will go ahead to Dr. Heimbach, if we could. What we are looking at here and what we want to study and focus on are the impact of these changes on the military and if there are problems with the proposed changes or things we should be concerned about with the military. If you could mostly confine your comments to that category, of its impact on the military and suggestions you might have or concern areas you think we ought to watch, I would appreciate it.

Dr. Heimbach, thank you for being with us.

TESTIMONY OF DANIEL R. HEIMBACH,¹ FORMER DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR MANPOWER

Mr. HEIMBACH. Thank you very much, Chairman Brownback and Members of the Subcommittee. I appreciate the opportunity to address you. I am Dan Heimbach, and as the Chairman said in his opening remarks, former Deputy Assistant Secretary of the Navy for Manpower, and that is active duty manpower. That was under the Bush administration. I have also served as a commissioned officer in the U.S. Navy and am a veteran who served in the Vietnam War.

We are focusing today on whether changes in military adultery standards proposed by the Clinton administration Department of Defense really are significant or not, and I will do my best to stay narrowly focused on just this issue. Of course, we could focus discussion on whether the changes proposed are addressing a real need or we could focus on whether the changes proposed are beneficial or hazardous, but views on these last two questions are very much affected by how we answer the first question regarding significance. I will argue here that the changes being proposed to military adultery standards are highly significant and that the nature of the stakes involved require strong opposition to their implementation.

¹The prepared statement of Mr. Heimbach appears in the Appendix on page 35.

Do the changes proposed matter? Will they make any significant difference? The Clinton administration claims there is no cause for alarm. The changes proposed really do not amount to anything that matters. But, their own actions belie the disposition they urge others to adopt. If the changes proposed are inconsequential, if they have no real significance, then why is the administration defending its proposal so strongly? If it affects nothing that really matters, then why has the administration invested so much time, energy, and expense defending these changes before the Congress of the United States?

The actions of the administration clearly demonstrate that it is convinced there are critical stakes involved and that it is determined to achieve them by amending military adultery standards. So if the administration does not believe its own rhetoric, why should we?

Although Secretary Cohen claims, "There will be no lowering of military adultery standards," the changes proposed by the Department of Defense in the *Federal Register* will certainly lower adultery standards in at least three critically important ways.

First, by reversing the relationship of disciplinary standards to morale and cohesion by ordering a standard of discipline so that it follows as a result of poor morale and failing cohesion when, in fact, good morale and strong cohesion are never produced except as the result of well-enforced discipline.

Second, by shifting the way a punishable offense is defined by moving the nature of the offense away from matters of objective fact, that is, whether the act occurred or not, and toward matters of subjective interpretation, that is, how others feel about it.

And third, by replacing a fixed standard with one that varies over time and from place to place, depending on the vacillations of public opinion.

In other words, the changes proposed by the administration abandon the idea that adultery is always a dishonorable act that is inherently opposed to the sort of moral discipline and personal character required of every military service member under all circumstances. In place of this approach, the administration seeks to substitute disciplinary guidelines derived from the idea that adultery involves no actual offense unless enough other people can be found to say they have taken offense.

These are general criticisms. I will now point out a few places in the language of the administration's proposal, as published in the *Federal Register*, that demonstrate the criticisms just described.

One, as proposed, subparagraph (c)(2) states, "To constitute an offense under the UCMJ, the adulterous conduct must either be directly prejudicial to good order and discipline or service discrediting." Stated this way, the new language redefines the offense involved by locating the offense for which punishment is deserved, not in the act of adultery itself, but in the impact it may or may not have on the perceptions and feelings of others under some circumstances.

Two, as proposed, subparagraph (c)(2) alters the term "prejudicial of good order and discipline" by inserting "direct" as a qualifier, and other changes are made regarding the meaning of service

discrediting. If these changes are made, then no longer will all acts of adultery be deemed prejudicial or detrimental to the good order, discipline, and reputation of the armed forces. Rather, they will codify a new legally protected category of adultery in which military members will be allowed to engage so long as it does not become “directly prejudicial” and does not sufficiently “injure the reputation of the armed forces.”

Third, as proposed, subparagraph (c)(2) defines directly prejudicial acts of adultery as “conduct that has an immediate obvious and measurable divisive effect on unit or organization discipline, morale, or cohesion.” This wording, if implemented, will mean that service members will rarely, if ever, be convicted of any adultery that is deemed “directly prejudicial.” The standard to secure conviction is almost entirely subjective and measures factors that, while meaningful in conceptual form, are notoriously difficult to quantify. These realities are observable only by their impact over time and are nearly impossible to assess by trying to find the immediate effects of a single act.

How shall we quantify units of depressed morale or weakening cohesion? How long should a commanding officer wait to measure the full impact an act of adultery may have on his command? How much corrosion of organizational discipline is tolerable before punishment can be considered? Even if these effects could be quantified, the standard is unworkable except where damage on military order and discipline is allowed to take effect. Preemptive measures are not warranted because no offense arises until a corrosive impact can be sufficiently measured.

Fourth, as proposed, subparagraph (c)(2) creates a standard for the punishment of adultery that is “service discrediting.” But the new standard does much more than clarify disciplinary practices. Instead of treating adultery as an act that, by its very nature, is injurious to the reputation of the military services, it turns the term into a highly variable and subjective measure that depends on assessing prevailing opinion in the area where an act of adultery was discovered.

Thus, service members would be guilty of no offense in areas where their active adultery does not subject the armed forces to “public ridicule” or lower their “public esteem.” So whether a service member is guilty of an offense worthy of dishonorable discharge is made to depend entirely on the shifting opinions of others over which he or she has no control and the status of which he or she may have no reliable way of assessing in advance.

Thus far, I have concentrated rather narrowly on what the changes to military adultery standards being proposed by the administration mean in and of themselves. But this is not where their greatest significance lies. To understand the most profound stakes involved in the administration’s proposal, we must step back and see the part it plays in a much larger picture. We must consider how this one change in adultery standards is part of a general shift in ethical thinking that is fundamentally opposed to the moral structure on which the American military services were built and on which they rely for their success.

A shift in ethical perspective is now working to so completely reshape and redefine military manpower policies and disciplinary

standards that should it succeed, it will threaten not only the combat effectiveness of our military services but their existence, as well. We need to understand that current efforts to minimize and relativize adultery standards is part of a much larger problem impacting the military services, a problem that, if not checked, can ultimately threaten the survival of the United States as a military power.

Put another way, the real significance that lies behind the administration's proposal to change military adultery standards is that they are part of a larger trend that threatens to dissolve the sustaining ethic on which the essential military qualities of combat readiness, good order and discipline, and unit cohesion most rely. The changes to military adultery standards proposed by the administration are based on a self-oriented, feeling-based, therapeutic ethic. It is based on an ethic of individual desire and self-fulfillment that opposes and corrodes the ethic of self-sacrifice without which no military force can survive, much less succeed.

While the general public may not yet be fully cognizant, those who are paying close attention to military manpower policy decisions understand that it is an area of national leadership that has itself become a major battleground in the moral wars now dividing American life and culture. Although the military services have been dealing with redefining their national defense mission and have been wrenched by the largest restructuring of defense forces since the founding of our Nation, the challenges these have brought have not troubled the services nearly as much as those that have been arising over social issues produced by a contrary ethical perspective.

Shifting guidance for interpreting adultery standards so that the difference between an honorable or dishonorable discharge is determined by personal sentiment and vacillating public opinion, rather than the immorality of the act itself, has now joined job security for single military parents, mixed-gender recruit training, the deployment of women in combat roles, adjusting strength requirements to allow a double standard favoring women over men, the prioritization of child care facilities over combat readiness, accommodating the limitations of dual military couples, and guidelines that accommodate the presence of known homosexuals, in a growing list of issues changing the face of military manpower policy.

What these issues have in common is that each compromises the national security mission of the military services in order to accommodate a policy idea that arises out of an ethic of individual desire and self-fulfillment. Each accommodation makes room for some new idea of individual self-fulfillment that is contrary to the ethic of self-sacrifice on which the military mission depends.

Thus, it is critical to understand that the motivation for shifting adultery standards does not stand alone. It is part of a general trend that corrodes the very purpose for which the military services exist. The ethic from which the adultery proposal arises puts the accommodation of individual needs and desires over the disciplinary needs of the services. The ethic from which the adultery proposal arises puts individual rights over the importance of unit cohesion, morale, good order, and discipline. The ethic from which the adultery proposal arises is more concerned with minimizing

complaints and matching popular opinion than inculcating self-discipline and emphasizing duty.

In other words, the ethic from which the adultery proposal arises is not so much about sacrificing personal feelings and ambitions or even life itself to achieve the higher goal of national security as it is about compromising disciplinary standards in order to accommodate military life to the sort of individualistic self-indulgent lifestyle demands a growing number of civilians in this country are coming to expect for themselves.

Military life is determined by the overwhelming need to maintain sacrificial discipline under fire in combat, and civilian life, quite simply, is not. If the ethic that sustains sacrificial military discipline is permitted to decline in favor of a therapeutic civilian ethic that prioritizes personal desire and self-satisfaction, our military services will soon cease to win wars no matter how superior our military technology may be compared to future opponents. Thank you.

Senator BROWNBACK. That is a powerful statement, Mr. Heimbach. I look forward to exploring some of it with you and I appreciate very much you coming forward and discussing this with us. It was a very strong statement.

Colonel Maginnis, thank you very much for joining us today and I look forward to your testimony.

**TESTIMONY OF LIEUTENANT COLONEL ROBERT L. MAGINNIS,¹
USA RET., DIRECTOR, MILITARY READINESS PROJECT, FAMILY RESEARCH COUNCIL**

Colonel MAGINNIS. Thank you, Mr. Chairman. I appreciate the opportunity to address the Subcommittee on the topic of the military's adultery standards and the impact of these changes that we are talking about today. I hope to put them in perspective.

My vantage point is somewhat different, of course. I spent 24 years of active Federal service, primarily as an infantry officer. I was the chief for leadership at the infantry school. The military sent me to graduate school to learn how to teach ethics so I could communicate tough issues to muddy boot infantrymen.

At the time, I was one of the few officers that wrote extensively about personnel issues, especially leadership, and about the very issues we are talking about today.

My final assignment was in the Pentagon as an IG. I was an Inspector General investigating sexual impropriety of general officers. I conducted many investigations that dealt with charges of adultery. I was also part of the "don't ask, don't tell" committee before I retired in 1993. Since 1993, I have dealt with military personnel policy.

The military's culture is, quite frankly, unique because service in the profession of arms is not just a job, it is a commitment to a most serious calling, a commitment to die at the behest of the Commander in Chief. Military culture demands camaraderie, absolute trust, and teamwork. Out of necessity, military culture must constantly focus on its primary mission, which is to win wars. Soldiers behave toward one another according to a set of rigid standards—

¹The prepared statement of Lt. Colonel Maginnis appears in the Appendix on page 46.

honesty, accountability, sacrifice, and absolute fairness. Anything that interferes with this focus can damage combat readiness, morale, and unit cohesion.

In recent years, the military has been assaulted by numerous ethos-bashing phenomena. My comments this afternoon will focus primarily on adultery, but the expanded testimony has many other factors.

To appreciate the seriousness of the adultery issue, one must understand two radical and relatively recent cultural changes. The military has become a family-based institution and it has been feminized. Becoming family-friendly has been a byproduct of the 1973 all-volunteer concept. Today, two-thirds of all service members are married. This makes sustaining marriage absolutely critical. A mostly married military has created significant personnel problems, like high divorce rates and domestic violence.

In 1994, then-Marine Corps Commandant Carl Mundy tried prohibiting Marines from marrying until the end of their first enlistment in an attempt to curb high divorce rates among young Marines who deploy frequently. The idea was, unfortunately, struck down by then-Secretary of Defense Les Aspin.

Service by increasing numbers of women has radically changed military culture, as well. Today, 14 percent of the force is female and many women serve in combat. Since 1993, the Clinton administration has overseen the removal of 260,000 combat exemptions for women. These politically-motivated changes have hurt combat readiness by ignoring the overwhelming evidence that women do not have an equal opportunity to survive on the battlefield and that mixing the sexes in units contributes to readiness-busting jealousies, rivalries, and favoritism.

Mixing the sexes in traditionally single-gender military units has resulted in serious readiness problems. These problems are attributable to predictable and unavoidable sexual tensions within the ranks. Few emotions are more powerful or distracting than those surrounding the normal sexual attraction between young men and women. Amorous relationships threaten fairness, and they often destroy marriages, which brings up another very important issue, and that is adultery.

It is a problem in the military because soldiers too often are tempted to disregard their vows of fidelity during frequent unaccompanied tours and deployments. Such behavior is stimulated by the increased number of women in the ranks and the forced intimacy of the environment in which young men and women must operate. Adultery is destructive of unit morale. It may also reduce effectiveness and deployability because of the spread of sexually-transmitted diseases.

Even worse for the military, the soldier involved is a dishonest person. Honor among warriors is key and the corrosive act of adultery is a violation of both trust and commitment. For centuries, the U.S. military has severely punished soldiers for cheating, robbing, and lying. These acts represent character flaws that damage military organizations which must be built on trust. That is why the military prosecutes adultery. Such cases are really about honor.

Not all adultery cases are treated the same, though. The commander has the discretion to fit the punishment to the situation.

The adultery standard requires that the offense demonstrate adverse impact on "good order and discipline and brings discredit upon the armed forces."

An Air Force wife told her husband's commander about an affair, which she blamed in part on the stress of military life. She said she benefitted from the adultery policy because it was used as leverage to force her husband into counseling. You see, she said, "Either let us go voluntarily," to her husband, "or I will take it to the commander and you will be compelled to go."

Well, contrary to many liberal views, adultery is not a victimless crime. In the military, both the offended spouse and the unit suffer. Mr. Chairman, adultery attacks the heart of military culture—honesty, commitment, and fairness. In the closed military subculture, adultery is a disease with grave readiness consequences and deserves the strictest enforcement.

With regard to the impact of these changes that have been recommended, quite frankly, I see that the changes are undermining the discipline of the military. It will damage the cohesion, the things that hold the military together. Based on my daily contact with active duty members, it is already undermining discipline. Unfortunately, soldiers are looking at what is going on at the national scene and saying, much like Ms. Donnelly said, if the President can get away with this, why can't I? So we are losing the discipline that is really absolutely more important to the military than any weapons system we can buy. Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you very much, as well.

Let me pursue some questioning with you. I talked with Secretary Cohen about these proposed changes when they were being rumored and then when they were put forward and Secretary Cohen said to me that there are no changes that are taking place, that this is to standardize, to provide greater clarity to people looking to enforce the current adultery standards. He emphasized that to me. I think he has written some letters in that regard. Do you think that these are changes that are being made in the adultery standards?

Ms. DONNELLY. At the news conference that took place announcing the new provisions, the elements of proof and the Manual for Courts Martial, a statement was made that these new elements were new, that they had not been anywhere in the rule book before. That statement, I found out later, was incorrect, that the new statements are based on court precedents and all the court precedents are on the books. They have happened. That is probably why the Secretary of Defense said what he said that, technically, this is not new language. It is based on precedents we have seen before.

But the question is not what has happened in the past. The question is what is going to happen in the future. The problem is, the perception has been raised that the rules are going to be relaxed. When the proposal was announced, the headlines in many of the major military as well as the regular press said, rules will be relaxed. Nothing was done the whole week that that trial balloon was out there to change that impression.

Sometimes it is not so much what is in the words, it is what people say the words mean. With the kinds of consultants and the attitude of the General Counsel of the Department of Defense, since

she only invited in people who want the rules to be rendered meaningless, it does raise some questions about what is going on here.

And I might add that the Secretary of Defense's responses on "Meet the Press" when he was being questioned by Tim Russert were totally inadequate. He dodged all over the question. He did not quite get the statement clear. In doing so, he failed to show leadership, and it was very confusing and, I would add, demoralizing to the troops.

Senator BROWNBACH. Mr. Heimbach.

Mr. HEIMBACH. I believe you are asking if there is any change—what was the second part of the question, if you would clarify it?

Senator BROWNBACH. He is charging that there are no changes in the adultery standards being put forward and that this is not going to change the military system. I was simply asking if you would agree with that. Would that be your opinion? If not, why not?

Mr. HEIMBACH. I would disagree very strongly on several grounds. First of all, I guess very, very simply and initially, if there is no change, then what is being proposed in the *Federal Register*? There is a change being proposed. New language, at least, is being added to the Manual for Courts Martial.

It is true regarding the revised position of the administration that the punishments will not be changed, there will be no change to the UCMJ, so that they can argue the consequences of conviction are not being changed. But my belief and my argument is that there is a tremendous change involved in terms of their interpretation, and that is what the language proposed for amending the Manual for Courts Martial actually involves. The issue is interpretation.

I have a couple of things to say about the significance of that change, in addition to what I said already in my remarks. First, we must respond to the sort of information Ms. Donnelly was given, that the interpretation does not amount to any thing significant because courts have made rulings and so forth and we are just simply putting this into effect.

I think we need to question that. I think this is something that needs to be looked at very carefully. Why? Because the Supreme Court certainly has not acted on it. The reference is to lower court decisions, if they pertain at all. The services are certainly within their rights and responsibility if they wish to maintain and interpret their personnel disciplinary standards in a way that is different from the way some lower court has interpreted them. They can appeal it and take it to higher court if they believe it necessary, and the courts have historically been very, very deferential to the armed services when it comes to matters of military discipline. The courts historically differ in the area of military discipline, they allow the military services to be different from civilian norms and expectations because they have to require whatever it takes to meet a special mission given to them by the people of the United States.

So, if some lower court in some part of the United States has made a decision that would try to interpret it differently, the services are usually successful if they wanted to appeal or challenge decisions like these. So basing argument on some lower court decision

is simply another way of saying, we are not going to fight this, we are going to roll over, we do not want to maintain it, because if they wanted to fight it they certainly could and would do so.

That particular strategy, I think, needs to be identified for what it really is. To me it is simply a smokescreen. It means the Clinton administration is saying it wants our standards to be reinterpreted or changed in a way that is beginning to be defined by some lower court decisions with which they agree. That is just a terribly irresponsible way to shape military manpower policy. It is a strategy that allows civilian judges to make decisions that undo the unique culture and mission of the United States military services. It defers leadership away from those with war-fighting experience and to those who do not. So I think it invites all sorts of problems.

I guess the last thing I wanted to mention is the question or the claim that somehow this is motivated by the desire to promote clarity. I think that it produces the reverse. I can make this no more obvious than to note that the offense of adultery, as defined by the amendment, is located in the feelings of other people other than the actors, and because the offense is located in something so subjective it is going to vary from situation to situation, and from time to time. As the culture changes, the offense will change, and it will change from place to place.

A service member is not going to know—and remember, the punishment is a dishonorable discharge—a service member is not going to know if he or she might be guilty of committing an act that is going to bring discredit to the services because hey, in one circumstance, it might not matter to anybody. In another circumstance, it will. How are they going to know in advance? They will not. They are not going to know in advance whether they will be guilty of an act that is going to result in a dishonorable discharge or whether what they plan to do will simply be something that is allowable by military disciplinary standards. The very same act done in exactly the same way is going to be judged worthy of a dishonorable discharge in one place and not another place. How is that service member going to tell when they have crossed the boundary from one circumstance to the other?

As a matter of fact, the commanding officer, who is supposed to uphold these new standards, is not going to know whether he should hold the service member guilty unless he takes a poll and figures out whether the community has been sufficiently offended so as to affect the service's reputation, in a prejudiced way? How is he going to access that? Even if he could, how is he going to know whether the prejudicial affect is significant enough to take an action? My point is the amended language is terribly, terribly relative. Rather than bringing about some kind of a standard interpretation, it is going to produce great inequity.

Senator BROWNBACK. Lieutenant Colonel Maginnis, as a former Inspector General in the military and in contact with military personnel regularly, how do you see these changes, if they become the regulation within the Manual for Court Martial, how do you see them being implemented? How do you think this is going to work?

Colonel MAGINNIS. Sir, I think the provisions are absolutely unnecessary. Commanders have always had discretion. We do not want to take discretion away from combat commanders, because,

after all, tomorrow, they may have to go out and tell people to go die for their country and we need to give them all the latitude necessary to make tough decisions in peacetime.

These are just more of an encumbrance, quite frankly. Having investigated many adultery cases personally, I did not see that this was necessary. We knew what adultery was. The three provisions in the law were very clear. We just had to work out the details and whether or not this was, indeed, dishonoring to the service.

I see a much larger thing, though, sir, and having been back in 1993 in the Pentagon, I began to recognize a major shift in culture that is trying to be imposed on the military, a radical change. The military is based on the character of the people that serve. If you have bad characters, you are going to have bad decisions and you are going to have a corrupt military.

Unfortunately, today, I see people trying to change the very foundation of the integrity, of the camaraderie that makes the military the great military that it is, and unfortunately, the intent that comes out of Mr. Cohen's mouth is not, well, we are just going to make it easier for the commander. The intent, which is what we tell commanders, this is the bottom line which you have to accomplish, is that we are going to change this, and that is how it has been interpreted.

As I have talked to soldiers, I have even looked at many of their letters, they are saying we know what is going on behind the background here. You are really trying to change the moral foundation of our institution and the integrity.

Secretary of the Air Force Widnall said that integrity is absolutely foundational and adultery is about integrity. You pull out the rug on adultery, you have compromised integrity, you have compromised the standing and the viability, I think, of our military. So we need to be extraordinarily careful. Any change, even guidelines, which are absolutely unneeded, I think is inappropriate.

Senator BROWNBACK. I want to ask you specifically, do you believe the insertion of the words, and let me quote these, "immediate, obvious, and measurably divisive" in the Manual for Courts Martial will make it more or less likely that commanders will actually take disciplinary actions against those who commit adultery? Those are the words being inserted. Do you think it more or less likely that actions will then be taken?

Ms. DONNELLY. Senator, I think the specificity will have the effect of a chilling effect on the commanders, because they will look at precedent and cases that were settled not in the court of law but in the court of public opinion, and I mentioned two.

The Kelly Flinn case should have been open and shut in the court of law. But in the court of public opinion, she manipulated public opinion. The commanders were not given support by the Air Force. In fact, attached to my testimony is a letter from someone I did not know who wrote to me and said how disappointed they were.¹ They were ready to prosecute that case. They had every right to. The commander had every right to pursue it. But without support from the top level, well, the floor fell out and Kelly Flinn

¹ Letter to Senator Brownback from Ms. Donnelly appears in the Appendix on page 100.

became an example of somebody using special status to get special favors.

Something similar happened in Syracuse. Again, you talk about immediate and disruptive, that was a very disruptive case, a woman who was carrying on very openly with one of her commanders in the chain of command, and there was favoritism, the perception and reality of favoritism. When the men reacted, predictably, and they were openly upset. They let it be known they were upset. What happened? The commander who tried to enforce the rules had the rug pulled out from under him. He was punished. Twelve heads rolled. Two investigations ensued. The commander was ultimately found to be correct, but the woman involved did not receive any punishment and all the men were punished instead.

So with those kinds of precedents, most of them more in the court of public opinion than in the court of law, what is a commander to do? The attorney for someone involved in a blatant affair will say, well, it is not prejudicial to good order and discipline and it is not service discrediting. If a couple involved in adultery said to their commander, "We did not go on '60 Minutes'." So our case is in a third category where neither stipulation applies." What is a commander to do? I am afraid that the atmosphere that is being created, of lowering the standard, will indeed have that effect.

I had several suggestions that I did not get a chance to mention before. I think that if anything is to be done, we need a clear statement that the military is not the same as the civilian world. The Supreme Court has upheld this concept in at least seven cases. The military defends individual rights, but it must be governed by different rules. There needs to be more support for field commanders who have the right and the responsibility under the UCMJ to enforce these rules. We must stop these consultations, these insider consultations with outside groups. Everybody needs to know what the rules are, and they need to defend those rules aggressively.

We need to do something about living conditions that increase sexual tensions, also, and this goes back to what Bob Maginnis mentioned earlier—coed tents, coed training. I saw an article in the paper the other day. In Bosnia, all kinds of rampant sexual activity is going on, and when asked, someone said, well, it is not really associational, it is more recreational. Where are the commanders? Who is supervising what is going on here? Is this the way we do business in the gender-integrated military? And what does this mean for good order and discipline?

I think we have a military now that is very much on the brink of a very serious problem and it is not just the hardware issues. Yes, we have shortages in people and our planes and ships, but we could build 600 ships quicker and a whole missile defense system and squadrons of airplanes. We could do that easier than we could rebuild the very character and integrity and culture of the military once it is destroyed. That is why we are here today and that is why we appreciate your concern, Senator.

Senator BROWNBACK. That is a true statement. The rebuilding of character is a very long process.

Mr. Heimbach, specifically on the question that I asked, do you believe the insertion of those words, "immediate, obvious, and

measurably divisive," will result in more or less adultery disciplinary actions being taken?

Mr. HEIMBACH. I think that is very easy to answer. It will result in less disciplinary action on adultery. That is the obvious answer to your question. But I think there is a lot more to discuss as to why it would be less. We should also take a hard look at what will no longer be subject to discipline here.

We have to remember that adultery is an inherently dishonorable and dishonest act. We are not even talking here about sexually permissive conduct between unmarried people. We are talking about the institution of marriage. We are dealing with commitments made in marriage and either being honest or dishonest with regard to commitments that are made in marriage, either violating a commitment to one's own family, or violating the marriage commitments and relationships of someone else's in the sort of conduct covered by these adultery standards.

To illustrate the significance of what is being proposed in these new regulations, we need only remember that adultery is a form of cheating and of lying. It is dishonest and dishonorable. If we inserted cheating and lying in the place of adultery in the administration's proposal, how would that come across? Cheating and lying are wrong only if they are directly prejudicial. It would say cheating and lying are punishable only if they include conduct that has an immediate and obvious and measurably divisive effect on unit or organizational discipline or morale.

In other words, it says that cheating and lying are allowed unless proved to have caused directly prejudicial affect. Cheating and lying do not really matter to the performance of your military duties.

But, cheating and lying are always inherently contrary to, corrosive to, the very core ethic of military character. How can any compromise be permitted? The offense is not in the way other people feel about it. The offense is in the act itself. Anyone who finds out about it should be offended, whether they actually take offense or not. I am very concerned that the change proposed puts the offense on the effect, not on the act itself.

Senator BROWNBACK. Colonel Maginnis, the same question. Do you believe those words are going to result in more or less disciplinary actions being taken?

Colonel MAGINNIS. Well, I think it is less, Senator. The investigations that I did, Desert Storm and otherwise, it was not obvious when you walked into a command. You know, there were not people running up to you to say, well, so-and-so is sleeping with so-and-so. Unfortunately, you really have to protect their identity within a command where there is attribution and where there is risk to careers and so forth, especially if it is a senior person, and that is what I focused on in the Pentagon. We had people that were seriously concerned about their own safety and their own viability in the organization.

So it is not going to necessarily be obvious. I had to pursue very vigorously evidence on many general officers because they were very good at hiding it. Generals, sergeants, lieutenants, do not want the world to know about their affairs, and we are experienc-

ing that in this country, that if you try to hide something, eventually, it is going to find you out.

Measurable, I can tell you that during Desert Storm, some adultery cases that I was involved in, directly and indirectly—in investigating—that you have to understand the operations of, say, a tactical operations center and the trust and the confidence they have in one another, and it is hard to measure, and this is subjective experience that tells you, those people are not talking. They are not communicating the information. They do not trust one another. Now, I cannot give you on a 1-to-10 scale on how it hurt that unit, but I know as a professional that it did, and those that I work with agree.

Those are the tough things. When you put words in here, quite frankly, most lawyers have no idea what that means in terms of a military context, and I suspect, based on those that wrote these regulations and the guidelines, they had no idea of the difference between a track, a tank, and a bomb. But they have to understand that when you are in that type of environment, it is absolutely critical that you understand the dynamics of a military operation, that trust, that camaraderie, that confidence. One incident can blow that completely away.

I did want to mention, as well, the Army, quite frankly, tried to hide some of its own data on this issue. A year ago, it was exposed by an ARI researcher, Army Research Institute, that the Army asked a series of questions. Well, it pulled out several of those questions and they had the link between views about adultery and views about sexual harassment. Because the results, based on what the researchers said, were very embarrassing, they retracted them and then completely destroyed data which showed a nexus between heightened degrees of sexual harassment in coed units and views about adultery and family relationships and respect for the marriage relationship.

We cannot afford to have that sort of research done by our Pentagon and then all of a sudden try to change the very element that is, quite frankly, defending the marriages that are represented by most of the military members today.

Senator BROWNBACK. Is that information available now?

Colonel MAGINNIS. They destroyed the data, sir. I have copies of the articles in which it was reported and the researcher is an anthropologist at Walter Reed, and I am sure——

Ms. DONNELLY. I have the data, also.

Colonel MAGINNIS. She would be more than glad to talk to you.

Senator BROWNBACK. I would like to see that data, if we could get that.

Each of you, did the General Counsel at the Department of Defense ask you, consult with you, before making these proposed changes? Have any of you been consulted since then by the General Counsel's Office, the Department of Defense?

Ms. DONNELLY. No, Senator, other than what we read in the newspapers. When I received the information——

Senator BROWNBACK. Dr. Heimbach, were you consulted?

Mr. HEIMBACH. No, Senator.

Colonel MAGINNIS. No, sir.

Senator BROWNBACk. Ms. Donnelly, have you been consulted since that time by the General Counsel's Office, Department of Defense?

Ms. DONNELLY. I did file statements with the Department of Defense at the hearing that was scheduled for October 1.

Senator BROWNBACk. Have you been consulted? Has anybody called you from the General Counsel's Office to ask for your input, why are you concerned about these things?

Ms. DONNELLY. No, and I am not aware of any other organization that has been called, either.

CLARIFICATION NOTE FROM MS. DONNELLY

My answer to this question was intended to refer to other organizations that were not consulted by the DoD. The *Army Times* reported that DoD did talk to one individual I know, Prof. Charles Moskow, during the policy-making process. The name of Prof. Moskow was not included, however, on the list of people and organizations that received letters from General Counsel Judith Miller dated July 3, 1997.

Senator BROWNBACk. Mr. Heimbach.

Mr. HEIMBACH. No, I have not.

Senator BROWNBACk. Colonel Maginnis.

Colonel MAGINNIS. No, sir, in spite of many articles that I have written on this particular topic that I am sure they must have read.

Senator BROWNBACk. That strikes me as strange in and of itself, why people that have been very forthright in their comments and their views towards this and very clear in what they think the impact will be have not been consulted by the General Counsel's Office, not sought out to ask why you think this if, indeed, they are representing the case to be differently than what you are representing it to be.

I would hope that that communication would take place and that if there are people in the audience that are watching that are associated with the General Counsel's Office or the Department of Defense, that they would seek your input into this and present to you why they think that the case is different than what you claim for it to be.

This is a corrosive issue, and when you get something that is out there of this nature, of this divisiveness, and then we are not having the consultation going back and forth as to why different people are interpreting this differently, all of a very respected nature, one would think that the dialogue would be going on and at least there would be some understanding back and forth and that they would say to you, here is why we do not think that these are real changes of any noteworthiness. I am concerned about that and will be seeking answers from the armed forces individuals that I do consult with about those issues.

Do any of you have any further recommendations either to make to this Subcommittee or to others about what should be done in this particular case? What do you think ought to happen? Ms. Donnelly, you have mentioned some. Do you have any further suggestions?

Ms. DONNELLY. Just to add this. In addition to having a heightened understanding of why the rules are different, why they must remain that way, and what it would cost the military if they were changed, I think we need a broader overview of gender integration

in the military. There are many living conditions and training and other conditions that heighten sexual tensions that also encourage indiscipline rather than discipline.

In addition to the housing arrangements that I mentioned, coed training, of course, which you have shown a leadership role on, we have pregnancy policies that actually subsidize single parenthood because there is no penalty no matter how many times a person becomes pregnant. It does not matter if they are married or single. They do not have to name the father. It is like in the civilian world. If you subsidize something, you get more of it. When we tolerate and encourage and turn a blind eye to that kind of indiscipline, then everything that has been said here by those on my left becomes a serious problem and everybody sweeps it under the rug.

There has been a lack of candor. Dr. Leora Rosen's data, as was mentioned before, was "deep-sixed," if you will, and I think that is outrageous. You need to know what the problem is before you can solve it, and the Pentagon has been closing their eyes to these problems far too long.

Senator BROWNBACK. Dr. Heimbach, do you have any suggestions of what should take place here by the Department of Defense?

Mr. HEIMBACH. Yes, I will mention a couple. Overall, I do not believe the proposed changes are responding to a real need, at least not a real need that is coming out of the military services and out of military experience. It is coming out of an agenda that is derived from a very contrary ethical perspective that is very subjective, very feeling-based, and that is absolutely incompatible with a cohesive, well-disciplined, well-ordered military service. So I do not believe any change is needed, and certainly nothing will be improved by what is proposed. I would urge that they not be adopted.

In addition, I would propose that the claim these changes are simply deferring to actions already decided by the courts be viewed as disingenuous. The military services are very good at resisting court efforts to impose their judgment on military disciplinary standards and the courts have characteristically deferred to the military on matters they insist are required to maintain the unique order and the unique discipline of the military services.

If there are lower court decisions moving towards a feeling based interpretation of adultery, I think the military services should be urged to resist or at least challenge that.

I think that we should be very, very conscious of the contrary ethic that is involved, and how utterly harmful it is to the military. On one hand, you have a therapeutic ethic, which is the feeling-based, self-oriented, self-fulfillment-based ethic. On the other you have ethic of self-sacrifice, which is so obviously the ethic on which the existence and success of military services depend.

We need to be zealous in defending and maintaining the right moral perspective and not allowing it to dissolve. We must realize that that is the real stake involved here and not be distracted by the minutiae of one particular change. It is part of a much larger change being forced onto the military services externally and from a very contrary ethical perspective that is absolutely incompatible with their success.

Senator BROWNBACK. Colonel Maginnis, any specific recommendations that you would make in regard to these changes?

Colonel MAGINNIS. Sir, a Marine sergeant said this: "Integrity is like a bubble. It does not matter if you poke it with a pin or hit it with a hammer. The bubble will break. Integrity is black and white. You either have it or you do not have it."

Those that commit adultery, obviously, in the military lack integrity. I would not trust them in combat and I do not think others should, as well.

The big picture, what Dan Heimbach pointed out, is absolutely essential. We can make all the rules in the world, but they are not going to change these fundamental issues here because we have to have leaders of character. We have to have an organization that strives to promote character, because all the rules are not going to keep you in line. They are only going to show you maybe where you should not go.

Separating the sexes, certainly, in basic as much as we can and in other situations, I think the 14 percent female decision is politically inspired, not dictated by military necessity, and those decisions should be based solely on military necessity.

The climate of discipline is undermined by a variety of things that are going on. My statement includes about six of those things, sex being one of them. And unfortunately, this particular regime has abandoned what I think is common sense with regard to military necessity, not paying attention to the fundamentals that make a military great. Our military today is very different than it was when I was in, and that is only 5 years ago, sir. We could not do what we did in Desert Storm and we probably are going to get much worse unless something radically happens, and it is not because we do not have enough money, it is because we lack the character to be the type of military we absolutely must be.

Senator BROWNBACK. You all put forward very good statements, and your comments are very troubling. I hope that the military takes a good look at the statements that you have put forward and responds and asks themselves, are these sort of things happening? Are they going to lead in the direction that you have pointed out?

I am glad you have contained your comments to the military questions in front of us, because that is what I wanted to focus on and get some input from you. I want to get responses back from Secretary Cohen regarding some of your comments here today and we will be seeking that from him and his responses to the comments that you have made that are contrary to some of his representations. This is very troubling, that there would be a strong difference in the interpretation of these words that are being put forward and the ultimate actions that will come from it.

Thank you for coming. The record will remain open for 3 days after the hearing, if you would like to add additional comments to what you have put forward or if there have been other additional questions that other Members may wish to submit. I appreciate very much you being here. The hearing is adjourned.

[Whereupon, at 3:27 p.m., the Subcommittee was adjourned.]

**HEARING STATEMENT OF ELAINE DONNELLY
PRESIDENT, CENTER FOR MILITARY READINESS**

**SUBJECT: "ARE MILITARY ADULTERY STANDARDS CHANGING:
WHAT ARE THE IMPLICATIONS?"**

**REFERENCE: PROPOSED CHANGES TO MANUAL
FOR COURTS-MARTIAL REGARDING ADULTERY**

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
RESTRUCTURING AND THE DISTRICT OF COLUMBIA
OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS**

342 DIRKSEN SENATE OFFICE BUILDING -- OCTOBER 7, 1998, 2:00 PM

Chairman Brownback and members of the Governmental Affairs Subcommittee, I am Elaine Donnelly, President of the Center for Military Readiness, an independent public policy organization that specializes in military personnel issues. I appreciate the opportunity to comment on proposed changes in the Manual for Courts-Martial regarding adultery, which have been published by the Defense Department in the Federal Register for public comment prior to October 28, 1998.

The proposed changes do not appear to be a radical departure from current policy, because DoD has not recommended legislative changes to the Uniform Code of Military Justice (UCMJ). CMR remains concerned, however, about expectations that rules regarding adultery have been or will be relaxed. Without steps to counter that perception, it will become a self-fulfilling prophecy. Our concerns, as already stated in comments filed with the Department of Defense, are heightened by the following circumstances and current events:

1. DoD Policy Advisors

By means of a Freedom of Information (FOIA) request filed in July, CMR recently learned that DoD General Counsel Judith Miller solicited inside advice from outside groups with letters dated July 3, 1997. A collection of feminist, homosexual, and extremely liberal organizations, such as the American Civil Liberties Union (ACLU), the National Organization for Women (NOW), the National Women's Law Center, and the Servicemembers Legal Defense Network were invited to help formulate policy on the sensitive issue of adultery.

The tax-funded Defense Advisory Committee on Women in the Services (DACOWITS), which deprecates women who oppose feminist demands to force women into combat, was also invited to meet with members of the Task Force on Good Order and Discipline. These organizations appear to range from A to B on the left side of the ideological spectrum.

Judging from statements filed in response to Ms. Miller's letters, the solicited groups are nearly unanimous in recommending that the adultery rules be scrapped or weakened in

significant ways.¹ Most were outspoken supporters of former Air Force Lt. Kelly Flinn, who lied and disobeyed orders to end an affair with the husband of an enlisted woman. None of them appear representative of military women who deplored Flinn's behavior, or of military families who expect official support during long separations from their spouses. Virtually all of them recommend adoption of civilian codes of conduct and enforcement procedures--most of which would undermine commanders' authority under the Uniform Code of Military Justice.

Instead of soliciting the views of people who are most likely to send their sons and daughters to serve in the military, the DoD has turned for advice to the post-modern "get real" crowd. These are the elitists who insist that the Pentagon should lighten up on "antiquated" rules, and endorse the view that private sexual behavior (including homosexual behavior) is no one else's business. To the "get real" crowd, consensual extramarital relationships in the military--or in the Oval Office, for that matter--are no big deal. All that matters, they say, is that people perform their jobs.²

Conspicuously missing from Ms. Miller's insider list are major women's, veterans, and public policy organizations that support laws designed to preserve good order and discipline in the military, such as the American Legion, the Veterans of Foreign Wars, Independent Women's Forum, Family Research Council, Heritage Foundation, and the Center for Military Readiness.

According to the FOIA office, not one of the military professional societies, such as the Association of the US Army, the Naval Institute, Air Force and National Guard Associations, or the Navy and Marine Corps Leagues were specifically invited to participate in this process before the DoD proposal was prepared for publication in the Federal Register. If General Counsel Miller had been diligent in seeking informed advice, she might have called upon Dr. Leora Rosen, a social anthropologist at the Walter Reed Institute of Research. Dr. Rosen collected data for the Army's Senior Review Panel, which linked tolerance for adultery with higher rates of sexual harassment.³

Special access for liberal groups who want to undermine the rules, to the exclusion of others who support them, betrays a narrow, ideological mindset. It appears that this exercise is not about adultery, it's about an agenda. Exclusive insider influence means that the actual words of the law don't matter. What really matters is who decides what the words mean.

¹ For example, the Servicemembers Legal Defense Network, a homosexual advocacy group, wrote: "SLDN has one specific recommendation. DoD officials should decriminalize adultery and most other adult consenting sexual activities to the extent their powers permit and, where necessary, seek the assistance of Congress and the President toward this end." (Letter to General Counsel Judith Miller, August 4, 1997)

² The feminist National Women's Law Center, for example, recommends that "If an adulterer's conduct does not negatively affect his or her job performance or the job performance of others in the armed services, it should not be subject to criminal or noncriminal sanctions." (Letter to General Counsel Judith Miller, August 1, 1997)

³ According to *Army Times*, the Senior Review Panel chose to ignore Dr. Rosen's data because it was considered politically sensitive. Most of the previously-approved questionnaires were destroyed, but the remaining 613 surveys found that "companies with a climate of greater respect for women and families in general...had a lower incidence of sexual harassment and unwanted sexual attention." (June 26, 1997, and April 13, 1998)

Unless circumstances change, avatars of the “sex without consequences” revolution, who demand similar cultural change in the military, will be in a position to extend their influence even further—into the design of training manuals, and the making of precedent in enforcement decisions. The “get real” agenda will be advanced for certain. The military has a proud tradition of leading the way for social change in a positive direction. That tradition is about to take a wrong turn.

2. The Example Set by the Commander in Chief

The outcome of congressional debates about the conduct of President Bill Clinton will have a direct and profound effect on disciplinary rules and the culture of the military. The civilian president is not subject to the UCMJ, but he is responsible for enforcing military discipline under the law. In his capacity as commander in chief, the president is more than a role model for uniformed troops under his command. Behavior deemed acceptable for the president could set a precedent that lowers standards for troops under his command.

The reason why was stated in one of the cases cited in the Manual for Courts Martial, *United States v. Butler*. The opinion suggested that adultery may be considered “*prejudicial to good order and discipline*” or “*of a nature to bring discredit upon the armed forces.*” The “*service discrediting*” element is tied, however, to shifting public opinion and declining civilian mores. According to an analysis of *United States v. Butler* sent to me by Prof. William Woodruff of Campbell University:

*“...the judge at first appears to treat adultery as being, by its very nature, service discrediting, but other parts of the decision make it clear that what makes [adultery] service discrediting is not the fixed star of a permanent moral standard, but a comparison with the current values and mores of the larger civilian community. This view might perhaps be summarized by saying that discredit lies in the eye of the beholder, with the beholder in this case being the larger society. The implication, of course, is that what brought discredit upon the military in the past may no longer do so today — or tomorrow.”*⁴

Congressional tolerance of the president’s behavior could and probably would be cited as credible evidence that the civilian mores have shifted, and the military should follow the demoralizing trend set by the commander in chief. A significant trend in that direction could have a devastating effect on discipline, which is the basis of military culture.

The statements filed last year with Ms. Miller do not acknowledge a nexus between acceptance of the President’s behavior and tolerance of similar conduct in the military. The National Institute for Military Justice did note, however, that “*efforts to penalize British Army personnel for adultery have been met with the observation that the Prince of Wales, who serves*

⁴ Memorandum, September 20, 1998, Re: Proposed Changes to Manual for Courts-Martial. Prof. William A. Woodruff, Norman A. Wiggins School of Law, Campbell University, is a former Chief, Litigation Division, Office of the Judge Advocate General, HQ, Department of the Army. Prof. Woodruff was promoted to the rank of Colonel just prior to his retirement in 1992.

as Colonel of some number of regiments, appears to have admitted that he has committed adultery."⁵

If *de facto* standards are lowered to meet the expectations of those who believe that private conduct doesn't matter, it is not difficult to imagine future cases in which officers escape discipline for consensual but reckless sexual misconduct comparable to that attributed to the president. Such an outcome is virtually certain if outside liberal groups and individuals are given the exclusive opportunity to shape the meaning of the law, as well as its terms.

3. Apparent Objective: Civilianizing the Military

Earlier this year, expectations were raised that the Defense Department was about to relax the adultery rules. On July 19, an obvious trial balloon was floated by unnamed Pentagon sources on the front page of the Sunday *New York Times*. According to reporter Steven Lee Myers, Secretary William Cohen's Task Force on Good Order and Discipline was about to downgrade adultery as an offense, recommend that penalties be reduced, and recognize that "*the military world should not really be so different from the civilian.*"⁶

Almost immediately, the trial balloon drew fire.⁷ A Marine Corps spokesman expressed opposition to "*any action that would lower our standards, either actually or by perception.*" The Center for Military Readiness issued a news release on July 23, expressing concern that President Bill Clinton was about to impose his peculiar moral code on the armed forces.⁸

According to Pentagon insiders, release of the Task Force report was delayed to avoid embarrassing comparisons with the alleged behavior of the commander in chief, which would be totally unacceptable under rules that govern every serviceman and woman under his command.

Rep. Steve Buyer (R-IN) responded to constant complaints about that disparity by sponsoring non-binding legislation, included by a House/Senate Conference Committee in the 1999 Defense Authorization Bill, which calls for "*exemplary conduct by civilians in the chain of*

⁵ Letter from Eugene R. Fidell to General Counsel Judith Miller, August 4, 1997.

⁶ William C. Fredericks, a New York City Bar Association official whose advice was sought in a letter from General Counsel Miller, told Myers that military values tend to widen rifts with civilians who run the military: "*Most people do not want to have a military that is run on a set of values that is so divorced from the civilian world that its members come from that they can no longer relate to each other.*" A July 21 *New York Times* editorial praised the expected proposals because they would "*reduce fears of unreasonable prosecutions based on private matters that have nothing to do with military discipline.*"

⁷ Syndicated columnists Mona Charen, Richard Estrada, Harry Summers, CNN commentator Kate O'Beirne and retired Army colonel Robert Maginnis of the Family Research Council joined in the chorus of disapproval.

⁸ In a published letter, DoD spokesman Kenneth H. Bacon took issue with similar sentiments in a column by Mona Charen. Bacon later conceded to the *Charleston Post & Courier* that the Task Force had indeed recommended that penalties for adultery should be lowered. (August 13, 1998)

command.” No one expected that the Pentagon might try to narrow the “misconduct gap” by bringing the military down to the president’s level.

Fortunately, the controversy forced reconsideration of the planned proposal. At a July 29 Pentagon news conference, Rudy de Leon, Defense Undersecretary for Personnel and Readiness, joined with General Counsel Judith Miller to unveil a modified plan. Much to the surprise of reporters, the announced proposal does not lower written standards, reduce penalties for adultery, or call for amendments to the Uniform Code of Military Justice (UCMJ). It does add clarifying language to the “elements of proof” in the Manual for Courts- Martial, which *enforces* the UCMJ.⁹

4. Enforcement Guidance Scenarios

The revised enforcement manual properly reminds commanders that when dealing with romantic entanglements, they should first use informal, non-punitive methods—such as counseling, reprimand, or reassignment—before resorting to more severe measures such as court-martial. Both the old and new language in the manual prescribes penalties for adulterous conduct if “*under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.*”

Field commanders may consider at least nine factors, such as marital status and rank of the uniformed person and partner, in determining whether a particular case is prejudicial to good order or service discrediting. Other relevant circumstances that may be considered in determining punishment include compliance with orders to desist, misuse of government resources, whether the relationship is ongoing or remote in time, and the level of disruption in the military unit.

As CMR understands it, an extramarital affair with a civilian that occurred many years ago, while the officer in question was separated from his wife, would not necessarily require severe judicial action or career penalties. This is the scenario that roughly parallels that of Air Force Gen. Joseph Ralston, Vice Chairman of the Joint Chiefs of Staff, whose expected promotion to the top job was derailed last year.

Then-Air Force Secretary Sheila Widnall allowed Ralston’s case to be unfairly equated with the flagrant, recent, and defiant misconduct of Lt. Kelly Flinn, the former B-52 pilot who made a mockery of disciplinary rules by falsely portraying herself as a “victim” of a dishonest married man.¹⁰ Flinn escaped court-martial by taking her case to the court of public opinion, where the Air Force lost by default.

⁹ When a reporter asked whether it was correct to say that the new language was not currently in the Manual for Courts-Martial, a Defense Department spokesman replied, “*That is correct.*” CMR later learned that the revisions are not entirely new, because they reflect court precedents set in previous cases involving a wide variety of mitigating circumstances.

¹⁰ Flinn had actually been introduced to the man and his Air Force enlisted wife at a social event. With the help of a public relations firm, Flinn appeared twice on CBS *60 Minutes*, and did countless interviews with sympathetic reporters. Senate Majority Leader Trent Lott (R-MS), who fell for the spin, admonished the Air Force to “*get real.*”

Prosecutors in North Dakota, who were well prepared to take on Flinn's attorney, Frank Spinner, were effectively gagged. According to Dr. Bruce W. Ebert, a member of the legal team, the prosecutors' legal strategy was significantly undermined by officials in Washington.¹¹ Air Force Chief of Staff General Ronald Fogleman tried to explain reasons why Flinn's court-martial was justified, but criticism of his efforts led him to resign early.

It was a public relations disaster--caused not by the law, but by the failure of civilian Air Force officials to explain and defend the law. Nothing that occurred in the Flinn or Ralston cases justifies radical changes in the rules regarding adultery.

5. Will "Clarifications" Serve as Loopholes?

The language of the UCMJ remains intact, despite early predictions of change. Language added to the enforcement manual still affirms that "*Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member.*" The Manual for Courts-Martial also continues to prescribe disciplinary action for conduct that is "*prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.*"

The Manual implies, but does not specifically state, that higher ranking people will be held more accountable than those of lower rank. By this standard, a private who leaves the base and engages in a one-night stand with a civilian woman who is separated from her husband may not be punished severely. By contrast, a brigadier general and base commander who engages in an open, notorious extramarital affair with the wife of an enlisted aide, and who facilitates his liaisons by repeatedly sending the husband away on assignments, would be subject to severe discipline.

CMR remains concerned, however, that proposed "clarifications" of the basic principle stated above may, in actual practice, serve to muddy the waters. The trial balloon floated earlier raised expectations that the rules would be relaxed. And Secretary Cohen conveyed mixed signals about his own understanding of the plan when answering a question about the commander in chief's admitted behavior. (See #8, below)

In view of the more liberal views of DoD personnel charged with enforcement, some attorneys may be encouraged to exploit the perceived attitude shift, and argue that their clients' conduct was neither disruptive nor service discrediting. Kelly Flinn's attorney had great success making such a case last year, even though Flinn's superiors had every right to proceed with a court martial. As the public relations campaign continued, local commanders received more criticism than support from Washington. Given this experience, why would a commander feel confident in pursuing similar cases in the future?

The task of countering Flinn's public relations offensive fell to a few retired military and civilian organizations, including the Center for Military Readiness.

¹¹ Letter to Elaine Donnelly from Bruce W. Ebert, Ph.D., a psychologist, attorney, and former Chief of Beale Air Force Base Department of Mental Health, July 7, 1997 (copy attached). Dr. Ebert was called to provide full consultation to the prosecution team throughout the Flinn case.

Overly specific “elements of proof” effectively raise the bar on commanders, making it difficult to enforce the rules in all but the most extreme cases. One element stipulates, for example, that: “*To constitute an offense under the UCMJ, the adulterous conduct...[must have] an immediate, obvious and measurably divisive effect on unit or organization discipline, morale or cohesion.*” (emphasis added)

Future commanders are sure to wonder: If Kelly Flinn’s case was not “*immediate*” and “*obvious*,” under the stated criteria, what sort of case would be? They would also be less likely to enforce the rules in a “*measurably divisive*” case like that of Air Force Maj. Jacquelyn Parker, one of the first women trained to fly the F-16.

6. The Syracuse Experience

Maj. Parker’s romantic relationship with a married senior instructor in 1995 almost destroyed the New York Air National Guard 174th Fighter Wing, which used to be known as the “Boys from Syracuse.” Members of the Syracuse unit reacted predictably to the intimate relationship and perceived favoritism that developed between Maj. Parker and her instructor, Col. Robert Rose. Months of turmoil ensued, and Maj. Parker resigned following a particularly harrowing check-ride flight in the F-16.

Fighter wing commander Col. David Hamlin and others who had tried to enforce the misconduct rules were accused of sex discrimination by local investigators. Twelve men were fired or punished with career-ending re-assignments, but Maj. Parker was barely reprimanded.¹²

7. Questions About Maj. Gen. David Hale

The controversy surrounding Maj. Gen. David Hale raises additional questions about DoD’s level of commitment to disciplinary rules. As Deputy Army Inspector General, Hale had the responsibility to investigate disciplinary violations. A report by the DoD Inspector General found credible evidence that Gen. Hale, a married man, had been carrying on simultaneous affairs with the wives of four subordinate officers. All of the women divorced their husbands, and one of them filed a complaint against Hale for sexual misconduct. (Hale has denied the charges.)

Under current and proposed regulations, this is a scenario that should have drawn the most severe penalties—or at least a thorough investigation. But even though Hale’s file should have been “flagged” pending resolution of the Inspector General’s investigation, Army Chief of Staff Gen. Dennis Reimer approved Hale’s retirement request in only three days. The unusually

¹² A subsequent probe by New York Inspector General Rosslyn Mauskopf confirmed most of the men’s allegations, but condoned their punishment nonetheless. On May 13, 1998, twelve members of the shattered Syracuse unit protested their shabby treatment by returning over 150 medals and awards on the steps of the U.S. Capitol.

swift action headed off an embarrassing court-martial, but the Defense Department refuses to investigate questions about perceived favoritism in the actions of Gen. Reimer.¹³

8. Secretary Cohen Heightens Concerns

By allowing reporters to preview the adultery enforcement plan as some sort of answer to the Lt. Flinn and Gen. Ralston fiascoes, the Pentagon created an unfortunate perception that the rules have been or will be relaxed in politically sensitive cases. Defense Secretary William Cohen added to that perception himself on August 23, during an appearance on NBC *Meet the Press*.

Host Tim Russert asked three questions comparing President Clinton's admitted misconduct to that of a hypothetical general engaging in similar activities, but the Secretary dodged each one. The colloquy with Russert suggests two possibilities: Either Secretary Cohen doesn't understand the "clarified" enforcement plan, or his interpretation is different from that presented to the public on July 29. Neither possibility inspires confidence.¹⁴

¹³ According to an *Army Times* report, (October 5, 1998) the Army has taken the unusual step of referring the adultery and misconduct case of Maj. Gen. Hale to General Thomas Schwartz, head of Army active forces in the United States. Gen. Schwartz will decide whether to order a post-retirement court martial, or refer the case to another official who would act as a convening authority.

¹⁴ Q: (Tim Russert) "Some folks at the Pentagon said to me the other day that if, in fact, a general had an affair with a private, he would be court-martialed, and that there's a double standard for our commander in chief. How would you respond to that?"

A: (Secretary Cohen) "First of all, that's not accurate. That is not true under the Uniform Code of Military Justice. We've tried to clarify the standard under the code. And we are making it applicable to all concerned, officer and enlisted alike, and there should be no double standard as far as how we treat them. Secondly, the president is not under the Uniform Code of Military Justice." (Cohen goes on to cite polls indicating that Americans who elected Bill Clinton are still "very strongly in his favor.")

Q: "You remember the case of Kelly Flinn, a woman who was driven out of the military because she committed adultery and lied about it?"

A: "No. No. She committed adultery, disobeyed an order and then lied about it. Again, those are grounds, under the Uniform Code of Military Justice, for her dismissal."

Q: "You're not concerned about morale in the military, who believe that there's a different standard?"

A: "I think the military has indicated its strong support for its commander in chief, and I've seen no evidence whatsoever there's been any diminution of that support."

Note: It is unlikely that the Secretary of Defense misunderstood the questions, or was unaware of unfavorable comparisons of military rules with the president's behavior. Surely, Cohen did not mean to suggest that the hypothetical general's punishment would be no more severe than that of the private.

According to the current and proposed new language in the Manual for Courts Martial, a general's affair with a private--behavior comparable to Bill Clinton's Oval Office dalliance with an intern--would be clearly "*prejudicial to good order and discipline,*" and "*of a nature to bring discredit to the armed services.*" By failing to state the obvious, the Secretary of Defense failed to show leadership, degraded *de facto* standards, and demoralized the troops.

Aside from his highly inappropriate suggestion that the military's professional devotion to duty translates into *political* support for Bill Clinton, Cohen's puzzling answers will also inspire servicemen and their attorneys to cite the president's bad example in cases involving similar activities.

Marine Sgt. Charles W. Little, who was recently found guilty of fraternization and consensual adultery with a junior Marine and recommended for a general discharge, has already written to the commander in chief, seeking a presidential pardon. Wrote Sgt. Little, whose discharge has been delayed, "*You explained that your private life is no one else's business. I wholeheartedly agree....There was no criminal intent.*" (*Washington Times*, September 11, 1998)

9. Suggestions to Enhance Good Order and Discipline

The Center for Military Readiness supports sound personnel policies that enhance good order and discipline in the military. CMR recognizes that each case is different, discipline will vary with circumstances, and there is no such thing as a "one size fits all" remedy for adultery and other forms of sexual misconduct in the military. Operational considerations are important, innocent family members are often involved, and emotions don't always respond to the cool mandates of military law.

That said, CMR believes that significant weakening of the rules of personal conduct would destroy morale and discipline in the military, which are essential for combat effectiveness. The following suggestions would help to strengthen disciplinary rules, and counter the perception that they have been relaxed:

a) *Clear Statement of Differences with the Civilian World*

Proposed revisions to the Manual for Courts-Martial should firmly declare that the armed forces are *not* the same as the civilian world. As stated in several Supreme Court decisions, the military defends individual rights, but it must be governed by different, more restrictive rules.

b) *More Support for Field Commanders*

Given the lack of support for local officials who tried to discipline Lt. Flinn and Maj. Parker, future commanders will find it more difficult to prosecute or prove "*immediate, obvious and measurably divisive effect(s)*" from romantic relationships--even in cases that are as notorious as the Flinn and Parker cases. To alleviate this problem, DoD should refrain from sending mixed signals, or discouraging commanders from exercising power and discretion given

them by the UCMJ. Commanders have the right, and the responsibility, to enforce good order and discipline in their own units.

c) ***Consultation with Outside Groups***

DoD officials should end the practice of extending special access to members of liberal/left-wing organizations that do not support the purpose of disciplinary rules embodied in the UCMJ.

d) ***Public Relations Strategy***

To avoid future Kelly Flinn fiascoes, DoD and members of Congress must support commanders who have reason to invoke the law, and refuse to be intimidated by public relations tactics and media circuses. Civilian Pentagon appointees, from the service secretaries on down, must understand and be prepared to explain the rationale behind disciplinary rules that differ from the civilian world.

e) ***Living Conditions that Heighten Sexual Tensions***

To reduce the frequency of predictable romantic entanglements between servicemen and women, the Defense Department should end gender quotas, as well as co-ed living arrangements in field tents and training barracks that heighten sexual tension. Instead of relying on bureaucratic mandates and unrealistic theories about the interchangeability of men and women, the services must recognize human differences, emotions, and frailties. If the Defense Department continues to advocate retention of current problematic policies, Congress should pass legislation calling for recruiting, training, housing and assignment arrangements that encourage discipline, rather than indiscipline.

Conclusion

In testimony before the Presidential Commission on the Assignment of Women in the Armed Forces, former leftist and author David Horowitz noted that *"The military is the one American institution that survived the 1960's intact. Now it threatens to become a victim of current radical fashions....Let's not add the weakening of America's military to the depressing list of disasters of utopias that fail."* (August 6, 1992)

It is possible to ignore this warning, but only at great risk. Families of men and women in the volunteer service will not accept fashionable rationalizations, tolerance, or official encouragement of rampant sexual misconduct in the military. Personal discipline is a pillar of military culture, which must be strengthened, not undermined.

Bruce W. Ebert, Ph.D., J.D.

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July 7, 1997

Ms. Elaine Donnelly
Center For Military Readiness
P.O. Box 51600
Livonia, MI 48151

Dear Ms. Donnelly:

I had the privilege of working on the prosecution team in the case of United States v. Lt. Kellie Flynn. I am both a Psychologist and an Attorney, and a former Air Force Officer. My last assignment was at Beale Air Force Base where I was the Chief of Mental Health. I was called in to be a part of the prosecution team and provide full consultation from start to finish in part because Lt. Flynn was evaluated by a Psychologist/Attorney like myself whose name was Dr. Ann Duncan. Dr. Duncan could be seen often in the television footage of Lt. Kellie Flynn leaving the legal office with her Attorneys. I am writing you for a number of reasons. First, you were the only individual of all of the people who commented publicly on the case, who had a complete command of the facts and circumstances of the case. In fact, although I was suspicious already of the media, I was particularly disturbed at the significant distortions extant in the media. In addition I was also utterly disgusted and embarrassed in listening to the comments of members of Congress, both Republicans and Democrats. It seemed that there was no shortage of ignorance on either side. My hat goes off to you for your quick study of the case.

The most disturbing aspect of the case however, had to do with a systemic problem which if not corrected will surely repeat itself many times over in the future. As a young officer attending Squadron Officer School at Maxwell Air Force Base in Montgomery Alabama, I studied the problem of command and control in Vietnam. Specifically, I researched the problem of mission changes that often occurred whereby military field commanders were overruled by military and civilian members in Washington. In fact in Vietnam, air strikes were actually re-routed based upon directions from Washington at the time rather than relying on officers in the field to direct strikes to the appropriate place. In this case, there was an eerie similarity to this process. Although the prosecutors in the case including myself had an absolute command of the facts and understood the strategy of the defense and political implications, they were essentially never consulted by the staff at the Secretary of the Air Force's office including the General Counsel. Most disturbingly was that direct negotiations occurred between the General Counsel of the Secretary of the Air Force and Frank Spinner.

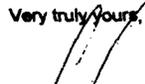
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Although we were attempting to provide input to the Secretary of the Air Force's office in order to get out in front of the public relations nightmare that was extant, our calls to be heard fell on deaf ears. The final bizarre turn to this case was that despite the fact that Lt. Kellie Flynn would have been convicted on all charges, and that we could have negotiated a significantly better deal for the government to include apologies by Lt. Flynn, the General Counsel's Office secretly negotiated the case with Frank Spinner without any consultation in the final hours with the prosecution team. This was one of those cases where Attorneys in the Secretary of the Air Force's office and the Secretary who have no trial experience or what trial experience they have is a long time ago, fell into every one of Frank Spinner's traps. Not only did the Air Force come across looking badly by this, but it also looked as though there was complete bungling of virtually every aspect of the case. In fact at the actual case level, we were incredibly organized. Every time Frank Spinner would go and present his case to the media, we were preparing motions, prepping witnesses and working on the intricate details of the trial. Frank Spinner would continually ask us for delays. He was not prepared to go to trial. This was a case in which individuals at the highest level of the Air Force, and I am not referring to General Fogelman, responded publicly and eventually at the conclusion of the case, from a defensive posture. Ultimately I think the Air Force looked bad for not letting justice run it's full course. The lack of understanding of these individuals was almost mind boggling. Further, the absence of an awareness on their part of their lack of understanding and in their role in inflaming the situation is even more mind boggling.

I wanted you to know the facts in this case since it seemed important to me for you to be aware of this disturbing set of events that occurred behind the scenes in the case. I am probably going to send a similar letter to General Hawley, the Two Star General in charge of the Air Force Judge Advocate Generals.

Please feel free to call me. I would be delighted to discuss this case with you.

Very truly yours,


Bruce W. Ebert, Ph.D., J.D.
Clinical and Forensic Psychologist
Attorney at Law

BWE/aj

TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT
OF COLUMBIA

Are Military Adultery Standards Changing:
What Are the Implications?

Date: October 7, 1998

Testimony by Daniel R. Heimbach, Ph.D.

Former Deputy Assistant Secretary of the Navy (Manpower)

Former Deputy Executive Secretary of the
White House Domestic Policy Council

We are focusing today on whether changes to military adultery standards proposed by the Clinton Administration Department of Defense really are significant or not, and I will do my best to stay narrowly focused on just this issue. Of course we could focus discussion on whether the changes proposed are addressing a real need. Or we could focus on whether the changes proposed are beneficial or hazardous. But views on the latter questions are very much affected by how we answer the first question regarding significance. I will argue here that the changes being proposed to military adultery standards are highly significant, and that the nature of the stakes involved require strong opposition to their implementation.

Do the changes proposed matter? Will they make any significant difference? The Clinton Administration claims there is no cause for alarm. The changes proposed really do not amount to anything that matters. But, their own actions belie the disposition they urge others to adopt. If the changes proposed are inconsequential. If they have no real significance, then why

is the Administration defending its proposal so strongly? If it affects nothing that really matters, then why has the Administration invested so much time, energy and expense defending these changes before the Congress of the United States? The actions of the Administration clearly demonstrate that it is convinced there are critical stakes involved, and that it is determined to achieve them by amending military adultery standards. So, if the Administration does not believe its own rhetoric, why should we?

Although Secretary Cohen says "There have been no changes in the Code," changes are being defended in his name before this Subcommittee today. And though he claims "there will be no lowering of [military adultery] standards," the changes proposed by the Department of Defense in the Federal Register will certainly lower adultery standards in at least three critically important ways. First, by reversing the relationship of disciplinary standards to morale and cohesion by ordering a standard of discipline so that it follows as a result of poor morale and failing cohesion, when in fact good morale and strong cohesion are never produced except as the result of well enforced discipline. Second, by shifting the way a punishable offense is defined by moving the nature of the offense away from matters of objective fact (whether the act occurred or not) and toward matters of subjective interpretation (how others feel about it). And third, by replacing a fixed standard with one that varies over time, and from place to place, depending on the vacillations

of public opinion. In other words, the changes proposed by the Administration abandon the idea that adultery is always a dishonorable act that is inherently opposed to the sort of moral discipline and personal character required of every military service member under all circumstances. In place of this approach, the Administration seeks to substitute disciplinary guidelines derived from the idea that adultery involves no actual offense unless enough other people can be found to say they have taken offense.

These are general criticisms. I will now point out a few places in the language of the Administration's proposal, as published in the Federal Register, that demonstrate the criticisms just described:

(1) As proposed, subparagraph (c) (2) states "To constitute an offense under the UCMJ, the adulterous conduct must either be directly prejudicial to good order and discipline or service discrediting." Stated this way, the new language redefines the offense involved by locating the offense for which punishment is deserved, not in the act of adultery itself, but in the impact it may or may not have on the perceptions and feelings of others under some circumstances.

(2) As proposed, subparagraph (c) (2) alters the term "prejudicial of good order and discipline" by inserting "direct" as a qualifier. And other changes are made regarding the meaning of "service discrediting." If these changes are made, then no longer will all acts of adultery be deemed prejudicial or

detrimental to the good order, discipline and reputation of the armed forces. Rather, they will codify a new legally protected category of adultery in which military members will be allowed to engage so long as it does not become "directly prejudicial" and does not sufficiently "injure the reputation of the armed forces."

(3) As proposed, subparagraph (c) (2) defines directly prejudicial acts of adultery as "conduct that has an immediate, obvious and measurable divisive effect on unit or organization discipline, morale or cohesion." This wording, if implemented, will mean that service members will rarely if ever be convicted of any adultery that is deemed "directly prejudicial." The standard to secure conviction is almost entirely subjective and measures factors that while meaningful in conceptual form are notoriously difficult to quantify. These realities are observable only by their impact over time and are nearly impossible to assess by trying to find the immediate affects of a single act. How shall we quantify units of depressed morale or of weakening cohesion? How long should a commanding officer wait to measure the full impact of a adulterous behavior on his command? How much corrosion of organizational discipline is tolerable before punishment can be considered? Even if these effects could be quantified, the standard is unworkable except where damage on military order and discipline is allowed to take affect. Preemptive measures are not warranted because no offense arises until a corrosive impact can be sufficiently measured.

(4) As proposed, subparagraph (c) (2) creates a standard for the punishment of adultery that is "service discrediting." But the new standard does much more than clarify disciplinary practices. Instead of treating adultery as an act that by its very nature is injurious to the reputation of the military services, it turns the term into a highly variable and subjective measure that depends on assessing prevailing opinion in the area where an act of adultery was discovered. Thus service members would be guilty of no offense in areas where their act of adultery does not subject the armed forces to "public ridicule" or lower their "public esteem." Thus, whether a service member is guilty of an offense worthy of dishonorable discharge is made to depend entirely on the shifting opinions of others over which he or she has no control and the status of which he or she may have no reliable way of assessing in advance.

Thus far I have concentrated rather narrowly on what the changes to military adultery standards being proposed by the Administration mean in and of themselves. But this is not where their greatest significance lies. To understand the most profound stakes involved in the Administration's proposal, we must step back and see the part it plays in a much larger picture. We must consider how this one change in adultery standards is part of a general shift in ethical thinking that is fundamentally opposed to the moral structure on which the American military services were built, and on which they rely for their success. A shift in ethical perspective is now working to

so completely reshape and redefine military manpower policies and disciplinary standards that should it succeed it will threaten, not only the combat effectiveness of our military services, but their existence as well. We need to understand that current efforts to minimize and relativize adultery standards is part of a much larger problem impacting the military services--a problem that if not checked can ultimately threaten the survival of the United States as a military power.

Put another way, the real significance that lies behind the Administration's proposal to change military adultery standards is that they are part of a larger trend that threatens to dissolve the sustaining ethic on which the essential military qualities of combat readiness, good order and discipline, and unit cohesion most rely. The changes to military adultery standards proposed by the Administration are based on a self-oriented, feeling based, therapeutic ethic. It is based on an ethic of individual desire and self-fulfillment that opposes and corrodes the ethic of self-sacrifice without which no military force can survive, much less succeed.

While the general public may not yet be fully cognizant, those who are paying close attention to military manpower policy decisions understand that it is an area of national leadership that has itself become a major battleground in the moral wars now dividing American life and culture. Although the military services have been dealing with redefining their national defense mission, and have been wrenched by the largest restructuring of

defense forces since the founding of our nation, the challenges these have brought have not troubled the services nearly as much as those that have been arising over social issues produced by a contrary ethical perspective. Shifting guidance for interpreting adultery standards so that the difference between an honorable or dishonorable discharge is determined by personal sentiment and vacillating public opinion, rather than the immorality of the act itself, has now joined job security for single military parents, mixed gender recruit training, the deployment of women in combat roles, adjusting strength requirements to allow a double standard favoring women over men, the prioritization of child care facilities over combat readiness, accommodating the limitations of dual military couples, and guidelines that accommodate the presence of known homosexuals, among other issues changing the face of military manpower policy.

What these issues have in common is that each compromises the national security mission of the military services in order to accommodate a policy idea that arises out of an ethic of individual desire and self-fulfillment. Each accommodation makes room for some new idea of individual self-fulfillment that is contrary to the ethic of self-sacrifice on which the military mission depends. Thus, it is critical to understand that the motivation for shifting adultery standards does not stand alone. It is part of a general trend that corrodes the very purpose for which the military services exist. The ethic from which the adultery proposal arises puts the accommodation of individual

needs and desires over the disciplinary needs of the services. The ethic from which the adultery proposal arises puts individual rights over the importance of unit cohesion, morale, good order and discipline. The ethic from which the adultery proposal arises is more concerned with minimizing complaints and matching popular opinion than inculcating self-discipline and emphasizing duty. In other words, the ethic from which the adultery proposal arises is not so much about sacrificing personal feelings and ambitions--or even life itself--to achieve the higher good of national security as it is about compromising disciplinary standards in order to accommodate military life to the sort of individualistic, self-indulgent life-style demands a growing number of civilians in this country are coming to expect for themselves.

Military life is determined by the overwhelming need to maintain sacrificial discipline under fire in combat, and civilian life quite simply is not. If the ethic that sustains sacrificial military discipline is permitted to decline in favor of a therapeutic civilian ethic that prioritizes personal desire and self-satisfaction, our military services will soon cease to win wars no matter how superior our military technology may be compared to future opponents.

TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT
OF COLUMBIA

Are Military Adultery Standards Changing:
What Are the Implications?

Date: October 7, 1998

Testimony by Daniel R. Heimbach, Ph.D.

ADDITIONAL COMMENTS-----ADDITIONAL COMMENTS-----ADDITIONAL COMMENTS

Mr. Chairman, I would like to add some additional comments responding to your question whether the Clinton Administration's proposals to amend military adultery standards in the Manual for Courts-Martial will suppress the number of convictions for adultery offenses among U. S. active duty military personnel. The short answer to that question is undoubtedly, yes. But, I would like to further explain why the Clinton Administration's proposal will most certainly suppress the number of disciplinary convictions.

The testimony you heard from me and the other witnesses made it clear, I believe, that the amended language of the Manual for Courts-Martial in fact sets a higher threshold of proof that must be met before a service member charged with an adultery violation can be convicted. This stricter burden of proof--requiring measurable evidence of a directly prejudicial impact on morale, cohesion and service reputation--will of course mean that many cases that should otherwise result in conviction will not be convicted. But (and this is the element I wish to clarify), we should be concerned not only with the fact THAT the threshold of proof will be raised. We should be even more deeply concerned

with **HOW** the Clinton Administration would raise the threshold. As important an issue **THAT** raising the bar of proof is for objecting to the Administration's proposals. I am convinced **HOW** the Administration means to raise the bar is of far, far greater importance, and is by far the most significant reason the Administration's changes will, if put into effect, radically suppress the number of adultery convictions in the military services.

Why do I take this position? The reason is the changes proposed by the Clinton Administration--as they currently stand--will **EXACTLY REVERSE THE MORAL EQUATION BY WHICH MILITARY ADULTERY STANDARDS ARE DEFINED**. In other words, the Clinton proposal turns the moral logic of military adultery standards on their head, and this (even more than raising the bar) will be the reason the Clinton changes will certainly reduce the number of adultery convictions.

Let me illustrate the reversal of moral logic involved. Although the Clinton Administration changes will allow adultery to remain a disciplinary offense in the UCMJ, and although the Clinton Administration changes will not alter punishments due upon conviction, they will by amending the Manual for Courts-Martial alter the moral logic,

From: Because adultery is wrong, it threatens morale, cohesion and reputation and must be punished to ensure proper military discipline;

To: Adultery is wrong if and only if it threatens morale, cohesion and reputation, and thus does not harm discipline and does not require punishment unless a positively harmful effect can be proven.

To further underscore the true significance of this change, we should remember that adultery is an act of cheating, lying and stealing. One who engages in an act of adultery is cheating on his or her spouse. Adultery is an act of lying, an act of dishonesty, because it breaks promises of fidelity that a marriage partner makes to his or her spouse. And, adultery is an act of stealing because the cheating spouse is either taking something from another that is not theirs to take, or is giving something that is not theirs to give. Thus the enormity of the Clinton Administration's changes is most glaringly demonstrated by stating the reversed moral logic it proposes in terms of cheating, lying and stealing. What this means is the Clinton Administration's changes will alter the moral logic in military adultery standards,

From: Because cheating, lying and stealing are wrong, they threaten morale, cohesion and reputation and must be punished to ensure proper military discipline;

To: Cheating, lying and stealing are wrong if and only they threaten morale, cohesion and reputation, and thus do not harm discipline and do not require punishment unless a positively harmful effect can be proven.

The change to military adultery standards now proposed by the Administration is, in fact, far more insidious than what it proposed earlier. Instead of removing adultery from the UCMJ, it has chosen to take a post-modernist approach that redefines the moral orientation of military adultery standards while purporting to leave the standards themselves in place. It leaves the form unchanged, but completely eviscerates their moral content.



**Testimony of Robert L. Maginnis
Lieutenant Colonel (Ret., U.S.A.) and
Director, Military Readiness Project,
Family Research Council
Before the Senate Subcommittee on Government Management,
Restructuring, and the District of Columbia
October 7, 1998**

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to address the committee on the topic of the military's adultery standards and the broader implications of the shifting military culture.

The military's culture is unique because service in the profession of arms is not just a job. It's a commitment to a most serious calling – a commitment to die at the behest of the commander-in-chief. Military culture demands camaraderie, absolute trust, and teamwork.

Out of necessity, military culture must constantly focus on its primary mission, which is to win wars. Soldiers behave toward one another according to a set of rigid standards: honesty, accountability, sacrifice, and absolute fairness. Anything that interferes with this focus can damage combat readiness, morale and unit cohesion.

General George C. Marshall addressed the necessity for a rigid ethos, saying: "The soldier's heart, the soldier's spirit, the soldier's soul are everything. Unless the soldier's soul sustains him, he cannot be relied on and will fail himself and his country in the end."

Unfortunately, today's military is losing its soul. It has been assaulted by numerous ethos-bashing phenomena.

- "Civilianize" through personnel policy changes.

Military culture has changed to the point that the warrior spirit is compromised. The changes have been radical. It has changed from a predominantly bachelor force to a family-based institution. It has inappropriately assigned men and women together and hidden the truth about sex in the ranks. It has compromised warrior values by embracing a Madison Avenue approach to recruiting, and it has embraced quotas.

Mostly married force: Perhaps the major personnel-based change has been the fact that the military has become a family-based institution. Becoming family-friendly has been a byproduct of the 1973 all-volunteer concept. Today, two-thirds of all servicemembers are married. This makes sustaining marriages important. A 1997 Pentagon report to the

Family Research Council

House National Security Committee warned: "Given the overwhelming evidence of the stresses being suffered by military families as a result of the high pace of operations, the health and resiliency of the military family has already become a serious readiness issue."

Previously, the military was mostly a bachelor force. Single military personnel spent most of their free time with unit buddies building friendships, which are key to morale, unit cohesion, and *esprit de corps*.

The presence of military families has altered the culture. The modern military has found that it must address family satisfaction as a key to retention. It has had to pour enormous resources into military bases to make them family-friendly. Bases now include subsidized childcare centers, large family housing projects, numerous schools, shopping malls, recreation centers, and family medical care facilities.

Most military spouses (63 percent) are in the labor force, and most military families have children. These facts influence and often complicate assignment considerations. It's not uncommon today for the civilian spouse's career to take precedence over that of the military spouse.

In 1994, Marine Corps Commandant Gen. Karl Mundy tried prohibiting Marines from marrying until the end of their first enlistment in an attempt to curb high divorce rates among young Marines who deploy frequently. The idea was struck down by then-Secretary of Defense Les Aspin.

There is evidence that married soldiers make good peacetime and career servants and are less likely to harass the growing number of female servicemembers. The mostly married force raises several long-term questions, however. Does a married force enhance the warrior spirit? Does it encourage cohesive units? Are the additional costs associated with a mostly married force the best use of scarce defense dollars? Does the burden of sustaining families left behind during frequent deployments sap the overall resources of the force?

Women in the military: The military's sexual revolution started in the early 1970s as barriers to women serving began to fall. Today, 14 percent of the force is female, and many women serve in combat positions, mostly aboard ships and in aircraft. These changes, in my opinion, have been made for political rather than military readiness reasons.

Since 1993, the Clinton administration has overseen the removal of 260,000 combat exemptions for women. These politically motivated changes have hurt combat readiness by ignoring the overwhelming evidence that women don't have an equal opportunity to survive on the battlefield and that mixing the sexes in units contributes to readiness-busting jealousies, rivalries and favoritism.

The truth is that most women don't want to serve in combat. A recent Pentagon study found that 79 percent of enlisted women and 71 percent of female noncommissioned

officers said they wouldn't volunteer for combat. Pushing women into combat hurts readiness and it damages male morale. Can we make combat mandatory for men and optional for women and maintain the concept of fairness?

The Clinton Pentagon commissioned studies in a blatant effort to bolster its feminization agenda. These politically motivated studies looked at sex-integrated basic training, sexual harassment, pregnancy, and women in combat. Study bias is evident in survey questions asked, the selection of participants, the "experts" used, and the conclusions drawn from the findings.

The Pentagon also hired consultants like former Secretary of the Army Advisor Madeline Morris of Duke Law School, who criticized the military as "masculinist" and encouraged the services to embrace an "ungendered vision."

The Pentagon's 1997 Kassebaum Commission recognized that mixing the sexes in basic training hurt the process of transforming undisciplined adolescents into military apprentices. It also recognized that billeting teenage men and women together encourages sexual relations.

The Kassebaum commissioners recommended the politically unpopular segregation of the sexes in basic training. Despite the unanimous recommendation of the commission, Secretary of Defense William Cohen rejected the idea in favor of a *status quo* solution.

Sex and adultery in the ranks: Mixing the sexes in traditionally single-gender military units has resulted in serious readiness problems. These problems are attributable to predictable and unavoidable sexual tensions within the ranks. Few emotions are more powerful or distracting than those surrounding the normal sexual attraction between young men and women. Amorous relationships threaten fairness and often destroy marriages, which brings up another important issue.

Adultery is a problem in the military because soldiers too often are tempted to disregard their vows of fidelity during frequent unaccompanied tours and deployments. Such behavior is stimulated by the increased number of women in the ranks and the forced intimacy of the environment in which young men and women must operate.

A sergeant told *The Washington Post*, "You have young men and women in young marriages with all the pressures of long separations and very unpredictable deployments. Somebody is always doing something."

Adultery is destructive of unit morale. It may also reduce effectiveness and deployability because of the spread of sexually transmitted diseases. Even worse for the military, the soldier involved is a dishonest person. Honor among warriors is key, and the corrosive act of adultery is a violation of both trust and commitment.

Marine Commandant Gen. Charles Krulak labels adultery a lie: "I don't think you can have an effective fighting organization if you have people who lie to themselves."

Adultery represents a wanton violation of the most sacred of all possible trusts. If the marriage vow means nothing to the servicemember, can we trust the soldier's commitment to his country and unit?

For centuries, the U.S. military has severely punished soldiers for cheating, robbing and lying. These acts represent character flaws that damage military organizations, which must be built on trust. That's why the military prosecutes adultery. Such cases are really about honor.

Not all adultery cases are treated the same. The commander has the discretion to fit the punishment to the situation. The adultery standard requires that the offense demonstrate adverse impact on "good order and discipline" or brings "discredit upon the armed forces."

Consider some examples of how different commanders have dealt with adultery cases:

#1: President Clinton's former Marine One helicopter pilot was alleged to have had an affair with his military neighbor's wife. The base commander decided to handle the case administratively. This keeps the case out of the public's view. In August, a board of inquiry cleared the officer of the charge and returned him to duty.

#2: Earlier this year, a Fort Benning, Ga., soldier was convicted of 8 counts of adultery, which were linked with assault charges. The soldier was given 15 years confinement.

#3: An Army captain had an affair and when it was discovered he tried to murder his wife by pushing her out a hotel window. Fortunately, she wasn't killed. The civilian authorities failed to win the murder case, so the military court-martialed the captain for adultery. He went to jail.

#4: When a general officer is alleged to have been involved in adultery, the military often determines that the general's actions brought discredit to the service. He is quickly retired with little or no publicity. The case of Major General David Hale, who retired in February and is now being considered for disciplinary action, is the exception.

An Air Force wife told of her husband's affair, which she blamed, in part, on the stress of military life. She said she benefited from the adultery policy because it was used as leverage to force her husband into counseling. "Either let's go voluntarily," said the wife, "or I'll report it and make it official and you'll be compelled to go."

Contrary to some liberal views, adultery is not a victimless crime. In the military, both the offended spouse and the unit suffer.

The Pentagon just completed a yearlong examination of the adultery law. In August, leaks to the press suggested that the Pentagon was on the verge of changing adultery to a minor rather than a felony offense. Fortunately, the Defense Department only changed

the guidelines outlining the circumstances commanders should consider before charging a soldier with the crime.

In formulating these guidelines, the Pentagon consulted mostly nonmilitary and socially liberal groups, including the American Civil Liberties Union, the National Organization of Women, the National Association for the Advancement of Colored People, and the Servicemember's Legal Defense Network, which promotes homosexuals in the military. Non-Pentagon groups that focus on issues outside the politically correct arena, such as readiness and family preservation, were not included.

Recruiting policies: One former U.S. commander in Europe reflected on the military's cultural challenge: "The values necessary to defend the society are often at odds with the values of the society itself. To be an effective servant of the people, the Army must concentrate, not on the values of our liberal society, but on the hard values of the battlefield."

There is evidence that today's recruiters are selling soft values. To a large degree, this is due to the increased feminization of the military. In order to appeal to women, recruiters must be seen as sensitive and less macho than in the past.

Seldom do recruiters appeal to the prospect's patriotism, the desire to be physically and mentally challenged, or to becoming a member of a team with an important mission. Today's recruiter embraces a Madison Avenue approach, which focuses on helping recruits self-actualize through travel, saving for college and learning a marketable trade. The Navy advertises, "Start Your Journey," and the Army says, "Be All You Can Be."

The military shouldn't be surprised when servicemembers recruited with promises of college money and marketable skills leave to pursue civilian alternatives.

There are allegations that the services use race- and sex-based recruiting quotas. Last week, it was reported that a Marine Corps committee might propose the adoption of a minority officer hiring plan that requires recruiters to hire 12 percent black, 12 percent Hispanic, and five percent "other" by year 2003. While the lowering of standards was denied, a Marine major told *The Washington Times* that historically, 55 percent of minority accessions are with waivers because recruits do not meet normal standards. Responding to outraged current and former Marines, Commandant Krulak has wisely denied the officer-quota plan.

Pushing race-based quotas rather than maintaining tough mental and physical criteria diminishes overall capability and undermines fairness, which has long been a key professional value.

- Careerism prevails over professionalism.

In the absence of recent or protracted war, careerism has become part of the profession of arms. This me-over-the-profession mentality has seriously damaged the ethos.

Indicative of careerism has been the lack of uniformed leaders standing against readiness-busting policies. Where were the chiefs of staff when in 1993 this administration introduced the homosexual-friendly "Don't Ask, Don't Tell" policy? Where have the leaders been as feminists have assaulted readiness in the name of equal opportunity?

So far in this administration, only one service chief, General Ronald Fogelman, has resigned over a policy disagreement. Fogleman could not stand by as a subordinate was made the scapegoat for the Khobar Towers incident in Saudi Arabia. Where are the others? The apparent blindness afflicting top Pentagon brass is a manifestation of their willingness to cower in the face of political correctness.

Careerism is also encouraged by the military's "up or out" personnel management system. Leaders are strongly discouraged from staying in the trenches. Rather, satisfying numerous career critical stopping points aimed at stars are considered vital to advancement. This approach undermines developing and maintaining a warrior ethos.

Troop needs are often neglected by commanders who focus more on their careers than on readiness, leadership and professional responsibility. Short-term assignments deemed critical to future promotions create great pressure for officers to demand every ounce of energy from their soldiers. This approach discourages personnel who receive nothing in return.

A Marine commander recently expressed a widespread perception that troop welfare suffers because leadership won't refuse bad missions. "We take, and we take, and we take from these kids. And we never give," said the colonel. As a result of neglecting our people, they are voting with their feet.

Military careerism is especially evident among the 150,000 uniformed bureaucrats residing in Washington. These legions are led by more admirals and generals than ever before. Many are nothing more than bureaucrats in uniform. Last week, during a Senate Armed Services hearing about readiness, Sen. Robert Smith (R-N.H.) reminded the chiefs of staff, "This is a war. You're battlefield commanders. You have to be commanders rather than bureaucrats."

- **Warriors lose edge when peacekeeping.**

Peacekeeping missions like those in Bosnia, Haiti, Iraq, and elsewhere may be in America's vital interests, but they have compromised our ability to fight.

Warriors assigned to peacekeeping tasks quickly lose their fighting edge. Once peacekeeping chores are finished, it's hard to switch gears from being an armed Peace Corps to being killers. This phenomenon negatively impacts self-confidence, unit cohesion and trust in senior leaders.

- **Readiness sacrificed for better toys.**

The military's readiness crisis is also a result of the senior leadership's cultural tendency to view service needs from the top down and define effectiveness in terms of newer and more sophisticated weapons systems.

Gen. Henry H. Shelton, chairman of the joint chiefs, and the service chiefs recently painted a bleak readiness picture. Their prognosis was long overdue. Unfortunately, the readiness problem has been ignored because Congress and the brass have looked exclusively and selfishly at the big picture.

Members of Congress and Pentagon brass measure readiness in terms of ships, squadrons, and battalions – a “top down” rather than a “bottom up” perspective. For a clear view, readiness should be measured from the tank commander's perspective – “bottom up.” That young tank commander measures readiness in terms of having enough spare parts to keep his vehicle moving, enough trained soldiers in his crew, and enough live-fire experience to meet combat standards. Quality-of-life issues, including working latrines, adequate medical care for families and enough pay, are also readiness measures for soldiers.

Junior military leaders have long been aware of the hypocrisy gap in readiness. It frustrates them to hear senior leaders say all is ready when, in fact, people with a “bottom up” perspective know better. The reality is that today's junior leader doesn't have enough people, spare parts, ammunition, and time to accomplish his assigned mission. Meanwhile, military brass scurry to replace existing equipment with the next whiz-bang generation at the expense of bottom-line readiness.

Our troops are figuratively being starved in terms of training and combat-capable equipment in order to buy the latest in technology. As we have cut our warrior strength, Congress and Pentagon brass continue to buy increasingly expensive and often unnecessary systems.

Military brass is not always to blame for buying unnecessary systems. Last week, the chiefs of staff complained that Congress forced the Pentagon to buy 20 C-130 transport planes for \$1 billion that were not requested by the Air Force. Air Force Chief of Staff General Michael E. Ryan implied that the bottom line on these purchases and stationing was purely political.

Most of the time, however, military brass is to blame for acquiring questionably necessary new systems. For example, despite today's reduced threat, the Navy is spending \$2 billion each for a new class of attack submarines even as it scraps relatively new, advanced and very capable attack submarines.

The Air Force is sending hundreds of functional warplanes to the boneyard while it pays \$188 million per copy for the single-seat F-22 warplane, which hasn't been thoroughly tested.

- **Lack of understanding of military.**

There is a lack of understanding of the military by the public and especially by its civilian leaders. This phenomenon tends to isolate the military from the public it serves and fosters mistrust.

Few civilian leaders have served. While close to half of the men in the Senate are veterans, less than one-third (31 percent) of House members have worn the uniform. One-fifth of Senate-confirmed Clinton appointees, and only 4 percent of the White House staff, are veterans. Neither the secretary of defense nor his deputy has ever served in the military.

Complicating matters is the fact that Americans have a fairyland view of the world. We are being lulled into thinking that the whole world is like us and thinks like we do. This isn't true. We live in a dangerous world, and many people are hostile to America's best interests.

To combat the fairyland view, we must give more credence to what military leaders say. The experts should make important security decisions – not by social engineers and bean counters. Congress must facilitate frank discussions about defense rather than host politically motivated decisions.

The growing lack of leaders with military experience raises another important issue. The all-volunteer career military fails to seed society with ex-servicemembers. In the past, our society has benefited from mandatory military service. As Congress wrestles with readiness and personnel retention issues, it should revisit the draft issue once again.

In conclusion, the warrior ethos is critical to success in warfare. Attacks on that ethos have a high price.

French military historian Colonel Ardant du Picq explained the importance of the warrior ethos:

Four brave men who do not know each other will not dare to attack a lion. Four less brave, but knowing each other well, sure of their reliability and consequently of mutual aid, will attack resolutely. There is the science of the organization of armies in a nutshell.

Unfortunately, a variety of phenomena have radically changed military culture and attacked the foundation of the warrior spirit. The result is a damaged military and an imperiled nation.



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LEADERSHIP CAN'T MAKE SOLDIERS IGNORE SEX

by
Lieutenant Colonel Robert L. Maginnis (U.S.A., Ret.)

Evidence continues to mount that integrating the sexes in the nation's armed forces is ill-advised. The Pentagon responds that the answer to recent sex scandals is better leadership, but leadership cannot curb the natural sex drive or the desire for romance. The sexes must be separated for the sake of America's military readiness.

Not everyone agrees, of course. "I personally believe we can't go backward to gender segregation," said General William Hartzog, who heads the Army's Training and Doctrine Command.¹ Hartzog and like-minded Washington politicians sat on the sidelines while women-in-combat advocates eviscerated the military in the name of "equal opportunity." The damage is severe and the application of common sense to this sensitive issue is long overdue.

Women now comprise 13 percent of the force, up from only 2 percent 20 years ago. They serve in 90 percent of all career fields and are eligible to hold 80 percent of all jobs. This radical change came about because politicians have allowed "equal opportunity" to outweigh military necessity.

In the shadow of recent sex scandals, the Clinton Pentagon argues that leadership can and will make sex integration work. "Plain and simple," said Army Chief of Staff General Dennis Reimer, "this is a leadership issue and it will be addressed as such."²

On September 11, 1997, the Army released the "Senior Review Panel on Sexual Harassment" study, which found widespread sex problems, which harm readiness.³ Feminist icon Rep. Jane Harman (D-Calif.) said she wasn't surprised by the report. She prescribes "a lot of retraining."⁴ On the flip side, Rep. Roscoe Bartlett (R-Md.) says that the study only "addresses ways of dealing with sexual misconduct and fails to address the issue of gender integrated training and its impact on sexual harassment and military readiness."⁵

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The study revealed that:⁶

- 76 percent of men and 78 percent of women report high rates of sexually crude behavior in their units.
- 22 percent of women and 7 percent of men report being sexually harassed within the past 12 months.
- 20 percent of soldiers said that fellow service members feel that there is "no moral restriction on their behavior."
- 44 percent of women say that male soldiers "come on" to them, and 28 percent of men say that female soldiers "come on" to them sexually.

The study panel of 40 military and civilian experts collected data from 30,000 soldiers at 59 Army posts worldwide. The panel concludes, "We are firmly convinced that leadership is the fundamental issue."⁷

The Army is not alone in having to deal with sex problems. In 1993, the Veterans Affairs Center in Minneapolis surveyed nearly 500 female former service members representing all services and found that 90 percent said they had been sexually harassed in the military.⁸ A 1995 Department of Defense all-service survey found that 55 percent of female service members reported some form of sexual harassment.⁹

The Army study provides revealing information about the military's sex experiment. It found that mixing the sexes caused readiness-busting relationship problems, damaging pregnancy rates, and morale-breaking double standards. These are reason enough to reexamine the mixed-sex policy.

The evidence shows that sex integration retards the ability of the services to perform their critical mission. It also puts young women unnecessarily in grave danger. Women don't have an equal opportunity physiologically to survive in the most physically demanding environment on earth – the battlefield. Mixing young, hormonally charged soldiers in such a pressure cooker setting creates problems that even the leadership skills of a George Patton couldn't solve.

Sex is the problem. Vice Admiral Skip Bowman, the former Chief of Naval Personnel, said, "I'm not stronger than cupid."¹⁰ On the subject of mixing the sexes on military ships, an Atlantic Fleet officer told *The Navy Times*, "When you go out with the girls as well as the boys, something else [sex] can happen."¹¹ The problem increases as the female military population increases.

The sex problem in society is a two-edged sword; perhaps more so in the military, where coercive powers are endemic. Both sexes are at fault. After all, though Aberdeen Proving Ground's drill sergeants were rightfully convicted for abuse of power, some of their female "victims" were willing participants.

It is important to note that sexual desire does not originate with the signing of enlistment papers. A 1997 study in *Military Medicine* of female recruits found that most are sexually experienced.¹² The number of prior sex partners reported by female recruits ranged from one (10 percent) to more than 21 (6.6 percent). The average number of sex partners was three; 26 percent reported at least one prior pregnancy, and 14 percent had had sexual diseases. According to the authors, sex-experienced recruits "will turn to sexual relationships as a means of coping with ... stress [like in basic training]."

Sexual relationships are common throughout the military. During the Gulf War, 64 percent of those who served in mixed-sex units said that they were aware of sexual relationships within their units.¹³ In 1996, one pregnancy was reported every three days among U.S. forces in Bosnia.¹⁴

The Bosnian media joke that U.S. peacekeepers are "breeding like rabbits."¹⁵ Pregnancy rates among female soldiers assigned to Bosnia-Herzegovina have declined only slightly over the past year despite focused and aggressive leadership. The current pregnancy rate is 6.5 percent, and so far 118 women have been sent home due to pregnancy. While leaders don't forbid sex for single soldiers, they expect relationships not to interfere "with good soldiering."¹⁶ Pregnancy is incompatible with "good soldiering," and providing replacements for women who become pregnant has a deleterious impact on unit readiness.

Units pay a high price when female members become pregnant, especially units with large numbers of women. The Army study found that the pregnant soldier "negatively and unfairly impact[s] the unit."¹⁷ Even though pregnancy is a "manageable" problem, it has a serious impact on soldier availability. Expectant soldiers are given limited duty and excused from deployment for up to a year. Female pilots are grounded, and fuel handlers are assigned desk jobs for their entire pregnancies.

A 1997 *Military Medicine* study of one Navy submarine found that 18 percent of its women were pregnant each year.¹⁸ A 1996 Navy survey of women assigned to 50 ships found that 13 percent hoped to get pregnant within the year, almost half don't use birth control, and two-thirds say that they are sexually active.¹⁹ These decisions impact ship readiness.

A 1997 Pentagon study found that single, pregnant, junior enlisted women are the most problematic.²⁰ About 12 percent of Army women are pregnant at any time.²¹ Typical of the problem is the Army's Fort Bragg. A battalion's worth of female soldiers (600-800) is pregnant at any given time at Bragg.²² One-third of these women are single. The average age is 24, and a majority are non-white. Pregnancy-related problems are followed by single parenting issues, especially since single mothers are far more likely than single fathers to have child custody.

The military's sexual concerns include fraternization and dating. All services prohibit fraternization, which is a relationship between an officer and an enlisted person in the same chain of command. The Army study found, however, that more than four in 10 soldiers

thought that relationships between leaders and subordinates could be tolerated. Such relationships severely impact discipline, morale, and unit cohesion. Even the appearance of the use of sex as a coercive tool within the chain of command poisons the atmosphere of trust necessary to an effective fighting unit.

The Army study also found widespread sexual activity among peers. Dating sexualizes the unit and corrodes the professional atmosphere. Cohesion suffers when soldiers pair off and value their romantic relationships above their duties. A break-up can impact everyone who knows either party. Dating within units also affects the morale of the majority who have left their spouses at home and may contribute to distrust between separated spouses.

Finally, according to the Army study, there is a double standard for women that arises from physical, sexual and cultural issues.

All services have different sex-based physical fitness test standards. The Army recently adjusted physical fitness test standards by gender-norming sit-ups and increasing minimum standards for women on the two-mile run and push-ups.²³ Unfortunately, adjustments will not change the fact that the average woman has half the upper-body strength and 70 percent of the aerobic fitness of the typical man. The test's adjustments also included lowering the requirements for young male soldiers, which means a less ready Army. Of course, there is no assurance that our enemies are going to reduce their standards.

Marine Corps Commandant General Charles Krulak labels the double standard "insanity." "What signal do we send to the Corps when, at the end of a mile and a half, all the women drop off to the side and the men keep running?"²⁴

The Army study found that male basic training recruits perceive they are held to a much higher standard than women. Although these perceptions may be true, basic training is easier than it once was because of gender-norming. Recruits can, for example, run around rather than crawl over obstacles. Hikes and outdoor work are replaced by mental exercises. A less physically strenuous basic training regime is incompatible with the demanding goal of preparing recruits for combat.²⁵

One of the most blatant examples of a double standard is found in the Navy. Following the 1994 crash of F-14 Tomcat pilot Lieutenant Kara Hultgreen, it became public knowledge that, in order to get women through F-14 pilot training, standards were compromised. According to Navy pilot Lieutenant Patrick Burns, "Safety and operational readiness were compromised to ensure the women graduated" from flight training.²⁶

The perceived double standard phenomenon begs the question: Should military men and women be treated alike? The Army study found that 51 percent of female soldiers surveyed said they were treated "differently" because of their sex. It also found that men work on the average two hours per day more than female soldiers and that only 50 percent of male soldiers believe women pull their weight. While 30 percent of men said that female soldiers are treated better than male soldiers, only 9 percent of females agree.

A 1996 Army study, "Sustaining Female Soldiers' Health and Performance During Deployment: Guidance for Small Unit Leaders," examined the lessons learned from the 40,000 female service members who participated in the Gulf War. The study found solid reasons for treating women differently. According to the study, women are prone to suffer twice as many lower extremity injuries as men and fatigue much faster due to differences in "size and muscle." Many soldiers were sexually active during the war but the burden of caution fell to the women. Women are thus encouraged to use various forms of birth control but are warned about "some side effects" for NORPLANT and Depo-Provera.²⁷

The Gulf War study recommends that women modify their uniforms for quick disrobing and carry special comfort items for rest stops. This action is necessary, says the Army, because women tend to dehydrate in the field due to the lack of privacy and time constraints. Commanders are encouraged to give women special levels of privacy and longer rest breaks.²⁸

Whether treating women differently is something inborn in men or justified because of female physical limitations, it's a behavior not to be dismissed lightly. In our society, men have always been the defenders of women. This fact and the peacetime evidence that male soldiers treat females differently has significant implications when considering women for combat.

Major Rhonda Cornum, USA, was captured after her helicopter was shot down over Iraq. She reports that she was "violated manually, vaginally, and rectally" by her captors but stoically called this an "occupational hazard of going to war."²⁹ Such treatment might be considered an "occupational hazard," but it is un-American to place women in situations where they might be raped by enemy captors. Strangely, men are asked to respect their female comrades in training but to deny their comrades' femininity in combat.

Military feminizers won't stop until all exemptions are lifted for women, including ground combat. Since 1994, 260,000 combat exemptions have been lifted for women. Further lifting might provide more "jobs," but it will also make women more vulnerable to violent death and the potential for sexual assault.

Expanding eligibility of women to include combat assignments could make women vulnerable to a future draft. If women are eligible in the name of equality to serve in combat positions, then it will likely be argued that they should be eligible in the name of equality to be drafted. A likely Supreme Court challenge based on gender discrimination and the military's new combat assignment policy may lead to the imposition of future female draft registration.

It's time to admit that integrating the sexes within the military has gone too far. Even the best leadership cannot regulate what God has created -- sexual attraction between men and women.

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SEXUAL MISCONDUCT IN THE MILITARY -- WHY IT MATTERS

by
Robert L. Maginnis

*This speech was delivered before the Association of the Bar of the City of
New York on March 18, 1998.*

I want to thank the bar association and the Committee on Military Affairs and Justice for the opportunity to join this distinguished panel.

Last week, Martha Radditz asked me to address military culture and explain the need for the adultery law.

Let me begin, however, with a little biographical perspective. I have examined military culture as both an insider for 24 years and now for five years as a Washington-based military analyst. My active duty service began in 1969 at West Point and continued until I retired in 1993. I spent most of my career with operational infantry units. My last Army assignment was in the Pentagon, where I served as an Inspector General investigating sexual misconduct of senior officials and as a member of the task force that wrote the "don't ask, don't tell" policy. Throughout my active service, I published many articles about military personnel issues.

The military as a culture is unique because it's not just a job -- it's a commitment to a most serious calling -- a commitment to die at the behest of the commander-in-chief. The culture demands camaraderie, absolute trust, and teamwork.

Take the example of a young Marine officer in Vietnam. One of his men was wounded and lying in an open field. While bullets were flying, the platoon commander ran to his wounded Marine, picked him up, and started back to his position. Suddenly a North Vietnamese soldier stepped from the jungle and shot the officer in the chest at point blank range. The officer, still with his wounded comrade on his shoulder, reached out, grabbed the rifle from the enemy, and beat him to death.

This is an example of what it takes to be a combat military leader. The military is unique among all professions. It's not a job. It's a way of life!

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Any discussion of military culture should begin by defining the military's mission. Simply, our armed forces exist to defend American interests both at home and abroad.

Overseeing this vast organization of 1.5 million members effectively takes well-informed leaders who appreciate and understand the military's mission, its capabilities, and culture. Unfortunately, too few of our current civilian leaders have served, and I believe their lack of service experience has resulted in misuse of our forces.

Close to half of the men in the Senate are veterans, but less than one-third (31 percent) of House members have served. One-fifth of Senate-confirmed Clinton appointees, and only four percent of the White House staff, are veterans. Neither the Secretary of Defense nor his deputy served in the military.

An Army officer explained the difficulty posed by civilian leaders who don't understand the military. "If Clinton tells an 18-year-old to go fight, he expects him to go whether or not he thinks it's a good idea. Yet he [Clinton] didn't think Vietnam was a good idea; he didn't want to serve, and he didn't. I'm not saying he didn't make a morally responsible choice. But given what he does [command the armed forces], it's a problematic choice."

To command the military, a civilian must have the military's respect. To earn that respect, the civilian must demonstrate an understanding of military culture.

The first thing a civilian leader should understand about military culture is that the military must focus constantly on its primary mission, which is to win wars.

Since the end of the Cold War, our military has been seriously distracted from the task of preparing for the next war. In part, it has been trying to define how and where future battles will be fought and modify its structure and technology accordingly. During the same period our military has been radically downsized and the Pentagon's budget share has been cut to historic lows. Meanwhile, the operational tempo has increased threefold for mostly other-than-combat missions.

Presently, military planners are trying to anticipate future personnel needs. Not surprisingly, the services believe they will require special people to run the future military. These soldiers will need to be self-confident, creative, technically competent, and free from outside distractions. They may be required to operate in small teams far from command and control centers. Unfortunately, recruiting forecasts are dismal. Pentagon focus groups indicate that the desire to serve among the pool of likely candidates is rapidly declining.

This phenomenon should be troubling for the military and the country. The military has long turned out good citizens who seek leadership, practice discipline, and believe in public service.

The military focuses on building character -- in the sense of resilience, courage, and leadership. It gives young Americans responsibilities foreign to most civilians.

These young people grapple with moral dilemmas most civilians never face, such as when to put your life on the line for others.

An army lieutenant who had graduated from Princeton commented on learning in the military. "You learn arrogance in the Ivy League. You learn humility in the Army, because some guy from a college you've never heard of knows a lot more than you do."

The military is unique in its ability to remake young people into disciplined apprentices. A former U.S. commander in Europe explained the problem of remaking today's "Nintendo" youth. "The values necessary to defend the society are often at odds with the values of the society itself. To be an effective servant of the people the Army must concentrate, not on the values of our liberal society, but on the hard values of the battlefield."

A young Marine explained this tough transformation process. "They break you down to ground zero -- and then build you up. You realize that you can be a leader, that you have all these qualities you never knew you had."

To appreciate this process, I would commend to your reading *Wall Street Journal* writer Thomas Ricks' latest book, *Making the Corps*. Mr. Ricks describes the breaking down process and then the building up of team-focused young leaders. It's a marvelous anthology.

Understanding basic training is only the tip of the military culture iceberg. I thought perhaps you might grasp the soldier's culture more quickly if I provided a series of word snapshots that profile an Army soldier but also apply generally to sailors, marines and airmen. I've divided these snapshots into two categories: readiness and family. First, consider readiness snapshots.

- Soldiers come from diverse groups. There tends to be a larger proportion of African-Americans in the military than in the general population. Seven percent of the Army's generals are black, as are 11 percent of all officers and 30 percent of enlisted personnel. Fourteen percent are female. That's up from less than two percent 20 years ago. Most (90 percent) recruits have at least high school education, and they tend to be more religious than the general population. They see the military as a stepping stone to the future.
- The military is a socialist meritocracy. It functions not on money but on nonmaterial recognition like awards, good reports, and slaps on the back.
- Soldiers work long hours and often on weekends. They can't quit and if they run away they'll be found and jailed.

- Soldiers have little choice about work setting and bosses. Most complaints about either will likely fall on deaf ears.
- Soldiers eat and sleep in austere or primitive group settings. Higher rank earns slightly improved conditions.
- Military food ranges from good to terrible. Many soldiers carry containers of hot sauce to hide the taste of field rations.
- Pay increases with rank and time in service. Forty-three percent of soldiers receive special allowances and incentives such as imminent danger pay, jump pay and flight pay. Soldiers can request to retire after a minimum of 20 years on half pay. 300,000 servicemembers leave the military each year.
- Soldiers look alike. They wear uniforms that have subtle differences such as rank and unit patches. They must comply with strict grooming standards.
- Soldiers are always on duty. They can be ordered back from vacation and put in double jeopardy with regard to legal infractions. A traffic ticket earned while on leave first goes to the soldier's commander who might tack on additional punishment for unbecoming conduct. A soldier can be jailed for five years for writing a bad check or 15 years for hitting the boss.
- One-third of the military relocates each year, often to farflung places in foreign cultures.
- Soldiers are expected to take initiative. They are doers. Even though they may disagree with a mission, once the decision is made, they are expected to execute their orders without further question.
- Late night calls to return to work are common. Soldiers usually leave home in the morning to be in formation before 6 a.m., and their days last at least 12 hours.
- Deployable soldiers update their last wills and testaments once a quarter -- a clear sign of the tenuous nature of life in the military.
- They get regular vaccinations and now anthrax boosters. They are often guinea pigs for new vaccines.
- Soldiers exercise daily to stay in top physical condition. Infantrymen run five miles or march 20 with heavy packs regularly.
- Soldiers constantly train with weapons and talk about killing. They practice tactics and teamwork. Testing under severe conditions is commonplace.

- The soldier never has enough time. If he fails to exceed the tough standards, he'll be docked on his fitness evaluation, which could cost him his career. After all, he's competing with every other Army soldier in his grade for the next promotion. A centralized promotion selection system, run out of Washington, determines his future based on a few pieces of paper.
- Soldier leaders have far more responsibility at earlier ages than civilian peers. A 24-year-old lieutenant is often personally responsible for millions of dollars worth of equipment and the care of perhaps 30 other soldiers and their families. The leader is expected to be psychologist, parent, financial counselor, disciplinarian and friend. He must build the unit into a fighting force.
- When the unit deploys, the leader must make key decisions that have life and death consequences. This applies whether it's during war or peacetime. The leader is expected to set the example through personal endurance. He is expected to take care of his soldiers before himself. An old Army axiom is "officers eat last."
- The leader negotiates with indigenous populations. He becomes the local law enforcer in places like Bosnia or Haiti.
- Soldiers are more politically conservative than the general population. In 1976, one-third of the senior military officers interviewed for a study said they were Republicans. By 1996, that share had doubled to two-thirds.

The 1973 all-volunteer military ushered in married soldiers and all the associated problems. Consider these military family snapshots:

- More than two-thirds of military personnel are married, and most have children. These families live in government housing projects, buy food and household items in government stores, and socialize in government clubs. Even when they live overseas, many soldiers refuse to leave the comfort of military bases. Few speak foreign languages.
- Soldiers have infrequent contact with their families. Crises at home often go unnoticed for deployed soldiers. This adds to the family's trauma and frequent sense of abandonment.
- Divorce and domestic violence have skyrocketed in recent years tracking with the increase in deployments.
- 65 percent of military spouses are in the labor force, and military families include 300,000 children under age 12. The Pentagon can meet only half the need for child care.

- One-third of military families live in government family housing. Much of this housing is in desperate need of repair. For the two-thirds who live off post, housing allowances don't match commercial housing costs. This imbalance can force these families to live in inadequate housing.
- Few soldiers can afford to buy homes, and, if they do, Uncle Sam has no obligation to help them sell before reassigning them to the other side of the world. Not being able to sell a home often means the soldier must go to the next duty station alone or choose to accept an unaccompanied overseas assignment. In either event, the family suffers.
- Soldiers often can't tell their spouses where they are going or when they'll return. Most soldiers have missed children's birthdays, anniversaries, and their children's births.
- When the soldier relocates, his few possessions are often treated carelessly by low-bid movers. Three military moves typically reduce most furniture to worthlessness.
- Soldier families share a socialized medical system that lacks a smile. Dependent medical care ranges from good to poor, and most soldiers can't afford to use civilian physicians. Waits for services are long.

As you can see, the military's culture is different from that of the typical American workplace. The culture's uniqueness, I believe, makes it especially vulnerable to sex problems.

Former Secretary of the Navy Jim Webb explains why the military is different and why its mission is values-driven:

Those who serve together must behave toward one another according to a set of unassailable and equally enforced standards: honesty, accountability, sacrifice, and absolute fairness in risk, promotion and rewards. The ultimate issue is trust: upstream and downstream.

Favoritism of all types must be eliminated. ... We all know there is no greater or more natural bias than that of an individual toward a beloved. And few emotions are more powerful, or more distracting, than those surrounding the pursuit of, competition for, or the breaking off of amorous relations. In the administration of discipline, benefits, and life-threatening risk, it takes an unusually strong personality to set aside passionate feelings when denying a spouse or lover a much-desired benefit or when exposing that person to great risk.

This explains in part the problem created when men and women are mixed in the military culture. Romances take place, and they can threaten fairness.

Adultery is a gripping problem with readiness implications; it, too, can threaten fairness.

As explained earlier, two-thirds of servicemembers are married, which makes the adultery law important. A 1997 Pentagon report to the House National Security Committee warned, "Given the overwhelming evidence of the stresses being suffered by military families as a result of the high pace of operations, the health and resiliency of the military family has already become a serious readiness issue."

This view was recently restated by a young sergeant. He told the *Washington Post*, "You have young men and women in young marriages with all the pressures of long separations and very unpredictable deployments. Somebody is always doing something."

No doubt, infidelity has always been a military problem. Historically, the military has used the adultery law as a hammer over the soldier's head to keep him faithful to his spouse and to keep him focused on his military tasks. Last year, 174 courts-martial cases included adultery charges. Adultery, like other sexual offenses, may really be abuses of power that undermine order, cohesion, and effectiveness in a life-or-death environment.

However, not all adultery cases are treated the same. The commander has the discretion to fit the punishment to the situation. For a soldier to be punished, the adultery standard requires that the offense demonstrate an adverse impact on "good order and discipline" or "brings discredit upon the armed forces."

Consider some examples of how different commanders have used the adultery provision:

#1: Many of you have heard that President Clinton's former Marine One helicopter pilot is alleged to have had an affair with his military neighbor's wife. The base commander decided to handle the case administratively. This keeps the case out of the public's eye. The case could result in a discharge or a slap on the wrist.

#2: Last week, a Fort Benning, Ga., soldier was convicted of eight counts of adultery which were linked with assault charges. The soldier was given 15 years confinement.

#3: An Army captain in Kansas had an affair and tried to murder his wife by pushing her out a hotel window. Fortunately, she wasn't killed. The civilian authorities failed to win the attempted murder case, so the military court-martialed the captain for adultery. He went to jail.

#4: When general officers are alleged to be involved in adultery, the military often determines that the general's actions brought discredit to the service and he is quickly retired. These cases are seldom publicized.

An Air Force wife told of her husband's affair and then explained how she benefited from the adultery policy. She explained that it was used as leverage to force her husband into counseling. "Either let's go voluntarily," said the wife, "or I'll report it and make it official and you'll be compelled to go." She blamed her husband's affair in part on the stress of military life.

Adultery is not a victimless crime. In the military, both the offended spouse and the unit suffer. Adultery hurts fairness, creates resentment, and damages families.

In conclusion, the military has a unique, value-driven culture. There is no room for relativism because success on the battlefield demands fairness, absolute trust and high morale. Sexual tensions, whether intended or not, damage the military's culture and undermine its readiness.

Thank you.

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A Chasm of Values

Lieutenant Colonel Robert L. Maginnis, US Army

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...values are...instilled in him or her since birth. The military looks to have the Army's institutional values...formally established during the Civil War and reinforced during the Spanish War... He disengages from the values...instilled in the Army and... the Army must... of these... will change.

FOR YEARS the Army quickly integrated young people. The integration was simplified by a general congruence of values—the recruit's and the Army's—or the recruit's willingness to completely adopt the Army's values.

Integrating future recruits may be more difficult. The future recruit's value system will be formed in a society that is becoming permissive in terms of right and wrong. His values may be

...values are...instilled in him or her since birth. The military looks to have the Army's institutional values...formally established during the Civil War and reinforced during the Spanish War... He disengages from the values...instilled in the Army and... the Army must... of these... will change.

The views expressed in this article are those of the author and do not purport to reflect the position of the Department of the Army, the Department of Defense or any other government office or agency.—Editor

The Army succeeds in the value transformation and inculcation process because of the disciplined movement of the soldier through carefully structured rites of passage such as basic training, advanced individual training, unit training programs, basic noncommissioned officers courses and others. These rites of passage . . . seed, nourish and grow the institution's values.

they have encountered in their past civilian lives. These experiences are attributed to powerful liminal processes, which create intense comradeship and egalitarianism.⁴ The success of these processes is attributed to the Army's unique and pervasive culture.

The Army succeeds in the value transformation and inculcation process because of the disciplined movement of the soldier through carefully structured rites of passage such as basic training, advanced individual training, unit training programs, basic noncommissioned officers courses and others. These rites of passage are the transmitters of Army values. They seed, nourish and grow the institution's values.

The Army's liminal processes conquered their toughest challenge during the Vietnam years. This was a time of racial disharmony, nonviolent law breaking, drug abuse and sexual and female liberation. It was also a time when the draft accessed people into the Army from all levels of society. Somehow the Army's value-producing liminal processes took a heterogeneous group of people from a troubled society and quickly formed them into relatively cohesive fighting units. Obviously there were problems, but the processes worked even during the worst of times.

Those same time-proven processes serve the Army today. They were especially successful during the fiscally prosperous 1980s. The Army's future challenge is to monitor these liminal processes to ensure they are not accommodated to society's paradigm shift (of changing values).

History of Army Values

The Army's values can be traced far back into Western history and Thucydides' History of the Peloponnesian War (431-404 B.C.). Thucydides describes a discussion that took place be-

tween Athenian envoys and Melian representatives. The Athenians employed a "might makes right" argument. The Melians refused to yield and were defeated. This history suggested limits on the methods of waging war, the treatment of noncombatants and the treatment of prisoners and reprisals. This was an early attempt to define the rules (values) for armies.

Saint Augustine developed a just war theory, not as a military policy but for European moral theologians in the Middle Ages. However, it also influenced the ethical considerations of armies as they sought to clarify the "rightness" of armed conflict. The theory's eight elements were recently evidenced during Operation Desert Storm.⁵

- The theory says there must be a just cause. Desert Storm was necessary to repel Iraq's unjust aggression.
- Competent authority must authorize the use of force. In this case the United States and the lawful governments of the international community sanctioned the action.
- The motivation must be proper. The coalition's intention was to remove Iraq from Kuwait and to protect human rights. It was not to punish Saddam Hussein.
- Armed conflict must be the last resort. The coalition tried to peacefully resolve the conflict before resorting to war. Unfortunately, Saddam Hussein refused to accept the peace initiatives.
- There must be a high probability of success. The prospect of success for the coalition was absolute. The entire world was arrayed against Iraq.
- The goals must be proportionately balanced. The costs of war were measured against the anticipated outcome (a free Kuwait). The

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outcome was considered worth the price in terms of lives and resources.

- The military means must be proportional to the evil to be overcome. The forces arrayed against Iraq and the conduct of the campaign were commensurate with Iraq's military might and naked aggression.

- Noncombatants must be given immunity from the ravages of war. The coalition forces established strict targeting guidelines in order to avoid collateral damage to civilians. The high technology smart munitions simplified and guaranteed this task.

These eight elements communicate an ethic for fighting a just war and confirms *Desert Storm* was a just war. The US Army appeared to abide by the elements of the theory. This suggests Army values encompass the values that undergird the just war theory.

The foundational values for the US Army were formally codified by Professor Francis Lieber and approved by President Abraham Lincoln in 1863. These 159 articles, called "Instructions for the Government of Armies of the United States in the Field," represent ethical concerns about the way wars are waged. They influenced how the Army trained for and conducted war.

The Lieber Rules were replaced in 1914 with the Law of Land Warfare. This law, the values that undergird the Constitution and the rich ethical framework built on these documents, as well as the Code of Conduct, form the framework for the modern Army values summarized in the Army's ethic and the soldierly qualities. These values are loyalty (to the nation and unit), personal responsibility, selfless service, commitment, competence, courage and candor.⁶ The first three are institutional values and the final four are character values. They are the heart and

soul of the Army.

Values are the bottom line for the Army. What the Army is as an institution is legitimated in terms of its values. Its reason for being transcends individual self-interest in favor of a higher good. The Army is an institution devoted to promoting the preservation of the nation through the use of military force when necessary. This high calling and the inherent dangers of armed conflict require a strict adherence to a set of ethical guidelines. Compliance with these guidelines is not negotiable.

Societal Trends

According to General Walter T. Kerwin, "The values necessary to defend the society are often at odds with the values of the society itself. To be an effective servant of the people the Army must concentrate, not on the values of our liberal society, but on the hard values of the battlefield."⁷ A recent Los Angeles Times survey suggests American societal values are changing for the worse. Sixty-four percent of the respondents said the nation was undergoing a period of moral decline.⁸

Corporate leaders recently met at Georgetown University to discuss value trends. They reported a rapid erosion of moral and ethical values in American businesses. They worry that the widespread lack of honesty, fairness, reliability and responsibility will lead to lawsuits, institutional instability and an erosion of respect for businesses.⁹ The reported value trend is significant for the Army because society influences the future stream of recruits and societal trends will inevitably influence internal Army value building processes.

The alleged value shift is evidenced by the fundamental changes that have occurred within

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society's traditional institutions. These institutions include: family, school, religion, the media and government. They promote values that are transferred to future recruits. Consider the changes within the first value-influencing institution, the family.

The typical American family of the 1950s consisted of a working father, a stay-at-home mother and one or two children. Nearly 70 percent of all households fit that description. Today, the typical 1950s style family constitutes only 15 percent of all households.¹⁰ The structure of the family has changed.

One family in six is headed by a single mother. Americans are having 1.7 children and then too often visit the doctor for sterilization.¹¹ As a result of this dynamic, America is falling short of the 2.2 zero population replacement rate.¹² Many women no longer regard having babies as self-fulfilling. These would-be-mothers seek jobs outside of the home. Approximately 79 percent of women with no children under 18 work.¹³ In many instances this is due to financial necessity. Finally, working mothers with children at home often leave their offspring with child-care providers.

There is empirical evidence to suggest young children frequently placed in child care may develop weak and insecure bonds with their parents, bonds that are crucial to intellectual and emotional development. Studies suggest some of these children display more serious aggression and less cooperation, less tolerance of frustration, more misbehavior and a pattern of social withdrawal.¹⁴ The long-term impact of commercial child care for future recruits is not clear.

The contemporary American black family has very serious problems. These problems are, in large part, due to the historical lack of economic

and social opportunity for blacks. Specifically, 55 percent of black families with children under 18 are maintained by single mothers. The black father is too often not available to provide parental influence. Approximately one in four young black males are behind bars, on parole or on probation. According to Virginia Governor L. Douglas Wilder, the "Black family is teetering near the abyss of self-destruction."¹⁵

The American family is also threatened with unprecedented violence. Every year violence in the home strikes two million women and one million children.¹⁶ Up to six million wives are abused by husbands and as many as 4,000 are beaten to death annually.¹⁷ During the period 1967 to 1973, 17,570 women and children died from family violence.¹⁸

Another value-laden family issue is the sexual relationship. In 1943, 89 percent of Americans said sex outside of marriage was unfortunate or wrong.¹⁹ As recently as 1989, this view declined to 36 percent.²⁰ Another survey said 75 percent of contemporary Americans agree it is morally acceptable to be single and have children.²¹

The family as a value-influencing institution is changing. The value impact of these changes for future recruits is yet to be determined.

The school is another institution that contributes to the child's value system. The modern educator has become a social worker. Instead of equipping America's youth academically for the next century, educators are too often counseling them about the abuse of alcohol or drugs, discipline problems, sexual promiscuity, suicide and anorectic and bulimic disorders. A 1989 survey indicated the biggest problems in public schools were drugs (34 percent) and discipline (19 percent).²² Too often the contemporary school is expected to accept some of the responsibility

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that once belonged to the family and the church. It is not faring well on this count.

Americans are aware of the role education could play in transferring values. A recent Gallup poll indicates 84 percent of public school parents want "moral values" taught.²³ Their concern for moral values is justified. A recent study of 250,000 college freshmen found the students "are less concerned with altruism . . . and more concerned with making money and getting power and status than they were in the past. When you put these things ahead of everything else, it becomes easier to rationalize lying or cheating in pursuit of your goals."²⁴

A study commissioned by the Girl Scouts of America and conducted by a Louis Harris research team polled 5,000 high school students in 1989 about their moral beliefs. The team found students tend to be moral in the home and immoral in the classroom. While only 50 percent of the students said they would steal from their parents, 65 percent said they would cheat on exams, and 36 percent said they would lie to protect a friend who had vandalized school property.²⁵

The school's role as a value builder has changed. Fortunately, there is growing national momentum to require schools to reintroduce value-based instruction. It remains to be seen whose values will provide the basis for the instruction.²⁶

Organized religion was previously very influential for the child's value-formation process. Although most Americans claim to be religious, fewer are attending mainline denominational churches. This trend has been especially evident during times of great change.

The local church has experienced great change over the last decade. It is no longer the center of family and community life. It tends to

be more relativistic and its purpose is correspondingly diffused. Members now expect it to serve them as opposed to their serving others. There is less dependence on the clergy and less tendency to become a member of a particular church. Finally, the community church or non-denominational "mega-church" often better meets the complex needs of a modern community at the expense of the declining denominational churches.

Organized religion's influence has waned, and the nontraditional church has emerged. Coincidental to the emergence of the nontraditional church is the advent of the New Age Movement, a modern alternative belief system.

The New Age Movement is a fast-growing spiritual, social and political initiative that seeks to transform the individual and society. It counts upward of 10 percent of America's population as believers.²⁷ This movement is a hybrid mix of spiritual, social and political forces. It encompasses sociology, theology, medicine, anthropology, history, the human potential movement, sports and science fiction. The movement promotes a view of the nature of reality that admits to no absolutes. It sees humanity as divine. Many adherents to this philosophy believe good and evil are really one. These adherents include 42 percent of Americans who believe they have been in contact with someone who has died.²⁸ They also include more than half of adult Americans (67 percent) who report having had psychic experiences such as extrasensory perception.²⁹

Gallup reports the New Age Movement is "The fastest growing alternative belief system in the country."³⁰ The New Age Movement and religious organizations will impact the values of future recruits.

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VII Corps engineers heading out to recover an armored personnel carrier near Iraqi positions, 23 February 1991.



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The media (television, radio, the printed word, movies and art) is an institution that has increased in its diversity and impact. For example, movies are becoming more permissive. The once subtle silver screen innuendo is now broadcast in unadulterated, often amoral and graphically violent scenes. Many movie heroes promote bankrupt lifestyles characterized by acts of violence, drug abuse, sexual promiscuity and questionable ethics. School officials complain the film media is adversely influencing America's children.

Television networks (to include 6,600 cable systems) leave a daily impression on most children. After all, the average child spends more time in front of the television than in school.³¹ Consider the impact of the Saturday morning cartoons such as the Teenage Mutant Ninja Turtles. These green amphibians promote aggressive and disrespectful behavior. Many young children mimic the phraseology of these judoist-crazed warriors in the half shell. The afternoon soap operas and evening serials have a similar impact on adult viewers. Serial programs such as "The Simpsons," "Married . . . with Children" and "Roseanne" contribute to the nation's moral demise. They promote ideas that are often contrary to goodness, achievement and family. Consider the way the nuclear family is portrayed. Parents can do nothing right, children are bratty, disrespectful and proud of it. It is of little comfort that 90 percent of Americans recently surveyed said television has gone too far.³²

The media's influence also spans a plethora of reading and other material for every conceivable prurient interest. The decadent contributions of the rap group "2 Live Crew," which celebrated sexual rage, and the scatological work of Robert Mapplethorpe, which legitimized pedophilia,

evidence a growing moral corruptness. These "artists" were tried. Juries of their peers refused to declare their works in violation of pornography laws. The jurors claimed expert witnesses convinced them the works evidence redeeming social value. Indeed, the media influences America's future generations.

The final influential institution is government. Government reflects the societally dictated rights and wrongs (laws). It also provides the muscle to enforce these laws. Unfortunately, the government's track record has not been impressive. Consider the crime statistics. Thirty years ago, the nation experienced one violent crime per three policemen. Today, there are three violent crimes per policeman. Violent crime is evidently out of control. Additionally, the guardians of the law, the local policemen, are under fire. Many Americans believe policemen are unnecessarily brutal when performing their law enforcement tasks.

Politics is often the ugly side of government. Political campaigns have become progressively underhanded and dirty. After the elections, these same politicians often bring their dubious ethical practices into government. They often avoid accountability for unpopular decisions. Additionally, too many government leaders appear to believe right and wrong are matters of personal preference.

The federal government also appears to lack the discipline to balance the budget. This is evidenced by the growing budget deficit. The values of fiscal and personal accountability communicated by government officials are often emulated by individual citizens.

Values Compared

The Army faces a value crisis because many

The New Age Movement is . . . a hybrid mix of spiritual, social and political forces. It . . . promotes a view of the nature of reality that admits to no absolutes. It sees humanity as divine. Many adherents to this philosophy believe good and evil are really one. . . . The New Age Movement and religious organizations will impact the values of future recruits.

influential American institutions communicate ideas that are often contrary to the critical Army values. The Army must either resist the tendency to accommodate society's trends or accept the modern value shift. This choice presents a significant crossroad. Consider the societal trends as they are compared with the corresponding Army values (see figure).

These trends are especially significant for the Army. They may impact on traditional Army values. The impact may not necessarily be harmful; after all, the Army has historically lead the nation in major sociological change: equal opportunity for women and minorities and advancement based on objectively measured merit. However, there is relatively recent evidence suggesting first-term soldiers are not adequately inculcating Army values. This may be the first indication of an accommodation to societal trends via a degradation of liminal processes.

In 1986, the Army chief of staff announced

Army Values	Societal Trends
Loyalty to nation and unit	Distrust of institutions
Personal responsibility	Self-reliance
Selfless service	Less nationalistic
Commitment	Less personal accountability
Competence	Less self-discipline
Candor	More self-fulfillment
Courage	More self-serving
	More avoidance of long-term commitments
	Works to live
	Seeks leisure over work
	Candid if convenient and self-promoting
	Acceptance of alternative views

"values" as the annual theme and conducted an Armywide survey. The unpublished survey indicates the Army's values are not retained by first-termers. The survey team reported 82 percent of respondents noticed a decline in first-term soldier values.³³ This may imply the Army's liminal processes are not completely effective and may have been degraded by societal trends. This survey may be an anomaly, with further study required.

Preserving Army Values

Assuming the traditional Army values are still applicable, the Army should not tolerate soldiers who fail to inculcate them. Soldiers who fail to evidence Army values could eventually and adversely influence changes within the institution. The Army should resist this momentum via four proactive and systemic actions.

First, validate basic values prior to accession. Find recruits who already endorse the base-line Army values. This may be impossible in a democratic society. However, generally speaking, the maintenance of the All-Volunteer Force (AVF) provides a legitimate discriminator. The Army's recruiting standards provide an opportunity to selectively access young Americans who are motivated, smart and cohesive. These people often assimilate easier than others because they are motivated to buy into the "calling" and therefore the associated values.³⁴ As long as the Army continues to be highly selective, the chances are it will attract recruits with generally congruent value systems or people willing to readily inculcate the Army's established values.

Second, training programs must promote Army values. Basic training does this by providing a significant emotional experience during which values are seeded and begin to grow. This

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effort continues during follow-on assignments. Value reinforcement is often best accomplished through the consistent example of leaders who evidence them. Leaders at all levels are key to the process.

Army values also need to be carefully managed in the unit. There must be a conscious effort to be consistent in awards and punishments. Personnel evaluations and other important personnel actions must legitimize the system and the values.

Third, the Army's paternalistic remuneration system must reinforce the traditional value system. It provides security to the soldier and his family. This security communicates institutional caring and unity of purpose and direction.

The Army must sustain this program. It is more than pay and allowances. It does not necessarily have to be competitive with the civilian sector as long as the security and basic needs of the service member are provided. Overreliance on outside civilian contract agencies to substitute for Army-provided services undermines the institution's influence. The trend to reduce dental and medical care for family members is not a reassuring and institutional value-preserving decision.

Finally, the more insular the military community, the better it will reinforce desirable values and minimize society's adverse influence. Overseas and isolated stateside posts enjoy this advantage. These posts tend to provide all services to include recreation and family support. However, the Armywide trend to off-post leased housing and a reliance on the local civilian community for key support services undermines the insular concept.

These actions will foster Army values. However, they cannot completely preclude the slow

contamination of those values by societal trends. Some change is inevitable. This change is best controlled from within by closely monitoring the liminal process.

Acquiescing to the Paradigm Shift

The alternative to the sustenance of the traditional Army values is acquiescence to the paradigm shift. This acceptance has numerous implications for the institution.

A paradigm shift is a fundamental reordering of the way society views the world. It is reflected by the societal trends. Daniel Yankelovich describes this concept in *New Rules*, "We now find our nation hovering midway between an older postwar faith in expanding horizons, and a new sense of lowered expectancy, apprehension about the future, mistrust of institutions, and a growing sense of limits."³⁵ Society's shifting value trends present a challenge for the Army.

Acceptance of change to Army values vis-à-vis the societal trends translates into a number of undesirable outcomes. Less loyalty to the institution and unit will lead to more of an occupational setting. Soldiers might then become viewed as employees who reflect marketplace values. This opens up a Pandora's box of organizational change: unions, time cards, negotiated contracts and more. Less responsibility and candor demonstrated by soldiers will require the Army to increase the number of checks and balances, as well as regulations. This type of change will require a far more bureaucratic institution. Less courage and competence could be disastrous for a highly technical and traditionally courageous institution. Such changes tend to be contrary to Army tradition. These and other changes would create a very different and probably unreliable Army.

The societal trends indicate a fundamental change in national values. The country's primary value-influencing institutions are promoting altered values for future recruits. These altered values are significantly different than the Army's values. The Army must preserve its integrity as an institution by resisting any tendency to accommodate these changed values.

General George C. Marshall addressed the necessity for strong values. "The soldier's heart, the soldier's spirit, the soldier's soul are everything. Unless the soldier's soul sustains him, he cannot be relied on and will fail himself and his country in the end."³⁶ A strong value system is the soul of the soldier and the Army he serves. A fundamental shift in these values could compromise readiness.

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altered values are significantly different than the Army's values. The Army must preserve its integrity as an institution by resisting any tendency to accommodate these changed values. It must do this by sustaining the liminal processes that foster critical Army values. This challenge is vividly articulated in the United States Military Academy's Cadet Prayer. It says, "To choose the harder right instead of the easier wrong and never be content with the half truth when the whole can be won." The Army must choose the harder right by stubbornly resisting the societal trend to change its values. *MR*

NOTES

1. S. L. A. Marshall, *Men Against Fire* (Gloucester, MA: Peter Smith, 1978), 78.
2. George Will, as quoted in "Professional Ethics Is Key to Well-Led, Trained Army," *ARMY* (October 1990):11.
3. Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970), 10. A paradigm shift is a reordering of the way the world is perceived. For the purposes of this article, a paradigm shift is a new way of thinking based on a changing value system.
4. Liminality is a technical psychological term for rite of passage.
5. Joseph A. Fitzpatrick, "Allied Coalition is Meeting All Just War Criteria in the Gulf," *Catholic Standard* (31 January 1991):7.
6. US Department of the Army Field Manual (FM) 100-1, *The Army* (Washington, DC, August 1981), 23-26.
7. Walter Kerwin, "The Values of Today's Army," *Soldier* (September 1978):4.
8. Karlyn H. Keene, et al., "Public Opinion Report," *The American Enterprise* (May/June 1990):111.
9. *The Church Around the World*, Vol 21, No. 5, (Wheaton, IL: Tyndale House).
10. John Nasbitt and Patricia Aburdene, *Megatrends 2000: Ten New Directions for the 1990's* (New York: William Morrow and Company, Inc., 1990), XIV.
11. *Ibid.*
12. This trend may be changing. During the period 30 September 1969 to 30 September 1990, there were 4.1 million live births in the United States, the highest since the 4.3 million births in 1964.
13. Nasbitt and Aburdene, 217.
14. Karl Zinsmester, "Is Infant Day Care Ruining Our Kids?," *Citizen* (February 1989):6.
15. L. Douglas Wilder, "To Save the Black Family, The Young Must Abstain," *Wall Street Journal* (28 March 1991):A14.
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17. *Ibid.*
18. *Ibid.*
19. Karlyn H. Keene, et al., "Public Opinion Report," *The American Enterprise* (November-December 1990):12.
20. Karlyn H. Keene, et al., "Public Opinion Report," *The American Enterprise* (May-June 1990):102.
21. Daniel Yankelovich, *New Rules* (New York: Random House, 1981), 96.
22. Karlyn H. Keene, et al., "Public Opinion Report," *The American Enterprise* (May-June 1990):111.
23. Martin M. Wooster, "Can Character Be Taught?," *The American Enterprise* (November-December 1990):51.
24. *McBee*, 55.
25. Wooster, 55.
26. "Impressions" is a kindergarten-sixth grade curriculum that teaches children to conduct spells and contains violent and morbid stories. This is an example of a value-based curriculum used in certain school districts. Many parents may not agree with the value base of this curriculum.
27. *Ibid.*
28. Russell Chandler, *Understanding the New Age* (Word Publishing, 1988).
29. *Ibid.*
30. *Ibid.*, 21.
31. Stewart Powell, "What Entertainers are Doing to Your Kids," *U.S. News & World Report* (28 October 1985):48. (It is estimated that by high school graduation the average student has seen 18,000 murders in 22,000 hours of television viewing. That is twice as many hours as spent in the classroom.)
32. Television viewer survey by *TV Guide*, 10 November 1990.
33. Guy L. Siebold, "Army Values: Results of Theme Year Research," (U.S. Army Research Institute presentation to the Army Leadership Conference, 9-11 December 1986, Fort Leavenworth, Kansas), 3.
34. A calling is legitimated in terms of institutional values. It usually enjoys high esteem because it is associated with notions of self-sacrifice.
35. Daniel Yankelovich, *New Rules* (New York: Random House, 1981), 24.
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THE EDITORIAL PAGE

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

—Allen H. Neuharth
Founder, Sept. 15, 1982



David Mazzarella
Editor
Karen Jurgensen
Editor of the
Editorial Page
Thomas Curley
President and Publisher

Today's debate: WOMEN IN THE MILITARY

Equality isn't sameness

OPPOSING VIEW Social experimentation is weakening the military. We need to reconsider women's role.

By Robert L. Maginnis

Soldiers guilty of misconduct must be punished, but let's not sacrifice common sense and our national defense on the altar of feminism and political correctness.

It's unconscionable that military supervisors would take advantage of female subordinates. These officers have violated a special trust. But the Army's scandal raises a very serious question: Does placing men and women in forced intimate settings for extended periods promote or detract from military effectiveness?

Desert Storm commander Gen. Norman Schwarzkopf testified to Congress, "Decisions on what roles women should play in war must be based on military standards, not women's rights."

On the modern battlefield, every soldier is a potential combatant, and all should have equal opportunity to survive. Women don't. That doesn't mean women and men aren't equal. They are, but equality is not sameness. Women are not equally equipped to survive in the violent and physically difficult environment of combat because they have 50% less upper body strength and 70% of a man's aerobic fitness.

The Clinton administration removed many exemptions for women in the military. Congress helped by rescinding laws that precluded their combat service. All without considering the findings of the 1992 President's Commission on the Assignment of Women in the Armed Forces.

Integrating the sexes has become a difficult challenge for commanders. Merely raising the women-in-the-military issue is to jeopardize one's career.

Commanders have the nearly impossible task of fighting the enemy while minimizing the impact of sexual tensions, which creates readiness problems, such as increased fraternization, sex-based rivalries and many unwanted pregnancies. Readiness also suffers because many pregnant soldiers can no longer perform their mission and often must be replaced on short notice with less experienced personnel.

The goal of the military is to protect and defend the United States, but social experiments are weakening the armed forces. Those who engage in sexual improprieties must be prosecuted, but the status of women in the armed services must be reviewed in light of reality instead of some mystical feminist agenda. We have a duty to support those who volunteer to serve us.

Robert L. Maginnis, a retired Army lieutenant colonel who served as a Pentagon inspector general investigating sexual improprieties, is director of the Family Research Council's military readiness project.

AR96K2WC

Should Men and Women Train and Go into Combat Together?

There are more than six times as many women in the armed services today as there were in 1967, and more than one-eighth of military servicemembers are female. Their growing numbers have raised new questions about the roles women should occupy in the military and how male and female soldiers can best be trained to serve together.

No

By LCol Robert L. Maginnis, USA-Ret.



What a society gets in its armed services is exactly what it asks for, no more and no less," said military historian Sir John Hackett. America seems naively intent on running the military like a gender-blind corporation, ignoring important differences between the sexes.

Separating the sexes during training and in combat optimizes military effectiveness. Same-sex units affirm that men and women are equal in terms of rights, opportunities, and intellect but different in other significant ways. Women's cognitive contributions are valuable to the armed services, and segregated training provides them the opportunity to focus on those skills.

Gender-blind reformers, however, are using the military as a job corps for women, ignoring the unique features that make mixing the sexes difficult in the military. The facts show that training men and women together decreases the readiness of men and shifts more of the burden of combat to them. They also show that putting hormonally charged young people in close-quarter, high-stress settings leads to sexual jealousies, rivalries, sex favors, and fraternization that damage unit effectiveness, not to mention individual men and women.

According to Marine Commandant Gen Charles Krulak, mixed basic training is "insanity." Training for the battlefield is the most physically demanding task known to man. Women, who have half men's upper-body strength and two-thirds their aerobic fitness, don't have an equal opportunity to survive.

(continues on page 43) AR97J5WC

The Army abandoned mixed-gender training in 1981 because men were experiencing reduced readiness, and sexual tension impeded soldiers from meeting overall training standards. In 1994, it rejoined the Navy and Air Force in training the sexes together but first changed its focus to cognitive, rather than demanding physical, skills.

Ignoring differences like physical capability and sex can frustrate the process of molding soldiers. Basic training is intended to transform recruits quickly from undisciplined adolescent civilians into competent military apprentices. This transformation requires a highly regimented environment, unquestioned discipline, and intense activity.

Sex differences create special problems. The Army sex scandals indicate that young women are vulnerable in a highly structured, coercive, and predominately male-run setting. No one condones sexual misconduct and abuse of authority, and a situation that fosters them must be questioned. Removing sexual temptation from basic training would make it easier for both men and women.

Reformers hope to remove all barriers to women even to the point of allowing them to serve in combat. In 1976, feminists started their assault on the military by forcing the service academies to promote equality at the expense of combat leader training. The trend soon permeated the entire military.

Former Sen. Sam Nunn (D-Ga.) recognized that not everyone supported removing gender barriers. "Basically the [female] officer corps wants total, complete access. But frankly, if you analyze it, the enlisted people don't. ... The reason is because the enlisted women know that they'd be the ones in the foxholes."

While female officers view combat exemptions as a glass ceiling to career progression, enlisted women don't want life in the foxholes because they know that armed combat maximizes the hazard of any physical disadvantage, and they wouldn't

have an equal opportunity to survive.

Some female servicemembers agree that mixing the sexes doesn't work. Gunnery Sgt Beth English, USMC, explains, "It would be incredibly naive for anyone to believe that professionalism would win out over hormones and loneliness."

The Persian Gulf War provided other reasons to exclude women from fighting areas. Twelve percent of the Army's female force is pregnant at any given time. Women suffer twice as many lower-extremity injuries as men and tire more quickly, making them more likely than men to suffer nonbattle injuries. Also, women demand more privacy and longer breaks than men, and mothers (about half the female force) suffer depression more frequently than men. These issues are serious for units preparing for war.

There are other reasons to keep women out of battle, such as vulnerability to sexual assault. Maj Rhonda Cornum, USA, was captured after her helicopter was shot down over Iraq. She reports that she was "violated manually, vaginally, and rectally" by her captors but stoically called this an "occupational hazard of going to war."

Such treatment might be considered an "occupational hazard," but it is un-American to place women in situations where they might be raped by enemy captors. Strangely, men are asked to respect their female comrades in training but deny their comrades' femininity in combat.

The issue of women in the military is the "elephant in the living room." It's time to stop examining this issue and ask whether feminization of the military is helping or hurting women and America's military readiness.



LCol Robert L. Maginnis, USA-Ret., is the director of the Military Readiness Project with the Family Research Council, a Washington, D.C., research and education organization. Maginnis last served as an inspector general in the Pentagon.



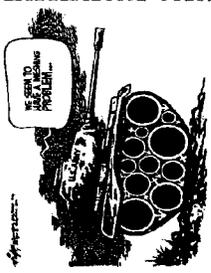
ROBERT MAGINNIS 3984

On Oct. 22, the Pentagon released a study that proves once again that research can be conducted politically correct conclusions.

The study supports the assignment of women to combat. According to The Washington Post, male commanders are resisting the idea of women in combat and instead are being told to "not be surprised." The Post says the study found that the sexes had had little negative effect on military readiness.

Study tilts for women in arms

was correctly assessed, using focus groups dominated by young women and "selected individuals" based upon the military's position. Laura Miller, a sociology professor and one of the study's authors, says the study's Army must "deconstruct" work settings. Soldiers must treat each other as equals, she says. Miller's co-author, Margaret Hartell, compiled a "biased bibliography" of studies from 1949 to 1996. She says the study's findings are "uncontroversial."



Miller and co-author Margaret Hartell compiled a "biased bibliography" of studies from 1949 to 1996. She says the study's findings are "uncontroversial."

used the combat exemptions for women), was a McNamara "white paper" in the 1960s and brought little support within the Pentagon in 1993. Defense Undersecretary Rudy E. Clay, who was then Clinton's top aide, said the study's findings are based on a "microbiological" study. The authors admit the survey was flawed, but insist the results don't matter, which makes the study more than half of those ar-

Army's 1997 Senior Review Panel study found that inappropriate sexual behaviors were high (66 percent of women reported) and "sexual harassment exists throughout the Army." The study also found that 66 percent of women reported sexual harassment. The study's findings are "uncontroversial."

Robert L. Maginnis, a retired U.S. Army lieutenant colonel, directs the Family Research Council.

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Sex Segregation Will Improve Basic Training

To the Editor:

Your Dec. 18 editorial "The New Military Segregation" misses the mark. The commission's mission was to assess ways to make gender-integrated training work, not to eliminate it. The six female and five male commissioners unanimously agreed that separating the sexes in their sleeping areas, but not in training outside the barracks, was key.

It's key because initial entry training is about remaking undisciplined adolescents into competent military apprentices. Housing teen-agers for 10 weeks of their military career in gender-segregated dorms will en-

hance training and won't harm readiness.

It's a non sequitur to compare four years at a service academy to 10 weeks of basic training. Academy cadets have many more supervisors than recruits. Cadets are also highly career motivated and, intellectually, the cream of the crop of high school graduates.

Drill instructors created the informal "don't talk, don't touch" and "three-second gaze at female recruits equals sexual harassment" policies because sex is a major factor among young recruits. Even Patton-like leadership and appeals to

patriotism are no match for raging hormones.

Basic training has suffered in part because of problems with gender integration. More separation will improve training.

ROBERT L. MAGINNIS

Washington, Dec. 19, 1997

The writer is director, Military Readiness Project, Family Research Council.

AR98B1MF

BACK TALK

By Lt. Col. (Ret.) Robert L. Maginnis



Double standard for adultery?

who was reduced in rank to command sergeant major and endured a six-week trial involving 19 allegations of sexual misconduct of which one was adultery. He was found guilty of one charge, obstructing justice, and reduced another grade. Last year the Air Force drummed out 1st Lt. Kelly Flinn, the first female B-52 pilot, for an affair with a married civilian. Flinn's case also involved disobeying

aggravate general officers are processed each year, most are not substantiated. A general officer's affair is a double standard. Where serious allegations are substantiated, the chief of staff administers discipline and the general is usually retired quietly. Last year, Maj. Gen. John Longhouse, who commanded Aberdeen Proving Ground, Md., was forced to retire when an alleged affair was reported to the chief of staff.

adulterically, the military has used the adultery law to keep the soldier faithful to his or her spouse and focused on the military task. In 1995, 174 military personnel were charged with adultery.

The adultery policy is important. A 1987 Pentagon report warns: "Given the overwhelming evidence that the presence of the high pace of operations, the health and readiness of the military family has already become a serious readiness issue."

Adultery is not a victimless crime. Adultery hurts fairness, creates resentment and damages families. The military should retain the adultery policy of an offense where flag officers are involved. Flag officers must receive equal treatment; in some cases this may be jail time.

Lt. Col. (Ret.) Robert L. Maginnis is the director of the Family Research Council's Military Readiness Project. He served as an IG investigator with the Department of the Army Inspector General Agency from 1990 to 1993.

AR98E1MF

in Army general recently retired to avoid disciplinary action for having an affair. His case creates the appearance of a double standard. Should the military keep its adultery policy?

In February, Maj. Gen. David Hale, the Army's deputy inspector general in charge of all investigations, was allowed to retire despite an ongoing investigation of "an alleged four-month sexual relationship with the wife of one of his key subordinates."

Hale denies the charge. The Army's official position about the case is: "At the time of Maj. Gen. Hale's request for retirement, the Army was not aware of any substantiated allegations that would preclude his retirement."

General (IG) investigators decide whether an allegation is substantiated only after all evidence is gathered and the investigation report is approved. This can be a long process. When Gen. Hale became aware the process had begun, he quickly retired.

Allegations of misconduct involving general officers are routinely investigated by the IG. Chief of staff investigations are conducted by the chief of staff for approval and appropriate action. On rare occasions, serious criminal matters are given to the Criminal Investigation Command for resolution.

The adultery policy is not uniformly enforced. Although hundreds of allegations

"Adultery is not a victimless crime. Adultery hurts fairness, creates resentment and damages families."

Army Times

The Independent Weekly

34th Year, No. 40 May 4, 1998 A Gannett Newspaper \$2.25

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ROBERT MAGINNIS

Adulterating the adultery rules

The Pentagon may soon urge President Clinton to lower adultery standards to make the military more like the civilian world. This would be an outrage. The military's readiness-promoting adultery law must stand.

Between 1992 and 1996, 838 military personnel were put on trial on charges that included adultery. A Pentagon panel has recommended downgrading the crime of adultery. The proposed changes would keep adultery a crime but result in fewer prosecutions and impose less serious discharges upon conviction.

Adultery deserves special attention because it tends to be an inside crime. Most military adultery cases involve affairs where both parties are in the service, married to service members, or civilians working for the military.

Old cases like that of Vice Chairman of the Joint Chiefs Gen. Joseph Ralston, who had an affair 14 years ago, would not be considered. Only cases deemed to disrupt morale or smooth functioning would be allowed. The maximum punishment would also be reduced from a dishonorable to a bad conduct discharge.

Adultery is a problem in the military because soldiers too often disregard their vows of fidelity during frequent unaccompanied tours and deployments. Such behavior is fanned by the increased number of women in the ranks and the forced intimate situations young men and women must endure.

The Uniform Code of Military Justice outlines three criteria for adultery prosecution: that sexual intercourse took place, that at the time at least one of the parties was married to someone else, and the conduct was prejudicial to good order and discipline.

Sexual misconduct inside military marriages affects all ranks. The famous case of Air Force Lt. Kelly



Finns, who had an affair with the spouse of an Air Force member, the ongoing case of Army Maj. Gen. David Hale, alleged to have had several affairs with subordinates' spouses, and the recently closed case of Sgt. Maj. of the Army Gene McKinney, who was cleared of adultery charges, are recent examples. Despite increased media attention, few soldiers are prosecuted for adultery alone. In most cases, other serious charges are involved.

The adultery law is important to readiness. Former Air Force Chief of Staff Gen. Ronald Fogleman said, "I truly believe we have to have a higher set of standards than the society we serve." Lowering the services' adultery standard will weaken readiness.

Adulterous relationships in what should be a highly disciplined military weaken the command, open leaders to accusations of favoritism, sap morale, and complicate decision-making.

Arguments such as "what consenting adults do behind closed doors is nobody's business" don't work. A leader's private behavior

does matter. To compartmentalize life in this way is impossible because soldiers are always on duty and subject to military law.

Two-thirds of military personnel are married. Strictly enforced adultery rules vaccinate military marriages for frequent and long separations. A 1997 Pentagon report warns: "Given the overwhelming evidence of the stresses being suffered by military families as a result of the high pace of operations, the health and resiliency of the military family has already become a serious readiness issue."

A technical sergeant told the Air Force Times, "I agree with the regulation against adultery. If I cannot go somewhere without worrying about who is trying to make the moves on my wife, how can I perform my job the way it should be done?"

Adultery is not only destructive to unit morale, but it can also reduce effectiveness and deployability because of the spread of sexually transmitted diseases, and — even worse for the military — it exposes the soldier as a dishonest

person. Honor is absolutely key, and the act of adultery is a violation of trust and commitment.

The marriage relationship is a formal and legal commitment in which two people make a vow of fidelity, "forsaking all others." Adultery is not just about sex, but about breaking a vow, a promised lifelong trust.

Marine Commandant Gen. Charles Krulak labels adultery a lie. "I don't think you can have an effective fighting organization if you have people who lie to themselves." Adultery represents a wanton violation of the most sacred of all possible trusts. If the marriage vow means nothing to the service member, can we trust the soldier's commitment to his country and unit?

For centuries, the U.S. military has severely punished soldiers for cheating, robbing and lying. These acts represent character flaws that can severely damage a military organization, which must necessarily be built on trust. That's why the military, believing such cases are really about honor, prosecutes adultery.

British military historian Sir John Hackett warns, "What a society gets in its armed services is exactly what it asks for." Unless common sense prevails, the Clinton administration will direct our military to become more like the sex-soaked society it serves. Such a move will further erode the trust-based profession of arms and further consume readiness.

In the wake of numerous Pentagon sex scandals, now is not the time to lower the moral goal post. Adultery is not a victimless crime. Adultery damages both families and readiness. It must remain a violation of military law. After all, enforcing adultery laws vaccinate the military community from sex scandals and promotes overall readiness in a highly married force.

Lt. Col. Robert L. Maginnis, U.S. Army retired, directs the Military Readiness Project for Family Research Council.

AR9811MF

Statement of Senator Cleland
Governmental Affairs Subcommittee on Oversight
Hearing on Military Adultery Standards
October 7, 1998

Handwritten signature and initials in black ink, appearing to be 'W. J. P.' with a large flourish above the name.

Mr. Chairman, the subject of today's hearing is the military adultery standards and whether they are changing. This is a subject that lies exclusively in the jurisdiction of the Senate Armed Services Committee, and its Personnel Subcommittee, on which I serve as Ranking Minority Member. Unlike civilian personnel issues, military personnel issues (including military justice issues) have no counterpart in other agencies and have no government-wide implications that would trigger the jurisdiction of the Governmental Affairs Committee.

The Senate Armed Services Committee has actively followed the Department's recent review of the military standards pertaining to adultery and good order and discipline, and is fully aware of the clarifying guidance proposed by the Department. Over the last month, our Committee has had an opportunity to consider the nominations of new Assistant Secretaries for Manpower and Reserve Affairs in each of the three military services; new General Counsels for the Navy and the Air Force, and a new Judge Advocate General of the Navy. In the course of considering these nominations, we have met with the nominees and asked about a broad range of issues, including those that are the subject of today's hearing. I have no doubt that we will hear about these issues from a broad range of Department of Defense witnesses during the course of hearings held by the Senate Armed Services Committee and its Personnel Subcommittee next Spring.

By contrast, today's hearing will hear from a single panel of witnesses, none of whom represent the Department of Defense, none of whom currently serves in the Armed Forces, and none of whom participated in the Department's recent review of the military standards pertaining to adultery and good order and discipline. While I recognize that the absence of DOD witnesses is the result of a request from the Chairman of the Armed Services Committee, based on the jurisdiction of that Committee, I think it is unfortunate that we would consider an issue on which the Department of Defense has unique expertise, and which has been studied by the Department for the last year, without a single civilian or military representative of the Department present.

Mr. Chairman, I understand that you have called this hearing to address concerns that the military standards for good order and discipline and adultery may have in some way changed. Let me assure you, as the Ranking Member of the Senate Subcommittee with jurisdiction over the issue, that they have not. Deputy Secretary of Defense John Hamre directly addressed this issue in a July 30, 1998, letter to the Chairman of the Armed Services Committee. Secretary Hamre's letter states:

"First and foremost, there has been no lowering of standards with respect to adultery. Second, there will be no change in the Uniform Code of Military Justice. Third, there has been no recommendation to change the maximum permissible punishment for those allegations of adultery that result in findings of guilty at court-martial. The proposed changes to the manual for Courts-Martial provisions on adultery are neither designed to -- nor do we expect that they will -- make it more difficult to prosecute at court-martial those cases of adultery that warrant disposition at that level. They are designed to provide commanders straightforward guidance, drawn from longstanding military practice and decisions of the military appellate courts, as they exercise their broad discretion to address allegations of adultery.

"The Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations,

and the Commandant of the Marine Corps were active participants at every step in the review of this issue, were fully consulted, and support Secretary Cohen's decision."

I ask unanimous consent that the full text of Secretary Hamre's letter be included in the record. I would also ask that an August 28 letter from Secretary Cohen to the distinguished chairman of this subcommittee be included in the record. His comments echo much of what I have just read.

Mr. Chairman, I understand that you had originally intended to have the Inspector Generals of the Army, Navy, and Air Force testify at this hearing. Two of these three distinguished military officers had prepared and submitted testimony before being told that they would not be permitted to testify. Each of these officers has stated that the Secretary's recent announcement on military policies concerning good order and discipline would not change the substantive rules regarding adultery or change the way in which such cases are investigated and prosecuted.

The testimony of Lt. General Larry R. Jordan, the Inspector General of the Army states:

"In regard to the proposed change to the Manual for Courts-Martial, provisions concerning the offense of adultery, the existing definition and elements of proof remain unchanged. . . . The proposed guidance makes it clear that adulterous conduct is unacceptable and remains an offense under the Uniform Code of Military Justice. . . . The proposed changes to the manual for Courts-Martial will not require a change in the way [Inspector General] conducts investigations because they merely restate the law as it exists in statute and case law, while providing guidance on how to apply the law."

The testimony of Lt. General Nicholas B. Kehoe, the Inspector General of the Air Force

states:

"[A]s proposed by the Secretary of Defense, the new guidance will have no appreciable impact on the handling of these cases in the Air Force. As stated by Secretary Cohen, there are no changes in the Code and there will be no lowering of standards. . . . In summary, our procedures and policies have not changed."

I ask unanimous consent that the prepared statements submitted to the Subcommittee by these two distinguished officers be included in the record.

Let me just say that I appreciate the difficult nature of this matter. Adultery, whenever and wherever it occurs, is wrong. Period. It is important that we not send any message that such behavior is to be condoned or excused. I do not believe that the changes to the Manual for Courts-Martial send that message. Indeed, I believe they reaffirm the basic position that such behavior is wrong. Clearly stated in the first explanatory provision in the proposed changes are the following words:

" Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member."

Having said that, I think it is important that we keep our eye on the ball here. There are three elements to the crime of adultery for purposes of determining whether a service member has violated the Uniform Code of Military Justice. Two elements are obvious: one being wrongful sexual intercourse, the other being such intercourse involving either individual being married to someone else. These factors alone, while serious and certainly indicative of wrongful

behavior, do not constitute a Court Martialable offense.

The third element is the key element. The conduct of the accused must be prejudicial to good order and discipline in the armed forces or be of a nature to bring discredit upon the armed forces. In effect, unless the adulterous conduct has an adverse impact on the military, an individual cannot be found guilty.

I believe that is an important point to make. Many have questioned the outcomes of recent high profile cases involving adultery. I do not believe it is necessary to reopen those specific matters, but I do believe it is important to point out that in each case, an evaluation had to be made regarding the impact of the alleged behavior on the military. It is obvious that different circumstances could result in different conclusions. Given this and the potential for bias within the system, it seems clear to me that the establishment of a uniform set of guidelines, based of previous experience and prior court rulings, for the handling of such cases is necessary. That is what the department has attempted to do with this proposed change to the MCM. I applaud their efforts to provide some order and consistency in the process. I look forward to working with the department, as the Ranking Member of the Personnel Subcommittee, to insure that progress is made in this area.

Mr. Chairman, let me just say that I appreciate the strong convictions you hold on this matter and other sensitive issues involving military personnel such as the issue of gender integrated training. While we have disagreed on some of these questions, I deeply respect the fact that you have taken stands on these matters and worked for what you believe is right. I trust this hearing will be fair and open-minded. Our soldiers, sailors, airmen, and Marines deserve nothing less.

I yeild the floor.

SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010
JUL 30 1998



Honorable Strom Thurmond
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I understand that there have been discussions concerning the Department's recent announcement on military policies concerning good order and discipline and adultery. I want to underscore several elements of that announcement.

First and foremost, there has been no lowering of standards with respect to adultery. Second, there will be no change in the Uniform Code of Military Justice. Third, there has been no recommendation to change the maximum permissible punishment for those allegations of adultery that result in findings of guilty at court-martial. The proposed changes to the Manual for Courts-Martial provisions on adultery are neither designed to – nor do we expect that they will – make it more difficult to prosecute at court-martial those cases of adultery that warrant disposition at that level. They are designed to provide commanders straightforward guidance, drawn from longstanding military practice and decisions of the military appellate courts, as they exercise their broad discretion to address allegations of adultery.

The Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps were active participants at every step in the review of this issue, were fully consulted, and support Secretary Cohen's decision.

The Secretary's directive to the Service Secretaries on good order and discipline will bring more uniformity to the Service policies. The Army, for example, will move to a more restrictive policy under the Secretary's directive.

Thank you for your continued interest.

Sincerely,

cc: Honorable Carl Levin
Ranking Minority Member



THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

Honorable Sam Brownback
United States Senate
Washington, DC 20510

AUG 28 1998

250.4

Dear Sam:

Thank you for your letter concerning the enforcement provisions for the punishment of adultery under the Manual for Courts-Martial (MCM). In response to the points raised in your letter, I want to underscore several elements of our recent announcement with respect to military policies concerning good order and discipline and adultery.

First and foremost, there has been no lowering of military standards with respect to adultery. Second, there will be no change in the Uniform Code of Military Justice (UCMJ). Third, there has been no recommendation to change the maximum permissible punishment for those allegations of adultery that result in findings of guilty at court-martial. The proposed changes to the MCM provisions on adultery are neither designed to -- nor do I expect that they will -- make it more difficult to prosecute at court-martial those cases of adultery that warrant disposition at that level. These changes provide guidance for commanders, consisting of a list of non-exclusive clarifying factors, based on longstanding military justice practice and current appellate court decisions. The guidance will enhance the ability of commanders and other military personnel to determine, as has always been required under the UCMJ, when the conduct is prejudicial to good order and discipline or is service-discrediting. This guidance is designed to provide commanders straightforward assistance, as they exercise their broad discretion to address allegations of adultery.

The Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps were active participants at every step in the review of this issue, were fully consulted, and support my decision. While these proposed changes to the MCM must still go through the public comment process, I believe that the changes, if adopted, will assist commanders responsible for making these difficult decisions, will result in consistent dispositions under the Uniform Code of Military Justice, and will assist in maintaining public confidence in the military justice system.

Thank you for taking time to express your concerns regarding this important matter and for your continued interest in military justice and our Armed Forces.

Sincerely,

28 AUG 1998

RECORD VERSION

STATEMENT BY

LIEUTENANT GENERAL LARRY R. JORDAN
THE INSPECTOR GENERAL
UNITED STATES ARMY

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
RESTRUCTURING, AND THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

SECOND SESSION, 105TH CONGRESS

ON CHANGING MILITARY ADULTERY STANDARDS

7 OCTOBER 1998

2007
[Signature]
Office Chief of Public Affairs
Security Review Office
SAPA-OSR, Room 2125
Washington, DC 20310-1505

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Albert G. Parmentier
Date: 9/10/02

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INTEGRATE FOR FREEDOM OF INFORMATION
AND SECURITY REVIEW
DEPARTMENT OF DEFENSE

99-C-0002

STATEMENT BY
LIEUTENANT GENERAL LARRY R. JORDAN
THE INSPECTOR GENERAL
UNITED STATES ARMY

Mr. Chairman and members of the Committee:

Thank you for the opportunity to speak to you today. The DAIG investigates allegations of misconduct against senior officials of the Department of the Army at the direction of the Secretary of the Army, the Under Secretary of the Army, the Chief of Staff, Army, Vice Chief of Staff, Army, or myself. These allegations of misconduct may include violations of policy, regulation and law.

Allegations of adultery are processed in the same manner as other allegations of misconduct. Upon receipt of an allegation, an inquiry is initiated to determine the allegation's credibility. If determined credible, a formal investigation is initiated. DAIG investigations develop evidence through documents and sworn testimony. After legal review, a fact based report that either substantiates or unsubstantiates the allegation is submitted to the directing authority for approval. In the case of adultery, the standards used are the elements of proof contained in the applicable article of the manual for courts-martial. Once the report of investigation is approved, the directing authority takes action that he or she deems appropriate.

In regard to the proposed changes to the Manual for Courts-Martial, provisions concerning the offense of adultery, the existing definition and elements of proof remain unchanged. Those three elements of proof are that: 1) the accused wrongfully had sexual intercourse with a certain person; 2) at the time, the accused or the other person was married to someone else; and 3) under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. The proposed change to the Manual for Courts-Martial provides additional guidance to assist commanders and other military personnel to better understand when conduct is prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. The proposed guidance makes it clear that adulterous conduct is unacceptable and remains an offense under the uniform Code of Military Justice.

The proposed guidance provides commanders a list of non-exclusive clarifying factors to assist them in determining whether conduct establishes the elements of proof for the offense of adultery. The list of factors for consideration is not intended to be all-inclusive or to indicate that one factor should necessarily be given weight above the others. The guidance also emphasizes the long-standing military justice policy that commanders dispose of all offenses under the Code, including adultery, at the lowest appropriate level. Finally, the proposed guidance maintains the commander's discretion to apply the appropriate response from a wide range of potential corrective actions. The response will continue to range from counseling and administrative options to non-judicial punishment and

courts-martial depending upon the facts and their impact on unit mission, morale, discipline and cohesion.

The proposed changes to the Manual for Courts-Martial will not require a change in the way DAIG conducts investigations because they merely restate the law as it exists in statute and case law, while providing guidance on how to apply the law. In regard to evidence gathering procedures, the proposed guidance will help investigators focus their inquiry on the specific factors that establish the third element of the offense of adultery. It should be noted that DAIG routinely investigates only those allegations of adultery involving senior Army officials. Those allegations involving non-senior Army personnel are normally handled by the local chain of command.

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SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

STATEMENT OF
LIEUTENANT GENERAL NICHOLAS B. KEHOE

THE INSPECTOR GENERAL
UNITED STATES AIR FORCE

HEARING ON
"ARE MILITARY ADULTERY STANDARDS CHANGING:
WHAT ARE THE IMPLICATIONS"

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
RESTRUCTURING, AND THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

7 OCTOBER 1998

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SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

Thank you, Chairman, for this opportunity to comment on the proposed new adultery guidance as it would affect the Air Force. I will be very brief.

First, as proposed by the Secretary of Defense, the new guidance will have no appreciable impact on the handling of these cases in the Air Force. As stated by Secretary Cohen, there are no changes in the Code and there will be no lowering of standards.

From the new policy, it is clear that adulterous conduct is unacceptable and remains, as it always has been, an offense under the UCMJ when the conduct is prejudicial to good order and discipline or brings discredit on the service. The new guidance does give commanders useful factors to consider in determining if adulterous acts are prejudicial to good order and discipline or of a nature to bring discredit on the service.

I will highlight how the process works in the Air Force and would emphasize that the same procedures would apply for offenses other than adultery.

Historically, adultery complaints are most often handled outside of the Inspector General complaint system, normally by commanders in the field. That means that upon receiving credible information that a military member under his or her command may have committed adultery, a unit commander would look into the allegation.

In the majority of these cases, the commander conducts what is known as a commander directed inquiry. In some cases, the commander may refer the matter to other investigative organizations such as our Security Forces Investigators or to the Air Force Office of Special Investigations. All other allegations of adultery are investigated within the IG complaint system. In all cases in which the allegations are substantiated, the commander will review the investigation results and take appropriate corrective action. As with any other allegation, the

proposed guidance emphasizes that commanders should dispose of allegations of adultery at the lowest appropriate level.

Regarding investigations handled within the IG complaint system, we really have three levels at which those investigations could occur. Most cases come from the field level and are handled by our installation IGs. If, however, the subject of the investigation is a colonel, then the investigation is normally conducted by an officer appointed at the Major Command or Numbered Air Force level. These investigations are then monitored and reviewed by my Inquiries Directorate. Finally, allegations of adultery made against general officers, including those within the Air National Guard and the Air Force Reserve are handled by my Senior Official Inquiries Directorate in the Pentagon. Regardless of the level at which an investigation occurs, I want to emphasize that the same basic investigative policies and procedures apply in accordance with Department of Defense and Air Force guidance.

Let me amplify a little bit on these procedures by describing how we would investigate an allegation of adultery against a general officer. First, the complaint is subjected to a critical preliminary analysis at Headquarters Air Force level to evaluate the merits of the information provided. This complaint analysis can include the taking of sworn testimony from the complainant or other witnesses as well as a review of any relevant documents.

If the information gained during this complaint analysis warrants further inquiry, I will direct a formal investigation. In doing so, I assign an investigating officer who will interview, under oath, all material witnesses including the subject of the investigation.

Upon completion of this fact-finding process, the investigator prepares a report addressing the evidence. The investigator, by applying the relevant standards for adultery as described in the Manual for Courts-Martial, and after consulting a judge advocate, determines

whether the alleged offense is substantiated or unsubstantiated. The report then goes through an independent legal review followed by my own review. When that is complete, the results are forwarded to the appropriate commander for action as necessary. Finally, all senior officer investigations are also reviewed by the Department of Defense IG.

In summary, our procedures and policies have not changed. The benefit of recent guidance is that it has reemphasized and expanded the discussion with respect to an adulterous relationship's impact on good order and discipline or the reputation of the armed forces. This expansion will assist commanders in the field in deciding on appropriate responses to allegations.

Again, thank you for the opportunity to comment on this matter. I look forward to your questions.



Center for Military Readiness

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President

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The Hon. Sam Brownback
Chairman, Subcommittee on Oversight of
Govt. Mgmt, Restructuring & the District of Columbia
Committee on Governmental Affairs
601 Hart Senate Office Building
Washington D.C. 20510

November 2, 1998

Dear Senator Brownback:

Thank you again for inviting me to participate in the October 7 hearing on the issue of proposed changes to personal conduct rules in the armed forces. It was an honor to place my concerns on the record, and I look forward to working with you and your staff to resolve our mutual concerns.

I have reviewed the letters addressed to you and to Sen. Carl Levin from Secretary of Defense William Cohen and Undersecretary John J. Hamre. Both state similar facts, which are not inconsistent with my statement before your committee. I am not reassured, however, that the new instructions will not make it more difficult for commanders to exercise their discretion in prosecuting cases of adultery that merit court martial.

Comments filed by Sen. Max Cleland as part of the hearing record also cause some concern. I realize that Sen. Cleland's statement was prepared prior to my testimony, but it is ironic that he has criticized your efforts to hear from people who are not affiliated with the Defense Department. The organizations consulted by Ms. Miller are largely civilian and liberal in their perspective. Surely, Sen. Cleland would not suggest that groups such as NOW and the Servicemembers Legal Defense Network should have exclusive influence over regulations regarding the sensitive issue of adultery.

The Constitution grants military oversight responsibilities to the Congress, not just to Pentagon insiders. The Defense Department must not be a closed society, granting access to the policy making process only to those who demand radical cultural change in the military. It appears that this exercise is not about adultery, it's about an agenda.

My concerns remain as stated, and letters from DoD to date do not address my primary point. General Counsel Judith Miller's exclusive invitations to a set of organizations that appear to have similar views on the military's adultery rules raises legitimate questions about her judgment, mindset, and the Pentagon's true intentions regarding interpretation and enforcement.

If the Pentagon meant what it has said about faithfully executing the law, cases involving Air Force Lt. Kelly Flinn and Air Force Major Jacquelyn Parker would not have been handled as they were. Their cases were treated as politically-charged "special" cases, instead of being handled in accordance with rules that apply to all other officers.

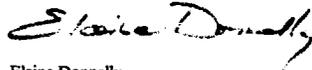
In view of statements made by DoD spokesmen previewing the Pentagon's proposal to the *New York Times* prior to its formal release, and on NBC "Meet the Press" by the Secretary himself, it appears that the actual words of the proposal are less important than the people who will interpret their meaning. Secretary Cohen's assurances to the contrary do not inspire confidence.

A recent situation reported by Ernest Blazar of the *Washington Times* reinforces my point about ways that the commander in chief's behavior could be cited in lowering standards for everyone under his command. Blazar reported that a Navy officer accused of consensual oral sex at a bachelor party, behind closed doors, was taken off a promotion list because he refused to answer questions about the alleged incident. Final action would require the president's signature, creating a potentially embarrassing situation. Secretary Cohen responded by restoring the officer's name to the promotion list—effectively lowering enforcement standards that will be applied in future cases. (Message from Cohen to the troops: *If you get yourself in trouble, just follow the president's example!*)

Please keep in mind that only a few years ago, Blue Angels commander Robert E. Stumpf was denied his rightful promotion to the rank of captain not because he engaged in such conduct, but because he was in the same room with hired performers who engaged in the same illegal act long after he had left the room and retired for the night. The injustice to Cmdr. Stumpf caused widespread disillusionment with Navy leadership, which has contributed to current shortages of skilled pilots in the Navy and the Air Force. This is not a partisan issue, since Bill Clinton is the only commander in chief we have.

I hope you will agree that this issue is of sufficient importance to be considered by the Senate Armed Services Committee as well as the Committee on Government Affairs. I would appreciate your comments, Senator Cleland, and look forward to working with you in the next Congress.

Best wishes,



Elaine Donnelly

P.S.: I would appreciate it if this letter and attachment were added to the hearing record.

The Washington Times



NATION

★ SUNDAY, OCTOBER 25, 1998 / PAGE A5

Flying nowhere

Inside the Ring won't print this young Navy officer's name out of respect for his family, but his story has to be told. It's about a Navy flier whose career was directly affected by the White House sex scandal.

Here's how.

Several years ago, some Navy pals arranged for a prostitute to appear at the flier's bachelor party. Somehow, word leaked out that she performed oral sex on him behind closed doors. An investigation ensued because such activity in today's military is forbidden.

The inquiry went nowhere until the Navy recently tapped this officer for promotion. Before approving and passing it to Pentagon leaders and Congress for confirmation, Navy Secretary John Dalton needed to know something. He ordered investigators to twice ask the flier, is the allegation true or false? Both times the flier refused to lie. He simply declined to answer.

That denied Mr. Dalton the chance to have "full confidence" in the officer. So he decided that the flier should be removed from the promotion list. But only the president can do that. And before the commander in chief can, he must first get a recommendation from Mr. Dalton's boss, Defense Secretary William Cohen.

And here is where the Navy fi-

er's case hung until Friday. The Pentagon's civilian leaders have been sitting on it for months, gunshy about passing a military punishment case involving oral sex to the White House now.

Meanwhile, the flier wants out but was hanging in limbo. He could resign but would lose big separation pay owed him. If stricken from the promotion list and passed over for promotion again, the flier would get to keep the extra separation pay after leaving the Navy.

But that would require presidential action — something that was blocked because of Pentagon fears about placing the commander in chief in a position of having to pass judgment on a military case that in part resembles his own current problems.

Late Friday, after receiving a press inquiry on this case, Mr. Cohen's office flew into action. It rejected Mr. Dalton's recommendation that the president remove the Navy flier from the promotion list. The officer's refusal to comment on the accusation was "insufficient grounds" for such action, went the reasoning.

The Navy officer's promotion now goes forward. Like all others, this one too will be signed by the commander in chief.

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