APA Amicus Briefs on Gays in the Military

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In 1988 and 1989, the American Psychological Association (APA) submitted two nearly identical amicus briefs in the cases of Watkins v. United States Army and BenShalom v. Marsh. Both cases dealt with whether the U.S. Army may constitutionally require the discharge or deny reenlistment to any service member who declares him/herself to have a homosexual orientation (American Psychological Association, 1988; American Psychological Association, 1989). Although the US Department of Defense policies against homosexuals serving in the military were not repealed until 2011 (Don’t Ask, Don’t Tell Repeal Act of 2010, 2011), the APA never submitted another amicus brief on the topic. What reasoning could the APA have had for failing to address this contentious but highly researched issue during the intermediate years?

**Watkins v. United States Army**

In 1982, Sergeant Perry J. Watkins was refused reenlistment in the U.S. Army pursuant to Army Regulations requiring the discharge of lesbians and gay men and barring them from re-enlisting. The hearing before the Ninth Circuit Court of Appeals questioned whether homosexuals are a specially protected group under the Equal Protection Clause of the Fourteenth Amendment to the Constitution; and, as a result, the U.S. Army has a constitutionally valid right to terminate soldiers simply because they admit to their homosexual status (American Psychological Association, 1988). In their amicus brief, the APA submitted nine arguments supporting Sergeant Watkins’ right to reenlist in the U.S. Army, all of which condense down to the assessment that homosexuals are a protected class, there is no rational or scientific basis for discriminating against them in military service, and the military’s efforts to do so are substantially based on erroneous stereotypes (American Psychological Association, 1988). In their finding, the court held that the Army could not prevent a soldier’s reenlistment solely because of his/her acknowledged homosexuality but elected not to reach a determination on the constitutional issues raised.
BenShalom v. Marsh

In 1988, Sergeant Miriam benShalom was refused reenlistment in the U.S. Army pursuant to Army Regulations requiring the discharge of lesbians and gay men and barring them from re-enlisting. In 1989, the U.S. Army appealed the district court’s finding that this denial violated the Equal Protection Clause of the Fourteenth Amendment. This case was very similar to Watkins v. United States Army and the APA submitted a condensed version, 5 points instead of 9, of the amicus brief from that case, again arguing that there is no rational or scientific basis for discriminating against them in military service and the military’s efforts to do so are substantially based on erroneous stereotypes (American Psychological Association, 1989). In this case, the Seventh Circuit Court of Appeals found the opposite of the Ninth Circuit in that the Army regulation did not violate either the first amendment or the equal protection rights of Sergeant benShalom.

APA and Gays in the Military

It is likely that these amicus briefs in 1988 and 1989 were a difficult issue for the APA which had only about a year prior completely removed homosexuality from the Diagnostic and Statistical Manual (DSM) with the publication of the DSM-III-R. Only a decade prior, a psychiatrist had to appear anonymously before the APA for a presentation about the discrimination gay psychiatrists faced in their own profession because “outing himself” could have had devastating effects on his career (Drescher, 2015). Throughout the 1970s and 1980s, the APA hotly debated the issue of whether homosexuality was a mental disorder under various diagnostic nomenclatures and even briefly legitimized the practice of sexual conversion therapies (Drescher, 2015). It is unlikely that mental health professionals who held so firmly to their beliefs that homosexuality was a mental disorder simply gave up that belief when the new DSM was published – especially as at least one study in the mid-1990s demonstrated a high risk for anti-gay bias in psychotherapy with lesbian, gay, and bisexual clients (Cabaj & Stein, 1996).
It is interesting that given the efforts the APA went through to remove homosexuality from the DSM, after 1989 they never again submitted an amicus brief regarding homosexuality in the military. The APA did not choose to ignore homosexuality in court entirely though. After 1990, the APA submitted amicus briefs for 57 separate court cases regarding discrimination due to homosexuality, including: five cases on anti-sodomy laws, 34 cases on marriage equality, five cases on custody rights of homosexual parents, three cases on adoption rights of homosexual couples, and ten cases of general discrimination against homosexuals. In each of these instances, the APA argued that discrimination against homosexuals was unconstitutional and that there was no scientific evidence that homosexuals could not perform in their applicable role due to their sexual orientation. So, was there something about the right of homosexuals to serve in the military that was different than all these other examples? Was it perhaps less of a psychological issue which the APA might not have insight on? Were there significantly fewer court cases? Did this issue perhaps affect a significantly smaller portion of the population, thereby justifying the lower effort? Each of these questions could possibly explain the lack of APA amicus briefs on this topic.

The argument that the Department of Defense, and the United States Government as a whole, used for decades to justify exclusion of homosexuals from the military centered around unit cohesion (Schaub, 2010). Unit Cohesion, or Group Cohesion as is it referred to in social psychology, is defined as the unity or solidarity of a group, including the integration of the group for both social and task-related purposes. Group cohesion is indicated by the strength of the bonds that link members to the group as a whole, the sense of belongingness and community within the group, the feelings of attraction for specific group members and the group itself as experienced by individuals, and the degree to which members coordinate their efforts to achieve goals, although these factors are neither necessary nor sufficient conditions for cohesion (APA Dictionary of Psychology, 2020).
In other words, the cohesion of the military unit, or group, revolves around the interpersonal relationships of the individuals in the unit and their emotions and feelings towards those individuals. Unit Cohesion is at its core a psychological concept – which is why it is well studied in the social psychology community (Belkin et al., 2002; Kirke, 2010). These studies have shown that knowledge that a fellow service member is homosexual has little to no impact on unit cohesion, even in the case of service members serving in combat situations (Belkin et al., 2002; Moradi & Miller, 2009). So, homosexuals serving in the military is a well-researched psychological issue that the APA would have insight on. It must be something else that has led them to avoid submitting amicus briefs on this topic.

Another possibility is that the APA did not have opportunities to submit amicus briefs on this topic following their 1989 brief in BenShalom v. Marsh. If this were the case, we would expect to see a lack of legal cases pertaining to the right of homosexuals to serve in the U.S. military following 1989. In 1998, the Second Circuit Court of Appeals heard Able v. United States on behalf of the following discharged homosexual service members: Lieutenant Colonel Jane Able, Petty Officer Robert Heigle, First Lieutenant Kenneth Osborn, Sergeant Steven Spencer, Lieutenant Richard von Wohld, and Seaman Werner Zehr (Able V. United States, 88 F.3d 1280, 1998). In 2008, Major Margaret Witt challenged the legal standing of Don’t Ask, Don’t Tell (DADT) following her discharge in Witt v. Department of the Air Force (527 F.3d 806, 2008). In 2011, a group of lesbian, gay, bisexual, and transgender (LGBT) Republicans calling themselves the Log Cabin Republicans brought a lawsuit against the government on behalf of members of their organization who had been discharged from the military under DADT (Log Cabin Republicans v. United States, 658 F.3d 1162, 2011). These are just a handful of the cases related to this issue that arose during the 22 years between 1989 and the repeal of DADT, meaning that the APA had a plethora of opportunities to submit additional briefs in any number of related cases.

One final possibility is that the population of homosexuals in the military is too small to justify APA continued efforts through submitting amicus briefs. In 2015, the RAND Corporation conducted a
survey of over 16,000 U.S. service members regarding their sexual orientation. At that time 5.8% of the respondents identified as being lesbian, gay, or bisexual (Meadows et al., 2018). When compared to the overall estimated LGBT population in the US, that rate is relatively high. The Gallup poll rates for the LGBT population in the US were 4.5% in 2017, up from 4.1% in 2016 and 3.5% in 2012 (Newport, 2018). This means in comparing the military rate to the overall population rate, the rate of LGBT persons in the military is higher than the population overall so supporting LGBT in the military would potentially have as much, if not more, impact as supporting non-military LGBT persons.

This assessment of the APA’s lack of amicus briefs related to homosexuals in the military is in no way meant to imply that the APA has done nothing else to support the LGBT military community. In July 2004, the APA issued a statement that DADT "discriminates on the basis of sexual orientation" (American Psychological Association, 2004, p. 480) and that "empirical evidence fails to show that sexual orientation is germane to any aspect of military effectiveness including unit cohesion, morale, recruitment and retention" (p. 481). The APA went on to state that the U.S. military’s track record overcoming past racial and gender discrimination demonstrated its ability to integrate groups previously excluded (American Psychological Association, 2004). Instead, this has simply been an attempt to identify possible reasons why, during a period when the APA submitted 57 amicus briefs related to LGBT rights, they never submitted a single amicus brief related to the right of the LGBT community to serve in the military following 1989, even when the issue reached its pinnacle in the mid-2000s. Clearly none of the reasons assessed in this paper show a reasonable justification, but that does not mean one does not exist – including the potential that it’s simply an oversight that never came up during that period. It is worth noting this discrepancy, however, as it is important to identify the potential for unobserved biases to allow for future adjustments.
References


https://www.apa.org/about/offices/ogc/amicus/watkins

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