

Dedication

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

Acknowledgements

SLDN would like to gratefully acknowledge the assistance of the entire SLDN staff in producing and distributing *Conduct Unbecoming: The Ninth 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, Jeffery M. Cleghorn, Sharra E. Greer, C. Dixon Osburn, Steve E. Ralls, and Kathi S. Westcott. We would also like to acknowledge Christopher Neff, Paula Neira and David W. Young 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 4,300 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 NINTH ANNUAL REPORT ON

*“Don’t Ask, Don’t Tell,
Don’t Pursue, Don’t Harass”*

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Executive Summary

GAY DISCHARGES DROP DURING TIME OF WAR

BIGOTRY IS NOT A PART OF OUR SOUL. IT'S NOT GOING TO BE A PART OF OUR FUTURE . . . THAT'S NOT THE AMERICAN WAY.
President George W. Bush¹

HOMOSEXUALS CAN AND DO SERVE HONORABLY IN THE MARINE CORPS. HOMOSEXUALS CAN AND DO MAKE SOME OF THE BEST MARINES. HOMOSEXUALS ARE CAPABLE OF MILITARY SERVICE AND CAN AND DO PERFORM AS WELL AS ANYONE ELSE IN THE MILITARY.
Official Memorandum from Twenty-nine Palms Marine Base²

History repeats itself.

During any time of war or conflict for America, gay discharges have dropped. Gay discharges decreased during the Korean War, the Viet Nam conflict, the Persian Gulf War, and now again during Operation Enduring Freedom.³

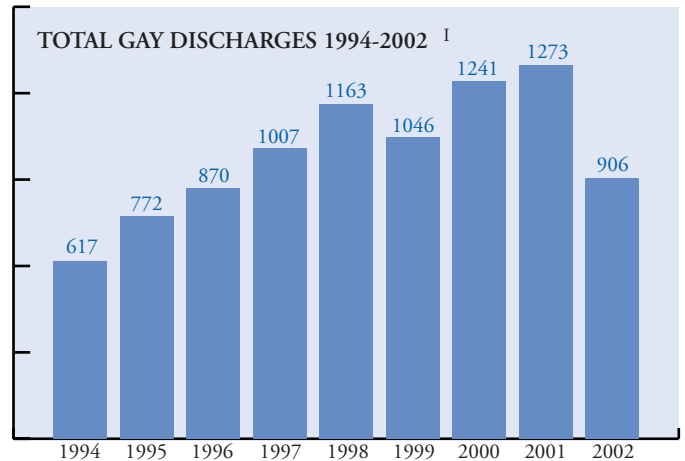
This year, gay discharges dropped to 906 from 1273 last year – the lowest discharge figure since 1996. The Navy and Air Force both recorded the fewest number of gay discharges since Congress codified “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” into law in 1993.⁴

Why? Perhaps because every service member, regardless of sexual orientation, is critical in our nation’s fight against terrorism. Perhaps because many commanders, like those who

follow the official guidance at Twenty-nine Palms Marine Base, would rather focus on the mission than on their troops’ private lives. Perhaps because commands are recognizing, as LTJG Jenny Kopstein’s command did, that “sexual orientation [does] not disrupt good order and discipline....”

The answer, we suspect, is all of the above.

Discharges of highly qualified service members, however, continue. In the summer of 2002, the Army discharged seven linguists, all trained in Arabic, for being gay.⁵ They did so despite a critical shortage of Arabic specialists. Even now, many more linguists who speak Arabic, Farsi and Korean – the languages of the “Axis of Evil” - have been discharged or are currently facing discharge.



At the same time, ironically, American troops are serving alongside thirteen coalition partners in Operation Enduring Freedom who have abandoned their bans on gays serving in the military.⁶ According to the Center for the Study of Sexual Minorities in the Military at the University of California, lifting these bans have been “non-events.”⁷

Lifting the ban in the United States military would be a non-event too. According to a recent survey, many service members report serving with a service member whom they know

to be lesbian, gay or bisexual.⁸ American troops also serve with civilians in the CIA, FBI, NSA and agencies inside the Department of Homeland Security who do not face a gay ban.⁹ Public opinion polls show that 72% of Americans support gays in the military.¹⁰ A report published in *International Security* argues that concerns about unit cohesion not are supported by empirical data.¹¹ Military studies from the leading force management researchers at RAND and PERSEREC seriously question the efficacy of the military’s gay ban.¹²

The chorus of dissent from “Don’t Ask, Don’t Tell” continues to grow. This year, the largest American-based human rights group, Human Rights Watch, issued a report calling the gay ban an affront to international human rights.¹³ Human Rights Watch called on President Bush and Congress to repeal “Don’t Ask, Don’t Tell.”¹⁴

We agree. Our national security is served when our national soul is free from the bigotry of “Don’t Ask, Don’t Tell.” The time has come to lift the ban.

INCOMPLETE: BUSH ADMINISTRATION FAILS TO IMPLEMENT ANTI-HARASSMENT ACTION PLAN

Sen. Levin: *Does [DoD] still support the 13-point Anti-Harassment Action Plan which was promulgated in July 2000?*

Mr. Abell: *Yes, sir. It has been implemented by all three services.*

Charles Abell, testifying before the Senate Armed Services Committee during hearings to confirm his nomination as Principal Deputy Under Secretary of Defense for Personnel & Readiness¹⁵

Claire Shipman: *Our next social report card – gays in the military.*

Charles Moskos: *On gays in the military, it’s an incomplete.*

Vice Adm. Patricia Tracey: *Incomplete on sexual preference.*

A *Good Morning America* Report on Social Progress in the Armed Forces, September 9, 2002¹⁶

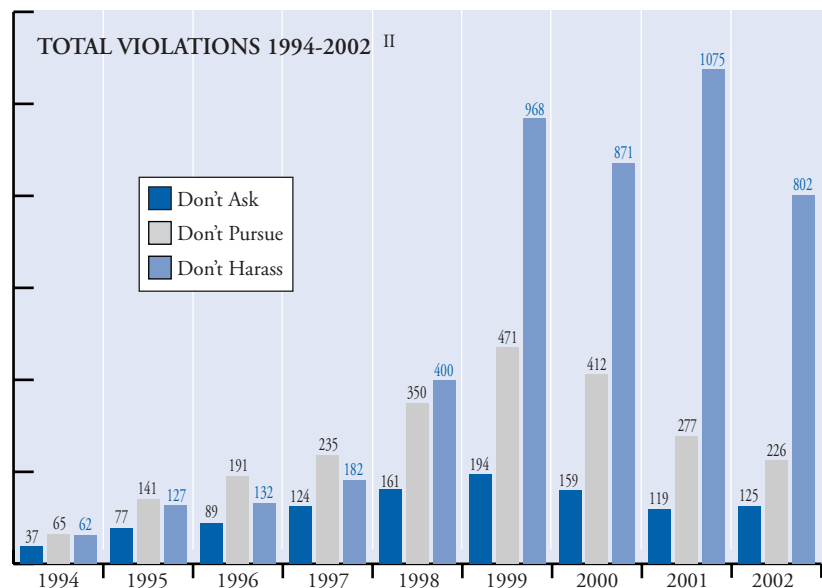
The decrease in military discharges is mirrored by a decrease in reports of harassment to SLDN during 2002.¹⁷ We hope military leaders are learning from past experience that retention requires respect and that those subjected to anti-gay hostility will leave military service. The

decline in harassment does not, however, reflect an elimination of serious anti-gay hostility in the armed forces. The military remains an unsafe place for lesbian, gay and bisexual Americans. Reports of anti-gay harassment remain at disturbingly high levels. Other policy violations, asking and pursuing, also continue at unacceptably high levels.

Almost four years after soldiers murdered PFC Barry Winchell for being perceived to be gay, and almost three years after then-Secretary of Defense William Cohen promulgated an Anti-Harassment Action Plan

(AHAP), the Bush Administration has failed to implement the plan.

The Department of Defense has failed to issue a single Department-wide directive on harassment as required by the AHAP. The directive was to “make clear that mistreatment, harassment, and inappropriate comments or gestures, including that based on sexual orientation, are not acceptable.”¹⁸ Further, according to the AHAP, “the directive should make clear that commanders and leaders will be held accountable for failure to enforce this directive.”¹⁹ That directive has not been issued.



★ 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

The AHAP requires each of the Services to implement training on “Don’t Ask, Don’t Tell” and anti-harassment measures. The training, according to the AHAP, is to be tailored to the grade and responsibility of the audience, and administered to every member of the military. SLDN has documented, however, that the training rarely meets the standards set forth by the AHAP. The Army has come closest to meeting those guidelines. The Marine Corps openly acknowledged its training is inadequate. The Navy and Air Force have blatantly failed to meet the requirements altogether.

The AHAP also has specific requirements regarding reporting. 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. Here, too, the Army has come closest to meeting the guidelines. The Marine Corps has taken small steps. The other Services, however, have done nothing in this important area.

Enforcement, also required by the AHAP, is absent from all of the Services. Complaints of harassment continue to fall on deaf ears, and are dismissed without consideration. Credible, well-documented cases of harassment go uninvestigated and

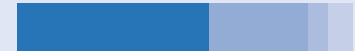
offenders go unpunished. Accountability for those who harass or condone anti-gay harassment is little more than empty words from military leaders.

Anti-gay harassment enforcement stands in stark contrast to how other complaints of harassment are handled. For example, the military tracks reported cases of sexual harassment. Incidents of sexual harassment have decreased from 1,599 in 1993 to 319 in 2000.²⁰ Under Secretary of Defense for Personnel and Readiness, Dr. David Chu, stated “to put it as bluntly as possible, [sexual harassment is] a career killer and we make sure that we enforce those standards.”²¹ The Pentagon has not made the same commitment regarding anti-gay harassment.

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. The only measurement of levels of anti-gay harassment was the DoD Inspector General report

published in March of 2000 which prompted creation of the AHAP. The prevalence of anti-gay harassment revealed by the DoD IG report makes the Services’ failure to measure the climate in the ranks a gross deficiency.

DOD IG Findings²²



- 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.

The majority of respondents reported that leaders took no steps to stop the harassment.

According to the AHAP, “treatment of all individuals with dignity and respect is essential to good order and discipline.”²³ During time of war, when good order and discipline is vital, it is irresponsible for the Pentagon to not take its commitment to end harassment seriously.

WHAT THE PENTAGON AND SERVICES MUST DO:

INTERIM STEPS ON THE JOURNEY TO FREEDOM

Congress should repeal “Don’t Ask, Don’t Tell.” Until then, the Bush Administration must, at the very least, take proactive steps to stop asking, pursuits and harassment.

SLDN recommends that the Department of Defense and Services:

- ★ **Ensure Full and Adequate Training on Anti-Harassment and Policy’s Investigative Limits.** The Services should ensure every service member – from recruit to flag officer – receives rank-appropriate training to prevent anti-gay harass-

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 Defense²⁴

ment. The Pentagon should 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 per-

sonnel, 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 should adopt a rule of privacy for conversations with health care providers. There must be adequate training on how to respond to complaints of harassment.

- ★ **Enforce 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 understand there are specific consequences for violations, from letters of counseling to courts-martial, depending on the offense. The Pentagon must uphold and enforce its own rules and regulations.

- ★ **Measure Effectiveness of Training and Guidance.** The Pentagon must require the services to measure the results of their efforts in implementing the AHAP.

Verbal commitments to fully implement the AHAP, and address harassment, must become concrete actions in the best interest of service members.

REALIZING THE FREEDOM TO SERVE

[W]e must never lose sight of the values that make our country so strong, the values of respect and tolerance.

President George W. Bush²⁵

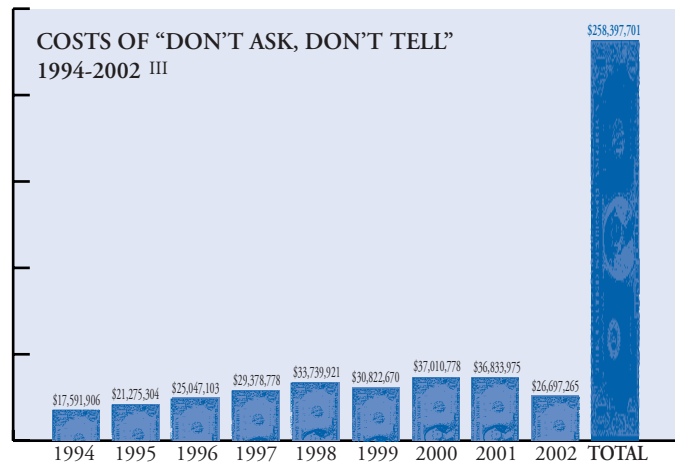
History will remember "Don't Ask, Don't Tell" as a stubborn scourge of bigotry within our national soul. Lesbian, gay and bisexual service members begin and end their days fighting for freedoms denied them at home. They face unforgivable harassment, discrimination and disregard. More than 9,000 Americans have been fired since 1993 because of "Don't Ask, Don't Tell," at a cost of more than a quarter billion dollars in tax payer money.

Equal opportunity is a uniquely

American ideal that continues to be withheld from uniquely qualified American patriots.

Congress, the Pentagon and the White

House must work together to lift the ban. Forcing lesbian, gay and bisexual service members to lie, hide, evade and deceive those around them breaks the bonds of trust among service members. We must never lose sight of the values of respect and tolerance that make our country strong. Our liberties, our



armed forces and our future are all made stronger by realizing the promise of the freedom to serve.

The time has come to lift the ban and welcome all qualified patriots to our struggle for freedom, regardless of their sexual orientation.



SERVICES CONTINUE TO DISCHARGE LINGUISTS CRITICAL TO NATIONAL SECURITY

“THE INTELLIGENCE AGENCIES HAVE SOUGHT TO RECRUIT PEOPLE WITH LANGUAGE SKILLS SO THAT DOCUMENTS AND INTERCEPTS COULD BE TRANSLATED PROMPTLY BUT IN THE MILITARY, AT LEAST, THE DESIRE TO DEFEAT AT QAEDA HAS BEEN PREEMPTED BY AN APPARENTLY MORE IMPORTANT PRIORITY: CONTINUING THE IRRATIONAL DISCRIMINATION AGAINST GAY MEN AND LESBIANS WHO WOULD SERVE THIS COUNTRY.”

Washington Post, November 20, 2002²⁶

“THIS IS A NEW HEIGHT OF STUPIDITY.”

Rep. Barney Frank commenting on the discharge of the linguists²⁷

Despite facing sharp criticism for discharging seven Arabic linguists for being gay, the Services have continued to expel gay linguists at a rapid rate.

These discharges have not been limited to Arabic linguists. As this report went to press, SLDN was

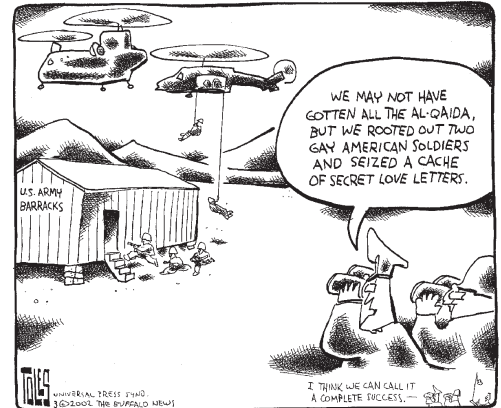
assisting ten linguists facing discharge from the Army and Air Force. These recent cases include Specialist Cathleen Glover, an Arabic linguist; Private First Class Ryan



Specialist Glover

Craig, a Korean linguist; and Private First Class Luis Rosas, a Farsi linguist. These men and women are one more reminder of the damage “Don’t Ask, Don’t Tell” inflicts on our national security.

Our nation faces a serious shortfall in the number of trained professionals who can speak and decipher the languages President Bush has indicated are critical to national security – languages from nations the President has termed the “Axis of Evil.” According to a Government Accounting Office (GAO) study released in January



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2002, the Army faces a critical shortfall in linguists needed to translate intercepts and interrogate suspected terrorists. The report concluded that staff shortfalls “have adversely affected agency operations and compromised U.S. military, law enforcement, intelligence, counterterrorism and diplomatic efforts.”²⁸

GAO REPORT: JANUARY 2002

SHORTFALL OF ARMY TRANSLATORS AND INTERPRETERS IN 2001

Language	Authorized Positions	Filled Positions	Unfilled Positions	Percent Shortfall
Arabic	84	42	42	50%
Korean	62	39	23	37%
Mandarin Chinese	52	32	20	38%
Farsi	40	13	27	68%
Russian	91	57	34	37%
Total	329	183	146	44%

The majority of language specialists are being discharged from the Defense Language Institute (DLI), the military's premier language training facility in Monterey, California. The discharge of linguists from DLI, however, is not a new phenomenon.

SLDN has warned of problems at DLI for years. For example, as reported in *Conduct Unbecoming, the 6th Annual Report on Don't Ask, Don't Tell*, in 1999 there were significant policy violations at DLI, including a witch-hunt, which

resulted in the discharge of 14 service members.

This ongoing loss of essential personnel is disturbing news in any language.



Coming Out in a World of Hatred

by Cathleen M. Glover
Guest Commentary

For those of us in the armed services who are gay, lesbian, or bisexual, life behind closed doors can be hell. The policy of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" forces us to shove our identities in the closet, making many of us suffer in silence or leave the military.

"Don't Ask, Don't Tell" is that absurd policy from the Clinton era that attempts the impossible by allowing homosexuals to serve as long as they are in the closet. The "Don't Pursue, Don't Harass" part was added later in an attempt to prevent witch hunts, but in the anti-gay climate of the military, comments can be heard daily and harassment still goes on.

Many people wonder why homosexuals join the military. Why do heterosexuals join the military? Why are the automobiles of our nation covered in stars and stripes? Most of us assume that we will be able to maintain a level of privacy under which we can lead double lives.

The truth is, none of us realizes how difficult it is to live a double life in which a relationship must be conducted behind closed doors and one must shield himself with lies. I don't have to explain the strain this puts on a relationship.

Recently, a pair of sailors came out to the Navy, fearing their safety in a hostile environment. The Navy refused to initiate separation proceedings or outline any steps guaranteeing the safety of these openly gay service members. It was only three years ago that a soldier was beaten to death at Fort Campbell by soldiers who perceived him to be gay. The commander at the time tolerated and even encouraged the homophobic environment, and at this time gay rights activists are fighting to prevent his promotion. I hope they succeed.

The fear that we all feel in these hostile environments is a constant presence. It drives some of us into severe depressions and others of us to seek discharge in order to protect ourselves. This is the only way we can ensure our safety, since the upper ranks of the military refuse to do so.

The two sailors felt that their safety was threatened, so they came out, and it took intervention by Senator Hillary Rodham Clinton to enforce the existing policy on homosexual conduct and to get the Navy to discharge them.

We realize that we are living in a state of perpetual war and that qualified soldiers and sailors should be retained, but the military cannot have it both ways. If the armed services continue to maintain a hostile, anti-gay climate, then we will be forced to continue to seek discharge until this ridiculous policy is dropped.

The United States is the only NATO country that has a ban on homosexuals. It's time we move into the 21st century with the rest of the industrialized world.

Cathleen M. Glover is a lesbian member of the Army. She worked at the Defense Language Institute at the Presidio of Monterey for two years and recently was transferred to Goodfellow Air Force Base in San Angelo, Texas.

What is “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass?”



“Don’t Ask, Don’t Tell” is a ban on lesbians, gays and bisexuals serving in the military – similar to the policies banning service that have been in place for the past fifty years.²⁹

“Don’t Ask, Don’t Tell” is the only law in the land that authorizes the firing of an American for being gay. There is no other federal, state, or local law like it. Indeed, “Don’t Ask, Don’t Tell” is the only law that punishes lesbians, gays and bisexuals for coming out. Many Americans view “Don’t Ask, Don’t Tell” as a benign gentlemen’s agreement with discretion as the key to job security. That is simply not the case. An honest statement of one’s sexual orientation to anyone, anywhere, anytime may lead to being fired.

THE HISTORY OF THE POLICY

“Don’t Ask, Don’t Tell” is the result of a failed effort by President Clinton to end the ban on gays in the military. Spurred in part by the brutal 1992 murder of Seaman Allen Schindler, then candidate Clinton proposed ending the ban by issuing

an Executive Order overriding the Department of Defense regulations that barred gays from serving. Congress, however, intervened and the ban was made law, preventing action by future Commanders in Chief.

This law was, however, significantly 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.³⁰ Second, the policy also states sexual orientation is no longer a bar to military service.³¹ 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.³² They agreed to take steps to prevent anti-gay harassment.³³ 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.³⁴ They agreed to implement the law with due regard for the privacy and associations of service

members.³⁵ The law became known in 1993 as “Don’t Ask, Don’t Tell, Don’t Pursue” to signify the new limits to investigations and the intent to respect service members’ privacy.

Small steps were made to keep some of these promises. Questions regarding sexual orientation at induction have, for the most part, stopped. Criminal prosecutions have decreased and witch-hunts have declined. President Clinton issued an Executive Order ending discrimination in the issuance of security clearances. The Department of Defense issued guidelines on anti-gay harassment and limits on investigations. Then, in 1999, PFC Barry Winchell was murdered by fellow soldiers at Fort Campbell, Kentucky. In the wake of this murder, the Department of Defense (DoD) issued new guidance on prohibiting anti-gay harassment. President Clinton issued an Executive Order providing for sentence enhancement under the Uniform Code of Military Justice (UCMJ) for hate crimes, as well as a limited psychotherapist-patient privilege. In February 2000, Pentagon officials added “Don’t Harass” to the title of the policy. The Pentagon then conducted a survey on anti-gay

<i>Seaman Allen Shindler murdered</i>	<i>Candidate Clinton proposes ending DoD regulations banning gays from the Military</i>	<i>Congress enacts DADTDP into law</i>	<i>August 1995: President signs Executive Order ending sexual orientation discrimination in issuance of security clearances</i>	<i>March 1997: DoD issues Dorn Memo on anti gay harassment</i>
1992	1993	1995	1996	1997

harassment, finding it was widespread. Thereafter, the Pentagon formed a Working Group which issued a 13-point action plan to address anti-gay harassment, which the Services were then directed to implement.

These limited steps, spurred in large part by the murder of PFC Barry Winchell, have done little to fulfill the promises made when the policy was created. Intrusive questioning continues. Harassment continues in alarming proportions. Little regard for service member privacy has been shown during the life of this law. Simply put, asking, pursuing and harassing have continued for all of the almost ten years since the law was passed.

THE POLICY ITSELF

SLDN documents violations of the policy reported to us by service members. In order to understand the critiques of the policy and the violations documented in this report, it is important to understand the policy. One way to understand the law, and implementing regulations, known as “Don’t Ask, Don’t Tell”, is 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.³⁶

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 . . .”³⁷

Don’t Pursue. More than a dozen specific investigative limits as 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.³⁸

Only a service member’s commanding officer may initiate an inquiry into homosexual conduct.³⁹ 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.⁴⁰ Actions that are associational 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.⁴¹ 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.⁴²

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).⁴³ Second, in statements cases, the command may only question the service member, his/her chain of command, and any-

<i>July 5, 1999: PFC Barry Winchell murdered</i>	<i>August 12, 1999: DoD issues DeLeon Memo prohibiting anti-gay harassment</i>	<i>October 1999: President Clinton issues Executive Order providing for limited psychotherapist-patient privilege and sentence enhancement under UCMJ for hate crimes</i>	<i>February 2000: "Don't Harass" added to Homosexual Conduct Policy</i>	<i>March 16, 2000: DoD Publishes IG Report documenting rampant anti-gay harassment</i>	<i>July 21, 2000: DoD Working Group issues 13 point Anti-Harassment Action Plan - Services directed to implement</i>
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1998

1999

2000

one that the service member suggests.⁴⁴ In most cases of homosexual statements, no investigation is necessary.⁴⁵ Cases involving sexual acts between consenting adults should be dealt with administratively, and criminal investigators should not be involved.⁴⁶

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.⁴⁷ Such an investigation is considered a "substantial investigation."⁴⁸ 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.⁴⁹

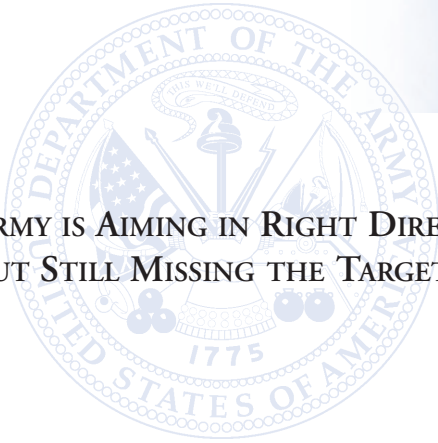
As with a "limited inquiry," only a service member's commanding officer has the authority to request permission to conduct a "substantial investigation."⁵⁰ By definition, a "substantial investigation" is anything that extends beyond questioning the service member, the service member's immediate chain of command, and anyone the service member suggests.⁵¹

Don't Harass. "The Armed Forces do not tolerate harassment or violence against any service member, for any reason."⁵² 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 nine years, the Services continue to violate these basic rules.



ARMY IS AIMING IN RIGHT DIRECTION, BUT STILL MISSING THE TARGET

“AS AMERICAN SOCIETY MOVES TOWARD AN EVER MORE POSITIVE APPRECIATION OF DIFFERENCES AMONG PEOPLE, IT BEHOOVES THE MILITARY TO DETERMINE HOW SUCCESSFULLY WE ARE INCULCATING THE MORES OF THOSE WE REPRESENT AND DEFEND.”

MG Robert Ivany, Commandant, U.S. Army War College⁵³

The news from the Army during 2002 was a mixed bag.

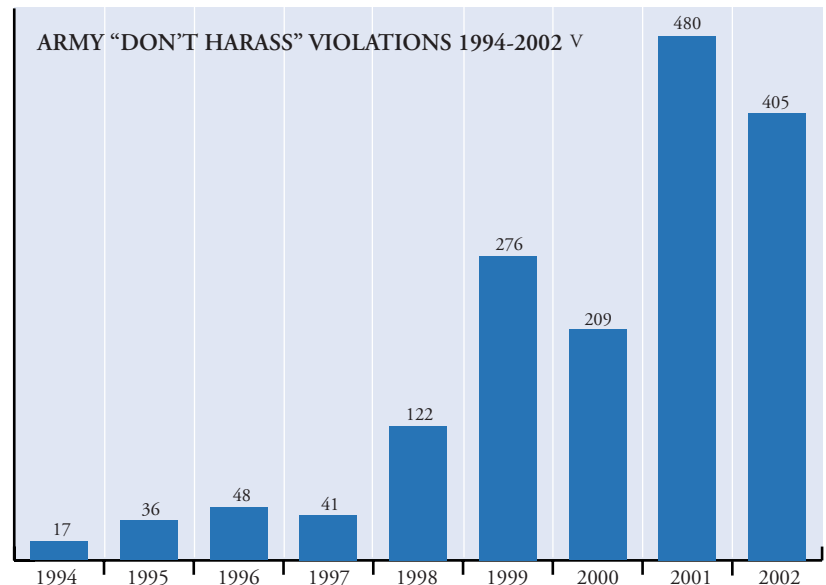
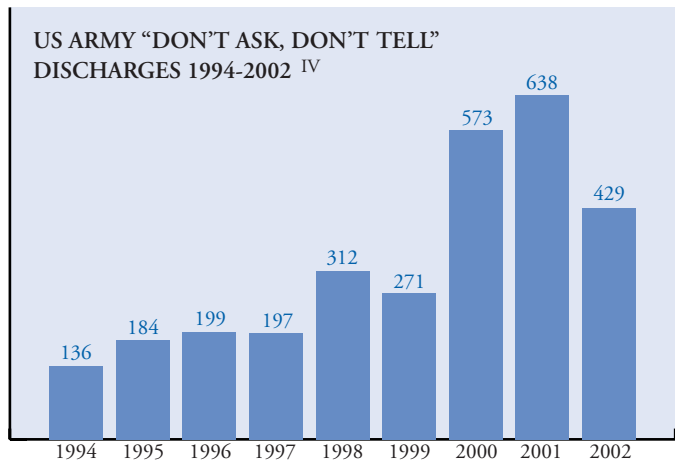
On the one hand, the Army is doing more than its sister Services to train on “Don’t Ask, Don’t Tell.” Gay discharges this year dropped to the lowest point since 1999. During 2002, more Army leaders also publicly spoke about their commitment to prohibiting harassment than did leaders in the other Services. The Army Inspector General began systemic checks on “Don’t Ask, Don’t Tell” adherence, and the Army invited SLDN to meet with senior Pentagon leaders to discuss policy implementation. SLDN also visited Fort Campbell, and spoke at the Army War College.

On the other hand, documented reports of anti-gay harassment during 2002 were the second highest ever recorded. The Army’s “Don’t

Ask, Don’t Tell” training still gives scant mention to the “Don’t Harass”

prong of the policy, thereby falling well short of

fully implementing the AHAP. Army leaders are not consistently



enforcing the “Don’t Harass” provisions, nor are they measuring the effectiveness of anti-harassment initiatives, as required by the AHAP. Reports of asking and pursuits, in direct violation of the policy, slightly increased.

SLDN appreciates the Army’s active engagement compared to the other Services. We especially appreciate the leadership of LTG John LeMoyné DCSPER-G1, the Army’s point person on the policy. Being open and honest about the Army’s policy programs, and the challenges the Army faces, allows for dialogue. We will remain strong in our criticism of the Army’s shortcomings when deserved, but also recognize the progress made within the Army.

GAYS & GRENADES: SOLDIERS STILL FACE HARASSMENT AT UNACCEPTABLY HIGH LEVELS

“Not a day goes by here that I am not inundated with derogatory comments regarding gay people or being gay Hatred for and misunderstanding of gays is rampant in the Army.”

Soldier at Fort Bragg, North Carolina⁵⁹

SLDN documented fewer reports of anti-gay harassment in the Army in 2002, 405 compared to 513 in 2001. Although this decrease is welcome, reports of harassment were still unacceptably high. SLDN suspects that the decrease is tied to the decrease in discharges as well as the Army’s modest steps to implement the AHAP. The Army, however, still has a significant ongoing harassment problem largely attributable to its failure to fully implement the AHAP. Contributing to the problem is a noticeable absence of leadership amongst the ranks of the Non-Commissioned Officer (NCO) corps. In fact, SLDN continues to

“[Gay soldiers] will continue to be treated with dignity and respect. The Army owes nothing less to [soldiers who have given many] honorable years in the service of their country.”

COL Gerald Ferguson, Jr., Chief of Staff, 1st Cavalry Division.⁵⁴

“I am committed to ensuring that every soldier in the Warrior Division is treated with dignity and respect.”

MG John Wood, Division Commander, 2d Infantry Division.⁵⁵

“The 10th Mountain Division (light infantry) strongly agrees with you that there is no room for harassment or threats in the military. Treating soldiers with dignity and respect is a bedrock Army value which we take very seriously.”

MG FL Hagenbeck, Division Commander, 10th Mountain Division.⁵⁶

“I certainly agree with you that treatment of all individuals with dignity and respect is essential to good order and discipline.”

COL Jackson Flake, III, Chief of Staff, 1st Armored Division.⁵⁷

“Reports of violations of the [Don’t Ask, Don’t Tell] policy within I Corps and Fort Lewis will be dealt with immediately and appropriately.”

LTG Edward Soriano, Commanding General, I Corps and Fort Lewis.⁵⁸

document instances where NCOs directly participate in the anti-gay harassment.

North Carolina Army National Guardsman SPC Brad Powell’s experience illustrates this ongoing problem.



SPC Powell reports an NCO instructing his unit’s hand grenade training encouraged the soldiers to visualize “blowing up a gay bar” while throwing their grenades. SPC Powell further reports hearing NCOs tell soldiers that “the only way to decrease our nuclear arsenal is to put all fags on an island and nuke it,” as well as NCOs saying “the only thing a good fag needs is a good fag bashing.”⁶⁰

The hostile climate led SPC Powell to reveal his sexual orientation to his command, seeking to escape what

Powell understandably viewed as a dangerous situation. Soon thereafter, SPC Powell reports receiving a written death threat in the form of a note left on his truck during a weekend drill. The note stated “fags die!” SPC Powell’s receipt of the death threat reaffirmed his belief that his only recourse to protect himself from the danger was to reveal that he is gay.

SPC Powell’s experiences, and others like it, indicate that much work remains before the Army’s pledge to treat all soldiers – including those perceived as gay – with “dignity and respect” is fulfilled.⁶¹

The Army has recently indicated to SLDN a greater understanding of the need for it to remedy its harassment problem by a determined implementation of the AHAP. The AHAP’s four components – training, reporting, enforcement and measurement – provide a framework to evaluate the Army’s anti-harassment efforts to date.

**THE ARMY & YOUNG AMERICANS:
A BLUEPRINT FOR CHANGE**

Not all lesbian, gay and bisexual soldiers face harassment; many find respect and acceptance. For example, Sergeant Casey Murphy, an Army communications repair person assigned to Fort Hood, Texas, is typical of many lesbian, gay and bisexual soldiers. SGT Murphy enlisted in the Army out of love of country and a strong sense of patriotism. SGT Murphy “came out” during her teenage years. Her family and friends all know she is a lesbian. At Fort Hood, most of the soldiers in



SGT Murphy

her unit also know. As she befriended other soldiers, developing the bonds of trust that are critical to unit cohesion and combat readiness, SGT Murphy found it easy to be open and honest about her sexual orientation. She is widely respected by other troops and their awareness of SGT Murphy’s lesbian orientation does not adversely affect their opinions of her professional competence or personal character. SLDN heard similar positive stories from several soldiers throughout 2002, indicating SGT Murphy is part of a growing rule, not an exception.

Increasingly, young lesbian, gay and bisexual Americans – like SGT Murphy – are comfortable with their sexual orientations and are less inclined to present themselves to

the world as heterosexual. In terms of our perceptions and treatment of gays, American society has come a long way since the introduction of “Don’t Ask, Don’t Tell” in 1993. Young lesbians, gays and bisexuals continue to enlist in our nation’s Army, and some, like SGT Murphy, find ways to live their lives with integrity – even in the face of “Don’t Ask, Don’t Tell,” which pressures them to do the opposite in hopes of making them invisible.

The Army is, sadly, losing the valuable skills and experience of SGT Murphy because of its anti-gay ban. SGT Murphy’s chain of command is discharging her, after discovering that she has been serving as an open lesbian. Although her fellow soldiers are comfortable with SGT Murphy being a lesbian, her command is not. Such is the reality under “Don’t Ask, Don’t Tell.”

**ARMY TRAINING: MISSING
THE HARASSMENT TARGET**

“I am going to snap your fucking neck, so know you have it coming.”

Death threat received by Gay soldier while serving in Kuwait⁶²

The AHAP requires that “[t]he Services shall ensure feedback on reporting mechanisms are in place to measure homosexual conduct policy training and anti-harassment training effectiveness....”⁶³

Spurred into action by PFC Winchell’s 1999 murder, the Army began implementing training on “Don’t Ask, Don’t Tell.” Specifically, the Army:

- ★ Conducted Unit Refresher training during the year 2000;⁶⁴
- ★ Ordered “Don’t Ask, Don’t

Tell” training in its “professional military education” system, ensuring that officers and NCOs receive training on the policy’s basics;⁶⁵

- ★ Published a policy training model on one of its websites;
- ★ Published a training brochure, and a “training manual;”⁶⁶
- ★ Directed an update to its training Regulation (Army Regulation 350-1) mandating “annual” unit-level “Don’t Ask, Don’t Tell” training;⁶⁷ and
- ★ Ordered its IG to check policy training as a special interest inspection item.⁶⁸

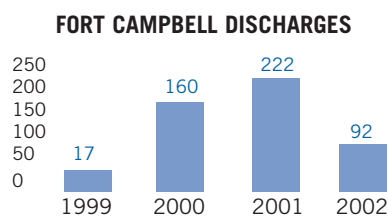
These actions, though, are less than they appear. As of early 2003, the Army’s training regulation had not been updated to reflect mandatory annual training – fully three years after the Chief of Staff directive

requiring the update was issued.⁶⁹ The training conducted at Army schools does not adequately emphasize the “Don’t Harass” prong of the policy. The website anti-harassment materials, the training materials and brochure do not appear to be used in any consistent way. In fact, most commands do not appear to know these resources even exist.

According to the Army Inspector General, 71% of soldiers report receiving some form of “Don’t Ask, Don’t Tell” training from April 2001 through April 2002.⁷⁰ Most soldiers with whom SLDN spoke, however, stated that the training, to the extent it happened at all, was brief and made little to no mention of the policy’s “Don’t Harass” provisions. While we are pleased that the schools are conducting training, the quality of the training appears to leave much to be desired.

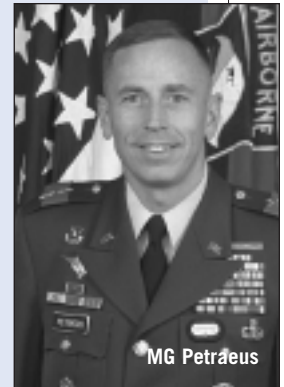
“I am committed to doing all I can to ensure that all my troopers are treated with dignity and respect and are able to serve their nation in an environment that is safe and free from harassment of any form.”

MG David Petraeus, Division Commander, 101st Airborne Division and Fort Campbell⁷¹



Fort Campbell, Kentucky, site of the 1999 anti-gay murder of PFC Barry Winchell, continues to lead the Army – indeed lead every military base – in discharging gay troops. Although its 92 gay discharges during 2002 are down con-

siderably from the 222 during 2001, the number remains alarmingly high.⁷² SLDN continues to work with senior Fort Campbell leaders, including the new commanding general, MG David Petraeus, to address this problem.



RAISE YOUR HAND: HARASSMENT REPORTING MECHANISMS NOT YET EFFECTIVE

“Fags shouldn’t be in the military.”

Comment directed towards PFC Luis Rosas, a Farsi (Persian) linguist at DLI⁷³

The AHAP requires the Services to “review all avenues for reporting mistreatment, harassment, and inappropriate comments or gestures to ensure they facilitate effective leadership response.”⁷⁴

The Army has designated defense attorneys and Chaplains as confidential resources for reporting anti-gay harassment.⁷⁵ The Army allows soldiers to use other resources to report harassment, including the command and Inspectors General, but stresses that these resources are not confidential. If a gay soldier is being harassed and the soldier’s sexual orientation surfaces during the harassment reporting process, the gay soldier will be at great risk of investigation and discharge. Unfortunately, according to the Army IG, 70% of soldiers are unaware of these confidential designations.⁷⁶

The Army has done a poor job ensuring its troops know how to report anti-gay harassment and to whom they can safely report it. The Army also continues to fail to establish command climates where lesbian, gay and bisexual soldiers feel comfortable speaking out about harassment. Most gay troops with whom SLDN has spoken over the past year indicate they are afraid to report harassment for fear of becoming the target of an anti-gay investigation or of worsening harassment. Until Army leaders actually make it safe for gays to report harassment, the AHAP’s reporting component will remain only partially implemented.



During this training, instructors told anti-gay “jokes,” leading her unit commander, Captain Ruiz, to suggest “anyone who is gay to raise their hand if they felt offended by the

Army Sergeant Sonya Contreras’ experience illustrates the Army’s problem. SGT Contreras, a recruiter in California, reports receiving unit Equal Opportunity training on January 4, 2003.

jokes.”⁷⁷ SGT Contreras felt despondent. She wrote to her command:

I have not raised my hand once, or spoken out against anyone who has felt free to make homosexual comments and jokes in the nearly five years that I have served in our nation’s Army. But today, Sir, I raise my hand There is the discrimination that I feel on a daily basis, the witty jokes, and slanderous comments about gays, but it goes uncorrected. It is obvious to me that no matter how many EO classes we have, how many times I hear the ‘Don’t Ask, Don’t Tell’ policy delivered, I will never be able to feel like a part of the team....⁷⁸

The Army has a duty to set safe conditions for lesbian, gay, and bisexual troops to feel comfortable reporting harassment, and have an expectation that their reports will be taken seriously. SGT Contreras’ experience of having gays ridiculed during the conduct of an Equal Opportunity training briefing indicates that the Army has a ways to go before its AHAP reporting procedures actually work.

SUBSTANTIATED: ACCOUNTABILITY OF HARASSERS MISSING IN ACTION

“As a former Army-level commander, I thoroughly understand and embrace the Chief of Staff of the Army’s directive to ensure that all Soldiers are treated with dignity and respect. As the Inspector General, I plan to assist commanders in ensuring that their training programs fully comply with all applicable laws, directives, and policies designed to create a positive and supportive command climate.”

LTG Paul T. Mikolashek, Army Inspector General⁷⁹



LTG Mikolashek

The AHAP requires that “[t]he Services shall ensure that commanders and leaders take appropriate action against anyone who engages in mistreatment, harassment, and inappropriate comments or gestures.”⁸⁰

The Army appears to have failed to hold a single person accountable for anti-gay harassment this past year. In case after case, SLDN has provided the Army with specific, detailed accountings of anti-gay misconduct, asking that those responsible be held accountable. Yet, time and again, the Army’s response is to rubber-stamp the excuses of those accused of the misconduct. Army leaders will not gain the confidence of soldiers if it fails to seriously and demonstrably hold accountable those who harass.

The Army’s recommendation that MG Robert T. Clark be promoted to Lieutenant General sends a strong signal that it is insincere in its commitment to enforce anti-harassment policies. MG Clark was the commanding general at Fort Campbell,

Kentucky, when soldiers used a baseball bat to bludgeon to death PFC Barry Winchell while he slept. MG Clark’s leadership failures, before and after the murder, are examined more fully in an accompanying spotlight section.

The Army also failed Sergeant Tracey Cade. In last year’s *Conduct Unbecoming*

report, SLDN discussed how SGT Cade’s officers and superior NCOs routinely used the words “faggot” and “fuck” in the presence of female soldiers.⁸¹ SLDN reported the harassment to the Fort Hood, Texas, Inspector General alleging “[m]ale soldiers frequently talk publicly about their interest in female-on-female sexual acts. These conversations take place in front of NCOs and female soldiers, to include SGT Cade. The NCOs do not correct the misconduct, allowing it to continue unabated.”⁸² The Inspector General concluded that the allegations of sexual harassment did not fit the definitions of sexual harassment and were “not substantiated.” The IG did not investigate the allegations of anti-gay harassment at all.⁸³

The Army failed Specialist Gidonny Ramos, too. SPC Ramos reported being harassed by a Chaplain after the Chaplain learned Ramos is a lesbian.⁸⁴ The Chaplain, Major Leininger, informed Ramos that he does not “accept” gays, told her she was “going to hell,” and that “homosexuality is a curable disease.”⁸⁵ SLDN reported the misconduct to the Army Inspector General, asking that Major Leininger be held accountable. The Army IG, however, reported back to SLDN that the allegation was “not substantiated.”⁸⁶ Remarkably, the IG investigators

failed to question the only eyewitness to the harassment, calling into question the competence and objectivity of the investigation.⁸⁷

The Army also failed to hold accountable COL Kevin Rice – the Army Installation commander at the Defense Language Institute – after Rice launched an improper anti-gay investigation after learning that two of his soldiers were lesbian. COL Rice’s appointed inquiry officer, 1LT Ruthe, proceeded to ask others questions about the two soldiers’ sex lives, whether others saw them kissing women or engaging in sexual acts. Ruthe further threatened soldiers with “jail” if they did not cooperate with his inquiry.⁸⁸

SLDN reported 1LT Ruthe’s investigative misconduct to the Army Inspector General, asking that Ruthe – and his superiors – be held accountable. The result? The IG wrote to SLDN that “no investigative action is warranted.” Despite declining to investigate the matter, the IG proceeded to proffer the perplexing conclusion that “the preponderance of evidence did not support your allegation” of investigative misconduct.⁸⁹ Given that the IG declined to investigate, it is difficult to imagine what “evidence” it was referring to. A preponderance of nothing is nothing.

The Army also failed to hold accountable lawyers at the Army’s Judge Advocate General (JAG) school for conducting “Don’t Ask, Don’t Tell” training that belittled and demeaned lesbians, gays and bisexuals. In last year’s *Conduct Unbecoming* report, SLDN documented “Don’t Ask, Don’t Tell” training misconduct at the Army’s JAG School.⁹⁰ The JAG School “training” contained a clip from a Monty Python movie making light of gay people with a male actor singing a song about men wearing

“women’s clothing,” wearing “high heels, suspenders and a bra” and being a “girlie” man. The training made no mention of the anti-harassment rules. What is astonishing is that the training was done by the Army’s lawyers – those charged with knowing “Don’t Ask, Don’t Tell” better than anyone else, those charged with advising senior Army leaders.

SLDN wrote to the Army’s top

lawyer, MG Thomas Romig, asking for accountability.⁹¹ We also asked the Army IG to look into the matter. To date, the Army has reported no action. A senior Army lawyer working in the Inspector General’s office, though, said that he did not believe the complaint warranted serious consideration.

These incidents evidence a continued failure by senior Army leaders to take anti-gay harassment seriously

and to provide the needed public leadership to stamp it out. If the Army wants soldiers to have confidence in its commitment to the AHAP implementation, as its leaders publicly assert, it needs to begin practicing what it preaches. Soldiers and their advocates will not have confidence in the fairness of the Army system until it begins enforcing “Don’t Ask, Don’t Tell” provisions.

**SURVEYING HARASSMENT:
MEASUREMENT COMES UP SHORT**

effective in addressing mistreatment, harassment and inappropriate comments or gestures.”⁹³

in response to the PFC Winchell murder, the Army’s failure to make a good faith effort to measure the scope of current harassment and to see if its harassment training is working is disappointing.⁹⁶ The DoD IG survey asked, for example:

“I have found that the Army has unnecessarily created an environment of intolerance. On a daily basis I hear jokes, crass comments, innuendos and personal opinions that belittle gay men and women. I have heard them from the mouths of privates and of colonels.”

SGT Pepe Johnson, former Fort Sill, Oklahoma, Soldier of the Year ⁹²

The Army is not measuring the effectiveness of its AHAP training program. Although the Army Inspector General recently conducted a “special interest item” review of “Don’t Ask, Don’t Tell” training, the review did not attempt to measure whether the

training is actually making a difference.⁹⁴ 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?”⁹⁵ The survey does not, however, ask any questions about the occurrence of harassment.

When contrasted with a DoD IG survey conducted in 2000

- ★ “How often have you heard offensive speech, derogatory names, jokes, or remarks about homosexuals in the last 12 months on your installation?”
- ★ “How often during the past 12 months have you witnessed or experienced event(s)/behavior(s) involving military personnel, on or off duty, who harassed another military person(s) because of perceived homosexuality?”

SLDN recommends that the Army formulate questions similar to the DoD IG survey harassment questions to better gauge the scope of its ongoing harassment problem.

The AHAP requires that “[t]he Services shall determine the extent to which [Don’t Ask, Don’t Tell] training and anti-harassment training programs ... are



**FRIENDS LIKE THESE:
ARMY “PURSUES” AND “ASKS” GAYS**

“I endured three and a half-hour improper interrogation about my — sexuality He stated that I would lose my VA benefits since this issue was severe enough to possibly put me in jail I was devastated and betrayed as my military career was being ripped away.”

SSG Karen Coleman, Fort Eustis, Virginia

SLDN documented an increase in Army “Don’t Pursue” and “Don’t Ask” violations during 2002. The Army’s continuing difficulty in adhering to these two important policy components is not surprising given the difficulty it has in implementing the AHAP. The message communicated to the field – intended or not – is that if it is okay to harass perceived lesbian, gay and bisexual soldiers, “asking” and “pursuing” is also permissible.

The case of Staff Sergeant Karen Coleman vividly illustrates this ongoing problem. SSG Coleman was an Army helicopter repairperson who had served 11 years in the military. In August 2002, SSG Coleman’s first sergeant received a phone call from a person claiming to be a female

“friend” of SSG Coleman. Based upon this anonymous information, which the command had no reason to believe, and despite SSG Coleman’s being a few short months away from completing her military service obligation, she found herself the target of an intrusive Army inquisition into her private life.

“Don’t Pursue” was designed to prevent commands from acting on anonymous information. Commands should not investigate service members based on non-credible allegations designed to cause harm to lesbian, gay and bisexual soldiers’ careers.⁹⁷ Former Secretary of Defense Les Aspin explained in 1993, “[i]f I came to the commander and said that you told me that you were gay, if that was the only thing going, my expectation would be that the commander would



not do anything.”⁹⁸ In SSG Coleman’s case, the first sergeant should have simply ignored the anonymous phone call and allowed this outstanding soldier to continue serving our country. Instead, she was investigated and discharged.

**RECOMMENDATIONS:
ARMY MARCHING INTO 2003**

“I have served my country honorably during the past eleven years and have achieved much. I don’t regret a minute of it.”

A Gay Arabic and German linguist, Louisiana National Guard⁹⁹

Ten years into the life of “Don’t Ask, Don’t Tell,” the Army continues to struggle with the policy’s implemen-

tation, especially the “Don’t Harass” piece. The sad truth is that, despite Army leaders’ assertions to the contrary, the Army does not take anti-gay harassment nearly as seriously as it does other forms of prohibited harassment.

In October 2002, SLDN wrote to all Army Division Commanders¹⁰⁰

providing simple recommendations to assist them in better implementing the AHAP. SLDN’s recommendations included:

- ★ Commanding Generals publish a policy letter stressing the need to treat perceived lesbian, gay and bisexual troops with dignity and respect;
- ★ Commanding Generals use their base newspaper and other publications to educate soldiers

about the “dignity and respect” requirement; and

- ★ Commanding Generals invite SLDN to speak with their senior leaders to stress their commitment to ensuring the well-being of all troops, including gay soldiers.

SLDN continues to urge that these combat unit commanding generals follow these recommendations.

Service-wide, to improve, the Army needs to:

- ★ Fully implement the AHAP, improving the “training” and “reporting” components of the AHAP, and implementing the “enforcement” and “measurement” components;
- ★ Direct NCOs to become involved in all facets of the gay policy;

- ★ Task Equal Opportunity representatives to oversee the AHAP (as they do with other types of harassment, including gender and race harassment); and
- ★ Form a committee to review AHAP implementation, including the Deputy Chief of Staff for Personnel (G-1), the Judge Advocate General, Inspector General, an Equal Opportunity Representative, Chaplains, and SLDN.



THE NOMINATION OF MG ROBERT T. CLARK

AT THE TOP OF [THE] CHAIN AT FORT CAMPBELL SAT GENERAL CLARK. INSTEAD OF BEING HELD RESPONSIBLE FOR WHAT HAPPENED TO A SOLDIER IN GOOD STANDING UNDER HIS COMMAND, HE IS BEING PROMOTED.

Thomas Oliphant, Boston Globe, October 16, 2002⁰¹

In a display of his indifference towards lesbian, gay and bisexual service members, President Bush recently nominated Major General Robert T. Clark, former commanding general of Fort Campbell, Ky., for promotion to Lieutenant General, the Army's second highest rank.



The promotion, which would include command of the prestigious Fifth United States Army, sends a dangerous message about the Bush Administration's regard for the safety and

well-being of its military personnel.

The message from the Administration, the Pentagon and the Army is that it does not take anti-gay harassment seriously and will not hold accountable those who fail to lead and address anti-gay harassment within their commands.

MG Clark was at the helm of Fort Campbell in 1999 when PFC Barry Winchell was beaten to death with a baseball bat by fellow soldiers who thought Winchell was gay. Clark's behavior before, during and after the murder, clearly showed a failure of leadership to address anti-gay harassment. Prior to the murder, there were serious problems of anti-gay harassment at Fort Campbell. PFC Winchell was harassed for months before his death, and leaders in his chain of command knew about the harassment. They did nothing, and in some instances even participated. The Inspector General at the base turned PFC Winchell away when he tried to get help. As commander of the base, MG Clark was responsible

for the conduct of the leaders and soldiers he commanded.

In wake of the murder, MG Clark did nothing. He issued no statements regarding anti-gay harassment, implemented no training regarding anti-gay harassment, and neglected to assure accountability for those who harassed or condoned harassment. He even refused to speak or meet with PFC Winchell's parents. Anti-gay graffiti, including a crude drawing of a baseball bat with the words "fag-whacker" writ-

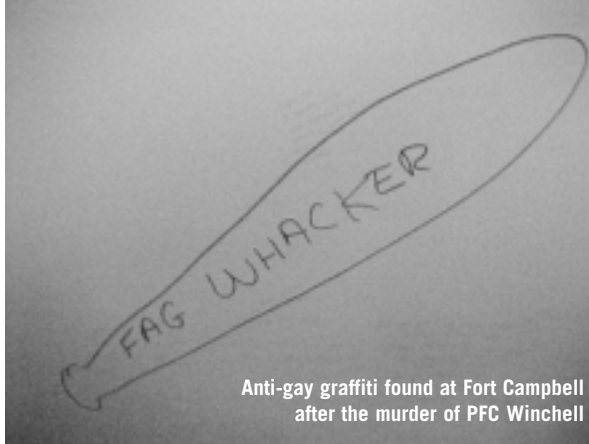


ten on it appeared in public areas of Fort Campbell after the murder.

MG Clark's actions and inactions resulted in a record number of discharges from his base. In fiscal year 1999, gay discharges from Fort

Campbell constituted 3.6% of all Army discharges. After the murder, and still under MG Clark's watch, discharges in FY 2000 sky-rocketed, comprising an astounding 27.7% of the Army's total. Service members fled the base in an attempt to escape the environment Clark had created. They were literally running for their lives.

Despite this overwhelming evidence concerning MG Clark's leadership failure regarding anti-gay harassment



at Fort Campbell, the White House has brushed aside concerns for service member safety and sought to reward MG Clark with a prestigious promotion. SLDN has opposed the nomination, which was originally

considered in October 2002 during a closed door session of the Senate Armed Services Committee. The Committee allowed Clark to testify, but refused to hear from PFC Winchell's mother or others with information related to the environment at Fort Campbell.

SLDN, along with People for the American Way, the National Organization for Women, the National Gay & Lesbian Task Force, the Human Rights Campaign and Michigan's Triangle Foundation, will continue to oppose Clark's promotion.¹⁰²

Our men and women in uniform deserve better.

2002 Air Force Report



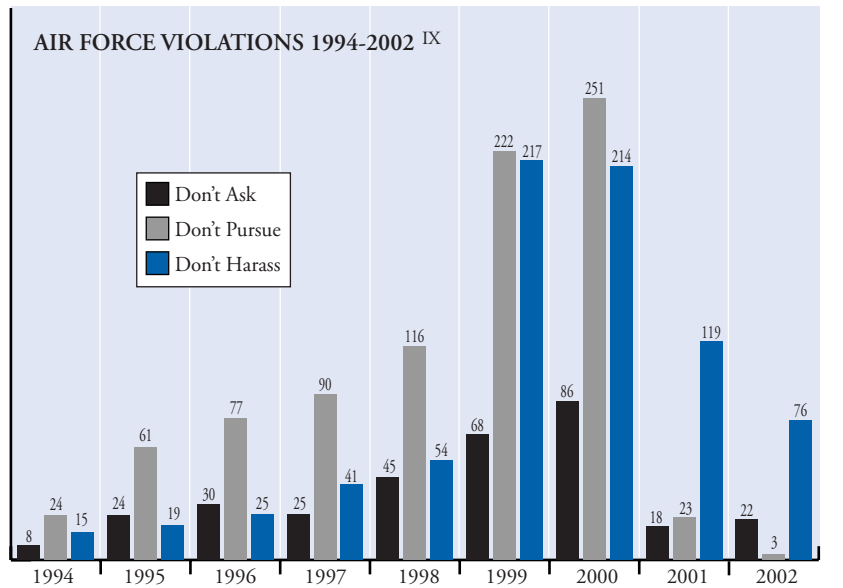
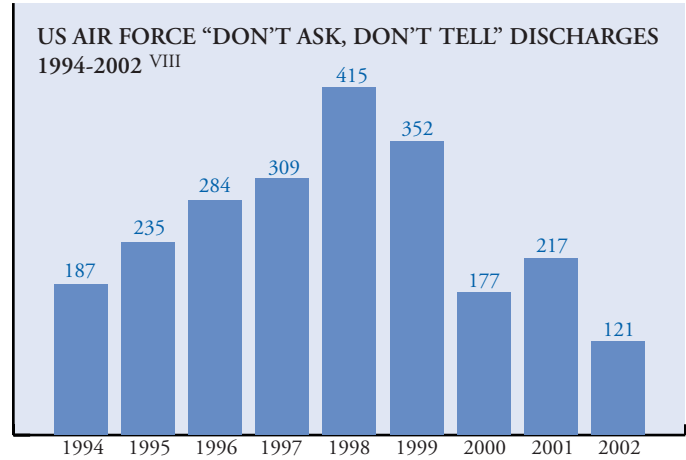
AIR FORCE: SEARCHING FOR STRENGTH IN DIVERSITY

“AMERICAN STRENGTH COMES FROM THE DIVERSITY OF OUR PEOPLE, UNITED BY THE COMMON VISION WE SHARE: FREEDOM.”
 Secretary of the Air Force Dr. James G. Roche¹⁰³

During FY 2002, the Air Force discharged fewer service members under “Don’t Ask, Don’t Tell” than ever before. SLDN also recorded the fewest reports of “Don’t Ask, Don’t Tell” violations from the Air Force since 1994. In as much as the Air Force continues to be reluctant to share information with SLDN, however, we can only speculate as to why discharge and violation numbers have decreased.

One plausible explanation for the decrease in discharge and violation numbers may be that the Air Force has recognized the need to retain qualified personnel during the war on terrorism. The Air Force may be taking steps unknown to SLDN that explain the decrease in discharges and reported violations. We do know, however, that the Air Force’s efforts to reduce anti-gay harassment appear inconsistent. While the Air Force has implemented some training and measurement procedures

partially complying with the AHAP, SLDN continues to hear from airmen that they are not receiving training on “Don’t Ask, Don’t Tell” or the prevention of anti-gay harassment beyond general



training at boot camp.

Despite lower numbers of discharges and violations, harassment and inap-

propriate asking persist as areas of concern. SLDN saw an increase, over the last year, in reports of “Don’t Ask, Don’t Tell” policy viola-

tions centering on invasions of privacy. Specifically, inappropriate asking remains an issue undermining the Air Force’s strength.

INVASION OF PRIVACY: ASKING, PURSUING AND “OUTING”

The Air Force continues to pry into service members’ private lives in violation of “Don’t Ask, Don’t Tell.” In 2002, SLDN received an increase in reported “Don’t Ask” violations and saw evidence of a continuation of the Air Force’s tendency towards inappropriate pursuits. While most of the asking violations were reported to SLDN by young airmen, between the ages of 18 and 25, it appears supervisors as well as peers were responsible for the violations. The following is a list of questions asked directly of airmen during their course of duty:

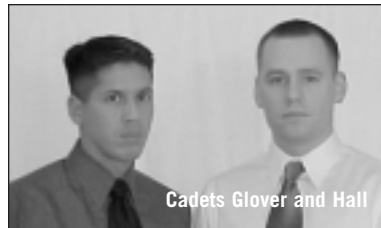
- ★ “Do you have something to tell me? Are you gay?”
- ★ “You are gay, aren’t you?”
- ★ “Do you have a wife? Why aren’t you married [at your age]?”
- ★ “Are you gay?”
- ★ “Are you a faggot?”

The continued prevalence of asking, and the failure to hold those who ask accountable, is unacceptable.

At the same time asking violations increased, the Air Force also persisted in pursuing and inappropriately investigating airmen based on invasions of privacy and violations of confidentiality. During 2002, the Air Force chose to discharge numerous qualified, trained and competent airmen whose sexual orientations were revealed to the Air Force unwittingly. These cases clearly show there is no

zone of privacy for service members and there are few, if any, safe spaces for lesbian, gay and bisexual airmen to be themselves.

The cases of Cadet Jack Glover and Cadet David Hall exemplify the Air Force’s propensity to inappropriately pursue and discharge talented airmen based on violations of their privacy. In the summer of 2002, Glover and Hall were looking forward to entering their last year of ROTC at the University of Alaska as leaders in their cadet corps. They



were also looking forward to, and planning for, their careers as Air Force officers. Unfortunately, in June their excitement was interrupted when Cadet Glover was called into his ROTC commander’s office for questioning. Glover was told that he was under investigation for homosexual conduct and was asked about allegations that he was involved in a homosexual relationship with Cadet Hall. Cadet Glover refused to answer any questions asked by his commander, as did Cadet Hall, who was subsequently confronted with the same allegations by the ROTC command.

The Cadets’ careers as Air Force officers were cut short because a former friend outed them to their ROTC command. There is no dispute that

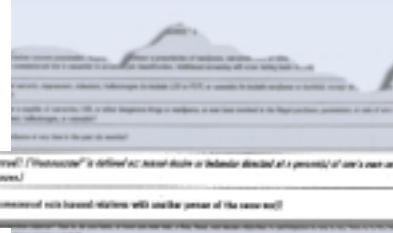
ARE YOU A HOMOSEXUAL?

In July 2002, SLDN caught the Air Force Reserves still using an outdated 1987 recruiting form asking recruits if they are gay. The old form illegally asks recruits, “Are you homosexual or bisexual?” and “Do you intend to engage in homosexual acts?”

Three recruiting offices, as well as the Air Force Reserve Publications Command, told SLDN that the enlistment application containing the questions was the only form available to recruitment offices. Mike West, forms manager for the Air Force Reserve Command, told SLDN, “I can assure you [the form in question] is the latest version officially released for use.”¹⁰⁴

The Pentagon had previously ordered all services to update recruiting forms after implementation of “Don’t Ask, Don’t Tell.” The 1994 recruiting form available to all Services does not ask questions about sexual orientation.

The Air Force Reserves’ compliance with the federal “Don’t Ask” policy was long overdue.



Graphic courtesy of the Washington Blade

they were top performers in their ROTC program. In fact, prior to the investigation, Glover and Hall were rated the number three and number one cadets in their unit, respectively, by their commander. Even as the investigation was ongoing, both were promoted to group commanders with the rank of Lieutenant Colonel. Cadet Hall had already served in the Air Force as an enlisted man and was honorably discharged prior to entering college.

Instead of respecting their privacy off duty, the Air Force chose to inappropriately investigate and pursue disenrollment from ROTC of Glover and Hall. Cadets Glover and Hall were model cadets. Their grades, attitude and leadership abilities were lauded by their Air Force commanders. The one mistake they made was to trust a fellow ROTC cadet, someone they considered a friend, and acknowledge to her they are gay. This trust was betrayed. Just before Glover and Hall's friend graduated from college and became a lieutenant in the Air Force, she told the cadets' ROTC command of their admission. The resulting disenrollment means that Glover and Hall

lost their college scholarships prior to entering their senior year, and they are prevented from becoming officers in the Air Force or ever serving our country in the military.¹⁰⁵

Similarly, Senior Airman Brandi Grijalva saw her trust and confidentiality broken after seeking counseling from an Air Force chaplain's assistant. While temporarily stationed at Tyndall Air Force Base for training, Senior Airman Grijalva sought help from a chaplain's assistant due to problems she was having at home. Concerned about the confidentiality of their conversation, Grijalva was hesitant to discuss the issues causing her unhappiness. Informed that their conversation was safe and confidential, Senior Airman Grijalva revealed to the chaplain's assistant that she



and her partner were having difficulties in their relationship. Following that revelation, the chaplain's assistant broke the promise of confidentiality and Senior Airman Grijalva was investigated for homosexual conduct.

Initially, Senior Airman Grijalva denied telling the chaplain's assistant she is gay. Soon, however, Grijalva recognized that her suspected sexuality would likely follow her throughout her Air Force career. Unwilling to live in an environment requiring her to lie and fear losing her job because of her sexual orientation, Senior Airman Grijalva told her command in September 2002 about the violation of confidence by the chaplain's assistant and confirmed she is a lesbian.¹⁰⁶ Shortly after her command received this information, the Air Force honorably discharged Senior Airman Grijalva. There has been no indication the Air Force investigated this violation of Grijalva's confidentiality or that the chaplain's assistant was ever held accountable for the violation.

FALLING SHORT ON THE JOB: HARASSMENT AND INADEQUATE TRAINING PERSIST

"[I have seen] a significant increase in anti-gay jokes and comments in the workplace during the last year."

quote from an active duty senior Air Force officer stationed in Texas

Despite decreased reports of anti-gay harassment to SLDN by Air Force members during the past year, "fag," "dyke," and "queer," as well as anti-

gay comments and jokes remain everyday occurrences in the Air Force. As with asking violations, the vast majority of specific harassment complaints to SLDN last year were made by airmen between the ages of 18 and 25. Supporting these reports, SLDN heard from senior noncommissioned officers (NCOs) and officers that an anti-gay climate persists in the Air Force. Most of these NCOs and officers report they are not consistently receiving annual "Don't Ask, Don't Tell" training, or

anti-harassment training as required under the AHAP.

Information regarding the Air Force's implementation of the AHAP's four prongs – training, reporting, enforcement and measurement – is incomplete and inadequate. SLDN made a Freedom of Information Act (FOIA) request to the Air Force for its anti-harassment training materials and instructions. The response back from the Air Force indicates that it has not made much progress.

**RIGHT TO REPORT: SAFE CHANNELS
A MYSTERY IN THE AIR FORCE**

With regard to training and reporting, the Air Force says that its “Don’t Ask, Don’t Tell” training materials show compliance with the AHAP. These materials do not meet that mark. The anti-harassment training consists of two Power Point slides stating that an Air Force member threatened or harassed because

of their perceived sexual orientation has “every right to report the threat or harassment to the authorities.”¹⁰⁷ The slides do not explain what is anti-gay harassment as required by the AHAP. Nor do the slides identify to whom the service member should report harassment. These slides do not meet the training and reporting requirements of the AHAP.

The Air Force has prepared separate

“Don’t Ask, Don’t Tell” training materials for general audiences and commanders, judge advocates and law enforcement personnel. While parts of these training materials are tailored to the target audience, the slides addressing harassment are identical. This fails to meet the AHAP requirement that training be tailored to the grade and responsibility level of the audience.

**INCOMPLETE STEPS:
ANTI-HARASSMENT ENFORCEMENT
AND MEASUREMENT**

The Air Force appears to have taken no steps to enforce anti-harassment provisions. There is no information in the Air Force materials that harassers, or those who condone harassment, will be held accountable for their actions. The Air Force has not provided SLDN any instructions or information regarding accountability.

The Air Force has taken some small steps towards implementing the measurement provisions of the AHAP. Specifically, Air Force Instruction 90-201 is intended to address the measurement prong of the AHAP. This instruction 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.”¹⁰⁸

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.

The Air Force has taken some steps towards reducing anti-gay harassment but these steps are anemic. Nearly three years after the AHAP was directed to be implemented, it is disturbing that so little progress in the Air Force has been made.

**RECOMMENDATIONS:
AIM HIGH AIR FORCE 2003**

“The future of the Air Force will depend on cutting-edge technology and a diverse team of people combining to fulfill our missions. Talent and brain power come in many packages.”

Secretary of the Air Force Dr. James G. Roche¹⁰⁹

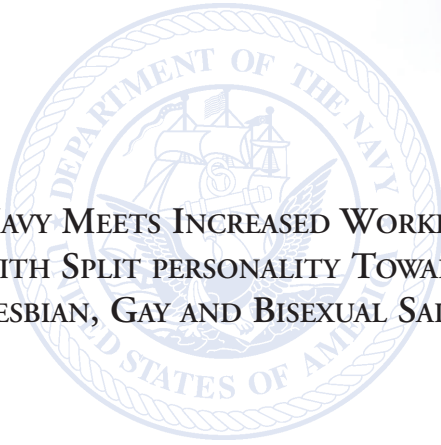
With fewer discharges and “Don’t Ask, Don’t Tell” violations, the Air Force seems to be making some progress. The Air Force, however, must do much more to eradicate harassment, asking and pursuits.

During the next year, SLDN recommends the Air Force take the following steps to improve the climate and productivity of their personnel:

- ★ 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 their tailored training to truly address different audience levels (command, judge advocates, senior NCOs, Inspectors General and enlisted ranks);
- ★ Re-emphasize in training materials that asking about sexual

orientation is a violation of the policy and hold accountable those who ask;

- ★ Clearly identify how and to whom Air Force members can safely report harassment based on perceived sexual orientation;
- ★ Authorize Equal Opportunity staff to investigate reports of harassment based on perceived sexual orientation;
- ★ Hold harassers, and those condoning harassment, accountable for their actions; and
- ★ Provide more specific training on “credible evidence” and limits to investigations under “Don’t Ask, Don’t Tell.”



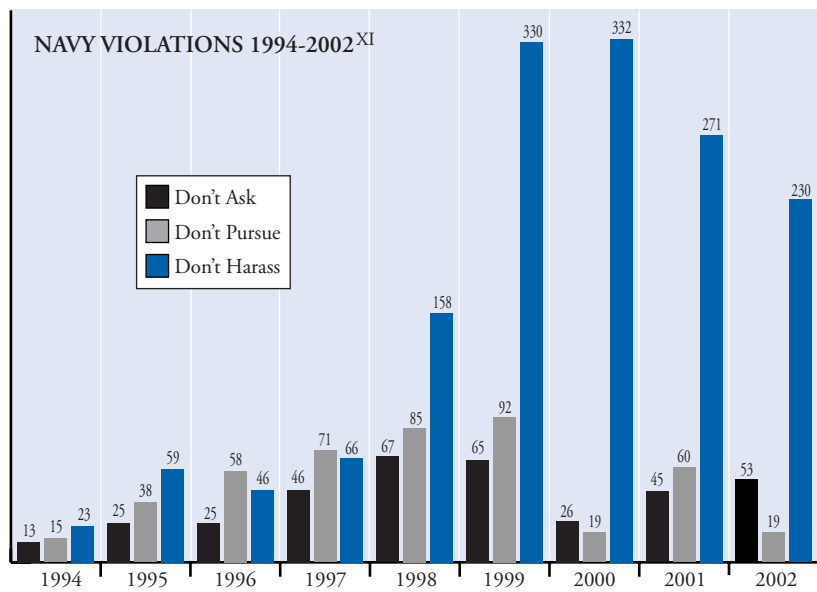
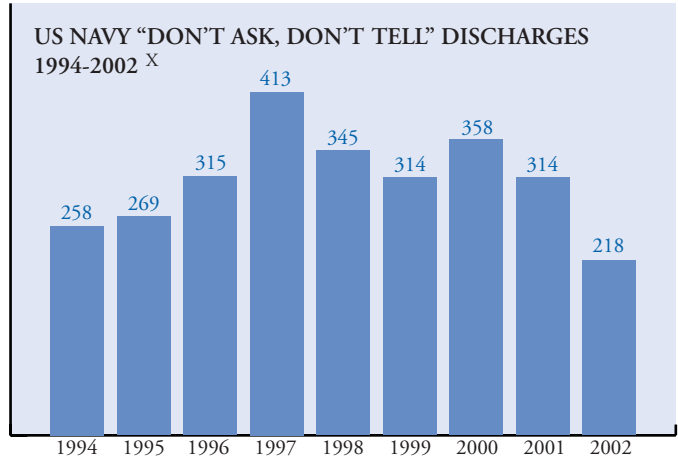
NAVY MEETS INCREASED WORKLOAD WITH SPLIT PERSONALITY TOWARDS LESBIAN, GAY AND BISEXUAL SAILORS

“NOW MORE THAN EVER, WE MUST RECRUIT AND RETAIN THE BEST AND THE BRIGHTEST, DESPITE THE REALITY AND STRAINS OF INCREASED OPTEMPO.”

CNO Guidance for 2002, 4 January 2002¹⁰

Under the spotlight of the war on terrorism, the Navy discharged 218 service members for being gay - the fewest sailors ever under “Don’t Ask, Don’t Tell.”¹¹¹ Along with a decrease in discharge numbers, SLDN also recorded an overall drop in “Don’t

Ask, Don’t Tell” violations in the Navy. Despite this overall decrease, however, harassment remains a significant problem within the Navy and “asking” violations increased during 2002. With little informa-



tion coming from the Navy about their efforts to prevent anti-gay harassment or ensure proper application of “Don’t Ask, Don’t Tell,” SLDN can only speculate why discharge and violation numbers were down during 2002. Perhaps discharge numbers are down because of the Navy’s participation in the war on terrorism and its need to recruit and retain good, qualified sailors.

With the war on terrorism raging thousands of miles away from our country, Navy ships, planes, and personnel are literally on the frontlines and are part of the staging for war. Last year, an increased workload, or OPTEMPO, forced the Navy to reemphasize the importance

of its recruitment and retention efforts of good sailors. These factors may have led to the Navy's apparent split personality treatment of lesbian, gay and bisexual sailors. Some commands are recognizing that a sailor's sexual orientation has no bearing on

their ability to do the job, nor does it negatively affect the good order and discipline of its units. SLDN saw a rise in the last few years of the Navy's efforts to retain openly gay sailors. Countering this retention movement are the Navy commands

who continue to ask about and pursue sailors' sexual orientation and who encourage or allow working environments filled with anti-gay jokes, comments, rumors and threats.

**NAVY EMPHASIZES RETENTION:
INCLUDING LESBIAN, GAY AND
BISexual SERVICE MEMBERS**

"We have repeatedly challenged Navy leaders to recruit, retain, and motivate..."

CNO Guidance for 2002, 4 January 2002¹¹²

"I couldn't care less whether the guy who pulls me out of a burning airplane is straight, gay or into Velveeta."

From an editorial by Ken Lynch, aviation operations limited-duty officer, in the February 3, 2003 Navy Times.¹¹³

The Navy is increasingly attempting to retain openly lesbian, gay and bisexual sailors, recognizing that it is in the best interest of the Navy to do so. Navy commands seem to be following CNO guidance from last year emphasizing retention and recruitment. Navy commands may also be following the lead of their sailors, who recognize the contributions of openly lesbian, gay and bisexual sailors and support the retention of those sailors by not "outing" them.¹¹⁴

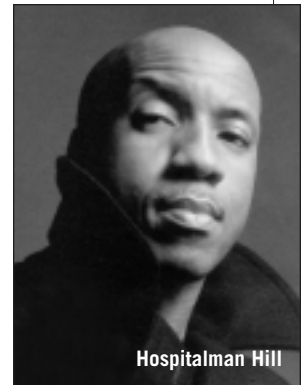
A powerful example of the growing trend of Navy commands retaining good sailors, despite knowing they are lesbian, gay or bisexual, is the



story of LTJG Jenny Kopfstein. LTJG Kopfstein was an officer assigned to the USS Shiloh when, more than two years ago, her command learned she is a lesbian. Recognizing her capabilities as a sailor and an officer, Kopfstein's command sought to retain her for continued service while the Navy determined her fate.

During her more than two years aboard the Shiloh, LTJG Kopfstein performed above and beyond officer expectations. Kopfstein sailed on deployment with the Shiloh and was recognized as an outstanding officer onboard the ship. In her final Fitness Report (FitRep), or officer evaluation, in July 2002, Kopfstein's commander, Captain W.E. Dewes, lauded her as a "trusted Officer of the Deck and the best ship handler among her peers." Captain Dewes also explicitly states in the same FitRep, "[LTJG Kopfstein's] sexual orientation has not disrupted good order and discipline onboard USS Shiloh." Captain Dewes concludes his comments by stating, "LTJG Kopfstein has been an asset to the ship and the Navy, but unfortunately her sexual orientation precludes further naval service."¹¹⁵ After serving more than two years as an "out" lesbian naval officer, defying the specious rationales underlying "Don't Ask, Don't Tell," the Navy honorably discharged LTJG Kopfstein in October 2002.

Similar to LTJG Kopfstein's case, Hospitalman Roy Hill's command attempted to retain him after learning he is gay. Again, Hill's command recognized his retention benefited the Navy. In May 2002, Hospitalman Hill came out to his command while reporting anti-gay harassment he witnessed during his three years of service. In his letter, Hill outlined the types of harassment he encountered, beginning with his boot camp experience and ending with his transition to Camp Lejeune, where he submitted his letter. Hill relayed to his command that he heard "fag, queer, cocker-sucker" jokes constantly and saw a classmate made the brunt of "many 'bull-dyke' jokes." Hospitalman Hill also reported he had been asked point blank by other sailors if he is gay. Hill explained in his letter how the direct and indirect harassment created an uncomfortable and hostile environment in which he was required to work everyday. He had reached a point where he felt it necessary to make his command aware of his concerns.¹¹⁶



Hospitalman Hill's command reacted to the letter by ignoring his reports of harassment and informing

Virgilio Santos for The Advocate - Used with Permission

Hill they were retaining him. LT Cooper, Hill's command's advising attorney, explained to SLDN that the command conceded "HN Hill was indeed a gay male but CDR Mulvanny believed Navy policy allowed for him to retain an openly gay male if he determined it was for the good of the service."¹¹⁷

Hospitalman Hill's command saw that Hill was a good sailor, with a fine service record and therefore sought to retain Hill for the "good of the service." This simple act of retention however, did not address the issue of Hospitalman Hill's concern about continuing to work in an uncomfortable and threatening environment. There is a clear difference

between threats to your safety from an outside enemy and threats to your safety from within your own work group. In light of his command's disregard of his concerns and failure to address the harassment he was experiencing, Hill maintained his efforts to separate from the Navy and was honorably discharged in October 2002.

**NAVY CAN'T HAVE IT BOTH WAYS:
ASKING AND PURSUITS CONTINUE**

"The government must decide that it cannot have it both ways. It must also rid itself of the notion that one's sexual preference is a reflection of one's courage."

Keith Taylor, 23 year Navy enlisted wrote in an editorial to the Navy Times, December 16, 2002¹¹⁸

In contrast to their retention efforts towards many openly lesbian, gay and bisexual sailors, the Navy continues to ask and pursue sailors rumored to be homosexual in direct violation of "Don't Ask, Don't Tell." The Navy can't have it both ways. Sailors reported to SLDN being asked the following questions by other sailors and supervisors during the past year:

- ★ "We heard you are gay. Are you gay?"
- ★ "You gotta be gay?"
- ★ "Did someone go to a gay bar?"
- ★ "Why don't you go to a whore house? Are you a fag?"
- ★ "What are you some kind of fag?"
- ★ "Are you gay? Oh, you don't have to answer that." – asked by Petty Officer First Class
- ★ "Are you homosexual?" – asked by a non-commissioned officer

- ★ "Are you gay or something?" – asked by LT at Portsmouth

During the early spring of last year, Petty Officer First Class Derek Sparks discovered just how vulnerable a sailor can be under "'Don't Ask, Don't Tell.'" After more than 14 1/2 years of service, he found himself under an excruciating command spotlight following a dubious report that he was gay and involved in homosexual activity onboard his ship. The investigation began after Petty Officer Sparks' Master Chief alleged Sparks and two other sailors were engaged in homosexual activity in Sparks' office. The Master Chief provided two statements of the alleged conduct. The first statement the Master Chief provided was less than a page and contained very few details about the alleged activity. The second statement, provided after his first statement, was much longer and gave the appearance that the Master Chief was coached in documenting his alleged observations of homosexual conduct.¹¹⁹

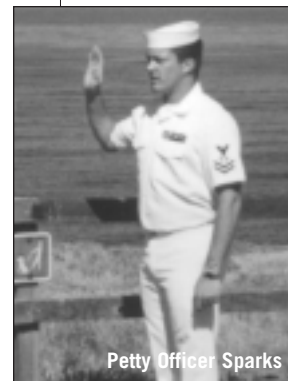
Throughout the command investigation into these allegations, the three sailors involved denied committing the acts. Petty Officer Sparks answered questions during numerous command interviews. Each time, he denied doing anything other than watching an action movie on the TV in his office

with the other two sailors. Each time, the questions seemed to get more involved and broader in scope.

- ★ Who is Sailor X (sailor from another ship)?
- ★ How did you meet Sailor A?
- ★ How did you meet Sailor B?
- ★ What is your relationship with Sailor A?
- ★ What is your relationship with Sailor B?
- ★ How would you characterize the relationship between Sailor A and Sailor X?
- ★ What were Sailor A and Sailor B doing when [you] left [your] office?¹²⁰

Petty Officer Sparks' command violated "Don't Ask, Don't Tell" and Navy policy by beginning an investigation based on dubious information, and continued to violate the policy by questioning Sparks about

events beyond the scope of the alleged conduct and seeking information about a sailor from another ship.



After the intensive questioning he faced from his command, Petty Officer Sparks decided not to fight his proposed discharge and leave the Navy. Sparks denied the allegation of homosexual conduct brought by his Master Chief, but admitted to

his command that he is gay. In April 2002, the Navy discharged Petty Officer Sparks, giving him a General discharge. Petty Officer Sparks considers this last Navy act as an additional insult. Prior to the Master Chief's allegations, Sparks

had an excellent service record and his own command recommended he receive an Honorable discharge. Petty Officer Sparks is now seeking to upgrade his discharge characterization through the Board for Correction of Naval Records.

**HARASSMENT: NAVY CLIMATE
NEEDS IMPROVEMENT**

“[Quality of service]...also includes providing Sailors with a work environment of which they can be proud.”

CNO Guidance for 2002, 4 January 2002¹²¹

The Navy's treatment of Petty Officer Sparks during its investigation and his discharge is indicative of how far the Navy still needs to go in improving its working environment. Another indicator of climate problems, despite the CNO's emphasis on improving the working environment, is the rampant anti-gay harassment reported during the past year. While there were fewer reports of harassment from sailors in 2002, a total of 230 reported violations is unacceptable.

As in previous years, sailors report to SLDN that the general climate in the Navy is one where “faggot,” “dyke,” and “queer” are part of the everyday language they hear. Further, they continue to report anti-gay comments and threats from peers as well as supervisors. The following are only a few of the threats and comments reported by sailors to SLDN during 2002:

- ★ “I don't want a pole smoker in my division.”
- ★ “We can't guarantee your safety.”
- ★ “If you are gay in my town, we'll kill you.”

- ★ “I can't wait till we get under way again so I can watch your little queer ass drown.”
- ★ “You are a fucking queer.”
- ★ “Sometimes you don't have to ask, you can just tell.”
- ★ “Faggot, if you are here tomorrow night, you'll go home in a body bag.”

This type of anti-gay atmosphere is just the environment Petty Officer Jason Reilly and Airman Apprentice Jason Hiatt faced everyday aboard the USS Iwo Jima. Sometime in December 2001, rumors about Petty Officer Reilly being gay started to circulate around the ship. After becoming more and more uncomfortable with hearing rumors about his sexual orientation and suspected conduct, Petty Officer Reilly admitted to his command that he is gay. Following his admission, LCDR Buzzard questioned Petty Officer Reilly. In violation of Navy regulations and “Don't Ask, Don't Tell,” LCDR Buzzard asked Petty Officer Reilly to prove his sexual orientation. LCDR Buzzard went so far as to incorrectly tell Petty Officer Reilly that kissing was not a homosexual act and alluded to Reilly that he needed to admit to more conduct. LCDR Buzzard then advised Reilly that if he admitted to engaging in sodomy he would be punished by court martial.¹²²

Shortly after Petty Officer Reilly's admission, Airman Apprentice Hiatt reported to his commander that he

is gay. Heitt knew Reilly was under investigation and was concerned for his own safety and security aboard the Iwo Jima. Petty Officer Reilly and Airman Apprentice Hiatt used a buddy system aboard the ship for protection and their time spent together sparked more rumors about the pair's sexual orientation. Instead of ensuring their safety, the admissions by Reilly and Hiatt made their environment worse. Rumors turned into questions and anti-gay comments made directly to them.

In July 2002, SLDN assisted Petty Officer Reilly and Airman Apprentice Hiatt in reporting the intense anti-gay harassment they were encountering. This harassment included a threat by the ship's Command Master Chief to send Reilly to the brig if he was caught confirming he is gay when asked by others. Instead of holding sailors accountable for violating “Don't Ask, Don't Tell” by asking Petty Officer Reilly about his sexual orientation, the Command Master Chief tried to make Reilly's honesty a crime.¹²³ The Navy responded to the complaint by ordering the USS Iwo Jima's commanding officer to investigate his own ship and command actions. Without an investigation by someone outside of the Iwo Jima's chain of command, SLDN was not surprised to hear that the commanding officer “failed to substantiate any anti-gay harassment occurred against Petty Officer Reilly and Airman Apprentice Hiatt while onboard the ship....”¹²⁴

Shortly after the harassment investigation concluded, Petty Officer Reilly and Airman Apprentice Hielt sought relief to escape the hostile environment in which they served by provid-

ing additional information to the Navy to “prove” they are gay and requested discharge. In September 2002, the Navy ordered Reilly and Hielt placed on leave and they subse-

quently discharged the sailors in October 2002. As our report went to print, Petty Officer Reilly and Airman Apprentice Hielt still had not received their final pay from the Navy.

INCOMPLETE AND INEFFECTIVE:
A PROGRESS REPORT ON NAVY
AHAP IMPLEMENTATION

harassment training and prevention as very low priorities. The Navy has provided very little information on how they are addressing the four AHAP prongs of training, reporting, enforcement and measurement.

sexual harassment prevention, and grievance procedures. This training, revised in 2000, speaks to the issues of fostering climates of respect, and ensuring sailors are able to report harassment free from “harm, reprisal, or inappropriate or inadequate command response,” but it does not explain how, and to whom, a sailor can safely report anti-gay harassment.¹²⁶ The Navy also claims to specifically provide Navy leaders and legal professional with more in depth training on the prevention of anti-gay harassment and “Don’t Ask, Don’t Tell.”¹²⁷ Despite this claim, SLDN has been unable to obtain any training materials other than the GMT materials mentioned above.

“[R]egarding the Department of the Navy’s implementation of the Department of Defense Thirteen Point Anti-Harassment Action Plan ... I assure you that the Department of the Navy is sensitive to this issue, and that we require compliance with the letter and the spirit of the various laws, regulations and policies that surround it.”

William A. Navas, Jr., Assistant Secretary of the Navy (Manpower and Reserve Affairs) in a letter to Senator Mark Dayton, September 19, 2002¹²⁵

With regard to training and reporting, the Navy appears to fall well short of complying with the AHAP.

The Navy currently combines its “Don’t Ask, Don’t Tell” training with its general military training (GMT) for equal opportunity,

Despite assurance of compliance, available evidence suggests that the Navy continues to view anti-gay

FOLLOW THROUGH LACKING:
NAVY ANTI-HARASSMENT
ENFORCEMENT AND MEASUREMENT

SLDN has no evidence that the Navy has taken steps to implement the enforcement or measurement prongs of AHAP. 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.” Further, it

is not clear the Navy is measuring the effectiveness of its training in any systematic way. The Navy claims that the Inspector General staffs include specific interest items in their inspections on the question of “Don’t Ask, Don’t Tell” training, application and enforcement.¹²⁸ There is no indication that the Inspector General staffs seek information about anti-gay harassment. Furthermore, the Navy has not

explained what it does with the information the Inspector General staffs collect.

SLDN will continue seeking information about the Navy’s “Don’t Ask, Don’t Tell” and AHAP implementation. The Navy’s sincerity that it is moving to implement the AHAP and maintain dignity and respect for all sailors, however, remains questionable.

RECOMMENDATIONS:
SAFETY AND SECURITY OF SAILORS
MUST BE A PRIORITY FOR THE NAVY
IN 2003

There is no question that the Navy must make a commitment to implement the AHAP to reduce harassment and protect its sailors. Although SLDN understands the

Navy is operating under intense OPTEMPO circumstances, reducing harassment and encouraging an atmosphere of respect without regard to sexual orientation can only improve the work of sailors everyday. SLDN recommends Navy leaders:

- ★ 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;

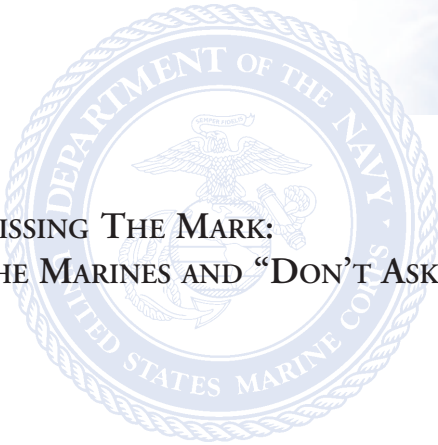
- ★ Instruct Navy leaders on how to hold accountable anyone who violates “Don’t Ask, Don’t Tell” or participates or condones anti-gay harassment;
- ★ Provide in-depth training on “credible evidence” and limits to

investigations under “Don’t Ask, Don’t Tell;”

- ★ Create training tailored to different audience levels (command, judge advocates, senior NCOs, and inspectors general vs. junior enlisted ranks);
- ★ Actively measure the effective-

ness 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.



**MISSING THE MARK:
THE MARINES AND “DON’T ASK, DON’T TELL”**

“IF YOU CAN DO THE JOB, YOU HAVE THE JOB.”
GEN Mike Hagee, the new Commandant of the Marine Corps, discussing his approach to empowering enlisted Marines ¹²⁹

“I THINK IT IS UNFORTUNATE THAT AS A MARINE CORPS WE FIGHT FOR FREEDOM BUT SIMULTANEOUSLY CANNOT GRANT GAYS AND LESBIANS THE FREEDOM TO SERVE OPENLY.”
Lance Corporal at Camp Pendleton, California ¹³⁰

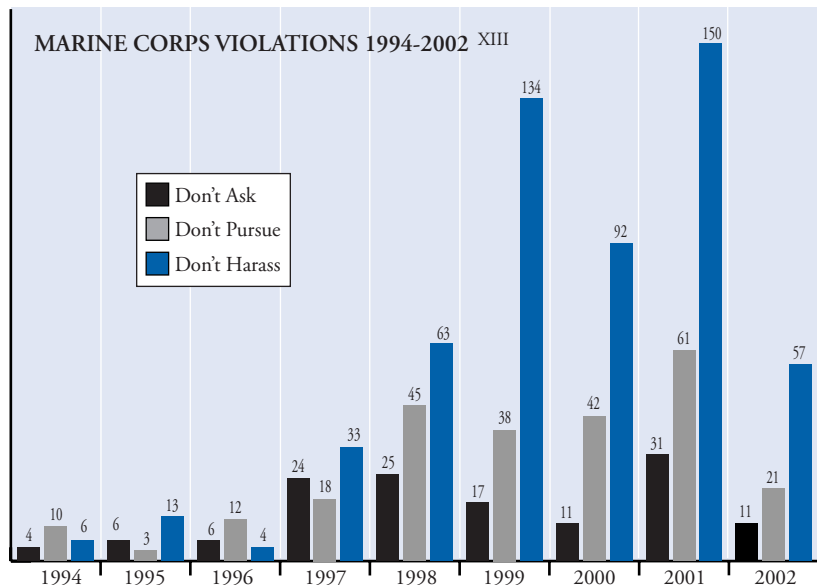
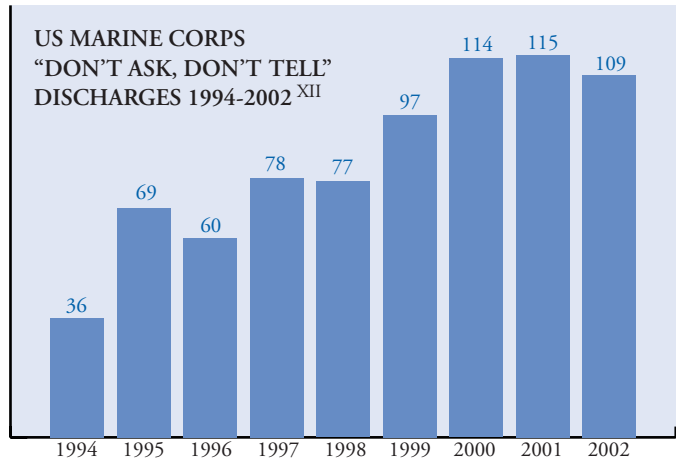
The Marine Corps saw some improvement during 2002.

Slightly fewer Marines were discharged for being lesbian, gay or bisexual. The Corps also saw a decrease in “Don’t Ask, Don’t Tell” violations with a total of 92 – the fewest violations since 1997. SLDN documented fewer “Don’t Harass” violations, providing some hope that the conditions under which lesbian, gay and bisexual Marines serve may be improving. The Corps conducted an “annual” review during 2002 of its “Don’t Ask, Don’t Tell” compliance and, surprisingly, publicly acknowledged that it is missing the mark, pledging to do better.¹³¹ The Commandant ordered renewed policy training.

These are positive steps in the right direction. The Marine Corps, however, still has a long way to go to

fully implement the AHAP and treat all Marines with dignity and respect. Unfortunately, too many Marines

report receiving death threats, being assaulted, or otherwise harassed



because of perceptions they may be lesbian, gay or bisexual. Similarly, too many Marines report to SLDN that they continue to be directly

asked whether they are gay, and continue to fear becoming the target of an intrusive inquisition into their private lives. Marine leaders also

continue to improperly give gay Marines lower discharge characterizations.

VULGAR STATEMENTS & A CLOSED FIST: ANTI-GAY HARASSMENT CONTINUES

Marine NCO after the NCO learned that the Lance Corporal is bisexual, illustrates the nature of the

Corps' ongoing problem with anti-gay harassment. The NCO, Sgt. Galvan, threatened the young Marine, saying "if I ever caught you doing faggot shit, I would kill you." Soon thereafter, the Marine was physically assaulted by LCpl. Cascante. Cascante called the Marine a "faggot" and proceeded to hit him in the face "with a closed fist."¹³³

The Lance Corporal reported the assault and death threat to his company commander, Capt. Pace. The Lance Corporal stated "I am

being harassed about this on a daily basis now the word faggot is used commonly and aggressively. Vulgar

statements are made referring to homosexual acts."¹³⁴ The command's reaction to the Lance Corporal's report? CWO2 Gutierrez "told me just to ignore them and to let them say what they were going to say." The command's refusal to address the criminal behaviors directed towards the Lance Corporal forced him to come out as the only means he felt he had to protect himself from further physical harm. The Lance Corporal stated, "I feel very threatened and in fear for my life."¹³⁵

The experience of this Lance Corporal should not be happening ten years into the life of "Don't Ask, Don't Tell." The Marine Corps directly participated in the development of the AHAP and has publicly pledged to implement the Plan.¹³⁶ The reality in 2002, however, is that the Marine Corps' anti-harassment efforts are not yet fully effective. The Marine Corps has yet to implement the AHAP's four components – training, reporting, enforcement and measurement.

"Sissy you're a fucking freak fucking fag shut up, fag."

Comments directed towards a Camp Pendleton Lance Corporal by Marine noncommissioned officers¹³²



Note received by SLDN client

The case of a Camp Pendleton Lance Corporal, who found himself the target of a death threat from a

TODAY'S LESSON: MARINE CORPS AHAP TRAINING IS SKETCHY, AT BEST

the Commandant directed new and clearer policy training.¹³⁹ The training plans developed by the Marine

Corps, however, make scarce mention of the "Don't Harass" prong of the policy. In fact, SLDN's review of the lesson plan and

student handout prepared by the Marine Corps revealed they contain virtually no mention of "Don't

Harass."¹⁴⁰ This training, therefore, does not satisfy the AHAP requirements. A case from Twenty-nine Palms, California, provides an insight into the Marine Corps' "Don't Ask, Don't Tell" training efforts.

An April 4, 2002 memorandum from Twenty-nine Palms on the subject of "Homosexual Conduct Discharge Potential" states: "The following is the Commanding Officer,

"Numerous commands are not in compliance with the requirement to conduct required homosexual conduct policy briefings for Marines"

Commandant of the Marine Corps¹³⁷

A Marine Corps review of "Don't Ask, Don't Tell" training found the Corps to be lacking. In response,

“If I slipped up just once and let my real self show I fear that I will be killed or beat [sic] severely [other Marines] talk about what they would do if they found out that a Marine in their platoon was gay, namely kill or severely injure them.”

A Private from Camp Pendleton, California¹³⁸

Marine Corps Communication and Electronics School (MCCES) guidance on Administrative Discharges for the reason of Homosexual Conduct.”¹⁴¹

The Twenty-nine Palms memo, signed by “Captain Darrell V. Allen, Adjutant/Legal Officer Captain – USMC,” makes a number of surprising assertions. Among them:

- ★ “Homosexuals can and do serve [h]onorably in the Marine Corps. Homosexuals can and do make some of the best Marines. Homosexuals are capable of Military Service and can and do perform as well as anyone else in the Military;” and
- ★ “Claiming to be Homosexual is not automatic grounds for discharge. We hesitate to discharge Marines solely based on a statement they make about their Sexual Orientation.”

SLDN applauds this progressive stance and agrees that lesbian, gay and bisexual Marines should not be discharged for honestly stating their sexual orientation. In our experience, most Marines who make coming out statements do so in response to anti-gay harassment. Marine leaders, therefore, need to address the harassment that is likely driving these coming out statements. Allowing the Marine to continue serving does not relieve the command of its responsibility under the AHAP to stop the harassment. This Twenty-nine Palms’ “Don’t Ask, Don’t Tell” training memo does not make this point.

The memo also asserts that gay Marines will only be discharged when evidence of conduct which brings “discredit on the Armed Forces” is found. The memo states:

- ★ “During a period of 2 years, 2000 through 2001, MCCES has had 19 Marines considered for discharge for Homosexual Conduct. Of those considered, only 5 were actually discharged. These 5 were separated when evidence was found that proved they were engaging in Homosexual Conduct of a nature to bring discredit on the Marine Corps;” and
- ★ “Examples of evidence that was [sic] found include pictures on a website, photographs found in the barracks room, eyewitnesses who caught a Marine in the act, or a combinations [sic] of various factors and other evidence that can support a statement of Sexual Orientation.”¹⁴²

“Don’t Ask, Don’t Tell” contains no requirement that Marine commands obtain evidence of service discrediting behavior in their handling of gay cases. SLDN is concerned that requiring evidence of conduct before discharging gay Marines may lead to abuses. This concern is reinforced by the questions this same command believes are appropriate to ask in investigating gays.

- ★ “Are you currently, or do you intend to engage in homosexual acts?”
- ★ “Do you have a propensity to engage in homosexual acts?”
- ★ “Are you currently or do you intend to enter into a homosexual marriage?”

These questions are inappropriate because they exceed the scope of any legitimate fact finding inquiry allowed under the “Don’t Pursue” limitations. This Twenty-nine Palms Policy memorandum indicates that some Marine leaders do not understand the basics of the “Don’t Ask, Don’t Tell” policy.

SLDN is concerned that the command seems to be encouraging investigating officers to dig up dirt on gay Marines in an effort to identify service discrediting behaviors. Evidence of such behaviors could subject the Marine to UCMJ criminal prosecution, or allow the command to administratively give the Marine a damaging “other than honorable” discharge characterization. As a matter of policy implementation, this part of the Twenty-nine Palms memo is troubling.

The notion of gay Marines serving openly is a positive one. Twenty-nine Palms’ admission that it is denying gay discharges to all but those found engaging in prohibited sexual behaviors indicates that gay Marines are serving openly. This command’s admission that its gay Marines are not detrimental to morale or readiness further discredits the already weak rationale for the gay ban.

SLDN suspects the ongoing war against terrorism and the need to retain qualified service members may have influenced the Twenty-nine Palms command’s policy pronouncement. Although the Marine Corps issued a “stop loss” directive – implemented on January 15, 2003 and essentially halting personnel separations across the Service – it contains an express exception that allows gay discharges to continue.¹⁴³ It is foreseeable that commanders will nevertheless decide to retain gay Marines during this time of combat necessity.

**AN OBLIGATION TO REPORT:
A FAILURE TO IDENTIFY SAFE
CHANNELS**

“I can’t tell you the number of times [the anti-gay harassment] got so bad I’d just sit in my room . . . tying a noose. I was depressed, and I couldn’t even talk to a psychiatrist because they’d be obligated to report me for being gay.”

A gay Marine in Okinawa¹⁴⁴

Marine leaders have established, as required by the AHAP, “avenues for reporting mistreatment, harassment, and inappropriate comments or gestures.”¹⁴⁵ The Marine Corps has not, however, designated confidential resources for reporting anti-gay harassment. Marine Corps policy states that reporting harassment through the chain of command is the “preferred method,”¹⁴⁶ 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.

The Twenty-nine Palms command’s “Don’t Ask, Don’t Tell” memo discussed above illustrates the dilemma facing gay

Marines. The memo flatly asserts that “there is no threat to Homosexual Service Members of this command, either physically or professionally (career).”¹⁴⁷ This would come as news to the many lesbian, gay and bisexual Marines serving at Twenty-nine Palms. In fact, Twenty-nine Palms’ reputation as being a particularly hostile place for gay Marines is well documented.

In SLDN’s 7th *Conduct Unbecoming* report, we discussed the case of a senior Twenty-nine Palms officer’s anti-gay misconduct. Following the

1999 murder of Army PFC Barry Winchell, Marine Corps Lt. Col. Edward Melton sent out an official email mocking PFC Winchell’s murder and referring to gays as “homos” and “back side rangers.”¹⁴⁸ The same Report contains the story of Twenty-nine Palms LCpl. Jackie Meyer who reported “[t]he people I work with are very homophobic I am forced to stay silent while my coworkers talk about how they hate gays and that if their kids end up gay they’ll disown them and kick them out.”¹⁴⁹

The Marine Corps is still missing the AHAP reporting mark. Lesbian, gay and bisexual Marines will report harassment when Marine leaders make it possible for them to do so. The Marine Corps should designate confidential reporting resources, including Chaplains, defense attorneys, IGs, medical personnel and Equal Opportunity advisors. Until such time, the Corps’ reality will continue to differ starkly from its rhetoric.

**MISSING IN USMC:
ANTI-HARASSMENT ENFORCEMENT
AND MEASUREMENT**

“Jokes and talk referring to mice and anal sex involving men, fudge packers, and fags were laughed at in my presence during the past few drills I attended. More specifically, at a class given during October’s drill commander Caprio was quoting General Lejune: ‘When asked why we don’t wear a beret he said then we’d either look like the French or fags and we sure don’t want to be either.’”

Marine Corporal Reservist in New Jersey¹⁵⁰

Despite the AHAP requirement to enforce anti-harassment rules and measure the effectiveness of anti-harassment programs, 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.

The Marine Corps also does not have a system in place to measure AHAP effectiveness. Although the Marine Corps Inspector

General appears to be taking the leadership role in monitoring “Don’t Ask, Don’t Tell” training compliance, neither the IG nor any other Corps agency appears to be taking a serious look at the substance of the anti-harassment training or the training’s effectiveness.

The Commandant ordered Marines to be “tested annually on the Policy,

which also will be made part of the Corps’ Common Skills Handbook.”¹⁵¹ This is a good first step towards being able to better measure Marines’ “Don’t Ask, Don’t Tell” understanding. The inclusion of “Don’t Ask, Don’t Tell” information in the Common Skills Handbook is a very positive development which should also assist unit level commands in better training their Marines.

An example of a good AHAP measurement tool, however, is found in the DoD IG survey used following the 1999 PFC Winchell murder.¹⁵² This confidential survey asked direct questions about the frequency and nature of anti-gay harassment. The Marine Corps IG should adopt questions similar to those used in the DoD IG survey to better gauge the occurrence of harassment within the Corps, as well as the effectiveness of anti-harassment training.

ACCEPTABLE PREJUDICE: MARINES STRUGGLE WITH “DON’T ASK” AND “DON’T PURSUE” VIOLATIONS.

“[The Lieutenant] attempted to draw similar personality traits between these ‘alternative individuals’ and myself. She later directly identified these individuals as ‘homosexuals.’ She attempted to get some kind of affirmation from me”

A Corporal from New River, North Carolina. The Marine reports that he and two others were directly asked whether they are gay.¹⁵³

“Prejudice against homosexuality is not only an acceptable prejudice in the Marine Corps, but a prejudice proudly held aloft and openly applauded within commands as one of the virtues which set Marines apart from civilians.”

Captain Kira K. Zielinski, Cherry Point, North Carolina¹⁵⁴

During 2002, SLDN documented a decrease in “Don’t Ask” and “Don’t Pursue” violations. The persistence of violations, however, ten years into the life of “Don’t Ask, Don’t Tell” is concerning. The Marine Corps Commandant’s concession that many of his commands are not in compliance with “Don’t Ask, Don’t Tell” requirements may help to explain the continued occurrence of “ask” and “pursue” violations. A close review of the case of Capt. Kira Zielinski is helpful in fully appreciating the scope of the problem. If this could happen to a distinguished officer, it could easily happen to any Marine.

The story of Capt. Kira Zielinski, a Marine helicopter pilot, demonstrates that commanders and their military attorneys continue to misinterpret the Marine Corps’ “Don’t Ask, Don’t Tell” policy and are not properly enforcing it.

Capt. Zielinski told her command in April 2001 that she is bisexual. In response, her chain of command conducted two improper substantial investigations. Substantial investiga-

tions entail inquiries which extend beyond questioning the Marine and her chain of command. Substantial investigations require Service

Secretary authorization.¹⁵⁵ After the initial improper investigation, the Cherry Point commanding general, Major General Thomas A. Braatan, appears to have ordered a further investigation,¹⁵⁶ despite his request seeking Secretary of the Navy approval for a “substantial investigation” being disapproved.

During the investigations, a Marine attorney, Capt. V.C. Danyluk, the appointed inquiry officer, improperly contacted members of Capt.

Zielinski’s squadron who were not in her chain of command.¹⁵⁷

Capt. Danyluk also intrusively questioned Capt. Zielinski’s

mother about Capt.

Zielinski’s sexuality and her “propensity to engage in homosexual behavior in the future.”¹⁵⁸ Capt. Danyluk then contacted a Marine Chaplain from whom Capt. Zielinski had sought counseling, impermissibly seeking information Zielinski may have shared, in confidence, with the Chaplain.

The Marine Corps eventually notified Capt. Zielinski that a Board of Inquiry (BOI) would be convened, threatening her with an “other than

honorable” discharge – although there was no basis for an OTH discharge in her case.

Capt. Zielinski sought assistance from her squadron Chaplain, Chaplain Grey. Chaplain Grey – instead of assisting this officer or directing her to a Chaplain who would be able to assist – proceeded to berate Capt. Zielinski, calling her a “sinner” and suggesting that she needed counseling for her “un-Christian tendencies.”¹⁵⁹

During the investigation, Capt. Zielinski reported anti-gay harassment she had experienced and observed at Cherry Point, as well as previous commands including Quantico, Twenty-nine Palms, El Toro, and Okinawa. For example, Capt. Zielinski informed the investigating officer of anti-gay misconduct in Okinawa, which included her commanding officer and department

heads frequently using anti-gay language in her presence.¹⁶⁰

Although Capt. Zielinski reported this misconduct, there is no evidence that the Marine Corps took any action to investigate the misconduct or to hold those responsible accountable. Capt. Zielinski was honorably discharged from the Marine Corps in 2002.

Capt. Zielinski’s case illustrates the failings of the Marine Corps’ “Don’t Ask, Don’t Tell” implementation. Command officials had apparently never been trained on the policy. “Don’t Ask, Don’t Tell” was not enforced; no one was held accountable for their misdeeds. SLDN has filed a formal Marine Corps IG complaint on Capt. Zielinski’s behalf and we are awaiting the Corps’ response.



IMPROPER: MARINES CONTINUE TO GIVE STIGMATIZING DISCHARGE CHARACTERIZATIONS

In last year's *Conduct Unbecoming* report, we expressed alarm that in some statements cases Marines were being given improper discharge characterizations in an apparent effort to retaliate against the Marine for coming out. During 2002 this disturbing trend continued.

For example, a Private First Class in New River, North Carolina, recently found himself faced with an effort by his command to improperly give him a "general, under honorable conditions" discharge instead of the "honorable" that he deserved.¹⁶¹ Lower discharge characterizations disadvantage service personnel by limiting their eligibility for many veterans' benefits and programs. The mere fact that a Marine is invol-

untarily separated prior to the end of his enlistment cannot be a reasonable justification for punishing a Marine with a lower discharge characterization than he otherwise has earned by his performance. The Marine Corps should not be in the business of penalizing gay Marines for simply acknowledging the truth of their sexual orientation.

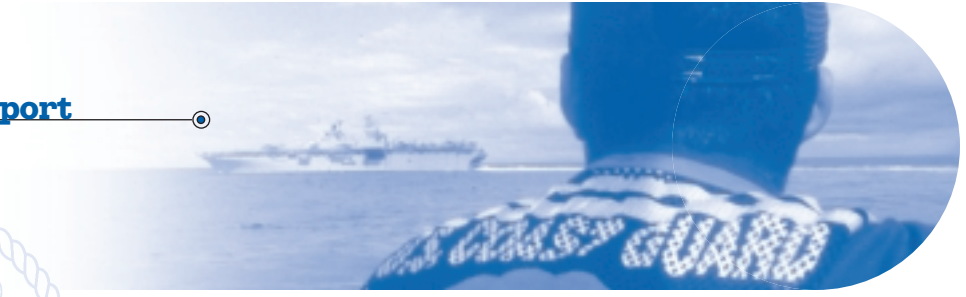
**RECOMMENDATIONS:
A CALL TO CHANGE FOR THE MARINE CORP IN 2003**

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. GEN Hagee's admonition that "if you can do the job,

you have the job" should be more than a rhetorical sound bite. During 2003, the Marine Corps should:

- ★ Fully implement all facets of the AHAP;
- ★ Designate confidential resources for reporting anti-gay harassment;
- ★ Hold accountable leaders who tolerate anti-gay harassment;

- ★ Direct NCOs to become involved in all facets of the gay policy;
- ★ Task Equal Opportunity representatives to oversee the AHAP (as they do with other types of harassment, including gender and race harassment); and
- ★ End the practice of giving lesbian, gay and bisexual Marines lower discharge characterizations than their service records warrant.



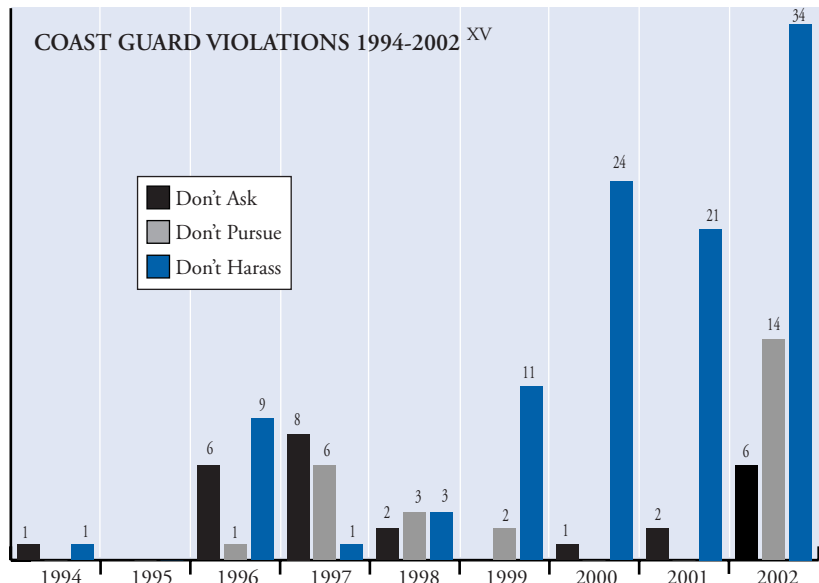
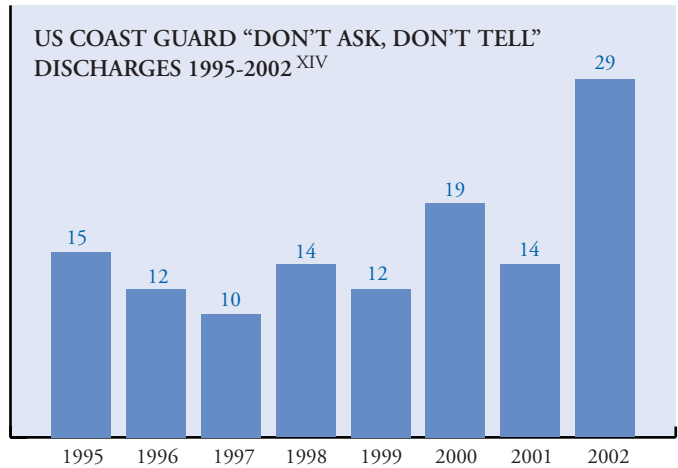
TIDES OF CHANGE: A RESTRUCTURED COAST GUARD GRAPPLES WITH “DON’T ASK, DON’T TELL”

“THE U.S. COAST GUARD IS EMBARKING ON A TRANSFORMATION OF LEVIATHAN PROPORTIONS...”
Mike Brunker, MSNBC¹⁶²

Discharges under “Don’t Ask, Don’t Tell” reached an all-time high during FY 2002 as the United States Coast Guard struggled with adapting to its new mission and place within the newly formed Department of Homeland Security. Transitioning to its updated role in an era of heightened security, the Coast Guard faces a stark contradiction. Active duty lesbian, gay and bisexual Coast Guard members face asking, pursuit, harassment and losing their jobs while they work side by side with Coast Guard civilian employees, Auxiliary members, federal law enforcement and intelligence personnel protected from discrimination based on actual or perceived sexual orientation.¹⁶³

Coinciding with the increase in dis-

charges, SLDN received more requests for assistance from Coast Guard members



and the most reported violations of “Don’t Ask, Don’t Tell” ever seen. Significantly, during both 2000 and 2001, Coast Guard members reported zero “Don’t Pursue” violations to SLDN. This past year, however, Coast Guard members reported 14 “Don’t Pursue” violations.

The increased numbers of discharges and reports of “Don’t Ask, Don’t Tell” violations may be caused by the Coast Guard’s turbulent year and its outdated training. In an effort to remedy its acknowledged deficiency in training, the Coast Guard began revamping its “Don’t Ask, Don’t Tell” training and anti-harassment training during 2002. Although the new training Rear Admiral Ames promised to SLDN in 2001 has not yet surfaced in final form, the Coast Guard did make specific additions to its personnel manual to reflect some of the principles outlined in the AHAP. The new language in its personnel manual is positive and signif-

COAST GUARD’S NEW ROLE IN HOMELAND SECURITY

During a year where the Coast Guard was adjusting to its increased security responsibility, winds of change came in the form of the new Department of Homeland Security. Last fall the United States Congress passed the Homeland Security Act of 2002, which transferred the Coast Guard from the Department of Transportation to the newly formed Department of Homeland Security. This transition was completed March 1, 2003.¹⁶⁴ The new Department of Homeland Security will combine resources from many different government agencies, such as the Departments of Agriculture, Commerce, Justice, Treasury, and Transportation. “With 41,000 employees, the Coast Guard will be the second-largest component of the new department.”¹⁶⁵

As a component of the Department of Homeland Security, the Coast Guard will be working with more security and law enforcement agency personnel than ever before. Federal law enforcement officers, intelligence personnel, and even military personnel from other countries will work along side Coast Guard members with the goal of securing our people and our country. From this team, only the active duty Coast Guard members work in fear of being targeted, and perhaps losing their jobs, because of their perceived sexual orientation.

icantly improves the manual. During the past year, the Coast Guard also began drafting changes to its annual Equal Opportunity

training curriculum. The target date for finalizing these changes is tentatively set for the summer of 2003.

NOT ALL COAST GUARD CHANGE IS GOOD: ASKING, HARASSMENT AND PURSUITS RISE

“He’s a fucking faggot.” “Would love to take care of business if we found a gay on board.” “I hear there is a queer on board.”

Anonymous quotes heard by SLDN Coast Guard clients

Inappropriate investigations based on rumors and innuendo, and without proper command authorization, were present in numerous SLDN Coast Guard cases in 2002. Petty Officer Lee Reinhart’s case is one example of the troubling trends we saw over the past year in the Coast Guard. An environment accepting of rumors and anti-gay harassment seems to be growing.

Lee Reinhart joined the Coast

Guard as Petty Officer Second Class following three years of civilian life. Previously honorably discharged from the Navy, Reinhart decided he missed the military and enlisted in the Coast Guard. Excited about his new career, Petty Officer Reinhart settled into his new assignment aboard the USCGC

Hamilton. Nothing warned him of the events that would quickly lead to his discharge from the Coast Guard and end his dream of serving to protect his country.

Rumor and innuendo ended Petty Officer Reinhart’s military career. Shortly after his first deployment began, Reinhart said he began to hear rumors about the sexual orientation of other crewmembers of the Hamilton. Although concerned,

Petty Officer Reinhart ignored this climate until the anti-gay rumors turned to him. During a deployment stop in Portland, Oregon, Petty Officer Reinhart and a few other enlisted members of the crew visited a gay bar. Under “Don’t Ask, Don’t Tell,” this visit to the gay bar is associational behavior and is not evidence of Petty Officer Reinhart’s sexual orientation or that of any of the other crewmembers. Unfortunately, this did not stop the development of rumors leading to an inappropriate investigation. While the Hamilton was sailing to Hawaii, Petty Officer Reinhart’s Chief jokingly relayed rumors about a couple of gay crew members while in the chiefs’ mess. The Hamilton’s command senior chief reported these jokes and rumors he overheard in the mess to the ship’s Executive Officer (XO). Acting on these

rumors, and seemingly without prior knowledge or approval by the Hamilton's commanding officer, the XO began an inappropriate investigation into Petty Officer Reinhart's sexual orientation. "Don't Ask, Don't Tell" explicitly states that only the commanding officer has the authority to initiate an investigation into an allegation of homosexual conduct based on "credible evidence." Further, rumors do not constitute credible evidence.

A fellow crewmember alerted Petty Officer Reinhart that the XO was questioning Hamilton crewmembers about his sexual orientation. Concerned about this investigation and his career, Petty Officer Reinhart used his chain of command and went directly to the XO to find out what was going on. Waiting outside of the XO's office, Reinhart saw another crewmember he had

gone to the gay bar with leaving the XO's office. This crewmember informed Petty Officer Reinhart he already had provided a statement to the XO regarding his own sexual orientation.

Petty Officer Reinhart faced question after question from the XO after entering the office. Despite the fact that no conduct occurred at the gay bar, Reinhart struggled to remain silent about his own sexual orientation as the questioning persisted. It became even more difficult after the XO told Reinhart he would only stop questioning other crewmembers if Reinhart stated he was gay. Finally, Petty Officer Reinhart admitted to the XO he had gone to the gay bar in Portland, and he is gay.

The remainder of the trip to Hawaii was unbearable for Reinhart.

Rumors about the sexual orientation of Reinhart and other crewmembers escalated to the point where Reinhart became concerned more crewmembers were going to come under investigation. Indeed, Reinhart heard from two other crewmembers that they were under investigation because of rumors about their sexual orientation. By the time the boat reached Hawaii, Petty Officer Reinhart felt defeated. He decided not to fight his command's recommendation for his discharge.

Although Petty Officer Reinhart received an honorable discharge from the Coast Guard, he still wants nothing more than to be back in the service. He hopes when "Don't Ask, Don't Tell" ends, he will be able to reenlist and finish his career in the military.

CLEARING THE WATERS: COAST GUARD SEEKS TO CHANGE "DON'T ASK, DON'T TELL" AND ANTI-HARASSMENT TRAINING

Personnel Manual states, "[h]arassment can take different forms, ranging from 'innocent' comments and jokes causing a hostile climate, to direct verbal or physical abuse."¹⁶⁷

The Coast Guard has not completed the training modifications on anti-harassment and "Don't Ask, Don't Tell" promised in

2001. SLDN believes the Coast Guard remains committed to revising its training. The timeline, however, was affected last year by its preparation for transition to Homeland Security. SLDN expects the Coast Guard to fulfill its commitment and provide additional guidance regarding anti-gay harassment in the Equal Opportunity curriculum it is currently revising. To assist in this

work, in June 2002, SLDN submitted a memo to the Coast Guard suggesting the training include the AHAP prongs of training, reporting, enforcement and measurement.¹⁶⁸ Specifically, SLDN suggested the Coast Guard ensure its training materials contain clear and accurate information using appropriate vehicles to illustrate prevention of anti-gay harassment and emphasizing strong leadership and accountability. SLDN also suggested the Coast Guard tailor its training material to its audience, preferably with commanding officers, senior noncommissioned officers, attorneys, Inspectors General, chaplains and equal opportunity officers receiving specialized training.

Final suggestions included clarifying to whom and how Coast Guardsmen should report anti-gay harassment, guiding principles on holding guardsmen accountable for

"The Coast Guard does not tolerate harassment and mistreatment of anyone, whether they are service members, civilian employees, Auxiliarists or members of the general public, for alleged or perceived sexual orientation, or any reason."

Coast Guard Manual, Chapter 12.E.1, para 4¹⁶⁶

The Coast Guard has taken some initial steps towards revamping how it deals with "Don't Ask, Don't Tell." This progress is reflected in the changes made to the Coast Guard Personnel Manual. In particular, the Coast Guard added "Don't Pursue" and "Don't Harass" language to the Personnel Manual section addressing "Don't Ask, Don't Tell." Much of the added language is very promising. Specifically, the Coast Guard

anti-gay harassment, and measuring the effectiveness of the Coast Guard's training program on anti-gay harassment.

Measurement is especially important because changes to the Coast Guard Equal Opportunity curriculum should target the prevention of anti-gay harassment specifically, not just

general harassment. SLDN looks forward to receiving concrete information during 2003 on how the Coast Guard will address the AHAP requirements.

RECOMMENDATIONS: THE COAST GUARD IN 2003 WORKING FOR CHANGE IN THE HOMELAND

In January of 2003, SLDN representatives met with RADM Kenneth T. Venuto, the Assistant Commander for Human Resources, and members of his staff. As occurred last year, when SLDN met with RADM F.L. Ames, the dialogue in the meeting was frank and productive. With assurances that SLDN and the Coast Guard have a mutual goal in preventing harassment of any Coast Guard member, SLDN remains encouraged in our continued relationship with the Coast Guard. In

the coming year, SLDN looks forward to the completion of the Coast Guard's revised training on "Don't Ask, Don't Tell" and anti-gay harassment and hopes to see the training specifically address:

- ★ Harassment based on sexual orientation;
- ★ To whom, and how members should report anti-gay harassment;
- ★ The identification of safe spaces for Coast Guard members to receive confidential counseling;
- ★ Examples of harassment, including name-calling and

jokes, using anti-gay language; and

- ★ 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 this type of harassment is unacceptable and those using these words will be held accountable.

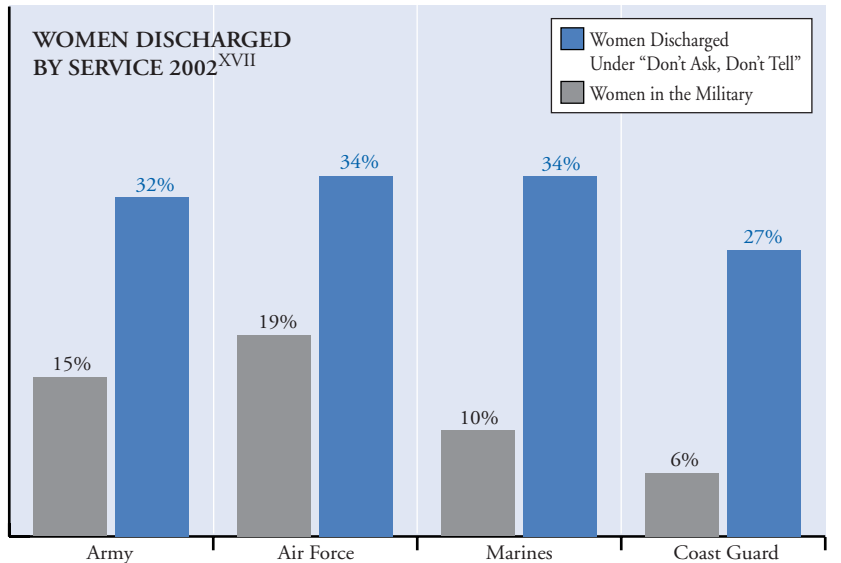
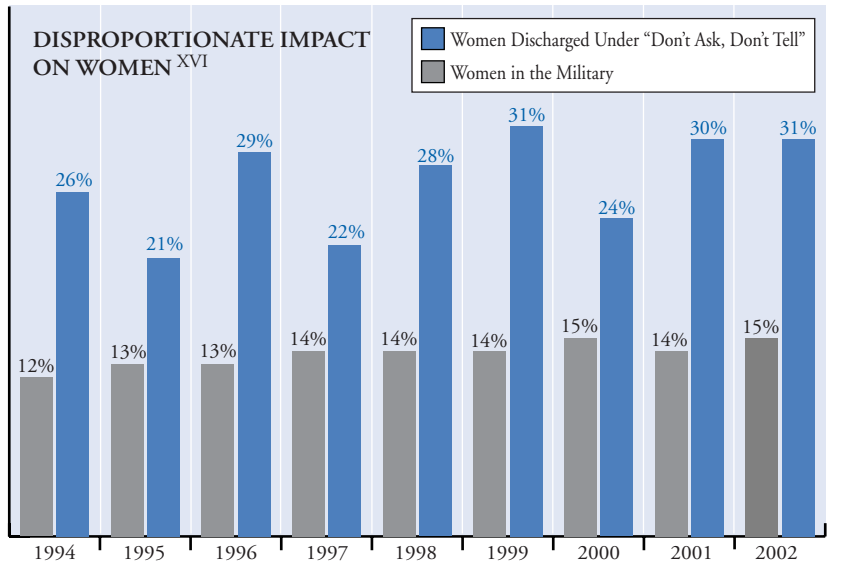
2003 opened positively with the Coast Guard and SLDN hopes this foreshadows beneficial changes to come throughout the year.

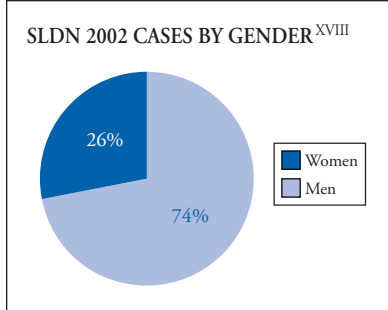
Disproportionate Impact on Women and Youth



SLDN has long reported on the disproportionate impact of “Don’t Ask, Don’t Tell” on women and youth. This year is no exception.

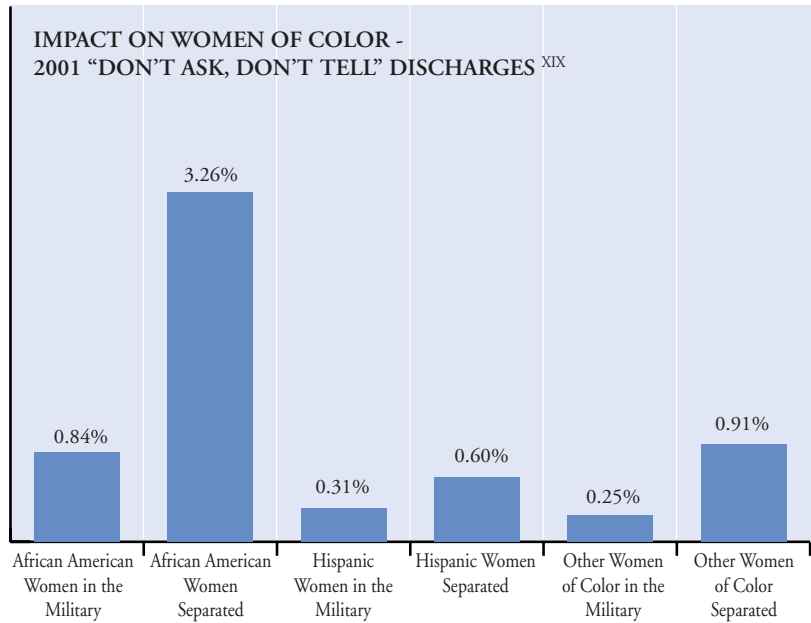
Women have been consistently discharged at a rate nearly twice their presence in the service. While we do not have all the discharge numbers for FY 2002, the numbers we do have indicate this trend continues. Thirty-six percent of the Army’s discharges under “Don’t Ask, Don’t Tell” were women, while women comprise only 15% of the Army’s total force strength. In the Coast Guard, 34% of the discharges were women, while 7% of the force is women. Similarly, in the Air Force 34% of the “Don’t Ask, Don’t Tell” discharges were women, while women only comprise 19% of the Air Force’s total strength. In the Marines Corps, 27% of the “Don’t Ask, Don’t Tell” discharges were women, compared to their being 6% of the Corps. This disproportionate impact is also born out by SLDN cases; women comprised 26% of SLDN cases for 2002.





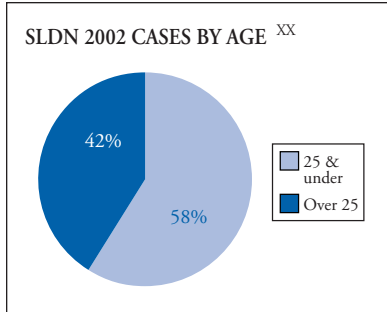
The policy hits women of color especially hard. While we do not have the data for FY 2002, a look at the FY 2001 discharge numbers makes this clear. African American women were discharged at almost three times their presence in the military. Latina and other women of color were also discharged at a disproportionate rate. SLDN does not know why African American women are impacted so hard by this policy. SLDN is committed to further study on this issue.

Women continue to be disproportionately impacted by “Don’t Ask, Don’t Tell” because of lesbian baiting and gender bias.¹⁶⁹ Lesbian baiting is a form of anti-gay harassment as



well as a form of sexual harassment. Women are often called lesbians, regardless of their sexual orientation, for a variety of retaliatory reasons. Some men accuse women who refuse their sexual advances of being lesbians. Other men who sexually harass women accuse them of being lesbians when the women report the sexual harassment, in an attempt to turn the investigation away from

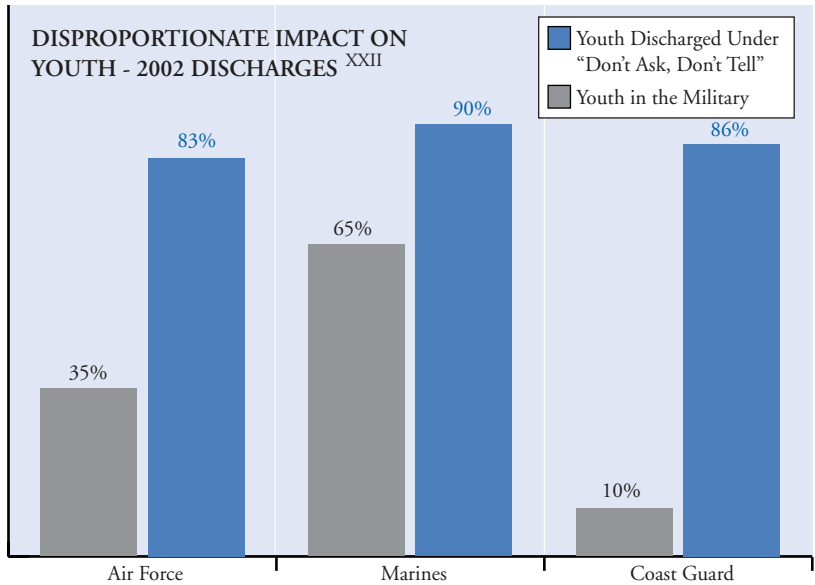
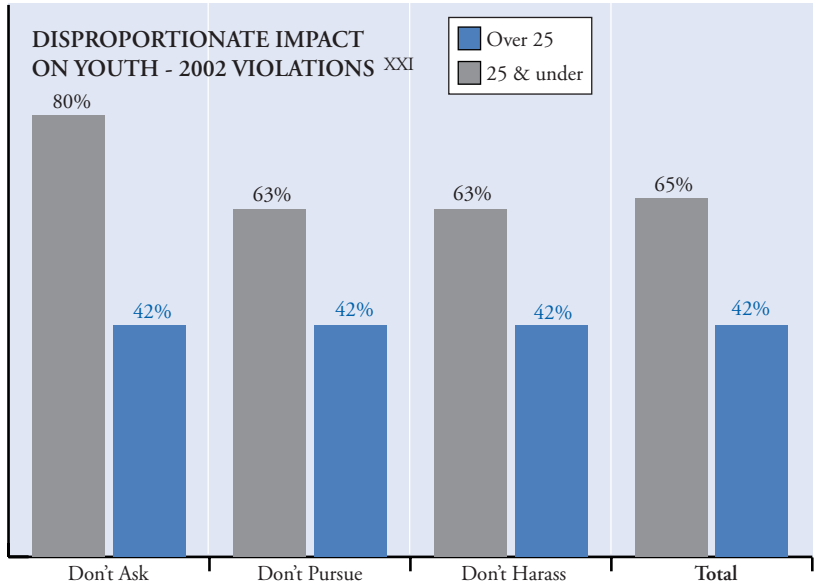
their own misconduct. Others, men and women, accuse female superior officers of being lesbians in retaliation for poor performance evaluations or unpopular orders. Yet others accuse successful women of being lesbians to derail their careers. The stereotype remains that women in nontraditional job fields are viewed, as many have noted, as “dykes.”



“Don’t Ask, Don’t Tell” also heavily impacts young adults aged 18-25.

Due to lack of data from DoD, SLDN only has the discharge data for FY 2002 from the Air Force, Marine Corps and Coast Guard. In the Air Force, 83% of the “Don’t Ask, Don’t Tell” discharges were young adults, while they comprise only 35% of the force. In the Marine Corps, youth comprise 65% of the force, but 95% of the “Don’t Ask, Don’t Tell” discharges. Service members under 26 comprise only 10% of the Coast Guard forces, yet they comprised 86% of the FY 2002 discharges under “Don’t Ask, Don’t Tell.” This is a consistent trend. In FY 2001, while young adults comprised only approximately 42% of the other armed forces, they comprised 90% of the Marine Corps and Navy discharges and 79% of the Coast Guard discharges.¹⁷⁰ Similarly, youth comprise a disproportionate number of SLDN’s cases. Young adults comprised 58% of SLDN clients for reporting year 2002.

The vast majority of “Don’t Ask, Don’t Tell” violations - 65% - were reported to SLDN by youth. “Asking” is rampant; 80% of all asking violations were reported by young adults. Harassment too continues to be a disproportionate problem among young service members - 61% of all harassment violations



were reported to SLDN by youth. The DoD Inspector General has also found that the majority of anti-gay harassment is inflicted by junior enlisted men on other junior enlisted men - the majority of who are young adults aged 18 to 25.¹⁷¹

The military is the largest employer in the United States, with approximately 2.5 million members on active duty and in the reserves. The

military is also the largest employer of youth in our country, with more than one million of the active and reserve population between the ages of 18 and 25. The service members most affected by the policy are young men and women. The military is a means by which young people move up and out of poverty. To deny or cut short opportunities for young lesbians, gays and bisexuals who want to serve our country is wrong.

Why do Service Members Make “Statements?”



“Don’t Tell” is commonly viewed as the opposite side of the coin from “Don’t Ask.”

While a service member cannot “ask” another service member about his or her sexual orientation; lesbian, gay and bisexual service members cannot “tell” the military about their sexual orientation.

Current policy, however, does not prohibit “telling” in all circumstances. It allows for gays to “tell” defense attorneys,¹⁷² chaplains,¹⁷³ security clearance personnel¹⁷⁴ and, in limited circumstances, doctors who are treating patients for HIV.¹⁷⁵ The “Don’t Tell” privacy rules do not explicitly state whether statements of sexual orientation in other private contexts are permitted.

The policy allows all service members to associate with gay friends, participate in gay-friendly organizations and read gay publications.¹⁷⁶

Further, the policy states that “sexual orientation is a personal and private matter.”¹⁷⁷ SLDN believes that gay service members should be able to talk openly and honestly with psychotherapists, physicians, law enforcement officials, family and friends. Our view is supported by those who helped craft the current policy, former Under Secretary of Defense Edwin Dorn¹⁷⁸ and military sociologist Charles Moskos, of Northwestern University.¹⁷⁹

SLDN’s interpretation, however, is not reflected in current application of the policy. While some good commands do not punish service members who disclose their sexual orientation in private, discharge actions against other service members who make disclosures in similar contexts are routine. The reality is that service members who come out to anyone, anywhere, anytime risk discharge.

The Pentagon has suggested that gays are “voluntarily” coming out. The

Pentagon has admitted, however, that it has no evidence to support its theory.¹⁸⁰ There is no such thing as a “voluntary discharge” under “Don’t Ask, Don’t Tell” as gay service members who face discharge cannot elect to stay in service. They have no choice. Most of the discharges under the policy, however, are characterized as “statement” cases – where a service member has told someone about their sexual orientation. This raises the question - why are service members making statements?

There are numerous reasons why service members decide to make statements to their commands about their sexuality. Some choose to make statements because they are being harassed; some choose to make statements because they are being threatened or blackmailed; some choose to make statements because they cannot lie about their lives any longer; and some choose to tell their commands about their sexuality because they believe that they have no other option.

HARASSMENT: DIFFICULT TO STAY SILENT IN FEAR

Harassment is one of the primary reasons service members who contact SLDN decide to make statements. After months, sometimes years, of being subjected to constant harassment they have lost faith that their chain of command will protect them. They have no confidence that they will not lose their careers and be subject to more intense harassment if they file a complaint. Unfortunately, these concerns are justified. Until the Pentagon takes the necessary steps to address anti-gay

“fags die!”

Note left on SPC Powell's Car

SPC Brad Powell was compelled to reveal his sexual orientation to escape harassment that threatened his physical safety. His NCO told soldiers to visualize “blowing up a gay bar” during a grenade training exercise. SPC Powell heard NCOs

say “the only way to decrease our nuclear arsenal is to put all fags on an island and nuke it” and “the only thing a good fag needs is a good fag bashing.” To escape this hostile climate, SPC Powell revealed his sexual orientation to his command. Shortly thereafter, he received a note on his car stating “fags die,” reaffirming for SPC Powell that the only way to protect himself was to reveal that he is gay.

harassment, service members will continue to justifiably believe that they

have no choice but to reveal their sexual orientation to protect themselves.

SILENCE: NOT SIMPLE

ARMY: *“Integrity: Do What’s Right, Legally and Morally”*

United States Army Core Values 181

AIR FORCE: *“Integrity First”*

United States Air Force Core Values 182

NAVY: *“Honor: Be honest and truthful in our dealings with each other.”*

United States Navy Core Values 183

MARINE CORPS: *“Integrity ... means being honest, candid, and upright, always.”*

United States Marine Corps Core Values 184

COAST GUARD: *“Honor - Integrity is our standard”*

United States Coast Guard Core Values 185

Each of the services stresses the virtue of integrity. If lesbian, gay or bisexual service members “tell” anyone – military or civilian – their careers may be in jeopardy. Lesbians, gays and bisexuals are therefore forced to lie in order to serve. For many service members, compromising their personal integrity is too much. Consequently, they are honest and “tell.”

During an Army Equal Opportunity training, the instructors told anti-gay “jokes.” The unit commander, Captain Ruiz, suggested “anyone who is gay to raise their hand if they felt offended by the jokes.”¹⁸⁶ Army Sergeant Sonya Contreras was in the audience. After five years, SGT Contreras felt despondent and could stay silent no more. She wrote to her command, “I have not raised my hand once, or spoken out against anyone who has felt free to make homosexual comments and jokes in the nearly five years that I have served in our nation’s Army. But today, Sir, I raise my hand”

There is a misperception that it is an easy thing not to “tell.” Service members work closely with one another, often times living with one another. It is part of basic human interaction to discuss your life – what you do on the weekends, whom you are dating, whom you love. Lesbian, gay and bisexual service members are barred from having such simple communications with their co-workers. The strain is often unbearable. This prohibition against discussing basic information about

one’s life is harmful to combat readiness. It sows the seeds of distrust among service personnel and erodes the bonds of trust and camaraderie necessary for effective military units.

The issue of lesbian, gay and bisexual service members “telling” is further complicated by the very nature of human sexual development. Most men and women join the armed forces at a very young age. With few exceptions, lesbian, gay and bisexual youth have not fully internalized and accepted their sexual orientation at the point when they enlist or are commissioned in the service. SLDN’s cases reflect this reality. Many young gay service members contact SLDN only after they have reached a comfort level with who they are. Once lesbians, gays and bisexuals reach this level of self-acceptance, they find it more difficult to balance the requirements of “Don’t Tell” with their need to lead healthy lives.¹⁸⁷ Further, young lesbians, gays and bisexuals have far more examples of healthy role models today than ever before. Because lesbian, gay and bisexual service members see greater acceptance of homosexuality within society at large, it is understandably difficult for them to reconcile the contradictions inherent under “Don’t Tell.”

OUTING: IT IS NOT ALWAYS THE SERVICE MEMBER WHO TELLS

Another part of the explanation as to why so many discharges are for “statements” is the problem of service members being “outed.” Sometimes people inform commands of a service member’s sexual orientation – often as a way to get back at or punish the service member. SLDN believes that in most circumstances commands should ignore such information and the motives of those providing the information to the commands be questioned. Unfortunately, such “outings” generally result in discharge.

Staff Sergeant Karen Coleman was a victim of being outed. SSG Coleman’s 11 year career in the Army was ended by a civilian woman with whom she had previously had a relationship. Motivated by a desire to hurt SSG Coleman personally and professionally, this woman called SSG Coleman’s first sergeant and stated that she was SSG Coleman’s lover. Based on this anonymous phone call, SSG Coleman was investigated, interrogated and ultimately discharged.

Cadets Jack Glover and David Hall were victims of a betrayal of trust. Cadets Glover and Hall were model Air Force ROTC cadets. Cadet Hall had already served in the Air Force as an enlisted man and was honor-

ably discharged prior to entering college. Their grades, attitude and leadership abilities were lauded by their Air Force commanders. The one mistake they made was to trust a fellow ROTC cadet, someone they considered a friend, and acknowledge to her they are gay. Just before Glover and Hall’s friend graduated from college and became a lieutenant in the Air Force, she told the cadets’ ROTC command of their admission. The Air Force chose to investigate. The resulting disenrollment meant that Glover and Hall lost their college scholarships prior to entering their senior year, and they are prevented from becoming officers in the Air Force or ever serving our country in the military.¹⁸⁸

BETRAYAL OF TRUST: CHAPLAINS AND HEALTH CARE PROFESSIONALS

SLDN has documented continued instances in which health care providers and chaplains reportedly turned in or threatened to turn in gay service members who sought their help in dealing with anti-gay harassment or the stresses imposed by “Don’t Ask, Don’t Tell.” These “outings” are often considered “statements.”

Issues involving sexual orientation are central to the provision of adequate health care, but health care providers are often reluctant to “ask” out of well-placed concern not to out gay service members. Service members are reluctant to “tell” for fear of being outed. While President Clinton’s Executive Order providing that communications with mental health professionals cannot be used as evidence in criminal proceedings was a step in the right direction, it has only limited value for gay service members who, for the most part, face administrative discharge proceedings, rather than criminal prose-

cutions.¹⁸⁹ While the DoD could extend this privilege to the administrative context, making it clear that private statements to health care providers are not the kind of statements that form a basis for discharge, it has failed to do so.

The Under Secretary of Defense’s clarification in the April 1998 report to the Secretary of Defense that health care providers are not, in fact, required to turn in gay service members was also a step in the right direction.¹⁹⁰ This clarification, however, has not made it to the field nearly five years later. Nor does it adequately address the problem, as it allows individual therapists to turn in military members, whether required to or not, depriving service members of the ability to trust therapists.

Military chaplains can be an invaluable resource for service members who are lesbian, gay or bisexual. Chaplains are supposed to be one of the safe spaces for service members to discuss their sexual orientation. While most chaplains keep the con-

fidences of gay service members, some do not.¹⁹¹ Others continue to give bad legal advice, such as directing service members to turn themselves in, rather than sending service members to a military defense attorney for advice about the policy. Still others tragically berate gay service members, telling them they are sick, going to hell, and deviant.

Two such cases of broken trust appear in this year’s report. Senior Airman Grijalva was outed by a chaplain’s assistant whose help she sought during a time of crisis – even after she was assured confidentiality. Marine Capt. Kira Zielinski sought the assistance of a chaplain. Instead of help, she was called “sinner” and told that she needed counseling for her “un-Christian tendencies.”¹⁹²

Telling gay soldiers to trust chaplains on the one hand, and having chaplains violate that trust undermines confidence. Sadly, such situations harm faith in the Chaplain Corps,

harm lesbian, gay and bisexual service members, and most importantly harm military readiness.

SLDN has long recommended that chaplains receive specific instructions not to turn in gay service members who seek their help and to treat these conversations as confidential,

per the chaplain-penitent privilege. Further, chaplains must be willing to recommend another chaplain if their personal beliefs preclude them from adequately counseling gay service members. As staff officers, chaplains should not engage in behavior that gay service members would likely perceive as harassment, in violation

of the policy's "Don't Harass" component. Chaplains should assist commands in combating anti-gay harassment. The Pentagon should initiate policy training programs tailored for the unique duties of chaplains in serving the needs of lesbian, gay and bisexual service members.

TELLING: A SIMPLE SOLUTION

Why service members make statements is a complicated question to answer. The solutions, however, are simple. Many lesbian, gay and bisexual service members are compelled to "tell" as their only recourse to escape harassment, including threats of physical violence. The solution lies in the hands of military leaders – stop anti-gay harassment in the ranks.

Some service members are outed to their commands by people they know in order to get them discharged. DoD should include specific guidance in the investigative

limits that reports to commands about service members' sexual orientation should not automatically be considered credible evidence and the motive behind the report should be questioned.

Some military therapists, physicians and chaplains out or harass gay service members. Combat readiness is harmed when gays and lesbians in uniform are denied safe access to health care and spiritual counseling. The solution again lies in the hands of military leaders – extend the privilege of mental health care providers and patients to the administrative context; make clear that health care providers and chaplains are not to

turn in service members; properly train health care providers and chaplains and hold them accountable when they violate a service member's confidence.

Lastly, many service members make statements because of the enormous ethical dilemma created by the policy or because they feel they have no other recourse. **Congress and military leaders should stop the hypocrisy that requires lesbian, gay and bisexual service members to lie as a condition of service. Congress should lift the ban on lesbians, gays and bisexuals serving in the armed forces and allow them the freedom to serve.**

END NOTES

¹ Linda D. Kozaryn, *U.S. Must Reject Bigotry, Bush Says in Address to American Muslims*, AMERICAN FORCES PRESS, Sept. 11, 2002, at http://www.defenselink.mil/news/Sep2002/n09112002_200209111.html (last visited February 4, 2003) [hereinafter Kozaryn article].

² Letter from Capt. Darrell V. Allen, MCCES Adjutant, 29 Palms, Subj: "Homosexual Conduct Discharge Potential." (Apr. 4, 2002) [hereinafter 29 Palms Memorandum].^e

³ For documentation on the decrease in discharges of lesbians, gays and bisexuals during World War II, the Korean Conflict, the Vietnam Conflict and the Persian Gulf War see RANDY SHILTS, CONDUCT UNBECOMING (St. Martin's Press, 1993) 70-71, 163, 210, 355-57, 387, 569-570, 575, 741, 745-6.

⁴ SLDN only has the number of Navy enlisted service members, and not officers, discharged under "Don't Ask, Don't Tell" for FY 2002; however, no more than nine officers during the last four years have been discharged during a fiscal year. In FY 2001, 2 officers were discharged under "Don't Ask, Don't Tell;" in FY 2000 5 were officers discharged; in FY 1999, 4 officers were discharged, FY 1998, 9 officers were discharged. Therefore, excepting an unlikely 400% increase in officer discharges last year, FY 2002 marks the lowest number of discharges in the Navy since the law was adopted.

⁵ Whenever "gay" is used throughout this report, it is used as an all-inclusive term for lesbian, gay and bisexual.

⁶ U.S. Central Command, see generally www.centcom.mil.

⁷ See AARON BELKIN & JASON McNICHOL, THE EFFECTS OF THE 1992 LIFTING OF RESTRICTIONS ON GAY AND LESBIAN SERVICE IN THE CANADIAN FORCES: APPRAISING THE EVIDENCE (Center for the Study of Sexual Minorities in the Military at University of California at Santa Barbara, April 2000); AARON BELKIN & JASON McNICHOL, THE EFFECTS OF INCLUDING GAY AND LESBIAN SOLDIERS IN THE AUSTRALIAN DEFENSE FORCES: APPRAISING THE EVIDENCE (Center for the Study of Sexual Minorities in the Military at University of California at Santa Barbara, September 2000); AARON BELKIN & JASON McNICHOL, THE EFFECTS OF INCLUDING GAY AND LESBIAN SOLDIERS IN THE BRITISH ARMED FORCES: APPRAISING THE EVIDENCE (Center for the Study of Sexual Minorities in the Military at University of California at Santa Barbara, November 2000); AARON BELKIN & JASON McNICHOL, THE EFFECTS OF LIFTING OF RESTRICTIONS ON GAY AND LESBIAN SERVICE IN THE ISRAELI FORCES: APPRAISING THE EVIDENCE (Center for the Study of Sexual Minorities in the Military at University of California at Santa Barbara, June 2000).

⁸ J.W. Bicknell, Jr., Study of naval officers' attitudes towards homosexuals in the military (2000) (unpublished M.S. thesis, Naval Postgraduate School) (on file with the Naval Postgraduate School, Monterey, CA) (finding that 21% of naval officers and 39% enlisted sailors attending the Defense Language Institute in 1999 answered "yes" to the survey question, "I personally know a homosexual service member.")

⁹ Exec. Order No. 13,087, 63 Fed. Reg. 30,097 (Jun. 2, 1998).

¹⁰ Beth Berlo, *Two Polls Confirm Growing Acceptance of Gay Civil Rights*, BAY WINDOWS, Jun. 22, 2001, <http://www.baywindows.com/main.cfm?include=detail&storyid=80432> (last visited Feb. 13, 2003).

¹¹ E. KIER, HOMOSEXUALS IN THE U.S. MILITARY: OPEN INTEGRATION AND COMBAT EFFECTIVENESS, 23 INT'L SECURITY 5-39 (1998).

¹² 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); RAND CORP., SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY: OPTIONS AND ASSESSMENT, NATIONAL DEFENSE RESEARCH INSTITUTE (1993).

¹³ HUMAN RIGHTS WATCH, UNIFORM DISCRIMINATION: THE "DON'T ASK, DON'T TELL" POLICY OF THE U.S. MILITARY, Vol. 15, No. 1 (G), 49 (Jan. 2003).

¹⁴ Letter from Kenneth Roth, Executive Director, Human Rights Watch, to President Bush (Jan. 23, 2003) at <http://hrw.org/press/2003/01/bushltr012303.htm> (last visited Feb. 11, 2003).

¹⁵ *Nominations: Hearings Before the Senate Comm. on the Armed Services*, 107th Cong. (Sept. 27, 2002) (testimony of Charles S. Abell).

¹⁶ Good Morning America (ABC television broadcast, Sept. 9, 2002).

¹⁷ SLDN's reporting year is February 1, 2002 to January 31, 2003. It is referred to in this report as the 2002 reporting year.

¹⁸ Department of Defense Working Group, *Anti-Harassment Action Plan* (Jul. 21, 2000) [hereinafter AHAP].

¹⁹ *Id.*

²⁰ Good Morning America (ABC television broadcast, Sept. 9, 2002).

²¹ *Id.*

²² Appendix C. Homosexual Conduct Policy Survey, DoD INSPECTOR GENERAL'S "DON'T ASK, DON'T TELL, DON'T PURSUE" POLICY SURVEY (undated) [hereinafter DoD Inspector General Policy Survey].^e

²³ See AHAP, *supra* note 18; Memorandum

from Under Secretary of Defense (Personnel & Readiness) Bernard Rostker to the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, and Commandant of the Marine Corps, *Approval and Implementation of the Action Plan Submitted in response to the DoD Inspector General's report on the Military Environment With Respect to the Homosexual Conduct Policy* (Jul. 21, 2000) (directing that the proposed action plan "be forwarded to the Services for implementation").^e

²⁴ Letter from David S.C. Chu to Senator Mark Dayton (Oct. 24, 2002).^e

²⁵ Kozaryn article, *supra* note 1.

²⁶ Editorial, *No Gay Help Wanted*, WASH. POST, Nov. 20, 2002, at A24.

²⁷ John Johnson, *Army Expels 9 Gay Linguists*, PHILA. INQ., Nov. 17, 2002, at A8.

²⁸ REPORT TO CONGRESSIONAL REQUESTERS ON FOREIGN LANGUAGES: HUMAN CAPITAL APPROACH NEEDED TO CORRECT STAFFING AND PROFICIENCY SHORTFALLS (General Accounting Office, GAO 02-375, Jan. 2002) 2.

²⁹ C. Dixon Osburn, *A Policy in Desperate Search of a Rationale: The Military's Policy on Lesbians, Gays and Bisexuals*, 64 UMKC L. REV. 199 (1995).

³⁰ *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. on the Armed Services*, 103d Cong., 707 (1993) (statement of General Colin Powell) [hereinafter Powell Statement]. "[H]omosexuals have privately served well in the past and are continuing to serve well today." *Id.*

³¹ DEP'T OF DEFENSE DIRECTIVE 1332.14, *Enlisted Administrative Separations* [hereinafter DoDD 1332.14], para. E3.A1.1.8.1.1 (1994); DEP'T OF DEFENSE INSTRUCTION 1332.40, *Separation Procedures for Regular and Reserve Commissioned Officers* [hereinafter DoDI 1332.40], para. E2.3 (1997). "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.*

³² Statement of General Colin Powell, *supra* note 30, at 709. "We will not ask, we will not witch hunt, we will not seek to learn orientation." *Id.*

³³ 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.*

³⁴ Memorandum from Secretary of Defense Les Aspin to the Secretaries of the Military Departments, *Implementation of the DoD*

Policy on Homosexual Conduct in the Armed Forces (Dec. 21, 1993).^e “[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.*

³⁵ 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 legitimate 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 Senator William Cohen).

³⁶ See DoDD 1332.14, *supra* note 31, at E3.A4.1.4.3; DoDI 1332.40, *supra* note 31, at E8.4.3.

³⁷ DoDD 1332.14, *supra* note 31, at E3.A4.1.3.2.2; DoDI 1332.40, *supra* note 31, at E8.3.2.2.

³⁸ See DoDD 1332.14, *supra* note 31, at E3.A1.1.8.1.1; DoDI 1332.40, *supra* note 31, at E2.3.

³⁹ See DoDD 1332.14, *supra* note 31, at E3.A4.1.1.1; DoDI 1332.40, *supra* note 31, at E8.1.1.

⁴⁰ See DoDD 1332.14, *supra* note 31, at E3.A4.1.1.1; DoDI 1332.40, *supra* note 31, at E8.1.1.

⁴¹ See DoDD 1332.14, *supra* note 31, at E3.A4.1.3.3.4; DoDI 1332.40, *supra* note 31, at E8.3.3.4.

⁴² See Memorandum from Rudy de Leon, Under Secretary of Defense (P&R), 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 Under Secretary of Defense (P&R) Rudy de Leon 1999 Implementation Memo].^e

⁴³ See DoDD 1332.14, *supra* note 31, at E3.A4.1.1.3; DoDI 1332.40, *supra* note 31, at E8.1.3.

⁴⁴ 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 11,12 (Apr. 1998) ; See also Under Secretary of Defense (P&R) Rudy de Leon 1999 Implementation Memo, *supra* note 42.

⁴⁵ See Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 11.

⁴⁶ 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).

⁴⁷ See DoDD 1332.14, *supra* note 31, at E3.A4.1.1.3; DoDI 1332.40, *supra* note 31, at E8.1.3.; see also, Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 11,12; see also, Under Secretary of Defense (P&R) Rudy de Leon 1999 Implementation Memo, *supra* note 42.

⁴⁸ See Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 12.

⁴⁹ See *id.*

⁵⁰ See Under Secretary of Defense (P&R) Rudy de Leon 1999 Implementation Memo, *supra* note 42.

⁵¹ See Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 12.

⁵² DoDD 1304.26 addendum, *supra* note 33.

⁵³ Letter from MG Robert R. Ivany, Commandant, US Army War College, to Jeffery Cleghorn, SLDN (Oct. 16, 2002).^e

⁵⁴ Letter from COL Gerald E. Ferguson, Jr., Chief of Staff 1st Cavalry Division, to Jeffery Cleghorn, SLDN (Oct. 4, 2002).^e

⁵⁵ Letter from MG John R. Wood, Commanding General, 2d Infantry Division, to Jeffery Cleghorn, SLDN (Oct. 17, 2002).^e

⁵⁶ Letter from MG F.L. Hagenbeck, Commanding General, 10th Mountain Division, to Jeffery Cleghorn, SLDN (Oct. 18, 2002).^e

⁵⁷ Letter from COL Jackson L. Flake, III, Chief of Staff, 1st Armored Division, to Jeffery Cleghorn, SLDN (Nov. 12, 2002).^e

⁵⁸ Letter from LTG Edward Soriano, Commanding General, I Corps and Fort Lewis, to Jeffery Cleghorn, SLDN, (Oct. 15, 2002).^e

⁵⁹ Memorandum from Anonymous Soldier at Fort Bragg, NC, to CPT Adam Steelhammer, A Company, 307th Engineer Battalion, Fort Bragg, NC, Subj: “Reasons for admission of homosexuality to the US Army” (Feb. 24, 2002).^e

⁶⁰ Letter from SPC Auville B. Powell, to CPT Allen (Jun. 28, 2002).^e

⁶¹ Electronic Message from Headquarters Department of the Army to ALARACT, Subj: “Homosexual Conduct Policy” (HQDA WASHINGTON, DC 101700ZJAN 00) (Jan. 10, 2000) [hereinafter ALARACT Message].^e

⁶² Sworn Statement from Anonymous Soldier in Kuwait (Aug. 8, 2002)^e; see also, Letter from Jeffery M. Cleghorn, SLDN, to LTG Edward Soriano, Commanding General, I Corps and Fort Lewis (Oct. 8, 2002).^e

⁶³ See AHAP, *supra* note 18.

⁶⁴ ALARACT Message, *supra* note 61.

⁶⁵ Letter from Bernard P. Ingold, Deputy Legislative Counsel, Department of the Army, to Senator Mark Dayton, (Sep. 4, 2002).

[hereinafter Ingold letter].^e

⁶⁶ *Id.*

⁶⁷ ALARACT Message, *supra* note 61.

⁶⁸ Ingold letter, *supra* note 65.

⁶⁹ ALARACT Message, *supra* note 61.

⁷⁰ 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].^e

⁷¹ Letter from MG David H. Petraeus, Commanding General, 101st Airborne Division and Fort Campbell, to Jeffery Cleghorn, SLDN (Oct. 18, 2002).^e

⁷² Letter from COL Thomas J. Schoenbeck, Chief of Staff, 101st Airborne Division and Fort Campbell, to Jeffery Cleghorn, SLDN (Jan. 13, 2003).^e

⁷³ Letter from PFC Luis Rosas (Dec. 9, 2002).^e

⁷⁴ AHAP, *supra* note 18.

⁷⁵ *Don’t Ask, Don’t Tell: Army Homosexual Conduct Policy*, HOT TOPICS: CURRENT ISSUES FOR ARMY LEADERS 8 (Winter 2000) (stating “[a] soldier can discuss any topic regarding sexual orientation with a legal assistance attorney or chaplain.”).

⁷⁶ IG Letter, *supra* note 70.

⁷⁷ E-mail from Sonya R. Contreras to Jeffery Cleghorn, SLDN, Re: “Sonya R. Contreras” (Jan. 8, 2003).^e

⁷⁸ *Id.*

⁷⁹ Letter from LTG Paul T. Mikolashek, Inspector General, U.S. Army, to Jeffery Cleghorn, SLDN (Nov. 1, 2002).^e

⁸⁰ AHAP, *supra* note 18.

⁸¹ See SERVICEMEMBERS LEGAL DEFENSE NETWORK, CONDUCT UNBECOMING – THE 8TH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS” 42 (2002) [hereinafter SLDN 8TH ANNUAL REPORT].

⁸² Letter from Jeffery Cleghorn, SLDN, to LTC William H. Haight, Inspector General, 1st Cavalry Division, Re: “Report of Sexual Harassment and Anti-Gay Harassment” (Oct. 2, 2001).^e

⁸³ Memorandum from Inspector General, HQ 1st Cavalry Division, to Commander 1st Cavalry Division, Subj: “Report of Inspector General Investigative Inquiry” (Apr. 23, 2002).^e

⁸⁴ See STACEY L. SOBEL ET AL, CONDUCT UNBECOMING – THE 7TH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE” 25-27 (2000) [hereinafter SLDN 7TH ANNUAL REPORT].

⁸⁵ Letter from Jeffery M. Cleghorn, SLDN, to LTG Michael Ackerman, Inspector General, U.S. Army, Re: “Request for Inspector

General Investigation ICO Former SGT
Gidonny S. Ramos” (Feb. 7, 2001).^e

⁸⁶ Letter from Robert M. De Ocampo,
Records Release Officer, Office of the Army
Inspector General, to Jeffery Cleghorn,
SLDN, (Mar. 19, 2002).^e

⁸⁷ Letter from Carlos Ramos to LTG Michael
Ackerman, Inspector General, U.S. Army,
(Mar. 11, 2002).^e

⁸⁸ Letter from Jeffery Cleghorn, SLDN, to
COL Kevin M. Rice, Installation
Commander, Defense Language Institute
(May. 17, 2002).^e

⁸⁹ Letter from LTG Michael Ackerman,
Inspector General, U.S. Army, to Jeffery
Cleghorn, SLDN (Jun. 10, 2002).^e

⁹⁰ SLDN 8TH ANNUAL REPORT, *supra* note 81,
at 13-14.

⁹¹ Letter from Jeffery Cleghorn, SLDN, to
MG Thomas J. Romig, The Judge Advocate
General of the Army, Re: “Homosexual
Conduct Policy (HCP) Training at JAG
School” (Jun. 7, 2002).^e

⁹² Letter (unsigned) from SGT Pepe Johnson
(Sep. 6, 2002).^e

⁹³ AHAP, *supra* note 18.

⁹⁴ IG Letter, *supra* note 70.

⁹⁵ *Id.*

⁹⁶ DoD Inspector General Policy Survey,
supra note 22.

⁹⁷ See DoDD 1332.14, *supra* note 31, para.
E3.A4.1.1.1; DoDI 1332.40, *supra* note 31,
para. E8.1.1.

⁹⁸ See, *Policy Concerning Homosexuality in the
Armed Forces: Hearings Before the Senate
Comm. on Armed Services*, 103d Cong. 721
(statement of then Secretary of Defense Les
Aspin).

⁹⁹ Letter from Anonymous Sergeant,
Louisiana National Guard (undated).^e

¹⁰⁰ Letter from Jeffery M. Cleghorn, SLDN,
to MG Buford C. Blount, III, Commanding
General, 3rd Infantry Division, Re: “The
Homosexual Conduct/Dignity & Respect
Policy” (Oct. 4, 2002) (citing to letter from
Cleghorn, to MG Walter L. Sharp,
Commanding General, 3rd Infantry Division,
Re: “Dignity and Respect: The Army’s
Homosexual Conduct Policy” (Nov. 29,
2001)).^e

¹⁰¹ Thomas Oliphant, *General Rises Despite A
Tainted Command*, BOSTON GLOBE, October
16, 2002.

¹⁰² For a detailed account of MG Clark’s lead-
ership failures and the current status of the
nomination fight see www.SLDN.org.

¹⁰³ TSgt Scott Elliott, *SECAF strives to build
'optimum' force*, AIR FORCE PRINT NEWS, Feb.
19, 2002.

¹⁰⁴ Email from Mike West, HQ AFRC
Publishing Information Technology Specialist,
to Troy D. Byers, SLDN (Jun. 17, 2002).^e

¹⁰⁵ DD Form 256, *Honorable Discharge
Certificate*; DD Form 785, *Record of
Disenrollment from Officer Candidate-Type
Training*, pertaining to SSgt David A. Hall
(USAFR) and Amn Jack D. Glover (USAFR).^e

¹⁰⁶ Letter from SrA Brandi L. Grijalva to Lt
Col Pat Savoy, 97th Services Commander
(Sept. 17, 2002).^e

¹⁰⁷ Select slides from Air Force Training
“Homosexual Policy for Commanders, Judge
Advocates and Law Enforcement,” and
“Homosexual Policy (General Audiences)”
(undated).^e

¹⁰⁸ AIR FORCE INSTRUCTION 90-201, *Inspector
General Activities*, paras. 2.3, A6.2.5 (Oct. 1,
2002).

¹⁰⁹ Roche, released in Air Force Print News,
2/19/02.

¹¹⁰ CNO Guidance for 2002 (Jan. 4 2002).^e

¹¹¹ SLDN only has the number of Navy
enlisted service members, and not officers,
discharged under “Don’t Ask, Don’t Tell” for
FY 2002; however, no more than nine officers
during the last four years have been dis-
charged during a fiscal year. In FY 2001, 2
officers were discharged under “Don’t Ask,
Don’t Tell;” in FY 2000 5 were officers dis-
charged; in FY 1999, 4 officers were dis-
charged, FY 1998, 9 officers were discharged.
Therefore, excepting an unlikely 400%
increase in officer discharges last year, FY
2002 marks the lowest number of discharges
in the Navy since the law was adopted.

¹¹² CNO Guidance for 2002, *supra* note 110.^e

¹¹³ Ken Lynch, *Editorial, Musings On War,
Domestic Enemies, Yoda In Kabakis And Horse’s
Patooties*, NAVY TIMES, February 3, 2003, at
54.

¹¹⁴ 21% of naval officers and 39% enlisted
sailors attending the Defense Language
Institute in 1999 answered “yes” to the survey
question, “I personally know a homosexual
service member.” J.W. Bicknell, Jr., Study of
naval officers’ attitudes towards homosexuals
in the military (2000) (unpublished M.S. the-
sis, Naval Postgraduate School, Monterey, CA).

¹¹⁵ LTJG Jenny Kopfstein, *Fitness Report and
Counseling Record* (July 2002).^e

¹¹⁶ Letter from HN Roy Hill to CDR R.J.
Mulvanny, Commanding Officer, 2d Med
Battalion, 2d FSSG, Camp Lejeune, NC
(May 31, 2002).^e

¹¹⁷ Letter from Paula Neira, SLDN, to BG
Michael R. Lehnert, Commanding General,
2d Force Service Support Group, Camp
Lejeune, NC (Aug. 19, 2002).^e

¹¹⁸ Keith Taylor (23-year Navy enlisted),
Editorial, *Military policy on gays wastes valu-
able talent*, NAVY TIMES, Dec. 16, 2002, at 54.

¹¹⁹ Statements by Master Chief Douglas W.
Huffman (Feb. 21, 2002).^e

¹²⁰ Email from Petty Officer Derek Sparks to

Paula Neira, SLDN (Mar. 8, 2002).^e

¹²¹ CNO Guidance for 2002, *supra* note 110.^e

¹²² Email from Petty Officer Jason Reilly to
Kathi Westcott, SLDN (May 31, 2002).^e

¹²³ Letter from Paula Neira, SLDN, to
VADM Norbert Ryan, Jr, Chief of Naval
Personnel (Jul. 15, 2002).^e

¹²⁴ Letter from RADM M.P. Nowakowski,
Commander, Amphibious Group 2, to Paula
Neira, SLDN (16 Sep. 2002).^e

¹²⁵ Letter from William A. Navis, Jr., Assistant
Secretary of the Navy (Manpower and
Reserve Affairs), to Senator Mark Dayton
(Sep. 19, 2002).^e

¹²⁶ Selected Navy Homosexual Conduct
Training Slides, “General Military Training –
Developing and Building Trust” (undated).^e

¹²⁷ Letter from William A. Navis, Jr., Assistant
Secretary of the Navy (Manpower and
Reserve Affairs), to Senator Mark Dayton
(Sep. 19, 2002), *supra* note 125.^e

¹²⁸ *Id.*

¹²⁹ *Corps to Re-Emphasize Policy on Gays*,
MARINE CORPS TIMES, Jan. 27, 2003, at 5.

¹³⁰ Letter from Anonymous Lance Corporal
(base) to Lt. Col. Callan, Commanding
Officer MAL, (Sep. 18, 2002).^e

¹³¹ *Corps to Re-Emphasize Policy on Gays*, *supra*
note 129; Electronic Message MARADMIN
451/02, CMC Washington DC, 220745Z
AUG 02, Subj: “Homosexual Conduct Policy
Tasks and Responsibilities” [hereinafter
MARADMIN 451/102].^e

¹³² Letter from Anonymous Lance Corporal,
Camp Pendleton, to Captain Torres (Aug. 8,
2002); Letter from Anonymous Lance
Corporal, Camp Pendleton, to Captain G.B.
Pace, Commanding Officer, Headquarters
Company, 3d Marines, 3d Marine Division
(Sep. 5, 2002).^e

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Memorandum from C.L. Grotzky, HQ
USMC, to Assistant Secretary of the Navy
(Manpower and Reserve Affairs), Subj:
“Implementation of the Thirteen Point Anti-
Harassment Plan” (Sep. 12, 2002).^e

¹³⁷ MARADMIN 451/02, *supra* note 131.

¹³⁸ Letter from Anonymous Marine Private at
Camp Pendleton (undated) (received by
SLDN during 2002).^e

¹³⁹ *Id.*

¹⁴⁰ USMC, “Lesson Plan, Emerging
Concepts/Contemporary Issues, DoD
Homosexual Policy,” Aug. 1, 2002; “Student
Handout,” Aug. 13, 2002.^e

¹⁴¹ Twenty-nine Palms Memorandum, *supra*
note 2.

¹⁴² *Id.*

¹⁴³ Electronic Message, MARADMIN

007/03, Marine Corps Stop Move and Stop Loss (Jan. 7, 2003) (071500Z Jan 03).

¹⁴⁴ David Allen, *Support group helps some gay Okinawa troops balance lifestyle, military*, STARS AND STRIPES (PACIFIC EDITION), May 2, 2002.

¹⁴⁵ See AHAR, *supra* note 18.

¹⁴⁶ MARADMIN 451/02, *supra* note 131.

¹⁴⁷ 29 Palms Memorandum, *supra* note 2.

¹⁴⁸ SLDN 7TH ANNUAL REPORT, *supra* note 84, at 84.

¹⁴⁹ *Id.* at 86.

¹⁵⁰ Letter from Anonymous Marine Corporal (Oct. 1, 2002).^ε

¹⁵¹ MARADMIN 451/02, *supra* note 131.

¹⁵² DoD Inspector General Policy Survey, *supra* note 22.

¹⁵³ Timeline by Anonymous Marine at New River (undated).^ε

¹⁵⁴ Letter from Capt. Kira K. Zielinski to Commanding Officer, Marine Aviation Training Support Group - 21 (undated) [hereinafter Zielinski letter].^ε

¹⁵⁵ See Electronic Message from Commandant of the Marine Corps, to ALMAR, *U.S. Marine Corps Implementation of DoD Homosexual Conduct/Administrative Separation Policy for Officers* (Feb. 28, 1994) (CMC WASHINGTON DC//MP//281600Z FEB 94 (ALMAR 64/94)); Electronic Message from Commandant of the Marine Corps to MARADMIN, *Homosexual Conduct Policy* (Jan. 7, 2000) (CMC WASHINGTON DC//IMP//070800Z JAN 00 (MARADMIN 014/00)) (modified by MARADMIN 014/2001).

¹⁵⁶ See Memorandum from Capt. V.C. Danyluk, USMC, Trial Service Office, to Col. J.A. White, Commanding Officer, Marine Aviation Training Support Group, *Non-Substantial Inquiry of Captain Kira Zielinski* (Jul. 6, 2001).^ε

¹⁵⁷ See *id.*

¹⁵⁸ See *id.*

¹⁵⁹ See Zielinski letter, *supra* note 154.

¹⁶⁰ See Memorandum from Capt. V.C. Danyluk, USMC, Trial Service Office, to Col. L.L. Larson, Commanding Officer, Marine Aviation Training Support Group, *Non-Substantial Inquiry of Captain Kira Zielinski* (Apr. 23, 2001).^ε

¹⁶¹ Letter from Sharra E. Greer, SLDN Legal Director, to MG Dennis T. Krupp, Commanding General, 2d MAW, U.S. MARFORLANT (May 7, 2002).^ε

¹⁶² *Sea Change for the Coast Guard*, Mike Brunner (MSNBC 12/19/2002).

¹⁶³ Exec. Order No. 13,087, 3 C.F.R. 13087 (1998).

¹⁶⁴ See generally, Homeland Security Act of 2002, Pub. L. No.107-296, 116 Stat. 2135.

¹⁶⁵ *Sea Change for the Coast Guard*, Mike Brunner (MSNBC 12/19/2002), *supra* note 162.

¹⁶⁶ Commandant Instruction M1000.6, *Coast Guard Personnel Manual*, para. 12.E.1.4 (Nov. 12, 2002).

¹⁶⁷ *Id.*

¹⁶⁸ Letter from Paul Neira, SLDN, to Ms. Lenora Ennis, USCG (Jun. 13, 2002).

¹⁶⁹ See Michelle M. Benecke and Kirsten S. Dodge, *Military Women: Casualties of the Armed Forces' War on Lesbians and Gay Men*, GAY RIGHTS, MILITARY WRONGS: POLITICAL PERSPECTIVES ON LESBIANS AND GAYS IN THE MILITARY 71-108 (Craig A. Zimmerman, ed., 1996).

¹⁷⁰ SLDN does not have the FY 2001 discharge numbers by age for the Army or the Air Force.

¹⁷¹ See Evaluation Report: *Military Environment With Respect to the Homosexual Conduct Policy*, Office of the Inspector General of the Department of Defense, Rept. No. D-2000-101, 18 (Mar. 16, 2000).

¹⁷² See MIL. R. EVID. 502.

¹⁷³ See MIL. R. EVID. 503.

¹⁷⁴ See DEP'T OF DEFENSE DIRECTIVE 5200.2, *DoD Personnel Security Program* encl. 3.7 (1997); see also, DEFENSE INVESTIGATIVE SERVICE MANUAL, DIS-20-1-M, encl. 18.C (1993).

¹⁷⁵ See DEP'T OF DEFENSE DIRECTIVE 6485.1, *Human Immunodeficiency Virus-1 (HIV-1)* encl. 3.2.1.9 (1991). "Information obtained from a Service member during, or as a result of, an epidemiological assessment interview may not be used against the Service member (in adverse criminal or administrative actions)." *Id.*

¹⁷⁶ See DoDD 1332.14, *supra* note 31, at E3.A4.1.3.3.4 (stating "[credible information 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 . . ."); DoDI 1332.40, *supra* note 31, at E.8.3.3.4.

¹⁷⁷ DoDD 1332.14, *supra* note 31, at E3.A1.1.8.1.1; DoDI 1332.40, *supra* note 31, at E.2.3.

¹⁷⁸ See Letter from Edwin Dorn to The Honorable Carol DiBattiste, Under Secretary of the Air Force (May 1, 2000).^ε "Recent reports have indicated that physicians, EEO personnel, inspectors general and law enforcement personnel believe that they are obliged to turn in service members who reveal their sexual orientation when they report anti-gay harassment, or who are discovered to be gay during an investigation into the reported harassment. If these practices occur, then they have the effect of punishing the victim. This is not what I anticipated or intended when I was involved in the development of DoD's 1997 anti-harassment guidance." *Id.*

¹⁷⁹ See Letter from Charles Moskos, Professor, Northwestern University, to The Honorable

William S. Cohen, Secretary of Defense, (Apr. 12, 2000).^ε In my opinion, military members who reveal their sexual orientation during private medical treatment sessions or in the course of reporting harassment and threats are not 'telling' in a manner contemplated under the policy. It is appropriate for officials to assist these service members, not turn them in. Indeed, it is the 'outing' of service members to their units that triggers concerns about unit cohesion. *Id.* Our view is further supported by former Reagan Administration defense official Lawrence Korb (Mr. Korb is now with the Council on Foreign Relations). See Letter from Lawrence J. Korb to The Honorable Carol A. DiBattiste, Undersecretary of the Air Force (May 8, 2000).^ε "My primary concerns are the on-going harassment of service members by their supervisors and peers, and the lack of safe places for service members to turn within the military if they are facing harassment, medical or mental health problems or seeking spiritual guidance." *Id.*

¹⁸⁰ Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 2, 5.

¹⁸¹ United States Army, *Army Values: Integrity*, at <http://www.dtic.mil/armylink/graphics/integrity.jpg> (last visited Jan. 20, 2003).

¹⁸² United States Air Force, The Core Values of the Air Force, *available at* http://www.af.mil/news/speech/current/The_Core_Values_of_the_Air_.html (reporting a speech given by The Honorable Sheila E. Widnall, then Secretary of the Air Force, to Air Force Academy Cadets, at Colorado Springs on Apr. 18, 1996) (last visited Jan. 20, 2003).

¹⁸³ United States Navy, *Core Values of the United States Navy*, *available at* <http://www.chinfo.navy.mil/navpalib/traditions/html/corvalu.html> (last visited Jan. 20, 2003).

¹⁸⁴ United States Marine Corp Core Values, *Integrity*, *available at* <http://www.usmc.mil/almars/almar2000.nsf/d50a617f5ac75ae085256856004f3afc/ce041316be6e481085256a55005e11e3?OpenDocument> (last visited Jan. 20, 2003).

¹⁸⁵ Coast Guard Core Values, *available at* <http://www.uscg.mil/lantarea/cutter/reliance/values.html> (last visited Jan. 20, 2003).

¹⁸⁶ E-mail from Sonya R. Contreras to Jeffery Cleghorn, SLDN, Re: "Sonya R. Contreras" (Jan. 8, 2003) *supra* note 77.

¹⁸⁷ See Vivienne Cass, Ph.D., *Sexual Orientation Identity Formation: A Western Phenomenon*, in TEXTBOOK OF HOMOSEXUALITY AND MENTAL HEALTH 227, 231-47 (Robert P. Cabaj & Terry S. Stein, eds., 1996).

¹⁸⁸ DD Form 256, *Honorable Discharge Certificate*; DD Form 785, *Record of Disenrollment from Officer Candidate-Type*

Training, pertaining to SSgt David A. Hall (USAFR) and Amn Jack D. Glover (USAFR), *supra* note 105.

¹⁸⁹ See Exec. Order No. 13140 (Oct. 7, 1999).

¹⁹⁰ Under Secretary of Defense (P&R) 1998 Report, *supra* note 44, at 2, 5.

¹⁹¹ See generally ARMY REGULATION 165-1, *Chaplain Activities in the United States Army* (1998). "A privileged communication is

defined as any communication to a chaplain [including those made as a] matter of conscience." *Id.* at para. 4.4.m(1).

¹⁹² See Zielinski letter, *supra* note 154.

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