

There is a real opportunity for things to change for gays in the military. I have not said that any time before," executive director C. Dixon Osburn told those gathered for the Servicemembers Legal Defense Network gala dinner Oct. 4 in Washington, D.C.

A principal reason for his optimism is the U.S. Supreme Court decision in June that struck down state sodomy laws, as well as a legal brief that SLDN filed two days prior to the fund-raiser that takes on sodomy laws in the armed forces under Article 125 of the U.S. Code of Military Justice.

"The military, unlike many of the states, actually enforces its [sodomy rules] pretty regularly," Osburn said. "You can face up to five years confinement for every act. So if one night you bring somebody home and you do it twice, that's 10 years. You better have been good."

SLDN has assisted about 5,000 men and women in uniform since its founding in 1993.



Calpernia Addams

One of the most dramatic examples followed the murder of Pfc. Barry Winchell while he slept in his barracks at Fort Campbell, Ky., in 1999. It vividly dramatized the failure of the anti-gay military policy known as "don't ask, don't tell."

So it was fitting that many of the speakers throughout the evening had ties to Winchell. His mother, Patricia Kutteles, presented the

A 21-GUN SALUTE

SLDN celebrates 10 years of fighting for queers in the military

by Bob Roehr

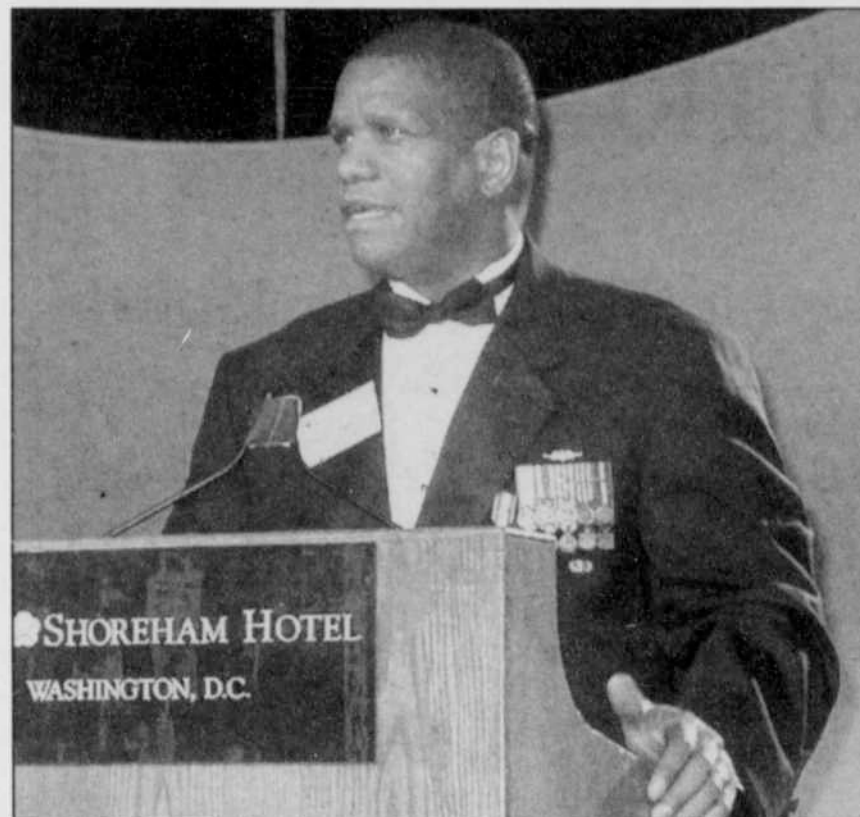
Barry Winchell Courage Award to Michelle Benecke, co-founder of SLDN, who has since retired from the organization.

"She has been a passionate advocate responsible for making the military pay attention and making it change. Many of us would not be here this evening without the vision and commitment of Michelle Benecke," Kutteles said.

Benecke called SLDN "the voice of servicemembers who cannot speak from themselves." She firmly believes "that within the lifetime of the younger servicemembers who are in the military today...we will see this policy fall."

Calpernia Addams was dating Winchell at the time of his death. The trans woman described how the Navy "taught me how to heal and how to fight" during her own service as a Gulf War medic more than a decade ago. "What Barry's murder showed is that even heterosexual servicemembers are vulnerable to hate crimes."

Retired Master Chief Petty Officer Vincent W. Patton III, at one point the highest-ranking enlisted man in the Coast Guard, explained why he, "a straight man," serves on SLDN's advisory



Vincent W. Patton III, at one point the highest-ranking enlisted man in the Coast Guard, called the military's anti-gay policy "ridiculous"

board. As a small child in Detroit, his father had defended a gay male couple living in the neighborhood when they were the victims of an anti-gay attack. That experience helped shape his view of equality and justice for all people.

He recalled a visit to one of his posts by openly gay U.S. Rep. Barney Frank, D-Mass. "He received a 19-gun salute, flag flying, but he couldn't serve in the military," Patton said. "It's ridiculous. It has to be stopped."

Reichen Lehmkuhl, a graduate of the Air Force Academy and poster boy from *The Amazing Race 4*, said he called SLDN when he was

serving as a lieutenant at Los Angeles Air Force Base and feared he was going to be outed. He wants to make sure that same support is there for others who need it.

"I didn't come out at the academy for one reason: 'don't ask, don't tell.' I was so scared at the academy that I couldn't even breathe. I went from day to day, class to class, meal to meal, wondering when it was going to happen. When I was going to be paraded in front of a group of cadets who were going to judge me for breaking a regulation, or court-martialed."

Lehmkuhl lashed out at "those who call themselves the Christian right...who have raised countless millions of dollars to halt and reverse the gay rights" movement in the United States. "People are hiding

behind religion to promote bigotry against gay people more than ever today.... There is a difference between tolerating religious beliefs and tolerating disruptive religious culture."

Osburn closed his presentation by quoting from Abraham Lincoln. "If there is anything which we should never entrust to any hands but our own, that thing is the preservation of our own liberty and our own institutions. The power to change is in our hands and in our thoughts." ■

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SODOMY CODE CHALLENGED

Court appears to question military's argument regarding unit cohesion by Bob Roehr

The last remaining sodomy statute in the United States is being challenged in court. Article 125 of the U.S. Code of Military Justice prohibits the practice of sodomy by both heterosexuals and homosexuals and is regularly enforced.

The case that might strike it down is the United States vs. Eric P. Marcum, a sergeant in the Air Force. In May 2000 he was found guilty of performing consensual oral sex on a fellow airman in the privacy of his home.

It has been appealed through the military courts and is now before the U.S. Court of Appeals for the Armed Forces. That is the highest court in the system, subject only to the U.S. Supreme Court.

The major legal development since the case began is the Supreme Court's landmark decision in *Lawrence vs. Texas*, which threw out state sodomy laws as unconstitutional. However, because of the court's traditional deference to the armed forces on most matters, there is some question as to whether the ruling applies to Article 125.

Government lawyers are arguing that Lawrence did not recognize a "fundamental right to engage in sodomy" and that the court should let the military decide how it runs itself.

Gay rights lawyers filed an amicus brief Oct. 2 arguing that "Lawrence wiped away the sole justification that kept this court from striking down Article 125 a decade ago." By overrul-

ing the Bowers decision, which accepted the criminalization of sodomy, the court "made clear that the long-established right to personal autonomy precludes the criminalization of private, intimate conduct."

Citing Pentagon reports on the widespread practice of sodomy by people of all sexual orientations, the lawyers maintained, "Article 125 undermines morale and discipline by criminalizing sexual acts that are widely practiced, thereby forcing military personnel to dissemble about their sexual conduct."

A second amicus brief argues that no evidence suggests that doing away with Article 125 would harm unit cohesion or the good functioning of the military. Among those submitting that

brief are Charles Moskos, known as the father of "don't ask, don't tell," and retired Adm. Bobby Inman, who headed up Naval Intelligence and the super-secret National Security Agency and later was deputy director of the CIA.

Sharra E. Greer, Servicemembers Legal Defense Network law and policy director, attended oral arguments Oct. 7. She reported that the court seemed to take issue with the military's assertion that consensual sodomy could be held to a different standard than vaginal intercourse.

"At least two of the justices were reluctant to differentiate between private, consensual sexual acts," Greer said. "It seemed clear that those same justices had serious reservations about whether one consensual sexual act could be more or less detrimental to unit cohesion than another."

The decision might come as early as the end of this year. A favorable ruling would knock out one of the main props supporting the anti-gay "don't ask, don't tell" policy. ■

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