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The era of open service

Change is on the wind for the Marine Corps with regard to unrestricted homosexual service. Professional, principled execution of the new policy that eliminates distinctions in service eligibility based on sexual orientation ("open service"), once finalized and implemented, will speak volumes about institutional loyalty to our civilian leaders, the Congress and, most importantly, the will of the people to whom we are most accountable. Personal beliefs on the wisdom of the policy are no longer relevant. The people have spoken through the legislative process. Active or passive expressions of unwillingness or reluctance of our Service to evolve to match the requirements of the new policy will have unintended effects that, in the long term, will damage the Marine Corps more than a small minority of gay Marines in a rifle platoon or on a flightline ever could. Dire consequences lurk in failure to honor the mandate of open service. Failure to achieve institutional buy-in 1 throughout the Marine Corps will have third order effects that reverberate throughout the Marine Corps for years to come.

The Nation is watching how one of her most faithful and cherished institutions responds to this modern, surmountable challenge. Passing that test will be a function of unequivocating, decisive leadership at all levels, from our general officers down through our NCOs. In fact, seamlessly integrating homosexual servicemembers into the force provides the Marine Corps an opportunity to demonstrate the universal American values of tolerance, equality, and fairness, not only to our own Nation but also to the rest of the world. Open homosexual service is going to be a fact of life. How we deal with it as an institution poses not only great risk but also great opportunity.

Background of the Policy

Since the foundation of the U.S. military during the prerevolutionary period, homosexual conduct has been considered incompatible with military service. Over the years, the military outlook on homosexual conduct generally has tracked the American social, cultural, and psychological conventional wisdom, with homosexuality even being categorized for a while in scientific literature as a deviant psychological condition.2 Social liberalization and continued scientific research in the 1960s and 1970s led to a push from the left, led by gayoriented civil rights groups, to liberalize military policies on service. The movement came to a head early on in the Clinton administration. President Bill Clinton campaigned in part on a promise to repeal the ban on service by members who engage in homosexual conduct.3 However, he badly misread the political tea leaves, as his efforts to introduce legislation eliminating service discretion to discharge homosexual service-members met stiff resistance in the Congress and from the Military Services and the Joint Chiefs of Staff (JCS).4 The resulting political compromise yielded a federal statute changing the standards for initiating homosexual conduct investigations and the standards for discharge of service-members whose homosexual conduct was substantiated.5 The statute and the derivative administrative discharge policy came to be known colloquially as "Don't Ask, Don't Tell" (DADT).

Many officers and servicemembers who have lived with DADT for the past 20 years would say it has worked effectively, balancing the military's professed requirement to screen out known or verified homosexuals to preempt their purported deleterious effect on military esprit and effectiveness with an individual's right to carry on purely personal affairs in a private manner. Critics of the policy, however, contended that it required gay service-members to suffer in silence and to lie about their essence, and political momentum for a wholesale repeal continued to accrue. Most would agree that the 11 September 2001 terrorist attacks

and the resultant surge in military operational tempo for operations in Iraq, Afghanistan, the Horn of Africa, and throughout the combatant commands, denied the DADT repeal movement political space for a number of years. In 2008 the movement breathed new life with the installation of a Democratic President working with a Democratic majority Congress, culminating in the present, legislatively mandated policy change. Ironically, over time, the increased pace of military operations globally, the struggle to continue to meet recruitment goals, and the requirement to retain service-members with certain specialized skill sets made it plain that the policy of discharging substantiated homosexuals was unaffordable and impracticable, lending added political momentum to a robust open service movement.

Recent History and Successful Legislative Change

On 9 September 2010, a U.S. District Judge (Federal trial court) in California issued an injunction against the U.S. Government and the Department of Defense (DoD) preventing the government from enforcing the DADT policy on First Amendment (free speech) and Fifth Amendment (due process) grounds. The injunction applied to the entire DoD and would have had the effect of ending, with a stroke of the judge's pen, the DoD-wide policy of discharging confirmed homosexual servicemembers. The U.S. Government took a prompt appeal, and that case is currently pending in the U.S. Court of Appeals that exercises appellate jurisdiction over the trial court.6 It is difficult to predict how the U.S. Court of Appeals will rule on the district judge's ruling, though some glaring legal errors appear in the district judge's ruling which, depending on how the appellate court rules, might ultimately be resolved by the Supreme Court.7

Though Service leaders in the Army and Marine Corps have consistently testified and made public media statements that repealing the policy in favor of a policy of complete nondiscrimination based on sexual orientation would be ill-advised while ground forces are engaged in active hostilities, the court actions and gathering political momentum prodded the legislative branch into action. On 30 November 2010, the DoD released the "Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell'" (the Johnson/Ham Report).8 Chief among its findings was that:

... when asked about how having a Service member in their immediate unit who said he or she is gay would affect the unit's ability to work together to get the job done, 70% of service members predicted it would have a positive, mixed, or no effect.9

This study served as validation for the administration's preferred policy, resulting in pushing ahead with repeal legislation.

On 9 December 2010, the National Defense Authorization Act for Fiscal Year 2011, containing an amendment repealing the policy, failed to survive a Republican filibuster by a vote of 57 to 40. 10 Sixty votes were required to invoke cloture (by definition, the end of a filibuster) and bring the measure to the Senate floor for debate and a vote. This victory by opponents of policy repeal was short-lived. Stand-alone legislation (House Resolution 2965), which had been introduced in 2009 and which was lying dormant awaiting political conditions to align to resurrect it, passed the U.S. House of Representatives on 15 December 2010 and the Senate on 18 December.11 President Barack Obama signed the bill into law as Pub.L. 111-321 on 22 December.12

The statute's text repeals the current policy concerning homosexuality in the Armed Forces to be effective 60 days after the Secretary of Defense has received DoD's comprehensive review on the implementation of such repeal (ongoing) and the President, Secretary, and Chairman of the JCS certify to the congressional defense committees:

^{*} That they have considered the report and proposed plan of action.

- * That DoD has prepared the necessary policies and regulations to exercise the discretion provided by such repeal.
- * That implementation of such policies and regulations is consistent with the standards of military readiness and effectiveness, unit cohesion, and military recruiting and retention.

The statute also preserves the status quo until these conditions are met; in essence, DADT is in a holding pattern while the Services and DoD fulfill the conditions prescribed by Congress. Given the President's and Secretary of Defense's statements on the policy, 13 satisfaction of the conditions is, of course, almost certainly a fait accompli, likely to occur sometime within 2011. Recognizing this, the Marine Corps, like the other Services, has already undertaken a tiered training program regarding the requirements of the law.

In short, Congress and the President have spoken in accord with their respective constitutional authorities to "make rules for the governance of the land and naval forces" and to act as the head of the executive branch and commander in chief of the Armed Forces. The guidance is clear and unequivocal, though the implementation details are yet to be fully extrapolated. The new policy will eventually effect blanket nondiscrimination regarding sexual orientation and a ban on discharges based on homosexual conduct. The time for opposing the policy on principle, practicality, and tradition has passed. The decision has been made.14 The real question for us as Marine leaders is, "What now, (insert rank here)?"

The Way Ahead

Rather than presenting this as a conventional "What now, Lieutenant" question of the type posed at The Basic School during tactical decision games, this "what now" guery applies across the spectrum of leadership, from NCO up through four-star Service and senior civilian departmental leadership. The moral and practical imperatives differ as the rank factor changes, but one thread runs through the actions required of the Marine leader at every level from corporal to general: obey the law; enforce it evenly; send strong, direct, and unambiguous signals to the led; and stay faithful to its mandate, a theme the Commandant and Sergeant Major of the Marine Corps have leaned forward to stress through ALMAR 047/10, a personally delivered and widely distributed video, 15 and MarAdmin 108/11.16 MarAdmin 108/11, in particular, is a clear statement of commander's intent sending a strong, clear signal throughout the force from the highest level of Service leadership to set the tone for implementation of the new policy down through every unit in the Marine Corps. Echoing this strong, clear, continuous signal throughout the force regarding the Marine Corps execution of the new policy at every level of leadership, once it becomes effective, is crucial to prevent mixed signals about how the institutional Marine Corps should execute the policy. Such mixed signals could manifest themselves in concrete, tangible occurrences (intra-Service tactical events) that brook unintended institutional strategic consequences far outweighing any short-term growth pains or minor impacts of the new policy on individual units. In short, for this policy to be implemented without harming the Marine Corps in the long run, strong, principled, unwavering officer and NCO leadership at every level is vital. Leaders who harbor residual negative personal feelings about the policy shift will be required to set them aside and execute the mandate faithfully. To do otherwise risks damage to units and the institutional Marine Corps that far exceed any risk presented by accepting Marines of all sexual orientations in the ranks. Fortunately, strong leadership and steadfast adherence to established policy to change organizational culture has a strong tradition in the Marine Corps. Resolute leadership has overcome dozens of institutional challenges over the history of the Corps-integration of women and minorities, changing the drug culture after Vietnam, and effective management of risk in operations, training exercises, and liberty pursuits spring to mind. However, the leading analogue is the Marine Corps' confrontation of hazing in the 1990s.

Hazing as Precedent for Organizational Change

The history of hazing in the Marine Corps serves as a useful precedent in the importance of leadership in changing organizational culture. Historically, hazing has been seen in athletic, fraternal, hierarchical, and military organizations as a rite of passage-as "part of the dea"-a tacit condition attached to membership in the organization. Once endured and survived, the prerogative to administer the rite of passage passes to the "old guard" in the organization to administer to the newer aspirants to join the culture. Clearly the potential for escalation in such circumstances is apparent, as each group, seeking to remain true to the customs, culture, and mores of the organization, errs on the side of overkill to ensure that their standard in the conduct of the rites measures up to their predecessors.

The Naval Service, of course, has not been immune to the culture of hazing; in fact, it has been notorious. From the infamous 1991 and 1993 "blood winging" incidents at Camp Lejeune,17 the edge dressing abuse of Marines at Marine Barracks Washington revealed in Sam Donaldson's 1993 PrimeTime Live exposé18, or infamous shellback and other line-crossing initiations at sea,19 hazing has revealed itself in the interstices of military culture for hundreds of years. The blood-winging incidents, in particular, revealed a need for strong leadership on the subject.

Internal to the Marine Corps, opinions diverged on the merits of hazing. Some traditionalists defended certain rites of passage as part and parcel of a unit's unique traditions and decried the tide of emasculation of the Service. Others realized how quickly seemingly harmless rites of passage can devolve into reprehensibly harmful acts as the rheostat of indoctrination intensity continues to slowly creep up. This cohort came to embrace recruit training, Officer Candidates School, and formal/ MOS training courses as the Marine Corps' only valid pass/fail tests for service as a Marine.

The issue was laid to rest through strong Service-level leadership action and accountability. By executive fiat and a strong statement of commander's intent, one Commandant delegit-imized hazing in the Marine Corps once and for all by mobilizing his general officers and sending strong, clear signals of his intent through the Service. In 1997 Gen Charles C. Krulak issued Marine Corps Order 1700.28, Hazing. The order defined hazing with as much clarity as is possible for such a malleable concept and established clear and unequivocal standards regarding hazing in the Marine Corps. The policy, simply stated, is that hazing is prohibitedfull stop. Prior to the order, Gen Krulak took the unusual step of writing an open letter to the mothers and fathers of all Marines everywhere addressing hazing issues, noting that:

. . . [T]radition in the Marine Corps has nothing whatsoever to do with hurting or humiliating each other. It has everything to do with Marines exhibiting mutual respect, a strength of character, and a willingness to sacrifice for one another.

Though the public record on inter-general officer communications is, by design, closely held and incomplete, every Marine who lived through this era knows he gave specific and explicit guidance to the Marine Corps general officer community, with instructions that they in turn have similar directive conversations with their subordinate commanders. He mandated annual training and, most importantly, established a culture wherein commanders would be held accountable for hazing that occurred in their units. In short, he left no doubt about the Service position on hazing in the Marine Corps. There was very little room to interpret the policy liberally or to misinterpret the regulation to continue to authorize certain "low-grade" hazing. There was no room to argue that the Commandant said "no hazing," but he really meant "tone it down." Instead, it was clear that in the context of hazing, no really did mean no. Gen Krulak saw the hazing issue as a moral issue on the way Marines treat other

Marines, but doubtless, he also saw the risk to the Marine Corps institutionally if he failed to take swift, decisive action to crush this cancer in the Marine Corps.

Hazing still occurs in the Marine Corps, usually initiated by junior Marines who are not old enough to remember the pain and humiliation that such ritualized violence caused the Service in the 1990s. Strong, iron-willed leadership by the Commandant, his general officer subordinates, his officer and NCO corps, and their successors has reduced the incidence of hazing over time, has discredited it in the modern Marine Corps, and has linked it to dysfunctional leadership by signaling that hazing is the territory of leaders who cannot get it done the right way. Moreover, the senior leaders, including the Commandant, were able to generate buy-in to the vision that failing to crush the immoral anomaly of hazing posed dire institutional risk to the Marine Corps. Eliminating hazing was Gen Krulak's crusade, and the Marine Corps is better for it. Not only did the institution adjust to the mandated change in culture, but it has also enjoyed the second order benefit of showing itself supremely faithful, obedient, and capable of rising to the challenge of change. This is a useful precedent for the homosexual conduct policy that our current Commandant has already begun to execute.

Service Imperatives Regarding the Homosexual Conduct Policy

The Marine Corps (all of us) needs to get out in front of the bow wave of change. The first step is a strong, unmistakable series of compliance statements by our most senior leaders, already initiated by the Commandant and the Sergeant Major of the Marine Corps, who are sounding the themes necessary to set the right tone for faithful implementation. We leaders must ensure we are internalizing the message.

"Slow rolling" or otherwise subtly resisting the new policy, by commission or omission, could irreparably damage the Marine Corps.20 First, an absence of strong leadership at the most senior levels inevitably will trickle down through the ranks and will be interpreted as a mixed signal regarding enforcement of the new policy and protection for "outed" gays in the ranks. In a worst-case scenario, isolated instances of violence against gay Marines and sailors could result. Less drastic outcomes include a wave of sexual harassment and hostile command climate claims and investigations, a morass of disciplinary actions, and general distractive mayhem and uncertainty in Marine units around the globe. Aside from the human tragedy of psychological or physical injury to gay Marines and sailors subject to harassment, the image of the Marine Corps would be irremediably sullied for years. Recruitment and retention could suffer, and our institutional reputation as a fair, equitable, just institution would be damaged forever by internal strife. All of these undesirable outcomes can be mitigated through strong leadership and supervision, starting with a clear statement from the outset regarding the senior leaders' expectations of the Corps.

Second, the Marine Corps' own motto is "Semper Fidelis," or always faithful. But faithful to what? Assume that Congress acts within its constitutional power to provide for and maintain a Navy and to make rules for the governance of the land and naval forces by repealing the homosexual service policy in favor of open service. Once the President or Secretary of Defense issues guidance implementing the change in the law, our institution will be in receipt of a constitutionally sound mandate. The time for debate has passed; the time to mount our packs and move out is nigh. Resisting the revised policy would run counter to our oaths to "support and defend the Constitution," which includes a tacit requirement to follow the lawful orders of the President and the Congress in their shared exercise of authority over the Armed Forces. Resisting the policy once the polity has spoken about how the Armed Forces should conduct themselves would be indefensibly disloyal and would implicate concerns regarding the reliability and trustworthiness of the Marine Corps that far outweigh this relatively benign issue. It would call into question our institutional loyalty and give legs to the notion brooked in some quarters that the Marine Corps considers itself a sort of Praetorian Guard. It is, in short, no-go territory for a Marine Corps that prides itself on adherence to

standards and faithful execution of policy determined by civilian leaders. Anything other than steadfast obethence is not on the menu of options. Faithfulness to process and adherence to the decisions of duly constituted civilian authority is as important as anything we do, including victory in combat.

Finally, anything other than principled adherence to the mandate for open service would be unwise and shortsighted. Overt or even masked resistance to the policy would be heard and felt at senior levels within the DoD and within the White House. At a critical juncture of budget austerity, when two of the Marine Corps' most important capability platforms (F-35 Lightning and MV-22 Osprey), among others, are being closely examined by senior civilian leaders, and with one important program already cancelled (expeditionary fighting vehicle), an institutional raspberry to those leaders on execution of a policy to which they attach substantial political and managerial importance would be unwise, even foolhardy. Perceptions of resistance could needlessly provoke senior civilian leaders and generate a short-term set of outcomes from which there is no recovery in terms of long-term perceptions of the Marine Corps. The Marine Corps ethos and our military capabilities cannot be delinked. Perceived weakness in the former will generate doubt regarding the latter. As usual, but particularly now, the Marine Corps must be seen (accurately) as a dependable, trustworthy, vital cornerstone of the republic. Less than steadfast execution of the new policy would undermine our position and our trustworthiness with the American public, the Congress, and our senior civilian executive branch leaders.

Conclusion

Change is coming. Open homosexual service in the Marine Corps will soon be a fact of life. How we handle it as leaders is vital to successful and loyal implementation of the policy. Executing the policy once implementation decisions are made is what America expects of her Marine Corps, regardless of how Marines, leaders, and the public feel about the merits of the policy. That issue has been decided; the round is out of the tube. All that is left for the Marine Corps is to execute. Equally important, failing to set the right tone out of the blocks could be disastrous for the Marine Corps in the long haul in a way that compromises our institutional identity and our operational effectiveness. Every day is a time for leadership in the Marine Corps, but implementation of this policy poses particularly thorny and difficult leadership issues because of the emotional and strongly held personal beliefs on this issue throughout the Service. The trust that we and our forebears generated over 235 years could be eroded, if not eliminated, in a relative flash absent strong leadership at every level on execution of the new policy.

NOTES

- 1. The Commandant's clear direction and guidance on this issue is, of course, a rational and firm starting point, but leadership is required at every level, from general to corporal, to prevent frustration of his commander's intent.
- 2. In 1952 the American Psychiatric Association (APA) published an authoritative inventory of mental disorders known as the Diagnostic and Statistical Manual. The manual categorized homosexuality as a sociopathic personality disturbance. The APA removed this designation in 1973 after the completion of further research concluding that homosexuality is not associated with mental illness.
- 3. Admirals, Generals: "Let Gays Serve Openly," www.msnbc.com, published 18 November 2008, available at http://www.msnbc.msn.com/id/27774058.
- 4. Bender, Brian, "Obama Seeks Assessment on Gays in the Military," Boston Globe, 1 February 2009.

- 5. Public Law 103-160 (107 Stat. 1671), Subtitle G, Section 571, amending 10 USC by adding Section 654.
- 6. In all likelihood, once the DoD fully implements the open service policy (see notes 7 to 9 and accompanying text), the case will become moot and will be remanded (sent back by the appellate court) and dismissed by the trial court judge. The case remains docketed as a tactical hedge by the litigants to keep pressure on the DoD to implement the program timely, and as a political signal to the 112th (current) Congress against repeal of the statute. Because 'Don't Ask, Don't Tell' remains in effect, Log Cabin Republicans has [sic] vowed to continue our lawsuit against the policy until the threat of discharge is removed permanently and open service is a reality. Log Cabin Republicans versus United States was frequently referenced during the debate on legislative repeal as a reason for Congress to act quickly. President Obama has promised that certification will move 'swiftly,' and it is the intent of Log Cabin Republicans to hold him to his word. Either the executive branch will implement open service, or the courts will fulfill their constitutional role to uphold the fundamental First and Fifth Amendment rights of gay and lesbian service-members.

Log Cabin Republicans website, available

- at http://www.logcabin.org/site/c.nsKSL7PMLpF/b.6417439/k.82ED/Log_Cabin_Republicans v US.htm.
- 7. The legal defects in the trial judge's ruling are nuanced and beyond the scope of this article and will have been rendered moot in any case by Congress' later legislative action.
- 8. "Report of the Comprehensive Review of the Issues Associated with a Repeal of 'Don't Ask, Don't Tell,'" available at http://www.defense. gov/home/features/2010/0610 gatesdadt/DAD TReport FINAL 20101130(secure-hires).pdf.
- 9. Ibid., p. 3.
- 10. Inside Congress, "Senate Vote 270 To Advance Repeal of 'Don't Ask, Don't Tell'," The New York Times (Politics), accessed at http://politics.nytimes.com/congress/votes/111/senate/2/270.
- 11. Wong, Scott, "Don't Ask, Don't Tell' Repeal Wins Final Passage," 18 December 2010, accessed at http://www.politico.com/news/stories/ 1210/46576.html.
- 12. Library of Congress (Thomas) Bill Summary & Status, 111th Congress (2009-10), H.R. 2965, Major Congressional Actions, accessed at http://thomas.loc.gov/cgi-bin/bd-query/ z?d111:HR02965:@@@R.
- 13. See Office of the Press Secretary, Remarks by the President and Vice President at Signing of the Don't Ask, Don't Tell Repeal Act of 2010 , 22 December 2010, available at http://www.whitehouse.gov/the-press-office/2010/12/ 22/remarks-president-and-vice-president-signing-dont-ask-dont-tell-repeal-a.

[I]n the coming days we will begin the process laid out by this law. Now, the old policy remains in effect until Secretary [Robert M.] Gates, Admiral [Mike] Mullen and I [President Obama] certify the military's readiness to implement the repeal. And it's especially important for service members to remember that. But I have spoken to every one of the service chiefs and they are all committed to implementing this change swiftly and efficiently. We are not going to be dragging our feet to get this done.

See also Statement by Secretary Gates on Senate Vote to Repeal "Don't Ask, Don't Tell," 18 December 2010, available at http://www.defense. gov/releases/release.aspx?releaseid=14154.

It is therefore important that our men and women in uniform understand that while today's historic vote means that this policy will change, the implementation and certification process will take an additional period of time.

14. Officers and Marines continuing to question the wisdom of the legislation might do well to consider the costs estimated in a recently released report by the Government Accountability Office (GAO) that values the total costs of DADT since implementation at over 13,000 servicemembers from fiscal year 1994 (FY94) to FY09, with 3,664 separations occurring from FY05-09. The fiscal cost of the 3,664 FY05-09 separations, taking into account recruiting, training and administrative costs, was about \$193.3 million. This report, which would have been useful during the legislative debates and during administration policy formulation, provides additional data documenting the enormous personnel and fiscal costs the DoD has borne since the inception of DADT. See GAO Report 11-170, Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy, accessed at http://www.gao. gov/new.items/d11170.pdf. There is no question that the policy has been expensive in terms of manpower, talent, skill, and money.

15. See ALMAR 047/10, 231709Z DEC 10:

We are Marines, first and foremost. Fidelity is the essence of who we are. Accordingly, we will faithfully execute this new law, and will continue to treat each other with dignity and respect. The SMMC [Sergeant Major of the Marine Corps] and I will personally lead this effort. We expect Marines to step out smartly to implement the new policy. In doing so, we will further demonstrate to the American people the discipline and loyalty that have been the hallmark of our Corps for over 235 years.

See also DADT: Commandant and SMMC's Message to Marines (video), available at http://www.marines.mil/news/pages/marinestv. aspx?pid=d9p4g5vJWiQII4bLGacNt1d1BTDx 1vus, 28 January 2011.

16. See MarAdmin 108/11, 161455Z FEB 11:

Successful implementation depends on leadership, professionalism, discipline, and respect, which must continue to be practiced at all times and in all situations. Leaders at all levels must set the example and must be fully committed to Department of Defense (DOD) intent to sustain unit effectiveness, readiness, and cohesion. In the profession of arms, adherence to standards of conduct is essential, each member must be treated with respect and dignity, and leadership is key to creating and sustaining such an environment and command climate where the opportunity to advance and achieve excellence is available to all.

- 17. Cable News Network, Inc., "Pentagon brass disgusted by Marine hazing ceremony," 31 January 1997, accessed at http://articles.cnn. com/1997-01-31/us/9701_31_hazing_1 _ h a z i n g i n c i d e n t c a m p l e j e u n e marines? s=PM:US.
- 18. Groah, Capt Joseph S., "Treatment of Fourth Class Midshipmen: Hazing and Its Impact on Academic and Military Performance, and Psychological and Physical Health," Naval Postgraduate School thesis, June 2005, p. 17, available at http://edocs.nps.edu/npspubs/ scholarly/theses/2005/Jun/05Jun_Groah.pdf.
- 19. Crossing the Line, Plank Owner and Other Personnel, Unofficial Certificates Acquired by Naval accessed at http://www.history.navy. mil/faqs/faq92-1.htm
- 20. As an example, see LtCol Andrew R. Mil-burn, "Breaking Ranks: Dissent and the Military Professional," Joint Forces Quarterly, Washington, DC, October 2010, p. 101, available at http://www.ndu.edu/press/breaking-ranks. html.

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