

## HOMOSEXUAL ASSAULT IN THE MILITARY

*Peter Sprigg*

### EXECUTIVE SUMMARY

A Family Research Council analysis of publicly available documents – the Pentagon’s own report on sexual assault in the military for Fiscal Year 2009, and published decisions from military courts of appeals over the last decade and a half – have shown that there is already a significant problem of homosexual misconduct in the military. This problem can only become worse if the current law is repealed and homosexuals are openly welcomed (and even granted special protections) within the military, as homosexual activists are demanding.

### Rates of Homosexual Assault in the Military Are Disproportionately High

Homosexual activist groups themselves have admitted that *less than three percent of Americans are homosexual or bisexual*.

FRC has reviewed the “case synopses” of all 1,643 reports of sexual assault reported by the four branches of the military for Fiscal Year 2009 (October 1, 2008 through September 30, 2009). Our startling finding was that *over eight percent (8.2%)* of all military sexual assault cases were homosexual in nature. This suggests that homosexuals in the military are *about three times more likely* to commit sexual assaults than heterosexuals are, relative to their numbers.

### Lack of Privacy Leads to Sexual Assaults

FRC and other supporters of the current law have pointed out the risks involved in having servicemembers share living quarters, showers, and bathrooms with persons of the same sex who may be sexually attracted to them.



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This concern is borne out by many of the case synopses reported by the Pentagon. *The most common type of homosexual assault is one in which the offender fondles or performs oral sex upon a sleeping victim. Assaults upon victims who are intoxicated are also common.*

### **Many Discharges of Homosexuals are for Sexual Assault**

Advocates of open homosexuality in the military often lament the fact that several thousand members of the military have been discharged under the 1993 law since its enactment. However, what they fail to note is that many of those discharges are actually for sexual assaults.

### **Court Records Reveal Shocking Cases of Homosexual Assault**

Published decisions of military courts (available on the legal search engine Lexis) give even more detail about homosexual assaults in the military. For example:

- 36-year-old Marine Sgt. Sean D. Habian used both alcohol and homosexual pornography in the course of assaulting a 21-year-old Lance Corporal.
- Marine Sgt. Steven G. Carlson, a military police instructor, took advantage of his position to exploit his students, inviting them to social events, plying them with alcohol, and playing games like “truth or dare” to identify who might be receptive to homosexual activity. One of his victims “testified that the appellant's acts shocked him, he froze, and was scared.”
- Homosexual activists are fond of saying that the military cannot afford to lose the specialized skills that some homosexual service members have – such as translators and linguists. Air Force Sgt. Eric P. Marcum was a Persian-Farsi linguist – but also was charged with forcible sodomy against a male Senior Airman who “testified that Appellant's actions made him scared, angry, and uncomfortable.”
- Air Force Major Rickie J. Bellanger was charged with sexually abusing two minor boys – one of whom had begun corresponding with Maj. Bellanger when he was in the fifth grade.

### **Conclusion**

The military already has a serious problem with sexual assault by homosexuals. If the current law against homosexuality in the military is overturned, *the problem of same-sex sexual assault in the military is sure to increase.*

- If the law is overturned and open homosexuals are welcomed into the military, the number of homosexuals in the armed forces can only increase – leading to a corresponding increase in same-sex sexual assaults.
- Removal of the threat of discharge from the military for homosexual conduct will reduce deterrence, likely leading to more cases of sexual assault.
- If homosexuals become a protected class within the military, victims will be afraid to report incidents of homosexual assault and commanders will be afraid to punish them, lest they be accused of “discrimination” or “homophobia.”

Allowing open homosexuality in the military would do nothing to enhance the readiness or effectiveness of our armed forces. On the contrary, it would clearly damage them – in part because it would increase the *already serious problem* of homosexual assault in the military.

*(Note of caution: Certain words referring to specific body parts have been edited in this paper; however, it still contains sexually explicit content.)*

## INTRODUCTION

Concerns about privacy and the dangers of injecting additional sexual tension into the military are two of the key reasons that Family Research Council and others support maintaining the current law concerning homosexuality in the military, which declares:

The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.<sup>1</sup>

Members of the military are regularly placed in positions of forced intimacy with their fellow servicemembers – showering and sleeping in close proximity and spending time with one another twenty-four hours a day, seven days a week. The military continues to provide separate bathroom, shower, and sleeping facilities for men and women in order to protect their privacy during these intimate activities. However, allowing homosexuals to openly serve in the military would likely result, for the first time, in heterosexuals being forced to cohabit with those who may view them as a potential sexual object.

It is almost inevitable that such conditions of forced cohabitation would result in an increase of sexual tension within the ranks, to the detriment of unit cohesion, morale, and good order and discipline. Furthermore, there is a serious risk that such tension in such intimate circumstances would lead to an increase in sexual harassment and even sexual assault.

The response of those who favor allowing open homosexuality in the military has largely been to dismiss these concerns. They simply deny that placing people in positions of forced intimacy with those who may view them as sexual objects will result in misconduct – or at least, they claim that the rates of such misconduct will not be disproportionate to that which already occurs among heterosexuals.

An FRC review and analysis of legal decisions and Pentagon sexual assault reports has now shown this cavalier attitude to be unfounded. All sides agree that some homosexuals are already serving in the military – largely due to the nearly universal (but false) belief that current law allows homosexuals to be in the military as long as they are not open about their sexual orientation. As is

clear from the quote above, the *law* which was passed by Congress in 1993 indicates that those with “a propensity or intent to engage in homosexual acts” are *ineligible* for military service. However, the “Don’t Ask Don’t Tell” *policy* which was implemented by the Clinton Administration has had the effect of allowing some homosexuals to enter the military in defiance of the intent of the law.

FRC’s analysis has shown that as a result, there is *already* a significant problem of homosexual misconduct in the military. This problem can only become worse if the current law is repealed and homosexuals are openly welcomed (and even granted special protections) within the military, as homosexual activists are demanding.

### **Rates of Homosexual Assault in the Military Are Disproportionately High**

*Less than three percent of Americans are homosexual or bisexual.*

Major national surveys of sexual behavior have consistently shown that less than three percent of the American population identify themselves as homosexual or bisexual. This was acknowledged by a coalition of thirty-one leading homosexual rights groups in an amicus brief which they filed in the 2003 U. S. Supreme Court case of *Lawrence v. Texas*. Their brief declared:

The most widely accepted study of sexual practices in the United States is the National Health and Social Life Survey (NHSLs). The NHSLs found that 2.8% of the male, and 1.4% of the female, population identify themselves as gay, lesbian, or bisexual. *See* Laumann et al., *The Social Organization of Sex: Sexual Practices in the United States* (1994).<sup>2</sup>

Of course, some people who do not self-identify as homosexual or bisexual may at times nevertheless engage in homosexual acts. On the other hand, some who do identify as homosexual or bisexual may not be sexually active for some period of time. However, if we measure homosexual conduct rather than homosexual or bisexual self-identification, the numbers remain similar. According to the same survey cited in the homosexual groups’ amicus brief, only 2.7% of men and 1.3% of women reported having any same-gender sex partners in the year prior to the survey.<sup>3</sup>

Therefore, if the propensity of homosexuals to engage in sexual assault is essentially the same as that of heterosexuals, we would expect the total percentage of sexual assaults that are homosexual in nature to be similar to the percentage of the population who engage in homosexual conduct in general.

Of course, it is difficult to know the percentage of currently serving *military* personnel who self-identify as homosexual or bisexual or who engage in homosexual acts, both because surveys of the military are difficult to conduct and because current law would give homosexuals a strong incentive to conceal such conduct. However, given the strong terms of the law against homosexuality in the military (and even the constraints on openness of the much weaker “Don’t Ask Don’t Tell” *policy*), it seems logical to assume that the percentage of military personnel who are homosexual is likely to be *lower* than it is in the civilian population. It is hard to come up with even a plausible theory to suggest how it could be higher.

*Nevertheless, more than eight percent of sexual assaults in the military are homosexual in nature. This is nearly three times what would be expected.*

If the likelihood of homosexual assault is equal to the likelihood of homosexual conduct in the population as a whole, *we would expect less than three percent of sexual assault cases in the military to be homosexual in nature* (that is, male on male or female on female).

This, however, is *not* what Department of Defense data reveals. FRC has reviewed the “case synopses” of all 1,643 reports of sexual assault reported by the four branches of the military for Fiscal Year 2009 (October 1, 2008 through September 30, 2009). Our startling finding was that *over eight percent* of all military sexual assault cases were homosexual in nature.<sup>4</sup> This suggests that homosexuals in the military are *about three times as likely* to commit sexual assaults than heterosexuals are, relative to their numbers.<sup>5</sup>

A similar figure was reported by the *New York Times* in a news article on the release of the Pentagon’s sexual assault report in March – but was virtually ignored in the debate over the law on homosexuality in the military. Citing a telephone interview with Kaye Whitley, the director of the Pentagon’s sexual assault prevention and response office, the *Times* reported, “Of all the assaults, . . . 7 percent were male on male.”<sup>6</sup> (FRC’s analysis showed that 7.55% of all cases were male on male, and an additional 0.61% were female-on-female, adding up to a total (with rounding) of 8.2% which were homosexual in nature.)

One could offer a number of hypotheses as to the reasons for the high rates of homosexual assault. If homosexuals were three times as prevalent in the military as in the general population, then this rate of sexual assault would not be disproportionate – but as we have noted, the current law regarding homosexuality in the military makes it likely that the percentage of homosexuals in the military is *less* than in the general public, not more (in which case, the disproportionate nature of the rate of homosexual assault may be even greater –

i.e., four or five times more likely, or more). It would also be theoretically possible that homosexual assaults might be more likely to be reported, while heterosexual assaults are more likely to go unreported. However, it seems more likely that the opposite would be the case – homosexual assault cases are probably *less* likely to be reported, given the stigma that a heterosexual soldier might feel about having been homosexually assaulted. Again, if homosexual report cases are *under-reported*, as seems more likely, then the actual rate of homosexual assault may be even *more* disproportionate.

Since the hypotheses above seem implausible, it is hard to escape the conclusion that, in fact, homosexual and bisexual servicemembers are, on average, more likely to engage in sexual assault than are heterosexual servicemembers. This could reflect the well-documented fact that homosexual men have far more sexual partners in general than do heterosexuals.<sup>7</sup> It could reflect in some way the higher rates of domestic violence that have been documented among homosexuals.<sup>8</sup> Or it could reflect the general higher rates of psychological disorders that have been identified in homosexuals.<sup>9</sup> An alternative explanation would be that precisely because of the situations of forced intimacy in the military, and because servicemembers may not be as much on guard against the possibility of same-sex sexual assault, homosexuals simply have greater *opportunity* to sexually exploit others than heterosexuals do. Regardless of whether the true explanation is one of these or some combination of them, the data clearly indicated that homosexual conduct poses a uniquely elevated risk to good order, morale and discipline in the military.

#### *Risk of homosexual assault in sleeping quarters*

FRC and other supporters of the current law have pointed out the risks involved in having servicemembers share living quarters with persons of the same sex who may be sexually attracted to them. This concern is borne out by many of the case synopses reported by the Pentagon. Consider the following cryptic case descriptions of on-base assaults, quoted directly from the Pentagon's report:<sup>10</sup>

"Victim #1 awoke to Subject touching his genitals."<sup>11</sup>

"Victim awoke in his rack to a hand moving up and down his leg and touching his groin area."<sup>12</sup>

"Asleep in his rack, Victim #1 felt a hand grab his genitals and Subject's wrist. Subject then fled the room. Victim #2 woke up to Subject grabbing his inner thigh area and he confronted the Subject."<sup>13</sup>

“Victim awoke in BEQ to Subject kissing his neck and trying to put his hand in his pants to touch his genitals.”<sup>14</sup>

“Victim reported that Subject touched his crotch on three occasions as he slept.”<sup>15</sup>

“Subject groped Victim #1’s genitals in their room and groped Victim #2’s genitals when he was asleep.”<sup>16</sup>

“Victim and Subject were off base at a bar and Victim got highly intoxicated. Subject said he would take Victim back to his barracks room but instead took Victim to his (subject’s) barracks room. Subject orally and a—lly sodomized Victim while he was in and out of consciousness. Subject’s computer was seized and numerous images of child porn were found.”<sup>17</sup>

“Victim was sleeping and awoke to find Subject performing oral sex on him without his consent.”<sup>18</sup>

“Victim was asleep at his computer station when Subject videotaped himself (Subject) touching Victim’s head with his (Subject’s) genitals.”<sup>19</sup>

“Victim claimed Subject (his roommate) slid his hand under Victim’s boxer shorts and caressed his buttocks and attempted to grab his p---s. Victim awoke while the touching was going on and engaged in a physical altercation with Subject.”<sup>20</sup>

“After a night of heavy drinking, Subject got on top of Victims #1 and #2 as they slept and kissed face, neck, and stomach before being told to stop.”<sup>21</sup>

“Subject groped Victim’s crotch several times when helping Victim, who was intoxicated, into his bunk.”<sup>22</sup>

*Risk of homosexual assault in bathrooms and showers.*

FRC and other supporters of the existing law also point out the loss of privacy involved in being forced to share facilities such as bathrooms and showers with homosexuals, and thus appearing partially or fully unclothed before people who may view them as a sexual object. There are also cases in which homosexual assaults in the military have taken place in such contexts. Note these examples (which include one of the female-on-female assaults):

“Victim and Subject were drunk at a bar in Dec. 2004. Subject grabbed Victim’s p---s while in the bathroom and kissed him.”<sup>23</sup>

“[Female] subject grabbed [female] Victim as she was returning from shower, threw her on the bed and fondled her.”<sup>24</sup>

“Victim reported being pulled from his rack by Subject #1 and #2 and taken to the shower, stripped naked with his feet bound. Subject #1 (naked) waved his genitals in the Victims’s face and told Victim to s—k on it.”<sup>25</sup>

*Many discharges of homosexuals from the military are for sexual assault – not because of arbitrary “discrimination.”*

Advocates of open homosexuality in the military often lament the fact that several thousand members of the military have been discharged under the 1993 since its enactment. However, what they fail to note is that many of those discharges are actually for sexual assaults. Below are examples:

“After a night of heavy drinking with the Subject, Victim awoke believing he had been sodomized by Subject while he slept. Subject admitted he had performed oral and a—l sex on sleeping victim. Article 32 Investigating Officer recommended against referral. Subject was administratively separated for homosexual conduct with an Honorable Discharge.”<sup>26</sup>

“Victim, who was highly intoxicated, had fallen asleep at Subject’s house when Victim awoke to being orally copulated. . . . Command advised Subject will received [sic] general discharge from USN for engaging in homosexual behavior.”<sup>27</sup>

“Victim was sleeping and awoke to find Subject orally copulating him without Victim’s consent. . . . Subject was awarded a General Discharge from the USN for Homosexual Acts.”<sup>28</sup>

“Victim was talking to Subject when Subject claimed the two had been ‘messaging around’ on a previous evening, while Victim was sleeping after consuming a large amount of alcohol. Subject admitted to Victim he had performed oral sex on him. . . . Per the SJA, an Administrative Separation Board recommended the Subject receive a General Discharge from the USN for homosexual behavior.”<sup>29</sup>

## Court Cases Reveal the Destructive Effects of Homosexual Misconduct

Criminal cases for homosexual misconduct in the military which reach military courts of appeals have resulted in publicly reported decisions which illustrate the serious consequences of homosexual misconduct in the military. Although these cases are part of the public record, they are rarely reported on by the media – in contrast to cases of heterosexual assault, such as the infamous “Tailhook” scandal.

These case records show that homosexuality poses a threat to good order, morale, discipline, and unit cohesion in the military even when the conduct in question is consensual.

### *Sodomy in the next bunk?*

For example, a military court described the case against Navy submariner Benjamin H. Hartman:

The appellant was originally charged with forcible sodomy committed aboard the Naval Submarine Base in Kings Bay, Georgia. In accordance with a pretrial agreement he entered a guilty plea to, and was found guilty of, the lesser offense of consensual sodomy. The appellant was attached to a fast-attack submarine that was in Georgia for some routine work, and he was staying in a room in the base's transient visitors' quarters that another Sailor from his submarine had procured. According to his responses during the plea colloquy, the appellant awoke to find another male Sailor fondling his p---s. The appellant eventually assisted the other Sailor in penetrating the appellant's a--s. This activity all occurred while a third occupant of the room, a petty officer also attached to the submarine, slept in one of the two beds in the room.<sup>30</sup>

### *Consensual sex in the barracks leads to violence*

In the case against Marine Private Paul S. Barrera, a majority of the court ruled that repeated acts of consensual sodomy in the barracks, but behind locked doors, were “private” conduct. Nonetheless, it violated a standing order and the relationship led to violence, which was disruptive to their unit:

On two separate occasions, the appellant and another Marine from his unit, Private First Class (PFC) HernandezDiaz, engaged in consensual a--l sodomy in the latter's first floor barracks room aboard Marine Corps Air Station Futenma in Okinawa, Japan. . . . Both sodomy incidents occurred either late in the evening or early in the morning, and each time the doors

to the room were locked. The room shared a common restroom with another barracks room, and there were approximately 100 other Marines living on that floor. A written standing order prohibited sexual activity of any kind in the barracks.

. . . [T]he appellant admitted that his acts of sodomy were prejudicial to good order and discipline. We agree with that assessment, and note that the danger to unit cohesion and morale posed by such sexual activity between members of the same unit in a military barracks is arguably even more pronounced where the unit is stationed overseas in a foreign country, away from families and friends and in relative isolation. Moreover, the danger to good order and discipline was borne out in this case by the rumors that circulated within the unit, and the tension leading up to the appellant's later offenses of assault and communication of a threat.

Second, the record demonstrates that all sexual activity was specifically prohibited in the barracks, and that fact underscores the harm to good order and discipline posed by the conduct at issue.

One of the other judges detailed how this relationship led to violence:

The record indicates that the appellant confronted Private First Class (PFC) HernandezDiaz and threatened to "burn him" for disclosing their relationship to others. Appellant then apologized to PFC HernandezDiaz, at which point he attempted to kiss him. Out of rage, appellant then slapped and choked PFC HernandezDiaz. . . . The appellant admitted on the record that he physically assaulted PFC HernandezDiaz. The assault directly resulted from the sexual relationship between the appellant and PFC HernandezDiaz. As I stated, he struck PFC HernandezDiaz out of rage for disclosing their relationship to third parties. The Government retains an interest in preventing disruptions within the ranks.<sup>31</sup>

#### *Exploiting Rank and Using Alcohol and Homosexual Pornography to Manipulate Victim*

In some of the reported cases, servicemembers have taken advantage of their relationship with those of lower rank, and also plied their victims with alcohol to make them vulnerable. Such was the case against Marine Sgt. Sean D. Habian:

Lance Corporal (LCpl) L, a 21-year-old radio repairman with less than 2 years experience in the Marine Corps, was sent by his unit to augment Military Police Company as a day-shift clerk at the base pass office. The appellant, a 36-year-old sergeant with over 8 years' experience in the Marine Corps, also worked in the pass office, on the night shift. . . . [T]he

appellant . . . asked LCpl L if he would be interested in coming over to the appellant's house to "hang out." LCpl L agreed . . . LCpl L arrived at the appellant's on-base quarters, and the appellant encouraged him, over LCpl L's initial protest, to drink alcoholic beverages. . . . LCpl L testified that he became extremely intoxicated, and could not recall anything that happened after he sat down on the downstairs sofa around 0300.

When LCpl L awoke, he was in the appellant's upstairs bedroom, and could feel a hand rubbing his a--s and digitally penetrating it. He felt a second hand reaching for his genital area. He still felt intoxicated, but attempted to push his elbow back to stop the person touching him. The touching was repeated, with a hand rubbing his a--s and a finger penetrating it "every once in awhile." He heard the person saying "one more time. One more time." After LCpl L again pushed back with his elbows, the appellant got off the bed, slapped LCpl L on the buttocks and yelled at him to get out of bed and leave the house. LCpl L was groggy, and the appellant slapped him two more times, a few minutes apart, before LCpl L finally got up off the bed. Realizing he was naked, LCpl L had a heated conversation with the appellant, asking the latter what had taken place and the location of his clothes. . . .

While discussing the incident [later] with [Special Agent] Ryan, LCpl L vaguely recalled an additional incident in which he woke up during the night and saw gay pornography on the television. He remembered waking up yet again due to a lack of air, with the appellant's groin area in his face and neck area. He could also feel the appellant s---ing on his p---s. LCpl L did not remember having any clothing on at this time, although he had been fully clothed when he sat down on the couch at approximately 0300. As LCpl L attempted to move his head to catch his breath, he opened his eyes and saw the television screen, on which he saw a man performing oral sex on another man. . . . The day before he invited LCpl L to his house, the appellant went to an adult store and purchased a transsexual inflatable doll kit. The doll had both an a--l and oral orifice, but no v-----l orifice. The appellant also purchased a videotape, entitled "Transsexual Streetwalkers," depicting homosexual sexual activity. After the incident, agents from the Naval Criminal Investigative Service found the doll, inflated, in the appellant's closet. . . . A homosexual video was found in the appellant's VCR, attached to his television set.

. . . He was . . . convicted of fraternization with LCpl L, and with an indecent acts offense for rubbing LCpl L's a--s, fondling LCpl L's p---s and t-----s, and penetrating LCpl L's a--s with his fingers. . . . [T]he appellant argues that the appellant's acts in rubbing LCpl L's private parts and digitally penetrating his a--s were simply "homosexual foreplay" and cannot be found indecent . . . . We disagree. . . . [T]he indecent acts of

which the appellant was convicted involved actions . . . as LCpl L was just awakening and trying to shake off an intoxicated stupor. . . . LCpl L's vulnerable condition and the lack of any express consent render the indecent acts of which the appellant was convicted coercive in nature.<sup>32</sup>

*Instructor Uses Alcohol to Identify Victims, Exploit Students*

The case against Marine Sgt. Steven G. Carlson also illustrates an individual exploiting his superior rank, socializing with others to find victims, and using alcohol to make victims more vulnerable:

The appellant was stationed at the Marine Corps Detachment, Fort McClellan, Alabama, where he instructed Marines attending military police military occupational specialty training. While in that position, the appellant transported students in his private vehicle, provided them alcohol, consumed alcohol with them, and socialized with them, in violation of Navy Regulations, an installation general order, and a Marine Detachment order. The appellant used these social interactions to determine if a student would be receptive to homosexual activity with him. This determination was made by plying students with alcohol and then discussing topics such as masturbation, p---s size, oral sex, and "playing truth or dare." During truth or dare, the appellant would ask students if they had ever thought of having sodomy with a man or kissing a man, or he would dare them to expose themselves in public or to get naked in private. These interactions came to light when a student reported that the appellant had sodomized him. . . . The appellant was charged with, among other things, multiple indecent assaults of a homosexual nature. . . .

. . . [A]t Fort McClellan, Alabama, the appellant invited Private First Class (PFC) M into the woods where he pulled PFC M's pants and his own pants down and began fondling PFC M's p---s. The appellant then put PFC M's hand on the appellant's p---s and pulled PFC M toward him and kissed him. The appellant asked PFC M to perform oral sodomy on him and when PFC M refused, the appellant performed oral sodomy on PFC M. PFC M testified that the appellant's acts shocked him, he froze, and was scared.<sup>33</sup>

*Do we really need more homosexual linguists?*

Advocates for allowing homosexuality in the military argue that we cannot afford to lose the talents and skills of the homosexuals who have been discharged or denied enlistment. In particular, they are fond of citing the cases of homosexual linguists or translators, a skill much in need because of the wars in

Iraq and Afghanistan. Therefore, it is ironic that one of the most important cases of homosexual assault (which set a precedent for how the Supreme Court's 2003 *Lawrence v. Texas* decision legalizing homosexual sodomy does and does not apply to the military) involved Air Force Sgt. Eric P. Marcum – a Persian-Farsi linguist:

Appellant, a cryptologic linguist, technical sergeant (E-6), and the supervising noncommissioned officer in a flight of Persian-Farsi speaking intelligence analysts, was stationed at Offutt Air Force Base, Nebraska. His duties included training and supervising airmen newly assigned to the Operations Training Flight.

While off-duty Appellant socialized with airmen from his flight at parties. According to the testimony of multiple members of his unit, airmen "often" spent the night at Appellant's off-base home following these parties. The charges in this case resulted from allegations by some of these subordinate airmen that Appellant engaged in consensual and nonconsensual sexual activity with them.

Among other offenses, Appellant was charged with the forcible sodomy of Senior Airman (SrA) Harrison (E-4). . . . With regard to the charged offense, SrA Harrison testified that after a night of drinking with Appellant he stayed at Appellant's apartment and slept on the couch. SrA Harrison further testified that at some point he woke up to find Appellant orally sodomizing him. Although Appellant testified that he "did not perform oral sex on [SrA Harrison] at all," he testified to "kissing [SrA Harrison's] p---s twice." . . . SrA Harrison also testified that Appellant's actions made him scared, angry, and uncomfortable.<sup>34</sup>

#### *Air Force Major Grooms Child for Sexual Abuse*

One of the most shocking cases did not involve a servicemember as victim, but a civilian minor. Air Force Major Rickie J. Bellanger was charged with sexually abusing two minor boys – one of whom had begun corresponding with Maj. Bellanger when he was in the fifth grade:

Appellant was deployed to support Operation Desert Shield/Desert Storm. During that time he answered a letter from JB, a fifth grader who lived in Texas. They continued corresponding. Upon his return from overseas, appellant met JB and his family and attended a school function. A friendship developed which included letters and phone calls as well as visits.

In May 1994, JB visited appellant in Florida for approximately one month. JB was almost 15 years old. One night JB and appellant drank alcohol while watching television. JB testified that he drank 12 Zimas, a malt

liquor beverage. JB became intoxicated and threw up. Appellant helped him to bed. Later JB awakened and realized that appellant was orally sodomizing him. Appellant then rubbed his p---s against JB's lips. . . .

On May 30, 1995, JB's mother became aware of an incident several years earlier when another individual had forcibly sodomized JB. JB admitted this incident when questioned by his mother. Under further questioning, he also alleged that appellant had sodomized him. The investigation against appellant was reopened. Several months later during the course of this second investigation another youth, EM . . . claimed that appellant made sexual advances towards him. Appellant was subsequently charged with offenses involving these two individuals. . . . In the computer correspondence, appellant admitted to prior acts of sodomy and expressed a desire to commit both oral and a--l sodomy with the individual to whom he was writing. Additionally, the graphical images files contained sexually explicit pictures of what appear to be young boys, some of whom are engaging in oral sodomy. . . . In one instance appellant allegedly rubbed his p---s over JB's lips. In the other instance, he told MR he wanted to "s--k his d--k." . . . Appellant was convicted of violating his commander's order not to have private contact with any person under the age of 18.<sup>35</sup>

## Conclusion

The research recounted above makes it clear – *the military already has a serious problem with sexual assault by homosexuals*. If the current law against homosexuality in the military is overturned, there is only one possible result – *the problem of same-sex sexual assault in the military will be greatly expanded*. This is predictable for three reasons:

- Despite the fact that some homosexuals have been able to enlist in the military because of the Clinton Administration's "Don't Ask Don't Tell" policy, both that policy and the statutory law against homosexuality in the military have suppressed the number of homosexuals who are in the military. If the law is overturned and open homosexuals are welcomed into the military, *the number of homosexuals in the armed forces can only increase – leading to a corresponding increase in same-sex sexual assaults*.
- In addition, the current law and policy have the effect of deterring overt homosexual behavior by those homosexuals currently in the military, because they face the possibility of discharge for engaging in homosexual conduct. While other disciplinary measures are available, *removal of the threat of discharge for homosexual conduct will reduce the effectiveness of the deterrent, likely leading to more cases of sexual assault*.

- The advocates of open homosexuality in the military seek not only to remove differential treatment of homosexuals, but also to affirmatively *protect* homosexuals against “discriminatory” treatment. While this would *reduce* the deterrent to engage in homosexual conduct (including same-sex sexual assault), it would at the same time *create* a deterrent to the reporting or punishment of such assaults. *Victims would be afraid to report such incidents and commanders would be afraid to punish them, lest they be accused of “discrimination” or “homophobia.”* With a smaller percentage of such cases being reported, investigated, or punished, *it is inevitable that a larger number of such cases would occur.*

Allowing open homosexuality in the military would do nothing to enhance the readiness or effectiveness of our armed forces – which is the only thing that could justify a change in the current law. On the contrary, welcoming open homosexuality in the military would clearly *damage* the readiness and effectiveness of the force – in part because it would increase the *already serious problem* of homosexual assault in the military.

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<sup>1</sup> Public Law 103-160, signed into law November 30, 1993; codified at 10 U.S.C. 654(a)(15).

<sup>2</sup> *Lawrence v. Texas*, Docket No. 02-102 (U.S. Supreme Court), brief of amici curiae Human Rights Campaign et al., 16 January 2003, p. 16 (footnote 42).

<sup>3</sup> Edward O. Laumann, John H. Gagnon, Robert T. Michael, and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: University of Chicago Press, 1994), Table 8.1, p. 303.

<sup>4</sup> 134 of 1,643 reported assault synopses involved homosexual assault, or 8.2%. There were 124 male-on-male cases and 10 female-on-female cases. One oddity of the reporting system should be noted, however. It appears that in cases where the subject (the perpetrator of the assault) cannot be personally identified, the convention is to also list the *gender* of the subject as “unknown”—even though it seems likely that in many, if not most, of these cases the gender of the subject actually *was* known to the victim. If these cases are subtracted from the total, and the percentage of homosexual assaults is calculated only on the basis of those cases in which the gender of both subject and victim is reported, then the percentage that are homosexual in nature would be even higher. *Department of Defense Fiscal Year 2009 Annual Report on Sexual Assault in the Military*, Office of the Secretary of Defense, Sexual Assault Prevention and Response Office, March 2010. Online at: [http://www.sapr.mil/media/pdf/reports/fy09\\_annual\\_report.pdf](http://www.sapr.mil/media/pdf/reports/fy09_annual_report.pdf)

<sup>5</sup> The percentage of sexual assaults that were male-on-male or female-on-female was 8.2%. Compared with the 2.8% of the population that self-identifies as homosexual or bisexual, the homosexual assault rate is 2.9 times as high. When compared with the 2.7% of the population who report any same-sex sexual partners in the last year, the homosexual assault rate is 3.0 times as high.

<sup>6</sup> Elisabeth Bumiller, “Sex Assault Reports Rise in Military,” *The New York Times*, March 16, 2010; online at: <http://www.nytimes.com/2010/03/17/us/17assault.html>

<sup>7</sup> The National Health and Social Life Survey found that for the entire male population, the median number of sex partners since age 18 was six (Laumann et al., op. cit., Table 5.1D, p. 180). Among men who had

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had any same-gender sexual partners since age 18, the mean number of partners was 44.3 (Laumann, et al., Table 8.4, p. 315).

<sup>8</sup> A 2002 study in the *American Journal of Public Health* reported, “In general, the 5-year prevalence of physical battering among urban MSM [men having sex with men] (22.0%) was significantly higher than either the annual prevalence of severe violence (3.4%) or the annual prevalence of total violence (11.6%) among a representative sample of women who were married or cohabiting with men.” Gregory L. Greenwood, Michael V. Relf, Bu Huang, Lance M. Pollack, Jesse A. Canchola, and Joseph A. Catania, “Battering Victimization Among a Probability-Based Sample of Men Who Have Sex With Men,” *American Journal of Public Health* Vol. 92, No. 12 (December 2002), p. 1967.

<sup>9</sup> A 2008 “meta-analysis” reviewed over 13,000 papers on this subject, and compiled the data from the 28 most rigorous studies. Their conclusion was, “LGB [lesbian, gay, bisexual] people are at higher risk of mental disorder, suicidal ideation, substance misuse, and deliberate self harm than heterosexual people.” Michael King, Joanna Semlyen, Sharon See Tai, Helen Killaspy, David Osborn, Dmitri Popelyuk and Irwin Nazareth, “A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people,” *BMC Psychiatry* 2008, 8:70 (August 18, 2008); online at: <http://www.biomedcentral.com/content/pdf/1471-244X-8-70.pdf>

<sup>10</sup> The Army’s case synopses provided less detailed information, and for unknown reasons the Air Force reported far fewer same-sex sexual assaults than the other three branches of the service (one male-on-male assault and two female-on-female—2.5% of 122 reported sexual assaults). Therefore, virtually all of the cases cited below are from the Navy or the Marine Corps.

<sup>11</sup> *FY09 Sexual Assault Synopses Report: United States Navy*, Case Number 3,

<sup>12</sup> *Ibid.*, Case No. 51.

<sup>13</sup> *Ibid.*, Case No. 63.

<sup>14</sup> *Ibid.*, Case No. 108.

<sup>15</sup> *Ibid.*, Case No. 128.

<sup>16</sup> *Ibid.*, Case No. 277.

<sup>17</sup> *Ibid.*, Case No. 280.

<sup>18</sup> *Ibid.*, Case No. 289.

<sup>19</sup> *Ibid.*, Case No. 321.

<sup>20</sup> *Ibid.*, Case No. 328.

<sup>21</sup> *FY09 Sexual Assault Synopses Report: United States Marine Corps*, Case Number 24.

<sup>22</sup> *Ibid.*, Case No. 65.

<sup>23</sup> *Ibid.*, Case No. 28.

<sup>24</sup> *Ibid.*, Case No. 66.

<sup>25</sup> *Ibid.*, Case No. 130.

<sup>26</sup> *Ibid.*, Case No. 64.

<sup>27</sup> Navy Case No. 232.

<sup>28</sup> *Ibid.*, Case No. 234.

<sup>29</sup> *Ibid.*, Case No. 235.

<sup>30</sup> *United States of America v. Hartman*, NMCCA 200900389, 2009 CCA Lexis 462 (United States Navy-Marine Corps Court of Criminal Appeals, December 29, 2009).

<sup>31</sup> *United States v. Barrera*, NMCCA 200400371, 2006 CCA Lexis 215 (United States Navy-Marine Corps Court of Criminal Appeals, August 28, 2006).

<sup>32</sup> *United States of America v. Habian*, NMCCA 100600753, General Court-Martial, 2007 CCALexis 352 (United States Navy-Marine Corps Court of Criminal Appeals, September 18, 2007).

<sup>33</sup> *United States v. Carlson*, NMCCA 200100209, 2006 CCA Lexis 27 (United States Navy-Marine Corps Court of Criminal Appeals, February 14, 2006).

<sup>34</sup> *United States v. Marcum*, 60 M.J. 198; 2004 CAAF Lexis 832 (U.S. Court of Appeals for the Armed Forces, August 23, 2004).

<sup>35</sup> *United States v. Bellanger*, No. 02-0944, ACM 32373, 1997 CCA Lexis 671 (U.S. Air Force Court of Criminal Appeals, October 29, 1997).