



Testimony Regarding DoD 'Don't Ask, Don't Tell' Policy

As Delivered by Secretary of Defense, Robert M. Gates and Adm. Mike Mullen, chairman of the Joint Chiefs of Staff, Dirksen Senate Office Building, Washington, D.C., Tuesday, February 02, 2010.

SEN. LEVIN: (Strikes gavel.) The committee is now going to receive testimony from our senior leadership in the Department of Defense as we begin the task of addressing the “don’t ask, don’t tell” policy on gays in the military.

I believe that ending the policy would improve our military’s capability and reflect our commitment to equal opportunity. I do not find the arguments that were used to justify “don’t ask, don’t tell” convincing when it took effect in 1993, and they are less so now. I agree with what President Obama said in his State of the Union Address, that we should repeal this discriminatory policy.

In the latest Gallup poll, the American public overwhelmingly supports allowing gays and lesbians to serve openly in the military. Sixty-nine percent of Americans are recorded as supporting their right to serve, and many in fact are serving. As former chairman of the Joint Chiefs, Gen. John Shalikashvili, said – and he supports ending the policy – a majority of troops already believe that they serve alongside gay or lesbian colleagues. One recent study estimated that 66,000 gays and lesbians are serving today, at constant risk of losing their chance to serve.

Other nations have allowed gay and lesbian service members to serve in their militaries without discrimination and without impact on unit cohesion or morale. A comprehensive study on this was conducted by RAND in 1993. RAND researchers reported on the positive experiences of Canada, France, Germany, Israel, and The Netherlands and Norway, all of which allowed known homosexuals to serve in their armed forces. Sen. McCain and I have asked the Department of Defense to update the 1993 report.

Ending this discriminatory policy will contribute to our military’s effectiveness. To take just one example, dozens of Arabic and Farsi linguists have been forced out of the military under “don’t ask, don’t tell,” at a time when our need to understand those languages has never been greater. Thousands of troops – 13,000, by one estimate – have been forced to leave the military under the current policy. That number includes many who could help the military complete some particularly difficult and dangerous missions.

I have long admired the merit-based system of advancement employed by the U.S. military that allows servicemen and women of varied backgrounds to advance to positions of high leadership. An Army is not a democracy; it is a meritocracy, where success depends not on who you are, but on how well you do your job. Despite its necessarily undemocratic nature, our military has helped lead the way in areas of fairness and anti-discrimination. It has served as a flagship for American values and aspirations, both inside the United States and around the world.

We will hold additional hearings to hear from various points of view and approaches on this matter. This committee will hold a hearing on February 11th, when we will hear from an independent panel. The service secretaries and service chiefs will all be testifying before this committee during the month of February on their various budgets, and they of course will be open to questions on this subject as well during their testimony.

My goal will be to move quickly but deliberatively to maximize the opportunity for all Americans to serve their country, while addressing any concerns that may be raised. We should end “don’t ask, don’t tell,” and we can and should do it in a way that honors our nation’s values while making us more secure.

My entire statement will be made part of the record. A statement of Sen. Gillibrand will also be inserted in the record following the statement of Sen. McCain.

Sen. McCain.

SEN. MCCAIN: Thank you very much, Mr. Chairman. And I want to thank Secretary Gates and Adm. Mullens (sic) (for what’s ?) turning into a very long morning for them, and we appreciate your patience and your input on this very, very important issue.

We meet to consider the “don’t ask, don’t tell” policy, policy that the president has made clear, most recently last week in his State of the Union Address, that he wants Congress to repeal. This would be a substantial and controversial change to a policy that has been successful for two decades. It would also present yet another challenge to our military at a time of

already tremendous stress and strain.

Our men and women in uniform are fighting two wars, guarding the front lines against a global terrorist enemy, serving and sacrificing on battlefields far from home, and working to rebuild and reform the force after more than eight years of conflict.

At this moment of immense hardship for our armed services, we should not be seeking to overturn the “don’t ask, don’t tell” policy.

I want to make one thing perfectly clear up front. I’m enormously proud of and thankful for every American who chooses to put on the uniform of our nation and serve at this time of war. I want to encourage more of our fellow citizens to serve and to open up opportunities to do so. Many gay and lesbian Americans are serving admirably in our armed forces, even giving their lives so that we and others can know the blessings of peace. I honor their sacrifice, and I honor them.

Our challenge is how to continue welcoming this service amid the vast complexities of the largest, most expensive, most well-regarded and most critical institution in our nation, our armed forces.

This is an extremely difficult issue, and the Senate vigorously debated it in 1993. We heard from the senior uniformed and civilian leaders of our military on eight occasions before this committee alone. When Congress ultimately wrote the law, we included important findings that did justice to the seriousness of the subject. I would ask without objection, Mr. Chairman, that a copy of the statute including those findings be included in the record.

SEN. LEVIN: It will be.

SEN. MCCAIN: I won’t quote all those findings. But three points must be made. First, Congress found in the law that the military’s mission to prepare for and conduct combat operations requires service men and women to accept living and working conditions that are often spartan and characterized by forced intimacy with little or no privacy.

Second, the law finds that civilian life is fundamentally different from military life, which is characterized by its own laws, rules, customs and traditions, including many restrictions on personal conduct that would not be tolerated in civil society.

Finally, the law finds that the essence of military capability is good order and unit cohesion, and that any practice which puts those goals at unacceptable risk can be restricted.

These findings were the foundation of “don’t ask, don’t tell.” And I’m eager to hear from our distinguished witnesses what has changed since these findings were written, such that the law they supported can now be repealed.

Has this policy been ideal? No, it has not. But it has been effective. It has helped to balance a potentially disruptive tension between the desires of a minority and the broader interests of our all-volunteer force. It is well understood and predominantly supported by our fighting men and women. It reflects, as I understand them, the preferences of our uniformed services. It has sustained unit cohesion and unit morale while still allowing gay and lesbian Americans to serve their country in uniform. And it has done all of this for nearly two decades.

Mr. Chairman, there – this is a letter signed by over 1,000 former general and flag officers who have weighed in on this issue. I think that we all in Congress should pay attention and benefit from the experience and knowledge of over a thousand former general officers and flag officers, and which – where they say: We firmly believe that the – this law, which Congress passed to protect order – good order, discipline and morale in the unique environment of the armed forces, deserves continued support.

And so I think we should also pay attention to those who have served, who can speak more frankly on many occasions than those who are presently serving.

I know that any decision Congress makes about the future of this law will inevitably leave a lot of people angry and unfulfilled. There are patriotic and well-meaning Americans on each side of this debate. And I’ve heard their many passionate concerns. Ultimately though, numerous military leaders tell me that “don’t ask, don’t tell” is working, and that we should not change it now. I agree.

I would welcome a report done by the Joint Chiefs of Staff – based solely on military readiness, effectiveness and needs and not on politics – that would study the “don’t ask, don’t tell” policy, that would consider the impact of its repeal, on our armed services, and that would offer their best military advice on the right course of action.

We have an all-volunteer force. It is better trained, more effective and more professional than any military in our

history. And today, that force is shouldering a greater global burden than at any time in decades.

We owe our lives to our fighting men and women. And we should be exceedingly cautious, humble and sympathetic when attempting to regulate their affairs. "Don't ask, don't tell" has been an imperfect but effective policy. And at this moment when we're asking more of our military than at any time in recent memory, we should not repeal this law.

Thank you, Mr. Chairman.

SEN. LEVIN: Thank you, Sen. McCain.

Secretary Gates.

SEC. GATES: Mr. Chairman, last week during the State of the Union Address, the president announced he will work with Congress this year to repeal the law known as "don't ask, don't tell." He subsequently directed the Department of Defense to begin the preparations necessary for a repeal of the current law and policy. I fully support the president's decision.

The question before us is not whether the military prepares to make this change but how we must – how we best prepare for it. We have received our orders from the commander in chief and we are moving out accordingly. However we can also take this process only so far, as the ultimate decision rests with you, the Congress.

I am mindful of the fact, as are you, that unlike the last time this issue was considered by the Congress more than 15 years ago, our military is engaged in two wars that have put troops and their families under considerable stress and strain. I am mindful, as well, that attitudes toward homosexuality may have changed considerably, both in society generally and in the military, over the intervening years.

To ensure that the department is prepared should the law be changed, and working in close consultation with Adm. Mullen, I have appointed a high-level working group within the department that will immediately begin a review of the issues associated with properly implementing a repeal of the don't ask, don't tell policy. The mandate of this working group is to thoroughly, objectively and methodically examine all aspects of this question, and produce its finding and recommendations in the form of an implementation plan by the end of this calendar year.

A guiding principle of our efforts will be to minimize disruption and polarization within the ranks, with special attention paid – a special attention paid to those serving on the front lines. I am confident this can be achieved.

The working group will examine a number of lines of study, all of which will proceed simultaneously. First, the working group will reach out to the force to authoritatively understand their views and attitudes about the impact of repeal. I expect that the same sharp divisions that characterize the debate over these issues outside of the military will quickly seek to find their way into this process, particularly as it pertains to what are the true views and attitudes of our troops and their families. I am determined to carry out this process in a way that establishes objective and reliable information on this question, with minimal influence by the policy or political debate. It is essential that we accomplish this in order to have the best possible analysis and information to guide the policy choices before the department and the Congress.

Second, the working group will undertake a thorough examination of all the changes to the department's regulations and policies that may have to be made. These include potential revisions to policies on benefits, base housing, fraternization and misconduct, separations and discharges, and many others.

We will enter this examination with no preconceived views, but a recognition that this will represent a fundamental change in personnel policy, one that will require that we provide our commanders with the guidance and tools necessary to accomplish this transition successfully and with minimum disruption to the department's critical missions.

Third, the working group will examine the potential impacts of a change in the law on military effectiveness, including how a change might affect unit cohesion, recruiting and retention, and other issues crucial to the performance of the force. The working group will develop ways to mitigate and manage any negative impacts.

These are, generally speaking, the broad areas we have identified for study under this review. We will, of course, continue to refine and expand these as we get into this process or engage in discussion with the Congress and other sources. In this regard, we expect that the working group will reach out to outside experts with a wide variety of perspectives and experience. To that end, the department will, as requested by the committee, ask the RAND Corporation to update their study from 1993 on the impact of allowing homosexuals to serve openly in the military.

We also have received some helpful suggestions on how this outside review might be expanded to cover a wide swath of issues. This will be a process that will be open to views and recommendations from a wide variety of sources, including, of

course, members of Congress.

Mr. Chairman, I expect that our approach may cause some to wonder why it will take the better part of the year to accomplish the task. We've looked at a variety of options, but when you take into account the overriding imperative to get this right and minimize disruption to a force that is actively fighting two wars and working through the stress of almost a decade of combat, then it is clear to us we must proceed in a manner that allows for the thorough examination of all issues.

An important part of this process is to engage our men and women in uniform and their families over this period since, after all, they will ultimately determine whether or not we make this transition successfully.

To ensure that this process is able to accomplish its important mission, Chairman Mullen and I have determined that we need to appoint the highest-level officials to carry it out. Accordingly, I am naming the Department of Defense general counsel, Jay Johnson, and Gen. Carter Ham, commander of U.S. Army Europe, to serve as the co-chairs for this effort.

Simultaneous with launching this process, I have also directed the department to quickly review the regulations used to implement the current don't ask, don't tell law, and within 45 days present to me recommended changes to those regulations that within existing law will enforce this policy in a fairer manner.

You may recall that I asked the department's general counsel to conduct a preliminary review of this matter last year. Based on that preliminary review, we believe that we have a degree of latitude within the existing law to change our internal procedures in a manner that is more appropriate and fair to our men and women in uniform. We will now conduct a final, detailed assessment of this proposal before proceeding.

Mr. Chairman, Sen. McCain, members of the committee, the Department of Defense understands that this is a very difficult, and in the minds of some controversial policy question. I am determined that we in the department carry out this process professionally, thoroughly, dispassionately, and in a manner that is responsive to the direction of the president and to the needs of the Congress as you debate and consider this matter.

However, on behalf of the men and women in uniform and their families, I also ask you to work with us to, insofar as possible, keep them out of the political dimension of this issue. I am not asking for you not to do your jobs fully and with vigor, but rather, as this debate unfolds, you keep the impact it will have on our forces firmly in mind.

Thank you for this opportunity to lay out our thinking on this important policy question. We look forward to working with the Congress and hearing your ideas on the best way ahead.

SEN. LEVIN: Thank you.

Adm. Mullen.

ADM. MULLEN: Thank you, Mr. Chairman, Sen. McCain. And thank you for giving me the opportunity to discuss with you this very important matter.

The chiefs and I are in complete support of the approach that Secretary Gates has outlined. We believe that any implementation plan for a policy permitting gays and lesbians to serve openly in the armed forces must be carefully derived, sufficiently thorough – sufficiently thorough, and thoughtfully executed.

Over these last few months, we have reviewed the fundamental premises behind don't ask, don't tell, as well as its application in practice over the last 16 years. We understand perfectly the president's desire to see the law repealed, and we owe him our best military advice about the impact of such a repeal and the manner in which we would implement a change in policy.

The chiefs and I have not yet developed that advice, and would like to have the time to do so in the same thoughtful, deliberate fashion with which the president has made it clear he wants to proceed. The review – the review group Secretary Gates has ordered will no doubt give us that time and an even deeper level of understanding. We look forward to cooperating with and participating in this review to the maximum extent possible, and we applaud the selection of Mr. Johnson and Gen. Ham to lead it. Both are men of great integrity, great experience, and have our complete trust and confidence.

Mr. Chairman, speaking for myself and myself only, it is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do. No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow

citizens. For me personally, it comes down to integrity – theirs as individuals and ours as an institution. I also believe that the great young men and women of our military can and would accommodate such a change. I never underestimate their ability to adapt.

But I do not know this for a fact, nor do I know for a fact how we would best make such a major policy change in a time of two wars. That there will be some disruption in the force I cannot deny. That there will be legal, social, and perhaps even infrastructure changes to be made certainly seem plausible. We would all like to have a better handle on these types of concerns, and this is what our review will offer.

We would also do well to remember that this is not an issue for the military leadership to decide. The American people have spoken on this subject through you, their elected officials, and the result is the law and the policy that we currently have.

We will continue to obey that law, and we will obey whatever legislative and executive decisions come out of this debate. The American people may yet have a different view. You may have a different view. I think that's important, and it's important to have that discussion.

Frankly, there are those on both sides of this debate who speak as if there is no debate; as if there's nothing to be learned or reflected upon. I hope we can be more thoughtful than that. I expect that we will be more thoughtful than that.

The chiefs and I also recognize the stress our troops and families are under, and I have said many times before, should the law change, we need to move forward in a manner that does not add to that stress. We've got two wars going on, a new strategy in Afghanistan, and remaining security challenges in Iraq. We're about to move forward under a new Quadrennial Defense Review. We still have budget concerns in a struggling economy. And we have a host of other significant security commitments around the globe. Our plate is very full. And while I believe this is an important issue, I also believe we need to be mindful as we move forward of other pressing needs in our military.

What our young men and women and their families want – what they deserve – is that we listen to them and act in their best interests. What the citizens we defend want to know – what they deserve to know – is that their uniformed leadership will act in a way that absolutely does not place in peril the readiness and effectiveness of their military.

I can tell you that I am 100 percent committed to that. Balance, Mr. Chairman – balance and thoughtfulness is what we need most right now. It's what the president has promised us, and it's what we ask of you in this body.

Thank you.

SEN. LEVIN: Thank you very much, Admiral.

So that everyone has a chance within a reasonable period of time, we're just going to have a three-minute first round.

SEN. MCCAIN: Mr. Chairman, we need more than three minutes. We need more than three minutes.

SEN. LEVIN: We'll have a – try to have a second round, then. We have to also have a schedule here. So we'll go to a second round if we can fit that into Secretary Gates' schedule. If not, we will pick this up at a later time.

The secretary – well, now, this schedule was shared with everybody here now, and so –

SEN. MCCAIN (?): Not with me.

SEN. LEVIN: It was indeed shared.

SEN. MCCAIN: You're the chairman.

SEN. LEVIN: Mr. Secretary, The Washington Post I think this morning reported that the military services will not pursue any longer disciplinary action against gays and lesbian servicemembers whose orientation is revealed by third parties. Is that one of the – is that one of the degrees of latitude within existing law that you're looking at?

SEC. GATES: Mr. Chairman, a preliminary assessment is that – and this fits within this 45-day review that I mentioned in my prepared statement – the preliminary assessment is that we can do the following within the confines of the existing law. We can raise the level of the officer who is authorized to initiate an inquiry. We can raise the level of the officer who conducts the inquiry. We can raise the bar on what constitutes credible information to initiate an inquiry. We can raise the bar on what constitutes a reliable person on whose word an inquiry can be initiated.

Overall, we can reduce the instances in which a servicemember who is trying to serve the country honorably is outed by a third person with a motive to harm the servicemember. And we also have to devise new rules and procedures in light of the appeals court decision in Witt versus the Department of the Air Force for the areas of the country covered by the appellate court.

So I would say all of these matters are those that will be reviewed within this 45-day period. So it's a little more complicated than The Washington Post conveyed.

SEN. LEVIN: All right. But all of those are possibilities?

SEC. GATES: Yes, sir.

SEN. LEVIN: Now, would you, assuming it – even if it requires a – legislation, would you support a moratorium on discharges under don't ask, don't tell during the course of this up to year-long assessment that the department is going to be making?

SEC. GATES: I would have to look into that because the problem – the problem that we have is that all of the issues that both Adm. Mullen and I described in terms of what we have to look into in terms of the effect on the force, in terms of everything else, is what we need to examine before I could answer that question.

SEN. LEVIN: All right. Well, you're going to be examining the other points that you're looking at, the other flexibilities.

SEC. GATES: Yes.

SEN. LEVIN: Would you add this to the questions you're going to look at and let us know promptly –

SEC. GATES: Sure.

SEN. LEVIN: – as to whether you would support the – a moratorium pending this period on discharges. That doesn't mean you couldn't discharge at the end of the period, but there would be a moratorium.

SEC. GATES: We will look at it, Mr. Chairman. I would tell you that the advice that I have been given is that the current law would not permit that, but –

SEN. LEVIN: I'm saying would you support a change in the current law, if necessary, in order to permit that? That's what we need to hear from you on.

Sen. McCain.

SEN. MCCAIN: I'm deeply disappointed in your statement, Secretary Gates. I was around here in 1993 and was engaged in the debate. And what we did in 1993 is we looked at the issue and we looked at the effect on the military, and then we reached a conclusion, and then we enacted it into law.

Your statement is, the question before us is not whether the military prepares to make this change, but how we best prepare for it. It would be far more appropriate, I say with great respect, to determine whether repeal of this law is appropriate, and what effects it would have on the readiness and effectiveness of the military, before deciding on whether we should repeal the law or not. And fortunately, it is an act of Congress, and it requires the agreement of Congress in order to repeal it. And so your statement obviously is one which is clearly biased, without the view of Congress being taken into consideration.

Adm. Mullen, you're the principal military adviser to the president. Do you – and you have to consult with and seek the advice of the other members of the Joint Chiefs of Staff and the combatant commanders. What, in your view, are the opinions of the other members of the Joint Chiefs and combatant commanders about changing this policy?

ADM. MULLEN: Sen. McCain, as the chairman indicated earlier, they will obviously be out in their posture hearings in the near future, and I would certainly defer to them in terms of exactly how they're going to –

SEN. MCCAIN: Well, in the near future – in the near future I'd like you to ask them and we could have it on the record what their position is.

ADM. MULLEN: Yes, sir.

SEN. MCCAIN: In the near future.

ADM. MULLEN: Yes, sir.

SEN. MCCAIN: I would like it as soon as possible.

ADM. MULLEN: I've – actually, I've worked very closely with them over the last months in terms of understanding what their – what their concerns and what our overall concerns are, and I would summarize them by saying it's really important for us – to us – for us to understand that if this policy changes, if the law changes, what's the impact, and how we would implement it.

And Secretary Gates' point about the study is to really understand objectively the impact on our – on our troops and on their forces, and that is their biggest concern.

SEC. GATES: And I would say, Sen. McCain, I absolutely agree that the – how the Congress acts on this is dispositive.

SEN. MCCAIN: Well, I hope you will pay attention to the views of over a thousand retired flag and general officers.

What kind – Mr. Secretary, what kinds of partnerships or unions would the military be prepared to recognize by law in the event that this don't ask, don't tell is repealed?

SEC. GATES: That's one of the many issues that I think we have to look at, Senator.

SEN. MCCAIN: So again, you are embarking on saying it's not whether the military prepares to make the change, but how we best prepare for it, without ever hearing from members of Congress, without hearing from the members of the Joint Chiefs, and of course without taking into considerations – consideration all the ramifications of this law. Well, I'm happy to say that we still have a Congress of the United States that would have to – would have to pass a law to repeal don't ask, don't tell despite your efforts to repeal it in many respects by fiat.

Thank you, Mr. Chairman.

SEN. LEVIN: Thank you, Sen. McCain.

Sen. Udall.

SEN. UDALL: Thank you, Mr. Chairman. Thank you for holding this very important hearing.

I want to acknowledge, Secretary Gates, the work you've done to put a plan in place. And Adm. Mullen, I think the centerpiece of your statement will be long remembered for the courage and the integrity with which you outlined your own personal beliefs and how we can proceed.

I'm proud to hail from a region of the country – the Rocky Mountain West – where we have a live-and-let-live attitude. Some people would call it small-L libertarianism. People's personal lives, the choices that people make, are not the government's business.

And I can't help but think about the great Arizonan. I grew up in Arizona. My father was an Arizonan, my mother was a Coloradan. I have the great honor to represent Colorado now. But Barry Goldwater once said, "you don't have to be straight to shoot straight." And that's the opportunity that we have here today as the Congress and the Pentagon moves forward.

I've got a few concerns I'd like to share in the couple of minutes that I have, and I'll pepper my comments with questions, and hopefully there will be time for you all to respond.

There have been a lot of studies done, Mr. Secretary – RAND, and there's a recent study in the Joint Force Quarterly. It's not clear to me that the study group needs a full year to study implementation and transition. I want to just put that out there.

I want to ensure that the focus of the group is on how to implement repeal of the policy, not whether. And I want to ask you to assure me that the endpoint of the study would be a road map to implementing repeal, and that the Congress would then be in a position to take legislative action that the Pentagon as a whole could support.

And then, before you answer, I'd like your reaction to a legislative proposal that you may have seen. It would be to write and to repeal legislation for the period of time you suggest you need – say, one year – while legislating that at the end of that time we would have finality – in other words, a complete end to don't ask, don't tell. During the year-long transition, the DOD would have full authority and discretion with respect to don't ask, don't tell investigations and discharges. Language like this would certainly make me much more comfortable, since I want, and so many others, a clear path to full repeal, and I'm not sure I see finality in the study.

Again, thank you, gentlemen, and hopefully there's a little bit of time left for you to answer.

SEC. GATES: Well, I think the purpose of the examination that we're undertaking, frankly, is to inform the decision-making of the Congress and the nature of whatever legislation takes place. It's also, frankly, to be prepared to begin to implement any change in the law. We obviously recognize that this is up to Congress, and my view is, frankly, that it's critical that this matter be settled by a vote of the Congress.

The study is intended to prepare us along those lines, so that we understand all of the implications involved. Frankly, there have been a lot of studies done, but there has not been a study done by the military of this, and this is the kind of thing that Adm. Mullen was talking about.

And I would just say, with respect to your **second point, that I think we would regard, if legislation is passed repealing don't ask, don't tell, we would feel it very important that we be given some period of time for that implementation, at least a year.**

ADM. MULLEN: Senator if I may, just the only thing I would comment about, all the studies and all the polls, I would just urge that everybody that's going to be involved in this look at those studies and polls deliberately and what they actually looked at specifically. And so just reemphasize what the **secretary said: there really hasn't been any significant – statistically significant and objective survey of our people and their families.** And that gets to the Chiefs' concern and mine as well, which really is engaging them in a way that we really understand their views on this, and that just hasn't been done. And as urgently as some would like this to happen, it's just going to take some time to do that.

SEN. LEVIN: Thank you, Sen. Udall.

Sen. Sessions.

SEN. JEFF SESSIONS (R-AL): Thank you, Mr. Chairman. And I know this is an important issue. We need to think it through, and every American is entitled to fairness and justice as we deliberate these issues, and I do think we should do it at a high level.

I would note, however, a bit of a concern that arises from something Sen. McCain suggested, and that is that the president, as the commander in chief, has announced a decision, and the secretary of Defense apparently supports that decision. Adm. Mullen now has declared that he personally believes in this decision. And so then presumably someone below you will do some work on the policy, whether this is a good policy or not. So I guess it's – if it was a trial, we would perhaps raise the undue command influence defense.

And I think we need an open and objective and a fair evaluation of this. A lot of things that have been said I would note that are not accurate, at least in my view, at least misrepresent certain things. One of them is 10,000 people have been dismissed from the military or voluntarily left from the military under these – under this provision, but that's over 10 years. It would be 1 percent, maybe, if it was one year, less than that maybe – (audio break) – so there will be costs.

I noticed – and I give the military credit. A lot of people don't know this, Adm. Mullen, how open the debate and discussion are. There's an article in the Joint Forces Quarterly that basically supports this change. It was an award-winning article, and they raised a lot of different issues, both for and against, and the military welcomed that. And I salute that. I think that's healthy.

But the – one of the points it made is that Charles Moskos, one of the original authors of the don't ask, don't tell policy, points out that the number of discharges for voluntary statements by servicemembers – presumably they come forward and say that they are homosexual – accounts for 80 percent of the total. And the number of discharges for homosexual acts have declined over the years. Do you think that's approximately correct?

ADM. MULLEN: Sen. Sessions, I think it is approximately correct. But it does go to, again sort of a fundamental principle with me, which is everybody counts. And part of the struggle back to the institutional integrity aspect of this, and –

SEN. SESSIONS: Well, I know. I appreciate your view.

ADM. MULLEN: – and putting individuals in a position that every single day they wonder whether today's going to be the day, and devaluing them in that regard just is inconsistent with us as an institution.

I have served with homosexuals since 1968. Sen. McCain spoke to that in his statement. Everybody in the military has, and we understand that. So it is a number of things which cumulatively for me, personally, get me to this position.

But I also want to reemphasize what I said, is I am not all-knowing in terms of the impact of what the change would have, and that's what I want to understand. And it's – and any impact, and understanding readiness and effectiveness, is absolutely critical.

SEN. SESSIONS: Well, it's pretty clear what your view is. And that will be – that will be clear on all your subordinates. Every single servicemember in uniform would be – qualify for that. And I don't think it – that they are required to lie about who they are; I think that's an overstatement, although I think the rule of don't ask, don't tell has seemed to work pretty well. And I would note from the Christian Science Monitor here that the chiefs of the services met with the chairman, Mike Mullen – I'm quoting from the article – “and the consensus seemed to be that the military, fighting two wars and now responding to a new mission in Haiti, now is not the time to make such a big change to military policy.”

And that's my understanding of the status of things. And I just hope that, as we discuss it, you'll recognize, first, that Congress has made the decision – it's not yours to make, and we'll have to change it if we do change it; and second, you shouldn't use your power to in any way influence a discussion or evaluation of the issue.

SEC. GATES: Senator I would just say that we can't possibly evaluate the impact on unit cohesion, on morale, on retention, on recruitment and so on unless we encourage people to tell us exactly what they think and exactly what their views are, honestly and as forthrightly as possible. Otherwise, there's no use in doing this at all.

And again, I just can't emphasize enough we understand from the beginning of this that this must be an act of Congress.

SEN. LEVIN: Thank you –

ADM. MULLEN: Sen. Sessions, for me, this is about – this is not about command influence, this is about leadership. And I take that very seriously.

SEN. LEVIN: Thank you.

Sen. Hagan.

SEN. HAGAN: Thank you, Mr. Chairman.

Secretary Gates, I want to say that I applaud your efforts in commissioning a thorough evaluation of the don't ask, don't tell policy, and how to implement a repeal of the policy in order to minimize disruption in military readiness. And I was just wondering, within this study, how will you study – how will this study take into account the views of the combatant commanders in theater in order to minimize any disruption in the military readiness?

SEC. GATES: The combatant commanders, the service chiefs will all have a part in this.

The one thing that I have asked is that, as we go through this process, we try to – try not to disrupt or impact the deployed forces, and particularly those in Afghanistan and Iraq.

They have enough on their minds, and it seems to me we can get the answers that we need to the questions that need to be asked by not adding to their burden. And so the one limitation I've put on this, which obviously does not apply to the combatant commanders, is that we and have as little impact on the deployed force as possible.

SEN. HAGAN: And, Mr. Secretary and Adm. Mullen, as we move to end discriminatory practices within our armed forces, is there any reason to believe that the dedication and professionalism of our leaders in uniform is based in any way upon their sexual orientation, and that the morale fitness of our men and women in uniform should be based upon their sexual orientation? And if not, then on what grounds do you believe that there remains a need to discriminate based on a servicemember's sexual orientation?

ADM. MULLEN: Well, I – Sen. Hagan, I personally don't think sexual orientation, again, has a place for these kinds of decisions. Actually, I think there's a gap between that which we value as a military, specifically the value of integrity, and what our policy is. But again, that's personally where I am.

I think it's really in the review that would take place over the course of the next – by the end of this year that I would look to certainly understand it much more fully and understand the impact, and if – you know, if and when the policy changes, the impact on our people.

And that's really – rather than at the end of this, we're to some degree at the beginning of really trying to understand that. And that's – in light of many other opinions on this, including the opinions of those who have retired, all those things, but it really is – what I need to understand is to get it from our people and their families. And incorporating that, in addition to all the other requirements that are here, will be the goal of the review over the next – better part of this year.

SEN. HAGAN: Thank you, Mr. Chairman.

SEN. LEVIN: Thank you, Sen. Hagan.

Sen. Wicker.

SEN. WICKER: Thank you, Mr. Chairman.

I too am disappointed with this decision by the administration, but I'll say this for our two witnesses. They understand the chain of command. I think we understand that elections have consequences, and these two gentlemen see their charge as moving forward with the directives of their commander.

I think Secretary Gates said it explicitly in his statement: quote, "We have received our orders from the commander in chief, and we are moving out accordingly." Unquote. So we'll have a debate about this, and we will appreciate the information that the department gathers for us.

Sen. McCain referenced in his statement more than a thousand retired flag and general officers – actually, I think it's upwards of 1,160 retired flag and general officers from all the armed services who have come out against a change in this policy. For my colleagues, their statement urging continued support for the 1993 law is contained at www.flagandgeneralofficersforthemilitary.com.

I would commend to the members of this committee an op-ed written by Carl E. Mundy, Jr., a retired four-star general and former commandant of the U.S. Marine Corps, who points out – who mentions the strong support for the current policy by this overwhelming number of retired flag and general officers, and points out that certain findings were made by Congress in support of the 1993 law to ensure clarity concerning the rationale behind the current statute.

Key findings included that the primary purpose of the armed forces is to prepare and to prevail in combat – not to promote civil rights or social justice or compassion or individual fairness, but to prepare for and prevail in combat.

Further findings include that success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion; and further, that one of the most critical elements in combat capability is unit cohesion – that is, the bonds of trust among individual servicemembers.

I would ask, Mr. Chairman, that this op-ed, dated January 12th, 2010, by Gen. Mundy, be included in the record at this point.

SEN. LEVIN: It will be made part of the record.

SEN. WICKER: So I appreciate the situation that our two witnesses find themselves in, and I look forward to the debate, and hope that the policy remains. Thank you.

SEN. LEVIN: Thank you, Sen. Wicker.

Sen. Webb.

SEN. WEBB: Thank you, Mr. Chairman.

Gentlemen, just – let me see if we can review the facts here. This is obviously quite an emotional issue, but it's also a legislative issue. My understanding from hearing both of your statements is, this year period that you're going to take in order to examine the issues will be followed then by clearer observations about the implications of changing the law. Would that be a correct way to state it? So you're not coming in here today and saying, we're going to change the law and this is the year that we're going to put into figuring out how to implement the change.

SEC. GATES: Our hope would be that the information we would develop during the course of this review would help inform the legislative process.

SEN. WEBB: Right. I salute both of you for **very careful** statements. And Adm. Mullen, I salute you for the courage of what you said. But I want to also emphasize that you balanced that, in your statement, **saying you don't know what's going to come out of this. We don't know.**

So you know, what we're looking for here is an examination of the present law. What is the most damaging aspect of the present policy? And I think, Adm. Mullen, you made a very powerful statement in terms of the integrity of the individual as your deciding factor on your personal view. And what is – on the other hand, what is the great value of this law, if we were to do away with it and move into something else?

And then, again, what are the perils of undoing the law? Where are we going? Do we – would we know we were going in the proper direction? We don't – we can't really say that today.

I think that, when you say that this is something that will ultimately decided – be decided by the Congress, I'd also like to emphasize my own agreement with what you have been saying about how important it is to hear from people who were serving. Because whether the ultimate decision might be here with the Congress, that decision can't be made in a proper way without a full and open input from all of those who are serving. Not just combatant commanders – family members, people who are in the operating units.

And the way that I am hearing this, which I would agree with, is that we have a duty here in a very proper way to understand the impact of this on operating units, to raise the level of understanding of the complexity of this issue among the American people and up here – as well as attempting to do fairly with this issue.

So again, I salute you both for a very responsible and careful approach to how we examine this.

Thank you, Mr. Chairman.

SEN. LEVIN: Thank you very much, Sen. Webb.

Sen. Chambliss.

SEN. SAXBY CHAMBLISS (R-GA): Thank you, Mr. Chairman.

And just as was stated by my friend, Sen. Udall, I think live and let live is not a bad policy to adhere to and that's what we have in place in the military with don't ask, don't tell right now.

To you, Secretary Gates and Adm. Mullen, you're in a tough spot and we understand that. This is an extremely sensitive issue and everybody on this committee, I'm satisfied, is very sensitive to the issue both inside and outside the military.

In the military, it presents entirely different problems than it does in civilian life, because there is no constitutional right to serve in our armed forces. And today we know we've got gay and lesbian soldiers serving. They've served in the past; they're going to serve in the future; and they're going to serve in a very valiant way.

But the primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise. Military life is fundamentally different from civilian life in that military society is characterized by its own laws, rules, customs and traditions – including restrictions on personal behavior that would not be acceptable in civilian society. Examples include alcohol use, adultery, fraternization and body art. If we change this rule of don't ask, don't tell, what are we going to do with these other issues?

The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline and unit cohesion. In my opinion, the presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would very likely create an unacceptable risk to those high standards of morale, good order and discipline, and effective unit cohesion and effectiveness. I'm opposed to this change and I look forward to a very spirited debate on this issue, Mr. Chairman.

SEN. LEVIN: Thank you, Sen. Chambliss.

I believe Sen. Burr is next.

SEN. ROLAND BURRIS (D-IL): Thank you, Mr. –

SEN. LEVIN: Sen. Burris.

SEN. BURRIS: Thank you, Mr. Chairman.

I'd like to extend my deep admiration for our two distinguished leaders in their position. And not only are you following the direction of the commander in chief, but Adm. Mullen, you expressed your personal view, which is to be commended.

What we need is a policy that allows any individual who has the integrity and the commitment to serve this country, to serve this country. We can go back to President Truman who took the audacity to integrate the services. At one time, my uncles and members of my race couldn't even serve in the military. And we moved to this point where they're some of the best and brightest that we've had – generals and even now the commander in chief is of African-American heritage.

So what we're doing here now is not looking at the integrity and the commitment that individuals can make not based on their sexual orientation, but the defense of this country. I say the policy needs to be changed; the policy must be changed. And we must have everyone who is capable, willing and able to volunteer to defend this country, defend this great American tradition of ours to have the opportunity to serve regardless to their sexual orientation.

And so based on that, we must continue to have the American spirit and have individuals who are willing to serve.

I don't have a question, Mr. Chairman. I just have the statement. I hope that we'll look at legislation. By the way, the House has drawn up a bill. There are 185 members on this House bill, which is House Bill 1283. And I'm hoping and praying that we will get moving on this issue, get it beside us and not be wasting the taxpayers' time and all of the energy on something that is so basic in human rights and opportunities for individuals in this country.

Thank you, Mr. Chairman.

SEN. LEVIN: Thank you very much, Sen. Burris.

Sen. Collins.

SEN. SUSAN COLLINS (R-ME): Thank you, Mr. Chairman. Mr. Chairman, unlike my colleagues, I do have some questions, rather than just a statement, to ask.

Adm. Mullen, we know that many of our NATO allies allow gays and lesbians to serve openly and many of these countries have deployed troops who are serving with us in Afghanistan.

Are you aware of any impact on combat effectiveness by the decision of our NATO allies to allow gays and lesbians to serve openly?

ADM. MULLEN: Sen. Collins, I've talked to several of my counterparts in countries whose militaries allow gays and lesbians to serve openly. And there has been, as they have told me, no impact on military effectiveness.

SEN. COLLINS: We've heard today the concerns that if don't ask, don't tell is repealed, that it would affect unit cohesiveness or morale. Are you aware of any studies, any evidence that suggests that repealing don't ask, don't tell would undermine unit cohesion?

ADM. MULLEN: I'm not. In fact, the 1993 RAND study focused heavily on unit cohesion and that became the principal point put forward by the military leadership at the time and I understand that.

I understand what it is; I understand what goes into it. And there are – there's been no thorough or comprehensive work done with respect to that aspect since 1993.

And that's part of what needs to be addressed as we move forward over the part of the – over this year.

SEC. GATES: I think I would just underscore that. I mean, part of – part of what we need to do is address a number of assertions that have been made for which we have no basis in fact.

SEN. COLLINS: Exactly.

SEC. GATES: We need the – the purpose of the review that we are undertaking is to find out what the force – what the men and women in our armed forces, and, as Sen. Webb said, and their families – really think about this. And the fact is, at this point, we don't really know.

SEN. COLLINS: Thank you.

Thank you, Mr. Chairman.

SEN. LEVIN: Thank you very much, Sen. Collins.

Sen. Lieberman is next; and then, assuming nobody else comes in, Sen. McCaskill would be next; and then Sen. Reed.

Sen. Lieberman.

SEN. LIEBERMAN: Thanks, Mr. Chairman.

I opposed the don't ask, don't tell policy when it was created by this committee in 1993 and I remain opposed to it today, therefore, I support repealing it as soon as possible. My feeling, stated simply then, was that what mattered most was not how a member of the military lived his or her private sexual life, but that they were prepared to risk their lives in defense of our country.

And my judgment was that, in a combat situation, a member of the military – in a tank or an MRAP, today is going to care a lot more about the capability and courage of the soldier next to him than they are about the sexual orientation of that soldier, just as over the years, as Sen. Burris referred to, they came to care a lot less about the race of the soldier next to them than about his or her courage or capability.

What I hear – and, therefore, I'm grateful that the president has said he supports the repeal of don't ask, don't tell. I thank you, Secretary and Chairman, for saying that the question now is not "whether," but "how," and I think, for us, really "when" we will repeal don't ask, don't tell.

Am I right that what you're telling us today is that what (you're ?) going to do – as soon as possible, at least within 45, after 45 days – is to determine how you can reduce the impact of the don't ask, don't tell policy within the current state of the law? Is that correct?

SEC. GATES: Yes, sir. And the numbers – the numbers actually have gone down fairly substantially. They were about 600-and-some in 2008; 428 in 2009. And we don't know – I mean, we can't quantify what the possible changes that I've talked about here, what impact they would have on that. But at least it would – if we were able to do something like that, would make these folks less vulnerable to somebody seeking revenge, or whatever their motives, in terms of trying to wreck somebody's career.

SEN. LIEBERMAN: Am I correct – just to ask the question and get it on the record, that your judgment, as advised by counsel, is that it requires an act of Congress repealing don't ask, don't tell for the actual policy itself to be ended in the military? You can't do it by Executive action?

SEC. GATES: Yes, sir. That is correct.

SEN. LIEBERMAN: I wanted to ask you if – I'm sure one of the reactions to what you've announced today will be that this is a delay, I wanted to ask you to consider not only the 45-day limit, but whether you would think about providing regular reports to Congress, and, therefore, the public, on the program of the study that you're doing, during this next year?

SEC. GATES: I don't see any reason why we can't do that.

SEN. LIEBERMAN: I appreciate that.

And, look, then the final, obviously, is that it's up to us in the Congress and in the Senate. We've got to – we've got to get 60 votes to repeal don't ask, don't tell, or else it will remain in effect. Thank you.

SEN. LEVIN: Unless there's a provision inside the Defense authorization bill; that goes to the floor, which would then require an amendment to strike it from the bill; in which case the 60-vote rule would be turning the other way. In fact –

SEN. LIEBERMAN: It is – (inaudible) – knowledge, but it is with great appreciation that I accept the higher wisdom – (laughter) – of the chairman of our committee.

SEN. LEVIN: (Laughs, laughter.)

SEN. LIEBERMAN: I think that's a great way to go.

SEN. LEVIN: That's on the record, everybody. (Laughter.)

SEN. LIEBERMAN: (Laughs.) Thank you.

SEN. LEVIN: Thank you, Joe.

Sen. McCaskill is next.

SEN. MCCASKILL: Thank you, Mr. Chairman.

I just want to make sure that we're crystal clear about a couple of things here. First, are gay and lesbian Americans currently serving in our military?

ADM. MULLEN: Yes.

SEN. MCCASKILL: And, in fact, isn't (it) the foundation of the current policy that we welcome their service?

ADM. MULLEN: Yes.

SEN. MCCASKILL: Are you aware of any morale issues or disciplinary problems surrounding the current service of gay and lesbian members – Americans, as members of our military?

ADM. MULLEN: Certainly not broadly.

SEN. MCCASKILL: Now, here's my – I think what you're embarking upon is important; I think it is welcomed, but here's my problem. We now have established that we have gay and lesbian Americans serving in the military; that they are not broadly causing any kind of disciplinary or morale problems; that we welcome their service.

So the issue isn't whether or not gay and lesbian Americans are serving in the military, it's whether or not we talk about it. So how are you going to get their input in this survey? (Applause.)

ADM. MULLEN: Oh, I'd, actually – I mean, my take on that is – well, hang on a second. (Laughs.) I think that we would have to look very carefully at how we would do that, specifically.

SEN. MCCASKILL: And that's the point I would like –

ADM. MULLEN: Yeah – (inaudible).

SEN. MCCASKILL: – to leave you with today, is that, unfortunately, because of this policy – we welcome their service –

ADM. MULLEN: Sure.

SEN. MCCASKILL: – they're serving bravely and well, we don't have any kind of issues with morale, and cohesiveness surrounding their service, but yet when it comes time to evaluate their service, they're not allowed to talk about it. And so you have a real challenge in getting perhaps maybe some of the most important input you may need as you consider this policy. And I'll be anxiously awaiting how you figure that one out.

ADM. MULLEN: Yes, ma'am.

SEN. MCCASKILL: Thank you, Mr. Chairman.

SEN. LEVIN: Thank you, Sen. –

SEC. GATES: Well, one approach, Senator is to talk to those who have been separated.

SEN. MCCASKILL: And I think that's terrific. I think the ones who have been separated would be a great place that you can get good information. But I don't know that you're going to be able to get at those that are currently serving because,

obviously, they're not going to be able to step forward and talk about it. But I agree, Secretary Gates, that's a great place, because so many of them voluntarily separated because of issues of integrity. Thank you.

SEN. LEVIN: Thank you, Sen. McCaskill.

Sen. Reed.

SEN. REED: Thank you very much, Mr. Chairman.

Mr. Secretary, I want to follow up on a point that Sen. Collins made. It's my understanding that both Canada and the United Kingdom have allowed gays and lesbians to serve openly – in the case of Canada, since the early '90s, and Great Britain since at least the early 2000.

They are fighting side-by-side with us today in Afghanistan. And, in fact, I would think that we would like to see more of their regiments and brigades there. Does that, I think, suggest, as Adm. Mullen mentioned before, that their combat effectiveness has not been impaired – and we've had the opportunity to work with them, you know, in joint operations; does that add credibility, evidence or weight to the discussions that you're undertaking?

SEC. GATES: Well, I think that it is clearly something we need to address. We need to talk to those countries' militaries in a more informal and in-depth way about their experience. I think that their experience is a factor. But I also would say that each country has its own culture and its own society, and has to be evaluated in those terms as well.

SEN. REED: I think one of the aspects you refer to in your prepared remarks is the, at least presumptive difference, in terms of the attitudes at differing ranks within the military. Is that something you can comment upon now? Have you done any research?

Or Adm. Mullen think on that, about the attitudes based on age, or based on other factors?

SEC. GATES: I think that really goes to the point of what – of what we, what we need to do in the months ahead. I think Adm. Mullen would agree that we don't know; we don't have information based on rank or anything like that.

ADM. MULLEN: Anecdotally, I mean, it would be my only comment, there really hasn't been any objective review of this and so I think it would too soon to comment, because actually, anecdotally, there are young people, NCOs, senior officers on both sides of this issue. And it gets to this strongly held views driving this as opposed to really understanding objectively what this policy change would mean.

SEN. REED: Let me ask a final question, which I think is implicit in your overall testimony. And that is, and this is rather simplistic, but there will be a decision and then there will be the implementation of that decision. I would assume that, at least in part, those have to be coordinated or referenced so that part of this discussion analysis going forward is not only a decision but it's also about how this policy would be implemented in a very detailed fashion. And that would be something that would be available to the Congress before they made the decision, or what's, can you comment at all about that aspect?

SEC. GATES: Let me just start by saying sure. And because one of the things that we will look at is, if there is a problem with unit cohesion, how would you mitigate it? How, through training or regulations or other measures, do you, if the Congress were to repeal the law, then how would we implement it, just as you say?

And part of our review process is, as we look at the different aspects of it, what are the problem areas that we're going to see, and how do we address those? And as I said in my statement, it's everything from base housing to various policies and regulations and so on. All of those have to be addressed.

ADM. MULLEN: For me, Senator it's the understanding the impact. It is then, in that understanding that speaks in great part to potential implementation, and that, then, really goes to the core of where I am on this, which is leadership. So I mean, understanding that, and they are integral to each other, impact and implementation, then says to me, Mullen, here's how you lead this. This is what you need to do to move through it, if the law changes.

SEN. REED: Thank you, Mr. Chairman.

SEN. LEVIN: Thank you.

Just briefly following up Sen. Reed's and Sen. Collins' point about other militaries, and Sen. Reed's point that our military is fighting side by side and with militaries who do not have a discriminatory policy against open service by

gays. Have you noticed any impact on our troops who serve with Canadians or with Brits because of a British or Canadian policy that allows gays to openly serve? Admiral?

ADM. MULLEN: Since these wars started in 2003, it has not been brought to my attention that there's been any significant impact of the policies in those countries on either their military effectiveness or our ability to work with them.

SEN. LEVIN: All right. I have to make one comment on a suggestion that somehow or other, Admiral, you are simply following orders here of your commander in chief who's made a decision, in your testimony this morning. I think your testimony was not only eloquent, but it was personal, you made it very clear that you were reflecting your personal view, which you are obligated, under the oath you take, to give to us. We thank you for that.

And I thank you, not just because it happens that I agree with what you said, but more importantly because you were required to give us a personal view, and it was clear to me, and I think clear to most of us, that this was a view that you hold in your conscience and not giving to us because you were directed to by anybody, including the commander in chief. This statement of yours, in my judgment, was a profile in leadership this morning. It's going to take a great deal of leadership to have this change made. I hope it is.

The sooner the better, as far as I'm concerned, but with the kind of leadership that you've shown this morning, I think it's very doable, hopefully, in a short period of time. One other comment, and that has to do with what can be done in the interim. You're going to be looking at that without legislative change.

Secretary, it's my understanding that when service members are discharged under the Don't Ask, Don't Tell policy, with an honorable discharge, the DOD policy now is that they only receive half of their separation pay, which is authorized by statute. You're authorized to either give half or full pay. Would you take a look at that as something we can do in the interim here to indicate a greater sense of fairness about this issue? (Sounds gavel.)

You know you're sitting there quietly, Sen. Udall. I should have asked, do you have a final question? Okay.

I thank you both, it's been a long hearing this morning. We very much appreciate you, the men and women that serve with you and your families.

We will stand adjourned