2024

Serving With Pride: Analyzing LGBTQ+ Personnel Policy in the U.S. Military

Sonja Woolley

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Serving With Pride:
Analyzing LGBTQ+ Personnel Policy in the U.S. Military

Submitted to
Professor Jenny Taw

By
Sonja Woolley

for
Honors Senior Thesis
Fall 2023 – Spring 2024
April 22, 2024
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Acknowledgements

I want to extend my heartfelt gratitude to Professor Jenny Taw, whose unwavering support, guidance, and belief in me have been instrumental to my personal and intellectual growth over these past three years. Taw, you saw potential in me when I was a little sophomore in a room full of seniors. You encouraged me to speak up and helped me believe that my point of view mattered. You do not realize the impact your mentorship has had on myself and so many others who have been influenced by your kindness, fierce intelligence, and commitment to your students. Thank you for everything.

To Professor Selig, whose class on LGBTQ+ history sparked my interest in this subject and inspired me to create this body of work. Your creation of a safe and inclusive learning environment empowered me to explore this topic with enthusiasm and depth. Thank you for being an inspiration and for advocating for the important expansion of gender and sexuality studies at CMC.

A special thanks to Riley, my partner in crime during this year-long project. Our Tuesday writing sessions helped build the foundation of this thesis and our friendship, and your encouragement propelled me forward even when doubt crept in. Your belief in the value of my work helped me persevere and realize its potential.

Thank you to my roommates—Nathan, Sascha, and Will—for their patience and willingness to listen to my brain vomit and help me shape it into something coherent. I will always be grateful for our senior year together and for the mutual support we provided each other as we navigated this rite of passage.

Finally, thank you to my parents, for showing me what service really means. Thank you for accepting and supporting me through the setbacks, the big changes, and the successes. You have been my biggest cheerleaders, and I would not be who I am today without you in my corner. Thank you for believing in me and trusting me to forge my own path. I love you both.
Abstract

This thesis examines the evolution of LGBTQ+ personnel policies in the U.S. military, analyzing how these changes reflect broader social transformations and the military’s role as both a mirror and catalyst in societal shifts. It traces the historical roots of discriminatory practices against queer and transgender servicemembers, identifying key periods of reform and resistance. Using institutional theory to dissect the mechanisms of policy adaptation, this paper focuses on coercive, mimetic, and normative isomorphism, which illustrate the complex interplay between external societal pressures, internal demands for legitimacy, and the professionalization of the military. Through detailed case studies, the thesis highlights how personnel policies have oscillated between exclusion and inclusion, reflecting, and sometimes precipitating shifts in societal values regarding gender and sexuality. Finally, it argues that inclusive military personnel policies are not only crucial indicators of societal acceptance but create a more capable military that reflects the diverse society it serves to protect.
A Note on Language

The task of chronicling LGBTQ+ history is fraught with the complexity of language and the evolution of social identities. It is difficult to apply modern labels and identities to individuals from the past, oftentimes because the historical record provides an incomplete picture of how they may have understood their identities. In recognizing this limitation, this research will employ language that seeks to be inclusive yet precise, to avoid misrepresentation or unintended exclusions. For instance, when differentiating between sexual orientation and gender identity—which I believe are often conflated—the language used will aim for clarity and distinctness. The term *queer* or *LGB* will often be selected to refer to lesbian, gay, and bisexual orientations, providing a broad but appropriate categorization that acknowledges the fluidity of sexual identities. Similarly, I use *transgender* and *nonbinary* to refer to those who identify with these gender identities, but also *genderqueer* to acknowledge the broader spectrum that transcends binary categorizations of gender.

In cases where historical figures’ pronouns are not explicit, I use they/them pronouns to avoid the presumption of gender. For other cases, I use the pronouns that these individuals preferred based on the historical record. Furthermore, the following glossary of terms reflects the current understanding of LGBTQ+ identities as of 2024, with the caveat that language and identities continue to evolve. This glossary serves both as a guide for the reader and as a historical artifact of the lexicon in use at the time of writing.
Glossary

The following glossary of terms was published by the Human Rights Campaign.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>LGBTQ+</td>
<td>An acronym for “lesbian, gay, bisexual, transgender and queer,” which includes the “+” sign to acknowledge the vast spectrum of sexual orientations and gender identities embraced within the community.</td>
</tr>
<tr>
<td>Gay</td>
<td>A person who is emotionally, romantically, or sexually attracted to members of the same gender. Men, women, and non-binary people may use this term to describe themselves.</td>
</tr>
<tr>
<td>Lesbian</td>
<td>A woman who is emotionally, romantically, or sexually attracted to other women. Women and non-binary people may use this term to describe themselves.</td>
</tr>
<tr>
<td>Bisexual</td>
<td>A person emotionally, romantically, or sexually attracted to more than one gender, though not necessarily simultaneously, in the same way or to the same degree. Sometimes used interchangeably with pansexual.</td>
</tr>
<tr>
<td>Queer</td>
<td>A term people often use to express a spectrum of identities and orientations that are counter to the mainstream. Queer is often used as a catch-all to include many people, including those who do not identify as exclusively straight and/or folks who have nonbinary or gender-expansive identities. This term was previously used as a slur but has been reclaimed by many parts of the LGBTQ+ movement.</td>
</tr>
<tr>
<td>Transgender</td>
<td>An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.</td>
</tr>
<tr>
<td>Nonbinary</td>
<td>An adjective describing a person who does not identify exclusively as a man or a woman. Nonbinary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all nonbinary people do. Nonbinary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.</td>
</tr>
<tr>
<td>Genderqueer</td>
<td>Genderqueer people typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation. People who identify as “genderqueer” may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.</td>
</tr>
</tbody>
</table>
Introduction

The history of the American military and the LGBTQ+ community is deeply interwoven. Since before the founding of the nation, when the U.S. military was born from a disparate band of revolutionaries, queer and trans individuals have left an indelible mark. While the labels we use today did not exist in that era, these individuals challenged prevailing gender and sexual norms in order to serve their country. In doing so, many of them created more opportunities for future LGBTQ+ individuals committed to military service. Meanwhile, the military, with its profound impact on the trajectory of American history and its central role in shaping cultural norms, has been immersed in the struggle for LGBTQ+ rights and the development of queer identity. Today, as in the past, military service fosters unity among a broad range of Americans of different backgrounds and experiences who labor, live, and fight together. Though the inclusion of LGBTQ+ individuals remains contentious, the military has time and again—whether quietly or formally—determined that they are valuable contributors to the mission. Thus, the military owes much to the LGBTQ+ community, just as the LGBTQ+ community would not be as it is without the military.

This interconnectedness addresses how identity interacts with military service. And at the heart of this dynamic lie personnel policies, the bedrock upon which the military builds its ranks and chooses who is fit to serve the country. These policies, shaped by complex internal dynamics and external pressures, serve as the lynchpin of the military’s ability to fulfill its mission effectively. Repeatedly, as societal norms have shifted, the military has found itself grappling with the need to balance tradition with inclusivity, efficacy with equity.

This thesis will explore the web of factors shaping the military’s approach to personnel policies and their broader implications for American society. The military’s deference to the
shifting currents of broader American politics becomes increasingly complex as it attempts to maintain its apolitical stance. Personnel policies are a salient example since they directly engage with the tensions between American identity and a diverse citizenry. Fundamentally, personnel policies are not just administrative rules; they are linked with the very essence of membership in civic society. In this case, the military holds the administrative power to determine who is fit to serve. Constraining this power, though, is the military’s obligation to recruit the necessary number of servicemembers to fulfill its mission. The Pentagon identified 2023 as the “toughest recruitment year for the military services since the inception of the all-volunteer force.”¹ The ongoing recruitment crisis poses a significant challenge to the military’s operational effectiveness and long-term sustainability.

Recruitment challenges encapsulate the largest issue that this thesis seeks to address—that the trajectory of military personnel policies lies at the intersection of tradition and inclusivity. Through the study of LGBTQ+ inclusion and exclusion in the military, this thesis explores how institutional dynamics catalyze change, with ripple effects that resonate on both individual and societal levels. The evolution within the military also highlights the substantial influence these policies exert on individual lives and the collective American ethos.

¹ Cohen, “Air Force Recruiting Rebounds While Army, Navy Still Struggle.”
Review of the Literature

Theory of Institutions

Institutions are dynamic entities shaped by a complex interplay of ideas, rules, norms, imperatives, options, and distributions of influence. Even as institutions are products of these multifaceted components, it is essential to recognize that they can be instruments deliberately constructed by individuals to navigate relationships, overcome obstacles to cooperation, and establish hierarchical structures. Formal institutions such as governments, legal systems, and educational frameworks exemplify deliberate construction aimed at enhancing efficiency, fostering collaboration, or streamlining decision-making. Formal institutions can be described as manifest entities that embody established norms and structures. They are inherently self-defensive, meaning that they have mechanisms in place to protect and preserve their established norms, rules, and structures. Informal institutions, by contrast, encompass cultural norms, traditions, and social practices, which are typically unwritten. Informal institutions are more intangible, rooted in ideas and behaviors rather than distinct organizational structures. Still, despite this dichotomy between entities versus ideas and behavior, both formal and informal institutions are susceptible to influences and changes.

Crucially, institutions are not static; they evolve, adapt, and undergo changes in response to shifting circumstances, evolving goals, and the leadership that guides them. Acknowledging their malleability is key, as institutions are not merely passive organizers of human activity, but dynamic constructs designed by humans for specific objectives. They may persist through generations, yet their capacity for adjustment, reform, and adaptation underscores their responsiveness to the ever-changing landscape in which they operate. Theorists Streck and Thelen write that, in the most general sense, institutions are “building blocks of social order,”
and that they represent “collectively enforced expectations with respect to the behavior of specific categories of actors or to the performance of certain activities.” In essence, institutions continually shape and are shaped by the socio-cultural and political contexts in which they exist.

As emphasized in the study of institutions, two contrasting narratives of stability and change emerge, highlighting the inherent tension within their definition. Rooted in stability, institutions are perceived as enduring features of social life, organizing patterns of human activity. The socially constructed nature of institutions highlights the fact that while they provide a sense of continuity, they are also ever-changing. They emerge as products of specific times, cultures, and societies. Thus, institutions serve as both anchors of stability and vessels of societal transformation.

**Institutional Stability, Change, and Survival**

Historical institutionalism is a frame of reference that seeks to understand formal institutional change through timing and contextual conditions, using real-world empirical examples. The theory has traditionally emphasized continuity over change, focusing on what is known as *path dependency*, or the idea that institutions shape and guide their behavioral norms along established trajectories or paths. Change can occur, however, during exceptional periods of time where the usual constraints are lifted and change may be forced more easily. These exceptional periods are known as *critical junctures*, and they become opportunities for change when the situation is acted upon by institutional actors that alter the trajectory of the institution.

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3 Miller, “Social Institutions.”
4 Steinmo, “Historical Institutionalism.”
5 Trouvé et al., “The Path Dependency Theory.”
Similarly, sociological institutionalism emphasizes the fact that institutions act in function of the pressures found in their environment. They seek to protect themselves through different methods, and from this point of view, the first objective of any organization is not efficiency, but rather the quest for survival. This statement is important because it can explain the often-contradictory decisions that, when examined closely, are inherent to institutional change.

The quest for institutional survival relates to Freeman and Hannan’s model, inspired by Darwinist biology. The theory draws parallels between institutions and biological organisms, highlighting that only a limited number of organizations can be supported in an environment. This perspective views the environment as competitive and resource-constrained, therefore, institutions must adapt to survive. Notably, organizational ecology observes that there is an inherent stability to the system; organizations tend to exhibit inertia, resisting change as the norm. Thus, guided by the perception that change may pose risks to their existence, institutions opt to maintain conditions that ensure their survival. Another perspective is that institutions commonly resist change due to the transmission and reproducibility of their rules, norms, values, and cognitive frameworks across time. Change, when it does take place, typically occurs during critical junctures as institutions seek to enhance stability within the competitive environment.

Legitimacy and Isomorphism

This need for stability is a key concept to understanding institutional dynamics in relation to legitimacy and isomorphism. Legitimacy can be defined as “a generalized perception...

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7 Lanteigne, “Institutional and Organizational Unconscious Theories.”
8 Hannan and Freeman, “Structural Inertia and Organizational Change.”
9 Scott, “Institutions and Organizations.”
10 Though these institutional theories apply both formally and informally, this thesis will utilize isomorphic theory specifically in the context of formal institutions.
or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.”

It reflects the beliefs and values shared by one group. While legitimacy is socially constructed, institutional actors perceive it as an objective reality and actively pursue it as a means of preservation. The dissemination of legitimacy among organizations results in conformity to the prevailing norms in the institutional environment. Termed institutional isomorphism, this phenomenon is crucial for comprehending the desire for survival. Institutions, to enhance their likelihood of survival, must adopt specific characteristics dictated by the environmental conditions they operate within. Two influential scholars, Powell and DiMaggio, developed this concept of isomorphism, writing that institutions “compete not just for resources and consumers, but for political power and institutional legitimacy, for social as well as economic fitness.”

Powell and DiMaggio describe three types of isomorphism, which clarify the institution’s fight for legitimacy and survival. First, coercive isomorphism is driven by external pressures from other organizations and society, which force institutions to reflect the prevailing values and norms of society in order to evade ostracism. The state, as an initiator of the isomorphi
c process, utilizes formal regulations, like legislation or legal mandates, to ensure conformity.

Second, during times of uncertainty, institutions may engage in mimetic isomorphism, where they replicate the structures of other institutions due to a belief in their efficacy and driven by a competitive pursuit of legitimacy. This tendency is particularly evident when an institution’s objectives or the means to achieve them are ambiguous. In such situations, institutions often choose to mimic others perceived as legitimate, offering a ‘safe’ pathway forward. Third,

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13 DiMaggio and Powell, “The Iron Cage Revisited.”
14 Meyer and Rowan, 358.
*normative isomorphism* involves institutional change through professionalization and the adoption of certain standards. Specialists, who themselves have legitimacy, contribute to the development of norms that then spread across management units. Personnel filtering and promotion reinforce adherence to these norms. In effect, to gain prestige and legitimacy from its environment, an institution must control the quality of its personnel according to specific norms and standards, even if this process may not increase effectiveness or efficiency.

This discussion demonstrates that formal institutions act in their own self-interest. Though the default inclination for institutions is to resist change as a survival strategy, the three forms of isomorphism provide pathways for change that prove advantageous for an institution’s pursuit of legitimacy and survival. Change is then built into the intrinsic stability of institutions. Another way to look at this adaptation process is through the “two-stage model,” which examines how institutional norms undergo change and subsequent reintegration: (1) first, institutions adopt new structures or policies in reaction to relevant issues, politics, or characteristics, initiating (2) processes of imitation, theorization, and diffusion, which eventually solidify into a widespread practice molded around core principles. Importantly, as the solutions diffuse, they become the accepted norm, described by many theorists as “taken-for-granted.” The concept of norms being reintegrated to the point of being taken-for-granted relates to institutional isomorphism—even as change occurs, the emerging institutional ideals will resemble and seamlessly integrate into the current framework. While institutions undergo changes, the underlying framework tends to remain consistent. This can have a constraining effect, as policies or norms established during the initial formation of an institution may later be limiting.

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15 Lanteigne, “Institutional and Organizational Unconscious Theories.”
16 Schneiberg and Lounsbury, “Social Movements and the Dynamics of Institutions and Organizations.”
17 Greener, “The Potential of Path Dependence in Political Studies.”
The U.S. Military: A Case Study

The U.S. military, a steadfast institution encapsulating both formal and informal characteristics, organizational structures, and deeply ingrained social norms, stands as a fascinating subject for study within the realm of institutional theory. Like other institutions, it fights for resources, struggles to maintain legitimacy, and adapts (or doesn’t) based on its own self-interest and need to survive. From its legacy of tradition and identity to the tension between stability and change, the U.S. military serves as a compelling case study to unravel the complexities inherent in Powell and DiMaggio’s framework of institutional theory.

Isomorphic Processes as Endogenous Variables

Three distinct narratives emerge that demonstrate the U.S. military’s usefulness as an example of institutional isomorphism. First, established even before the country itself, the U.S. military’s history and structure contribute significantly to its legitimacy as an institution, but also its resistance to change. The military’s formal mechanisms (such as hierarchical structures and bureaucracy), alongside its informal norms and beliefs (i.e. the institution’s identity), collectively contribute to a resistance to change. In some cases, this resistance is subsequently addressed through external pressures. This narrative aligns with coercive isomorphism, where external pressures, both formal and informal, play a significant role in forcing adaptation in the institution. The U.S. military—shaped by its own values, norms, and interests—must sometimes be forced to change through external pressure. The institution’s success in preserving its well-established identity lies in its ability to integrate new norms into its traditional narrative, even though internal resistance is frequently encountered in this process.

Second, in contrast to coercion, the military may voluntarily respond to pressures by changing its formal rules or structure when it deems such changes as advantageous. This
inclination towards change corresponds with mimetic isomorphism, demonstrating the military’s pursuit of enhancing its standing in the competitive institutional landscape. When confronted with uncertain objectives, it attempts to emulate other institutions perceived as successful. As previously noted, critical junctures are exceptional periods where typical institutional constraints are relaxed, creating the opportunity for change to be forced. Thus, uncertainty leads to adaptation, making the military more inclined to adjust to a shifting environment through imitation to solidify its legitimacy. This inter-institutional dynamic goes both ways, as organizational norms can influence the military and vice versa. And beyond inter-institutional engagement, the U.S. military may respond to societal pressures or trends when necessary to maintain its relevance and benefit its standing within the institutional environment.

Finally, the U.S. military aims to establish legitimacy by professionalizing its personnel, encompassing aspects such as recruitment procedures, specialized training, leadership pathways, physical and psychological standards, and more. Toinpre et. al write that “professional associations are drivers for defining and promulgating normative rules about professional and organizational behavior.” This process of association and ‘credentialing’ is important because it “strengthens the moral basis for legitimacy of the organization hence making them morally governed.” Thus, the process of professionalization corresponds with normative isomorphism, wherein the standards in place reinforce adherence to certain structural norms. In the military, adherence to a specific image or mold is imperative for soldiers to ascend through the ranks and, in certain instances, avoid discharge or court-martial. The professionalization of the soldier plays a pivotal role in instigating institutional change as the very definition of soldier has evolved over time, becoming more or less inclusive, and typically facing resistance. This transformation is

also connected to coercive and mimetic isomorphism, as external or mimetic pressures have led to adjustments in professional qualifications, standards, and other elements.

Within this context, resistance to change is prevalent because of the high-stakes nature of soldiering. As an institution, the military is unique in that its credentialing process involves readying each of its personnel to complete its mission—to “fight and win [the] nation’s wars.”¹⁹ The institutional structure relies on mission readiness and trust at every level, similar among organizations involving high-stakes teams such as firefighters, police, or even operating rooms. Consequently, changes to personnel policy are subject to rigorous scrutiny, both on the formal and informal levels, due to the persistent concern that any change in the standard could potentially diminish ‘battlefield readiness.’ This apprehension results in resistance to change, even when the proposed changes could potentially enhance the military’s ability to fulfill its mission.

For example, over its 250-year history, the military has undergone numerous revisions to its standards and doctrine. As this thesis will show, several controversial modifications to personnel standards have been related to evolving needs for quantity, particularly in response to the demands of ground warfare, which necessitates high numbers of soldiers. The tension, then, lies in how the military seeks to enhance its legitimacy—the demands of the mission may not align with its personnel standards. Does the adjustment of standards diminish the legitimacy of the professional soldier? Alternatively, does the failure to accomplish a mission due to resistance to change erode the legitimacy of the institution? The military is confronted with the challenge of striking a balance between these questions.

¹⁹ “Purpose & Legacy.”
**Exogenous Variables and the Broader Institutional Context**

Powell and DiMaggio’s model of coercive, mimetic, and normative isomorphism provides a framework for understanding the endogenous variables that impact the military’s decision-making in response to various situations. Nevertheless, the military operates within a broader set of institutional dynamics that must also be considered to gain a comprehensive understanding of institutional change. When addressing challenges, the military responds with its own self-defensive logic, fighting for its legitimacy and survival, whether that be through progressive, regressive, or stable measures. However, its responses are also shaped by a broader context, initially through interaction with its own superiors’ oversight—the executive and legislative branches—which, in turn, are influenced by a surrounding cultural environment and societal circumstances.

Structurally, the executive branch has the most power and oversight of the U.S. military. According to Article II of the Constitution, the president is the Commander-in-Chief of the armed forces (which includes the six service branches), with the Secretary of Defense acting as the “principal assistant” to the president in matters of national defense. The President and the Secretary of Defense exert command and oversight over the armed forces through two distinct branches of the chain of command. One branch relates to mission and operational direction of forces, with the chain of command traveling from the President to the Secretary of Defense, to the Unified Combatant Commanders, who are charged with executing military operations in different parts of the world by combining the capabilities of two or more military services. The Chairman of the Joint Chiefs of Staff—who is the military head of the armed forces and principal

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20 “10 U.S. Code § 113 - Secretary of Defense.”
21 There are eleven UCCs, seven of which lead geographic commands (such as Indo-Pacific Command, European Command, Africa Command). The other four lead functional combatant commands (such as Cyber Command or Special Operations).
advisor to the President and Secretary of Defense on military matters—acts as an intermediary, transmitting orders between the Secretary of Defense and the Commanders of Combatant Commands. The other branch runs from the President to the Secretary of Defense, to the Secretaries of Military Departments (which includes the Secretaries of the Army, Navy, and Air Force). The secretaries are civilian officials responsible for organizing, training, and equipping forces, rather than working on mission and operations, as is the case for the Unified Combatant Commanders.²²

Military oversight is also carried out through the legislative branch. Congress assumes a critical role in overseeing the military, serving as a conduit for civil-military relations through its access to information, willingness to engage in oversight, and the influential use of information that holds significance for both the executive branch and the armed forces. For example, oversight committees in the House and Senate can conduct hearings, investigations, and inquiries to ensure accountability and transparency in military matters. Congress gathers and leverages information to shape the defense budget, enact changes to defense policy through legislation, and exercise its authority in confirming or rejecting appointments and promotions of military officers and senior defense officials. This legislative engagement is designed to ensure that military decisions align with national priorities and comply with legal and constitutional standards. Of course, the Constitution also grants Congress the sole power to declare war, although declarations of war have been exceedingly rare since the end of World War II despite frequent military engagement abroad.²³

The design of executive and legislative oversight allows for the military to function subordinate to its civilian authority. However, this does not mean that military leaders have no

²² “Organization and Management of the Department of Defense.”
²³ Fay, “Why America Won’t Declare War.”
agency. Due to the civilian control of the military, particularly by politicians whose decisions often prioritize re-election or respond to political and media pressures, military leadership actively seeks to exert its own influence. Members of the professional military leadership, along with their non-uniformed supporters, can and do engage in the bureaucratic bargaining process within Washington’s policy-making apparatus. This engagement can be seen as a form of regulatory capture, as military professionals may aim to limit the policy options available to politicians regarding military matters.

In most cases, however, the military responds to what it’s asked to do; it completes its mission. As an institution, it sits within a hierarchical structure of authority, designed to directly respond to the executive and legislative branches. These branches of government, in turn, address broader circumstances and can use the armed forces as a tool, whether the circumstances pertain to security threats or social issues. This hierarchy—of a cultural context influencing the branches of government which then influence the military institution—is what shapes, constrains, and encourages internal military choice logic.

*The Social Experimentation Narrative*

The military has long been regarded as a “social experiment,” a phrase that has been used to either critique or applaud personnel changes that appear to challenge military culture and tradition. This perspective calls back to controversial policy changes, many of which are civilian-initiated, that seek to include populations into military service that do not resemble the ‘soldier image’—straight, white, Christian, native-born, cisgender men. On the critics’ side, the social experimentation critique began during the 1970s-80s, the era of the all-volunteer force. During this time, LGBTQ+ servicemembers and women advocated for broader roles and inclusion, while vocal opponents of integration accused politicians of compromising military effectiveness.
for political gain. The critique gained momentum in the 1990s. Charles Moskos, a prominent military sociologist, suggested the era of a “postmodern military,” which wrought unwelcome developments in the civil-military arena.

Critics decry efforts to diversify military forces as a) politically correct efforts that have no place in a nonpartisan institution that b) negatively impact military effectiveness. These two camps are related and broad, which demonstrates the utility and flexibility of social experimentation as a trope. Critics posit that first, the military should focus on its priorities as a fighting force and not as an “experimental laboratory,” and second, inclusion efforts endanger the armed forces by negatively impacting “unit cohesion,” “morale,” and “readiness.” These three terms and other similar signifiers have been used repeatedly by critics over time. These concerns are heard today with regard to transgender and genderqueer servicemembers and have been used historically against any effort to diversify military forces.

On the other hand, from the perspective of supporters, the military is viewed as a central arena for promoting social advancement and instigating change in American society. Recognized for its capacity to institute comprehensive changes through top-down policies and function as a microcosm of society, the military is commended as a realm for social experimentation. Nowhere is this narrative more prominent than in discussions of racial integration. The integration of the armed forces is frequently hailed as a significant success story for the American military, as African Americans were incorporated in 1948, a full 16 years before the passage of the Civil Rights Act in civilian society. Supporters of the social experimentation

24 Whitt and Perazzo, “The Military as a Social Experiment.”
25 Moskos, “From Citizens’ Army to Social Laboratory.”
narrative believe that equal participation in the armed forces fosters harmony among diverse servicemembers, leading to understanding and empathy when these servicemembers reintegrate into civilian society. This perspective is often encapsulated in the “foxhole narrative”: two soldiers sharing a foxhole forge an indescribable bond by fighting to protect each other and their fellow soldiers, transcending racial boundaries and forging an understanding that a person should be judged not by differences but by their character.

*Chicken or the Egg?*

Understanding the social experimentation narrative is crucial for examining cause and effect. The opposition to more inclusive personnel policies often centers around the notion that politicians are jeopardizing military effectiveness for the sake of being ‘politically correct,’ suggesting that societal or cultural influences are pushing policymakers and military officials to make important changes. This implies that military personnel policy responds to societal norms. On the other hand, supporters of more inclusive policies employ the ‘foxhole narrative’ to demonstrate that inclusive military policies and ‘social experimentation’ can contribute to broader societal acceptance of differences. In this point of view, societal norms respond to military personnel policy. So, which came first, military policy or cultural norms? The chicken or the egg?

Though it is interesting, this thought experiment oversimplifies the issue—neither perspective accurately describes the dynamics between social norms and military policy, although a reciprocal relationship *does* exist. This relationship calls back to Powell & DiMaggio’s model of three isomorphic processes, demonstrating that regardless of whether it’s the chicken or the egg, the institution will consistently act in its self-interest and strive for legitimacy. In some cases, progressive military policies have served as a precursor to (and likely
played a role in) societal changes. In other cases, we have observed military personnel policies adapting to societal changes, whether initiated by its own policymakers or compelled by legal mandates. The latter has been more common, given the military’s inherent resistance to change, with recent trends indicating a lag in keeping pace with societal strides toward greater inclusion.

In either scenario, once a policy is adjusted or ordered, the military system excels at swift implementation. Its proficiency lies in executing top-down policies across the entire service quickly, due to robust logistical capabilities and its chain-of-command system. However, the potential for rapid progressive changes is often preceded by lengthy periods of negotiations, commissioned studies, committee meetings, and the endorsement of numerous senior officials in government and the DoD hierarchy. Additionally, though new policies can be implemented swiftly, informal norms and resistance to change among servicemembers impact full implementation and acceptance, particularly in the case of personnel policy. Nonetheless, the history of the U.S. military reflects repeated instances of more inclusive personnel changes, which consistently use the same messaging—that improving diversity and inclusion renders the military more representative of the nation and better equipped to defend against threats. This occurs, however, after years of excluding these groups using another messaging—that certain folks cannot serve because of concerns about “unit cohesion,” “morale,” “readiness,” or using other buzzwords.

Changing personnel policy requires a considerable amount of time and effort on the formal front, and the shift of informal norms is an even more protracted process. The military’s organizational structure, coupled with its imperative for institutional survival, influences its choice to implement more or less inclusive personnel changes. Ultimately, we know that the military adapts based on its own self-interest. But while personnel policy may not always align
with the most progressive responses to more inclusive societal norms, the military undeniably has the potential to ensure that every American—respective, and irrespective of, their identity—has the right and opportunity to serve. This issue is paramount. Given the institution’s central role in American society and culture, it should aspire to establish the most inclusive personnel policies, not only because diversity breeds strength, but also to best reflect the society it is dedicated to defend.
Historical Analysis

Similar to other identities that existed outside the norm of a stereotypical American soldier (read: white, cisgender, heterosexual, male), the extent to which the U.S. military includes or excludes queer or transgender servicemembers has a complex history. For LGB servicemembers, their treatment has been sporadic and dependent on the military’s needs for personnel. Historically, military policy did not explicitly prohibit or discharge individuals based on their sexuality; rather, soldiers were threatened by court-martial if they committed the sexual act of sodomy²⁸ along with other crimes that disrupted “good order and discipline.”²⁹ Sodomy has been considered a crime in the U.S. since the 17th century, legally inherited from colonial laws that targeted same-sex sexual behavior (SSSB).³⁰ This criminality, however, in no way prevented queer people from serving in the U.S. military. In the same vein, though a more mainstream understanding of trans and genderqueer identity has only emerged in the last few decades, records indicate that individuals who we might view today as transgender have served in the U.S. military since the Civil War, and likely even earlier. In fact, there is no shortage of examples of LGBTQ+ individuals who have demonstrated honorable and distinguished service in the U.S. military, spanning from its earliest history to the present day.

Randy Shilts, in his book *Conduct Unbecoming: Lesbians and Gays in the U.S. Military* (1993), presents accounts of both officers and soldiers who were able to serve despite their SSSB being known by other service members; this behavior was presumably overlooked due to their contributions to the military. This extends to the earliest days of the U.S. military—Friedrick Wilhelm von Steuben left Germany to assist George Washington in training his troops at Valley

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²⁸ Sodomy has various definitions but typically refers to anal or oral sex between two men, a man and a woman, and, by the World War II period, two women.
²⁹ Goodhart and Taylor, “LGBT Military Service Policies in the United States.”
³⁰ Godbeer, “The Cry of Sodom.”
Forge, likely accepting the role to evade potential prosecution in Europe for his reported homosexual behavior.\textsuperscript{31} Von Steuben’s service in the U.S. was significant—he single-handedly reformed the Continental Army into a disciplined and professional fighting force to rival the British, and is consequently regarded as one of the fathers of the U.S. Army.\textsuperscript{32}

1700s–1930s: Gender Nonconformity, Sodomy, the Articles of War

In the 1700s, American society adhered to traditional Judeo-Christian norms of morality and behavior that resulted in an overall anti-gay stance. The U.S. Army, given its origins of an institution of citizen-soldiers, mirrored societal norms and did not allow SSSB within its ranks. However, administratively, history shows that the early Army did not have much official interest in prosecuting SSSB.\textsuperscript{33} The earliest record of a soldier being dismissed from the U.S. military for SSSB can be traced to the court-martial of Lieutenant Frederick Gotthold Enslin, who was convicted of sodomy and perjury and discharged from the Continental Army in 1778, at the same time Von Steuben was leading.\textsuperscript{34} This represents the dichotomy of military enforcement of anti-gay policy.

Transcending Binaries in the Civil War

The absence of records suggests that prosecutions for SSSB were likely infrequent. This scarcity of documentation persisted into the Civil War era, with only one recorded instance of SSSB known to exist: in 1865, three pairs of Union Navy sailors were court-martialed and presumably discharged from service for engaging in “improper and indecent intercourse with

\textsuperscript{31} Dean Sinclair, “Homosexuality and the Military.”
\textsuperscript{32} Blakemore, “The Revolutionary War Hero Who Was Openly Gay.”
\textsuperscript{33} Fred L. Borch III, “The History of ‘Don’t Ask, Don’t Tell’ in the Army: How We Got to It and Why It Is What It Is.”
\textsuperscript{34} Shilts, Conduct Unbecoming: Gays and Lesbians in the U.S. Military, 11–12.
each other.”\textsuperscript{35} This demonstrates that despite the absence of documented prosecution, SSSB and other forms of queer intimacy were indeed occurring within military contexts, although they would not come to be known as examples of “homosexuality” until decades after the war had ended. Union and Confederate soldiers did not conceptualize a sexual landscape categorized by straight, gay, bisexual, or queer identities, as such distinctions had not yet been constructed. Of this understanding, historian Joshua Bader writes that “men were men and the sexual binary of the Civil War era separated genders, not orientations.”\textsuperscript{36} However, the Civil War era also reveals a rich historical narrative that challenges even this gender binary, demonstrating how military settings could serve as unique spaces wherein individuals could explore gender nonconformity and transness.

There are well over 400 cases of “women disguising themselves as men”\textsuperscript{37} and serving in the military during the Civil War. These individuals had a variety of possible reasons for making this decision, often motivated by a desire to engage in work typically restricted to men or to follow male partners into service. Some individuals presented as men only during their military service, while others served as men and continued to live as men for the remainder of their lives. Albert Cashier is one of the most well-documented cases. Cashier enlisted in 1862 and served in the Union Army with the 95\textsuperscript{th} Illinois Infantry until 1865. Throughout their military service, Cashier presented as a man, and historical records indicate that they maintained their masculine identity of Albert Cashier for the

\textsuperscript{35} Lowry, \textit{The Story the Soldiers Wouldn’ t Tell: Sex in the Civil War}, 109.
\textsuperscript{36} Bader, “A Queer Civil War Soldier’s Story.”
\textsuperscript{37} “Albert Cashier Aka Jennie Hodgers.”
remainder of their life. It wasn’t until 1911 when Cashier was involved in an automobile accident that the attending physician discovered that they were female-bodied. Records reveal that Cashier’s fellow veterans from the 95th Illinois Infantry publicly praised their performance as a soldier and offered support during Cashier’s later years of medical treatment. One scholar wrote of these veterans: “No mere matter of sexual identity could efface the valor and fellowship of their comrade Albert Cashier, who had stood in their ranks as a fighting member of the Union Army.” Cashier was buried with full military honors four years later.

Military policy made no reference to any form of transgender or genderqueer identity until the mid-to-late 20th century. Rather, if soldiers were found to be female-bodied, typically when physicians were treating wartime injuries, they were usually directed to receive necessary medical care before being sent home. In very few cases, they were temporarily jailed. Specific military policies governing these scenarios were absent, apart from the overarching policy that those assigned female at birth were forbidden to enlist and serve as combat soldiers.

As for queer servicemembers, the threat of court-martial remained the primary means through which the U.S. military sought to regulate the sexuality of its soldiers until the early 20th century. Military policy with regard to court-martialing for SSSB was generally vague during this period. Rather than explicitly designating SSSB as prohibited or undesirable, the military interpreted policies that emphasized good character and proper conduct as reasons to exclude those servicemembers who engaged in SSSB. This ambiguity led to inconsistent application of restrictions on queer individuals serving in the early armed forces. While there is evidence that

38 Embser-Herbert and Fram, With Honor and Integrity: Transgender Troops in Their Own Words, 3.
39 Blanton, They Fought Like Demons: Women Soldiers in the American Civil War, 170–74.
40 Righthand, “The Women Who Fought in the Civil War.”
41 Ibid.
42 Goodhart and Taylor, “LGBT Military Service Policies in the United States.”
some soldiers were discharged for sodomy during the 18th and 19th centuries, the absence of clear guidance meant that military leaders imposed the discharges at their own discretion. Importantly, when restrictions were enforced, it was on the basis of behavior, not sexual orientation per se. Regulations excluding queer people would not focus on the identity of the individual until the World War II period.

The Interwar Period

Not until the early 20th century did military policy begin to expressly prohibit SSSB in the service. The first mention of sodomy in military policy was in the 1916 amendment of the Articles of War (AW), which stated that any person subject to military law (active-duty soldiers, civilian personnel, etc.) would be punished by court-martial if found guilty of committing “assault with [the] intent to commit sodomy.”43 Importantly, sodomy was treated as a crime only when combined with the intent to commit sexual assault. This wording was changed four years later, in the 1920 amendment to the AW, which made consensual sodomy involving military personnel a crime.

During this period, the military was engaging in several forms of protective behavior. The end of World War I in 1918 served as a critical juncture for the military; typically, interwar periods allow military officials the opportunity to restructure and examine old policies for improvements. In this case, the military was attempting to enhance its legitimacy through professionalization, achieved through standardization efforts. Specifically, the military attempted to provide greater specificity of undesirable characteristics, as evident in the AW amendments, with the aim of achieving uniform implementation of such policies. Although there certainly was

a moral component underlying the Army’s change in policy, the official rationale for separations related to SSSB was medical; engaging in “sexual psychopathy” was identified as an illness unfit for service. This demonstrates an early example of conflicting policies relating to the reasons for exclusion of queer servicemembers—not only was sodomy considered a crime under the AW, but it was also considered a symptom of the broader “illness” of homosexuality.

The interwar period was also marked by increased concern about queer men in the armed forces, demonstrating the military institution’s response to broader societal pressure of anti-gay norms. In 1919, Franklin D. Roosevelt, who at the time held the position of Assistant Secretary of the Navy, requested an investigation into “vice and depravity” in the naval forces. This order led to what is now known as the Newport sex scandal—an undercover operation that was launched to lure sailors suspected of being queer into sexual acts, leading to their discharge from the service. The investigation resulted in at least 17 sailors being jailed and court-martialed before widespread public criticism prompted the Senate to denounce the operation.

Following this period, the Articles of War were amended to make consensual sodomy a crime, representing the first explicit prohibition of SSSB within the United States armed forces. In addition to this change, the 1921 Army Regulation 40-105, overseeing medical fitness standards, singled out men exhibiting perceived femininity based on subjective physical characteristics. This change attempted to align military policy with contemporary biological theories about the origins and manifestations of homosexuality, demonstrating early interaction of military regulation with the psychiatric field. The policy also illustrates how strict gender

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46 Notably, the public criticism was not in response to the unethical operation but rather was linked to the use of enlisted soldiers in carrying out “immoral practices” to obtain evidence.
47 Loughery.
48 Rostker et al., 4.
norms during this era were interacting with military policy, wherein male soldiers were required to conform to a specific standard of masculinity. Fitness regulations often served as a platform for enforcing these gender norms onto recruits. The standards dictated that an ideal physique should be “well developed and muscular,” while traits such as “sloping shoulders, broad hips, and a lack of secondary sexual characteristics, including facial and body hair,” were discouraged.

These gender expectations were similarly reflected in the roles women assumed during the wartime era, working as nurses, switchboard operators, telegraphers, mail carriers, and train or trolley drivers. Despite their contributions, the prevailing notion that ‘a woman’s place is in the home’ persisted, necessitating the preservation of traditional gender roles even though women were taking on jobs traditionally held by men. Consequently, painstaking efforts were made to assure the nation that working women would not become “masculinized” and deviate from other societal norms. Newspaper and magazine publishers depicted women in work ads as attractive and feminine, and uniforms for these roles predominantly consisted of skirts or dresses, which allowed for mobility while still adhering to conservative gender conventions.

1940s: World War II and the Influence of Psychiatry

Two decades later, as the U.S. became increasingly entangled in the Second World War and Congress approved an expanded defense budget and passed the conscription act, the field of psychiatry began to enter the military fold. American psychiatrists saw this period as their opportunity to contribute to the American war effort and enhance their own legitimacy (see the

49 Friedl, “Body Composition And Military Performance.”
50 Rostker et al., 4.
51 Vining and Hacker, “From Camp Follower to Lady in Uniform.”
52 “Women in World War I.”
pattern?). They set out to persuade the Selective Service System, the organization responsible for the draft, to incorporate a psychiatric examination alongside the existing physical examination required for all selectees. The two men who led this charge, Harry Stack Sullivan and Winfred Overholser, formulated the guidelines for psychiatric screening to identify and exclude not only individuals suffering from mental illness but also those experiencing neurosis or maladjustment. The two psychoanalysts hoped that through these screening measures, the Selective Service would be able to identify and exclude individuals prone to mental breakdown, thereby mitigating mental health issues during deployment. This was preferable for the military, they argued, which had spent over one billion dollars to care for the psychiatric casualties of World War I, who still occupied more than half of all Veterans Administration (VA) hospital beds by the start of World War II.

Psychiatric screening held the potential to reduce these costs (in theory), a claim that benefitted psychiatrists like Sullivan and Overholser who also sought to elevate the relatively new and untrusted field of psychiatry. The efforts of psychiatrists like Sullivan and Overholser, who sought to legitimize their field, demonstrates how a competitive organizational environment compels entrepreneurs to either push hard for change or avoid it completely. In this case, the psychiatric field saw the coming war and the draft as a critical juncture during which they could elevate psychiatry by persuading the most prominent institution of the time—the U.S. military—to incorporate it into their procedures. LGBTQ+ historian Allan Bérubé writes that Sullivan and Overholser’s initiative is extremely important to understanding queer servicemember exclusion, writing that “these early efforts to establish a screening program to determine the mental health

53 Sullivan, “Psychiatry and the National Defense.”
54 Pols and Oak, “WAR & Military Mental Health.”
of potential soldiers carved out the territory on which others would build an anti-homosexual barrier and the rationale for using it.”

Interestingly, both Sullivan and Overholser, as well as some of their colleagues, shared the controversial opinion (in 1940) that sexuality played a minimal role in mental disorders. Sullivan himself was in a loving relationship with his male partner but kept this private. Overholser wrote that military officials, as well as the public, had irrational opinions about queer individuals because the subject was “so overlaid with emotional coloring that the processes of reason are often obscured.” Thus, the initial plans for psychiatric screening did not include any references to homosexuality.

However, despite the two psychoanalysts’ recommendations, traditionalist psychiatrists and military officials revised the plans as they traveled through Washington bureaucratic channels. Each iteration of the initial plan underwent a process of compromise and adjustment by committees and military officials. This bureaucratic process meant that final decisions regarding screening procedures fell into the hands of a select few high-ranking officials, many of whom held biases against both the field of psychiatry and queer individuals. This illustrates the path dependency ingrained within the military establishment; senior military officials, steeped in years of service and institutionalized in the military’s traditions and procedures, are naturally inclined to adopt conservative stances when confronted with pivotal decisions. Even if some of these leaders were not working with an agenda against psychiatry or homosexuality, the military institution has molded their behavioral norms, prompting changes that align with established trajectories.

57 Bérubé, 10.
58 Bérubé, 11.
59 Ibid.
Ultimately, this red tape led to the classification of homosexuality as a disqualifying mental health condition in the psychiatric screening, despite Overholser and Sullivan’s initial plans.\(^\text{60}\) This classification would carry significant consequences. Importantly, this bureaucratic process also initiated the accumulation of directives, memos, and revisions circulating through the chain of command concerning the validity of homosexuality as a disqualifying condition, contributing to the wartime focus of the military on issues related to queerness.

*The Psychiatric Screening Process*

Screening for homosexuality resulted in a military psychiatric process that required millions of young men to answer point-blank questions about their romantic interests, thoughts, feelings, and experiences, particularly about their sexuality and their relationships and/or sexual activity with other men or boys. The routine question to start off the interrogation would be “Do you go out with the girls?” followed by direct questions about queer experiences or feelings. Many draftees answered how they assumed the examiners wanted them to: “that they liked girls and that they were not homosexual.”\(^\text{61}\) For many, regardless of sexuality, this was the first time they had to explain their SSSBs or inclinations to anyone, let alone the federal government. Bérubé writes that the questioning became “a new military ritual,” one that “forced each selectee to make a public statement about his sexuality and to wonder privately if he might be queer.”\(^\text{62}\)

For those who knew they were gay, the questioning created a dilemma on how to answer knowing it would affect their participation in the war. Stuart Loomis, who served as an Army psychologist, recalled that among his circle of queer friends in Omaha, Nebraska, they debated this dilemma: “You had to decide, were you going to try to go in and cover and take your

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\(^{60}\) Bérubé, 12.

\(^{61}\) Bérubé, 22.

\(^{62}\) Ibid.
chances or were you going to declare yourself and stay out?”

Many gay draftees lied during their evaluation, likely influenced by a combination of factors including the stigmatization of being rejected from military service, the stigmatization of being queer, or merely a strong desire to serve their nation during the war. Charles Rowland, who was drafted in Phoenix, Arizona at age twenty-five, said that of the many gay people he knew and grew up with, only one ever considered not serving: “We were not about to be deprived the privilege of serving our country in a time of great national emergency by virtue of some stupid regulation about being gay.” In some cases, examiners themselves were queer, making it easier for other queer men to enter the service. A twenty-eight-year-old high school English teacher recounts his experience being examined at a Navy recruiting station comically:

[I] walked into this office and here was this man who was a screaming belle—lots of gold braid, but he was a queen if ever I saw one! And he asked me the standard questions, ending up with, “Did you ever have any homosexual experiences?” Well, I looked him right in the eye and I said, “No!” And he looked right back and said, “That’s good!” The two of us lying through our teeth.

For various reasons, including deception, lack of awareness, or getting lucky with their examination, gay men were able to enter the service during this era. The military had a significant need for any and all individuals who could serve.

Following the Japanese attack on Pearl Harbor, there was a remarkable surge in the number of U.S. military personnel drafted. Between 1941 and 1942, the total count of U.S.

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63 Ibid.
64 Bérubé, 23.
65 Bérubé, 24.
military personnel surged from 1,801,101 to 3,915,507. The subsequent year witnessed a further increase, with the number reaching 9,195,912 personnel. Recruiting offices felt pressure to meet unfilled personnel quotas, leading to a relative relaxation in psychiatric examinations. Maxwell Gordon, a queer teenager who enlisted in the Navy in Los Angeles, said that he saw the psychiatrist for all of eight or ten seconds. When asked if he liked girls, Gordon responded “I can take them or leave them.” Despite this ambiguous answer, the examiner signed him off and took on the next selectee. Gordon explained, “There were hundreds, hundreds of people… If you were warm, they would take you.” It was the middle of 1942.

*Psychiatric Screening in the Women’s Corps*

While the initial focus of physical and psychiatric screening was on male selectees, the military also initiated screening procedures for women once they were granted access to the armed forces. Midway through World War II, every branch of the military had formed its own women’s division. The largest branch was the Women’s Auxiliary Army Corps (which later was called the Women’s Army Corps or WAC, when it became an official part of the U.S. Army in 1943), followed by the Navy WAVES, the Women Marines, the Women Airforce Service Pilots (WASPs), and the Coast Guard SPARS. All of these organizations had a similar function—to free up men for combat roles. Women were brought in to work in clerical or administrative positions, those deemed culturally appropriate for women in the 1940s. But, as the war pushed on, women stepped into more opportunities that expanded beyond traditional roles—corps members excelled at specialized work and worked as vehicle and aircraft mechanics, parachute

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66 “Research Starters: US Military by the Numbers.”
67 Bérubé, 25.
68 Bérubé, 28.
riggers, air traffic control operators, drivers, and intelligence specialists. By the end of the war, over 200 jobs had opened to women in the armed forces.

In contrast to the men’s branches of the military—which had built their anti-homosexual policies based on a legal framework that had historically prosecuted men for sodomy—psychiatrists and military authorities didn’t establish screening policies or procedures for identifying lesbians in the women’s service until a later stage of the war. This lag could be attributed to two main factors. First, women held a marginal status in the military before World War II, necessitating the development of policies for women from the ground up. Second, criminal law typically ignored lesbian sexual activities—women were rarely prosecuted in court for engaging in sex with other women. Bérubé writes: “Not only in the law but in most areas of American life lesbians were ignored either as nonexistent or as less significant than gay men.” This double standard of anti-homosexual screening, combined with their history of invisibility, allowed queer women to enter the military undetected. In fact, many lesbians decided to join the ranks because it was a more welcoming place to be queer.

Similar to the relaxing of standards on the men’s side once demand for soldiers increased, recruiting officers and examiners felt pressure to meet personnel quotas and thus let in almost every woman that volunteered. Nevertheless, despite the shared need for recruits in both men’s and women’s selection processes, a distinct double standard persisted in the examination procedures for women. Examiners did not pry into the volunteers’ sexual lives, did not ask potentially disqualifying questions, and occasionally even waived examinations at distant induction stations to prevent discouraging applicants due to the lengthy journey. In contrast to

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69 Martin, “It’s Your War, Too.”
70 Bérubé, 28.
71 Coming Out Under Fire.
72 Bérubé, 29.
how male effeminacy was viewed by those examining male draftees and regarded as a “disqualifying defect,” female masculinity was embraced and, in some cases, sought after. This reflected the wartime necessity for women to take on roles traditionally seen as ‘men’s work’ during the WWII era.

WAC officials, in particular Director Colonel Oveta Culp Hobby, advocated for the Army to implement more comprehensive screenings of WAC selectees between 1942 and 1944. Their objective was to address the double standard compared to the men’s corps and gain public respect for the organization. Once again, this demonstrates the institution’s desire to enhance its legitimacy. The justification for these screenings became even more pertinent as officials gradually became aware of the prevalence of queer women in the service through several controversies.

One of the most notable controversies occurred at the WAC Training Center at Fort Oglethorpe, Georgia (one of the two operating at the time) when the mother of a WAC private discovered love letters between her daughter and a woman sergeant. Immediately, the mother wrote to authorities in Washington, alleging that the WAC was rife with “homosexuals and sex maniacs,”73 and threatened to involve the media if the matter wasn’t addressed. In response, the War Department sent an investigative team from the Inspector General’s office to Fort Oglethorpe, where they conducted over a month of secret hearings on the presence of queer women in the WAC. The investigative team convinced the War Department to recommend more strict psychiatric screening of applicants, leading to the first anti-lesbian directive. These instructions were part of a medical technical bulletin titled “WAC Recruiting Station Neuropsychiatric Examination” and established homosexuality as a disqualifying category from

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the WAC. In this case, the WAC engaged in both mimetic and normative isomorphism, seeking to enhance its legitimacy through the adoption of psychiatric screening that disqualified queer women, mimicking the men’s corps. However, the directive did not include any guidelines for identifying lesbian candidates, nor was there enough time for any kind of implementation; it was October 1944 and most of the WAC recruiting was over. Despite the directive, much like the men’s recruiting situation, anecdotal evidence demonstrates that queer women were not successfully disqualified.

*Historical Impact of Screening Procedures*

Bérubé describes WWII-era screening measures as an “anti-homosexual wall that psychiatrists began to build around the military” which became a new and enduring “feature on the American sexual landscape.” Though ineffective in actually keeping out queer servicemembers, the new screening directives and procedures introduced to the military the concept that queer people were unfit to serve in the armed services because they were mentally ill. Traditionally, the military had punished SSSB within its criminal justice system, defining the sexual act of sodomy as the problem. The WWII psychiatric screening process transitioned the military’s queer exclusion policy to define the *person* as the problem, regardless of whether any sexual act had been committed. This created the narrative that queer folks were mentally ill and thus seen as disruptive of morale and unfit to serve. The military, ironically, raised this narrative and systematically wrote it into its regulations and directives, excluding an entire class of qualified people at a time when the armed forces desperately needed every possible recruit to serve in the nation.

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74 Bérubé, 32.
75 Bérubé, 33.
In 1941, confronted with the challenges of massive wartime mobilization and an ineffective screening criterion that allowed many gay service members in, the military found itself in a tricky situation—it was unable to continue charging gay servicemembers with sodomy and sending them to prison. This was a time-consuming and expensive process, and military prisons were already overcrowded. These policies that had been established during the initial formation of the institution had become extremely limiting, and thus, in order to keep queerness at bay, this critical juncture created another opportunity for change. The prevailing norms of the time allowed for another instance of psychiatry to influence new military policy. So, to address the presence of “queers” in their ranks, a coalition of reform-minded military officials and psychiatrists (them again!) proposed a new system. Winfred Overholser, one of the psychiatrists involved in the initial push for psychiatric screening criteria, headed the National Research Council’s Committee on Neuropsychiatry; his leadership and team represented some of the most powerful voices from the psychiatric side in advocating for a new discharge system for queer service members.

Overholser disagreed with the existing military law of addressing homosexuality through the courts-martial, describing the system as “antiquated” and further criticizing the intolerance and homophobia embedded in the civilian legal system and court of public opinion. Though Overholser and his team of psychiatric consultants may have disagreed with the reaction to and legal treatment of gay people, they maintained the mainstream perspective that homosexuality was a mental illness. Their focus was on reforming existing military policy to implement a more

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76 “Blue and ‘Other Than Honorable’ Discharges.”
77 Bérubé, 128.
78 Bérubé, 134.
humane method of discharging gay servicemembers without necessitating a prison sentence. Though discharging gay soldiers without benefits cannot be regarded as humane, this effort by psychiatrists does signify a departure from the criminalization and imprisonment of queer individuals.

The first step in advocating for reform was to educate officials on the origins and definitions of homosexuality in the psychiatric field. The background brief presented by the psychiatric consultants referenced elements of Freudian psychoanalysis and proposed that homosexuality had both psychological and biological underpinnings. They posited that all individuals were inherently “bisexual,” suggesting that, at various life stages, anyone could experience queer desires and engage in SSSB. However, the duration of queer behavior served as the criteria for potential mental illness. Their framework suggested that a person considered “normal” would progress through a homosexual “stage” before reaching heterosexual maturity. In contrast, certain individuals might not progress to the heterosexual stage and would instead remain homosexual—a classification that was viewed as immature and “deviant.” This formed the foundation for a perspective that regarded homosexuality as a mental illness.

Interestingly, the consultants also presented the idea that in unusual circumstances (such as prison or the military), “normal” heterosexual individuals may “revert” to their homosexual developmental stage and potentially engage in SSSB. Additional consultants within the Army added to this argument, reporting that homosexuality cannot be cured through medical treatment or imprisonment. They contended that “confinement... will not even act as an effective deterrent,” emphasizing that imprisoning gay servicemembers incurs significant expenses for the government over extended periods without any potential returns on investment. This

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79 Bérubé, 136.
80 Bérubé, 137.
notion—that homosexuality is incurable—formed a cornerstone of the psychiatric campaign against imprisonment and in favor of discharge.

Based on the psychiatric brief, military leadership in the legal, personnel, and medical offices created three administrative categories, inspired by the psychiatrists’ psychosexual ‘stages,’ that would allow for a streamlined process of how to handle queer servicemembers. Each offending category resulted in a different action, whether that be court-martial, discharge, or retainment. The three categories were as follows:

1) **Criminal offender**: this category was somewhat narrow and only included those offenders who sexually assaulted or somehow coerced their same-sex partner into sexual activity. This category also included those who had sex with a minor. Criminal offenders were subject to trial by court-martial.81

2) **Mentally-ill offender**: this category included the “true perverts” who engaged in SSSB with consenting adults. Mentally-ill offenders would be discharged under the new system.82

3) **Reclaimable offender**: this category is less clear. In the words of the Army judge advocate general, this category applied to “normal young men” who were not “by nature homosexuals,” but who engaged in SSSB out of “intoxication or curiosity.”83

These servicemembers most closely identified the psychosexual category of reverting to the homosexual development stage under times of great stress. Reclaimable offenders were to be rehabilitated and retained without trial or discharge.

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81 Bérubé, 137.
82 Ibid.
83 Ibid.
The discharge of some queer servicemembers while retaining others demonstrates the pressure to maximize the efficiency of the U.S. military by using all available human resources during wartime. Those servicemembers who were categorized under the second category, *mentally-ill offender*, were to be committed to military hospitals, examined by psychiatrists, and handed a Section 8 ‘undesirable discharge.’ Military officials did not want to issue medical/honorable discharges to queer servicemembers for both practical and moral reasons. On the practical side, they did not want to allow for the possibility that servicemembers would engage in SSSB or declare themselves gay in order to escape compulsory service. On the moral side, military officials felt it would be unfair to award the “overt homosexual” an honorable discharge, structurally equating them with someone who was wounded in action or incapacitated while fulfilling their military duties. Rather than hand out the typical honorable or dishonorable discharge, the military utilized the ‘undesirable discharge’ category that had only previously been used for “social misfits”—alcoholics, drug addicts, chronic liars, individuals who consistently antagonized others, those who damaged unit morale and cohesion—to discharge queer servicemembers. These discharges were also known as ‘other than honorable’ discharges and were governed under Section Eight of Army Regulation 615-360, which permitted the discharge of servicemembers with “undesirable habits or traits of character.” They were issued on blue slips of paper, prompting the nickname *blue discharges*.

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84 Bérubé, 138.
This new system would be initiated when suspected servicemembers were either caught engaging in SSSB, if they were reported by witnesses, or if they declared themselves to an officer. They were then placed on sick call and hospitalized; here, a psychiatrist would perform an interview to identify in which category the servicemember was to be placed. Intelligence officers often performed invasive and abusive interrogations in an attempt to obtain the names of their sexual partners and other queer servicemembers. Many men were subject to physical abuse, sexual abuse, and public humiliation. In some places, queer servicemembers were rounded up and confined in “queer stockades” until further processing could take place. A medical report, which included the psychiatrist’s analysis and recommendations, would be forwarded to an administrative board, which was comprised of commissioned officers and the examining psychiatrist. The board would determine the next steps for the servicemember: remaining hospitalized, returning to duty, or being discharged or forced to resign (in the case of officers).

Enlisted men would be subject to the decisions of the administrative board without the right to counsel or the right to be present, cross-examine witnesses, or even obtain a copy of the proceedings. Consequently, officers would conduct these hearings with greater speed and flexibility compared to the more cumbersome court-martial trials.

From 1941 to 1945, more than four thousand Navy sailors and five thousand Army soldiers were hospitalized, diagnosed by psychiatrists, and issued a blue discharge. The label of

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86 Bronski, “Sex in the Trenches,” 166.
87 Bérubé, 143–144.
homosexuality appeared on their military records. The discharge count rises when the tally incorporates the number of queer women who were discharged, a figure that was not officially documented by either the Army or Navy. Additionally, according to official estimates, many more servicemembers were discharged under primary diagnoses that disguised secondary homosexual diagnoses. Including the unreported blue discharges of women and those under disguised diagnoses, the number exceeds 10,000 in just four years. By contrast, the total number of men in the Army and Navy who had been convicted of sodomy from the start of the 20th century to the start of World War II—four decades—numbered only in the hundreds.

*Discrimination and Fights for Reform*

Carrying a blue discharge was a unique burden. Despite language in the G.I. Bill that guaranteed benefits to all veterans, the VA made it a practice to deny benefits to any former servicemember carrying a Section 8 or blue discharge. This was directly at odds with the bill’s language, which explicitly specified that only a dishonorable discharge could serve as grounds for denying benefits to a veteran. In April 1945, the VA institutionalized this discrimination by issuing a directive that clarified the language in the bill: all holders of blue-discharges for homosexuality were to be denied benefits. The instruction read: “An undesirable or blue discharge issued because of homosexual acts or tendencies … will be considered as under dishonorable conditions and a bar to entitlement.” The many benefits that helped servicemembers get back on their feet, reward them for service, and integrate into civilian society—including VA health care, college tuition, occupational training, mortgage insurance,

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88 Bronski, 165.
89 Bérubé, 147.
91 Mettler, 66.
and business loans—were not accessible to those holding a blue discharge slip. Worse, many of those with a Section 8 discharge struggled to get a civilian job; most employers at the time required applicants to present their discharge papers as part of the application process, and many were aware of the stigma surrounding blue discharges, denying anyone with a less-than-honorable discharge.  

Of the former servicemembers who held a blue slip, many had been discharged for vague “undesirable traits of character” by officers who wanted to get rid of “problem soldiers.” This not only includes queer soldiers but also large numbers of Black soldiers, and also those considered to be addicts, liars, or general “troublemakers.” Official estimates of blue-discharge veterans ranged from 49,000 to 68,000 in the Army alone, with a disproportionate number being Black (10,000) and/or gay (5,000). Generally, all these blue-dischargees were denied GI benefits. The VA was a discriminatory body that even discriminated against its honorable dischargees—it allowed employers to give job preference to white veterans over Black veterans. However, the VA’s moral judgment and discrimination drew the wrath of many. The large number of blue-discharge veterans, coupled with the level of their mistreatment by the VA and civilian society sparked an organized campaign from late 1945 to early 1947, with the aim to safeguard the rights of blue-dischargees, enhance their well-being, and advocate for the elimination of the procedure.

Advocates for Black civil rights spearheaded the postwar campaign against blue discharges. In a series of articles from October to December 1945, the most widely read Black newspaper in the country, The Pittsburgh Courier, campaigned on behalf of veterans holding blue discharges, specifying that the paper was fighting for the rights of former servicemembers

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92 Bronski, 165.
93 Bérubé, 232.
94 Bérubé, 230.
regardless of race or nature of discharge.\textsuperscript{95} The \textit{Courier} ran stories that harshly criticized blue discharges, calling them a “vicious instrument which should not be perpetrated against the American Soldier,” and criticized the military for “allowing prejudiced officers to use [blue discharges] as a means of punishing the Negro soldier.” The harsh criticism continued by listing queer veterans among the “‘unfortunates’ of the Nation” who were being subject to discrimination, asking “why the Army chooses to penalize these ‘unfortunates’ who seem most in need of Army benefits and the opportunity to become better citizens under the provisions of the GI Bill of Rights.”\textsuperscript{96} During its campaign, the \textit{Courier} contacted Secretary of War Robert P. Patterson, submitted a brief to the U.S. Attorney General Tom Clark, and brought the American Legion into the fight.

The campaign garnered significant public attention and quickly made its way to the chambers of Congress by the Fall of 1945. Senator Edwin C. Johnson, chairman of the Senate Veterans Committee, read the \textit{Courier’s} editorial into the Congressional record and condemned blue discharges on the Senate floor.\textsuperscript{97} The House Committee on Military Affairs created a special committee that studied the inequities of blue discharges, issuing a scathing report in late January 1946. The report, officially titled “Investigations of the National War Effort,” but commonly called “Blue Discharges,” used rhetoric emphasizing rights and injustice, explicitly highlighting gay dischargees as individuals who had been treated unfairly.

The committee rightly suggested that military officials had used blue discharges to avoid the more cumbersome court-martial proceedings, but in doing so, failed to protect the rights of the accused, and had ruined the lives of thousands of veterans who had not been convicted of any

\textsuperscript{95} Bérubé, 233.
\textsuperscript{96} “Blue and ‘Other Than Honorable’ Discharges.”
\textsuperscript{97} United States: Congress, “Congressional Record: Volume 91, Part 13 (October 15, 1945 to December 21, 1945), A4778.”
crime. In particular, the report harshly criticized the VA in its handling of blue-discharge veterans, stating that it should stop “passing moral verdicts on the history of any soldier.”  

The committee did concede that the Army has the duty to “eject” queer soldiers who had been given a blue-discharge, but that “it has no right to make the remainder of their lives grievous” by discharging them “with what amounts to a disgrace for life.” The report recommended several reforms of the discharge system, namely that blue discharges should be abolished, and that any discharge that did not specify the quality of service state plainly that it is not dishonorable. Other recommendations of the report suggested that the discharge system incorporate four classifications: honorable, under honorable conditions to replace the blue discharge, general to cover misconduct, and dishonorable.

Despite this report, the VA reissued instructions to deny benefits to blue-discharge veterans in 1946 and again in 1949. The VA did, however, take up the committee’s recommendation to expand the classifications for discharge to include honorable, general, undesirable, and dishonorable. The general discharge was under “honorable conditions” whereas the undesirable discharge was under “conditions other than honorable.” Consequently, the Army changed its own discharge regulations to ensure that queer servicemembers would not be able to qualify for general discharges and to make it close to impossible to receive an honorable discharge.

The story of the blue discharge illustrates how the military apparatus resisted major change to maintain its stability. The pressure by the Courier and eventually Congress did little to

98 Bérubé, 235.
99 Ibid.
100 “House Body Asks Army to Abolish Blue Discharges.”
101 Mettler, 66.
103 Bérubé, 243.
force change in the *purpose* behind the blue discharge, largely due to a lack of societal concern in the 1940s for marginalized groups such as African American or queer veterans. However, in its creation, the blue discharge itself was an administrative change that only came to be because its creators faced a critical juncture. Psychiatrists, once again seeking to enhance their own legitimacy and advocating against incarceration for queer individuals, played a major role in establishing this new administrative approach to help the military address the ‘queer issue’ without draining resources. Despite the intentions of reform-minded psychiatrists like Overholser, the military ultimately reinforced anti-gay norms that individuals engaged in SSSB are mentally ill and unfit for military service. This demonstrates a clear path dependency in military norms and behavior against queerness.

However, subtle progress on this issue was still accomplished. The creation of new categories, such as the “reclaimable offender,” informed by contemporary (albeit problematic) psychiatric theories, snuck a novel idea into military policy—that those servicemembers who engaged in SSSB could potentially still serve under specific conditions. This significantly liberalized prior regulation that immediately imprisoned those same servicemembers. It allowed for situations in which sexual behavior that may not exactly fit into ‘the box’ of homosexuality could be excusable. This institutionalized the flexibility and turn-the-other-way approach that the military had often taken with queer servicemembers since its inception. These more ambiguous situations laid the groundwork for the eventual relaxation of anti-gay military policy down the line. However, the fact of this change should not minimize the thousands of servicemembers who were still discharged under Section 8, and the profound damage it caused to the lives of those who faced discrimination by a mere piece of blue paper.
1950s–60s: Post-WWII Panic

The WWII era and its extensive mobilization efforts propelled many gay men and lesbian women into the mainstream of American life. Ironically, the military’s screening and discharge policies, coupled with the drafting of millions of men and women, eroded the societal barriers that had previously kept gay individuals hidden and pushed to the periphery of society. The war had allowed them greater visibility and participation in society and helped them find community. The Selective Service recognized the significance and presence of queer identities and SSSB by having examiners ask millions of selectees about their queer tendencies. As the war progressed, and as an aggressive campaign to identify and dispose of queer soldiers had many exposed and subject to scrutiny, these servicemembers were no longer able to hide in the closet. They were forced out to lead new lives as known gay individuals. They were thrown in stockades together, endured the hardships of being discharged as undesirables, and were denied benefits. Through these shared adversities, this group of veterans came to view themselves as comrades who were united by a common experience, prompting them to stand against the injustices they were facing.

Exposed by the war, gay life in the 1950s seemed to be growing at an unprecedented rate and subsequently becoming more visible.\(^\text{104}\) While the queer community viewed this growth as a sign of hope and progress, government officials and mainstream society viewed it as a growing threat. The postwar era was thus marked by a period of cultural backlash. As many families reunited and Americans began to put together their old lives, the dominant national narrative promoted by the media and the government advocated for idealized portrayals of the nuclear family, heteronormativity, and traditional gender roles in the home and professional settings.\(^\text{105}\) Along with these ideals was a fixation on conformity and a tendency to scapegoat individuals

\(^{104}\) Bérubé, 256.

\(^{105}\) Johnson, *The Lavender Scare*, 51.
who diverged from the increasingly constricted notion of the ‘American way of life.’ Queer individuals, many of them unable or unwilling to conform to such restrictive ideals, began to stand out more than they had during the war. As nonconformists, both media and government propaganda began linking them with other outlier populations, like communists, portraying these groups as dangerous and a threat to America.

*The UCMJ and Consolidation of Anti-Gay Policies*

During these postwar years characterized by intense heteronormativity and gay panic, the newly consolidated Department of Defense sought to standardize what had been an array of screening measures and various anti-gay policies under separate branches of the military. The DoD worked to unify these various measures into a single policy. The new subcommittee of the Defense Department Personnel Policy Board commissioned a study in 1949, Project M-46, that generated standardized procedures for all branches regarding queer service members. The final language was unequivocal: “Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces is mandatory.”

By October 1949, the Army, Air Force, Navy, Marines Corps, and Coast Guard were issued a memo from the DoD giving them two months to initiate their own policies to conform with this guideline.

At the same time, Congress enacted the Uniform Code of Military Justice (UCMJ), which replaced the Articles of War as the foundation of military law in the United States. The UCMJ established a uniform court-martial system and, by 1951, had established basic policies, discharge procedures, and appeal channels for addressing queer servicemembers. This system

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106 Bérubé, 261.
remained in effect, with little modification, in all branches of the military for the next four decades.

Article 125 of the UCMJ forbade sodomy among all military personnel and defined the offender as anyone “who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal.”\textsuperscript{107} Though Article 125 formalized the military’s anti-queer stance, it also expanded the definition of sodomy so broadly that it essentially punished almost all non-procreative sexual acts, possibly targeting servicemembers of all genders and sexualities. However, because all queer sex would be considered non-procreative by this provision, queer servicemembers were particularly targeted by the definition of “carnal copulation.” The full definition from the 1951 Manual for Courts-Martial is below.\textsuperscript{108}

\begin{figure}[h]
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\textbf{204. ARTICLE 125—SODOMY} \\
\textit{Discussion}.—This article defines sodomy as engaging in unnatural carnal copulation, either with another person of the same or opposite sex, or with an animal. Any penetration, however slight, is sufficient to complete the offense and emission is not necessary. It is unnatural carnal copulation for a person to take into his or her mouth or anus the sexual organ of another person or of an animal; or to place his or her sexual organ in the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation in any opening of the body of an animal. \\
\textit{Proof}.—That the accused engaged in unnatural carnal copulation with a certain other person or with an animal, as alleged. \\
\hline
\end{tabular}
\caption{Article 125 in the Manual for Courts-Martial, p.367, 1951}
\end{figure}

Article 125 prohibited “unnatural” sex acts and made these offenses worthy of court-martial. Though the definition of sodomy was expanded to apply to all sexualities of service personnel, it was enforced almost exclusively against gay and lesbian servicemembers.\textsuperscript{109}

\begin{footnotes}
\footnotetext{107}{“Key Dates in US Policy on Gay Men and Women in Military Service.”}
\footnotetext{108}{“Manual for Courts-Martial, United States, 1951.”}
\footnotetext{109}{Estes, \textit{Ask and Tell}: Gay & Lesbian Veterans Speak Out, 31.}
\end{footnotes}
**Peacetime Years into the Korean War**

While changes related to the UCMJ and the consolidation of anti-gay policies were being implemented at the policy level, the military’s control over queer servicemembers and veterans was intensifying in practice as well. Many accounts of the postwar era (1947-50) point to the rapid decrease in blue discharges in comparison to the average annual number during WWII.\(^{110}\) As the military downsized its troop levels, there was a corresponding decrease in the number of blue discharges. However, the decline in the quantity of blue discharges conceals the surge in the rate; instead, examining the rough estimate of undesirable discharges for homosexuality per one hundred thousand troops, it is clear the extent to which the military was tightening its anti-gay policies. From the peacetime period spanning 1947 to early 1950, the rate of blue discharges for homosexuality more than tripled compared to the wartime rate.\(^{111}\)

The Korean War, by contrast, saw a dramatic plunge in queer-related discharges. The Navy was the only service that kept records on the issue, but the contrast is stark. During the latter years of WWII and throughout the 1950s and 60s, the Navy typically issued around 1,100 undesirable discharges per year to gay sailors. However, in 1950, at the peak of the Vietnam War, that figure plummeted to less than half (483 blue discharges). The following year, it remained in the five hundreds. But, in 1953, following the armistice signed at Panmunjom and the conclusion of U.S. involvement in Korea, the rate surged once again, with the Navy issuing over 1,300 blue discharges in that year alone.\(^{112}\) This illustrates that the military’s increased rate of gay discharges tends to align with peacetime periods, with a significant decrease in rates during wartime. Clearly, when the military requires troops, it turns a blind eye to formally

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\(^{110}\) Estes, 30.
\(^{111}\) Bérubé, 262.
\(^{112}\) Shilts, 70.
prosecuting SSSB. While the military may resist making public-facing changes to its formal regulations, this indicates a shift in informal norms that enable queer individuals to serve. The tension between these informal norms and the formal rules will later be intensified.

*The Lavender Scare*

Military policies have long served as a testing ground and model for social policies. Like the chicken-and-the-egg debate discussed previously, the 1950s era illustrates a striking similarity between military policy and civilian norms. This period was marked by fear and increasing discrimination against nonconformists, with the military’s anti-gay apparatus mirroring a similar model that was used to launch the most aggressive attack on queer government employees ever witnessed in the federal government. This period was known as the Lavender Scare and was marked by a widespread campaign to identify and remove gay individuals from government positions.

In 1950, anti-gay hearings began in the Senate as a by-product of the better-known Red Scare, which targeted suspected communists. During a Senate Committee investigation into the loyalty of government employees, Under Secretary of State John Peurifoy admitted that the majority of the 91 State Department employees who had been fired due to security risks were gay.  

113 This kickstarted a panic over the “threat” of homosexuality—several Senate investigations were initiated and subcommittees were established to write reports on topics such as the “Infiltration of Subversives and Moral Perverts Into the Executive Branch of the United States Government,” or the “Employment of Homosexuals and Other Sex Perverts in Government.”

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114 Bérubé, 266–67.
Queer people were considered to be security risks for several reasons. First, they were nonconformists who, like communists, were seen as subversive elements in American society that threatened to undermine middle-class morality, ideals, and the government. Second, they were “sex perverts” who engaged in illegal and immoral activities and preyed on others, and third, they were “high-strung from leading double lives”\(^{115}\) and thus, they were at a higher risk for revealing sensitive information. In other words, they were easy to blackmail, and this—in a period of deep mistrust towards anyone who could be the infiltrated enemy—became the leading reason that queer people were rooted out of government positions.\(^{116}\)

The Senate investigations and subcommittees reports, also known as the Hoey Committee Report and the Wherry-Hill Investigation, were completed in 1950. Following consultations and testimonies from law enforcement, judicial authorities, military and governmental security officers, as well as medical experts, and in coordination with the White House during President Truman’s administration, the outcomes revealed did not support the anti-gay rhetoric of the time. Neither congressional investigation uncovered any evidence at all that suggested that any federal employees had been blackmailed into revealing state secrets on account of their sexuality. Rather, the reports found considerable differences of opinion, even within the government, regarding policies related to the dismissal and exclusion of queer employees and the extent to which queer employees were targets of blackmail.\(^{117}\) Despite this, the Hoey Committee’s report deemed authoritatively that gay men and lesbian women were “unsuitable” for federal employment because they were security risks. The report continued by saying that there was “no place in the United States Government for persons who violate the laws or the accepted

\(^{115}\) Bérubé, 266–67.

\(^{116}\) Wooledge, “Today in History: State Department Reveals Purge of 91 Homosexuals.”

\(^{117}\) Johnson, 114.
standards of morality,” especially those who “bring disrepute to the Federal service by…scandalous conduct.”\footnote{Charles, \textit{Hoover’s War on Gays: Exposing the FBI’s “Sex Deviates” Program}, 94.}

Following the anti-gay procedures that the military had set as the precedent, the committee recommended a standard, government-wide policy that would purge lesbian women and gay men from federal employment. Thus, in 1953, President Eisenhower signed Executive Order 10450 which set security regulations and, for the first time in civil service law, explicitly designated “sexual perversion” as sufficient grounds for the termination and exclusion of individuals from federal employment.\footnote{Bérubé, 269.} Despite not explicitly referring to homosexuality, “sexual perversion” was enough, and the executive order had the effect of banning queer individuals from working for any agency of the federal government.

According to some scholars, Eisenhower’s Executive Order 10450 was used to not only target queer individuals, but transgender individuals as well. “Sexual perversion” and other forms of “criminal, infamous, dishonest, immoral, or notoriously disgraceful”\footnote{“Executive Order — Security Requirements for Government Employment.”} conduct would be grounds for investigation and a threat to national security; these categories could be applied to gender nonconforming individuals as well. While there are no documented instances of the order being enforced against trans government employees or servicemembers until the 1960s, transgender history remains pertinent to this period. The widely publicized case of Christine Jorgensen garnered attention in 1952. Jorgensen, a World War II veteran, is credited as being the first American to become widely known for undergoing gender-affirming surgery. Her story made front-page news with headlines that juxtaposed her prior military service with her new persona as a woman, demonstrating the deeply ingrained gender norms of the time. Following
Jorgensen, other lesser-known WWII transgender veterans, such as Charlotte McLeod and Tamara Edel Rees, also underwent gender-affirming surgery in Europe.\footnote{Embser-Herbert and Fram, With Honor and Integrity: Transgender Troops in Their Own Words, 3–4.}

Eisenhower’s executive order solidified the government’s anti-gay policies and procedures and expanded their application to include every agency and department within the federal government, as well as every private company or corporation holding a government contract. This impacted the job security of over six million government employees and members of the armed forces.\footnote{Ibid.} Continuing throughout the 1950s, similar policies went into effect in state and local governments, private companies, and even private organizations like the American Red Cross, extending the prohibitions to an estimated twelve million Americans.\footnote{D’Emilio, Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970, 46.} This underscores the impact of organizational ecology. Exclusive policies from the military apparatus, which had been developed and modified based on norms inherited from the colonial period, had now disseminated through the federal government and trickled down to affect other organizations. These organizations were engaging with all three forms of institutional isomorphism in the pursuit of legitimacy. Various pressures, whether coercive, mimetic, normative, or a combination of the three, were influencing policy change to conform with ideals that would reinforce institutional stability by aligning with intensely anti-gay views and cultural backlash of the time.
The Crittenden Report

Despite the restrictive policies of the Lavender Scare era, subtle signs of progress emerged in the place least expected—military policy review boards. In the mid-1950s, an internal review of the Navy’s policy on queer soldiers uncovered dissent among its ranks. Navy Captain S.H. Crittenden Jr. chaired the committee entitled the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, which completed its study in 1957. The study became known as the Crittenden Report. This committee was formed in the first place to evaluate Navy policies that were based in part on the assertions made in the December 1950 Hoey Committee’s report, that had previously declared “sex perverts” to be security risks and had recommended a government-wide policy to purge queer individuals from federal employment, leading to the signing of Executive Order 10450 by Eisenhower.

The Navy report criticized the Hoey Committee, stating (correctly) that in relation to the security-risk argument against queer individuals, “no intelligence agency, as far as can be learned, adduced any factual data before that Committee with which to support these opinions.”[124] Beyond addressing the assumptions and impact of the Hoey Report, the Navy authors also repudiated the claim that queer soldiers “cannot acceptably serve in the military.” The report states, unequivocally, that “there have been many known instances of [queer] individuals who have served honorably and well, despite [their sexuality].”[125] This statement is significant, especially considering the extent to which the military had attempted to purge its ranks of queer servicemembers in the decades prior and mistreated them through the blue discharge process and aftermath. It subtly acknowledges a history of queer servicemembers and

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[125] Smith, 5.
underscores the shared sentiment within the LGB community—the desire to achieve social and political equality irrespective of romantic partner or attraction. In this way, the Crittenden Report suggested a more progressive mindset than that which was being perpetuated in the government during the 1950s.

However, despite challenging these new norms, the board did not recommend any changes to Navy policy for fear of excessively challenging societal norms. This demonstrates a level of self-awareness on the part of military policymakers, who recognize that the decision of who is allowed to serve in the military extends beyond its own confines and impacts broader norms and social dynamics. In its discussion, the report acknowledges that the medical and legal “segments of society” have been attempting to present SSSB as a matter “less serious in its criminal aspects than present statutory prohibitions portray them.”126 In other words, medical and legal experts had been shifting their perspective away from solely interpreting queerness within the framework of the criminalization of sodomy.

However, the report also acknowledged that “present day society generally finds homosexual behavior unacceptable” and that people who are classified as or identify as queer are “regarded in their communities as…persona non grata.”127 The authors argued that the military should not “liberalize standards ahead of society”128 with respect to queer servicemembers, and thus recommended no concrete policy changes. Despite this, the importance of the Crittenden Report lies in its progressive questioning of misconceptions surrounding queer servicemembers and federal employees, especially in its challenge of the widely applied results of the Hoey Report. Moreover, by addressing viewpoints from medical, legal, religious, and societal

126 Smith, 55.
127 Ibid.
128 Ibid.
perspectives on queer servicemembers, the report showcases the interplay between military policy and societal views.

*Homophile Movements*

In the restrictive social climate of this post-WWII era, an expansion of gay culture, public discussion over homosexuality, and a continuous gay political movement and press emerged. In 1950, the Mattachine Society was created in response to the general crackdowns towards the queer community, in particular the Lavender Scare in Washington and the treatment of gay men in the military. Many of the founders of the Mattachine Society had been veterans; co-founder Charles Rowland stated that his own interest in starting a gay-rights organization grew indirectly out of his WWII military experience, which he interpreted as a fight against fascism. It was this “save the world” idealism that inspired him to start the Mattachine Society.¹²⁹ In 1955, lesbian women in San Francisco started the Daughters of Bilitis (DOB), the first lesbian civil and political rights organization in the United States.

These early LGB rights organizations, part of the collective homophile movement of the 1950s and 60s, were influential in their support of gay and lesbian veterans, particularly in recognizing and elevating the plight of their postwar struggles. The Mattachine Society and DOB distributed their own magazines, many of which included

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¹²⁹ Bérubé, 273.
pieces covering updates from Congressional testimony, blue discharges, and printed anonymous interviews with queer veterans as well as their poems, letters, and stories. A particularly moving letter, published in 1954 in *Mattachine Review*, was written in response to Senator Everett Dirksen, who had made an offhand comment about the difficulty of purging *all* queer individuals from the government. The anonymous author wrote in memory of the gay soldiers who had died in World War II:

> Thousands of graves in France; many, many thousands more graves on South Pacific Islands and beneath the seas, contain the sad remains of men who were brave soldiers, airmen, sailors and marines *first* and homosexuals second. They were no less brave, they did no less to win the war for democracy, than did their heterosexual compatriots. But the democracy for which they did fight and die, and still fight and die, and will yet fight and yet die, denies them and us our rights as individuals… Our tears do not flow less freely than yours at the loss of husbands, sons and brothers in warfare… because we are homosexual. Our hearts are not less full of pride and honor at the sight of massed American flags because we are homosexual. We do not work less hard for America, or love her less… because we are homosexual.\(^{130}\)

This letter captured the quiet outrage felt by many veterans who had found themselves persecuted by the very government and country that they had fought for and risked their lives to defend.

The issue of discriminatory practices in the military remained a vital concern to the growing gay rights movement. Frank Kameny, a World War II combat veteran and gay rights activist with the Washington D.C. chapter of the Mattachine Society, played a pivotal role in

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directing the growing homophile movement’s attention towards military discrimination against queer people. Kameny, who had a PhD in astronomy from Harvard, was working at the U.S. Army Map Service in 1957 on improving the precision of missile guidance maps. Following the launch of Sputnik, he dreamed of becoming an astronaut. However, after only a few months at the Map Service, he was fired after refusing to provide information about his suspected homosexuality; in January 1958, he was barred from future employment by the federal government. He appealed his firing through the courts several times, before taking it to the Supreme Court in 1960 with financial support from the New York Mattachines. Instead of denying that he was gay (as was often the case with fired employees), he argued that the government had no authority to label homosexuality as immoral. The Court declined to review his claim for *certiorari*, but he’d already made history; with the Mattachine Society’s support, his case marked the Supreme Court’s first civil rights claim based on sexual orientation. After exhausting the courts, Kameny devoted his life to gay rights activism and urged more militant activism from the Mattachine Society. The organization, which had been leaning towards advocating for the quiet integration of queer people into straight society, witnessed a shift under Kameny’s leadership. The D.C. Mattachines, under his guidance, concentrated on addressing discrimination in the military and within the U.S. Civil Service Commission.

Through the Mattachine Society, DOB, and other organizations, some of the first public demonstrations for gay rights addressed the military. In September 1964, a picket line demonstration outside the U.S. Army Building in Manhattan marked what is considered to be the first public protest for gay rights in the U.S., contesting the mistreatment of queer veterans by the

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131 Crain, “Frank Kameny’s Orderly, Square Gay-Rights Activism.”
132 Ibid.
134 Estes, 30.
Though it received little media attention, the event was a precursor to further protests and public visibility of queer-rights organizations. The protest also demonstrated an early instance of allyship from the NYC League for Sexual Freedom (LSF), a mostly straight organization, that joined forces with the Homosexual League of New York (HLNY), an organization borne out of the Mattachine Society.

In April of 1965, Frank Kameny through the Mattachine Society of Washington, D.C., organized the first of several pickets to protest the Lavender-Era policies that forced many queer people out of government jobs. These protestors wore business-appropriate dress, insisted on by Kameny himself, in an effort to communicate employability and societal conformity, demonstrating homophile organizations’ commitment to advocating for societal acceptance rather than challenging established norms. The group held pickets outside of the White House and later in front of Independence Hall in Philadelphia on July 4th, establishing the first annual “Reminder Day” to draw attention to the civil rights still due to the LGB community.

![Frank Kameny among protestors at the White House in 1965. Signs read statements such as, “Fifteen million homosexuals protest federal treatment”; “Sexual preference is irrelevant to employment.”](source-the-wall-street-journal)

136 Kirchick, “Stonewall Wasn’t the Start of the Gay Rights Struggle.”
137 Alaina Noland, “Reminder Days.”
In May of 1966, a coalition of homophile organizations across the country organized simultaneous demonstrations on Armed Forces Day to protest the military’s discrimination against gay personnel and veterans. The coordinated pickets and parades in cities such as Los Angeles, New York, Boston, Philadelphia, San Francisco, and Washington D.C. are recognized as the first nationwide protest by gay and lesbian organizations.\textsuperscript{138} The San Francisco picket featured “the largest group of homosexual protestors to date,”\textsuperscript{139} and in LA, the thirteen-car motorcade has been called the first gay pride parade.\textsuperscript{140} The protests on Armed Forces Day garnered significantly more media coverage compared to its 1964 precursor, with prominent newspapers like the \textit{San Francisco Chronicle}, the \textit{New York Times}, and the \textit{Los Angeles Times} featuring coverage of the demonstrations. This attention raised the profile of early gay rights movements, and their connection with military policies marked a new level of activism.\textsuperscript{141}

During this era of increasing militancy for gay rights, homophile organizations were quickly being surpassed. Despite their immense significance and role as precursors to the liberation movements of the 1960s and 70s, homophile organizations still inherently worked towards the respectable integration of openly queer individuals into restrictive social norms.\textsuperscript{142}

\textsuperscript{138} Bérubé, 274.
\textsuperscript{139} Sides, \textit{Erotic City: Sexual Revolutions and the Making of Modern San Francisco}, 88.
\textsuperscript{140} Fletcher, \textit{The First Gay Pope and Other Records}, 42.
\textsuperscript{141} Kelleher, “The Little-Known Story of the Nationwide Queer Protest Which Happened Three Whole Years before the Stonewall Uprising.”
\textsuperscript{142} Wills, “Coming Out Against The Vietnam War.”
But, as the gay rights movement evolved in the mid-to-late 1960s, the goals of the decade prior began to be seen as too traditional and not confrontational enough. A position advocating against the military’s discrimination towards queer servicemembers began to appear old-fashioned; the baby-boom generation of gay activists, who centered on an antiwar ethos as the war in Vietnam heated up, began to question why queer folks would want to join the military at all.

1960s–70s: Vietnam, Gay Liberation, and the Courts

The Vietnam War era, much like World War II, saw a loosening of military standards to address the demand for personnel to fight the war. This time around, the military had screening processes to detect queer individuals—consisting of a question on the standard medical survey given to all potential draftees: “Have you ever had or have you now … homosexual tendencies?” As was developed over the years, if the screening failed, the military had its established discharge policies to expel queer individuals if it so chose. The military had also adjusted its medical fitness policy to explicitly disqualify transgender or transitioning individuals, based on the assumption that they would have ongoing medical needs and that they had a heightened risk of psychological issues.\(^\text{143}\) The Defense Department publicly asserted, as was the case historically, that individuals who committed SSSB could not serve in the military, for reasons related to “discipline, good order, morals and the security of our armed forces.”\(^\text{144}\) However, unsurprisingly, history repeated itself—the military enforced the appearance of exclusion of queer servicemembers in its ranks, but not in practice.

\(^{143}\) The 1963 transgender service ban under Army Regulation 40-501 and later DOD Directive 6130.3, both of which govern fitness standards, presented a doubled rationale. Initially, it deemed transgender individuals psychologically unfit, but it also introduced a secondary rationale, anticipating the first one falling through (which it did). This secondary rationale claimed to protect troops in “austere environments” where medical care is scarce, making ongoing hormone treatment inaccessible, thus necessitating a blanket ban on genderqueer individuals.

\(^{144}\) Shilts, 65
As early as 1966, when the need for more soldiers in Vietnam mounted, the Pentagon issued a directive to local draft boards mandating that potential draftees be required to submit “proof” if they checked the box claiming “homosexual tendencies.” Despite the fact that the Defense Department claims no such directive was issued, from 1966 onwards, local draft boards clearly began demanding evidence of “homosexual tendencies” from potential draftees. This evidence could be in the form of signed affidavits from sex partners or a sworn statement from a psychiatrist. The catch was, of course, that confessing to engagement in SSSB was confessing to a felony which could result in (at most) a charge of up to twenty years in prison and (at least) becoming ineligible for millions of civil service jobs and holding a named record with the FBI.

The less-selective stance by the Selective Service System went beyond the intention to draft as many able-bodied men as they could. The policy was also a response to the fact that the homosexuality screening was increasingly being used to dodge the draft. As the war became more unpopular, particularly with draft-age men, the challenge of “gay deceivers” emerged as a major issue for the Selective Service.

“Hoaxosexuality” and the Assertion of Queer Identity

Similar to World War II, the draft and medical screening forced many men between the ages of eighteen and twenty-six to come to terms with their sexuality. The screening also heightened attention to the military’s anti-gay policies, as, for the first time in history, countless straight men adopted a queer identity to avoid the draft. This strategy to be a “hoaxosexual” was promoted in radical magazines, draft-resistance manuals, and by draft counselors. As the demand for manpower grew, draft boards realized that this tactic was becoming widespread.

145 Ibid.
146 Suran, “Coming Out Against the War,” 460.
147 Shilts, 67.
Consequently, “proof” policies were implemented, making it more challenging to evade the draft by simply “checking the box.” Even in places like San Francisco—recognized as a sanctuary for draft resisters due to lax enforcement of regulations—it was difficult to prove one’s gay identity to a draft board. This difficulty mainly stemmed from the military’s inability to provide a clear definition of “a homosexual” as a person. Up until this point, the act of gay sex—which soldiers were occasionally caught engaging in or more frequently rumored to engage in—was the case for many a blue discharge in WWII. This, however, was not sufficient to prove to the draft boards the sexuality of these potential draftees, who were appealing as queer individuals.

Men who were using this technique to attempt to avoid the draft were not just emphasizing the acts of queer sex, which were documented in letters or signed affidavits. They were also entering into induction interviews prepared to “play the homosexual bit.” One draft-resister manual had suggestions for how to act: “Besides flicking your wrist, move your body like chicks do—hold cigarette delicately, talk melodically, act [embarrassed] in front of the other guys when you undress.”

Terry Barnard, a queer 21-year-old man from San Francisco, presented a psychiatrist’s letter and repeatedly acknowledged that he was gay during his induction interview. However, he recalled that though his interviewer never contested his claimed sexuality, he told Barnard that “since [he] wasn’t effeminate, he wouldn’t grant me a deferment.”

The Army’s requirements to now prove the queer identity of men like Barnard ended up violating its historically stringent regulation meant to discharge anyone at all who exhibited “homosexual tendencies.” In the past, claiming or appearing to have “homosexual tendencies” (regardless of whether these tendencies were acted upon) was enough to be discharged or

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148 Suran, 462.
149 “Army Won’t Believe He’s Gay.”
deferred with negative consequences. Now, checking the box to claim one had “homosexual
tendencies” was no longer enough. The strict regulation was not being broadly enforced because
the military needed soldiers. It was, once again, willing to bend its regulations in order to meet
its manpower needs.

Because military officials and draft boards assumed that many potential draftees were
lying about their sexuality (and they couldn’t simply ask them to drop their pants and prove it),
psychiatrists were called upon to make decisions on queer identity based on vague criteria that
called for rejection, such as “overt homosexuality” or “sexual[ly] deviant practices …
exhibitionism, transvestism, voyeurism, etc.”

In the end, lacking clear guidance from the
Department of Defense, these psychiatrists relied on their own preconceptions and ideas about
how a queer person would act, which often favored the “hoaxosexual” over the true homosexual.
Ironically, straight men were more inclined to declare themselves as queer compared to queer
men themselves, potentially stemming from their naivety about the lasting stigma associated
with being outed by a military board and the challenges of securing employment following.

Nevertheless, this life-or-death incentive for straight men to feign queerness despite the
consequences, as well as general public discussion and resistance to the draft, had the effect of
normalizing queerness (particularly male queerness) and promoting widespread recognition of
being gay as “a sexual identity and social type.” And while the Vietnam war was a political
awakening for many Americans, it was also a sexual awakening for many gay men. Those gay
men who wanted to avoid the draft had to go beyond just admitting that they engaged in SSSB
but had to assert their queerness as a personal identity. Sparrow Robinson had only been

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150 Suran, 462.
151 Shilts, 67.
152 Suran, 463.
experimenting with his sexuality when his friend suggested that he tell the board that he was gay in order to get out of the draft. Robinson was afraid of asserting his queerness, not only because of the stigma and the fact that it would go on his record, but because he couldn’t fully admit it to himself. If he was successful and given a deferral, he felt that it would acknowledge that there was something “wrong” with him. But he felt that there was something “profoundly wrong” with the war, too. A mindset shift caused him to reconsider:

At some rally I went to, we were encouraged to use the system against itself. I had to come to terms with the idea that if I said there was nothing wrong with me being gay, and the system said there was, then the system was denying itself the use of my body, not me… I said, “If they’re willing to acknowledge that there’s nothing wrong with me being gay, then I’ll go in the Navy” The draft board wanted “proof,” [so] I got a referral to a psychiatrist who writes letters. He saw me twice … the letter said something about “effeminate behavior, slight lisp, clearly a sexual deviant.” I was reclassified … It was a major breakthrough for me, because it was the first time I had to take total responsibility for my life and accept the consequences… In order to come to terms with the draft over there, I had to come to terms with [being] gay.

The war had radicalized a generation. Antiwar organizing got people involved politically and brought crowds out into the streets; it also helped form identity-based groups, which in turn, influenced the power of the antiwar movement. For example, the gay rights movement shifted from the style of homophile groups to a more radical ideology. Suran argues that the militant antiwar ethos that came out of this period was “absolutely central to the creation of a specifically

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153 Gottlieb, *Hell No, We Won’t Go!: Resisting the Draft During the Vietnam War*, 103–5.
‘gay’ identity in the United States.”\textsuperscript{154} As Wills writes, “Antiwar politics brought gay liberation out of the political closet.”\textsuperscript{155}

Eventually, in the midst of a considerable headache over the number of men identifying as gay to avoid the draft, the standard form for prospective draftees dropped the question of “homosexual tendencies” altogether. This significant yet discreet policy shift contradicted years of public apprehension regarding the potential disruption queer servicemembers might cause to discipline, order, morality, security, or various other reasons cited by the military over the years. And rather than acknowledge the issue as stemming from a demand for more troops, the government claimed this move was made to protect the privacy rights of inductees.\textsuperscript{156}

Nonetheless, as of 1971, it was now the responsibility of the draftee to inform military doctors of their sexuality during their regular psychiatric examination, rather than being given the opportunity to check a box.

Dropping the question also correlated with an increased difficulty in leaving the service on grounds of queerness. Soldiers who claimed that they were gay would be put through the discharge process, but it was not that easy. In fact, Army Specialist Five Mark Houston, who worked as an administrative clerk at Fort Polk, LA, was ordered to make the discharge process “as difficult as possible for anyone who claimed to be homosexual.”\textsuperscript{157} Not only would these discharges take months longer than the typical discharge, but soldiers would have to undergo repeated psychiatric evaluations in which they were asked to prove that they were gay, primarily by providing letters from former or current lovers. In some cases, merely having sex with

\textsuperscript{154} Suran 456.
\textsuperscript{155} Wills, “Coming Out Against The Vietnam War.”
\textsuperscript{156} Shilts, 153.
\textsuperscript{157} Shilts, 154.
another man was insufficient for the investigative team; the letters needed to confirm that the individual being discharged had actually swallowed semen during sexual encounters.  

The increased burden of proof represents the military grappling with a newfound problem. Clearly, the problem was big enough to make administrative changes such as those mentioned by Specialist Houston, but statistically, the social stigma of being outed as gay still prevented this from being a problem widespread across the country. The documented cases of individuals seeking a gay deferment, whether through misrepresentation or truthful disclosure, were predominantly found in large cities. And when examining the draft deferment statistics of the Vietnam era, of the 5 million men exempted from military service due to something on their draft physicals, only 1 percent or 50,000 men were deferred due to a “moral defect.” The changes that made it more difficult to receive a gay deferment or to be discharged countered the written military policy that unequivocally excluded queer servicemembers, demonstrating a level of cognitive dissonance and hypocrisy that was eventually exploited in later legal challenges.  

*Queer Life in Vietnam*  
This hypocrisy was also apparent overseas, where the many queer men who enlisted or were drafted participated in what came to be a vast gay subculture. Just as the institutionalization of the straight GI’s pursuit of diversion was established in a network of well-known bars and brothels, the queer GI’s quest for pleasure had similarly evolved in Vietnam. There were plenty of gay bars in Saigon, and it was not unusual to see male soldiers dancing together publicly. Some bars catered to people of all sexualities, with a section for servicemembers who liked women and another for servicemembers who liked men. Queer activity was thriving on-base too;
certain swimming pools became notorious as gay cruising areas and GIs would oftentimes go to USO libraries to flirt with and date civilian men.\footnote{Shilts, 150.}

Of course, discharges on the grounds of queerness still occurred in Vietnam, but there was an increasing level of acceptance and tolerance overseas in comparison to stateside duty stations. This was not due to any specific policy, but rather the proliferation of informal norms that cautiously accepted queer servicemembers. Military officers were struggling with high levels of disciplinary and morale problems beyond the issue of their soldiers’ sexualities. Many officers simply did not have the time to care about the subject of sexuality as they dealt with drug use, stealing, racial tensions, and violence occurring within their units.\footnote{Drummond Ayres Jr., “Army Is Shaken by Crisis In Morale and Discipline.”} As the war in Vietnam became increasingly unpopular, and officials were publicly acknowledging that the U.S. military was losing, many units dealt with high levels of AWOLs and desertions. From 1969 to the end of the war in 1973, one American soldier went AWOL every two minutes, and one soldier deserted every six minutes.\footnote{Shilts, 150.} Clearly, the military in Vietnam had other problems to worry about.

The era of the Vietnam War provides another instance of societal and military norms mutually influencing each other. Within more politically radical circles, the nascent gay rights movement had advanced to the extent that male queerness was being utilized as a means to evade military service. Consequently, this forced the military to change its policies, raising the standard of proof and eventually dropping the question of “homosexual tendencies” altogether—contradicting earlier, more exclusive regulation that sent thousands of soldiers home with blue discharges. This military policy change did not stem from any form of acceptance, but out of the institution’s imperative to fulfill its wartime objectives and maintain its legitimacy as a
sufficiently manned force and cultural institution. At the same time, the Vietnam draft and the growing visibility of the early gay rights movement forced many queer men to come to terms with their own sexuality, underscoring the military’s influence on societal norms and vice versa.

Post-Vietnam

Shortly after President Nixon’s inauguration, a group of nine senators introduced a bill to eliminate the military draft and transition to an all-volunteer Army. Nixon, eager to address the antiwar sentiments that had affected his predecessor, President Johnson, aimed to fulfill his campaign promise of ending conscription. In November 1969, the largest antiwar protest in U.S. history took place, with critics accusing Nixon of deception as he had yet to initiate troop withdrawals from Vietnam. Four months later, Defense Secretary Gates presented a report to a commission established by the president a year earlier, outlining the shift to an all-volunteer force with a standby draft. These actions marked the beginning of significant changes in the composition of the military, including shifts in gender dynamics. But the post-Vietnam era brought about substantial transformations, impacting not just the composition of military personnel but also the increased outspokenness of its individuals, particularly regarding gay servicemembers and their continued exclusion. The 1970s ushered in a new era.

Nixon’s objective of achieving an all-volunteer military by July 1973 faced challenges. Despite salary increases, the military was struggling to attract enough volunteers for its infantry and artillery units. Not only was it difficult to find recruits, but retention rates of experienced soldiers hit their lowest point since the Korean War. Traditionally, the military had sourced new officers from college ROTC programs, but the escalating Vietnam controversy on campuses

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163 Archuleta, “Fifty Years After the President’s Commission on an All-Volunteer Armed Force.”
165 Shilts, 160.
led to a sharp decline in enrollment. For its survival, the military needed to end the draft. But it needed an injection of new personnel in order to do so. So, it looked to women.

A special House subcommittee on military manpower, in addition to personnel officials at the Department of Defense, came to this conclusion: in the atmosphere of “a zero-draft environment… women could and should play a more important role.”166 The bureaucratic arms sprang into action. The head of the Pentagon’s task force for a volunteer military ordered the Army, Navy, Air Force, and Marines to plan to almost double their numbers of women. The Army launched its own ambitious program to supplement low male recruitment with increases in WACs.167 While the Equal Rights Amendment was gaining traction in the houses of Congress, increasing political pressure mounted on the services to open more job categories to women.

Almost inevitably, there was pushback from the top brass. Particularly, the controversy came from senior Pentagon officials who did not want nor see the possibility of women attending the prestigious military academies.168 Clearly, the adherence to ‘tradition’ and the entrenched misogyny within the ranks of the old left the military poised to shoot itself in the foot when it came to the future success of the institution. Here, pressure from more established and conservative military leadership did not succeed. Federal rulings signaled that the courts would force the inclusion of women at the academies under the equal protection clause of the Constitution, regardless of the old guard’s preferences. This initiated a cycle of legal battles throughout the decade that challenged military officials to reconsider their policies, aligning with the evolving political landscape. This period following the draft marked the onset of challenges to the military’s personnel policy from external, domestic sources—activists, civil society, and

166 Ibid.
167 Morden, “Chapter X: The End of the Draft and WAC Expansion.”
168 Shilts, 161.
the courts—indicating a shift towards change driven by coercive isomorphic processes. And it wasn’t just women; LGB and transgender servicemembers also started advocating for their right to serve and using these channels to pressure the military.

*Lenny Matlovich and Legal Battles*

On January 27, 1973, officials from the U.S. and North Vietnam sat around a table in Paris to sign the peace treaty that ended the Vietnam War. The next day, President Nixon signed an executive order to end the draft, fulfilling his campaign pledge. From that day onward, the U.S. would employ an all-volunteer force. One year later, Frank Kameny, a gay rights activist, received a call from a sergeant in the Air Force named Leonard Matlovich. Kameny had continuously been organizing for the gay rights movement, and the post-Stonewall era of the early 1970s was much better suited to him than the mild-mannered homophile organizations he had helped run decades prior. He was fiery and wanted to challenge the system. Never one to give up the chance to be quoted, Kameny frequently appeared in the press and offered assistance to those who contacted him, often queer individuals who needed assistance with security clearances or discharge proceedings. In an *Air Force Times* article covering gay people in uniform, Kameny was quoted as actively looking for a test case—someone with an exemplary military record who was facing expulsion for being gay. He aspired to take this case to the Supreme Court. Matlovich was his guy.

Leonard Matlovich held a Bronze Star, a Purple Heart, two Air Force commendation medals, and an Air Force Meritorious Service Medal. He had enlisted when he was 19 and volunteered for service in Vietnam. He served three tours of duty before being seriously

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170 Crain, “Frank Kameny’s Orderly, Square Gay-Rights Activism.”
wounded in Da Nang, after which he made a full recovery and began teaching Air Force NCOs and officers in race-relations classes—part of a program launched in the wake of racial tensions during the Vietnam War. He was an excellent instructor, often using unconventional teaching methods, and earned accolades for consistently high ratings. He had altogether 11 years of impeccable service in the Air Force. He was also a gay man.

After connecting with Kameny and finding legal representation from former Air Force lawyer David Addlestone, the team started strategizing his case. Despite knowing that he would likely be kicked out, Matlovich had come to the realization that “he could not stand the hypocrisy of teaching equal opportunity while working for an organization that would not extend the same equality to him.” After being in doubt about his sexuality for years, he was sure of this. Matlovich’s lawyer drew up a letter that he would hand to his commanding officer in which he revealed his sexuality, while also stating that he was still fully qualified for military service based on his desire to serve and exemplary record. Matlovich dived headfirst into the challenge and did not, nor could not, look back.

Thus began a major turning point in the push for acceptance of queer individuals, extending beyond the military and encompassing the broader movement. Matlovich was not the only one looking to use a legal challenge to fight for acceptance; he was one of about a dozen cases of spontaneous resistance challenging military policy across the country. The same spring Matlovich handed in his letter, PFC Barbara Randolph and Private Debbie Watson, two WACs stationed at Fort Devens, Massachusetts, knew they had a high likelihood of being purged during an investigation by the CID. Despite their distinguished status in the honors platoon and

172 Oelsner, “Homosexual Is Fighting Military Ouster.”
173 Shilts, 198.
174 Shilts, 199.
recognitions such as “WAC of the Month,” the two were lovers who did not want to act ashamed or conceal their relationship. Their friend PFC Tanya Domi, who had been in contact with Frank Kameny, got Randolph and Watson a civilian lawyer. In May of 1975, the two women decided to go public with their case, becoming the first women in military history to challenge the regulation excluding queer individuals.

That same spring, on the opposite coast, Staff Sergeant Rudolph “Skip” Keith was sitting in a race-relations class at Dover Air Force Base, Washington. While discussing discrimination, Keith had brought up the topic of discrimination towards other minority groups, including queer individuals. That question initiated an animated discussion during which Keith openly revealed that he was gay to his class. Discharge proceedings were initiated against him.

Around this time, states across the country were considering legislation to rescind statutes that made “sodomy” or “unnatural sexual acts” a felony punishable by prison sentences. Oregon had dropped its sodomy law in 1972, followed by Connecticut, Hawaii, Delaware, and Ohio in 1973. The majority of these states repealed their sodomy laws as part of a general overhaul of criminal legislation. California was an exception, undergoing a prolonged six-year battle over the repeal of its sodomy law. During this time, Gary Hess, a commander in the United States Naval Reserve and respected member of the community, attended a public meeting in Santa Barbara, where he ended up debating with two local politicians who opposed the repeal of the sodomy statute. Following this confrontation, the two politicians contacted the Reserve, leading to an investigation that found evidence of Hess’s bisexuality. Predictably, following a military

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176 Carlton, “LGBTQ Rights and the U.S. Military.”
177 Shilts, 201.
178 Shilts, 208.
179 ACLU, “Getting Rid of Sodomy Laws.”
180 Shilts, 209.
career of twenty-three years, the Navy started discharge proceedings against him. Hess decided to go public and resolved to go to court to stay in the Navy.\textsuperscript{181}

LGB servicemembers were not the only ones going to bat against the military apparatus over their right to serve. Sergeant Joanna Clark had enlisted in the Navy in 1957 and served twelve years, eventually attaining the rank of chief petty officer. Towards the end of her Navy career, she came to terms with her transgender identity and was honorably discharged to pursue gender-affirming care.\textsuperscript{182} In 1976, Clark was approached by a recruiter about joining the U.S. Army Reserves. She had been well-regarded as a Navy officer and had enjoyed her work in the military. She did not hide the fact that she was a trans woman and was assured that this would not be an issue—she joined the Army Reserve later that year.\textsuperscript{183} Lt. Col. Art Wolford, Clark’s recruiter, later remarked in an interview, “I’m the one who enlisted her, and she made absolutely no attempt to hide her background...It doesn’t bother me one bit. She was a person qualified to do the job we needed done.”\textsuperscript{184} According to the Army, she was not qualified. Less than two years later, when her nomination for promotion was sent up the chain of command, she was dishonorably discharged for violating Army Regulation 40-501, which governs medical fitness standards. Clark brought suit against the Army.

In all these cases, the military faced an unfamiliar response. Up until this point, the U.S. military had discharged tens of thousands of individuals for their sexuality. Only a few had chosen to challenge those separations in court, and when they did, they did not voluntarily admit that they were queer. Often, their contestations focused on procedural issues such as insufficient evidence, improperly obtained evidence, or improperly placed burden of proof, rather than

\textsuperscript{181} Seager, “First Gay Man to Be Honorably Discharged from the Navy Passes Away at 81.”
\textsuperscript{182} Embser-Herbert and Fram, With Honor and Integrity: Transgender Troops in Their Own Words, 5.
\textsuperscript{183} “Joanna Clark: Warrior Woman.”
\textsuperscript{184} “TS Discharged from Naval Reserve,” 6.
challenging the legality of the government’s policy itself. But, by the spring of 1975, a critical mass had been reached.

On Memorial Day, 1975, the new era appeared on the first page of the *New York Times*. Matlovich had decided to take his case public after hiring a military lawyer willing to launch a broad attack on the DoD regulation. The story reported the test case as “a clear-cut challenge by a ‘perfect’ challenger,” and highlighted the major stakes at play. A month later, in June, Matlovich was on stage in Central Park for the Gay Pride March commemorating the sixth anniversary of the Stonewall riots. By his side were Skip Keith, Barbara Randolph, and Debbie Watson, icons of the moment who were challenging their gay discharges. Matlovich, the most media-savvy of the group, gave a speech to the crowd, where he delivered the line he would come to be known by: “The military gave me a medal for killing two men, but a discharge for loving one.”

The gay liberation movement of the early 70s evolved into the gay rights movement, shifting its emphasis from personal liberation to working within the system to secure civil rights. Despite facing criticism from more radical factions within the movement, the persistent lobbying

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186 Oelsner, “Homosexual Is Fighting Military Öuster.”
187 Shilts, 212.
effort led by prominent gay rights activists started yielding remarkable successes, the most significant of which came four days after the Gay Pride March of 1975 where Matlovich had given his speech. On July 3rd, the U.S. Civil Service Commission announced that it was ending its Eisenhower-era policy forbidding the employment of gay people in federal jobs. The decision followed a federal court decision that ruled that the Civil Service must be able to prove the connection between employees’ personal conduct and the ability to perform their jobs. Since no connection could be made between queerness and job performance, the Civil Service was forced to overturn its exclusive policy.\textsuperscript{188} Additionally, the American Psychiatric Association had recently removed homosexuality from its list of mental disorders, explaining that “for a mental condition to be considered a psychiatric disorder, it should either regularly cause emotional distress or regularly be associated with generalized impairment of social functioning.”\textsuperscript{189} Both changes had been reached in part through aggressive lobbying by Frank Kameny and Bruce Voeller, cofounder of the National Gay Task Force.

Voeller, believing that the gay rights movement would be best served as a mainstream liberal reform effort, had started building connections with national news organizations. He saw media exposure as a key tool for educating the nation about injustices faced by the queer community.\textsuperscript{190} Voeller played a crucial role in shaping Leonard Matlovich’s quest for exposure in his case against the Air Force. He connected Matlovich with \textit{Time} magazine, and they ran a story about his legal challenge with him on the cover, in his crisp Air Force uniform, over the headline “I AM A HOMOSEXUAL.” This was a first in many ways. His photograph made him

\textsuperscript{188} Lewis, “Lifting the Ban on Gays in the Civil Service.”
\textsuperscript{189} “The Sergeant v. The Air Force.”
\textsuperscript{190} Shilts, 249.
the first named openly gay person to appear on the cover of a U.S. newsmagazine.\textsuperscript{191} It was also the first time the fledgling gay movement had ever graced the cover of a major magazine.

For a cause struggling to gain legitimacy, this event proved to be a pivotal moment.

Matlovich, in terms of image, defied stereotypes associated with queer men. He was clean-cut and respectable. He was a war hero. He was looking to settle down. In these ways, he embodied mainstream values. Shilts writes that the interest in Matlovich’s story stemmed from a profound, almost unconscious fascination with the contradictions inherent in his case. Matlovich not only defied the conventional image of a gay man but also, as Shilts notes, the “substance of his case… pitted the gay movement, the ultimate affront to the ethos of American manhood, against the military, the last great bastion of male heterosexuality.”\textsuperscript{192}

The influence of the \textit{Time} cover extended far beyond the civilian world, with its most profound impact felt within the military. Even the most intense homophobes couldn’t help but pause when confronted with Matlovich’s commendable record. Achievements like the Purple Heart, Bronze Star, and twelve years of exceptional service held significant weight for servicemembers and veterans, resonating in a way that civilians might not fully grasp.

\textsuperscript{191} Miller, “40 Years Since Leonard Matlovich’s Time Magazine Cover.”

\textsuperscript{192} Shilts, 227.
Matlovich’s cover resonated with others in uniform who were queer as well, and his case sparked debate on the merits of the anti-gay policy at military installations around the world. In September of 1975, six months after giving his commanding officer the letter, Leonard Matlovich attended his discharge board. He was not facing a court-martial, which would occur if he had broken military law. Rather, he had violated administrative regulations that barred queer people from serving, and thus would face a five-member administrative board made up of military officials. His lawyers, David Addlestone and Captain Jon Jaenicke, knew that his chances of being retained were low, but hoped they could create a strong record for the constitutional challenge to the issue that lay ahead.

The case was designed to test the unclear regulations on the Air Force books, which allowed for exceptions to the overall exclusion of gay servicemembers: “Exceptions to permit retention may be authorized only when the most unusual circumstances exist and provided the airman’s ability to perform military mission has not been compromised.” There was no explicit definition provided for what constituted “unusual circumstances,” a characteristic example of regulatory ambiguity that allowed the service to selectively retain individuals while discarding others. While researching the regulation, Addlestone had found that “immaturity” or other circumstances could serve as valid reasons to excuse a servicemember from a gay discharge. Notably, the exception could not be invoked solely based on drunkenness, exceptional service, or one-time experimentation (known colloquially in queer circles as the “Queen for the Day” rule). However, in a previous case where Addlestone defended an enlisted man, he successfully averted the discharge by presenting arguments that encompassed all three aspects.

193 Shilts, 227.
195 Shilts, 199.
Clearly, the regulation was ambiguous, but more than anything, a government regulation legally had to make it clear what constitutes a violation. If there were going to be exceptions, they had to be specified.

Because it was a board and not a trial, the members could only “apply” the existing regulation, rather than deciding if it was just or constitutional.196 While arguing the case, Addlestone emphasized that Matlovich fell within the clause of “most unusual circumstances”—his twelve years of exemplary service—while also demonstrating that his ability to serve in no way was compromised by his sexuality. After deliberating for four and a half hours, the administrative discharge board recommended that he be “subject to discharge for unfitness,” meaning he was granted a less-than-honorable discharge.197 Though it was later upgraded to honorable, Matlovich sued for reinstatement, starting a years-long process that ended in a financial settlement.198

Despite Matlovich’s case failing to prevent his discharge, its significance within the gay rights legal realm cannot be overstated. Many legal arguments later used to advocate for gay rights were initially presented at the Administrative Discharge Board for Leonard Matlovich. Addlestone and Jaenicke strategically used the case as a platform to establish the scientific foundation of queerness. They addressed questions for the board, such as the determinants of being gay. By arguing that being gay is immutable and without choice, the defense laid the groundwork for positioning it as a civil rights issue. Addlestone called upon two leading sex researchers, Dr. Wardell Pomeroy and Dr. John Money, to act as expert witnesses for the defense. They delved into theories regarding the origin of queerness in individuals and addressed

196 Shilts, 239.
197 Ibid.
198 Matlovich v. Secretary of the Air Force, 591 F.2d 852.
the expansive nature of the queer spectrum, demonstrating that it was wider than the conventional understanding during the time. Pomeroy’s studies, for instance, had shown that 37 percent of adult American males had experienced at least one sexual encounter with another man leading to orgasm.\textsuperscript{199} The defense also addressed stereotypes surrounding whether gay servicemembers could potentially ‘recruit’ or influence others towards their ‘lifestyle.’ It was not merely the Air Force regulation being disputed. As Shilts writes, “It was every bad thing people thought about homosexuals, because those attitudes were the basis of the regulations.”\textsuperscript{200}

The scientific basis put forth to the board, asserting that sexual orientation is not a matter of choice, remains a subject of debate (especially considering a contemporary perspective on sexual fluidity). Nevertheless, it has proven to be an effective legal strategy, being utilized in federal courts to reinforce constitutional arguments against discrimination based on sexual orientation.

Five days after Matlovich was discharged, Skip Keith, the man who had disclosed his sexuality during a race-relations class, was judged “unfit” and discharged. Consecutive hearings resulted in the discharge of both PFC Barbara Randolph and Private Debbie Watson, despite ample evidence showcasing their commendable performance as WACs. Gary Hess, the Navy reservist from California, received a discharge from a Navy panel due to his bisexuality. Notably, it was reported that he was discharged honorably, with full benefits, due to his outstanding military record.\textsuperscript{201} There are many other queer servicemembers who fought their discharges during this extraordinary period, and in each of their own unique cases, various

\textsuperscript{199} Kinsey et al., “Homosexual Outlet.”
\textsuperscript{200} Shilts, 238.
\textsuperscript{201} “Military Gays Come Out.”
aspects of the anti-gay policies across different branches of the military were challenged. Joanna Clark successfully sued the Army for her discharge, receiving a payout of $25,000 and an honorable discharge. She was the first transgender servicemember to ever win a legal action case against the U.S. military.

Despite their near-universal failure to avoid discharge (although many were able to upgrade their discharges to honorable during the appeals process), these cases proved to be significant. This effort challenged regulation that never had been publicly challenged and brought attention to the constitutional questions surrounding the military’s exclusionary policy, putting considerable stress on military legal teams to determine the next course of action.

In one of Matlovich’s federal appeals, the judge denied his reinstatement, citing the recent *Doe v. Commonwealth’s Attorney* Supreme Court case, which had attempted to challenge Virginia’s sodomy laws but was unsuccessful. Notably, the judges had refused to articulate legal rationale for affirming the sodomy policy, not even allowing debate, or writing an opinion—a choice that infuriated gay activists and legal scholars alike. Matlovich’s judge had ruled against him and cited *Commonwealth*, but still took the opportunity to harshly criticize the military policy during his statement:

> In the light of increasing public awareness and the more open acceptance of what is in many respects essentially a matter of private sexual conduct, it would appear that the Armed Forces might well be advised to move toward a more discriminatory and informed approach to these problems, as has the Civil Service Commission in its treatment of

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202 To name a few others—Tanya Domi, Perry Watkins, Miriam Ben-Shalom, Copy Berg, and Jay Hatheway (who actually attended my own college, Claremont McKenna College, with a full ROTC scholarship).

203 Smith, “Transsexual Nun’s Order Repudiated.”

204 “Joanna Clark: Warrior Woman.”
homosexuality within the civilian sector of the Government… While the court has reached its conclusions… I hope it will be recognized that after months of intense study of this problem, matters within and without the record, the Court, individually, for what it is worth, has reached the conclusion that it is desirable for the military to reexamine the homosexual problem, to approach it in perhaps a more sensitive and precise way… The Armed Forces have shown they can lead the way on matters of discrimination; and I simply suggest that this is an area that deserves its more intense and immediate study.\textsuperscript{205}

This unusually strong condemnation and recommendation against the military’s policy startled attorneys at the Pentagon and the Attorney General’s office. They were beginning to perceive a noticeable shift in both the courts and public opinion.

Over in the Navy, when officials fretted over their own legal challenges, the office of the Chief of Naval Personnel decided to do some digging into Pentagon files to clarify the rationale behind their anti-gay policy.\textsuperscript{206} Lawyers found the 639-page Crittenden Report that had been buried in 1957 after its commission reviewed its recommendations. The report, as was previously discussed, indicated that queer servicemembers were indeed fit for duty but recommended against policy changes to align with societal norms. The report’s reintroduction in the 1970s was a bombshell. Lawyers could now argue that queer individuals were fully capable of serving, were not a security threat, and that the anti-gay policy merely catered to the prejudices of homophobic leadership—a fact the Navy had been aware of since 1957. It was only a matter of time before the courts would rule against the military on this matter. The policy, as it existed then, was doomed.

\textsuperscript{205} Shilts, 285–286.
\textsuperscript{206} Shilts, 281.
1980s: New Regulation and Personnel Purges

As a new decade began, advocates for gay rights were feeling more optimistic in the political space. The issue of gay civil rights had finally gained prominence as a topic of discussion in the 1980 presidential election. However, it became evident that supporting gay rights posed more of a political risk than an advantage in a general election campaign. Women’s rights and gay rights emerged as issues in the national consciousness, fueling political polarization. Conservatives rallied around a newfound national fear with which it could mobilize voters: queer individuals.

The Republican nomination race appeared to be a competition to demonstrate who could adopt the most anti-gay stance, with Reagan emerging as a frontrunner. His New Right platform staunchly opposed matters such as the Equal Rights Amendment, abortion rights, and notably, gay rights. Reagan’s anti-gay rhetoric appealed to religious voters; he quoted the Bible saying that homosexuality was an abomination, and was quoted saying that the gay rights movement was “asking for recognition and acceptance of an alternative lifestyle which I do not believe society can condone; nor can I.”

In contrast, Carter’s administration had made some regulatory adjustments concerning gay concerns but took little interest in issues of the queer community. Ironically, the conservative religious movement portrayed him as pro-gay, contributing to his loss. Reagan’s successful strategy to gain support in the South led many white evangelicals who had voted for Carter in 1976 to vote for Reagan in 1980, ultimately securing his presidency. Reagan’s election marked a significant conservative shift politically, and military policy regarding queer servicemembers soon followed. However, far from diminishing, momentum behind the issue continued to grow.

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207 Shilts, 368.
In January 1981, the DoD issued its most stringent regulation to date concerning the exclusion of queer individuals from service. The revision to DoD Directive 1332.14 had been under development since 1977, when the Carter administration called for a review of DoD policy given the weakening legal basis for LGB exclusion.208 The resulting policy voided all provisions in military regulation that allowed for the retention of anyone who could be discerned to be queer—eliminating the discharge exceptions that had proven so problematic in cases like Matlovich’s and others that had plagued the DoD for much of the prior decade. The new policy was primarily intended to strengthen the DoD’s position in the courts, and in doing so, was the strictest regulation against queer servicemembers in the past century.

The new policy was short—only 123 words—but incredibly exclusive. It sharpened the policy’s language and clearly articulated that queerness was “incompatible with military service.”209 The text reads:

The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work in close conditions affording minimal privacy; to recruit and retain members of the armed forces;

208 Goodhart and Taylor, “LGBT Military Service Policies in the United States.”
209 Ibid.
to maintain the public acceptability of military service; and to prevent breaches of security. \(^{210}\)

Except for the last sentence concerning national security, nothing in the policy and related statements from the Pentagon suggests anything about queer servicemembers and their fitness for service. Rather, the rationale was solely based on the anticipated response of straight servicemembers to serving alongside gay counterparts. As Shilts points out, “the policy was the rationale; the rationale was the policy… [it] was not a statement about homosexuals but about heterosexuals.” \(^{211}\)

The policy puts into words the same justifications heard many times before and used many times again—that gay servicemembers would damage unit cohesion and pose a threat to good order, discipline, and morale. An earlier draft of the policy also revealed the logic of organizational ecology and pressure from the broader public, arguing that allowing openly gay individuals to serve would “damage the image of the military in the eyes of the American people, our allies, and our potential adversaries.” \(^{212}\) The justification continues, saying inclusion would make military service “less attractive” and would cause “great difficulties in recruitment and retention” of servicemembers, threatening the viability of an all-volunteer military.

The distinguishing feature of the regulation lay in the sections outlining the criteria for identifying a gay servicemember for purposes of administrative separation. These provisions were extreme, aiming to eliminate any potential loopholes that could be exploited in legal proceedings. One clause specified that the policy would be enforced on any servicemember who had previously engaged in SSSB at any point in their lifetime. Another criterion was if a


\(^{211}\) Shilts, 379–80.

\(^{212}\) “FOIA Document: Rationale for Exclusion of Homosexuals from Military Service.”
servicemember attempted to enter a same-sex marriage or legal partnership. Additionally, the policy extended to any servicemember who told another that they were gay (a clause added to cover cases like Matlovich’s). But the most dystopian clause in the new regulation was the simple declaration: “Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.”213 This meant that there was no longer a requirement to establish that a servicemember had engaged in SSSB. There were no more questions of “homosexual tendencies.” Later, this language was refined to include servicemembers who by “their statements demonstrate a propensity to engage in homosexual conduct.”214 By including the desire or the intent to engage in SSSB, even if not acted upon, the military had essentially banned queer thoughts. The only government to have gone to such extreme lengths to suppress queerness—to criminalize thought—was the Nazis.215

The architect of this policy, Deputy Secretary of Defense Graham Claytor, stated that he intended for the regulation to be a compassionate act, ensuring that queerness was treated as a disability rather than a crime. He sought to prevent the use of less-than-honorable discharges for gay servicemembers and had incorporated this “merciful provision”216 into the new Directive 1332.14. The Joint Chiefs had disagreed with this adjustment to the policy (though they had failed to persuade Claytor to reconsider), and so too did many other commanding officers; they ignored the provision and were still issuing less-than-honorable discharges to gay servicemembers a decade later, violating the new DoD guidelines.

214 Wicker et al., 16.
215 Shilts, 380–82.
216 Ibid.
**Whack-a-Mole**

Following the new anti-gay policy laid out in DoD Directive 1332.14, military commanders struggled with still more LGB controversies. The new policy did little to end messy legal battles, and even as authorities launched more intense purges to rid installations of gay servicemembers, they were not successful— as soon as one threat to the military’s gay policy was struck down, two or more rose up elsewhere. It was like a big game of whack-a-mole.

The continual influx of cases did not deter the investigations and discharges. In the years following the implementation of the new DoD Directive, there was a notable increase in gay discharges, reaching a new post-Vietnam era high. This record was evidenced by a series of purges conducted on bases worldwide. Though a handful of those discharged during this period still pursued lawsuits, a series of rulings throughout 1981 indicated that the increasingly conservative federal courts were unlikely to sympathize with such challenges. The Supreme Court declined to hear several gay discharge cases, effectively endorsing the status quo by abstaining from comment on the matter.

The purges of queer servicemembers in the early 1980s were most intense for lesbians. As the presence of women had become more pronounced in every branch of the armed forces, an entire mythology around lesbians had evolved, followed by purges. This period of lesbian purges correlates largely with a backlash to the inroads made by women during this period. The number of enlisted women in the Army had increased by 550 percent from 1972-82, and the number of woman officers had doubled. In broader society, a woman had been appointed to the Supreme Court for the first time, women were being elected to state and federal office at higher rates, the

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217 Shilts, 415.
first woman astronaut was scheduled to fly in the space shuttle *Challenger*, and the proportion of management positions held by women had nearly doubled.\(^{218}\)

Prior to 1980, talk about homosexuality had almost universally been about gay men. The result of a more visible and pervasive corps of powerful women coming up in the military and beyond meant that queer women were being torn down at higher rates. Shilts aptly describes the attack against lesbians:

Lesbians were the sum of all fears for the confused heterosexual male of the 1980s. Lesbianism was the phenomenon that could deprive heterosexual men of women who would participate in the construction of their heterosexual identity. It was a frightening thought for those men who had created a society in which heterosexual identity—or, more accurately, the proof that one did not have a homosexual identity—was of paramount importance. At the same time, the new popularity of men as sex objects exacerbated anxiety, because heterosexual men for the first time faced the same dilemma that they had thrust upon women for so long—that they might not measure up physically.\(^{219}\)

These anxieties were even more acute in the institution devoted to traditional ideas of masculinity—the military. Thus, it is not surprising that sexual harassment and paranoia over lesbianism were running rampant on bases and military installations across the world during the 1980s.

The lesbian investigations contributed to the rise of gay discharges in the early 1980s. Interestingly, while the discharge numbers increased, the number of investigations decreased,

\(^{218}\) Ibid.
\(^{219}\) Shilts, 417.
only because each investigation yielded so many more discharges. In 1982, 2,069 enlisted
servicemembers were discharged for being gay. The following two years showed 1,809 enlisted
personnel discharged, with the number remaining steady the next year at 1,801.\textsuperscript{220} Field officers
had begun to harbor mixed feelings about the anti-gay policies, often citing alternative reasons
for discharging servicemembers.\textsuperscript{221} The Defense Department, in its 1992 GAO report,
acknowledged that the actual number of soldiers discharged for being queer was significantly
higher than the figures released by the late 1980s. Nonetheless, by the end of the decade, the
military had drummed out approximately 17,000 servicemembers under the category of
“homosexuality.”\textsuperscript{222}

Even official statistics obscure the reality—that the military had not launched such an
aggressive campaign against queer servicemembers since the days of McCarthyism. Displayed
on fact sheets in military legal offices worldwide were the 123 words that the military vigorously
sought to uphold—that allowing gay individuals to serve would undermine unit cohesion and
jeopardize good order, discipline, and morale. The military, as an institution, needed to enforce
this new regulation to deter additional court challenges questioning the legitimacy and supposed
professionalism of its soldiers. But attitudes towards the queer community were changing, and
this latest policy change and the following frenzy of anti-gay hostility was not going to prevent
challenges and more court battles.

\textit{More Litigation}

The 1980s were also a difficult time for transgender servicemembers, as the military
began enforcing its medical regulations more forcefully against them. In 1981, the Army

\textsuperscript{220} Wicker et al., “Defense Force Management: DOD’s Policy on Homosexuality.”
\textsuperscript{221} Shilts, 521.
\textsuperscript{222} Wicker et al.
litigated *Doe v. Alexander*, a case that directly challenged the military’s exclusionary policy towards transgender individuals. The case reached the U.S. District Court of Minnesota, where the Army defended its policy of denying enlistment to transgender individuals, citing concerns that the “condition” of being transgender “presented a medical problem” in which the military could not guarantee hormone supplementation in certain locations. The court found that the plaintiff had not made a legitimate case, and the Army was able to reaffirm its 1963 policy.

Trans activists were just as unsuccessful in the case of *Leyland v. Orr*, in which Air Force Reservist Jane Leyland challenged her discharge after undergoing gender-affirming surgery, arguing that the discharge was grounded in the arbitrary interpretation that she was psychologically and physically unfit. While the court acknowledged that Leyland was not psychologically unfit, it ultimately ruled against her, determining that her gender-affirming surgery rendered her physically unfit. The court, rather ridiculously, equated her surgery to the loss or amputation of a limb. Additional cases initiated by genderqueer servicemembers not only tackled concerns regarding medical standards but also addressed disciplinary standards regulated by the UCMJ. In two instances, the courts upheld that cross-dressing (even when done privately) is considered a disruption of good order within the military.

The success of these court challenges was not in forcing policy change, but in bringing more attention to the issue of LGBTQ+ rights. When *Bowers v. Hardwick* reached the Supreme Court in 1986, challenging Georgia’s sodomy law, it became the first case regarding

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224 828 F2d 584 Leyland v. Orr F E, F2d.
225 Witten, 12.
226 The court asserted that this loss of limb “render[ed] the enlisted person unable to perform the full demands of soldiering,” despite the fact that the penis is not considered a limb and that her surgery itself did not impede her ability to serve.
homosexuality to be fully argued before the nation’s highest tribunal. Like the many cases before it, though, it failed to overturn any laws. The justices upheld Georgia’s sodomy statute with a narrow 5-4 vote. It was clear that justice for LGBTQ+ servicemembers was not to be found in the courts. This is particularly true because of the politics of the era; President Reagan and President Bush’s emphasis on appointing young, conservative federal judges meant that the courts were not inclined to reform the military’s policies. Despite Democratic presidential candidates’ attempts to court favor with the queer community throughout the elections of the 1980s, President Bush’s victory in 1988 indicated that more time would need to pass until an administration would be inclined to address the policies.

Although activists complained that anti-LGBTQ+ policy was being preserved by the Bush presidential administration solely to curry favor with religious conservatives, the issue was also being protected by both Republican and Democratic politicians in Congress.\textsuperscript{228} Democrats who chaired committees on armed services in the Senate and House of Representatives had steadfastly declined to hold hearings on the issue of the policy for years. However, there were a few voices calling for reform—notably Congresswoman Pat Schroeder, a ranking armed services member, and Congress’ two openly gay members, Gerry Stuuds and Barney Frank. Though their voices were not enough to garner congressional and media attention, their efforts became consequential when they got access to a new, controversial Pentagon report.

\textit{Déjà vu: The PERSEREC Report}

Following several embassy spy scandals, the Defense Department commissioned a report from the Defense Person nel Security Research and Education Center (PERSEREC) on

\textsuperscript{228} Shilts, 659.
improving its security regulations. Dr. Ted Sarbin, a psychological researcher and government adviser, and Dr. Kenneth Karols, a PERSEREC psychologist and Navy captain, were asked to write a report studying the question of whether queer individuals represented security risks and determine whether changes should be made to personnel practices. The topic of the report is strikingly like the Navy’s Crittenden Report, commissioned exactly three decades prior, and the results mirror as well. The PERSEREC report found no evidence of security risks related to queer individuals. This time around, Sarbin and Karols went farther with their conclusions, drawing controversy and pushback from the Pentagon on what it deemed to be a blasphemous report.

The PERSEREC report pushed back against the military’s anti-gay policy in several ways. First, it claimed that the current policy was unsuccessful—having only identified an “infinitesimal percentage” of queer servicemembers—and that Article 125 of the UCMJ (governing sodomy) was “unenforceable.” Second, they wrote that official fears about the disruption of queer inclusion were unfounded, comparing these fears to the case of racial integration: “The order to integrate [Black soldiers] was first met with stout resistance…Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.” They continued by recommending that the military adopt programs like those implemented following Vietnam that addressed racial discrimination (including classes such as the one taught by Leonard Matlovich) to ensure equal opportunity for queer servicemembers. Third, the report tackled some of the most widely discussed concerns regarding queer servicemembers—such as


\[^{230}\] Sarbin and Karols, 25.
poor job performance, sexual aggression, likelihood of HIV infection, and security risks—and refuted each of them.

Sarbin and Karols concluded by proposing that broader society is progressing towards nondiscrimination policies, stating that military services will soon face calls from the courts or Congress to reassess their policies. In their conclusion, they borrowed the language of organizational ecology and coercive isomorphism: “The lessons of history tell us that the legitimacy of our behaviors, customs, and laws is not permanently resistant to change. Custom and law change with the times, sometimes with amazing rapidity. The military cannot indefinitely isolate itself from the changes occurring in the wider society, of which it is an integral part.”

Even early drafts of the PERSEREC report caused a stir at the Pentagon. In January 1989, Under Secretary of Defense Alderman sent an angry memo to PERSEREC Director Eoyang, complaining that the report’s conclusion failed to take into account the recent court decisions that had supported anti-gay military policies, suggesting “a bias which does justice neither to PERSEREC nor the Department.” Alderman also claimed that studying criteria for military service had exceeded the authority of PERSEREC. Eoyang stood by the report in his response, writing that the report’s mandate included “all information relevant to [queer individuals] and not just that which is supportive of [DoD] policy.”

DoD officials had cause for concern regarding the study’s findings. Firstly, its conclusions weakened the Pentagon’s stance in ongoing legal disputes concerning the constitutionality of barring LGB individuals from obtaining clearances and serving in the

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231 Sarbin and Karols, 37.
232 Shilts, 648.
233 Ibid.
military. Second, if the report were to reach the hands of liberal journalists or members of Congress, it could further embarrass the institution. As stated in a memo by Alderman, it would require the Department “to invest even greater time and effort in addressing concerns surrounding this entire issue, both within Congress and the media, as well as within the Department itself.”

Since the PERSEREC director had refused to alter the report, the Pentagon decided to identify it as a draft rather than a final official document. This allowed the military to deny its existence if the news got out about it. Military leadership used this exact strategy when lawyers from the Lambda Legal Defense and Education Fund (who were challenging the Pentagon’s anti-gay policy) sought access to the report after hearing rumors about it. Congressman Gerry Studds also heard rumors but was informed that the report did not exist after his own request. Unfortunately for the Pentagon, the Xerox machine was quickly becoming a potent tool against government deception. Despite the Pentagon’s effort to limit the distribution of the ‘draft’ to just three copies, someone managed to photocopy it, and that photocopy led to another until it eventually circulated through the Washington network and landed on a desk in Capitol Hill. Congressmembers Studds and Schroeder held a briefing with Dr. Sarbin and Pentagon officials before releasing their copy of the report, along with copies of memos that had been written between the DoD and PERSEREC, to the media. The New York Times, other major newspapers, and virtually every gay rights advocacy group published the report.

Another significant embarrassment occurred around the same time as the release of the PERSEREC report. Between 1989 and 1990, several ROTC cadets had independently chosen to come out to their commanders as gay. As per policy, the cadets were disenrolled (equivalent to a

234 Shilts, 648.
discharge in ROTC). However, when the students received recoupment orders—orders to repay tuition funds disbursed by the military—they went to their administrators.\(^{235}\) This brought attention to the fact that ROTC personnel policy, reflecting the DoD’s anti-gay policy, prohibited queer students from serving as cadets, thus violating university nondiscrimination policies.

These disenrollments, fueled by the perceived unfairness of recoupment orders, started a campaign on more than fifty college campuses to remove their ROTC programs for violating nondiscrimination policies. This movement included major educational institutions such as Harvard, MIT, UCLA, University of Colorado, Ohio State University, Washington University of St. Louis, and University of Pennsylvania, among others. Additionally, some prestigious law schools—such as Stanford, Columbia, Yale, and Northwestern—moved to prohibit recruitment by the military, CIA, and FBI.\(^{236}\) This campaign posed the most serious threat to ROTC programs since the Vietnam War, garnering support from students, faculty, administrators, and a broader coalition of gay rights activists.\(^{237}\)

The media coverage of the campaign, especially the stories of cadets who came out only to be disenrolled and handed hefty bills from the government, made great TV. It was another public affairs disaster for the Pentagon. After reprimands from the Pentagon’s highest levels and a direct order from Defense Secretary Cheney, the military services abruptly halted recoupment procedures for the most publicized cadets.\(^{238}\) However, once again, the public-facing policy differed from the reality of the situation. Despite Cheney’s directive and the Pentagon’s assertion that it was no longer DoD policy to pursue recoupment in cases of gay disenrollment, the actual practice was to seek repayment from cadets who chose not to go to the media.

\(^{235}\) “ROTC Exclusion of Homosexuals Is under Fire.”

\(^{236}\) Shilts, 703.


\(^{238}\) Weitzman, “Navy Reverses Stand On ROTC Funds For Two Gay Men.”
In the end, few colleges were able to officially cut ties from their ROTC programs. The financial support they received in the form of scholarships and research grants from the DoD was too substantial to let go, leading the schools to pass less consequential policies. In MIT’s case, the school unanimously passed a resolution condemning the military’s ban on queer individuals; the resolution included a commitment to lobby for policy change over a five-year period. Other college administrations and their trustees opted to make any resolutions passed by faculty senates and university councils temporary. By the end of 1990, the only college to officially eliminate the ROTC from its campus was Pitzer College.

Nevertheless, the campaign had sparked renewed public attention and debate, drawing academia and college students into the discourse. Regardless of the outcome, the military’s anti-gay policies were once again subjected to unfavorable scrutiny. This heightened publicity, along with that of the PERSEREC report, generated more momentum for policy reform. The next shift in momentum would involve the outbreak of war in the Middle East and a new president.

1990s–2000s: Don’t Ask, Don’t Tell

The Persian Gulf War marked the first major armed conflict since the birth of the gay rights movement a generation earlier. Not much had changed, however. The military’s policy and patterns of gay discharges demonstrated the same contradictions as it had in WWII and Vietnam. As in these conflicts, needing bodies for combat, the armed forces suddenly gained a new tolerance for queer servicemembers. In 1990, the DoD drew up orders to implement its “Stop/Loss” policy, aiming to slow the number of discharges from the armed forces to ensure

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239 Shilts, 704.
240 Haldane, “Battle Lines Drawn in ROTC’s Campus War.”
adequate manpower. The policy specifically targeted active-duty personnel who had “skills in short supply,” to include language specialists and medical personnel—two of the most important fields and two of the fields with higher proportions of queer servicemembers.

Many LGB servicemembers who came out to their commanding officers during this period were assured that they could serve in the war. What they weren’t informed was that they would be handed a gay discharge upon return stateside after their deployment concluded. Those who were discharged before deployment were only those few who went to the media after being told they could fight. Once more, this illustrates the military’s priority to appear like it enforced its anti-gay regulation, rather than actually enforcing it. It also reveals the military’s tendency to apply its regulations in manners that suit its interests—such as when it needs bodies—often at the expense of individual queer servicemembers. Despite explicit regulations indicating otherwise, the Staff Judge Advocate’s Office at a Marine Corps Support Center asserted that “claimed sexual preferences do not constitute an exemption from the mobilization process,” and continued to advise retaining LGB servicemembers seeking discharge from their commanders.

When the 100-hour ground war was over, servicemembers returned home to jubilation. Several LGB Gulf veterans were invited to lead gay pride marches across the country, generating visibility and media attention. More visibility was achieved throughout 1991 and 1992, as more LGB servicemembers began stepping forward in the papers, on morning talk shows, and evening news broadcasts. In the fall of 1991, Democratic presidential hopeful Bill Clinton appeared at Harvard’s JFK School of Government, where he first announced publicly that he would lift the ban on LGB individuals serving in the military if elected president. He was

241 Shilts, 724.
242 Shilts, 684; Shilts, 736; Curtis, “More Gays Discharged than Thought.”
243 Gaines-Carter, “GAY PARADE LEADER QUESTIONED.”
244 Shilts, 740.
decisive in his response and remained resolute in his stance throughout the rest of his campaign and upon assuming office after winning the 1992 election.

*Clinton’s Broken Promise*

Clinton seemed to be one of the first mainstream politicians who harbored no prejudice against the queer community—he spoke at gay fundraisers, endorsed political demands like AIDS funding and a federal gay rights bill, and had worked out his own rationale for extending his firm commitment to civil rights to include the queer community.\(^{245}\) Very early into his administration, the Pentagon realized that Clinton was actually serious about his campaign pledge to abolish the military’s prejudicial policy. The topic—what became termed “gays in the military”—essentially blew up Washington. Not only was it a brazen challenge to military leadership, who consistently maintained anti-gay positions publicly, but it also created an opportunity for conservatives to jump on the issue and attack the newly elected administration.

Clinton hit a wall of opposition on allowing gays in the military. He did not want to sign an executive order unless he had consulted with the Joint Chiefs first. However, according to some reports, Chairman General Colin Powell—who had maintained anti-gay positions for years—was threatening to resign so that he could avoid spending the last eight months of his tenure leading an inclusive military. Two other members of the Joint Chiefs reportedly threatened to resign if the order went through.\(^{246}\) Others predicted the doom of mass resignations of officers and senior enlisted personnel throughout the services. Lobbying groups and various military constituencies sprang into action, denouncing Clinton’s intention. Conservative rhetoric focused on the classics—good order, discipline, morale, recruitment—but went darker with

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\(^{246}\) Shilts, 744.
imagery of sexual predators in bathrooms with young male recruits. Hardly anyone discussed lesbians.

Congressional pressure increased as several Senators began discussion on sponsoring legislation to codify the anti-gay regulation into law if Clinton passed the executive order. Privately, President Clinton did not want to veto a bill banning LGB service in the military. In order to avoid the legislation, the administration asked Congress to hold off on introducing any bill for six months, giving the DoD time to hammer out a compromise. In the meantime, recruiters were to stop asking applicants about their sexuality, all gay investigations would cease, and there would be no more gay discharges.

The Department of Defense tasked RAND, a prominent think tank and government consulting firm, with evaluating the potential policy changes and their probable effects. In 1993, RAND conducted an exhaustive study that assessed the historical treatment of LGB individuals in the military, including military opinions and concerns regarding HIV transmission, sexual predation, and unit cohesion. The research was extensive, with RAND researchers even visiting several countries with varying policies towards LGB armed forces inclusion in order to estimate the potential impact of the policy change in the U.S. Researchers also examined experiences of domestic organizations allowing LGB individuals to serve openly, finding that concerns about unit cohesion were largely unfounded. Ultimately, the study recommended adopting a policy that treated sexuality as “not germane” to service. The recommendation also emphasized the importance of strong leadership in facilitating this major change in policy successfully.

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247 Shilts, 745.
250 Goodhart and Taylor.
251 Rostker et al, xviii.
Despite the recommendations of the report, the Clinton administration announced a policy that tried to compromise the campaign promise with the opposition from conservative politicians and military officials. The temporary policy changes put in place during the six-month study became the tenants of the final policy, which was announced in July of 1993 and called “Don’t Ask, Don’t Tell” (DADT).\(^{252}\) The full title was “Don’t Ask, Don’t Tell, Don’t Pursue,” with the last phrase describing an aspect of the policy that prevented the endemic gay witch-hunts and purges. In September 1993, Congress passed an act that codified DADT, elevating it from military regulation to a law on the books.

On paper, the policy made a number of changes to DoD’s anti-gay regulation, although the tangible impact of these changes was minimal for queer servicemembers. The revised policy specified a shift in focus of DoD policy to a servicemember’s conduct rather than their identity when considering grounds for dismissal. However, what the policy failed to understand was that the conduct considered grounds for dismissal was related to identity; DADT retained prohibitions on servicemembers being openly queer, including through known sexual behavior, marriage, or any public statement revealing an LGB identity. Thus, though identifying as queer was no longer grounds for discharge, openly doing so was equivalent to queer conduct, which was. Notably, DADT did not address transgender servicemembers at all.

DADT mandated uniform application of the UCMJ, aimed at treating Article 125 (forbidding sodomy) equally to servicemembers of any sexuality. It also created a mechanism for openly queer servicemembers to challenge discharges. Unfortunately, a servicemember could only use this mechanism by demonstrating they would not engage in SSSB.\(^ {253}\) While the original policy did maintain the ban on questioning recruits about their sexual orientation, this ban was

\(^{252}\) Carroll, 460–461.

\(^{253}\) Goodhart and Taylor, “LGBT Military Service Policies in the United States.”
eventually dropped, allowing for questions regarding sexuality on a “discretionary basis.”

Really, the policy was new packaging for the same old regulations established back in 1981. What was new was the attempt to end affirmative efforts by the military to seek out LGB individuals. In practice, however, this attempt failed. Military commanders seemed to feel more empowered to actively seek out queer servicemembers; gay discharges actually increased following the implementation of DADT, and reports of anti-gay harassment and death threats rose as well.

Ironically, DADT worked to undermine good order and discipline in military settings. By marginalizing queer servicemembers and barring them from serving openly, the policy inadvertently condoned a level of disorder and violence against them. It imposed harsh penalties on LGB servicemembers, creating a system where individuals could not seek help from their chain of command to report harassment, crimes, or violence perpetrated against them. In the 1990s, following DADT’s implementation, numerous incidents occurred where servicemembers who reported hate crimes, extortion, or domestic violence were discharged after being outed by their perpetrators. Another irony of the policy was that it undermined core values of the military—loyalty, duty, respect, selfless service, honesty, integrity, and personal courage. The policy subverted these principles by allowing for, and even promoting, dishonorable behaviors such as spying and extortion. Crucially, by requiring LGB personnel to lie (either overtly or by omission) about their personal lives, it eroded the honesty and integrity of these servicemembers.

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255 Benecke, Corbett, and Dixon Osburn, “Diminishing Core Values: The Consequences for Military Culture of ‘Don’t Ask, Don’t Tell, Don’t Pursue.’”
256 Ibid.
**Challenging DADT**

Once more, challenges to the military’s anti-gay policy ended up in the courts, and once more, they hit dead ends. For many years, the tradition of “special deference” to political branches led most appeals courts to affirm the judgment of military leaders in how they discipline or discharge servicemembers, particularly for something as thorny as queer conduct. Building upon the 1986 Supreme Court ruling in *Bowers v. Hardwick*, which determined that individuals have no right to engage in ‘sodomy,’ these appeals courts held that the military had constitutional grounds to discharge a service member for whatever they determined to be “overt homosexual behavior.” 257 Thus, legal challenges to the DADT policy primarily focused on its “statements” provision, which assumed, in the absence of contrary evidence, that SSSB would occur among servicemembers who acknowledged their queerness outwardly. Despite this strategy, the Supreme Court repeatedly declined to review the military’s DADT policy throughout the decade after its implementation. To those challenges that reached the court, the justices offered no commentary on arguments asserting that the policy stemmed from homophobic prejudice and infringed upon servicemembers’ free speech rights. 258

In July 1999, a critical juncture was reached after the highly publicized murder of Army Private First Class Barry Winchell at Fort Campbell, KY. Winchell, 21-years-old, was murdered in his sleep by a fellow soldier a few hours after a physical altercation between the two. The crime was determinedly motivated by homophobic and transphobic bias; Winchell was in an off-duty romantic relationship with a trans woman at the time of his murder, resulting in an extreme

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257 Burrelli and Feder, 10.
level of harassment that his superiors did nothing to stop.\textsuperscript{259} Some argued that this oppressive and disorderly atmosphere, fostered by the DADT policy, contributed to his murder.

Partly in response to the murder, President Clinton issued an executive order amending the UCMJ to allow the inclusion of evidence related to hate crimes during the sentencing phase of a military trial.\textsuperscript{260} Then, in response to concerns over the Winchell case, Secretary of Defense William Cohen initiated a review of the DADT policy to evaluate its compliance with anti-gay harassment regulations. Following the review’s unsurprising revelation of widespread expression and tolerance of anti-gay sentiments within the military, the DoD implemented a new anti-harassment policy in July 2000, known as the Anti-Harassment Action Plan (AHAP). The comprehensive, 13-point plan recommended anti-harassment training, reporting, enforcement, and measurements to assess adherence to and effectiveness of anti-harassment policies. AHAP was forwarded to the branches of the armed forces for implementation. However, DoD did not issue an overarching policy directive, as is typical, which consequently relegated the policy to the sidelines. AHAP thus lacked the necessary impact as a response to the harassment problems; critics question its effectiveness.\textsuperscript{261}

The push against the DADT policy struggled to gain significant traction in the following decade, primarily due to political reluctance stemming from the fallout of Clinton’s 1993 efforts. Winchell’s murder brought the issue back to the forefront after it had largely disappeared from public discourse, yet military leaders and executive officials were hesitant to address it. Despite both Al Gore and Bill Bradley, the leading candidates for the Democratic presidential nomination, expressing support for allowing LGB individuals to serve openly, the 2000

\textsuperscript{259} Clines, “For Gay Soldier, a Daily Barrage of Threats and Slurs.”
\textsuperscript{260} “Executive Order 13140.”
\textsuperscript{261} Burrelli and Feder, 20–21.
Democratic Party platform remained silent on the matter. The election of George W. Bush in 2000 signaled an end to any lingering consideration of repealing DADT, for the time being. The Republican Party platform reiterated the stance that “homosexuality is incompatible with military service.” And given President Bush’s nominations for key defense-related positions, such as Secretary of State (Colin Powell) and National Security Adviser (Condoleezza Rice), both of whom opposed openly allowing LGB individuals to serve in the military, it was improbable for the administration to shift its stance on the issue.

As political and military perspectives remained stagnant, public opinion underwent significant change during the 1990s and into the new millennium. Polling data indicates that the percentage of the public who endorsed the inclusion of LGB individuals in the military increased by 20 points from 1992 to 2000. This trend persisted into the 2000s; a Gallup poll in 2004 revealed that 63 percent of the public supported the admission of queer individuals into the armed forces. By 2005, the growing public support had translated back into the political sphere, resulting in several efforts to repeal DADT through bills introduced on the House and Senate floors from 2005-2009. These bills aimed to amend Chapter 37 of Title 10 of the United States Code to prohibit discrimination on the basis of sexual orientation. Unfortunately, the efforts failed to advance out of committee.

The emergence of Senator Obama as the frontrunner for the Democratic presidential ticket brought new hope to reformers. Throughout his 2008 campaign, Obama advocated a full

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262 “2000 Democratic Party Platform.”
263 “2000 Republican Party Platform.”
264 “Bush on Gay Rights Issues.”
266 “LGBTQ+ Rights.”
repeal of laws barring service of openly queer individuals.\textsuperscript{268} He emphasized GAO reports detailing the significant cost of the DADT policy,\textsuperscript{269} along with the widely publicized discharges of more than fifty linguists and translators.\textsuperscript{270} Once elected, the Obama administration moved slowly on DADT and other gay rights concerns, being mindful of the Clinton administration’s missteps. Administration officials announced that the repeal would not begin until 2010 so that Obama had proper time to confer with the Joint Chiefs, the Pentagon, and Congress.

Indeed, progress was almost too slow—Colin Powell, an architect of DADT who had held a fierce position against LGB service, announced that even he believed it was time to review the exclusionary policy.\textsuperscript{271} Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, addressed cadets at West Point in 2008 and when asked, he implied that the military was ready to implement more inclusive personnel changes, although the decision was ultimately in the hands of Congress.\textsuperscript{272} Gay rights advocates like Andrew Sullivan criticized the administration for what they perceived as a lack of urgency in addressing gay rights issues, labeling it as the “fierce urgency of whenever.”\textsuperscript{273} By 2010, polling indicated that nearly 75 percent of Americans supported LGB individuals serving openly in the military, while backing for restrictive service, where servicemembers couldn’t disclose their sexual orientation, had dropped to just 8 percent.\textsuperscript{274}

\textsuperscript{268} “Obama: Repeal of ‘don’t Ask, Don’t Tell’ Possible.”
\textsuperscript{269} In February 2005, the Government Accountability Office (GAO) disclosed estimates regarding the expenses associated with DADT—including additional recruitment and training replacements for the 9,500 troops discharged for being queer between 1994 and 2003. The expenses totaled roughly $383 million.
\textsuperscript{270} Throughout DADT, the DoD dismissed many highly skilled LGB personnel, despite facing significant shortages, such as fifty-nine fluent Arabic speakers and nine fluent Persian speakers.
\textsuperscript{271} “Time to Review Policy on Gays in U.S. Military.”
\textsuperscript{272} “Chairman of the Joint Chiefs Tells Cadets Military Ready to Accept Gay Service Members.”
\textsuperscript{273} Sullivan, “The Fierce Urgency Of Whenever.”
\textsuperscript{274} McCabe, “Public Opinion on ‘Don’t Ask, Don’t Tell.’”
2010s–Present: Ban, Repeal, Repeat

The stars had to align to provide for the repeal of a policy as entrenched as Don’t Ask, Don’t Tell. The president, other executive officials, the Joint Chiefs and other military leaders, the courts, and Congress all had a vested interest in overturning the policy. Public opinion applied pressure from the outside in. The federal court case *Log Cabin Republicans v. United States* was challenging the constitutionality of DADT and had been appealed to the Supreme Court. The DoD General Counsel led the charge with Army General Carter Ham on directing an internal study to assess the impacts of repealing DADT. The report took into account a wide-reaching survey distributed to servicemembers across the branches. The working group’s report, released in late 2010, indicated that there was a low risk of service disruptions from repealing DADT, provided time was allowed for proper implementation. Of course, many studies conducted previously had said the exact same thing; in response to the report, 30 professors and scholars, many of whom came from military institutions, issued a joint statement that emphasized this fact. They wrote, “We hope that our collective statement underscores that the debate about the evidence is officially over…The only question left is whether prejudice will prevail.” Following the release of the report, its authors, Johnson, Ham, alongside officials like Defense Secretary Robert Gates and Joint Chiefs Chairman Michael Mullen, urged an immediate repeal of DADT. Johnson noted that DoD felt the pressure of the *Log Cabin* case, wanting to avoid a situation in which the repeal of DADT came by court order.

At the same time, both chambers of Congress had been making efforts to repeal DADT for several months by amending the Defense Authorization Act (DAA). It had become one of the most tumultuous legislative endeavors of the year. While the House of Representatives had

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275 Renna, “Military and Civilian Professors Say That ‘Don’t Ask, Don’t Tell’ Debate Is Over.”
passed the amendment to the DAA, debate had been filibustered twice in the Senate, with Senator John McCain leading the opposition against the repeal of DADT. Eventually, a separate bill that included the policy-related sections of the DAA passed both the House and Senate, effectively banning DADT. President Obama signed the repeal act into law on December 22, 2010. The Pentagon began its implementation process, in which it trained and prepared troops for an end to DADT, with the repeal policy change scheduled for September 20, 2011.

The Repeal

It was a rather anti-climactic end to decades of queer exclusion. The truth was, queer servicemembers had always been there, and now they were able to be open and share their lives with their colleagues. Despite the lack of fanfare, the day of the repeal was a meaningful day to many. LGBT organizers within the military were finally able to come out, military couples got married, and any ongoing gay discharge proceedings came to a halt. In the ensuing weeks, there were many firsts. Long-standing military traditions, previously reserved for heterosexual partnerships—such as the “pinning-on” ceremony at promotions or the customary “first kiss” upon a Naval ship’s return to port—were carried out for the first time by queer couples. A Navy linguist, previously discharged for being gay under DADT, became the first to rejoin active duty. Many of these stories garnered widespread media attention. A notable photograph captured Marine Sgt. Brandon Morgan kissing his partner upon return from deployment. After the photo went viral, a Marine Corps spokesperson commented to the press, “It’s [just] your typical homecoming photo.”

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276 “Senate Votes To Repeal ‘Don’t Ask, Don’t Tell.’”
277 Stolberg, “Obama Signs Away ‘Don’t Ask, Don’t Tell.’”
278 Scarborough, “Gay Marine’s Kiss Sparks Praise, Anger.”
This nonchalant air characterizes the overall execution of the repeal. In late October
2011, Col. Gary Packard, the leader of the team responsible for drafting the DoD’s repeal
implementation plan, said that “the best quote I’ve heard so far is, ‘Well, some people’s
Facebook status changed, but that was about it.’” Other high-level officials expressed this
same satisfaction, with one Marine General calling it a “non-event.” A Defense
Department spokesperson remarked that the implementation of the repeal proceeded
smoothly and without incident, attributing this success to the comprehensive pre-repeal
training program.

The repeal of DADT, though significant, had limited effects due to other legislation.
While servicemembers could now be openly queer, sodomy remained a criminal offense under
the UCMJ. It was not until 2014, that the National Defense Authorization Act was modified to
decriminalize consensual sodomy under military law. Additionally, the DADT repeal did not
automatically extend spousal benefits to queer couples, as the Defense of Marriage Act (DOMA)
did not allow the federal government to recognize same-sex marriages. This unfair standard
remained in place until 2013 when the Supreme Court ruled DOMA unconstitutional in the case

279 Branum, “Academy Experts Discuss Effects of DADT Repeal.”
280 Lowrey, “Repealing Don’t Ask, Don’t Tell: A Historical Perspective from the Joint Chiefs of Staff,” 157.
of United States v. Windsor. Following the case, the DoD began allowing same-sex married couples to receive the same spousal benefits as heterosexual couples.282

Because DADT did not address transgender servicemembers, its repeal did not extend the same benefits of serving openly as it did to LGB individuals. However, increasing social awareness of trans issues, as well as the smooth implementation following the repeal of DADT, increased pressure on the military and the Obama Administration to lift the trans ban.

Administrative Limbo (Part I)

Under DoD Instruction 6130.03, “Medical Standards for Appointment, Enlistment, or Induction in the Military Services,” candidates for military service cannot have “current or history of psychosexual conditions…including transsexualism, exhibitionism, transvestitism, voyeurism, and other paraphilias.” The 2012 edition made sure to note that this provision does not contradict the repeal of DADT, as homosexuality had been removed from the DSM283 classification of psychosexual conditions in 1973.284 Despite the DADT repeal, the trans ban was alive and well. While the military has kept detailed records of the number of servicemembers who had been discharged for their sexuality, there are no official statistics for the discharge of transgender individuals due to their identity. Consequently, there is a lack of data not only on the number of transgender individuals discharged but also on the total number who have served in the military. The historical understanding is primarily based on the accounts and records that transgender servicemembers kept themselves, which were subsequently made public by themselves or family members. These accounts reveal that, as with LGB servicemembers,

282 Goodhart and Taylor.
283 The DSM, or the Diagnostic and Statistical Manual of Mental Disorders, is a reference book on mental health conditions and disorders published by the American Psychiatric Association.
284 “DoD Instruction 6130.03 Supplemental Guidance,” 76.
transgender and genderqueer individuals have served in the military for many years, despite their formal exclusion.

Many of the stories of transgender servicemembers over the past two decades involve individuals who realized their gender identity while serving in the armed forces. Some chose to leave the military to undergo medical transition and live authentically; some later returned to service. Others opted for temporary leave to pursue medical transition. Captain Sage Fox, an Army servicemember since 1993, took time off to transition from active duty to the Army Reserves in 2012. During this hiatus, she also began her medical transition. She had excelled as an active-duty officer and was asked after a few months of leave to return. Upon being asked to return by her commanding officer, she disclosed her transition and expressed her desire to serve as a woman. Despite policies hindering her service as a transgender woman, her commander permitted her to return as an officer after a medical review. According to statements to the media, her medical board had said they believed the transgender policy to be “outdated,” and that she could pursue legal action against the Army if she were discharged for her trans identity, a theoretical suit which the board believed she “would probably win.”

In 2013, after getting the green light, Fox returned to the Army, making her one of the first openly transgender individuals to serve in the modern military. However, after only two weeks, she was removed from command and placed on the Inactive Ready Reserve, meaning she could not show up for training, draw a paycheck, or have access to health benefits. Following this, she went to the media and began several administrative processes to either be reinstated or be discharged and receive disability. She described her situation as administrative “limbo.”

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285 “Transgender Soldier Shares Journey.”
286 Somashekhar, “Transgender Military Members Are in a Precarious Position.”
A strikingly similar situation unfolded around the same time with Army Sergeant Shane Ortega, another one of the first openly trans servicemembers in the modern military. Ortega served as a helicopter crew chief in the Army’s 25th Infantry Division in Hawaii. Ortega enlisted in the Marines in 2004 and had actively performed combat roles in both the Marines and later, the Army, serving three combat tours by 2015. Reflecting on these tours, he served “two as a woman and one as a man.” Ortega’s combat deployments underscored that gender identity held little significance to fellow servicemembers: “You really learn it really plays no role. Nobody’s going to carry my gear…It’s pretty hard-core equal treatment in a combat zone.”

Ortega identifies as two-spirit, an identity he discovered through his upbringing as a member of the Haudenosaunee-Tuscarora tribe in North Carolina. While in the military, he inhabited a unique space where he has served between two genders, taking testosterone under the supervision of military and civilian medical personnel, but choosing not to seek special accommodations from his chain of command. Thus, due to the military’s rigid adherence to a binary gender system, and with no mechanism to change his gender marker in the Military Defense Enrollment Eligibility Reporting System (DEERS), he was required to follow female standards and regulations. This included wearing the female dress uniform and using women’s restrooms.

When a routine urine test revealed Ortega’s elevated testosterone levels, he was barred from flight duties. In explaining his gender identity and the fact that he was in ongoing hormone therapy, the discrepancy between his DEERS status and his trans identity meant that he faced discharge from the Army. The intervention of the ACLU, which filed a petition in September

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288 Eilperin.
289 Hall, “Shane Ortega, Trans Indigenous Former U.S. Marine, on His Activism and Celebrating Intersectionality.”
290 Brydum, “Meet the First Out Trans Soldier in the U.S. Military.”
of 2014 on behalf of Ortega and other trans servicemembers, temporarily held off discharge. The
next year, Ortega was cleared to return to flight duty after a psychological evaluation determined
he did not suffer from gender dysphoria, making him fit to serve in the Army.292

Not all trans servicemembers share the same story of a less-than-supportive command. In
2015, Senior Airman Logan Ireland was featured in a New York Times documentary short,
following his journey to find acceptance as a transgender man in the military. Like Ortega,
Ireland thrived during combat missions, describing deployment as “opening up doors” for gender
expression for himself and other trans servicemembers he met. While stationed in Kandahar,
Afghanistan, he described being able to feel his authentic self: “Here in Afghanistan, a war zone,
it’s like a vacation for me, because I can be myself in such an austere environment.”293 This is in
comparison to his status back stateside; his DEERS gender designation is female, which forces
him to follow female regs and standards despite identifying as a man.

Surprisingly, Ireland’s experience of coming out to his superiors was met with support,
both during deployment and upon his return home. When he disclosed his gender identity to his
commander at his home base, he received encouragement and was even advised to adhere to
male dress and appearance standards.294 After coming out publicly via the New York Times
documentary, adding to the list of openly trans servicemembers, Ireland and his wife—who is
also a trans servicemember—were invited to the White House for an LGBT pride reception.
Ireland proudly wore his dress blues, following the male appearance standards, while his wife,
Army Corporal Laila Villanueva, dressed in civilian attire because her command was not

291 Gender dysphoria, or GD, is a condition of severe discomfort or distress that is caused by a discrepancy between
a person’s gender identity and the sex they were assigned at birth. GD is one of the primary criteria used by the
military to deem trans and genderqueer servicemembers mentally unfit.
292 Brydum, “Meet the First Out Trans Soldier in the U.S. Military.”
293 Transgender, at War and in Love.
294 Brading, “OSI Special Agent Shares Trans Journey to Inspire Others.”
supportive of her gender identity as a woman. This illustrates how the mid-2010s were a distinct era in military history, showcasing the varying treatment transgender servicemembers received based on their commanding officers.

*Lifting the Trans Ban*

Logan Ireland and Laila Villanueva were able to attend the White House Pride Event in 2015 because the Obama administration had taken a new position; in February 2015, Defense Secretary Ash Carter stated that trans individuals should not be barred from military service solely because of their gender identity. One month later, the Army, Air Force, and Navy issued directives protecting trans servicemembers from dismissal by mid-level officers, requiring that the discharge decision be pushed up the chain-of-command. The Air Force went even farther, stating that for enlisted airmen, there were no outright grounds for discharge for anyone who was transgender or struggled with gender dysphoria unless these conditions interfered with their potential deployment or performance.

Following these directives, on July 15, Secretary Carter announced the establishment of a working group tasked with studying the implications of allowing trans individuals to serve openly in the military. Echoing the process to repeal DADT, the Obama administration commissioned RAND to conduct a study focused on assessing the healthcare needs of trans

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296 Gray, “U.S. Military Takes Baby Step Toward Allowing Transgender Soldiers.”
297 “Air Force Elevates Discharge Authority for Transgender-Related Airmen Separations.”
servicemembers and anticipating the implications for military readiness if the ban were lifted. As with the previous RAND study on LGB servicemembers, this study found no evidence indicating that lifting the trans ban would reduce operational effectiveness.298

The study, again, followed in the path of its predecessor, evaluating the experience of four foreign militaries (Australia, Canada, Israel, and the UK) that allow open service for trans individuals. It concluded that flexibility in rule application and strong leadership were essential for a successful implementation. Healthcare emerged as a major focus of the report, with RAND predicting that the health costs associated with treating trans servicemembers would represent a small proportion of the overall military healthcare budget.299 This directly countered supporters of the ban who argued that trans inclusion would result in exorbitant healthcare costs. As if predicting this response, the report also stated that if the Pentagon did not choose to cover gender-affirming care for servicemembers, they would likely avoid seeking medical care which could lead to higher rates of substance abuse and suicide.300

The RAND report was completed in March 2016 but was not released, leading LGBTQ+ activists to accuse Secretary Carter of delaying its release because DoD found few obstacles to lift the ban. A copy of the report was leaked and published by the New York Times in May. One month later, in June 2016, Secretary Carter announced an official end to the ban, effective immediately. In the press release, DoD cited three main reasons to lift the trans ban: “the force of the future, the existing force and matters of principle.”301

Secretary Carter spoke about the practicalities of the policy change, emphasizing the Department of Defense's need to tap into 100 percent of America’s population to recruit and

300 Schaefer et al., 9–10
301 Cronk, “Transgender Service Members Can Now Serve Openly, Carter Announces.”
retain highly qualified personnel for its all-volunteer force. He also noted the expected impact on readiness would be negligible, as would medical expense increase. On a matter of “principle,” the secretary said that he and senior DoD leaders had engaged with transgender servicemembers deployed worldwide. Through discussions with medical professionals, employers, and insurance companies, it became evident that transgender identities were increasingly commonplace and accepted in both public and private sectors. Based on these comments, the increasing societal acceptance and change in views largely influenced the policy change. From Carter’s perspective, it was no longer appropriate, practically and principally, to deny transgender individuals the right to serve based solely on their gender identity.

The new policy, however, did have caveats. While it granted access to military service for some transgender individuals, it maintained restrictions for others. Specifically, a diagnosis of gender dysphoria (GD) could still serve as grounds for disqualification from service. This aspect was somewhat perplexing, considering that the process of transitioning—to include psychosocial, pharmacologic (mainly but not exclusively hormonal), or surgical care—often follows a diagnosis of or experience with GD. However, for individuals seeking to transition while in-service, as outlined in the new policy, they had to obtain confirmation from a military medical provider indicating that “gender transition is medically necessary.” Presumably, this would include a diagnosis of GD. Nevertheless, the document governing in-service transition for trans servicemembers, DoD Instruction 1300.28, does not mention the term gender dysphoria within its 18 pages. GD seemed to be more of a concern for prospective servicemembers than for those in-service.

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302 “DoD Instruction 1300.28: In-Service Transition for Transgender Service Members,” 3.
The 2016 policy inherently treated current servicemembers and recruits differently. Trans individuals currently serving could continue their military careers. They would not be discharged for their gender identity or their desire to transition medically. Moreover, they would be afforded the opportunity to transition to their preferred gender while remaining in the military. In cases where their ability to serve was impacted by their transition, the new policy mandated that they follow the same regulations that allowed for exceptions to policy for servicemembers unable to serve due to other reasons. This is in comparison to new recruits, who were ineligible if they could not prove a history of 18 months of clinical stability following a GD diagnosis or any medical transition. Thus, recruits would be deemed ineligible to enlist if they were in the midst of gender transition. Additionally, recruits who were clinically stable but who anticipated further gender-affirming care, such as surgeries, were ineligible.\textsuperscript{303}

The 2016 policy was complex but comprehensive. Its emphasis on \textit{transition}\textsuperscript{304} demonstrates the military’s adherence to a structural framework built on gender binaries. Its attempt to include folks with trans identities still forced the need for them to fit within this binary system. Moreover, it underscores the military’s prioritization of health considerations and healthcare implications when addressing issues concerning transgender servicemembers, rather than dwelling on concerns related to unit cohesion or morale, which were prominent during the repeal process of DADT. This underscores the notion that, theoretically, if transgender individuals conform neatly to the gender binary and adhere to regulations regarding gender presentation, they may not pose a threat to military culture. The change in norms following the

\textsuperscript{303} This, however, excluded any required maintenance hormone therapy.

\textsuperscript{304} DoD Instruction 1300.28 specifies that a gender transition begins when the servicemember receives a diagnosis from a medical provider indicating that transitioning is medically necessary. The process ends when the servicemember has “achieved stability” in their self-identified gender, and when their gender marker is changed in the DEERS system. Notably, the only options for gender in DEERS are male or female.
military’s overturning of DADT facilitated a somewhat smoother repeal of the trans ban, illustrating the two-stage model of norm integration and principles of normative isomorphism. Nonetheless, it also illustrates the military’s swift social liberalization and the comparatively shorter and less resistant path to the inclusion of transgender servicemembers, compared to the lengthier and more challenging journey toward the inclusion of LGB servicemembers five years prior. Unfortunately, this lack of major resistance would be short-lived.

Administrative Limbo (Part II)

In the early morning hours of July 26, 2017, President Trump tweeted a series of messages into the void, as he so often did during that period, which caught trans servicemembers and military leadership off guard. In three tweets, he proclaimed the following:

After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow … Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming … victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you.[3]

The unexpected tweets represented a last-ditch effort from Trump to save a spending bill stacked with his campaign promises (including funding for the border wall) that was being threatened by a GOP split on Pentagon funding for gender-affirming surgery. Upon DoD refusal to change the policy at the whims of House Republicans, these lawmakers went directly to the White House, prompting the tweets. What originally was meant to be a taxpayer matter was more far-reaching than lawmakers expected. “This is like someone told the White House to light a candle

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[3] Bade and Dawsey, “Inside Trump’s Snap Decision to Ban Transgender Troops.”
on the table and the WH set the whole table on fire,” a senior House Republican aide said.\[306\] This era of Trump’s leadership was characterized by uncertainty regarding whether his impulsive tweeting could be considered official policy decisions.

One month later, however, Trump took further action by releasing a Presidential Memorandum that instructed the Secretaries of Defense and Homeland Security to extend indefinitely the policy of prohibiting transgender individuals from joining the military, cease gender-affirming surgeries for current servicemembers (unless medically necessary), and present the president with an alternative transgender policy proposal adhering to his Twitter proclamation.\[307\] In response, LGBTQ+ legal groups promptly challenged the policy change in court and successfully blocked the implementation of a new trans ban.\[308\] Democratic lawmakers in Congress jumped to condemn the memo. In addition, acting in response to Trump’s remarks at an August 2017 press conference where he claimed to be “doing the military a great favor,” 114 Representatives signed a letter to Defense Secretary Mattis, requesting access to records and any communication exchanged between the White House and the Pentagon regarding the policy.\[309\]

DoD officials had to swiftly respond to the president’s about-face on the policy. Rather than taking the lead in shaping personnel policy changes, or even being actively involved in the process, military leadership had to quickly devise new guidelines in response to Trump’s memo. Four days after the release of the memo, Secretary Mattis appointed a panel of experts from the DoD and Homeland Security to develop a plan to implement the new ban. He announced that in the meantime, currently serving transgender servicemembers would not be booted out.

\[306\] Ibid.
\[307\] “Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security.”
\[308\] Goodhart and Taylor, “LGBT Military Service Policies in the United States.”
The panel came to completely different conclusions from the 2016 RAND study, claiming “substantial risks” associated with openly transgender service that could detrimentally affect the military as a whole. Rather predictably, the panel repeated the tell-tale claims of disruptions to readiness and unit cohesion. Despite the panel’s claims and recommendations, a series of legal battles involving four cases and two Congressional bills, alongside conflicting directives from the DoD and the courts, effectively stalled the implementation of any new transgender ban. Trans servicemembers once again existed in a state of administrative limbo. Meanwhile, the DoD attempted to draft a policy that complied with Trump’s directive from the Presidential Memorandum, while retaining some elements of the original 2016 policy.

In January 2019, the Supreme Court lifted injunctions that had halted the implementation of the Trump administration’s trans ban. Four months later, in April, the new restrictions took effect. The policy introduced two main provisions: First, it barred transgender individuals who had undergone medical transition from joining the military. Second, the policy specified a rather convoluted arrangement for currently serving trans individuals— allowing those without a history or diagnosis of GD to continue serving only if they adhered to the regulations and standards corresponding with the gender they were assigned at birth. Those trans servicemembers with a diagnosis of GD (received before April 2019), were permitted to serve in their preferred gender and receive gender-affirming care. However, trans servicemembers diagnosed with GD after the new ban were restricted to serving in the gender assigned at birth, and if unwilling to do so, faced separation procedures.\textsuperscript{310} Essentially, the Trump administration policy demanded adherence to gender assignment at birth as a condition for military service, and viewed the discovery of one’s gender identity as a disqualifying factor.

\textsuperscript{310} The DoD took the time to create a visual for the convoluted policy: “5 Things to Know About DOD’s New Policy on Military Service by Transgender Persons and Persons with Gender Dysphoria.”
Interestingly, while Trump touted that he had banned transgender individuals from serving, presumably to energize his conservative base, his own Defense Department rebutted this characterization. Thomas Crosson, the Pentagon’s deputy public affairs director, said that the policy “on transgender service members is not a ban of transgender individuals. As a matter of fact, the policy specifically prohibits discrimination based on gender identity.”

Although purportedly centered on health-related considerations such as diagnoses and medical procedures, the eventually implemented policy unmistakably represents an assault on transgender individuals. Forcing many servicemembers to adhere to the regulations and standards of their gender assigned at birth is inherently discriminatory, exclusionary, and threatening to the personal well-being and livelihood of trans individuals who just want to be allowed to serve.

The Repeal (of the Repeal of the Repeal)

On Biden’s first day in office in January 2021, his press secretary, Jen Psaki, announced that the President intended to reverse the government’s ban on transgender people from serving openly in the military. Five days later, Biden reversed Trump’s policy by signing an executive order. In March, the Pentagon unveiled the revised rules, which restored the trans-inclusive policy to its pre-Trump era status. The announcement coincided with International Transgender Day of Visibility. Finally, on April 30, the new policies came into effect, protecting transgender servicemembers from involuntary discharge, permitting their enlistment, and providing support for gender transitions while in-service. Defense Secretary Lloyd Austin directed the DoD to examine records of servicemembers who were discharged or prevented from reenlisting due to gender identity issues under the previous policy. The exact number of servicemembers who were

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311 Ibid.
312 “Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform.”
removed from service because of the Trump-era ban remains unclear. But for prospective transgender soldiers, sailors, airmen, and Marines, the reversal could not arrive quickly enough. They have watched the tug-of-war play out in Washington. And for those trans folks already serving, the policy reversal reflects that they are valued and worthy as American citizens.
Conclusion

The rapid reversal of Obama’s trans-inclusive policy by Trump, followed by Biden’s swift reintroduction of it, highlights the significant authority wielded by the executive branch in shaping military personnel policy concerning LGBTQ+ service. Nevertheless, despite the executive order and subsequent implementation by the Pentagon, fierce legislative battles have thrust military personnel policy back into the spotlight. The political polarization in Congress has made it so that no area of public policy is insulated from culture war debates, to include the treatment of LGBTQ+ servicemembers. The negotiations for the National Defense Authorization Act (NDAA) for Fiscal Year 2024 saw conservatives fight to include riders on the must-pass appropriations bill that included restrictions on gender-affirming care, prohibitions of drag performances, banning of pride flag displays, and restrictions on DEI programs in the military. The NDAA passed in December 2023 without the wish list of anti-LGBTQ+ policies, but still demonstrates how the military has been pulled into debates over “wokeness,” and will continue to be in this legislative climate.

Regarding LGBTQ+-related health policy within the military, ongoing efforts toward inclusivity persist, as seen in recent policy reforms. The VA expanded its in vitro fertilization benefits in March 2024, now encompassing unmarried veterans and those in same-sex partnerships. The previous rule only allowed IVF for married veterans who could produce their own eggs and sperm. This expansion broadens access not only for queer couples but also for individuals facing fertility challenges due to other health conditions. However, in the same

314 Matsumoto, “The Latest Must-Pass Bill Barreling Through Congress Is an Attack on Gender-Affirming Care.”
315 Rubin, “Biden Admin Expands IVF Access to Unmarried Veterans and Those in Same-Sex Couples.”
316 This shift is significant not only for its change to an archaic and exclusive rule but also for its timing, given the recent debate over IVF procedures sparked by a ruling from Alabama’s Supreme Court in February 2024. This ruling deemed frozen embryos as children according to state law.
month, the VA has come under fire for its continued delays in providing gender-affirming surgery to trans veterans. VA Secretary Denis McDonough had announced in mid-2021 plans to introduce these procedures at select medical centers as part of a broader initiative to make the VA “more welcoming” to all veterans. However, nearly three years later, no surgeries have been conducted, leaving trans veterans awaiting access. The delay prompted a lawsuit filed in early 2024 by the Transgender American Veterans Association. According to VA officials, the delay is attributed to the need for additional review regarding the implementation of gender-affirming surgeries following the expansion of healthcare options under the PACT Act, which broadened VA eligibility. The department does provide other forms of gender-affirming care for veterans, including hormone therapy. However, these services have faced scrutiny from conservative lawmakers in recent months, highlighting the impermanent nature of policies pushed into the middle of partisan battles. In the end, it is the brave individuals who serve, aspire to serve, or have served in defense of the nation—LGBTQ+ servicemembers and veterans—who still find themselves caught in the middle.

In looking to the future, the military will likely continue to defer to the executive branch or Congress for the enactment of new personnel policies. In the sphere of organizational ecology today, the military institution finds itself responding to coercive measures from government oversight mechanisms, which are being influenced by evolving societal norms. This reactionary state can be attributed to the institution’s desire to maintain a nonpartisan stance and avoid causing disruptions within the broader social and political fabric. However, the institution stands at its own critical juncture. Facing a recruitment crisis, the military must determine how to toe

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317 Shane III, “VA Again Delays Decision on Transgender Surgery Options.”
318 Kheel, “VA Won’t Cover Gender-Affirmation Surgery for Transgender Veterans Until It Reviews PACT Act Effects.”
the line of inclusion while seeking to recruit from the broader public. Some critics argue that adopting more inclusive personnel policies may risk alienating individuals from conservative backgrounds. However, a recent Army survey revealed that only 5 percent of young people identified “wokeness” as a factor influencing their decision to join. Instead, concerns regarding discrimination against women and people of color were found to be a bigger issue, alongside a broader sense of mistrust toward the military. Thus, to address recruitment issues, the military must persist in addressing discrimination concerns while also considering equitable treatment for servicemembers in the future.

In this regard, it appears that the military’s next personnel policy challenge will revolve around the concept of gender neutrality. This issue has already sparked controversies in various domains of military regulation and cultural norms, including physical fitness standards, uniforms, job titles, and signifiers. Gender neutrality remains contentious due to a historical pattern of labeling things as such while they are predominantly designed by and for men. Some argue that implementing gender-neutral fitness testing may not ensure equity for individuals with female-bodied characteristics, while others advocate for equal standards to reflect combat scenarios more accurately. Presently, the Army has introduced gender-neutral fitness standards exclusively for combat branches.

The issue of gender neutrality is relevant not only for the growing presence of women in the military, particularly in combat branches, but also for individuals who identify as genderqueer or nonbinary. Currently, the military does not formally acknowledge nonbinary identities within its identification and health frameworks. While newer policies allowing transgender troops to serve openly have somewhat eased the situation for nonbinary service

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319 Baldor, “Army Sees Safety, Not ‘wokeness,’ as Top Recruiting Obstacle.”
members, they still encounter challenges due to the absence of official recognition of gender nonconforming identities. There is a lack of guidance on adhering to gendered policies, and their omission from the healthcare system leaves them vulnerable to potential discharge on grounds of mental disorder or gender dysphoria when seeking care. The lack of official recognition thereby prevents nonbinary servicemembers from serving openly. Reports indicate that the Pentagon has begun “quietly looking” into the issue by commissioning a report from a private research center, similar to the steps taken before repealing the bans on LGB and transgender service. Should policies be revised to permit open service for nonbinary troops, it would represent the military’s latest step toward fostering inclusivity for LGBTQ+ individuals.

Any additional changes to personnel policy will be made to fit into the rhetoric of tradition. The military, as an institution, excels at preserving its well-established identity by adeptly integrating new norms into its traditional narrative. Regarding personnel policies, the military consistently justifies them by portraying greater inclusion as a means to bolster the fighting force, citing diversity as a source of strength. When addressing inter-group dynamics, the military often employs a narrative that minimizes personal identity, emphasizing the collective goal of accomplishing the mission—i.e. ‘getting the job done,’ fighting the battle, serving the nation, protecting, and defending—while saying that personal identity characteristics should not be relevant. This approach has its drawbacks: downplaying personal identity can force an erasure of aspects of identity that are fundamental to individuals’ sense of self. But it has proven to be a highly effective narrative that has reshaped perceptions around certain identities. This process aligns with the two-stage model of institutional norm change, in which norms become “taken-for-granted” after a process of imitation, theorization, and diffusion. This

320 Kheel, “Pentagon Quietly Looking into How Nonbinary Troops Could Serve Openly.”
approach facilitates change while maintaining consistency with core principles, offering powerful potential for change and inclusivity within the military.

Ultimately, the military will adapt based on its own self-interest, as it navigates its institutional environment and responds to the pressures shaping its mission, oversight, and broader societal demands. Personnel policies will persist as a battleground because they touch upon fundamental aspects of American identity and civic participation. And because of its central role in shaping society and culture, the military wields immense power to uphold symbolic equality for every American, guaranteeing them the right and opportunity to stand in service of their nation.
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