

FOIA MARKER

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Folder Title:

Gays in the Military, 1993-1999 Part II [4]

Staff Office-Individual:

Defense Policy-Beardsworth, Richard

Original OA/ID Number:

3154

Row:	Section:	Shelf:	Position:	Stack:
31	2	6	1	V

National Security Council

Washington, D.C. 20504

Fax Cover Sheet

From: Captain Joseph F. Bouchard, USN
Director for Defense Policy

Phone: 202-456-9191

Fax: 202-456-9190

E-mail: bouchard_j@al.eop.gov

To: Laura Marcus

Organization: OCOS

Fax Number: 62271

Number of pages that follow: 8

Message: Laura, Initial document search on Meinhold case turned up nothing. Trying one more time with other keywords, but do not expect to find anything. Here are some NYT articles giving an overview of the case.

Access No: 9300008270 ProQuest - The New York Times (R) Ondisc.
Title: HOMOSEXUAL BAN LOSES IN U.S. COURT
Authors: ROBERT REINHOLD, Special to The New York Times
Source: The New York Times, Late Edition - Final
Date: Friday Jan 29, 1993 Sec: A National Desk p: 13
Length: Long (891 words)
Subjects: UNITED STATES ARMAMENT & DEFENSE; MILITARY PERSONNEL;
HOMOSEXUALITY; DISCRIMINATION; NAVIES; SUITS & CLAIMS

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(R) Service.

Article Text:

LOS ANGELES, Jan. 28 -- A Federal district judge ruled today that the Pentagon's ban on homosexuals was unconstitutional and permanently enjoined the military services from discharging or denying enlistment to gay people 'in the absence of sexual conduct which interferes with the military mission.'

The judge, Terry J. Hatter Jr., then ordered the Navy to reinstate permanently Petty Officer V. Keith Meinhold, 30, who was discharged last year after proclaiming his homosexuality on national television. Judge Hatter ruled that the Navy's action violated the Constitution's guarantee of equal protection.

Lawyers familiar with the case said the order applied to all branches of the armed services in Judge Hatter's jurisdiction, the Central District of California, and was not binding elsewhere, although it could be persuasive in other cases. 'This is a great decision, but it has greater political impact than legal impact,' said one of Mr. Meinhold's lawyers, John McGuire of the Los Angeles firm of White & Case.

The crucial question now was whether the new Clinton Administration, which has pledged to end the military's ban on homosexuals, will permit the Navy to appeal the decision. The Pentagon declined to comment on the ruling tonight.

Comparison With Segregation

In Judge Hatter's order, which was issued late this afternoon, he wrote: 'Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity and loyalty. The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.'

Homosexual-rights advocates applauded the Federal court ruling, saying it provided the Clinton Administration new ammunition to counter arguments from the Joint Chiefs of Staff and supporters of the ban in Congress.

'The real impact of this decision will be political not legal,' said Kevin Cathcart, a lawyer who is executive director of the Lambda Legal Defense and Education Fund, a group that promotes gay rights. 'The question right now is how will Congress react and will it press this issue further.'

Judge Refers to Studies

Judge Hatter ruled that the military policy violated Mr. Meinhold's rights to equal protection under the Fifth Amendment and, citing several Pentagon and other Government studies, that there was no rational basis for discrimination against gay men and women in the military.

One of the sailor's lawyers, Christopher Rudd, hailed the ruling. 'A U.S. District Court judge has ruled that the U.S. Navy's policy banning gays from military solely based on their status is unconstitutional

because it is discrimination based on prejudice and has no rational basis,' he said. 'If this decision is upheld on appeal, it doesn't matter what Congress does.'

Mr. Meinhold, an airborne sonar analyst and instructor, has become a national symbol of the fight by homosexuals to lift the longstanding policy of excluding gay people and discharging them if found out. He joined the Navy at the age of 17 in 1980 and has never been accused of sexual misconduct. After he publicly announced his sexual orientation last year on a program on ABC, the Navy relieved him of duty at the Moffett Field Naval Air Station in Mountain View, Calif., south of San Francisco.

The sailor sued, and last November Judge Hatter issued a temporary injunction ordering the Navy to reinstate Mr. Meinhold while his case was argued. The order today made the injunction permanent and extended it to all other people as well.

If upheld or allowed to stand, the order would reverse numerous previous Federal court rulings generally upholding the military policy on the ground that the armed forces are permitted to use their own judgment on such matters.

But today Judge Hatter, relying on a 1992 ruling by the Court of Appeals for the Ninth Circuit, in San Francisco, wrote that the court 'cannot merely defer to the 'military judgment' as the rationale for the policy -- the court must consider the factual basis underlying the 'military judgment.'

Cheney Comments Cited

He then cited numerous Government statements and documents that he said undermined the rationale for the exclusion, including televised comments by former Secretary of Defense Dick Cheney. He also cited a study commissioned by the Defense Department in 1988 that found that sexual orientation was no more related to job performance than being left- or right-handed.

The judge also quoted Lawrence J. Korb, a former Assistant Secretary of Defense responsible for approving and carrying out the current policy as saying 'there is no longer any justification for the armed services' current ban on homosexuals serving in the military.'

Judge Hatter, who was appointed by President Jimmy Carter in 1979, concluded, 'Gays and lesbians should not be banned from serving our country in the absence of conduct which interferes with the military mission.'

At Mr. Meinhold's home in Palo Alto, Calif., telephone calls were greeted by a recorded message that said: 'Hi, this is Keith Meinhold. We just got a very favorable ruling from the judge. The policy banning gays from the military is unconstitutional.'

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Access No: 9300054966 ProQuest - The New York Times (R) Ondisc
Title: WHITE HOUSE PLANS TO FIGHT FOR DISCHARGE OF GAY SAILOR
Authors: Special to The New York Times
Source: The New York Times, Late Edition - Final
Date: Saturday Jul 31, 1993 Sec: 1 National Desk p: 10
Length: Medium (308 words)
Subjects: UNITED STATES ARMAMENT & DEFENSE; HOMOSEXUALITY; MILITARY
PERSONNEL; NAVIES
Names: CLINTON, BILL (PRES); MEINHOLD, KEITH
Companies: DEFENSE DEPARTMENT

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Article Text:

SAN FRANCISCO, July 30 -- The Clinton Administration argued in a court brief today that the old Pentagon ban on homosexuals was constitutional and indicated that it would continue fighting for the discharge of a gay sailor.

In a brief filed here in the United States Court of Appeals for the Ninth Circuit, the Administration criticized Judge Terry J. Hatter Jr. of Federal District Court for overturning the discharge of Keith Meinhold, a sonar operator at Moffett Field Naval Air Station in Mountain View, Calif.

The Defense Department discharged Mr. Meinhold last August after he disclosed in a national television interview that he was homosexual. He was reinstated in January on Judge Hatter's orders.

The Clinton Justice Department argued that Judge Hatter's decision overstepped his judicial authority by making decisions that fall in the jurisdiction of the legislative and executive branches of the Federal Government.

Furthermore, the brief argued, 'the District Court's ruling may interfere with implementation of the President's new policy regarding homosexuality in the military' because of an implication that the court's decision in the Meinhold case could be construed to mean that the new policy first had to be reviewed by the court.

Under President Clinton's compromise policy, homosexuality will still be grounds for discharge, although the military will not ask incoming men and women whether they are homosexuals or lesbians. The policy will be effective on Oct. 1.

After reviewing the Administration's brief, Mr. Meinhold's lawyer, John I. McGuire, said the Government's legal arguments today indicated little difference between the old and new policies.

'Here the Clinton Administration is claiming before the courts that they are not kicking gays out, but then they defend the old rule,' Mr. McGuire said in a telephone interview.

Access No: 9300067299 ProQuest - The New York Times (R) Ondisc
Title: GAY SAILOR CLAIMS A VICTORY AS COURT CASE DEADLINE PASSES
Authors: DAVID JOHNSTON, Special to The New York Times
Source: The New York Times, Late Edition - Final
Date: Monday Oct 17, 1994 Sec: A National Desk p: 12
Length: Medium (505 words) Illus: Photo
Subjects: UNITED STATES ARMAMENT & DEFENSE; HOMOSEXUALITY; NAVIES;
SUITS & CLAIMS AGAINST GOVERNMENT; SUSPENSIONS, DISMISSALS
& RESIGNATIONS
Names: MEINHOLD, KEITH

Abstract: Keith Meinhold, the homosexual sailor who has waged a two-year legal battle against his discharge by the Navy, said on Oct 16, 1994 that he had prevailed because the government allowed a legal deadline to pass on Oct 14 without challenging an appeals court decision in his favor.

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Article Text:

WASHINGTON, Oct. 16 -- A homosexual sailor who has waged a two-year legal battle against his discharge by the Navy said today that he had prevailed because the Government allowed a legal deadline to pass on Friday without challenging an appeals court decision in his favor.

Lawyers for the Navy flight instructor, Petty Officer Keith Meinhold, said the Government did not file a required notice seeking a review of a Sept. 1 decision by a panel of the Ninth Circuit Court of Appeals in San Francisco. The judges ruled that the Navy could not discharge Mr. Meinhold merely because he is gay.

'For two and a half years, the Pentagon has fought tooth and nail to kick me out of the Navy because I'm gay,' said Mr. Meinhold in a statement quoted by The Associated Press and Reuters in California. 'By this decision, they finally have admitted that I can say I am gay and proudly serve my country in the military.'

A Government lawyer said today that the Justice Department had not ignored the deadline, but was intentionally allowing the decision to stand without asking for a review by the full appeals court. But the official added that the Justice Department had not decided whether to petition the Supreme Court. The Government has more than a month to decide whether to seek a review by the High Court.

But one lawyer who has followed the case suggested that the Justice Department officials may have decided against all further appeals. 'The Solicitor General believes that policy issues could be better litigated in the context of other cases,' he said, referring to Drew S. Days, the

Solicitor General, who is the Government's chief lawyer in appellate courts.

Mr. Meinhold was discharged in 1992 under a longstanding policy barring homosexuals from the armed forces, after he said in an interview on a nationwide television broadcast that he is a homosexual.

He challenged the discharge, and after a long battle the appeals court upheld a lower court's order that Mr. Meinhold be reinstated. He is now stationed at the Naval Air Station on Whidbey Island in Washington State.

John McGuire, Mr. Meinhold's lawyer, said in the statement quoted by the news services that the Government's decision against further action 'is an acknowledgement that the court's decision is correct and that the gay ban is headed toward its ultimate and deserved demise.'

Mr. McGuire suggested that the case could influence courts considering newer regulations, 'the don't ask, don't tell, don't pursue' policy adopted under the Clinton Administration in which recruits cannot be asked if they are homosexuals. 'The Meinhold ruling, in effect, eliminates the 'don't tell' provision from the 'don't ask, don't tell' policy,' Mr. McGuire said.

But a Government lawyer said the Meinhold case would probably not affect the legal debate over the new policy. He said the appeals court said that its ruling in the Meinhold case applied only to his treatment under the old policy and reached no legal conclusions about the validity of the new regulations.

Caption:

Photo: Petty Officer Keith Meinhold (Agence France-Presse)

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Access No: 9300079524 ProQuest - The New York Times (R) Ondisc
Title: U.S. DROPS EFFORT TO OUST A GAY SAILOR
Authors: STEPHEN LABATON, Special to The New York Times
Source: The New York Times,
Late Edition - Final Correction Appended
Date: Tuesday Nov 29, 1994 Sec: A National Desk p: 20
Length: Long (907 words) Illus: Photo
Subjects: UNITED STATES ARMAMENT & DEFENSE; HOMOSEXUALITY;
DISCRIMINATION; SUITS & LITIGATION; NAVIES
Names: CLINTON, BILL (PRES); MEINHOLD, KEITH (PETTY OFFICER)

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Abstract: The Clinton administration said on Nov 28, 1994 that it would drop its effort to bar a homosexual from serving in the Navy and would not appeal the case to the US Supreme Court. Government lawyers insisted that their decision in the case of Petty Officer Keith Meinhold was not intended to convey the message that the military must admit homosexuals, but was simply a tactical decision in the long-running court battle between the armed services and gay and civil rights groups over the Pentagon's policy on homosexuality.

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Correction:

November 30, 1994, Wednesday

An article on Tuesday about the Government's decision to drop its effort to bar a homosexual from serving in the Navy misstated a Federal appeals court's rationale in the case. The United States Court of Appeals for the Ninth Circuit, in San Francisco, found that under the old military policy restricting homosexuals, the Navy officer, Keith Meinhold, could not be discharged for merely saying he is homosexual. But the ruling did not say the policy violated equal protection guarantees of the Constitution.

Article Text:

WASHINGTON, Nov. 28 -- The Clinton Administration said today that it would drop its effort to bar a homosexual from serving in the Navy and would not appeal the case to the United States Supreme Court.

Government lawyers insisted that their decision in the case of Petty Officer Keith Meinhold was not intended to convey the message that the military must admit homosexuals. Rather, they said, it was simply a tactical decision in the long-running court battle between the armed services and gay and civil rights groups over the Pentagon's policy on homosexuality.

Last August, the United States Court of Appeals for the Ninth Circuit, in San Francisco, said Mr. Meinhold could not be discharged merely for saying he is gay. The Navy had tried to remove him under the policy, in effect when Mr. Clinton took office in January 1993, that prohibited anyone who described himself as gay from serving in the armed services.

Administration officials said that the Meinhold case was not worth appealing because the regulations under which the Navy sought to discharge Mr. Meinhold have since been rewritten and that the case could therefore

be distinguished from others that have begun to arise under the new policy written by the Clinton Administration. The Meinhold decision had cast doubt on that new policy.

Moreover, last week the Administration won a different case revolving around the old policy in a different appeals court. Government lawyers said that victory, in the case of former Midshipman Joseph C. Steffan, would have the effect of limiting any damage done to the military policy by the Meinhold case.

Still, the decision means the Government may be prevented from taking disciplinary action against Petty Officer Meinhold, a Navy flight instructor whom the Government had tried to discharge after he said in a television interview in 1992 that he is gay.

The Government's decision not to appeal the Meinhold case was announced today by Joseph Krovisky, a Justice Department spokesman, who said it was made by Solicitor General Drew S. Days 3d, who represents the Administration before the Supreme Court.

The Pentagon rules written by the Clinton Administration took effect in February 1994 and permit the military to remove members who say they are homosexuals. But Government lawyers say that because the new rules are more flexible, they are more likely to withstand constitutional challenges.

The new rules strike a compromise between Mr. Clinton's 1992 campaign promise to remove the ban on homosexuals entirely and the sentiments of military leaders and Congress to keep the ban in place.

Under the new policy, known as 'Don't ask, don't tell, don't pursue,' homosexuals may serve in the military so long as they remain silent about their sexual preferences, except in the most private of settings, and abstain from homosexual acts. The new policy also discourages supervising officers from opening sexual investigations without significant evidence of homosexuality.

John McGuire, Mr. Meinhold's lawyer, said today that his client was told last week that he would not be disciplined under the new policy so long as he did not repeat his earlier statement that he is gay.

'He was told by the executive officer of his squadron that he has a clean slate, and that he would be permitted to remain, but that if he says he's gay again, then they would be taking action against him under the new policy,' Mr. McGuire said. 'It's ridiculous.' They live with a known homosexual so long as he doesn't show how gay he is. It shows how symbolic the policy really is.'

While the case was moving through the courts, a district court order prevented the Navy from discharging Petty Officer Meinhold, and he has continued to serve at the Naval Airborne Station at Whidby Island in the Washington State.

In the Meinhold case, the appeals court said that the military could not discharge Mr. Meinhold and that the old policy violated the equal protection guarantees of the Constitution. Although the court said that it was not passing judgment on the new regulations, the decision cast doubt on them because it said that Mr. Meinhold could not be dismissed merely for asserting that he is gay.

The court said it would defer to the Navy's judgment that homosexual conduct 'seriously impairs the accomplishment of the military mission.' But the court distinguished between words and deeds and rejected the argument that a declaration of homosexuality was reason enough for discharge.

The Meinhold opinion conflicts with the decision in the case involving Mr. Steffan, which was handed down last week by the United States Court of Appeals for the District of Columbia Circuit. Mr. Steffan, a top-ranking midshipman from the United States Naval Academy in Annapolis, Md., was forced to resign six weeks before graduation because he acknowledged under

questioning by a disciplinary board that he is gay.

In the Steffan case, the court upheld the right of the Government to impose restrictions on gays who wish to serve in the military. In contrast to the Meinhold decision, the court in the Steffan case said that if a person declared himself to be gay, then it was reasonable to conclude that the person had engaged in conduct proscribed by the regulations. The decision said rules prohibiting homosexuals were no different than other employment restrictions, like those imposing height or age restrictions or requiring good eyesight.

Caption:

Photo: Petty Officer Keith Meinhold (Agence France-Presse)

Bouchard, Joseph F.

From: Sestak, Joseph A.
To: Bell, Robert G.
Cc: /R, Record at A1; Bouchard, Joseph F.
Subject: FW: Gays in the Military [UNCLASSIFIED]
Date: Sunday, February 23, 1997 9:25PM

Bob,

There was a meeting between John Podesta and Fred Pang on Saturday regarding "the facts on the gay issue". As of late Friday, no one from here (or D. Kerrick) was invited.

On Monday, we intend to speak with Pang's people and the OSD GC handling the issue to get Don Kerrick the info below (via you). vr, Joe

From: Sestak, Joseph A.
To: Bell, Robert G.
CC: /R, Record at A1; Bouchard, Joseph F.
Subject: FW: Gays in the Military [UNCLASSIFIED]
Date: Friday, February 21, 1997 07:45 PM

Bob,

Don asked us to find facts about (1) what Administration said last year regarding last year's report (per below) (alerted David Johnson because he is on record saying some things); (2) what has Admin (DoD) done with regard to what it said; and (3) what do we think this year's report (due out Wednesday) will say and what can we say. vr, Joe

From: Kerrick, Donald L.
To: @NSA - Natl Security Advisor
CC: /R, Record at A1; @DEFENSE - Defense Policy; @PRESS - Public Affairs; @EXECSEC - Executive Secretary
Subject: Gays in the Military [UNCLASSIFIED]
Date: Friday, February 21, 1997 07:32 PM

Jim and Sandy

FYI. I attended the Podesta chaired session today on how we should respond to the annual report that will be issued next week by the public group Servicemembers Legal Defense Network.

The WH Staff is concerned that the report will be very critical of "Don't Ask, etc" and want to develop a strategy for response. They are especially concerned because last years report was also critical and, in their view, despite promises, DoD failed to do anything.

I urged them to make this a Pentagon story and to allow the new SECDEF to first develop his strategy for responding before we directed anything.

A follow-on meeting with DoD will be called by Podesta. We will likely be asked to provide press points for Mike...

AM 24 FEB

GAYS IN MILITARY

- Laura Marcus (Ch. Staff WH) 66796
 - Results SAT mtg (Podesta-Pang) ~~66796~~
 - Is another mtg planned?
- Mike Shane (DOD PERS) 697-2086
 - Results SAT mtg
 - Press guidance? Please fax.
 - Q's:
 - What did DOD promise?
 - What has DOD done?
 - What are statistics/trends?
 - How compare with last year?
 - Women being singled out?
 - What is DOD response to SMHDN report?
- Brad Wigman (DOD CG) 665-3392
(Bill Sheehan)
 - Same Q's:
- Press guidance
 - Bacon (DOD PAO) 697-9312
 - Fax me press guidance
- Prep, e-mail to Bob for chop
- E-mail to Dave Johnson (NSC PAO) NLT 1000 TUE

DEFENSE
INFO

6A7-5131

Shane:

- 650
 - Adjusted for USAF change from FRAUD ENL vice GAY, is 750-800
- To up from .039 $\rightarrow$.041
- OSD meeting with SHDN 1800 MON
- THU Report out
WED Press release

Laura: Amicable

- Rec TUE MTG (after DOD-SHDN mtg)
Podesta - Kerrick - Pung - AIDS
- E-mail to ~~Kerrick~~ Bell info Kerrick
 - Laura will contact you tomorrow
 - Call Shane first, put in Mrs.

Col. Shane

1800 Bennicke/Osborne - Pang
Boadner

- Trend -

No substantial change

Slight increase $.039 \rightarrow .041$ $\times/1000$

Numbers about steady

BA
843AA
657 - 96Within services - large changes
NAVY $\uparrow$ ARMY $\downarrow$ AF & MC $\rightarrow$ - Females over-represented
20% of disch
13% of force

- Most 1st term
- Most statements
- Most uncontested

- SLDN

- Numbers not down, so policy not being implemented

- Not going to comment on anecdotal data.

- What has DOD done?

- Violence against gays:

- Reviewed policies

- Looking at strengthening regulations or write a new one.

- Memo reiterate regs, vice new reg.

- Did DOD make any commitments?
 - No formal response

Uniformed not satisfied

Law

Underlying precept - homo not conducive
conduct not tolerated

Bouchard, Joseph F.

From: Kerrick, Donald L.
To: @NSA - Natl Security Advisor
Cc: /R, Record at A1; @DEFENSE - Defense Policy
Subject: FW: Gays in the Military - Update[UNCLASSIFIED]
Date: Monday, February 24, 1997 3:14PM

Please pass to Jim.

You asked to let you know about this:

DOD will meet with a gay/lesbian group at 6:00pm today to discuss the upcoming report. After there is feedback from DOD, there will either be a conference call tonight or a meeting tomorrow morning. Laura has been in touch with Bob Bell's office and will let us know what our next step will be.



HUMAN
RIGHTS
CAMPAIGN

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WORKING FOR LESBIAN AND GAY
EQUAL RIGHTS



Statement In Response to SLDN Report

We have not yet received the SLDN report, and, therefore, we have not had a chance to review or analyze its contents.

We are aware that the report contains assertions that we in the Department of Defense have not been faithful in our execution of the "Don't Ask, Don't Tell" law and policy. We will review the SLDN report carefully, and if there is credible and specific information presented in this regard, then, as with any other deviations from law or policy, we will look into the allegations and take appropriate action.

The law governing the "Don't Ask, Don't Tell" policy was enacted in October 1993 after months of Congressional research, hearings, and debate. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual statements or conduct.

Just as with all laws and policies, Secretary Cohen affirms his commitment to the faithful execution of "Don't Ask, Don't Tell", and the entire chain of command is accountable for the effective execution of the policy.

Finally, Secretary Cohen is unequivocally committed to providing an environment throughout the Department of Defense that is free from harassment and discrimination, and where all persons are treated with the utmost dignity and respect.

OPTIONAL FORM 98 (7-90)

FAX TRANSMITTAL# of pages **3**

To JOE BOURNARD	From OSD/PA
Dept./Agency	Phone #
Fax # 202 456 9191	Fax #

NSN 7540-01-317-7388

5088-101

GENERAL SERVICES ADMINISTRATION

Of the 843 homosexual conduct discharges in FY 96, 315 or 37% were in grade E-1 which means that they almost all had to come from the training base (service members are promoted to E-2 at 6 months of service). When you add in E-2s, the total number jumps to 487 or 58% many of whom may still have been in the training base. Of the total number of these discharges for FY 96, 760 (or 90%) were in grade E-4 and below most of whom would still be in their first term of service.

Sheet1

summary	gender	other	white	black	hispanic	am ind/an	asian/pi	total
E-1	male	2	193	19	19	2	2	237
	female	0	69	6	2	0	1	78
E-2	male	0	91	14	10	1	1	117
	female	0	42	7	6	0	0	55
E-3	male	2	66	11	8	1	6	94
	female	0	48	5	3	2	1	59
E-4	male	0	66	12	6	0	0	84
	female	0	29	5	2	0	0	36
E-5	male	0	31	3	2	0	0	36
	female	0	5	2	1	0	0	8
E-6	male	0	12	2	0	0	0	14
	female	0	1	0	0	0	0	1
E-7	male	0	4	0	0	0	0	4
	female	0	0	0	0	0	0	0
E-8	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
E-9	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
W-1	male	0	0	1	0	0	0	1
	female	0	0	1	0	0	0	1
W-2	male	0	0	0	0	0	0	0
	female	0	0	0	1	0	0	1
W-3	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
W-4	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
W-5	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
O-1	female	0	3	0	0	0	0	3
	female	0	1	0	0	0	0	1
O-2	male	0	1	0	0	0	0	1
	female	0	0	0	0	0	0	0
O-3	male	0	8	1	1	0	0	10
	female	0	1	0	0	0	0	1
O-4	female	0	0	0	0	0	0	0
	female	0	1	0	0	0	0	1
O-5	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
O-6	male	0	0	0	0	0	0	0
	female	0	0	0	0	0	0	0
Total		4	672	89	61	6	11	843

FORCE MANAGEMENT
POLICYOFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000PHONE: 703-697-1898; FAX: 703-695-4046
(DSN PHONE: 227-1898; FAX: 225-4046)

FACSIMILE COVER SHEET

TO: Capt Joe Testale / Cdr Joe BouchardFAX # 202-456-9190

VOICE # _____

FROM: COL Mike ShamsNumber of pages 2 (including cover sheet)Date: 25 Feb 97 Time: 1820

Message:

Joe³ : Attached is latest (at least as
of about 1800) and hopefully final version.
However, in my life, had so much trouble
with 5 paragraphs. Let me know what
else I can do to help.

Thanks
Mike

Statement In Response to SLDN Report

We have not yet received the SLDN report, and, therefore, we have not had a chance to review or analyze its contents.

We are aware that the report contains assertions that we in the Department of Defense have not been faithful in our execution of the statute and DoD regulations governing service by homosexuals in the military. We will review the SLDN report carefully, and if there is credible and specific information presented in this regard, we will look into the allegations and take appropriate action.

The statute governing service by homosexuals in the military was enacted in October 1993 after months of Congressional research, hearings, and debate. Under that statute, homosexual conduct is grounds for separation from the Military Services. Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

Secretary Cohen affirms his commitment to the faithful execution of the statute, and the entire chain of command is accountable for its effective execution.

Secretary Cohen is unequivocally committed to providing an environment throughout the Department of Defense that is free from harassment and discrimination, and where all persons are treated with the utmost dignity and respect.

26 February 1997

HOMOSEXUAL DISCHARGES BY THE MILITARY

Background

The New York Times reported today that three years after the Clinton Administration enacted a policy of "don't ask, don't tell" for homosexuals in the military, the total number of discharges for homosexuality has risen to a level higher than before the policy went into effect. The article quotes allegations by the Servicemembers Legal Defense Network that military commanders continue to ask, pursue and harass gay service members with impunity.

According to OSD data (which is slightly different from that reported in the article), 843 service members were discharged for homosexuality in Fiscal Year 1996 compared to 722 in FY 1995, a 17 percent increase. This is the second year in a row that the number has increased.

The data on homosexual discharges reported to DOD by the services does not, by itself, provide a sufficient basis for reaching a judgement as to whether the new policy has been a "success" or "failure." OSD contends that "most" homosexual discharges are during first enlistments, result from statements made voluntarily by service members, and are not contested by the service members. OSD suggests that such figures mean gays are leaving the military on their own initiative rather than being driven out by their superiors, but cannot substantiate this interpretation of their data. OSD points out that it is constrained in its ability to collect data on gays in the military by the "don't ask, don't tell" policy. For example, OSD cannot compare the discharge rate for homosexual service members with the discharge rate for heterosexual service members, which would be invaluable for assessing whether or not the overall number of discharges for homosexuality represents discrimination against gays.

Comparisons with fiscal years prior to FY 1995 is complicated by a 1995 change in Air Force policy. Prior to FY 1995, Air Force personnel were often discharged for "fraudulent enlistment" rather than homosexuality. Under that policy, personnel who answered "no" when asked if they were homosexual on enlistment forms and then subsequently recanted their denials were often discharged for fraudulent enlistment. Under the Administration's "don't ask, don't tell" policy, that question could no longer be asked in the enlistment process, so the number of Air Force discharges reported to OSD as being for homosexuality increased in FY 1995. When the total figures for FY 1996 and FY 1995 are

adjusted downward to be comparable with those of prior years, the six year trend is as follows:

FY	gay discharges	% of Armed Forces
96	657	.041
95	610	.039
94	597	.037
93	682	.039
92	708	.039
91	949	.047

One implication of this adjusted data is that the increase in homosexual discharges from FY 1994 to FY 1996 was 10 percent rather than 42 percent as reported in the Times article.

The Times article also reports that women may be singled out for harassment since they account for 29 percent of homosexual discharges but comprise only 13 percent of the military force.

The article ends with an allegation that, rather than protecting the rights of gays in the military, the "don't ask, don't tell" policy has inadvertently caused the number of homosexuality discharges to go up by drawing attention to the possibility of gays being present in military units.

Points

- We believe that the current policy is working well and that the Administration's policy balances an individual's right to privacy with the military's need to maintain unit cohesion and readiness.
- We are also pleased that the policy has recently been upheld by a series of court decisions at the Federal appellate level.
- The statistics available for FY 1995 and FY 1996 are open to conflicting interpretations. For example, while the rates for these two years are higher than for 1994, they are below the 1993 level and well below the 1991 and 1992 levels.
- Nonetheless, any allegation of an improper investigation will be pursued.

26 February 1997

HOMOSEXUAL DISCHARGES BY THE MILITARY

Background

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troops from the 307th and 37th engineer battalions, part of the 82nd, destroyed hundreds of bunkers in a huge ammunition depot. Only one, bunker 73, contained nerve gas rockets. On March 10, a noncommissioned officer from the Headquarters & Headquarters Company also destroyed stacks of nerve gas-filled rockets in a nearby pit.

Although the Pentagon began informing troops in the summer of possible exposure, there is no medical data indicating that veterans suffering from a set of symptoms

dubbed "Gulf War syndrome" became ill from chemical agents in Iraq. But the Pentagon's handling of the Khamisiyah information has seriously damaged its credibility.

Pentagon and CIA officials have pointed out that on the days of the Khamisiyah explosions no soldier reported becoming sick and that there is still no firm evidence—unequivocal chemical alarms for example—of a chemical release on those dates. One reason many Army officials dismissed the possibility of exposure

during or just after the war is that no soldiers reported being sick then or had symptoms that could be traced to chemical exposure.

Yesterday's revelations drew a flurry of condemnations from veterans groups and their advocates on Capitol Hill. "The DOD and CIA withheld this information from the U.S. Congress . . . and are now citing national security," said James Tuite III, an independent investigator on the issue. "There is nothing more vital to national security than the lives and health of U.S. citizens."

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New Study Faults Pentagon's Gay Policy

By PHILIP SHENON

WASHINGTON, Feb. 25 — Three years after the Clinton Administration adopted a policy of "don't ask, don't tell" for gay men and lesbians in the military, Pentagon figures show that the number of service members discharged for homosexuality is far higher than it was before the policy went into effect.

The numbers, cited in a new study by a legal aid organization, show that 850 men and women were discharged from the military for homosexuality in the yearlong period that ends this month, an 18 percent increase from the year earlier and a 42 percent increase from 1994, the year in which the policy was adopted.

The results of the study by the Servicemembers Legal Defense Network, a group that provides legal aid to troops accused of homosexuality, suggest that the plight of homosexuals in the military may actually be more dire today than it was when President Clinton first announced his plan to end discrimination against gay service members.

"The reality of 'don't ask, don't tell, don't pursue' has been anything but humane, as many commanders have continued to ask, pursue and harass suspected gay service members with impunity," the report said.

The report's authors said that the controversy over the policy might have created a backlash against gay members of the military by focusing so much attention on them. "In 1996, the armed forces repeatedly excused violations of current law, including witch hunts, seizure of personal diaries and threatening service mem-

bers with prison unless they accused others as gay," it said.

The figures in the report show that women account for a disproportionate number of the discharges for homosexuality, especially in the Army.

According to the Defense Department statistics cited in the report, 29 percent of those discharged in the last fiscal year were women, even though they make up only 13 percent of service members on active duty. In the Army, women accounted for 41 percent of the discharges.

The Pentagon did not immediately rebut the report's conclusions, but said that it was willing to review the report "carefully, and if there is credible and specific information presented in this regard we will look into the allegations and take appropriate action." The report is to be made public on Wednesday.

The Clinton Administration's policy was an awkward compromise enacted in February 1994 after months of political turmoil.

On taking office in January 1993, Mr. Clinton tried to impose a blanket moratorium on discrimination against homosexuals in the military, but he had to abandon his plan in the face of fierce opposition from military leaders and from members of Congress.

Under the compromise, homosexuals are permitted to serve in the military so long as they keep their homosexuality a secret, and commanders are barred from asking service members questions about their sexual orientation.

But the military has maintained its long-standing prohibition of homosexual acts, and commanders are allowed to open discharge investigations of service members if there is "credible evidence" that they have declared their homosexuality, even in a private setting.

The constitutionality of the policy has been repeatedly challenged in court — and, to date, upheld at the appellate level.

The report, by the Servicemembers Legal Defense Network found that the number of discharges for homosexuals grew in all four branches of the armed service, most dramatically in the Air Force. The number of Air Force discharges rose to 282 from 234 the year before, an increase of 20 percent.

The report provided a dramatic account of efforts within the Air Force last year to ferret out homosexuals serving at Hickam Air Force Base in Honolulu.

In January 1996, the Air Force entered into a plea agreement with an airman stationed at the base who had been accused of raping another man. In exchange for a reduced sentence, the airman agreed to a demand from Air Force prosecutors to provide them with the names of all men with whom he had engaged in consensual sex. The airman named five enlisted men, and four have since been dismissed.

One of the dismissed airmen, Andre Taylor, 23, said in a phone interview today that while his commanders at Hickam had not asked him directly about his sexual orientation.

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(Room 3A1037) ELECTRONIC EARLY BIRD DISTRIBUTION: Defense Technical Information Center (703-767-6000, DSN 427-6000)

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WASHINGTON POST

February 26, 1997

Pg. 1

CIA Warned Of Chemical Arms in '91

Possible Iraqi Cache
Was Disclosed to Army
Before U.S. Blew It Up

By Dana Priest
Washington Post Staff Writer

The Pentagon disclosed yesterday that the CIA had warned the Army of the possible presence of chemical weapons at an ammunition depot in southern Iraq in 1991 days before U.S. troops blew up the arsenal and were possibly exposed to poison gas.

The Army's 18th Airborne Corps received the information from the CIA on Feb. 26 as U.S. troops were ed to the area to seize it from Iraqi forces. The corps passed the news to two of its three divisions, but not to the one that demolished the bunkers at Khamisiyah on March

4 and 10.

The revelation that the CIA warned then that there might be chemical weapons at Khamisiyah contradicts the steadfast position of the Defense Department and CIA since questions were first raised by veterans groups in 1993 about possible poison gas exposure during the Persian Gulf War. Until now, the Pentagon and CIA said they learned of the presence of chemical arms there first in an inconclusive report from U.N. inspectors in November 1991 and then conclusively after a United Nations inspection of the site last year.

Bernard Rostker, head of the Pentagon's investigation of its own handling of the matter, had no explanation for why it was only now that the CIA information, contained in a Pentagon report released yesterday, was being made public.

In an interview, Rostker said that when a draft of the report issued yesterday was circulated last week at the CIA, "the CIA said we think we have some further information" related to Khamisiyah. He declined to say what the information was except to say it was held "at some level of security."

Rostker said the Pentagon had "raised the same question" about why the CIA had not earlier shared the information about what it had

told the Army about Khamisiyah. "I'm satisfied we're up against the firewall and you'll have to deal with the CIA."

CIA spokeswoman Carolyn Osborn said yesterday that the agency had identified Khamisiyah "early on" as "one of several suspected sites" but had "no definitive proof" when it alerted the Army in February 1991.

Although the troops that eventually destroyed the chemical munitions did not receive a forewarning, previous Washington Post interviews with the company commanders in charge of the operation indicate they took the necessary precautions anyway against possible chemical exposure.

The report released yesterday indicates that on Feb. 26 the 18th Airborne Corps passed information from the CIA of "possible chemicals on Objective Gold"—the codename for the Khamisiyah site—to the 24th Mechanized Infantry Division and the 101st Airborne Division, both of whom were sweeping into the area. Within a week they had secured the area and left. In came the 82nd Airborne Division, which had been given the mission to destroy armaments in the area.

The Pentagon has said an estimated 20,000 troops may have been exposed to poison gas released when

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In Washington, Saudis Try to Ease Tensions on Bombing Inquiry

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Embassy Warns Americans in Saudi Arabia

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which would be a violation of the policy, they got around the issue by asking him instead "if I knew what the definition of 'sodomy' was."

One of the authors of the report, Michelle M. Benecke, said that the

increased discharges for homosexuality were explained in part by the "hornet's nest that was kicked up" by the imposition of the "don't ask, don't tell" policy three years ago.

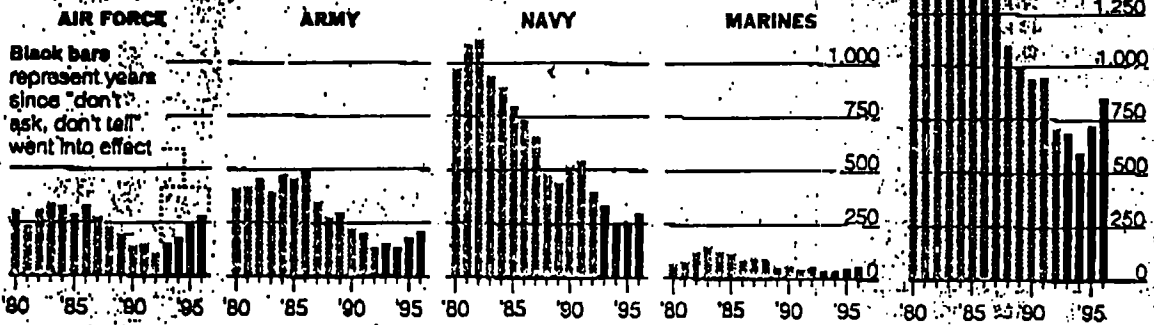
"For the first time, everyone from

private to general openly speculated about who in their unit might be gay, and as a result there are some people who've had a bull's-eye on their back," she said.

POLICY

Before and Since 'Don't Ask, Don't Tell'

Number of service members discharged for homosexuality, according to the Department of Defense. For the fiscal years shown.



NEW YORK TIMES

Feb. 26, 1997

Pg. 5

In Washington, Saudis Try to Ease Tensions on Bombing Inquiry

By STEVEN LEE MYERS

WASHINGTON, Feb. 25 — A senior delegation from Saudi Arabia, led by King Fahd's brother, began four days of talks with the Clinton Administration today, trying to repair a serious breach in relations caused by Saudi Arabia's investigation into the terrorist bombing that killed 19 American airmen in Dhahran last June.

Prince Sultan bin Abd al-Aziz, the King's brother and Saudi Arabia's Second Deputy Prime Minister and Minister of Defense and Aviation, met with President Clinton privately and later led a delegation of ministers in a meeting with Vice President Al Gore.

With Prince Sultan and five other senior ministers in the delegation, the Saudis have described the trip as one of their most important diplomatic forays to Washington in years — on a par with King Fahd's state visit with President Reagan in 1985.

The visit — which is to include separate meetings with Secretary of Defense William S. Cohen and Secretary of State Madeleine K. Albright on Wednesday and Thursday — comes a month after Attorney General Janet Reno and the Director of the Federal Bureau of Investigation, Louis J. Freeh, criticized the Saudi Government for failing to cooperate

in the investigation of the bombing at Al Khobar Towers.

After meeting with Mr. Clinton in the Roosevelt Room at the White House, Prince Sultan spoke warmly of the relationship and expressed hope that he had allayed at least some of the American concerns. "I think if you ask the American side you will find a positive response that they were left with," he said.

But the White House was more circumspect. Neither Mr. Clinton nor Mr. Gore appeared with the Saudis in public. Instead, the White House issued a written statement. In it, the President's press secretary, Michael D. McCurry, praised the visit as "the latest chapter in a decades long relationship of mutual respect and support."

Although the statement did not mention the bombing investigation, it referred to the President's desire to protect the 21,000 American soldiers stationed in Saudi Arabia from terrorism. As if to emphasize the point, the State Department and the American Embassy in Riyadh issued a warning today to Americans living in Saudi Arabia of a renewed threat of terrorist attack.

Mr. McCurry declined to discuss the meeting in detail, but said Prince Sultan had reassured the President that his Government would cooper-

ate. "We've received some cooperation with respect to the investigation," he said. "The President made clear today we expect to receive more."

The controversy over the investigation into the bombing — on top of the handling of a bombing that killed five Americans in 1995, in which the Saudis beheaded four suspects before American agents could question them — has revived questions about security and caused some worries here about the stability of the kingdom.

While today's talks focused on an array of issues, the lingering animosity over the investigation was a steady undercurrent. "Obviously Khobar has to come up," one Administration official said, speaking on condition of anonymity.

Ever since the bombing on June 25, the investigation has been a source of tension. Although Saudi Arabia pledged its full cooperation, it has operated largely in secret, providing only summary reports on its findings. Last fall, the Saudis accused some 40 Shiite-Muslims of carrying out the bombing with the support of Iran, but they have not yet shared forensic evidence or allowed F.B.I. agents to question any witnesses or suspects.

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WASHINGTON POST

Feb. 26, 1997

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Embassy Warns Americans in Saudi Arabia

Visitors Advised to Keep Low Profile, Be Vigilant

By R. Jeffrey Smith
Washington Post Staff Writer

The American Embassy in Saudi Arabia issued an unusually strong warning yesterday of a potential terrorist attack against U.S. personnel in the kingdom, citing televised threats by a Saudi dissident in Afghanistan as well as fresh reports that suspicious figures are conducting surveillance of U.S. facilities there.

The warning was noteworthy partly because it was issued on the same day a senior Saudi official met with President Clinton at the White House to discuss the overall state of U.S.-Saudi relations and to try to ease frictions over a Saudi probe of a terrorist bombing in Saudi Arabia last that killed 19 American Air Force servicemen.

White House spokesman Michael McCurry

said Clinton told Prince Sultan, the second deputy prime minister and defense minister of Saudi Arabia, that Washington expects more cooperation in the investigation of the Khobar Towers explosion. U.S. officials have complained that Saudi investigators have blocked them from gaining direct access to persons who may have witnessed or participated in the bombing.

But McCurry also said after the meeting that "U.S.-Saudi relations are strong and will remain so" and that Clinton pledged he will "work with Saudi Arabia to respond to any external threats to our mutual interests." Sultan, in brief remarks translated by his son, Prince Bandar, the Saudi ambassador to the United States, said he too would "reaffirm the especially strong relationship."

In its warning, the U.S. Embassy in Riyadh expressed "deep concern" about threats made against the United States and its 40,000 citizens in Saudi Arabia by Osama bin Laden, a wealthy dissident whom Saudi officials have stripped of citizenship and who apparently lives near Jalalabad, Afghanistan.

Bin Laden told a reporter from London's Channel 4-TV on Feb. 20 that the Khobar Towers bombing was a clear sign that U.S. troops in Saudi Arabia should "correct their grave mistake" and withdraw "before the battle begins in earnest," according to a State Department summary of the broadcast. He also said that "if someone can kill an American soldier, it is better than wasting his energy on other matters."

The warning described the current period as a particularly dangerous one in Saudi Arabia be-

cause Ramadan, a period of religious fasting and low activity, is now over and next month the kingdom will experience a huge influx of Muslims for the Hajj, an annual pilgrimage to various holy sites.

Americans were cautioned to maintain a low profile, reduce travel, vary routes and times, and scrutinize mail. They also were advised to be on the lookout for continued "surveillance or probes of U.S. military and government facilities." A similar warning is to be issued today or Thursday for U.S. citizens in neighboring Kuwait.

In his meetings with Clinton and Vice President Gore, Sultan discussed various energy, environmental and economic matters as well as security issues. Sultan also was to raise Saudi concerns about Iran's export of revolution and the continuing threat posed by Iraq.

Meanwhile, on Capitol Hill yesterday, Air Force chief of staff Ronald R. Fogleman defended his service's actions before the Khobar bombing and said it was "criminal" for officials in Washington to try to discipline the military for failing to protect the site out of "political correctness or because the media has created a frenzy."

Fogleman has defended the actions of Brig. Gen. Terryl J. Schwalier, who was responsible for the air patrol mission of U.S. servicemen who lived in the Khobar housing complex, against charges that he failed to ensure their safety despite many intelligence warnings of a possible attack.

Staff writer Thomas W. Lippman
contributed to this article.

NEW YORK TIMES

Feb. 26, 1997

Pg. 4

With Iran's Aid, Guerrillas Gain Against Israelis

By DOUGLAS JEHL

BEIRUT, Lebanon, Feb. 23 — Apparently with help from the Iranian Government, the main guerrilla group waging a campaign against Israeli forces in southern Lebanon has made important gains in recent months in intelligence, weapons and tactics, Western diplomats and other experts here say.

Less reliant than before on inaccurate Katyusha rockets, the guerrillas, from the Hezbollah group, have become increasingly adept at deploying sophisticated roadside bombs as their main weapons in a campaign aimed at ending Israel's 15-year occupation.

In adhering to understandings that since last April have prohibited attacks across the border, Hezbollah, known as the Party of God, has turned the Israeli-held zone itself into a more perilous region for the occupiers.

Some Lebanese and United Nations officials contend that Hezbollah's increasing effectiveness main-

ly reflects the group's dedication and adaptability. But some Beirut-based diplomats and other experts say that much of the responsibility belongs to Iran, whose Revolutionary Guards continue to train Hezbollah forces in the Bekaa region in Lebanon. The diplomats say Iran funneled tens of millions of dollars in aid through Hezbollah last year to Lebanese civilians who had been displaced by an Israeli military offensive.

With these and other overtures, the diplomats say, Iran appears increasingly determined to bolster Hezbollah and other forces in southern Lebanon as its proxies in a war that had begun to cause Israelis to openly question the wisdom of maintaining their military presence even before the helicopter crash on Feb. 4 in which 74 Israeli soldiers died on their way to the occupation zone.

The diplomats said they could not confirm a recent assertion by David Levy, the Israeli Foreign Minister, that the Teheran Government has over the last 10 months shipped 30

plane loads of weapons to Syria for delivery to Hezbollah. And, along with Lebanese and United Nations officials, they said that most components of the roadside bombs that the Hezbollah forces have used with devastating effect against Israeli patrols in the occupation zone could be obtained in Lebanon.

But they said the \$30 million in supplemental aid that Iran distributed through Hezbollah in the aftermath of Israel's military campaign last April had helped extend the organization's network of support in the villages where most of its guerrillas are based. And they said they believed that Iranian training had helped Hezbollah to confound countermeasures that at one time allowed Israel to use aircraft to detonate the bombs from afar.

"They're getting decent matériel, and they're obviously well trained and well motivated," a Western diplomat said of Hezbollah, which is by far the largest and most effective of the guerrilla groups active in south-

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military and not a civilian?" he asked.

At Whiteman Air Force Base, meanwhile, Lieutenant Kite is still going to work every day, doing what he calls the "odds and ends" jobs he has been assigned since the investigation began. He tries not to think about how he will support his wife and baby if he is forced to leave the Air Force. Against all odds he hopes to stay in the service — or at least to leave with honor.

"Rhonda and I decided we've gone through too much time and too much stress to just say, 'Okay, we'll accept what we can get,'" he said in a telephone interview from Warrensburg today. "We know we have to get on with our lives. But we also have to make a point — that this stuff goes on and people's lives are affected by little rules that most people would consider absurd."

WASHINGTON TIMES
July 3, 1997 Pg. 7

Air Force to resume recovery of A-10

The Air Force said yesterday it will resume efforts in Colorado next week to recover the wreckage of an A-10 attack jet and the remains of Capt. Craig Button, who disappeared mysteriously in the aircraft two months ago.

The wreckage of Capt. Button's fighter was found April 20 on a Rocky Mountain peak after the aircraft, which was loaded with bombs, disappeared April 2.

Fragmentary human remains were recovered from the snow-covered wreckage at the time and the Air Force said they had been identified as those of Capt. Button by using DNA testing by scientists at the Armed Forces Institute of Pathology in Washington.

WASHINGTON TIMES
July 3, 1997 Pg. 13

Life sentence sought for Serb war criminal

THE HAGUE — Convicted Bosnian Serb war criminal Dusan Tadic should be sentenced to life imprisonment for his actions, prosecutors told the U.N. war crimes tribunal yesterday.

Tadic, 41, was found guilty of war crimes and crimes against humanity by the tribunal May 7 for his part in a Serbian "ethnic cleansing" campaign against Bosnian Muslims in 1992. The court is holding hearings in advance of sentencing July 14.

BALTIMORE SUN

July 3, 1997

Pg. 1

Judge rejects policy on gays

Military's 'don't ask, don't tell' is ruled unconstitutional

An appeal is likely

Decision in N.Y. has implications beyond armed forces

By LYLE DENNISTON
SUN NATIONAL STAFF

WASHINGTON — In the most complete court defeat yet for the government's "don't ask, don't tell" policy, a federal judge in New York ruled it is unconstitutional for the armed forces to treat homosexuals differently solely because of their sexual activity.

U.S. District Judge Eugene H. Nickerson of Brooklyn, ruling in a case that may go to the Supreme Court, said the military services may not impose "unequal conditions" on homosexuals based on their sexual behavior.

"It is not within our constitutional tradition for our government to designate members of one societal group as

pariahs," the judge said.

Nickerson rejected the government's core justification for the policy — the need to deter homosexual sex — after a higher court told him last year to reconsider an earlier, narrower ruling against the policy.

The decision has implications beyond the armed forces: The judge declared that "homosexuals meet the criteria of a group warranting heightened protection" against unequal treatment by the government. He said there has been "widespread discrimination and social pressure" against homosexuals.

If the decision is upheld by higher courts, after an appeal that seems all but certain, it could go further than any prior decision toward ensuring legal equality for homosexuals.

The Defense Department, where the policy originated, and the Justice Department, which has vigorously defended it in courts across the country, said they would study the ruling before deciding whether to appeal it. The Pentagon

did note that all of the federal appeals courts that have reviewed the policy so far have upheld it.

Because the military's policy on gays and lesbians singles them out for discrimination, Nickerson said, the services cannot discharge homosexuals for engaging in sex when heterosexuals would face no punishment for sexual activity.

Moreover, the judge said, the services cannot enforce another part of the policy, which requires discharging service members who say they are gay or lesbian. The policy allows those who make such statements to remain in the service only if they can later prove they did not mean it.

Lambasting the Pentagon's argument that the policy is needed to protect "cohesion" within military units, the judge said that argument "is a euphemism" for giving in to prejudice. "The Constitution does not grant the military special license to act on prejudices or cater to them," he said.

The Clinton administration policy, written into law by Congress in 1993 and put into effect in early 1994, allows homosexuals to

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remain in the service only if they do not engage in homosexual acts and do not admit they are homosexual.

Saying that the policy forces homosexuals into silence about their sexual characteristics, Nickerson wrote: "For the United States government to require those self-identifying as homosexuals to hide their orientation and to pretend to be heterosexuals is to ask them to accept a judgment that their orientation is in itself disgraceful and they are unfit to serve."

Military laws aimed at heterosexuals as well as homosexuals already allow the services to "deter a whole gamut of sexual conduct from sodomy and rape to sexual harassment and lewd, lascivious, and reprehensive conduct," the judge said.

Thus, he said, the military does not need another law punishing only homosexuals since it is a fact that they will not violate military law more often than heterosexuals would.

The "don't ask, don't tell" policy has been upheld by three federal appeals courts, but some judges have voiced doubts about its validity because it punishes service

members for merely saying they are gay or lesbian.

Even though the policy has met differing fates in different courts, and the Supreme Court has not agreed to step in, decisions so far generally have had one thing in common: The courts ruled, or at least assumed, that the military was free to punish those who engage in homosexual sex, as opposed to merely talking about sexual orientation.

Nickerson, striking out in a new direction, disagreed. To demonstrate how discriminatory he found the law to be, he said it would cover "innocuous" acts such as holding hands or kissing in private, away from a military base.

"It is hard to imagine why the mere holding of hands off base and in private is dangerous to the mission of the armed forces if done by a homosexual but not if done by a heterosexual," he commented.

Chai Feldblum, a Georgetown University law professor who is one of the architects of the constitutional theory that Nickerson upheld yesterday, commented: "This will be critical in forcing courts to see gay people as full human beings, as individuals whose sexual

conduct is no different in quality from that of heterosexuals."

She said it had "significant implications for other areas of the law where gays and lesbians have been stigmatized and discriminated against." The ruling does not mean, Feldblum added, "that morality is thrown out the window, not at all. It simply means that morality is to be applied equally."

Beatrice Dohm, legal director of Lambda Legal Defense Fund, a gay rights advocacy group involved in the case, commented: "A simple argument has prevailed: The government must use the same rules for lesbian and gay service members as for nongay service members. The nation's major employer is not exempt from the Constitution."

The Family Research Council, a conservative group that strongly defends the 1993 law, reacted scornfully to the ruling. Robert L. Maginnis, who helped develop the policy while serving at the Pentagon in 1993 and now directs the council's military readiness project, said Nickerson "comes across as a homosexual apologist" who decided as he did "because he wants to say it's all about bigotry."

Russia sells China high-tech artillery

Arms buildup appears aimed at U.S.

By Bill Gertz
THE WASHINGTON TIMES

Russia is selling 100 advanced artillery systems with precision-guided shells to China in secret arms deals that include modern aircraft, guided-missile destroyers, submarines and other high-tech arms, according to Pentagon officials.

The latest deal involves China's purchase of 100 self-propelled gun-mortar systems known as the 2S23 Nona-SVK, a mobile 120mm weapon capable of firing artillery projectiles and mortar shells.

The artillery package includes an unspecified number of 300mm Smerch multiple-rocket launcher systems (MRLS), according to a classified intelligence report obtained by The Washington Times.

Pentagon officials said the sale

is part of a weapons buildup aimed at countering U.S. firepower. The buildup includes an array of precision-guided weapons, including air-to-air missiles, anti-ship missiles and high-tech torpedoes.

"The weapons China is buying or building have a clear anti-U.S. intention, as opposed to using them against Vietnam or places in the South China Sea," said one official, who like the others spoke on the condition of anonymity.

The Pentagon intelligence report says the People's Liberation Army has been interested in buying the gun-mortars since 1994 and concluded a contract for the weapons in the past three months.

The gun-mortars and MRLS are being sold to the Bureau of Military Equipment and Technology Cooperation, the Chinese army's weapons-buying agency, the re-

WASHINGTON TIMES

July 3, 1997

Pg. 1

port says. Deliveries are set to begin this summer, when nearly a dozen gun-mortars will arrive. The bulk of the systems will be supplied in 1998 and 1999.

The report specifies no costs, but military experts estimate the price of the 2S23s, built on Russian armored personnel carrier chassis, at \$45 million. The systems are amphibious.

Defense officials are especially worried about the gun-mortar deal because it is expected to include large numbers of Kitolov-2 precision-guided artillery projectiles.

The shells are guided to targets with laser designators. Those on the 2S23 have a range of nearly nine miles, making them effective against U.S. M-1 tanks.

The Pentagon also fears the precision-guided shells will be copied and sold by China to rogue states in the Middle East.

The 2S23 also can fire laser-guided mortar shells called the Gran, which would be highly effective in blowing up bunkers or other hardened facilities.

The artillery purchases are part of the ground element of China's

SLDN Briefing

3/11/97

~~Dick San Olson~~ - C. Dixon ~~Olson~~

Michelle Bencke - (former Army Captain)

Gave briefing - key pt: highest rate of discharge since 1987
annual disprop. targeted

Why are numbers going up. -

- cited recent Cohen report in report

- "don't want to wait policy to be upheld"

"Don't Ask"

Cadet Galvan (Nicole) - at West Point

Kelly Spagnue (Coast Guard) -

DD Form 1966 - some recruits not making this out

pressed on sexuality

"Don't Tell"

DoD has "induced" psychologists to turn in gay people
- verbal - other?

AF memorandum - of 1994 & instructs asking
interrogation of family

"Don't Pursue" - Not all to expand activities

"Hawaii 17" - at Hickam Air Force Base

17 men named in plea bargain
for rape charge, arranged
by AF Prosecutors. AF IG
has looked at and said this
is not a witch hunt. DoD
IG has been asked to review

USS Sumner Lake - Up to 60 women investigated

"Don't Harass"

Can't report accusations w/out fear of reprisals.

Arman Fucci - Ft. Meade. Reported death threats
but not followed up by ^{first Sgt} ~~only officer~~
then went higher

Private First Class Shannon Emery in Korea
Camp Carroll - attempted rape
by fellow soldiers -
in retaliation accused of being a lesbian
& added to tons in others

Drill Sergeant Ft. Benning -
said to recruits "If you find an L, beat the
shit out of him"

"Leadership absent"

- Seeking - w/ Memo to DoD (POTUS)
- DoD memo to all mil personnel on intent behind policy + limits on JAG investigations
- Mtg w/ Cohen to brief in person -

Recent Mtgs

Jim Bodnar (short) gave heads up on report

want guarantee of protection when reporting sexual harassment -

No Training - on implementation of the policy

"willful omission"

"senior leaders don't want to deal"

No Commanders intent - not prepared to implement properly

The Washington Post

TUESDAY, MARCH 11, 1997

Pentagon Calls Antisemitic Contract Clause 'Intolerable'

By Robert Burns
Associated Press

Responding to reports that the Air Force excluded Jews from a project in Saudi Arabia, Defense Secretary William S. Cohen has instructed all branches of the military to ensure such discrimination is not repeated.

Cohen acted after learning the Air Force recently settled charges brought by the Commerce Department office that oversees compliance with a law prohibiting American companies from respecting an Arab boycott of Israel and Jews.

The settlement, first reported this week by the Journal of Commerce, indicated officials from the Air Force

and the Justice Department had ordered a private contractor to exclude Jews and "Jewish-surnamed personnel" from a federal government contract in Saudi Arabia. There was no evidence the Saudi government had played any role in the exclusion.

Yesterday the Pentagon released a copy of Cohen's order, issued a week ago but not publicized.

"The conduct alleged . . . is intolerable in this department and cannot be allowed to occur in the future," Cohen wrote in a memorandum to the military service secretaries.

"I ask each of you to reiterate to everyone in your departments the importance of strict compliance with anti-discrimination policy and

regulations, and in particular the anti-boycott regulations," Cohen wrote.

As part of the settlement with the Commerce Department, the Justice Department and Air Force apologized and promised to abide by the law.

The settlement stemmed from a 1991 lawsuit filed against the United States by the Boeing Co. The government hired an outside contractor, CACI Inc. of Arlington, to photocopy thousands of documents to prepare for the lawsuit, which concerned military sales abroad.

A proposal for the project contained the provision: "No Jews or Jewish-surnamed personnel will be sent as part of the Document Acquisition Team because of cultural differences be-

tween Moslems and Jews in the region."

At least one Jewish worker was denied employment on the project and was compensated.

The Journal of Commerce yesterday reported another complaint of discrimination against Jews in the military. It said an Army employee, whom it did not identify, had complained to the Anti-Defamation League of B'nai B'rith that he was "bumped" from a trip to Saudi Arabia in 1993 because he is Jewish.

Army spokeswoman Martha Rudd said she had no information on the matter and had been told by the Army's Equal Employment Opportunity Office that it had no such complaint.

Example of
Cohen "fast action"
Why not applied to
"Don't Ask, Don't Tell?"

Example of Guidance
Desired by SLDN

**Joint Statement For Secretary Perry and
For General Shalikashvili, Chairman, Joint Chiefs of Staff**

Section 567 of S.1124, the National Defense Authorization Act for Fiscal Year 1996, requires the separation from the armed forces of any member who is HIV-positive.

This provision will require the discharge of over 1000 service members who, although they have tested HIV-positive, are currently deemed fit to perform their duties. While nondeployable, they join other service members in that category.

To discharge all of these service members arbitrarily as section 567 mandates would be both unwarranted and unwise.

Section 567 is unnecessary as a matter of sound military policy because there is already in place a physical evaluation system to determine the fitness for duty of HIV-positive personnel.

Discharging service members deemed fit for duty would waste the government's investment in the training of these individuals and be disruptive to the military programs in which they play an integral role.

There are service members who suffer from diseases that make them non-deployable, but who are still permitted to serve their country so long as they meet uniform retention standards. Decisions on their retention are made on an individual basis in accordance with current regulations. Section 567 singles out those members who are HIV-positive and requires discharge regardless of their ability to perform. This violates a standard traditionally used by the services for retention and thus undermines a fair policy of evaluating retention on medical and service issues on an individual basis.



ASSISTANT TO THE SECRETARY OF DEFENSE
1400 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1400



PUBLIC AFFAIRS

VERBATIM TESTIMONY
Senate Armed Services Committee
5 March 1996

GEN SEALIKASHVILI, CJCS: Senator Kennedy, as you know, we have some 6,500 or so men and women in uniform who for one reason or another are non-deployable. Of these, some one thousand are HIV-positive. Each one of those 6,500 continues to perform his or her duty inside the United States until they are judged by -- on an individual basis -- that their medical condition no longer allows them to perform their military duties, at which time they are discharged from the military.

I think to single out one group over another in how we were to treat them among all of the non-deployables is, I think, unnecessary because the system we have now works well. I think it is unfair and that's what bothers me very much. And finally, I think it is, in at least a number of cases, wasteful because we do have individuals who are in their middle ranks in whom we have invested some training and they have considerable experience and so they continue to contribute.

And if we were to let them go before we need to, we'd just have to bring in someone else and start the training and gaining of experience sooner than is necessary....

DRAFT

CONDUCT UNBECOMING:

THIRD ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"

FEBRUARY 28, 1996 - FEBRUARY 26, 1997

EXECUTIVE SUMMARY

"Don't Ask, Don't Tell, Don't Pursue" is evolving into a Machiavellian system where the ends justify the means. In 1996, the armed forces repeatedly excused violations of current law including witch hunts, seizure of personal diaries, and threatening servicemembers with prison unless they accused others as gay -- all in an effort to target and ferret out gay men and women who serve our country. The result is that gay discharges have soared to a five-year high at a cost exceeding \$25 million in 1996.¹ (Exhibit 1)

The findings of the third annual report by Servicemembers Legal Defense Network (SLDN) on "Don't Ask, Don't Tell, Don't Pursue" include:

1. DOD discharged 850 people under "Don't Ask, Don't Tell, Don't Pursue" in fiscal year 1996 -- a five-year high, and the highest rate of discharge since 1987.² (Exhibit 2)
2. SLDN documented 443 specific violations where suspected gay servicemembers were asked, pursued and harassed.³ (Exhibit 3)
3. Women were disproportionately targeted, accounting for 29% of gay discharges, despite making up only 13% of the active force. In the Army, women accounted for 41% of gay discharges, three times their presence in the service. Women are often accused as gay after rebuffing men's sexual advances or reporting sexual abuse, regardless of their actual orientation. (Exhibit 4)
4. DOD continues to criminally prosecute servicemembers for allegations of gay, but not straight, consensual relationships, contrary to regulations requiring even-handed treatment in the criminal system.
5. The physical torture of suspected gay servicemembers seems to have ended. Tactics under prior policies included forced "neurological testing," like that endured by former Lieutenant Jay Hatheway, and locking military members in broom closets with no personal breaks until they "confessed" to being gay.⁴

RECOMMENDATIONS

SLDN concludes that many military members continue to ask, pursue and harass servicemembers in direct violation of "Don't Ask, Don't Tell, Don't Pursue." The violations result from a lack of leadership, training and recourse to stop illegal investigations. Some commanders, criminal investigators and inquiry officers blatantly disregard the clear limits on gay investigations. Others simply do not know any better, as the services have failed to implement adequate, ongoing training in the field. Lastly, those accused under "Don't Ask, Don't Tell, Don't Pursue" have no recourse to stop improper investigations before it is too late. SLDN recommends that DOD take the following steps to stop the continuing abuses of the law:

1. Train all military personnel about the letter and intent of "Don't Ask, Don't Tell, Don't Pursue," emphasizing the limits placed on investigations into gay accusations. Most servicemembers report that they have received no training or only cursory, one-time training three years ago, when the law was implemented.
2. Discipline commanders who disobey the limits on investigations and who tolerate harassment. The law and regulations will be respected when commanders know that they will be held accountable for their actions.
3. Allow women to report sexual abuse without fear that they will be accused and discharged as lesbians in retaliation. Officials should adopt, as a first step, the 1989 recommendation of the Defense Advisory Committee on Women in the Services⁵ to train commanders on the potential misuse of gay accusations.
4. Provide servicemembers with a way to report anti-gay harassment, including death threats and hate crimes, without fear of retribution and discharge.
5. Exclude evidence that has been wrongfully obtained from being used at an administrative discharge board, as suggested by a 1995 report by the Advisory Board on DOD Investigative Capability.⁶
6. Stop selective criminal prosecution of servicemembers for allegations of adult, consensual gay relationships in circumstances where heterosexuals would not be prosecuted, as required by the regulations.
7. Revise and replace obsolete recruiting forms written in January 1989 (DD Form

1966/1) with ones that do not ask recruits about their sexual orientation or conduct.

8. Require commanders to reveal in writing to the servicemember the specific reason an inquiry or investigation has been initiated against the servicemember so that (s)he knows what the allegations are and can provide commanders an appropriate response to expeditiously resolve and end unwarranted investigations.
9. Require commanders to not intrude into private conversations between gay servicemembers and their families, doctors and other health care professionals and not use such statements as the basis for retribution, investigation and discharge.
10. Make clear to commands that, under current law, inquiries and investigations can only be started with credible information. Not all information is credible, such as rumors or retaliatory accusations. Commanders cannot start inquiries on the theory that they will discover credible information if they investigate.
11. Discharge expeditiously individuals who come out as gay to commanders rather than launch costly, wide-ranging investigations to establish bases for criminal charges or reduced benefits against the servicemember.
12. Rescind the Department of Defense, Air Force and Navy memoranda that provide confusing and contradictory guidance to military personnel regarding the original letter and intent of the law not to pursue suspected gay servicemembers.

DOD should adopt these recommendations as a first step to bring itself into compliance with the current law and regulations. These recommendations, if fully implemented, would marginally improve the safety of servicemembers' daily lives. They would not eliminate or alter "Don't Ask, Don't Tell, Don't Pursue," which requires administrative separation of servicemembers who say that they are gay, engage in affectional or sexual conduct with someone of the same gender, or attempt to marry a person of the same gender. These recommendations would in no way cure the constitutional defects of the law, which punishes gay servicemembers for saying and doing the same things permitted to their straight counterparts.

HOMOSEXUAL DISCHARGES BY THE MILITARY

Background

The New York Times reported today that a report by the Servicemembers Legal Defense Network (SLDN) alleges that there are numerous violations of the Clinton Administration's "don't ask, don't tell" policy for homosexuals in the military two years after its enactment. The violations include the military continuing to ask some troops about their sexual orientation, as well as their parents and friends, contrary to policy. The article said that this may help explain why the number of service members discharged for homosexuality jumped last year.

In Fiscal Year 1995, 722 service members were discharged for homosexuality compared to 597 in FY 1994 -- a 21 percent increase. However, 163 of the FY 1995 discharges were Air Force personnel who previously would have been discharged for "fraudulent enlistment" under the Air Force's old policy. Under that policy, personnel who answered "no" when asked if they were homosexual on enlistment forms and then subsequently recanted their denials, were often discharged for fraudulent enlistment. Under the Administration's new policy, that question is no longer asked in the enlistment process. When the total figure for FY 1995 is adjusted for these Air Force cases, the rate of discharge for last year is 610 -- comparable to the 597 homosexual discharges for FY 1994. Comparative figures over the last five years (accounting for the Air Force "adjustment" for FY 1995) are:

FY	gay discharges	% of Armed Forces
95	610	.039
94	597	.037
93	682	.039
92	708	.039
91	949	.047

The Times article also reports that women may be singled out for harassment since they account for 21 percent of homosexual discharges but comprise only 13 percent of the military force. Additionally, the paper cites reports that women are being accused by men of being homosexual after they file either sexual harassment or assault charges.

Points

- The Administration is committed to ensuring that its current policy regarding homosexuals in the military works well and balances an individual's right to privacy with the military's need to maintain unit cohesion and readiness.

- The Defense Department will review the report prepared by the Servicemembers Legal Defense Network (SLDN) and will thoroughly investigate any evidence of impropriety regarding the implementation of the policy.
- In the past, the Defense Department has met with SLDN and it has brought to the Department's attention facts that may have indicated a violation of the policy. In each case, the Department looked into the facts presented and, where substantiated, took corrective action.
- The Defense Department will continue to attempt to ensure that the policy is properly and fairly implemented and that families and friends are only contacted in appropriate cases consistent with policy. For instance, the Assistant Secretary of Defense for Force Management Policy, conducted an assessment last year of the training within each Service for those personnel who are involved in the implementation of the policy, such as unit commanders and legal and personnel staff members.
- While the statistics available -- once corrected for the change in how the Air Force now properly characterizes the discharge of homosexuals -- do not suggest a failure by commanders to conform to the "don't ask, don't tell" limitations on investigations, the Department will continue to thoroughly look into any allegation of an improper investigation.
- DoD is looking into the figures regarding women. However, it is a patent violation of DoD policy for a woman to be investigated in retaliation for filing sexual harassment or assault charges.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 23, 1995

INFORMATION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL 

FROM: JOSEPH SESTAK 

SUBJECT: Gays in the Military

You asked how the number of gay servicemembers being discharged from the military now compares to the period prior to the Administration's "don't ask, don't tell" policy. The General Counsel of the Defense Department has statistics only through February of this year, but they indicate the same answer as that provided to the President in December, 1994 (Tab A): the number of discharges are essentially the same.

Defense intends to do a year-end comparison. However, the Department believes the factors cited in Tab A are still why there has been little effect upon discharges, rather than a failure by commanders to conform to the limitations on investigations established by the Administration's policy.

Attachment

Tab A Memorandum to the President

THE WHITE HOUSE

WASHINGTON

December 15, 1994

THE PRESIDENT HAS SEEN

12/19

DEC 15 16:00

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM:

ANTHONY LAKE *AL*

SUBJECT:

Article on Gays in the Military

On November 27, you asked us to look into a Washington Times article alleging that the "don't ask, don't tell" policy has had little effect on the numbers of discharges of homosexuals from the military (Tab A). You noted in particular Michelle Benecke's accusation that military commanders are still pursuing gay servicemembers in violation of the new policy.

Defense believes there is no reason to suppose that the statistics cited in the article suggest a failure by commanders to conform to the "don't ask, don't pursue" limitations on investigations established in the new policy. The number of discharges under the new policy have been artificially and temporarily increased by actions taken in 1993 to 1994. In essence, the Department delayed processing a large number of cases that arose under prior policies until the new policy went into effect in February. Thus, post-February 28, 1994 discharges include a large number of 1993 cases, as well as some 1994 cases. In addition, the national attention focused on the issue in 1993 and 1994 has likely had two effects that would tend to increase discharges under the regulations: more servicemembers have voluntarily come forward to disclose their sexual preferences, and more commanders have likely undertaken to enforce the rules.

In the past, Defense has invited Ms. Benecke to provide specifics to support her charges, but the information she has submitted does not suggest widespread violations. The Department has followed up on specific cases when she or others have provided sufficient detail, but it has not uncovered a pattern of noncompliance. The DOD Inspector General, to whom such violations would normally be reported if they were occurring, in November 1994 informed the DOD Office of General Counsel that it had received no complaints to date of noncompliance by commanders.

cc: Vice President
Chief of Staff

Defense does not assert that no violations of this policy -- or any other policy -- have occurred in the field. Indeed, some alleged violations appeared worthy of attention and are being looked into, but it does not have evidence or reason to believe there is a widespread problem.

Noteworthy are the four new policy cases involving declarations of homosexuality in which administrative boards have ruled that the servicemember in question should be retained because he or she "rebutted the presumption." This never occurred under the old policy.

Attachment

Tab A Times Article

'Don't ask, don't tell' has little effect on discharges

By **Power** **carborough** **A1**
THE WASHINGTON TIMES

The U.S. military is discharging homosexuals at about the same rate for violating President Clinton's new "don't ask, don't tell" policy as it did under the old ban in its final year.

Mr. Clinton and top Pentagon officials last year trumpeted the new guidelines as a major departure from previous regulation.

The Clinton plan allows homosexuals to serve if they keep their orientation private, and it discour-

ages investigations into a person's lifestyle based solely on hearsay evidence.

Homosexual-rights groups complained that the new regulation, the product of a compromise between the White House and pro-ban legislators in Congress, did little more than codify the 50-year-old ban.

Early figures provided by the Army, Navy and Marine Corps appear to show there is little change, at least in the rate of those discharged in relation to the total active-duty force. The new policy

went into effect Feb. 28.

The Navy and Marine Corps did show slight decreases, but not the significant drop in separations some had predicted under the Clinton plan's ban on "witch hunts" to ferret out homosexuals. The Army showed an increase in the rate of separations.

Charles Muskus, a professor of sociology at Northwestern University and a military expert, said the initial figures please him because they show "don't ask, don't tell" has not disrupted the ranks.

"I thought it would be this way,"

GAYS

From page A1

video legal aid to suspected homosexuals targeted for military discharge, said she believes the numbers show that field commanders are not adhering to the new directive.

"If 'don't ask and don't pursue' were enforced, then maybe that would make life marginally less intolerable for service members," said Ms. Benocke of the Servicemembers Legal Defense Network. "But in fact, in many commands, it is not being enforced. Many commanders are violating the policy."

Robert Maginnis, a retired Army colonel who supports the old ban, said "it's possible" the rate of separations is basically unchanged because both policies contain a key similarity — they ban open homosexuality.

"Without looking at the individual cases, I really couldn't tell," said Mr. Maginnis, an analyst at the Family Research Council. "It's going to take a number of years to really determine if this is a blip or if this is consistent. Political correctness still reigns. Yes, they are discharging people, but there is confusion and there is trepidation as they approach some of these cases."

The last full year the old ban was enforced was 1992. President Clinton took office in 1993 and ordered an easing of the ban while he, the Pentagon and Congress worked out the compromise. He initially sought to lift the ban completely.

With Republicans set to take control of Congress in January, there has been speculation conservatives would move to override "don't ask, don't tell" with a new law reinstating an outright ban. But congressional sources this week said there is little sentiment to reopen the debate.

The Washington Times asked each of four branches to supply the number of homosexuality-related discharges they executed during the policy's first eight months, from Feb. 28 until the new federal fiscal year began in Oct. 1.

The numbers showed the Navy separated 202 people from an active-duty roster of 464,000. For the same period in 1992, the Navy discharged 272 sailors from a

said Mr. Moskos, who supported the old ban and helped devise the new regulations. "This shows that basically, the status quo is holding. There has been no big rupture in the system as concerns gays in the military. I'm very heartened by that."

Michelle Benocke, co-director of a Washington group that promotes GAYS, page A26

The Clinton administration will let the reinstatement of a homosexual petty officer stand. A26

force of 542,000.

The Marines discharged 23 persons (out of 174,138) under the new policy, compared with 39 (out of 184,529) in 1992.

The Army did not break its numbers down to monthly totals, but its yearly totals show that the rate of discharge appears to have increased under the new regulations.

In the last fiscal year, it discharged 138 soldiers (out of 541,343). In 1992, it discharged 137 people (out of 611,000).

The Air Force did not provide comparable numbers.

It has separated 125 service members since February for violating the policy. During the same period in 1992, it discharged 72 persons, but then it did not keep track of personnel discharged for failing to acknowledge their homosexuality at the time of enlistment.

Under the Clinton regulations, the Pentagon no longer asks recruits about their sexual orientation.

Ms. Benocke said her organization, through a nationwide network of about 200 lawyers, has in the past year helped more than 400 service members targeted for separation under the new and old policies on homosexuality.

Based on her involvement in these cases, Ms. Benocke contends the military is in fact intruding on people's private lives to determine if they are homosexual.

"The sad thing is, there have been so many people who needed assistance because their commanders continue to ask and pursue," she said.

Ms. Benocke, a former Army officer, also said the emotional debate on the issue last year has hurt homosexual service members.

"For many service members the national debate resulted in a far worse command climate, and that's entirely aside from the new policy," she said. "In many units, there wasn't that sort of constant speculation when I served."

Ms. Benocke also contended the official count of those discharged always has been artificially low because the services use other means to get homosexuals to leave the military. One way, she said, is for them to deny re-enlistments to those suspected of being homosexual.

MILITARY DISCHARGES

The number of discharges under the old and new military homosexual policies. The Air Force did not keep comparable discharge statistics.

	Feb. 28- Oct. '92	Active force	Feb. 28- Oct. '94	Active force
Army	137	611,000	138	541,000
Marine Corps	39	185,000	25	174,000
Navy	272	464,000	202	464,000

* Army figures are for full fiscal years, 1992 and '94.

Source: U.S. military

The Washington Times

The Washington Times FRIDAY, NOVEMBER 18, 1994

NATIONAL SECURITY COUNCIL
WASHINGTON, D C 20506

December 14, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: ROBERT BELL *RB*

SUBJECT: POTUS Question Regarding Gays in Military
Discharges

On November 27, the President asked us to look into a Washington Times article alleging that the "don't ask, don't tell" policy has had little effect on the number of discharges of gays in the military (Tab A). The article quotes an accusation by Michelle Benecke, Co-Director of the Servicemembers' Legal Defense Network, that many commanders are still pursuing homosexuals in violation of the new policy.

The memorandum to the President at Tab I addressing these allegations was coordinated with OSD/GC.

Concurrence: Alan Kreczko *AK*

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President
Tab A Times Article

UKAF I**Statement In Response to SLDN Report**

We have not yet received the SLDN report, and, therefore, we have not had a chance to review or analyze its contents.

We are aware that the report contains assertions that we in the Department of Defense have not been faithful in our execution of the "Don't Ask, Don't Tell" law and policy. We will review the SLDN report carefully, and if there is credible information presented in this regard, then, as with any other deviations from law or policy, we will look into the allegations and take appropriate action.

The law governing the "Don't Ask, Don't Tell" policy was enacted in October 1993 after months of Congressional research, hearings, and debate. Our policy remains that homosexual conduct is grounds for separation from the Military Services. Homosexual conduct includes homosexual acts, or statements by a member that demonstrates a propensity or intent to engage in homosexual acts. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

Just as with all laws and policies, Secretary Cohen affirms his commitment to the faithful execution of "Don't Ask, Don't Tell", and the entire chain of command is accountable for the effective execution of the policy.

Finally, Secretary Cohen is unequivocally committed to providing an environment throughout the Department of Defense that is free from harassment and discrimination, and where all persons are treated with the utmost dignity and respect.

DRAFT

TO LAURA MARCUS

DRAFT

Statement In Response to SLDN Report

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Finally, Secretary Cohen is unequivocally committed to providing an environment throughout the Department of Defense that is free from harassment and discrimination, and where all persons are treated with the utmost dignity and respect.

DRAFT

25 FEB

FAX: 456-2271

456-7494

0930 Laura Marcus

- Awaiting DOD press guidance
- Perhaps meeting this PM after DOD input recd.
- Podesta, Kerrick, Kitty Higgins

1230 Laura Marcus

- Have DOD mention their forthcoming directive. - Podesta
- Call Shane.
- Press leak NYT WED ~~1300 PM~~

1237 Shane

- Exec summary
- SLDN 1300 Nat. Press Club

GAYS IN THE MILITARY

- The Administration's "don't ask, don't tell" policy is not only the right policy, but is greatly improved over the one it replaced:
 - It not only provides for more consistency within the Defense Department while maintaining high morale and unit cohesion which are so important for military readiness and effectiveness, but **it was also issued with the support of the Services and the Congress and has the force of law.**
 - It sets forth standards of military conduct that are consistent with traditional military practice and reflect the unique conditions of military service.

Q: Does the policy represent a failure to support your pledge to lift the ban on homosexuals in the military?

A: No, because no longer are individuals excluded from military service solely on the basis of their status. Rather, it ensures that American citizens who want to serve their country are able to do just that unless their conduct disqualifies them from doing so.

Q: Doesn't this policy still discriminate against homosexuals?

A: I believe that behavior can and should be strictly regulated in the military. The fact is that because of the requirement for maintaining good order and discipline, the rights of military personnel are necessarily more restricted than the rights of persons in civilian society.

HOMOSEXUAL DISCHARGES BY THE MILITARY

Background: On February 27, the New York Times published an article regarding a report by the Servicemembers Legal Defense Network (SLDN) which alleges that there are numerous violations of the Clinton Administration's "don't ask, don't tell" policy for homosexuals in the military two years after its enactment. The violations include the military continuing to ask some troops about their sexual orientation, as well as their parents and friends, contrary to policy. The article said that this may help explain why the number of service members discharged for homosexuality jumped last year.

In Fiscal Year 1995, 722 service members were discharged for homosexuality compared to 597 in FY 1994 - a 21 percent increase. However, 163 of the FY 1995 discharges were Air Force personnel who previously would have been discharged for "fraudulent enlistment" under the Air Force's old policy. Under that policy, personnel who answered "no" when asked if they were homosexual on enlistment forms and then subsequently recanted their denials, were often discharged for fraudulent enlistment. Under the Administration's new policy, that question is no longer asked in the enlistment process. When the total figure for FY 1995 is adjusted for these Air Force cases, the rate of discharge for last year is 610 -- comparable to the 597 homosexual discharges for FY 1994. Comparative figures over the last five years (accounting for the Air Force "adjustment" for FY 1995) are:

FY	gay discharges	% of Armed Forces
95	610	.039
94	597	.037
93	682	.039
92	708	.039
91	949	.047

The Times article also reports that women may be singled out for harassment since they account for 21 percent of homosexual discharges but comprise only 13 percent of the military force. Additionally, the paper cites reports that women are being accused by men of being homosexual after they file either sexual harassment or assault charges.

Points

- The Administration is committed to ensuring that its current policy regarding homosexuals in the military works well and balances an individual's right to privacy with the military's need to maintain unit cohesion and readiness.
- The Defense Department will review the report prepared by the Servicemembers Legal Defense Network (SLDN) and will thoroughly investigate any evidence of impropriety regarding the implementation of the policy.

- In the past, the Defense Department has met with SLDN and it has brought to the Department's attention facts that may have indicated a violation of the policy. In each case, the Department looked into the facts presented and, where substantiated, took corrective action.
- The Defense Department will continue to attempt to ensure that the policy is properly and fairly implemented and that families and friends are only contacted in appropriate cases consistent with policy. For instance, the Assistant Secretary of Defense for Force Management Policy, conducted an assessment last year of the training within each Service for those personnel who are involved in the implementation of the policy, such as unit commanders and legal and personnel staff members.
- While the statistics available -- once corrected for the change in how the Air Force now properly characterizes the discharge of homosexuals -- do not suggest a failure by commanders to conform to the "don't ask, don't tell" limitations on investigations, the Department will continue to thoroughly look into any allegation of an improper investigation.
- DoD is looking into the figures regarding women. However, it is a patent violation of DoD policy for a woman to be investigated in retaliation for filing sexual harassment or assault charges.

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

MARCH 1, 1995 - FEBRUARY 27, 1996

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NOTICE: If you are a servicemember reading this and come under investigation, you have certain legal rights. Under Article 31 of the Uniform Code of Military Justice, you have the right to remain silent and a right to consult a lawyer. Exercise them. Say Nothing. Sign Nothing. Get Legal Help.

If you are thinking of "coming out," do not until you speak to a defense lawyer. Saying or doing the wrong thing under "Don't Ask, Don't Tell, Don't Pursue" could get you thrown in jail.

CONDUCT UNBECOMING: SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"

MARCH 1, 1995 - FEBRUARY 27, 1996

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

EXECUTIVE SUMMARY

In its second annual report on the impact of the "Don't Ask, Don't Tell, Don't Pursue" policy, Servicemembers Legal Defense Network (SLDN) reveals a continuing pattern of abuse that has effectively rendered the current policy as bad as, if not worse than, its predecessors. Many military members clearly continue to ask, pursue and harass suspected gay troops in blatant disregard of the policy's limits. From March 1, 1995 - February 27, 1996, SLDN documented 363 specific violations of the current policy.¹ The result, in part, is that the Department of Defense (DOD) discharged more servicemembers under its gay policy in fiscal year 1995 than in each of the past four years at a cost exceeding \$21 million in 1995.²

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

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

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

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

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

federal court.

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

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

A second reason discharges under the gay policy remain high is that the military uses the policy to retaliate against women. DOD data show that women are being singled out for investigation and discharge at rates exceeding those for men. Though women comprise only 13% of the total active duty force, they account for 21% of all discharges and 30% of SLDN's cases under the gay policy. A disturbing constant in women's cases is the frequency with which women are accused as lesbian after reporting sexual harassment or rape, regardless of their actual

sexual orientation. It was believed that “Don’t Ask, Don’t Tell, Don’t Pursue” would stop investigations and discharges based on retaliatory accusations, but it has not.

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

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

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

This report is based on violations of “Don’t Ask, Don’t Tell, Don’t Pursue” documented by SLDN, located in Washington, D.C. SLDN is the sole national legal aid and watchdog

organization for those targeted under the military's policy on service by gay men and lesbians, and the only means currently available to document abuses. DOD has instituted no method of identifying, documenting or correcting abuses of the new policy.

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

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

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

³ SLDN would like to thank its cooperating attorneys for their tireless efforts on behalf of lesbian, gay, bisexual and straight servicemembers hurt under the "Don't Ask, Don't Tell, Don't Pursue" policy. SLDN would like to extend special recognition to Ted Bumer and Kathy Gilbert of the Military Law Task Force in San Diego, and Bridget

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

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

Wilson, a private attorney in San Diego, for their long-standing leadership in fighting for the rights of servicemembers.

RECOMMENDATIONS

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

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

investigation to help deter illegitimate efforts, as recommended by a 1995 Advisory Board on DOD Investigative Capability report.

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

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

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

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

116TH STORY of Level 1 printed in FULL format.

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FDCH Political Transcripts

February 27, 1996, Tuesday

TYPE: NEWS BRIEFING

LENGTH: 6537 words

HEADLINE: HOLDS REGULAR DAILY NEWS BRIEFING.; WASHINGTON, D.C.

SPEAKER:

GINNY TERZANO, WHITE HOUSE DEPUTY PRESS SECRETARY
DAVID JOHNSON, WHITE HOUSE SPOKESMAN

BODY:

TERZANO: We're ready to begin. Any questions?

QUESTION: Is there a readout that Panetta had this morning with leaders on the budget?

TERZANO: Sure. He -- Mr. Panetta went up to Capitol Hill today to meet with the chairmen, both the minority and the majority, Senator Hatfield and Senator Byrd, Congressman and Congressman Obey, the chairman of the Appropriations Committee, to talk about the FY-96 appropriation bills.

He had a very good meeting with them where they reached an agreement where we would work toward one appropriations bill to resolve all of the differences on the appropriation bills -- on all of the outstanding appropriation bills, and to work towards those differences, and to also work toward meeting the President's priorities as far as investments and modifying some of the language concerns that the President had in various appropriation bills.

*** Elapsed Time 00:01, Eastern Time 13:13 ***

In doing so, they have agreed to designate staff both here at the White House, in OMB and at Capitol Hill to begin the necessary discussions to resolve the differences. And those discussions will start today.

QUESTION: Those are the five still unresolved appropriations bills?

QUESTION: Could you do an (OFF-MIKE)?

JOHNSON: We are, but let's...

QUESTION: What parts of the Helms bill would you be ready to accept now, that you didn't accept before?

JOHNSON: I think I said earlier that we're going to be consulting with staff on the Hill this afternoon, and we're going to be developing an approach in consultation with them. I'm not going to foreshadow that for you.

QUESTION: David...

JOHNSON: And your question -- yes?

QUESTION: David, was this out of the blue from the point of view of the White House? I mean, Castro had been receiving some wider international acceptance recently, and these flights apparently have been going on for some period of time. Is there any assessment as to why this happened over the weekend?

JOHNSON: I don't think I can account for this type of killing, no, its timing. Yes?

QUESTION: Good. Thank you.

(LAUGHTER)

This report that was released today by the Service Members' Legal Defense Network said that DOD discharged 722 people under its gay policy in '95.

*** Elapsed Time 00:32, Eastern Time 13:44 ***

And this was a four-year high. And they documented 363 violations of "don't ask, don't tell, don't pursue" in the past year." Is the administration concerned about what groups like this one are saying, that there's really no change in the military's treatment of gay troops?

JOHNSON: I'd like to make, I think, three points on that. The first is that in the past, the Defense Department has met with this group, and when it's brought to the department's attention facts that may have indicated a violation of the Pentagon's policy with respect to "don't ask, don't tell," in each case, the department has looked into those facts that they presented, and where

they've been able to substantiate them, they've taken corrective action.

The second point I would make is that the discrepancy in numbers identified in the report is largely, if not exclusively, due to a change in accounting rules that the Pentagon has adopted in the last year to account for discharges.

*** Elapsed Time 00:33, Eastern Time 13:45 ***

Based on an assessment of Fiscal Years 91 through 95, the discharges using consistent accounting rules would indicate that they've fallen from a high of about 950 in 1991 to using consistent accounting rules, down to about 610 in '95. There was a rather rapid drop-off at the beginning of the administration, and then it's been level in the meantime.

So the third point I'd make is I think Dennis -- excuse me, I think that Ken Bacon at the Pentagon will be taking a number of questions on this during the course of the day.

JOHNSON: And he'll probably have a rather -- a much fuller explanation of the Defense Department's reaction to the report.

QUESTION: But as far as the administration is concerned, is the administration confident that the policies that it enacted two years ago in terms of "don't ask, don't tell, don't pursue" is being implemented the way that you wanted it to?

*** Elapsed Time 00:34, Eastern Time 01:46 ***

JOHNSON: The administration and the Department of Defense believes that whenever anything that's inconsistent with this policy has been brought to its attention, it's investigated, and where substantiated, it's implemented changes to the policy and actions which compensate for any wrong-doing that was done. And that's been a very, very few incidents when investigations have in fact taken place.

QUESTION: Just for clarification on the numbers, you're saying 950 were dismissed in '91. For what reason? What was given as the reason?

JOHNSON: So-called discharges due to homosexuality.

QUESTION: And then 610 in '95?

JOHNSON: Right. Using consistent accounting rules.

QUESTION: Is there anything else that has to come from the administration, or does the administration intend to issue any directives, any clarifications in the near future on "don't ask, don't tell, don't pursue"?

JOHNSON: Well, the administration will clearly take a very close look at this report, and if it indicates charges that can be substantiated where policy changes need to be made in order to ensure that the policy that's already been adopted is effective, those changes will be made.

*** Elapsed Time 00:35, Eastern Time 01:47 ***

QUESTION: But you don't see a problem with the way that they ...

JOHNSON: I think we have to look into what they've laid out, but the numbers, which is the primary feature of their report, we find is largely, if not totally, accounting rule change.

QUESTION: Can I ask a question on Ireland? Lake said last week after the President's call to Bruton and Major that both of them said to be back in touch with the President this week. Have they and what's the status of Adams' visa?

JOHNSON: On the -- I'm unaware of any contact at the presidential level this week. It's rather early in the week. So -- and these calls just took place on Saturday. Our contacts with all the parties continue, but I -- we have not

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FEBRUARY 27, 1996, TUESDAY

SECTION: DEFENSE DEPARTMENT BRIEFING

LENGTH: 4673 words

HEADLINE: DEFENSE DEPARTMENT
REGULAR BRIEFING
BRIEFER: KENNETH BACON

BODY:

MR. BACON: Okay, I'd like to start -- thank you very much, General Sheehan. I'd like to start with an announcement about the budget plans. We will have a background briefing here at 3:30 on Friday to discuss the fiscal '97 budget. Unfortunately, we will not be able to release as much information as we always do with this, we usually do with this background budget briefing, simply because it hasn't been produced yet. There will be a press release and slides and some other handouts. We hope to have the program acquisition cost by weapon system book. We do not expect to have the detailed research and development report or the procurement report or the military construction report. They will be produced sometime shortly after the briefing, a week or so after the briefing in March.

The material we release on background and the briefing on Friday will be embargoed until 6:00 a.m. on Monday, and Secretary Perry will hold a briefing at 2:00 p.m. on Monday. So that's the budget schedule.

Yeah, Todd?

Q (Off mike) -- the summary book will be available but the other three breakout books by line item will not be available.,

MR. BACON: The three breakout books will not be available. We hope the summary book will be available. I can't promise it for sure now. That's the one -- that's the one on which we have the best shot at this stage.

Q We'll have those figures, though, at the -- (inaudible)?

MR. BACON: We should be able to have those figures, yeah, but we can't promise the other line-by-line books, but we will have a fairly detailed press release and slides.

Q By embargoed for 6:00 a.m., you mean embargoed for wire movement at 6:00 a.m. on Monday, or at least can it be moved earlier and held for release until then -- or for movement?

MR. BACON: When would you normally move something for 6:00 a.m. release?

Q Well, we could move --

Q It's right after midnight.

Q You could move it, Charlie, after midnight.

MR. BACON: Midnight on Sunday.

Q Yeah.

MR. BACON: Yeah.

Q As long as it -- it carries an embargo slug on it.

MR. BACON: Yeah, that's fine.

Q Midnight Sunday --

MR. BACON: Yeah.

Q -- for release --

MR. BACON: 6:00 a.m. Monday.

Q (Inaudible) -- for Monday morning papers -- (inaudible).

MR. BACON: It is the p.m. cycle that's not for Monday morning papers, it's the p.m. cycle.

Yes?

Q On another subject?

MR. BACON: Yes.

Q Good. Yes, Ken, Cuba, especially the recent shoot-down north of Havana. I want to ask specifically, what is the policy opinion of the United States military with regard to civilian aircraft flying near the Cuban airspace and the area where the shoot-downs occurred on Saturday? And specifically, would the United States need to become involved in protecting private U.S. aircraft if they were close to Cuban airspace, if they were provocative or entering Cuban airspace; would U.S. warplanes intervene to take out Cuban MiGs?

MR. BACON: The first thing I want to stress is that this was an outrageous act by Cuba, that there was no reason to shoot down these planes, these unarmed civilian planes. They were -- the shoot-down was in complete violation of international air traffic conventions. There were a number of policies they should followed and they did not. So there was no justification for what happened.

Secondly, the Cubans had warned these planes that they were going into a dangerous area. There was still -- that did not constitute any excuse for what the Cubans did. The FAA had warned fliers about penetrating the Cuban air defense zone. We do not plan -- we have made no plans in our flight patterns around Cuba and we don't intend to -- our military flight patterns around Cuba.

Q Are we not protecting civilian -- American civilian aircraft near Cuba? Is that not a policy?

MR. BACON: Our policy is that Cuba violated international norms, and we're dealing with this in the United Nations. Our policy is that planes should respect sovereign airspace. That's a tenet of U.S. policy and we expect that planes will respect sovereign airspace.

Q But back to my question, U.S. war planes are not --

MR. BACON: I told you, Bill, that we have made no change in our use patterns of U.S. war planes now.

Q Ken, Dr. Perry and administration officials have repeatedly said that these planes were in international airspace when it was shot down. I think what he's asking is, if Cuba moves again to shoot down U.S. private planes in international airspace, will U.S. military jets respond?

MR. BACON: We -- I'm not going to deal with a speculative or contingency situation. We -- one lesson here is that I think planes should respect sovereign airspace. We're not condoning what happened in any way. But on the other hand, I'm not going to get into the business of speculating what might

happen given a certain set of circumstances that have yet to occur.

Q Ken, in fact, Jose Basulto of Brothers to the Rescue, has told NBC News that he plans to have an aircraft in the exact spot where those two were shot down this Saturday. What would you say to him?

MR. BACON: I would say he seems to be a slow learner. (Laughter.)

Any other questions? Yeah?

Q Since the New York Times primed you a day in advance, I'm sure you're aware of the content of the report on the second anniversary of "don't ask, don't tell," which, you know, reports not only are you increasing the number of homosexuals who are being kicked out of the services, but the pursuit and harassment seems to be on the increase rather than on the decrease.

MR. BACON: The -- there was an increase in fiscal '95 from fiscal '94. Fiscal

'94 was the year the policy took effect, so it was a split year, split between the old policy and the new policy.

We do not have right now an explanation for this increase. We're studying the report, and we're studying the patterns, but I can't explain to you why this increase occurred.

Of course, statistics always tell a number of stories, and one thing that has happened over the last two years is that the -- these statistics reflect a different reporting method by the Air Force than occurred prior to fiscal 1994. The Air Force is now including a significantly greater number of discharges as homosexually-related than they were prior to 1994; 102 discharges in 1994 and 163 discharges in 1995 would not have -- that were for homosexual activity would not have been included in previous years' statistics, prior to the change in the Air Force reporting method. So if you adjust the figures of the last two years for that change in the Air Force reporting method -- and that change basically was prior to fiscal year 1994 -- the Air Force, when it found homosexual activity during basic training, discharged somebody for fraudulent enlisted -- enlistment rather than for homosexual activity. They changed that in fiscal year 1994, so there's been an increase in the number of discharges for this reason in the Air Force.

But if you adjust the figures to take account of that, you would have lower figures than -- by 100. In 1994 the figure was 597; it would be 102 lower. And the figure of 722 in 1995 would be 163 lower because that's the impact of the Air Force change.

Q What about their statement that -- one, that there are still recruiters who were asking the question on the enlistment questionnaire; and that both the Air Force and Navy have implemented policies that encourage aggressive investigations that require them to go outside even of the unit to ask parents, friends, relatives of the person to determine their sexual orientation?

MR. BACON: In terms of recruiting, the guidance is very clear that recruiters aren't supposed to ask such questions. There's fairly -- we've issued a number of memoranda over the years dealing with training of military people for dealing with the new policy, and the training is specifically for recruiters but there's also training for commanders, there's training for people in the Judge Advocate General's Corps, and similar legal services in -- and also, there's training for people who are involved in investigations.

We've tried to be as uniform as possible in getting the message out. It's a big organization. I cannot tell you that there aren't examples where this may be asked, but it's not our policy to ask that question, and our policy has been clearly stated in regulations and training guidance.

Q Ken, in the time that these homosexuals have been discharged from the military, has a single commander been reprimanded or censured in any way for failing to adhere to the spirit or letter of the policy?

MR. BACON: Let me go back and finish answering Otto's other question, which was about an Air Force directive. The Air Force directive that was referred to in this report deals with a very narrow set of circumstances. It deals with a set of circumstances where a person in the Air Force has revealed his or her homosexuality and is seeking a separation from the Air Force, and may have been the beneficiary of either recruiting bonuses, reenlistment bonuses, or educational benefits, that the government may be able to recoup under military regulation.

In those situations, one, an admission, two, the possibility of recruitment -- recoupment, there are procedures for talking to other people, but the first person to talk to is always the subject himself or herself, the person who made the declaration.

Federal News Service, FEBRUARY 27, 1996

Q Was the subject of this thing to see if there was fraud or not on the part of the recruit so that you can recover this money?

MR. BACON: These regulations were instituted -- or actually, what it is, it's a tip sheet to investigators who are dealing with investigations to determine whether the Air Force should recoup either educational benefits or reenlistment or other benefits, bonuses, because a person is getting out before his or her term is up. That's -- this is the narrow set of circumstances to deal with that situation.

Jamie?

Q My question was whether any commanders have been reprimanded or censured in any way, since this policy has gone into effect, for failing to adhere to the letter or spirit of the policy.

MR. BACON: The -- I want to make a couple of points. The first is that we are trying to administer this policy right down the line, even-handedly and fairly. There is nothing in -- we believe, in our training or our policy that encourages what this report refers to as "witch hunts". And in fact, DOD regulations specifically prohibit such activity. In cases where these allegations are brought to our attention, we look into them, and we will pledge to look into these allegations as they're brought to our attention in the future. We have looked into several cases that this group has brought to our attention in the past, and we will in the future.

There is, of course in the military, a very clear and well-designed series of avenues for bringing complaints to the fore. There are inspectors general, for instance. There are people designed to handle complaints, and there are legal officers, et cetera. So, there are many ways to bring allegations or complaints, or reports of allegedly improper activity, to the attention of military commanders.

Q Mine was actually a pretty simple question was: Do you know of -- is there any case where any commander has been reprimanded or in any way censured or -- for not adhering to this policy, which you said is, you know, strictly prohibited?

MR. BACON: There is a case -- well, first of all, there are a limited number of cases that we have investigated from start to finish, involving so-called witch hunts or harassment of -- with homosexuals.

The one case that was mentioned by the Servicemembers' Legal Defense Network, at the very beginning of its report, involved a woman in Korea. The -- the commander in that case was, in fact, investigated for improper activity.

(Cross talk.)

Q Was he sanctioned? Would you check that out?

MR. BACON: Well, I can't -- I don't believe -- I will find out whether I can tell you, under the privacy rules. But there was a sanction, yes.

Q Ken, are you disappointed that this remains a issue, that it's not something

that's being followed by the book?

MR. BACON: Well, I suppose, in a broad sense, I'm always disappointed when I encounter problems. But it's a pretty regular part of life. I think we are working very hard to make this policy succeed.

General Sheehan said that he did not think this is an issue -- a big issue -- as a commander. And he doesn't sense it is an issue, in talking to the troops.

My sense and the sense of Secretary Perry is that, based on what he hears from commanders, based on what the Defense Department leadership hears from commanders, that this today is not a huge command problem.

We are working to educate commanders and the troops. We're working to make them understand exactly what the policy promises and does not promise, and some of the confusion over the policy may reflect that there's perhaps -- that we have

to do more work on this. We're always looking at our training, and we will look at this report and decide if any activity has to be taken in response to the report.

Q Ken, what are the official totals -- not breakdown among the (services ?) -- what are the official totals for the four years ending in fiscal '95 -- of dismissals?

MR. BACON: The official totals --

Q For each year from -- (off mike) --

MR. BACON: Starting in fiscal year 1992 --

Q ('92, '93 ?) -- yeah.

MR. BACON: Ninety-two was 708. Fiscal 1993 is 682. Fiscal year 1994 is 597, and I explained that that includes 102 discharges that would not have been included in fiscal '93 or previous years in the Air Force.

Q (Off mike) -- '95?

MR. BACON: And fiscal '95 is 722, as reported in the report, and that includes 163 discharges that would not have been counted under prior Air Force policies.

Q Thank you.

Q Ken, how many cases have been investigated during this whole time?

MR. BACON: I can't answer that question. Our reporting of -- I don't have those figures. I'm not sure that we have a central data depository on the number of cases, but it's done by service.??

Q (How are you all going to go about ?) investigating this? Is there going to be some formal procedure for looking into it?

MR. BACON: No, we're going to sit down and -- we got the report late last night, and we're going to read the report very carefully, and we're going to go through the cases in the report.

Now many of them, as you know, are anecdotal. Many of them are referred to only in terms of totals, without specifics.

We have said to the Service Members Legal Defense Network and other groups, come to us with specific allegations and we will investigate them. And that remains our pledge to do that. But we cannot investigate anecdotal information. I'm not saying that some of these events or all of them didn't occur, I'm just saying that without specifics it's very difficult to track them down.

Pat?

Q You mentioned that these groups have come to you in the past and you have investigated things in the past; the Korean situation, the Korean woman, and an officer sanctioned there. Were there any other cases where these groups have come to you in the past, have resulted in censures or actions against commanders, sergeants or --

MR. BACON: There was another one that certainly resulted in an investigation. I'm not aware that there was a sanction in that case.

Q Can you tell us a little more?

MR. BACON: I can't right now, no.

Mark?

Q There's about a dozen men and women openly serving in the military who are gay and their cases for discharge are being held up because of court action, in some cases for many years. Is there any evidence, anecdotal or otherwise, that their service in units and some are in combat units, has been detrimental to the good order and discipline?

MR. BACON: I can't answer that question. I just don't know. I can tell you that, as I said earlier, that commanders who have spoken to this issue have not rated it as one of their major command problems.

Q Ken, given that the stated purpose of this policy when it was instituted two years ago was to afford homosexual members of the military an opportunity to

serve so long as they kept their status private, and given that Secretary Perry this morning made the admission that the result has been what he called not a very significant change, hasn't the policy failed?

MR. BACON: The policy has not failed. The policy was, as Secretary Perry said, a small change. What it said was that orientation is not a bar to service. It looks to -- the ability to serve in the military is based on conduct, not on sexual orientation. It does not -- and that's what the policy said. And it goes on to say that the military would stop asking people about their sexual orientation, and as long as people did not disclose their sexual orientation, either in words or actions or conduct, they would be allowed to serve in the military.

The cases that have -- the court cases, in particular, many of them which have arisen are cases where people have announced that they were homosexual and fought for the right to remain in the military. The policy change should be very clear. It did not -- it did not say that practicing homosexuals could remain in the military. It said that people who do not disclose their sexual orientation could serve in the military because the indicator would look to conduct, not to orientation.

So, there may be some confusion about that. I think that Secretary Perry described this as a small change because it really was a change on the enlistment form more than anything else.

Q Ken?

MR. BACON: Yes?

Q To Bosnia for a moment --

Q Can we stay on this for just a moment?

MR. BACON: Yes.

Q Go ahead.

Q You talked about the Pentagon looked into the case in Korea. The other case that the Servicemembers group prominently displayed was the submarine tender in (Senigallia ?) where there's, you know, something like 60 women were being investigated simultaneously. Do you know whether there's been any investigation into that?

MR. BACON: The first we heard about that was in late December, and the Navy has not completed its investigation of that case. I cannot support -- I have no ability now to comment on what the report said about that. I've read the report, we're looking into it. I can't -- I don't have anything for you on it right now.

The -- Jamie, going back to your case, the -- this policy tries to balance the military's need to maintain morale, unit cohesion on the one hand, and the right to privacy on the other hand. The ticket to privacy is not talking about sexual

orientation. It allows people to come into the service without disclosing their sexual orientation and to stay in the service as long as they don't disclose their sexual orientation, if they're homosexuals. But disclosure then can trigger a series of investigations.

We are trying -- our goal is not to harass people, our goal is not to pursue people, our goal is not to have witch hunts. But there are rules that are laid out for dealing with situations where people disclose their -- if they disclose a homosexual orientation. We're trying -- as I said, trying to balance an increased right for privacy in the military with what the commanders have said and what Congress have said is a need to protect a certain amount of unit cohesion.

Q But in making the -- in disputing the charge that things are worse now for homosexuals in the military, you seem to be admitting that things are really

no better. MR. BACON: What I'm saying is that figures -- over a five-year period, the figures that I read you don't show an extremely significant change.

Now, the tyranny of statistics is that it's the -- you have to look at long lists of statistics; you have to look at a number of years before they're particularly meaningful. We don't have a lot of experience with the statistics under this policy right now.

Q I'm sorry, one more time. Are things better for homosexuals in the military today under this policy than they were two years ago?

MR. BACON: Yes, they are.

Q In what way?

MR. BACON: And the reason they're better is that being a homosexual is no longer a bar to military service. Before, if you honestly answered a form as a homosexual, a recruiting form, and put down you were a homosexual, you were barred from joining the service. Now you're no longer asked what your sexual orientation is when you come into the service, and you can serve careers -- many do -- without disclosing your sexual orientation. And as long as that's the case, there should be absolutely no harassment or pressure on this person. That's our policy.

Q Ken, that's what the policy is, but during this briefing from these people today and in their report, they mention that there are still enlistment forms out there that have not been corrected, that there are still witch hunts going on where members' families and friends are asked questions about the person who has enlisted even though nothing was said or admitted.

MR. BACON: Those -- if that is happening, that is not conformance with our policy, and we will stop that if that is happening. What we want is strict compliance with our regulations, and that's what -- one of the things we will do in the course of reading this report and studying it is decide whether there are areas where we have to look at better compliance. I'm not trying to prejudge what we're going to find. I think that we'll just have to wait and see what people determine after looking at this. But right now, the invitation is there for people who feel they're being harassed or mistreated to come forward to their IGs, to their lawyers, and complain about this. There are authorized channels for lodging such complaints. The invitation is also there for any group, including the Service Members Legal Defense Network, to come forward and report specific charges or allegations to us, and we have said in the past and we say now and we will say in the future that we will investigate these. We are against witch hunts. We are against unfairness. We want strict compliance with this regulation on all sides.

Yeah, John.

Q I'm going to turn to Cuba for just a moment.

Q Can I just --

Q Go ahead.

MR. BACON: Sure.

Q Is the lack of statistical change a disappointment to you. What were you anticipating seeing when the policy was introduced.

MR. BACON: Well, I wasn't here when the policy was introduced and I find that I think we're just going to need more experience looking at the statistics and looking at how the institutions adjust to the policy. I think it would be premature right now to say that this is disappointing. I think we have to wait and see what the trend is. Two years does not make a trend, particularly when there's been a rebased Air Force report in the middle of it which distorts comparisons between fiscal '94 and the years before fiscal '94 and I think that's an important rebasing.

Yes, John.

Q Does the Defense department plan to release the composite radar tracks from the Cuban incident which have been pulled together at March (sp) Air Force Base and which have been circulating around here and the rest of the government.

MR. BACON: I'm not aware of any plan to release those. It's possible that they may be released by another agency. I believe that there will be material released today.

Q On the radar tracks?

MR. BACON: Not that. Not on the radar tracks. There'll be other materials released today.

Q The transcripts has been handed out at the U.N. already.

MR. BACON: Yeah, it was supposed to be released at three. I mean, that should be available through the U.N. or elsewhere.

Q (Inaudible) -- audio of the conversations between the cockpits and --

MR. BACON: No, the transcripts, as I understand it.

Q Okay, and the radar tracks, you believe some other agency of the government --

MR. BACON: I do not know whether they'll be released or not. That was still under discussion as of several hours ago.

Q And, secondly, on the defector who is now I guess now a re- defector or whatever he's called, Mr. Roque, did agents from DIA or the (humment?) agency in this building interrogate him when he came to Guantanamo the first time? Were you the primary interrogators?

MR. BACON: I don't think we want to get into the details of how we deal with defectors but you're right in assuming that somebody from the government talked to him and we talked to other fighter pilots who defect from nations we're interested in.

Q Do you have an assessment as to what he is now?

MR. BACON: No.

Q I mean you have no knowledge or suspicion that he is a -- maybe he was kidnapped for all we know and they've got him under some nefarious drug or something.

MR. BACON: Sounds like a good story for ABC.

Q So you have no opinion on what he is now.

MR. BACON: No.

Q Okay.

MR. BACON: Bill.

Q I believe it was last Wednesday, Rich Holbrooke told of there beings as many as eight, at the fewest four terrorists training bases involving Iranian Mujahedin.

Then Secretary Perry on Thursday mentioned something about the U.S. IFOR was

looking into this matter and looking for these facilities. And my question is, do you have any more information on this particular matter? And have you -- has the IFOR found any of these alleged other facilities?

MR. BACON: First, it's the responsibility of the three governments who signed the Dayton peace accord to honor the provision requiring the expulsion of foreign troops. It's not an IFOR responsibility to do that. IFOR has shown that it has an ability to locate and to capture or collect these troops in certain situations. But it is the responsibility of the governments to get them out. And we expect the Bosnians, the Croatians and the Serbs to honor this responsibility. We believe that they've made considerable progress but it's not over yet. And there's still more to be done.

Q Do you believe that there still are such facilities besides the one in the Muslim countries --

MR. BACON: Well, Ambassador Holbrooke spoke about -- speculated that there were a number of facilities and Secretary Perry said we're watching those facilities, and I think I'll stick with that.

Q You can't say any more than that, that we're continuing to watch.

MR. BACON: Right.

Q Ken, a representative -- military representatives from the Bosnian government are making the rounds of several U.S. Army facilities, I guess today and tomorrow. Can you describe briefly what it is that they're doing and how it fits in with the possible equipping and training of Bosnian government forces?

MR. BACON: It's a delegation that's come to look at training facilities and methods. One of the things we've agreed to do is to help other countries help the Bosnians equip and train, and one of the things they're looking at are training methods. This delegation was here yesterday, I believe they're in Fort Polk today, it's my understanding.

Q So they're just getting a look at how the United States trains its troops and its training facilities --

MR. BACON: Ultimately these -- whatever training takes place will not take place here, so it's mainly a question of looking at facilities and methods more than anything else.

Q Is this -- I take it it's in accord with the provisions in the peace agreement about when -- does this technically amount to advice on training or training, or is it just preliminary?

MR. BACON: Well, it's a visit. I wouldn't say that it's the beginning of training at this stage.

Q And how long will they be and when do they go --

MR. BACON: I'll get you those details. I just don't happen to have them.

Q Thank you.

MR. BACON: Thank you.

END

LANGUAGE: ENGLISH

LOAD-DATE: February 28, 1996

91ST STORY of Level 1 printed in FULL format.

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February 28, 1996, Wednesday, Final Edition

SECTION: A SECTION; Pg. A02

LENGTH: 726 words

HEADLINE: Military, Despite Policy Shift, Discharged More Gays in '95; Perry Promises Inquiry but Sees No 'Significant Change'

BYLINE: Dana Priest, Washington Post Staff Writer

BODY:

Two years after the Clinton administration put in place a policy it said would make it easier for homosexuals to serve in the military, more gay service members are being discharged than before it took effect.

The Defense Department discharged 722 gay service members in fiscal 1995, compared with 597 in 1994 and 682 the year before that, according to Pentagon figures.

Anecdotal evidence and Pentagon documents collected by a leading legal defense organization also suggests that some military investigators and commanders are not only ignoring provisions of the policy but pursuing wide-ranging inquiries aimed at identifying members suspected of being homosexual.

The Washington-based Servicemembers Legal Defense Network said yesterday it had documented 363 cases in the last year in which military officials violated the policy by directly asking members about their sexual orientation or harassed members suspected of being gay.

Some of those cases include military commanders who went on retaliatory "witch hunts" against women who complained of sexual harassment or misconduct by male colleagues, the group alleged.

If the military "really stopped asking and really stopped harassing we would not see the number of discharges go up," said Michelle M. Benecke, co-director of the Network and a former Army captain.

The increase "is directly related to the fact that these few limits are not being administered correctly . . . what is conspicuously lacking is the senior leadership is missing in action."

Defense Secretary William J. Perry said yesterday that his staff would look into the allegations made by the group. He said the increase in discharges "was not a significant change" from previous years.

Pentagon spokesman Kenneth Bacon said later the department had no explanation for the increase but would study the report.

The "Don't Ask, Don't Tell" policy was a strained compromise between campaign promises Bill Clinton made to lift the ban on homosexuals in the military and

The Washington Post, February 28, 1996

fierce congressional and military resistance to his attempt to lift it after he became president.

Clinton's compromise was to allow gay members to continue to serve, but only if they did not disclose, even in private conversations, their homosexuality.

The military is permitted to investigate service members if officers have "credible information" that the service members engaged in homosexual conduct, which is prohibited in military law.

In making its case, the Network released several Pentagon memos it said proved military officials are overstepping their bounds. One, an Air Force memorandum, suggests that officers conducting investigations of service members who have said they are gay should interview the members' parents and siblings, school counselors, roommates and close friends and should review mental health and medical records.

Air Force officials said the memorandum applies only to a narrow range of cases in which there is a possibility that the service member is claiming to be gay only to avoid service or specific assignments, or if the individual received free advanced educational or medical training with an obligation to enter the service afterward.

"Air Force investigators aren't out there randomly calling people," said Capt. Samuel O'Niel, an Air Force spokesman. "That's not the way it works."

In one of the most extensively documented cases, the Network described what it called a "witch hunt" against Pfc. Shannon Emery.

When she was assigned to the Army's 728th Military Police Battalion in Korea, Emery charged that several drunken male soldiers had attempted to rape her. She reported the incident to her commander, but he dismissed it.

Meantime, the men she had accused started false rumors that she was a lesbian. During the investigation, Emery was pressured to accuse other women of being lesbians and told she would receive lenient treatment in exchange for their names, she has said.

The Army attempted to court-martial her, but charges were dropped by the judge for insufficient evidence. Then the Army tried to discharge her through administrative proceedings, which also were eventually dropped.

The Army confirmed yesterday that charges were dropped against her and Bacon said her commanding officer was investigated and sanctioned for his inappropriate actions.

LANGUAGE: ENGLISH

LOAD-DATE: February 28, 1996

107TH STORY of Level 1 printed in FULL format.

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February 27, 1996, Tuesday, Late Edition - Final
Correction Appended

SECTION: Section A; Page 1; Column 5; National Desk

LENGTH: 1620 words

HEADLINE: Armed Forces Still Question Homosexuals

BYLINE: By PHILIP SHENON

DATELINE: WASHINGTON, Feb. 26

BODY:

Two years after the Clinton Administration enacted a policy of "don't ask, don't tell" for homosexuals in the military, Pentagon documents and interviews with service members show that the military is not only continuing to ask some of them about their sexual orientation, but is also asking their parents, their friends and their therapists.

The documents suggest that the Administration's effort to help homosexuals in the military may instead be harming many of them -- leading to formal, wide-ranging investigations in cases that might have been handled in the past with little fanfare and without punishment.

That change may help explain why the number of service members discharged for homosexuality jumped last year in the Army, Navy and Marines. Pentagon figures show that in the fiscal year that ended Oct. 1, the three services discharged 488 service members for homosexuality, a 17 percent increase over the previous year. The Air Force said it did not have figures on dismissals of homosexuals.

The documents were obtained by the Servicemembers Legal Defense Network, a Washington group that assists members of the military accused of homosexuality. Among them was a November 1994 Air Force memorandum that outlined the "don't ask, don't tell" policy and listed the people who should be questioned in an investigation to determine whether a service member was homosexual.

The list includes the service member's parents, brothers and sisters, school

counselors, roommates and close friends, "including people the subject member dated." The memo also directs investigators to review "mental health and medical records."

A Navy memorandum that was undated but clearly issued in the aftermath of the "don't ask, don't tell" policy seemed to recommend that Navy prosecutors consider intimidating sailors who serve as character witnesses for gay service members by warning the witnesses that "supporting homosexual interests" could lead to their punishment.

Above all, the documents and interviews with service members and their families make clear that there is widespread confusion in the military over how to implement the "don't ask, don't tell" policy and that some service members

The New York Times, February 27, 1996

are still being subjected to sweeping investigations of their sex lives on the basis of second-hand reports.

In a report to be made public Tuesday, the Defense Network said that its monitoring of hundreds of cases showed that the "don't ask, don't tell" policy was "as bad, if not worse, than its predecessors," with witch hunts of homosexuals still common in all branches of the military.

The Defense Department disputed the conclusions of the report, questioned its interpretation of Pentagon documents and defended a two-year-old policy intended to satisfy both gay activists and military traditionalists by allowing gays to serve in the armed forces as long as they remained quiet about their sexual orientation.

"We believe that the current policy is working well," said Kenneth Bacon, the department's chief spokesman. "The 'don't ask, don't tell' policy balances an individual's right to privacy with the military's need to maintain unit cohesion and readiness. We are concerned about allegations of witch hunts, and we will investigate all firm evidence of such violations of our policy."

Mr. Bacon said the family members and friends of service members would normally be contacted by military investigators only in limited circumstances, such as when the service members had declared their homosexuality or when there was evidence to suggest that a person was falsely claiming to be a homosexual to leave military service.

The legality of the "don't ask, don't tell" is now under challenge in Federal courts. Last March, a Federal district judge in Brooklyn struck down the policy, saying that it violated the First and Fifth Amendments and catered to the fears and prejudices of heterosexual troops. The Clinton Administration has appealed the decision.

Several recent cases involving the policy seem to suggest that the policy is violated in spirit, with investigators fanning out across military squadrons to investigate even the smallest details of a soldier's life after accusation of homosexuality. Labor specialists say the policy is so confusing that even many well-meaning military commanders are unable to carry it out properly.

Lawrence J. Korb, Assistant Secretary of Defense for manpower in the Reagan Administration and now a senior fellow at the Brookings Institution, said the policy was being violated "all the time," with service members asked directly and indirectly about their sexuality.

The Defense Network report said women were being singled out for harassment, since they account for a fifth of discharges for homosexuality even though they make up 13 percent of the active duty force of the military, and Mr. Korb said that was not surprising.

Often, he said, women are accused of being lesbians after they file complaints of sexual harassment or assault against male co-workers. "With women in the military," he said, "you're either accused of being promiscuous or of being a lesbian."

The Clinton Administration's policy -- known in the Defense Department as "don't ask, don't tell, don't pursue" -- was an awkward compromise enacted in

The New York Times, February 27, 1996

February 1994 after months of turmoil at the White House and within the Pentagon.

On taking office the previous year, Mr. Clinton had tried to impose a blanket moratorium on discrimination against homosexuals in the military, but he was forced to abandon it in the face of fierce opposition within the military and in Congress.

Under the compromise, homosexuals are permitted to serve in the military so long as they keep their homosexuality a secret, and commanders are barred from asking service members questions about their sexual orientation.

But the military has maintained its long-standing prohibition on homosexual acts, and commanders are allowed to open discharge investigations of service members if there is "credible evidence" that they have declared their homosexuality, even in a private setting.

For Cpl. Kevin Blaesing, a 25-year-old marine with an otherwise exemplary service record, the setting was a psychologist's office in a naval hospital in Charleston, S.C. He had gone there in September 1993 to discuss, among other matters, his confusion over his sexual orientation.

"I sat down and we discussed homosexuality in general -- if you are gay, do you stay gay, how does that go along with being in the military," Corporal Blaesing, whose case is noted in the Defense Network study, said in an interview. "I never made a statement of what my sexual orientation was."

While the psychologist found that Corporal Blaesing was "fit for full duty," she reported details of their conversation to his commander. Corporal Blaesing had not realized that military psychologists are held to far looser rules of patient confidentiality than their civilian counterparts, and the Marines are now seeking to discharge him.

Corporal Blaesing said that since his meeting with the psychologist, he had repeatedly been asked by his commanders whether he was homosexual -- the clearest possible violation of the "don't ask, don't tell" rule -- and that his experience was not uncommon.

"From my experience, I can tell you that this policy is a failure," he said. "It's like a mine field, and you're just wandering in this mine field because they don't advise you what the rules are. The military is basically waiting you for you to step on that mine."

Among the other documents gathered by the Servicemembers Legal Defense Network are reports from investigators aboard the submarine tender Simon Lake, docked in Italy, who questioned dozens of women last November about accusations of lesbianism on the ship.

The handwritten reports showed that the women were asked unusually broad questions that violated the spirit of the "don't ask, don't tell" policy, if not the letter of the law, including: "Have you performed any homosexual acts on the ship? Have you performed any homosexual acts off the ship?"

The Air Force memorandum, dated Nov. 3, 1994, and prepared for military judges and lawyers, was careful to insist that investigations of service

The New York Times, February 27, 1996

members under the new policy were not meant "to discover evidence of homosexual acts or to ferret out other homosexuals in the military."

But it then suggested that if the investigation of one service member turned up evidence that a second service member might also be homosexual, then it would be proper to open an investigation of the second service member, as well.

The memo also recommended that Air Force investigators interview a service member's family, friends and school advisers, especially if there was a chance that the service member might be lying in claiming homosexuality as a way to obtain a quick discharge from the service.

Capt. Samuel McNiel, an Air Force spokesman at the Pentagon, said that the policy was meant to protect taxpayers from service members who might walk away from their obligations to the military, not to infringe on the privacy of gay service members. He said that "contact with family members is not mandatory, and inquiry officers are instructed to exercise discretion in this regard."

Still, the Servicemembers Legal Defense Network said that it knew of cases in which parents had received unwelcome phone calls from Air Force officers pursuing investigations of their sons and daughters under the "don't ask, don't tell" policy.

"Mothers and fathers have been shocked when called by Air Force officials asking them whether their son is gay and whether he has ever had sex with another man," the report said.

CORRECTION-DATE: March 2, 1996, Saturday

CORRECTION:

Because of an editing error, a front-page article on Tuesday about homosexuals in the military misstated the Air Force's policy on keeping track of the number of people discharged for homosexuality. The Air Force does tabulate the number, but a change in record keeping makes it impossible to compare the figures for the fiscal year 1995 and the previous year.

GRAPHIC: Photo: Cpl. Kevin Blaesing said that after talking with a Navy psychologist he was asked by commanders if he was homosexual. He was at home in Muscatine, Iowa, on Saturday awaiting a decision in the case. (Associated Press)(pg. 20)

Sestak, Joseph A.

From: Sestak, Joseph A.
To: Bell, Robert G.
Cc: /R, Record at A1
Subject: FW: Gay discharges [UNCLASSIFIED]
Date: Tuesday, February 06, 1996 5:00PM

Bob,

In case it does come up, OSD did look into the figures on why the number of gay discharges appeared to go up in FY 95 from FY 94. The numbers are not that much different if one subtracts the 163 AF gay discharges for FY 95 which would have been classified as "fraudulent enlistment discharges" in prior years. For FY 95, the AF had redesignated the type of discharge for those who entered fraudulently by denying they were gay (but later were found to be so).

As a result, the comparative figures (if one accounts for this "fair basis" comparison) are:

FY	gay discharges	% of Armed Forces
95	610	.039
94	597	.037
93	682	.039
92	708	.039
91	949	.047

From: Sestak, Joseph A.
To: Bell, Robert G.
CC: /R, Record at A1
Subject: Gay discharges
Date: Wednesday, January 24, 1996 07:25 AM

Bob,

Article in Army Times yesterday indicated that for FY1995, there were 722 servicemembers discharged for homosexuality compared to 597 in FY 1994, a 21% increase.

You might remember that we sent two memos to TL last year on what the statistics' trend was based on reports from gay rights organizations that the trend was up since Clinton's don't ask, don't pursue policy was established.

I spoke with OSD; the figures appear correct, although they seemed to have been inadvertently released early. The problem is that the two FYs may have different bases, not permitting a fair comparison.

This is because the Air Force changed its policy after the new policy was established so that someone who had enlisted but was later found to be a homosexual used to be discharged in certain cases as a "fraudulent enlistment". However, in FY 95, the policy was changed and these cases were now all being treated as discharges for homosexuality. This may involve as many as 100-120 cases, which would bring the number of FY95 discharges down to 600-620 as a "fair" basis for comparison with FY94. OSD is trying to confirm this number today-tomorrow.

Also, the reason why the stats don't go down, while not definitely known, may have to do with the fact that more homosexuals are being open about it; and that because of the spotlight of this issue over the past few years, COs are more focused upon it.

I will let you know the final "fair comparison" count of discharges for FY1995; but I am sure we can expect another letter from the gay rights organizations. vr, Joe

Servicemembers Legal Defense Network

★ ★ ★ ★ ★

Jean M. Podrasky
Director of Finance and Information Systems



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Military, Despite Policy Shift, Discharged More Gays in '95

Perry Promises Inquiry but Sees No 'Significant Change'

By Dana Priest
Washington Post Staff Writer

Two years after the Clinton administration put in place a policy it said would make it easier for homosexuals to serve in the military, more gay service members are being discharged than before it took effect.

The Defense Department discharged 722 gay service members in fiscal 1995, compared with 597 in 1994 and 682 the year before that, according to Pentagon figures.

Anecdotal evidence and Pentagon documents collected by a leading legal defense organization also suggests that some military investigators and commanders are not only ignoring provisions of the policy but pursuing wide-ranging inquiries aimed at identifying members suspected of being homosexual.

The Washington-based Servicemembers Legal Defense Network said yesterday it had documented 363 cases in the last year in which military officials violated the policy by directly asking members about their sexual orientation or harassed members suspected of being gay.

Some of those cases include military commanders who went on retaliatory "witch hunts" against women who complained of sexual harassment or misconduct by male colleagues, the group alleged.

If the military "really stopped asking and really stopped harassing we would not see the number of discharges go up," said Michelle M. Benecke, co-director of the Network and a former Army captain.

The increase "is directly related to the fact that these few limits are not being administered correctly . . . what is conspicuously lacking is the senior leadership is mulling in action."

Defense Secretary William J. Perry said yesterday that his staff would look into the allegations made by the group. He said the increase in discharges "was not a significant change" from previous years.

Pentagon spokesman Kenneth Bacon said later the department had no explanation for the increase but would study the report.

The "Don't Ask, Don't Tell" policy was a strained compromise between campaign promises Bill Clinton made to lift the ban on homosexuals in the military and fierce congressional and military resistance to his attempt to lift it after he became president.

Clinton's compromise was to allow gay members to continue to serve, but only if they did not disclose, even in private conversations, their homosexuality.

The military is permitted to investigate service members if officers have "credible information" that the service members en-

gaged in homosexual conduct, which is prohibited in military law.

In making its case, the Network released several Pentagon memos it said proved military officials are overstepping their bounds. One, an Air Force memorandum, suggests that officers conducting investigations of service members who have said they are gay should interview the members' parents and siblings, school counselors, roommates and close friends and should review mental health and medical records.

Air Force officials said the memorandum applies only to a narrow range of cases in which there is a possibility that the service member is claiming to be gay only to avoid service or specific assignments, or if the individual received free advanced educational or

Some military commanders conduct retaliatory "witch hunts," a legal defense group alleges.

medical training with an obligation to enter the service afterward.

"Air Force investigators aren't out there randomly calling people," said Capt. Samuel O'Neil, an Air Force spokesman. "That's not the way it works."

In one of the most extensively documented cases, the Network described what it called a "witch hunt" against Pfc. Shannon Emery.

When she was assigned to the Army's 728th Military Police Battalion in Korea, Emery charged that several drunken male soldiers had attempted to rape her. She reported the incident to her commander, but he dismissed it.

Meantime, the men she had accused started false rumors that she was a lesbian. During the investigation, Emery was pressured to accuse other women of being lesbians and told she would receive lenient treatment in exchange for their names, she has said.

The Army attempted to court-martial her, but charges were dropped by the judge for insufficient evidence. Then the Army tried to discharge her through administrative proceedings, which also were eventually dropped.

The Army confirmed yesterday that charges were dropped against her and Bacon said her commanding officer was investigated and sanctioned for his inappropriate actions.

CLIENT FACTS

- IN TWO YEARS, SLDN HAS ASSISTED MORE THAN 700 SERVICE-MEMBERS IN 48 STATES AND 13 FOREIGN COUNTRIES.
- THE RATE OF DISCHARGE UNDER "DON'T ASK, DON'T TELL, DON'T PURSUE" IS GREATER NOW THAN IT WAS UNDER THE OLD POLICY.
- MOST OF SLDN'S CLIENTS ARE YOUNG, BETWEEN THE AGES OF 18 AND 22.
- 30% OF SLDN CLIENTS ARE WOMEN; WOMEN COMPRISE ONLY 13% OF THE ACTIVE FORCE.
- 28 WITCH HUNTS HAVE OCCURED IN THE PAST 2 YEARS.
- THE AIR FORCE HAS ACTIVELY PURSUED CRIMINAL CHARGES AGAINST AIRMEN FOR PRIVATE, ADULT, CONSENSUAL SEX. THE SENTENCE CAN BE FOR UP TO 15 YEARS IN PRISON.

Yes! I would like to help Servicemembers Legal Defense Network in one or more of the following ways:

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☐ **Yes!** I will reach out to key venues in my community so that servicemembers know where to turn for help. Please contact me at the address above.

☐ **Yes!** I will help defend servicemembers, or help with other legal matters. Please contact me at the address above.

Please return to: SLDN, P.O. Box 53013, Washington, DC 20009
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SLDN is a 501(c)(3) organization. All contributions are tax deductible.

Please cut along dashed line and return in the enclosed envelope.

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SLDN is the sole legal aid and watchdog organization for men and women harmed by the "Don't Ask, Don't Tell, Don't Pursue" policy. SLDN is a 501(c)(3) organization. All contributions are tax deductible.



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SERVICEMEMBERS LEGAL DEFENSE NETWORK

"...save my
life and made it much
better than it could
have been. My partner
and I thank you with
all our hearts. You
stepped in to help in
our hour of need."



STATEMENT FROM THE EXECUTIVE DIRECTORS

Every day, we receive calls from gay, lesbian, bisexual and straight servicemembers who have been hurt by the military's "Don't Ask, Don't Tell, Don't Pursue" policy.

These brave young men and women have faced witch hunts, death threats and prison. They have had their lives turned upside down. They often come to us scared and apprehensive because their second family, the military, an institution that has told them from day one that it would stand by them no matter what, is threatening to disown them.

We are here to help. We, and our network of volunteer attorneys, provide clients with direct legal intervention.. We are the only organization that battles witch hunts, death threats and harassment every day. We use our legal, political, watchdog and military expertise to obtain the best resolutions for our clients and to discipline commanders who violate military regulations.

We also work hard to close the loopholes in the current policy that permit commanders to ferret out suspected gay troops. And, we work to counter moves by extremist organizations to make the new policy even worse.

Discrimination by our federal government is the lynch pin to discrimination against us all and until we end government inequality, none of us will be truly free.

Please join us in the fight to help the brave young men and women of our country.

Michelle M. Benecke

C. Dixon Osburn

WARNING: If You Are A Servicemember and you are under investigation or are thinking of coming out to the military, take no action until you speak with an attorney. Please remember under Article 31 of the Uniform Code of Military Justice: You have the right to remain silent and you have a right to an attorney. Say nothing. Sign nothing. Get legal help. Call SLDN at (202) 328-3244.

OUR CLIENTS: SLDN IN ACTION

★ ★ ★ ★ ★ ★ ★

WITCH HUNTS

Former Corporal Craig Haack and twenty other marines were interrogated during what DOD now admits was a witch hunt in Okinawa, Japan. Investigators seized Haack's personal diary, letters, and computer in an effort to obtain evidence of homosexual conduct. *SLDN, with cooperating attorneys, stopped the witch hunt and pressed the Department of the Navy to admit it's improper conduct.*

"I love serving my country and I know without SLDN I wouldn't have had a chance of staying in. I would like to take this opportunity to thank SLDN for all that you have done for me and my family."

responded quickly to find safe, off-base lodging for the airman and convinced the Air Force to investigate the source of the threat, not the airman's personal life.

HARASSMENT

A young Army private reported an attempted rape and was accused of being lesbian in retaliation. She was threatened with prison unless she identified other suspected lesbians. *SLDN worked nine months to have all charges dropped against the private and the responsible officers disciplined for taking action against her.*

IMPRISONMENT

A 15 year Navy enlisted man was threatened with up to 5 years in jail based on false allegations that he solicited another serviceman in front of 200 people. *With SLDN's help, he won his case at trial.*

DEATH THREATS

A young airman received a written death threat because someone suspected he was gay. The airman's command refused to take action to protect him. *SLDN*

WHAT YOU CAN DO FOR SLDN

★ ★ ★ ★ ★ ★ ★

GIVE

We rely, in large part, on contributions from individuals. We encourage you to support SLDN with a fully tax-deductible contribution today. SLDN has earned a reputation as a good investment. Whether you give \$25 or \$2500, please know we take seriously our responsibility to use every dollar wisely and to maximum effect. If you are able, please join our Patriot Circle at \$500 or more annually. Please call Mary Ester, our Director of Development, to ask about other opportunities to help SLDN financially, including in-kind contributions, house parties, donations of frequent flyer miles, bequests, gifts of stock and the Combined Federal Campaign.

REACH OUT

Servicemembers must know where to turn for help and everyone needs to know the truth about this policy. You can help by making sure SLDN's phone and address are listed with hotlines and local papers; by distributing information provided by SLDN at bars, bookstores, Pride Days and other venues; and by helping us coordinate confidential training sessions for local servicemembers and attorneys.

DEFEND

SLDN depends on its volunteer attorneys to help with its cases. No military expertise is required; we can provide that. What is required is good, aggressive lawyering. We also need help with legal research and amicus briefs.

"I can say most definitely that SLDN has been my savior and my strength during these trying times. I salute each and every one of your staff and supporters."

Homosexuality Still Questioned By the Military

By PHILIP SHENON

WASHINGTON, Feb. 26 — Two years after the Clinton Administration enacted a policy of "don't ask, don't tell" for homosexuals in the military, Pentagon documents and interviews with service members show that the military is not only continuing to ask some troops about their sexual orientation, but is also asking their parents, their friends and their therapists.

The documents suggest that the Administration's effort to help homosexuals in the military may instead be harming many of them — leading to formal, wide-ranging investigations in cases that might have been handled in the past with little fanfare and without punishment.

That change may help explain why the number of service members discharged for homosexuality jumped last year in the Army, Navy and Marines. Pentagon figures show that in the fiscal year that ended Oct. 1, the three services discharged 488 service members for homosexuality, a 17 percent increase over the previous year. The Air Force said it did not have figures on dismissals of homosexuals.

The documents were obtained by the Servicemembers Legal Defense Network, a Washington group that assists members of the military accused of homosexuality. Among them was a November 1994 Air Force memorandum that outlined the "don't ask, don't tell" policy and listed the people who should be questioned in an investigation to deter-

Continued on Page A20, Column 1

Despite New Policy, Military Asks About Homosexuality

Continued From Page 1

mine whether a service member was homosexual.

The list includes the service member's parents, brothers and sisters, school counselors, roommates and close friends, "including people the subject member dated." The memo also directs investigators to review "mental health and medical records."

A Navy memorandum that was undated but clearly issued in the aftermath of the "don't ask, don't tell" policy seemed to recommend that Navy prosecutors consider intimidating sailors who serve as character witnesses for gay service members by warning the witnesses that "supporting homosexual interests" could lead to their punishment.

Above all, the documents and interviews with service members and their families make clear that there is widespread confusion in the military over how to implement the "don't ask, don't tell" policy and that some service members are still being subjected to sweeping investigations of their sex lives on the basis of second-hand reports.

In a report to be made public Tuesday, the Defense Network said that its monitoring of hundreds of cases showed that the "don't ask, don't tell" policy was "as bad, if not worse, than its predecessors," with witch hunts of homosexuals still common in all branches of the military.

The Defense Department disputed the conclusions of the report, questioned its interpretation of Pentagon documents and defended a two-year-old policy intended to satisfy both gay activists and military tradition-

is so confusing that even many well-meaning military commanders are unable to carry it out properly.

Lawrence J. Korb, Assistant Secretary of Defense for manpower in the Reagan Administration and now a senior fellow at the Brookings Institution, said that the policy was being violated "all the time," with service members asked directly and indirectly about their sexuality.

The Defense Network report said that women were being singled out for harassment, since they account for a fifth of discharges for homosexuality even though they make up 13 percent of the active duty force of the military, and Mr. Korb said that was not surprising.

Often, he said, women are accused of being lesbians after they file complaints of sexual harassment or assault against male co-workers. "With women in the military," he said, "you're either accused of being promiscuous or of being a lesbian."

The Clinton Administration's policy — known in the Defense Department as "don't ask, don't tell, don't pursue" — was an awkward compromise enacted in February 1994 after months of turmoil at the White House and within the Pentagon.

On taking office the previous year, Mr. Clinton had tried to impose a blanket moratorium on discrimination against homosexuals in the military, but he was forced to abandon it in the face of fierce opposition within the military and in Congress.

Under the compromise, homosexuals are permitted to serve in the military so long as they keep their homosexuality a secret, and commanders are barred from asking service members questions about their sexual orientation.

But the military has maintained its long-standing prohibition on homosexual acts, and commanders are allowed to open discharge investigations of service members if there is "credible evidence" that they have declared their homosexuality, even in a private setting.

For Cpl. Kevin Blaesing, a 25-year-old marine with an otherwise exemplary service record, the setting was a psychologist's office in a naval hospital in Charleston, S.C. He had gone there in September 1993 to discuss, among other matters, his confusion over his sexual orientation.

"I sat down and we discussed homosexuality in general — if you are gay, do you stay gay, how does that go along with being in the military," Corporal Blaesing, whose case is noted in the Defense Network study, said in an interview. "I never made a statement of what my sexual orientation was."

While the psychologist found that Corporal Blaesing was "fit for full duty," she reported details of their conversation to his commander. Corporal Blaesing had not realized that military psychologists are held to far looser rules of patient confidentiality than their civilian counterparts, and the Marines are now seeking to discharge him.

Corporal Blaesing said that since his meeting with the psychologist, he has repeatedly been asked by his commanders whether he was homosexual — the clearest possible violation of the "don't ask, don't tell" rule — and that his experience was not uncommon.

"From my experience, I can tell you that this policy is a failure," he said. "It's like a minefield, and you're just wandering in this minefield because they don't advise you what the rules are. The military is basically waiting you for you to step on that mine."

Among the other documents gathered by the Servicemembers Legal Defense Network are reports from investigators aboard the submarine tender *Simon Lake*, docked in Italy, who questioned dozens of women last

An easier policy brings more dismissals of gay service members.

alists by allowing gays to serve in the armed forces as long as they remained quiet about their sexual orientation.

"We believe that the current policy is working well," said Kenneth Bacon, the department's chief spokesman. "The 'don't ask, don't tell' policy balances an individual's right to privacy with the military's need to maintain unit cohesion and readiness. We are concerned about allegations of witch hunts, and we will investigate all firm evidence of such violations of our policy."

Mr. Bacon said that the family members and friends of service members would normally be contacted by military investigators only in limited circumstances, such as when the service members had declared their homosexuality or when there were evidence to suggest that a member was falsely claiming to be a homosexual to leave military service.

The legality of the "don't ask, don't tell" is now under challenge in Federal courts. Last March, a Federal district judge in Brooklyn struck down the policy, saying that it violated the First and Fifth Amendments and catered to the fears and prejudices of heterosexual troops. The Clinton Administration has appealed the decision.

Several recent cases involving the policy seem to suggest that the policy is violated in spirit, with investigators fanning out across military squadrons to investigate even the smallest details of a soldier's life after accusation of homosexuality. Labor specialists say that the policy



Associated Press

Cpl. Kevin Blaesing said he has been repeatedly asked by commanders if he is homosexual after talking with a Navy psychologist. He was at home in Muscatine, Iowa, on Saturday awaiting a decision on his case.

November about accusations of lesbianism on the ship.

The handwritten reports showed that the women were asked unusually broad questions that violated the spirit of the "don't ask, don't tell" policy, if not the letter of the law, including: "Have you performed any homosexual acts on the ship? Have you performed any homosexual acts off the ship?"

The Air Force memo, dated Nov. 3, 1994, and prepared for military judges and lawyers, was careful to insist that investigations of service members under the "don't ask, don't tell" policy were not meant "to discover evidence of homosexual acts or to ferret out other homosexuals in the military."

But it then suggested that if the investigation of one service member turned up evidence that a second service member might also be homosexual, then it would be proper to open an investigation of the second service member, as well.

The memo also recommended that Air Force investigators interview a service member's family, friends

and school advisers, especially if there was a chance that the service member might be lying in claiming homosexuality as a way to obtain a quick discharge from the service.

Capt. Samuel McNeil, an Air Force spokesman at the Pentagon, said that the policy was meant to protect taxpayers from service members who might walk away from their obligations to the military, not to infringe on the privacy of gay service members. He said that "contact with family members is not mandatory, and inquiry officers are instructed to exercise discretion in this regard."

Still, the Servicemembers Legal Defense Network said that it knew of cases in which parents had received unwelcome phone calls from Air Force officers pursuing investigations of their sons and daughters under the "don't ask, don't tell" policy.

"Mothers and fathers have been shocked when called by Air Force officials asking them whether their son is gay and whether he has ever had sex with another man," the report said.

CONDUCT UNBECOMING:

THE SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE" VIOLATIONS



March 1, 1995 - February 27, 1996

By: C. Dixon Osburn, Esq.
Michelle M. Benecke, Esq.
Co-Executive Directors,
Servicemembers Legal Defense Network

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

MARCH 1, 1995 - FEBRUARY 27, 1996

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NOTICE: If you are a servicemember reading this and come under investigation, you have certain legal rights. Under Article 31 of the Uniform Code of Military Justice, you have the right to remain silent and a right to consult a lawyer. Exercise them. Say Nothing. Sign Nothing. Get Legal Help.

If you are thinking of “coming out,” do not until you speak to a defense lawyer. Saying or doing the wrong thing under “Don’t Ask, Don’t Tell, Don’t Pursue” could get you thrown in jail.

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

MARCH 1, 1995 - FEBRUARY 27, 1996

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

EXECUTIVE SUMMARY

In its second annual report on the impact of the "Don't Ask, Don't Tell, Don't Pursue" policy, Servicemembers Legal Defense Network (SLDN) reveals a continuing pattern of abuse that has effectively rendered the current policy as bad as, if not worse than, its predecessors. Many military members clearly continue to ask, pursue and harass suspected gay troops in blatant disregard of the policy's limits. From March 1, 1995 - February 27, 1996, SLDN documented 363 specific violations of the current policy.¹ The result, in part, is that the Department of Defense (DOD) discharged more servicemembers under its gay policy in fiscal year 1995 than in each of the past four years at a cost exceeding \$21 million in 1995.²

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

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

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

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

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

federal court.

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

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

A second reason discharges under the gay policy remain high is that the military uses the policy to retaliate against women. DOD data show that women are being singled out for investigation and discharge at rates exceeding those for men. Though women comprise only 13% of the total active duty force, they account for 21% of all discharges and 30% of SLDN's cases under the gay policy. A disturbing constant in women's cases is the frequency with which women are accused as lesbian after reporting sexual harassment or rape, regardless of their actual

sexual orientation. It was believed that “Don’t Ask, Don’t Tell, Don’t Pursue” would stop investigations and discharges based on retaliatory accusations, but it has not.

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

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

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

This report is based on violations of "Don't Ask, Don't Tell, Don't Pursue" documented by SLDN, located in Washington, D.C. SLDN is the sole national legal aid and watchdog

organization for those targeted under the military's policy on service by gay men and lesbians, and the only means currently available to document abuses. DOD has instituted no method of identifying, documenting or correcting abuses of the new policy.

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

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

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

³ SLDN would like to thank its cooperating attorneys for their tireless efforts on behalf of lesbian, gay, bisexual and straight servicemembers hurt under the "Don't Ask, Don't Tell, Don't Pursue" policy. SLDN would like to extend special recognition to Ted Bumer and Kathy Gilberd of the Military Law Task Force in San Diego, and Bridget

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

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

Wilson, a private attorney in San Diego, for their long-standing leadership in fighting for the rights of servicemembers.

RECOMMENDATIONS

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

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

investigation to help deter illegitimate efforts, as recommended by a 1995 Advisory Board on DOD Investigative Capability report.

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

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

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

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

DON'T ASK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DON'T TELL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DON'T PURSUE

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

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

⁴ Federal News Service, Testimony Before Senate Armed Services Committee, July 21, 1993.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

heterosexual lover, is attempting to extort money, or is a former friend when a friendship has apparently turned sour. The commander should consider whether the accuser's allegations are coherent and consistent and whether the suspected gay soldier has a plausible explanation. Without a rational review of allegations made, the gay policy simply becomes a weapon to punish anyone, straight or gay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DON'T HARASS

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

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

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

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

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

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

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

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

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

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

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

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

The primary reason for the high incidence of harassment is lack of leadership. Two years into this policy, Pentagon leaders have yet to issue any guidance to the field regarding this provision or otherwise make clear to subordinates that harassment will not be tolerated. Commanders who ignore complaints of death threats or harassment send a terrible message that harassment is condoned. Against the backdrop of the Joint Chiefs' vociferous opposition to acknowledged gay servicemembers during the national debate on lifting the ban, this omission has allowed a negative climate to grow and fester.

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

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

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

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

These findings also point to at least one reason why efforts to stem sexual harassment of women have proved inadequate, since they do not address the double impact of anti-gay harassment on women. These efforts have not addressed the role of anti-gay harassment in encouraging unwanted sexual advances against women, nor have they considered the chilling effect of lesbian baiting in deterring women from reporting sexual harassment.

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

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

The unfortunate tendency of many commanders to investigate the victims of anti-gay harassment, instead of the perpetrators, further heightens servicemembers' risk of discovery if they report harassment. Even where investigations start out properly to determine the source of threats

or harassment, they too often end up focusing instead on the victim's private life. This occurs for a variety of reasons, including bias, misguided curiosity on the part of the investigating officer or, like lesbian baiting, as the result of retaliatory accusations by the perpetrators.

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

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

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

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

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

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

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

CONCLUSION

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

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

MARCH 1, 1995 - FEBRUARY 27, 1996

**TOTAL VIOLATIONS OF
"DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS"
FOR ALL SERVICES**

# CASES	SERVICE	DON'T ASK	DON'T TELL	DON'T PURSUE	DON'T HARASS	TOTAL
50	AIR FORCE	24	10	61	19	114
49	ARMY	22	4	39	36	101
67	NAVY	25	4	38	59	126
12	MARINE CORPS	6	0	3	13	22
2	COAST GUARD	0	0	0	0	0
180	TOTALS	77	18	141	127	363

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

TOTAL DISCHARGES FOR ALL SERVICES

FISCAL YEAR	USAF	USA	USN	USMC	TOTAL
1990	141	220	519	61	941
1991	151	206	545	47	949
1992	111	138	401	58	708
1993	152	156	334	40	682
1994	180	136	245	36	597
1995	234	182	260	46	722
TOTAL	969	1038	2304	288	4599

**PERCENT SHARE OF DISCHARGES UNDER GAY POLICY
FOR ALL SERVICES**

FISCAL YEAR	USAF	USA	USN	USMC	TOTAL
1990	15%	23%	55%	6%	99%
1991	16%	22%	57%	5%	100%
1992	16%	19%	57%	8%	100%
1993	22%	23%	49%	6%	100%
1994	30%	23%	41%	6%	100%
1995	32%	25%	36%	6%	100%

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

**COSTS OF TRAINING REPLACEMENTS FOR SERVICEMEMBERS
DISCHARGED UNDER GAY POLICY¹**

YEAR	# DISCHARGED	COST
1980-1990	16,919	\$498,555,244
1991	949	\$27,964,355
1992	708	\$20,862,764
1993	682	\$20,096,617
1994	597	\$17,591,907
1995	722	\$21,275,305
TOTAL	20,577	\$606,346,192

¹ Costs are based on figures and percentages reported in a General Accounting Office study, Defense Force Management: Statistics Related To DOD's Policy on Homosexuality (June 1992). The GAO reported that the Department of Defense discharged 16,919 servicemembers for homosexuality from 1980-1990 at a cost of \$498,555,244. The costs figures for 1991-1995 are based on the ratio of discharges in year x divided by the costs in year x set equal to the ratio of discharges in years 1980-1990 divided by the costs in years 1980-1990. *The cost figures have not been adjusted for inflation.*

**CONDUCT UNBECOMING:
SECOND ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE"**

**GAYS, LESBIANS AND BISEXUALS SERVING OPENLY IN THE
UNITED STATES MILITARY¹**

RANK/NAME	SERVICE	SERVING OPENLY SINCE
Colonel Margarethe Cammermeyer	WA National Guard	April 1990-92; June 1994 ²
Lieutenant Cdr. Zoe Dunning	USNR	January 1993
SGT Justin Elzie	USMC	January 1993
Petty Officer Robert Heigl	USN	March 1994
Petty Officer Keith Meinhold	USN	May 1992 ³
Captain Pam Mindt	MN National Guard	July 1992
First Lieutenant Kenneth Osborn	USAR	July 1993
Lieutenant (j.g.) Dirk Selland	USN	January 1993
Sergeant Stephen Spencer	USAR	March 1994
Lieutenant Richard von Wohld	USNR	July 1993
Lieutenant Rich Watson	USN	October 1994
Seaman Werner Zehr	USN	November 1993

¹ The servicemembers listed represent only those who have received national media attention and are currently challenging their separation from the U.S. military. Many others have served and do serve openly, but no adverse action has been taken against them.

² Colonel Cammermeyer served openly for three years prior to her discharge in 1992. On June 1, 1994, Colonel Cammermeyer was ordered reinstated to the WA State National Guard.

³ Petty Officer Meinhold came out on national television in May 1992, though court documents indicate that he has been open about his sexuality in the Navy for more than fourteen years.

Servicemembers Legal Defense Network

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**CONDUCT UNBECOMING CONTINUES:
THE FIRST YEAR UNDER
"DON'T ASK, DON'T TELL, DON'T PURSUE"**

Date: February 28, 1995

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OPTIONAL FORM 99 (7-90)

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CONDUCT UNBECOMING CONTINUES: THE FIRST YEAR UNDER "DON'T ASK, DON'T TELL, DON'T PURSUE"

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**CONDUCT UNBECOMING CONTINUES:
THE FIRST YEAR UNDER "DON'T ASK, DON'T TELL, DON'T PURSUE"**

Executive Summary

Servicemembers Legal Defense Network's review of the first year of the military's new policy on homosexuals, "Don't Ask, Don't Tell, Don't Pursue," reveals a pattern of violations that often renders the policy little more than "Ask, Pursue and Harass." SLDN has documented death threats and other specific violations of the new policy from March 1, 1994 - February 28, 1995, and concludes that many military officials continue to ask questions about sexual orientation, conduct witch hunts and condone harassment of lesbian and gay servicemembers in direct violation of "Don't Ask, Don't Tell, Don't Pursue." SLDN concludes that the chief reasons for the continuing violations are lack of information, lack of adequate training and guidance regarding the new policy, and in some cases, willful disregard of military policy by commanders and investigators.

SLDN recommends that the Department of Defense ensure the proper implementation of "Don't Ask, Don't Tell, Don't Pursue" through adequate training of all servicemembers about the new policy, common sense remedies when inquiries or investigations are started improperly, and clear accountability for violations of the policy by military officials.

SLDN reports the following findings from its monitoring activities during the past year:

- 1. 340 total violations of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."¹**

¹ Multiple violations per case make total violations exceed total cases. Thus, findings that state total number of SLDN cases involving violations present the most conservative picture of violations servicewide.

2. 37 cases with "Don't Ask" violations.
3. 18 cases with "Don't Tell" violations.
4. 65 cases with "Don't Pursue" violations.
5. 62 cases with "Don't Harass" violations.
6. 13 actual or attempted witch hunts among the "Don't Pursue" violations.
7. 10 cases where servicemembers faced death threats in violation of "Don't Harass" because of their actual or perceived sexual orientation.
8. The U.S. Navy and U.S. Army accounted for the most number of cases with "Don't Ask" violations; the U.S. Army accounted for the most number of cases with "Don't Tell" violations; the U.S. Air Force accounted for the most number of cases with "Don't Pursue" violations; and the U.S. Navy accounted for the most number of cases with "Don't Harass" violations.²
9. Servicewide, violations of "Don't Pursue" and "Don't Harass" were the most significant problems.
10. Women accounted for 47 of SLDN's cases, or 25%, a percentage disproportionate to their numbers in the military.
11. The worst witch hunt occurred in the U.S. Marine Corps in Okinawa, Japan at Camp Hansen from March to June 1994 in which over 21 servicemembers were questioned about the sexual orientation and activities of themselves and other servicemembers. Despite careful documentation of abuses by SLDN and cooperating attorneys in the New York-based law firm, Skadden, Arps, Slate Meagher & Flom, U.S. Navy and U.S. Marine Corps officials have yet to acknowledge any impropriety in the witch hunt.

² These figures indicate the Service with the most cases involving particular violations. The figures do not reflect, as a percentage of total active force in each Service, which Service had the highest rate of cases with violations of "Don't Ask, Don't Tell, Don't Pursue, Don't Harass."

12. An Air Force memorandum dated November 3, 1994, violates (1) "Don't Pursue" by directing inquiry officials to start actions "against other military members" "discovered" during their investigations, and (2) "Don't Tell" by directing inquiry officials to interrogate "parents, siblings and close friends" to obtain information to be used against servicemembers for purposes of discharge.
13. A U.S. Navy memorandum dated June 1994 violates "Don't Pursue" by (1) instructing attorneys to conduct their own off-line inquiries into the private lives of servicemembers; and (2) by expanding the scope of an investigation from a status case to an acts case, suggesting that inquiry officials find "final evidence" of acts in cases involving statements of sexual orientation only.
14. Despite conceding violations of "Don't Ask, Don't Tell, Don't Pursue," government officials have argued at discharge boards that violations of policy are not grounds for the servicemember to object.
15. The rate of discharge of homosexual servicemembers did not decrease in fiscal year 1994. In fact, the rate of discharge for 1991, 1992, 1993 and 1994 has remained constant.
16. At least 15 homosexual servicemembers have served openly for one to three years with only a good effect on their unit.

SLDN received over 400 phone calls for assistance, and monitored 188 cases covering each branch of service worldwide. The cases SLDN monitored are just the tip of the iceberg and suggest a systemic problem that will require steps by the Department of Defense to ensure that its actions are consonant with law.

All findings are well-documented. Memoranda, servicemembers and attorneys who worked on the cases reported are available upon request.

CONDUCT UNBECOMING CONTINUES THE FIRST YEAR UNDER "DON'T ASK, DON'T TELL, DON'T PURSUE"

Introduction

February 28, 1995 marks the first anniversary of "Don't Ask, Don't Tell, Don't Pursue," the military's new regulations on homosexuals. There are two striking results during the past year: one good and one bad.

The good news results not from the policy but from federal court and military commands with strong leadership. In cases where courts have allowed lesbian and gay servicemembers to serve openly, there have been no problems. In fact, the opposite has proven to be the case. As reported in U.S. News & World Report on February 6, 1995 in regard to Petty Officer Keith Meinhold, who won his case before the Ninth Circuit Court of Appeals last year, "Meinhold...has been not only tolerated by the majority of his colleagues - he has been embraced by them." Meinhold's flight crew was recently named the most combat effective in the Pacific fleet.

Colonel Margarethe Cammermeyer has also received strong support: after she won her court case in June 1994, she immediately received calls from her unit welcoming her back to the Washington State National Guard. Petty Officer Mark Phillips was given a chocolate cake by his crewmembers on the one-year anniversary of his coming out to his unit. And, Captain Rich Richenberg's co-workers threw a surprise birthday party for him in February 1995 as he continues to fight to stay in the military. These servicemembers are only a handful of those who have been serving openly for the past one to three years, and who, as clear documentation shows, have had a positive impact on their unit's good order, discipline and morale.

The bad news results from the implementation of "Don't Ask, Don't Tell, Don't Pursue" in the field. The new policy promised to stop questions about sexual orientation, witch hunts and harassment. Through a lack of proper training and willful disregard of the new policy, many commanders continue to ask, witch hunt and harass suspected homosexual servicemembers in direct violation of the new policy. The result has been that the discharge rate for homosexuals in fiscal year 1994 has not declined and the cost of training replacements for those discharged has exceeded \$17.5 million. The costs of conducting investigations, holding discharge hearings, administering the new policy and defending the policy in federal court are far higher.

This report, "Conduct Unbecoming Continues: The First Year Under "Don't Ask, Don't Tell, Don't Pursue"" details four specific violations of the new policy occurring in the field. The report documents cases where military officials have (1) asked servicemembers about their sexual orientation; (2) punished statements of sexual orientation that are permissible under the new policy or expanded the situations where telling is prohibited; (3) pursued or witch hunted suspected homosexuals; and (4) condoned harassment based on sexual orientation. This report does not include other clear violations, including situations, among others, where suspected homosexuals receive improper or inadequate legal representation within the military; are treated in an unevenhanded manner with respect to potential criminal prosecution; and are "outed" to their units and family by commanders in direct violation of the Privacy Act.

This report is based on violations of "Don't Ask, Don't Tell, Don't Pursue" documented by Servicemembers Legal Defense Network (SLDN), located in Washington, D.C. SLDN is the sole national legal aid and watch dog organization for those targeted by the military's new

policy on homosexuals, and the only means currently available to document abuses. The Department of Defense has instituted no method of identifying and correcting abuses of the new policy.

SLDN's documented cases reflect only the tip of the iceberg of all servicemembers affected by the "Don't Ask, Don't Tell, Don't Pursue" policy. Many servicemembers are discharged by the Department of Defense for homosexuality without ever having contacted SLDN, and others are removed from service for homosexuality through ulterior means, such as denial of reenlistment. SLDN's outreach is limited by its scarce resources, but even with such constraints, it received over 400 calls for direct assistance in the past year, suggesting that SLDN's figures represent only a fraction of the total violations of the new policy.

SLDN is headed by two attorneys, C. Dixon Osburn and Michelle M. Benecke. Mr. Osburn is a former legal/policy advisor to the Campaign for Military Service, the national coalition that worked to lift the ban legislatively. Mr. Osburn holds a J.D. and M.B.A. from Georgetown University, and an A.B. from Stanford University. Ms. Benecke is a former Captain and Battery Commander in the U.S. Army, and former staff attorney at the Campaign For Military Service. She has written extensively on the military policy's disproportionate impact on women. Ms. Benecke is a graduate of Harvard Law School and holds a B.A. from the University of Virginia.

Background/Definition of Terms

From March 1, 1994 to the present, over 400 servicemembers contacted SLDN needing assistance. The servicemembers were typically between the ages of 18 and 25 and had limited financial resources. The types of assistance requested ranged from basic information about

how to comport one's behavior under the new policy to intensive efforts to stop witch hunts or prevent death threats from being carried out. Of the 188 calls requiring intervention, SLDN's staff attorneys, in conjunction with aides in Republican and Democratic Congressional offices and with cooperating attorneys from SLDN's network of over 200 attorneys from the finest law firms in the country, carefully monitored and documented violations of the "Don't Ask, Don't Tell, Don't Pursue" policy.

This report documents common command violations of four regulatory provisions in the "Don't Ask, Don't Tell, Don't Pursue" policy. Those provisions are called, not surprisingly, "Don't Ask," "Don't Tell," "Don't Pursue" and "Don't Harass." "Don't Harass" was never added to the common title of the new policy, but is nevertheless an explicit component of the policy.

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

"What is Don't Tell?" With respect to "Don't Tell," the new regulations do not prohibit all statements about sexual orientation. Indeed, the new regulations do not forbid statements made to lawyers, chaplains, spouses or security clearance personnel. In violation of the new policy, however, security clearance personnel continue to punish servicemembers who state they are gay by removal of or protracted delays in granting the clearances or, also in direct violation of the new policy, by threatening servicemembers with the denial of their clearance if they do not confess to their sexual orientation and any sexual activity. Additionally, the Pentagon has expanded "Don't Tell," in ways that the public is not aware, to include statements to family members, close friends, doctors and mental health professionals. Thus, violations of "Don't Tell" include incidents where statements to family members, close friends, doctors and mental health professionals and security clearance personnel have resulted in discharge or the threat of discharge of homosexual servicemembers.

"What is Don't Pursue?" The "Don't Pursue" portion of the new regulations states that (1) "sexual orientation is a personal and private matter," (2) "inquiries shall be limited to the factual circumstances directly relevant to the specific allegations," and (3) "credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a service member has engaged in homosexual conduct." Additionally, it is widely understood that the new regulations would "bring an end" to witch hunts, as President Clinton stated on July 19, 1993, and General Colin Powell reiterated upon the issuance of the new regulations. Some military commands continue to pursue homosexual or suspected homosexual servicemembers in a variety of ways. Violations of "Don't Pursue" include (1) witch hunts, (2) improper searches and seizures, (3) expanding

investigations beyond the instant allegation, and (4) misapplication of the credible information standard.

While there is some overlap among these four prongs, each prong can be roughly defined as follows. Witch hunts are situations where inquiry officials ask servicemembers or take other affirmative steps to identify suspected homosexuals or those they suspect have engaged in homosexual acts. "Improper searches and seizures" include illegal, warrantless searches, as well as zealous investigations where commanders confiscate personal and private property such as diaries and letters. "Expanding investigations beyond the instant allegation" includes situations, among others, where a servicemember who has been alleged to have engaged in a homosexual conduct on a specific occasion is investigated for any additional conduct in which the servicemember may have engaged in order to fish for information that could lead to criminal prosecution or lower discharge characterization. "Misapplication of the credible information standard" contemplates situations where a commander has not seriously evaluated the "source and the surrounding circumstances" of the allegations as required by the new regulations. Examples include situations where the commander has failed to examine or take into account (a) the retaliatory motives of an individual making the allegations, (b) the lack of consistency and coherence in the allegations, (c) recanted testimony, (d) exculpatory evidence, and (e) inadvertent discoveries in which no one knows about a servicemember's sexual orientation except through, for example, the discovery of a private letter by a commander during a surprise inspection.

"What is Don't Harass?" Lastly, the "Don't Harass" portion of the new regulations makes explicit that "the Armed Forces do not tolerate harassment or violence against any

servicemember, for any reason." Violations of "Don't Harass" include death threats, physical harassment and verbal harassment made against servicemembers who are or are suspected of being homosexual. "Don't Harass" violations also include downgraded performance evaluations, denial of reenlistment and failure to promote due to sexual orientation.

Findings

SLDN CASES BY SERVICE

Service	Total # Cases	% Total Cases	Men	Women	Gender n/a
Air Force	49	26%	38	9	2
Army	55	29%	31	24	0
Navy	68	36%	56	11	1
Marine Corps	15	8%	12	3	0
Coast Guard	1	1%	1	0	0
TOTAL	188	100%	138	47	3

The cases received by SLDN spanned every branch of military service and were geographically dispersed. 36% of SLDN's cases came from military personnel in the U.S. Navy; 29% came from the U.S. Army; 26% from the U.S. Air Force; 8% from the U.S. Marine Corps; and 1% from the U.S. Coast Guard. Of the 188 cases followed, 138 servicemen contacted SLDN for help (73%), and 47 servicewomen contacted SLDN (25%). The number of women who contacted SLDN is disproportionate to their representation among the total active armed forces.

**SLDN CASES INVOLVING VIOLATIONS OF
"DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS"
BY SERVICE
(Total #, %)**

Service	Don't Ask	Don't Tell	Don't Pursue	Don't Harass
Air Force	8 (21%)	5 (28%)	24 (37%)	15 (24%)
Army	11 (30%)	9 (50%)	16 (25%)	17 (27%)
Navy	13 (35%)	2 (11%)	15 (23%)	23 (37%)
Marine Corps	4 (11%)	1 (5.5%)	10 (15%)	6 (10%)
Coast Guard	1 (3%)	1 (5.5%)	0 (0%)	1 (2%)
TOTAL	37 (100%)	18 (100%)	65 (100%)	62 (100%)

Of SLDN's 188 cases under the new policy, SLDN documented 37 cases where there were violations of "Don't Ask" (20% of its cases); 18 cases where there were violations of "Don't Tell" (18% of its cases); 65 cases where there were violations of "Don't Pursue" (35% of its cases); and 62 cases where there were violations of "Don't Harass" (33% of its cases). See Chart on the following page.

The U.S. Navy and U.S. Army accounted for the most cases involving violations of "Don't Ask," accounting for 35% and 30% of such cases respectively. The U.S. Army accounted for the most cases misapplying or redefining "Don't Tell," accounting for 50% of all such cases. The U.S. Air Force accounted for the most cases involving violations of "Don't Pursue" accounting for 37% of all such cases. The U.S. Navy accounted for the most cases involving violations of "Don't Harass," accounting for 37% of all such cases.

The total number of cases involving violations does not total the 188 cases received by SLDN because some cases did not involve any regulatory infractions by military officials. Thus, the total number of cases involving violations reported above is 182.

The total number of cases involving violations also does not take into account multiple violations occurring in the same case. In the past year, SLDN documented 65 violations of "Don't Ask," 21 violations of "Don't Tell," 114 violations of "Don't Pursue," and 140 violations of "Don't Harass," for a documented total of 340 overall violations during the past year. The multiple violations indicate that in cases where there is one incident of asking, pursuit or harassment, others are likely.

It is clear that some commanders continue to violate "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" in a myriad of ways. A few examples of how the new policy on homosexuals is being improperly implemented in the field are the following.

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

Asking direct questions about sexual orientation. One Chief of Boat asked a sailor "You not going to tell me you're a f___ faggot, are you?" In Japan, CID Special Agent Jose Abrante asked a marine point blank: "Are you gay?" In Florida, recruiters asked one recruit whether she is homosexual five times, both verbally and through use of outdated written forms. In the Washington, D.C. area, a security clearance investigator asked, "I'm not going to ask you if you're homosexual, but if I did ask, how would you respond?"

Asking surrogate questions about sexual orientation. An inquiry official asked a male Sergeant, "Do you find men attractive?" An executive officer asked a PFC whether she had "homosexual tendencies." A security clearance investigator asked an Army Major about her female roommate, "Do you have a physical relationship with your roommate?" Another security clearance investigator at Ft. William, AL, asked during an interview whether the individual knew "any homosexuals?"

Asking inadvertent questions about sexual orientation. Out of concern, a Naval commander asked one his unit members why he had not reported to work one day. The servicemember honestly told him that he and his male partner had a family emergency, and was subsequently discharged for his statement. Another commander asked why a servicemember's security clearance had been held up. The reason was that the member had followed regulations and was

honest with the investigators about his orientation.

Violations of "Don't Tell." Violations of "Don't Tell" include using statements from family members, doctors and psychologists and security clearance personnel for purposes of discharge.

Using statements from family members. Air Force Capt. Earl Brown's parents were asked in detail about their son's sexual orientation and statements made by Capt. Brown to his mother and father were included among the statements for which he was to be discharged. An Air Force doctor's mother says she was shocked when an inquiry official contacted her to ask about her son's sexual activities. Indeed, the Department of Air Force issued a memorandum on November 3, 1994 specifically directing inquiry officials to "interview...parents and siblings" to obtain information to be used as a basis for discharge.

Using statements from doctors and psychologists for purposes of discharge. Corporal Kevin Blasing, with the Marine Security Force in Charleston, South Carolina, was turned in by his Naval psychologist for asking questions about sexuality during private counseling sessions. His commander, Lt. Col. Martinson, ordered that he face discharge proceedings despite advice from his legal advisors not to proceed. Another servicemember in the Air Force was advised by his psychologist that disclosure of his sexual orientation would be conveyed to his commanding officer for purposes of discharge; the servicemember, however, stated that his priority was mental health services and that he could not obtain full and adequate treatment without some discussion of issues related to his sexuality. He now faces discharge.

Using statements made during security clearances for purposes of discharge. In violation of the new policy, security clearance personnel continue to punish servicemembers who state they are gay by removal of or protracted delays in granting the clearances. In direct violation of the new policy, servicemembers are also threatened with the denial of their clearance if they do not confess to their sexual orientation and sexual activity.

Violations of "Don't Pursue." Violations of "Don't Pursue" include (1) witch hunts, (2) improper searches and seizures, (3) expanding inquiries beyond the instant allegations, and (4) misapplying the credible information standard.

Witch hunts: Asking about the orientation and conduct of others. SLDN documented 15 actual or attempted witch hunts under the new regulations where commanders and inquiry officials asked military members to identify other servicemembers who were or were suspected to be homosexual. In Japan, over twenty-one servicemembers were questioned regarding the sexual orientation and private lives of their co-workers. At New River Station, North Carolina, immediately after briefing his unit about the military's new policy on March 1, 1994, a marine Master Sergeant told his troops that, despite the regulations, they had "a moral duty and an obligation" to turn in suspected homosexuals. At Pope Air Force Base, North Carolina, a commander reportedly asked for a list of all Combined Federal Campaign (CFC) contributors to gay and AIDS organizations; the commander dropped his order once the incident was publicly reported.

Improper searches and seizures. Overzealous commands continue to conduct or condone illegal searches and seizures of items belonging to suspected homosexual servicemembers. Additionally, they continue to confiscate personal and private items, as well as circumstantial evidence, that should have no bearing on an inquiry, per regulation. Commanders and inquiry officials routinely seize personal diaries, private letters, address books, personal computers, erased computer files, photos of friends, copies of popular gay-themed books and videos like "Torch Song Trilogy," HIV pamphlets, academic notes from classes on human sexuality, and, in one servicemen's case, even a pair of men's platform shoes.

Expanding inquiries beyond the "instant allegations." Commands routinely expand the scope of an investigation beyond the instant allegations. Thus, a person who has admitted to being gay will be asked to additionally confess to homosexual acts in order to gather information that could lead to criminal prosecution or lower discharge characterization. Servicemembers who are under investigation for allegations of homosexual acts are often questioned about other acts beyond the instant allegation. Inquiry officials in North Carolina, for example, asked more than 25 servicemembers to speculate about the sexual orientation and activities of one marine, beyond the two allegations she faced.

Misapplying credible information standard. A seaman faces discharge after his roommate, while snooping in the seaman's personal desk, discovered and read several letters from which he concluded that the seaman might be gay, and turned the letters over to the command. In another case, a seaman was asked by his superior if he is gay and he answered truthfully; the command has decided to proceed with a discharge board despite the clear "don't ask" violation.

Violations of "Don't Harass." Violations of "Don't Harass" include (1) death threats based on sexual orientation, (2) targeted physical and verbal harassment based on sexual orientation, and (3) downgraded performance evaluations, denial of reenlistment and failure to promote due to sexual orientation.

Improper response to death threats. SLDN received 10 cases where servicemembers were threatened with their lives for being or being suspected of being gay. One commander in Misawa, Japan, Captain Miller reportedly told a heterosexual servicemember "You're going to die," after the servicemember's recommended separation for alleged homosexual conduct had been overturned. A new recruit at Parris Island was told she was not "going to walk out of here alive" if she reported being physically assaulted for being suspected of being lesbian. A seaman reports finding a noose next to his berthing onboard ship having previously found a note scrawled on a magazine photo that read "Die Fag." The Pentagon has established no means whereby servicemembers can report death threats with a guarantee that the report will not be used as a basis to start an investigation against them.

Improper response to harassment (physical/verbal) and extortion.

As with death threats, the Pentagon has established no means whereby servicemembers can report harassment with a guarantee that the report will not be used as a basis to start an investigation against them. SLDN has received 69 reports of targeted physical and verbal abuse based on their perceived orientation. A majority report command climates rife with derogatory comments about gays. One servicemember reports that someone gouged his new car with keys and scrawled into the paint the word "fag."

Downgraded performance evaluations, denial of reenlistment and failure to promote due to sexual orientation. Lt. Col. Trask admitted on the record at a discharge board that he downgraded the evaluation of and recommended against promotion for Captain Rich Richenberg, an officer who ranked in the top ten percent of all Air Force officers prior to Lt. Col. Trask's actions, solely because Richenberg is gay. After Corporal Kevin Blaesing, Marine of the Quarter for his unit, succeeded in having his recommended separation overturned, his commander, Lt. Col. Martinson, downgraded his performance evaluations contrary to the recommendations of Blaesing's supervisors and gave Corporal Blaesing the lowest possible recommendation for reenlistment, thus effectively killing Blaesing's opportunity to reenlist and continue his military career.

Notably, there is little to no harassment of open lesbian and gay service personnel who have remained in service due to court order or discharge board recommendation. In fact, all documentation shows that those individuals enjoy the wide support of their colleagues, co-workers and commands.

These cases make clear that either through a lack of training or willful disregard of the new policy, some commanders continue to ask, pursue and harass servicemembers in direct violation of the new policy.

DOD DISCHARGES OF SERVICEMEMBERS FOR HOMOSEXUALITY

Fiscal year	Air Force	Army	Navy	Marine Corps	Total	% Total Armed Forces
1991	151 (15.9%)	206 (21.7%)	545 (57.4%)	47 (5.0%)	949 (100%)	.04
1992	111 (15.7%)	138 (19.5%)	401 (56.6%)	58 (8.2%)	708 (100%)	.04
1993	152 (22.2%)	156 (22.9%)	334 (49.0%)	40 (5.9%)	682 (100%)	.04
1994	180 (30.1%)	136 (22.8%)	245 (41.0%)	36 (6.0%)	597 (100%)	.04
Total	594	636	1525	101	2936	.04

The result of the widespread violations is that the rate of discharge for homosexuals has not declined, as expected. Despite the belief that the interim and new regulations would be as President Clinton remarked, "a major step forward," the rate of discharge of homosexuals from

1991 to 1994 has remained constant at .04% of the total active force.

The distribution of discharge cases by service as reported by the Pentagon, however, has markedly changed for two services. The Navy's percentage of homosexual discharge cases compared with other services has declined from 57.4% of total discharges in 1991 to 41% of total discharges in 1994. On the other hand, the U.S. Air Force has contributed more to total discharges during the same time frame. In 1991, the U.S. Air Force accounted for only 15.9% of total homosexual discharges; in 1994, the U.S. Air Force accounted for 30.1% of total homosexual discharge cases. The Pentagon's figures suggest that the Air Force has significantly increased its efforts to target and discharge homosexual servicemembers over the last four years, and especially during fiscal year 1994.

The dollar costs of the military's policy on homosexuals continues to be high. Based on figures the Pentagon supplied to the General Accounting Office in 1992, the last time the Pentagon provided such information, the cost of training servicemembers to replace those discharged for homosexuality totaled \$17.5 million in fiscal year 1994 (See Table on following page). The costs from 1991 to 1994 totaled \$86.5 million. These figures are not adjusted for inflation and do not include the costs to investigate servicemembers, the costs of holding and preparing for administrative discharge hearings or the costs of administering the policy. Nor do the figures include the significant cost of defending the policy in federal court. SLDN has no independent estimates of the costs of the DOD policy.

**COSTS OF TRAINING REPLACEMENTS FOR SERVICEMEMBERS
DISCHARGED UNDER HOMOSEXUAL CONDUCT POLICY**

Year(s)	# Discharged	Costs ³
1980-1990	16,919	\$498,555,244
1991	949	\$27,964,355
1992	708	\$20,862,764
1993	682	\$20,096,617
1994	597	\$17,591,907
TOTAL	19,855	\$585,070,887

In summary, it is clear that many military commanders continue to ask, pursue and harass servicemembers in direct violation of the new policy. Evidence of the continuing violations comes not only from servicemembers' cases documented by SLDN and its cooperating attorneys, but from memoranda issued by the Department of the Air Force, Department of Navy and others. The question is why these abuses have occurred.

³ Costs are based on figures and percentages reported in a General Accounting Office study, Defense Force Management: Statistics Related To DOD's Policy on Homosexuality (June 1992). The GAO reported that the Department of Defense discharged 16,919 servicemembers for homosexuality from 1980-1990 at a cost of \$498,555,244. The costs figures for 1991-1994 are based on the ratio of discharges in year x divided by the costs in year x set equal to the ratio of discharges in years 1980-1990 divided by the costs in years 1980-1990. *The cost figures have not been adjusted for inflation.*

Analysis

Reasons for command violations. There are four common reasons for command violations of "Don't Ask, Don't Tell, Don't pursue, Don't Harass": (1) commanders and others lack information; (2) commanders and others do not understand the policy; (3) insubordination by commanders, investigators and prosecutors; and (4) commanders and others have no incentive to learn or follow the rules.

Commanders and Other Leaders Lack Information. Some command violations can be attributed to lack of information about the new policy. A major problem has been inadequate distribution of the new regulations. Throughout the past year, numerous commanders, defense attorneys and servicemembers have contacted SLDN in search of current copies of the DoD and service regulations because they were not available in their commands. As recently as three weeks ago, SLDN was required to ship these regulations to an overseas trial defense office.

Commanders and Others do not Understand the Policy. Other command violations stem from insufficient training, and therefore understanding, of the policy. Even the Pentagon concedes that training on the new policy has been handled less diligently than other personnel policies, such as those on sexual harassment.* The most striking gap in training has been the failure of the Department of Defense (DoD) to issue sufficient guidance regarding the intent of the new policy to military leaders as well as servicemembers. This is an especially

* Art Pine, "Few Benefit From New Military Policy on Gays," Los Angeles Times, A1, A8.

critical oversight in light of the broad discretion afforded commanders under the policy. Without an understanding of the intent of the policy, many commanders and prosecutors have focused their efforts on how to skirt the letter of the regulations.

Insubordination by Commanders, Investigators and Prosecutors. An alarming number of command violations documented by SLDN result from outright insubordination, not lack of information or inadequate training. These violations are fueled, in part, by a climate of backlash in many units. The controversy over President Clinton's proposal to lift the ban charged the atmosphere in the military and focused unprecedented attention on the private lives of servicemembers. Since that time, everyone from private to general officer has speculated about who in the ranks might be gay. In this climate, many commanders and others have taken the Congressional vote against lifting the ban as a license to go after those whom they suspect are gay. As Lawrence J. Korb, former Assistant Secretary of Defense for Personnel and Readiness under President Reagan, recently stated, "I think the military feels they have beaten Clinton back on this issue and they're not going to change."⁵ As a result, many servicemembers are actually worse off than before.

Commanders Have No Incentive to Learn or Follow the Rules. A major problem is that the Department of Defense has established no means to monitor cases and to correct violations and misapplications of the policy. Although Department of Defense regulations provide that commanders and others who violate the policy may be disciplined, this provision has been roundly ignored. SLDN knows of no commander or other military member who has yet been disciplined for abusing the policy, despite numerous complaints.

⁵ Id.

The military's treatment of servicemembers who are harmed by command violations of the policy exacerbates the problem of accountability. Servicemembers presently have no official means of redress for command violations. As just one example, a young sailor is currently being discharged solely because he responded truthfully to his supervisor's direct question about his sexual orientation, even though the command admitted on the record that the supervisor's action violated the new policy. To date, DoD and the services have been unwilling to provide a common sense resolution to this and similar situations.

The clear message to commanders is that they do not have to take the new policy seriously and that, if so inclined, they may violate it with impunity.

Analysis of "Don't Ask" Violations. "Don't Ask" is a simple, well-publicized mandate. Unlike some other provisions, there is no ambiguity in this part of the regulations. Nevertheless, commanders and other leaders continue to ask servicemembers about their sexual orientation, often repeatedly. While a few commanders have done so inadvertently, the overwhelming majority have violated "Don't Ask" through direct questions about sexual orientation and surrogate questions designed to circumvent the letter of the regulations. The facts and circumstances surrounding these violations indicate that almost all were deliberate. The degree of thought and ingenuity evident in devising many of the surrogate questions further indicates a climate of insubordination in many commands.

Analysis of "Don't Tell" Violations. Most military leaders fail to understand that the new policy does not preclude all statements regarding sexual orientation and that it recognizes

a zone of privacy for all servicemembers.⁶ Over the past year, military leaders have established two clear trends that violate "Don't Tell." They have (1) punished statements of sexual orientation that are permissible under the new policy, and (2) expanded the situations where telling is prohibited in order to reach the most private spheres of servicemembers' lives.

The most prominent cases involving the first trend have occurred in the context of security clearance investigations. Security clearance regulations encourage gay servicemembers to be forthcoming about their sexual orientation and to reveal whether their family and close associates are aware of it. The regulations state that "information about homosexual orientation or conduct obtained during a security clearance investigation will not be used...in separation proceedings." The regulations further state that a servicemember may decline to answer questions about sexual orientation without adverse consequence. In reality, however, security clearance personnel continue to threaten servicemembers with denial of clearances for either stating or declining to state their sexual orientation. Denial of a security clearance effectively kills the servicemember's career. Additionally, some commands have attempted to use the information obtained during security clearance interviews for purposes of discharge, in direct violation of the new policy.

The chief problem with the security clearance regulations is that they are inconsistent with the other sections of the military's policy on homosexuals. Those charged with implementing the security clearance regulations in light of the other policy provisions do not

⁶ In announcing the new policy, President Clinton charged DoD civilian and military leaders to "carry out this policy with fairness, with balance and with due regard for the privacy of individuals." "Text of President Clinton's Announcement of the New Policy," Washington Post, July 20, 1993, A12. The new regulations also state that "sexual orientation is a personal and private matter."

know whether or not to ask about sexual orientation and how to respond to the answers forthcoming. Servicemembers do not know how or if to respond to questions about sexual orientation, given the regulations' conflicting guidance. Thus, confusion results and homosexual servicemembers typically receive the short end of the stick.

Servicemembers and their families have also been shocked by the Department of Defense's expansion of situations where telling is prohibited. At least some commanders have violated this prong of "Don't Tell" as a direct result of guidance from the top levels of the Pentagon. A Department of the Air Force memo from Judge Advocate General Headquarters to all Staff Judge Advocates and military judges dated November 3, 1994 actually instructs inquiry officers to question parents about the sexual orientation and activities of their children to obtain information for purposes of discharging their sons and daughters. The memo also instructs officers to interrogate close civilian friends and mentors, such as high school guidance counselors, to determine whether a servicemember has ever discussed their orientation.

Additionally, the Department of Defense instructs psychologists to turn in servicemembers who seek private counseling about their sexual orientation. In response to public outcry in the wake of one case, the Department of Defense General Counsel's office simply announced that the military would not treat statements to psychologists as privileged and confidential. The response entirely brushes aside the issue of whether such private statements are the kind of statements contemplated as a grounds for discharge under the new policy.

This attempt to enforce a gag rule in the context of communications with family and professional health care providers is chilling. Most Americans would be appalled to learn that

their tax dollars are being spent on such unprecedented invasions into relationships that are generally considered private and confidential.

A related problem is the "outing" of gay servicemembers by their commanders. Although a detailed analysis is outside the scope of this report, it should be noted that some commanders have told their units, and even a servicemember's spouse and parents, that the servicemember was under investigation for homosexual conduct, in direct violation of the Privacy Act. "Outing" is not only a violation of servicemembers' privacy, but it has also jeopardized the safety of servicemembers in commands where harassment is tolerated.

Analysis of "Don't Pursue" Violations. The words "Don't Pursue" do not actually appear in the policy or regulations. Instead, the concept is communicated through two primary standards. First, commanders or investigators may not initiate an inquiry or investigation unless, considering the source and surrounding circumstances, they have credible evidence that a servicemember has engaged in homosexual conduct. Information based on opinion, rumor and capricious claims does not constitute credible information. Second, inquiries and investigations must be limited to the scope of the instant allegation.

"Don't Pursue" was intended, in part, to stop the military's infamous witch hunts of suspected homosexuals. Like "Don't Ask," this concept has been well-publicized and communicated through the ranks. General Colin Powell testified before the Senate Armed Services Committee that the new regulations held forth that "We won't witch hunt. We won't chase. We will not seek to learn orientation."⁷ Nevertheless, SLDN documented fifteen

⁷ Federal News Service, Testimony Before Senate Armed Services Committee, July 21, 1993.

attempted and actual witch hunts over the past year. Most were initiated in deliberate violation of the new policy.

Among those commanders who wish to follow the regulations, most do not comprehend the actual standards of "Don't Pursue." Some commanders know that they must be able to articulate a basis to begin an inquiry against a servicemember. Army and Air Force commanders are supposed to write down their justification for beginning an inquiry. A significant problem, however, is that the vast majority of commanders do not know what constitutes credible information. The policy itself provides little guidance on how to interpret this inherently subjective and vague standard.

A major consequence is that commanders apply the policy inconsistently throughout the services and even in the same commands. Additionally, commanders routinely initiate inquiries and investigations against servicemembers based only on hearsay or circumstantial evidence, contrary to the clear intent of the regulations. These trends are evident in the following examples.

In the case of Corporal Blaesing, who asked questions of his psychologist, his first commander did not consider his questions as evidence of homosexual conduct and allowed him to continue service. When this commander later retired, his successor revived the case, notwithstanding the fact that the Navy psychologist testified that she did not know Blaesing's orientation and that he had not stated it to her. As a result, Blaesing was forced to face discharge proceedings and was recommended for separation.

In identical cases from the Air Force, two commanders inadvertently discovered private letters belonging to one of their airmen that contained language that could be interpreted as

hints about homosexuality. One commander made no issue of the letters and allowed the airman to stay; the other investigated and discharged the airman based solely on the letters.

SLDN has also found that most commanders are not even aware of the standard to limit inquiries to the scope of the instant allegations. Thus, even where inquiries are properly initiated, they inevitably become fishing expeditions into all aspects of a servicemember's private life. In the case of Lance Corporal Elena Martinez, an inquiry that was not initiated properly, her supervisor directly solicited co-workers to make allegations of homosexual conduct against her. Two male marines lodged allegations that Martinez had danced with both men and women at a popular local club and that, on another occasion, she had given another woman a goodbye peck on the cheek. Based on this report, the command initiated an inquiry in which they questioned over twenty-five co-workers and civilian acquaintances, including former landlords, inviting them to speculate about every detail of Martinez' private life. Further, her supervisor directly ordered co-workers to monitor and report on Martinez's social activities. Even if the basis of this inquiry had been legitimate, the command's wide-ranging campaign into Martinez's personal life clearly violated the requirement to limit inquiries to the scope of the instant allegation.

Many commanders and investigators use this tactic of expanding investigations beyond the scope of the instant allegation in a deliberate effort to dig up information to support a less than honorable discharge characterization or criminal charges against servicemembers who are or are perceived to be gay.

Analysis of "Don't Harass" Violations. Like "Don't Ask," the mandate against harassment is unambiguous. It forbids harassment of any kind against any servicemember.

This mandate is not unfamiliar to commanders. In the wake of the Tailhook scandal, it has become a standard order. Nevertheless, SLDN's cases show that harassment and death threats against suspected gay servicemembers are worse than ever.

Poor leadership is the primary reason for the high incidence of harassment. A majority of servicemembers who have called SLDN report that their supervisors have witnessed incidents of harassment and have taken no steps to correct it. In an alarming number of SLDN's cases, members of the chain-of-command have actually participated in harassment against suspected gays. In addition, some commanders have retaliated against gay servicemembers through downgraded performance evaluations or by denying them reenlistment. These actions send a clear message that harassment is condoned.

SLDN's data also show a high correlation between harassment and "Don't Pursue" violations. In units where commanders pursue gays, servicemembers report that they feel great pressure to prove that they are not gay. One way to do so is to make derogatory comments about gays in the company of co-workers and to directly harass other servicemembers who are perceived as gay. Servicemembers report that, if they do not participate in such activities, they are quickly labeled as gay and harassed.

In light of these findings, it is not surprising that the majority of servicemembers who have called SLDN report that derogatory comments and harassment of suspected gays has been a regular occurrence in their units since the national debate.

Servicemembers who wish to complain about harassment or death threats face significant obstacles. There is no guarantee that commands will not use a report of harassment or death threats as a basis for investigation and discharge of the threatened servicemember.

At best, servicemembers who have dared to file complaints have simply been ignored by their chain-of-command. As a result of the lack of response and threat of discharge, most incidents of death threats and harassment go unreported.

In stark contrast, there has not been a problem with harassment in those units with openly gay servicemembers, many of whom are serving by court order. Nor has there been a problem in units with commanders who have made it clear to their troops that they will not tolerate harassment. This suggests the truth of the old maxim that "Troops follow the flag." In short, harassment occurs because of a unit's leadership, not despite it.

Conclusion/Recommendations

SLDN concludes that many military officials continue to ask questions about sexual orientation, conduct witch hunts and condone harassment of lesbian and gay servicemembers in direct violation of "Don't Ask, Don't Tell, Don't Pursue." SLDN further concludes that the chief reasons for the continuing violations are lack of information, lack of adequate training and guidance regarding the new policy, and in some cases, willful disregard of military policy by commanders and others.

SLDN recommends that the Department of Defense ensure the proper implementation of "Don't Ask, Don't Tell, Don't Pursue" by providing (1) adequate information to and training for all servicemembers about the new policy, (2) common sense remedies to servicemembers who are harmed by command violations, and (3) clear accountability for violations of the policy by military officials.

Provide Adequate Information and Training. The Department of Defense should ensure that full DOD Directives, Guidance and Service Regulations reach the field. Attorneys and commanders often possess only the message text of the service regulations sent to the field on February 28, 1994, with no guidance on how to interpret those regulations. At a minimum, military officials should have the full DOD Directives, Commander's Guidance, DOD Guidelines dated July 20, 1993, and all DOD and service guidance necessary to interpret the regulations.

Additionally, the Department of Defense should clearly and strongly communicate the intent of the new policy to stop anti-gay harassment and pursuits of suspected homosexual servicemembers. At present, the intent of the new policy has not been adequately disseminated to the field and, thus, is not widely known or understood. In order to apply the legal standards of the new policy, commanders must, as with all regulations, understand the "commander's intent" behind the policy itself. Advisors to the command, particularly military attorneys and Inspectors General, must also understand its intent. Clear intent is vital given the current hostile command climate in many commands, the wide discretion afforded commanders and the ambiguity of some policy standards. At a minimum, all existing command and advisory channels should be vigorously utilized to communicate and reinforce the intent of the policy. All servicemembers and unit leaders need to be trained on the policy and the expectations for their behavior.

The Department of Defense should also issue further guidance on legal standards. Even armed with all existing materials, there is still a clear need for more information on the meaning of the new standards. The credible information standard needs particular elaboration.

Credible information should be defined to exclude reports of harassment or death threats, information obtained by the command through illegal means, use of private statements to parents, siblings and psychologists, or inadvertent disclosures, such as when a supervisor discovers a letter after snooping through the personal possessions of a unit member.

Provide Common Sense Remedies for Command Violations. "Don't Ask, Don't Tell, Don't Pursue" means nothing if servicemembers must pay the price for improper questions, witch hunts, and harassment. Enforcement of military regulations and acts of law is not discretionary. Thus, homosexual servicemembers who are discovered through improper methods should be afforded a common sense remedy, like other victims of command impropriety. Decisionmakers, for example, are not permitted to disregard claims by women that they have been retaliated against for reporting sexual harassment and rape. Where claims are substantiated, they must take steps to correct the retaliation.

The Department of Defense should establish measures to ensure command compliance with the new regulations. Advisors to the command, including military prosecutors and Inspectors General, must understand their role to ensure that credible information exists at the outset of an inquiry or investigation, not merely to justify poor, let alone illegal, actions by the command. Where an inquiry is appropriate, JAGs need actively to advise inquiry officers, who typically have no legal training or experience with the regulations, on the parameters of the inquiry.

The Department of Defense should also order Staff Judge Advocates to monitor violations by investigative agents. SJAs should make clear to base MCIOs that investigative violations will not be tolerated and ensure that agents are trained in proper and improper

investigative tactics.

The Department of Defense should also issue strong, clear guidance regarding harassment and threats. The one sentence in the "Don't Ask, Don't Tell, Don't Pursue" regulations forbidding harassment has proven inadequate. A top-down policy of zero tolerance is required instead. As a minimum, servicemembers must be able to report death threats and harassment and their underlying basis without fear that the report will be turned against them for purposes of investigation and discharge. Based on SLDN's experience, many complaints are likely to require disclosure of a servicemember's sexual orientation or details of their private lives. For this reason, and because even legitimate questions going to a servicemember's safety can result in "incriminating" answers, complainants should be exempted from discharge and investigation and should be afforded counsel. It is reasonably foreseeable that if the Department of Defense does not take corrective actions now, deaths of actual and perceived homosexual servicemembers, like slain sailor Allen Schindler, will occur.

The Department of Defense should prevent the use of security clearance interviews as a loophole for targeting suspected homosexuals. DOD should take strong steps to ensure compliance by Defense Investigative Service (DIS) agents with DIS regulations and the intent of the DOD directives. The present situation putting servicemembers' careers and liberty in jeopardy for truthful responses regarding their sexual orientation is untenable. Already, without such attention, the security clearance process has become a back channel to obtain information for commands and pursue suspected homosexuals.

Provide Adequate Review And Accountability. Those who are willfully disobeying the letter and intent of the new policy on homosexuals will continue to do so unless they are held

accountable for their insubordination. Those violating the new regulations out of ignorance will also continue to do so as long as there is no incentive to learn and abide by the policy.

The Department of Defense needs to amplify disincentives to prevent violations of the policy. Currently, guidance is needed regarding procedures to initiate discipline against commanders and others who violate the policy, as provided for in the DOD directives. To date, no commander has been disciplined for violating provisions in "Don't Ask, Don't Tell, Don't Pursue" despite many complaints. Further, information obtained as the result of violations should be excluded and inquiries/investigations found to have been initiated without credible information should bar prosecution and discharge. Security clearance regulations should bar transfer of information to the military command. Annotations in servicemembers files based on information obtained as the result of improper command actions should be prohibited.

These three broad recommendations, information and training, common sense remedies, and accountability, are only a handful of recommendations specifically targeted to the violations detailed in this report. The recommendations are intended to bring commanders and other military officials into compliance with military regulations and law. The recommendations are intended to ensure that "Don't Ask" means don't ask; "Don't Tell" does not mean interrogate family, doctors and psychologists; "Don't Pursue" means don't pursue; and "Don't Harass" means don't harass.

SLDN will continue to monitor the Department of Defense's implementation of its newest policy on homosexuals and report on its progress in complying with the policy's provisions.