

285-6

National News

'Don't ask, don't tell' violations jump up 27 percent in 1997

by Peter Freiberg

Kevin Smith, a 23-year-old lance corporal in the Marine Corps, was attacked by two civilian men outside a Gay bar in San Angelo, Texas, last fall. He decided not to press charges against his assailants, he said, "because I was scared of military repercussions toward me."

But Smith's platoon sergeant found out anyway. And, instead of asking about Smith's well-being, the sergeant interrogated him about why he went to the bar and threatened Smith with a criminal investigation.

Smith said that after painful soul-searching, he decided he had no choice but to come out to the Marine Corps and face the inevitable discharge.

"[T]he price of serving my country," Smith wrote his commander, "is too high if the military puts more of a premium on investigating my private life than in assisting me with bringing those who assaulted me to justice."

Smith's superiors violated the "don't ask, don't tell, don't pursue" policy on Gays in the military by seeking information about his sexual orientation and investigating him instead of his assailants, according to Servicemembers Legal Defense Network (SLDN), a legal aid and watchdog organization that monitors the policy.

Smith's experience was far from unique: Command violations of the policy increased in 1997 for the fourth consecutive year, rising to a record 563 — a 27 percent jump over the 443 violations in 1996, according to SLDN's annual report.

"Commanders asked. Commanders pursued. Commanders harassed," says C. Dixon Osburn, co-executive director of SLDN. "Commanders have ignored the limits to Gay investigations and have ignored the intent to stop prying into people's private lives."

In the annual report released last month, SLDN cited a lack of commitment from top military and civilian authorities as the explanation for the latest upsurge in command violations of the policy. Field personnel, according to SLDN, receive no guidance on the limits to investigations, servicemembers have no recourse when the policy is violated, and no one is held accountable for violations of the policy.

The result, said the Washington-based SLDN, is a climate in many commands where "'anything goes' in the pursuit of suspected Gay personnel."

Former Army Capt. Michelle Benecke, SLDN's co-executive director, commented, "Lack of leadership. Lack of training. Lack of accountability. All are to blame for the military's persistent failure to abide by its own laws."

Asked for comment, Assistant Secretary of Defense for Public Affairs Kenneth Bacon said "it would be premature to say anything" about the SLDN report until the Pentagon completes a study of it. But Bacon noted that after SLDN released its annual report last year, Defense Secretary William Cohen said he was committed to a "fair and effective implementation" of the policy on Gays and ordered a review of how the policy was being carried out. Bacon said that review is "almost finished" and should be released this spring.

"[I]t's a review of how well or how poorly we implement the ["don't ask, don't tell, don't pursue"] policy," Bacon said, "and the design of the review is to make sure the policy is clearly understood and equitably applied in a way that is fairly reflective of the policy's goals."

SLDN noted that, although it usually has the Pentagon's Gay discharge numbers by the time it releases its annual report, the Pentagon has yet to give out its figures on 1997 discharges.

When the *Blade* asked for the 1997 discharge figures, Pentagon spokesperson Lt. Col. Tom Begines said the military is "still collecting and verifying the numbers." Begines said he has "no idea" when they

But SLDN's Osburn said, "They definitely have them. They don't want to release them without having their report [ordered by Secretary Cohen] ready to go." Osburn predicted that the discharge figures would go up by at least 100 in 1997 over 1996, from 850 to at least 950.

In this year's SLDN report, in which SLDN said it



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had verified 563 command violations of the military's policy on Gays, the "don't pursue" violations ranked as the worst problem.

SLDN documented 235 "don't pursue" violations, up 23 percent from last year's figure of 191. The Air Force led the services with 90 "don't pursue" violations.

SLDN pointed to the highly-publicized case of Senior Chief Petty Officer Timothy R. McVeigh as a prime instance of continued pursuit of suspected Gay service members.

The Navy attempted to discharge McVeigh, a 17-year-veteran sailor, based on information the Navy surreptitiously obtained about him from the America Online computer service.

In January, federal Judge Stanley Sporkin ruled that the Navy had not only violated the Electronic Communications Privacy Act, but also "violated the very essence" of "don't ask, don't tell, don't pursue" by launching a "search and destroy mission" against McVeigh. McVeigh remains in the Navy, but the Pentagon said it plans to appeal Sporkin's ruling.

In contrast to the Navy's McVeigh actions, SLDN said, top Army officials took action to stop a witch hunt that was in progress at a Southeast installation.

Army investigators at the installation, SLDN said, had interrogated a soldier alleged to have worked as a male prostitute, stripper, porn star, and drug dealer. Instead of charging the man, the investigators turned him into an informant to identify Gay soldiers.

When top Army officials were informed of the witch hunt, SLDN said, their "refreshing response ... was to review the case, not automatically rush to justify the command's actions"

"The Army did the right thing in this case and should be commended," SLDN said. "The Army's actions ... sharply contrast with the Navy's insistence that it behaved properly in the McVeigh case." Overall,

by Clint Steib

285-6

'Don't ask, don't tell' violations jump

Continued from page 14

SLDN said, the Navy committed 193 violations of the Gays in the military policy, chalking up the worst record of all the services.

Other major findings in SLDN's report include:

- A 39 percent increase in "don't ask" violations, from 89 in 1996 to 124 in 1997;

- The frequent use of threats during Gay investigations to extract confessions, including threats of criminal charges, confinement, non-judicial punishment, and "outing;"

- A 38 percent increase in incidents of anti-Gay harassment, from 132 reported incidents in 1996 to 182 in 1997, including death threats and physical assaults.

SLDN praised Under Secretary of Defense Edwin Dorn for issuing a "ground-breaking" memorandum clarifying that commanders should investigate perpetra-

tors of anti-Gay harassment and Lesbian-baiting rather than their victims.

"The services, however, have failed to distribute the Dorn memo to the field," said SLDN. "No commander, attorney, inquiry officer, investigator or other service member asked by SLDN in the course of assisting service members last year had ever heard of the Dorn memo, much less read of it."

In what SLDN called one of the most harrowing instances of anti-Gay harassment in 1997, four sailors aboard the *USS Eisenhower* were the subjects of Gay-bashing and death threats.

One of the four sailors, Barry Waldrop, who spoke at the SLDN news conference releasing the report, said he faced repeated questions from other sailors as to whether he was Gay. One night, Waldrop said, he returned to his berth to find "You're a dead faggot" written in magic marker. Another sailor, he said, found a

note that said, "Leave or Die Fag."

Security personnel, SLDN says, made no efforts to investigate these and other threats against the four sailors. Finally, Waldrop and the other three independently decided the only way to guarantee their safety was to tell supervisors they were Gay and be discharged from the Navy.

While one sailor was discharged expeditiously, SLDN said, the command initially demanded that the other three prove they were Gay by submitting evidence they had engaged in homosexual acts — information that could have subjected them to criminal charges.

Eventually, the remaining three sailors were discharged after intervention by top Navy officials, the sailors' families and members of Congress.

"I was willing to put my life on the line for my country," Waldrop says. "I am not willing to put my life on the line

for Gay-bashers or for commanders who won't follow the rules."

While praising top Navy officials for their actions when alerted to the *Eisenhower* situation, SLDN urged the Navy "to hold accountable those responsible for both the threats and command violations."

Among its recommendations, SLDN urged the Department of Defense to:

- Issue written guidance stating the limits to investigations under "don't ask, don't tell, don't pursue" and the intent of the policy to stop prying into service members' private lives;

- Discipline commanders who disobey the limits;

- Provide recourse to servicemembers to stop improper investigations;

- Cease use of "heavy handed tactics" in Gay investigations.

Continued command violations of the basic limits on investigations under "don't ask, don't tell, don't pursue" will not only erode confidence within the military, SLDN said, "it will erode the confidence of the American people." ▼