

**THE THIRTIETH CHARLES L. DECKER LECTURE IN
ADMINISTRATIVE AND CIVIL LAW***

HONORABLE THOMAS. R. LAMONT¹

Thank you, General Ayres. General Chipman, other general officers, distinguished guests, and members of the Office of the General Counsel, I hope you're not here to just to keep an eye on what I'm saying, but I'm fearful. As a matter of fact, Lincoln was in our law firm five years after

* This is an edited transcript of a lecture delivered on October 5, 2011 by The Honorable Thomas R. Lamont to members of the staff and faculty, distinguished guests, and officers attending the 60th Graduate Course at The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. The lecture is named in honor of Major General Charles L. Decker, the founder and first Commandant of The Judge Advocate General's School, U.S. Army, in Charlottesville, Va., and the 25th Judge Advocate of the Army. Every year, The Judge Advocate General invites a distinguished speaker to present the Charles L. Decker Lecture in Leadership.

¹ Mr. Thomas R. Lamont, Assistant Secretary of the Army (Manpower & Reserve Affairs), is responsible for the supervision of the manpower, personnel and reserve component affairs for the Department of Army. In this position, he serves as the Army's point person for policy and performance oversight of human resources (military, civilian and contractor) training, readiness, mobilization, military health affairs, force structure, manpower management, equal opportunity, equal employment opportunity and other critical matters as part of the Army leadership.

On April 27, 2009, President Barack H. Obama nominated Thomas R. Lamont as Assistant Secretary of the Army (Manpower & Reserve Affairs) and he was confirmed by the U.S. Senate on May 18, 2009. Prior to his appointment, he was the Chair of University of Illinois Board of Trustees and a longtime Springfield, Illinois attorney and resident partner for the Chicago firms of Gordon & Glickson and Altheimer & Gray, and the historic Springfield firm of Brown, Hay & Stephens, whose members previously included Abraham Lincoln. He concentrated his practice in Government Law and Legislative Affairs.

In the public arena, Mr. Lamont served as Assistant Illinois Attorney General, Executive Director of the Illinois Board of Higher Education, and Special Counsel and Adjunct Professor of Law to the University of Illinois. In the mid 1970's, he served as a Counsel to the Speaker of the Illinois House of Representatives.

In 1990, Mr. Lamont was elected to the University of Illinois Board of Trustees. In addition, he served as a trustee of the State University Retirement System, a member of the Illinois Board of Higher Education, and on U.S. Senator Alan J. Dixon's Military Academy Appointments Committee.

He is admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Armed Forces, U.S. District Courts and Illinois State Courts.

Mr. Lamont served as a Judge Advocate General in the Illinois Army National Guard for over twenty-five years. He culminated his career serving as the Illinois Staff Judge Advocate and retired as a Colonel in 2007. His military awards and decorations include the Legion of Merit and the Meritorious Service Medal.

Mr. Lamont received his bachelor's degree from Illinois State University in 1969 and earned his law degree from the University of Illinois, College of Law in 1972.

we were founded, but he left five years later because he couldn't keep his hours up. *Laughter.*

He was always out on his own, riding the circuit, running for office, and he lost about five different positions before he was ever elected. And yes, I was the The Judge Advocate General (TJAG) for Illinois, Staff Judge Advocate for many years. I only had two of my governor Commanders in Chief go to jail under my term. *Laughter.* Otherwise, it was an interesting life, I can assure you.

Well, it's great to be back in the JAG school where I spent many hours sitting in this classroom. I really wanted to see what would happen if I brought an open cup of coffee in here today. *Laughter.* I don't know how many times I wanted to do that when I was back here, but we know that's not going to happen.

Pleasure to join with you all and talk about some of our current issues facing the Army. I want this to be a discussion now, not just a session where I talk and you listen. So I'm going to speak for a minutes, and then we can do some Q and A about Army personnel issues or anything else you have in mind.

Now, today is the first anniversary of the first ever televised presidential address given by the White House, October 5, 1947.² President Harry Truman addressed the nation on the topic of food conservation. Western Europe was experiencing a severe food shortage, and Americans were called upon to voluntarily conserve food in order to send supplies to Europe. Truman directed the American people along with all government agencies including the military, to conserve bread, use no meat on Tuesdays, and no poultry or eggs on Thursdays. Now, Truman's speech ran less than ten minutes, and my speech will run a bit longer, but the good news is I promise I won't say anything about what you eat for lunch after this session.

President Truman also famously said, and I quote, "Within a few months I discovered that being a president is like riding a tiger. A man has to keep on riding or be swallowed."³ I think we can all identify with some of that sentiment these days.

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Let me give you a quick idea of what I oversee as Assistant Secretary for Manpower and Reserve Affairs. My organization, in essence, is responsible for the entire soldier life cycle, from recruitment to retention to retirement and in some cases even in death as we are responsible for the burial policies of Arlington National Cemetery.

We are deeply involved in Force Structure, Force Mix, the Reserve Component (RC)/Active Component (AC), budgeting of the same, Soldier and Soldier Family Programs, quality of life, suicide programs, sexual assault, Soldier records, Army correctional facilities and the list goes on and on. We oversee all personnel and work with the commands in between from the G-1 to Human Resources Command, Cadet Command, U.S. Army Recruiting Command, etc.. We have roughly 569,000 AC soldiers; 562,000, roughly, RC soldiers; 283,000 Department of Army civilians; and 300,000 contractors, give or take a few thousand, because we never know quite how many we have—a few things to work out in our Information Technology systems. But we are a very busy organization, as you might imagine.

I've asked to be topical today, so we are going to go through any number of things, and we'll have a little Q and A action afterwards.

Drawdown. It's no secret that things are tight financially all over the country, and the Army is feeling the strain of tightened resources. In February, with the approval of the Secretary of Defense, the Army achieved a temporary end strength increase of 22,000 soldiers to ensure that deploying units are adequately manned. In fiscal year 2012, we will begin to reduce that temporary increase. Additionally, the Secretary of Defense has directed another 27,000 in strength reduction to 520,000 by the end of FY16. Now, we hope this will be the end, but the demands for additional budget efficiencies will likely drive the numbers further down. Bear in mind, no matter those numbers are as of last month, we had 730,000 active-duty soldiers, on active-duty orders, right now when you count in the RC and you count in Active Duty for Operational Support (ADOS) and count in our retiree recalls. So our mission right now requires over 700,000 soldiers. Keep that in mind when we start talking about the drawdown.

The Army civilian workforce will also be smaller. In July, the Secretary of the Army directed the Army commands and agencies to cut more than 85,000 civilian positions by the end of Fiscal Year 2012. We'll try to mitigate the impact of the cuts with voluntary retirements

and separation incentives, but there will most likely be more cuts to come.

The Base Closure and Realignment Commission (BRAC) initiative will also lead to civilian reductions as the Army reduces its force structure. Approximately 25,000 civilian positions were affected by BRAC with the majority of them movements, transitions, and consolidations occurring this fiscal year; or going to occur, at least. Efforts to drawdown the Army aren't anything new. We had drawdowns after the Cold War, Vietnam, Korea, and there are two big differences now. First, we're still at war; and second, the economy is hardly in the best of shape with unemployment at very significant highs.

And a major concern, though, is our junior soldiers who are transitioning out of the Army and face a difficult job market. Last year more than 130,000 soldiers separated from the Army. In January of this year, the unemployment rate for veterans of Gulf War II era, ages twenty to twenty-four, was around thirty-one percent. We have an obligation to ensure that our transitioning soldiers are prepared for future opportunities and are aware of their available benefits after their service. And this is an obligation that the Army can't fulfill on its own. We need the commitment and support of business leaders, both at large corporations and small businesses, and of communities. And those of you who particularly are in the Guard and Reserves, you've seen what's going on with some of your Reserve component soldiers. I think you'll find those numbers of unemployment even high upon their return from deployments.

We are trying very hard to promote a new and better TAP program, Transition Assistance Program. And early reports suggest it has had considerable success. This is just being modified and put in places much broader than it has been in the past, and it's got some great things going with it. I think it will be a very significant improvement. And of course, on the RC side you have Yellow Ribbon Programs and things of that nature.

Cuts to benefits. I know most of you might want to go get a cup of coffee on this and not have to worry about it. You're only in it for today anyway. We're not worried about our retirement benefits or anything like that. But I'm going to briefly touch on them. Not a whole lot we can say about this. You read the papers. One question I get asked about a lot is what's going to happen to military benefits?

As you may know, on September 19th President Obama unveiled a \$4.4 trillion deficit reduction plan that could raise healthcare costs for soldiers, retirees, and families and could lead to some rather significant changes to the military retirement system. Bottom line nothing has been decided. There are ideas and there are numerous models out there all being discussed, but we don't know anything for sure yet. There are no real concrete proposals even that I'm aware of.

Secretary of Defense Panetta has repeatedly stated that much study and analysis remains to be done. Effect on recruiting; what does it mean? Effect on retention; what would changes mean? What would be the actual savings with whatever model we come with? What level of grandfathering are we going to have? Implementation of a 401K, vesting of services that would allow you to retire without twenty or nothing, just like the federal government. All these things are being considered. And of course, we have to recognize the care and compassion of our soldiers who have repeatedly gone to the fight.

So a lot to be done there. A lot of questions with very few answers right now. But the Army is in transition. Transformation being a new buzzword, as well. And the military has always been at the forefront of social issues in our society from desegregation for the force in 1948; to the integration of the women into the Army; to issues we face today revolving around the repeal of "Don't Ask, Don't Tell"; exceptions to uniform policy on the basis of religion; and the assignment policy for our female soldiers.

"Don't Ask, Don't Tell." The repeal of "Don't Ask, Don't Tell" policies is one of the biggest changes to personnel policy the Army has ever seen. On September 20, the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff certified, with the advice of the service chiefs, service secretaries and combatant commanders, that the Department of Defense (DoD) was ready to make this change consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the armed forces.

We value the services and the heroism of any gay soldier with the same respect as all those who serve beside them without regard to sexual orientation. This legacy of respect should and will continue with the first generation of service members able to serve openly. Now, the repeal necessitated some changes to policies, but most of our policies were already neutral in regard to sexual orientation and required no change.

Servicemembers continue to have various benefits for which they may designate beneficiaries regardless of sexual orientation, such as the death gratuity, Soldier's Group Life Insurance, and the Thrift Savings Plan. Other benefits are restricted by DOMA, the Defense of Marriage Act, or other applicable statutes based on governing definitions of spouse and/or dependent. In connection with the repeal, the DoD is exploring the possibility of extending other benefits that are legally permitted to same sex partners.

Commanders will need to make case-by-case decisions on issues as they arise, and no doubt many of you will be advising the commanders. And these decisions are to be made based on individual circumstances, not sexual orientation. With any change there is apprehension. But to date, this transition's been very smooth, and I have confidence in the professionalism of the men and women in our military to continue to treat each other with the utmost respect.

Historically, the Army has placed a high value on the rights of soldiers to observe their religious faiths. The Army will generally approve requests for accommodations of religious practices unless accommodation will have an adverse impact on unit readiness or individual readiness, unit cohesion, morale, discipline, safety, or health reasons.

I don't know how many of you have had a question that's come up recently about this. We're not really into the religious practices. We're into the uniform policy on the basis of religion. Requests for things like time off from work for worship or prayer or the accommodation of a soldier's diet due to religious reasons are routinely handled at the command level.

However, the rub is requests for exceptions to policy for grooming in uniforms are not considered religious accommodation. They are considered exceptions to the uniform policy for religious reasons. And these exceptions are reviewed on a case-by-case basis, not liberally granted and are limited in nature. Unfortunately, Army policy may well be in conflict with the Religious Freedom Restoration Act (RFRA) of 1993 that raised the standard of review for religious accommodation request. The government may substantially burden a person's exercise in religion only if it is able to demonstrate the application of the burden, one, is in furtherance of a compelling governmental interest; and two, is the least restrictive means of furthering that compelling governmental

interest. Congress failed to exempt the military services from RFRA, so here we are.

Since October 2009, the Army has granted five limited exceptions to Army Regulation 670-1, *Wear and Appearance of Army Uniforms and Insignia*,⁴ all related to religious-based requests. These limited exceptions are specific to assignment location with three-seek soldiers requested to have beards, unshorn hair, and to wear turbans. Two of these soldiers are doctors and one is a medic. Two Muslim soldiers, both doctors, requested to have beards. And two requests are currently pending, awaiting a decision from the Army G-1. A female Muslim soldier, who is a pediatric resident, is requesting to wear the head scarf, hijab. And the Muslim soldier, who is a chaplain candidate, requesting to retain his beard.

We're also in the middle of a law-suit brought by a Jewish applicant who wishes to retain his beard, a Jewish rabbi. Don't worry, I'm not going to get into any details. Although, that case can, in some respects, be somewhat distinguished in that the person is an applicant. He's not in the Army. So he's seeking an exemption before he raised his hand; these others were already under contract. Any number of circumstances that are unique to this case suggest that we may not—we don't know what the standing question really is going to amount to here, but you can imagine. We have a lot of challenges ahead of us.

The challenges we face in regard to exception to uniform policy for religious reasons revolve around the fact that there is no formal DoD policy on this issue. Each service handles its own cases. But we don't want these cases turning into additional lawsuits if we can avoid it, and we obviously don't want the judiciary determining Army policy. But the cases we're seeing now will unlikely be the last ones, and this isn't an issue that's going to go away. We are actively working with DOD to develop a uniform policy for all services that ensures the soldiers religious freedoms are protected and balanced with the needs of the Army.

All right. Women in the Army. The role of women in the Army is also an issue that's getting a lot of attention lately. Women currently represent 13.5 percent of the active Army, a little over 14 percent in the

⁴ U.S. DEP'T OF ARMY, REG. WEAR AND APPEARANCE OF ARMY UNIFORMS AND INSIGNIA (3 Feb. 2005).

National Guard, and almost 24 percent of the Army Reserve. The Army's current assignment policy does not allow the Army to assign women to units below brigade level whose, one, primary mission is to engage in direct ground combat; or two, which routinely co-locates—that's the key here—which routinely co-locate with units assigned a direct combat mission. Based on DoD and Army policies, female soldiers are restricted from specific specialties such as Infantry, Armor, Special Forces, Field Artillery, Combat Engineers, et cetera.

However, in our practice numerous unavoidable situations on the ground have resulted in females being involved in combat operations. With the kind of a 360-degree battlefield that we have now, it's kind of hard to avoid. They're involved in route clearance operations, so on and so forth. And many of you know far more of what I'm talking about from your own experiences.

The Army recently completed a routine cyclic review of its current assignment policy for female soldiers. As a result of this review, we are moving forward to align our policy with that of DoD by adopting DoD terminology and definitions and by eliminating the co-location requirement—the co-location restriction, I should say.

The results of the review revealed that the Army could potentially open currently closed MOS's, units, and positions to female soldiers resulting in several thousand more jobs being available to women soldiers.

However, the Secretary of the Army will not implement any changes until the more comprehensive fiscal year 2011 National Defense Authorization Act mandated review is completed; final report is due to Congress this month. The report is currently working its way to the appropriate channels and will serve as the required notification to Congress of changes the services are expecting to make and a timeframe in which they expect to implement these changes.

The report will consist of in-depth research, analysis, planning, sequential implementation, and review. And the end result will be to develop a common methodology across the services to be used in testing against occupational, physical standards. The Army will review open MOS's that have female restrictions such as Military Intelligence, and Signal, and Maneuver Battalions, and closed Military Occupations Skill's where females are completely restricted, such as I mentioned,

Infantry and Armor. In essence, the report is expected to challenge the current direct ground combat rule of 1994 that prohibits the assignment of females to battalions and below with a primary mission to conduct combat on the ground.

Sergeant (SGT) Monica Lynn Brown, SGT LeAnne Hester are just two examples of why the Army needs to review its assignment policy for women. Both SGT's Brown and Hester are the first female soldiers since World War II to receive the Silver Star which, as you know, requires extraordinary valor in combat. Changes are coming.

In conclusion, our all volunteer Army truly represents the best of our nation. It's made up of men and women who said, "I choose to serve. I will do my part." Everyday active-duty soldiers, Reservists, Guardsmen, Army civilians, family members, and contractors all work to ensure that our all volunteer Army is the best trained, equipped, and manned force in the world.

Many of these challenges to Army policy and the changes we are seeing are being fueled by the desire of individuals to serve their country. And lastly, I want to thank each of you for your role in taking care of our soldiers and their families.

All right. That's an abbreviated speech. But now I want to know what's on your mind. Let's open it up for some questions. We'll talk about all kinds of things. I'll be happy to elaborate on any of the things I've talked about here, so be brave.