Conduct Unbecoming
THE EIGHTH ANNUAL REPORT ON
“Don’t Ask, Don’t Tell,
Don’t Pursue, Don’t Harass”
DEDICATION

This report is dedicated to all those who lost their lives in the September 11, 2001 attacks on the United States, especially Lieutenant General Timothy J. Maude, the Army’s Deputy Chief of Staff for Personnel. LTG Maude was the Army’s point person on matters related to “Don’t Ask, Don’t Tell.” LTG Maude played a pivotal role in working to protect our men and women in uniform from anti-gay harassment.

ACKNOWLEDGEMENTS

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Servicemembers Legal Defense Network (SLDN) is dedicated to ending witch hunts, death threats, imprisonment, lesbian-baiting, discharges and other discriminatory actions against men and women in the military harmed by “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass,” and related policies, through direct legal assistance, watchdog activities, policy work, outreach and education, and litigation support. Since 1993, SLDN has assisted more than 3,300 service members affected by the policy.

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This year has been a difficult and challenging one for all of America. We are at war. At a time when we need our forces to be at their strongest, “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” (DADTDPDH) continues to undermine our national security. It has never been more obvious than in the weeks and months following September 11th that this policy weakens our military, deteriorates our readiness and undermines the morale and cohesion of our troops. The day has arrived for the Bush Administration and Members of Congress to preserve the strength of our nation and repeal the military’s gay ban once and for all.

Lesbian, gay and bisexual Americans are making important contributions to the war on terrorism from Navy Airman Paul Peverelle, whose story is detailed in the Navy section of this report, to the anonymous soldier quoted in the Army section who is currently deployed in Operation Enduring Freedom. Lesbians, gays and bisexuals are flying planes. They are translating documents. They are fighting on the front lines. During this conflict, and throughout the history of our nation’s armed forces, lesbian, gay and bisexual Americans make, and have made, “the military go.” And the military makes them go home – sometimes without careers, discharged for being gay, and sometimes in body bags. The price we pay for federally sanctioned discrimination is too high.

In 2001, the armed services fired more than 1250 lesbians, gays and bisexuals. This figure includes unofficial Air Force discharge statistics received by SLDN from a source outside the Air Force - the Air Force has so far refused to release to SLDN its discharge numbers for 2001. Assuming that the Air Force official numbers match its unofficial numbers, 2001 saw more gay discharges than any year since 1987. Since the policy’s implementation, more than 7,800 American service members have lost their jobs because of anti-gay discrimination.
Taxpayers have paid more than $230 million to facilitate this federal policy of job discrimination. Not included in the figures are the costs of investigation or the loss of countless men and women who resign or choose not to reenlist because of the gay ban.

There is no question that their skills are urgently needed. In the days following the initiation of the war on terrorism, each Service, except the Coast Guard, issued “stop-loss” orders to suspend some administrative discharges. Their goal? To retain needed personnel. Yet, as they sought so clearly to retain qualified personnel, they took time to specifically mandate that lesbian, gay and bisexual service members continue to be fired. As our nation seeks to “make the military go,” the Pentagon continues to tell helicopter pilots, cryptologists, doctors and others with skills we so urgently need to simply “go home.” Not because they cannot do their job, but because of their sexual orientation.

The time has come to align our priorities and pursue terrorists, not the patriotic Americans who risk their lives for our freedom while denied their own.

White Wash Of Silence: The Bush Administration’s Failure To Protect Our Military Personnel

Harassment is once again at record levels, an epidemic the Pentagon itself recognizes directly undermines good order, discipline and morale. Asking and pursuing continue in all the services. Yet, nearly two years after the Pentagon adopted a thirteen point Anti-Harassment Action Plan, nearly three years after the brutal murder of Private First Class Barry Winchell at Fort Campbell Kentucky, who was murdered because of his perceived sexual orientation, and nearly three years after the Pentagon ordered regular refresher training on DADTDPDH, none of the services have complied with either order. That is nothing less than scandalous.

In March 2000, the DoD Inspector General released a report on its survey of 75,000 service members. The report found that 80% of respondents heard derogatory, anti-gay remarks during the past year; 37% said they witnessed or experienced targeted incidents of anti-gay harassment, 9% of whom reported anti-gay threats and 5% of whom reported witnessing or experiencing anti-gay physical assaults. The majority of respondents reported their leaders took no steps to stop the harassment.

This year the Navy was caught short when an Associated Press photographer took a photo of a bomb with the words “High Jack this fags” scrawled across it. Navy officials called it a “spontaneous act of penmanship” and not reflective of the climate on board the USS Enterprise, where the incident took place. Navy Airman Paul Peverelle, however, was stationed on the USS Enterprise at that time and was verbally harassed and threatened for being gay while on board. That is simply unacceptable. In the Army section, we discuss how lawyers at the Judge Advocate General school in Charlottesville, VA have reportedly made a mockery of the anti-harass-
ment training. In the Air Force section, we describe how the Air Force is seeking to discharge Captain Monica Hill after she requested a deferment from active duty to care for her dying partner. She lost her partner and now is about to lose her job.

Until military officials are held accountable for harassment, until their jobs are on the line, lives will continue to be ruined. This year marks the tenth anniversary of Seaman Allen Shindler’s death at the hands of fellow sailors because of his perceived sexual orientation. It was his murder that prompted, in part, the debate on gays in the military nine years ago. Since then, the evidence continues to grow that DADTDPDH undermines military readiness and should end. Today, the United States is conducting joint operations with our allies who have lifted their bans without incident. In defense of homeland security, uniformed personnel are working alongside openly gay people as they protect our nation: civilian government employees, countless federal, state and local law enforcement and emergency personnel, and private-sector employees.

Sadly, it is reasonable to foresee that as the current Administration continues to do nothing, and bury its head in the sand, there could be yet another anti-gay murder in our armed forces.

**Turning Commitment into Action: “For All Of Our Military People”**

The President is committed to a harassment-free environment for all of our military people.

Dr. Condoleezza Rice (February 20, 2001)

Until the day the policy is repealed, the Bush Administration must take proactive steps to stop asking, pursuit and harassment. Among our recommendations:

- **Hold the services accountable for their failure to implement the thirteen-point Anti-Harassment Action Plan published in July 2000.** The Pentagon’s failure to require the services to fully implement the Plan as ordered, which could save lives, is irresponsible. The services should ensure every service member from recruit to flag and general officer receives appropriate training to prevent anti-gay harassment. The Pentagon should also make clear to all services that anti-gay harassment includes, but is not limited to, inappropriate comments and gestures, mistreatment, threats, and assaults.

- **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, healthcare providers, commanders and other personnel who deal with harassment should be given clear instructions not to out service members who seek their help. Service members—straight, lesbian, gay and bisexual—go to these sources for help. There must also be adequate training on how to handle complaints of harassment, which is currently lacking.

- **The Pentagon must recommit to ensuring full and adequate training on the policy’s investigative limits and privacy protections.** The Department of Defense Inspector General, in a March 2000 survey of 75,000 service members, found that 57% had not received any policy training, and of those who said they understood the policy to a large or very large extent, only 26% could answer correctly three basic questions about how the policy works.

- **Hold accountable those who ask, pursue or harass.** Military leaders should aggressively hold accountable those who ask, pursue or harass, starting with the many examples cited in this report. Commanders must understand there are specific consequences for violations, from letters of counseling to courts-martial, depending on the offense. The Pentagon must uphold and enforce its own law.

If, as Dr. Rice asserted to SLDN in her letter of February 20, 2001, “the President is committed to a harassment-free environment for all of our military people,” the White House will surely agree that taking these steps is urgently needed to protect those who protect our nation. The time has come to adopt and implement the policies that will preserve the strength of our armed forces and our nation.
13 POINT ANTI-HARASSMENT ACTION PLAN

General Recommendations:

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

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

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

Recommendations Regarding Training:

3. The Services shall ensure feedback on reporting mechanisms are in place to measure homosexual conduct policy training and anti-harassment training effectiveness in the following three areas: knowledge, behavior, and climate.

4. The Services shall review all homosexual conduct policy training and anti-harassment training programs to ensure they address the elements and intent of the DoD overarching principle and implementing directive.

5. The Services shall review homosexual conduct policy training and anti-harassment training programs annually to ensure they contain all information required by law and policy, including the DoD overarching principle and implementing directive, and are tailored to the grade and responsibility level of their audiences.
Recommendations Regarding Reporting:

6. The Services shall review all avenues for reporting mistreatment, harassment, and inappropriate comments or gestures to ensure they facilitate effective leadership response.

   • Reporting at the lowest level possible within the chain of command shall be encouraged.
   • Personnel shall be informed of other confidential and non-confidential avenues to report mistreatment, harassment, and inappropriate comments or gestures.

7. The Services shall ensure homosexual conduct policy training and anti-harassment training programs address all avenues to report mistreatment, harassment, and inappropriate comments or gestures and ensure persons receiving reports of mistreatment, harassment, and inappropriate comments or gestures know how to handle these reports.

8. The Services shall ensure that directives, guidance, and training clearly explain the application of the “don't ask, don't tell” policy in the context of receiving and reporting complaints of mistreatment, harassment, and inappropriate comments or gestures, including:

   • Complaints will be taken seriously, regardless of actual or perceived sexual orientation;
   • Those receiving complaints must not ask about sexual orientation – questions about sexual orientation are not needed to handle complaints; violators will be held accountable; and
   • Those reporting harassment ought not tell about or disclose sexual orientation – information regarding sexual orientation is not needed for complaints to be taken seriously.

Recommendations Regarding Enforcement:

9. The Services shall ensure that commanders and leaders take appropriate action against anyone who engages in mistreatment, harassment, and inappropriate comments or gestures.

10. The Services shall ensure that commanders and leaders take appropriate action against anyone who condones or ignores mistreatment, harassment, and inappropriate comments or gestures.

11. The Services shall examine homosexual conduct policy training and anti-harassment training programs to ensure they provide tailored training on enforcement mechanisms.

Recommendations Regarding Measurement:

12. The Services shall ensure inspection programs assess adherence to the DoD overarching principle and implementing directive through measurement of knowledge, behavior, and climate.

13. The Services shall determine the extent to which homosexual conduct policy training and anti-harassment training programs, and the implementation of this action plan, are effective in addressing mistreatment, harassment, and inappropriate comments or gestures.

July 21, 2000
The world sees our compassion toward one another.
President George W. Bush

Ultimately, the ban on gays in the military must be lifted, and the United States must join the rest of the industrialized western nations that have abandoned their policies of discrimination. Forcing lesbian, gay and bisexual service members to hide, lie, evade and deceive their commanders, subordinates, peers, families and friends breaks the bonds of trust among service members essential to unit cohesion. It is also inherently un-American, as is forcing commanders to discharge mission-tested, valued members of their team because of who they are. Enforcing a law that treats an entire group of Americans as second-class citizens undercuts the very liberties and freedoms our military members fight to protect.

Leadership is needed, from the halls of the White House to the halls of the Pentagon. Allowing rampant harassment and policy violations to continue unchecked will lead to the loss of qualified personnel, lowered morale and diminished unit cohesion.

As goes the armed forces, so goes the nation. It is time for the Bush Administration to end its silence on this issue. It is time for discrimination in our nation’s military to go.
DADTDPDH is a ban on lesbians, gays and bisexuals serving in the military—similar to the policies banning service that have been in place for the past fifty years.9 DADTDPDH 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, DADTDPDH is the only law that punishes lesbians, gays, and bisexuals for coming out. Many Americans view DADTDPDH as a benign gentlemen’s agreement with discretion as the key to job security. That is simply not the case. An honest statement of one’s sexual orientation to anyone, anywhere, anytime may lead to being fired.

The History of the Policy

DADTDPDH is the result of a failed effort by President Clinton to end the ban on gays in the military. Spurred in part by the brutal 1992 murder of Seaman Allen Shindler, candidate Clinton proposed ending the ban by issuing an Executive Order overriding the Department of Defense regulations that barred gays from serving. Congress, however, intervened and the ban was made law, theoretically preventing action by future Commanders in Chief.

This law was, however, significantly different from prior prohibitions on service in three respects. First, Congressional and military leaders acknowledged, for the first time in 1993, that lesbians, gays and bisexuals serve our nation and do so honorably.10 Second, the policy also states sexual orientation is no longer a bar to military service.11 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.12 They agreed to take steps to prevent anti-gay harassment.13 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.14 They agreed to implement the law with due regard for the privacy and associations of service members.15 The law became known in 1993 as “Don’t Ask, Don’t Tell, Don’t Pursue” to signify the new limits to investigations and the intent to respect service members’ privacy.

Small steps were made to keep some of these promises. Questioning on sexual orientation at induction stopped. Criminal prosecutions have decreased and witch-hunts have declined. President Clinton issued an Executive Order ending discrimination in the issuance of security clearances. The Department of Defense issued guidelines on anti-gay harassment and limits on investigations.

Then, in 1999, PFC Barry Winchell was murdered by fellow soldiers at Fort Campbell, Kentucky. In the wake of this murder, the Department of Defense (DoD) issued new guidance on prohibiting anti-gay harassment. President Clinton issued an Executive Order providing for sentence enhancement under the Uniform Code of Military Justice (UCMJ) for hate crimes, as well as a limited psychotherapist-patient privilege. In February 2000, Pentagon officials added “Don’t Harass” to the title of the policy. The Pentagon then did a survey on anti-gay harassment, finding it was widespread. Thereafter the Pentagon formed a working group which issued a 13-point action plan.
to address anti-gay harassment which the services were then directed to implement.

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

**The Policy Itself**

SLDN documents violations of the policy reported to us by service members. In order to understand the critiques of the policy and the violations documented in this report, it is important to understand the policy. One way to understand the law, and implementing regulations, known as DADTDPDH is by breaking it down to its component parts.

**Don’t Ask.** Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation.\(^\text{16}\)

**Don’t Tell.** “A basis for discharge exists if . . . [t]he member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts . . . “\(^\text{17}\)

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

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

1) make a statement that they are lesbian, gay or bisexual;

2) engage in physical contact with someone of the same sex for the purposes of sexual gratification; or

3) marry, or attempt to marry, someone of the same sex.\(^\text{18}\)

Only a service member’s commanding officer may initiate an inquiry into homosexual conduct.\(^\text{19}\) In order to begin an inquiry, the commanding officer must receive credible information from a reliable source that a service member has violated the policy.\(^\text{20}\) Actions that are associational behavior, such as having gay friends, going to a gay bar, attending gay pride events, and reading gay magazines or books, are never to be considered credible.\(^\text{21}\) In addition, a service member’s report to his/her command regarding harassment or assault based on perceived sexuality is never to be considered credible evidence.\(^\text{22}\)

If a determination is made that credible information exists that a service member has violated the policy, a service member’s commanding officer may initiate a “limited inquiry” into the allegation or statement. That inquiry is limited in two primary ways. First, the command may only investigate the factual circumstances directly relevant to the specific allegation(s).\(^\text{23}\) Second, in statements cases, the command may only question the service member, his/her chain of command, and anyone that the service member suggests.\(^\text{24}\) In most cases of homosexu-
al statement, no investigation is necessary. Cases involving private sexual acts between consenting adults should be dealt with administratively, and criminal investigators should not be involved.

The command may not attempt to gather additional information not relevant to the specific act or allegation, and the command may not question anyone outside of those listed above without approval from the Secretary of that Service. Such an investigation is considered a “substantial investigation.” In order to request authority to conduct a “substantial investigation,” the service member's command must be able to clearly articulate an appropriate basis for an investigation.

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

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

DADTDPDH is a complex policy comprised of statute, regulations and policy memoranda. The above description, however, covers the basic policy components – and those are fairly simple. Don’t ask about sexual orientation. Don’t investigate sexual orientation, except in specific circumstances in limited ways. Don’t harass. Don’t tolerate harassment based on perceived sexual orientation. Unfortunately, even after nine years, the Services continue to violate these basic rules.

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Private First Class Barry Winchell was beaten to death in July 1999, in his barracks at Fort Campbell, Kentucky, by fellow soldiers who believed him to be gay. Over two and a half years later, the Army has yet to take any effective action to eliminate the type of anti-gay harassment that eventually led to PFC Winchell’s brutal murder. Army leaders refuse to implement the Anti-Harassment Action Plan. In today’s Army, harassment of lesbian, gay and bisexual soldiers – including those serving in our nation’s war on terrorism – is alive and well. SLDN’s cases reflect a worsening, hostile climate where gay soldiers face great risk of bodily harm – or death – not only from our nation’s enemies, but also from our own troops.

SLDN documented during 2001 a record 513 instances of anti-gay harassment in the Army, a shocking 145% increase from the year 2000. The death threats and hateful anti-gay ridicule permeating virtually every aspect of Army culture led to more than 616 lesbian, gay and bisexual soldiers being fired from their jobs – the most discharges in any service.33 Fort Campbell – site of the Winchell murder – chalked up 222 gay discharges, accounting for 36% of the Army’s total. Gay soldiers continue to report frequently being “asked” and “pursued,” in direct violation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” The story in the Army this year, much more so than in the past, is about failed leadership driven by callous indifference. Army leaders, up and down the chain of command, have failed to implement the safety and training initiatives launched in the wake of PFC Winchell’s murder. Last year, SLDN lauded the Army for finally acknowledging its anti-gay harassment problem and taking some good first steps to fix it. This year, SLDN sharply criticizes Army leaders for collectively – and quite purposefully – losing interest. Many junior leaders have tolerated, encouraged and participated in anti-gay harassment, reflecting the failure of senior leadership to act. The Army’s “Vision” states “[w]e are about leadership; it is our stock in trade.”34 If the Army’s climbing discharge and harassment rates are what the Army calls leadership, its time to replenish the merchandise and restock its shelves.

This section discusses what the Army did – more pointedly, what it failed to do – during 2001, and what steps the Army needs to take in 2002 to get back on track.

“[A]lmost on a daily basis, I hear ‘fag’ comments and ‘gay’ jokes … from most ranks … from practically every member of my [unit] … one of whom is a [JAG officer] … one of the chaplains here had made some sort of ‘gay’ joke … NCOs and officers never take action against those making the comments, instead they just laugh along.”

soldier deployed overseas in Operation Enduring Freedom in a communication to SLDN
NOTHING LESS THAN HELL:
ANTI-GAY HARASSMENT
AT RECORD LEVELS

The Army’s anti-gay harassment crisis is, arguably, worse than ever. In a year where the Army fired more than 616 lesbian, gay and bisexual soldiers, SLDN documented an astounding 513 Army “Don’t Harass” violations. The Army’s record high discharge rate appears to be the direct result of the worsening epidemic of anti-gay hostility. The following sampling of soldier testimonies vividly illustrates the scope of the Army’s anti-gay harassment crisis.

Specialist Dell Sellers, who had over six years exceptional service, reports finding pervasive anti-gay harassment at every one of his assignments, including two tours of duty in South Korea and one each at Fort Stewart, Georgia, and Fort Carson, Colorado.

- “If I were to find out if anybody in this unit was gay, I would fucking kill that individual.” – Leader’s statement to soldier at Fort Sheridan, Illinois.
- “Be the shit out of those fags … beat the faggot mother-fucker half dead … kicked that faggot’s ass.” – Comments frequently heard by soldier at Fort Gordon, Georgia.
- “Who hates this damn faggot?” – Leader’s question to young soldiers regarding a gay soldier at Fort Benning, Georgia.
- “Dyke” – frequent comment directed to female soldier at Fort Bliss, Texas.
- “Why are you smiling like a faggot swinging limb to limb from a dick tree?” – Drill Sergeant’s question to soldier at Fort Benning, Georgia.

The year 2001 was a particular disappointment given that it came on the heels of the Army’s most determined effort to “do what’s right” by its gay soldiers during the year immediately following PFC Winchell’s murder. In early 2000, for example, the Army issued a directive stating that “harassment of soldiers for any reason, to include perceived sexual orientation, will not be tolerated,” and ordered that all soldiers receive “refresher training” on the policy. The Army even revamped its “homosexual conduct policy” training materials, focusing on the need to treat all soldiers with “dignity and respect.” The Army directed that its training regulation, Army Regulation 350-1, be revised to include an annual “Don’t Harass” training requirement. The Army’s orders followed the Pentagon’s mandate to comply with a thirteen point Anti-Harassment Action Plan.
Army Chief of Staff General Eric K. Shinseki issued the following order: “[a]ny derogatory words about any group, including those based upon sexual orientation … may subject a soldier to adverse administrative actions or disciplinary measures under the UCMJ.”38 In an effort to stress the importance of the subject matter, General Shinseki personally trained all other Army four star Generals on the policy, and encouraged them to do the same with their subordinate General officers.39

This past year, however, the Army did almost nothing. Although the Army issued its first-ever training publication, entitled “Dignity and Respect: a Training Guide on Homosexual Conduct Policy,” in May 2001, soldiers report to SLDN that the training guide is not being used. Over two years after directing its revision, the Army has not updated Army Regulation 350-1 to require annual training. The sad truth is soldiers report receiving no policy training at the unit level during 2001. The Army is doing precocious little to implement the Anti-Harassment Action Plan.

The policy “can only be successful through the direct and positive involvement of commanders and other leaders at every level…”

The Army Inspector General40

The Army leadership’s lack of seriousness and long-term commitment to the Anti-Harassment Action Plan is obvious from the fact that there has been no effort whatsoever to engage the Army’s Non-Commissioned Officers (NCOs). NCOs are the Army’s backbone. The Sergeant Major of the Army, its most senior NCO, has never once publicly spoken about the importance of treating lesbian and gay soldiers – and those perceived as such – with dignity and respect. Until NCOs become directly involved “at every level,” the Anti-Harassment Action Plan will remain dead in the water.

Systemic policy training is in place at the Army’s schools – implemented following PFC Winchell’s murder. It is, however, treated as the functional equivalent of a “Jerry Springer” television episode. This “training” cannot be viewed as a good-faith effort to comply with the Anti-Harassment Action Plan when it is conducted in such an unprofessional manner. A shocking illustration comes from the highest levels of Army “academia,” its law school.

IT’S (TOO) ELEMENTARY: TRAINING AT THE ARMY’S JAG SCHOOL

SLDN has received a report about attorney-instructors at the Army’s JAG School routinely engaging in professional misconduct while presenting formal training on the policy.

“Faggots” “Queers” “Tinky Winky”

words contained in JAG School briefing

SLDN has received a report about attorney-instructors at the Army’s JAG School routinely engaging in professional misconduct while presenting formal training on the policy.

The Army’s school for training attorneys and senior leaders on Uniform Code of Military Justice (UCMJ) subjects, located in Charlottesville, Virginia, has developed formal policy training in response to General Shinseki’s January 2000 directive. The Army JAG School’s approach, however, appears intended to poke fun at gays and ridicule the policy, rather than to teach Army leaders how to apply the rules.

According to a reserve officer who recently attended the school, three Army Majors – each a JAG attorney – presented a course entitled “Reserve Component Separations,” a portion of which ridiculed lesbian, gay and bisexual soldiers. This specific class was taught on January 9, 2002 and was attended by approximately 85 Army Reserve and National Guard attorney-students. The class was presented by Majors Robertson, Tuckey, and Woodward. SLDN’s understanding is that this “training” is part of a standard JAG School course taught to all Army lawyers passing through the Charlottesville campus, as well as to all senior Army commanding officers (in the ranks of Colonel and above).

Major Robertson, the chief instructor on the “Homosexual Conduct Policy” portion of the course, said that he supervised the attorneys defending PFC Winchell’s murderers during their courts-martial while assigned as the Chief of the Trial Defense Service at Fort Campbell, Kentucky.

Major Robertson then reportedly conducted a “Power-Point” presentation, with imported video and sound clips, that at least one officer per-
ceived as inappropriate, unprofessional and demeaning. The training reportedly used a clip from the movie “Stripes” referring to gay Americans as “queers,” an image of the television “Tele-Tubby” character “Tinky-Winky,” and other video clips containing the word “faggot.” The officer providing this information to SLDN reports that most of the students laughed during this presentation, leading the officer to conclude the training was nothing more than a joke.

During 2001, and prior to this report of JAG School misconduct, SLDN twice wrote to the Judge Advocate General of the Army, Major General Thomas J. Romig, raising issues of concern about how Army lawyers implement the policy. MG Romig declined to directly address SLDN’s concerns, choosing instead to respond, “[o]ur objective is to ensure that all individuals who serve in our Army are treated with dignity and respect, free from harassment, now and in the future.”

SLDN calls on MG Romig to immediately investigate this reported misconduct. If substantiated, MG Romig should take swift action up to and including relieving these instructors from their duties for professional dereliction. MG Romig should further consider pressing UCMJ charges for “Conduct Unbecoming an Officer” and violating General Shinseki’s order.

HAUNTED BY MURDER: THE SPECIAL CASE OF FORT CAMPBELL, KENTUCKY

“[W]e share a common goal of ensuring that all Fort Campbell soldiers – straight, gay, lesbian, and those perceived to be gay or lesbian – are treated with dignity and respect.”

Major General Richard A. Cody, Commanding General Fort Campbell

Fort Campbell discharged 222 lesbian, gay and bisexual soldiers during 2001, more than any other Army installation. Fort Campbell, the site of PFC Barry Winchell’s brutal anti-gay murder in July 1999, accounted for an astonishing 36% of the Army’s reported gay discharges. This is the second consecutive year in which Fort Campbell has had an inordinate number of gay discharges, having also discharged more gay troops than other bases – 160 (28% of the Army total) – during 2000.

Under the command of Major General Richard A. Cody, Fort Campbell has worked to improve the base’s climate. MG Cody, for example, ordered Fort Campbell leaders to “vigorously police the content of [cadence runs and] training briefs … to ensure that they are devoid of profanity or phrases demeaning of others.”

Unfortunately, some Fort Campbell leaders continue to perpetuate anti-gay attitudes within their units by tolerating hateful anti-gay remarks. Fort Campbell’s alarmingly high gay discharge rate is at least partly driven by ongoing instances of leader-tolerated peer-on-peer harassment. Despite MG Cody’s efforts, much work remains to be done.

During 2001, SLDN assisted eight soldiers from Fort Campbell. Every one of these soldiers report hearing degrading and defamatory comments regarding gays while assigned to the base.

- “Since my arrival at Fort Campbell, I have heard many anti-gay comments (e.g., “fag,” “faggot,” etc.). Several times, the comments have been heard by NCOs, but I have not seen any NCO make an on-the-spot correction to stop the comments.” - former Infantryman Keagan Smith

- “I must sit silently while other soldiers ridicule gays and bisexuals. I feel compelled to go along with these ‘jokes’ because if I do not, then I would become the target…” - from a bisexual soldier at Fort Campbell

- “He’s definitely a Homo” - comment made towards a bisexual soldier at Fort Campbell
First Lieutenant Shawn Brown served as an Air Defense Artillery Battalion personnel officer at Fort Campbell, completing his Army commitment in May 2001. 1LT Brown reports hearing many anti-gay comments made by Fort Campbell personnel, ranging from junior enlisted soldiers to members of the officer corps. Brown states that under the current policy “ignorance breeds” because few are willing to speak out against harassment for fear of somehow seeming to oppose Army policy. 1LT Brown was an exceptional officer, but he knew that had knowledge of his being gay come to Army leaders’ attention they would have promptly branded him as unfit for duty. 1LT Brown left the Army at the end of his commitment because of this irrational prejudice. He is one of many soldiers who never show up in the statistics of gay discharges, but nonetheless is a casualty of the policy.

SLDN has worked with Fort Campbell to identify steps to curb its high gay discharge rate. In December 2001, SLDN provided Fort Campbell with ten specific recommendations on how to improve the conditions under which its lesbian, gay and bisexual troops live and work.46

SLDN’s recommendations focused on the continued effort to fix training deficiencies identified in the July 2000 Army Inspector General’s Fort Campbell Task Force Report.47 The Army IG Report concluded Fort Campbell had no “sustainment training” on the policy and its leaders lacked an “understanding and working knowledge” of the policy. The Army IG further concluded that successful implementation of safety and policy training required commitment from Army leaders “at every level.”

SLDN recommended that Fort Campbell reexamine its procedures for handling gay discharges. For example, SLDN found, following PFC Winchell’s murder, Fort Campbell instituted a unique system requiring battalion level (Lieutenant Colonel) commanders to personally handle gay cases. This unique requirement had the unintended consequence of severing junior leader involvement – especially that of NCOs – in matters relating to the policy, thereby failing to comply with one of the key conclusions of the Army IG Fort Campbell Task Force’s report.

Severing junior leaders from responsibility for policy implementation relieves them from accountability in its implementation. SLDN has urged MG Cody to involve his senior non-commissioned officer, the Division Sergeant Major, in policy training and in setting the proper leadership example.

Fort Campbell’s ongoing problems with anti-gay harassment, epidemic throughout the broader Army, can only be addressed through forceful leadership and holding accountable those – especially leaders – who violate the “Don’t Harass” policy.

**NEW YORK TIMES REPORT**

Despite Lieutenant General McNeill’s assertions to the contrary, Fort Bragg leaders are failing to work for the “dignity and respect” of lesbian, gay and bisexual soldiers. The cases of Staff Sergeant Wayne Peacock and Sergeant Carlos Torres illustrate the numerous reports of anti-gay harassment SLDN received from Fort Bragg.

SSG Wayne Peacock reached a point where he could no longer tolerate the pervasive anti-gay climate at Fort Bragg. A certified paratrooper with over 70 jumps from combat aircraft, Peacock wrote to his command, “I have served with
honor for over six years … I know that I have nothing to be ashamed of and I can no longer continue silently suffering from the constant barrage of anti-gay comments that other soldiers – and leaders – make here at Fort Bragg."49

SGT Carlos Torres reluctantly disclosed his sexual orientation to Fort Bragg leaders after becoming fed up with the constant anti-gay harassment. SGT Torres wrote to his command "I have honorably served as a soldier for over ten years … [and can no longer endure] the frequent anti-gay hostility I am exposed to from other soldiers, to include some NCOs. It seems to be okay at Fort Bragg for soldiers to make derogatory comments about and towards gays. I can no longer tolerate this bigotry and must speak out."50

The poor climate at Fort Bragg is further evidenced by an anti-gay cartoon that ran in the on-post newspaper in late September 2001. The cartoon stereotypes gay soldiers as weak and unreliable. Although Fort Bragg leaders apologized to SLDN for the leadership lapse in allowing the offensive publication, that it happened at all shows that much hard work remains to be done. The publication also vividly illustrates the Army’s failure to appreciate the many contributions of its lesbian, gay and bisexual soldiers, such as those of SSG Peacock and SGT Torres. With a combined 16 plus years of excellent military experience, Peacock and Torres epitomize the very type of patriot needed by our nation’s Army in this time of war.

SLDN is also concerned by Fort Bragg’s reported statistics for gay discharges, which show a mysterious and unexplained decrease, from 29 discharges in 2000 to only four discharges in 2001. Interestingly, neither SSG Peacock nor SGT Torres are likely to be counted among Ft. Bragg’s discharges, since both Peacock’s and Torres’ discharge paperwork stated as their reason for separation “completion of required active service” – despite the fact that neither Peacock nor Torres actually completed their terms of enlistment.51 The possibility that Fort Bragg leaders may have falsified soldiers’ discharge paperwork in order to misrepresent statistics is a serious matter and should be promptly investigated.

COMMENTS AND CONDUCT:
A FORT CARSON SOLDIER’S STORY

“The I have become the target of relentless anti-gay harassment which includes having a Staff Sergeant threaten to kill me if he learns I am gay … All I can think about is the soldier back in 1999 that was killed at Fort Campbell for his perceived sexuality.”

Private Mike Wooten, Fort Carson52

The case of Private Mike Wooten, at Fort Carson, Colorado, further illustrates the consequences of the Army’s failure to train on the policy and allowing leader driven anti-gay hate. The death threat was the last straw. After suffering through months of harassment, Private Wooten realized he had to come out in order to protect himself from an onslaught of anti-gay abuse and to ensure his safety.

Wooten wrote to his command, “I routinely hear hateful anti-gay comments such as ‘that vacuum sucks as good as you do’ and ‘you can suck my cock.’” Wooten continued:

[With F Troop, rumors of other soldiers’ sexual orientation are rampant…. NCOs sometimes participate in this speculation and frequently hear the anti-gay comments being made but never take steps to stop the comments…. I have heard other soldiers within my unit talk openly about perceived gay soldiers and stated ‘I wish I could kick their ass.’ This leads me to further fear for my safety if the speculation about my private life is verified.
Wooten added:

I have tried to put up a good front and be strong. I have brushed off the constant comments and hazing by trying to appear ‘not gay.’ Sometimes I have attempted to deflect attention by going along with the hateful jokes made by soldiers and NCOs. This has caused me great shame and personal pain... I have tried to serve my country, but I can’t.

SLDN notified Fort Carson’s then-Commanding General, Major General Edward Soriano, who took immediate steps to ensure Wooten’s safety. MG Soriano ordered an investigation into the allegations of wrongdoing within F Troop and whether F Troop and the 3rd Armored Cavalry Regiment were “conducting required training on [the policy].”

The Fort Carson report substantiated the hostile anti-gay climate and lack of training. The report’s findings include:

• “[T]he comments and conduct of various soldiers and noncommissioned officers within F Troop created an atmosphere where offensive, crude comments and jokes were made and condoned by Private Wooten’s immediate section chain of command.”

• “F Troop has no record of conducting [DADTPDH] training. In addition, the Troop commander is not aware of the Troop ever conducting the training... There is not a local Commanding General policy letter covering the Homosexual Conduct Policy.”

• “Staff Sergeant Christopher Porter would sometimes participate in the joking and would often use the word ‘fag’ in front of other noncommissioned officers and soldiers.”53

SLDN salutes MG Soriano for allowing such a thorough and objective investigation into his command’s “Don’t Harass” adherence. Few commanders are so forthright.

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**Out of Balance: A Disconnect Between Words and Actions**

The friction between the Army’s stated belief in the dignity of lesbian, gay and bisexual soldiers, and its failure to fully implement practices consistent with the Anti-Harassment Action Plan, has created an environment hostile to Army personnel. As the above illustrations from the JAG School, Fort Campbell, Fort Bragg, and Fort Carson demonstrate, Army leaders have a long way to go to erase this friction.

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**Are You Having a Problem?**

Army “Pursuing” Gay Soldiers At Record Pace; “Don’t Ask” Violations Continue

“I doubt very seriously that you are straight.”

Senior NCO’s statement to female soldier at Fort Bragg, North Carolina

SLDN documented a record 133 Army “Don’t Pursue,” along with 23 “Don’t Ask,” violations during 2001. It should come as no surprise that Army leaders feel they have a green-light to “pursue” since their senior leadership has, by and large, lost interest in ensuring lesbian, gay and bisexual soldiers are treated with “dignity and respect.” Nonetheless, the ongoing instances of Army leaders fishing for personal information about perceived gay soldiers is alarming. Often times, upon learning a soldier is gay, leaders launch intrusive, improper inquisitions attempting to gather evidence to harm the soldier, frequently by asking about sexual behaviors.

Other times, soldiers are asked about their sexuality by their peers or their leaders. When leaders ask questions such as “are you a lesbian?” and “are you having a problem with your sexuality?” they violate not only “Don’t Ask,” but “Don’t Pursue” as well. Army leaders are prohibited from conducting inquiries solely to determine whether a soldier is straight, lesbian, gay or bisexual.55
“Have you engaged in, attempted to engage in or solicited another to engage in a homosexual act?”
First Sergeant’s question to soldier at Fort Huachuca, Arizona

Private Orlando Estrella came out to his command, in May 2001, because of anti-gay harassment. Private Estrella wrote:

[T]he Army has proven to be much more homophobic and anti-gay than I had imagined … There has been a lot of suspicion and rumors about service members being gay throughout my unit and it has finally become too emotionally draining and stressful worrying about people finding out about me.56

Private Estrella’s command should have simply initiated administrative discharge proceedings but instead chose to launch an intrusive investigation into Estrella’s sex life. Questions asked of Private Estrella included:

- “Do you desire to have sexual relations with an individual of the same sex?”
- “Do you have a same sex partner here in Germany or stateside?”
- “Do any of the soldiers living in the barracks know that you profess to be gay?”57

In cases where lesbian, gay or bisexual soldiers come out, the Army may involuntarily discharge them. However, Army leaders remain bound by “Don’t Pursue” and should never ask intrusive questions about the soldier’s private life, particularly about “homosexual acts,” just because the soldier came out.

“What made you gay?”
First Sergeant’s question of soldier at Fort Wainwright, Alaska

Training, and consequences for those who violate the limits on investigations, is the only way to check the rising tide of Army “Don’t Pursue” violations. “Don’t Ask” violations, on the other hand, present a different dilemma. That asking occurs at all, nine years into the policy is troubling, although not surprising. In a real sense, the “Don’t Ask” policy inhibits development of trust between soldiers.

“Are you having a problem with your sexuality? The Army tells me I’m not allowed to ask, so I won’t”
Drill Sergeant’s question to soldier at Fort Huachuca, Arizona

It is unreasonable to expect soldiers not to query each other about their personal lives. Indeed, such basic interpersonal interaction is part and parcel of how young men and women develop trust in each other and become cohesive as a team. When soldiers ask questions such as “are you married?” or “are you dating anyone?,” they are merely engaging in socially acceptable behaviors which, under the bizarre twist of the “Don’t Ask” policy, violates Army rules and places gays at great risk. Such otherwise benign questioning is no different from that heard everyday around the proverbial corporate water-cooler, with one notable exception: gay soldiers who answer truthfully risk being fired from their jobs, and becoming the targets of increased harassment.

“Are you a lesbian?”
Question asked of female officer at Fort Lee, Virginia
Most lesbian, gay and bisexual soldiers report being compelled to “play along” and pretend to be heterosexual as the only way to protect themselves from being “asked.” A gay soldier serving in Operation Enduring Freedom describes the dilemma: “I think that I may have done a good job trying to convince my co-workers and command that I am not gay ... I worry daily that I might accidentally say or do something that might indicate my sexual orientation.”

“Are you gay?”
Sergeant’s question asked of female soldier at Fort Carson, Colorado

Although the Army’s core values call for soldiers to live with integrity and honor, for lesbian, gay and bisexual troops, “Don’t Ask” essentially asks them to deceive and evade. “Don’t Ask” muddies the trust-through-bonding water. It creates an obstacle that forces soldiers to distance themselves from each other by avoiding and, sometimes, deceiving. Over time, the friction between the need to trust and the need to live with integrity, between the requirement to “not ask” and the natural inclination to “ask,” threatens military readiness.

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**Army Conclusion**

Almost three years after PFC Winchell’s murder, the Army still has a problem. It fired a record 616 lesbian, gay and bisexual soldiers during 2001. The “Don’t Harass” policy is in shambles. “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” doesn’t work. The question for Army leaders is what are they going to do about it? To get back on track in 2002, the Army should:

- Hold policy violators accountable. Start with a thorough investigation of the reported misconduct at the Judge Advocate General’s (JAG) School;
- Investigate Fort Bragg’s possible manipulation of its gay discharge numbers; and
- Establish a joint Department of the Army – Servicemembers Legal Defense Network Task Force to explore better ways to ensure Army compliance with the policy.

In 2000, the Army made some good first steps. 2001, however, was marked by Army leaders’ complacency, indifference and stagnation.

When Army leaders allow command climates to be polluted by virulent anti-gay hostility, soldiers are unable to establish esprit and camaraderie within their platoons. When Army leaders allow perceived lesbian, gay and bisexual soldiers to be “asked” and “pursued,” trust and teamwork are the victims.

The friction between the Army’s “dignity and respect” rhetoric and its widely embraced homophobic practices has created an acute infection within the Army culture. The culture is out of balance and nothing less than readiness – as measured in the lives of young Americans, including those who are lesbian, gay and bisexual – hangs in the balance.
Comparing homosexuality to “alcoholism, thievery [and] lying,” an Air Force Colonel demonstrated this year how comfortable he now is in conveying his bigotry to those he commands. His forthright assertion that he will ask airmen if they are gay flies in the face of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass.” His utter disrespect for both the letter of the law and service members, epitomizes the brick wall SLDN has faced with the Air Force throughout 2001.

Given the grave leadership delinquencies SLDN continues to see in the Air Force with respect to DADTDPDH, it might be expected that SLDN would have counted more violations than ever before in the Air Force. However, SLDN has recorded fewer total violations of DADTDPDH by the Air Force during the past year. While it is impossible to say with certainty what factors led to this decrease in the number of violations, it is clear from SLDN’s Air Force cases that the Air Force has not improved its application of the policy. Therefore, other factors may have contributed to a decrease in total Air Force violations.

First, the total number of SLDN’s Air Force cases was significantly lower than previous years. Some of this may be attributable to the ongoing war against terrorism. Second, when looking specifically at the issue of harassment, unlike previous years, this year SLDN had more Air Force officers than Air Force enlisted members as clients. While it should not be said in a blanket statement that only enlisted service members are harassed, both SLDN and the DoD have observed that enlisted service members tend to be subjected to more harassment, direct and indirect, than officers.

Finally, regarding pursuit violations, SLDN has observed that much of the Air Force’s past violations of the anti-pursuit provisions seem to be because of witch-hunts or motivated by recoupment. During the past year, SLDN did not document a single witch-hunt. Furthermore, although SLDN has had numerous Air Force recoupment cases this year, only one case was procedurally in a position where inappropriate pursuit could and did occur. That case is highlighted below.

SLDN’s Air Force cases show that harassment continues to be a serious issue, and there is growing evidence...
of a new trend to "punish" service members for being lesbian, gay or bisexual beyond simple discharge. We also continue to see a trend towards greater recoupment efforts by the Air Force than by other services. Furthermore, the Air Force appears to be attempting to prevent SLDN from gathering information relevant to its application of the policy.59 The Air Force has repeatedly refused to provide SLDN with requested information on its implementation of the policy, suggesting there is information Air Force leaders would rather not make publicly available. SLDN has been told by a source outside the Air Force that the unofficial number of Air Force gay discharges for 2001 has increased to 191. This could be one reason for the Air Force’s reticence in keeping the public informed.

Don’t Harass
Don’t Pursue
Don’t Ask

AIR FORCE VIOLATIONS 1994-2001


Captain Monica Hill faced the most difficult, and yet easiest, decision of her life. She had just been informed that her partner of 14 years, Terri, was dying of brain cancer. What made this devastating news even more heartbreaking was the fact that she was scheduled to report to Andrews AFB, more than 1000 miles away from Terri, in a matter of days, to enter into active duty service as a doctor with the Air Force. After digesting the news that her partner was dying, Capt Hill was confronted with the reality that in the eyes of the Air Force, Terri was not legally her "family." Therefore, Capt Hill had very little standing to seek permission to remain with Terri as she prepared to die.

Desperate to remain with her dying partner, and feeling it was irresponsible to move Terri from her treating physicians, Capt Hill decided to seek permission to delay reporting to Andrews AFB. Hill wrote, "I am very proud of the Air Force and of being an office(r). However, I have been placed in an impossible situation. I cannot care for Terri during the course of her illness and report to active duty at Andrews AFB." Capt Hill was left with no other option but to explain why she needed the requested deferment and thereby outed herself to the Air Force.

In response to her request, the Air Force cancelled Capt Hill’s orders to report to Andrews AFB but was silent regarding her request for a deferment. Had Capt Hill been heterosexual and her husband diagnosed with a terminal illness, the Air Force would likely have granted the deferment without hesitation.

Several months after her orders were cancelled, and still without any word on her deferment request, the Air Force informed Capt Hill they were initiating discharge proceedings against her based on the revelation of her relationship with Terri, who tragically and unexpectedly died on September 11, 2001. On December 11, 2001, Capt Hill was interviewed by Major S. Peterson as part of the discharge investigation. Violating Air Force regulations, Maj Peterson did not allow Capt Hill’s military attorney to be present during the interview, and he did not inform her of her rights under military law.61 During his questioning, Maj Peterson insinuated that Capt Hill...
was only trying to get out of completing her service commitment when she revealed her sexual orientation in her deferment request. Even when presented with proof of Terri’s death and proof that they had rented an apartment near Andrews AFB in preparation for moving there, Maj Peterson continued to question Capt Hill about her sexual activity, motivation for sending the deferment request, commitment to the Air Force, and when Capt Hill became aware that she is a lesbian.62

The Air Force has devastated Capt Hill with its unkind treatment. Not only has Capt Hill lost someone she dearly loved, but she may lose her Air Force career as well. Were it not for the Air Force’s harsh and abusive application of DADTDPDH, Capt Hill would have continued on in her career with the Air Force after Terri’s death. Instead, Capt Hill is fighting to retain her Air Force career, while grieving for the loss of her partner of 14 years, and searching for a new civilian job.

This heartbreaking story is illustrative of the Air Force’s strategy and tactics in cases where recoupment of money could be an issue. The Air Force’s desire to recoup the money it spent for her medical school can be the only explanation for the callous way the Air Force has treated Capt Hill since revealing her relationship with Terri. However, improper pursuits do not occur just in recoupment cases.

“Have you ever been to a gay club?” “Are you currently dating anyone?” “How long has it been since you dated anyone?” “What do you do when you are off work?” “How do you feel about gay people?” “Have you had any visitors since being stationed here from back home or anywhere?” “What are your plans for the weekend?”

Questions asked of Airman Judson Smith by Captain Craig Dumos in violation of “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass”63

Airman Judson Smith, an Air Force firefighter/paramedic for more than two years and assigned to Patrick AFB, was inappropriately investigated for being gay after his command received an allegation about his sexual orientation from a civilian unknown to the command. Airman Smith’s command never should have begun the investigation because the allegation it was based on did not rise to the level of being credible information from a reliable source, the standard by which commands are required to judge whether or not to begin an investigation. In further violation of DADTDPDH, once the inappropriate investigation began, Airman Smith was subjected to very intrusive questions, some of which are listed above, designed to elicit details about his personal life. The questions violated the “Don’t Pursue” element of the policy in that they went far beyond what the civilian is said to have alleged.64

Ultimately the Air Force concluded that they did not have enough credible evidence of his sexual orientation to kick him out of the service. Unfortunately, the damage has been done; Airman Smith could not continue to stay in the Air Force constantly looking over his shoulder. Since this investigation occurred, Airman Smith believes he is a marked man and that there will always be people questioning his sexuality or making their own assumptions. Therefore, Airman Smith admitted to his command that he is gay.

Despite support from all of his coworkers and immediate supervisors, Airman Smith is being discharged from the Air Force because of his sexual orientation.

THE BUCK STOPS HERE: AIR FORCE CONTINUES TO PURSUE MONEY

According to regulations, the military may seek repayment, or recoupment, of money spent on education and/or recruitment bonuses if a service member voluntarily seeks discharge before the end of their commitment or if discharged because of misconduct.65 The Air Force has sought to recoup against gay service members in an effort not equaled by any of the other branches of the military, either in desire or design. Despite a 1994 DoD memorandum instructing the services that a member’s statement of sexual orientation does not alone constitute a basis for recoupment, the Air Force continues to aggressively pursue recoupment against service members who have made statements of sexual orientation by attempting to prove the statements were made for the purpose of avoiding their military commitments.

“[A] member’s statement that he or she is a homosexual, though grounds for separation under the current policy. …
does not constitute a basis for recoupment.... This does not preclude recoupment, however, if... it is determined that the member made the statement for the purpose of seeking separation.” quote from Deutch Memorandum.

Basing its strategy on “purpose of seeking separation” language, the Air Force specifically crafts its investigations to try to develop information to prove that service members made statements merely to get out of the Air Force. This strategy is apparent in the way Capt Hill was questioned. SLDN does not anticipate the Air Force will alter its position on recoupment to be more in line with the Deutch directives. The District Court for the Northern District of California recently ruled that the Air Force can continue to recoup against service members in “coming out” cases as long it can find multiple bases on which to conclude that a service member revealed their sexual orientation for the purpose of avoiding service. It is too early to tell how, or if, this ruling will affect the Air Force’s attitude and strategy towards potential recoupment cases.

While the Air Force maintains that it does not recoup against every gay former Air Force service member where educational benefits or enlistment bonuses have been paid, SLDN has observed that only under extremely unusual circumstances has the Air Force not tenaciously sought recoupment.

DON’T HARASS: THEY’LL BE PUNISHED IN THE END

“What are you a fucking faggot!”
told to an Airman at the Defense Language Institute in Monterey, CA.

According to service members calling SLDN, the Defense Language Institute (DLI) in Monterey continues to be an environment ripe with unchecked anti-gay harassment, as detailed in prior SLDN reports. In fact, the quote listed above comes from one of several clients SLDN had at DLI this year. This particular Airman told his command that he is bisexual because he could not continue to remain silent amid rampant anti-gay harassment. In addition to being directly called an anti-gay epithet, during a break in one of his classes the Airman heard a senior Navy enlisted sailor state, “They (homosexuals) disgust me. I don’t care what they do because they will be punished in the end....” The Airman has since been discharged from the Air Force for revealing his sexual orientation to his command. Unfortunately, this Airman’s story of individual harassment as well as a hostile and harassing environment is typical of SLDN’s Air Force cases. It is also part of a disturbing and ongoing trend at DLI.

More than 18 months after the DoD directed the Services to implement the Anti-Harassment Action Plan’s 13 recommendations, SLDN has yet to discover evidence that the Air Force has implemented a single recommendation. Only a few of SLDN’s Air Force clients report that they have heard their commands make any statement about not tolerating anti-gay harassment. In contrast, most report that their commands permit a climate hostile to lesbian, gay and bisexual service members. Although SLDN filed a Freedom of Information Act (FIOA) request seeking the Air Force’s training and instructions on anti-gay harassment in the fall of 2001, we have yet to receive a response to that request.

PUNISHED FOR BEING GAY

In addition to overt anti-gay harassment, SLDN has started to uncover evidence of more subtle, institutional harassment in the Air Force. Increasingly, Air Force officers and enlisted members are being “punished,” beyond discharge, for being discovered to be lesbian, gay or bisexual. SLDN has documented several cases during the past year where the Air Force has attempted to “punish” gay service members. They do so by giving service members incorrect or inappropriate discharges, lower performance evaluations, or refusing to give them the promotions they have been selected to receive. This occurs after service members have revealed their sexual orientation or when their consensual, adult, same-sex conduct is discovered.

One example of such “punishment” is in the case of First Lieutenant Megan Kuzmich. In October 2000, 1st Lt Kuzmich explained to her commander that she felt she was compromising her integrity as an officer by not telling him she is a lesbian. Following her revelation, 1st Lt Kuzmich’s command investigated her and moved to discharge her from the Air Force. 1st Lt Kuzmich fought the discharge recommendation at every step of the way citing her desire to remain in the Air Force.
Despite her arguments to be retained, in March 2001, a Board of Inquiry found that 1st Lt Kuzmich should be honorably discharged from the Air Force. While 1st Lt Kuzmich was appealing the decision, her command withdrew her name from the promotion list for Captain almost one year after being selected for the list. In a letter to her command responding to her withdrawal from the Captain’s list, 1st Lt Kuzmich wrote, “I urge that my removal from the promotion list to Captain be reconsidered as nothing in my performance supports this action. The outstanding service that I continue to render should be properly recognized with the promotion I was selected for.” In fact, 1st Lt Kuzmich had never received a poor performance evaluation in her career.

Shortly thereafter, 1st Lt Kuzmich received a performance evaluation from her command that marked her top-notch in all areas except “Professional Qualities” citing that she “has not complied with DoD/AF homosexual policies.” In other words, her command lowered her performance evaluation rating solely because she was honest with her command about her sexuality. Ironically, the “Professional Qualities” section of the evaluation lists integrity and honesty as two of the key factors in judging officer performance. 1st Lt Kuzmich lost her battle with the Air Force and was honorably discharged. She never received the promotion to Captain that she had earned and deserved.

DON’T ASK:
…because “If You Are Gay, I’ll Tell.”

“If you were raped, you must be gay.”
Statements made to an Air Force Airman by a civilian Air Force psychiatrist.

After being sexually assaulted by a civilian, an Air Force Airman reluctantly sought treatment from a medical clinic on his base where he reported that he had been raped.

The Airman was referred to a base psychiatrist who repeatedly attempted to get the service member to reveal his sexual orientation, by asking the service member several leading questions and then the psychiatrist made the ludicrous assertion that he knew the Airman was gay because of what had happened. While information about the Airman’s sexual orientation could have been useful for treatment, current regulations do not allow for psychiatrist-patient confidentiality. Therefore, when his treating psychiatrist continued to question the Airman about his sexual orientation, he was violating “Don’t Ask.”

The psychiatrist went on to threaten to “out” the Airman to his command if he stated he is gay which only underscores the precarious position in which service members can find themselves. The Airman did not answer the psychiatrist’s questions, requested treatment from another Air Force psychiatrist, and continues to cautiously serve our country in the Air Force.

RESISTANCE TO DISCLOSING RELEVANT INFORMATION

“Disclosure of this information is not in the public interest.”
Air Force response to an SLDN Freedom of Information Act (FOIA) request.

Every year, SLDN formally requests information from the Air Force on a variety of standard issues, such as discharge statistics, reports of inquiry, Inspector General reports of investigation, and other client related materials. This year, more than any past year, and more than any other service, the Air Force has stalled, delayed, denied and otherwise prevented SLDN from obtaining information in the public interest and on behalf of our clients. As one example, the Air Force has repeatedly thwarted SLDN attempts to obtain data on gay discharges, including breakdowns by base, gender, age, race, rank, etc. All of the other services have complied with similar SLDN requests in due course. The Air Force has not.

Similarly, the Air Force has consistently refused to produce information SLDN requested specifically regarding gay discharges from Lackland AFB for fiscal years 1998, 1999, and 2000. SLDN has been told, but not confirmed, that gay discharges at Lackland AFB have declined because the base has re-categorized them as entry level separations. If true, this sleight of hand would be of grave concern. SLDN continues to withhold judgment at this time, but the repeated denials of FOIA requests, including “[d]isclosure of this information is not in the public interest,” smacks of bad faith.

The second area where the Air Force seems the most reluctant to respond
to FOIA requests is on the issue of recoupment. For example, last year when SLDN filed FOIAs seeking information relevant to two of our clients against whom the Air Force sought recoupment, the Air Force responded in both cases by stating, “The records you have requested are partially exempt from disclosure. Some documents pertain to the decision making process of the Air Force….” The information SLDN seeks through these inquiries is directly relevant to our clients’ cases and is not privileged information. In light of the tenacity with which the Air Force seeks recoupment against lesbian, gay and bisexual service members, its reluctance to provide this information indicates that recoupment remains a sensitive issue.

**America’s Air Force – We Can Come Close**

As SLDN has cited in the past, many of the difficulties and policy violations we see could be prevented through better training. The Air Force has not provided SLDN copies of its training materials despite specific requests. Most of SLDN’s clients report that they have not received training within the past year on the policy. Furthermore, when SLDN clients and contacts have received training, many state that the trainers have allowed, encouraged, and led anti-gay harassment during training.

To this point, the only evidence we have of any compliance by the Air Force with DoD anti-harassment guidance is a March 2000 memorandum issued by General Michael Ryan, Chief of Staff for the Air Force, entitled a “Policy Statement on Homosexual Conduct in the Air Force.” This memo emphasized that harassment based on perceived homosexual orientation will not be tolerated and anti-harassment training was required. It also promised the distribution of additional materials on harassment once completed. SLDN urges the Air Force to:

- Systematically train on the DADTDPDH policy, emphasizing appropriate investigative procedures, and implement regulations instructing that the training occur yearly;
- Create and distribute anti-harassment training materials and implement regulations instructing that anti-harassment training occur yearly;
- Clearly identify safe places for airmen to report anti-gay harassment; and
- Hold harassers accountable for their actions. This is important no matter the rank of the harasser.

In addition to emphasizing anti-harassment training, General Ryan’s memo emphasized the need for more extensive, and regular, training on DADTDPDH. It further stated that training should occur annually, and First Sergeants should be encouraged to attend supervisor training. SLDN urges the Air Force to:

- Follow through with General Ryan’s recommendation regarding training on the policy and especially encourage the inclusion of senior non-commissioned officers (NCO) in this training. Senior NCOs are often first in the chain of command to be contacted by a lesbian, gay, or bisexual airman about the issue of sexual orientation;
- Adopt regulations allowing airmen to reveal their sexual orientation to military health care providers during the course of treatment without fear that the information will be used to end their careers; and
- Cease the delay and denial tactics they are employing in a perceived attempt to prevent SLDN from gathering relevant information which is in the public interest.

The Air Force can come closer to complying with DADTDPDH, and with protecting the safety and dignity of all its airmen, through more diligent training and emphasis on a zero-tolerance policy for anti-gay harassment.

No service member, from the lowest enlisted person to the highest commander, should be allowed to bring their own biases to the work place in a manner that humiliates, degrades, and threatens other service members.
At every turn, and in every way, the Navy abandoned the Assistant Secretary’s commitment to “dignity and respect” in 2001. The Navy fired 314 men and women for being lesbian, gay or bisexual last year. SLDN documented 271 incidents of anti-gay harassment in the Navy during the past year, including a very public display of anti-gay graffiti on a bomb used in Afghanistan in the war on terrorism. The Navy’s harassment undermines its ability to retain qualified, skilled sailors.

“WE TREAT EVERYONE WITH DIGNITY AND RESPECT.”

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The Navy claimed, “We do... expect...leadership on the scene.” Nevertheless, accountability for those who wrote the message, and for those who allowed an environment to fester where such behavior was acceptable, was missing in action.

Navy Airman Paul Peverelle knew all too well the leadership's refusal to adequately deal with anti-gay harassment on the USS Enterprise. He came out to his command in April 2001 because he wanted them to “know that this great work – and effort – is coming from a gay man.” His command, however, refused to discharge him, believing, without evidence, that Peverelle was simply trying to avoid service. Four weeks later, Peverelle deployed for a six month tour of duty on the USS Enterprise. In September, after the terrorist attacks on America, the USS Enterprise was ordered to join the forces fighting the war against terrorists in Afghanistan.

Peverelle served his country honorably with one of the F-14 squadrons. Like all of our valued men and women in uniform, Peverelle was an integral part of Operation Enduring Freedom.

Peverelle served as an openly gay man. But not by choice. Having deployed after coming out to his command, he, like many gay men, was careful about the people in whom he confided. Yet, in spite of his own caution, his command outing him. His sexual orientation became common knowledge on board the ship.

When members of his squadron learned that Peverelle had come out, they harassed him, threatening his safety, teasing him, and calling him derogatory names. Peverelle says, “I actually had two guys in my berthing area call me ‘faggot,’ ‘gay bitch,’ and ‘ass licker,’ threatening to beat my ass the next chance they get.”

Peverelle reported the harassment to his commanding officer, who did nothing.

Shortly thereafter, as captured by the Associated Press, the consequences of harassment left unchecked became abundantly clear. High Jack This Fags. The Navy characteristically dismissed the epithet as “an isolated incident.” The incident, however, was not isolated. It was borne of a climate that tolerates harassment from the top down. SLDN is asking the Navy to review the reports of harassment aboard the USS Enterprise and take strong, appropriate action now.

The USS Enterprise has since returned to Norfolk to a hero's welcome. SLDN salutes the men and women who serve our country, particularly at this difficult time. The Navy, however, has now discharged Seaman Peverelle for being gay.

Unfortunately, anti-gay harassment in our Navy is far too common... and far too often unchecked.

A sailor stationed in Europe, for example, reports hearing daily anti-gay comments from his fellow sailors. Comments such as “You’re such a poof,” “Quit being such a rainbow warrior,” and “Is your favorite cereal Fruit Loops?” The Navy's response? “We can’t control what people say.”

Apparently, they cannot protect their men and women in uniform, either. Sonar Technician Third Class (E-4) Brian Moore’s experience with another “spontaneous act of penmanship” and lack of “leadership on the scene” further displays the horror gay Navy personnel face every day.

“Someone wrote in green letters across my bed sheets, FAG,” says Moore. “I was... really scared to sleep on this ship. I no longer feel safe here aboard the USS Curtis Wilbur. I feel that the environment here is intimidating and dangerous. I hear many anti-homosexuals (sic) comments and jokes everyday.”

Navy leadership appears to be immune to the policy’s “Don't Harass” provision. A west coast sailor reports to SLDN that, soon after revealing to her command that she is bisexual, she found a threatening note on her pillow. While her command took more than a week to “check it out,” female sailors began shouting derogatory remarks to her. Upon her return from emergency leave, fellow sailors chased the sailor down a pier, and three days later, pushed her from behind, pulled her jacket over her head and kicked her as they laughed.

Shortly after SLDN urgently telephoned her command to secure the sailor’s safety, her department head questioned whether the injuries were “self-inflicted.” Sailors derive no sense of trust in their leaders when they fail to take harassment seriously and, instead, blame the victim.

Ultimately, her command transferred her. She has since been discharged, but to SLDN’s knowledge, the Navy...
has taken no action to hold accountable those who harassed her or to properly investigate the matter.

Rather than protecting its sailors – rather than complying with Secretary of Defense orders to adhere to the Pentagon’s Anti-Harassment Action Plan – the Navy continues to do nothing. Of the thirteen points outlined in the Pentagon’s plan, the Navy has complied with zero.

Steps taken by the Navy to address the policy – outlined in its General Military Training (GMT) – are not harassment specific and are woefully inadequate. Dignity and respect? Instructions for preventing harassment before it starts? Identifying safe resources for those who are harassed? Holding those who harass accountable? Not on this watch. Not in this Navy’s GMT. Not in this Navy period.

**HAVING IT BOTH WAYS: NAVY COMMANDERS CONTINUE TO RETAIN PERSONNEL**

Though the Navy does little to protect gay sailors from harm, it retains them and puts them in harm’s way. SLDN has documented efforts by naval commands to retain gay sailors even after learning of their sexual orientation. While SLDN does not fault naval leaders for wanting to retain qualified, skilled, and motivated men and women, it does point out that doing so, when these sailors happen to be gay, violates federal law – and is dangerous when measures are not taken to protect their safety.

By asking sailors to “prove” their sexual orientation, or by dismissing their statements with a simple “I don’t believe you,” or “I don’t care,” commanders have found creative ways to temporarily retain personnel. Nothing in DADTDPDH requires a sailor to prove his or her sexual orientation. Not only is asking for corroborative evidence prohibited, providing corroborative evidence can lead to criminal prosecution or other disciplinary actions. In fact, Section 125, Uniform Code of Military Justice, prohibits oral and anal sex – both homosexual and heterosexual. Articles 133 and 134, the General Articles, prohibit an even broader range of sexual and affectionate conduct.

If commanders sincerely doubt the truthfulness of a sailor’s coming out statement, they may request permission from the Secretary of the Navy to conduct a “substantial investigation,” defined by Navy policy. To SLDN’s knowledge, this was done only once during the past year in the case of an officer who came out to her command as a lesbian. Her command believed she was coming out simply to avoid deployment. After the officer did deploy for over six months, and was cited for “outstanding seamanship,” her command withdrew its request for a substantial investigation, admitting that it had wrongly accused her of making a statement merely to avoid deployment. This officer continues to proudly serve.

Repealing the policy would allow commands to retain valued sailors, such as a west coast sailor SLDN recently assisted. The sailor, whose commanding officer described him as a “top ten percent performer” and “the kind of sailor you want to keep in the Navy,” came out to his command. The commanding officer, hoping to keep a good sailor, offered to ignore the statement, let the sailor withdraw it, and continue to serve. The sailor considered the offer but ultimately declined. In response, the commanding officer recommended the sailor who was a ‘top ten performer’ receive a general, rather than honorable, discharge. After SLDN intervened, the sailor received an honorable discharge, and the Navy lost yet another valuable member to the shadows of “Don’t Ask, Don’t Tell.”

**YOU’RE BEING WATCHED: “DON’T PURSUE” VIOLATIONS SOAR**

After a dramatic drop in the Navy’s “Don’t Pursue” violations in 2000, SLDN documented an equally dramatic increase in 2001. Sailors reported 60 “Don’t Pursue” violations last year, compared to just 19 in 2000. This sudden rise seems to be attributable to the Navy’s inability to understand or follow the limits of the policy.

A typical example is that of a young sailor who went on unauthorized absence after receiving two death threats, including one on his car which read, “You’re being watched, watch your ass.” Upon returning from UA and making a statement about his sexual orientation to escape the threats, the sailor was asked a series of illegal questions, including:

- Are you seeing anyone?
- Have you ever had sex on the ship?
- Are there other gay sailors on the ship?
- Do you ever go to gay bars in Norfolk?

Evidently more interested in the sailor’s sexual activity than in his safety, the command then called the sailor’s parents, asking about his sex life. The command also called the sailor’s previous civilian employer to inquire about his sexual orientation. The “Don’t Pursue” regulations pro-
hibit these questions. Under the policy, commands are not permitted to ask about sexual relationships, to start a witch hunt for other gay sailors, or to probe associations at gay bars. Was it prurience, vengeance, or stupidity that led the command to want to discuss this sailor’s sex life with his parents and civilian employer? It was inappropriate in any case.

While only one example, Navy leaders, particularly junior leaders, frequently take part in pursuits by asking intrusive and illegal questions, launching investigations without commanding officer approval and asking questions that clearly exceed proper investigative scope. While proper training could greatly reduce these violations, Navy leaders seem too busy invading bedrooms to bother with training programs.

“I GUESS YOU DON’T HAVE TO ANSWER THAT:” ASKING AS HARASSMENT

Naval personnel largely seem unable to control their urge to illegally ask sailors about their sexual orientation. Peer “asking” is rampant. Speculation and gossip follow sailors who are perceived to be gay. And, despite knowing such questions are inappropriate, Navy leaders simply don’t care.

One sailor reports to SLDN that, while at sea, he was asked by a much more senior sailor, “Are you gay? Oh, I guess you don’t have to answer that.” The statement plainly indicated that the sailor knew he was asking an inappropriate – and illegal – question.

Another sailor at a naval air station received an anonymous phone call, warning the sailor not to show up for work the next day. When he did not, the sailor received a second phone call “[I]t’s a good thing you didn’t show up,” the caller said, “cause we would’ve kicked your ass, and you would’ve gotten fucked up.”

When the sailor’s command master chief came to his home to find out why he missed work, the sailor told him of the anonymous calls. The command master chief, completely ignoring both the safety threat and the letter of the law, asked the sailor if he is gay. The threat to his safety went uninvestigated.

This corrosive environment undermines unit cohesion and is contrary to the Navy’s own Core Values – Honor, Courage, Commitment. Elaborated, these “bedrock principles” affirm in part, that sailors must conduct themselves in the highest ethical manner in all relationships with peers, superiors and subordinates; adhere to a higher standard of personal conduct; show respect towards all people; and treat each individual with human dignity.

On a daily basis, SLDN sees the Navy’s failure and absence of “leadership on the scene” hypocritically making these values appear to be mere “window dressing” or “eye-wash.”

FRONT PAGE NEWS: DISCHARGES DECLINE AT NAVAL NUCLEAR POWER TRAINING COMMAND

Last year, the Navy’s Nuclear Power Training Command (NNPTC), near Charleston, South Carolina, received considerable public attention for its discharge of 72 sailors under DADT-DPDH. The command, which accounted for 23% of all Navy gay discharges that year, refused to discuss either with SLDN or the media any possible causes for such a high discharge rate. In addition, its commander repeatedly declined SLDN’s offers to assist in uncovering why discharges were so high. The NNPTC’s discharge numbers captured considerable media attention, including stories from the Associated Press and front page coverage in the Charleston Post & Courier.

In 2001, following last year’s intense media scrutiny, discharges at NNPTC declined dramatically to 28. SLDN has again asked to meet with the commander to determine whether there are lessons learned that could be shared with other naval commands. Unfortunately, the door remains shut tight.

WHERE DO WE GO FROM HERE?

PROTECTING THE MEN AND WOMEN OF THE U.S. NAVY

The Navy’s inability – or lack of desire – to protect its men and women in uniform is inexcusable. Ten years after the brutal murder of Seaman Allen Schindler, Navy leaders have done nothing to implement or comply with Pentagon directives to prevent or curb harassment. Navy leaders must immediately implement those directives by issuing orders to commanders:

★ to actively and vigorously stamp out anti-gay harassment;
★ to clearly inform sailors where they can confidentially turn to for help; and
★ to hold accountable those who persist in harassing sailors perceived to be gay.

Anything less smacks of indignity and disrespect for those who risk their lives to defend freedoms denied them by their nation.
A bad situation deteriorating was the Marine Corps story in 2001. Marines have performed admirably in Afghanistan. However, the Marine Corps’ treatment of its lesbian, gay and bisexual members continues a record of ineffective training and a failure to translate Marine policy into day-to-day reality throughout the Corps. The last year showed a dramatic increase in asking, pursuing and harassing of Marines, a direct result of poor training and failure to implement the Anti-Harassment Action Plan.\(^97\) The increase in pursuit violations pointedly demonstrates a leadership failure because in pursuit violations, it is the chain of command itself that is the violator. These increased pursuit violations are also disappointing because they indicate that the few positive improvements reported in this area last year were isolated incidents of individual commanders doing the right thing and not a Corps-wide trend.

A Failure to Train Is a Failure to Lead

"[I]n order to ensure ['Don't Ask, Don't Tell, Don't Pursue, Don't Harass'] consistent application, it is imperative that all Marines understand the policy and that all commanders . . . are clear on proper enforcement of the policy."

Commandant of the Marine Corps\(^99\)

Despite DoD orders to do so,\(^100\) Marine leaders have failed to ensure that DADT: DPDH is properly and uniformly implemented in the field. This failure must stem from a systemic lack of training. The only other explanations for the leadership failure are gross incompetence or willful disobedience. Improperly trained, or untrained, Marines of all ranks are responsible for the increased asking...
and harassment incidents reported to SLDN. More alarming, commands are performing unauthorized “substantial investigations” — reflecting that Marine leaders in the field, tasked with teaching junior Marines on DADTDPDH, do not understand and, therefore, cannot implement the Marine Corps policy.

In 2001, SLDN documented the most Marine Corps policy violations ever reported. “Don’t Ask” violations rose to their highest level, reflecting a dramatic reversal of a downward trend since 1998 and almost triple the number reported during 2000. “Don’t Pursue” violations increased — reflecting the numerous unauthorized “substantial investigations” being conducted by local commands in clear violation of Marine Corps policy. “Don’t Harass” violations also increased.

Marine Corps recruit training on DADTDPDH is inadequate. The total training new Marines appear to receive consists of a form that must be signed containing a recitation of the three grounds for discharge with a warning that “[c]ertain homosexual acts are subject to prosecution under the UCMJ.” One paragraph addresses harassment, including based on perceived homosexuality, without any guidance on inappropriate conduct. The only other mention of homosexuality appears in a briefing on the UCMJ — stating that a Marine may receive an “other than honorable” discharge for “misconduct involving homosexuality” — without explaining what constitutes misconduct.

Marines contacting SLDN overwhelmingly report that they have not been trained on the policy, particularly in regard to anti-gay harassment, by their commands. Commanders continue to fail to train their Marines that the Corps will not tolerate harassment based on perceived sexual orientation, that certain behavior constitutes harassment, and that harassers will be held accountable. Despite the Commandant’s orders, the policy is not being implemented and commands are not taking their duty to comply with DADTDPDH seriously.

**As a General Rule:**

**Don’t Pursue**

*“As a general rule, when a service member states that he or she is a homosexual or bisexual and does not contest separation, little or no investigation is necessary.”*

Commandant of the Marine Corps

**“Have you engaged in conduct characteristic of homosexual individuals? If so, what type of activities have you or are you involved in . . . ? When have these occurred? . . . Where have these activities occurred? With Whom? Can any of these individuals be contacted . . . ? Have you been involved with recruits . . . ?”**

Questions Asked of SSgt Stacy Strong, a Parris Island Drill Instructor (DI), by 1stLt Shiozawa, Marine Corps Inquiry Officer

In January 2000, the Commandant issued new guidance on the Homosexual Conduct Policy providing direction about conducting inquiries and investigations. Despite this guidance, Marine commands continue to conduct improper investigations into the private lives of Marines without receiving authorization from the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN (M&RA)). Further, the Commandant, to SLDN’s knowledge, has not held any commanding officer accountable for these unauthorized investigations.
SLDN is unaware of any case in which authorization for a substantial investigation has been granted in a “statement” situation. This has not stopped commands from expanding the scope of inquiries, questioning the integrity of Marines, contacting family members and co-workers, and labeling unauthorized investigations as permissible inquiries. The Marine Corps, again, has failed to properly train commanders, Judge Advocates and inquiry officers regarding inquiry limitations and has failed to train its leaders that federal law does not require service members to “prove” they are gay.

Parris Island Drill Instructor Improperly Questioned

The “DI” is a legendary Marine Corps figure. Pop culture idealizes the Drill Instructor as the quintessential Marine — the embodiment of Marine values: Honor, Courage and Commitment. The Corps selects these senior non-commissioned officers because of their outstanding leadership and their ability to mold recruits into Marines. Losing one of these elite NCOs is a dual blow to the Corps; it loses a role model for young recruits and it takes years to groom a suitable replacement.

Staff Sergeant Stacy Strong, a nine-year veteran and Parris Island Drill Instructor, informed her command that she is a lesbian. After coming out, the appointed Inquiry Officer, First Lieutenant Shiozawa, asked SSgt Strong a series of improper questions about her private sexual activity, and sought to obtain information about the private sexual relationships of civilians, and information about other Marines. Such information could potentially be used to pursue administrative separations or criminal prosecutions — the hallmarks of a witch hunt and well beyond a limited inquiry’s scope. When SSgt Strong refused to answer, 1stLt Shiozawa insinuated that Strong’s lack of cooperation indicated she may be lying about being a lesbian in order to leave the Marine Corps. 1stLt Shiozawa also doubted her truthfulness because SSgt Strong had never sought counseling before making her statement. This comment ignores the fact that SSgt Strong had no military mental health resources where she could discuss her sexual orientation in confidence.

1stLt Shiozawa’s inquiry report shows that this officer has not been adequately trained. The report’s comments concerning SSgt Strong’s statement and refusal to answer improper questions misstate federal law and Marine DADTDPDH policy. The report indicates that 1stLt Shiozawa was seeking to determine if SSgt Strong’s statement was being made to seek separation. A properly trained inquiry officer would have known that an investigation into the issue of whether a Marine made a false statement in order to seek separation is appropriately addressed by seeking prior approval from the ASN (M&RA) to conduct a substantial investigation.

When Marine of the Year is Not Enough: Improper Discharge Characterizations: Poor Training or Intentional Retaliation?

Another troubling trend is the tendency of commanders to consider a lesser discharge characterization than a member’s service warrants when a Marine makes a statement about sexual orientation. Marine regulations provide guidance on the proper characterization of service in a statement situation. However, commanders repeatedly ignore these regulations, usually recommending general (under honorable conditions) discharges when honorable discharges are clearly warranted. An unwarranted general discharge will cause lesbian, gay and bisexual Marines to lose their Montgomery GI Bill benefits, some of their veterans benefits and may exclude them from some types of civilian employment. This trend reflects either a failure to properly train commanders, or a deliberate retaliatory effort to harm lesbian, gay and bisexual Marines for coming out.

Corporal Paul O’Dell’s story best demonstrates this situation. O’Dell served for over 11 years in the United States Army, the West Virginia Army National Guard, and the Marine Corps. As a soldier, the Army repeatedly decorated him for meritorious service, selecting him as both...
the Soldier of the Month or Soldier of the Quarter for his unit and honorably discharged him. Joining the Marine Corps mainly for its Core Values – Honor, Courage and Commitment112 – Cpl O’Dell continued his stellar performance. In his final assignment, his battalion command selected Cpl O’Dell as the 2000 Marine Support Battalion Marine of the Year.113

Living in the barracks, other junior Marines repeatedly asked him about his sexual orientation. The harassment included other Marines putting notes such as “cocksucker” and “faggot” on his door. Because of the continuous harassment, and his desire to uphold Marine Corps values, O’Dell finally told his command that he is bisexual.114 Previously, in recommending Cpl O’Dell for Marine of the Year, his company commander wrote, “[s]uperb leadership, military efficiency, professional excellence, and loyal dedication to mission accomplishment characterize [O’Dell’s] action.”115 The battalion commander, Lieutenant Colonel N.C. Davis, having lauded O’Dell as his battalion Marine of the Year in March, recommended only a general discharge and said O’Dell had “no potential for further service” in April.116 LtCol Davis’ recommendation was completely unwarranted and could only be attributed to O’Dell’s coming out as bisexual. With SLDN’s prodding, LtCol Davis’ superiors ignored his recommendation and awarded Cpl O’Dell the honorable discharge his service merited.

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**UN-CHRISTIAN TENDENCIES: A CORPS OF HARASSMENT**

“Mistreatment of any Marine is incompatible with our core values and is unacceptable conduct . . . .” Commandant of the Marine Corps117

Almost unanimously, the Marines contacting SLDN during 2001 report an anti-gay climate permeating the Marine Corps. Junior Marines constantly ask and gossip about each other’s sexual orientation and cheer anti-gay comments or jokes. A 20 year-old private had Marines making sexual gestures at him, blowing kisses, making anti-gay jokes about him, and directing anti-gay slurs at him.118 Other Marines constantly hear the use of “fag” and “gay” as a derogatory term for anything considered inferior or weak. Death threats and threats of physical assault continue to be made. Even officers feel free to use anti-gay slurs without fear of accountability.

A Marine sought help from a chaplain. Instead of providing support, the chaplain called the Marine a “sinner” and suggested that the Marine needed counseling for “un-Christian tendencies.” When a chaplain’s personal religious beliefs prevent him or her from providing assistance to lesbian, gay or bisexual service members, the chaplain has an obligation to bring in another chaplain who can help. Religious beliefs do not justify abusing a Marine because of his or her sexual orientation.

We know you’re a fag
We don’t care what rank you are
Your time will come!

Note left on a Marine’s car119

Another example of Marine commanders’ willingness to ignore anti-gay harassment and retaliate against perceived lesbian, gay or bisexual Marines is the ongoing struggle of a Marine whose story appeared in last year’s report.120 After informing his new command about past anti-gay harassment he had experienced, this Marine was verbally harassed anew and a note containing a death threat was left on his car. When he reported the threat, his commander did nothing to investigate or protect him. When he sought medical help, his doctor harassed him for disclosing his sexual orientation. Having been harassed at a second assignment, having seen his commander ignore his reports of harassment, having been harassed by a military doctor, this Marine felt he had no other option but to leave without permission. Upon his voluntary return, instead of investigating the reasons for his leaving and investigating the allegations of anti-gay harassment, his battalion commander punished him.121

When officers are the harassers, when harassment is reported and the
chain of command does nothing, or when a chaplain or doctor, tasked to help Marines in crisis, instead harasses them, it is of little surprise that an anti-gay climate permeates the Corps. The lack of training fuels this behavior, as does the widespread belief that the Corps will not hold an anti-gay harasser accountable.

**Unacceptable Values: Asking as Harassment**

“One do not ask whether a Marine is heterosexual, homosexual or bisexual”  
Commandant of the Marine Corps

During 2001, “Don’t Ask” violations reported to SLDN tripled. While SLDN noted that “Don’t Ask” violations in the Marine Corps had decreased during 2000, whatever factors that may have led to the reduction appear to have lost effect.

One area that definitely did not impact the past reduction in asking violations was improved training. No training nurtures a belief among Marines that asking about a peer’s sexual orientation, directly or indirectly, is acceptable conduct. Direct questions like “[a]re you gay?” or harassing questions such as “[a]re you a fag?” or “[a]re you a homo?” are commonplace in the barracks. Other indirect questions, such as asking a male Marine, “Where’s your boyfriend?”

**The Time is Now: Building Strong Forceful Leadership**

The Commandant of the Marine Corps must provide strong, forceful leadership. He must correct the training problem that exists throughout the force and must fully implement the Anti-Harassment Action Plan as he was directed to do more than eighteen months ago. Unless the Marine Corps leadership backs up its rhetoric with concrete action — proper training and accountability — the situation facing lesbian, gay and bisexual Marines will only continue to deteriorate. In order to halt further deterioration and fully comply with the Anti-Harassment Action Plan, the Commandant must:

- Ensure that his Judge Advocates are properly trained and have the ability, and command support, to terminate unauthorized investigations;
- Task the Inspector General of the Marine Corps to investigate the status of training throughout the chain of command;
- Ensure that rank-appropriate training is being conducted annually at all levels in the chain of command;
- Hold commanders accountable for conducting DADT-DPDH training, particularly addressing anti-gay harassment;
- Clearly identify the proper channels to report anti-gay harassment;
- Clearly identify with whom Marines can discuss their sexual orientation in confidence (i.e. chaplains and defense attorneys); and
- Hold accountable those who violate Marine Corps policy.

- ★ hold commanders accountable for conducting DADT-DPDH training, particularly addressing anti-gay harassment;
- ★ clearly identify the proper channels to report anti-gay harassment;
- ★ clearly identify with whom Marines can discuss their sexual orientation in confidence (i.e. chaplains and defense attorneys); and
- ★ hold accountable those who violate Marine Corps policy.
The play on words of the Coast Guard motto describes the attention that the Coast Guard has paid to training and harassment under DADTDPDH.

There is hope that Rear Admiral Ames’ recent pledge to eliminate anti-gay harassment bodes well for 2002. However, especially after September 11th, one cannot escape the conclusion that DADTDPDH is an anachronism in the Coast Guard.

September 11th changed the landscape for the Coast Guard, the smallest military service. Before the attacks on America, the Coast Guard focused on its usual peacetime missions - law enforcement, water safety, search and rescue, environmental protection and security. Since September 11th, the Coast Guard has dramatically shifted its priorities to homeland defense.

This increased operational tempo has put an immense burden on resources and personnel. To meet these demands, the Coast Guard has been authorized to mobilize its entire reserve force and has already recalled over one-third of its reserve strength. Additionally, it has increasingly relied on the Coast Guard Auxiliary, 34,000 civilian volunteers, to meet its non-military commitments.

Despite the need to retain every member to meet increased operational requirements, the Coast Guard continues to discharge experienced, capable members simply because of their sexual orientation. During FY-2001, the Coast Guard discharged 14 members. While this is a reduction from FY-2000, the number of FY-2001 discharges is still higher than the average number of Coast Guard homosexual discharges recorded between 1995-1998.

The ban on allowing openly lesbian, gay and bisexual patriots from serving in uniform is not justified in any of the services. However, in the Coast Guard it seems even more absurd. Almost as many Team Coast Guard members (active duty and reserve military personnel, federal civilian employees, and civilian volunteers) are protected from anti-gay discrimination by Executive Order as are subject to DADT-

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Radm F. L. Ames, Assistant Commandant for Human Resources, after meeting with SLDN representatives November 2001

"WE CLEARLY SHARE THE COMMON GOAL OF ELIMINATING HARASSMENT BASED UPON SEXUAL ORIENTATION.... I BELIEVE THAT WE CANNOT REST IN OUR EFFORTS TO CONTINUALLY IMPROVE OUR TRAINING."

US COAST GUARD DISCHARGES

- 15 members in 1995
- 12 members in 1996
- 10 members in 1997
- 14 members in 1998
- 12 members in 1999
- 19 members in 2000
- 14 members in 2001
DPDH. Coast Guardsmen every day serve alongside openly gay people as they protect our nation: civilian employees, Auxiliarists, countless federal, state and local law enforcement and emergency services personnel, and private-sector employees. All credible evidence suggests the Coast Guard would enhance mission readiness by being free of DADTDPDH’s bonds.

“[Kilmer] clearly lives our core values, demonstrates the highest professional skills and has the personal qualities we value and demand in our officer corps.”
CAPT Philip M. Sanders

Petty Officer First Class Michael Todd Kilmer’s story best exemplifies the untenable situation the services face when forced to follow a discriminatory federal law. YN1 Kilmer, a 14-year Coast Guard veteran, stationed in Seattle, is described as “a leader in every sense of the word.” As a junior seaman, Kilmer performed as well as senior non-commissioned officers. As a young petty officer, he worked as well as a seasoned commissioned officer. He was the 1997 District Thirteen Enlisted Person of the Year and had been nominated by his superiors to be the Coast Guard Enlisted Person of the Year. Due to his outstanding performance, the Coast Guard selected him to be commissioned as an officer. While obtaining his college degree prior to reporting to Officer Candidate School, he was selected as the University of Washington-Tacoma’s 2000/2001 Student Leader of the Year. He was on the “fast-track” to a superior career as a Coast Guard “Mustang.”

Petty Officer, soon to be Ensign, Kilmer exhibited “all of the qualities that the Coast Guard looks for in its officer leadership.” However, Kilmer is gay and reached a point where he could no longer lie about himself. Asking to serve as an openly gay officer, Kilmer wrote, “I would like to pursue a fulfilling career as a commissioned officer in the United States Coast Guard and live the Coast Guard’s core values of honor, respect, and devotion to duty. Unfortunately, the ‘Don’t Ask, Don’t Tell’ policy does not permit me to serve the Coast Guard with integrity.”

Simply because YN1 Kilmer is gay, the Coast Guard immediately started the discharge process. The Coast Guard lost fourteen years of leadership experience and a potentially outstanding officer. The Coast Guard did not want to lose Kilmer, but the policy gave it no choice. Michael Kilmer’s commanding officer encouraged him to apply for a civilian position in the same command — working with the same people, doing essentially the same job he had been doing as a military member. He was asked to join the Coast Guard Auxiliary in the district where he worked as a petty officer. His command plainly felt that serving in the same command would not have any effect on Coast Guard morale, unit cohesion, or good order and discipline. Kilmer, however, declined as a matter of principle.

Examples of anti-gay slurs and comments reported to SLDN by Coast Guardsmen during 2001

The Coast Guard, for the eighth year in a row, leads all the services in its more humane treatment of its lesbian, gay and bisexual members. That is not to say that the Coast Guard is without its problems and cannot improve. Coast Guardsmen reported 23 policy violations to SLDN in 2001. For the second year
THE FRUITS OF POOR TRAINING - CONTINUED ANTI-GAY HARASSMENT AND DISTRUST OF THE CHAIN OF COMMAND

"The Coast Guard mandates that all members of Team Coast Guard . . . are to be treated fairly, with respect, dignity, and compassion."

Coast Guard statement on Civil Rights

"When it comes to convincing your organization that you are serious . . . there is simply no substitute for keeping the issue on your front burner . . . ."

Admiral James M. Loy, Commandant of the Coast Guard, stressing the importance of diversity

While Admiral Loy has been very forceful in expressing support for racial and ethnic diversity, he has not placed a similar emphasis on clearly stating to Team Coast Guard his intolerance of anti-gay harassment and support for properly training Coast Guardsmen on DADT-DPDH. Though he has privately expressed that anti-gay harassment is not tolerated, 2001 passed without ADM Loy taking any concrete action to reduce anti-gay harassment or to mandate continued training in the Coast Guard. This occurred despite the DoD working group’s Anti-Harassment Action Plan recommendations and SLDN’s encouragement to make an unambiguous policy statement to his force, similar to ones issued by the other service chiefs.

The Coast Guard conducts DADT-DPDH and anti-gay harassment training only at its accession points – Cape May, New Jersey and New London, Connecticut. The training is included as part of the Equal Opportunity Basic Human Awareness and Sexual Harassment curriculum. The anemic amount of information on this complex policy that is presented to Coast Guardsmen at the beginning of their careers, with no requirement for unit-based refresher training, is clearly inadequate. In fact, the Coast Guard is not providing the most basic understanding necessary for its personnel to properly implement the policy and address the anti-gay harassment that is ongoing at the junior enlisted levels of the chain of command.

By failing to properly train its personnel that anti-gay harassment will not be tolerated and by failing to teach what constitutes harassment – threats, assault, anti-gay slurs, anti-gay jokes and comments, lesbian baiting, repeatedly asking peers if they are gay, and spreading rumors about an individual’s sexual orientation – the Coast Guard perpetuates a climate that tolerates it.

Only 14 harassment incidents were reported between 1994-1998. Harassment continues to be the Coast Guard’s major issue in 2001. This on-going problem is fueled by a continued lack of clear, proactive leadership condemning anti-gay harassment from the Secretary of Transportation and the Commandant to all Coast Guard personnel. There is no service-wide training on anti-gay harassment or DADT-DPDH.

"Sincerity in leadership can be established only through consistency and attentiveness."

Admiral Loy

Over 18 months ago, the DoD directed the Services to implement the Anti-Harassment Action Plan’s thirteen recommendations. To date, the Coast Guard, which follows the DoD’s lead on matters pertaining to its homosexual conduct policy, has implemented none of them. The lack of command training sends a subtle, troubling message to members: commands are not sincere about curtailing anti-gay harassment and holding harassers accountable. The lack of command attention fosters a climate where young, junior enlisted personnel – the most common target of anti-gay harassment – are afraid to report anti-gay harassment. Their fear arises because they do not trust the chain of command to investigate their allegations, protect them from retaliation, and prevent them from becoming the target of an investigation into their sexual orientation. Coast Guardsmen also do not know to whom they can speak in confidence. Fear of losing a military career simply because an honest admission of sexual orientation was made to the wrong person stifles the open communication needed to report harassment to the chain of command.
2002: A New Hope

There is hope that Coast Guard training will improve dramatically in 2002. In November 2001, SLDN representatives met with RADM F. L. Ames, the Assistant Commandant for Human Resources. In the wake of a frank and productive meeting, RADM Ames directed his staff to develop a DADTDPDH Coast Guard-wide training syllabus for initial and refresher training, to review current sexual harassment training, and specifically tasked that the training address:

★ harassment based on sexual orientation;
★ where members can go for confidential counseling; and
★ how to report anti-gay harassment.150

RADM Ames’s proactive leadership and willingness to address the shortcomings in Coast Guard training about DADTDPDH and anti-gay harassment is very encouraging. SLDN looks forward to working with him and his staff on the common goals of correcting long-standing Coast Guard training shortfalls and ensuring that all Coast Guardsmen are treated with dignity and respect.

2001 was another year in which the Coast Guard failed to adequately address its problems with anti-gay harassment and poor training. SLDN is hopeful that 2002 will show an improvement in Coast Guard training. There must be proactive leadership to communicate to the uniformed members of the Coast Guard that anti-gay harassment will not be tolerated and those who harass or condone harassment will be held accountable. This proactive leadership will be demonstrated by:

★ a communication from the Commandant to his force addressing respect and dignity for all Coast Guardsmen, and stating, in unmistakable terms, that harassment based on perceived sexual orientation is not tolerated;
★ completing the overhaul of current anti-gay harassment training;
★ producing the Coast Guard-wide syllabus on DADTDPDH;
★ promulgating the newly developed training;
★ clearly identifying those individuals with whom Coast Guardsmen can speak in confidence about their sexual orientation (i.e. defense attorneys, chaplains);
★ designating the proper channels to report anti-gay harassment;
★ mandating annual, unit-based training; and
★ holding harassers and commanders who fail to address anti-gay harassment in their commands accountable.
SLDN has long reported on the disproportionate impact of DADTDPDH on women and youth. This year is no exception.

Women have been consistently discharged at a rate nearly twice their presence in the service. This disproportionate impact is also borne out by SLDN cases. While women comprise approximately 14% of the total force strength, 29% of SLDN clients for the 2001 reporting year were women. Most alarming is the unofficial information SLDN has received that 43% of the Air Force’s 191 discharges are women. This is extremely concerning since women only comprise 19% of the Air Force’s total strength.

Women continue to be disproportionately impacted by DADTDPDH because of lesbian baiting and gender bias. 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
Sergeant Tracy Cade is an example of what strong, high performing women can encounter in the military. SGT Cade was a military policewoman with five years of outstanding service and experience. After encountering daily harassment – largely from male soldiers who believed she was not feminine enough – SGT Cade felt compelled to come out and report the harassment. SGT Cade also filed an Inspector General complaint based on Fort Hood “leaders participating in and tolerating incidents of sexual harassment and anti-gay harassment.”

SGT Cade reports a climate where anti-gay epithets and mistreatment of soldiers perceived as gay is widespread. She reports “hearing a dozen or more anti-gay comments each day” and that “[Captain] Steven Curso directly participates in the anti-gay harassment. [Captain] Curso frequently used the term ‘faggot’ in front of Soldiers ….” Cade further reports, “[m]ale soldiers frequently talk publicly about their interest in female-on-female sexual acts. These conversations take place in front of NCOs and …[t]he NCOs do not correct the misconduct, allowing it to continue unabated.”

SGT Cade’s experience is not unusual. Women face an uphill battle while serving our country, battling enemies foreign and domestic, while also combating gender discrimination, lesbian baiting and sexual harassment. SLDN is gravely concerned by reports that DoD is considering dismantling one of the chief champions of women in the military - the Department of Defense Advisory Committee on Women in the Services, known as DACOWITS. Established in 1951 by Secretary George Marshall, DACOWITS has played an important role in military preparedness. SLDN urges the DoD not to shirk its commitment to gender equality so essential to national security by maintaining DACOWITS.
DADTDPDH also heavily impacts young adults aged 18-25. While young adults comprise only approximately 42% of the armed forces, they comprised 90% of the Marine Corps and Navy discharges for FY 2001 and 79% of the Coast Guard’s gay discharges. Similarly, youth comprise a disproportionate number of SLDN’s cases. Young adults comprised 59% of SLDN clients for reporting year 2001.

The vast majority of DADTDPDH violations were reported to SLDN by youth. Even more alarming, 64% of all harassment violations were reported to SLDN by youth. The DoD Inspector General has also found that the majority of anti-gay harassment is inflicted by junior enlisted men on other junior enlisted men, most of whom are young adults aged 18 and 25.

The military is the largest employer in the United States, with three million members on active duty and in the reserves. The military is also the largest employer of youth in our country, with more than one million of the active and reserve population between the ages of 18 and 25. The service members most affected by the policy are young men and women. The military is a means by which young people move up and out of poverty, gain education and life experience, and save themselves from family or community violence. To deny or cut short opportunities for young lesbians, gays and bisexuals who want to serve our country is wrong.
“Don’t Tell” is commonly viewed as the opposite side of the coin from “Don’t Ask.” While a service member cannot “ask” another service member about his or her sexual orientation, lesbian, gay and bisexual service members cannot “tell” the military about their sexual orientation.

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

The policy allows all service members to associate with gay friends, participate in gay-friendly organizations and read gay publications. Further, the policy states that “sexual orientation is a personal and private matter.” SLDN believes that gay service members should be able to talk openly and honestly with psychotherapists, physicians, law enforcement officials, family and friends. Our view is supported by those who helped craft the current policy, former Under Secretary of Defense Edwin Dorn and Northwestern University military sociologist Charles Moskos.

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

The Pentagon has suggested that gays are “voluntarily” coming out. The Pentagon has admitted, however, that it has no evidence to support its theory. There is no such thing as a “voluntary discharge” under DADT-DPDH as gay service members who face discharge cannot elect to stay in service. They have no choice.

However, most of the discharges under the policy are characterized as “statement” cases – where a service member has told someone about their sexual orientation. This raises the question - why are service members making statements?

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

“I, Captain Monica R. Hill... write this letter requesting a two year deferment in my report for active duty due to hardship. I am prepared to fulfill my ADSC, however, on July 14, 2001, my partner and dependent, Ms. Terri Cason, was diagnosed with terminal cancer.”

Capt Monica Hill to her Air Force Reserve command requesting an extension in her deferment of active service so she could care for her terminally ill partner.
In August 2001, Capt Hill and her partner of 14 years, Terri, were preparing to move near Andrews Air Force base, where Capt Hill was to begin her active duty service with the Air Force. Then, Terri was diagnosed with terminal brain cancer. Since it would have been irresponsible to move Terri from her treating physicians, Capt Hill sought to delay reporting to Andrews. If Capt Hill had been straight and Terri had been her husband, the Air Force would likely have granted her deferment request. But the Air Force could not grant a deferment request without good reason. Capt Hill had to explain why she needed the deferment, and thereby came out. The Air Force changed Capt Hill’s orders – and has now begun an inquiry into possible separation. Were it not for DADTDPDH, Capt Hill would be serving our country even after the death of her partner on September 11, 2001. Instead, Capt Hill must fight to retain her Air Force career, grieve for her partner, and look for a new civilian job.

**ARMY: “Integrity: Do What’s Right, Legally and Morally”**
United States Army Core Values

**AIR FORCE: “Integrity First”**
United States Air Force Core Values

**NAVY: “Honor: Be honest and truthful in our dealings with each other.”**
United States Navy Core Values

Each of the services stresses the virtue of integrity. However, if lesbian, gay or bisexual service members “tell” anyone – military or civilian – their careers may be in jeopardy. Therefore, to protect against harm to their military careers, lesbians, gays and bisexuals are forced to lie. For many service members, compromising their personal integrity is too much. Consequently, they are honest and “tell.”

“The ‘Don’t Ask, Don’t Tell’ policy restricts my ability to be honest with my shipmates and prevents me from building the bonds with them that is necessary for unit cohesion.”
Former Air Traffic Controller Second Class (E-5) Eric Lekberg

There is a misperception that it is an easy thing not to “tell.” Service members work closely with one another, often times living with one another. It is part of basic human interaction to discuss your life – what you do on the weekends, whom you are dating, whom you love. Lesbian, gay and bisexual service members are barred from having such simple communications with their co-workers. The strain is often unbearable. This prohibition against discussing basic information about one’s life is harmful to combat readiness. It sows the seeds of distrust among service personnel and erodes the bonds of trust and camaraderie necessary for effective military units.

The issue of lesbian, gay and bisexual service members “telling” is further complicated by the very nature of human sexual development. Most men and women join the armed forces at a very young age. With few exceptions, lesbian, gay and bisexual youth have not fully internalized and accepted their sexual orientation at the point when they enlist or are commissioned in the service. SLDN’s cases reflect this reality. Many young gay service members contact SLDN only after they have reached a comfort level with who they are. Once lesbians, gays and bisexuals reach this level of self-acceptance, they find it more difficult to balance the requirements of “Don’t Tell” with their need to lead healthy lives.

Further, young lesbians, gays and bisexuals have far more examples of healthy role models today than ever before. Because lesbian, gay and bisexual service members see greater acceptance of homosexuality within society at large, it is understandably difficult for them to reconcile the contradictions inherent under “Don’t Tell.”

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

There are two other areas of particular concern. In the past, SLDN has documented continued instances in which health care providers and chaplains reportedly turned in or threatened to turn in gay service members who sought their help in dealing with anti-gay harassment or the stresses imposed by DADTDPDH. These “outrages” are often considered “statements.” This year we have recorded only a few instances of this, one of which is described in the Air Force section an another in the Marine Corps section, but it continues to be an issue of great concern.

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

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

Military chaplains can be an invaluable resource for service members who are lesbian, gay or bisexual. While most chaplains keep the confidences of gay service members, some do not. Others continue to give bad legal advice, such as directing service members to turn themselves in, rather than sending service members to a military defense attorney for advice about the policy. Still others tragically berate gay service members, telling them they are sick, going to hell, and deviant. As in past Conduct Unbecoming reports, SLDN has again documented such cases including that described in the Marine Corps section. Telling gay soldiers to trust the chaplain on the one hand, and having a chaplain violate that trust undermines confidence. Sadly, such situations harm faith in the Chaplain Corps, harm lesbian, gay and bisexual service members, and – most importantly – harm military readiness.

SLDN has long recommended that chaplains receive specific instructions not to turn in gay service members who seek their help and to treat these conversations as confidential, per the chaplain-penitent privilege. Further, chaplains must be willing to recommend another chaplain if their personal beliefs preclude them from adequately counseling gay service members. As staff officers, chaplains should not engage in behavior that gay service members would likely perceive as harassment, in violation of the policy’s “Don’t Harass” component. Chaplains should assist commands in combating anti-gay harassment. The Pentagon should initiate policy training programs tailored for the unique duties of chaplains in serving the needs of lesbian, gay and bisexual service members.

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

Some service members are outed to their commands by people they know in order to get them discharged. The solution again lies in the hands of military leaders – include specific guidance in the investigative limits. Reports to commands about service members’ sexual orientation should not automatically be credited and the motive behind the report should be questioned.

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

Lastly, many service members make statements because of the enormous ethical dilemma created by the policy or, like Capt Monica Hill, because they feel they have no other recourse. Congress and military leaders should stop the hypocrisy and tension created when lesbian, gay and bisexual service members are required to lie about their sexual orientation in violation of their “core values.” End the ban on lesbians, gays and bisexuals serving in the armed forces.
END NOTES

1 Remarks by President Bush to Troops At Travis Air Force Base (CA) (10/17/01 - 1:30pm) available at http://www.whitehouse.gov/news/releases/2001/10/20011017-20.html

2 See Electronic Message from Commandant of the Marine Corps to MARADMIN, Stop-Loss Policy for Personnel Within C-130 Community (Jan. 7, 2002) (CMC WASHINGTON DC/MR&A/ 070805Z JANG02 (MARADMIN 012/02)) (allowing for continued processing of involuntary separations including those based on sexual orientation) [hereinafter MARADMIN 012/02]; see also U.S. Total Army Personnel Command, MILPER, TACP-PDT-PM, Message No. 02-064, Suspension of Voluntary Separation of Officers and Enlisted Soldiers from the Active Army (Stop-Loss) in Selected Specialties (Jan. 3, 2002), available at http://personneldivant.army.mil/ MILPEPmsg.nsf/webframeSet/OpenFrameSet.html (last visited Feb. 1, 2002); Electronic message from Chief of Naval Operations to NAVOP, Suspension of Provisions of Law and Navy Policy Relating to Retirement or Separation (Sep. 28, 2001) (CNO WASHINGTON DC/NO00/ 283132Z SEP 01) (NAVOP 012/01); Electronic Message from HQ USAF/DP to various commands, Stop Loss Approval and Guidance (Sep. 22, 2001) (HQ USAF WASHINGTON DC/CCI 220135Z SEP 01); Electronic message from HQ USAF/DP to various commands, Stop Loss Update (For All Active, Reserve, and Air National Guard Personnel) (Oct. 29, 2001).


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

5 SLDN’s reporting year is February 16, 2001 to February 15, 2002. It is referred to in this report as the 2001 reporting year.


7 Letter from Condoleezza Rice to SLDN (Feb. 20, 2001).


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

11 DEPT’F OF DEFENSE DIRECTIVE NO. 1332.14, Enlisted Administrative Separations E3.A1.1.8.1.1 (1994) [hereinafter DoDD 1332.14]; DEPT’F OF DEFENSE DIRECTIVE NO. 1332.40, Separation Procedures for Regular and Reserve Commissioned Officers E2.3 (1997) [hereinafter DoDD 1332.40]. “A member’s sexual orientation is considered a personal and private matter, and is not a bar to continued service . . . unless manifested by homosexual conduct . . . .” Id.

12 Powell Statement, supra note 10, at 709. “We will not witch hunt. We will not chase. We will not seek to learn orientation.” Id.

13 DEPT’F OF DEFENSE DIRECTIVE NO.1304.26, Qualification Standards for Enlistment, Appointment, and Induction; Applicant Briefing Item on Separation Policy, addendum (1993). “The Armed Forces do not tolerate harassment or violence against any service member, for any reason.” Id.

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

15 President William J. Clinton, Text of Remarks Announcing the New Policy, WASH. POST, Jul. 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.” Id. Then Senator William Cohen understood that the “small amount of privacy under the current policy was intended to prevent the military from prying into people’s private lives.” Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Comm. On Armed Services, 103d Cong, 788 (statement of Senator William Cohen).

16 DoDD 1332.14, supra note 11, at E3.A4.1.4.3; DoDD 1332.40, supra note 11, at E8.4.3.

17 DoDD 1332.14, supra note 11, at E3.A4.1.3.2.2; DoDD 1332.40, supra note 11, at E8.3.2.2.

18 See DoDD 1332.14, supra note 11, at E3.A1.1.8.1.1; DoDD 1332.40, supra note 11, at E2.3.

19 See DoDD 1332.14, supra note 11, at E3.A4.1.1.1; DoDD 1332.40, supra note 11, at E8.1.1.

20 See DoDD 1332.14, supra note 11, at E3.A4.1.3.3.4; DoDD 1332.40, supra note 11, at E8.3.3.4.

21 See DoDD 1332.14, supra note 11, at E3.A4.1.3.3.4; DoDD 1332.40, supra note 11, at E8.3.3.4.

22 See Memorandum from Rudy de Leon, Under Secretary of Defense (P&R), to the Secretaries of the Military Departments, Guidelines for Investigating Threats Against or Harassment of Service Members Based on Alleged Homosexuality (Aug. 12, 1999) [hereinafter Under Secretary of Defense (P&R) Rudy de Leon 1999 Implementation Memo].

23 See DoDD 1332.14, supra note 11, at E3.A4.1.1.3; DoDD 1332.40, supra note 11, at E8.1.3.


26 See DEPT’F OF DEFENSE INSTRUCTIONS 5505.8, Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations.


29 See id.


32 DEPT’F OF DEFENSE DIRECTIVE 1304.26, Qualification Standards for Enlistment, Appointment, and Induction, Applicant Briefing Item on Separation Policy (Dec. 21, 1993).

33 The Army reported 615 “Don’t Ask, Don’t Tell” discharges for active duty officers, and enlisted personnel during fiscal year 2001. The Army Reserve Personnel Command reported one enlisted 2001 gay discharge. The resulting total, of 616, therefore does not include 2001 discharges for active duty officers, and enlisted National Guard personnel, ROTC Cadets, officers and enlisted personnel in other Army Reserve components. The 616 figure, therefore, under-represents the true number of Army lesbian, gay and bisexual discharges during fiscal year 2001. SLDN has requested the additional discharge data via Freedom of Information Act (FOIA) channels. As of the date of this report going to print, the Army has not provided the requested information.

35 See Electronic Message from Headquarters, Department of the Army to ALARACT, Homosexual Conduct Policy (Jan. 10, 2000) (HQDA WASHINGTON DC 101700Z JAN 00) (ALARACT).

36 See id.; see also Electronic Message from Headquarters, Department of the Army, to ALARACT, Dignity and Respect for All (Jan. 10, 2000) (HQDA WASHINGTON DC 101800Z JAN 00) (ALARACT 008/00) [hereinafter ALARACT 008/00].

37 See id.

38 Id.

39 According to information obtained by SLDN from meetings with Army personnel in the Office of the Deputy Chief of Staff for Personnel (ODCSPER) and Office of the Inspector General (IG).


41 Memorandum from Brigadier General Thomas J. Romig, Assistant Judge Advocate General of the Army, to SLDN (Oct. 2, 2001). Major General Romig has since been promoted and is now the Judge Advocate of the Army.

42 See ALARACT 008/00, supra note 36.


44 Memorandum for Record from Fort Campbell, Policy Letter #2 – Respect for All Soldiers (undated).


46 See Memorandum from SLDN to Major General Cody, Commanding General of Fort Campbell, SLDN Recommendations on Fort Campbell HCP Issues (Dec. 13, 2001).

47 IG Fort Campbell Task Force Report, supra note 40.


49 Letter from Staff Sergeant Leonard “Wayne” Peacock to Captain Jackson (Nov. 13, 2001).

50 Letter from Sergeant Carlos Torres to Captain Raymond (Oct. 4, 2001).

51 See Notification from United States Army to Staff Sergeant Leonard W. Peacock, Certificate of Release or Discharge from Active Duty (Form DD-214) (Dec. 3, 2001); Notification from United States Army to Sergeant Carlos Torres, Certificate of Release or Discharge from Active Duty (Form DD-214) (Dec. 21, 2001).

52 Letter from Private Mike Wooten to Captain Teague (Sep. 4, 2001).

53 Memorandum from Major Richard L. French to Chief of Staff, Fort Carson, Colorado, AR 15-6 Investigation: Allegations of Soldier Harassment Based on Suspected Sexuality and the Threatening of Life by a Noncommissioned Officer (Sep. 18, 2001).


56 Letter from Specialist Orlando Estrella to Captain Davis (May 4, 2001).

57 Sworn Statement of Orlando Estrella, DA Form 2523 (May 29, 2001).

58 See Confidential communication from an overseas Air Force member (Dec. 17, 2001).


60 Letter from Captain Monica Hill to her command (Jul. 22, 2001).

61 See Guidelines for Fact-Finding Investigations into Homosexual Conduct, in IC 2000-1 to Air Force Instruction 36-3206, Administrative Separation of Commissioned Officers A2.4.4 (Mar. 10, 2000) [hereinafter AFI 36-3206]. “Commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member must first be advised of the DoD policy on homosexual conduct (and rights under Article 51, UCMJ, if applicable).” Id.

62 See E-mail from Captain Hill to SLDN (Dec. 11, 2001).

63 Email from Airman Smith to SLDN (Dec. 17, 2001).

64 See Guidelines for Fact-Finding Investigations into Homosexual Conduct, in IC 2000-1 to Air Force Instruction 36-3208, Administrative Separation of Airmen A4.1.3 (Mar. 10, 2000) [hereinafter AFI 36-3208]. “Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.” Id.

65 See Air Force Instruction 36-3207, Separating Commissioned Officers 1E.1.18 (Jul. 1, 1995). “Only certain homosexual conduct constitutes a basis for recoupment of educational assistance, special pay, or bonuses. Homosexual conduct constitutes a basis for recoupment if it is characterized as UOTHC is authorized, or if conduct is punishable under the UCMJ (provisions governing sexual conduct).” Id. “If the officer voluntarily separates, the officer is subject to recoupment of a portion of education assistance, special pay, or bonus money received.” AFI 36-3206, supra note 61, at 4.37.2.2.

66 Memorandum from John M. Deutch, Deputy Secretary of Defense to the Secretaries of the Military Departments, Recoupment of Education Assistance Funds, Bonuses and Special Pay from Persons Discharged or Separated on the Basis of Homosexual Conduct (May 17, 1994) [hereinafter Deutch Memorandum].


68 Confidential email communication from Airman to SLDN (Jun. 20, 2001).

69 See Anti-Harassment Action Plan, supra note 3.

70 See Letter from SLDN to Air Force Department of Personnel, Attn: FOIA Officer (Nov. 5, 2001).

71 Memorandum from 1Lt Megan Kuzmich to her command (Apr. 5, 2001).

72 Company Grade Officer Performance Report from Colonel Ricky Ales for 1st Lt Megan Kuznich (Apr. 26, 2001).

73 Confidential telephone communication from Airman to SLDN (Dec. 21, 2001).


75 See Letter from SLDN to Air Force Department of Personnel, FOIA Officer (May 3, 2001); Letter from SLDN to Rhonda M. Jenkins, Documentation Information & Services Branch (Jul. 23, 2001); Letter from SLDN to Air Force Department of Personnel, FOIA Officer (Jan. 8, 2001).

76 See Letters from SLDN to Barbara Strayer, FOIA Officer at Lackland AFB (Aug. 6, 2001); Letter from SLDN to Air Force Personnel Center, FOIA Officer at Randolph AFB (Nov. 5, 2001).

77 See Cordero letter, supra note 74; Letter from Captain Evan E. Cooper, Flight Commander, Air Force Education and Training Command, to SLDN (Sep. 10, 2001).

78 Letter from Major Isaac J. Nehus, Acting Staff Judge Advocate, Headquarters 88th Air Base Wing (AFMCC), to SLDN (Aug. 9, 2001); see also Letter from Ronald R. Chalecki, Acting Director, Communications and Information, to SLDN (Aug. 9, 2001).


81 Letter from RADM. S. R. Pietropaoli, Chief of Navy Information, to Elizabeth Birch, Executive Director, Human Rights Campaign (Oct. 17, 2001) [hereinafter Pietropaoli letter].

82 Id.

83 E-mail from Paul Peverelle to SLDN (Nov. 6, 2001).

84 Id.

85 Pietropaoli letter, supra note 81.
138 Letter from CAPT J.J. Hathaway to President, PPEP Selection Panel (Feb. 23, 1999).  
139 Letter from YN1 Michael Todd Kilmer to CAPT Philip M. Sanders (Aug. 30, 2001).  
140 Telephone interview by Paula M. Neira with YN1 Michael Kilmer (Jan. 2, 2002).  
145 See Anti-Harassment Action Plan, supra note 3.  
146 See STACEY L. SOBEL ET AL., CONDUCT UNBECOMING - THE SEVENTH ANNUAL REPORT ON ‘‘DON’T ASK, DON’T TELL, DON’T PURSUE’’ AT 90 (2000).  
148 See supra note 143.  
149 See Anti-Harassment Action Plan, supra note 3.  
150 See supra note 123.  
152 Letter from Sergeant Tracey Cade to Captain Timothy Smith (Jul. 26, 2001).  
155 SLDN does not have the 2001 discharge numbers by age for the Army or the Air Force.  
157 See MIL. R. EVDT. 502.  
158 See MIL. R. EVDT. 503.  
159 See DEPT OF DEFENSE DIRECTIVE NO. 5200.2, DoD Personnel Security Program encl. 3.7 (1997); see also DEFENSE INVESTIGATIVE SERVICE MANUAL, DIS-20-1-M, encl. 18.C (1993).  
160 See DEPT OF DEFENSE DIRECTIVE NO. 6485.1, Human Immunodeficiency Virus-1 (HIV-1) encl. 3.2.1.9 (1991). ‘‘Information obtained from a Service member during, or as a result of, an epidemiological assessment interview may not be used against the Service member (in adverse criminal or administrative actions).’’ Id.  
162 See DoDD 1332.14, supra note 11, at E.3.A.1.3.4.3 (stating ‘‘[credible information does not exist when] the only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals . . . .’’); DoDD 1332.40, supra note 11, at E.8.3.3.4.  
163 DoDD 1332.14, supra note 11, at E.3.A.1.8.1.1; DoDD 1332.40, supra note 11, at E.2.3.  
164 See Letter from Edwin Dorn to The Honorable Carol DiBattiste, Under Secretary of the Air Force (May 1, 2000). ‘‘Recent reports have indicated that physicians, EEO personnel, inspectors general and law enforcement personnel believe that they are obliged to turn in service members who reveal their sexual orientation when they report anti-gay harassment, or who are discovered to be gay during an investigation into the reported harassment. If these practices occur, then they have the effect of punishing the victim. This is not what I anticipated or intended when I was involved in the development of DoD’s 1997 anti-harassment guidance.’’ Id.  
165 See Letter from Charles Moskos, Professor, Northwestern University, to The Honorable William S. Cohen, Secretary of Defense, (Apr. 12, 2000).  
167 Letter from Captain Monica Hill to her command (Jul. 22, 2001).  
170 See supra note 93.  
171 Letter from AC2 Eric Lekberg to his command (May 27, 2001).  
175 See generally Army Regulation 165-1, Chaplain Activities in the United States Army (1998) ‘‘A privileged communication is defined as any communication to a chaplain [including those made as a] matter of conscience.’’ Id. at 4.4.m(1).
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