

DEDICATION

TO THE MEN AND WOMEN WHO ARE FAITHFULLY SERVING IN ENFORCED SILENCE TO SECURE FOR AMERICA THE FREEDOM THAT IS DENIED TO THEM.

ACKNOWLEDGMENTS

SLDN would like to gratefully acknowledge the assistance of the entire SLDN staff in producing and distributing *Conduct Unbecoming: The Tenth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."* We especially thank the authors and editors of this report, Sharon E. Debbage Alexander, Sharra E. Greer, C. Dixon Osburn, Steve E. Ralls, and Kathi S. Westcott. We would also like to acknowledge Abigayle Needham, Christopher L. Neff, Jeffery L. Light, and Joseph T. Gasper for their contributions to this report.



A VISION

Freedom to Serve

A MISSION

Servicemembers Legal Defense Network (SLDN) is a national, non-profit legal services, watchdog and policy organization dedicated to ending discrimination against and harassment of military personnel affected by "Don't Ask, Don't Tell" and related forms of intolerance.

SLDN was founded in 1993 in the wake of the debate leading to "Don't Ask, Don't Tell." SLDN has worked tirelessly to provide free legal services to those harmed by "Don't Ask, Don't Tell," to protect service members from harassment and to press for changes that improve service members' daily lives. SLDN has responded to over 5,400 requests for assistance and obtained almost three dozen changes to military policy and practice, including an Executive Order on hate crimes in the military.

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CONDUCT UNBECOMING: THE TENTH ANNUAL REPORT ON *“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass”*

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MOMENTUM: AFTER TEN YEARS, A GROWING MOVEMENT FOR FREEDOM

“Don’t Ask, Don’t Tell’ works against our military preparedness, is unfair to patriotic Americans and, as a policy, has failed miserably. It must be repealed.”

The Washington Post

“The rationale for the [gay ban] had always been that the presence of homosexuals in the military somehow undermined ‘unit cohesion’ and morale . . . the reality, increasingly, is that in practice this rationale is undermined by experience.”

Tom Oliphant, *The Boston Globe*²

Momentum to repeal “Don’t Ask, Don’t Tell” is building.

As fighting in Afghanistan and Iraq continues, the Pentagon has discharged the fewest lesbian, gay and bisexual service members since 1995. The Pentagon expelled 787 service members for being gay³ in FY2003, down 17% from FY2002, and 39% from FY2001. Gay discharge numbers have dropped every time America has entered a war, from Korea to Vietnam to the Persian Gulf to the present conflicts.⁴

As more and more lesbian, gay and bisexual Americans serve with honor, veterans of the war on terrorism are

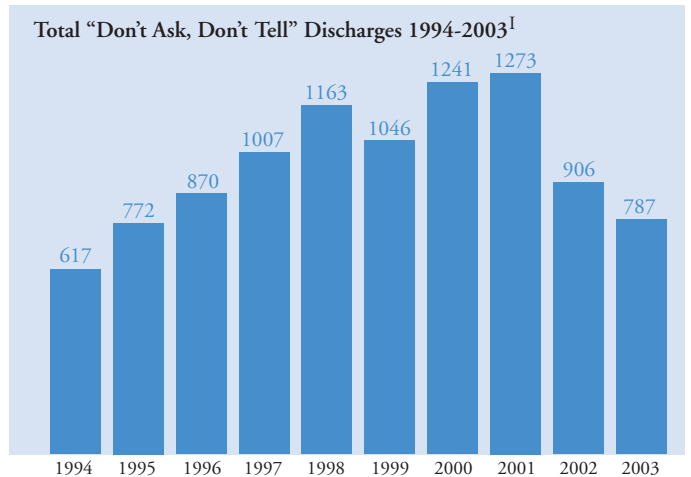
beginning to speak out. In this year’s report, we include the experiences of several service members who have served with distinction in Afghanistan and Iraq.

More of our allies have dropped their bans, and our American troops are fighting alongside openly lesbian, gay and bisexual allied personnel in the war on terrorism.⁵ They are also joined by our own skilled operatives from the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI) and National Security Agency (NSA), whose agencies do not discriminate on the basis of sexual orientation.⁶

In an historic declaration, three retired flag officers, and members of SLDN’s

Honorary Board – Generals Keith Kerr and Virgil Richard and Admiral Alan Steinman – came out publicly this year in *The New York Times* and denounced “Don’t Ask, Don’t Tell” as ineffective. “There are gays and lesbians who want to serve honorably and with integrity, but have been forced to compromise,” Brigadier General Richard told the *Times*. “It is a matter of honor and integrity.”⁷

The three officers were joined by thirteen other retired senior military leaders in calling for an end to the ban, including former Reagan Administration Assistant Secretary of Defense Lawrence J. Korb and former Judge Advocate General of the Navy, Rear Admiral John Hutson, USN (Ret.).⁸





Former President Bill Clinton said for the first time ever that, “Simply put, there is no evidence to support the gay ban,” marking a major retreat from a policy that he once called “a major step forward.”⁹

The American people agree. In two separate public opinion polls, Americans registered their strongest support for gays serving openly in our armed forces. In a December 2003 *Gallup* poll, 79% of Americans said they support allowing lesbian, gay and bisexual Americans to serve openly in the armed forces.¹⁰ In a poll from the conservative *Fox News* organization, 64% of Americans said they support gays serving openly in our armed forces.¹¹ In 1993, the number was 57%.¹²

Our nation’s most respected newspapers agree. Almost every major daily newspaper has weighed in on the side of opportunity for lesbian, gay and bisexual service members. *The New York Times*. *The Washington Post*. *USA Today*. *The Chicago Tribune*. *The New Orleans Times-Picayune*. *The Los Angeles Times*.¹³ The list goes on and on.

Policymakers agree. Every Democratic presidential candidate called for an end to the current ban, including Vietnam veteran Sen. John Kerry (D-MA) and former NATO Supreme Allied Commander General Wesley Clark.¹⁴ Members of Congress are also speaking out against “Don’t Ask, Don’t Tell” and taking action in greater numbers.

The Supreme Court’s historic June 2003 decision in *Lawrence v. Texas*,¹⁵ overturning state sodomy laws, also calls into question both the military’s sodomy statute and “Don’t Ask, Don’t Tell.”

In 2003, for the first time in a decade, veterans and their allies convened in Washington, D.C. to urge their elected representatives to open the door to service for every qualified American, regardless of sexual orientation. Participants in the event, part of SLDN’s first annual lobby day, met with more than fifty congressional offices.

Reality television gave America two new images of gay veterans this past year. Jason Tiner, came out as gay on the *Bravo’s* gay dating show, *Boy Meets Boy*. And Reichen Lehmkuhl, an Air Force Academy graduate, and his partner, won *CBS’ Amazing Race*.

In the decade since “Don’t Ask, Don’t Tell” became law, overwhelming evidence has shown the military’s gay ban to be counterproductive to our national interests and contrary to our nation’s ideals.

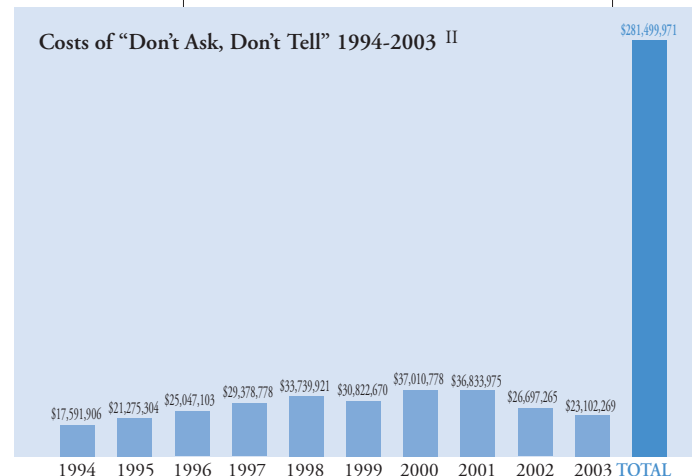
In this year’s report, we provide a ten year review of “Don’t Ask, Don’t Tell,” highlighting the major events of the past decade.

The failed promise to lift the ban a decade ago. The Department of Defense (DoD) policies that made it clear “Don’t Ask, Don’t Tell” is a ban. The anti-gay harassment left unchecked that was exposed by the tragic murder of Private First Class (PFC) Barry Winchell. The careers that have been ruined by pursuits and witch hunts. The loss to the nation of talented needed service members like the 37 linguists - many speaking Arabic, Farsi and Korean - discharged from the Defense Language Institute.

As discharges during the war in Iraq drop to historically low levels, Americans see first hand the talents of the lesbian, gay and bisexual patriots.

This irrational policy of exclusion has cost our nation, and our security, almost 10,000 dedicated and trained Americans over the past ten years. That’s more than two full brigades. It is also one-third of the 30,000 new recruits that the Army now says it needs to fight the war on terrorism.¹⁶

It costs between one quarter *billion* and 1.2 *billion* dollars just to train replacements for those men and women fired simply because of their sexual orientation.¹⁷



The cost of shrinking the pool of talent for our nation's armed forces, meanwhile, is immeasurable.

Yet today, the pool of accomplished lesbian, gay and bisexual Americans who have served in our nation's mili-

tary is one million strong, according to a recent study by the Urban Institute.¹⁸ These patriotic men and women continue to live every day embracing the core values of their services: truth, honor, dignity, respect and integrity.

From the front pages and into America's living rooms, proud gay veterans spoke out about their service to our country.

REMEMBERING THE PAST:

HOLDING A GENERAL ACCOUNTABLE

While there is new and palpable momentum to repeal "Don't Ask, Don't Tell," 2003 reminded all Americans how far we have to go. The confirmation of Major General (MG) Robert T. Clark for promotion to Lieutenant General was a prime example.

Clark was commander of Fort Campbell, Kentucky, in 1999 when PFC Barry Winchell was bludgeoned to death by fellow soldiers who believed Winchell was gay. Under Clark's watch many reports of anti-gay harassment surfaced in addition to Winchell's murder, including anti-gay graffiti.¹⁹ Clark also implemented a policy at Fort Campbell that led to a record number of gay discharges at the post. A Department of Army Inspector General (IG) report found other troubling facts about Clark's tenure at the post, including command-wide low morale; inadequate delivery of health care to soldiers and their families; and wide-spread, leader-condoned underage drinking in the barracks.²⁰ According to a report from *60 Minutes*, Fort Campbell also saw an alarming spike in domestic abuse cases during Clark's tenure.²¹ Despite Clark's claims that the IG report exonerated him, the IG in fact asked no questions regarding anti-gay harassment.

The Senate Armed Services Committee refused to act on Clark's nomination in 2002 due to serious concerns about his leadership at Fort Campbell. Undeterred, President Bush re-nominated him in 2003.

The Senate had never denied promotion to a General, let alone questioned his fitness to lead based on his handling of anti-gay harassment under his watch.

For fourteen months, Senators debated MG Clark's leadership, the rampant anti-gay environment under his watch, and the state of lesbian, gay and bisexual military personnel. Sen. Susan Collins (R-ME) expressed concerns about the nomination stating on *NBC Nightly News* that, "[t]here is compelling evidence that there were problems at this base."²² As the nomination moved out of the powerful Senate Armed Services Committee, three of the Committee's members – Sen. Daniel Akaka (D-HI), Sen. Hillary Rodham Clinton (D-NY) and Sen. Edward Kennedy (D-MA) – voted to deny Clark's promotion.

"There is compelling evidence that anti-gay harassment at Fort Campbell was pervasive," Sen. Kennedy said on the Senate floor.²³ Sen. Kennedy went on to say that, when he pointed to such evidence during Committee hearings, "General Clark stated that he agrees with these findings, but that he was, nonetheless, not aware of a single

instance of anti-gay harassment prior to the murder," leading Sen. Kennedy to conclude that "the available evidence indicated that General Clark's response was not adequate."²⁴

Sen. Mark Dayton (D-MN), also speaking on the Senate floor, broadened the question of Clark's nomination. "What about those gay and lesbian service members? What message are we sending them?" Sen. Dayton asked as a vote on Clark's nomination neared.²⁵

And in a written statement, Sen. Akaka said he was "disturbed by General Clark's continued reliance on lack of knowledge regarding misconduct and anti-gay harassment on post as a rationale for his lack of action." Sen. Akaka concluded that "I could not support his promotion to Lieutenant General."²⁶ Senators Russ Feingold (D-WI), John Kerry (D-MA) and Frank Lautenberg (D-NJ) submitted their concerns about the nomination to the Congressional Record.

While Clark was eventually confirmed by the Senate, the debate surrounding his nomination brought the issue of anti-gay harassment in the military to the Senate floor for the first time in history. Military leaders were put on notice that Congressional leaders will no longer turn a blind eye to anti-gay harassment, and signaled growing frustration with the military's intransigence toward its lesbian, gay and bisexual personnel.

★ 13 POINT ANTI-HARASSMENT ACTION PLAN ★

General Recommendations:

1. The Department of Defense should adopt an overarching principle regarding harassment, including that based on perceived sexual orientation:

“Treatment of all individuals with dignity and respect is essential to good order and discipline. Mistreatment, harassment, and inappropriate comments or gestures undermine this principle and have no place in our armed forces. Commanders and leaders must develop and maintain a climate that fosters unit cohesion, esprit de corps, and mutual respect for all members of the command or organization.”

2. The Department of Defense should issue a single Department-wide directive on harassment.
 - It should make clear that mistreatment, harassment, and inappropriate comments or gestures, including that based on sexual orientation, are not acceptable.
 - Further, the directive should make clear that commanders and leaders will be held accountable for failure to enforce this directive.

Recommendations Regarding Training:

3. The Services shall ensure feedback on reporting mechanisms are in place to measure homosexual conduct policy training and anti-harassment training effectiveness in the following three areas: knowledge, behavior, and climate.
4. The Services shall review all homosexual conduct policy training and anti-harassment training programs to ensure they address the elements and intent of the DoD overarching principle and implementing directive.
5. The Services shall review homosexual conduct policy training and anti-harassment training programs annually to ensure they contain all information required by law and policy, including the DoD overarching principle and implementing directive, and are tailored to the grade and responsibility level of their audiences.

Recommendations Regarding Reporting:

6. The Services shall review all avenues for reporting mistreatment, harassment, and inappropriate comments or gestures to ensure they facilitate effective leadership response.
 - Reporting at the lowest level possible within the chain of command shall be encouraged.
 - Personnel shall be informed of other confidential and non-confidential avenues to report mistreatment, harassment, and inappropriate comments or gestures.

7. The Services shall ensure homosexual conduct policy training and anti-harassment training programs address all avenues to report mistreatment, harassment, and inappropriate comments or gestures and ensure persons receiving reports of mistreatment, harassment, and inappropriate comments or gestures know how to handle these reports.
8. The Services shall ensure that directives, guidance, and training clearly explain the application of the “don’t ask, don’t tell” policy in the context of receiving and reporting complaints of mistreatment, harassment, and inappropriate comments or gestures, including:
 - Complaints will be taken seriously, regardless of actual or perceived sexual orientation;
 - Those receiving complaints must not ask about sexual orientation – questions about sexual orientation are not needed to handle complaints; violators will be held accountable; and
 - Those reporting harassment ought not tell about or disclose sexual orientation – information regarding sexual orientation is not needed for complaints to be taken seriously.

Recommendations Regarding Enforcement:

9. The Services shall ensure that commanders and leaders take appropriate action against anyone who engages in mistreatment, harassment, and inappropriate comments or gestures.
10. The Services shall ensure that commanders and leaders take appropriate action against anyone who condones or ignores mistreatment, harassment, and inappropriate comments or gestures.
11. The Services shall examine homosexual conduct policy training and anti-harassment training programs to ensure they provide tailored training on enforcement mechanisms.

Recommendations Regarding Measurement:

12. The Services shall ensure inspection programs assess adherence to the DoD overarching principle and implementing directive through measurement of knowledge, behavior, and climate.
13. The Services shall determine the extent to which homosexual conduct policy training and anti-harassment training programs, and the implementation of this action plan, are effective in addressing mistreatment, harassment, and inappropriate comments or gestures.

July 21, 2000

REVIEWING THE PRESENT:
LITTLE PROGRESS IS MADE TO
IMPLEMENT THE ANTI-HARASSMENT
ACTION PLAN

We write to request full and complete implementation of the 13 Point Anti-Harassment Action Plan (AHAP) by all of the Armed Services... . We conclude that the Services are not in full compliance with the Action Plan and ask that the Department of Defense evaluate the Plan's implementation.

22 Members of Congress in a Letter to Secretary of Defense Ronald Rumsfeld²⁷

[A]ny harassment of the members of our Armed Forces is unacceptable.

Under Secretary of Defense for Personnel and Readiness Dr. David S.C. Chu²⁸

The Bush Administration and its Pentagon leaders continue to ignore a growing epidemic of anti-gay harassment within the armed forces. Despite the adoption of a comprehensive Anti-Harassment Action Plan (AHAP) by then-Secretary of Defense William Cohen more than four years ago, Defense Department leaders refuse to implement the plan and continue to turn a blind eye to dangerous harassment within the ranks.

The AHAP specifically notes that “treatment of all individuals with dignity and respect is essential to good order and discipline.”

Its words, however, have never made it down the chain of command. The Plan continues to collect dust on Pentagon shelves.

In response to the Pentagon's failure to follow the Plan, twenty-two Members of Congress, in a July 2003 letter to Secretary of Defense Rumsfeld, ordered action. In their letter, the Congressional

Representatives conclude that “the Services are not in full compliance” with AHAP and subsequent order and request that “the Department of Defense evaluate the Plan's implementation” and report on its progress.

In a September 2003 response to the letter, Under Secretary of Defense Dr. David Chu indicated he would comply with the Congressional request. An honest review will find that:

- **The Pentagon has failed to issue a single Department-wide directive on harassment, as required by the AHAP.** The directive, according to the Anti-Harassment Action Plan, must “make clear that mistreatment, harassment and inappropriate comments or gestures, including based on sexual orientation, are not acceptable.” Further, “the directive should make clear that commanders and leaders will be held accountable for failure to enforce this directive.”

- **None of the individual services have implemented the training requirements spelled out under the AHAP.** The training is to be tailored to the grade and responsibility of the audience, and administered to every member of the military.

Instead, SLDN has documented that training rarely meets such standards, and is instead often treated as a joke and dismissed by military leaders. The Army has come closest to meeting those guidelines and this year took a step forward with the development of a new training for Non-commissioned Officers (NCOs). Unfortunately, the Army failed to include anti-gay harassment training in its revision of its training regulations this year. The Marine Corps acknowledges its training is

inadequate. The Navy and Air Force have blatantly failed to meet the requirements altogether, and indeed took steps backward in 2003.

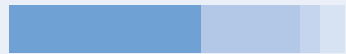
- **No service has properly instructed personnel on how to safely report anti-gay harassment.** The services are required to provide clear training on how to report harassment and to instruct those who receive such complaints not to ask about a service member's sexual orientation. While some services have taken small steps, most have completely failed to properly inform service members. Here, too, the Army has come closest to meeting the guidelines, but the message is not reaching the field. The Marine Corps has taken small steps. The other services, however, continue to do nothing in this important area.

- **None of the services have enforced – or evaluated adherence to – the Anti-Harassment Action Plan.** The services are required by the AHAP to ensure inspection programs to assess adherence to the AHAP and assess the effectiveness of efforts to address anti-gay harassment. While the Army, Air Force and Marine Corps have taken small steps in the right direction on measurement, the Navy has completely failed to make any assessment of its efforts. None of the services have evaluated the level of anti-gay harassment. Enforcement, also required by the AHAP, is absent from all of the services. Instead, complaints of harassment continue to fall on deaf ears. Credible, well-documented cases of harassment go uninvestigated and offenders go unpunished. Accountability is non-existent.

All this, despite overwhelming evidence, as reported by the DoD Inspector General, on the need for such programs.

DOD IG Findings

III



80% have heard derogatory, anti-gay remarks during the past year;
37% said they witnessed or experienced targeted incidents of anti-gay harassment
—9% of whom reported anti-gay threats
—5% of whom reported witnessing or experiencing anti-gay physical assaults.

This Administration, which has for too long ignored the safety of a specific segment of its military personnel, must immediately:

- **Ensure full and adequate training on anti-harassment programs and the law's investigative limits.** The services should ensure every service member – from recruit to flag officer – receives rank-appropriate training to prevent anti-gay harassment. The Pentagon should

also make clear that anti-gay harassment includes, but is not limited to, inappropriate comments and gestures, mistreatment, threats and assaults. The Pentagon should make clear that “Don’t Ask, Don’t Tell” contains specific investigative limits.

- **Provide adequate avenues to report harassment.** The Pentagon must ensure that all service members understand avenues available for reporting harassment. All service members should know that complaints are to be taken seriously and those making complaints will not be asked about their sexual orientation. Inspectors General, law enforcement personnel, equal-opportunity representatives, chaplains, health-care providers, commanders and all personnel who deal with harassment must be given clear instructions not to “out” service members who seek their help. The services must also adopt a rule of privacy for conversations with health care providers. And, there must be adequate training on how to respond to complaints of harassment.

- **Enforce the policy and hold accountable those who ask, pursue or harass.** The Pentagon must require enforcement of prohibitions against asking, pursuits and harassment. Commands must hold accountable those who harass or condone harassment, as well as those who ask or pursue. Commanders must also understand there are specific consequences for violations, from letters of counseling to court-martial, depending on the offense. *The Pentagon must uphold and enforce its own rules and regulations.*
- **Measure the effectiveness of training and guidance.** The Pentagon must require the services to measure the results of their efforts in implementing the Anti-Harassment Action Plan.

Sound-bites offering empty promises to protect men and women in uniform are useless. The Pentagon must take concrete steps to address harassment. This Administration must leave no service member behind.

CHARTING THE FUTURE:

“THE STATE CANNOT Demean
THEIR EXISTENCE OR CONTROL
THEIR DESTINY”

Lawrence v. Texas

The future of “Don’t Ask, Don’t Tell” is clear – the ban will be lifted. The question remains when and how.

The Supreme Court’s decision in *Lawrence v. Texas*,³¹ while it does not directly address “Don’t Ask, Don’t Tell,” does call into serious question the future of a law that is predicated on governmental intrusion into the private lives of its citizens.

There’s only one good way to celebrate the 10 year anniversary of this law: by ending the discrimination against American sons and daughters who are protecting us everywhere, everyday and who also happen to be gay.

Robin Gerber, USA Today²⁹

[“Don’t Ask, Don’t Tell”] has done the nation a disservice by doing wrong to those who would fight for it.

Editorial: Unhappy Anniversary, *The Washington Post*³⁰

In broad and sweeping language, Justice Anthony Kennedy confirmed in the *Lawrence* case the “right to liberty under the Due Process Clause,” which, he wrote, “gives the full right to engage in private conduct without government interven-

tion.” The decision, he summarized, found that in the matter of private, consensual adults, “the state cannot demean their existence or control their destiny.”³²

Service members, straight and gay, have already challenged the military’s sodomy statute, and that antiquated statute’s fate lies, initially, with the Court of Appeals for the Armed Forces, the military’s highest criminal court of appeals.

Another case already filed challenges “Don’t Ask, Don’t Tell” using the *Lawrence* decision before the Court

of Federal Claims. Lieutenant Colonel (LTC) Steve Loomis, a decorated Vietnam combat veteran and recipient of the Purple Heart, was discharged eight days prior to his twenty year retirement for being gay. LTC Loomis is challenging his discharge and the constitutionality of “Don’t Ask, Don’t Tell.”

The Pentagon says it is “fairly enforcing” the law.³³ There is, however, no fair way to implement “Don’t Ask, Don’t Tell” or any policy of discrimination. The truth is evident and overwhelming: there is no evidence to support the gay ban.

Pentagon leaders must speak up for repeal. Former Presidents, Secretaries of Defense, service leaders, senior enlisted leaders, and all Americans must speak up and demand repeal. As the courts, veterans and the American people speak out in favor of opportunity for all, the end of discrimination in our armed forces is closer, and more attainable, than ever before. Overturning “Don’t Ask, Don’t Tell” is the right thing for our military, for our service members and for all Americans. The momentum is building.

SPOTLIGHT



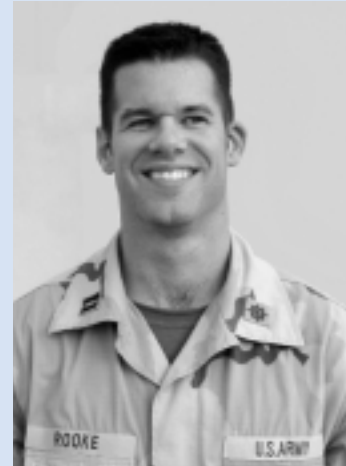
FIGHTING FOR FREEDOM: LESBIAN, GAY & BISEXUAL AMERICANS ON THE FRONTLINES IN IRAQ

“Great Britain lifted its ban on gays after our debate in 1993, and over the past year, I did not see any of the critics of gays in the military here in America asking the British to stay out of Afghanistan or Iraq.”

President Bill Clinton, in remarks made to SLDN³⁴

SLDN estimates that the Pentagon has deployed as many as 10,000 lesbian, gay and bisexual service members to Afghanistan, Iraq and other locations in the Middle East.³⁵

As they continue to fight, more and more stories about the heroism of lesbian, gay and bisexual patriots emerge. Their testimony is a powerful reminder that bravery and patriotism know no sexual orientation.



Now that I am back home, I can do what so many cannot: speak about the sacrifices made and the accomplishments realized by lesbian, gay, bisexual and transgender Americans serving our country at its time of greatest need. I know they are there, serving, as I did, under a veil of silence and anonymity. They cannot speak, but today I can.³⁶

CAPTAIN AUSTIN ROOKE

FROM THE FRONTLINE OF QATAR: CAPTAIN AUSTIN ROOKE

The Army recalled Captain Austin Rooke to active duty in the wake of the terrorist attacks on September 11th, 2001. At the time he was recalled, Rooke had been working for the National Gay and Lesbian Task Force, one of the nation's largest lesbian, gay, bisexual and transgender advocacy organizations.

Rooke received his commission as an officer after graduating from the University of Texas on an ROTC scholarship.

Following graduation, Rooke served four years on active duty, including assignments in Bosnia, working with NATO allies. Like many gay soldiers, Rooke came out to himself while in the Army. In 1998, after completing his active duty obligation, Rooke went into the inactive reserves.

Upon his recall to active duty, Rooke reported to Fort Lewis to work in military intelligence. He extended his service commitment by six months to volunteer for overseas duty in Qatar, in support of Operation Enduring Freedom and

for the first few weeks of Operation Iraqi Freedom serving with the Special Operation Forces.

Rooke says it was not easy serving as a gay man overseas. “I had only one

friend I could really be open to and confide in,” he says. “I did not know anyone else who was gay. And the environment was such that one did not feel comfortable coming out,” Rooke says.

Sources of comfort for Rooke,

though, were the care packages that his friends from the Task Force sent him. “Those care packages made me feel connected back to friends and support back home,” he says.

Today, Rooke has returned home to Washington, D.C. and continues his

work with the Task Force.

His isolated existence in service to his country stands in stark contrast to his career with the Task Force, where he works on the frontlines for freedom again – for his community as well as his country.

FROM THE FRONTLINE OF IRAQ: GAY MARINE SERVES IN SILENCE

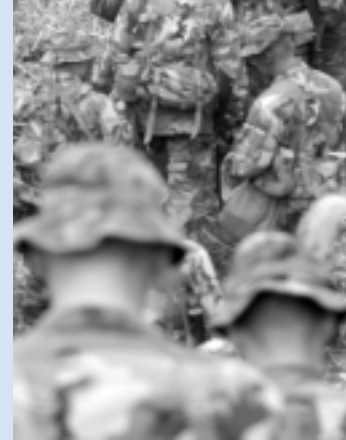
An SLDN client who must remain anonymous because he continues to serve on active duty served as an infantryman in Iraq for seven months, conducting security patrols and humanitarian assistance.

A native Spanish speaker, “Joaquin’s” command selected him to serve as an interpreter for U.S. forces working with allied forces from Spanish-speaking countries. An immigrant to America from Mexico, Joaquin had a uniquely American dream: to become a United States Marine. Joaquin impressed local recruiters in his home town because he had attended recruiting events since he was fifteen years old. “I wanted,” he says, “to give something back to my country, America.”

Joaquin is also a gay American, and came to terms with his sexuality during high school.

At first, he brushed aside the issue of his sexual orientation, not wanting anything to interfere with his dream of becoming a Marine. But as he fought for freedom abroad that his country denied him at home, Joaquin became increasingly wary of serving under “Don’t Ask, Don’t Tell.” The ban compromised his integrity.

Reluctantly, he came out to his command as a matter of honesty, and in response to harassment from other Marines who concluded that his silence about his private life indicated he was likely gay. The Marine Corps has not yet discharged Joaquin and he continues to serve his country proudly.



When I was in Iraq, I served alongside some of our nation’s staunchest allies, many of whom allow gay people to serve openly. In my own country, however, I cannot serve openly and honestly.³⁷

LANCE CORPORAL “JOAQUIN”

FROM THE SKIES OVER THE PERSIAN GULF: A PILOT CLOUDED BY “DON’T ASK, DON’T TELL”

The vast majority of service members deployed for Operation Enduring Freedom and Operation Iraqi Freedom cannot be out. They are the shadows and voices behind the screens. Yet, without their courage and skill, America could not carry out its mission.

One such sailor is a Seahawk helicopter pilot who was deployed in both Iraq and Afghanistan. His missions included combat search and

rescue, submarine hunting, small boat defense and Special Forces support. Seahawk pilots are the ones who try to stop terrorists from striking ships like the *USS Cole* and who helped secure the oil wells in Iraq prior to invasion to ensure that Iraqi forces did not set them ablaze.

“Our mantra is up in twelve, meaning we have to go from a dead sleep to airborne in twelve minutes to carry out any mission assignment,” he explains.³⁸

He speaks anonymously, because his name could mean his discharge. He speaks on behalf of at least a dozen sailors based on his ship who are gay.



What would I say to someone who is anti-gay? If it weren’t for “Don’t Ask, Don’t Tell,” I would say ‘You are a bigot. Get out. Move on. It’s better for the military for him to find another job’⁴⁰

ANONYMOUS NAVY PILOT

He speaks for his partner, also serving in the Navy, fighting for our country, too. “We’ve been together,” he says, “for three years.” Everyone on his partner’s ship knows he is gay and, he says, “at least five percent of

the ship is gay.”³⁹

Back on his ship, the pilot finds comfort in confiding with his gay colleagues, but says everyone is careful to come out only to those they

trust. The pilot intends to make the Navy his career and serve for at least twenty years. One wrong story about life back home, made to one wrong person, however, could result in his discharge.

FROM THE FRONTLINE
OF AFGHANISTAN:

**MASTER CHIEF PETTY OFFICER OF
THE COAST GUARD VINCENT W.
PATTON III, (RET.)**

General John Abizaid, Commander of U.S. Central Command, and the USO, invited SLDN Honorary Board member, Master Chief Petty Officer of the Coast Guard Vincent W. Patton III (Ret.) to tour Afghanistan, Uzbekistan, Kyrgyzstan and Pakistan with the USO. Patton tried to go into Iraq twice, but each time his aircraft turned back due to enemy fire. Patton’s mission which was part of the USO’s “Operation Handshake” program, was to gauge the morale of our troops involved in military operations in the Middle East.

Patton served in the U.S. Coast Guard for over 30 years, retiring after serving as the Coast Guard’s top senior enlisted service member for over four years. Patton most recently completed his divinity studies at Graduate Theological Union, Berkeley, CA and is now an ordained minister.

Patton says that he spoke to roughly 700-800 troops, mostly soldiers, during his tour. While he talked about a variety of topics with the troops, he also talked candidly about his thoughts on gays in the military and the “Don’t Ask, Don’t Tell,” policy. “It’s like building a sandwich,” Patton says. “You don’t start off the conversation talking about gays in the military. I had to first build trust with the individual I was talk-

ing with. In doing so, I found some common ground, that opened up the dialogue to pursue the discussion further to touch on this sensitive yet volatile subject,” Patton says.

Attitudes regarding lesbian, gay and bisexual colleagues, he says, split largely among generational lines. Young enlisted troops were not concerned about the sexual orientation of their military colleagues. “I found in my conversations that for the most part they are more culturally exposed to gays. They grew up with it so it’s no big deal. There’s a lot to be said about Barry Goldwater’s statement, you don’t have to be straight to be a good soldier, you just have to know how to shoot straight,” Patton says.⁴¹

Patton’s experience shows that leadership makes a difference. One soldier came out to Patton because he had heard that he was asking troops about gays in the military, and telling them about his work on behalf of SLDN. Having gained the trust of the troops, and showing leadership on behalf of all service members, he created a zone of comfort where at least one soldier was willing to be open. The soldier said, “I know about SLDN.”⁴²

“The soldier reported that he knew of three other soldiers in his unit that are gay or lesbian, but they kept themselves distant from each other out of fear of being discovered,” Patton says.⁴³

When Patton returned to the United States, he visited troops at Walter



*When we take the time to listen, we learn. Too many leaders are unwilling to open their eyes and ears and hearts to the courage of our lesbian, gay and bisexual service members. That trend is changing as more gay veterans speak candidly about their service.*⁴⁵

MASTER CHIEF PETTY OFFICER OF THE COAST
GUARD VINCENT W. PATTON III, (RET.)

Reed Medical Center in Bethesda. He saw many of the soldiers with a variety of injuries from serious burns to amputated limbs incurred from their hazardous profession. They are the face of the war on terrorism that few see. “They were in bad shape. I had to steel myself to stay positive. The visit was so overwhelming that when I got back to my car, I had to cry and have a talk with God about how deeply this event was so troubling to me. They have given so much for our country,” Patton says.⁴⁴

It is quite likely that more than one of the patients Patton saw is gay.

FROM THE HOMEFRONT:
A DISCHARGED SAILOR WAITS FOR
HER GIRLFRIEND TO RETURN

The media are filled with photos of the worried families of straight soldiers, including their tearful, poignant goodbyes or their joyous reunions. But gay and lesbian partners can't share such scenes. They can't access the support services the military offers spouses. They can't be sure they would be the first to find out if their loved ones were wounded, captured or killed.

Patricia Ward Biederman in *The Los Angeles Times*⁴⁶

Unlike their peers, lesbian, gay and bisexual service members have no teary goodbyes at dock-side. Communication is cryptic, to obscure the gender of their loved ones left behind. Separation, for months or for years, is made more painful by the inability to simply say "I love you" in a phone call back home. And, perhaps most cruelly of all, the partners of gay personnel injured or killed in battle may never be notified of their loved one's status.

One such partner met her girlfriend two years ago in the Navy. Jen worked in Navy legal affairs; her partner reads radar, tracks incoming missiles and recently sailed to the Persian Gulf to fight a war.

Jen has since been discharged under "Don't Ask, Don't Tell," but her partner remains on active duty, and plans to stay in for twenty years.



Being able to acknowledge their love, Jen said, "would take a weight off our shoulders." Although Jen said she is not bitter about the "don't ask, don't tell" policy that ended her naval career, she thinks reform is overdue. "The policy needs to change because there are so many gays serving and serving well," she said, sounding like any proud spouse of an American service member. "They're out there, and they're fighting for us."⁷⁷

TEN YEARS OF “DON’T ASK, DON’T TELL.” A DISSERVICE TO THE NATION

The decade under “Don’t Ask, Don’t Tell” has been a disservice to our country and to the people who serve in our Armed Forces.

“Don’t Ask, Don’t Tell” has deprived our Armed Forces of the skills, talent, experience and commitment of nearly 10,000 personnel discharged under the law.

It has deprived us of untold numbers of young Americans who have chosen not to serve or who have cut short their careers in the military because of the ban. The ban demands self-denial far beyond the already substantial sacrifices expected of uniformed personnel and their families.

WHAT IS “DON’T ASK, DON’T TELL?”

“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” is a statutory ban on gays in the military, similar to the regulatory bans that preceded it.⁴⁸ It is the only law in America that authorizes firing someone for his or her sexual orientation. Indeed, “Don’t Ask, Don’t Tell” is the only

“Don’t Ask, Don’t Tell” forces gay military personnel to live a lie as a condition of service. The law denies others the opportunity to know and learn from their gay colleagues.

The history of “Don’t Ask, Don’t Tell” is complicated. A comprehensive account of the policy, its genesis and application, would require volumes to tell. On this tenth anniversary, however, we review some of the defining moments of the past decade.

We review how the initial promise of a more benign policy toward gays actually created mass confusion about the policy and backlash against lesbian, gay and bisexual service members.

We review how, over time, the new law showed its true colors as a gay ban, just like its predecessors, not a

law that punishes lesbians, gays and bisexuals for coming out. Many Americans believe that “Don’t Ask, Don’t Tell” represents a compromise in which gay people can serve in the military as long as they are discrete about their personal lives. Ten years’ experience has proven beyond a doubt that this is simply not the case. An honest statement by a gay

step forward for our nation, our military or our military personnel.

We review the epidemic of anti-gay harassment in the ranks and the inadequate response of our military leaders. In particular, we review the brutal murder of Private First Class Barry Winchell at Fort Campbell, Kentucky, exposing six years of harassment and violence against gay service members left unchecked by military leaders.

Lastly, we examine the significant shift in public opinion post September 11th in support of gays serving openly in the military. The American people and some military leaders are beginning to acknowledge that “Don’t Ask, Don’t Tell” was bad policy when it became law, and it is bad policy today. It is time for change.

service member of his or her sexual orientation to anyone, at anytime, anywhere may lead to discharge.

“Don’t Ask, Don’t Tell” is an umbrella term for the statute, regulations and memoranda that comprise the ban. It is perhaps easiest to understand by breaking it down into its component parts.

Don't Ask. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation.⁴⁹

Don't Tell. "A basis for discharge exists if . . . [t]he member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts"⁵⁰

Don't Pursue. More than a dozen specific investigative limits laid out in DoD instructions and directives comprise "Don't Pursue." It is the most complicated and least understood component of the policy. These investigative limits establish a minimum threshold to start an inquiry and restrict the scope of an inquiry when one is properly initiated.

A service member may be investigated and administratively discharged if they:

- 1) make a statement that they are lesbian, gay or bisexual;
- 2) engage in physical contact with someone of the same sex for the purposes of sexual gratification; or
- 3) marry, or attempt to marry, someone of the same sex.⁵¹

Only a service member's commanding officer may initiate an inquiry into homosexual conduct.⁵² In order to begin an inquiry, the commanding officer must receive credible information from a reliable source that a service member has violated the policy.⁵³ Actions that are associa-

tional behavior, such as having gay friends, going to a gay bar, attending gay pride events, and reading gay magazines or books, are never to be considered credible.⁵⁴ In addition, a service member's report to his/her command regarding harassment or assault based on perceived sexuality is never to be considered credible evidence of their sexual orientation.⁵⁵

If a determination is made that credible information exists that a service member has violated the policy, a service member's commanding officer may initiate a "limited inquiry" into the allegation or statement.

That inquiry is limited in two primary ways. First, the command may only investigate the factual circumstances directly relevant to the specific allegation(s).⁵⁶ Second, in statements cases, the command may only question the service member, his/her chain of command, and anyone that the service member suggests.⁵⁷ In most cases of homosexual statements, no investigation is necessary.⁵⁸ Cases involving sexual acts between consenting adults should normally be dealt with administratively, and criminal investigators should not be involved, except in extraordinary circumstances.⁵⁹

The command may not attempt to gather additional information not relevant to the specific act or allegation, and the command may not question anyone outside of those listed above, without approval from the Secretary of that service.⁶⁰ Such an investigation is considered a "substantial investigation."⁶¹ In order to

request authority to conduct a "substantial investigation," the service member's command must be able to clearly articulate an appropriate basis for an investigation.⁶²

As with a "limited inquiry," only a service member's commanding officer has the authority to request permission to conduct a "substantial investigation."⁶³ By definition, a "substantial investigation" is anything that extends beyond questioning the service member, the service member's immediate chain of command, and anyone the service member suggests.⁶⁴

Don't Harass. "The Armed Forces do not tolerate harassment or violence against any service member, for any reason."⁶⁵ There are many regulations and laws that prohibit harassment and can be applied to anti-gay harassment cases. Harassment can take different forms, ranging from a hostile climate rife with anti-gay comments, to direct verbal and physical abuse, to death threats.

"Don't Ask, Don't Tell" is a complex law comprised of statute, regulations and policy memoranda. The above description, however, covers the basic components of the law – and those are fairly simple. Don't ask about sexual orientation. Don't investigate sexual orientation, except in specific circumstances and in limited ways. Don't harass. Don't tolerate harassment based on perceived sexual orientation.

Unfortunately, even after almost ten years, the services continue to violate these basic rules.

HOPES DASHED THAT THE BAN WOULD BE LIFTED: HOW "DON'T ASK, DON'T TELL" BECAME A LAW

The prohibition of gays from military service has been an issue since the regulatory ban began during

World War II. In 1992, the issue came to the forefront of the American consciousness with the national news coverage of the brutal murder of Seaman Allen Schindler, beaten to death by fellow sailors because he was gay.⁶⁶ The murder

and the public response that accompanied it helped bring attention and support to then-candidate Bill Clinton's vow to lift the ban on gays in the military if he were elected President.



"I lost my son Allen to anti-gay hatred at the hands of his fellow sailors. My son's life was ended in the most brutal way imaginable, and the Navy has done nothing to ensure that another mother of a gay sailor in the future won't have to go through this kind of pain."

DOROTHY HOLMAN, MOTHER OF ALLEN SCHINDLER



"As a member of the Military Working Group assigned by the Secretary of Defense to develop a policy to meet President Clinton's intent to lift the ban, I can attest to the unfairness of the process that led to "Don't Ask, Don't Tell." There was no honest discussion about whether gay service members contribute positively or negatively to unit cohesion. Anti-gay stereotypes and a sense that the military should not break with tradition so as to acknowledge the civil rights of gay Americans were key features of the working group's dynamic. My 30 years of military service lead me to believe that gay, lesbian and bisexual members of the Armed Services deserve every opportunity afforded straight service members; sexual orientation is irrelevant to one's ability to serve well in our Armed Forces."

MASTER CHIEF PETTY OFFICER OF THE COAST GUARD VINCENT W. PATTON, USCG (RET.)



After President Clinton's election, there was hope that he would issue an Executive Order allowing gays and lesbians to serve following the example of President Harry Truman who

integrated the military by Executive Order. The political response in opposition to lifting the ban was swift and vicious. In the intense political wrangling that plagued his Administration in early 1993, it became clear that President Clinton's promise of an end to the ban would be blocked by the Joint Chiefs of Staff and conservatives in Congress, including members of the President's own party.⁶⁷

Congress held hearings heavily weighted toward supporters of the ban.⁶⁸ The Pentagon created a working group to examine the issue that

was also biased towards retention of the existing policy.⁶⁹ Ultimately, in July 1993, President Clinton announced that a "compromise" had been reached. This compromise was presented to the public as a "gentleman's agreement" which would respect the sensibilities of heterosexual service members while affording some privacy to gay members of the armed forces. Assurances of a "zone of privacy" with respect to sexual orientation were made, as then-Chair of the Joint Chiefs Colin Powell promised, "We won't witch

hunt. We won't chase. We won't seek to learn orientation."⁷⁰ Military leaders promised that discretion would be all that was required of gay service members, and in exchange, gay service members would not be subject to invasive questioning. As a result, this new policy came to be popularly known as "Don't Ask, Don't Tell."

In November 1993, the new ban on gays in the military became law – a statute passed by Congress. No longer could the ban be lifted by Executive Order, nor was it still possible to work through the regulations to alter the status of gay military personnel.

"Don't Ask, Don't Tell" was different from prior prohibitions on service in three respects. First, Congressional and military leaders acknowledged, for the first time in 1993, that lesbians, gays and bisexuals serve our nation and do so honorably.⁷¹ Second, the policy states sexual orientation is no longer a bar to military service.⁷² Third, President Clinton, Congress and military leaders agreed to end intrusive questions about service members' sexual orientation and to stop the military's infamous investigations to ferret out suspected lesbian, gay and bisexual service members.⁷³ They agreed to take steps to prevent anti-gay harassment.⁷⁴ They agreed to treat lesbian, gay and bisexual service members even-handedly in the criminal justice system, instead of criminally prosecuting them in circumstances where they would not prosecute heterosexual service members.⁷⁵ They agreed to implement the law with due regard for the privacy and associations of service members.⁷⁶

The ink on the new statute had barely dried when the promises underlying it were broken. The "gentleman's agreement" proved illusory when the regulations imple-

menting it were published. Witch hunts and anti-gay harassment were left unchecked by the Pentagon. The promised zone of privacy did not materialize. It quickly became clear that far from a liberalization of the prior regulations, “Don’t Ask, Don’t Tell” was a ban on gay service of the most insidious kind.⁷⁷

No Evidence to Support the Ban: Four reports authored or commissioned by DoD since 1957 have concluded there is no evidence to support a ban on military service by gay people. The Navy’s 1957 Crittenden Report challenged the assumption that gay people in the military posed security risks.⁷⁸ Two reports issued by the Personnel Security Research and Education Center in 1988 and 1989 concluded that there was no empirical evidence to support the ban, finding that gay people performed as well as heterosexuals.⁷⁹ Finally, a 1993 Rand Report commissioned by DoD concluded that allowing gay people to serve openly in the military posed no threat to readiness.⁸⁰ Congress and the public virtually ignored these studies during the debates surrounding the creation of “Don’t Ask, Don’t Tell.”

THE EARLY YEARS OF “DON’T ASK, DON’T TELL:” CONFUSION AND BACKLASH

In the first few years of “Don’t Ask, Don’t Tell,” some believed, mistakenly, that the new policy represented a liberalization of the prior ban on gays in the military. The response from military leaders, however created mass confusion in the ranks.

DoD failed to distribute the new regulations, or train on the policy’s investigative limits.

DoD and the services issued guidance that directly contradicted the promises made when “Don’t Ask, Don’t Tell” became law.

The confusion generated by inaction and missteps created a vacuum quickly filled by anti-gay harassment and improper investigations - manifestations of a severe backlash against service members perceived to be gay, or even gay-friendly. Conservatives within the military transferred their anti-Clinton sentiment and their anger at what they perceived to be a “homosexual agenda” foisted on them by a President with no military credibility, to the easiest targets – their gay coworkers.⁸¹ Where once gay service members flew largely under the radar, there was now nowhere to hide after the political firestorm that surrounded “Don’t Ask, Don’t Tell.”⁸² Anti-gay harassment and witch hunts soared. The human toll mounted as careers were

shattered by an increasing number of illegal investigations and discharges.

CONFUSION

When the Department of Defense issued the regulations implementing “Don’t Ask, Don’t Tell” and the services followed with their directives, the promises made by those who supported the new ban were already broken. The regulations contradicted the very assurances that made “Don’t Ask, Don’t Tell” palatable to those who favored lifting or liberalizing the ban.⁸³ There was no zone of privacy for gay service members, and it was clear that discretion would not save anyone’s career.⁸⁴ Contrary to the promises made, nothing short of celibacy and complete secrecy would be necessary for gay service members to avoid discharge under the new regulations.

For example, in June 1994, the Navy Manpower Analysis Center issued a memorandum suggesting that public displays of support for gay activities by Navy members may be “inconsistent with good military character” contrary to “Don’t Ask, Don’t Tell.”⁸⁵ The Navy issued this memo in response to the discovery that an active duty sailor was a member of a gay choir.

In another memo, the Navy instructed psychologists and other healthcare providers to turn in service members who sought counseling

for issues related to their sexual orientation.⁸⁶ Again, from all indications, Congress had no intent to include within the mandate “Don’t Tell” a prohibition that would prevent members of the armed services from obtaining adequate medical assistance by requiring them to lie to their military healthcare providers. Nonetheless, this guidance served as the basis for a number of discharges.⁸⁷

A November 1994 memorandum from Richard A. Peterson, Air Force Judge Advocate General instructs investigators to question parents, siblings, school counselors, roommates, and close friends of suspected gay service members. The memo also tacitly promotes witch hunts in that it states that commands may take action against service members discovered to be gay during the course of an investigation into another service member.⁸⁸ Nothing in “Don’t Ask, Don’t Tell” or its legislative history even hints at a prohibition on “telling” to parents and family members; the only justification asserted for the “Don’t Tell” component of the law lay in the (unfounded) premise that unit cohesion would be impacted negatively by open gay service. No one ever argued that coming out to one’s parent would impact military readiness.

Then DoD General Counsel Judith Miller buttressed the Air Force memo with one of her own on August 18, 1995, which, among

other things, instructed commanders and inquiry officers to inquire into whether service members making statements of homosexual or bisexual orientation had ever engaged in a sexual relationship with a person of the same sex.⁸⁹ Once again, this instruction contradicted the stated intent of the “Don’t Pursue” component of “Don’t Ask, Don’t Tell.”

DoD General Counsel Miller issued this memorandum in response to a surprising case in which a service member actually prevailed against the odds to remain in the service as an openly gay woman. This was the case of Navy Lieutenant Zoe Dunning. Dunning was a Naval Reserve Lieutenant when she stated publicly that she was a lesbian, and the Naval Reserve initiated discharge proceedings against her.⁹⁰ Dunning fought to remain in the Naval Reserves, arguing that her status as a lesbian could not serve as the basis for her discharge without evidence that she intended to act upon her sexual orientation so as to violate military law.⁹¹ The separation board agreed and retained her. The Miller memorandum prohibited further use of Dunning’s successful “status versus conduct” defense.⁹² Dunning nonetheless continues to serve today, having now reached the rank of Commander.

Commander Dunning and others like her present perhaps the most salient contradiction that marked this early period of the ban - the fact that many gay service members challenging the ban in court served openly during this period with overwhelming support from their colleagues and their commands. A number of service members came out in 1993 as well, when gay discharges were temporarily suspended



served our country in uniform.

Colonel Margarethe Cammermeyer was perhaps the most celebrated case of a lesbian serving openly, with her story forming the basis of a movie with Glenn Close, *Serving in Silence*. The Army National Guard initiated Colonel Cammermeyer’s discharge after learning that she is a lesbian during a security clearance investigation.⁹⁴ Cammermeyer, a Vietnam veteran, successfully challenged her discharge, and received overwhelming support from her military colleagues.⁹⁵ She served as an open lesbian for four and one-half years. She was not alone.

Petty Officer Mark Phillips’ coworkers presented him with a chocolate cake on the anniversary of his coming out to his unit, and Captain Rich Richenberg’s colleagues surprised him with a birthday party during his legal battle to stay in the military.⁹⁶ Sergeant Justin Elzie served as an openly gay Marine for many years before he left the military.⁹⁷

Petty Officer Keith Meinhold, rated as one of the Navy’s top airborne sonar analysts, served openly even before he became a plaintiff in litigation challenging the ban.⁹⁸ His unit was named the most combat-ready in the Pacific Fleet, and Meinhold’s coworkers supported him throughout his battle to stay in the Navy.⁹⁹ One of Meinhold’s coworkers, who admitted to being “the bigot from

while the new policy was being ironed out.⁹³ The Pentagon has never once suggested that military effectiveness decreased while these openly lesbian, gay and bisexual Americans

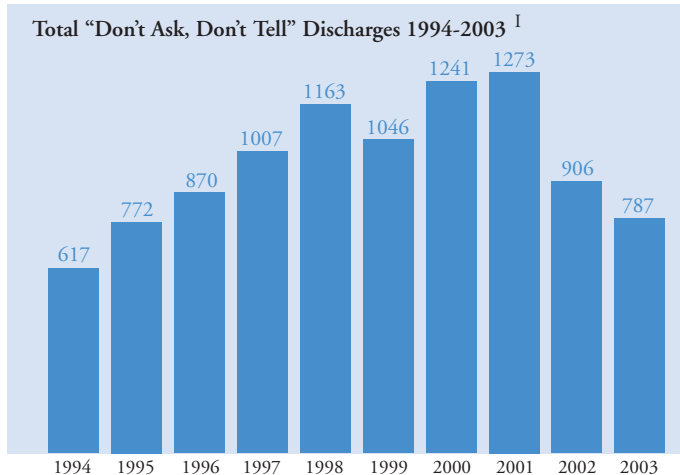
hell” prior to working with Meinhold, said Meinhold “totally changed” his attitude toward gays in the military.¹⁰⁰

For members of the Armed Forces trying to make sense of the new ban during these early years, the juxtaposition of these successful openly gay service members against the regulations mandating discharge of any person found to be gay – regardless of his or her accomplishments or value to the unit – was perplexing.

The silver lining in these early years should have been the limits on administrative and criminal investigations included among the initial guidance from DoD and the services. The prohibition of the use of criminal investigators in almost all inquiries into alleged homosexual conduct was a significant improvement over prior regulations. And even though “Don’t Ask, Don’t Tell” is and will always be a ban on gays in the military, the limits on administrative investigations, if observed, would have provided some minimal protections for gay service members. DoD and the services, however, failed to disseminate this guidance to commanders in the field.¹⁰¹ The vacuum created by the lack of guidance was quickly filled with misinformation, leading to severe violations of service members’ privacy in contravention of the new regulations. Accountability for such violations was virtually non-existent, providing no real incentive for commanders to learn the new regulations and observe them.¹⁰²

BACKLASH

The confusion created by the new regulations themselves, the vacuum created by the poor dissemination of the regulations, and the additional guidance that undercut the initial promises of the policy, set the stage



for anti-gay forces within the military to engage in substantial backlash against service members perceived to be gay or even gay friendly. Gay discharges soared during the first years of the policy, and witch hunts and anti-gay harassment skyrocketed.

SLDN documented a startling number of witch hunts in its first three annual reports on "Don't Ask, Don't Tell." One of the most outrageous occurred in Okinawa in 1994, when twenty-one service members were questioned about their sexual orientation and the sexual orientation of other service members in a massive sweep of suspected gay personnel.¹⁰³

Another egregious situation occurred in the same year in South Korea, where a young female enlisted soldier was threatened with criminal charges for allegedly being a lesbian, after she reported a sexual assault committed by male soldiers and they initiated rumors about her sexual orientation in retaliation.¹⁰⁴

On the *USS Simon Lake*, ported in Sardinia in 1995, over sixty women were questioned about their sexual orientation.¹⁰⁵ General Powell's promises in 1993 of "Don't Pursue" notwithstanding, witch hunts and illegal pursuits were rampant during the first three to four years of "Don't Ask, Don't Tell."

routinely investigated themselves or found their complaints ignored.

The case of Airman Sean Fucci illustrates how military leadership has consistently failed to stop harassment.¹⁰⁸ Fucci reported a note reading, "DIE FAG" left in his room. His commanders offered him no protection, and failed to investigate the source of the threat.¹⁰⁹ Instead, his supervisor questioned him about his sexual orientation, forcing Fucci to move off-base at his own expense for his personal safety.¹¹⁰

Even the tragic death of Seaman Allen Schindler at the hands of fellow sailors was not enough to make the leadership of the *USS Belleau Woods* take anti-gay violence seriously. In 1996, a young sailor on the same ship from which Schindler and his murderers hailed was told by his Chief Master at

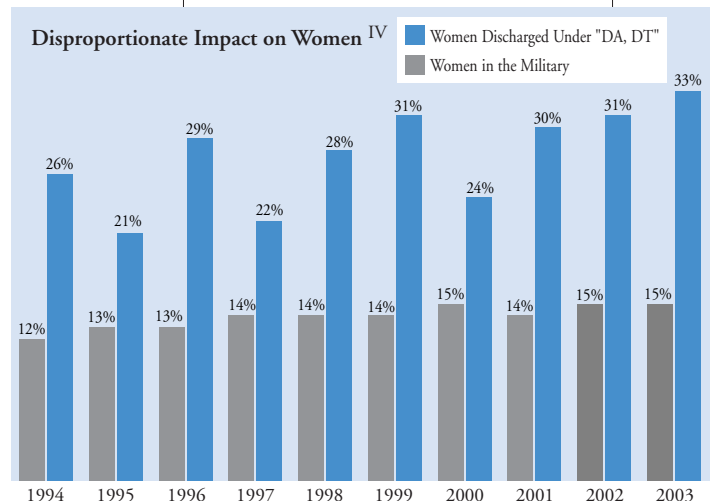
Women are disproportionately impacted by the ban, making up 30% of all gay discharges despite comprising only 14% of the force.

In addition to the witch hunts, anti-gay harassment skyrocketed during the first years of "Don't Ask, Don't Tell," and remains a significant problem today.¹⁰⁶ In 1995, SLDN documented ten death threats in just one year under the ban.¹⁰⁷ When service members reported death threats, they were

Arms that he would be killed in the same way Schindler was if he exercised his right to a discharge board to fight allegations of gay conduct.¹¹¹ Assured that his leaders would not protect him and fearful for his safety the sailor accepted the discharge.¹¹²

Not all harassment was this extreme. But the day-to-day experience for gay service members during this period, and throughout the history of "Don't Ask, Don't Tell," has been characterized by persistent anti-gay comments, jokes, cadences, and epithets - on the parts of both officers and non-commissioned officers (NCOs), as well as junior enlisted personnel. Hostile command climates for gay service members have been the rule, rather than the exception. After putting up with anti-gay language and veiled threats of physical and professional harm for long periods of time, some service members found it necessary to make coming out statements as a matter of principle or personal safety. One such case was that of Air Force Major Robert Kittyle, in which an inquiry officer concluded, "It appears Major Kittyle made this announcement after he could not tolerate derogatory comments concerning homosexuals."¹¹³

A form of harassment known as "lesbian-baiting" was prevalent during



this period and made life very difficult for many women in the service.¹¹⁴ Top female performers, as well as women who rebuffed the sexual

advances of male colleagues and superiors, were regularly targeted by rumors of lesbian conduct.¹¹⁵ This may be one of the reasons behind the

fact that women are discharged at a rate twice their presence in the services under “Don’t, Ask, Don’t Tell.”

REALITY SINKS IN:

“DON’T ASK, DON’T TELL” IS A BAN

In 1998, SLDN continued to document inadequate dissemination of the regulations implementing “Don’t Ask, Don’t Tell.” Commanders and military lawyers received conflicting guidance when they received any guidance at all. Service members and commands were still confused about the new rules. Nevertheless, by the mid 1990’s, norms emerged – some good, some not.

Criminal investigations became less common, witch hunts decreased, and inappropriate command-directed asking and pursuits also generally decreased.

Conversely, gay discharges increased exponentially. Reports of anti-gay harassment skyrocketed. Attempts to preserve the promised zone of privacy completely failed. The last of the constitutional challenges to “Don’t Ask, Don’t Tell” also failed, extinguishing the hope some held that the courts would lift the ban.¹¹⁶

THE RULES OF “DON’T ASK, DON’T TELL” BECOME CLEARER

While the regulations implementing “Don’t Ask, Don’t Tell” were promulgated in 1994,¹¹⁷ it took years before they began to filter down to the unit level.¹¹⁸ Even where the new regulations were available, old habits died hard, and reversion to the tactics allowable under the prior ban, but not under “Don’t Ask, Don’t Tell,” was common.¹¹⁹

In 1998, DoD released its only review of the implementation of

“Don’t Ask, Don’t Tell.” While the report white-washed many of the problems in the first years of the implementation of “Don’t Ask, Don’t Tell,” it acknowledged the improper investigations reported by SLDN, and recommended that those responsible for implementing the policy be given better training to ensure compliance with the regulations.¹²⁰ The review also contained recommendations that DoD stress the need for “consultation with higher headquarters” prior to the initiation of substantial investigations.¹²¹ Finally, the report recommended the reissuance of existing guidance on anti-gay harassment.¹²²

Certain aspects of the new rules, however, began to be generally observed. The new security clearance rules were one example.¹²³ The new regulations, followed by an Executive Order, prohibited the use of information about a service member’s sexual orientation garnered during the security clearance process as a basis for investigation and discharge.¹²⁴

Criminal investigations also became less common, as word got out – even where the regulations did not – that the regulations prohibited the use of criminal investigators in administrative investigations under “Don’t Ask, Don’t Tell.”¹²⁵ In the early 1990’s, SLDN documented more than a dozen cases of criminal prosecution for consensual same-sex conduct. Over time, reports of criminal investigations diminished. In 1997, SLDN reported that it did not receive a single report of a gay service member undergoing court martial for consensual same-sex sexual conduct during the entire year.¹²⁶

There were exceptions to this trend, like the 1995 case of Air Force Debra Meeks. The Air Force held Major Meeks beyond her retirement date and subjected her to court-martial for allegedly engaging in sexual conduct with another female.¹²⁷ At stake were Meek’s liberty and her twenty year retirement pension. The court-martial acquitted her.

Witch hunts were not entirely a thing of the past by the mid-to-late 1990’s. A plea arrangement used in a 1996 sexual assault case at Hickam Air Force Base in Hawaii provided a lesser sentence for the accused in exchange for his promise to give the names of all men with whom he had had consensual sex.¹²⁸ The defendant offered 17 names of men in all branches of the military but the Coast Guard, and every one was discharged.¹²⁹

Over time, command-directed asking and pursuing decreased. The regulations were still inadequately disseminated. SLDN reported in 1997 that it was still receiving regular requests for copies of the regulations from commanders and JAG officers. The norm, however, was beginning to change.

There were exceptions to the general trend away from improper administrative investigations.¹³⁰ One of the more flagrant of these was the March 1999 witch hunt at the Defense Language Institute in Monterey, California, in which 14 airmen, primarily women were discharged.¹³¹

Another example of unlawful pursuit was the highly publicized case of Senior Petty Officer Timothy

McVeigh, outed to his command when AOL disclosed his personal information – including the use of the word “gay” in his user profile – to a Navy investigator.¹³² A federal judge found the Navy acted improperly in McVeigh’s case.¹³³

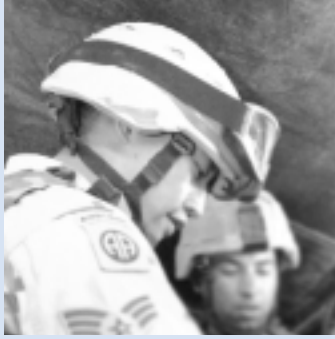
Perhaps the most heart-wrenching example of an inappropriate administrative investigation was the case of Air Force Captain Monica Hill, subjected to invasive and demeaning questions about her sexual life after requesting a deferment of her active duty report date to care for her terminally ill partner.¹³⁴ Upon receiving the deferment request, the Air Force immediately suspended Hill’s orders in order to investigate her.¹³⁵ Hill’s partner died several months later, and the Air Force discharged Hill several months after that.¹³⁶

Complaints of inappropriate investigations by service members rarely resulted in the investigations being stopped, and often resulted in retaliation. Such was the case of Nikki Galvan, a West Point cadet who stood up for what she believed were her rights under “Don’t Ask, Don’t Tell,” when she reported a Lieutenant Colonel for inappropriately questioning her about her sexual orientation and sexual activities.¹³⁷ In response to her complaint, Galvan’s diaries and three years worth of emails were seized, and information contained in them led to her discharge.¹³⁸

While improper command-directed asking decreased, peer asking increased as a new generation of Americans entered the service.

MURDER AND HARASSMENT

The tragic 1999 murder of Private First Class (PFC) Barry Winchell for his perceived sexual orientation exposed on the national stage the



“Don’t Ask, Don’t Tell” Hits Young People Hardest. Personnel under 25 years of age are targeted at much higher rates for investigation and discharge under the ban than their percentage of the force would suggest.

Source: Department of Defense

These young Americans were unfamiliar with the “closet” as a cultural phenomenon, having grown up watching *Will and Grace*, and having much greater access to openly gay people than had prior generations.¹³⁹ Many of them thought nothing of asking questions about the sexual orientation of their peers, sometimes causing trouble for gay service members struggling to keep their sexual orientation secret.

HARASSMENT CONTINUES TO INCREASE

Throughout the mid-to-late 1990’s, harassment continued to increase, as did the targeting of service members who reported harassment for administrative investigation. In 1997, Assistant Secretary of Defense Edwin Dorn issued a memorandum emphasizing that reports of anti-gay harass-

military’s tolerance of anti-gay violence and harassment. It represented a defining moment in the history of “Don’t Ask, Don’t Tell.” No longer could one ever view “Don’t Ask, Don’t Tell” as a benign policy.

ment or threats do not constitute a basis for investigation.¹⁴⁰ In 1997, however, SLDN reported that not one of the many commanders and JAG officers with whom SLDN worked had ever heard of, much less seen a copy of, the Dorn memo.¹⁴¹

Lieutenant Edward Galloway’s experience of constant anti-gay harassment and inappropriate questioning from peers and subordinates on the *USS Vandergrift* was typical.¹⁴² When the anti-gay climate aboard his ship proved too humiliating to bear, he came out to his commander in the hopes that he would put a stop to the harassment and ensure his own safety.¹⁴³ Far from protecting Galloway, the commander allowed the anti-gay climate to persist unchecked and offered Galloway no protection, despite acknowledging that a large percentage of the ship’s crew harbored anti-gay sentiments.¹⁴⁴

In another particularly egregious example of anti-gay harassment in the Navy, graffiti aimed at a gay sailor reading “You’re a dead faggot” was left on the sailor’s bunk for more than two weeks.¹⁴⁵

Over time it became clear to service members, commands and the public that “Don’t Ask, Don’t Tell” is indeed a ban on gays in the military. Over time, the rules of this new ban began to filter down from the Pentagon to commands. The new ban kept lesbian, gay and bisexual service members second class citizens in the military. The forced silence of gay service members and failure to address the barrage of harassment and violence set the stage for tragedy.

On July 5, 1999, PFC Barry Winchell was beaten to death with a baseball bat in his sleep by fellow soldiers who believed he was gay.¹⁴⁶ At the trial of his murderers, soldiers testified that Winchell endured four



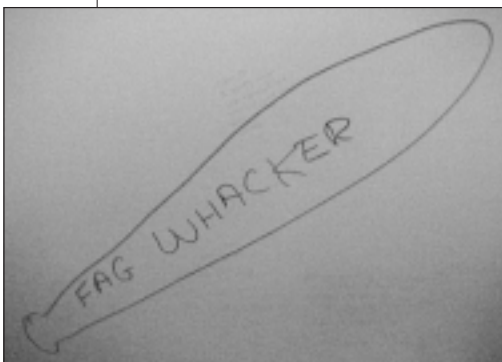
months of daily anti-gay taunts and harassing comments from the two killers and others prior to his death.¹⁴⁷ Winchell had tried to report the harassment to the Fort Campbell Inspector

General, but was turned away. Winchell's chain of command was aware of the harassment and did little. Some members of Winchell's chain of command even participated in the harassment.

"Faggot, faggot down the street. Shot him, shot him 'til he retreats."

– Cadence reported at Fort Campbell in the weeks following Private First Class Winchell's murder.

At Fort Campbell, soldiers continued to report anti-gay graffiti and anti-gay cadences in the weeks and months after Winchell's death.¹⁴⁸ Gay discharges at Fort Campbell skyrocketed after the murder. In FY1999, Fort Campbell's gay discharges represented 3.6% of the Army total. By FY2000, they represented almost 28% of the Army total.¹⁴⁹ Winchell's murder, and the Army's inadequate response to it, was a clear sign to gay soldiers that their lives would not be protected in the face of anti-gay violence.



Many consequently came to view assignment to Fort Campbell as a death sentence. Gay soldiers fled the installation in droves, often making statements of homosexual orientation purely as a means of self-preservation.

Fort Campbell was not the only place in the military where anti-gay rhetoric was pervasive. Rather, it was the most extreme example of a systemic problem across the services.

Just three months following the Winchell murder, a Marine Lieutenant Colonel at Twenty-Nine Palms sent an email to his subordinates mocking the Winchell murder and deriding the premise that commanders should take responsibility for the safety of their gay Marines, or "backside rangers," as he called them.¹⁵⁰

In early 2000, a senior non-commissioned officer on the USS Carl Vinson told a sailor rumored to be gay, "I'm not the one you want to tell that you are gay; I will discharge you from the Navy and send you home in a box."¹⁵¹ SLDN reported scores of similar statements by leaders and junior enlisted personnel across the services in 1999 and 2000.

"There is not, nor has there ever been a climate of homophobia at Fort Campbell."

– LTG Robert Clark.¹⁵²

"Department policy concerning harassment is based on the fact that treatment of all individuals with dignity and respect is essential to good order and discipline. Mistreatment, harassment, and inappropriate comments or gestures undermine this principle and have no place in our armed forces."

– Dr. David S.C. Chu, Under Secretary of Defense¹⁵³



"We never intended to become activists, but the murder of our son and the Army's indifference to the anti-gay climate that led to it left us no other choice. The command climate at Fort Campbell set the conditions for our son's death. After his death, the command, including the commanding general Robert T. Clark, failed to take any action to correct the anti-gay climate on the base. No one in command at the time of our son's murder was ever held accountable for the leadership failures that cost us our son. We will continue to fight for an end to the ban, in the hopes that no other parents will ever have to endure the loss of a child to anti-gay violence in the military again."

– Pat and Wally Kutteles, parents of Private First Class Barry Winchell

RESPONSE FROM DoD AND THE SERVICES

The Pentagon took its first look at anti-gay harassment in 1998, and discovered confusion in the ranks about how to respond to such harassment.¹⁵⁴ Ironically, little more than a month after Winchell's murder, Under Secretary of Defense Rudy de Leon issued a memorandum reiterating DoD policy to investigate threats of harassment, in response to deficiencies discovered during the 1998 review.¹⁵⁵ This reaction was unfortunately too little, too late.

In response to the Winchell murder, the DoD Inspector General administered a survey to assess the command climate across the services and determine whether anti-gay harassment was truly a problem.¹⁵⁶ The results of the survey, reported in March 2000, indicated that anti-gay harassment was a substantial problem. 80% of service members reported having heard derogatory anti-gay remarks in the preceding year. 37% indicated that they witnessed or experienced targeted incidents of anti-gay harassment – of those, 14% reported anti-gay threats or anti-gay physical assaults.¹⁵⁷ The DoD could no longer claim that anti-gay harassment was an isolated occurrence.

The DoD formed a working group to address the now demonstrated wide-spread problem of anti-gay

harassment. The working group proposed a thirteen point Anti-Harassment Action Plan (AHAP) and on July 21, 2000 Under Secretary of Defense Bernard Rostker instructed the services to implement the plan.

The AHAP contained four primary mandates designed to curb anti-gay harassment: (1) training to prevent harassment; (2) appropriate and effective reporting mechanisms for complaints of anti-gay harassment; (3) enforcement of the prohibition on harassment and accountability for those who violate it; and (4) measurement of AHAP implementation and the plan's effectiveness. Unfortunately, the requirements of AHAP have gone largely unfulfilled to date and anti-gay harassment continues to be a significant problem

across the services.

In addition to issuing AHAP, the Administration had one final response to the epidemic of anti-gay harassment. Then President Clinton issued Executive Order 13140 providing for sentence enhancement under the Uniform Code of Military Justice for hate crimes.¹⁵⁸

Anti-gay harassment left unchecked contributed to the tragic murder of PFC Barry Winchell. In response to this tragedy, the military finally began to acknowledge anti-gay harassment is a problem and has taken some steps to address it. The failure to adequately address anti-gay harassment, however, has allowed anti-gay harassment to continue in the ranks and leaves open the possibility of yet another tragedy.

OPPOSITION TO THE BAN GROWS

Over the years, evidence that “Don’t Ask, Don’t Tell” has failed service members and America has grown. After ten years, “Don’t Ask, Don’t Tell” has led to the discharge of nearly 10,000 service members and the loss of countless others who have chosen to leave the military earlier in their careers rather than serve in silence. The price to the American taxpayer is estimated between one quarter of a billion to over \$1.2 billion.¹⁵⁹ The lost time, resources and personnel caused by the law represent an immeasurable disservice to military readiness and American security.

The September 11th, 2001 terrorist attacks and the military actions that followed have brought the failure of “Don’t Ask, Don’t Tell” into stark relief. When the U.S. went to war in Afghanistan, gay discharges decreased 29%, a fact that is unsurprising given the historical trend toward fewer gay discharges in times of war.¹⁶⁰

In FY2003, during which time the U.S. embarked on a second effort, Operation Iraqi Freedom, discharges dropped another 13%. The irony of gay service members being allowed to serve during the times when unit cohesion is of the utmost importance has not been lost on many Americans.



Studies of the experiences of our allies in the United Kingdom, Australia, Canada and Israel have all concluded that lifting the ban was a non-event. Military service by openly gay personnel in these countries and others has resulted in no detriment to morale, unit cohesion, or readiness.¹⁶²

American troops have been serving side by side with openly gay members of allied forces, including the United Kingdom, Canada and Australia. Thirteen coalition partners in Operation Enduring Freedom allow lesbians, gays and bisexuals to serve openly, as do eleven coalition members fighting in Operation Iraqi Freedom. Service members have been working side by side in the war on terrorism with CIA, NSA, and FBI agents – all of whom cannot only be openly gay, but are protected from discrimination on the basis of their sexual orientation.¹⁶¹

Even inside the military, a change in attitude toward gay service members is evident. Gay troops are more openly valued than ever before.

In 2001, the Army dropped its discharge proceedings against openly gay Lieutenant Steve May, an officer skilled in bio-terrorism.¹⁶³

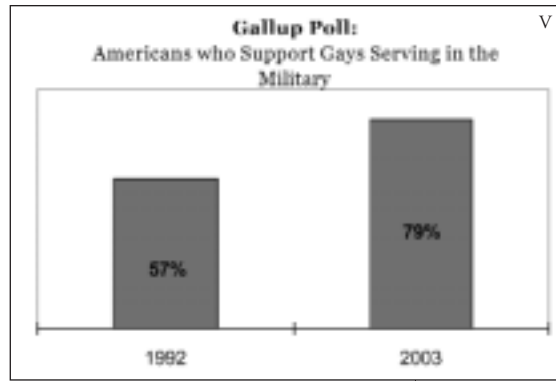
An April 2002 Marine Corps memorandum at Twenty-Nine Palms stat-

ed, "Homosexuals can and do make some of the best Marines."¹⁶⁴ Letters to the editor in the *Military Times* publications are increasingly supportive of gay Americans serving openly. A January 2004 *Military Times* poll shows an increase in acceptance of gays in the military among its subscribers, who tend to be senior military personnel and careerists.¹⁶⁵ Gay service members are becoming less willing to stay in the closet as a condition of service.

High-ranking retired officers and senior NCOs are increasingly speaking out on the issue. In October 2003, retired Admiral John Hutson, formerly the Navy's top military lawyer, wrote an article condemning the ban and calling for repeal.¹⁶⁶ Democratic presidential nomination candidate General Wesley Clark spoke out repeatedly against the ban during his campaign, arguing that the policy is unworkable and calling for a new law under which all Americans may serve regardless of sexual orientation.¹⁶⁷

In November 2003, three retired flag officers denounced "Don't Ask Don't Tell" and came out in a *New York Times* article, becoming the highest ranking gay military personnel ever to come out publicly.¹⁶⁸ In December 2003, fifteen retired senior military leaders signed an open letter calling for an end to the ban.¹⁶⁹

The public's attitude has changed as well. A December 2003 *Gallup Poll* reported that 79% of Americans



believe that openly gay people should serve in the U.S. military¹⁷⁰ – a dramatic change from 1992 when only 57% of Americans believed homosexuals should be hired for the armed forces.¹⁷¹ Even the politically conservative *Fox News Network's* polling in August 2003 indicated that 64% of the public supports allowing gay people to serve in the military.¹⁷²

The political landscape and discourse is shifting as well. From the halls of Congress to the editorial pages there was outrage at the discharge of thirty-seven linguists from the Defense Language Institute. The senselessness of losing Arabic linguists during a time of war for something as irrelevant as their sexual orientation was clear - particularly when there is a severe shortage of qualified linguists.¹⁷³ By the end of 2003, nearly every major newspaper in the country, including the *New York Times*, the *Washington Post*, *USA Today*, and the *Chicago Tribune* had issued editorials calling for an end to the ban.¹⁷⁴

Members of Congress are speaking out against the ban. Sen. Mark Dayton (D-MN) made a lengthy speech on the floor of the Senate during the consideration of Major General Clark for promotion in which he called for an end to the ban.¹⁷⁵ In the same debate, Sen.

Jeff Sessions (R-AL), one of the most conservative voices in the Senate acknowledged gay service members have a right to be treated fairly.¹⁷⁶ Such a statement from as conservative a voice as Sen. Sessions' would have been unthinkable ten years ago.

In the presidential campaigns of 2000 and 2004, the shift in thinking on this issue is apparent. President Bush announced his support of "Don't Ask, Don't Tell"¹⁷⁷ in contradiction to the GOP platform which still states that "homosexuality is incompatible with military service."¹⁷⁸ Every contender for the Democratic nomination from the 2000 election forward has supported gay military service, including Vietnam veteran Sen. John Kerry and retired General Wesley Clark. And former President Clinton issued a letter in October 2003 acknowledging for the first time that there is no evidence to support the ban, marking a major retreat from his initial statements that the policy was a "step forward."¹⁷⁹

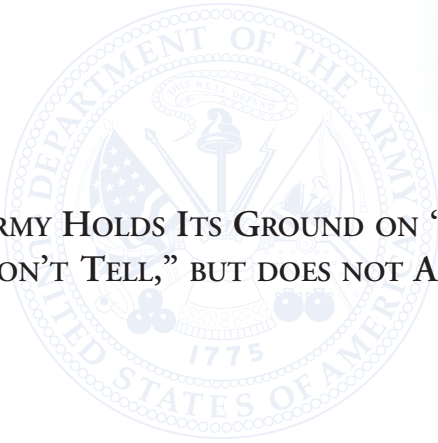
CONCLUSION: “DON’T ASK, DON’T TELL” WAS BAD LAW WHEN IT WAS PASSED, AND IT IS BAD LAW TODAY

“Don’t Ask, Don’t Tell” has proven itself over the course of the last ten years to be an unworkable policy in which nobody wins. “Don’t Ask, Don’t Tell” provides no greater privacy for gay service members than its predecessor regulatory bans. The rules that implement the law are convoluted and strained. The wasted lives and resources behind the statistics of “Don’t Ask, Don’t Tell” are becoming less tolerable to Americans in a wartime environment and a cultural environment in which the clos-

et has become, in many segments of American society, a thing of the past. A sea change has resulted with respect to public support for the ban, stemming from a growing recognition that a policy which deprives the nation of skilled military service members has no place in our federal law. “Don’t Ask, Don’t Tell” will undoubtedly take its place in the history books as a failed policy experiment that did a great disservice to thousands of Americans discharged under the law, and to the country deprived of their service.

The future of the law is uncertain. The Supreme Court’s decision in

*Lawrence v. Texas*¹⁸⁰ acknowledging a constitutional right to engage in intimate sexual relationships may provide a new basis for a constitutional challenge to “Don’t Ask, Don’t Tell.” The Court’s pronouncement in that case has already led to challenges to the constitutional validity of the Uniform Code of Military Justice sodomy provision, Article 125, a provision often used to support the argument that gays should not serve.¹⁸¹ The political landscape is shifting towards repeal. The time for change is upon us, and the only question remaining is when – not whether – the ban will cease to be the law of the land.

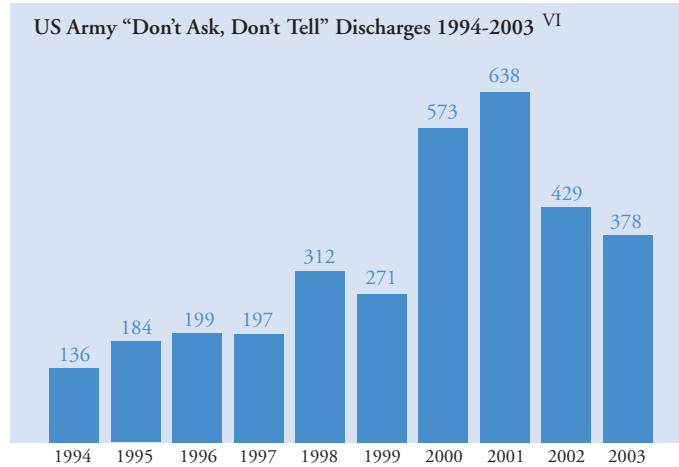


ARMY HOLDS ITS GROUND ON “DON’T ASK, DON’T TELL,” BUT DOES NOT ADVANCE

“... [E]ven as some gay men and lesbians are being tolerated temporarily while they help liberate Iraq, others are being kicked out of military language training. This is an enormous waste of human resources, at once self-destructive and unjust. The military cannot afford to brand as unfit for service qualified men and women who wish to put their talents — whether those lie in combat roles or languages — in the service of their country.”

Washington Post Editorial¹⁸²

In FY2003, Army discharges under “Don’t Ask, Don’t Tell” continued the downward trend that began with the start of the war on terrorism in the Middle East and Afghanistan, dropping to 378.¹⁸³



This represents a 23% decrease from FY2002, and a remarkable 42% decrease from FY2001. As SLDN speculated in the Ninth Annual Report, this continued decrease in gay discharges is likely due to a combination of factors, including the war in Iraq, continued military operations in Afghanistan, and a growing recognition by commanders that sexual ori-

entation is irrelevant to unit cohesion and mission readiness.

The Army’s implementation of the Anti-Harassment Action Plan (AHAP) stagnated in 2003, with the exception of one improvement in anti-gay harassment training, and little progress was achieved in other areas of the policy.

AHAP IMPLEMENTATION: ARMY TAKES ONE STEP FORWARD

The Army made some progress in 2003 with the implementation of AHAP. The Army continues to lead the other services in AHAP implementation, though the bar remains low given

that the other services have virtually ignored AHAP for the last three years. AHAP training and reporting continue to be problematic, and accountability for and measurement of anti-gay harassment in the Army continue to be inadequate.

“Harassment of soldiers for any reason, to include race, religion, national origin, sex, and perceived sexual orientation, will not be tolerated.”

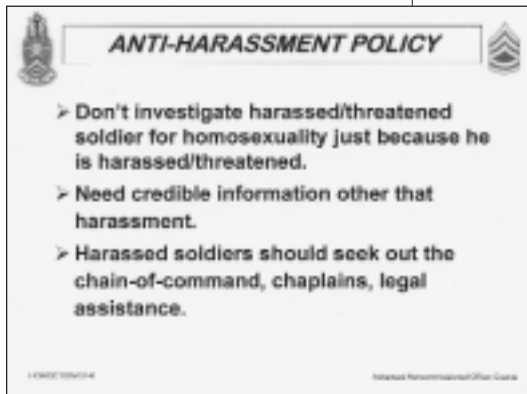
AR 350-1 paragraph 1-7(c)(1)¹⁸⁴

“As a noncommissioned officer your duty is to take care of soldiers. If other soldiers perceive a soldier to be homosexual, and they are threatening or harassing him, your duty is to correct the problem.... If you violate the trust of any soldier, you violate the trust of all.”

U.S. Army Sergeants Major Academy (ANCOC) L434 October 2003, The Army Homosexual Policy [sic], Training Support Package, page 13.¹⁸⁵

The Army made modest improvements in anti-gay harassment training in 2003. The good news is that in October 2003 new training materials were issued by the Sergeants Major Academy, which promises better anti-harassment training for the Army’s senior non-commissioned officers (NCOs). The bad news is that the April 2003 revision of Army Regulation 350-1 failed to include a mandate for annual AHAP training as directed by DoD.

The new training issued by the Sergeants Major Academy in October, 2003 for use in the Advanced Non-commissioned Officers Course (ANCOC) is a positive development.¹⁸⁶ This hour-long training emphasizes NCOs’ responsibilities to care for soldiers – including those perceived to be gay – and the tone of the training materials is respectful and professional. Using



ANTI-HARASSMENT POLICY

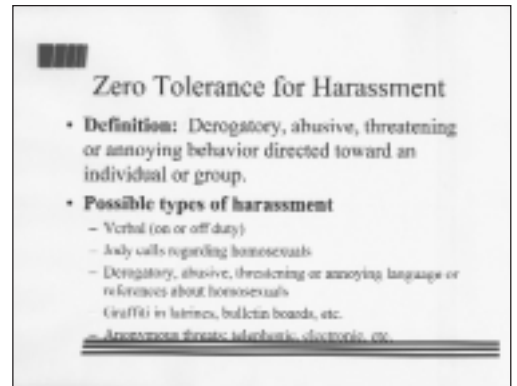
- Don't investigate harassed/threatened soldier for homosexuality just because he is harassed/threatened.
- Need credible information other than harassment.
- Harassed soldiers should seek out the chain-of-command, chaplains, legal assistance.

practical exercises, NCOs are coached through situations in which they are faced with rumors regarding the sexual orientation of a soldier, statements of homosexual orientation, lesbian-baiting, and anti-gay vandalism. Throughout the training packet, the emphasis is on the limits to appropriate investigations, and on ensuring that soldiers reporting harassment are not targeted for investigation.

SLDN welcomes this step forward, having long argued that training of NCOs is key to ensuring that the message that anti-gay harassment will not be tolerated is communicated to the field. SLDN encourages the Army to ensure through monitoring and evaluation mechanisms that these trainings are given in the respectful tone in which they are intended by the Sergeants Major Academy.

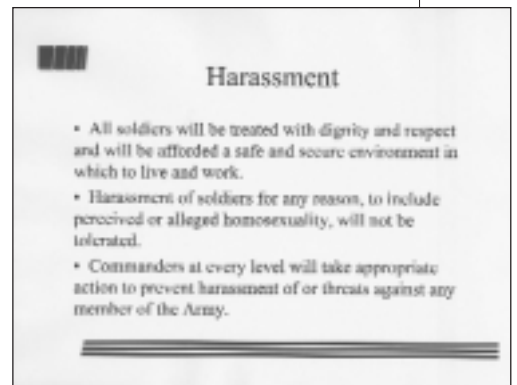
A major disappointment in 2003 was the failure of the Army to include any reference to AHAP training in its April revision of AR 350-1, the Army Training regulation. The regulation has still not been updated to reflect mandatory annual training on AHAP – more than three years after the issuance of the Chief of Staff’s directive requiring the update.¹⁸⁷ Annual training on the Homosexual Conduct Policy (HCP) is mandated by the regulation, as is annual training on sexual harassment and fraternization policies. The regulation, however, continues to omit a requirement for annual training to prevent anti-gay harassment as required by DoD.

Despite the failure to direct annual training on AHAP, training materials on the HCP are available online¹⁸⁸ and include four slides devoted to



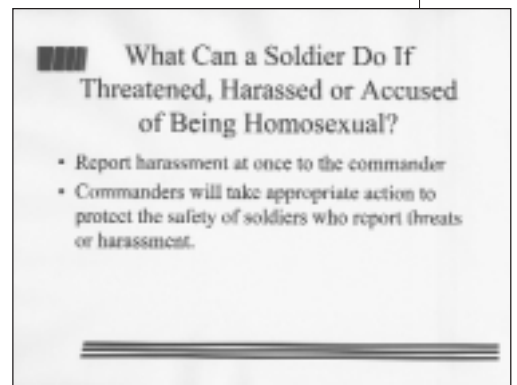
Zero Tolerance for Harassment

- **Definition:** Derogatory, abusive, threatening or annoying behavior directed toward an individual or group.
- **Possible types of harassment**
 - Verbal (on or off duty)
 - Jody calls regarding homosexuals
 - Derogatory, abusive, threatening or annoying language or references about homosexuals
 - Graffiti in hallways, bulletin boards, etc.
 - Anonymous faxes, telebank, electronic, etc.



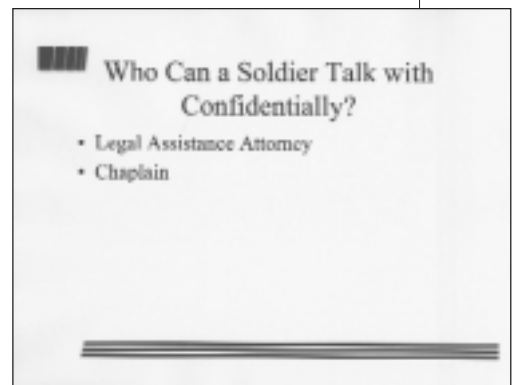
Harassment

- All soldiers will be treated with dignity and respect and will be afforded a safe and secure environment in which to live and work.
- Harassment of soldiers for any reason, to include perceived or alleged homosexuality, will not be tolerated.
- Commanders at every level will take appropriate action to prevent harassment of or threats against any member of the Army.



What Can a Soldier Do If Threatened, Harassed or Accused of Being Homosexual?

- Report harassment at once to the commander
- Commanders will take appropriate action to protect the safety of soldiers who report threats or harassment.



Who Can a Soldier Talk with Confidentially?

- Legal Assistance Attorney
- Chaplain

anti-gay harassment. These slides explain the prohibition on anti-gay harassment, define what constitutes

anti-gay harassment, and identify reporting channels.¹⁸⁹

Commanders can use these slides as a basis for annual training on the AHAP within the larger training on the HCP, even though they lack the dedicated AHAP training materials mandated by DoD. Unfortunately, most commands with whom SLDN has had contact are not using these training materials with any consistency, and most SLDN clients continue to report never having received any training on “Don’t Ask, Don’t Tell,” or anti-gay harassment, in basic training or in their units.

ARMY REPORTING, ENFORCEMENT, MEASUREMENT MECHANISMS FOR ANTI-GAY HARASSMENT: MARKING TIME

Reporting mechanisms for anti-gay harassment continue to be problematic in the Army. The new NCO training and the Army-wide training materials contain information designed to ensure that leaders under-

stand that reports of anti-gay harassment should not be used as a basis for an investigation into whether the soldier suffering the harassment actually is gay. Both trainings also include information about confidential reporting channels. However, neither message is being effectively communicated to the field, as soldiers continue to express confusion about to whom they can confidentially report harassment, and commanders continue to inappropriately target soldiers reporting harassment for investigation. According to the Army Inspector General (IG), 70% of soldiers are unaware of the designation of defense attorneys and chaplains as confidential resources.¹⁹⁰

The Army has made little progress in implementing the accountability prong of AHAP. SLDN knows of no case in which a soldier committing anti-gay harassment was held accountable for his or her actions. In case after case, SLDN has provided the Army with specific, detailed accounts of anti-gay misconduct, asking that those responsible be held

accountable. Yet, time and again, the Army’s response is to accept the excuses of those accused of the misconduct.

The Army is also not measuring the effectiveness of its AHAP training program. The Army IG recently conducted a “special interest item” review of “Don’t Ask, Don’t Tell” training. The review, however, did not attempt to measure whether the training is actually making a difference. For example, the IG used a brief survey for soldiers that asked, “what can a soldier do if threatened, harassed or accused of being homosexual?” The survey does not, however, ask any questions about the occurrence of harassment. Asking these types of questions is clearly important, given the contrast between the Army IG survey and the DoD IG survey conducted in 2000, which revealed significant statistics on the reality of anti-gay harassment within the services. Measuring the effectiveness of the anti-gay harassment measures is key to the implementation of AHAP and ensuring the safety of soldiers.

ANTI-GAY DEATH THREAT ENDS CAREER: AHAP FAILURES CONTINUE DISSERVICE TO SOLDIERS AND TO THE ARMY

“The team leader said to me, ‘If I ever found out someone on my crew was gay, I would kill him.’”

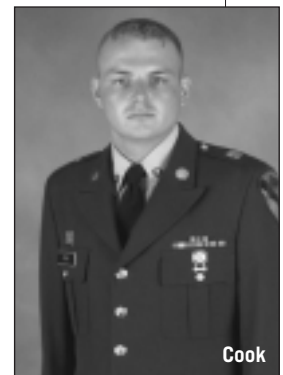
Specialist Tommy Cook¹⁹¹

Specialist (SPC) Tommy Cook loved the Army and loved being a soldier. The battalion representative to the Better Opportunities for Single Soldiers (BOSS) program, Cook knew everyone in his battalion and was well-liked. Cook’s positive relationships did not help him, however, when he came out in response to an anti-gay death threat. An NCO in Cook’s company informed Cook, “If I ever found out someone on my

crew was gay, I would kill him.” Daunted by this threat but unwilling and afraid to report it, Cook chose to come out to his command and face the discharge proceedings he knew would follow.

In response to his statement, Cook’s battalion commander accused him of making his statement to avoid deployment, and threatened him with a general discharge. When Cook reminded his battalion commander that he made his statement in response to a death threat, the battalion commander was unmoved and forwarded a recommendation for a general discharge to brigade headquarters. With the help of SLDN and his Army trial defense attorney, however, Cook was honorably discharged in January of 2004.

If anti-harassment training in Cook’s unit had been effective, the NCO who cost the Army this bright young soldier would not have felt at liberty to make an overt threat to gay personnel with whom he worked. If the Army had properly disseminated information about confidential reporting channels, Cook might have chosen to seek assistance through those channels, rather than risking discharge. Cook’s story is yet another example of why AHAP implementation in the Army has a long way to go.



ASKING THE WRONG QUESTIONS:
INAPPROPRIATE INVESTIGATIONS
PERSIST IN THE ARMY

“After September 11th I enlisted to become an MP officer ... to fight for what I believe in. I lost my chance to serve when drill sergeants accused me of being gay and threatened to put me in jail for who I am.”

Former Army Private Jennifer McGinn, discharged after inappropriate investigation at Fort Leonard Wood, Missouri.¹⁹²

In 2003, SLDN discovered a troubling trend in the use of a form that clearly violates regulatory limits on investigations. At least two Army installations, Fort Leonard Wood and Fort Stewart, are using this form. The form is a modified Sworn Statement Form (DA Form 2823) apparently being used as a standard investigatory tool in cases where the soldier has made a statement regarding his or her sexual orientation. Questions on the form include “... have you experienced difficulties being around other members of your own sex?” “Did you tell your recruiter about your Homosexual/Bisexual conduct prior to entering the Army?” and “Did you engage in Homosexual/Bisexual acts as an experiment?”¹⁹³ Such questions are a flagrant violation of the “Don’t Ask,” and “Don’t Pursue” components of the law.

SLDN wrote the Fort Leonard Wood Inspector General’s (IG) Office regarding the use of this form in the case of one client, Jennifer McGinn. Fort Leonard Wood’s IG’s office investigated the use of this form, and replied to SLDN that it

SWORN STATEMENT			
For use of this form, see AR 160-45; the proponent agency is ODCSOPS			
PRIVACY ACT STATEMENT			
AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).		PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.	
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.		DISCLOSURE: Disclosure of your social security number is voluntary.	
1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Bldg # 1025 Ft Leonard Wood, MO 63041	2003 09 01	1433	
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	
[REDACTED]	[REDACTED]	E-2/Pvt	
8. ORGANIZATION/ADDRESS			
B-787 MP Bn, 14th MP Bde.			
9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
Q= CPT Doran L. Settles			
A= [REDACTED]			
Q= HAVE YOU HAD THE OPPORTUNITY TO SPEAK WITH A LAWYER? [REDACTED]			
1. What does Homosexual/Bisexual mean to you? Conduct with the same sex.			
2. Have you ever engaged in Homosexual/Bisexual acts? [REDACTED]			
3. Did you engage in Homosexual/Bisexual acts because you were forced or drunk? [REDACTED]			
4. Did you engage in Homosexual/Bisexual acts as an experiment? [REDACTED]			
5. Did you engage in Homosexual/Bisexual acts because you were influenced by another? [REDACTED]			
6. Did you engage in Homosexual/Bisexual acts of your own free will? [REDACTED]			
7. Did you engage in Homosexual/Bisexual acts because you wanted to? [REDACTED]			
8. When you say you have participated in Homosexual/Bisexual acts, what do you mean? [REDACTED]			
9. Have you had sexual relationships with both males and females? [REDACTED]			
10. Are you married? If so, are you married to same sex partner? [REDACTED]			
11. Are you, or have you experienced difficulties being around other members of your own sex? [REDACTED]			
12. Did you tell your Recruiter about your Homosexual/Bisexual conduct prior to entering the Army? [REDACTED]			
13. Why have you brought this to our attention now? [REDACTED]			
14. Why did you join the Army? To become a Military Police officer. I wanted to make it a career.			
15. Were you aware of the Army’s policy concerning Homosexual/Bisexual Conduct? [REDACTED]			
16. Do you still want to be in the Army? [REDACTED]			
17. Do you intend to further engage in Homosexual/Bisexual conduct? [REDACTED]			
10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 28 PAGES	
	[REDACTED]		
ADDITIONAL PAGES MUST CONTAIN THE HEADING “STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED]”			
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.			
DA FORM 2823, DEC 1998		DA FORM 2823, 1998 IS OBSOLETE	
CERTIFIED TRUE COPY			

was approved by Fort Leonard Wood’s Staff Judge Advocate’s office for use in basic training companies. At the time of writing this report, SLDN has not received a response to its written request for confirmation of this approval by the Fort Leonard Wood Staff Judge Advocate’s office. SLDN continues to investigate how widespread the use of this form is within the Army, and is working to ensure the Army discontinues its use.

The use of standard forms or questionnaires in “Don’t Ask, Don’t Tell” cases has been a recurring problem across the services over the years.¹⁹⁴ DoD must ensure that commanders and inquiry officers only ask questions that pertain to the particular instances of alleged homosexual conduct, as required by the regulations.¹⁹⁵

RECOMMENDATIONS:
MAINTAINING PROGRESS ON
AHAP IMPLEMENTATION MUST BE
A PRIORITY FOR THE ARMY

“He can go over there and he can fight for his country ... but he can't say goodbye to me in public without the threat of court martial.”

Partner of gay soldier in the 82nd Airborne.¹⁹⁶

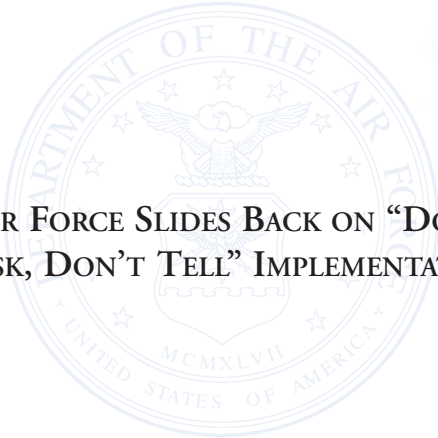
While the Army has come a long way in protecting its gay or perceived to be gay soldiers since the murder of PFC Barry Winchell at Fort Campbell in 1999, there is still much to be done. Full implementation of the AHAP is essential to fair treatment of gay soldiers, and the Army must provide better and more consistent training on “Don't Ask,

Don't Tell.” Specific recommendations for 2004 include:

- Ensure anti-gay harassment assessment mechanisms are developed to ascertain the effectiveness of training;
- Train soldiers on how to report harassment;
- Ensure officers know how to respond to reports of harassment;
- Hold harassers, and those condoning harassment, accountable for their actions;
- Utilize command channels and Army publications to better educate soldiers on AHAP, the rules of “Don't Ask, Don't Tell”

and on principles of dignity and respect for all soldiers;

- Eliminate the use of standard forms in limited investigations of alleged violations of the homosexual conduct policy. Questions must be tailored to the particular circumstances of each case in order to avoid unnecessary intrusion into the personal lives of service members and their families; and
- Form a committee to review AHAP implementation, encompassing Army experts from the Personnel, Equal Opportunity, Inspector General, Chaplain, and Staff Judge Advocate realms, as well as senior NCO representation.



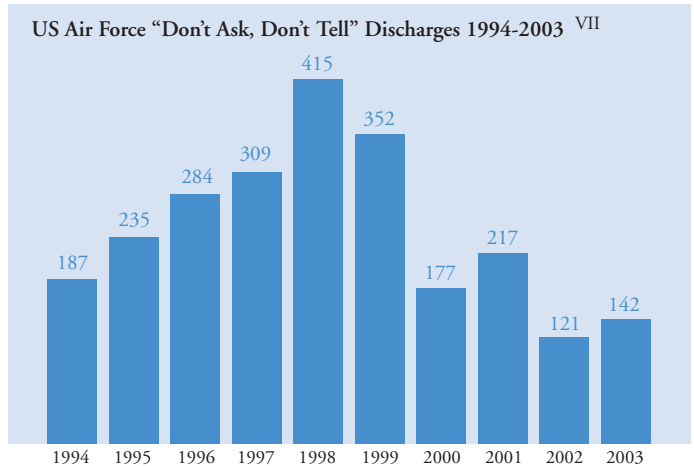
AIR FORCE SLIDES BACK ON “DON’T ASK, DON’T TELL” IMPLEMENTATION

“The Air Force is mission-oriented... . The rank and file falls in line to protect one another.”

Secretary of the Air Force James Roche, *Air Force Times*⁹⁷

Air Force “Don’t Ask, Don’t Tell” discharges increased slightly in FY2003 to 142, higher than the 121 reported in FY2002, but still dramatically lower than the 217 reported in FY2001. The continued trend of lower discharge numbers may be attributed to the

Air Force’s significant involvement in Operation Enduring Freedom and Operation Iraqi Freedom, as well as the Air Force’s growing tendency to selectively apply “Don’t Ask, Don’t Tell.” During FY2003, the Air Force largely ignored implementa-



tion of the Anti-Harassment Action Plan (AHAP).

SELECTIVE ENFORCEMENT IN ACTION:
LACKLAND AIR FORCE BASE (AFB)

Several years ago, Lackland AFB, home of the Air Force’s basic train-

“Entry-level discharges for homosexuality dropped from 326 in 1998 to 19 in 2002... . What happened? Basic-training officials set up a system to make sure recruits really understand all the implications of a discharge for homosexuality, such as having to convince officials they are homosexual.”

Air Force Times¹⁹⁸

“Once they recant their statements, as far as we’re concerned, they never made [the statement]”

Colonel Sharon Dunbar, commander of the 737th training group at Lackland AFB, Air Force Times¹⁹⁹

ing, had alarmingly high “Don’t Ask, Don’t Tell” discharges. This past year, in an interesting turn, the Air Force publicly acknowledged that Lackland AFB’s discharge rates have decreased dramatically since 1998 due to a softening in its implementation of “Don’t Ask, Don’t Tell.” While pleased with the reduction in discharges, SLDN is concerned with how the numbers are now being reduced.

In 1999, after a DoD review revealed the skyrocketing rate of dis-

charges at Lackland AFB, the Air Force invited SLDN to visit the base and assist in a review of the implementation of “Don’t Ask, Don’t Tell” in an effort to reduce discharges. SLDN proposed multiple changes and was pleased to see the discharge numbers decrease over the last few years.

Now, however, it appears the Air Force may be lowering the numbers by requiring service members to prove their sexual orientation. Air Force officials stated to the *Air Force Times* that airmen are required to convince officials of their sexual orientation.²⁰⁰ This requirement of proof is not only contrary to law and policy, it potentially exposes airmen

to discharge as well as to disciplinary or criminal charges. Air Force officials also stated that they are ignoring statements of sexual orientation made by airmen while in training.²⁰¹ While SLDN applauds the retention of gay airmen, the Air Force’s selective application of “Don’t Ask, Don’t Tell” is troubling.

TOLERANCE TUMBLES BACKWARDS: AHAP IMPLEMENTATION CLOUDED BY PRACTICAL EXPERIENCES OF AIR FORCE MEMBERS

The increased demands on the Air Force during FY2002 and FY2003 due to Operation Enduring Freedom and Operation Iraqi Freedom appear to have negatively impacted its compliance with the AHAP. The overwhelming trend during FY2003 was a fall back from the already inadequate compliance efforts in FY2002, resulting in the Air Force falling far short of meeting the training, reporting, enforcement, and measurement requirements of AHAP.

The Air Force claims to conduct annual training on the Homosexual Conduct Policy (HCP), which contains some information about the Air Force’s anti-harassment measures. This training, however, is woefully inadequate and may be contrary to the goal of ensuring that airmen will be comfortable in reporting harassment based on actual or perceived sexual orientation. The HCP training contains only two Power Point slides addressing anti-gay harassment.²⁰² Neither slide identifies to whom airmen may report harassment nor what avenues within the Air Force are confidential, as required by the AHAP.²⁰³ Furthermore, one slide specifically states that an airman’s sexual orientation may be investigated following a report of harassment if credible evidence of conduct arises during the

course of an inquiry into the harassment report.²⁰⁴

“During our officer training program in 2003, we were instructed that Air Force health care professionals are to report statements of sexual orientation to the airman’s command.”

Report by anonymous active duty Air Force Major to SLDN²⁰⁵

SLDN is concerned about reports that the Air Force is telling its members during training that they have a duty to report gay service members. SLDN was dismayed to discover from an Air Force officer who attended an officer training program in 2003 that the attendees were instructed that Air Force health care professionals, including doctors and therapists, and chaplains should report statements of sexual orientation to the service member’s command. DoD has stated there is no requirement that military health care professionals turn in service members.²⁰⁶ SLDN has received at least one other report this year of similar guidance.

In addition, while the Air Force has prepared separate training materials tailoring some of the information for different target audiences (general audiences and commanders, judge advocates and law enforcement per-

sonnel), it appears that these training materials contain identical slides addressing harassment. This fails to meet the AHAP requirement that training be tailored to the grade and responsibility level of the audience.

The Air Force appears not to have taken steps to enforce anti-harassment provisions. There is no information in the Air Force materials about accountability for those who engage in anti-gay harassment. The training materials for supervisors, Staff Judge Advocates (SJA), and commanders should detail that appropriate action must be taken against anyone who condones or ignores harassment or mistreatment based on an airman’s actual or perceived sexual orientation.²⁰⁷ The current training, however, contains no guidance on what action should be taken to hold harassers accountable.

The Air Force has taken some small steps towards implementing the measurement provisions of the AHAP. Specifically, Air Force Instruction 90-201 requires the Air Force Inspector General to “evaluate the training of all those charged with implementing the homosexual conduct policy,” and to “assess commander, staff judge advocate, and investigator training on the DoD homosexual conduct policy.”²⁰⁸ Regrettably, this instruction does not mention anti-harassment training specifically, as the AHAP orders. Furthermore, no remedy is indicated

if a unit is found not to be in compliance with requirements.

It is imperative that the Air Force

take the AHAP requirements seriously. Air Force members need to be clear that harassment based on actual or perceived sexual orientation

is prohibited in the Air Force, and that they can confidentially report such harassment and harassers will be held accountable for their actions.

UNNECESSARY LOSSES:

A SENIOR ENLISTED AIRMAN FIGHTS FOR HIS RETIREMENT

After more than twenty years of outstanding service in the Air Force, the last thing that Master Sergeant David A. Cooper expected was to have to fight for his retirement. Unfortunately, this is precisely what Cooper was required to do following allegations that he engaged in homosexual conduct at the on-base enlisted club. Despite the fact that Cooper's wife, who was with him at the club that night, and seven other witnesses stated that Cooper did not engage in any type of homosexual conduct that night, Cooper's command chose to believe the statements

of two civilians making vague allegations against Cooper.

Following the accusation, Cooper's command initially recommended that he submit a request to retire.

Incredulous that the Air Force was choosing to believe vague allegations over multiple witness statements to the contrary, and fearing what it might mean to fight his command's recommendation, Cooper submitted his retirement request. Shortly after-



ward, Cooper's command informed him they were withdrawing their retirement recommendation and he was being processed for discharge for homosexual conduct. During the months that followed, Cooper fought to save the retirement he worked so hard for. Cooper's retirement request and discharge paperwork were submitted to the Secretary of the Air Force at the same time. Fortunately for Cooper, the Secretary of the Air Force granted his request for retirement. Unfortunately for Cooper, his separation paperwork from the Air Force is flagged so that he is prohibited from reentering the service.

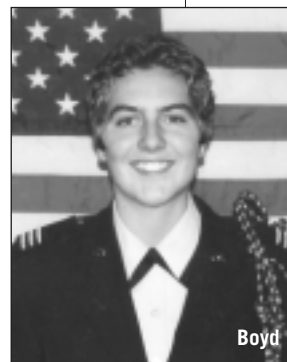
MORE UNNECESSARY LOSSES: AIR FORCE RESERVE OFFICER TRAINING CORPS CADET CHOOSES HONESTY OVER A SCHOLARSHIP

and the money that enabled her to go to college, Boyd confidently signed her AFROTC contract, prepared to live the Air Force's core values of honesty and integrity, and acknowledging that homosexual conduct was grounds for dismissal. She had no concerns at the time because she had had the same boyfriend for three years in high school. Boyd, however, would later be forced to confront the meaning of honor and

realized just how difficult it was to keep her sexuality a secret. Even innocent questions by other cadets became potential minefields. "What did you do over the summer?" "Are you dating anyone?" "Can I fix you up with my friends?" Boyd quickly came to realize that every half truth she told chipped away at her sense of honor and integrity. This was no way to be the officer she knew she could be. So, with complete understanding that her honesty would likely mean disenrollment from

ROTC and a hefty bill from the Air Force, Boyd chose to remain true to herself and revealed to her ROTC command that she is a lesbian.

Despite a very understanding and supportive command, the Air Force honorably discharged Boyd and is now seeking



"But I don't get the impression these kids are in it just for the money. There's something else going on here."

Lieutenant Colonel Joseph Martinelli, AFROTC at Miami University, *Air Force Times*²⁰⁹

"The 'don't ask, don't tell' law is a torturous double standard for people ingrained with a sense of honesty."

Former AFROTC Cadet Mara Boyd, *Air Force Times*²¹⁰

"Don't Ask, Don't Tell" often requires service members to choose between honesty and service. Mara Boyd, like many, felt that service without honesty was too high a price to pay. Boyd entered the University of Colorado as an Air Force ROTC cadet in 1999. Excited by the leadership possibilities the military offers

integrity as she came to discover she is a lesbian.

After coming out to herself as a lesbian in the summer before her junior year, Boyd soon

repayment of her scholarship. Currently, Boyd has left school and is working to save enough money to finish her last year of college and

repay the Air Force for her ROTC scholarship. Boyd would gladly serve her country if she was allowed to do so openly. In the meantime,

Boyd is sharing her story with as many people as she can in an effort to end the ban on gays serving in the military.

AIR FORCE COMMANDS IN TEXAS CONTINUE OLD PROHIBITIONS:

IN CLEAR VIOLATION OF “DON’T ASK, DON’T TELL,” TEXAS COMMANDS MAKE GAY BARS OFF LIMITS

For the last nine years of “Don’t Ask, Don’t Tell,” it has been clear that simply going to a bar or club catering primarily to lesbians and gays is not a violation of the law. Under “Don’t Ask, Don’t Tell,” the services were supposed to end any prohibitions against service members from going to these types of bars. The Air Force bases in and around San Antonio, Texas, however, are still violating this rule and have been instructing their airmen and officers that

five area bars are off-limits to service members solely because they are considered to be gay bars.

This past year, SLDN obtained a Power Point slide presentation from Randolph AFB listing these off limits establishments.²¹¹ The slides show pictures of the five bars and state that they are off limits because of “illicit homosexual activity.” The slides indicate the bars have been off limits since 1990, before “Don’t Ask, Don’t Tell” became law. The presentation also notes, however, that “[e]ach of these facilities were reviewed and inspected July and Aug 2002 timeframe. We found credible evidence that warrants leaving these facilities on the

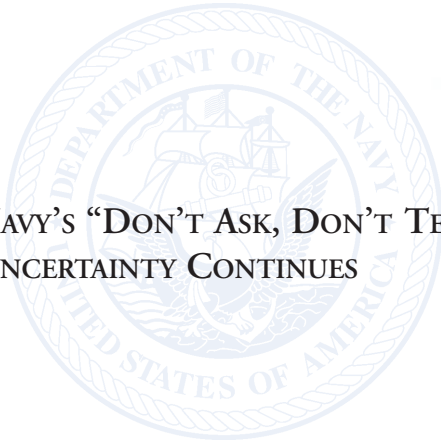
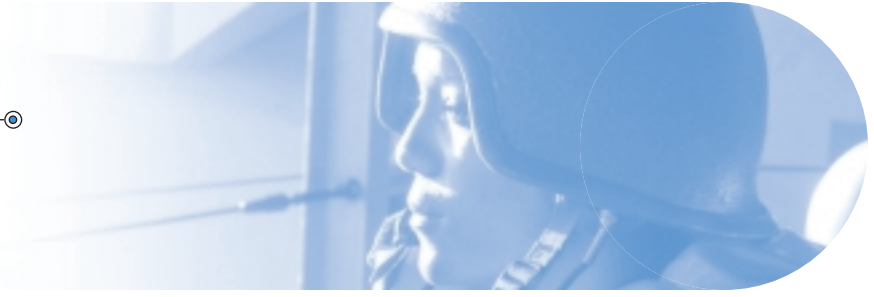


off-limits list.”²¹² Prohibiting service members from frequenting a bar simply because it caters to a gay or alternative crowd is a direct violation of “Don’t Ask, Don’t Tell.”²¹³ SLDN has reported this violation to the Air Force and is awaiting a response.²¹⁴

RECOMMENDATIONS: THE AIR FORCE MUST COMPLY WITH “DON’T ASK, DON’T TELL” AND MOVE FORWARD TO IMPLEMENT AHAP

Tension, confusion, and a return to a few old ways marked the Air Force environment last year with respect to “Don’t Ask, Don’t Tell” and the AHAP. The Air Force members who contacted SLDN during 2003 expressed uncertainty about where the Air Force stands in its implementation of both, and a renewed fear that they will be discharged or otherwise punished if the Air Force perceives them to be lesbian, gay or bisexual. Therefore, SLDN proposes recommendations very similar to those made last year:

- Open a dialogue with SLDN on training and implementation of “Don’t Ask, Don’t Tell” and the AHAP;
- Fully implement all prongs of the AHAP;
- Alter tailored training to address different audience levels (command, judge advocates, senior NCOs, Inspectors General and enlisted ranks);
- Clearly identify how and to whom Air Force members can safely report harassment based on perceived sexual orientation;
- Clearly identify confidential resources for Air Force members who are, or are perceived to be, lesbian, gay or bisexual;
- Authorize Equal Opportunity staff to investigate reports of harassment based on perceived sexual orientation;
- Hold harassers, and those condoning harassment, accountable for their actions;
- Provide more specific training on “credible evidence” and limits to investigations under “Don’t Ask, Don’t Tell;” and
- Re-emphasize that associational behavior, such as going to bars and clubs frequented by lesbians and gays, is not evidence of someone’s sexual orientation and should not be a punishable offense in the military.



NAVY'S "DON'T ASK, DON'T TELL" UNCERTAINTY CONTINUES

"Now I'm the type who's bought into the whole conservative mindset. I believe in a strong military... . [And] virtually anything Charlton Heston has to say. Still, I can't tell you how much I don't care about someone's sexual orientation."

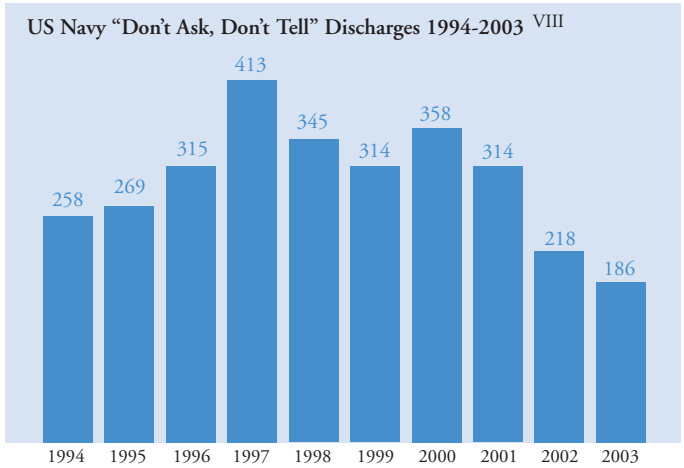
Kenneth Lynch, aviation operations limited-duty officer, *Navy Times*²¹⁵

Discharges of lesbian, gay and bisexual sailors continued to drop in FY2003.

This trend is not surprising. The Navy needs good sailors and has shown reluctance to discharge sailors while they are deployed. A significant percentage of the Navy was deployed in 2003. Deployments in support of the Operation Iraqi Freedom and Operation Enduring Freedom in Afghanistan engaged over half of the

Navy's surface vessels and submarines during FY2003.²¹⁶

The Navy also appears to be further de-emphasizing its Homosexual Conduct Policy (HCP) and Anti-Harassment Action Plan (AHAP) training during this time of amplified deployment. This reduction in training is troubling. There remains confusion in the



Navy about how the HCP should be implemented and Navy commands are still pursuing service members based on non-credible evidence, or evidence provided based on retaliatory motives.

EFFICIENCY TAKES ITS TOLL ON SAFETY: NAVY'S IMPLEMENTATION OF AHAP WEAKENS

The Navy made no progress on its implementation of AHAP in FY2003. Instead, the Navy actually reduced its training from the minimal and inadequate training that existed in FY2002.

This reduction was part of a larger trend by the Navy in FY2003 to cut down on its personnel training programs.

The only vehicle the Navy uses for training on HCP and AHAP is its general military training (GMT) for equal opportunity, sexual harassment prevention, and grievance procedures. In 2002, the Navy's GMT contained just three slides out of twenty-five addressing "Don't Ask,

"Every hour a sailor doesn't have to sit in training is an hour they're working."

Commander Craig Anderson, executive officer of the personnel development center, *Navy Times*²¹⁷

"GMT [general military training] is sometimes viewed as a negative because we do repeat it over and over again"

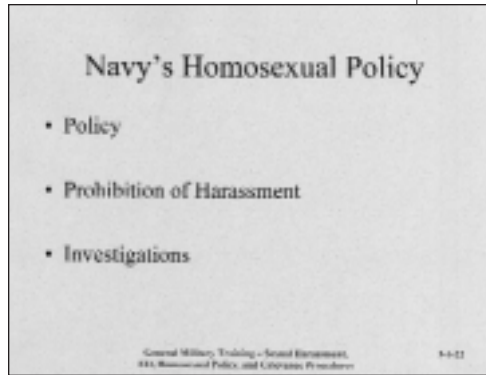
Master Chief Electronics Technician Lyman Watts, *Navy Times*²¹⁸

Don't Tell" and anti-harassment measures. In our 2002 report, SLDN reported deficiencies in this training. Unfortunately, in its desire to cut down on the time spent in training, the Navy's 2003 revision of the GMT has further reduced the training and now provides only one slide addressing the HCP and AHAP.

The one remaining slide briefly addresses three major issues. First, it instructs sailors that homosexuals and bisexuals will be separated from the Navy if they state their sexual orientation, engage in sexual acts with someone of the same gender, or marry or attempt to marry someone of the same gender. Second, it states that sailors who are perceived to be gay should not be harassed. Lastly, the slide instructs that investigations into a sailor's sexual orientation by their command should be based on credible evidence. These subjects are much too broad to be addressed in one training slide. Therefore, this slide, the full extent of the Navy's training, completely fails the training requirements of AHAP by providing no details on how anti-gay harassment will be addressed. This failure is reflected in reports from sailors to SLDN that the GMT trainings they have received provided very little information about the "Don't Ask, Don't Tell" or about anti-harassment measures.

The Navy claims to specifically provide Navy leaders and legal profes-

sionals with more in-depth training on the prevention of anti-gay harassment and "Don't Ask, Don't Tell," as required by the AHAP. However, SLDN has been unable to find any training materials to support this claim.



The Navy has utterly failed to meet the reporting requirement of AHAP that mandates that sailors be provided with information on how and to whom to report harassment based on actual or perceived sexual orientation. The Navy training materials state that "[i]ndividuals must be able to report crimes and harassment free from fear from harm, reprisal, or inappropriate or inadequate command response."²¹⁹ The training materials do not discuss how or to whom harassment can be reported, nor do they indicate what avenues for reporting may be confidential.

Enforcement of AHAP and accountability for those who harass is virtu-

ally non-existent. The Navy GMT materials say little about what will happen to sailors who harass other sailors, or commands who violate "Don't Ask, Don't Tell." SLDN is unaware of any directives or orders specifically addressing the issue of enforcement and accountability. Furthermore, SLDN has found little proof that the Navy is holding accountable its members for harassing or condoning harassment of its sailors.

AHAP's final requirement is measurement of the effectiveness of anti-harassment programs. It is unclear what, if any steps, the Navy is taking to comply with this requirement. The Navy claims that its Inspector Generals include specific interest items in their inspections on the question of "Don't Ask, Don't Tell" training, application and enforcement. There is no indication that the Inspector Generals seek information about anti-gay harassment, nor has the Navy explained what it does with the information collected.

The Navy's desire to make sure that sailors' time is used efficiently during this time of war is understandable. This desire for efficiency should not come at the expense of training that is geared towards ensuring the safety of sailors and improving unit cohesion.

COMMAND SANCTIONED REVENGE SUCCEEDS:

CHAPLAIN RESIGNS AFTER HER COMMAND RECOMMENDS DISCHARGE BASED ON ALLEGATIONS MADE IN RETALIATION

Since its passage in 1993, "Don't Ask, Don't Tell" has been seen as a perfect vehicle for revenge. Spurned men and women use the law to ruin the careers of those who reject sexual

advances; supervisors use the law to frighten subordinates seeking to report them for improprieties; ex-spouses use the law to try and gain an edge in divorce or custody proceedings. Unfortunately, the services contributed to the popularity of this avenue for revenge by freely accepting allegations of "wronged" persons without considering how motive might affect their credibility. Revenge appears to be the motive

that ended the ten year career of Navy Chaplain, Lieutenant Commander Karen Soria.

In late 2002, early 2003, Soria realized her Navy ministry was in danger when the husband of a close friend alleged Soria was having an affair with his wife. Newly divorced, but on very good terms with her own husband, Soria provided support and counsel as her friend pro-

ceeded through her own divorce. Unhappy with his impending divorce, Soria's friend's husband threatened to hurt Soria and his wife by alleging they were involved in an intimate relationship. The husband followed through on his threat and reported to Soria's command that she was in a relationship with his wife. Attempting to ensure his allegations had the correct result, he turned over two personal and private documents to Soria's command.

The first document was a friendship card sent by Soria to his wife expressing caring and gratitude for their friendship during a difficult time in both their lives; the second document was an entry he had ripped from his wife's private journal detailing an erotic dream she had about Soria.

Soria's command first stated that they would not pursue the allegations. Ultimately, the Navy chose to disre-

gard Soria's outstanding ten year Naval career and initiated discharge proceedings. Disgusted by the Navy's pursuit of allegations made by a man motivated by revenge with his only evidence a friendship card and a dream, Soria decided to resign her commission and leave the Navy to minister in the civilian world. In the summer of 2003, Soria was honorably discharged and the Navy lost an experienced, caring and compassionate spiritual advisor for its sailors.

COMMAND SANCTIONED RETALIATION STOPPED BY SEPARATION BOARD: DOING THE RIGHT THING LEADS SAILOR TO BRINK OF LOSING CAREER

During the spring of 2003, a senior enlisted sailor learned first hand how "Don't Ask, Don't Tell" can be a dangerous weapon of retaliation. This sailor found herself facing allegations that she had engaged in misconduct and homosexual conduct shortly after she reported another sailor engaging in fraud.

In April of 2002, the senior enlisted sailor reported an incident in which she witnessed another sailor engaging in fraud by misusing her government purchasing card. As a result of this report, the sailor engaged in the fraudulent activity was investigated, found guilty of fraudulent acts and ultimately demoted.

Shortly after the demotion of this sailor, the reporting senior enlisted sailor's command confronted her stating they were unhappy because her fraud report had caused embarrassment to the entire command. Rather than supporting a sailor

MIXED REVIEWS OF A VERY PUBLIC EVENT: "BOY MEETS BOY"

"I was giving up a lot to be there – my job." "I would do it again, but ... I wish I'd fought the policy."

Former Fire Control Technician 1st Class
Michael J. Tiner, *Navy Times*²²⁰

"There are a lot of homosexuals in the military, and there will be a lot of homosexuals in the military no matter what the policy is. The guy who went on the show didn't do anything wrong, and there was no inappropriate behavior."

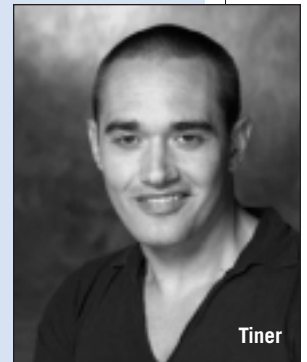
IT3(SW) Joseph M. Schnettler, *Navy Times*²²¹

Fire Control Technician 1st Class Michael Jason Tiner, a combat systems instructor based in San Diego who taught at the Navy's Submarine Learning Center, made headlines last year when he was outed on national television. In the spring of 2003 Tiner found himself at a proverbial fork in the road. Down one road was his continued successful career in the Navy, down the other road was the freedom to live a fuller life. With few regrets, Tiner, 26, chose to live his life openly and became a contestant on the *Bravo* television series *Boy Meets Boy*. The program was a gay dating show in which men, both gay and straight, vied for

the affections of a gay bachelor. The show later revealed the sexual orientation of the contestants once they were dismissed. Tiner, eliminated in the first episode, was identified as gay.

Prior to the airing of the show, Tiner's command confronted him about his appearance on the series. Some members of his command had recognized Tiner in promotional advertisements for the show. Within weeks of the show airing, and Tiner admitting he is gay on the show, the Navy honorably discharged him. Tiner decided at that time not to fight his discharge when his command agreed not to conduct an intrusive investigation into his private life and recommended he receive an honorable discharge.

Although he lost his Navy career through discharge, Tiner received support directly from sailors he served with, and others with whom he had not served. The private and public support he has enjoyed, have made Tiner even more committed to advocating for the end of "Don't Ask, Don't Tell."



NAVAL ACADEMY
ALUMNI COME OUT:

FORMER MIDSHIPMEN APPLY
FOR LESBIAN AND GAY ALUMNI
CHAPTER

“We want gay and lesbian officers and midshipmen to know we have gone before them, and they can serve with honor and pride.”

Former Lieutenant Junior Grade Jeff Petrie, *Navy Times*²²²

“[John Sewell, Class of 1990] said the pressure caused by not being honest about who he was caused him to leave the Navy. A submariner, Sewell loved being at sea, but resigned after five years.”
*Navy Times*²²³

On Veterans Day of 2003, a group of former naval officers and United States Naval Academy graduates applied to the academy for recognition of a lesbian and gay alumni chapter. The officers and graduates created USNA Out, as it is called, to provide positive openly lesbian, gay, bisexual and transgender role models for active duty officers and midshipmen forced to serve in silence. USNA Out also allows gay Naval Academy Alumni, who may not feel comfortable in joining traditional alumni chapters, a way to connect with their peers.

Although the Academy rejected USNA Out’s application, the intent behind the application received support. An editorial in the November 24, 2003 edition of the *Navy Times* stated, “[w]hat the Heck, if the Fab Five on ‘Queer Eye for the Straight Guy’ can remake the doofusses they deal with, the far-less-flamboyant gay alumni ought to be able to rearrange the thinking of some retired naval officers.”²²⁴

for properly reporting illegal activity, the senior enlisted sailor’s command appears to have engaged in deliberate retaliatory action against her. First, her performance evaluations dropped dramatically. Then, the senior enlisted sailor’s command reprimanded her for referring to a civilian friend as her “sister.” During that reprimand meeting, the sailor reported that her new Executive Officer (XO) initially expressed her disapproval with the “sister” reference; however, the XO soon expressed her displeasure instead

with the sailor for reporting the fraud.

The sailor’s command then attempted to separate her from the Navy for allegedly providing a false official statement and for homosexual conduct. Despite an outstanding record, including evaluations consistently praising her efforts and demeanor, and receiving the award of “Senior Sailor of the Year” for FY2002, the sailor’s command chose to pursue allegations made against her by the very same sailor she had reported for

defrauding the government.

Determined to fight this retaliation, the senior enlisted sailor presented her case before an administrative separation board and filed an official complaint against her command. The separation board voted unanimously to reject the command’s allegations and retain this sailor in the Navy. Unfortunately for the Navy, this senior enlisted sailor chose not to reenlist in large part because of her experience under “Don’t Ask, Don’t Tell.”

RECOMMENDATIONS:

CLEAR AND CONSISTENT
IMPLEMENTATION OF THE AHAP AND
“DON’T ASK, DON’T TELL” WITHIN
THE NAVY MUST BE A PRIORITY

“For this training to be as effective as it can, sailors need to see their leadership participating, too.”

Commander Craig Anderson, *Navy Times*²²⁵

The Navy must lead by example. The Navy cannot sacrifice clarity and consistency in training intended to promote the safety of its sailors

and unit cohesion in the name of time saving measures. SLDN continues to hear reports from sailors and naval officers that anti-gay harassment is an everyday occurrence in the Navy. When harassment is reported, no one is held accountable for engaging in or condoning that harassment. Furthermore, sailors report to SLDN that they feel even less is being done to stop harassment and retaliation than has been done in previous years. While SLDN understands that the Navy is under great pressure to perform in the current military

operations, the Navy cannot neglect its sailors nor ignore DoD directives. SLDN makes recommendations identical to last year. SLDN challenges Navy leaders to:

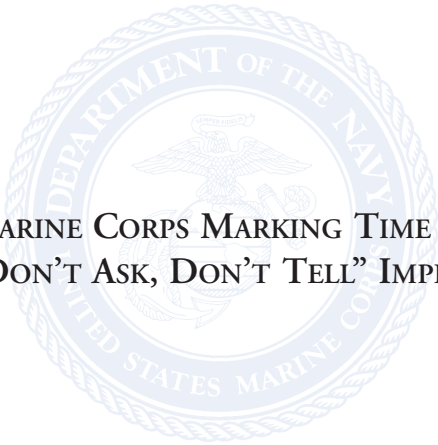
- Open a dialogue with SLDN on training and implementation of “Don’t Ask, Don’t Tell” and AHAP;
- Update the GMT training to more clearly explain how and to whom sailors can safely report anti-gay harassment;
- Authorize Equal Opportunity

staff to investigate reports of harassment based on perceived sexual orientation;

- Create accountability measures for those who violate “Don’t Ask, Don’t Tell,” or who participate in or condone anti-gay harassment, and instruct all Navy leaders on those measures;

- Provide in-depth training on the “credible evidence” standard and limits to investigations under “Don’t Ask, Don’t Tell;”
- Create training tailored to different audiences (command, judge advocates, senior NCOs, and inspectors general vs. junior enlisted ranks);

- Actively measure the effectiveness of “Don’t Ask, Don’t Tell” and anti-harassment training;
- Alter training as necessary when its effectiveness is found to be lacking; and
- Raise improving command climates and working environments to a higher priority.



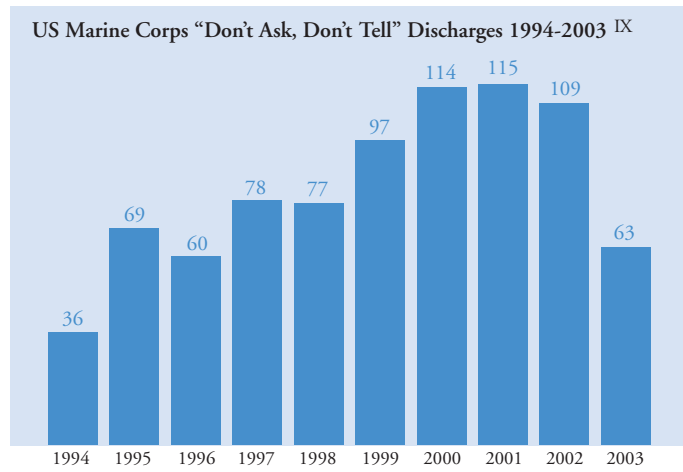
MARINE CORPS MARKING TIME ON “DON’T ASK, DON’T TELL” IMPLEMENTATION

“The nongay soldiers who do not wish to shower with gay soldiers are ideological descendants of those white soldiers who did not wish to live with in the same barracks, eat at the same table, or swim in the same swimming pool with black soldiers”

Col. R.M. Balzhiser (Ret.), *Army Times*²²⁶

Discharge numbers of lesbian, gay and bisexual Marines dropped again in FY2003 – a remarkable 43% from FY2002. Despite the exemption of gay discharges from the January 9th, 2003 stop loss covering the entire Marine Corps and Marine Reserves, it appears that

in practice gay Marines are being retained. It is likely that this is attributable to the Corps’ need for good Marines in wartime. In 2003, the Marine Corps also failed to follow



up on its progress made in 2002 regarding the implementation of Anti-Harassment Action Plan (AHAP).

MARINE CORPS FAILS TO FOLLOW THROUGH: AHAP IMPLEMENTATION STILL LACKING

Corps continues to miss the mark in all respects.

HCP will be provided under separate MARADMIN.²²⁸ Revised training materials were then published in August of 2002.

“In concert with our core values, all Marines will be treated with dignity and respect.”

MARADMIN 259/02 Homosexual Conduct Policy

In FY2002, the Marine Corps conducted a review of its training and implementation of the Homosexual Conduct Policy (HCP) and AHAP and issued revised training guidance applicable to the entire Marine Corps in May.²²⁷ The May 2002 guidance also indicated that “specific taskings and responsibilities to further improve training and the Marine Corps’ execution of the

While the review and issuance of revised training guidance in 2002 was a positive step, follow up in 2003 has been minimal. The May 2002 guidance mandated that the next annual review of training be conducted in January of 2003.²²⁹ SLDN has found no evidence that the Marine Corps conducted such a

The Marine Corps failed to follow through on progress made in 2002 on AHAP implementation. AHAP implementation in the Marine

review or that any revised training materials have been issued. Despite issuance of new training materials in August 2002, specific taskings to improve training have failed to appear as promised in the May 2002 guidance.

Further, while the 2002 training plans still in use by the Marine Corps provide a good overview of the HCP and limits on investiga-

tions, they give short shrift to the “Don’t Harass” component of the policy. The training provides virtually no information about harassment, and while it identifies reporting channels, the training materials do not indicate which channels are confidential. There is also only one set of training guidance on the HCP available to Marines, instead of several sets of training materials suitable for different audiences as required by

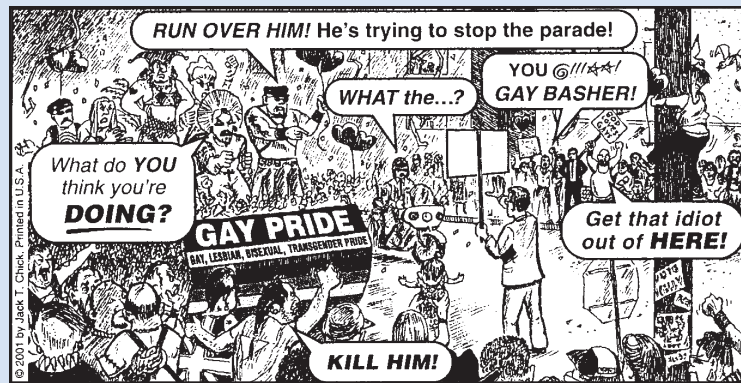
the AHAP.²³⁰ Finally, despite the Marine Corps policy that HCP training will be provided to every Marine within 14 days of enlistment or accession into active duty, after 6 months on active duty, or, in the case of Reservists, after the Marine has completed recruit training, and again at reenlistment, most SLDN Marine clients report not having received any training on the HCP or the AHAP.

**FORCED EXPOSURE TO HATE:
ANTI-GAY CARTOONS
DISTRIBUTED AT BRIG**

“We take your concerns very seriously and have conducted an investigation into the matter... Once it was discovered that one of the volunteers brought the material into the Brig, he was instructed as to the inappropriateness of the material, and corrective action was taken.”

Colonel R.H. Zales, Assistant Chief of Staff, Camp Pendleton Office of the Staff Judge Advocate.²³¹

A gay Marine incarcerated in the Camp Pendleton Brig reported distribution through



the Brig Chaplain of anti-gay religious materials, including those pictured here. In response to a letter from SLDN, the Marine Corps investigated and determined the materials were distributed by a civilian volunteer, rather than a chap-

lain. Once advised by SLDN of the distribution of the cartoons, the Marine Corps took corrective actions, according to a response from the Camp Pendleton Office of the Staff Judge Advocate.

Harassment reporting mechanisms in the Marine Corps continue to be insufficient. The reporting component of AHAP entails encouraging those with concerns to report them and providing confidential avenues for reporting. Marine Corps leaders, however, have not established confidential avenues for reporting mistreatment, harassment, and inappropriate comments or gestures. Marine Corps policy states that reporting harassment through the chain of command is the “preferred method,” although Marines may also make reports to Chaplains and IGs. Lesbian, gay and bisexual Marines who report harassment,

however, face the risk of investigation and discharge if they inadvertently discuss their sexual orientation during the reporting process. Therefore, Marines are understandably hesitant to report anti-gay mistreatment at all. Marine clients of SLDN continue to report anti-gay harassment as a significant problem within the Marine Corps, and the lack of channels for confidentially reporting such harassment is a key contributing factor in this problem.

There is little evidence that the Marine Corps is enforcing AHAP. Reports to SLDN indicate that the Marine Corps continues to tolerate

mistreatment, harassment and derogatory comments about lesbians, gays and bisexuals. Reports of those engaging in the misconduct being held accountable are scarce, indicating that Marine leaders are not taking the AHAP enforcement requirement seriously.

Lastly, the Marine Corps appears to have taken some steps to address measuring the effectiveness of their implementation of the AHAP. However, despite the inclusion of “Don’t Ask, Don’t Tell” training as a special interest for the Marine Corps Inspector General, neither the IG nor any other Marine Corps agency

appears to be taking a serious look at the substance of the anti-harassment training or the training's effectiveness. SLDN welcomes the Commandant's order that "Don't

Ask, Don't Tell" training be included in the Marine Corps Common Skills Handbook, the Marine Corps' manual of basic skills all Marines must master, regardless of military occupa-

tional specialty. SLDN encourages the Marine Corps to measure the effectiveness of including HCP related information in the Common Skills Manual.

**ANOTHER CAUSALITY TO
"DON'T ASK, DON'T TELL:"
GAY IRAQ VETERAN COMES OUT
IN RESPONSE TO THREATS**

"All I ever wanted to do was become a Marine. I have wanted to be a Marine for as long as I can remember."

"Joaquin," Marine Lance Corporal²³²

The case of a Marine Lance Corporal we will refer to only as "Joaquin" speaks volumes about the tragic loss of talent and motivation inflicted by the ban in today's Marine Corps.

Joaquin has wanted to be a Marine for as long as he can remember. Years after he and his family immigrated to the United States from Mexico, Joaquin made himself a legend among recruiters in his small

home town when he started showing up at recruiting events at the age of fifteen. During high school, Joaquin came to terms with the fact that he was gay, but did not want his sexual orientation to get in the way of his dreams of wearing the Marine uniform. He had been out to his friends in high school without incident, and did not appreciate the complexity of the double life he would have to lead as a gay Marine.

Joaquin realized his dream and became a Marine in 2002. He served as an infantryman and spent seven months in Iraq doing humanitarian assistance missions and security patrols. A native Spanish speaker, Joaquin's command selected him to serve as an interpreter for US forces working with coalition forces from Spanish speaking countries. His language skills made him an especially valuable Marine, and he took pride in

the additional contributions he made to the mission as an interpreter.

Shortly after his return from the war, however, Joaquin determined that pursuing his dream of a life in the Marine Corps came at too great a cost. The stress of hiding his sexual orientation was worse than the stress of deployment or any other stresses he had endured as a Marine, and fear of being discovered and scorned by his fellow Marines became too much for him. Joaquin told his command he was gay, as a matter of integrity and in response to anti-gay threats he endured from people in his unit who interpreted his discretion about his private life to mean he was gay. At the time of this publication, Joaquin awaits a decision from his command as to whether he will be discharged or allowed to continue to live his dream as a United States Marine.

**RECOMMENDATIONS:
TAKE CARE OF MARINES**

"Some years ago, I would have agreed with the Joint Chiefs of Staff and then-Sen. Sam Nunn, R-Ga., as chairman of the Senate Armed Service Committee. But I no longer feel that way... It's time to remove this ban and stop wasting valuable resources on investigating and kicking out otherwise fully competent personnel."

Marine Lieutenant Colonel H. Thomas, *Army Times*²³³

The Marine Corps needs to do much more to satisfy the letter and the spirit of "Don't Ask, Don't Tell" and the AHAP. Marine leaders have a professional and moral duty to take care of all of their Marines, including those who are lesbian, gay and bisexual. During 2004, the Marine Corps should:

- Open a dialogue with SLDN on training and implementation of "Don't Ask, Don't Tell" and AHAP;
- Update training to adequately address anti-gay harassment;

- Designate "confidential" resources for reporting anti-gay harassment;
- Hold accountable leaders who tolerate anti-gay harassment; and
- Actively measure the effectiveness of "Don't Ask, Don't Tell" and anti-harassment training.



THE NEW COAST GUARD STRUGGLES WITH “DON’T ASK, DON’T TELL” UNDER HEIGHTENED DEMANDS ON PERSONNEL

“From the Mediterranean Sea to the Persian Gulf, the homeland-focused Coast Guard is engaged in its largest overseas deployment since the Vietnam War.”

*Navy Times*²³⁴

The Coast Guard saw a 38% decrease in gay discharges during FY2003 as the demands on its personnel and resources increased.

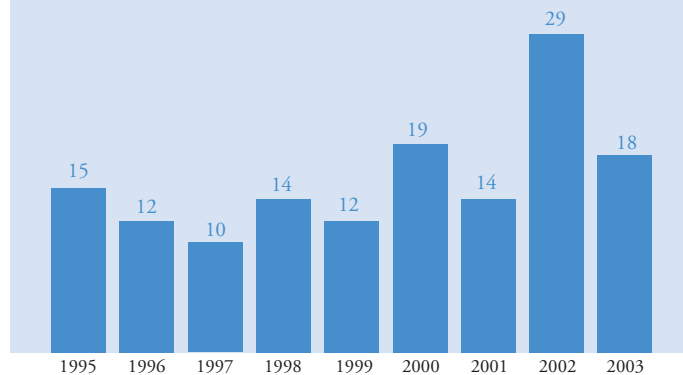
This past year the Coast Guard was required to expand beyond its duty of guarding homeland shores to engaging in security duties overseas in Operation Iraqi Freedom. More Coast Guard personnel and equipment are deployed abroad now than at any other time since the Vietnam War. This over-

seas deployment, combined with the high volume of ships coming in and out of

United States ports, has pushed the Coast Guard to its limits.

Acknowledging the increased demands on the Coast Guard this past year, it is still disappointing that the Coast Guard’s promised “Don’t

US Coast Guard “Don’t Ask, Don’t Tell” Discharges 1994-2003 X



Ask, Don’t Tell” training revisions have not yet been completed. Further, there are indications that delays in completing the training revisions have resulted in continuing command violations of “Don’t Ask, Don’t Tell.”

SECURITY AND SAFETY CONFLICT: ANOTHER YEAR PASSES WITHOUT THE COAST GUARD COMPLETING ANTI-HARASSMENT TRAINING

“Safety and security are both sides of the same coin, and we can’t ignore safety at the expense of security.”

Rear Admiral Paul J. Pluta, *Navy Times*²³⁵

Individual Coast Guard commands struggled this year with implementing “Don’t Ask, Don’t Tell” and the Anti-Harassment Action Plan (AHAP) without clear guidance from above. The Coast Guard has taken some steps towards revamping its execution of “Don’t Ask, Don’t Tell” and its compliance with the

AHAP. Specifically, the Coast Guard added “Don’t Pursue” and “Don’t Harass” language to its Personnel Manual section addressing “Don’t Ask, Don’t Tell.”²³⁶ Importantly, the addition included the statement that, “[h]arassment can take different forms, ranging from ‘innocent’ comments and jokes

causing a hostile climate, to direct verbal or physical abuse.²³⁷ Unfortunately, any additional progress on AHAP implementation has slowed significantly. The Coast Guard still has not completed the training modifications on anti-harassment and “Don’t Ask, Don’t Tell” promised in 2001. Therefore, SLDN finds that the Coast Guard has yet to meet any of the requirements outlined in the four components of the AHAP.

The Coast Guard has assured SLDN that it plans to fulfill its commit-

ment and provide additional guidance regarding anti-gay harassment in the Equal Opportunity curriculum it is currently revising. Currently, SLDN’s understanding is that the Equal Opportunity officer for each command has been tasked with temporarily altering their training material to reflect the changes to the personnel manual. This temporary measure is intended to fill the gap until the permanent changes to the Equal Opportunity curriculum are finished. The Coast Guard has informed SLDN that completion of its changes to the Equal

Opportunity curriculum is targeted for the spring of 2004.

As of the publication date for this report, SLDN had received, reviewed, and offered recommendations to the Coast Guard regarding their draft Equal Opportunity curriculum alterations. SLDN urges the Coast Guard to make AHAP implementation a priority. The safety of Coast Guard members, in their person and in their jobs, helps to ensure the security of our ports and of our other service members abroad.

FACT AND RUMOR CLASH:
IN VIOLATION OF “DON’T ASK,
DON’T TELL,” COAST GUARDSMAN
JUSTIN PEACOCK IS INVESTIGATED
BASED ON RUMOR AND CONJECTURE



Delays in revising Coast Guard training, combined with incomplete implementation of the AHAP, has cost the Coast

Guard and its members dearly. Individual guardsmen pay through the loss of their careers; the Coast Guard pays through losing valuable personnel at a time when it can least afford it. One example is Seaman Justin Peacock.

When Peacock joined the Coast Guard he never imagined he would spend almost a year of his enlistment fighting to keep his job. A good guardsman, Peacock never thought his command would begin an investigation, and move to discharge him, based on rumors and an offhand comment made in response to

harassment. Unfortunately, this is exactly what happened to Peacock this last year.

Shortly after reporting for duty at Cape Disappointment, Peacock became the subject of rumors that he was gay. Peacock endured jokes and comments for months until during the summer of 2002 Peacock reported to his Executive Officer that another guardsman, Seaman Bilby, was repeatedly harassing him calling him a faggot. Following Peacock’s report, it appears that the Executive Officer admonished Bilby for the comment but then asked Bilby if he had any evidence that Peacock is gay. This was clearly an inappropriate response by the command to a report of harassment.²³⁸

Even more disturbingly, it appears Peacock’s Executive Officer and Chief then began an inappropriate investigation by questioning other guardsmen about their knowledge of Peacock’s sexual orientation. An investigation based on rumors, speculation and the allegation of a disgruntled witness violates the requirement that credible evidence from a reliable source be presented prior to initiating an investigation.²³⁹ Peacock’s Executive Officer and Chief further violated “Don’t Ask,

Don’t Tell” by apparently conducting this investigation without prior approval by Peacock’s Commanding Officer.²⁴⁰

In the fall of 2002, Peacock was notified that he was under investigation and immediately contacted SLDN. Determined to remain in the Coast Guard, Peacock fought fiercely for retention by requesting to appear before an administrative discharge board. At the board, evidence revealed that Peacock’s command had violated “Don’t Ask, Don’t Tell” repeatedly. Interviews with fellow guardsman showed that the workplace was rife with direct and indirect anti-gay harassment. Peacock had faced numerous rumors about his perceived sexual orientation and was not the only guardsman at the command to face such rumors. Furthermore, Peacock’s was not the only inappropriate investigation within the command. At Peacock’s discharge board, it was revealed that another guardsman in the same command was also investigated regarding his sexual orientation apparently based on rumor alone.

Ultimately, Peacock lost his case before the discharge board which recommended his dismissal based

largely on an off-hand comment Peacock made to co-workers after other guardsmen repeatedly teased him about being gay. Almost every witness to this alleged statement testified that Peacock was frustrated with the incessant ridicule and rumors he was enduring and when he was once again harassed and asked if he was gay while on watch duty, he responded by saying “Yeah, whatever.” One witness even testified that she felt Peacock made the statement to get the harasser off his back. Despite this testimony, the

board ruled to honorably discharge Peacock.

SLDN appealed to the Coast Guard Assistant Commandant for Personnel and requested the Commandant reject the board’s decision and allow Peacock to remain in the Coast Guard. Unfortunately, the Commandant confirmed the discharge board’s decision and discharged Peacock. Adding insult to injury, the Coast Guard then tried to improperly recoup against Peacock for his enlistment bonus. SLDN was

forced to intercede on Peacock’s behalf and was successful in stopping the attempt to recoup the bonus.

It is also troubling that while Peacock’s career in the Coast Guard is over, there is no indication that any steps have been taken to reprimand the guardsmen who were harassing Peacock and other guardsmen in the command. There is also no evidence that the command has held Peacock’s Chief and Executive Officer accountable for conducting improper investigations.

RECOMMENDATIONS:

THE COAST GUARD IN 2004 SHOULD FULFILL ITS PROMISES

Following a year that saw tremendous demands placed on the Coast Guard to protect the homeland and our troops abroad, SLDN remains cautiously optimistic that the Coast Guard will fulfill its promises of improving training and implementation of “Don’t Ask, Don’t Tell” and the AHAP. Similar to our recommendations of last year, SLDN hopes the Coast Guard’s revised training is completed this year and that the Coast Guard:

- Maintain a dialogue with SLDN on training and implementation of “Don’t Ask, Don’t Tell” and the AHAP;

- Ensure that anti-harassment specifically addresses harassment based on perceived sexual orientation;
- Clearly identify to whom, and how Coast Guard members can safely report anti-gay harassment;
- Clearly identify safe spaces for Coast Guard members to receive confidential counseling;
- Provide examples of harassment, including name-calling and jokes, using anti-gay language; and
- Provide clear guidance to Coast Guard commands on “credible evidence” and investigative limits under “Don’t Ask, Don’t Tell.”

The new training should use blunt, specific language to clarify to all members of the Coast Guard that anti-gay harassment is unacceptable and that those using anti-gay epithets, or otherwise engaging in anti-gay harassment, will be held accountable.

Safety and security of Coast Guardsmen should remain as high a priority as the inspection of ships entering and leaving our harbors. SLDN challenges the Coast Guard to complete the work it started on revamping its training in an effort to ensure the safety of its members and move it closer to compliance with the AHAP.

END NOTES

- 1 Editorial, *No Gays Except . . .*, WASH. POST, March 26, 2003 at A16.
- 2 Tom Oliphant, *Gays In Military See An Easing Of Discrimination*, BOSTON GLOBE, April 8, 2003 at A23.
- 3 Whenever “gay” is used throughout this report, it is used as an all-inclusive term for lesbian, gay and bisexual.
- 4 For documentation on the decrease in discharges of lesbians, gays and bisexuals during World War II, the Korean Conflict, and the Vietnam War see RANDY SHILTS, *CONDUCT UNBECOMING* (St. Martin’s Press, 1993) 70-71,163,210,355-57,387,569-570,575,741,745-6.
- 5 Eleven allied countries with troops in Operation Iraqi Freedom allow open service: Australia, Czech Republic, Denmark, Italy, Lithuania, Netherlands, New Zealand, Norway, Slovenia, Spain and Great Britain. Thirteen coalition partners in Operation Enduring Freedom allow lesbian, gay and bisexual troops to serve openly: Australia, Belgium, Canada, Czech Republic, Denmark, France, Germany, Great Britain, Italy, Netherlands, Norway and Spain.
- 6 Exec. Order No. 13087, 63 Fed. Reg. 30097 (Jun. 2, 1998).
- 7 John Files, *Gay Ex-Officers Say ‘Don’t Ask’ Doesn’t Work*, N.Y. TIMES, December 10, 2003 at A18.
- 8 Those endorsing the statement include: BG Keith H. Kerr, CSMR (Ret.), BG Virgil A. Richard, USA (Ret.) and RADM Alan M. Steinman, USCG (Ret.). The three were joined by COL Robert V. Barnes, Jr., USA (Ret.); COL Graham E. Beard, USA (Ret.); COL Margarethe Cammermeyer, USA (Ret.); MG Vance Coleman, USA (Ret.); COL Paul W. Dodd, USA (Ret.); BG Evelyn P. Foote, USA (Ret.); former Assistant Secretary of Defense Lawrence Korb; COL Eugene A. “Andy” Leonard, USA (Ret.); MCPOCG Vincent W. Patton III, USCG (Ret.); CAPT Mike Rankin, USNR (Ret.); and MG Charles Starr, Jr., USAR (Ret.).
- 9 Letter from William Jefferson Clinton to Servicemembers Legal Defense Network, [hereinafter Clinton Letter], (Aug. 12, 2003) (on file at http://www.sldn.org/binary-data/SLDN_ARTICLES/pdf_file/1163.pdf).
- 10 Gallup Poll, *Public OK with Gays, Women in the Military*, December 23, 2003.
- 11 See Dana Blanton, *Majority Opposes Same-Sex Marriage*, FOX NEWS, August 26, 2003, available at http://www.foxnews.com/printer_friendly_story/0,3566,95753,00.html, describing the National Poll conducted by Opinion Dynamics Corporation where question 5 “Allowing gays and lesbians to serve openly in the military?” resulted in 64% in favor.
- 12 Gallup Poll, *Do You Think Homosexuals Should Or Should Not Be Hired For Each Of The Following Occupations?*, June 1992.
- 13 Editorial, *Law Schools, Gays And The Military*, N.Y. TIMES, October 5, 2003 sec. 4 p12; Editorial, *No Gays Except . . .*, WASH. POST, March 26, 2003 at A16; Editorial, *Still No Gay Linguists*, WASH. POST., April 16, 2003 at A26; Editorial,

- Unhappy Anniversary*, WASH. POST, November 30, 2003 at B6; Robin Gerber, *End Decade-Old ‘Don’t Ask’ Policy*, USA TODAY, November 26, 2003 at A25; Editorial, *A Self-Inflicted Military Wound*, CHIC. TRIB., December 5, 2003 at C24; Editorial, *Let Gays Serve*, NEW ORLEANS TIMES-PICAYUNE, March 28, 2003; Editorial, *The Price of Not Telling*, LA TIMES, December 21, 2003 at M4.
- 14 See Lisa Neff, *Presidential Candidates Attack ‘Don’t Ask, Don’t Tell’*, CHICAGO FREE PRESS, November 12, 2003.; see also, Gay Today, *Democratic Presidential Hopefuls Support Gays In The Military*, GAY TODAY.COM, November 5, 2003.
- 15 *Lawrence v. Texas*, 123 S. Ct. 2472 (2003).
- 16 See George Cahlink, *Army May Temporarily Boost Troop Size*, GOV. EXEC., January 28, 2004, available at <http://www.govexec.com/dailyfed/0104/012804g1.htm>.
- 17 *Id.*
- 18 Gary Gates, *Gay Veterans Top One Million*, URBAN INSTITUTE, July 9, 2003.
- 19 SERVICEMEMBERS LEGAL DEFENSE NETWORK, *CONDUCT UNBECOMING – THE 9TH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS” 23-24* (2003) [hereinafter SLDN 9TH ANNUAL REPORT].
- 20 Department of the Army Inspector General (DAIG), *DAIG Special Assessment / Investigation Of Allegations Of Violations Of The DOD Homosexual Conduct Policy At Fort Campbell*, July 2000
- 21 Michael Radutzky, *The War At Home*, [Transcript], CBS 60 MINUTES, January 17, 1999.
- 22 Tom Brokaw, *Mother Tries To Prevent Promotion Of General Who Commanded A Base Where Her Son Was Killed For Being Gay*, NBC Nightly News, June 17, 2003.
- 23 CONG. REC. S15030, Executive Session (daily ed. November 18, 2003) (statement of Sen. Kennedy).
- 24 *Id.*
- 25 CONG. REC. S15040, Executive Session (daily ed. November 18, 2003) (statement of Sen. Dayton).
- 26 CONG. REC. S15029, Executive Session, (daily ed. November 18, 2003) (statement of Sen. Akaka).
- 27 Letter from 22 Members of Congress to Donald Rumsfeld, Secretary of Defense, July 23, 2003.^c
- 28 See Letter from David S. Chu, Under Secretary of Defense, to James Langevin, House of Representative, September 25, 2003, responding to the letter from the 22 Members of Congress.^c
- 29 Robin Gerber, *USA Today: End Decade-Old ‘Don’t Ask’ Policy*, USA TODAY, November 26, 2003 at A25.
- 30 Editorial, *Unhappy Anniversary*, WASH. POST, November 30, 2003 at B6.
- 31 *Lawrence*, *supra* note 15.
- 32 *Id.*, at 2484
- 33 See *Highest Ranking Military Officers To Date Come Out*, N.Y. TIMES, December 10, 2003.
- 34 See Clinton Letter, *supra* note 9.
- 35 Estimate based on conservative estimate that 5% of the American population is gay. (See Gay and Lesbian Families in the United States, David M. Smith and Gary Gates, Urban Institute available at

- <http://www.urban.org/url.cfm?ID=1000491>). Over 200,000 service members have been deployed over seas in support of Operation Enduring Freedom and Operation Iraqi Freedom. (See <http://www.defenselink.mil>).
- 36 Email from Austin Rooke to SLDN (February 5, 2004).
- 37 Phone Communication from Lance Corporal “Joaquin” to SLDN (October 29, 2003).
- 38 Email from anonymous service member to SLDN (February 5, 2004).
- 39 *Id.*
- 40 *Id.*
- 41 Email from Vince Patton to SLDN (February 5, 2004).
- 42 *Id.*
- 43 *Id.*
- 44 *Id.*
- 45 *Id.*
- 46 Patricia Ward Biederman, *For Gays, Secrecy In Love, War*, LA TIMES, April 17, 2003 at A1.
- 47 *Id.*
- 48 C. Dixon Osburn, *Symposium: “Don’t Ask, Don’t Tell”: Gays in the Military A Policy in Desperate Search of a Rationale: The Military’s Policy on Lesbians, Gays and Bisexuals*, 64 UMKC L. REV. 199 (1995).
- 49 See DEP’T OF DEFENSE DIRECTIVE 1332.14, *Enlisted Administrative Separations* [hereinafter DoDD 1332.14] at E3.A4.1.4.3; DEP’T OF DEFENSE INSTRUCTION 1332.40, *Separation Procedures for Regular and Reserve Commissioned Officers* [hereinafter DoDI 1332.40] at E8.4.3.
- 50 See DoDD 1332.14, *supra* note 49, at E3.A1.1.8.1.1; DoDI 1332.40, *supra* note 49, at E2.3.
- 51 See DoDD 1332.14, *supra* note 49, at E3.A1.1.8.1.1; DoDI 1332.40, *supra* note 49, at E2.3.
- 52 See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.1.1; DoDI 1332.40, *supra* note 49, at E8.1.1.
- 53 See *Id.*
- 54 See DoDD 1332.14, *supra* note 49, at E3.A4.1.3.3.4; DoDI 1332.40, *supra* note 49, at E.8.3.3.4.
- 55 See Memorandum from Rudy de Leon, Under Secretary of Defense (Personnel & Readiness), to the Secretaries of the Military Departments, *Guidelines for Investigating Threats Against or Harassment of Service Members Based on Alleged Homosexuality* (Aug. 12, 1999) [hereinafter de Leon 1999 Implementation Memo].^c
- 56 See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.3; DoDI 1332.40, *supra* note 49, at E8.1.3.
- 57 See Report to the Secretary of Defense from Under Secretary of Defense (Personnel & Readiness), *Review Of The Effectiveness Of The Application And Enforcement Of The Department’s Policy On Homosexual Conduct In The Military*, April 1998 [hereinafter Under Secretary of Defense (P&R) 1998 Report]; see also de Leon 1999 Implementation Memo, *supra* note 55.
- 58 See Under Secretary of Defense (P&R) 1998 Report, *supra* note 57, at 11.
- 59 See generally, DEP’T OF DEFENSE INSTRUCTION

5505.8, *Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations* (2000) [hereinafter DODI 5505.8].

⁶⁰ See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.3; DoDI 1332.40, *supra* note 49, at E8.1.3.; *see also*, Under Secretary of Defense (P&R) 1998 Report, *supra* note 57, at 11,12; *see also*, de Leon 1999 Implementation Memo, *supra* note 55.

⁶¹ See Under Secretary of Defense (P&R) 1998 Report, *supra* note 57, at 12.

⁶² See DoDD 1332.14, *supra* note 49, at E3.A4.1.3.1.

⁶³ See de Leon 1999 Implementation Memo, *supra* note 55.

⁶⁴ See Under Secretary of Defense (P&R) 1998 Report, *supra* note 57, at 12.

⁶⁵ DEP'T OF DEFENSE DIRECTIVE 1304.26, *Qualification Standards for Enlistment, Appointment, and Induction: Applicant Briefing Item on Separation Policy*, addendum (1993) [hereinafter DoDD 1304.26 addendum]. "The Armed Forces do not tolerate harassment or violence against any service member, for any reason." *Id.*

⁶⁶ Cheryl Lavin, *Strange Case of a Dead Sailor, Was Allen Schindler Killed Because He Was Gay?*, CHI. TRIB., Dec. 21, 1992, at C1.

⁶⁷ See JANET E. HALLEY, DON'T: A READER'S GUIDE TO THE MILITARY'S ANTI-GAY POLICY 20-22 (1999).

⁶⁸ 139 Cong. Rec. S11157 (daily ed. Sep. 9, 1993) (statement of Sen. Kennedy).

⁶⁹ Thomas W. Lippman, *Pentagon Studies Conflict on Effect of Gays in the Military*, WASH. POST, Aug. 27, 1993, at A10.

⁷⁰ *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. on the Armed Services*, 103d Cong., 707 (1993) (statement of Gen. Colin Powell) [hereinafter Powell Statement].

⁷¹ *Id.*, "[H]omosexuals have privately served well in the past and are continuing to serve well today." *Id.*

⁷² DoDD 1332.14, *supra* note 49 at E3.A1.1.8.1.1; DoDI 1332.40, *supra* note 49, at E2.3. "A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service . . . unless manifested by homosexual conduct . . ." *Id.*

⁷³ Powell Statement, *supra* note 70, at 709. "We will not ask, we will not witch hunt, we will not seek to learn orientation." *Id.*

⁷⁴ DoDD 1304.26 addendum, *supra* note 65.

"The Armed Forces do not tolerate harassment or violence against any service member, for any reason." *Id.*

⁷⁵ Memorandum from Les Aspin, Secretary of Defense, to the Secretaries of the Military Departments, *Implementation of the DoD Policy on Homosexual Conduct in the Armed Forces* (Dec. 21, 1993) [hereinafter Les Aspin Memo].^c "[The new policy] provides that investigations into sexual misconduct will be conducted in an evenhanded manner, without regard to whether the alleged misconduct involves homosexual or heterosexual conduct." *Id.*

⁷⁶ See PUB. PAPERS William J. Clinton, 1993, vol. 1, p. 1111. President Clinton pledged that the policy would provide for "a decent regard for the legiti-

mate privacy and associational rights of all service members." *Id.* Then Senator William Cohen understood that the small amount of privacy under the current policy was intended to prevent the military from prying into people's private lives. *See, Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. on Armed Services*, 103d Cong. 787 (statement of Sen. William Cohen).

⁷⁷ Opposition in Congress to the idea of liberalizing the policy on gays in the military did not end when President Clinton signed the bill into law on November 30, 1993. On July 31, 1996, Congressmen Dornan, Hunter, Chambliss, Stearns and Crane introduced a bill to reinstate the pre-"Don't Ask, Don't Tell" regulations allowing the services to ask about sexual orientation and pursue personnel perceived to be gay. The bill passed the House of Representatives, but ultimately failed to become law.

⁷⁸ *Report of the Board of Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuality* (Mar. 15, 1957) "Crittenden Report."

⁷⁹ Theodore R. Sarbin, Ph.D. & Kenneth E. Karols, M.D., Ph.D., *Defense Personnel Security Research and Education Center, Nonconforming Sexual Orientation and Military Suitability* (Dec. 1988); M. McDaniel, *Defense Personnel Security Research and Education Center, Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability* (1999).

⁸⁰ RAND Corp., *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment*, National Defense Research Institute (1993).

⁸¹ The DoD Working Group's findings foreshadowed this dynamic. "Lifting the ban on homosexuals serving in the military would be perceived by many service members as the imposition of a political agenda by a small group - an agenda which is seen as having no military necessity and as being, in fact, destructive to the finest fighting force in the world. Morale would suffer accordingly." DoD MWG report at 5. Gary Lehring describes the anti-gay harassment sparked by President Clinton's new policy. "Following a period in which the military fought long and hard to keep gay and lesbian servicepersons out of the armed forces, the increased attention directed new waves of hatred at anyone in the military who was suspected of being gay or lesbian. . . . Seen as political rather than military, the national debate over lifting the ban against gays in the armed forces had the long-lasting effect of making any service member who was suspected of being gay or lesbian an even greater target than before. . . . [G]ay men and lesbians were increasingly considered fair game by fellow soldiers. . . . [H]aving more than failed to create real change, the Clinton policy had seemingly created a more dangerous environment for gay men and lesbians in the military." GARY LEHRING, OFFICIALLY GAY: THE POLITICAL CONSTRUCTION OF SEXUALITY BY THE U.S. MILITARY 141-142 (2003). SLDN's First Annual Report also provides insight into the anti-Clinton

sentiment in the military during this time, and its effect on gay service members. "An alarming number of command violations documented by SLDN result from outright insubordination, not lack of information or inadequate training. These violations are fueled, in part, by a climate of backlash in many units. The controversy over President Clinton's proposal to lift the ban charged the atmosphere in the military and focused unprecedented attention on the private lives of servicemembers. . .

.In this climate, many commanders and others have taken the Congressional vote against lifting the ban as a license to go after those whom they suspect are gay. As Lawrence J. Korb, former Assistance Secretary of Defense for Personnel and Readiness under President Reagan . . . stated, 'I think the military feels they have beaten Clinton back on this issue, and they're not going to change.' As a result, many servicemembers are actually worse off than before." SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING - THE FIRST ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE" 17 (1994) [hereinafter SLDN 1ST ANNUAL REPORT].

⁸² "The controversy over President Clinton's proposal to lift the ban charged the atmosphere in the military and focused unprecedented attention on the private lives of servicemembers. Since that time, everyone from private to general officer has speculated about who in the ranks might be gay. . . . As a result, many servicemembers are actually worse off than before." SLDN 1ST ANNUAL REPORT, *supra* note 81, at 17.

⁸³ See generally SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING - THE 2ND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE" 5-7 (1995) [hereinafter SLDN 2ND ANNUAL REPORT].

⁸⁴ See SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING - THE 3RD ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE" 5-6 (1996) [hereinafter SLDN 3RD ANNUAL REPORT].

⁸⁵ Navy Manpower Analysis Center, *Homosexual Administrative Discharge Board / Show Cause Hearings*, June 1994 memo at 4.^c

⁸⁶ DEP'T OF THE NAVY, NAVMED P-5134, GENERAL MEDICAL OFFICER (GMO) MANUAL (May 1996 ed.).

⁸⁷ See, the case of Marine Lance Corporal Blaesing, discharged for asking questions about sexual orientation to a military psychologist, described in SLDN 1ST ANNUAL REPORT, *supra* note 81, at 22; *see also* SLDN 3RD ANNUAL REPORT, *supra* note 84, at 6-7.

⁸⁸ See SLDN 1ST ANNUAL REPORT, *supra* note 81, at 20; *see also* Memorandum from Richard A. Peterson, to All Staff Judge Advocates and Military Judges, *Commander Inquiries on Members Stating They are Homosexual* (Nov. 3, 1994) [hereinafter Peterson Memo].^c

⁸⁹ Memorandum from Judith A. Miller, General Counsel for the Department of Defense, to the General Counsels of the Military Departments, *Re: Policy on Homosexual Conduct in the Armed Forces* (Aug. 18 1995) [hereinafter Miller Memo].^c

⁹⁰ Janet Zich, *Living in Limbo with "Don't Ask, Don't Tell"*, 70 Stan. Bus no. 4 (Aug. 2002), available at <http://www.gsb.stanford.edu/community/bmag/sbsm0208/viewpoint.html>.

⁹¹ *Id.*

⁹² Miller Memo, *supra* note 89.

⁹³ Janet Halley, *supra* note 67, at 24.

⁹⁴ See generally *Cammermeyer v. Perry*, 97 F.3d

1235, 1236 (9th Cir. 1996). See also MARGARETHE CAMMERMEYER, *SERVING IN SILENCE* 1-5 (1994).

⁹⁵ SLDN 1ST ANNUAL REPORT, *supra* note 81, at 1. ⁹⁶ *Id.*

⁹⁷ SLDN 3RD ANNUAL REPORT, *supra* note 84, at 24-25.

⁹⁸ SLDN 1ST ANNUAL REPORT, *supra* note 81, at 1.

⁹⁹ SLDN 3RD ANNUAL REPORT, *supra* note 84, at 24.

¹⁰⁰ C. Dixon Osburn, *supra* note 48 at 218.

¹⁰¹ SLDN 1ST ANNUAL REPORT, *supra* note 81, at 16.

¹⁰² *Id.* at 17-18.

¹⁰³ *Id.* at 11; see also, SLDN 2ND ANNUAL REPORT, *supra* note 83, at 11-12

¹⁰⁴ SLDN 2ND ANNUAL REPORT, *supra* note 83, at 12.

¹⁰⁵ *Id.*

¹⁰⁶ See SLDN 1ST ANNUAL REPORT, *supra* note 81, at 11-12, 23-24; SLDN 2ND ANNUAL REPORT, *supra* note 83, at 21-26; SLDN 3RD ANNUAL REPORT, *supra* note 84, at 16-25.

¹⁰⁷ SLDN 1ST ANNUAL REPORT, *supra* note 81, at 12.

¹⁰⁸ SLDN 3RD ANNUAL REPORT, *supra* note 84, at 17-18.

¹⁰⁹ *Id.*, at 18.

¹¹⁰ *Id.*

¹¹¹ *Id.*, at 19.

¹¹² *Id.*

¹¹³ *Id.*, at 21.

¹¹⁴ SLDN 2ND ANNUAL REPORT, *supra* note 83, at 22-25; SLDN 3RD ANNUAL REPORT, *supra* note 84, at 21-24.

¹¹⁵ SLDN 2ND ANNUAL REPORT, *supra* note 83, at 24; SLDN 3RD ANNUAL REPORT, *supra* note 84, at 21.

¹¹⁶ A number of cases were brought during the mid 1990's challenging the new ban on First Amendment free speech grounds. The Second Circuit Court of Appeals in *Able v. U.S.*, 155 F.3d 628 (2d Cir. 1998) found that "Don't Ask, Don't Tell" and the prohibition on homosexual acts did not violate gay, lesbian and bisexual service members' right to free speech because the prohibitions on speech furthered the government's interest in preventing homosexual conduct in the military. In *Thomasson v. Perry*, 80 F.3d 915 (4th Cir. 1996) and *Philips v. Perry*, 106 F.3d 1420 (9th Cir. 1997) the Fourth and Ninth Circuits, respectively, analyzed the "statements" prong of the "Don't Ask, Don't Tell" statute and found that discharges based on statements did not violate the First Amendment, because the statements themselves were evidence of a propensity to act and the discharges were based on the propensity demonstrated by the statements, not

the statements themselves. Equal protection arguments were also central to the constitutional challenges to "Don't Ask, Don't Tell." Both the "acts" component of the policy and the "statements" component were unsuccessfully challenged on Fifth Amendment Equal Protection grounds. In *Philips v. Perry*, 106 F.3d 1420 (9th Cir. 1997), the Ninth Circuit Court of Appeals rejected a challenge to the "acts" component, finding the Navy's justifications for the policy – the maintenance of unit cohesion, preservation of personal privacy, and the reduction of sexual tension, among others – were legitimate government interests rationally related to the policy of discharging persons who engaged in homosexual acts. Equal protection challenges to the "statements" component of the law also failed in *Holmes v. California Army National Guard*, 124 F.3d 1126 (9th Cir. 1997), *Richenberg v. Perry*, 97 F.3d 256 (8th Cir. 1996), and *Philips v. Perry*, 106 F.3d 1420 (9th Cir. 1997). The rebuttable presumption of an intent to act implied in a statement of homosexual orientation was found to be rationally related to the legitimate government interest of preventing homosexual conduct in the ranks.

¹¹⁷ DODD 1304.26, *supra* note 65; DoDD 1332.14, *supra* note 49; DoDD 1332.30, *supra* note 49; DoDI 5505.3 "Initiation of Investigations by Military Investigative Organizations" (July 11, 1986); DoDI 5505.8, *supra* note 59. For a brief summary of the changes, see Les Aspin Memorandum, "Implementation of DoD Policy on Homosexual Conduct in the Armed Forces" 21 Dec. 1993. Each branch's implementation as follows: Army Regulation 165-1; Army Command Policy 600-20, Ch. 4 – Para. 19; NAVADMIN 033/94 CNO Washington DC 110300Z (Mar 94); ALMAR 64/94 CMC Washington DC 281600Z (Feb 94); USCG Personnel Manual 12.E

¹¹⁸ SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING-THE 4TH ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS," 63, (1997) [hereinafter SLDN 4TH ANNUAL REPORT].

¹¹⁹ New ways of pursuing gay service members developed during this period as well. Among the new rules and regulations was guidance from a memorandum from John M. Deutch, Deputy Secretary of Defense to the Secretaries of the Military Departments regarding when service members discharged under "Don't Ask, Don't Tell" would have to repay educational assistance or enlistment bonuses. The 1996 Deutch memo prohibited recoupment except in cases where the service member was found to have made his or her statement for the purpose of avoiding service. With the notable exception of the Air Force, the services generally complied with this memorandum, until a federal judge validated the Air Force's more aggressive interpretation of the law.

Now recoupment is common throughout the services in statements cases. Memorandum from John M. Deutch, Deputy Secretary of Defense to the Secretaries of the Military Departments, *Recoupment of Education Assistance Funds, Bonuses and Special Pay from Persons Disenrolled or Separated on the Basis of Homosexual Conduct* (May 17, 1994) [hereinafter

Deutch Memorandum].^c; see also, *Hensala v. Department of the Air Force, et al.*, 343 F.3d 951 (9th Cir. Cal. Ct. App., 2002).

¹²⁰ Secretary of Defense (P&R) 1998 Report, *supra* note 57.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Memorandum from Deputy Secretary of Defense to Secretaries of the Military Departments, *Implementation of "Policy Guidelines on Homosexual Conduct in the Armed Forces" in Personnel Security Investigation and Adjudication*, available at http://www.sldn.org/binary-data/SLDN_ARTICLES/pdf_file/990.pdf.

¹²⁴ Executive Order 12968 (Aug. 4, 1995).

¹²⁵ See generally, DoDI 5505.8, *supra* note 59.

¹²⁶ SLDN 4TH ANNUAL REPORT, *supra* note 118, at 42-43.

¹²⁷ SLDN 3RD ANNUAL REPORT, *supra* note 84.

¹²⁸ SLDN 4TH ANNUAL REPORT, *supra* note 118, at 28.

¹²⁹ See *Id.*, explaining how this incident was among those motivating the 1998 Report's recommendation for a review of the use of pretrial agreements to obtain information about service members' sexual orientation.

¹³⁰ In addition to instances of improper pursuits, as late as 2002 SLDN discovered that some Air Force recruiting offices were still using outdated forms containing questions about recruits' sexual orientation notwithstanding Defense Secretary Cohen's 1997 order to the services to replace the forms with updated ones. SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING – THE 7TH ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS," 12-13 (2001) [hereinafter SLDN 7TH ANNUAL REPORT].

¹³¹ SLDN 7TH ANNUAL REPORT, *supra* note 130.

¹³² *McVeigh v. Cohen*, 983 F. Supp. 215 (D.D.C. 1998).

¹³³ *Id.*

¹³⁴ SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING – THE 8TH ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS" 22-23 (2002) [hereinafter SLDN 8TH ANNUAL REPORT].

¹³⁵ SLDN 8TH ANNUAL REPORT, *supra* note 134, at 22-23.

¹³⁶ *Id.*

¹³⁷ SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING – THE 5TH ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS" 10 (1998) [hereinafter SLDN 5TH ANNUAL REPORT].

¹³⁸ SLDN 5TH ANNUAL REPORT, *supra* note 137.

¹³⁹ The lack of familiarity with the closet that characterized this new generation of service members also resulted in a decreased willingness on the part of gay service members to remain in the closet. Many service members were out to their colleagues and friends. At Lackland Air Base in San Antonio, discharges for statements soared so high that the Air Force invited SLDN to investigate the reason for the soaring discharges. After SLDN's visit, which included training on the

policy for Lackland personnel, discharges dropped from 200 in FY1997 to fewer than 50 in FY2000. SLDN 8TH ANNUAL REPORT, *supra* note 134, at 27.

140 Memorandum from Edwin Dorn, Undersecretary of Defense to Secretaries of the Military Departments, *Guidelines for Investigating Threats Against Service Members Based on Alleged Homosexuality*, (Mar. 24, 1997).

141 SLDN 4TH ANNUAL REPORT, *supra* note 118, at 64.

142 SLDN 5TH ANNUAL REPORT, *supra* note 137, at 74.

143 *Id.*

144 *Id.*

145 SLDN 4TH ANNUAL REPORT, *supra* note 118, at 11.

146 SLDN 5TH ANNUAL REPORT, *supra* note 137, at 48-49.

147 SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING – THE 6TH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS” 48-49 (1999) [hereinafter SLDN 6TH ANNUAL REPORT].

148 SLDN 6TH ANNUAL REPORT, *supra* note 147, at 51-54.

149 SLDN 9TH ANNUAL REPORT, *supra* note 19, at 22.

150 “Due to the ‘hate crime’ death of a homo in the Army, we now have to take extra steps to ensure the safety of the queer who has ‘told’ (not keep his part of the DOD ‘don’t ask don’t tell’ policy). Commanders now bear the responsibility if someone decides to assault the young backside ranger. And remember, little ears are everywhere.” Statement of Lt. Col. Melton, SLDN 6TH ANNUAL REPORT, *supra* note 147, at 55.

151 SLDN 6TH ANNUAL REPORT, *supra* note 147, at 57.

152 Elaine Sciolino, *Army Exonerates Officers In Slaying Of Gay Private – Soldier’s Mother Calls Report A Cover-Up*, NY TIMES, July 19, 2000 at A16.

153 Letter from David S. Chu to Sen. Mark Dayton, Unites States Senate, October 24, 2003.^c

154 See Under Secretary of Defense (P&R) 1998 Report, *supra* note 57.

155 de Leon 1999 Implementation Memo, *supra* note 55.

156 Appendix C. Homosexual Conduct Policy Survey, DoD INSPECTOR GENERAL’S “DON’T ASK, DON’T TELL, DON’T PURSUE” POLICY SURVEY (undated).^c

157 *Id.*

158 Exec. Order No. 13140, 64 Fed. Reg. 55115 (Oct. 6, 1999).

159 Servicemembers Legal Defense Network, *General Accounting Office, Defense Force Management: Statistics Related to DoD’s Policy on Homosexuality* (1992); George Cahlink, *supra* note 16.

160 R.L. Evans, *U.S. Military Policies Concerning Homosexuals: Development, Implementation and Outcomes*, 11 Law & Sex 113, 133-38 (2002).

161 Exec. Order No. 13087, *supra* note 6.

162 Aaron Belkin & R.L. Evans, *The Effects of Including Gay and Lesbian Soldiers in the British*

Armed Forces: Appraising the Evidence, Center for Study of Sexual Minorities in the Military (Nov. 2000); Aaron Belkin & Jason McNichol, *The Effects of Including Gay and Lesbian Soldiers in the Australian Defence Forces: Appraising the Evidence*, Center for Study of Sexual Minorities in the Military (Sep. 2000); Aaron Belkin & Jason McNichol, *Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces: Appraising the Evidence*, Center for Study of Sexual Minorities in the Military (Apr. 2000); Aaron Belkin & Melissa Levitt, *Effects of Lifting of Restrictions on Gay and Lesbian Service in the Israeli Forces: Appraising the Evidence*, Center for Study of Sexual Minorities in the Military (June 2000). All are available at <http://www.gaymilitary.ucsb.edu/Publications/PublicationsHome.htm>.

163 See Website of Steve May, *About Steve May*, available at <http://www.stevemay.org/about.htm>.

164 Letter from Capt. Darrell V. Allen, MCCES Adjutant, 29 Palms, Subj: “Homosexual Conduct Discharge Potential,” (Apr. 4, 2002). [hereinafter 29 Palms Memorandum].^c

165 Gordon Trowbridge, *2003 Military Times Poll: Social Issues: How Troops View Gays, Women, Harassment*, ARMY TIMES, Jan. 5, 2004 at 15. “Those polled differ from the military as a whole in important ways. They tended to be older, higher in rank and longer in the service than the overall military.”

166 John D. Hutson, *Retire a Bad Military Policy*, Nat’l Law Journal, Vol. 25, No. 47, at 30 (Aug. 11, 2003).

167 General Wesley Clark Website, available at <http://clark04.com/issues/glb>.

168 John Files, *Gay Ex-Officers Say ‘Don’t Ask Doesn’t Work’*, N.Y. Times, Dec. 10, 2003, at A18, *supra* note 7.

169 *Highest Ranking Military Officers To Date Come Out*, N.Y. TIMES, December 10, 2003, *supra* note 33.

170 Darren K. Karlson, *Public OK with Gays, Women in Military*, Gallup Poll Tuesday Briefing, Dec. 23, 2003.

171 Hugick, *Public Opinion Divided on Gay Rights*, Gallup Poll Monthly, June 1992, at 3.

172 Dana Blanton, *Majority Opposes Same-Sex Marriage*, FOX News Poll, Aug. 26, 2003, available at <http://www.foxnews.com/story/0,2933,95753,00.html>.

173 General Accounting Office, *Foreign Languages: Human Capital Approach Needed to Correct Staffing and Proficiency Shortfalls* 7, Report to Congressional Requesters GAO-02-375 (Jan. 2002).

174 Editorial, *Why We Need Gays in the Military*, N.Y. TIMES, November 28, 2003, at A43; Editorial, *Still No Gay Linguists*, WASH POST, April 16, 2003, at A26; Robin Gerber, *End Decade-Old ‘Don’t Ask’ Policy*, USA TODAY, November 26, 2003, at A25; Nathaniel Frank, Editorial, *Don’t Ask, Don’t Tell, Don’t Act*, CHIC. TRIB., March 27, 2002, at N16.

175 CONG. REC. S15029, Executive Session, (daily ed. November 18, 2003) (statement of Sen. Dayton). “But I have also visited parents of young men and women who are not recovering, who are not coming home because they paid the ultimate

price for their service. I am on the Armed Services Committee, and when I look at the reports and the casualty figures of the brave young Americans who are being injured or wounded or maimed or who died in combat, I don’t see categories of “heterosexual” or “gay” or “lesbian” and I don’t see “women” or “men.” I see American soldiers, with the same kind of blood and bodies. All they are asking is an equal opportunity to serve their country, to risk their lives in the service of their country even to die in the service of their country.” *Id.*

176 CONG. REC. S15029, Executive Session, (daily ed. Nov. 18, 2003) (statement of Sen. Sessions). Sen. Sessions stated, “This investigation of the command climate found that Major General Clark was not culpable of any dereliction or failure of leadership, as has been alleged by the Service Members Legal Defense Network—SLDN—which is an advocacy group that works to protect and ensure that homosexual soldiers are treated fairly in the military, as they have every right to be treated. They have a right to insist that they be treated fairly.” *Id.*

177 *Excerpts from the Debate Among G.O.P. Candidates*, N.Y. TIMES, Jan. 7, 2000, at A15.

178 Republican Party Platform, available at <http://www.gop.com/About/PartyPlatform/default.aspx?Section=8>.

179 Clinton Letter, *supra* note 9.

180 *Lawrence*, *supra* note 15.

181 *U.S. v. Marcum*, No. 02-0944/AF (C.A.A.F. filed Sep. 23, 2002). Additional cases are pending before the courts of criminal appeals for the individual services, and before the Court of Appeals for the Armed Forces. These cases are on hold pending a decision in *Marcum*.

182 Editorial, *Still No Gay Linguists*, WASH. POST, April 16, 2003 at A26.

183 “United States Army Discharges,” Source – Unofficial Source, Outside the Army.

184 Army Regulations 350-1, *Army Training And Education*, at 1-7.c.1.

185 US Army Sergeants Major Academy (ANCOC), L434: *The Army Homosexual Policy Training Support Package*, October 2003, at 13.

186 See generally *Id.*

187 See generally Army Regulation 350-1, *supra* note 184.

188 See Deputy Chief of Staff Personnel Management (DCSPER/G1) Website, available at <http://www.usarc.army.mil/95thdiv/dcsper.htm>.^c

189 See *Id.*

190 Memorandum from Office of the Inspector General, Department of the Army, to the Army Chief of Staff, Subj: “Special Interest Item – Implementation of Homosexual Conduct Policy Training – ACTION MEMORANDUM” (Apr. 11, 2002) [hereinafter IG Letter].^c

191 Phone Communication from Specialist Tommy Cook to SLDN (December 2, 2003).

192 Email from Jennifer McGinn to SLDN, January 15, 2004, in response to Email From SLDN to Jennifer McGinn, January 12, 2004.^c

193 See Sworn Statement from Jennifer McGinn at 1.^c See also Sworn Statement from anonymous service member.^c

194 For example, in 1998 SLDN documented the Navy's use of a standard form known as the "homosexual/bisexual questionnaire" containing fifty questions designed to determine a sailor's sexual orientation. The form was used to discharge at least two sailors that year. See SLDN 5TH ANNUAL REPORT, *supra* note 137, at 10.

195 See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.3; DoDD 1332.40, *supra* note 49, at E8.1.3.

196 See News Story, "Don't Ask, Don't Tell" on the Frontlines in Iraq, KGO-TV, San Francisco, April 16, 2003, available at <http://www.sldn.org/templates/press/record.html?section=5&record=883>.

197 Laura M. Colarusso, *Sexual Assault In The Air Force: How Bad Is The Problem?* AIR FORCE TIMES, August 4, 2003, at 8.

198 Rod Hafemeister, *Claiming Homosexuality Not An Easy Out In Basic Training*, AIR FORCE TIMES, September 22, 2003.

199 *Id.*

200 *Id.*

201 *Id.*

202 United States Air Force, *Homosexual Policy Training for Supervisors*, Power Point Presentation, available at <http://www.aetc.randolph.af.mil/ja/documents/hspbasicfinal.ppt>.^c

203 *Id.*, at slides 15 – 16.^c

204 *Id.*, at slide 16.^c

205 Confidential Phone Conversation from service member to SLDN (December 23, 2003).

206 See Office of the Under Secretary of Defense (P&R), Report to the Secretary of Defense: *Review of the Effectiveness of the Application and Enforcement of the Department's Policy on Homosexual Conduct in the Military* [hereinafter Under Secretary of Defense (P&R) 1998 Report], at 10 (Apr. 1998), (stating that the Department of Defense has found that none of the Services require health care professionals or chaplains to report if a service member reveals his sexual orientation.)

207 Department of Defense Working Group, *Anti-Harassment Action Plan* (July 21, 2000) [hereinafter AHAP].

208 AIR FORCE INSTRUCTION 90-201, *Inspector General Activities*, paras. A6.2.5.1, A6.2.5.2 (Oct. 1, 2002).

209 Gannett News Service, *Rising College Costs Spark Growth In ROTC Enrollment*, AIR FORCE TIMES, January 13, 2003.

210 News Briefs, *Lesbian Cadet Gets The Boot*, AIR FORCE TIMES, September 22, 2003, at 4.

211 Power Point Presentation from Randolph Air Force Base, *Off-Limits Establishments AETC*, sent to SLDN by anonymous service member.^c

212 *Id.*, Slide 1.^c

213 See DoDD 1332.14, *supra* note 49, at E3.A4.3.3.4; See also, DODI 1332.40, *supra* note 49, at E8.3.3.4, stating that "A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service . . . unless manifested by homosexual conduct . . ." and DoDD 1332.14, *supra* note 49 at E3.A4.1.3.3.4 (stating "[credible information of homosexual con-

duct does not exist when] the only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals . . .").

214 See Letter from Kathi Westcott, Esq, SLDN to General Donald G. Cook, Commander, Air Education and Training Command, *Re: Off Limits Designation of Gay Bars and Nightclubs in San Antonio Area*, (January 14, 2004).^c

215 Kenneth Lynch, "Old Sailor" Gives His Last Reflections Before He Moves On And Overseas, NAVY TIMES, July 7, 2003, at 62.

216 United States Navy, *Status Of The Navy as of March 27, 2003*, available at <http://www.chinfo.navy.mil/navpalib/news/www/status.html>.

217 Mark D. Faram, *Get Credit For What You Already Know: Now Sailors Can Test Out Of GMT*, NAVY TIMES, October 20, 2003, at 22.

218 *Id.*

219 United States Navy, *Discussion Points Relating to Slide 22 Of The Navy General Military Training available at* <http://www.cnet.navy.mil/cnet/gmt/gmt03/3-1.pdf>.

220 Christopher Munsey, *Don't Ask, Don't Televise: Sailor Doesn't Regret Coming Out On TV*, NAVY TIMES, September 1, 2003, at 29.

221 Joseph M. Schnettler, IT3(SW), *Letters: Gay Sailor Did Nothing*, NAVY TIMES, September 29, 2003, at 46.

222 Christopher Munsey, *Former Mids Apply For Gay And Lesbian Alumni Chapter: Group May Be Pioneers In Seeking Official Standing*, NAVY TIMES, November 24, 2003, at 27.

223 *Id.*

224 Editorial, *Seek Change From Within*, NAVY TIMES, November 24, 2003, at 52.

225 Mark D. Faram, *supra* note 217, at 22.

226 Col. R. M. Balzhiser (ret.), letter to the editor, ARMY TIMES, December 20, 2003.

227 See Electronic Message MARADMIN 259/02, CMC Washington DC / / MP, 081015Z May 02, Subj: "Homosexual Conduct Policy" [hereinafter MARADMIN 259/02].

228 *Id.*, at para. 11.

229 *Id.*, at para. 12.

230 See AHAP, *supra* note 207.

231 Letter from R.H. Zales, Colonel, USMC, to Jeffery Cleghorn, SLDN, (May 29, 2003) [hereinafter Zales Memo].^c

232 Phone Communication from Lance Corporal "Joaquin" to SLDN (October 29, 2003).

233 Marine Lt. Col. H Thomas, letter to the editor, ARMY TIMES, December 20, 2003.

234 Patricia Kime, *Coasties Take Fight To The Enemy Half A World Away*, NAVY TIMES, April 7, 2003.

235 Ledyard King, *Admiral Wants More Active-Duty Coasties*, NAVY TIMES, June 30, 2003 at 30.

236 Commandment Instruction M1000.6, *Coast Guard Personnel Manual*, para. 12.E.1 (Nov. 12, 2002).

237 *Id.* at para. 12.E.1.4.

238 See de Leon 1999 Implementation Memo, *supra* note 55, stating that a report of harassment to a service members command "should result in prompt

investigation of the threat or harassment itself. Investigators should not solicit allegations concerning the sexual orientation or homosexual conduct of the threatened or harassed person."

239 See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.1; DoDI 1332.40, *supra* note 49, at E8.1.1.

240 See DoDD 1332.14, *supra* note 49, at E3.A4.1.1.1; DoDI 1332.40, *supra* note 49, at E8.1.1; see also, DoDI 5505.8, *supra* note 59, at para 6.3.

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- I. "Total 'Don't Ask, Don't Tell' Discharges 1994-2003," Source - Department of Defense, United States Army, United States Air Force, United States Navy, United States Marine Corps, United States Coast Guard, and Unofficial Congressional Sources.
- II. "Costs of 'Don't Ask, Don't Tell' 1994-2003," Source - Servicemembers Legal Defense Network, General Accounting Office, Defense Force Management: Statistics Related to DoD's Policy on Homosexuality (1992).
- III. "DoD IG Findings" Source - Appendix C. Homosexual Conduct Policy Survey, DoD Inspector General's "Don't Ask, Don't Tell, Don't Pursue" Policy Survey (undated).
- IV. "Disproportionate Impact on Women" Source - Department of Defense, United States Army, United States Air Force, United States Navy, United States Marine Corps, United States Coast Guard and Unofficial Congressional Sources.
- V. "Gallup Poll: Americans Who Support Gays Serving in the Military" Source - Hugick, Public Opinion Divided on Gay Rights, Gallup Poll Monthly, June 1992, at 3; Darren K. Karlson, Public OK with Gays, Women in Military, Gallup Poll Tuesday Briefing, Dec. 23, 2003.
- VI. "US Army 'Don't Ask, Don't Tell' Discharges 1994-2003," Source - Department of Defense, United States Army, and Unofficial Congressional Sources.
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- VIII. "US Navy 'Don't Ask, Don't Tell' Discharges 1994-2003," Source - Department of Defense, United States Navy.
- IX. "US Marine Corps 'Don't Ask, Don't Tell' Discharges 1994-2003," Source - Department of Defense, United States Marine Corps and Unofficial Congressional Sources.
- X. "US Coast Guard 'Don't Ask, Don't Tell' Discharges 1994-2002," Source - United States Coast Guard.