

**CONDUCT UNBECOMING:  
SECOND ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE”**

**MARCH 1, 1995 - FEBRUARY 27, 1996**

*In South Korea, a young Private First Class reported that male soldiers assaulted and threatened to rape her. The soldiers then spread false rumors that she was a lesbian. Rather than investigate the men who attacked her, the command in South Korea investigated her. The command tried to force her to confess to being gay. She refused. The command threatened her with prison if she did not identify suspected lesbians in her unit. She refused. The command started discharge proceedings against her based on the same trumped up allegations. She still refused to buckle. In July 1995, after ten months of intense efforts by her family, Servicemembers Legal Defense Network and its cooperating private attorney, the Army finally dropped all charges and retaliatory actions against her. Her new command is excellent, but she and her family should never have had to go through what they did. What happened to her is common. Straight or gay, the “Don’t Ask, Don’t Tell, Don’t Pursue” policy has been used to retaliate against hundreds of servicemembers.*

**EXECUTIVE SUMMARY**

In its second annual report on the impact of the “Don’t Ask, Don’t Tell, Don’t Pursue” policy, Servicemembers Legal Defense Network (SLDN) reveals a continuing pattern of abuse that has effectively rendered the current policy as bad as, if not worse than, its predecessors. Many military members clearly continue to ask, pursue and harass suspected gay troops in blatant disregard of the policy’s limits. From March 1, 1995 - February 27, 1996, SLDN documented 363 specific violations of the current policy.<sup>1</sup> The result, in part, is that the Department of Defense (DOD) discharged more servicemembers under its gay policy in fiscal year 1995 than in each of the past four years at a cost exceeding \$21 million in 1995.<sup>2</sup>

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<sup>1</sup> See Exhibit A. SLDN had documented 340 violations in the policy’s first year of operation, resulting in 703 documented violations for the past two years. The documented violations do not include violations that fall outside “Don’t Ask, Don’t Tell, Don’t Pursue” but are nevertheless serious breaches of military regulations, such as denial of or ineffective assistance of counsel, threats of adverse action by criminal agents against servicemembers unless they cooperate, and violation of the servicemembers’ rights under the Privacy Act.

<sup>2</sup> See Exhibits B & C. The cost of training replacements for those discharged in 1995 exceeded \$21 million, bringing the cost under the current policy to more than \$38.5 million, and the cost since 1980 to more than one-half billion

Among SLDN's specific findings for March 1, 1995-February 27, 1996:

1. DOD discharged 722 people under the gay policy in fiscal year 1995 - a four year high, and a 21% increase over 1994 levels.
2. According to DOD figures, the Air Force accounted for 32% of gay discharges – a figure that has doubled under the current policy. The Navy accounted for 36% of gay discharges, a decrease of 21% since 1992; the Army and Marine Corps discharge rates remained about the same at 25% and 6% of the totals, respectively.
3. SLDN documented 363 violations of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass." The Navy was the worst service with 126 documented violations, followed by the Air Force with 114 documented violations, the Army with 101 and the Marine Corps with 22.
4. SLDN documented 141 violations of "Don't Pursue" and 127 violations of "Don't Harass" making them the leading problems under the current policy for the second year in a row. The Air Force was the worst violator of "Don't Pursue;" the Navy was the worst at "Don't Harass."
5. The Air Force, more than the other services, is actively pressing criminal charges and imprisoning gay servicemembers for allegations of consensual adult sexual relationships, in violation of current regulations.
6. Women were disproportionately hurt by the new policy, accounting for 30% of SLDN cases and 21% of DOD discharge figures, despite making up only 13% of the military's active force. Women are often accused as gay after reporting sexual harassment or rape, regardless of their actual sexual orientation.
7. SLDN documented 28 witch hunts. Witch hunts of women occurred in locations ranging from Korea to Texas to the Mediterranean last year.
8. After one lesbian officer succeeded in arguing for retention, DOD, on August 18, 1995, quietly issued a memorandum that prohibited the services from accepting similar arguments by other gay servicemembers. The memo also undercuts limits on investigations of suspected gay troops contrary to the original letter and intent of the current policy. The new DOD memo was apparently in response to lobbying by Senators Coats, Nunn and Thurmond, as revealed by the Family Research Council in federal court.

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dollars. These cost estimates do not include the substantial costs of investigating servicemembers, holding administrative discharge hearings or defending the new policy in federal court.

9. On a positive note, President Clinton issued Executive Order 12968 on August 4, 1995, prohibiting discrimination based on sexual orientation in the issuance of security clearances for gay military and civilian government employees.
10. Another positive finding is that DOD officially recognizes that more than one dozen gay servicemembers have been serving openly and honestly for one to fourteen years.

Three primary reasons account for the increase in discharges and the continued violations of the current gay policy. The first reason is that, according to DOD's own data, discharges from the Air Force have skyrocketed while discharges from the other services have declined or remained the same. The Air Force now accounts for 32% of all gay discharges, while in 1992, it accounted for only 16% of all gay discharges. The Navy, by contrast, accounted for 57% of all gay discharges in 1992, but now accounts for 36% of all gay discharges. Furthermore, the Air Force's 1995 figures are higher than would be predicted given its size. The Air Force accounts for only 26% of total active duty troops, but it accounts for 32% of all gay discharges. The fact that the Air Force discharges have increased so dramatically is reflected in SLDN's finding that the Air Force is the worst violator of "Don't Pursue."

A second reason discharges under the gay policy remain high is that the military uses the policy to retaliate against women. DOD data show that women are being singled out for investigation and discharge at rates exceeding those for men. Though women comprise only 13% of the total active duty force, they account for 21% of all discharges and 30% of SLDN's cases under the gay policy. A disturbing constant in women's cases is the frequency with which women are accused as lesbian after reporting sexual harassment or rape, regardless of their actual sexual orientation. It was believed that "Don't Ask, Don't Tell, Don't Pursue" would stop investigations and discharges based on retaliatory accusations, but it has not.

The third major reason discharges under the gay policy have escalated is that DOD is not educating or adequately training commanders and their troops about the new policy and what it really means in their everyday lives. Further, DOD and the services only take steps to stop clear violations of the current policy in individual cases when confronted with intense outside pressure from servicemembers' families and their lawyers.

This report details four specific categories of violations. It documents cases where military members have (1) asked servicemembers about their sexual orientation ("Don't Ask"); (2) punished statements of sexual orientation that are permissible under the new policy or expanded the situations where telling is prohibited ("Don't Tell"); (3) pursued, witch hunted or criminally prosecuted suspected homosexuals ("Don't Pursue"); and (4) condoned harassment based on perceived sexual orientation ("Don't Harass").

This report is divided into four sections which describe SLDN's data in more detail. The sections are entitled "Don't Ask," "Don't Tell," "Don't Pursue," and "Don't Harass." Each section explains what constitutes a violation of the current policy according to the letter and spirit of the regulations, summarizes SLDN's findings, provides examples of the violations documented by SLDN, analyzes why many military leaders continue to violate the new policy and recommends how the military can stop the ongoing violations of "Don't Ask, Don't Tell, Don't Pursue."

This report is based on violations of "Don't Ask, Don't Tell, Don't Pursue" documented by SLDN, located in Washington, D.C. SLDN is the sole national legal aid and watchdog organization for those targeted under the military's policy on service by gay men and lesbians, and the only means currently available to document abuses. DOD has instituted no method of identifying, documenting or correcting abuses of the new policy.

SLDN's documented cases capture only a fraction of the servicemembers hurt by the

"Don't Ask, Don't Tell, Don't Pursue" policy. Many servicemembers are discharged by DOD for alleged homosexuality without ever having contacted SLDN, and others are removed from service for homosexuality through ulterior means, such as denial of reenlistment. SLDN's outreach is limited. We are in touch with only a very small percentage of all servicemembers harmed by the current policy.

Servicemembers who contact SLDN are straight, gay and bisexual. The military's "Don't Ask, Don't Tell, Don't Pursue" policy is often used as a means to retaliate against anyone, regardless of their sexual orientation.

SLDN is asked to provide a wide range of assistance from basic information about what the policy says to intensive efforts to stop witch hunts or prevent death threats from being carried out. SLDN carefully tracks those cases where servicemembers need ongoing assistance. From March 1, 1995 - February 27, 1996, the period on which this report is based, SLDN closely tracked 180 cases. Its attorneys work to monitor and document violations of the "Don't Ask, Don't Tell, Don't Pursue" policy in conjunction with Republican and Democratic Congressional aides and lawyers from SLDN's network of more than 250 cooperating attorneys from private law firms around the country.<sup>3</sup>

SLDN's findings are well-documented. Servicemembers and attorneys who worked on the cases reported are available upon request, except in cases where servicemembers could suffer retaliation from speaking publicly. Due to reasons of confidentiality and to protect servicemembers from potential retaliation, the names of servicemembers and other identifying features of cases are omitted in this report.

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<sup>3</sup> SLDN would like to thank its cooperating attorneys for their tireless efforts on behalf of lesbian, gay, bisexual and straight servicemembers hurt under the "Don't Ask, Don't Tell, Don't Pursue" policy. SLDN would like to extend

SLDN is headed by two attorneys, C. Dixon Osburn and Michelle M. Benecke. Mr. Osburn holds a J.D. and M.B.A. from Georgetown University and an A.B. from Stanford University. Ms. Benecke is a graduate of Harvard Law School and holds a B.A. from the University of Virginia. Ms. Benecke is also a former Captain and Battery Commander in the U.S. Army. Both have spoken extensively about the military's gay policies, including a speech at the American Bar Association Annual Convention in August 1995. They have also both published respected works about the policies, including articles in *The New York Times*, *The Harvard Women's Law Journal*, *The University of Missouri Kansas City Law Review*, and contributions to several books.

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special recognition to Ted Bumer and Kathy Gilbert of the Military Law Task Force in San Diego, and Bridget Wilson, a private attorney in San Diego, for their long-standing leadership in fighting for the rights of servicemembers.

## RECOMMENDATIONS

SLDN concludes that many military members continue to ask, pursue and harass lesbian, gay, bisexual and straight servicemembers in direct violation of "Don't Ask, Don't Tell, Don't Pursue." Some of the violations result from a deliberate disregard of the policy by commanders, criminal investigators and inquiry officers. Some violations result from top Pentagon officials backtracking from limits imposed by the current policy. And other violations result from poor communication to servicemembers and the American public about what is and is not permitted under the new policy. SLDN recommends that DOD take the following steps to stop the continuing abuses of the current policy:

1. *Designate* an official from the Office of the Secretary of Defense and Office of the Secretary for each service who is charged with the responsibility to resolve problems as they arise and send a clear signal that abuses will not be tolerated.
2. *Discipline* those who disobey the limits of the regulations.
3. *Rescind* the Department of Defense, Air Force and Navy memoranda that gut the original intent of the new policy not to pursue gay servicemembers.
4. *Issue* clear guidance that inquiries and investigations can only be started with good cause. Not all information is credible, such as retaliatory accusations.
5. *Stop* harassment, including death threats and hate crimes, discipline those who harass, and allow servicemembers to report harassment without fear of retribution.
6. *Require* commanders to reveal in writing to the servicemember the specific reason an inquiry or investigation has been initiated against the servicemember.
7. *Provide* servicemembers access to a military attorney at the beginning of an inquiry or investigation to help deter illegitimate efforts, as recommended by a 1995 Advisory Board on

DOD Investigative Capability report.

8. *Require* commanders to not intrude into private conversations between gay servicemembers and their families, doctors and other health care professionals and not use such statements as the basis for retribution, investigation and discharge.

9. *Prevent* selective criminal prosecution of gay, but not straight, servicemembers for adult, consensual sexual relationships, consistent with regulations requiring even-handed treatment.

10. *Exclude* evidence that has been wrongfully obtained from being used at an administrative discharge board against the servicemember, as suggested by a 1995 Advisory Board on DOD Investigative Capability report.

DOD should adopt these recommendations as a first step to bring itself into compliance with the current law and regulations. These recommendations if fully implemented would improve the safety of servicemembers' daily lives under the "Don't Ask, Don't Tell, Don't Pursue" policy. These recommendations would in no way cure the constitutional defects of the policy currently being litigated in federal court.

## **DON'T ASK**

*"What is Don't Ask?"* The "Don't Ask" regulations state that "servicemembers will not be asked about or required to reveal their sexual orientation." Violations of "Don't Ask" monitored by SLDN include (1) direct questions about sexual orientation, such as "Are you gay?"; (2) surrogate questions about sexual orientation where a servicemember is not asked directly about his or her orientation, but is asked through creative phrasing, as in "Do you find men attractive?"; and (3) inadvertent questions, in which a military member does not realize that the question asked requires disclosure of sexual orientation, such as when a commander, out of concern for someone in his or her unit, asks what is troubling the servicemember, and the answer is that the servicemember is grappling with issues related to sexuality. The question would not pose a problem for a heterosexual servicemember but it does for the homosexual servicemember.

*Findings.* SLDN documented 77 "Don't Ask" violations. Direct questions and surrogate questions about sexual orientation constituted 99% of those violations. SLDN documented significant violations of "Don't Ask" in each service.

*Examples.* Violations of "Don't Ask" include asking direct, surrogate, or inadvertent questions about sexual orientation.

*Direct Questions.* An Air Force Office of Special Investigations (OSI) agent started a witch hunt by directly asking a seaman who was not under investigation if he were gay. In another case, a fellow worker asked an enlisted female airman if she were gay and then turned her in when she answered "yes." One officer in the Southwest confronted a woman under his command with, "I know you're a lesbian," looking to see if she would respond. Similarly, an Army officer asked a fellow officer, "What about these rumors [that you're a lesbian]."

*Surrogate Questions.* A male officer in the Navy asked a female co-worker, "Do you date men?," after she turned down several offers for a date with him. An Army noncommissioned officer asked an enlisted member whether another soldier was "funny."

Numerous servicemembers report being asked, "Whom are you dating?," and "Why haven't I seen you with any [people of the opposite sex]?"

***Inadvertent Questions.*** A psychologist asked why a serviceman was having marital difficulties. He replied that he was attracted to other men, not knowing that such a statement would have repercussions. The psychologist ordered him to write a statement to that effect and turned him over to his commander for investigation and discharge.

***Analysis.*** "Don't Ask" is a simple, unambiguous and well-publicized mandate.

Nevertheless, military members continue to ask servicemembers about their sexual orientation.

While a few have done so inadvertently, the overwhelming majority have violated "Don't Ask" through direct questions about sexual orientation and surrogate questions designed to circumvent the letter of the regulations. Many servicemembers also report that they have been baited by anti-gay comments, questions and jokes, and that any response, except joining in the gay-bashing, immediately raises suspicions. Not even silence will protect a servicemember. Gay-baiting should be viewed not only as a form of harassment, but a form of asking.

Asking, however, also occurs in a way that is much more congenial and routine. This form of asking is not fully reflected in this report. Servicemembers report to SLDN that they are asked every day about their sexual orientation and their relationships, or lack thereof. They are asked about dates. They are asked about who joined them at lunch. They are asked about photos of friends, buddies, loved ones and family. They are asked about plans to go to the military ball. They are asked about with whom they will spend Christmas. They are asked about their church membership, neighborhoods where they live, clubs they go to. They are asked to comment about the looks of opposite sex members.

These questions are a natural part of every day conversation, and they pose no problems

for heterosexual servicemembers. For gay servicemembers, however, these questions place them in an untenable position. Silence or avoiding the formation of friendships is noticeable. Lying is against servicemembers' values and integrity, not to mention the services' own codes of conduct. Yet, if gay servicemembers reveal an integral part of their identity and community, the "Don't Ask, Don't Tell, Don't Pursue" policy means an end to their careers. As implemented, the policy will not protect them, even if the questioner is their best friend, mom or doctor.

***Recommendations.*** Clearly, eliminating all questions about sexual orientation is impossible. It is only natural for men and women who work together to be interested in each others' lives. There are, however, some specific steps the military should take to make the "Don't Ask" portion of its policy more meaningful.

Those who ask direct or surrogate questions to determine a servicemember's sexual orientation during an investigation or informal command inquiry, or who turn information over to the command after asking questions about sexual orientation, should be counseled and disciplined for their actions. This does not mean, though, that commanders should police private conversations between troops or erect barriers to the formation of friendships.

A servicemember who offers a truthful answer to a direct, surrogate or inadvertent question about his or her orientation, or speaks out in response to anti-gay harassment, should not be subject to an inquiry, investigation or discharge. Further, no mark should be made in his or her record about the incident, nor should he or she be subject to further retaliation. If a command ignores these guidelines, and nevertheless takes discharge action, such action should be obviated. In short, for the "Don't Ask" portion of the new regulations to have any teeth, those who violate the policy should be disciplined; their victims should be exonerated, not punished.

## **DON'T TELL**

*"What is Don't Tell?"* The "Don't Tell" provision of the new policy does not prohibit all statements about sexual orientation. Indeed, the new regulations specifically permit statements to lawyers, chaplains, or security clearance personnel, and in announcing the current policy, DOD promised it would protect a "zone of privacy" for all servicemembers. Yet, the Pentagon has expanded "Don't Tell" in ways that most Americans are not aware, to include private statements to family members, close friends, church members, doctors, psychologists and other health professionals. Further, if a chaplain or lawyer violates confidentiality and reveals a servicemember's sexual orientation to a commander, the military will use that information to discharge the servicemember. Violations of "Don't Tell" include incidents in which statements to any of the above have resulted in discharge or the threat of discharge of lesbian and gay servicemembers.

*Findings.* SLDN documented 18 violations of "Don't Tell" which represents a small decrease in total "Don't Tell" violations from the previous year. Most violations involved statements to family and doctors that were then used to discharge servicemembers. The Air Force accounted for 56% of documented "Don't Tell" violations. In a marked improvement over the previous year, however, fewer servicemembers reported that security clearance investigators used information about their sexual orientation to deny their clearances or instigate discharge proceedings.

*Examples.* Violations of "Don't Tell" primarily include using statements from family and doctors for purposes of discharge.

**Families.** Air Force criminal investigators asked a young child whether her civilian father were gay and involved with a male servicemember. In another case, military officials discharged a servicemember after he revealed his orientation to his brother in a private family conversation.

**Doctors.** An Army psychologist turned over to the commander a married, male servicemember who admitted to being attracted to other men. In another case, a Navy commander initiated an inquiry after reading through a servicemember's medical records and discovering that the servicemember was treated for a medical condition that the doctor noted occurred primarily in "gay men."

**Analysis.** Many military leaders fail to understand that the new policy allows some statements regarding sexual orientation and that it recognizes a zone of privacy for all servicemembers. In announcing the new policy, President Clinton charged DOD civilian and military leaders to "carry out this policy with fairness, with balance and with due regard for the privacy of individuals." The new policy further made clear that sexual orientation was to be considered a "personal and private matter." Many military members have wrongly assumed that the "personal and private" language means that servicemembers must keep their sexual orientation a complete secret.

Servicemembers are confused by the conflicting guidance they have been given. They have been told to be fully honest with security clearance investigators about their sexual orientation and conduct for the purposes of national security. They are further encouraged for security purposes to be fully open and honest with their family and friends. In other contexts, they have been told to be fully honest to their doctors, psychologists and other health care professionals to ensure full and adequate treatment. And most assume that they can be fully honest within the sanctity of family and church relationships.

Yet, servicemembers who have been honest about their sexual orientation in these

contexts have suffered. Mothers and fathers have been shocked when Air Force officials have asked them whether their son is gay and whether he has ever had sex with another man. Servicemembers who have revealed their orientation in a private family setting have been discharged after family members disclosed this information.

Some commanders have violated "Don't Tell" as a direct result of guidance from the top levels of the Pentagon. A memo from the Air Force's top uniformed lawyer at the time, Colonel Peterson, to all military prosecutors and military judges, dated November 3, 1994, actually instructs inquiry officers to question parents about the sexual orientation and activities of their children to obtain information for the purpose of discharging their sons and daughters. The memo also instructs officers to interrogate close civilian friends and mentors, such as high school guidance counselors, to determine whether a servicemember has ever discussed his or her orientation. Thus, it is not surprising that the Air Force accounts for 56% of "Don't Tell" violations.

A memorandum authored by DOD General Counsel Judith Miller on August 18, 1995, seems to buttress the Air Force memo by instructing commanders and inquiry officers to investigate not only whether a servicemember has said he or she is gay, but whether he or she has ever been in a sexual relationship with a person of the same gender. The memo greatly expands the scope of investigations beyond the original intent and letter of "Don't Ask, Don't Tell, Don't Pursue" and intrudes on private family relationships in a way never before seen. The DOD memo could make it easier for the Army, Navy and Marine Corps to follow the Air Force's unfortunate lead.

The services have also instructed military psychologists and other health professionals to

turn in servicemembers who discuss, reveal or seek private counseling about their sexual orientation. Last year, we reported the case of Marine Corporal Kevin Blaesing who was turned in by his Naval psychologist merely for asking questions about sexual orientation. The Naval psychologist admits that Corporal Blaesing never revealed his sexual orientation to her, but his mere questions about sexual identity started an entire investigative and discharge process that has effectively killed Corporal Blaesing's career. Corporal Blaesing had been Marine of the Quarter and had a very bright future in the military until this incident.

The attempt to enforce a gag rule in the context of communications with family and professional health care providers is chilling. Most Americans would be appalled to learn that their tax dollars are being spent on such unprecedented invasions into relationships that are widely accepted as private and confidential.

One bright spot in the "Don't Tell" category is in the area of security clearances. Security clearance regulations encourage gay servicemembers to be forthcoming about their sexual orientation and to reveal whether their family and close associates are aware of it. The regulations state that "information about homosexual orientation or conduct obtained during a security clearance investigation will not be used...in separation proceedings." The regulations further state that a servicemember may decline to answer questions about sexual orientation without adverse consequence.

In the first year of the new policy, some security clearance personnel ignored the new regulations and turned servicemembers in for discharge who stated they are gay, or effectively killed their careers by removing or encouraging delays in granting their clearances.

SLDN has received fewer cases involving security clearance violations during the second

year of “Don’t Ask, Don’t Tell, Don’t Pursue.” SLDN believes that the improvement is based, in part, on better understanding by investigators of the limits placed in the security clearance regulations, and in part by President Clinton’s issuance of Executive Order 12968 on August 4, 1995, that prohibits questioning about sexual orientation and sexual activities and makes clear that neither are a bar to issuance of security clearances in both the military and civilian contexts.

***Recommendations.*** The chief step the military must take regarding “Don’t Tell” violations is to make clear that private statements are not prohibited under the new policy. Gay servicemembers should be permitted to discuss their sexual orientation in private settings with family members, doctors and other health care professionals without fear. In the alternative, DOD should also consider extending confidentiality to the same privileged relationships that civilians enjoy today, such as to psychologists. A standard that promotes family integrity is consistent with current security clearance regulations and the original intent of the new policy.

## DON'T PURSUE

*"What is Don't Pursue?"* In the words of General Colin Powell, "Don't Pursue" means that "We won't witch hunt. We won't chase. We will not seek to learn orientation."<sup>4</sup> The current regulations echo General Powell's words. Witch hunts are prohibited: commanders cannot (1) ask servicemembers to identify suspected gays and lesbians nor can they (2) fish for information about a servicemember to see what they can turn up. The regulations are also clear that commanders cannot start inquiries or investigations without good cause. The policy requires that commanders have "credible information" of a statement, act or marriage before launching an inquiry or investigation. Not all information is deemed credible. Lastly, the regulations are clear that commanders are not to selectively prosecute suspected gay servicemembers for consensual, adult sexual activities when they would not prefer criminal charges against heterosexuals for the same activities.<sup>5</sup> The clear limits on investigation and criminal prosecution under the new policy were intended to prohibit the far-ranging investigations that have characterized prior policies. These limits have been roundly ignored.

*Findings.* SLDN documented 141 violations of "Don't Pursue" in the second year of the "Don't Ask, Don't Tell, Don't Pursue" policy. SLDN documented 28 witch hunts, of which the

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<sup>4</sup> Federal News Service, Testimony Before Senate Armed Services Committee, July 21, 1993.

<sup>5</sup> The military has two systems: administrative and criminal. Administrative separation boards recommend whether a servicemember should be retained in the service or discharged and what the characterization of any discharge should be. The criminal system determines whether a servicemember has committed a crime under military law. A servicemember who has said he or she is gay, has engaged in sexual activity with a person of the same gender, or married someone of the same gender is subject to administrative discharge under the "Don't Ask, Don't Tell, Don't Pursue." Heterosexuals are not subject to administrative discharge for the same statements, acts or marriages. A servicemember who has engaged in sexual acts, such as consensual oral sex, whether heterosexual or homosexual, may also be subject to criminal prosecution under the Uniform Code of Military Justice. The military rarely criminally punishes heterosexuals for consensual sexual activities; the military, however, regularly selects suspected gay servicemembers for criminal prosecution for the same activities.

Air Force accounted for 46% and the Navy 32%. The Navy was responsible for starting 26 of the inquiries without credible information, or 42% of the total. The Air Force threatened with prison eleven suspected gay servicemembers for consensual sexual acts, or 65% of the total.

**Examples.** Violations of "Don't Pursue" include (1) witch hunts, (2) pursuit without credible information, and (3) selective criminal prosecution.

**Witch Hunts.** SLDN documented 28 witch hunts in the second year of "Don't Ask, Don't Tell, Don't Pursue." In Korea, Army officials pressured a young private first class to identify other suspected lesbians in her unit. In Hawaii, Air Force criminal agents questioned the friends of an airman under investigation about their sexual orientation. In a massive witch hunt targeting women on a ship in Sardegna, Italy, at least 60 sailors came under investigation for their sexual orientation. Fishing for incriminating evidence, one Army officer asked subordinates to determine if there were any truth to the rumors that a certain servicemember was a lesbian. On several occasions, Air Force officials have attempted to interrogate parents to fish for incriminating information about their children.

**Pursuit Without Credible Information.** One woman was accused of being a lesbian in retaliation for reporting an attempted rape. Another woman was accused of being a lesbian after she rebuffed a man's persistent requests for a date and reported him for stalking her. In overzealous investigations, agents have seized computer files to search for "evidence" of homosexual conduct. They have seized items that indicate nothing about sexual orientation, such as posters of Melissa Etheridge and k.d. lang, condoms, and books like *Exclusion*, which, ironically, argues in favor of the gay ban, and *Conduct Unbecoming*, which, also ironically, documents the military's long history of witch hunts.

**Selective Criminal Prosecution.** According to a base paper, one airman was criminally convicted and sentenced to 6 months in prison for engaging in private, consensual, sexual activity with another man. Base personnel refused to let a civilian attorney retained by the airman's parents consult with the airman. In another case, a woman faces criminal charges and the threat of prison for an alleged consensual sexual relationship with another woman.

**Analysis.** Like "Don't Ask," "Don't Pursue" is a well-publicized mandate. Commanders cannot witch hunt or start inquiries without good cause. Some military commanders and criminal

investigators, however, continue to pursue suspected lesbian and gay servicemembers with as much fervor as before.

***Witch Hunts.*** Witch hunts continue unabated for two reasons. One, top Pentagon officials have legitimized witch hunts by issuing memoranda that gut the original intent of the current policy. As mentioned previously, the top uniformed lawyer for the Air Force and the top lawyer for the Pentagon have issued memoranda that encourage inquiry officers to investigate not only whether a servicemember has ever said he or she is gay, but whether he or she has ever engaged in homosexual sexual activity.

The Air Force memo is very specific, stating that it is permissible to interrogate "parents and siblings," "school counselors," and "roommates and close friends," among others, to fish for information about a servicemember that can be used against him or her. The Air Force memo also unequivocally states that "if...other military members are discovered during the proper course of the investigation...appropriate action may be taken." No proper investigation under "Don't Ask, Don't Tell, Don't Pursue" would ever turn up other people: that is a witch hunt.

The second reason witch hunts continue unabated is that DOD and service officials are unwilling to take action to stop witch hunts. For example, the Pentagon did nothing when apprised by SLDN and its cooperating attorney of a witch hunt in Okinawa, Japan, in the spring of 1994 in which criminal investigators questioned twenty-one marines about their sexual orientation and that of others. As a result of the witch hunt, one marine was criminally prosecuted and confined in the brig for more than one month. One and one-half years later, on August 25, 1995, after constant pressure, DOD released a report by the Navy admitting that a witch hunt took place, but its report provides little solace for the servicemember who went to jail

and lost his career. His private life would have been kept private but for the witch hunt. The Pentagon has not taken any disciplinary action against the criminal investigators involved.

Pentagon officials were again alerted that a witch hunt was taking place in South Korea in late 1994. As the opening anecdote describes, a private first class was investigated for being lesbian after false rumors about her were started by male soldiers whom she had reported for assaulting her. Her officers criminally charged her and threatened her with prison unless she identified other suspected lesbians. She refused. When a military judge dismissed the charges because there was no evidence to substantiate them, her battalion commander, Lieutenant Colonel Treuting, then held her in South Korea beyond her transfer date to initiate discharge proceedings against her based on the same retaliatory, trumped up allegations. During this time she missed out on a promotion due to the allegations. It took ten months of intense effort by this soldier's family, SLDN and its volunteer, cooperating attorney before the Army finally dropped all charges against her and allowed her to transfer to a new command. This soldier's family incurred more than \$8,000 in non-legal expenses on behalf of their daughter.

Currently, SLDN is again asking the Pentagon to intervene to stop a witch hunt of up to sixty female sailors aboard the USS Simon Lake, ported in Sardegna, Italy. There is abundant evidence that Navy personnel asked servicemembers about the sexual orientation of others, and cast a wide net to identify other suspected lesbians on board the ship. When alerted to the witch hunt, however, neither the Office of the Secretary of Navy nor the Office of the Navy General Counsel took steps to investigate this witch hunt or discipline those who ordered and conducted it. One sailor has been forced out of the Navy as a result of the witch hunt, and another has been recommended for discharge. The fate of the other fifty-eight sailors is unclear.

The Pentagon fuels witch hunts by responding slowly to them, if at all. The lack of an exclusionary rule means that inquiry officers and criminal investigators who obtain evidence through illegal witch hunts can still use that evidence to discharge the servicemembers who are their targets. Failing to discipline those who violate the current policy signals that commanders and others can pursue suspected lesbian and gay servicemembers with impunity.

***Pursuit Without Credible Information.*** In addition to witch hunts, some military commanders continue to pursue suspected gay troops by launching inquiries or criminal investigations without good cause. The regulations are clear that commanders should not initiate inquiries unless there is "credible information" that the servicemember has made a prohibited statement that he or she is gay, engaged in sexual acts with a person of the same gender or married or attempted to marry a person of the same gender. The regulations require commanders to be able to explain at all times "clearly and specifically" what grounds for separation they are attempting to verify. Both the Army and Air Force require that commanders write down what they believe the credible information to be prior to initiating an inquiry or investigation.

The current regulations state that commanders must evaluate the "source and surrounding circumstances" of the allegations to determine if credible information exists to start an inquiry or investigation. Credible information does not exist according to current policy when the information is based solely on opinion, rumor, or capricious claims. Credible information also does not exist according to current policy when the only evidence is that a servicemember has attended a gay bar or a gay pride parade or that a servicemember is seen reading a gay news magazine or other gay literature. The regulatory list does not exhaust all the information that is considered not credible.

Most commanders, however, seem to have an extraordinary lack of skepticism when it comes to allegations against suspected gay troops. Rather than review the "source and surrounding circumstances" of the allegations, as required by the regulations, most commanders tend to zealously pursue any allegations made about suspected gay servicemembers. The uncritical pursuit of servicemembers under the gay policy opens the door to retaliation.

Women are particularly vulnerable to false claims as a means of sexual harassment. For example, when a female servicemember rebuffs the sexual advances of men, reprimands a male subordinate for inferior performance, or simply competes against men for a job opening, she often finds herself being accused of "lesbian conduct" in retaliation. This is a form of sexual harassment and should be treated as such. Given the military's troubled history of addressing sexual harassment, it is not surprising that women have borne the brunt of the "Don't Ask, Don't Tell, Don't Pursue" policy, being discharged under it at rates far greater than men.

Men are also subject to false claims of homosexual acts. In one case, for example, a married, male enlisted servicemember with more than twelve years in service, was falsely accused of soliciting another servicemember for sex in front of two hundred servicemembers. No one ever corroborated the allegations. Even so, the commanding officer sent the case to a court-martial. The accused faced the possibility of more than five years in prison simply because someone, out of the blue, decided to falsely accuse him under the "Don't Ask, Don't Tell, Don't Pursue" policy. The servicemember was found not guilty at trial, but his case should have never reached that stage.

It is clear that commanders rarely, if ever, take into account the context of the allegations. Commanders should consider whether the accuser has a history of lying or fraud, is a jilted

heterosexual lover, is attempting to extort money, or is a former friend when a friendship has apparently turned sour. The commander should consider whether the accuser's allegations are coherent and consistent and whether the suspected gay soldier has a plausible explanation.

Without a rational review of allegations made, the gay policy simply becomes a weapon to punish anyone, straight or gay.

Commanders' astounding lack of skepticism regarding allegations about suspected gay troops presents serious problems. First, it means that allegations that should be quickly dismissed instead launch a lengthy and costly criminal investigation or command inquiry. Second, the false allegation provides commanders the opportunity to fish for additional evidence which may reveal that a servicemember is indeed gay, a fact that would have remained otherwise unknown, but for the initial false allegations. Third, given the laxity of the administrative discharge hearing process, circumstantial evidence, false allegations, hearsay and rumor are admissible and often sufficient to permit discharge of the servicemember. And lastly, even if the servicemember is lucky enough to survive the noncredible allegations, the inquiry, investigation and hearing all become part of the servicemember's record, and will likely destroy the chances for the servicemember to advance in the military.

There are two primary reasons why commanders are launching inquiries and criminal investigations without credible information. Despite an attempt in the current policy to define credible information, the standard is still vague and subjective. Thus, many commanders view all allegations about suspected gay troops as credible when they should not.

Second, top Pentagon officials have signaled that commanders have wide discretion to ignore the credible information standard. In June 1994, for example, the Navy's appellate

litigation group issued a memorandum entitled “Homosexual Administrative Discharge Board/Show Cause Hearing.” The memorandum suggested that gay associational activities, such as belonging to a gay men’s chorus, are “inconsistent with good military character,” even though the current policy expressly permits servicemembers to attend gay pride parades, gay bars and engage in other associational activities. The memo further states that the Navy would provide additional legal support for the Navy prosecution in any cases where a servicemember accused under the new policy seeks support from outside organizations, civilian lawyers, the press or members of Congress. The Navy’s attempt to chill freedom of association, access to the free press, the right to counsel and the right to petition members of Congress clearly signals strong antipathy for those even suspected of being gay.

The Navy’s antipathy has surfaced in two prominent cases which have since moved into federal court. At the administrative discharge hearing for Lieutenant Paul Thomasson, who is now challenging the current policy in federal court, the Navy prosecutor presented as evidence of homosexual conduct Lieutenant Thomasson’s involvement in a gay men’s chorus in Washington, D.C. And at the administrative discharge hearing for Lieutenant Tracy Thorne, another federal court litigant, the Navy presented as evidence of homosexual conduct Lieutenant Thorne’s listing of a man as an insurance beneficiary and for associating with known homosexuals.

It does not surprise SLDN that the Navy is pursuing servicemembers without credible information more than the other services. Not only has the vague and ambiguous credible information standard made it difficult to apply it in any consistent or forthright manner, but the 1994 Navy memo, like the Air Force and DOD memoranda discussed previously, clearly signals that all is fair in its war on suspected homosexuals.

*Selective Criminal Prosecution.* The Uniform Code of Military Justice (UCMJ) criminalizes sodomy, defined as oral or anal sex, and “indecent acts” such as masturbation, for both heterosexuals and homosexuals. The penalty for each act of consensual sodomy is up to fifteen years in prison; the penalty for each count of indecent acts is up to five years in prison. The UCMJ also criminalizes heterosexual acts such as adultery. There is no state that actually imprisons people for violations of similar state statutes. The military almost never imprisons heterosexuals for consensual, adult acts in violation of the UCMJ, though a few heterosexual servicemembers are administratively discharged for such acts.

Under “Don’t Ask, Don’t Tell, Don’t Pursue,” the “preferred method” of handling allegations of consensual, adult homosexual activity is in the administrative system. The criminal system is not to be resorted to casually and, within it, heterosexuals and homosexuals must be treated the same. Contrary to the regulations, however, SLDN has documented a continued effort, especially in the Air Force, to prosecute and imprison servicemembers accused of same-gender, but not opposite gender, consensual adult activities.

Selective criminal prosecution occurs primarily for three reasons. One, commanders have deliberately disregarded the regulations that instruct them to use the administrative system to address allegations of private, consensual adult activities. Two, commanders often rush to judgment when gay sexual conduct is alleged. And three, top officials refuse to intervene to prevent criminal prosecutions.

Some commanders have clearly used the criminal system to punish suspected gay troops. In at least two recent cases, the commanding officers who preferred criminal charges against the servicemember were expressly made aware that the preferred method of handling such allegations

was the administrative system. They deliberately ignored the regulatory guidance either because they did not understand the intent of the new regulations or because they were motivated by anti-gay animus.

Closely related to this dynamic is the second reason for increased prosecution of gay conduct: the rush to judgment. Commanders have demonstrated a decided lack of critical evaluation of gay conduct allegations, being all too willing to believe whatever is alleged in the line of gay conduct, regardless of the credibility of the accuser.

Third, top leaders have refused to intervene when presented with evidence of improper criminal prosecution for allegations of adult, consensual gay conduct. This failure fuels the criminal prosecution of suspected gay and lesbian servicemembers. Commanders in the field get the message that their efforts to single out suspected gay and lesbian servicemembers for criminal prosecution, even though directly opposed to stated DOD policy, will be neither overturned nor punished and is, in fact, condoned at the highest levels of the Pentagon.

***Recommendations.*** The United States military has a long and sordid history of pursuing and purging suspected gay servicemembers. But one of the clearest promises that emerged from the Clinton Administration, Congress and the Pentagon regarding the current gay policy was that the days of relentless pursuit would be over. To make “Don’t Pursue” meaningful, the military will, at a minimum, have to take the following steps.

If any military member initiates or condones a witch hunt, he or she should be severely reprimanded and discharged. The “Don’t Ask, Don’t Tell, Don’t Pursue” policy means nothing without accountability. The victims of witch hunts should have all inquiries, investigations and criminal or administrative proceedings against them obviated, and all information related to the

witch hunt expunged from their records. Alternatively, servicemembers should be allowed to exclude all information obtained through an illegal witch hunt from being used at an administrative discharge board. The 1995 Advisory Board on DOD Investigative Capability report strongly suggested that DOD consider adoption of an exclusionary rule.

DOD should rescind the June 1994 Navy memorandum, November 1994 Air Force memorandum, and August 1995 DOD memorandum that encourage witch hunts that fish for incriminating information about a servicemember and pursuit of servicemembers without credible information. Troops do what they are told. Instructions to violate regulations will lead to violations.

DOD should also issue additional guidance as to what does or what does not constitute credible information. Lesbian-baiting should be considered per se not credible (i.e., instances where women are accused of being lesbian in retaliation for reporting sexual harassment, or for other retaliatory purposes). Furthermore, all allegations that are retaliatory should be considered per se not credible. Accusations made by those with a history of lying and fraud should be considered per se not credible. Anonymous accusations, and those made by parties not known to a commander, should also be per se not credible.

DOD should instruct the Navy to adopt the Army and Air Force practice of stating in writing the specific credible information on which an inquiry is based and DOD should ensure full compliance by all services. Further, DOD should require commanders to divulge the credible information in writing to servicemembers before an inquiry is initiated against them.

Lastly, DOD should make clear that no servicemember should be criminally charged, convicted or incarcerated for allegations of consensual, adult, sexual activities, absent aggravating

circumstances. All such charges should be dropped. All convictions for such charges should be overturned. Further, DOD should instruct commanders and criminal investigators to rationally and critically review accusations of sexual acts prior to pressing charges to weed out false allegations.

## DON'T HARASS

*"What is Don't Harass?"* The "Don't Harass" portion of the new regulations makes explicit that "the Armed Forces do not tolerate harassment or violence against any servicemember, for any reason." Violations of "Don't Harass" include physical abuse and threats of physical harm including death threats, verbal harassment, gay baiting, and hostile command climates. Gay baiting occurs when a person confronts someone with an assertion "Are you gay?" or accuses someone of being gay for retaliatory reasons because they know that a mere allegation that someone is gay is sufficient to cause harm. A hostile command climate is one where leaders tolerate anti-gay slurs, and other forms of harassment, making servicemembers feel that they cannot trust the command to take appropriate steps to remedy the problem of harassment.

*Findings.* Harassment has skyrocketed, not decreased, contrary to the clear intent of "Don't Ask, Don't Tell, Don't Pursue." The Navy accounted for 46% of the "Don't Harass" violations. The biggest problems in terms of the number of reported incidents include verbal harassment and hostile command climates. The severity of physical abuse and death threats, however, makes even one such incident too many. Three and a half years ago, Seaman Allen Schindler was brutally murdered by shipmates because he was gay. He had told his commanding officer that he thought his life was in danger. The command took no action, and within days Allen had been murdered. Even today, DOD has neither implemented a means for servicemembers to report death threats or other forms of harassment, nor issued guidance to commanders on how to handle such reports to avoid a repeat of the Schindler tragedy.

An ironic exception to the prevalence of anti-gay harassment in the ranks is found in the more than one dozen units where gay men and lesbians are and have been serving openly for one to fourteen

years. In those units, harassment has become almost nonexistent. (Exhibit D) These servicemembers have been serving openly due to pending discharge or federal court proceedings. Many other servicemembers are serving openly within their units simply because their commanders have chosen not to act against them.

**Examples.** Violations of "Don't Harass" include (1) physical abuse and threats, including death threats based on a servicemember's real or perceived sexual orientation; (2) targeted verbal harassment; (3) gay-baiting and (4) hostile command climates.

**Physical Harm.** One servicemember found a note in his room that said "Die Fag!" His commander said that no investigation would be launched to determine the source of the threat. A sailor in the South reports being punched more than 100 times and that his command took no action when the attacks were reported. Another soldier reports that a plastic bag was placed over his head, he was beaten, and told "We don't need queers around here." A former civilian roommate threatened to accuse as lesbian a female officer unless she paid her money, which the officer refused to do. The civilian roommate then threatened to kill her, which placed the officer in the quandary of reporting the threats to her commander and risking an investigation into her private life or keeping quiet and risking death. One sailor fled his unit after his command refused to investigate threats against him, such as "We're going to get you." The sailor is now being criminally prosecuted for unauthorized absence.

**Verbal Harassment.** An airman returned to his room to find anti-gay statements written on his clothing. In another case, rather than squelching rumors about a subordinate's sexual orientation, an officer fueled the rumors by asking others to corroborate them. Having suffered physical abuse, a sailor also endured comments such as "What are you going to do about it, fag?;" "Fuck you, fag;" and "I don't like sissies."

**Gay Baiting.** A senior male officer spread rumors about a woman officer, accusing her of having a lesbian affair after she earned a top job in a prestigious field. The woman filed a complaint with the inspector general, who responded by investigating her professionalism, not the male officer, and by soliciting coworkers to provide further rumors against her. In another case, coworkers started rumors that a male sailor was gay and verbally harassed him because he would not join the group in outings to local heterosexual strip clubs.

**Hostile Command Climate.** The majority of servicemembers who contacted SLDN last year reported hostile command climates where anti-gay slurs are common and

are tolerated by their commands. Some commanders even refuse to take action against specific death threats and verbal harassment, and respond to complaints of sexual harassment by investigating the victim rather than the perpetrator.

*Analysis.* Like "Don't Ask," the mandate against harassment is unambiguous. It forbids harassment of any kind against any servicemember. This mandate is not unfamiliar to commanders. In the wake of the Tailhook scandal, it has become a standard order. Nevertheless, SLDN's cases show that harassment and death threats against suspected gay servicemembers are greater than ever.

There are three main reasons for the increased harassment: (1) a lack of leadership, (2) continued witch hunts, and (3) a lack of recourse for victims of anti-gay harassment.

The primary reason for the high incidence of harassment is lack of leadership. Two years into this policy, Pentagon leaders have yet to issue any guidance to the field regarding this provision or otherwise make clear to subordinates that harassment will not be tolerated. Commanders who ignore complaints of death threats or harassment send a terrible message that harassment is condoned.

Against the backdrop of the Joint Chiefs' vociferous opposition to acknowledged gay servicemembers during the national debate on lifting the ban, this omission has allowed a negative climate to grow and fester.

The result of such hostile climates is to force increasing numbers of gay and lesbian servicemembers to leave the military, either by choosing not to reenlist or by coming out as a last resort to escape threats to their safety and other harassment. Leaders are, in effect, condoning a system wherein harassment has equaled witch hunts as a means of ferreting out gay and lesbian servicemembers and forcing them from the service.

In stark contrast, there has not been a problem with harassment in those units with openly gay servicemembers. In fact, all documentation shows that these individuals enjoy the wide support of their colleagues for at least two reasons. One, harassment ends when conditions allow gay and lesbian servicemembers to be fully forthright with their colleagues about their sexual orientation. Two, harassment occurs because of a unit's leadership, not despite it.

The second reason that harassment has escalated under the current policy is that witch hunts have continued unabated. SLDN's data show a high correlation between harassment and "Don't Pursue" violations. In units where commanders attempt to ferret out gay and lesbian troops, servicemembers report that they feel great pressure to prove that they are not gay. One way to do so is to make derogatory comments about gays in the company of co-workers and to directly harass other servicemembers who are perceived as gay. Servicemembers report that, if they do not participate in such activities, they are quickly labeled as gay or lesbian and harassed.

Male servicemembers can also "prove" they are not gay, however, by making sexual advances toward women or by joining in sexual harassment of women. Women do not appear to have adopted similar coping tactics. Instead, women report great pressure to comply with men's sexual demands as a means of warding off rumors and speculation about their sexual orientation. In this vicious circle, women who refuse the men's sexual advances or who report sexual harassment then become suspect as lesbians and suffer the consequences of lesbian baiting, including retaliatory accusations and investigation. The dynamic of lesbian baiting explains, in large part, why women continue to be disproportionately targeted and investigated under the "Don't Ask, Don't Tell, Don't Pursue" policy.

These findings also point to at least one reason why efforts to stem sexual harassment of women have proved inadequate, since they do not address the double impact of anti-gay harassment on

women. These efforts have not addressed the role of anti-gay harassment in encouraging unwanted sexual advances against women, nor have they considered the chilling effect of lesbian baiting in deterring women from reporting sexual harassment.

Finally, harassment continues because its victims have no effective recourse. First, military leaders have established no means or guidelines whereby servicemembers may report harassment, meaning those who nonetheless have attempted to report harassment face significant obstacles. The major obstacle is the military's current practice of discharging gay and lesbian servicemembers who report crimes or harassment if information about their sexual orientation is discovered in the process of investigating their report. Thus, it is impossible for gay and lesbian servicemembers to report hate crimes, for example, because such reports require the victim to reveal the basis for the crime, i.e., their sexual orientation.

Information about a victim's sexual orientation can arise in the most well-intentioned of circumstances, such as when a concerned supervisor asks the victim if they know why they were targeted for death threats or harassment. Unknown to most servicemembers, they will face discharge if they answer, "because I am gay." Servicemembers cannot even seek recourse from civilian authorities if their lives or safety are in danger, since civilian police departments routinely transfer records involving military members to the military police at the servicemember's base.

The unfortunate tendency of many commanders to investigate the victims of anti-gay harassment, instead of the perpetrators, further heightens servicemembers' risk of discovery if they report harassment. Even where investigations start out properly to determine the source of threats or harassment, they too often end up focusing instead on the victim's private life. This occurs for a

variety of reasons, including bias, misguided curiosity on the part of the investigating officer or, like lesbian baiting, as the result of retaliatory accusations by the perpetrators.

In addition, servicemembers who report harassment can face greater risk to their lives. The frequency with which commanders ignore servicemembers' reports of threats and harassment is of particular concern. The mere lodging of a report of anti-gay harassment is enough to cause speculation and rumors about a servicemember's sexual orientation. Commanders who do nothing in response to such reports send a message to the entire unit, not only the perpetrators, that anti-gay harassment is condoned. The result is to make the victim a target for all to see, thus further jeopardizing the servicemember's safety.

Even where commands take threats and harassment seriously, and appropriately limit any investigation to the source, servicemembers' safety can be jeopardized. Without knowing better, investigators put the servicemember at risk of further harassment by simply revealing the nature of the threats being investigated and permitting additional speculation about the servicemember to surface.

Because servicemembers face the likelihood of losing their careers and making harassment worse by reporting it, most incidents of death threats and harassment go unreported.

***Recommendations.*** There are three basic, critical steps that military and civilian leaders must take now to stem the tide of harassment and to prevent physical harm and deaths. Even after these three steps are in place, though, DOD and the services will need to take further actions to address this problem.

First, leaders must send instructions to the field making it clear that harassment will not be tolerated and that commanders will be held accountable for their command climates in this regard. By taking this step, DOD will simply be doing what is usually done to implement any new policy.

Second, DOD and the services should issue clear guidelines to servicemembers and commanders regarding how to handle reports of harassment. At a minimum, commanders should be instructed to (1) take threats and harassment seriously, (2) limit the scope of any investigation to the source of the threats and not the victim's private life, and (3) keep private the nature of the threats or harassment so as not to create rumors or speculation. SLDN's experience with concerned commands has shown that sufficient investigations can be conducted without revealing this or other sensitive information.

Finally, commanders should be informed that gay accusations that surface shortly after a man or woman reports harassment are automatically suspect and do not constitute credible information to investigate the victim.

## CONCLUSION

Two years into the current policy on gays in the military, it is clear that military and civilian leaders have settled for business as usual. Rather than putting an end to asking, witch hunts or harassment as originally promised, leaders have sent a strong message that they will turn a blind eye to such violations. Gay, lesbian, bisexual and straight servicemembers are caught in the trap. DOD has two choices: it must either be fully forthcoming and honest to the American public that it has no intention of stopping asking, witch hunts or harassment, or it must act in good faith to enforce the original spirit and intent of the current policy. Implementing the recommendations outlined in this report would be a good first step in bringing DOD into compliance with current law and regulations.