

SLDN Lawsuit Challenges "Don't Ask, Don't Tell"

By Bob Roehr
 Contributing Writer

The Servicemembers Legal Defense Network (SLDN) launched its promised challenge to the antigay military policy known as "Don't Ask, Don't Tell" (DADT) on December 6 with a lawsuit filed in federal court in Boston and a news conference in Washington, DC.

The dozen plaintiffs are from around the country and served anywhere from several months to more than fourteen years before being kicked out for being gay. The lawsuit charges that DADT violates their rights under the First, Fourth, Fifth, and Ninth Amendments to the Constitution. All are seeking to be reinstated in the military.

SLDN executive director C. Dixon Osburn said, "They have all served during the war on terrorism, three in direct support of operations in the Middle East. Together, they have served more than sixty-five years in the armed forces. Among them, they have earned more than five dozen commendations, medals, and awards."

They represent more than 65,000 gay and lesbian service members on active duty and more than a million GLBT veterans. "We hope to end, once and for all, the ban on gays in the military...It is unconstitutional and contrary to our national security interests."

Osburn bases his optimism for success upon the 2003 *Lawrence* decision by US Supreme Court that threw out state sodomy laws. That opinion "declared that gays and lesbians have a fundamental right to privacy, free from interference from our government."

Several of the earlier adverse decisions affirming the constitutionality of DADT were based in part upon the 1986 *Bowers v. Hardwick* decision by the Court, which upheld state sodomy laws.

But the *Lawrence* decision explicitly reversed that earlier precedent stating: "Bowers was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."

This lawsuit, known as *Cook v. Rumsfeld*, is one of the first to revisit the issue of DADT in light of that legal underpinning being knocked down.

Sharra E. Greer, SLDN's legal and policy director, said, "There is no other law quite like DADT. It is the only law



SLDN Executive Director C. Dixon Osbourne addresses that National Press Club. Photo by Bob Roehr

in the history of our nation that requires the firing of an employee—from our nation's largest employer—simply because they are lesbian, gay, or bisexual."

"Service members are muzzled in violation of their first amendment rights. They are denied due process; they are denied equal protection of the law. They are forced to serve as second-class citizens and denied the opportunity to serve their country for no good reason at all."

"It is this law, and not the lesbians, gay men, and bisexuals who serve their country that undermine good order, discipline, unit cohesion, and morale. There can be no doubt that don't ask, don't tell is blatantly unconstitutional," she said.

Two of the plaintiffs participated in the news conference.

Lieutenant jg Jen Kopfstein joined the Navy in 1995, winning honors as a midshipman at the US Naval Academy in Annapolis and as a weapons officer aboard ship. She told the story of her grandfather who fought in the Battle of the Bulge during WWII and of being on a warship that left port on 9/11 not knowing if the country would be under further attack. "I am his blood, and I was ready and willing to fight for my country in time of crisis."

Her commander fought for her reten-

tion when Kopfstein was under investigation for being a lesbian, but the investigators paid little heed.

Dr. Monica Hill was "forced to choose between serving my country as an Air Force physician and caring for my terminally ill partner, Terri Cason." She requested a delay in reporting for duty in order to care for Cason.

"I watched Terri die in her hospital room as the World Trade Center towers fell and the Pentagon burned, and I never felt more helpless. I could not stop the cancer from taking Terri, nor was I at Andrews [Air Force Base near Washington, DC] helping with the casualties from the attacks."

Hill's request resulted in "a long and humiliating interrogation" and eventual termination from the Air Force. The military later sought recoupment, or repayment the money they had paid toward Hill's medical education. That process is ongoing.

"Last month, 135 servicemen and women were killed in Iraq. No one can ever know how my presence as a physician could have altered the outcome of those casualties," Hill said.

Stuart Delery is an attorney with the prestigious firm of Wilmer Cutler Pickering Hale and Dorr, which has taken on the case on a pro bono basis. He recounted how the firm has a long

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Military Appeals Court Reverses Heterosexual Sodomy Conviction

WASHINGTON (AP) - A military appeals court has overturned the conviction of a soldier for heterosexual sodomy in a decision that legal scholars and advocates for gay rights say may have broader implications for gays serving in the armed forces.

The decision, issued late last month by the United States Army Court of Criminal Appeals, was based in part on the Supreme Court opinion in *Lawrence v. Texas*, which declared last year that the Texas sodomy statute violated the right to privacy.

The case before the Army court involved a male Army specialist who admitted that he had engaged in consensual oral sex in a barracks room with a female civilian whom he had met at a nightclub. But those seeking to abolish the military's "don't ask, don't tell" policy, and some legal experts, say the ruling is also applicable to private gay sex - thus cracking the foundation of the military's rationale for requiring gays to serve in silence.

Under Article 125 of the Uniform Code of Military Justice, armed forces personnel are prohibited from "unnatural carnal copulation with another person of the same or opposite sex or with an animal."

The separate policy regarding the service of gays and lesbians in the armed forces, known as "don't ask, don't tell," bars officials from inquiring into a soldier's sex life unless there is evidence of homosexual conduct. But those who volunteer the information can be discharged.

"The effect on 'don't ask, don't

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