

## Telling: Living with “Don’t Ask, Don’t Tell”

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“What are you going to do, Lieutenant, tell the cops your girlfriend beat you up?” The words of my ex-girlfriend haunt me almost a decade after their utterance. At the time, I was a mere twenty-three years old and in an abusive relationship with another woman, and I was also an officer in the United States Air Force. I had sworn to uphold and defend the Constitution of the United States, yet, if I told my employer that my life was in danger, I would have run up against the “Don’t Ask, Don’t Tell” policy,<sup>1</sup> a policy that effectively forces gay and lesbian service members to live a double life. Indeed, all of the ironies of my existence hung in the air with the single question of my abuser. What was I going to do?

Fortunately, I ended the relationship shortly after its climax that early morning in Los Angeles, but I was still left with the question of what to do. I did eventually “tell,” and after undergoing a dehumanizing administrative discharge proceeding before a Board of Inquiry in which my integrity as a military officer was questioned, I was discharged and ordered to pay back the costs of my college education.<sup>2</sup>

In this article, I explain why this law must be altogether eradicated. I offer a brief snapshot of my background and the march down the road that eventually led me to come out to the military. I then describe the consequences of my telling

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1. The policy regarding gays in the military was codified into law in 1993. See 10 U.S.C. § 654 (2005) (hereinafter Policy). For a detailed history on the law’s origins and the various compromises struck by policymakers and then-President William Jefferson Clinton, visit the web page of Servicemembers Legal Defense Network (SLDN) at About Don’t Ask, Don’t Tell, available at <<http://www.sldn.org/templates/dadt/index.html?section=42>> (last visited Sept. 1, 2007).
2. I graduated from the United States Air Force Academy in May of 1998. I was discharged in August of 2001. The Air Force prorated my educational expenses based on my time served. As a result, I was billed approximately \$48,000 because, at the time of my discharge from the military, two years of my service commitment remained out of the required five-year commitment for service academy graduates. See 10 U.S.C. § 2005(a)(3) (2005) (describing payment requirements when a military member receives education benefits and does not fulfill a required service commitment attached thereto).

the truth about my identity as an African American lesbian Air Force Academy graduate. For those law students and faculty grappling with how to view the military and those who serve in it and who would like to respond to the Supreme Court's invitation to exercise their First Amendment right to speak out against "Don't Ask, Don't Tell,"<sup>3</sup> I offer a recommendation with respect to the engagement of military recruiters entering law school campuses. Finally, I suggest a framework for GLBT and civil rights activists grappling with this modern-day problem of state-sanctioned discrimination in our country's military and fighting to get Congress to rewrite this dangerous law.

### **Passing**

I graduated from high school in 1994, barely a year after Congress enacted the Don't Ask, Don't Tell Policy. It's amazing to me to consider how naïve I was when I left home at seventeen to attend the United States Air Force Academy. I was black girl from Austin, Texas, who grew up in a single-parent household and who did everything right to receive my coveted nomination to the Academy. I had no idea what lay before me.

To describe my first year's experience at the Academy as jarring would be an understatement. I was just another young, smart kid who had graduated at the top of her class and excelled both academically and athletically while demonstrating leadership potential. I quickly learned that the key to survival at the Academy was not necessarily to stand out, but to be solidly in the pack.

During those years, I also learned the language of homophobia. While no one at the Academy ever suffered a brutal attack because of sexual orientation, cadets often sarcastically joked that a fellow classmate could be gay but that the policy was "don't ask, don't tell, so we shouldn't ask." This behavior and mindset permeated the Academy, creating a hostile environment for those who might be struggling with their orientation.

Although when I entered the Academy I lacked so much as an inkling that I might be a lesbian, I somehow gravitated to women's rugby, a sport where many open lesbians have found a niche and built community. I fell in love with the sport and my junior year I met my first girlfriend. When I finally realized that I could be a lesbian, I was terrified. I knew the jokes and had lived in the Academy's homophobic atmosphere. I always knew that a so-called "don't ask, don't tell" policy existed, but I never truly understood its implications for my life.

After two years of living in the closet, I graduated from the Air Force Academy. All but two or three of my closest Academy friends thought I was straight. I thought I could easily keep up the façade of living a double life once I became a military officer, but I was wrong.

3. See *Rumsfeld v. FAIR*, 547 U.S. 47, 60 (2006) ("The Solomon Amendment neither limits what law schools may say nor requires them to say anything. Law schools remain free under the statute to express whatever views they may have on the military's congressionally mandated employment policy, all the while retaining eligibility for federal funds.").

My first assignment after the Academy was as a recruiter in Arlington, Texas. My girlfriend at the time had moved with me from Colorado, and I was thrilled to be out of the shadow of the Academy to begin to live my life freely and openly. My dream quickly became a nightmare. From renting an apartment well outside of our budget, to avoiding conversations with colleagues regarding why I wasn't married, every personal interaction became a carefully orchestrated lie to protect my secret life. I was twenty-one years old, miserable, and an absolute wreck.

Again, naïvely, I thought perhaps things would change when I received my second assignment to Los Angeles Air Force Base. I thought for sure I'd be able to blend into Los Angeles, one of the most cosmopolitan and gay-friendly cities in the world. Once again, I was wrong. My long-time girlfriend became abusive, and I began to question everything about my life. Could I continue to live a double life; was I, at twenty-two, destined for a life of unhappiness and dishonesty simply because I was a lesbian; and as eloquently stated by my then-girlfriend at gun point, what *was* I going to do?

I finally researched the policy, and I discovered that "don't ask, don't tell," is really a misnomer. The policy really should be "don't ask, don't tell, don't practice," because it merely states that one cannot be questioned about one's homosexual orientation. The moment one begins "acting" on that orientation the questions can begin and investigation follows.<sup>4</sup> Even those whose orientation may be heterosexual could be in violation of the policy, as any number of things could be construed as "homosexual conduct." There was no question that as a lesbian who was "acting" on my orientation I was in blatant violation of the policy. I knew I had to come out, and so I did.

I came out. I came out after living a double life for over five years. I came out because I could no longer look at myself in the mirror, dressed in my sharply-creased uniform, and feel pride about the military in which I served *and* about who I had become. I came out because my own silence was deafening. I came out because my silence nearly killed me.

### I Am a Lesbian

With the assistance of Servicemembers Legal Defense Network, I wrote a letter to my supervisor delicately explaining the situation.<sup>5</sup> When, holding the letter, I approached my supervisor, a white, male civilian who was about fifty-five years old, I told him, "Sir, this is a statement of homosexuality," as it was ridiculously called. My supervisor immediately threw up his hands and nearly shouted, "I don't want the letter. Don't give me the letter." From there ensued

4. See 10 U.S.C. § 654(b) (2005) ("A member of the armed forces shall be separated from the armed forces...if one or more of the following findings is made and approved in accordance with procedures set forth [by the Secretary of Defense]: ...the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless...the member does not have a propensity or intent to engage in homosexual acts.").
5. See Servicemembers Legal Defense Network, available at <<http://sldn.org>> (last visited Sept. 1, 2007).

a conversation about me, my career, and my future in the military. He asked me if anyone was “giving me a hard time” about my orientation, because they “shouldn’t be asking, you know.” He then suggested that he could protect me throughout my career because, as he put it, I was a good officer and I had a bright future ahead of me. I left his office that day without giving him the letter. A couple of months later, after struggling even more with my difficult decision to come forward, I left the letter on his desk. “I am a lesbian,” the letter began.

It has always struck me how cavalierly my supervisor would suggest that he could protect me from the policy. That day, while standing in his office and looking into his concerned face, I could tell that he genuinely cared about me. However, my mind always goes back to the picture on his desk that pointed out toward visitors and passersby. The picture was a happy family photo of him, his wife, and his two sons. In that moment, with his family photo facing me, I knew, even as he threw up his hands and told me not to give him the letter, that I could never have a picture of my family on my desk. It was arrogant and misguided for him to think that I would live under those conditions and that I would be happy to do so.

After giving him the letter, my life became an open book. The Air Force was building its case against me. I later learned that everyone I knew and worked with was questioned to determine why I had made my statement of homosexuality. The Air Force sought any evidence that would support the conclusion that I had made my statement of homosexuality “for the purpose of avoiding or terminating military service.”<sup>6</sup> Of course, they could not find such evidence because I was more than willing to fulfill my commitment; I simply did not want to live a lie.

Because I was challenging my discharge, I had to stand before a military Board of Inquiry.<sup>7</sup> I faced the Board and I told them my life story from beginning to end. They were riveted. They were obviously moved by my story of abuse, and they seemed to understand that I was a military officer who wanted simply to do her job. At the conclusion of my unsworn testimony and the presentation of my case, the military judge pulled aside both attorneys trying the case. He told them that sufficient evidence had been presented that I did not make my statement solely for the purpose of getting out of my service commitment and that the case didn’t need to go to the Board for decision. My attorney, a young Air Force officer who throughout the case didn’t understand why I wanted to come out, was delighted. However, the prosecutor, an equally

6. Policy, *supra* note 1, at § 654(e); see also *Hensala v. Department of the Air Force*, 343 F.3d 951, 952 (2003) (describing the memorandum issued on May 17, 1994 by the Deputy Secretary of Defense, John M. Deutch, which stated that recoupment for educational expenses incurred by the military on behalf of military members who have made statements of homosexuality “would be appropriate ‘where, based on the circumstances, it is determined that the member made the statement for the purpose of seeking separation.’”).
7. The Board was five colonels, twenty-plus years my senior, all of whom were white, only one of whom was a woman.

young and enthusiastic attorney, was trying his first case. He wanted to give a closing argument and let the Board decide the issues. The judge let the case go forward.

Perhaps the most memorable moment of this entire story is what happened next. The young prosecutor stood before the Board and gestured at me, saying, "Sure, she's bright, she's articulate, and she tells a compelling story, but she benefited from four years of education at the Air Force Academy and for that, she should pay." That may have been the turning point in the case. In that single moment, the prosecutor completely undercut my testimony as a military officer, his peer and equal. Essentially, he told the board, I was an uppity black girl from Texas who benefited from a "free" education at one of the best universities in the country on the Air Force's dime, and therefore, because, presumably, I would be nothing but for this education, I should have remained silent. Indeed, to take his assessment a step further, I should have been grateful for what I had and, under no circumstances, no matter how extreme, should I have told.

That message apparently resonated with the Board because, after five hours of deliberation, they determined that I made my statement of homosexuality solely for the purpose of seeking separation from the military and to forgo my military commitment. Therefore, I was ordered to pay back the costs of my college education.

I was penalized not only for being educated, female, and African American, but also for being audacious enough to speak out against something that had affected my life so deeply and personally. I lived for many years with a secret I guarded with my life. I lied to colleagues, friends, and even medical personnel, all so I could continue to serve with honor in our military.<sup>8</sup> At the end of the day, however, rather than be rewarded for my integrity, I was told I had no right to speak out for injustice.

### **Our Privilege and Duty**

As a former insider, I think it wise for us, as activists, carefully to frame this debate about justice and equality in our United States military. We must be mindful of the reality of the lives of military recruiters who enter our law school campuses, and we must treat our activism as more than just another opportunity for activism, but as an opportunity to educate all who might interact with this discriminatory law, including our peers and military recruiters. Indeed, we have a mighty responsibility, as citizens privileged enough to find our life's work within the sanctity of the non-discriminating walls of a law school, to speak for those who are serving in silence.

8. On several occasions I went to work with black eyes and bruises. In one instance my supervisor, a woman, saw that my eye was bloodshot and sent me to the base clinic out of concern. I lied to the military doctor regarding the source of my eye injury, just as I had lied to my supervisor. That was not the last time that I would lie about an injury I sustained at the hands of my abuser. In my basement I have my medical records from that time, documenting this abuse and the lies I told to remain an active-duty military officer.

For those who have no understanding of this deafening silence, understand that it is real and crippling for all military members, regardless of sexual orientation. As one who entered scores of high school campuses as a lesbian recruiter for the U.S. Air Force, I especially understand that it may be difficult for a person in uniform always to be forthcoming with his or her thoughts or passions. Indeed, while undergoing my separation from the military, I encountered countless military colleagues and friends who expressed anger and outrage at the policy, but felt powerless to speak out against it.

As we all try to find ways to exercise our First Amendment right to speak out against Don't Ask, Don't Tell, let us not forget that the recruiters who enter our campuses also are in many ways powerless to show their outward allegiance to our cause. They are not faceless individuals who lack feelings. They have families, moral conflicts, thoughts, and compassion, even if it may not be apparent from their crew cuts and crisp uniforms. At this critical time, we must build bridges, and, to foster understanding, we must empathize with each other's plight.

As we engage military recruiters, exercising our First Amendment rights to protest and display signs and speak out against the policy, we must use our speech to give voice to the powerless and to silence the powerful. Yes, our speech should be spoken loudly and with enough vigor to shake the very homophobic foundations on which this law rests; however, our speech should seek to build alliances with those who are silenced by their uniforms and by the allegiances they've sworn to uphold. In undertaking this task, we must not only be passionate about our work and our end goal, but we must have compassion for those in the military who share our views, but lack the voice and privilege to speak.

### **A Straightforward Approach to Justice**

Just as activist law students and professors must be mindful of the human beings serving in the military and entering college campuses to recruit would-be military lawyers and officers, those of us seeking to change the law through lobbying must be careful of the slippery slope on which we tread. The current bill, the Military Readiness Enhancement Act,<sup>9</sup> is being introduced in Congress on the premise that because we are at war, we cannot afford to let go of and miss opportunities to recruit all who might be willing to serve, including gays and lesbians. We have come a long way, but let us be careful in our framing of the issues.

The manipulation of civil rights arguments is not a new phenomenon. When, in 1954, nearly one hundred years after the abolition of slavery in this country, the Supreme Court decided the landmark *Brown* case, which allowed African American students to attend desegregated schools with white children, civil rights leaders celebrated. However, as Professor Derrick A. Bell, Jr. cynically suggests in *Brown v. Board of Education and the Interest-Convergence Dilemma*,

9. See Military Readiness Enhancement Act, H.R. 1059, 109th Cong. (2005).

the "interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites,"<sup>10</sup> and thus the landmark civil rights victory in *Brown* in fact resulted from the convergence of the interests of those whites "in policymaking positions able to see the economic and political advances at home and abroad that would follow the abandonment of segregation."<sup>11</sup> I disagree with this as a principle of advocacy going forward, because once the interests of the minority and majority diverge, minorities are often left with a rights vacuum.

We observed this in *Regents of Univ. of Cal. v. Bakke*,<sup>12</sup> where the Supreme Court announced that affirmative action could be used as a tool to increase diversity but made no mention of racial equality. Twenty-five years later, as a civil rights community, we giddily celebrated the holding in *Grutter v. Bollinger*,<sup>13</sup> which meant the continuation of affirmative action. Sadly, at that point we seemed truly to believe that diversity *was* in fact the reason why more people of color should be admitted to institutes of higher learning. With our acquiescence, the true reason, racial justice, no longer has a place in the debate, and the status quo remains. Now, with affirmative action programs all but disbanded, and with those that still exist on the tight timeline prescribed by the Court in *Grutter*, the errors of the diversity argument are more than evident.

In this case, however, we have the ability to frame the argument, and we cannot afford to allow the majority to hijack this issue in ways that leave gays willing to serve in the military expendable and fungible. As an African American woman, it pains me to see this interest convergence argument being made yet again, but even more overtly than in the race cases. I find this argument especially dangerous in the context of a United States Congress comprised of persons whose children and families are left largely unaffected by the Global War on Terror, and the people being asked to serve again and again come from our poorest and most disenfranchised communities.

Essentially, by framing the argument in this way, we are saying to gays and lesbians that their equal rights are valuable only when we are at war and no one else is willing to serve. We cannot view the mandate for gay rights in the confines of this gross convergence of interests, dependent largely upon recent international events. I do not think this is the actual intent of the proposed law,<sup>14</sup> but, as framed, it cheapens the value of having a truly non-discriminatory military service policy, it allows for an uncritical framing of the current War on Terror, and it does not question the price of the war for this country and for the thousands of men and women who joined the military because their economic situations required it. By arguing today that we should lift the

10. 93 Harv. L. Rev. 518, 523 (1980).

11. *Id.* at 524.

12. 438 U.S. 265, 315 (1978).

13. 539 U.S. 306 (2003).

14. Indeed, the bill squarely proposes nondiscrimination based on sexual orientation.

ban on gays in the military simply because we need more bodies, we run the risk of losing the point in all of this: justice.

We have made great strides in the battle to end discrimination against gays in the military, but today I prefer to argue that justice requires that the ban be lifted. If that doesn't work, let us say it again. If we are still not heard, let those of us whose lives have forever been altered because we were serving as gays and lesbians in the military say it yet again, and again, until we are heard. We will not find a permanent safe harbor at this current level of gay equality and limitless foreign policy objectives, and I am not willing to allow the next generation of young men and women to live with this compromise just so they may don the military uniform and serve openly as gays and lesbians.

### **Conclusion**

A peculiar thing happened when I began to speak out about my experience. Each time I told my story I gained tremendous perspective. The facts of my case may appear extreme, but it would be self-aggrandizing to say that they are unique. Each day, thousands of young women and men suffer through similar, if not even more horrific, circumstances while serving in today's military. To eradicate this law and mitigate its devastating impact, let us use our First Amendment right wisely: to open a meaningful dialogue, and to refuse anything less than true justice and equality, for all people, at all times.