

# Conduct Unbecoming

THE SIXTH ANNUAL REPORT ON

“DON'T ASK, DON'T TELL,  
DON'T PURSUE, DON'T HARASS”

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## **VOLUME 2**

Exhibits to *Conduct Unbecoming:*  
*The Sixth Annual Report on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass”*  
are in a separate volume and may be obtained by contacting SLDN.

## ACKNOWLEDGMENTS

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## **SLDN FINDINGS FROM SIXTH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS”**

- ★ **Anti-Gay Harassment More than Doubles.** SLDN documented 968 incidents of anti-gay harassment, including a murder, assaults, death threats and verbal gay bashing from February 15, 1999, to February 15, 2000, up 142% from a record 400 violations the preceding year. SLDN documented 495 reports of anti-gay harassment after the Pentagon stated it would not tolerate anti-gay harassment in August 1999. This marks the second consecutive year that anti-gay harassment has more than doubled.
- ★ **Reports of Asking and Pursuing Increase 30%.** SLDN documented 665 incidents in which service members were asked and pursued, up from 511 violations the year before.
- ★ **Military Fails to Hold Anyone Accountable for Asking, Pursuing or Harassing.** In six years, the military has not officially held anyone accountable for violating the current policy.
- ★ **Service Members Come Out to Escape Anti-Gay Harassment.** Service members overwhelmingly come out because of unchecked harassment, contrary to the Pentagon’s claim that gays are leaving the military “voluntarily” because they wanted “an easy way out.” The military does not give members a choice to stay, even if they come out solely because of fear for their safety.
- ★ **Doctors and Psychologists Told to Out Gay Service Members.** Psychologists report they have been instructed to turn in lesbian, gay and bisexual military members who seek their help. Military officials have knowingly permitted erroneous instructions to circulate in the field that tell psychologists and doctors to out gay service members. Officials have failed to inform health care providers not to turn in gay members, but instead to respect their privacy.
- ★ **Service Members Reporting Anti-Gay Harassment Risk Being Outed and Discharged.** Inspectors General believe they are required to turn in service members who are found to be gay in the course of investigating anti-gay harassment complaints. Some Chaplains have berated gay members who have reported harassment, while others have advised service members to turn themselves in and face discharge. Army Equal Opportunity representatives have been told not to help. The Pentagon has failed to make clear that private statements of sexual orientation in these contexts do not constitute grounds for discharge.
- ★ **Air Force Interrogates Family and Friends.** The services, especially the Air Force, continue seeking out parents, siblings and close friends in an effort to dig up “dirt” on gay, lesbian and bisexual service members.
- ★ **Women Discharged at Highest Rate in Two Decades.** Women comprised 31% of gay discharges in 1999, although women represent only 14% of the force. This is the highest percentage of women discharged since at least 1980. The Air Force had the worst record, with 37% of its gay discharges being women, followed by the Army with 35%, the Navy 22% and the Marine Corps 16%. Women are often accused of being lesbians for retaliatory reasons, regardless of their actual sexual orientation.

- ★ **Pentagon Fires Three People Every Day for Being Lesbian, Gay or Bisexual.** The Pentagon discharged 1,034 service members in fiscal year 1999, compared to 1,149 discharges in fiscal year 1998. Discharges still are 73% higher than when the policy went into effect. The Air Force discharged 352 service members, a drop from 414 the previous year, due mainly to revamped procedures at Lackland Air Force Base. The Navy discharged 315 service members, compared to 345 the year before. The Army discharged 271 soldiers, down from 312 the year before. Marine Corps discharges increased to 97, compared to 77 last year.
- ★ **Pentagon Adopts SLDN Recommendation for Training on Investigative Limits; Some Services Fail to Comply.** In August 1999, Secretary Cohen instructed the services to prepare and implement training programs on the investigative limits under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Only the Army and Navy have complied in part, with the Army doing a better job. The Marine Corps emphasizes how to discharge gays rather than how to comply with the policy’s investigative limits. The Air Force has failed to make any training program public.
- ★ **After Years of Delay, Pentagon Adopts SLDN Recommendations on Anti-Gay Harassment.** In August 1999, Secretary Cohen instructed the Secretary and Chief of each service to distribute a leadership message against anti-gay harassment. The Navy did so in October 1999. Finally, in January 2000, the other services followed. After a three-year delay, the services sent instructions to commanders that a service members’ report of anti-gay harassment does not constitute credible information to begin an investigation. In February 2000 the Army, Navy and Marine Corps began training against anti-gay harassment. All services could use improvement, especially the Marine Corps. The Air Force has not released its training program.
- ★ **Pentagon Conducts Misguided Survey of Anti-Gay Harassment.** In December 1999, Secretary Cohen ordered an Inspector General survey to assess anti-gay harassment. Among other problems, some commands have prevented service members known to have experienced anti-gay harassment from participating in the survey. As long as “Don’t Tell” exists, forcing gay service members to hide, there will be no way to accurately assess anti-gay harassment or to compare the experience of gay and non-gay members.
- ★ **More Commanders Attempt to Retain Openly Gay Service Members.** Increasing numbers of commanders, especially in the Navy, are attempting to keep openly gay service members in the military. The problem is that commanders often will not address the harassment that leads gay service members to come out in the first place, nor can they guarantee that members will not be kicked out later, after investing years in the military.
- ★ **Investigators Inexperienced in Investigating Anti-Gay Hate Crimes.** Criminal investigators and law enforcement personnel, like those involved in Private First Class Barry Winchell’s murder investigation, have no experience investigating anti-gay hate crimes.
- ★ **Commands Use Heavy-Handed Tactics to Pursue Gays.** SLDN documented frequent use of threats to extract confessions about service members’ sexual activities, including threats of criminal charges, confinement and non-judicial punishment.

## **SLDN RECOMMENDATIONS FROM SIXTH ANNUAL REPORT ON “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS”**

- ★ **Permit Service Members to Report Anti-Gay Harassment and Crimes Without Fear of Being Outed and Discharged.** Inspectors General, law enforcement personnel, Equal Opportunity representatives, Chaplains, health care providers, commanders and other personnel who deal with harassment-related issues should be given clear instructions not to out service members who seek their help. These individuals should be trained on how to handle reports of anti-gay harassment and crimes appropriately. Service members—straight, gay and bisexual—go to these sources for help, not to make a public statement of their sexual orientation. These are private contexts, and would remain so if officials did not out service members who seek their help.
  
- ★ **Adopt Rule of Privacy for Conversations with Health Care Providers.** The Pentagon should inform health care providers there is no requirement to turn in lesbian, gay and bisexual patients, and should further clarify that conversations with health care providers are not a basis for investigation or discharge under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” The Executive Order signed by President Clinton, providing for a limited psychotherapist privilege, prevents use of conversations with psychotherapists as incriminating evidence in criminal trials. The rule, however, does not address SLDN’s concern that some psychotherapists continue to turn in gay service members who are then administratively discharged under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.”
  
- ★ **Hold Accountable Those Who Ask, Pursue or Harass.** In six years, military leaders have not publicly held anyone accountable for asking, pursuing or harassing. With the new guidelines on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” the Pentagon should remind commanders there are specific consequences for violations, from letters of counseling to courts-martial, depending on the offense. Senior leaders should set the example by holding those who violate the policy accountable, starting with:
  - Senior leaders at Fort Campbell who failed to train their personnel on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” and who permitted anti-gay harassment to flourish before and, shockingly, after Private First Class Winchell’s murder; the anti-gay harassment continues to the present day;
  
  - Marine Lieutenant Colonel Edward Melton at Twenty-Nine Palms for calling gays “homos,” “queers” and “backside rangers,” and for mocking the murder of Private First Class Winchell when distributing an e-mail from the Chief of Naval Operations that ordered steps to end anti-gay harassment; and
  
  - Air Force investigators and others at Monterey’s Defense Language Institute, who have conducted a witch hunt of female student leaders and ignored numerous reports of anti-gay harassment.

- ★ **Require Leaders to Demonstrate Commitment to Stopping Anti-Gay Harassment.** Leaders must show through their own actions they take anti-gay harassment seriously, and they should specifically inform service members that epithets such as “faggot,” “dyke” and “queer” will no longer be tolerated.
- ★ **Ensure Full Distribution and Training on Guidance Against Anti-Gay Harassment.** The services should ensure every service member from recruit to flag officer receives and understands guidelines and leadership messages from the Secretary and Chief of each service against anti-gay harassment.
- ★ **Ensure Full and Appropriate Training on Investigative Limits.** The Pentagon should ensure the services train all personnel on the policy’s investigative limits and intent to respect service members’ privacy, not on how to detect and discharge gay service members, as Marine Corps training currently suggests. Leaders must be involved in the training and set the proper tone for it.
- ★ **Provide Recourse to Service Members to Stop Improper Investigations.** In six years, the Pentagon has failed to provide service members with recourse to stop improper investigations, taking an ends justifies the means approach. While recent guidelines requiring Service Secretary approval for “substantial investigations” and greater legal guidance from higher headquarters may help, they still deprive members of the opportunity to show why an inquiry should not go forward in the first place. Members should be able to obtain a military defense attorney before an inquiry is initiated, and have an opportunity to show that no credible evidence exists.
- ★ **Require Commanders to State in Writing Reasons for Investigations.** This would be a further step to prevent improper investigations.
- ★ **Cease Use of Intrusive Questioning in Gay Investigations.** Military leaders in all services should train inquiry officers and criminal agents in proper investigative tactics, to include instructing personnel not to question parents, siblings and other confidants such as close friends about a service member’s sexual orientation or private life. The Air Force should rescind its written instructions to the contrary.
- ★ **Train Investigators on How to Handle Possible Anti-Gay Hate Crimes.** Criminal investigators and law enforcement personnel need training to recognize and appropriately investigate possible anti-gay hate crimes.
- ★ **Adopt Exclusionary Rule.** The Pentagon should adopt an exclusionary rule so that evidence obtained illegally, as in a witch hunt, can be excluded at administrative discharge boards.

**CONDUCT UNBECOMING:  
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**EXECUTIVE SUMMARY**

*I am satisfied that the policy generally is being  
implemented fairly.*

—William Cohen, January 28, 2000

*[T]he data show that the climate remains as hostile to gay  
military personnel as ever . . . .*

—New York Times Editorial, August 20, 1999

Army Private First Class Barry Winchell’s murder gives the country a heartbreaking insight into the failure of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” On July 5, 1999, Private First Class Barry Winchell was brutally beaten to death with a baseball bat, while he slept on a cot outside his barracks room at Fort Campbell, Kentucky. Private Calvin Glover attacked Winchell after another unit member, Specialist Justin Fisher, goaded him using anti-gay epithets. Soldiers later testified that Private First Class Winchell faced daily anti-gay harassment for more than four months prior to his murder, based on rumors started by Fisher. Winchell confided in two close friends that he was profoundly troubled by the harassment, but he could do nothing for fear he would be kicked out of the Army he loved.

The military failed Winchell. His leaders asked. They pursued. They harassed. The military allowed no safe haven for Winchell to seek help. Psychologists, Inspectors General, law enforcement personnel and commanders have been given the misguided message to turn in gay people who seek their help. Ultimately, the military’s indifference to Winchell’s well-being and its hostility to the presence of people who are perceived to be gay set the stage for his murder.

Congress should repeal the ban on openly gay service members because the policy hurts military readiness, and it kills. Given our current political environment, however, it is unlikely Congress has the will to overturn “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Until that day, our military leaders, both civilian and uniformed, must step up to the plate in ways they have not, thus far. They must stop the rampant asking, pursuing and harassing of service members who are, or are perceived to be, lesbian, gay or bisexual. While there are many heterosexual service members who do not engage in anti-gay harassment, the incentives in today’s military climate support those who do. Military leaders must stop teaching young people entering the military to hate and discriminate against a particular group of people in our society.

In the wake of Barry Winchell’s murder, one thing is clear—“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” has reached its highest level of public debate since it was first

implemented in 1993. The Pentagon and President Bill Clinton have scrambled to respond to the policy's failed implementation. Political candidates and the public have called for the policy's repeal. What follows are just a few of the developments from the past year covered in detail in *Conduct Unbecoming: The Sixth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."*

### **Asking, Pursuing and Harassing Surge to Record Levels**

Instances of asking, pursuing and harassing in direct violation of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" have surged to record levels since Congress enacted it into law six years ago. Reports of anti-gay harassment in the past year more than doubled, for the second consecutive year. Reports of asking increased 20%. Reports of pursuing increased 34%. Asking, pursuing and harassing continued even after the Pentagon announced new training programs and guidelines on anti-gay harassment six months ago.

Among dozens of examples, this report details the murder of Private First Class Barry Winchell and the anatomy of a witch hunt at the Defense Language Institute in Monterey, California, which, during the course of the past year, ensnared more than fourteen airmen, mostly women. This report also describes the epithets, threats and everyday indignities that service members must silently suffer as a condition of serving our country under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."

While Department of Defense officials have repeatedly maintained that "proper implementation of the policy has been a priority and the policy has, for the most part, been properly applied and enforced,"<sup>1</sup> events of this past year once again show that assertion to be little more than whitewash.

### **Pentagon Fires Three Gay People Every Day**

Discharges under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" remain alarmingly high. The Pentagon is firing, on average, three people every day for being gay, lesbian or bisexual—a total of 1,034 last year alone (Exhibit 1). Gay discharges last year increased 73% since "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" was first implemented. Six years of pink slips have cost American taxpayers over \$160 million<sup>2</sup> (Exhibit 2). Many more dedicated, competent service members have left at the end of their terms, fed up with constant fear, dissembling and anti-gay harassment.

### **Service Members Come Out Because of Anti-Gay Harassment**

The Pentagon claims most gay discharges result from gays voluntarily coming forward to be discharged. Even Major General Robert Clark at Fort Campbell, Kentucky, had the temerity

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<sup>1</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998.

<sup>2</sup> GAO 1993 dollars. This figure represents costs of retraining replacements alone and does not include the significant expense of investigations and separations.

to suggest that the tripling in gay discharges at Fort Campbell in the wake of Private First Class Barry Winchell's murder was the result of gays voluntarily leaving because they wanted a so-called easy way out of the military.<sup>3</sup> The reality is gay members often come out under duress as a last resort to protect themselves against constant anti-gay harassment, including verbal gay-bashing, death threats and assaults. Service members contact Servicemembers Legal Defense Network (SLDN)<sup>4</sup> every day afraid they may be the next Barry Winchell. In addition, some service members conclude that, for reasons of integrity, they can no longer serve under a policy that, as implemented, requires them to lie to their parents, best friends and health care providers as a condition of military service. They want to serve, but Uncle Sam says, "I don't want you." Contrary to what the Pentagon suggests, all gay discharges are involuntary because no service member ensnared by "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" is given the choice to stay.

### **Military Leadership Missing in Action**

The continued asking, pursuing and harassing are due to failed leadership. Military leaders must hold those who ask, pursue and harass accountable, and provide recourse to service members who are improperly targeted. SLDN has repeatedly warned of the dangers of lax leadership in applying this policy. In SLDN's *Conduct Unbecoming Continues: The First Year Under "Don't Ask, Don't Tell, Don't Pursue,"* SLDN warned "that if the Department of Defense does not take corrective actions now, deaths of actual and perceived homosexual service members, like slain sailor Allen Schindler, will occur."<sup>5</sup> It is shameful that it took Private First Class Winchell's murder before military leaders would begin to take steps to address the problem.

### **Secretary Cohen Orders Misguided Inspector General Survey of Anti-Gay Harassment While Army Inspector General Promises to Discharge Gays He Discovers**

Five months after Winchell's murder, Secretary Cohen ordered a Department of Defense Inspector General investigation into anti-gay harassment.<sup>6</sup> The Inspector General is surveying 75,000 troops, with survey results due back to Secretary Cohen on March 13, 2000. When announced in December 1999, SLDN questioned the efficacy of the survey, because there is no way to compare the experience of gay service members with non-gay service members. Gay service members are not permitted to be honest with the Inspector General under the current regime. Indeed, as long as a law exists that bans known gay service members, few gays will feel comfortable reporting anything, no matter what steps the Inspector General takes to assure their confidences.

Their fears of being outed and kicked out of the military are well-founded. An officer with the Department of Army Inspector General told SLDN he believed he was required to turn

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<sup>3</sup> Elizabeth Becker, *Policy on Gays Part of the Drill At Army Base*, N.Y. Times, Feb. 14, 2000, at A1.

<sup>4</sup> Servicemembers Legal Defense Network is an independent legal aid and watchdog organization.

<sup>5</sup> C. Dixon Osburn and Michelle M. Benecke, *Conduct Unbecoming Continues: The First Year Under "Don't Ask, Don't Tell, Don't Pursue,"* (Servicemembers Legal Defense Network, Feb. 28, 1995).

<sup>6</sup> Office of Assistant Secretary of Defense (Public Affairs), *Secretary of Defense Directs Assessment of Extent of Harassment*, Dec. 13, 1999.

in any service member who inadvertently came out or was found to be gay during the course of investigating anti-gay harassment at Fort Campbell. SLDN has received reports that some commands have prevented service members known to have experienced anti-gay harassment from participating in the Inspector General survey, even when all other unit members were ordered to participate. Other service members report that, because of the way the survey is designed, those who report anti-gay harassment draw undue and unwanted attention to themselves. Those who do not report harassment may skip quickly to the end of the survey and leave the survey room. Thus, everyone taking the survey knows who is reporting harassment. This arrangement leaves service members vulnerable to speculation about their own sexual orientation.

In short, the Inspector General processes, despite the best intentions of those actually reviewing anti-gay harassment, are likely to produce a whitewash. Inspector General representatives will hear from commanders, and they will hear from some service members, but they will not hear from the service members who are most affected, because lesbian, gay and bisexual military members must hide.

### **Jury out on Pentagon Promise to Train Troops on Investigative Limits**

Spurred by Private Winchell's murder, Secretary of Defense William S. Cohen ordered—for the first time—mandatory training for all service members on the investigative limits of “Don't Ask, Don't Tell, Don't Pursue, Don't Harass.”<sup>7</sup> The order partially adopts a six-year SLDN recommendation. To date, however, only the Army has initiated training on the policy's investigative limits, and the reviews of the training are mixed. Some soldiers report the training has been conducted professionally and intelligently. Others, however, report the training is confusing. Disturbingly, some say their leaders have mocked the training, calling it a “fag briefing” and other anti-gay epithets. This sends the immediate and unmistakable signal to those under their command that they do not have to take the training seriously. If this training is to have any good effect, leaders must make a commitment to treat it seriously.

### **Jury out on Pentagon Promise to End Anti-Gay Harassment**

In the aftermath of Winchell's murder, the Pentagon also implemented stronger guidelines on anti-gay harassment, including more explicit language sanctioning anti-gay epithets such as “faggot,” “fag,” “queer” and “dyke.” In response to a longstanding SLDN request, the Secretary and Chief of each service have issued statements denouncing anti-gay harassment. The Department of Defense added “Don't Harass” to its description of the current policy, “Don't Ask, Don't Tell, Don't Pursue, Don't Harass.”<sup>8</sup> In the Army, soldiers report the training is limited to two slides at the end of training on the overall anti-gay policy. Air Force personnel report no knowledge of the anti-gay harassment training. The Navy has delivered the message against anti-gay harassment to some sailors, with training showing up in at least some weekly commander briefings at the unit level.

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<sup>7</sup> Under Secretary of Defense Rudy de Leon, *Memorandum to Secretaries of the Military, Subject: Guidelines for Investigating Threats Against or Harassment of Service Members Based on Alleged Homosexuality*, Aug. 12, 1999.

<sup>8</sup> Linda D. Kozaryn and Jim Garamone, *Cohen Adds 'Don't Harass' to Homosexual Policy, Says it Can Work*, American Forces Press Service, Dec. 29, 1999.

One downfall of the current training in all services is that it does not address the problem that psychologists, Inspector Generals, law enforcement personnel, equal opportunity representatives, commanders, and others believe they are required to turn in gay people seeking their help. The Army is telling service members to see Chaplains if they are harassed, but many Chaplains are by and large not prepared to address these situations. Indeed, as discussed further in the “Don’t Tell” section of this report, some Chaplains have berated service members who have sought their help in dealing with anti-gay harassment. Other Chaplains have told service members to turn themselves in to their commands resulting in their discharge. The Army is also directing service members who are harassed to see military defense attorneys, without lifting policies at some bases that preclude military defense attorneys from representing a service member until a discharge action or criminal charges have been filed. The Army has stated it is forbidding its Equal Opportunity representatives from helping service members who are targeted by anti-gay harassment.

Of great concern, the current training in all services fails to specify any consequences for service members who disobey the rules and harass, ask or pursue their colleagues.

### **President Clinton Signs Important Military Hate Crimes Law**

As Commander-in-Chief, President Clinton signed an Executive Order three months after Winchell’s murder, amending the *Manual for Courts-Martial* to provide for sentence enhancement in hate crimes based on race, gender, sexual orientation, and disability. The Joint Service Committee in the Pentagon recommended the change to make military law conform with similar state statutes. While the Executive Order had been on the President’s desk for more than one year, and it did not factor into the prosecution of soldiers at Fort Campbell for the murder of Private First Class Barry Winchell, the Executive Order will aid law enforcement personnel, prosecutors and commanders in addressing hate-motivated violence.

### **Pentagon Fails to Ensure Privacy of Communications with Mental Health Providers**

The same Executive Order also provided, for the first time, a limited psychotherapist privilege that prevents use of conversations with psychotherapists as incriminating evidence in criminal trials. The Executive Order has only limited value for gay service members, however, who, for the most part, face administrative discharge proceedings, rather than criminal prosecutions, under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Mental health providers continue to turn in gays for discharge. Although Pentagon officials have publicly represented<sup>9</sup> that health care providers are not required to turn in gay people who seek their help, health care providers tell SLDN otherwise. In fact, SLDN discovered that the Navy had sent written instructions to its health care providers to turn in gay people via its website. Despite SLDN’s protests to top Department of Defense officials, the website was left in commission until July 1999. Service members have been discharged as a result, with the website language showing up verbatim in SLDN’s cases. The Pentagon has failed to take any steps in six years to

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<sup>9</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998, at 10.

make clear that such conversations are considered “personal and private” under current regulations and do not form the basis for discharge.

### **Anti-Gay Policy Elevated to Highest Level of Political Debate Since 1993**

In the wake of PFC Winchell’s murder, “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” has erupted on the campaign trail. First Lady Hillary Rodham Clinton,<sup>10</sup> Vice President Albert Gore<sup>11</sup> and Senator Bill Bradley<sup>12</sup> all called for repeal of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” making national headlines. Governor George W. Bush<sup>13</sup> and Senator John McCain<sup>14</sup> called for better implementation of the current policy, a shift toward the center from prior GOP political stands calling for witch hunts. President Clinton also weighed in for the first time in six years, describing “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” as “out of whack” in a *CBS Radio News* interview.<sup>15</sup>

### **American Public Opinion Supports Gays in the Military**

At the same time, public opinion polls and editorial boards expressed overwhelming support for ending discrimination against lesbians, gays and bisexuals in the military. Independent public opinion polls released this past year by Gallup<sup>16</sup> and The Wall Street Journal/NBC<sup>17</sup> found that 70% or more of Americans support gays in the military. Dozens of major national and regional newspapers have called for repeal of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.”<sup>18</sup>

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<sup>10</sup> *Rejecting ‘Don’t Ask, Don’t Tell,’* N. Y. Times, Dec. 10, 1999, at A34: “Hillary Rodham Clinton was exactly right when she told a gay audience at a fund-raiser in SoHo this week that homosexuals ought to be able to serve openly in the United States military.”

<sup>11</sup> Ceci Connolly and Bradley Graham, *Gore Vows New Policy On Gays In Military*, Wash. Post, Dec. 14, 1999, at A1.

<sup>12</sup> Sandra Sobieraj, *Bradley Supports Gays in Military*, Assoc. Press, Sept. 16, 1999.

<sup>13</sup> *Excerpts From the Debate Among G.O.P. Candidates*, N. Y. Times, Jan. 7, 2000, at A15.

<sup>14</sup> James Warren, *McCain Says Gore Wrong on Military Gays Policy*, Chi. Tribune, Dec. 15, 1999, <<<http://chicagotribune.com>>>.

<sup>15</sup> *Transcript: Radio Interview of President Clinton by CBS News*, Distributed by Office of International Information Programs, U. S. Department of State, Dec. 11, 1999.

<sup>16</sup> See Alan S. Yang, *From Wrongs to Rights: Public Opinion on Gay and Lesbian Americans Moves Toward Equality* 12, 13 (National Gay and Lesbian Task Force Policy Institute, 1999).

<sup>17</sup> Ronald G. Shafer, *The Wall Street Journal/NBC News Poll*, The Wall Street Journal, at A1: “DON’T CARE: The public, by 74% to 22%, favors allowing gays to serve in the military.”

<sup>18</sup> They include: Don’t Ask, Don’t Harass: The military is finally facing the flaws in the policy on homosexuals, Albany Times Union, Feb. 7, 2000, at A6; ‘Don’t ask, don’t tell’ Policy doesn’t work, The Arizona Republic, Dec. 15, 1999, at B8; Enforcing ‘Don’t Harass’, Boston Globe, Feb. 7, 2000, at A14; Reviving ‘Don’t Ask, Don’t Tell’, Chicago Tribune, Feb. 4, 2000, at 20; Don’t lie: Clinton admits ‘don’t ask don’t tell’ is a policy failure; the answer is to lift the ban on homosexuals in the military, Cleveland Plain Dealer, Dec. 21, 1999, at 8B; Military’s gay policy: Time to get real, Dayton Daily News, Dec. 15, 1999, at 14A; Gays in military: Clinton admits ‘don’t ask, don’t tell’ is a failure, Houston Chronicle, Dec. 20, 1999, at 34; Verdict Is In For ‘Don’t Ask’, L. A. Times, Feb. 4, 2000, at B10; David P. Sheldon, Don’t Expect a Change in ‘Don’t Ask . . .’, Newsday, Dec. 16, 1999, at A65; Bigotry in the Military, N. Y. Times, Aug. 30, 1999, at A22; They Had to Tell: Presidential Candidates Consider Military Policy on Gays, Pittsburgh Post-Gazette, Jan. 24, 2000, at A12; Rethink ‘don’t ask, don’t tell’, Providence Journal, Dec. 15, 1999, at B6; Deborah Mathis, Anti-homosexual Policy Avoids Reality, Seattle Post-Intelligencer, Aug. 19, 1999, at A11; Gays in military after ‘don’t ask, don’t tell’, Seattle Times, Dec. 14, 1999, at B4; Don’t ask, don’t tell: A not so

## **Army Investigates Arizona State Representative Steve May**

The Army's attempted discharge of openly gay Arizona State Representative Steve May burst onto the scene at the same time as the American public learned of the horrifying tragedy of Private First Class Barry Winchell's murder, underscoring the absurdity of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," but in a different way.

Shortly after calling First Lieutenant Steve May back to the active reserves, the Army informed him it was initiating a "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" inquiry based upon statements reported in a newspaper article. The article focused on comments May made during a committee hearing against anti-gay legislation, while he was still a member of the Inactive Ready Reserve. First Lieutenant May was outed by opponents during his unsuccessful run for office in 1996. When he ran again, he was honest with voters about being gay and he won. The great irony of May's case is that his constituents voted him into office for his honesty and candor, while the Army seeks to punish him for it.

In spite of the policy, May's fellow officers support his service. May's direct commander said that May's performance "has been nothing less than outstanding . . . [T]he vast majority of personnel in the unit have knowledge of the article; however, such knowledge has in no way affected morale in his PLT or other PLT's. In fact, the HQ section is function[ing] better than it has for (sic) my past tenure as commander" (Exhibit 3). A fellow officer's comments mirrored May's commander and further stated, "I firmly believe that whether LT May's sexual orientation is as suspected by the investigating parties, the fact is and should be considered irrelevant by all concerned parties. It has in no way affected his performance or that of anyone with whom he has had contact in a military matter" (Exhibit 4). Thus, contrary to the stated rationale for this discriminatory policy, the presence of an openly gay man is enhancing military readiness, and the Army's attempts to discharge him is undermining unit cohesion. May's case continues to proceed in the Army's administrative system.

## **Britain Repeals Ban on Gays in the Military, Isolating United States**

On September 27, 1999, the European Court of Human Rights ruled that Great Britain violated the human rights of four service members dismissed from the military for being gay. In ruling against Britain's anti-gay policy, the court said, "Those negative attitudes could not, of themselves, justify the interferences in question any more than similar negative attitudes towards those of a different race, origin or colour."<sup>19</sup> The court's decision leaves the United States and Turkey as the only NATO<sup>20</sup> countries banning service by openly gay military members.

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benign suppression of reality, St. Paul Pioneer, Dec. 12, 1999, at 12A; Gays in military: A policy sabotaged, Tacoma Morning News Tribune, Dec. 19, 1999, at B16; Don't Ask, Wash. Post, Dec. 15, 1999, at A46.

<sup>19</sup> Judgements in the Cases of *Lustig-Prean and Beckett v. The United Kingdom* and *Smith and Grady v. The United Kingdom*, European Court of Human Rights, (1999) <<<http://www.echr.com>>>

<sup>20</sup> North Atlantic Treaty Organization.

## The Good News

Some good trends documented in prior years continue. Physical abuse by investigators has declined.<sup>21</sup> Mass investigations, though not obsolete, have waned. Criminal prosecutions of lesbian, gay and bisexual service members have decreased, as commanders administratively discharge gays. A problem remains, though, in that many inquiry officers continue to threaten criminal prosecution. Finally, not all officers and enlisted leaders engage in verbal gay-bashing or snoop on their service members. The current climate, however, supports those who do. The positive steps forward reflect the low baseline used to measure success.

### **Conclusion: Military Readiness Suffers from Anti-Gay Bias**

SLDN's *Conduct Unbecoming: The Sixth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"* examines the military's failure to implement the core parts of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" and how it has impacted military readiness in the past year.<sup>22</sup> The report concludes that as military leaders continue to struggle with critical retention and recruiting shortfalls,<sup>23</sup> they can ill afford to continue violating the letter and intent of the policy. Lesbian, gay and bisexual Americans' contributions to our armed forces are valuable. The military's indifference to the well-being of and hostility toward lesbian, gay and bisexual service members must cease. The failure of military leaders to fairly implement the policy's provisions on privacy, investigative limits, accountability and recourse takes its toll on readiness by undercutting respect for rule and order. Forcing lesbian, gay and bisexual service members to hide, lie, evade and deceive their families, friends and colleagues breaks the bonds of trust among service members essential to unit cohesion.<sup>24</sup> Command climates poisoned by anti-gay abuses hurt readiness. As Specialist Edgar Rosa testified at Fort Campbell, the murder of Private First Class Barry Winchell has destroyed any illusion that he was part of "a band of brothers."<sup>25</sup>

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<sup>21</sup> See Randy Shilts, *Conduct Unbecoming*, 231-232 (citing former Army Lieutenant Jay Hatheway's testimony that he was forced to undergo "neurological testing" that included a psychiatrist's puncturing his scalp with pins to attach sensors); 570 (citing Steve Ward's testimony that he was placed into a broom closet without personal breaks until he confessed to being gay), (St. Martin's Press, 1993).

<sup>22</sup> SLDN has assisted more than 2,100 service members in the past six years who have been harmed by the policy.

<sup>23</sup> Andrea Stone, *Army opens more to school dropouts*, USA Today, Feb. 4, 2000, at 13A.

<sup>24</sup> 10 U.S.C § 654(a)(7), "One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit . . . ."

<sup>25</sup> Specialist Edgar Rosa, Delta Co., 2nd/502nd, Specialist Justin Fisher Art. 32 Hearing, Sept. 1, 1999.

## WHAT IS “DON’T ASK, DON’T TELL, DON’T PURSUE, DON’T HARASS?”

*The American public remembers the 1993 revisions to military anti-gay policy wrong. [P]eople think that the new policy is more lenient toward gay men and lesbians in uniform, less anti-gay and less homophobic than the policy in place when President Clinton took office . . . . Wrong, wrong and wrong again.*<sup>26</sup>

“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” contains exactly the same prohibitions on service by lesbians, gays and bisexuals that have been in place for fifty years.<sup>27</sup> The Pentagon discharges gays, lesbians and bisexuals for statements, acts and marriage. In other words, the Pentagon fires service members who acknowledge they are lesbian, gay or bisexual, engage in sexual or affectionate conduct (such as handholding) with someone of the same gender, or have a relationship with someone of the same gender.

“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” 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, Don’t Pursue, Don’t Harass” is the only law that makes it illegal to come out. Many Americans view “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” 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.

“Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” is, however, significantly different from prior laws in three respects. First, Congressional and military leaders acknowledged, for the first time in 1993, that lesbians, gay men and bisexuals serve our nation and do so honorably.<sup>28</sup> Second, the policy also states sexual orientation is no longer a bar to military service.<sup>29</sup> 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.<sup>30</sup> They agreed

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<sup>26</sup> Janet E. Halley, *DON’T: A Reader’s Guide to the Military’s Anti-Gay Policy*, 1 (Duke University Press, 1999).

<sup>27</sup> 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).

<sup>28</sup> *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On the Armed Services*, S. Hrg. 103-845, 103rd Cong., 2nd Sess. (1993) at 707. “[H]omosexuals have privately served well in the past and are continuing to serve well today.” (statement of General Colin Powell).

<sup>29</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 3 H.1.a (1994), *Enlisted Administrative Separation; Id.* NO. 1332.30, encl. 2.C (1994) *Separation of Regular Commissioned Officers*: “Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.”

<sup>30</sup> *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services*, 103rd Cong., 2d Sess. (1993) at 709 (statement of General Colin Powell). “We will not witch hunt. We will not chase. We will not seek to learn orientation.” These include the investigation of women onboard the *USS Norton Sound* in 1980, which resulted in the discharge of eight women sailors; investigations on the hospital ship *Sanctuary* and on the *USS Dixon*; the Army’s ouster of eight military police officers at West Point in 1986; the 1988 investigation of thirty women, including every African American woman, onboard the destroyer-tender *USS*

to take steps to prevent anti-gay harassment.<sup>31</sup> 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.<sup>32</sup> They agreed to implement the law with due regard for the privacy and associations of service members.<sup>33</sup> 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. In February 2000, in the wake of the murder of Private First Class Barry Winchell at Fort Campbell, Kentucky, Pentagon officials added “Don’t Harass” to the title of the policy.

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*Yellowstone*, which resulted in the discharge of eight women; the 1988 investigation of five of the thirteen female crew members onboard the *USS Grapple*; and the 1986-1988 investigation at the Marine Corps Recruit Training Depot at Parris Island, South Carolina, where 246 women were questioned, at least 27 women were discharged, and three were jailed.

<sup>31</sup> *Applicant Briefing Item on Separation Policy*, Addendum to DEP’T OF DEFENSE DIRECTIVE NO. 1304.26 (1993), *Qualification Standards for Enlistment, Appointment, and Induction*: “The Armed Forces do not tolerate harassment or violence against any service member, for any reason.”

<sup>32</sup> Secretary of Defense Les Aspen, *Memorandum for Secretaries of the Military Departments, Subject: Implementation of the DoD Policy on Homosexual Conduct in the Armed Forces*, Dec. 21, 1983; “[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.”

<sup>33</sup> President William J. Clinton, *Text of Remarks Announcing the New Policy*, Wash. Post, July 20, 1993, at A12; President Clinton pledged that the policy would provide for “a decent regard for the legitimate privacy and associational rights of all service members.” Then Senator, now Secretary of Defense, 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.” *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services*, 103rd Cong., 2nd Sess. at 788.

## DON'T ASK

### **“Don’t Ask” Prohibits Questioning Service Members About Sexual Orientation**

Despite a clear prohibition on “asking,” SLDN continues to document increased questioning of service members about their sexual orientation.

“Don’t Ask” states “commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal their sexual orientation.”<sup>34</sup> In 1997, Secretary of Defense William Cohen reaffirmed the rule, stating on “Larry King Live” that asking “is a clear violation of law.”<sup>35</sup> The Pentagon reaffirmed asking is wrong in its April 1998 report on the effectiveness of the implementation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.”<sup>36</sup>

“Don’t Ask” violations are up for the sixth consecutive year. SLDN documented 194 “Don’t Ask” violations from February 15, 1999, to February 15, 2000, up 20% from 161 such violations in the preceding year. The Air Force led all Services with 68 “Don’t Ask” violations; the Navy followed closely with 65 violations; the Army tallied 44 violations; and the Marine Corps closed out with 17 violations.

Supervisors, coworkers and investigators continue to question service members about their sexual orientation. Service members’ silence in the face of questioning, in an effort to comply with “Don’t Tell,” only fuels speculation about their sexual orientation and invites anti-gay harassment in the current military environment.

This section discusses common problems with “Don’t Ask” implementation: (1) questions asked by supervisors and coworkers as a means of anti-gay harassment or intimidation; (2) inadvertent questions; and (3) questions by security clearance investigators. Past SLDN reports have documented each of these problems, and they continue to pose great concern.

### **Asking as Anti-Gay Harassment**

The most disturbing trend documented by SLDN is the continued link between asking and anti-gay harassment. Hostile commanders, supervisors, colleagues and investigators pepper service members with constant questions about their sexual orientation. The questioning is experienced not only as asking, but as harassment and intimidation. How should a service member respond when asked day after day, sometimes hourly, “Are you a lesbian?” “You’re a fag, aren’t you?!” “Is it true you’re a homo?!”

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<sup>34</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.D.3 (1994), *Id.* NO. 1332.30, encl. 8.D.3 (1994); *See also, Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services*, S. Hrg. 108-845, 103rd Cong., 2d Sess. (1993), at 789. “[W]e do not ask about orientation not only at accession but at any time.” (statement by former DoD General Counsel Jamie Gorelick).

<sup>35</sup> *Larry King Live*, CNN television broadcast, Transcript # 97012700V22, Jan. 27, 1997.

<sup>36</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998, at 2.

In six years under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” the Pentagon has held no one publicly accountable for asking or harassing a service member in violation of the policy. Instead, military leaders have allowed personnel to ask and harass with impunity. At the same time, military leaders have told mental health care providers, Inspectors General and others to turn in gay, lesbian and bisexual service members who are found to be gay while reporting anti-gay harassment, effectively closing down any safe space for service members, contrary to the intent of the policy.

Often, targeted service members have no recourse to protect themselves but to disclose their sexual orientation in response to the asking and anti-gay harassment, resulting in their discharge. This trend will likely continue in the absence of military leadership to ensure accountability and provide recourse for service members who are questioned or harassed.

#### *Fort Campbell: Asking as a Prelude to Murder*

Soldiers testified Private First Class Barry Winchell faced questions about his sexual orientation and anti-gay harassment daily for more than four months prior to his murder in July 1999 (Exhibits 5 & 6). While Winchell denied he was gay in an effort to deflect the questions, rumors and harassment, they continued unchecked. According to sworn testimony:

- Staff Sergeants Kleifgen and Dubielak, Private Winchell’s supervisors, testified they asked Winchell directly if he was gay when rumors about him surfaced;
- Private Johanson testified he “asked Winchell if he was gay during [a field training exercise];”
- Specialist Novak testified that he overheard “someone ask Winchell if he was going into a gay club.”

These frank admissions were apparently only a drop in the bucket of what Winchell experienced on a daily basis. Another unit member, Specialist Philip Ruiz, and his wife, Melanie, testified that Winchell confided in them he was gay and was deeply concerned that the rumors would derail his career. Winchell did his best to ignore the daily asking and harassment until one night, goaded by anti-gay taunting, Private Calvin Glover took a baseball bat and killed Winchell while he slept.

#### *USS Abraham Lincoln Sailor Directly Questioned*

Seaman Luis Sierra’s case further illustrates the danger of leaders failing to enforce “Don’t Ask.” Onboard the aircraft carrier *USS Abraham Lincoln*, Seaman Sierra reportedly faced direct questions about whether he is gay. The harassment reportedly began when one sailor repeatedly asked him about his sexual orientation. Fearful of being “outed,” Sierra said he was not gay. Seaman Sierra reports that after repeated denials, “I finally told [the shipmate asking] that I am gay in the hopes that he would discontinue his constant harassment and prying into my sexual orientation” (Exhibit 7). This honest response, however, only resulted in

increased harassment. The sailor reportedly began calling Seaman Sierra “faggot” and making other anti-gay remarks.

The questions, fueled by rampant rumors concerning his sexual orientation, continued. Sierra reports that approximately twelve shipmates repeatedly asked him questions about his sexual orientation.

Seaman Sierra feared for his safety because of the constant hounding he faced about his perceived sexual orientation and the anti-gay harassment it spawned. Sierra reports that, one day during muster, he requested permission to speak with his Senior Chief Petty Officer about a “personal matter.” The Petty Officer refused Seaman Sierra’s request.

He then turned to a Navy Chaplain. Seaman Sierra reports:

I tried seeking counsel from the base chaplain. I told him I was being harassed because I am gay and he told me to talk to the Chaplain on board the ship. The ship’s Chaplain condemned my “lifestyle” and told me I was on a “one way path to contracting HIV.” I was then advised to ignore the harassment and “deal with it or get out.” He then told me to go to the ship’s legal<sup>37</sup> and tell them everything (Exhibit 7).

Seaman Sierra reports he heard about the murder of Private First Class Winchell that weekend and, fearing for his safety and not knowing where to turn, he went on unauthorized absence. When he returned, Sierra came out to his command, reporting the anti-gay harassment he faced. The command tried to retain him, but he was eventually discharged at his repeated request. There is no indication, however, that the Navy has held accountable anyone for the asking and harassment he faced, or for the failed leadership that permitted it to occur.

#### *Navy Petty Officer Asked by More Than Ten People*

Navy Petty Officer Third Class Patricia Esty served at Fort Meade, Maryland, where others repeatedly asked her about her sexual orientation and private life. In a May 1999 letter, Petty Officer Esty recounted her experience to her commander:

[O]ther sailors began directly asking me questions about my sexual orientation and making direct statements to me that they thought I am gay . . . I have been directly asked about my sexual orientation by more than 10 people on base. Some have outright asked me “Are you gay?” and “Do you like girls?” Others have made statements like, “I know about you.” When asked what they meant, the sailor said “I heard you’re gay.” Others have said that

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<sup>37</sup> “Ship’s legal” refers to the command’s legal advisor, not a military defense attorney. A service member has no right of confidentiality with the legal advisor. The Chaplain gave bad legal advice that could have resulted in serious legal harm to the sailor. The advice was also an inappropriate response to anti-gay harassment. Unfortunately, it is not uncommon for Chaplains to provide bad legal advice. See “Don’t Tell” section.

there are rumors that I am gay and wanted to know if it is true (Exhibit 8).

These questions caused Petty Officer Esty great anguish because “Don’t Tell” prevented her from answering the questions truthfully and defending herself against the anti-gay harassment. “Don’t Tell” required her to remain silent, which only egged on her tormentors and made her vulnerable to being outed. Ultimately, she decided she had no choice but to confront the rumors directly. She further wrote to her commanding officer:

I have been questioned about my sexual orientation repeatedly in the last 7 months . . . I have been living under the very real fear that someone would turn me in because of the rumors about my sexual orientation. . . I will no longer allow others to hold my job, my future, and my life hostage. I am informing you that I am a lesbian (Exhibit 8).

Petty Officer Esty’s command was reluctant to discharge her and lose a good sailor. The command was, however, also reluctant to investigate her complaints about asking and harassment. Having come out, Petty Officer Esty was in a particularly vulnerable position, concerned about her physical safety and career. After SLDN’s intervention, Esty’s command finally initiated an investigation into the anti-gay harassment and discharged her for her safety.

#### *Monterey Leaders “Ask” Female Airman*

Airman First Class Deanna Grossi was studying Serbian at the Defense Language Institute (DLI) at Monterey, California. On one weekend off, Airman Grossi traveled to San Francisco to visit friends. Following the weekend break, a civilian class instructor, Mr. Abdolvic, reportedly asked Airman Grossi whether she had spent the weekend with her “girlfriend.”

An Air Force Noncommissioned Officer, Master Sergeant Hamlett, also reportedly questioned Airman Grossi directly as to whether her friendships with other female airmen were “more than simple friendships.” (Exhibit 9). DLI leaders created an environment in which junior enlisted personnel could question Airman Grossi about her sexual orientation free from reprisal.

Airman Grossi is one of a number of service members who have been asked, pursued and harassed while studying at DLI. These cases are discussed further in this report’s “Don’t Pursue” section.

#### *Navy Leaders “Ask” About Sexual Orientation*

A Navy noncommissioned officer and instructor repeatedly asked and harassed a Petty Officer who was his student. The noncommissioned officer taunted him with comments such as: “You have a date with [another male sailor] tonight, don’t you [Petty Officer]?” and “Hey [Petty Officer], how’s your girlfriend [another male sailor] doing?”

One day, after weeks of such abuse, the student reports the noncommissioned officer asked the other male sailor, “What are you laughing at . . . ?” We all know you’re a faggot.” The Petty Officer spoke up and correctly pointed out to the noncommissioned officer that such a comment was improper. In response, the noncommissioned officer reportedly replied in a mocking tone: “What’s wrong? I didn’t *ask* him and he didn’t *tell* me! Isn’t that the policy?” (Exhibit 10).

The harassment continued on a daily basis for a few more weeks. Finally, the Petty Officer couldn’t take it anymore. The Petty Officer disclosed his sexual orientation to his command as a last resort to protect himself against further harassment. Silence or denial in the face of such questions would only encourage his harasser. Corroboration that he is gay would make him a confirmed target of anti-gay harassment, further jeopardizing his safety. The command investigated the Petty Officer’s complaint, but it is unclear what, if any, actions were taken against the noncommissioned officer.

Despite stating he is bisexual, the command sent the Petty Officer to his next duty assignment without discharging him. The Petty Officer and many of his classmates were sent to the same ship. Fearing that word of his abuse at his former base would spread onboard, causing rumors about his perceived sexual orientation and anti-gay harassment, the Petty Officer disclosed his fears and his sexual orientation to his new command. The Petty Officer was honorably discharged.

#### *Army Criminal Investigative Command “Asks” About Sexual Orientation*

Army Criminal Investigation Division (CID) agents violated “Don’t Ask” by questioning Army Sergeant Matthew Peck in the parking lot of a gay-owned establishment near Fort Bragg, North Carolina. Under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” going to a known gay establishment is permitted. Despite this, Sergeant Peck reports he was pulled over by the CID agents as he was driving through the parking lot. The agents “questioned [me] about why I was there, had I been there before, and did I know what type of place it was. Being questioned by CID that night chilled me to the bone” (Exhibit 11).

Sergeant Peck concluded he and his career were not safe in the Army so long as wrongdoers, such as the errant CID agents, could ignore the policy’s investigative limits and out him at their discretion. Sergeant Peck came out to his command to end the asking, pursuit and harassment that should not have been taking place. In the letter to his command, Peck writes:

I have been directly asked by soldiers under my command if I am gay. I have been forced to deny my sexual orientation. I cannot expect the soldiers that I lead to live up to the Army core values of honesty and integrity when I lie to them on a daily basis (Exhibit 11).

## **Inadvertent Questioning**

“Don’t Ask” violations continue to result from inadvertent questions from commanders and others that, on their face, are not designed to ask about sexual orientation, but, in fact, do. The problem is that some commands are acting on the information inadvertently discovered and discharging service members, rather than treating the information as “personal and private” and taking no action.

### *Army Captain “Asked” Why He Would Not Accept Command Position*

The case of an Army Captain serves as a classic example of an inadvertent “Don’t Ask” violation.

The Captain, who remains on active duty, recently declined to accept the plum assignment of company commander. The Captain informed his command, to their great consternation, that he did not intend to remain in the Army past his five year commitment.

The Captain’s command lobbied hard to retain him. The Captain is a West Point graduate. On his most recent officer evaluation report, his rater wrote, “If I go to war, I want [this Captain] with me.”

The Captain’s Brigade Commander, a Colonel, called the Captain to his office to persuade the officer to accept the command opportunity. The Colonel pressed the Captain to reconsider, telling him that the Army needs qualified leaders like him. The Colonel asked repeatedly why the Captain was resigning. In response to the Colonel’s good-faith question, the Captain reports that he truthfully alluded to the Colonel that he is gay.

In a subsequent letter to the Colonel, the Captain writes:

I am honored by your confidence in me and I am equally honored to serve in your command. My military experience has proven invaluable and I love the Army, as well as our country. I’m saddened that I cannot serve beyond my five year commitment. Were it not for the Army’s anti-gay policy, I believe that I would remain in the military well beyond my five year commitment (Exhibit 12).

The Captain’s service commitment ends in June, 2000. Rather than letting him serve three more months to fulfill his service commitment, however, the Army is discharging the Captain based on his truthful response to the Colonel’s inadvertent questions.

### *Navy Petty Officer First Class “Asked” Why He Is Not Re-Enlisting*

Petty Officer First Class Larry Glover informed his command in San Diego, California, that he decided not to re-enlist after more than 14 outstanding years of service. It is highly unusual for a service member with so many years invested in serving our country not to finish a

twenty-year career. With his departure, Glover gave up the retirement and pension benefits he has worked so hard to earn. Petty Officer Glover's superiors naturally asked him why he was not going to finish the five years needed to complete his Navy career. His decision to leave the Service puzzled his chain of command, and they pressured him to explain "why."

In response to their repeated attempts to persuade him to re-enlist, Petty Officer Glover wrote to his commanding officer:

I have been continually pressured to explain 'why' I am choosing not to re-enlist. I have, repeatedly, declined to discuss my reasons for not re-enlisting, but the pressure for me to 'explain myself' continues unabated . . . . I . . . am not re-enlisting because of the Navy's unfair and discriminatory 'Don't Ask, Don't Tell, Don't Pursue' policy" (Exhibit 13).

Petty Officer Glover's letter describes the anguish this policy causes service members every day:

Each day I face an inner struggle of keeping my private life and military career separate. I am not allowed to speak of my friendships and relationships, discuss my weekend activities, or place pictures of important persons in my life on my office desk all because of the great risk posed by the Navy's anti-gay policy. I have had to live my life in fear for these past 14 plus years, constantly looking over my shoulder and wondering whether I'd become the target of an anti-gay investigation or whether my career would be harmed or whether I'd suffer some disciplinary action because of my sexual orientation. This is no way for me to live my life (Exhibit 13).

Petty Officer Glover is being discharged based on his response to the Navy's inadvertent questioning.

### **Security Clearance Questions Continue to Threaten Gays**

Although SLDN's cases indicate that security clearance investigators are generally adhering to President Clinton's 1995 Executive Order<sup>38</sup> ending discrimination in the issuance of security clearances, investigators are using miscellaneous psychological profiles and questionnaires that impermissibly ask service members about their sexual orientation and private lives.

Under the Executive Order and resulting policy changes, investigators may not ask questions about sexual orientation or conduct unless relevant to resolving legitimate national security issues. Sexual orientation and conduct are not a *per se* security issue.

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<sup>38</sup> Executive Order No. 12,968, 60 C.F.R. 151, at 40250 (1995).

In one case this year, Army investigators asked an Army reservist questions about his sexual orientation and conduct in a psychological profile and questionnaire to be completed in advance of taking a polygraph examination. The Army reservist was considering an opportunity that required him to have a higher level of security access.

The Minnesota Multiphasic Personality Inventory (MMPI), used by the Army, asks whether: “[A service member is] very strongly attracted by members of [his/her] own sex.”<sup>39</sup> (Exhibit 14). This is a flagrant “Don’t Ask” violation.

The accompanying questionnaire, which is a military survey, also asked questions about sexual conduct in violation of the 1995 Executive Order and “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass:”

- Have you ever engaged in any criminal activity that has gone undetected?
- Engaged in sexual behavior that might be considered to be abnormal, deviant, or perverted? (Exhibit 15).

The soldier told SLDN that he feared his responses to the questions might create a risk of criminal prosecution or administrative separation. The soldier feared criminal prosecution because the Uniform Code of Military Justice (UCMJ) criminalizes certain sexual acts for both straight and gay persons, such as oral sex. Although the criminal provisions are supposed to be applied in an evenhanded manner with respect to heterosexuals and gays, they are not. Without knowing the law or how the facts of his situation might apply, he did not know how to answer the question.

The soldier also reported that he did not know how to respond to the question about sexual conduct that others might consider “perverted.” Subjective questions based on what others might consider abnormal, given that some Americans hold anti-gay views,<sup>40</sup> leave the soldier guessing as to the intent of the question. Questions such as these function as possible surrogate questions to identify gays without directly asking candidates about their sexual orientation. Whether intended for that purpose or not, their effect is to place gays in a position of having to risk “outing” themselves should they answer.

After considering the context of the security clearance questions, the soldier decided not to pursue the opportunity. The Army, without knowing it, deprived itself of the capabilities of this highly respected soldier.

### **Additional Examples of “Don’t Ask” Violations**

The following are just a few of the many “Don’t Ask” violations reported to SLDN in the past year:

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<sup>39</sup> While the Army does not draft the questions in the MMPI, its use of this instrument violating “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” is unacceptable.

<sup>40</sup> Public opinion polls regularly indicate strong support for gays in the military.

- The Air Force convicted an Airman at General Court-Martial and sentenced him to seven months in prison for fleeing his base out of fear for his safety after other airmen asked him repeatedly if he is gay. The Airman believed “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” prevented him from reporting anti-gay harassment, so he ruled out that option and he feared criminal prosecution if he told his command he is gay, so he remained silent. SLDN’s experience in the Army, Navy and Marine Corps is that commands administratively discharge AWOL service members in similar circumstances or, at worst, prosecute them at Special Court-Martial, where a conviction is the rough equivalent of a misdemeanor.
- A noncommissioned officer asked a female Airman First Class at Whiteman Air Force Base, Missouri, “I hear you’re dating a girl? . . . Is there anything I need to know?”
- Army Specialist Stacy Lane, stationed at Fort Bliss, Texas, reports he was asked, “Are you and [another male soldier] together?”
- Air Force Senior Airman Jose de Leon, stationed at Andrews AFB, Maryland, reports he was asked whether he is gay by several airmen.
- A Marine Lance Corporal at Cherry Point, North Carolina, reports she was asked whether she was marrying a man or a woman.
- A Navy Petty Officer onboard the *USS Carl Vinson* reports she was asked if she is gay more times than she can remember.
- An Army Private at Fort Sam Houston, Texas reports his Drill Sergeant asked him, “Are you a homosexual?”
- A Fort Campbell, Kentucky Staff Sergeant reportedly questioned a soldier’s sexual orientation by asking whether the soldier was “that way.”

### **“Don’t Ask” Conclusion**

*Service Members “Asked” About Whether They Are Gay Have Nowhere to Turn for Help*

The “Don’t Ask” rules are not being enforced. As the cases discussed in this section illustrate, superiors, subordinates and peers ask service members about their sexual orientation with impunity and hound service members out of the military.

Private First Class Winchell, prior to his being murdered, suffered in silence as his leaders and peers asked and harassed him about his perceived sexual orientation. Seaman Sierra also had nowhere to turn to stop the anti-gay asking or harassment. He feared his command and Chaplains were indifferent or hostile to his concerns.

Military leaders especially should be held accountable for asking. A superior who asks a service member about his or her sexual orientation sends the signal that anyone may ask, and effectively puts a bulls-eye on the back of the targeted service member. For the lesbian, gay, or bisexual service member who is asked, their physical safety and career hangs in the balance. Silence and dissembling in an effort to comply with "Don't Tell" only invites more abuse.

In the absence of strict enforcement of "Don't Ask," the Pentagon effectively has adopted a rule of one hundred percent tolerance for asking and one hundred percent intolerance for "telling," even when service members "tell" in the course of reporting anti-gay harassment, asking and other violations of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."

The failure of military leaders to enforce "Don't Ask" hurts military readiness by destroying trust. Leaders are charged to take care of their service members. Lesbian, gay and bisexual service members are at the total mercy of their leaders to prevent anti-gay harassment and asking, since they are not permitted under "Don't Tell" to defend themselves. When leaders hound soldiers about their sexual orientation, demonstrating their willingness to break the rules in order to abuse someone in their charge, it sends a message to heterosexual as well as gay service members that they cannot trust their leaders to look out for their welfare.

The policy itself ensures the perpetuation of false stereotypes about a group of people who serve our country by denying heterosexuals the opportunity to know that they, in fact, know gay people. "Don't Ask" also instills an artificial barrier to friendship, and prevents service members from forming the bonds necessary to have a truly cohesive unit. The policy mistakes homogeneity for cohesion, a premise rejected by even the military's own experts on unit cohesion. Finally, unit cohesion and military readiness are hurt not only because gay service members must lie, hide, evade and deceive, but because the policy gives every incentive to those who want to snoop, snitch, ask and harass. These are not incentives our government should support.

## DON'T TELL

### **“Don’t Tell” Prohibits Gays from Publicly Stating Their Sexual Orientation to the Military While Allowing for Personal and Private Expressions**

“Don’t Tell,” while prohibiting public statements of sexual orientation to the military, allows for “personal and private” communications between gay service members and their families, friends and others. It protects service members’ freedom of association with friends and extracurricular organizations.<sup>41</sup> The policy further allows for disclosure of sexual orientation by gay service members to defense attorneys,<sup>42</sup> chaplains,<sup>43</sup> security clearance personnel<sup>44</sup> and, in limited circumstances, doctors who are treating patients for HIV.<sup>45</sup> The policy was intended to create some private, safe space for lesbian, gay and bisexual service members.

Despite the policy’s intent to respect service members’ privacy, SLDN documented 52 “Don’t Tell” violations in the past year, a 126% increase over the previous year’s 23 violations. For the sixth consecutive year, the Air Force led the other services with 16 violations in the past year. These violations are incidents in which commands investigated or discharged service members based on private conversations that were intended to be off-limits under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” For purposes of this report, SLDN counts command violations of “Don’t Tell,” rather than instances where service members face possible discharge for statements of sexual orientation.<sup>46</sup>

This section discusses common problems with “Don’t Tell” implementation: (1) health care providers continue to receive instructions to “tell”—to turn in— gays; (2) military leaders and investigators continue intruding into the private lives of gays, asking family members and friends to “tell;” (3) chaplains provide inappropriate legal advice to gay service members seeking their guidance; (4) Inspectors General report they will turn in service members who are found to be gay when investigating anti-gay harassment; and (5) spouses and ex-spouses “tell” in an effort to harm gay service members. Past SLDN reports have documented these problem areas, and they continue to cause concern.

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<sup>41</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.E.4.; *Id.* NO. 1332.30, encl. 8.E.4. “[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 . . . .”

<sup>42</sup> MILITARY R. EVID. 502.

<sup>43</sup> MILITARY R. EVID. 503.

<sup>44</sup> DEP’T OF DEFENSE DIRECTIVE NO. 5200.2 encl. 3.7 (1999), *DoD Personnel Security Program*. See also, DEFENSE INVESTIGATIVE SERVICE MANUAL, DIS-20-1-M, encl. 18.C (1993).

<sup>45</sup> DEP’T OF DEFENSE DIRECTIVE NO. 6485.1, encl. 3.2.1.9 (1991), *Human Immunodeficiency Virus-1 (HIV-1)*. “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).”

<sup>46</sup> Service members are sometimes compelled to disclose their sexual orientation to the military for one of two primary reasons: (1) protection from anti-gay harassment; and (2) wanting to live their lives honestly.

## Health Care Providers Turn in Gays

Health care providers continue to report to SLDN they have been instructed to turn in lesbian, gay and bisexual service members who seek their help. Indeed, service members have been discharged based on private counseling sessions with military psychologists. In other cases, commanders and inquiry officers have pulled service members' medical records specifically to look for information that a service member is gay. In the past year, SLDN documented continued instances in which health care providers reportedly turned 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, Don't Pursue, Don't Harass."

"Don't Tell" hamstrings conscientious health care providers. 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.

SLDN appreciates President Clinton's Executive Order providing that communications with mental health professionals cannot be used as evidence in criminal proceedings (Exhibit 16). This Executive Order, however, has only limited value for gay service members who, for the most part, face administrative discharge proceedings, rather than criminal prosecutions, under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass." While the Department of Defense could follow established practice by extending this privilege to the administrative context, as it does with the attorney-client and chaplain-penitent privileges, it has failed to do so to date. The Department of Defense could also address concerns about the privacy of conversations with mental health professionals within the context of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," by making it clear that private statements to health care providers are not the kind of statements that form a basis for discharge, but it has failed to do so.

SLDN also appreciates the Under Secretary of Defense's clarification in the April 1998 report to Secretary of Defense Cohen that health care providers are not, in fact, required to turn in gay service members. This clarification has not made it to the field. Nor is it adequate to address the problem, as it allows individual therapists to turn in military members, whether required to or not, and deprives service members of the ability to trust therapists.

### *Virtual Naval Hospital: Doing Gay Patients Harm*

Last year SLDN reported that, contrary to Pentagon assertions that the services do not require health providers to turn in their patients,<sup>47</sup> the Navy's *General Medical Officer Manual* specifically instructed health care providers to turn in gay, lesbian and bisexual service members.<sup>48</sup> Pentagon officials removed the section on "homosexuality" from the online version

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<sup>47</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998, at 10. "We found that none of the Services require health care professionals to report information provided by their patients . . . [T]he lack of a privilege does not mean that doctors must report information provided by their patients . . ."

<sup>48</sup> DEP'T OF THE NAVY, NAVMED P-5134, GENERAL MEDICAL OFFICER (GMO) MANUAL (May 1996).

of the *General Medical Officer Manual* in February 1999, after SLDN brought the *Manual* to their attention. The Pentagon, however, let stand additional guidance on the *Virtual Naval Hospital* instructing health care providers to turn in gays until July 1999.

The web site's chapter on "Confidentiality," for example, stated:

Your patients basically have none with you. If the Captain wants to know anything that a patient told you, you must reveal it. Also, if your patient tells you something illegal or dangerous, e.g., . . . homosexuality, . . . you are required to report it to the [executive officer] and [commanding officer]"<sup>49</sup> (Exhibit 17).

This section is wrong for two reasons. First, under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," statements of sexual orientation are considered "personal and private," not the basis for disclosure to the command for purposes of discharge. Second, it is inappropriate and medically unfounded to equate homosexuality with something "illegal or dangerous." It is further disingenuous to equate certain acts, such as oral sex, solely with homosexuality, when the Uniform Code of Military Justice prohibits exactly the same acts between heterosexuals, including husbands and wives.<sup>50</sup> SLDN is unaware of any guidance instructing health care providers to turn in heterosexual service members who discuss their consenting, adult sexual conduct.

In piecemeal fashion, the Pentagon has corrected sites that contain erroneous information, but only after SLDN has brought the materials to their attention. That instructions to turn in gay people exist in the first place, and the Pentagon's failure to take proactive steps to correct this erroneous and harmful information, undermines Department of Defense assertions of sincerity in attempting to better implement "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" correctly.

This continuation of improper guidance to medical personnel appears to be contributing to the increasing "Don't Tell" violations SLDN documented in 1999.

#### *Air Force Psychologist Asserts "Duty" to Turn in Gay Patients*

During SLDN's visit to Lackland Air Force Base, Texas, in March 1999, the base psychologist told SLDN he had a duty to report any service member who came out to him during a private treatment session (Exhibit 18). This stance is contrary to current policy as reiterated by the Pentagon's April 1998 review of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."<sup>51</sup> This places basic trainees in harm's way because the services specifically instruct trainees to see mental health professionals to deal with adjustment issues in basic training. We asked the psychologist to provide the specific guidance ordering him to turn in gays, but he provided none.

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<sup>49</sup> *Id.*

<sup>50</sup> 10 USCA § 654 (West Supp. 1995).

<sup>51</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998, at 10.

### *Doctor Directs Lesbian Seaman to Out Herself to Her Command*

While Navy Seaman Lesah Pickard was serving on the *USS Bridge* in Bremerton, Washington, a Navy doctor directed her to turn herself in to the ship's Master-at-Arms. Seaman Pickard reports that she asked the doctor for a mental health referral because she wanted guidance on how to manage the stress of living a double life as a lesbian in the Navy. Pickard revealed her sexual orientation because she was seeking a mental health referral. Instead, the doctor told Pickard "that [she] didn't need to go to mental health (sic) that it was not a medical problem that [could] be cured, but did tell [her] to go to the master-arms (sic) office and make a statement" (Exhibit 19). Believing she had no other options, Seaman Pickard told her command she is a lesbian and the Navy discharged her.

### **Military Officials Solicit Private Information from Service Members' Families and Friends**

SLDN remains highly concerned that inquiry officers and investigators are seeking out family members and close friends to solicit information that can be used against their loved ones. SLDN continues to document cases where overzealous military commanders and investigators improperly pry into gay service members' relationships with their families and close personal friends. Military Leaders should be ashamed of themselves for applying "Don't Tell" even to conversations with moms and dads. Communications between gay service members and their parents, siblings and friends should be off-limits in military inquiries relating to "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."

### *Investigator Questions Parris Island Marine's Mother*

A Marine Private's command at Parris Island, South Carolina, contacted his parents seeking information about their son's sexual orientation. Upon learning the Private is gay, the Private's command telephoned the Private's mother, asking whether she and her son had ever discussed his sexual orientation. Additionally, the Private's mother was asked if she knew of her son's sexual activities and if he engaged in homosexual activities. The mother made it clear to her son's command that she considered his sexual orientation to be a personal matter. She also made it clear that she and the Marine Corps should put her son's safety first (Exhibit 20). Asking a young Marine's mother to divulge the contents of private communications with her son concerning his sexual orientation is beyond the boundaries of the policy and common decency.

### *Air Force Instructs Investigators to Interrogate Families and Friends*

As reported in past SLDN reports, senior Air Force lawyers have instructed inquiry officers, in writing, to seek out service members' parents, siblings and close friends for questioning (Exhibit 21). In 1999, SLDN documented the continuation of this intrusive tactic. While many examples are detailed in the "Don't Pursue" section, one example illustrates the point.

After Senior Airman Tommy Jones reportedly told his command he is gay, his command initiated an inquiry that included attempted questioning of his friends. The inquiry officer, Chief

Master Sergeant Michael Wade, asked Airman Jones to identify “friends near Andrews AFB” who could provide information concerning Jones’ sexual orientation. The inquiry officer further requested that Jones provide the names and contact information of friends at “local gay establishments” who could provide information about his sexual orientation and private life (Exhibit 22).

The Air Force’s attempt to seek out a gay service member’s friends in an effort to pry into the member’s private life violates “Don’t Tell.” It is also unnecessary, as the policy is clear that a statement alone is sufficient to discharge a service member.<sup>52</sup> The intent behind “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” was to allow service members to have relationships with their family and friends into which the military would not intrude. These types of inquiries undermine that goal.

The Air Force remains the worst offender in instigating intrusive inquiries, as detailed in “Don’t Pursue.” In the past, the Air Force has claimed such inquiries are only initiated in cases involving recoupment of monies received for educational funding, special pay or bonuses. In reality, the Air Force initiates such inquiries in almost all cases. New guidance from the Pentagon now requires Secretarial authority prior to initiating inquiries of this scope. Time will tell whether the Air Force falls into line.

### **Chaplains Provide Improper Legal Advice**

While most chaplains keep the confidences of gay service members, some do not. Others continue to give service members bad legal advice, such as telling service members to turn themselves in, rather than sending service members to a military defense attorney for questions about the policy. Additionally, SLDN documented a number of cases in the past year where Chaplains have berated gay service members, telling them they are sick, going to hell, and so forth. No matter one’s religious beliefs, this is an inappropriate response to a service member’s report of anti-gay harassment that only serves to further victimize the service member.

Chaplains need training on this policy and how to respond to reports of anti-gay harassment. Under the new training regimen announced by the Pentagon on February 1, 2000, the Army is directing service members to see Chaplains if they are harassed or if they have questions about the policy, but Chaplains have not received training to date on how to handle such situations. Chaplains should receive specific instructions not to turn in gay service members who seek their help and to consider these conversations as confidential, per the chaplain-penitent privilege. Under the new training regimen announced by the Pentagon on February 1, 2000, the Army is directing service members to see chaplains if they are harassed or if they have questions about the policy, but Chaplains have not received training to date on how to handle such situations. Proposed guidelines from SLDN are contained in Exhibit 23.

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<sup>52</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 3.H.1.a. *Id.* NO. 1332.30 encl. 2.C.1: “Homosexual conduct is grounds for separation from the Military Services. Homosexual conduct includes . . . a statement by a member that demonstrates a propensity or intent to engage in homosexual acts . . . .”

## USS Abraham Lincoln *Chaplain Condemns Gays*

In a case discussed more fully in the “Don’t Ask” section, the Chaplain at Everett Naval Station, Washington and the chaplain onboard the *USS Abraham Lincoln* reportedly failed to assist Seaman Luis Sierra with reports of anti-gay harassment. Seaman Sierra sought the assistance of the base Chaplain at Everett Naval Station, Washington, who reportedly refused to assist him and referred him to the ship Chaplain. The ship’s Chaplain reportedly lectured Sierra, condemning the “gay lifestyle,” and told Sierra he was on a “one way path to contracting HIV.” The Chaplain then reportedly advised Sierra to ignore the harassment and “deal with it, or get out” (Exhibit 7).

Seaman Sierra, who went to the Chaplain out of fear for his safety, did not know where to turn for help. Seaman Sierra concluded that, if the ship Chaplain failed to provide a safe space for service members, then none must exist. As a last resort out of fear for his safety, Sierra fled, going on Unauthorized Absence (UA).

With SLDN’s assistance, Seaman Sierra safely returned to the Navy, came out and reported the anti-gay harassment. The Navy discharged Sierra for being gay. There is no evidence the Navy has held anyone accountable for the anti-gay harassment or counseled the Chaplains for their lack of assistance.

### **Inspectors General Say They Will Turn in Gays Who Report Harassment**

An Army Inspector General representative who is reviewing anti-gay harassment at Fort Campbell told SLDN he would turn in any soldiers who, in the course of reporting anti-gay harassment or participating in the Army review, revealed information about their sexual orientation. Last year, at Lackland Air Force Base, an Air Force Inspector General took the same misguided stance. As a practical matter, this makes it impossible for gay service members to report harassment to or seek help from the Inspector General if they are being threatened. Any claim by the Department of Defense that it is addressing anti-gay harassment by conducting Inspector General surveys and reviews will not hold up if the service members who are most affected cannot speak candidly for fear of being outed to their units and discharged.

### **Services Use Retaliatory Accusations by Spouses**

SLDN documented increased incidents where the armed forces rewarded retaliatory spouses who outed service members by discharging the service members. These cases usually arise when a couple decides to get divorced after one of the spouses begins to realize that he or she is gay. The armed forces are taking sides in family disputes that are more properly resolved through other channels and should not be played out under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Here are a few examples:

- An Army Major’s husband reportedly threatened to out her to her command during a custody battle for their children. As a result of this threat, the Major was forced to forgo a custody

battle for fear of losing her livelihood. The Major kept her job, but no longer has custody of her children.

- The wife of Air Force Staff Sergeant Patrick Willis reportedly threatened to out him to his command if he contested child custody during their divorce. Despite having served almost fifteen years, Staff Sergeant Willis voluntarily told his command he is gay so he could maintain his relationship with his children and teach them how to be honest and tolerant people (Exhibit 24).
- A Marine Corps Gunnery Sergeant with 16 years of service was recently outed to his command by his wife during the course of a bitter divorce and custody battle. Although still serving, the Gunnery Sergeant's command has initiated an inquiry into his wife's allegations, and his career is in jeopardy.

Military leaders should be concerned that commands are allowing people with vendettas to take down their best and brightest, using “Don't Ask, Don't Tell, Don't Pursue, Don't Harass” as the weapon of choice. The services should also be greatly concerned that their efforts to police service members' personal relationships interfere with other legitimate legal proceedings.

“Personal and private” communications between service members and their families are just that, personal and private. These service members are not making public proclamations of their sexual orientation and such confidences should not form a basis for discharge. Further, retaliatory outings by disgruntled spouses should not be considered credible. Without credible information, no inquiry into a service member's sexuality should commence.<sup>53</sup>

### **“Don't Tell” Conclusion**

Service members have no safe space or privacy, contrary to the intent of “Don't Tell.” Psychotherapists have been ordered to turn in gay, lesbian and bisexual service members. Investigators are pursuing close friends and family members in an effort to dig up allegations against suspected gay service members. Some Chaplains are telling service members to come out to their commands. And during a time in which the services are seeking information about anti-gay harassment, Inspectors General have stated that they will turn in service members who inadvertently reveal their sexual orientation in the course of reporting harassment. Military leaders need to make clear that private conversations—to family members, health care providers and best friends—should not be used as the basis for inquiry or discharge. Service members must be allowed to report anti-gay harassment without the fear that they will be punished for their efforts to defend themselves. As former Secretary of Defense Les Aspin explained in 1993,

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<sup>53</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.1.; *Id.* NO. 1332.30, encl. 8.A.1. “A commander may initiate a fact-finding inquiry only when he or she has received *credible information* (emphasis added) that there is a basis for discharge.”

“If 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 commander would not do anything.”<sup>54</sup>

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<sup>54</sup> *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services*, 103rd Cong. 2nd Sess. (1993) at 721 (testimony of then Secretary of Defense Les Aspin).

## DON'T PURSUE

### “Don't Pursue” Places Limits on Gay Investigations

“Don't Pursue” is intended to get commanders and investigators to back off and to respect service members' privacy. More than a dozen specific investigative limits comprise “Don't Pursue” (Exhibit 25). These limits establish a minimum threshold to start an inquiry and restrict the scope of an inquiry even where one is properly initiated. While the investigative limits would help, they are not being followed. Commanders and investigators continue to pry, search and dig in violation of “Don't Ask, Don't Tell, Don't Pursue, Don't Harass.” On February 1, 2000, the Pentagon ordered training on the policy's investigative limits. The jury is still out on whether the training will be effective. Early reviews of the training are mixed.

SLDN documented 470 “Don't Pursue” violations in the past year, compared to 350 the year before, a 34% increase. Almost half of the past year's “Don't Pursue” violations occurred in the Air Force. Air Force “Don't Pursue” violations nearly doubled, with 222 violations compared to 116 the year before. Army violations increased 16% in the past year, with 117 violations compared to 101 the year before. In the Navy, violations increased 8% to 92 violations, compared to 85 violations in the preceding year. The Marine Corps saw a 16% decrease, with 38 violations in the past year compared to 45 violations the year before.

The most common “Don't Pursue” violations are witch hunts and fishing expeditions. Witch hunts occur when commands or peers seek out the sexual orientation of a group of service members. While mass investigations of service members have waned in recent years under “Don't Ask, Don't Tell, Don't Pursue, Don't Harass,” they are not obsolete. This year, a witch hunt at the Defense Language Institute (DLI) at the Presidio of Monterey, California, described in detail below, ensnared at least fourteen airmen, mostly women.

Fishing expeditions are cases where an inquiry is expanded beyond the original allegation to seek out additional grounds for discharge and other potentially harmful information against the service member.<sup>55</sup> Sometimes fishing expeditions start out with false allegations and turn into attempts to find any damaging information against a service member.

Other times, commands attempt to dig up dirt on a service member who has already come out as gay. These investigations seek to punish gay service members by forcing them to provide information that could lead to criminal prosecution or other adverse legal action beyond being fired and losing their benefits.

The Air Force accounts for almost half of all fishing expedition violations. While there appears to be no pattern to fishing expeditions in the other services, Air Force inquiry officers

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<sup>55</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.3 (1994), *Enlisted Administrative Separations*; *Id.* NO. 1332.30 encl. 8.A.3 (1994), *Separation of Regular Commissioned Officers*: “Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.”

are being directed to ask wide-ranging questions into service members' private lives.<sup>56</sup> Air Force inquiry officers often prepare scripted questions expanding the scope of investigations by asking service members and co-workers impermissibly broad questions about the service members' private lives.

Another problem area concerns "prove it" cases, especially in the Navy. In these cases, service members make statements that they are gay, usually in response to anti-gay harassment. Currently, a statement alone is a sufficient basis for discharge. Rather than being kicked out, however, these service members are told they will not be discharged if they do not provide information about their sexual histories. This is an incorrect interpretation of the policy<sup>57</sup> and in many instances the delay this creates places service members in potential danger from anti-gay harassment. Those who respond truthfully also face the danger of further legal harm.<sup>58</sup> Ironically, as a result, the Navy and other Services attempted to retain a record number of gay personnel during the past year who admitted to being gay, but who refused to provide additional information. The problem is that, while allowing gay people to serve, the Navy and other Services took no steps to stop the anti-gay harassment that prompted the service members' statements in the first place.

### **Anatomy of a Witch Hunt: The Case of the Defense Language Institute**

During the past year, fourteen service members stationed at the Defense Language Institute (DLI) at the Presidio of Monterey in California reported serious "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" violations. Reported violations included a witch hunt, numerous fishing expeditions, asking and harassment. The primary culprits were Air Force enlisted leaders, inquiry officers and civilian language instructors. Following the example set by their leaders, Air Force students piled on by hounding their peers with anti-gay epithets, threats and questions. The result was a flourishing and potentially dangerous anti-gay climate.

#### *The Witch Hunt Begins: Student Leaders Questioned About Their Sexual Orientation*

In March and April 1999, Air Force Master Sergeant Rodney Hamlet and Senior Airman David Vigil launched a witch hunt to determine the sexual orientation of A-Flight female student leaders under their charge. By their own admission, the witch hunt was based on nothing more than rumors. The witch hunt has set off a chain of events consuming DLI for the past year and

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<sup>56</sup> The Air Force has claimed it conducts wide-ranging inquiries only in cases involving recoupment of educational funds. However, the Air Force conducts wide-ranging inquiries in most of its cases. The Defense Department attempted to rein in the Air Force in an April 1998 report calling for an end to such tactics and misconduct. The Pentagon finally released new guidelines on February 1, 2000 requiring Service Secretary approval prior to initiating "substantial investigations." It is too early to tell whether the Air Force will finally heed the original letter and intent of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."

<sup>57</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 3.H.1.a.; *Id.* NO. 1332.30 encl. 2.C.1. "Homosexual conduct is grounds for separation from the Military Services. Homosexual conduct includes . . . a statement by a member that demonstrates a propensity or intent to engage in homosexual acts . . . ."

<sup>58</sup> First, the Uniform Code of Military Justice criminally punishes heterosexuals and gays for certain sexual conduct, such as oral sex. Second, some commanders downgrade a service member's discharge characterization and threaten benefits to which a service member is entitled by racking up the number of bases for possible discharge. These "prove it" cases are thus punitive in nature.

ruining the promising careers of some of the Air Force's best and brightest young enlisted members.

On March 26, 1999, Senior Airman Vigil called two female Airmen First Class, who will be called [X] and [Y] in this report, into his office. He reportedly read them their Article 31 rights and told them they were being charged with "conduct unbecoming," a criminal offense. Vigil asked [X], "do you and [Y] have a personal relationship? I am not saying it's homosexual. Did the relationship go sour and did you use your [student leader] position to have her removed from the flight?" Both Airmen First Class said "No," and [Y] was excused. Vigil then asked [X] for her "rope," a symbol worn by student leaders, and removed her from her leadership position (Exhibit 26).

Three days later, Master Sergeant Hamlet reportedly asked Airman First Class [X], "Are you aware of the 'family'?" She said, "No, sir. I can't help you." Hamlet reportedly told her there were allegations she had become "a little too friendly on her flight," and said, "Right now, you are not in trouble. I am just trying to get to the bottom of this."

The same week, Vigil and Hamlet questioned other student leaders about their fellow student leaders' sexual orientations. One of them was Airman First Class Deanna Grossi. Master Sergeant Hamlet reportedly questioned Grossi about a rumor concerning "the family" on her flight and asked if she knew about the "propensity" of her fellow student leaders. Grossi told Hamlet she did not understand. Hamlet replied, there are "certain kinds of people," who like the same kind of people, and asked Grossi if she knew of other airmen's "propensity to like the same kind of people." It was clear to Airman First Class Grossi that Master Sergeant Hamlet was asking about the sexual orientation of other A-Flight student leaders (Exhibit 27).

Master Sergeant Hamlet reportedly proceeded to directly question Airman First Class Grossi about Airman First Class [X]'s "relationship" with Airman First Class [Y]. Hamlet told Grossi he called her in because "nasty rumors were flying around DLI." Then, he said that her name was mentioned among the rumors and he asked her if she was involved in the rumors. Airman First Class Grossi told him, "No" (Exhibit 27).

Enlisted leaders apparently felt free to pursue and comment on the sexual orientation of the students. Airman First Class [X] for example, reports that a male student leader told her that Senior Airman Vigil asked him to keep an eye on a male student because Vigil did not want any "fags" in his Air Force. Another DLI student, while walking down Commander's Hallway, reports she overheard a Military Training Leader remark to another Military Training Leader, "You can tell the student leaders on dyke flight because of their short hair."

Master Sergeant Hamlets and Senior Airman Vigil's actions violated "Don't Pursue" in many ways:

- First, only a commander may authorize an inquiry regarding a service member's sexual orientation, not enlisted leaders. No commander authorized a "Don't Ask, Don't Tell, Don't

- Pursue, Don't Harass" inquiry against the student leaders or Airman First Class Grossi.<sup>59</sup>
- Second, there was no credible evidence upon which to begin an inquiry.<sup>60</sup> Current regulations specifically forbid investigations based on rumor and innuendo.<sup>61</sup>
  - Third, the preferred method of handling allegations of consensual homosexual conduct is through administrative channels.<sup>62</sup> Even though there were never any specific, credible allegations against Airmen First Class [X] and [Y], Vigil said they were suspected of having committed a criminal offense, and he tried to coerce them to reveal their sexual orientation under threat of criminal prosecution.
  - Fourth, even if there had been credible evidence and command authorization, Vigil and Hamlet expanded the scope of their inquiry by questioning other student leaders about their sexual orientation.<sup>63</sup> Hamlet and Vigil, for example, should never have questioned Airman First Class Grossi, let alone implicated her based on rumors and innuendo.

The fact these leaders asked and pursued with impunity was not lost on their students. While an anti-gay climate existed at DLI before the witch hunt, reports of anti-gay harassment and fears of investigation increased dramatically afterward.

### *Witch Hunt Leads to Anti-Gay Harassment*

A few weeks after being targeted by Master Sergeant Hamlet and Senior Airman Vigil, Airman First Class Grossi reports that her classmates began questioning her sexual orientation. The anti-gay harassment began after one classmate reportedly referred to Airman First Class [X] as "queen dyke." Grossi told him the comment was inappropriate and the Airman replied, "Oh no, not you too" (Exhibit 27).

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<sup>59</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.1.; *Id.* NO. 1332.30 encl. 4.A.1. "Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct."

<sup>60</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.1.; *Id.* NO. 1332.30 encl. 4.1. "A commander may initiate a fact-finding inquiry only when he or she has received *credible information* (emphasis added) that there is a basis for discharge."

<sup>61</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.C.; *Id.* NO. 1332.30 encl. 8.C. "A commander will initiate an inquiry only if he or she has credible information that a basis for discharge exists." Credible information does not exist when "[t]he inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation. . . ."

<sup>62</sup> DEP'T OF DEFENSE INSTRUCTION NO. 5505.8 6.1 (1994), *Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations*. "Allegations of adult private consensual sexual misconduct received by a DCIO or other DoD law enforcement organization shall be referred to the commander(s) of the Service member(s) concerned . . . ."

<sup>63</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4 A.3. *Id.* NO. 1332.30 encl. 8 A.3. "Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations."

From that day on, Grossi states her classmates harassed her. For example, when someone wanted to know how to say the word rainbow, a symbol of gay pride, in Serbian, a classmate said, "Oh Grossi should know." A classmate, Airman First Class Reyes, reportedly made repeated sexually explicit gestures and comments to her. While sitting in class, Reyes would hold his fingers to his nose as if he was smelling them until Airman First Class Grossi would notice. Then, Reyes would say, "let me smell your hand so I can see if you did the same thing I did last night." Many of these harassing comments were reportedly made in the full hearing of Grossi's civilian instructor, Mr. Abdolvic. Mr. Abdolvic never attempted to stop the harassment. He did, however, comment on her perceived sexual orientation. On one occasion for example, Grossi states, Mr. Abdolvic asked her if she had "fun . . . with her girlfriend. Oh, I mean boyfriend." Airman First Class Grossi reports she felt powerless to do anything about the anti-gay harassment without drawing more attention to the rumors about her sexual orientation (Exhibit 27).

Airman First Class Grossi was not alone in her experiences with anti-gay harassment and the fear of a career-ending investigation, as the following cases illustrate. DLI students from outside the flight knew about the witch hunt. Some of the students were friends of service members who were questioned. Others heard rumors about the pursuit of A-Flight student leaders. Master Sergeant Hamlet and Senior Airman Vigil set the tone for a hostile command climate in which rule-breaking, in an effort to rout out women and suspected gay men, was the order of the day.

#### *Witch Hunt Forces Airmen to Come Out—Inquiry Officer Conducts Intrusive Investigation*

In April 1999, Airman First Class Katrina Bandle, whose friends were questioned in the witch hunt, decided she could not silently endure anti-gay harassment and wait for someone to accuse her of being gay. Bandle feared her friendship with pursued student leaders would trigger an investigation or, at the very least, speculation that she might be gay. In May, Airman First Class Bandle wrote a letter to her command disclosing her sexual orientation. The letter described her fear of investigation and the constant anti-gay comments and jokes made in her class. These comments were reportedly made by her classmates and sometimes by the class leader, an officer, and her civilian language instructor (Exhibit 28).

Airman First Class Bandle's disclosure, however, did not protect her from embarrassing and personal questions that violated "Don't Ask" and "Don't Pursue." After handing in the letter, Bandle's superior, Sergeant Thrasher, reportedly asked her if she acted on her sexual orientation. She told him she could not answer the question. The Sergeant proceeded to read Bandle her Article 31 rights and questioned her again. Left with little choice, Airman First Class Bandle told him, "No."

The command appointed an inquiry officer, Captain Nicolle Schippers, who interrogated four DLI airmen about Bandle's personal life. Captain Schippers asked them when they found out Airman First Class Bandle was gay and if she had a girlfriend. All four witnesses testified about the service member's sexual orientation, her civilian girlfriend and the negative effect DLI's anti-gay climate was having on Airman First Class Bandle (Exhibit 29).

The inquiry officer overstepped the boundaries of “Don’t Pursue” by questioning Bandle’s friends about her sexual orientation and private life. Captain Schippers’ interrogation of friends was a blatant effort to dig up dirt on the Airman. These questions also potentially placed the witnesses and other airmen at risk of investigation into their personal lives. Additionally, her intrusive investigation violated their freedom of association, which is permitted under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.”<sup>64</sup>

In May, another DLI student, Airman First Class Bill Johnson, came out in direct response to DLI’s anti-gay climate and his knowledge of the earlier witch hunt. In a letter to Master Sergeant Hamlet, he wrote, “[t]he only means by which I can avoid becoming the target of harassment or a witch hunt in the future is by [disclosing my sexual orientation] to you” (Exhibit 30).

Johnson, who had previously experienced an improper security clearance investigation at DLI, feared what might happen to him.<sup>65</sup> The command appointed the same inquiry officer, Captain Schippers, to investigate his case. Captain Schippers reportedly asked him intrusive and improper questions, including, “Did you have any [homosexual] relations before you came into the military,” and “Who are the airmen on post who know you are gay?” After Johnson refused to respond to the questions, Captain Schippers asked him questions about “former lovers” and repeatedly asked for telephone numbers of people who could verify his sexual orientation. The inquiry officer also reportedly interrogated Johnson’s DLI friends and asked them:

- “Do you know Amn Johnson to have had any sex while in the military?”
  - “Is Amn Johnson currently involved in any relationships?”
  - “Does Amn Johnson’s parents know he is gay?”
  - “Who else on post knows he is gay?”
- (Exhibit 31)

The inquiry officer reportedly hounded one friend about whether Johnson was seeing someone, until the friend finally caved in and gave a name. Captain Schippers should never have asked the Airman’s friends such wide-ranging questions about his personal life. She should never have asked for names of other people.

Captain Schippers’ questions show she either did not know “Don’t Pursue’s” investigative limits or she purposefully ignored them. The only appropriate issue to ascertain in a statement case is whether the service member made a statement of sexual orientation. Despite this, Captain Schippers pursued the intimate details of Bandle and Johnson’s lives. Captain Schippers took no steps to address the anti-gay harassment Bandle and Johnson reported. Nor did DLI and 9th Wing commanders, despite the fact that the witch hunt and anti-gay harassment were reported in the discharge packets they reviewed and signed.

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<sup>64</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.E.4.; *Id.* NO. 1332.30 encl. 8.E.4. Credible information does not exist when “[t]he only information known is an associational activity such as . . . associating with known homosexuals . . . .”

<sup>65</sup> In 1998, while undergoing a security clearance check at Monterey, Johnson was asked personal questions regarding his sexual orientation, and whether he “ever had relations with gays or drag queens.”

*Mistaken Identity Forces Student to Come Out:  
Inquiry Officer Pries into Airman's Private Life*

Airman First Class John Petrozino also faced rumors about his sexual orientation and false allegations about his conduct. On June 18, 1999, a DLI Airman reportedly approached Petrozino and claimed that another student, Airman First Class Antonio Milani, had said he saw Petrozino “making out with a guy” in the parking lot the night before. Petrozino explained to the Airman this was not true—a female friend with short hair, wearing a baseball cap, hugged and kissed him goodnight in her car (Exhibit 32).

Later, Petrozino reports overhearing Airman First Class Shell, his roommate and a senior squad leader, discussing Milani's allegation with other airmen. Petrozino, fearing others would believe the false rumor, asked his female friend to explain to the airmen that she was in the car with him. After she did so, Milani apologized. Shell, however, reportedly indicated he believed he had to report the incident, a belief that was mistaken (Exhibit 32).

A few weeks passed and it appeared the false allegation was forgotten. While Airman First Class Petrozino continued hearing the general anti-gay comments and jokes that permeated DLI, he was not singled out. Then, on July 7, for no apparent reason, Airman First Class Shell reportedly shouted in the barracks hallway, loud enough for everyone to hear, “We still have a faggot on flight.” Fearing he could not escape the anti-gay climate and rumors about him, Petrozino informed Master Sergeant Hamlet of the harassment and that he is gay.

The command appointed an inquiry officer, Major Terry O'Brien, to investigate Petrozino's report. After concluding her investigation, Major O'Brien found:

The evidence also suggests that a hostile and intolerant environment existed in [Petrozino's] flight and the squadron. Both A1C Milani and A1C Shell admit to spreading rumors that the subject was gay, and making derogatory comments about homosexuals in general. It is clear that absent the subject's admission there would be insufficient credible evidence to support a finding that he has the propensity to engage in homosexual conduct. The fact that a hostile environment exists, provides the motive for his disclosure (Exhibit 33).

Despite the specific guidance of “Don't Pursue” to limit inquiries to the factual circumstances of the service member's statement, Major O'Brien asked Airman First Class Petrozino invasive personal questions that went well beyond the proper scope of the inquiry. Even though Major O'Brien and Master Sergeant Hamlet found Petrozino's statement credible, Major O'Brien nonetheless pursued details of his private life. Her questions included:

- How do you know you have a “homosexual orientation” and/or “propensity”?
- When did you realize you had a “homosexual orientation” and/or “propensity”?

- Have you told anyone else that you are homosexual? Who? What did you tell them? When? Why? What was their response? How can these people be contacted?
- Have you been dating anyone (opposite or same sex)? How frequently? How recently? How can these people be contacted?
- Have you told any family members? Whom? How can they be contacted?
- Who are your close friends and how can they be contacted? (Exhibit 34)

The violations in this case are numerous. That an inquiry officer would go to such great lengths to get information about a service member's personal life, after the service member disclosed his sexual orientation out of fear for his safety, is outrageous.

Students coming out in fear through the Spring and Summer reported violations of "Don't Ask," "Don't Pursue" and "Don't Harass." SLDN is not aware of any command attempts at the time to investigate or hold accountable those who asked, pursued and harassed. Despite the numerous reports of anti-gay harassment to the leaders of DLI's Air Force contingent, nothing changed. This is particularly disturbing in light of Major O'Brien's specific comments concerning DLI's "hostile and intolerant environment."

Not surprisingly, anti-gay harassment only got worse. By not acting to stop the harassment by leaders, instructors and students, top leaders sent the message that they condoned the abuse. DLI students, particularly women, reported extensive pursuit of gays and a rampant anti-gay climate in the Air Force contingent and classes following the Summer reports of harassment.

#### *Unchecked Anti-Gay Harassment Leads Students to Pursue Peers' Sexual Orientation*

During the summer, rumors about another female Airman First Class's perceived sexual orientation began spreading at DLI. The service member reports many airmen directly commented on her sexual orientation, including, "I heard you are a lesbian," and "Do you like girls or what?" (Exhibit 35).

Additionally, a friend reportedly told her that a group of male airmen were talking about her perceived sexual orientation and discussing other Air Force students they suspected were lesbians in one of the flight dayrooms. These questions and comments persisted through October 1999, when a new rumor that she had sex with a male student circulated around DLI. Numerous people then asked her if this new rumor was true or whether she was a lesbian. Her sexual orientation was reportedly discussed in all DLI Air Force flights (Exhibit 35).

The Airman First Class, aware of the earlier witch hunt, wrote her supervisor, Sergeant Schowl, that she feared that the command would investigate her sexual orientation based on the rumors flying around the base. Feeling she needed to be honest with her command, the Airman First Class disclosed her sexual orientation. She received an honorable discharge.

### *Anti-Gay Harassment Intensifies, Ensnaring More Airmen*

Another student leader, Airman First Class [Z], heard anti-gay comments as soon as she arrived at DLI in February 1999. Whenever some DLI students' names were mentioned, including many of the female students discussed in this section, other students would tell this Airman First Class, "don't hang out with them because they're dykes" (Exhibit 36).

In the fall, Air Force students began hounding Airman First Class [Z] and a female friend, Airman Erin Hollenshead. Over the course of the next few months, at least twenty male DLI students reportedly asked the Airmen if they were sexually involved with each other and commented on their perceived sexual orientation, including by repeatedly calling them "lipstick lesbians." Airman First Class [Z] tried dating male students to halt the anti-gay harassment, but it only got worse. Rumors about [Z] and Hollenshead's alleged relationship spread to other flights (Exhibits 36 & 37).

The Airmen also report that classmates routinely made hostile anti-gay comments and threats including: "If I ever found out someone is a faggot, I would kill him because faggots do not belong in the military," "gay people shouldn't have joined in the first place. They don't deserve to serve our country," and calling other DLI students "fucking faggots."

Airman First Class [Z] and Airman Hollenshead eventually reported the anti-gay harassment to Colonel Smith, the Air Force commanding officer at DLI, after a male student made an offensive gesture, called them "pussy suckers" and asked them "why would you want that, when you can have this," referring to himself. While reporting the harassment, Airman Hollenshead said, "I cannot serve my country in good conscience knowing that my classmates don't want me here and could possibly physically harm me if they suspected or learned that I am in fact gay" (Exhibits 37).

Airman First Class [Z] stated:

There is absolutely no way that I can escape from the constant questions and anti-gay behavior of my fellow students and it will only continue when most of us go on to Goodfellow AFB for our advanced training . . . . I am coming forward and telling you this information now because I refuse to spend my entire military career being hounded by my fellow service members (Exhibit 36).

Both service members are awaiting discharge.

### *Instructor Harasses Gay Soldier*

While the cases above all involve Air Force students, two Army soldiers at DLI also reported violations of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass." One soldier reports that his civilian language instructor asked him if he is gay in front of his entire class, leading to laughter and comments about the soldier's perceived sexual orientation by his classmates. On other occasions, the instructor asked him when he was going to get a girlfriend and if he had a

girlfriend yet. A classmate also reports that the instructor makes and tolerates constant anti-gay comments in class.

### *Soldier Harassed at Monterey*

Another soldier, Private Timothy Dilley, switched classes at DLI to avoid students who constantly brought up topics about homosexuals in class and how “they don’t belong in the military.” Private Dilley believes that anti-gay comments were sometimes made because of the rumors that he is gay and students wanted to see how he would react to the derogatory comments and jokes. Dilley told his teacher he wanted to switch classes because he did not know of any other way to handle the situation (Exhibit 38).

Private Dilley also reported anti-gay harassment out of class. On one occasion, another DLI student reportedly asked him “Can’t you move any faster, you faggot.” Dilley also states he found “I bet you can’t wait for Santa Clause to cum,” written on his door shortly before Christmas. Private Dilley disclosed his sexual orientation to his command because of the anti-gay harassment and climate at DLI. He is in the process of being discharged.

### *SLDN Requests Investigation into DLI Violations*

In an effort to halt the witch hunt of DLI students, SLDN contacted: DLI’s Air Force Commanding Officer; the Staff Judge Advocate at Goodfellow Air Force, who is also the Staff Judge Advocate for DLI; and the Secretary of the Air Force’s office to raise concerns about the base. The Air Force has ordered an investigation into the witch hunt and anti-gay harassment. The investigation’s results were not known at the time of this report’s release. DLI’s commander, Colonel Patrick Smith, investigated the reported asking and anti-gay harassment of the last three female airmen who came out, but only after SLDN’s involvement in the cases. It is unknown if any of the service members who violated the policy have been held accountable.

The command investigation, however, does not help the service members above. Despite the prohibitions against asking, pursuing and harassing, DLI leaders, instructors and students felt free to engage in all three activities. Almost all of the DLI service members mentioned above have been, or are in the process of being, discharged.

### **More Fishing Expeditions**

#### *Pursued Officer Fights to Serve*

An active duty officer, who must remain unnamed, was pursued based on unsubstantiated allegations that did not constitute credible information under current regulations.<sup>66</sup> Her superior,

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<sup>66</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4 F.1.; *Id.* NO. 1332.30 encl. 8.F.1. “Credible information exists, for example, when a *reliable person* (emphasis added) states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex.” DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.E.3.; *Id.* NO 1332.30 encl. 8.E.3. Credible information does not exist when “[t]he inquiry would be based on rumor, suspicion, or capricious claims concerning a member’s sexual orientation. . . .”

a Major, accused the officer of telling her she was in a lesbian relationship. The Major further alleged she saw the officer and her supposed girlfriend receive a blessing at a chapel service and that the officer had disclosed her lesbian relationship to two previous superiors (Exhibit 39).

Based on the Major's unsubstantiated allegations, the officer's commander appointed an inquiry officer to investigate the alleged incidents. The inquiry officer questioned nine people. Instead of limiting his questions to the specific allegations, as required,<sup>67</sup> the inquiry officer asked broad questions that were well beyond the scope of the Major's allegations. These questions included:

- “Have you witnessed any act or statement by the identified person under investigation . . . that could indicate that this person was involved in homosexual conduct? If so, please describe the situation in which the act or statement took place.”
- “Do you know other person(s) involved in homosexual conduct with the identified person under investigation?”
- “Do you know of anyone else who has witnessed any act or statement of homosexual conduct by the identified person under investigation, and/or knows other person(s) involved in homosexual conduct with this person under investigation?” (Exhibits 40).

The inquiry officer conducted a witch hunt contrary to “Don't Ask, Don't Tell, Don't Pursue, Don't Harass”<sup>68</sup> by asking for the names of other people. The inquiry officer also asked questions—digging for additional bases for administrative separation or criminal prosecution – expanding the scope of the inquiry in violation of current regulations.<sup>69</sup>

The inquiry officer interviewed two people who were present at the chapel, neither of whom saw the service member receive the alleged blessing. The inquiry officer also interviewed a former superior. He and the others interviewed stated they did not know of any homosexual statements or conduct by the officer. Despite his wide-ranging inquiry, the only so-called “evidence” the inquiry officer could turn up was one witness who reported the officer possessed a compact disc “labeled or marked as having music containing homosexual or lesbian content” (Exhibit 41). In fact, the compact disc was produced to raise money for breast cancer research. Even had the compact disc contained gay content, this would not be a sufficient ground for investigation or discharge under “Don't Ask, Don't Tell, Don't Pursue, Don't Harass.”<sup>70</sup>

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<sup>67</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.3. (1994) *Id.* NO. 1332.30 encl. 8.A.3. “Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.”

<sup>68</sup> *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services*, S. Hrg. 103-845, 103rd Cong., 2d Sess. (1993) at 709 (statement of General Colin Powell). “We will not witch hunt. We will not chase. We will not seek to learn orientation.”

<sup>69</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.A.3. (1994) *Id.* NO. 1332.30 encl. 8.A.3. “Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.”

<sup>70</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.E.4; *Id.* NO. 1332.30 encl. 8.E.4. “Credible information does not exist when [t]he only information known is an associational activity such as a going to a gay

Despite the inquiry officer's inability to substantiate any of the allegations, a Colonel in the officer's chain-of-command advised the inquiry officer to check the officer's "prior service records for any adverse administrative actions relating to homosexual conduct as part of this fact-finding investigation." There was, however, no derogatory information contained in the officer's file (Exhibit 42). The order once again impermissibly expanded the inquiry in violation of "Don't Pursue" because it was not related to the Major's allegations.

Additionally, the Colonel advised the inquiry officer to search the internet files on the officer's computer based on her possessing the alleged "lesbian" compact disc (Exhibit 43). The order again impermissibly expanded the inquiry in violation of "Don't Pursue" because it was not related to the specific allegations against the officer. The order was made even more absurd by its suggestion that a musical compact disc would in some way be connected to files or e-mail stored on the officer's computer. The order is simply further evidence that the officer's chain-of-command was on a fishing expedition. Once again, no "gay" information was found.

In the Report of Investigation (Exhibit 39), the inquiry officer conceded the Major's uncorroborated allegations were the only information against the officer. Yet, despite the lack of any corroborating evidence, he recommended the command begin administrative separation proceedings against her. The officer's military defense counsel, with SLDN's assistance, successfully fought the recommendation. The officer's higher headquarters ultimately reversed the command's decision, finding that sufficient evidence for an administrative separation did not exist (Exhibit 44). The officer remains on active duty, but fears that knowledge of the investigation could lead to suspicion and anti-gay harassment if coworkers learn of it.

#### *Airman Coerced to "Prove" He Is Gay*

After Airman First Class Jeremy Cruz informed his command he is gay, enlisted leaders at Holloman Air Force Base violated "Don't Pursue" by conducting an unauthorized inquiry and by asking him to "prove" he is gay. The first "Don't Pursue" violation occurred when the Airman's First Sergeant, Senior Master Sergeant Barbara L. Townsend, gathered three other noncommissioned officers and proceeded to interrogate Airman First Class Cruz in front of them. She asked Cruz about his private life, without command authorization.<sup>71</sup>

First Sergeant Townsend read Cruz his Article 31 rights for suspicion of violating the military's sodomy provision. Townsend then asked Cruz questions about his sex life, including, "Did you have sex with a male person," and "Did you have sex with a male before you came into the Air Force?" Even if the investigation were properly initiated, the First Sergeant's questions were not proper, because they were not limited to the factual circumstances in his statement. Instead, the First Sergeant tried to solicit names of sexual partners who might have been in the military. The inquiry should have been limited to little more than whether Cruz made the statement.

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bar, possessing or reading homosexual publications, associating with known homosexuals. . . . Such activity, in and of itself, does not provide evidence of homosexual conduct."

<sup>71</sup> DEP'T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4 A.1; *Id.* NO. 1332.30 encl. 4.A.1. "Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct."

The First Sergeant and the other three noncommissioned officers concluded that “Amn Cruz is very believable. . . . we also agreed that he admitted to having gay feelings and wanting to act on them.” According to “Don’t Pursue,” the inquiry should have stopped there, and Cruz should have been administratively separated. Since Airman First Class Cruz had not provided the answers she was looking for, however, Townsend questioned if he was just “confused,” instead of gay (Exhibit 45).

In the days following First Sergeant Townsend’s unauthorized interrogation, the command-appointed inquiry officer, Chief Master Sergeant Joyce Gobrecht, questioned eight people about Airman Cruz’s sexual conduct, outing him to some of his coworkers in the process. The inquiry officer’s questions included:

- “Have you ever heard him talk about desires to engage in homosexual acts . . . ?”
- “Have you ever witnessed any homosexual acts by him?”
- “Do you know anyone who has witnessed any homosexual acts by him?”
- “Do you know if he has a boyfriend?” and
- “If you’ve seen or heard of any homosexual acts, what were they, with whom, when, where, etc.” (Exhibit 46).

These questions violated “Don’t Pursue” by wrongfully focusing on whether Cruz had sex instead of whether he made a coming-out statement, and by soliciting allegations against others. As evidence of how widely the inquiry officer cast her net, one questioned service member stated that he had only “hung out with [Cruz] once.”

The questions, however, did not stop there. First Sergeant Townsend renewed Airman First Class Cruz’s interrogation. With no basis whatsoever, she again read him his Article 31 rights “for violating Article 125 (sodomy).” Townsend wrote in the interrogation summary that she asked Cruz:

- “how he knew he wanted that lifestyle if he’s never engaged in homosexual activity;”
- “how do you know you are gay if you’ve never had sex with a man;”
- “if he’d had sex with a man;” and
- “to tell me about it . . . the number of men or how many times.”

Airman First Class Cruz states he finally cracked under the repeated questioning and revealed intimate details of his private sexual conduct. Townsend reported, “I started to write down the information . . . an example was the first man, they engaged every weekend; the next man was about every three days, etc.” (Exhibit 47).

First Sergeant Townsend reportedly stopped writing and coerced a written statement from Airman First Class Cruz identifying all of his sexual partners. Townsend’s aggressive and intrusive investigation goes against common decency as well as the law.

The Air Force conducted this investigation improperly. Initially, there was no clear commander authorization. There was no basis to investigate Cruz for sodomy. There was no justification for questioning unit personnel concerning Cruz's sexual conduct. Finally, there was no basis for requiring Cruz to list the names of past sexual partners. This was a witch hunt. In a simple coming out case such as this, the Department of Defense has clearly stated that "little or no investigation" should be conducted.<sup>72</sup>

### *Navy Outs Sailor While Conducting Fishing Expedition*

A Navy meteorologist, Petty Officer Second Class Nicole Barbe, stationed in Kingsville, Texas, faced an intrusive investigation after coming out to her command due to anti-gay harassment and the stress of living in the closet (Exhibits 48). As in other cases discussed in "Don't Pursue," the command-appointed inquiry officer did not limit the scope of his investigation to whether Petty Officer Second Class Barbe made a statement concerning her sexual orientation and its credibility. Instead, the inquiry officer, Lieutenant Commander Milot, impermissibly expanded the investigation's scope by asking Petty Officer Second Class Barbe questions about her sexual conduct (Exhibit 49).

Lieutenant Commander Milot asked other sailors impermissible questions, including if they had ever observed or heard Barbe say she engaged in homosexual acts. Additionally, Milot reportedly outed Barbe to dozens of service members, at two bases, when he asked sailors who barely knew her if they knew she is gay. After the investigation, a number of service members reportedly told Barbe they had only become aware of her sexual orientation because they had been faxed documents referring to the Homosexual Conduct Policy and to Petty Officer Second Class Barbe by name.

Current regulations state that a service member's sexual orientation is "a personal and private matter," but the inquiry officer failed to respect this basic tenet. The inquiry officer also failed to follow the rule that "little or no investigation" should be conducted when a service member comes out as gay, lesbian or bisexual.

Remarkably, Lieutenant Commander Milot stated in his Report of Investigation, "Although now an openly homosexual individual . . . [h]er continued presence in the Navy is consistent with the Navy's interest in good order and discipline and morale" (Exhibit 49). Petty Officer Second Class Barbe's commander, Commander Daniel Soper, then sent her a letter stating her retention was in the best interest of the Navy. However, Commander Soper's letter further admonished, "I strongly recommend that you continue to keep your sexual orientation a personal and private matter." That was impossible. The inquiry officer had reportedly outed her and Barbe no longer had any control over whom within the Navy knew she is gay. Even if she had wanted to comply, she could not (Exhibit 50)

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<sup>72</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), *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*, Apr. 1998, at 11. "The decision whether to initiate an investigation when a service member acknowledges his or her homosexuality and does not contest separation has generally rested with the individual commander. We concluded that, in most of these cases, little or no investigation should be conducted."

One example illustrates how untenable this suggestion was. After Barbe was retained, Barbe's supervisor, Chief Petty Officer Robert Tyo, reportedly threatened her by saying he was "watching her" so she would not do anything in her personal life that would subject her to discipline. Then, during a work-related dinner, Chief Petty Officer Tyo reportedly questioned Petty Officer Second Class Barbe, in front of her peers and their spouses, about why she did not bring a date. Soper and Tyo placed Barbe in a double bind by refusing to discharge her for being gay, while goading her and threatening her with possible punishment if she made any "missteps."

Ultimately, the Navy discharged Barbe after SLDN intervened. To our knowledge, the people who violated "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" were not held accountable for their actions.

SLDN welcomes what seems to be an increasingly public desire by commanders to retain openly gay service members. SLDN documented more than twenty cases in the past year where commanders moved to retain openly gay personnel, mostly in the Navy. It is not clear what lies behind command motives in these cases.<sup>73</sup>

### **Additional "Don't Pursue" Incidents**

- A Senior Airman, Jose de Leon, serving at Andrews Air Force Base, Maryland, reported that his supervisor threatened all of his subordinates with adverse action if they did not report all statements of sexual orientation to their chain-of-command. The service member informed his command that he is gay after rumors circulated around his unit and he was repeatedly harassed about his perceived sexual orientation. This harassment included one airman reportedly saying "this is how de Leon likes it, in his ass," while making a motion between his legs with a pole. During a basketball game, the same airman yelled at Airman de Leon, "If you ever touch me again, I'll kick your faggot ass" (Exhibit 51).
- After being harassed by other *USS Abraham Lincoln* crewmembers, Seaman Luis Sierra went on an Unauthorized Absence (UA) because he feared for his safety. When he returned, he reported the anti-gay harassment and informed his commander he is gay. The ship's attorney, Lieutenant Dow, told Sierra that his statement was not sufficient for discharge. In response, Sierra wrote a letter to Dow stating, "I was very shocked that you asked me to prove that I am gay considering all I have gone through. . . . I would prefer to not disclose the intimate details of my life, but I

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<sup>73</sup> Some commanders may be concerned with retaining quality personnel as every service struggles to meet their retention goals. Some may be trying to find a way to assess personnel based on their merit, as it should be. Some may be signaling to superiors that sexual orientation has nothing to do with military suitability and that retaining good soldiers, sailors, airmen and marines who are gay is in the best interest of the military.

feel like you have left me no choice, but to disclose my most personal thoughts . . .” (Exhibit 52).

- A Marine Private, stationed at Parris Island, South Carolina, came out to his command in basic training. The inquiry officer called the Private’s parents and questioned them about his sexual orientation. The inquiry officer also ordered the marine to write down every instance in which he had engaged in homosexual conduct and to provide the names and telephone numbers of people with whom he engaged in homosexual conduct (Exhibit 20).
  
- A Senior Airman’s wife told her command that her husband is gay. Fearing an investigation, the Senior Airman decided to be honest with his command by disclosing he is gay. The Senior Airman’s command nevertheless appointed an inquiry officer who wrongfully expanded the scope of the investigation by asking the Senior Airman questions such as:
  - “Are you now or have you ever been dating anyone;”
  - “Do you belong to any homosexual organizations;”<sup>74</sup>
  - “Do you have any close friends that can be contacted that have knowledge of this matter;”
  - “Do you subscribe or purchase any gay or lesbian magazines, video’s (sic) or other pornographic material;”<sup>75</sup>  
and
  - “Do you or have you ever participated in gay parades or demonstrations or supported any gay organization’s (sic)”<sup>76</sup>  
(Exhibit 53).

The inquiry officer also questioned ten people regarding the Airman’s sexual orientation and private life.

### **“Don’t Pursue” Conclusion**

In the past six years, commanders have pursued service members based on any information, however obtained, in direct violation of the investigative limits under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Commanders have pursued information that is defined as not credible, including anonymous allegations, false charges, rumor and innuendo. Commanders and inquiry officers have expanded inquiries, looking for information when their initial leads have run dry or proven untrue so that they could justify their inquiries. Commanders and inquiry officers have pursued other service members uncovered in their investigations. The bottom line

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<sup>74</sup> DEP’T OF DEFENSE DIRECTIVE NO. 1332.14, encl. 4.E.4; *Id.* NO. 1332.30 encl. 4.E.4. 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, or marching in a gay rights rally in civilian clothes.”

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

is that commanders still work hard to put service members onto the radar screen, contrary to the policy's letter and intent that sexual orientation is a "personal and private" matter.

There are three reasons why "Don't Pursue" violations continue to increase: lack of guidance, accountability, and recourse. First, until this year, the Pentagon refused to distribute guidance on the policy's investigative limits or intent to respect privacy, despite repeated SLDN requests to get this information to the field. In August 1999, Secretary Cohen finally instructed the services to prepare training on the policy's investigative limits for all service members.

The Army's training materials include information regarding the policy's investigative limits, including what is and is not credible information and the grounds for a fact-finding inquiry. The Marine Corps training focuses on how to discharge service members. The Air Force has not made its training public, but should do so. Until all service training programs include the limits to investigations, and the intent of the policy to back off, it is likely that "Don't Pursue" violations will continue to increase.

Second, military leaders need to hold accountable those who ask, pursue and harass. Service members need to know what the consequences are for violating "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," including actions from letters of counseling to court-martial charges, depending on the severity of the violation.

Third, service members who are improperly targeted need realistic, clearly identified recourse. Military attorneys, for example, should be permitted to represent service members before an inquiry is started and show why an inquiry is not appropriate.

In addition, commanders should state in writing, at the outset of an inquiry, the credible information on which the inquiry is based.

Finally, SLDN would welcome guidance from the Department of Defense or the services regarding the recent trend permitting known lesbian, gay and bisexual personnel to serve, and what steps they will take to ensure service members' safety and the viability of their careers in these cases.



## DON'T HARASS

*What has been alleged is that there is a lot of harassment of homosexual service members within the military. We have always said that every time we have clear evidence of harassment, we will investigate that. . . . We don't believe that there has been escalating harassment of gays in the military, and I don't believe that the evidence shows that. . . . [I]t's not an issue that generally comes up, that this is a problem for commanders.*<sup>77</sup>

—Kenneth Bacon, Defense Department Spokesman  
December 9, 1999

*Butt pirate. Faggots. Queers. Dyke ass bitch. Bunch of flammers. Fucking faggot. Backside ranger. Die Faggot. Twisted freaks. Rump ranger. Lezzies. Pole smoker. Goddamn freaks.*

—Typical anti-gay comments reported  
by service members to SLDN

### “Don't Harass” Violations Soar

“Don't Harass” states, “the Armed Forces do not tolerate harassment or violence against any service member for any reason.”<sup>78</sup> Despite this clear standard, SLDN documented 968 reports of anti-gay harassment this year, up 142% from 400 last year. Reports of anti-gay harassment, including death threats, assaults and verbal gay-bashing, more than doubled for the second consecutive year.

Despite six years of SLDN warnings that a tragedy like the 1992 murder of gay sailor Allen Schindler was likely to recur if service leaders did not take steps to stop anti-gay harassment,<sup>79</sup> military leaders utterly failed to begin to take steps to address this serious problem until after Private First Class Barry Winchell was murdered last summer.

In 1997, the Office of the Under Secretary of Defense issued the Dorn memorandum instructing commanders to investigate anti-gay threats and lesbian baiting, not service members who report it.<sup>80</sup> SLDN then documented that the services never sent the guidance to the field. In

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<sup>77</sup> Defense Department Regular News Briefing Speaker: Kenneth H. Bacon, Defense Department Spokesman, trans. by Federal Document Clearing House, Dec. 9, 1999.

<sup>78</sup> *Applicant Briefing item on Separation Policy*, addendum to DEP'T OF DEFENSE DIRECTIVE NO. 1304.26, (1993), *Qualification Standards for Enlistment, Appointment, and Induction*.

<sup>79</sup> C. Dixon Osburn and Michelle M. Benecke, *Conduct Unbecoming: The First Year Under “Don't Ask, Don't Tell, Don't Pursue,”* Feb. 1995, at 27: “It is reasonably foreseeable that if the Department of Defense does not take corrective actions now, deaths of actual and perceived homosexual service members, like slain sailor Allen Schindler, will occur.”

<sup>80</sup> Under Secretary of Defense Edwin Dorn, *Guidelines for Investigating Threats Against Service Members Based on Alleged Homosexuality*, Mar. 24, 1997.

April 1998, the Pentagon conceded the services had not distributed the Dorn memorandum. The Pentagon not only ordered the Dorn memorandum's reissuance, but also that the memo be clarified to expressly include anti-gay harassment, not just threats.<sup>81</sup> Months passed without the memo being sent to the field, despite repeated requests by SLDN. Only after Private First Class Barry Winchell's murder did the Pentagon finally distribute the memo.

This year, reports of anti-gay harassment, from death threats to verbal gay-bashing, came from nearly every major base and port. Service members report being harassed by officers and enlisted personnel. The anti-gay harassment often begins in basic training and continues throughout a service member's career. Today, anti-gay slurs, comments, and epithets are as much a part of the military culture as the uniform.

Overall, the Navy is the worst violator of "Don't Harass," with 330 incidents of anti-gay harassment during the past year, a 108% increase over the 158 violations reported the year before. The Army had the second highest number of harassment violations with 276, a 126% increase over the 122 violations found during the previous year. The Air Force had 217 incidents, an alarming 302% increase from last year's 54 violations. There were 134 Marine Corps violations, a 113% increase over last year's figure of 63.

Even after Secretary Cohen stated in August 1999 that he would not tolerate anti-gay harassment, SLDN documented 495 reports of anti-gay harassment, more than half the 968 total incidents of "Don't Harass" violations during the past year. Service members who contact SLDN endure the same daily anti-gay harassment that Private First Class Barry Winchell faced and they are terrified they may be the next service member who is attacked.

This section examines in depth the anti-gay climate at Fort Campbell, Kentucky that contributed to the murder of Private First Class Barry Winchell. The "Don't Harass" section then turns to additional examples of anti-gay harassment endured by SLDN clients from death threats to verbal gay-bashing. The section closes with an examination of lesbian baiting as "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" continues to disproportionately impact women and derail their careers.

## **Anatomy of a Murder: Pervasive Anti-Gay Climate at Fort Campbell, Kentucky**

### *The Murder of Private First Class Barry Winchell*

During the early morning of July 5, 1999, just hours after our nation celebrated the anniversary of its independence, Private Calvin Glover took a baseball bat offered by Specialist Justin Fisher, beat Private First Class Barry Winchell to death, shattering his skull like an

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<sup>81</sup> OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS) Report to the Secretary of Defense, Office of the Undersecretary of Defense Personnel and Readiness, *Review of the Effectiveness of the Application and Enforcement of the Department's Policy on Homosexual Conduct in the Military*, Apr. 1998, at 14. ". . . in reissuing the memorandum providing guidelines for investigating threats against service members based on homosexuality, the Department should include language to make clear that harassment of service members based on their alleged or presumed sexual orientation is unacceptable and that service members who engage in such harassment will be held accountable."

eggshell while he slept in his barracks. Fifteen to twenty minutes transpired before Glover returned the baseball bat to Fisher, who then washed Winchell's blood off the bat.

The Army initially attempted to downplay the murder, calling Winchell's death the result of a "physical altercation in a post barracks," as though it was the result of a mutual fight (Exhibit 54). In response to a reporter's question, the Army also claimed there was no evidence that the murder was an anti-gay hate crime, without having investigated the possibility. As late as August, 1999, the Fort Campbell Criminal Investigation Division flat out denied to SLDN finding any evidence of a hate crime. SLDN conducted its own preliminary investigation and, contrary to the Army's initial position, found every reason to be concerned this was an anti-gay hate crime.

Five months later, in December 1999, the Army convicted Private Glover of premeditated murder and sentenced him to life in prison with the possibility of parole. Army prosecutors argued that Glover's primary motive was a predisposed hatred of gays. One month later, in January 2000, the Army convicted Specialist Justin Fisher for obstructing the criminal investigation into the murder, lying to investigators, and providing alcohol to a minor. For reasons that remain unclear, Major General Robert T. Clark, Commanding General, 101st Airborne Division (Air Assault) at Fort Campbell, accepted a lenient plea bargain with Fisher, reportedly over the objections of Winchell's family. The plea agreement dropped the original charges of principal to premeditated murder and accessory after the fact. If Fisher had been found guilty of those charges, he could have been sentenced to the maximum of life in prison. Instead, pursuant to the plea bargain, Specialist Fisher was sentenced to twelve and one-half years in prison, with possibility of parole in four years.

The courts-martial<sup>82</sup> of Private Glover and Specialist Fisher provide a window into the virulent anti-gay climate at Fort Campbell that set the stage for this terrible tragedy.

Soldier after soldier testified during the preliminary hearings<sup>83</sup> that Private First Class Winchell had faced daily anti-gay harassment from his peers and supervisors for four months prior to his murder. Soldiers testified it was common to use words such as "fag," "faggot" and "queer." They also testified that Winchell became the target of daily, direct anti-gay harassment after Fisher started rumors that Winchell had gone to a gay bar in Nashville, Tennessee. Winchell tried to deny resulting questions about his sexual orientation at every turn, but the taunting continued unabated. At the criminal proceedings, soldiers testified that:

- Staff Sergeants Kleifgen and Dubielak, Private First Class Winchell's supervisors, asked Winchell directly if he were gay;

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<sup>82</sup> A court-martial is a military criminal proceeding that is similar to a civilian criminal trial. Both the military court-martial and civilian criminal trial use similar rules of evidence and in each forum an accused may choose a trial by jury or a trial by judge alone.

<sup>83</sup> An Article 32 hearing, which takes place before a court-martial, is somewhat similar to a civilian grand jury proceeding. However, in a military Article 32 hearing, the defense counsel may present evidence to reduce or dismiss the charges against his/her client.

- Staff Sergeant Kleifgen told his platoon, referring to Winchell, “I have a soldier I could get out of the Army if I wanted to. I have a soldier that is gay;”
- First Sergeant Secrist said, referring to Private First Class Winchell, “I’m gonna get that little faggot,” or words to that effect;
- Specialist Fisher allegedly told Private First Class Winchell, “I will make you my bitch;”
- Private Glover told Private Kenneth Buckler, “the one thing I can’t stand is faggots or niggers;” and
- Private Johanson allegedly asked Private Winchell, “Do you take it in the ass or mouth?”
- Specialist Fisher repeatedly taunted Private Glover about having “his ass kicked by a faggot” when Private First Class Winchell bested Private Glover in an altercation provoked by Private Glover on July 3, 1999.

Multiply the general anti-gay comments that permeate Fort Campbell and the comments directed specifically to Winchell, only a few of which are above, by 120 days and one begins to get a sense of the enormous strain placed on Private First Class Winchell at Fort Campbell. Two friends, Specialist Philip Ruiz and his wife, Melanie, testified that Winchell was profoundly troubled by the rumors and was concerned he would be kicked out of the Army he loved as a result of them. The Ruizes further testified that Private First Class Winchell was particularly concerned about possible violence by Specialist Fisher. Soldiers testified Specialist Fisher had previously assaulted Private Winchell with a metal dust pan, opening a cut that required stitches to Winchell’s face. And the Ruizes testified Specialist Fisher had threatened to kill Winchell one night when they returned from a night out in Nashville.

Staff Sergeants Kleifgen and Dubielak, while not blameless for asking, pursuing and harassing Winchell in direct violation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” recognized that what was happening to Winchell was wrong. When First Sergeant Secrist, the top enlisted leader in the unit, began to call Winchell a “faggot” and single him out for punishment, Kleifgen and Dubielak took steps to address the First Sergeant’s misconduct. They reported the First Sergeant to their commander, Captain Rouse, and subsequently to the base Inspector General. During the criminal proceedings, Staff Sergeant Kleifgen testified that neither Captain Rouse, nor the Inspector General, took action against First Sergeant Secrist.

On July 3, 1999, soldiers including Private First Class Winchell, Private Glover and Specialist Fisher, were drinking outside their barracks. According to soldiers’ testimony, Glover picked a fight with Winchell, which Winchell handily won. As the fight ended, Glover threatened Winchell, saying, “It’s not cool. I could kill you.”

Soldiers testified that Specialist Fisher taunted Glover ceaselessly on July 4, 1999 about having had “his ass kicked by a faggot.” Fisher himself testified that as the July 4 party ended, he invited Glover up to his and Winchell’s room for more alcohol. He played the compact disc from *Psycho* and taunted Glover further about being bested by Winchell. Fisher stated at his own sentencing hearing that he suggested to Glover that he do something about it. Glover took Fisher’s baseball bat, walked outside the room, and bashed Winchell to death.

One of the many questions that arises out of Winchell’s murder is who is or are responsible for the anti-gay harassment and failed implementation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” that set the stage for Winchell’s murder. SLDN is concerned that if the Army holds anyone else accountable, it will scapegoat lower ranking noncommissioned officers, rather than placing blame at the top with Major General Clark, where it belongs. The following cases illustrate how anti-gay harassment was not isolated in Winchell’s unit, but continues to permeate the entire culture at Fort Campbell. The command climate is ultimately set by the top—Major General Clark.

*“Faggot, Faggot, Down the Street. Shot Him, Shot Him, Till He Retreats”*

Two months after Private First Class Winchell’s murder, Private Javier “Cortland” Torres feared he might be next in line to be killed. A heterosexual soldier, former Specialist Richard Adkins, warned Torres that he might be in danger after he overheard two members of Torres’ unit speculating about Torres’ sexual orientation. While one soldier supported Torres, the other soldier said “that’s fucked up.” Adkins told Torres that the tone of the conversation made him fear for Torres’ safety.

Private Torres reports that rumors about his sexual orientation became more prevalent after he expressed concern about Private First Class Winchell’s murder, upon learning of the crime. Torres did not know Winchell and did not serve in the same platoon, but was horrified to learn that one soldier had killed another soldier. In response to his expression of concern, soldiers derisively dismissed the murder, saying, “So what if he (Winchell) was killed. He was gay.” And “Who cares? He was just a fag.” The soldiers then turned on Private Torres and asked him if he were gay too (Exhibit 55).

Winchell’s murder and the increasing speculation about Torres’ sexual orientation terrified Torres. This fear was exacerbated by Torres’ observations of anti-gay harassment by his enlisted leaders.

Shortly after Winchell’s murder, Staff Sergeant Matelstreet led Private Torres’ unit on a run, singing the following cadence: “Faggot, faggot, down the street. Shot him, shot him, till he retreats” (Exhibit 55). The chant advocated violence against gays in the wake of the anti-gay hate crime murder of one of Fort Campbell’s own soldiers. Torres, for fear that his noncompliance would reveal that he is gay, felt forced to sing the chant. No one objected to the chant.

On several occasions between May and September 1999, Torres reportedly heard First Sergeant Teetly refer to soldiers as “getting porked up the ass” if they could not adequately

perform assigned tasks. Everyone in the unit understood this to be a disparaging remark about gay people. If the First Sergeant had made similarly disparaging remarks based on race, for example, or religion, he would no longer be serving in the United States Army (Exhibit 55).

At the end of August 1999, Sergeant Barry briefed Torres' unit on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass." The class was intended to remind soldiers about the policy's investigative limits and prohibitions on anti-gay harassment. Torres reports that Sergeant Barry called the class a "fag briefing" and referred to gay soldiers as "fags." Sergeant Barry's comments again sent the unmistakable message to the soldiers that they did not really have to observe "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" (Exhibit 55).

Private Torres did not know what to do. He feared that remaining silent would only fuel the speculation about his being gay and place him in harm's way. He could not report the anti-gay harassment to his leaders because they were the ones engaging in it. He was reluctant to come out to his command, for fear that they would mishandle the information and he could be murdered by bigoted soldiers. Ultimately, Private Torres concluded he had to come out and leave, despite his strong desire to serve, as his only way to protect his safety. With SLDN's assistance, Private Torres reported in detail the anti-gay harassment he was facing, and found a military defense attorney who expedited Private Torres' discharge.

The command at Fort Campbell took no steps on their own initiative to investigate or hold people accountable for the anti-gay harassment Torres witnessed and experienced. Only after SLDN and Congressional members raised this case to the highest level at the Pentagon was any investigation started. The results of that investigation have not yet been made available, although recent unofficial reports indicate that some steps may have been taken against Staff Sergeant Matelstreet.

*"You Are a Faggot . . . and I Will Beat You with a Baseball Bat"*

After Private First Class Winchell's murder, Specialist Michael McCoy observed increased anti-gay epithets, comments and graffiti at Fort Campbell. The increased anti-gay harassment indicates a lack of leadership in stopping anti-gay harassment even after Winchell's murder. In some cases, Specialist McCoy even observed soldiers mocking Winchell's murder. During one training exercise, for example, Specialist McCoy heard an infantry soldier state that if anyone answered a question wrong, "You are a faggot." Another soldier replied with "That's right, and I will beat you with a baseball bat" (Exhibit 56). These statements were made in the presence of noncommissioned officers, none of whom spoke up or intervened.

On other occasions, Specialist McCoy observed graffiti in public areas on post. One drawing on the wall of the Family Support Center restroom portrayed a two to three foot long baseball bat with the words "FAG WHACKER" prominently inscribed in the middle of the bat (Exhibit 57). This was not a small doodle, but a large and purposeful drawing mocking Winchell's murder and indicating the degree of anti-gay sentiment allowed to flourish at the base. At a post recreation center, graffiti appeared stating, "All Fagets [sic] in the Army will be killed" (Exhibit 58). Both the Family Support center and the post recreation center are heavily

used common areas at Fort Campbell in which officers and enlisted leaders could not have missed seeing the graffiti.

Specialist McCoy decided to come out and be discharged out of fear for his safety after rumors began circulating about his sexual orientation. While McCoy reports he had a good command that acted promptly in addressing the rumors, he feared that his leaders could not protect him twenty four hours a day, seven days a week. Specialist McCoy did not fear the colleagues in his unit, but soldiers outside of his unit who more freely engaged in anti-gay harassment (Exhibit 59). Because his job required him to train and work with soldiers from other units, like those who mocked Private First Class Winchell's murder, McCoy concluded he had no choice to protect his safety but to come out and be discharged.

Specialist McCoy was a good friend of Private First Class Winchell's and was devastated by his death. Specialist McCoy could not fathom the disrespect other soldiers showed by mocking Winchell's death and the failure of leaders to correct it on the spot.

### *Gays "Don't Deserve . . . Same Rights"*

A third soldier arrived at Fort Campbell shortly after Winchell's murder and reports he was shocked to find a command climate of intolerance and indifference, characterized by constant anti-gay epithets and jokes. The soldier reports that a Lieutenant in his battalion told soldiers in the unit day room that gays "give nothing to society so they don't deserve the same rights that heterosexual people have." No soldier objected.

The soldier was forced to come out after a Sergeant searched through files on the soldier's personal computer<sup>84</sup> and discovered some gay-related materials. While the Sergeant did not report him to the command, the Sergeant teased him about being gay and told others about the soldier. Not wanting to become the victim of an assault or other anti-gay harassment, the soldier believed he had no other option but to come out to his command and be discharged.

### *Complete Failure of Leadership at Fort Campbell*

In the wake of Private First Class Winchell's murder, gay discharges at Fort Campbell have nearly tripled, from 7 to 20. Without basis, Major General Clark has blamed the increase in gay discharges on gays "seeking an easy way out of the Army."<sup>85</sup> Major General Clark's comment suggests a total disregard for the anti-gay harassment reported by his soldiers.

The preliminary hearings in the Winchell murder case shed light on further command indifference for the well-being of soldiers at Fort Campbell, including:

- pervasive drinking by underage soldiers in the barracks;
- lack of adequate supervision in the barracks;
- violence in the barracks;

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<sup>84</sup> See further discussion of case in the "Don't Ask" section of this report.

<sup>85</sup> Elizabeth Becker and Katharine Q. Steelye, *Policy on Gays Part of the Drill at Army Base*, N. Y. Times, Feb. 14, 2000, at A1.

- lack of 911 access from individual barracks room phones; and
- lack of training on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.”

Major General Clark has never once, to SLDN’s knowledge or the knowledge of the nearly 20 soldiers from Fort Campbell SLDN has assisted, publicly stated anti-gay harassment is wrong. Major General Clark alluded to anti-gay harassment for the first time months after Winchell’s murder and apparently in response to the Department of the Army and the high level of media interest in the Winchell case. In a memorandum titled “Respect for Others,” Major General Clark stated: “Respect for others is an Army Value and a cornerstone of discipline and *esprit de corps*. All soldiers will be treated with dignity and respect.” Clark’s failure to address anti-gay harassment directly, given the magnitude of information about anti-gay harassment that was then on the record, is inexplicable.

More recently, Major General Clark placed off-limits a gay-friendly bar in Nashville,<sup>86</sup> making it a criminal offense<sup>87</sup> to go to that bar. Under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” soldiers may go to gay bars without fear of reprisal. Major General Clark states he made the move to protect soldiers from possible drug use or violence, but offered no evidence to back up his claim. SLDN has requested to know the basis of his claim. Without supporting information, this claim raises the question of whether his order was motivated by anti-gay animus.

Major General Clark also recently refused to permit publication of an ad in the base paper, *The Fort Campbell Courier*, alerting soldiers to how they can anonymously report anti-gay harassment to the Army Inspector General. On his behalf, the Fort Campbell Public Affairs Office stated, “We do not believe that running this advertisement is in the best interest of the command and its soldiers (Exhibit 60).” Soldiers are terrified to meet with the Inspector General review team for fear of being outed, harassed and discharged. Their fears are well-founded. The officer in charge of the Inspector General review team stated he believes he must turn in any service members found to be gay during the course of investigating anti-gay harassment. Given that the purpose of the ad was to inform soldiers of where they could safely turn to address harassment, one would think this would be a goal shared by the chain-of-command.

Major General Clark’s actions from start to finish underscore his failed leadership in addressing anti-gay harassment at Fort Campbell. The Army should take appropriate action to send the unmistakable message that it will hold accountable those who fail to address anti-gay harassment, and who permit a hostile command climate to flourish.

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<sup>86</sup> *Id.*

<sup>87</sup> Violation of direct orders may result in criminal charges under the Uniform Code of Military Justice.

## **Anti-Gay Harassment Pervasive: From Officers and Enlisted**

### *Marine Lieutenant Colonel Mocks Private First Class Winchell's Murder and Pentagon Order Against Anti-Gay Harassment*

In October 1999, Marine Lieutenant Colonel Edward Melton informed his subordinates and his boss at Twenty-Nine Palms, California of his opinion of gay people in an e-mail. The e-mail related to the need to properly apply the "Homosexual Conduct Policy" and to stop anti-gay harassment. In his e-mail, Lieutenant Colonel Melton wrote:

Due to the "hate crime" death of a homo in the Army, we now have to take extra steps to ensure the safety of the queer who has 'told' (not kept his part of the DOD "don't ask, don't tell" policy). Commanders now bear the responsibility if someone decides to assault the young backside ranger. Be discreet and careful in your dealings with these characters. And remember, little ears are everywhere (Exhibit 61).

Lieutenant Colonel Melton violated the guidance against anti-gay harassment on its face. He also communicated to his subordinates that they did not need to take it seriously. He callously mocked Private First Class Winchell's murder.

Dismayed by the complete disregard for their son's murder, Private First Class Winchell's parents wrote to the Commandant of the Marine Corps, General J. L. Jones, and the base commander, Major General Clifford Stanley, seeking accountability. In their December 22, 1999, letter, Pat and Wally Kutteles wrote:

We can't put into words how appalled and upset we were when we read the text of an e-mail from a Marine Corps officer, Lt. Col. Edward Melton, mocking the murder of our son . . . Lt. Col. Melton's e-mail [also] shows a lack of concern for the men and women who serve under him and may be in need of his guidance, leadership or protection. We request that Lt. Col. Melton is held accountable for his actions and that he is removed from his position (Exhibit 62).

At this time, the Kutteles' have not received a response from General Jones or Major General Stanley. In the meantime, the e-mail has been widely published.<sup>88</sup> On January 26, 1999, the *San Diego Union-Tribune* reported that a combat center spokesman said, "Administrative action has been taken against Col. Melton, and he has been transferred." SLDN has been unable to verify from the Marine Corps whether, in fact, Lieutenant Colonel Melton was disciplined and, if so, exactly what actions were taken.

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<sup>88</sup> Elizabeth Becker, *Military Orders a Broad Survey of Gay Abuse*, N. Y. Times, Dec. 14, 1999, and *Marine Officer Investigated for Allegedly Slurring Gays in E-mail*, CNN Headline News, Dec. 16, 1999.

*“We Should Kill Them All”*

Navy ROTC Midshipman Renee Farster reports she faced repeated anti-gay harassment at the University of Pennsylvania by ROTC instructors, other midshipmen and active duty Navy enlisted members and officers. One day, Gunnery Sergeant Sauer reportedly asked Midshipman Farster about a bracelet she was wearing. When she informed the Gunnery Sergeant that it was an AIDS awareness bracelet, he stated, “they deserve it. It’s a fag disease. It’s a way to control them” (Exhibit 63). Following the Gunnery Sergeant’s example, Midshipman Farster’s peers also made constant anti-gay comments including, “We should kill them all,” and “They (homosexuals) disgust me.” Other midshipmen often referred to gay men as “cocksuckers” and “fudgepackers.”

Midshipman Farster eventually became a target for their attacks. In preparation for a Fall semester 1998 briefing on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” another midshipman e-mailed Midshipman Farster stating, “Hey, Renee, as you know we have to talk about faggots in drill tomorrow, so we’d like you to help us. We know you know a lot about stuff like this.” During the unit briefing, many of Midshipman Farster’s fellow midshipmen whispered comments about “goddamn freaks” and “lezzies.” When one of the midshipman briefers asked what an officer should do if a fellow service member “came out” to him, Midshipman Farster reports hearing one midshipman say “kill him.” Many midshipmen laughed approvingly at this comment.

Midshipman Farster hoped things would be different in the fleet, but they were not. During her summer training cruise onboard the *USS Yorktown*, she witnessed frequent anti-gay comments. Midshipman Farster was directly asked by the ship’s officers, those responsible for oversight of the midshipmen trainees, what her views were of “four year lesbians.” She states she was also asked, “what do you think of threesomes?” Midshipman Farster reports these officers stated, “[we] don’t care too much about gay girls. They’re hot, but guys, [we’d] like to kill them.”

During the following school year, Midshipman Farster was the target of heightened anti-gay harassment. On one occasion in the Spring of 1999, the midshipmen were required to give impromptu speeches on a topic selected by other midshipmen. The first topic given to Midshipman Farster was “lesbians.” Fortunately, Farster reports, another midshipman spoke up stating, “No. We’re not going there.”

Believing it was the only way she could end the anti-gay harassment and be true to the Navy Core Values of honesty and integrity, Midshipman Farster ultimately reported the harassment and informed her command that she is a lesbian. Midshipman Farster’s command commended her courage and honesty, but nevertheless disenrolled her from the Navy ROTC program (Exhibit 64). To SLDN’s knowledge, no ROTC instructor, midshipman, active duty Navy Officer or sailor has been held accountable for the anti-gay harassment Midshipman Farster reported.

*“I’m Not the One You Want to Tell That You Are Gay;  
I Will Discharge You from the Navy and Send You Home in a Box”*

Seaman Apprentice Jeremy Manders reportedly experienced on-going anti-gay harassment onboard the aircraft carrier *USS Carl Vinson*. On January 28, 2000, Seaman Apprentice Manders wrote to the ship’s commander, Captain Bruce Clinan, that he felt “that [his] life [was] in danger.” (Exhibit 65). In his letter, Manders described the anti-gay climate on the ship, as well as threats directed at him by his supervisor Chief Petty Officer Smith. On one occasion, for example, Chief Petty Officer Smith reportedly asked Seaman Apprentice Manders if it were true that he was gay. Manders had little choice but to say, “No.” Chief Petty Officer Smith reportedly responded, “I am not the one you want to tell that you are gay, I will discharge you from the Navy and send you home in a box.” On another occasion, Seaman Apprentice Manders reports overhearing Chief Petty Officer Smith state in a discussion with other enlisted leaders, “I hate faggots. They have no right to be in the Navy.” (Exhibit 65).

Seaman Apprentice Manders also heard anti-gay comments by his peers. A sailor once stated he hated the San Francisco 49ers football team because “the city is filled with faggots and I wish that the city would burn to the ground.” Junior sailors, encouraged by Smith, told anti-gay jokes. Manders feared for his safety due to Chief Petty Officer Smith’s death threat and the *USS Carl Vinson*’s anti-gay climate. He reported the threat to his command and requested a discharge because of his safety concerns. SLDN has been unable to verify whether any disciplinary action has been taken against Chief Petty Officer Smith.

Seaman Apprentice Manders is not the only sailor on the *USS Carl Vinson* who has reported a pervasively anti-gay climate. Two Petty Officers contacted SLDN this year seeking help in combating anti-gay harassment on the ship. Both Petty Officers report they hear anti-gay epithets onboard several times each day and that other sailors openly speculate about their perceived sexual orientation. One of the Petty Officers, for example, reports she has heard sailors state, “We should kill them all,” when discussing gays. Another sailor contacted SLDN because he is tired of living in fear that his shipmates might harm him if they find out he is gay.

*“We Don’t Like You Queers Around Here”*

Airman First Class Dennis Potter reports being the target of repeated anti-gay harassment this year at Goodfellow Air Force Base in Texas. In August 1999, a concerned straight friend told Potter that other service members were discussing his perceived sexual orientation and referring to him as a “fucking faggot” (Exhibit 66). Potter’s friend also said she heard one of the airmen say about Airman First Class Potter, “that boy better watch himself or he is going to get what’s coming to him.” As a result, Potter feared for his safety. Potter’s fear escalated after military personnel confronted him in a straight bar near base and told him “you need to get out of here because we don’t like your type.”

Other service members harassed Airman First Class Potter with comments such as:

- “we don’t like you queers around here;”
- “what the hell are you gays doing here;”

- “look at the fucking faggot;” and
- “I thought they didn’t allow gays in the military” (Exhibit 66).

Ultimately, Airman First Class Potter came out to his command and accepted a discharge because he believed that this course of action was the only way to ensure his safety.

*“Are You Going to Suck His Dick to Keep Him in?”*

Major Robert Scott, a New Jersey Air National Guard fighter pilot, filed a discrimination suit in the Superior Court of New Jersey earlier this year. Major Scott claims he has endured constant anti-gay harassment from his fellow Guard members based on the perception that he is gay. He is heterosexual. According to his complaint, Major Scott reports he faced the following incidents of anti-gay harassment, among others :

- Major James Hay called him a “fucking faggot;”
- Captain Kirk Miller stated that by the time he was married to his third wife, Major Scott would be “working on his fourth boyfriend;”
- While referring to Major Scott’s efforts to convince another Guard member to remain in the unit, Major James Desanctis asked Major Scott, “Are you going to suck his dick to keep him in;” and
- Lieutenant Colonel Robert Knauff, Lieutenant Colonel Robert Brenner, Lieutenant Colonel Larry Thomas, Major James Desanctis and Captain Brian Bunn have all referred to Major Scott as a “homosexual” (Exhibit 67).

In his discrimination complaint, Major Scott states he attempted to address the harassment problem repeatedly with his unit command and then sought relief through the unit’s Equal Employment Opportunity Officer and the Adjutant General of the New Jersey National Guard. Not only did his command not stop the anti-gay harassment, but Major Scott was retaliated against for reporting the harassment. Major Scott alleges his National Guard command grounded him from flying without justification and segregated him from his fellow officers in the Fall of 1997. In the Spring of 1998, his National Guard command told Major Scott that he would remain grounded, would continue to be segregated, and was under investigation for unspecified wrong-doings. Then in the Spring of 1999, his command issued him a written reprimand for having a consensual sexual relationship with an unmarried female enlisted person. While it is common knowledge that several other members of the Guard have had sexual relationships with enlisted personnel, Major Scott has been the only Guard member disciplined.

Believing that he had no other option, Major Scott has filed a complaint in Superior Court seeking compensatory and punitive damages from The New Jersey Air National Guard, the State of New Jersey, and named members of his unit.

*“[You Don’t] Show Enough Interest in the Dancing Girls Downtown”*

Air Force Staff Sergeant Eric Gundberg reports that fellow airmen labeled him a “fag” during an assignment at Osan Air Force Base in South Korea. According to Gundberg, the airmen spread rumors that he was a “fag” because he did not “show enough interest in the dancing girls” downtown (Exhibit 68).

In June 1997, after Staff Sergeant Gundberg transferred to Beale Air Force Base, California, he attended an Equal Opportunity Class where the instructor routinely referred to gays as “fruits [and] fairys (sic).” In response to a question about whether the Air Force was allowed to discriminate, the instructor reportedly responded, “Of course, we don’t let disabled people in, or overweight individuals, and of course, fairies can’t come in, unless they keep their mouths shut about it that is.”

The final straw came when Staff Sergeant Gundberg’s senior supervisor, Master Sergeant Angel Munier, is reported to have openly made fun of another airman who was perceived to be gay. In a September letter to his command reporting the anti-gay harassment, Gundberg explained he could not speak up for the ridiculed airman because he was afraid the other noncommissioned officers would think he, too, was gay. Gundberg decided to report the anti-gay harassment because he could no longer remain silent about the treatment of those perceived to be gay, including himself. Staff Sergeant Gundberg also stated that, in the seven and one-half years he served in the Air Force, he heard approximately 300 to 400 anti-gay jokes and listened to 100 tirades about how “homosexuals are ruining the US military.”

*“In the Fleet, Some People Wake up with Black Eyes for No Reason”*

During training at the Naval base in Pensacola, Florida, Marine Private First Class Timothy Smalley reports that he faced continuous questions about his perceived sexual orientation. Private First Class Smalley’s supervisors and peers reportedly made comments to Smalley such as, “You stand like a bitch. You’ll get raped in the fleet standing like that,” and, “You need to watch the way you walk. Once you get into the fleet, people will begin to question certain things” (Exhibit 69). One of Smalley’s noncommissioned officers even confronted him, saying “If I beat you up, would you tell anyone? In the fleet, some people wake up with black eyes for no reason.”

Private First Class Smalley completed this training believing that once he reached his permanent assignment at Cherry Point, North Carolina, he would be able to serve safely. Smalley learned, however, that the noncommissioned officer who threatened him was being assigned to Cherry Point as well. Fear that the harassment would follow him to Cherry Point, and elsewhere in the Marine Corps, led Smalley to come out and report the harassment. The Marine Corps discharged Private First Class Smalley. To SLDN’s knowledge, no one has been held accountable for harassing him.

*“If You Think You’re Hiding It, You’re Dead Wrong . . .”*

Seaman Apprentice Lori Smith, assigned to the *USS Eisenhower*, found a threatening note left under the windshield wiper of her car in March 1999 while it was parked on base in Norfolk, Virginia. The note stated, among other things:

[I]f you think you’re hiding it, you’re dead wrong, yeah (sic) you know what I’m talking about, you dyke ass bitch. . . You homo’s (sic) are sickening, the Navy, has no room for you twisted freaks. . . Your (sic) constantly being watched, your every move, every step. . . Your (sic) pasrt (sic) overdue for a beatdown!!!!!! (Exhibit 70).

This note was the last straw for Seaman Apprentice Smith, who had endured countless anti-gay comments directed at her by shipmates over the preceding months. Other sailors often reportedly confronted Smith with comments such as:

- “I don’t know why they let them in the Navy if they know they’re like that;”
- “You know she’s gay, don’t you;”
- “Stupid dykes;”
- “Gays aren’t supposed to be here, why don’t they get out;” and
- “They have to be gay, they look too much like guys.” (Exhibit 71)

Additionally, Seaman Apprentice Smith was once performing official maintenance in a male sleeping area when a sailor announced, “female on deck,” as they are required to do. A sailor standing nearby looked past Smith and said, “Female? I don’t see any female.” Because these incidents caused Seaman Apprentice Smith to fear for her safety, she asked to be removed from the ship and discharged from the Navy despite her desire to serve our country.

*Petty Officer Assaulted While Asleep on Ship*

An unidentified assailant reportedly kicked the face of a Petty Officer assigned to the *USS Barry* while the Petty Officer was sleeping onboard the ship. Shortly before the incident, the Petty Officer wrote a letter to a civilian friend confiding his bisexuality. The letter disappeared from his sleeping area before he was able to mail it. The Petty Officer reports that, shortly thereafter, he became the target of anti-gay statements and threats, including, “I heard the guy who was kicked in Berthing 1 is a fag. I’d like to find the guy who kicked him because he deserves a medal.”

Once when the Petty Officer was alone in the ship’s bathroom, someone reportedly asked “Who’s in here?” The Petty Officer replied by stating his name. Several more sailors then came into the bathroom and threatened, “We don’t need faggots on ship” and “Something should be done to get rid of them.” The Petty Officer asked for SLDN’s assistance in requesting a discharge from the Navy because he did not feel safe after these incidents and others. Despite the

Petty Officer's fears for his safety and statement that he is bisexual, the Navy tried to convince him to continue serving. His commanders, however, did not promise to ensure his safety.

*"Let's Go to a Gay Bar this Weekend and Fuck Some Queers Up"*

A Marine Lance Corporal reports hearing other Marines threaten to harm gay people almost everyday while serving at Camp Pendelton, California. These threats include:

- "If I see a faggot, I'm gonna kill him;"
- "I'll beat those goddamned homos (sic) until they're dead;"
- "Let's go to a gay bar this weekend and fuck some queers up."  
(Exhibit 72)

These comments made the Lance Corporal fear that other marines might harm him if they perceived him to be gay. Because he felt unsafe in the Marine Corps, he reluctantly decided his only option was to come out and be discharged.

### **Lesbian Baiting Continues**

Women continue to be disproportionately impacted by "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" because of lesbian baiting and gender bias. Based on Department of Defense statistics, women comprised 316 of the 1,034 gay discharges during the past year. Women comprised 31% of total discharges under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," although women comprise only 14% of the force. According to the Department of Defense's own discharge figures, this is the highest percentage of women discharged under gay policies in at least twenty years.<sup>89</sup> The highest percentage of female discharges this year were in the Army and Air Force. Thirty-five percent of Army soldiers discharged this past year under "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" were women, while women make up only 15% of the force. In the Air Force, 37% of last year's discharges under the policy were women, while women make up only 18% of the Air Force. The most striking disparity was in the Marine Corps, where 21% of discharges under the policy were women, yet women comprise only 6% of the Marine Corps.

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. And yet others accuse successful women of being lesbians to derail their careers. The stereotype remains that women in nontraditional job fields

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<sup>89</sup> Michelle M. Benecke and Kirstin S. Dodge, *Military Women: Casualties of the Armed Forces' War on Lesbians and Gay Men*, in *Gay Rights, Military Wrongs: Political Perspectives on Lesbians and Gays in the Military* 71-108 (Craig A. Zimmerman, ed., 1996).

are viewed, as many have noted, as “dykes” or “whores.” Lesbian baiting thus continues to disproportionately affect women who serve our country.<sup>90</sup>

As a result of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” many women do not report anti-gay harassment. Others choose more traditional career paths, or tone down their ambition. Some women report they stop publicly socializing with other women for fear that they will be labeled as lesbians just because they are in a group with other women.

The following are a few examples of lesbian baiting.

*Marine Threatened with Involuntary “Outing”  
After Reporting Sexual Harassment*

During the almost two years that Lance Corporal Kisha Frady was a Marine, she was continually harassed about the way she looks. Members of her unit called her a “big dyke,” told her that she was a “man in woman’s fatigues,” and referred to her motorcycle as her “giant vibrator.” While assigned to Camp Pendelton, California, Lance Corporal Frady’s roommate was sexually harassed by a male supervisor. Lance Corporal Frady stopped this harassment when she took her roommate to the command to report the noncommissioned officer’s actions. Shortly after reporting the sexual harassment, Lance Corporal Frady received an anonymous letter in the mail threatening to inform her command that she is a lesbian. Fearing the threat would lead to increased anti-gay harassment, discharge and even criminal prosecution, Lance Corporal Frady reluctantly told her command she is gay. Lance Corporal Frady chose to preempt the anonymous harasser, despite wanting to make the Marine Corps her career.

*Anti-Gay Harassment Exacerbated by Sailor’s Refusal of Sexual Proposition*

As described previously in this section, Seaman Apprentice Lori Smith was verbally harassed and threatened because she was perceived to be a lesbian. Smith reports that the anti-gay harassment started when a Petty Officer in the galley began making sexual comments to her. This Petty Officer repeatedly asked Smith if she was gay and asked her out on dates numerous times. The Petty Officer did this despite Smith’s consistent refusals and the fact that he was married (Exhibit 71).

In addition, Seaman Apprentice Smith rebuffed a male sailor’s sexual advances when she was off ship with friends. While relaxing at a hotel in Norfolk with six of her friends, a male sailor repeatedly told Seaman Apprentice Smith that he knew she was gay and sexually propositioned her. When Smith refused his repeated advances, he said, “You’re a fucking dyke” in front of other sailors. The anti-gay harassment of Seaman Apprentice Smith continued, even after she reported to her command that a threatening note had been placed on her car (Exhibit 73).

*“Are You Married to a Man or a Woman”*

A female Warrant Officer in a highly prestigious position, who is the only woman in her unit, was questioned about her marriage by her command. The Warrant Officer has served with

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<sup>90</sup> *Id.*

distinction for more than fifteen years in the military, and has been married for most of that time. She is the only member of her unit whose marriage status was questioned. Prior to these developments, there were numerous rumors circulating throughout her unit that she is a lesbian. She believes the rumors and questions about her sexual orientation and her marriage arose because of her non-traditional work assignment. The Warrant Officer has requested a transfer out of her prestigious assignment and continues to serve in the military. However, her career remains in jeopardy.

*“It Must Be True [That You Are Gay] Because I Have Never Seen You with a Guy”*

Air Force women were lesbian baited in a witch hunt at the Defense Language Institute (DLI) in Monterey, California this year, as described in detail in the “Don’t Pursue” section. Female students at the base reported that Air Force senior enlisted leaders and other students asked and pursued the women about their perceived sexual orientation. The women report they repeatedly had to ward off sexually harassing comments designed to paint them as lesbians.

Airman First Class Deanna Grossi reports that Airman First Class Reyes would rub his fingers in front of his nose while saying to Airman Grossi, “let me smell your hand so I can see if you did the same thing I did last night.” (Exhibit 27) Airman Hollenshead reported to Colonel Smith, the Air Force commanding officer at DLI, that a male student had called her and another airman “pussy suckers” and then asked them, “Why would you want that, when you can have this?” while pointing to himself. A male airman told another female Airman First Class, “It must be true [that you are gay] because I have never seen you with a guy.” Some of these female airmen told SLDN that they tried dating men in an effort to stop the anti-gay harassment, but the rumors, questioning and anti-gay harassment persisted. Almost all of the airmen at DLI who contacted SLDN have been or are in the process of being discharged.

### **Additional Incidents of Anti-Gay Harassment Reported to SLDN in 1999**

- Seaman Neil Salisbury reports he suffered anti-gay harassment onboard the *USS Blue Ridge*. Sailors called Seaman Salisbury “butt buster,” “rump ranger,” and “queer.” On one occasion, Seaman Salisbury was walking on the pier when a sailor yelled, “I fucking heard about you, you Faggot. I’m gonna kill you if I ever catch you looking at my ass.”
- Air Force Staff Sergeant Patrick Willis decided after almost fifteen years of military service that he could no longer endure constant anti-gay comments such as: “I hope no fag tried to hit on me because I would kill them;” “I’m glad that I don’t have to work with queers;” and “People like that should not be allowed to work with, or have custody of, children.” Staff Sergeant Willis also wanted to stop living a lie because he wants his children to grow up to be honest, tolerant, and respectful adults. As a result, he informed his new Air National Guard command in Starke, Florida

that he is gay. Staff Sergeant Willis was honorably discharged (Exhibit 24).

- A Seaman reports being assaulted by other Navy enlisted personnel at a base in Florida. During the assault, they reportedly called him “faggot” and “queer” and told him “I don’t want any faggots in my Navy.” The Seaman told SLDN that his barracks’ door was vandalized with threats such as, “Watch your ass or its going to get fucked or beat.” He also reported receiving death threats late at night by telephone, including “I’m gonna tag your ass,” and “I’m gonna cap your ass.”
- A Marine Lance Corporal assigned to Cherry Point, North Carolina, reports being so afraid for her safety that she left the base one weekend and did not return the following Monday. The Lance Corporal went “UA”—unauthorized absence—because she reportedly overheard a corporal in her unit say, “If I knew of a gay marine within my unit and we went to war together, I would kill that gay marine before I killed any of the enemy.”
- A Navy Petty Officer reportedly was the subject of repeated death threats. The Petty Officer reports that he found a note on his rack that read “DIE! FUCKING FAGGOT.” The Petty Officer also reports hearing: “All faggots need to be killed;” “I don’t know a fag, and if I did, I don’t know what the hell I would do to him;” “If I knew of a faggot onboard this ship I would take him to the gym and show him what being a real man is like;” and “Jerry (referring to Jerry Springer) needs to hang those queer guests he has on his show” (Exhibit 74). With SLDN’s assistance, this Petty Officer continues to serve.
- An Air Force Staff Sergeant reports finding a note on his door that read “Die Faggot! We know who you are!” Despite the threat, the Staff Sergeant remains on active duty (Exhibit 75).
- An Army Private was in basic training at Fort Benning, Georgia, when another soldier in his barracks discovered that the Private is gay by reading a letter the Private was writing home. The Private reports that after this occurred he experienced constant verbal and physical abuse. He reports he was punched and kicked by soldiers, and once tripped in a barracks stairwell and thrown down a flight of stairs. After being continually asked if he is gay, the Private confirmed the speculation. His Drill Sergeant then exclaimed to other soldiers, “Now you know where to get a blow job,” and pointed to the Private (Exhibit 76).

- Captain Philip Howland reported to his command that he observed anti-gay harassment at three separate Army posts during his military career. The anti-gay harassment included denigration of former soldiers who were gay and questioning about his own sexual orientation. No longer able to tolerate the anti-gay harassment and unwilling to spend the rest of his career looking over his shoulder in fear of investigation, Captain Howland informed his command he is gay (Exhibit 77). Despite discussing his sexual orientation, his administrative separation board wanted to know if or how they could keep him.

## **The Pentagon and Administration Respond to Anti-Gay Harassment**

### *Pentagon Releases Anti-Gay Harassment and Investigations Guidelines*

On August 13, 1999, just days after the highly charged testimony in Private Glover's preliminary hearing, Secretary Cohen released anti-gay harassment and investigations guidelines that had been bottled up at the Pentagon for more than fifteen months (Exhibit 78). According to *The New York Times*, a Clinton Administration official said, "[T]he Pentagon felt the need to announce the new guidelines as quickly as possible, given the uproar over the death last month of a gay soldier."<sup>91</sup> Most notably, the guidelines state that reports of anti-gay harassment or threats must be investigated promptly and service members reporting anti-gay harassment should not be investigated or retaliated against because they report the anti-gay harassment. While the new guidelines are welcome steps forward, they fall short in several respects.

First, the guidelines dropped provisions about lesbian baiting that appeared in the original Dorn Memo. As the cases in this section illustrate, women continue to face allegations that they are lesbian, regardless of their sexual orientation, for retaliatory reasons. SLDN hopes the omission of lesbian baiting from the new guidelines is not a Pentagon retreat from addressing this form of anti-gay harassment and sexual harassment seriously.

Second, the guidelines fail to provide guidance to service members on how they may report anti-gay harassment without fear of retaliation. Service members should be able to report anti-gay harassment to their commanders, mental health counselors, Inspectors General, Chaplains, and equal opportunity officers, among others. The Pentagon has taken no steps, however, to make sure that these personnel are appropriately trained to handle such complaints. In fact, one Army spokesperson has said that the Equal Opportunity chain has been specifically instructed not to address issues of anti-gay harassment.<sup>92</sup> Third, the guidelines fail to make clear that the military should not discharge service members who, in the course of reporting harassment, inadvertently reveal they are gay, or are found to be gay. As highlighted in the section, "Don't Tell," the Pentagon must make clear to all concerned personnel that private statements of sexual orientation during the course of reporting anti-gay harassment are not

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<sup>91</sup> Philip Shenon, *Pentagon Moving to End Abuses of "Don't Ask, Don't Tell" Policy*, N. Y. Times, Aug. 13, 1999, at A1.

<sup>92</sup> Roberto Suro, *Military's Differing Lesson Plans Reflect Unease on Gay Policy*, Wash. Post, Mar. 4, 2000, at A1.

grounds for inquiry, investigation or discharge. Unless this basic step is taken, any assurance that service members will not suffer reprisals for reporting anti-gay harassment falls flat.

As military leaders know, the impact of even the best guidance depends on the leadership commitment with which it is applied. In each of the past six years, SLDN has noted a conspicuous lack of leadership, particularly from uniformed leaders, when it comes to the proper implementation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Leaders must step up to the plate to stop harassment. This will require holding those who harass their fellow service members accountable for their actions. The Pentagon’s credibility rests on accountability.

#### *Services Issue Statements on Anti-Gay Harassment*

In the past few months, the Secretary and Chief of each service has issued a message against anti-gay harassment, a long-standing SLDN request. The pertinent part of the guidance for each of the services is as follows:

- Navy: “Respect for the individual is paramount. Commanding officers must not condone homosexual jokes, epithets, or derogatory comments, and must ensure a command climate that fosters respect for all individuals” (Exhibit 79).
- Marine Corps: “As all Marines learn in their earliest basic training, mistreatment of any Marine is incompatible with our core values and is unacceptable conduct that must be dealt with quickly and appropriately by commanders” (Exhibit 80).
- Air Force: “Harassment, threats or ridicule of individuals or groups based upon real or perceived differences, including sexual orientation, have no place in the United States Air Force and will not be tolerated . . . . We wholeheartedly endorse and support this policy. Each of us has an individual responsibility and professional obligation to do his or her best to prevent harassment of any nature and to immediately correct it if it occurs” (Exhibit 81).
- Army: “Harassment of soldiers for any reason, to include perceived sexual orientation, will not be tolerated” (Exhibit 82). “Commanders at every level will take appropriate action to prevent harassment of or threats against any member of the Army” (Exhibit 83).

This is an important development that will, finally, signal to commanders in the field that they have the support of their top leaders to take steps to prevent anti-gay harassment.

### *Services Begin Training to Prevent Anti-Gay Harassment*

The Army is currently training soldiers on anti-gay harassment and the policy's investigative limits, and expects to complete the training within 90 days. The other services are due to follow within the next year. Because the training is so new, an in-depth analysis is not yet possible. One concern, however, is to better inform commanders about accountability. While some of the training makes clear that commanders should hold accountable anyone who engages in anti-gay harassment, the services should provide guidance on what that means. Those who engage in anti-gay harassment should face actions ranging from counseling to courts-martial, depending on the offense.

Reports to SLDN regarding the Army training thus far are mixed. Some soldiers report their leaders have taken the training seriously and have presented it intelligently. Other reports are to the contrary, including:

- An Army Judge Advocate General officer tasked to conduct the training reports, "The Army has done a disservice by using the slides they distributed. They need something that will reach the soldiers. My commanders barely understood. . . ." The officer further states, "Commanders are very uneasy about having to give this briefing . . . I think that the only way the current policy will work is if the commanders stand up and walk the walk" (Exhibit 84).
- An Army Lieutenant tasked to do the training reports he was concerned with the content of the briefing materials and he did not fully comprehend the slides even after reviewing additional materials. Prior to the briefing, a superior officer asked the trainer if he was gay because the Lieutenant stressed the training's importance. When the briefing was completed, a senior enlisted member stood up and told the entire unit an anti-gay joke.

Despite some problems with the conduct of the training, SLDN appreciates that the Army has commenced it. Given the delays that have characterized past Pentagon promises regarding "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," SLDN is concerned to see the other services expeditiously follow suit and fulfill their commitment to train all personnel. The ultimate test of the training's success is whether service members understand the policy's investigative limits, its intent to respect people's privacy and the consequences of failing to follow the rules.

### *Defense Department Inspector General Directed to Assess Anti-Gay Harassment*

In December 1999, Secretary of Defense William S. Cohen ordered the Department of Defense Inspector General (DoD IG) to review the application of the Homosexual Conduct Policy, including the extent of anti-gay harassment at representative installations in each

Service.<sup>93</sup> The Inspector General is surveying 75,000 service members, with a report due back to Secretary Cohen on March 13, 2000. When announced, SLDN questioned the efficacy of the survey because there is no way to compare the experience of gay service members with non-gay service members, and because gay service members risk being outed if they respond candidly. Indeed, as long as a law exists banning openly gay service members, few gays will feel comfortable reporting anything, no matter what steps the Inspector General takes to assure their confidences.

SLDN has received reports that some commands have prevented service members known to have experienced anti-gay harassment from participating in the survey, even when all other unit members were ordered to participate. Other service members report that, because of the way the survey is designed, those who do not report anti-gay harassment may skip quickly to the end of the survey and leave the survey room. Those who report harassment are left behind, which draws unwanted attention to them.

Some of the survey's questions are flawed and meaningless (Exhibit 85). Question #6, for example, asks service members: "To what extent do you understand 'Don't Ask, Don't Tell?'" A service member could think he or she understands the policy, but in reality he or she may be uninformed or misinformed. If the intent was to test actual knowledge of the policy, this question will not reach that goal.

Question #11 is likewise meaningless. It asks: "Has the 'Don't Ask, Don't Tell, Don't Pursue' policy been effective in preventing/reducing anti-gay harassment based on perceived sexuality?" First, there is no way to compare the experience of gay service members, who would have the most relevant information for the question, with non-gay service members because "Don't Tell" prevents gay service members from self-identification. Second, the question assumes the service member has a baseline by which to assess the effectiveness of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass," which most do not.

Questions #12 and #13 also fail to understand the very nature of the problem the Inspector General is attempting to assess. Question #12 asks: "How often have you heard offensive speech, derogatory names, jokes or remarks about homosexuals in the last twelve months on your ship / at your installation?" Question #13 asks: "To what extent are offensive speech, derogatory comments and jokes tolerated on your ship / installations?" As the cases in "Don't Harass" point out, many non-gay service members view terms such as "fag," "faggot," "queer" and "dyke" as a normal part of military life. To a gay service member who is the target of such comments or hears them in the general command climate, these comments can be highly offensive. Thus, these questions fail to appreciate the extent to which the military is socializing service members to view use of anti-gay epithets as a "normal" part of the banter in a unit. They fail to provide specificity as to what constitutes "offensive" speech and "derogatory" comments.

The Inspector General survey could be further dissected, but the bottom line is this: the Inspector General survey has significant problems that will complicate the already difficult task of obtaining an accurate assessment of anti-gay harassment through official channels. To the

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<sup>93</sup> *Secretary of Defense Directs Assessment of Extent of Harassment*, Office of Assistant Secretary of Defense (Public Affairs), Dec 13, 1999.

extent the Inspector General obtains any significant reading of the anti-gay harassment, it will be in spite of the survey, not because of it. Conversely, the Department of Defense will have no credibility whatsoever if it attempts to use the survey to minimize the serious problem of anti-gay harassment in the ranks.

### *President Signs Executive Order on Military Hate Crimes*

In the aftermath of Private Winchell's murder, President Clinton, in October 1999, signed an Executive Order amending the *Manual for Courts-Martial* to provide for sentence enhancement in hate crime cases, including anti-gay hate crimes. The Executive Order's hate crimes provision states in part, "Evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person."<sup>94</sup> The Joint Service Committee in the Pentagon recommended the change prior to Winchell's murder to make military law conform with similar state statutes.<sup>95</sup>

### **"Don't Harass" Conclusion**

Lesbian, gay and bisexual service members must endure constant anti-gay threats and epithets as a condition of military service. While not all service members harass their colleagues, the current climate supports those who do. This climate is inimical to good order, discipline and the morale of our forces, and adversely affects military readiness.<sup>96</sup> Anti-gay harassment not only hurts the military, but it is an unjust return to the men and women who put their lives on the line for our country, only to be forced out, whether by being discharged or leaving at the end of their service obligation.

It is shameful that it took the murder of Private First Class Barry Winchell to move the Pentagon and Clinton Administration to act after six years of warnings by SLDN. Finally, the Pentagon has issued guidelines and training on anti-gay harassment. Secretary of Defense William Cohen has ordered the Inspector General to survey 75,000 troops to assess the level of anti-gay harassment in the armed forces, among others. President Clinton signed an Executive Order on hate crimes in the military. All of the actions taken by the Pentagon, the Administration and the individual services to address anti-gay harassment since Private First Class Winchell's murder are steps in the right direction. Real change, however, will not occur unless there is strong leadership and accountability.

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<sup>94</sup> Executive Order No. 13,140 (1999).

<sup>95</sup> While the Executive Order had been on the President's desk for more than one year, and it did not factor into the prosecution of soldiers at Fort Campbell for the murder of PFC Barry Winchell, the Executive Order will aid law enforcement, prosecutors and commanders in deterring hate motivated violence. One of the great challenges in pressing the Army to conduct a full and fair investigation and prosecution into the murder of Private First Class Winchell was that the criminal investigators and Army prosecutors had no prior guidance about how to investigate or prosecute hate crimes. The services should avail themselves of the hate crimes unit within the Department of Justice to obtain appropriate training.

<sup>96</sup> As General Clark stated recently, the "cornerstone of discipline" is "respect for others." Scholars also affirm that "Abuse of homosexual service members hurts military readiness." See Elizabeth Kier, *Homosexuals in the U. S. Military* 23 *International Security* 5, 37 (1998).

Some may argue that even if “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” were overturned, there would still be Private Glovers who would kill because of hatred. They may be correct, but “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” reinforces the message that gays are second class citizens who are not worthy of the rights and responsibilities of citizenship. The fact that leaders have allowed service members to harass their counterparts with impunity reinforces this message, and gives a green light to those who would do violence. Whether or not “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” remains the law of the land, military leaders have a duty to take care of our service members. To date, many military leaders have failed to do so.

## CONCLUSION TO SIXTH ANNUAL REPORT

The Pentagon is at a critical juncture in implementing “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” Military leaders can either address, with commitment, the harassment and forced secrecy that push so many dedicated lesbian, gay and bisexual service members out of the armed forces, or they can continue with business as usual, at a high price to the military generally, as well as to individual service members.

As Military leaders continue to struggle with critical retention and recruiting shortfalls,<sup>97</sup> they can ill afford to continue violating the letter and intent of the policy. Lesbian, gay and bisexual Americans’ contributions to our armed forces are valuable. The military’s indifference to the well-being of and hostility toward lesbian, gay and bisexual service members must cease. The failure of military leaders to fairly implement the policy’s provisions on privacy, investigative limits, accountability and recourse takes its toll on readiness by undercutting respect for rule and order. Forcing lesbian, gay and bisexual service members to hide, lie, evade and deceive their families, friends and colleagues breaks the bonds of trust among service members essential to unit cohesion.<sup>98</sup> Command climates poisoned by anti-gay abuses hurt readiness. As Specialist Edgar Rosa testified at Fort Campbell, the murder of Private First Class Barry Winchell has destroyed any illusion that he was part of “a band of brothers.”<sup>99</sup>

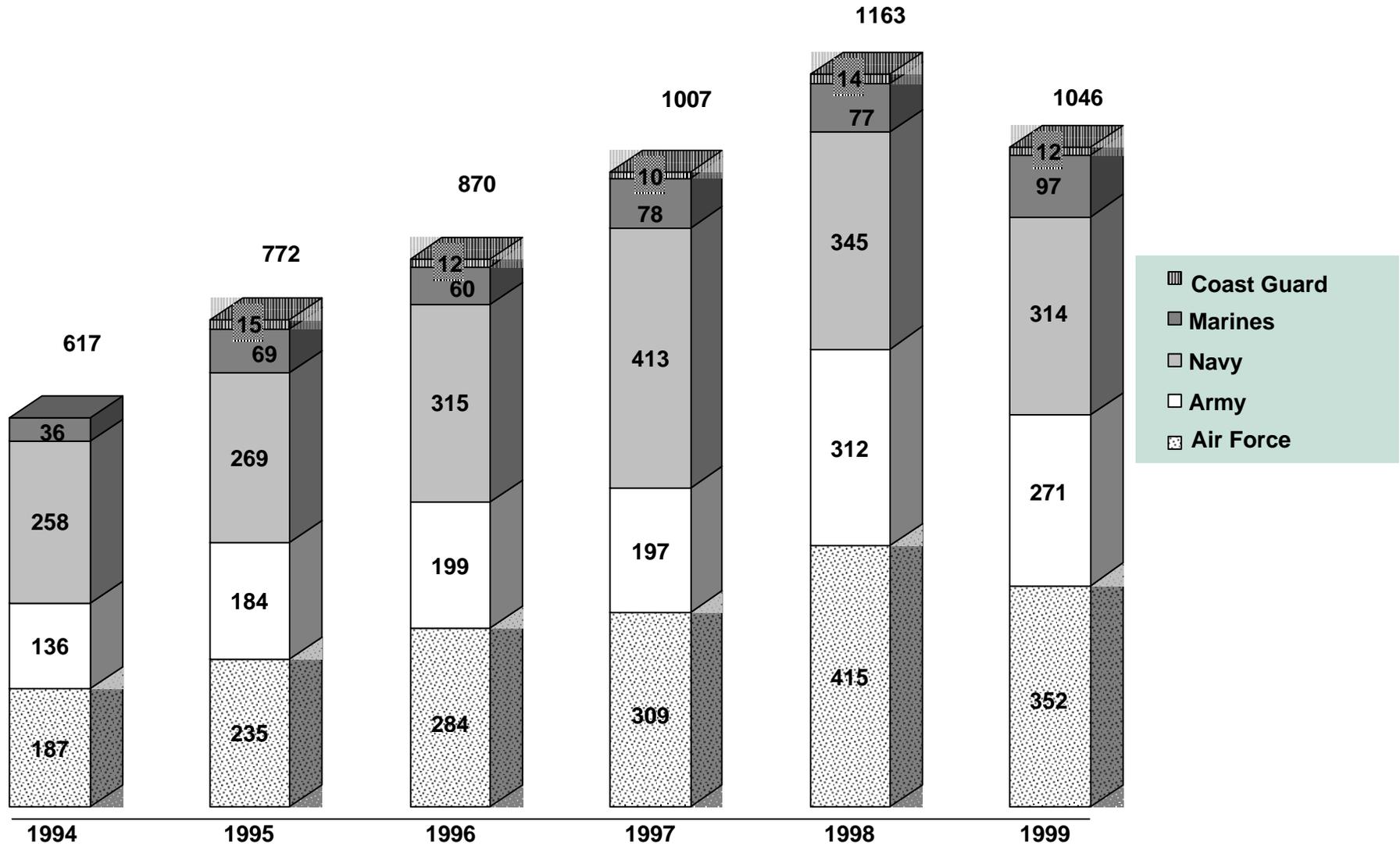
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<sup>97</sup>Andrea Stone, *Army opens more to school dropouts*, USA Today, Feb. 4, 2000, at 13A.

<sup>98</sup> 10 U.S.C § 654(a)(7), “One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit . . . .”

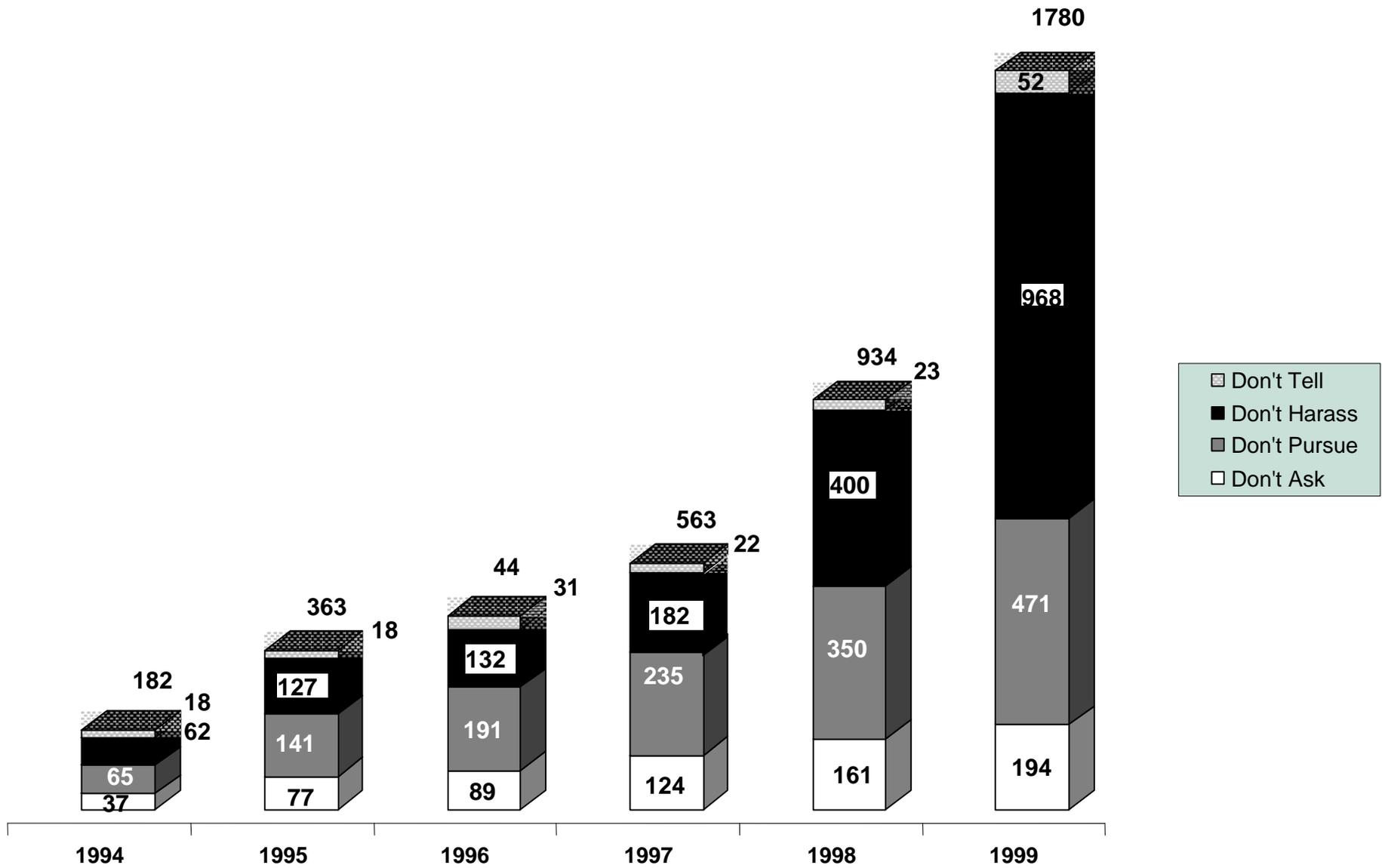
<sup>99</sup> Specialist Edgar Rosa, Delta Co., 2nd/502nd, Specialist Justin Fisher Art. 32 Hearing, Sept. 1, 1999.

## Annual Gay Discharges Under “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass”



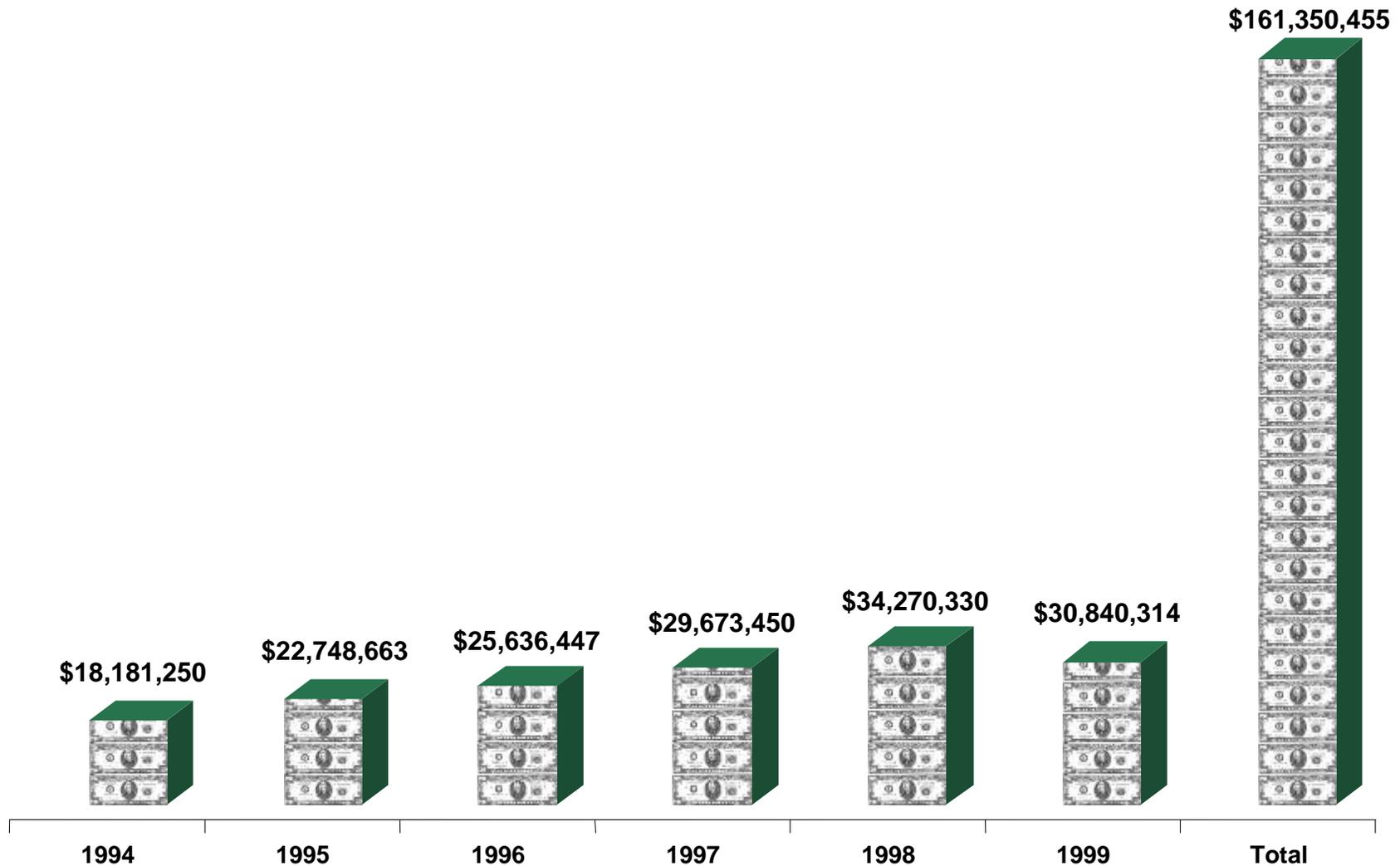
**SOURCE: SERVICEMEMBERS LEGAL DEFENSE NETWORK, BASED ON DEPARTMENT OF DEFENSE FIGURES**

## "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" Command Violations 1994 – 1999



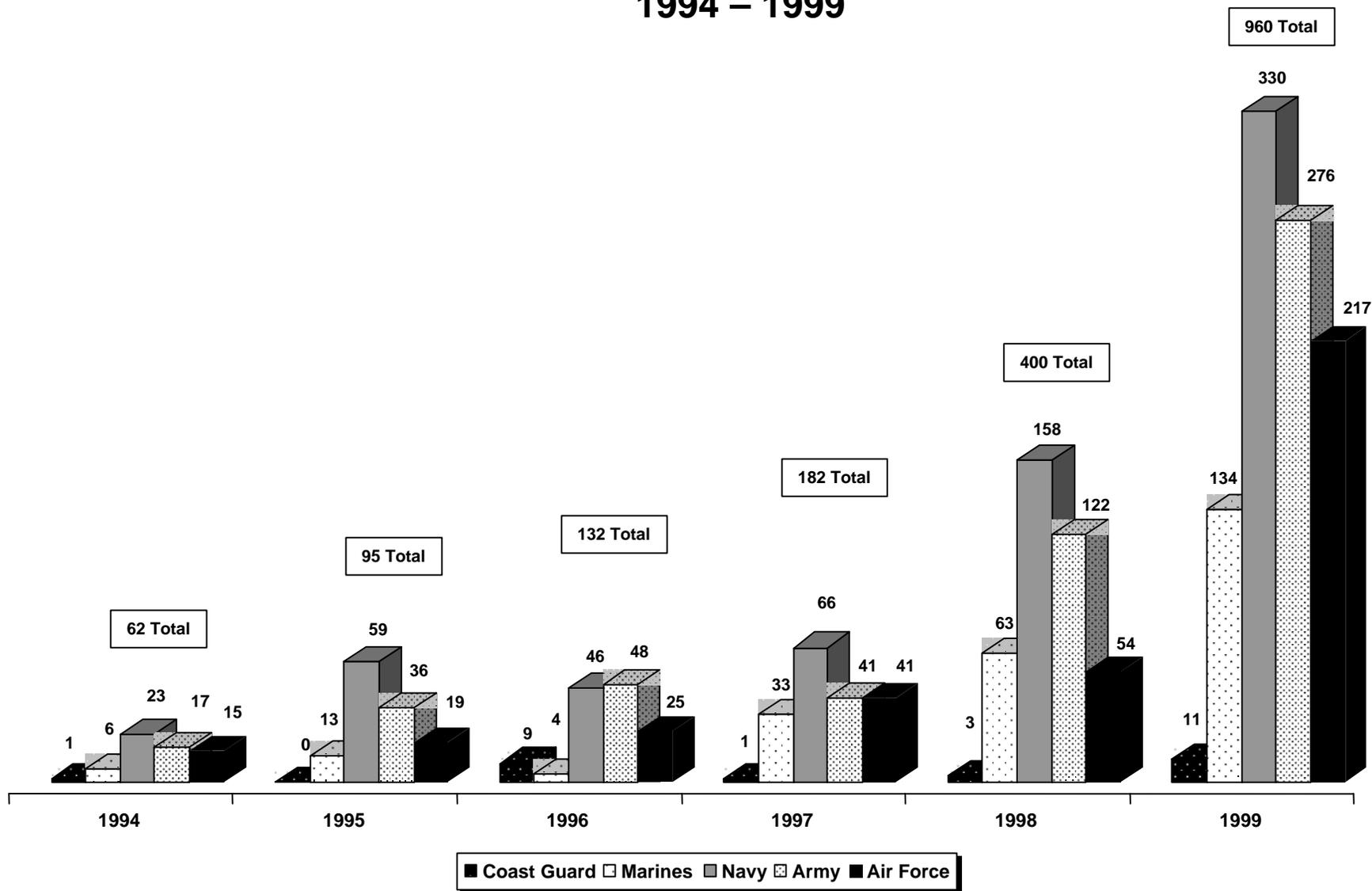
SOURCE: SERVICEMEMBERS LEGAL DEFENSE

## Costs of Training Replacements for Service Members Discharged Under Gay Policy



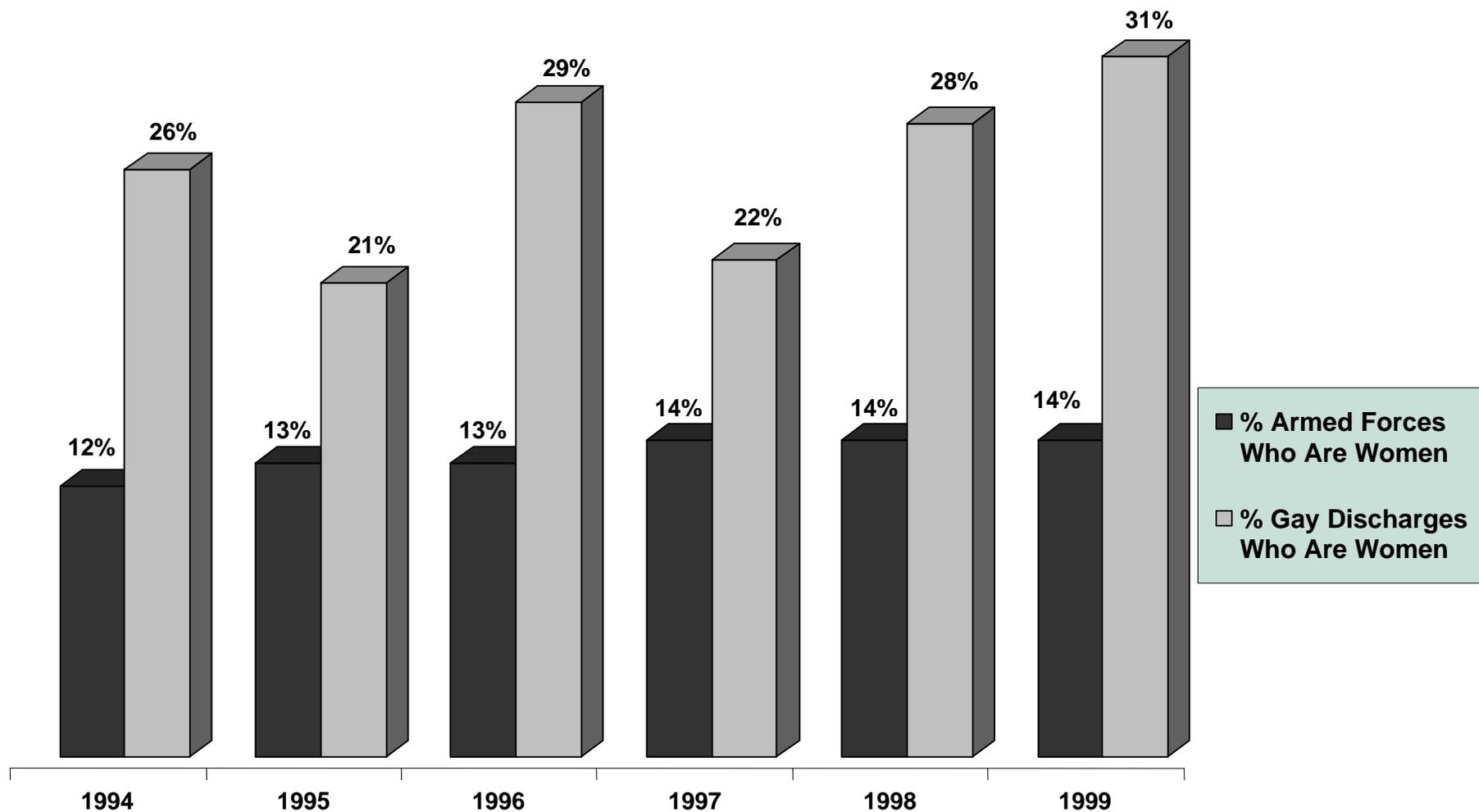
SOURCE: SERVICEMEMBERS LEGAL DEFENSE NETWORK,  
BASED ON GENERAL ACCOUNTING OFFICE FIGURES (IN 1993 DOLLARS)

# “Don’t Harass” Violations by Service 1994 – 1999



**SOURCE: SERVICEMEMBERS LEGAL DEFENSE NETWORK**

# Lesbian Baiting: The Disproportionate Impact of the Gay Policies on Women 1994 – 1999



SOURCE: SERVICEMEMBERS LEGAL DEFENSE NETWORK,  
BASED ON DEPARTMENT OF DEFENSE FIGURES