Beyond "Restoration of Honor": Compensating Veterans for the Psychological Injuries of the Gay and Transgender Bans

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BEYOND “RESTORATION OF HONOR”: COMPENSATING VETERANS FOR THE PSYCHOLOGICAL INJURIES OF THE GAY AND TRANSGENDER BANS

Evan R. Seamone

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INTRODUCTION

Just over a decade ago, September 20, 2011, marked the repeal of the Don’t Ask, Don’t Tell, Don’t Harass, Don’t Pursue (DADT) policy in the U.S. military.1 After decades of lawsuits and challenges,2 Congress and the military establishment recognized the discriminatory nature of the policy.3 DADT often led to less-than-honorable discharges solely based upon an otherwise qualified service member’s actual or perceived sexual orientation.4 With DADT enforcement

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1. Don’t Ask, Don’t Tell Repeal Act of 2010, Pub. L. No. 111-321, § 124 Stat. 3515 (2010). The Repeal was effectuated by the July 22, 2011, certification by the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff of the military’s readiness for repeal. Id.; see also Press Release, Office of the Press Secretary, Statement of the President on Certification of Repeal of Don’t Ask, Don’t Tell (July 22, 2011); Press Release, Office of the Press Secretary, Statement by the President on the Repeal of Don’t Ask, Don’t Tell (Sept. 20, 2011).
2. See, e.g., Antony Barone Kolenc, Pretend to Defend: Executive Duty and the Demise of “Don’t Ask, Don’t Tell,” 48 GONZ. L. REV. 107, 111 (2013) (describing legal challenges to the policy close in time to its repeal); JODY FEDER, “DON’T ASK, DON’T TELL”: A LEGAL ANALYSIS (CONG. RSCH. SERV. REPT. NO. 7-500) 3–15 (Aug. 6, 2013) (summarizing legal challenges beginning with the implementation of DADT); Judith Hicks Stiehm, Managing the Military’s Homosexual Exclusion Policy: Text and Subtext, 46 UNIV. MIAMI L. REV. 685, 702–09 (1992) (providing a detailed history of legal challenges to DADT as well as prior policies that were discriminatory toward sexual minorities in the military from Matlovich v. Secretary of the Air Force, 591 F.2d 852 (D.C. Cir. 1978) through Pruitt v. Cheney, 943 F.2d 989 (9th Cir. 1991)).
3. President Barack Obama’s comments after the certification of military readiness to implement the repeal summarized the consensus that DADT was a “discriminatory . . . law that . . . violates American principles of fairness and equality.” July Press Release, supra note 1.
4. See COLIN J. WILLIAMS & MARTIN S. WEINBERG, HOMOSEXUALS AND THE MILITARY:
facially limited to same-sex sexual relationships, its repeal permitted
the open expression of sexual orientation within the bounds of the
military’s traditional personal conduct rules.\textsuperscript{5} Approximately 114,000
service members were involuntarily separated from the military on
the basis of actual or perceived sexual orientation.\textsuperscript{6} One of the im-
mediate benefits of DADT’s repeal was the promise that gay, lesbian,
and bisexual service members no longer had to conceal their authentic
identity in order to defend their country.\textsuperscript{7}

Even after the DADT repeal, several unanswered questions lin-
gered regarding the accumulated impact of the anti-gay bans.\textsuperscript{8} First,
because the hypermasculine nature of the military is inextricably
linked to prevalent gender norms, researchers forecasted that an en-
during level of hostility toward Sexual and Gender Identity Minority
(SGIM) troops would continue to permeate military culture.\textsuperscript{9} Second,
separate prohibitions on transgender service members expressing

A STUDY OF LESS THAN HONORABLE DISCHARGE 29 (1971) (observing that even in cases
where regulations provided for an honorable conditions separation, this happened so
rarely that “separation with a less than honorable discharge is almost a foregone con-
clusion”). While more recent iterations of DADT mandated an Honorable Discharge if
the basis for the separation did not involve misconduct, for decades, particularly in the
1960s and 1970s, homosexual discharges were most commonly accompanied by Undesirable
or Other Than Honorable administrative discharges. Id. These discharge characterizations
were a particularly inhumane consequence because “the stigma is designed to last through-
out the life of the former serviceman. . . .” Id. at 36.

5. DADT Repeal Policy Guidance to Memorandum from Under Secretary of Defense
Clifford L. Stanley to Secretaries of the Military Departments, Subject: Repeal of Don’t
Ask Don’t Tell and Future Impact on Policy 2 (Jan. 28, 2011) [hereinafter First Stanley
Repeal Memorandum] (“Upon repeal, existing standards of conduct shall continue to
apply to all service members regardless of sexual orientation. Enforcement of service
standards of conduct, including those related to public displays of affection, dress and
appearance, and fraternization will be sexual orientation neutral.”).

6. See M. Heliana Ramirez & Paul R. Sterzing, Coming Out in Camouflage: A Queer
Theory Perspective on the Strength, Resilience, and Resistance of Lesbian, Gay, Bisexual,
and Transgender Service Members and Veterans, 29 J. GAY & LLESBIAN SOC. SERV. 68, 68
(2017) (accounting for 113,369 discharges attributed to anti-gay military policies between
1941 and 2010).

7. See Introduction (discussing the consequences of identity concealment under anti-
gay policies).

8. See, e.g., Catherine Connell, “Different Than an Infantry Unit Down in Georgia”:
Narratives of the Queer Liberation in the Post-DADT Military, 21 SEXUALITIES 776, 777
(2018) (“[W]e know little about how the US military and its ancillary institutions are (or
are not) changing in the wake of the [DADT] repeal.”).

9. See, e.g., Kathleen A. McNamara, Carrie L. Lucas, Jeremy T. Goldbach, Carl A.
Castro & Ian W. Holloway, “Even if the Policy Changes, the Culture Remains the Same”:
A Mixed Methods Analysis of LGBT Service Members’ Outness Patterns, 47 ARMED
FORCES & SOC. 505, 505 (2021) (describing cultural reasons why “[d]espite [the] repeal
of [DADT] in 2011 and the ban on . . . transgender service from 2016 to 2019 . . . (LGBT
service members may be reluctant to disclose their identities to fellow military personnel.”).
If harassment still occurred, the continued stigma could promote identity concealment
akin to the prior policies. Id.
their gender identity persisted, resulting in continued discrimination against a substantial and important segment of the military’s SGIM population. The Trump Administration’s Transgender Ban, first articulated on July 26, 2017, was particularly concerning because it reversed the policy position that transgender people could serve in the U.S. military. For many, this was hailed as a new DADT and generated renewed concerns of SGIM discrimination. Third, and most significant to this Article, while the repeal of DADT represented new hope for service members currently serving or joining in the future, a major unknown remained for those who had suffered sanctioned discrimination in the past.

10. See Joseph E. Wise, Loss of Moral High Ground: The Transgender Ban, A Military Psychiatrist’s Perspective and Call to Action, 23 GAY & LESBIAN MENTAL HEALTH 114, 115 (2019) (observing the discriminatory nature of the policy when “the transgender member is not treated with the same dignity and respect afforded other military members”). It is particularly noteworthy that transgender persons serve in the military at much higher rates than their cisgender counterparts. See Charles A. Castro & Jeremy T. Goldbach, The Perpetrator Hypothesis: Victimization Involving LGBT Service Members, in MILITARY AND VETERAN MENTAL HEALTH: A COMPREHENSIVE GUIDE 145, 148 (Laura W. Roberts & Christopher H. Warner eds., 2018) (observing that “21% of all transgender adults in the United States have served in the military compared to 10% for the general population”).

11. The following tweets began a reinvigorated Executive policy against transgender troops in the Service: “After consulting with my Generals and military experts, please be advised that the United States Government will not accept or allow . . . Transgender individuals to serve in any capacity in the U.S. Military.” Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 5:55 AM); Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 6:04 AM); Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 6:08 AM).

12. See Memorandum from Ash Carter, Sec’y of Def., to Sec’y of the Military Departments et al., Subject: Directive-Type Memorandum (DTM) 16-005: Military Service of Transgender Servicemembers 2 (June 30, 2016) (“The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military.”). Transgender service members had been openly serving under a policy implemented by Defense Secretary Ash Carter on June 30, 2016. See id.


15. Jose Cortes et al., Mental Health Differences Between Older and Younger Lesbian, Gay, Bisexual, and Transgender Veterans: Evidence of Resilience, 42 CLINICAL GERONTOLOGIST 162, 163 (2019). Much has been revealed in studies of older SGIM veterans who served during times of the various gay bans. Even without being separated on the basis of orientation or identity, their “formative identity development occurred in a heteronormative military system that was heavily punitive toward non-cisgender and/or
Veterans who left military service by the time of DADT’s repeal fall into two categories: (1) SGIM veterans who were involuntarily separated on the basis of their identity; and (2) SGIM veterans who served while DADT was in place but left the military for other reasons.\textsuperscript{16} The most significant distinction between the two categories is size.\textsuperscript{17} The first group consists of slightly under 114,000 veterans;\textsuperscript{18} the second group has been estimated as approximately one million veterans,\textsuperscript{19} and potentially many more.\textsuperscript{20} 


\begin{itemize}
\item See Ramirez & Sterzing, \textit{supra} note 6, at 68.
\item See infra notes 18–19.
\item See \textit{LEGAL SVC’S CTR. ET AL., DO ASK, DO TELL, DO JUSTICE: PURSUING JUSTICE FOR LGBTQ VETERANS} 1, 6 (2018).
\item Researchers have lamented the lack of statistics on SGIM service members due to the significant costs of admitting one’s orientation or identity during the time of homophobic policies. McNamara et al., \textit{supra} note 9, at 506 (“[P]olicies prohibiting open service have prevented collection of data regarding LGBT service.”). While the current estimates are based on extrapolation of self-reports, it is very possible that the true number is larger. Adolph Joseph Delgado, Dannielle Gordon & Phillip Schnarrs, \textit{The Effects of}
For those who were discharged, the Department of Defense (DoD) quickly made it clear in its policy prescriptions that it would not automatically re-enlist or accord retroactive benefits to persons separated on the basis of sexual orientation. At most, those who had been involuntarily separated could apply for re-enlistment. For those who had military records indicating “homosexuality” as the reason for separation, such veterans could apply for official changes to their records. Those with less-than-fully honorable discharges could also apply for upgraded characterizations. But upgrades were not automatic and, depending upon the number of years since the separation, the DoD review boards applied different standards.

“Restoration of honor” denotes a recent legislative trend to address the lasting impact of gay bans on veterans who were involuntarily separated for sexual orientation or gender identity with stigmatizing less-than-fully honorable discharges. The recent 2020


22. First Stanley Repeal Memorandum, supra note 5, at 2 (“Upon repeal, former Service members who were discharged solely under 10 U.S.C. § 654 and its implementing regulations may apply to re-enter the Armed Forces. They will be evaluated according to the same criteria and Service requirements applicable to all prior-Service members seeking re-entry into the military at that time.”).

23. Memorandum from Under Secretary of Defense Clifford L. Stanley to Secretaries of the Military Departments, Subject: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code 1, 1 (Sept. 20, 2011) (providing that Discharge Review Boards “should normally grant requests to change the narrative reason for a discharge[,] . . . requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category” if the discharge was based solely on an anti-gay policy and if the veteran’s military records lacked “aggravating factors” including a history of misconduct).

24. Id.

25. See id. In contrast to the Discharge Review Boards, which are statutorily limited to considering discharges issued during the prior 15 years, the Department of Defense adopted a stricter standard for older discharges falling under the Boards of Correction of Military Records. See id. at 2 (citing the different function of the BCMRs and the corresponding policy “that broad, retroactive correction[] of records from applicants discharged under DADT [is] not warranted. Although DADT is repealed . . . it was the law and reflected the view of Congress during the period it was law.”). See also KUZMA ET AL., supra note 21, at 500–10 (exploring different strategies to address the contrasting standards).

National Defense Authorization Act (NDAA) marked the first incorporation of this term into federal law with the “Restore Honor to Service Members Act.”

Since this legislation was first contemplated in June 2013, the bill’s sponsors attempted to improve the processing of discharge upgrades based on sexual orientation. They also hoped to remove references to sexual orientation on military records given the significant obstacles faced by veterans petitioning for redress.

After years of attempting to pass this legislation, Senators Brian Schatz (HI) and Kirsten Gillibrand (NY) sponsored the most comprehensive version of the Act in an amendment to the Senate version of the National Defense Authorization Act (NDAA) in 2013. The proposed legislation stalled for successive years until 2020, apparently rejected by the Ways and Means Committee based on the expected costs of implementation.


The phrase “restoration of honor” is ironic and misleading in the sense that SGIM veterans who served despite great stigma and challenges demonstrated tremendous honor and loyalty to the nation. As Other-Than-Honorably discharged Navy veteran Louis Miller explained, “[The military] gave me a bad piece of paper, but you can’t take away what I did there . . . . You can’t take away my honor. What you took away was my recognition of it.” AM. HOMEFRONT PROJECT, Colorado Among States Extending Benefits to Veterans Discharged Because of Their Sexual Orientation, CPR NEWS (May 13, 2021), https://www.cpr.org/2021/05/13/colorado-among-states-extending-benefits-to-veterans-discharged-because-of-their-sexual-orientation [https://perma.cc/DAK6-3RSW]. A more fitting term for the movement is one to “Rectify Injustice” for SGIM veterans.

Sara Cammarata, States make it easier for vets who were kicked out for being gay to access benefits, STARS & STRIPES (Mar. 22, 2021), https://www.stripes.com/theaters/us/states-make-it-easier-for-vets-who-were-kicked-out-for-being-gay-to-access-benefits-1.666864 (citing Representative Mark Takano).


29. Representatives Mark Pocan and Charlie Rangel initially obtained the backing of 30 other bipartisan members of Congress for this legislation since the hardships posed to veterans hoping to upgrade their discharges and correct their records appeared to continue the discrimination present in DADT following its repeal. Meacham, supra note 28.
the 2020 NDAA.\textsuperscript{30} This final push for meaningful legislation included streamlined measures to prove eligibility with affidavits and copies of a DD Form 214, development of “tiger teams” to conduct outreach to SGIM veterans,\textsuperscript{31} an accounting of “the facts and circumstances” surrounding all discriminatory discharges since WWII,\textsuperscript{32} and the recording of oral histories of veterans who suffered under the policy “so that such testimony may serve as an official record of these discriminatory policies and their impact on American lives.”\textsuperscript{33}

Despite its proposed broad reach, in an apparent compromise, the Restore Honor to Service Members Act passed with few of these exhaustive provisions.\textsuperscript{34} It merely codified the requirement for Discharge Review Boards to upgrade such discharges when warranted under existing laws.\textsuperscript{35} A similar development occurred more recently on September 20, 2021, when Veterans Affairs (VA) Secretary Denis McDonough implemented a policy guidance clarifying that the VA would not prevent veterans who were discharged with discriminatory Other Than Honorable (OTH) discharge characterizations from obtaining VA benefits.\textsuperscript{36} The guidance specifically states that “VA adjudicators shall find that all discharged service members whose separation was due to sexual orientation, gender identity or HIV status are considered ‘Veterans’ who may be eligible for VA benefits[.].”\textsuperscript{37}

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\item[30.] Restore Honor to Service Members Act, Proposed Amendment to S.B. 1790 § 565, 116th Cong., 1st Sess. (June 12, 2019).
\item[31.] \textit{Id.} at § 565B(2) (noting as a fundamental component of restoration of honor that “expanding outreach to veterans impacted by DADT or a similar policy prior to the enactment of DADT is important to closing a period of history harmful to the creed of integrity, respect, and honor of the military”).
\item[32.] \textit{Id.} at § 565D(1).
\item[33.] \textit{Id. at § 565D(2).}
\item[34.] See Restore Honor to Service Members Act, H. R. 3517, 116th Cong. 1st Sess. (June 29, 2019).
\item[35.] National Defense Authorization Act for Fiscal Year 2020, 116th Cong., S. 1790 § 530H(b) (2019) (directing, in its primary part, that “the appropriate discharge boards shall review the discharge characterizations of covered members at the request of a covered member, and shall change the discharge characterization of a covered member to honorable if such a change is determined to be appropriate after a review is conducted”). Other provisions do appear more impactful, such as the mandate to remove any reference to sexual orientation in discharge papers of those approved for an upgrade or who were honorably discharged but with notations relating to homosexuality. National DefenseAuthorization Act for Fiscal Year 2020, 116th Cong., S. 1790 § 530H(d) (2019).
\item[37.] Kayla Williams, \textit{Tenth anniversary of the repeal of Don’t Ask, Don’t Tell}, VANTAGE
\end{itemize}
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Although the VA’s motivation for this guidance was to acknowledge “the trauma caused by the military’s decades-long policy of discrimination against LGBTQ+ people,” the policy admittedly is merely a restatement of existing rules regarding the VA’s process for granting benefit eligibility. In this vein, it is vital to understand that the VA is not automatically granting any benefits to veterans based on a discriminatory discharge. It remains the case that all VA benefits must be applied for and all applicants must still satisfy specific eligibility prerequisites to obtain VA benefits. At most, the new guidance establishes that discriminatory discharges for SGIM status will not prevent veterans for applying for VA disability benefits under other existing eligibility standards.

While the Restore Honor to Veterans Act and Secretary McDonough’s policy guidance mark two small advances within the federal government, the most robust effort to restore honor has instead come from state legislatures granting state-based veterans’ benefits to SGIM veterans. In 2017, the first state to introduce

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38. "This policy statement does not represent a change in law . . . [but] reiterates what constitutes eligibility for benefits under law.”

39. “While the current administration’s policy is to grant an honorable discharge, generally, to a veteran [discharged based solely on SGIM status] . . . . it is not yet law to do so, meaning that a new President could change this policy unless it is passed into law.”

40. See Wentling, supra note 36.

41. Williams, supra note 37.

42. Id. (explaining that a veteran discharged based on SGIM status must still meet other statutory and regulatory requirements for VA benefit eligibility).

43. See Advocates for Passage of “Restore Honor to Service Members” Act, Press Release, Congressman Higgins, Higgins Stands Up for LGBT Veterans on the House Floor (Sept. 11, 2015), https://higgins.house.gov/media-center/press-releases/higgins-stands-up-for-lgbt-veterans-on-the-house-floor [https://perma.cc/9UUG-Q7EJ]. Since its proposal, the major objective behind the enacted language was to ensure DoD’s duty to provide redress to veterans who were discharged from the military due to sexual orientation. Id. The bill’s proponents feared that without officially codifying this standard in federal legislation, future administrations would be able to reverse such policies similar to the imposition of the Transgender Ban. Id. (“While the current administration’s policy is to grant an honorable discharge, generally, to a veteran [discharged based solely on SGIM status] . . . it is not yet law to do so, meaning that a new President could change this policy unless it is passed into law.”)

44. See Pat Poblete, State Senate Unanimously Approves LGBT Veteran Benefit Bill, COLORADO POLITICS (Mar. 29, 2021), https://www.coloradopolitics.com/legislature/state -senate-unanimously-approves-lgbt-veteran-benefit-bill/article_8b395aac-753b-11eb-a5e1 -3f2254864c35.html [https://perma.cc/2MNN-9BS5]. While states do not control VA or TRICARE federal benefits, they can intervene to ensure that veterans are able to take advantage of significant entitlements. The legislation in Colorado, for example, allows veterans with discriminatory discharges to obtain: (1) tuition assistance; (2) teaching grants; (3) burial at the Homelake Veterans’ Cemetery in Monte Vista or any other state-owned veterans’ cemetery, and (4) hunting licenses. Id. In New York, research by Senator Brad Hoylman revealed that “there are more than 50 New York State benefits denied to LGBT veterans who were less than honorably discharged on the basis of their sexual
sweeping legislation was Nevada, which prohibited the denial of state benefits “based solely on status as [a] discharged veteran who is gay, lesbian, bisexual, or transgender.” 45 Around the same time, New York’s Albany County clarified that its purpose for passing similar comprehensive local laws was to overcome the federal government’s failure to remedy a situation that left a lasting legacy on those who left the military. 46

orientation, gender identity or gender expression.” Press Release, Governor Cuomo, Governor Cuomo Signs Legislation Giving Veterans who were Denied Honorable Discharge Due to Their LGBTQ Identity the Right to Have Their New York State Benefits Restored, Nov. 12, 2019. Other states may offer employment and housing assistance, eligibility to live under managed care at a state veterans’ home for the elderly and disabled, or monetary stipends. See, e.g., Veterans Benefits by State, AM.LEGION (2021), https://www.legion.org/veteransbenefits/state [https://perma.cc/77DB-27U6] (permitting visitors to identify veterans’ benefits entitlements for each state).

The New York State Division of Veterans Affairs, in association with SAGEVets recently sponsored a conference featuring representatives from several states that had just enacted Restoration of Honor laws. See Restoration of Honor Virtual Conference, NEW YORK STATE BAR ASSOC. (Nov. 18, 2021), https://nysba.org/events/restoration-of-honor-virtual-conference [https://perma.cc/N4CU-L78G]. At the conference, Benjamin Pomerance, counsel for the New York State Division of Veterans Affairs, emphasized circumstances under which federal discharge upgrades still would not enable the receipt of crucial VA benefits to SGIM veterans who had received discriminatory discharges. SAGE, 2021 National Restoration of Honor Conference, YOUTUBE (Dec. 7, 2021), https://www.youtube.com/watch?v=p9ca6bWCUKs [https://perma.cc/XB95-PKV2]. Specifically, a VA eligibility requirement for federal VA benefits is 24 continuous months of active-duty military service. 38 U.S.C. § 5303A(b)(1)(A) (2021); 38 C.F.R. § 3.12(a). Pomerance identified veterans who were discharged for their confirmed or presumed sexual orientation prior to completing this time-in-service requirement. See id. Although the discriminatory policy was the sole reason for the veteran failing to serve for 24 continuous months, the VA neither waives this period nor grants constructive time to make up for these gaps, leaving certain veterans ineligible regardless of whether they have fully honorable military discharges. 38 U.S.C. § 5303A(d) (2021). In these circumstances, state benefits may be the only available alternative to obtain benefits related to the veteran’s honorable service. See Dan Aiello, CA Could Be First in Nation to Offer Redress to Gay Vets, BAYAREA REP. (Nov. 16, 2012), https://www.ebar.com/news///242036 [https://perma.cc/DT2D-XYFB].

45. REV. STAT. ANN. § 417.0185 (LexisNexis 2018) (prohibiting discharges based on SGIM status from depriving a veteran of “eligibility for any program, service, benefit, activity or facility of a department, division, board, bureau, commission or agency of this State or any political subdivision of this State which provides a program, service, benefit, activity or facility to veterans for which the veteran would otherwise be eligible”). The very first state to institute any local measures in response to DADT was California, which had begun to address the limitations of federal policy shortly after the repeal of DADT. See Aiello, supra note 44 (“If passed, [the] legislation will be the first such effort at redress by any state or federal agency”). Ultimately, when the legislation became effective in 2013, state benefits were made expressly contingent upon the decision of the federal government to change discharge characterizations based on SGIM status. CAL. MIL. & VET. CODE § 711.1(a) (West 2013).

46. Local Law No. 7-2017 of the County of Albany, § 1 (“While the Federal government is best suited to effect restoration of LGBT veterans’ discharge records, legislation at the Federal and State level has gone nowhere.”).
Illinois, Colorado, Connecticut, Maine, New Jersey, New York, and Rhode Island are among the states that have more recently joined this expanding restoration movement, largely based on perceptions of continued inaction and recent reversals of protections for all SGIMs. While “[s]everal other states are considering similar

47. Honorably Discharged; Veterans Benefits. 5 Ill. Comp. Stat. 70/1.44 (2021) (effective on Jan. 1, 2022) (defining “honorable discharge” under state law to include “a discharge under other than honorable conditions or general discharge under honorable conditions if only due to a person’s sexual orientation or gender identity”).

48. An Act Redefining “Veteran” and Establishing a Qualifying Review Board, 2021 Conn. Acts 4 Reg. Sess. (developing a mechanism permitting veterans with Other Than Honorable Discharges to file for “state-based veterans benefits” if they believe “such discharge characterization was based on such veteran’s sexual orientation, gender identity or gender expression”).

49. Colo. Rev. Stat. Ann. §§ 28-5-103(1)(a)–(b) (West 2021) (effective Nov. 11, 2021) (granting “Discharged LGBT Veteran” status for exemption from bars to state benefits as established by verification of the Division of Veterans Affairs for those veterans “discharged from the armed services due to the person’s sexual orientation or gender identity or gender expression; or statements, consensual sexual conduct, or consensual acts relating to sexual orientation or gender identity or gender expression” unless the discharge resulted to military misconduct unrelated to SGIM status).

50. An Act to Restore Honor to Certain Service Members, Me. Rev. Stat. Ann. tit 37, § 503, sub-§ 9 (2021) (requiring the development of procedures to “establish a process for a veteran who was separated from service without an honorable discharge due solely to the veteran’s sexual orientation or gender identity or . . . consensual acts relating to sexual orientation or gender identity to have that discharge treated as an honorable discharge for purposes of determining the veteran’s eligibility for rights, privileges and benefits granted to veterans under state law”).

51. N.J. Stat. §§ 38A: 3-59(a)–(c) (2021) (granting those veterans who were “separated from the service with a general or other than honorable discharge due solely to their sexual orientation, or gender identity or expression” assistance from the New Jersey Department of Military and Veterans Affairs in recording their discharges as honorable to accord them “the same rights, privileges, and benefits authorized by State law to service members who were honorably discharged”).

52. N.Y. Exec. Law § 350 (Consol. 2019) (defining a “discharged LGBT veteran” as “a veteran who was discharged less than honorably from military or naval service due to their sexual orientation or gender identity or expression . . . or statements, consensual sexual conduct, or consensual acts relating to sexual orientation, gender identity or expression, or the disclosure of such statements, conduct, or acts” and requiring uniform procedures for determining such status as an exemption from state veterans’ benefits disqualification).

53. R. I. Gen. Laws § 30-18-3(a) (2019) (“[M]embers of the armed forces who were separated from the service with a general or other than honorable discharge due solely to their sexual orientation, or gender identity or expression, may petition the office of veterans services . . . to have his or her discharge recorded as honorable”); R. I. Gen. Laws § 30-18-3(c) (2019) (“Persons who have the character of their discharge changed under this section shall be afforded the same rights, privileges, and benefits authorized by [Rhode Island] general or public law to service members who were honorably discharged.”).

54. Cammarata, supra note 26 (observing that “[s]ome states are pushing to enact laws this year [2021] to provide immediate recourse for these veterans, rather than waiting for federal laws to change”). According to New Jersey State Senator Vin Gopal, “Under the Trump administration, nothing’s happened . . . in fact, we went backwards in the last four years on many equal rights issues.” Id.
legislation,"55 the Supremacy Clause of the Constitution strips state legislatures of the ability to upgrade military discharges in a manner that would be recognized by federal entities.56

This includes the Department of Veterans Affairs (VA), where a veteran’s eligibility to participate in nearly all benefit programs depends upon their discharge status.57 In fact, some state lawmakers have explained that their reason for refusing to extend state benefits independent of federal action is because of federal reluctance to do so, stating “[t]he state benefits are so dependent on federal benefits that it would really be hard to separate the two. It’s almost undoable.”58 While the vast majority of states have not granted automatic eligibility for state-based benefits to recipients of sexual orientation—or gender identity–based discharges, some have taken a more neutral approach and explicitly conditioned the award of state-based benefits upon a hypothetical future federal action to grant upgrades.59

These statutes were passed in an unsuccessful effort to demonstrate

55. AM. HOMEFRONT PROJECT, supra note 26.
56. U.S. CONST. art. VI, § 1, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . .”).
57. For a comprehensive listing of dozens of federal benefits that require discharges under honorable conditions as a prerequisite, see John W. Brooker, Evan R. Seamone & Leslie C. Rogall, Beyond "T.B.D.": Understanding VA’s Evaluation of a Former Service-member’s Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces, 214 MIL. L. REV. 1, 250 app. H-2 (2012) (“Selected Authorities for Most Popular Benefits Available for Former Servicemembers Based on Character of Service”).
58. Aiello, supra note 26 (reporting California State Assemblyman Richard Pan’s reasons for amending the original version of the LGBT discharge bill to include a “contingency and enactment clause” that makes the legislation dependent upon federal action to grant upgrades).
59. See, e.g., CAL. MIL. & VET. CODE § 711.1(a) (2013) (“If the federal government acts to reinstate benefits to discharged veterans, regardless of their discharge classification, who were denied those benefits solely on the basis of sexual orientation pursuant to any federal policy prohibiting homosexual personnel from serving in the Armed Forces of the United States, the state shall reinstate to those veterans any state-offered benefits they were denied due to those federal policies.”). Connecticut introduced a similar law in 2013 and revised it in 2018. CONN. GEN. STAT. § 27-102q(b) (2018) (“If the federal government acts to reinstate eligibility for benefits to discharged veterans, regardless of their discharge classification, who have been or otherwise would be denied such benefits solely on the basis of sexual orientation pursuant to any current or former federal policy prohibiting homosexual personnel from serving in the armed forces, the state shall reinstate eligibility for any state benefits such veterans were or would have been denied due to such federal policy.”). The Connecticut state legislature, however, has recently passed a more robust law that is not contingent upon federal government action. See Julia Bergman, Bill Would Allow State Benefits to Veterans Kicked Out for Sexual Orientation, THE DAY (Feb. 2, 2021, 5:44 PM), https://www.theday.com/article/20210202/NWS09/210209864 [https://perma.cc/3XMS-G58R] (discussing new legislation that would consider honorable military discharges based solely on sexual orientation, gender identity or gender expression).
Given the repeated failure over the past decade to pass the Restore Honor to Service Members Act in different administrations, as well as the shell of a law that was finally enacted, it remains unclear whether the federal government will ever meaningfully address the needs of the 114,000 veterans who were discharged under the military’s anti-gay policies. The federal government’s inaction makes it difficult to consider meeting the needs of the nearly 1 million other SGIM veterans who served under DADT and who may have been deeply affected by the stress they endured even though they were not separated on the basis of their identity. Those SGIM veterans who were not involuntarily discharged were nevertheless impacted in serious ways that do not get as much attention.

60. See, e.g., Aiello, supra note 26 (noting the comments of the bill’s sponsor, Assemblyman Richard Pan, addressing a reason for a contingency provision: “I hope that other states will follow California’s lead and put pressure on Congress on this important issue”).

61. While it is too early to see the impact of policy regarding the recent treatment of transgender service members, the recent repeal of the transgender ban by the Biden Administration has been recognized as part of a “series of moves” to remediate the impact of all forms of sexual orientation discrimination by the military. Annie Karni, VA Plans to Offer Gender Confirmation Surgeries for Transgender Veterans, N.Y. TIMES (July 9, 2021). https://www.nytimes.com/2021/06/20/us/politics/veterans-transgender-surgery.html [https://perma.cc/PKCS-J93J]. The new trend incorporates more research about adverse health outcomes of SGIM veterans. ASSOCIATED PRESS, VA moves to offer gender confirmation surgery to vets, NBC NEWS (June 20, 2021), https://www.nbcnews.com/news/us-news/va-moves-offer-gender-confirmation-surgery-vets-n1271506 [https://perma.cc/R49A-5KHY] (reporting VA Secretary Denis McDonough’s basis for changes to VA policy as “high[] rates of mental illness and suicidal thoughts among LGBTQ veterans, and a fear of discrimination that prevents those veterans from seeking care”). In recent comments, VA Secretary McDonough announced a policy change enabling the VA to cover gender transition surgery and to make VA facilities more responsive to the needs of SGIM veterans. Id. The justification for this policy was to address a “dark past” that left a lasting legacy. Id. (citing VA Secretary McDonough).

62. A common experience is avoidance of any mention of veteran status to the point where many physicians are unaware of an LGBTQ patient’s veteran status. In studies of SGIM veterans’ experiences seeking treatment from the VA, only 33% of respondents reported that they “disclosed their sexual orientation to their providers” and, moreover, 25% of respondents “reported avoiding at least one VA service because of concerns about stigma.” Michelle D. Sherman, Michael R. Kauth, Lauren Ridener, Jillian C. Shipferd, Kristi Bratkovich & Gregory Beaulieu, An Empirical Investigation of Challenges and Recommendations for Welcoming Sexual and Gender Minority Veterans into VA Care, 45 PROF’L PSYCH.: RSCH. & PRAC. 433, 434–35 (2014) (reviewing leading studies).

63. Myott, supra note 20, at 201–02 (observing how “Americans give minimal attention to the enduring effects of [anti-gay policies] . . . on LGBT veterans who escaped detection and received honorable discharges”). Common psychological consequences that occurred even without anti-gay discharge from the military are explored in detail in Part I of this Article. By illuminating this group, this Article in no way aims to lessen concern for those SGIM veterans who were discharged for sexual orientation or gender identity or to detract from the unique additional stressors they faced in problems obtaining civilian
First, although not formally separated by the military, many of the 1 million SGIM veterans were forced to separate themselves and cut short otherwise promising military careers due to minority stressors. These stressors included the fear of being discovered, peer and command suspicions, fear of extortion by civilians or others who suspected or knew of their status, being subjected to humiliating investigations, and simply being unable to sustain the pressure of concealing their identities and living an inauthentic life. While it is not possible to quantify how many SGIM veterans left the military for these reasons, the impact of de jure discrimination was unquestionably felt in each instance. Those who served for successive enlistments or until retirement likely suffered significant mental and/or emotional injuries due to sustained identity concealment and other minority stressors with all of the related consequences.

employment, loss of federal benefits, and estrangement from family that often resulted in these cases. See, e.g., WILLIAMS & WEINBERG, supra note 4, at 122–27 (revealing several consequences stemming from military discharges for homosexuality). Certainly, research has revealed the link between involuntary separation from the military for any reason and adverse health and social outcomes, making this group a high priority for policy and practical intervention. See, e.g., id. (observing more severe psychological and traumatic effects for SGIM veterans discharged under less-than-honorable conditions). For more recent studies, see also Mark A. Reger et al., Risk of Suicide Among U.S. Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation from the U.S. Military, 72 JAMA PSYCHIATRY 561, 561 (2015) (identifying that less-than-honorable administrative discharge was associated with greater risks of suicide); Emily Brignone et al., Non-Routine Discharge from Military Service: Mental Illness, Substance Use Disorders, and Suicidality, 52 AM. J. PREVENTIVE MED. 557, 559, 562 (2017) (observing from a cohort of 126,314 veterans non-routinely discharged from the military that those who received discharges for misconduct—including less-than-honorably discharged service members—were “strongly associated with mental health and behavioral vulnerabilities” to the point where they suffered “double the prevalence of PTSD than those discharged under routine conditions’’); Eric Elbogen et al., Psychological Risk Factors and Other Than Honorable Military Discharges: Providing Healthcare to Previously Ineligible Veterans, 183 MIL. MED. e532 (2018) (identifying that these discharges are associated with several negative outcomes, such as depression and substance abuse). In sum, the “[p]rior research has found that Veterans who experienced less than honorable discharges have poorer mental health functioning, higher risk for substance use and depression, less social support, and are more likely to be homeless.” Claire A. Hoffmire et al., Administrative Military Discharge and Suicidal Ideation Among Post-9/11 Veterans, 56 AM. J. PREVENTIVE MED. 727, 733 (2019). For these discharged veterans, federal legislation must do what state statutes cannot.

64. The hostility toward sexual minorities engendered by anti-gay policies frequently led to “lower military commitment” in which those impacted by the discrimination were “less likely to make the military a career.” Castro & Goldbach, supra note 10, at 151–52.

65. For a more detailed discussion of stressors unique to the discriminatory policies, see infra Part II.

66. McNamara et al., supra note 9, at 506 (attributing prevention of obtaining reliable statistics on SGIM veterans to the stigma imposed by former policies).

67. Id.

68. See, e.g., Kerry Beckman et al., Military Sexual Assault in Transgender Veterans: Results from a Nationwide Study, 31 J. TRAUMATIC STRESS 181, 182 (2018) (identifying
This Article is titled “Beyond Restoration of Honor” specifically to introduce the policy priority of ensuring that all SGIM veterans who were harmed by these discriminatory policies can obtain and use VA disability benefits for injuries resulting from discrimination while in the military. While this Article highlights the value of codifying a series of specific SGIM stressor markers for PTSD in the VA’s regulations concerning personal assault and creating presumptions of service-connection for specific military experiences, existing laws and regulations permit service-connection for these injuries without further regulatory changes.

In recognition of the policy concerns facing this large, underserved group of military veterans, this Article adopts a three-step approach. Part I briefly explores the relationship between SGIM status and adverse mental health outcomes among U.S. veterans. This Part pays particular attention to the characteristics of the anti-gay bans that have theoretically caused mental health injuries. Part III then examines the existing VA disability framework for compensating mental health injuries. This Part identifies VA disability compensation as the appropriate vehicle to address the unmet needs of impacted SGIM veterans.

Part III describes the research methodology and results of a study that identified and analyzed VA disability appeals in which veterans claimed that SGIM orientation discrimination caused their mental health condition. Through natural language processing (NLP) strategies and machine learning (ML) algorithms, the study identified 118 Board of Veterans’ Appeals cases out of 123,011 decisions addressing service-connection for mental health disorders. This Part presents the results of statistical analysis of the relationships between case outcomes and case characteristics. It specifies the unique SGIM stressors among veterans who served in the military, including “being interrogated . . . being threatened with loss of custody of children or military career, or being forced to undergo psychological treatment” due to confirmed or perceived sexual orientation or gender identity). Id. Years of service for them may have included the strains of concealing their identities, observing their friends interrogated or persecuted, or being subject to humiliating investigations. See also infra Part III (addressing specific stressors in the context of VA disability claims).

69. See infra Section II.A (discussing the application of 38 C.F.R. § 3.304(f)(5), which allows for alternative forms of evidence to prove the existence of traumatic stressors in PTSD claims).
70. Id.
71. Infra Part I.
72. Id.
73. Infra Part II.
74. Id.
75. Infra Part III.
76. Id.
77. Id.
types of mental health conditions most often claimed and awarded in SGIM discrimination cases, the demographic background of the veterans who appealed, and other factors related to the success and failure of these claims. As an aid to practitioners, this Part introduces an Online Supplement containing a digest of summarized cases, indexed by different facts which may resemble the background of a future veteran’s claim.

The last Part concludes with recommendations to ensure that those veterans who have been impacted by the military’s discriminatory policies are able to address longstanding needs and overcome persistent stigma surrounding requests for assistance. This Part discusses the benefits of developing a presumption related to SGIM discrimination in the regulations related to traumatic stressors. It also explores Canada’s recent experience developing a comprehensive governmental approach to veterans who experienced the Gay Purge and is a noteworthy example of success in the restoration of honor. It further draws salient lessons from cases litigated under the present adjudication framework. In sum, the Parts below offer a comprehensive roadmap for immediate action—well beyond simply the restoration of honor.

I. Psychological Consequences for Sexual and Gender Identity Minorities in the Military

A. SGIM Veterans’ “Double Minority” Status

Serving in the military subjects all veterans to unique combat and operational stressors that place them at higher risk for adverse health outcomes compared to civilians. Scholars have identified thirty-one sources of trauma unique to military service during the Gulf War alone, from sexual assault to exposure to burning oil fields.

78. Id.
80. Infra Concluding Remarks and Recommendations.
81. Id.
82. Id.
83. Id.
84. See, e.g., Kathleen A. McNamara et al., Mental Health of the Bisexual Veteran, 31 MIL. PSYCH. 91, 91 (2019) (observing the association between military service and increased risks of “negative outcomes” including suicidality, PTSD, mental discord, anxiety, depression, and survivor guilt).
Some researchers suggest that veteran status is a stigmatized minority status due to these occupational hazards. Overlapping SGIM identity during military service, then, yields a “double minority” status. The empirical research into health consequences supports this view, as SGIM veterans suffer higher levels of adverse mental health issues. Researchers have attributed the heightened risk not only to military anti-gay policies, but also to the practical consequences of those policies on the behavior of both the perpetrators of harassing and victimizing acts and the SGIM veterans themselves.

The military’s gay bans blatantly discriminated against SGIMs with the edict that “tendencies” or “propensities” toward homosexuality, even without any accompanying sexual behavior, made one “incompatible with military service.” Even in comparison to harsh

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86. Cortes et al., supra note 15, at 163. This unique excess stress has been attributed to “additional victimization.” McNamara et al., supra note 84, at 91.
87. Id.; cf. Bridget B. Matarazzo et al., Suicide Risk Among Lesbian, Gay, Bisexual, and Transgender Military Personnel and Veterans: What Does the Literature Tell Us?, 44 SUICIDE & LIFE-THREATENING BEHAV. 200, 202 (2014) (“[B]eing a member of the U.S. military, as well as identifying as LGBT, could potentially constitute a double-edged risk for suicide.”). SGIM veterans may be considered a triple minority if it is also accepted that veterans are a “statistical minority” representing experience that very few citizens have. David E. Rohall, Morten G. Ender & Michael D. Matthews, The Intersections of Race, Class, Gender, and Sexuality in the Military, in INCLUSION IN THE AMERICAN MILITARY: A FORCE FOR DIVERSITY 191, 205 (David E. Rohall et al. eds., 2017). Of course, veterans may occupy additional intersecting minority statuses, such as race and gender, which add additional risk factors based upon each minority identity. See, e.g., Keren Lehavot et al., Race/Ethnicity and Sexual Orientation Disparities in Mental Health, Sexism, and Social Support Among Women Veterans, 6 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 347, 348 (2019) (describing the manner in which analysis of discrete categories “may obscure” results and further observing “it is important to consider the whole of a person’s identity, rather than treating marginal identities as discrete units because a person is not Black or a woman or bisexual in isolation”). This Section focuses on SGIM status specifically because studies have shown significant associations between adverse mental health outcomes and SGIM veteran status even when controlling for race and other minority identities. Id.
88. Infra Section I.B (sharing consistent and longitudinal study results).
89. Infra Section I.C; see also Beckman et al., supra note 68, at 182 (concluding that “[m]ilitary service may confer unique risks for exposure to violence and discrimination for [sexual and gender minority veterans].”)
90. Marin Vesseliov Nikolov, U.S. Army Drill Sergeants' Response to Sexual Harassment and Sexual Assault of Gay, Lesbian, and Bisexual Recruits, WALDEN DISSERTATIONS & DOCTORAL STUD. 1, 83 (2017) (articulating as grounds for involuntary administrative separation “homosexual acts and other aberrant sexual tendencies”).
91. See, e.g., 10 U.S.C. § 654 (1994) (“The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”).
civillian standards, the persecution of suspects and lasting consequences of discharge made the military more discriminatory than any other institution in America.93 For those military members who first realized they were LGBT after they had joined the military, the consequences were multifaceted.94

Because even suspicion by peers could result in arrest, interrogation, loss of a career, and less-than-honorable discharge, many service members felt forced to actively conceal their identities throughout their service.95 Given far less personal privacy as a byproduct of military service,96 identity concealment was not limited to staying development from 1993 to late 2010 just prior to the repeal of DADT. See BERNARD D. ROSTKER ET AL., SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY: AN UPDATE OF RAND’S 1993 STUDY 39–62 (RAND Corp. 2010).

93. See, e.g., Troy R. Holroyd, Homosexuals and the Military: Integration or Discrimination?, 8 J. CONTEMP. HEALTH L. & POL’Y 429, 430 (1992) (“[T]here is no area where homosexuals have been more severely discriminated against than in the United States military.”); GARY L. LEHRING, OFFICIALLY GAY: THE POLITICAL CONSTRUCTION OF SEXUALITY BY THE U.S. MILITARY 73 (2003) (“Although aversion to homosexuals is present in all facets of society, in no other area is the hostility toward them as absolute or as codified as in the armed forces.”).

94. Given the gradual process of identity development during the formative years when most recruits join up, many SGIM veterans did not learn of their own status until they had already joined, after they had truthfully reported they were not homosexual upon induction. Michael D. Pelts, Susan Hrostowski, Scott A. Cardin & Rebecca Swindle, Using a Life Review to Inform Mental Health Services with Older Lesbian and Gay Veterans, 14 BEST PRACT. IN MENTAL HEALTH 27, 28 (2018). Sexual identity is still in development at the key ages of 17 to 24 when most people join the military, and many came to the military entirely lacking any sexual experience whatsoever. Id. Some were not attracted toward the same sex until after they began serving. Id. (“During this period, it is also likely that many were not fully aware or accepting of their sexual orientation.”). Others, in fact, were motivated to join the military to root out sexual confusion. See David G. Smith & Karin De Angelis, Lesbian and Gay Service Members and Their Families, in INCLUSION IN THE AMERICAN MILITARY: A FORCE FOR DIVERSITY 129, 135 (David E. Rohall et al. eds., 2017) (observing that, in some cases, “both gays and lesbians were drawn to military service to overcome their attraction to same-sex people (i.e., ‘make a man out of them’”).

95. See, e.g., ROSTKER ET AL., supra note 92, at 118 (describing how SGIM veterans were required to “maintain constant vigilance against careless or inadvertent disclosure”); Bobbi J. Van Gilder, Coping with Sexual Identity Stigma in the U.S. Military: An Examination of Identity Management Practices Prior to and After the Repeal of “Don’t Ask, Don’t Tell,” 17 IDENTITY: AN INT’L J. THEORY & RES. 156, 165 (2017) (reporting common reactions of “a constant fear of being discovered” throughout military service).

96. See, e.g., Nicholas A. Livingston, Danielle S. Burke, Mollie A. Ruben, & Alexis R. Matza & Jillian Shipherd, Experiences of Trauma, Discrimination, Microaggressions, and Minority Stress Among Trauma-Exposed LGBT Veterans: Unexpected Findings and Unresolved Service Gaps, 11 PSYCH. TRAUMA: THEORY, RESCH., PRAC., & POLY 695, 699 (2019) (identifying the practical consequences of being deployed aboard ship with 100 other sailors on the impact of SGIM discrimination); Melissa M. Foyes, Jillian Shipherd & Ellen F. Harrington, Race and Gender Discrimination in the Marines, 19 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 111, 112 (2013) (identifying how the military workplace is “unlike many workplace settings” in the unprecedented way that “housing is embedded within the work environment and salient aspects of identity are often closely tied to the work environment”).
silent and inaction. It frequently resulted in the deployment of active measures to avoid being exposed and greater fear of undesired and inadvertent exposure. Some SGIM veterans labeled their own condition as a sort of “multiple personality syndrome” and a state of paranoia over being discovered akin to living clandestinely, “deep inside enemy lines.” Along the same lines, research confirms the consequence of “cognitive depletion” among identity-concealing sexual minorities due to a cycle of taking action and then doubting its effectiveness.

Studies of SGIM veterans revealed that they faced “unique” challenges that made the experience inherently more stressful and traumatizing, including the inability to discuss their experiences and feelings with others, the inability to seek mental health treatment or counseling with clergy, and the inability to act on their sexual feelings for fear of violating criminal provisions of the Uniform Code of Military Justice (UCMJ). These limits were imposed

97. See, e.g., Van Gilder, supra note 95 (identifying several more active concealment measures, including various forms of outright manipulation and misrepresentation). In the most comprehensive study of active-duty service members’ behaviors during DADT, 46% of respondents stated that they avoided talking about their sexuality and 22% of the respondents stated they “pretended to be heterosexual.” Rostker et al., supra note 92, at 25.

98. Rostker et al., supra note 92, at 25; see also Smith & De Angelis, supra note 94, at 132 (discussing the requirement to engage in “deceit” in order to mask their identity and remain in compliance with the policy).

99. Livingston et al., supra note 96, at 699 (describing the experiences of a lesbian veteran who became so distrustful of others that she believed her lesbian sexual partner had to be an undercover agent with the mission to expose her sexuality); see also Van Gilder, supra note 95, at 166 (describing a closeted veteran’s account that the concealment “builds up over the years . . . into paranoia and hyper-vigilance”).

100. James M. Brennan et al., Inconcealable: A Cognitive-Behavior Model of Concealment of Gender and Sexual Identity and Associations with Physical and Mental Health, 8 Psych. Sexual Orientation & Gender Diversity 80, 81–82 (2021); see also Rostker et al., supra note 92, at 118 (“[T]he psychological costs of leading a life of concealment, when there is always a threat that one’s entire life could collapse, are considerable” often amounting to “preoccupation” with feared consequences) (emphasis added).

101. Livingston et al., supra note 96, at 696.

102. See, e.g., Williams & Weinberg, supra note 4, at 112 (observing that the pressure to conceal extended beyond military peers to encompass family members and personal friends); see also id. at 124 (identifying estrangement from family as a consequence for many SGIM military members).

103. As noted by a physician who treated military members at public non-military clinics, an anti-gay policy “compromises the medical care of gay, lesbian, and bisexual service members by stymieing normal lines of questioning in clinical encounters.” Kenneth A. Katz, Health Hazards of “Don’t Ask, Don’t Tell,” 363 New Eng. J. Med. 2380, 2381 (2010). In many cases, fear of being discovered led SGIM service members to entirely forego medical or mental health treatment, thus exacerbating injuries and illnesses. Id. at 2380.

104. See infra note 169 and accompanying text (describing the manner in which the UCMJ criminalized consensual sodomy as a felony-level offense, justifying highly resourced investigations and interrogations).
because members of the military, including mental health providers and chaplains, were under a duty to report gay, lesbian, and bisexual service members. These collective impediments to the healthy development of sexual and gender identity also led to specific maladaptive coping mechanisms.

B. Consequences of SGIM Stressors

SGIM-identifying veterans experience significantly greater incidences of mental health conditions than non-SGIM-identifying veterans. The disparities in health and social outcomes extend to: (1) Greater rates of depression than “heterosexual veterans . . . or a sample of veterans”; (2) greater rates of Post-traumatic Stress Disorder (PTSD) than heterosexual veterans, even when controlling for combat exposure; (3) higher rates of attempted and completed suicide than heterosexual veterans; (4) as much as double the rate of Military Sexual Trauma (MST) as non-SGIM veterans; and (5) lower levels of satisfaction with life than heterosexual veterans. In evaluating the stark differences, researchers have applied the theory of Sexual and Gender Identity Minority Stress, which posits that “excess stress” and additional behavioral impositions arise from identifying as a SGIM, especially in contexts where SGIM status is stigmatized.

105. See Williams & Weinberg, supra note 4, at 107 (observing that all officers in the military had a responsibility and a duty to report all cases of suspected homosexuality, including those in the helping professions); id. at 29 (noting that chaplains and military psychiatrists were some of the most common sources of allegations of homosexuality). For instance, “a Navy psychologist turned in a servicemember simply for asking questions about sexuality.” C. Dixon Osburn, Policy in Desperate Search of a Rationale: The Military’s Ban on Lesbians, Gays and Bisexuals, 64 UKMC L. REV. 199, 232 (1995).

106. See, e.g., McNamara et al., supra note 84, at 95 (noting that SGIM veterans “as a combined group were significantly at greater odds of PTSD than heterosexual veterans”).


108. See, e.g., Pelts et al., supra note 94, at 27 (observing that LGB veterans have “PTSD at a rate far greater than their heterosexual counterparts”).

109. Lucas et al., supra note 107, at 613.

110. Id. at 617.

111. McNamara et al., supra note 84, at 91 (noting marked disparities in greater rates of suicidality, depression, PTSD, anxiety, alcohol abuse, and military sexual assault).

112. See, e.g., Ilan H. Meyer, Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence, 129 PSYCH. BULL. 764, 764 (2003) (defining Minority Stress as “excess stress to which individuals from stigmatized social categories are exposed as a result of their social, often a minority, position.”); see also Castro & Goldbach, supra note 10, at 145 (“At its core, minority stress postulates that prejudice and stigma directed toward LGBT people results in unique stressors that cause adverse health outcomes, especially mental health disorders.”);
homosexual conduct, tendencies, or even affiliation (at different periods of time), is a prime example of an environment that generates SGIM Stress.\footnote{113}

Ilan Meyer’s work developing Minority Stress theory focuses on two aspects of being stigmatized on the basis of sexual orientation or gender identity\footnote{114}: distal minority stressors, which represent external and objective forms of stigma,\footnote{115} and proximal minority stressors, which include those internal beliefs that arise due to the stigma.\footnote{116}

In the military context, a distal minority stressor would be involuntary separation from the military on the basis of sexual orientation or the interrogation that precedes it.\footnote{117} A proximal minority stressor related to military stigma would be the veteran’s internalization of the belief that gays, lesbians, or transgender persons are less worthy of respect and dignity, which can manifest in negative beliefs about oneself and other SGIMs.\footnote{118} Learning of other SGIM veterans’ exposure during any number of witch hunts and sting operations increased these self-sabotaging beliefs.\footnote{119}


\footnote{113. See, e.g., Beckman et al., supra note 68, at 182 (“The ‘minority stress model’ is a helpful framework for understanding the context of transgender veterans’ lived experiences and potential negative outcomes . . .”).

\footnote{114. See, e.g., Meyer, supra note 112, at 766 (defining and applying Minority Stress theory). In 2012, scholars adapted Sexual Minority Stress to gender identity in recognition of differences in treatment of and responses by transgender persons. Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 42 PROF'L PSYCH.: RSCH.& PRAC. 460 (2012). Despite differences, research has confirmed that transgender and LGB persons both respond to minority stress in a similar manner. Brennan et al., supra note 100, at 89 (identifying how identity concealment is a leading coping mechanism for both groups).}

\footnote{115. See, e.g., Lucas et al., supra note 107, at 613 (describing distal minority stressors as “external” factors); Nicholas A. Livingston et al., *Real-Time Associations Between Discrimination and Anxious and Depressed Mood Among Sexual and Gender Minorities: The Moderating Effects of Lifetime Victimization and Identity Concealment*, 7 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 132, 132 (2020) (citing “discrimination and victimization” as distal minority stressors).

\footnote{116. See, e.g., Lucas et al., supra note 107, at 613 (describing proximal minority stressors as “internal” factors); Livingston et al., supra note 115, at 133 (citing examples of proximal minority stress as “shame, expressions of rejection, [and] identity concealment”).

\footnote{117. See, e.g., Livingston et al., supra note 96, at 698 (citing distal minority stressors related to “systemic discrimination,” including “being investigated, demoted, or discharged from the military due to known or assumed LGBT identity”).

\footnote{118. Id. at 699 (identifying the proximal minority stressor of “insecurity and internalized feelings of shame”).

\footnote{119. Peits et al., supra note 94, at 27–28 (attributing knowledge “about the sexual harassment of LGB service members” as an additional burden that compounded “living in the [military] closet”).}
The impact of the gay bans has varied among SGIM veterans. For those who developed communities and turned to each other for support in the backdrop of persecution and hate, health outcomes could be negligible. Others, who experienced rejection, isolation, humiliation, and betrayal, may have left the military without any sense of self-worth, negatively impacting their ability to interact with others and work for the rest of their lives. Although many SGIM veterans developed sufficient resilience to thrive, a growing body of research has identified the proximal stress of identity concealment as a determinant of mental illness, with more serious conditions emerging for those who engaged in active measures.

The military’s anti-gay policies have been attributed to long-lasting mental health consequences specifically because of their interference with the stages of veterans’ sexual identity development during military service. For many who led double lives within the military, concealment continued in family and work relationships and other contexts, even after separation from the military.

120. Rostker & Harris, supra note 92, at 119.
121. See Ramirez & Sterzing, supra note 6, at 68–69. For instance, scholars have recently adopted a “strengths-based perspective” when researching SGIM veterans by noting “examples of strength, resilience, and everyday acts of resistance . . . to manage an anti-LGBT military environment.” Id. The common strategies that emerged from veterans’ oral histories and personal accounts included the intentional mockery of heteronormative standards by “queering military trainings, values, resources, and spaces,” as well as “creating underground LGBT support networks.” Id. at 69, 71.
122. Kristen Kavanaugh, Lesbian, Gay, Bisexual, and Transgender Veterans, in THE CIVILIAN LIVES OF U.S. VETERANS: ISSUES AND IDENTITIES 673, 677 (L. Hicks et al. eds., 2017) (describing the “long-term” consequences of military SGIM stress as impairment of the veteran’s “ability to function interpersonally and in the civilian job force”).
123. See, e.g., Livingston et al., supra note 96, at 701 (“[M]any LGBT veterans are resilient to these [adverse and discriminatory] experiences.”).
124. See also Mankowski, supra note 112, at 114 (“[F]orced concealment has created undo [sic] stressors related to fear of discharge, loss of employment, as well as vic-
timizations.”).
125. Van Gilder, supra note 95, at 163 (identifying a common experience among SGIM veterans “that they hit a breaking point where they could no longer engage in hiding”).
126. See, e.g., Cortes et al., supra note 15, at 163 (“This is especially true for older veterans, whose formative identity development occurred in a heteronormative military system that was heavily punitive toward non-cisgender and/or non-heterosexual identities.”).
127. See, e.g., McNamara et al., supra note 84, at 96 (observing that the prohibition on identity revelation in the military environment prevented SGIM veterans from disclosing to “other important people in their lives”); Kavanaugh, supra note 122, at 677 (“This fear had immediate and long-term implications for those serving under the policy, and it remained with many of them as they exited the military into the civilian workforce.”); Kavanaugh, supra note 122, at 685 (describing the consequence of “struggling with the reintegrative process after their service”); Mankowski, supra note 112, at 111 (observing that SGIM veterans “are more . . . vulnerable to homelessness and unemployment when compared to the general population of older [LGBT] adults”).
some cases, SGIM retirees who had long left the military felt continued pressure to conceal their orientation and identity in a civilian setting for fear that they would still be subject to the UCMJ and court-martial. Others faced the dilemma of a “double-closet,” in which they felt pressure to conceal their veteran status from other members of the SGIM community following military service.129

SGIM stress in the context of veterans is distinguishable from racial minority stress in many important ways. While, in some cases, racial minorities may have physical features that allow them to “pass” as Caucasians, passing as heterosexual involves distinctly different behaviors. Concealing one’s SGIM status during military service often required marriage, pregnancy, and “performing heterosexuality.” Unlike racial discrimination, military SGIM discrimination during this time period was de jure, rooted in federal law and military regulations. In contrast to the racial desegregation of the military in the 1950s, this same period marked an increase in discriminatory policies against military SGIMs. With a brief interruption in the 1990s, persecution of SGIMs continued through the 2000s until DADT began to limit the reach of criminal and command investigatory resources. At the very time procedural protections

128. See, e.g., Myott, supra note 20, at 211 (observing how “LGBT retirees still fear prosecution under the [UCMJ]”); Kavanaugh, supra note 122, at 685; Brennan et al., supra note 100, at 91.
129. LEGAL SVC’S CTR. ET AL., supra note 18, at 9; see also Livingston et al., supra note 115, at 133 (observing the consequence of “concealment of veteran identity among LGBTQ peers”).
131. See Brennan et al., supra note 100, at 80 (observing that SGIM status is an inherently “concealable stigma,” since SGIM status is “not necessarily immediately detectible by others”). Research with SGIM veterans who served during the gay bans has uncovered twelve distinct “communication strategies” employed to manage their identities, with “significant personal cost.” Van Gilder, supra note 95, at 158. More specifically, these identity management strategies routinely resulted in “feelings of self-reproach, isolation, and stress.” Id. at 164.
132. See, e.g., Livingston et al., supra note 96, at 699 (reporting a gay veteran’s reasons for marrying a lesbian veteran during their military service: “We were both gay but we didn’t want to get fired and we wanted to make a career out of it, so we got married.”). Van Gilder defines the “performing heterosexuality” as a common coping mechanism to conceal one’s identity which involves “managing the visibility of one’s sexuality in everyday interactions.” Van Gilder, supra note 95, at 162.
133. ROSTKER & HARRIS, supra note 92, at 6.
134. Id. at 21.
135. See, e.g., ROSTKER ET AL., supra note 92, at 3–10 (describing the history of military prohibitions on homosexuality as well as the military’s increasing protections for racial minorities). Although Defense Secretary Les Aspin ordered that “[c]ommanders and investigating agencies will not initiate inquiries or investigations solely to determine a
grew for racial minorities who experienced discrimination and harassment, anti-gay policies penalized victims and emboldened their perpetrators.136

C. The Perpetrator Hypothesis for SGIM Stress Among Veterans

Psychiatrists have presented the Perpetrator Hypothesis to explain the impact of SGIM stress on veterans.137 Under this theory, anti-gay policies “fomented,”138 encouraged, and excused the perpetration of “deliberate and malicious” sexual, physical, and mental abuse of fellow service members against those suspected or known to be SGIMs.139 Lack of protections against discrimination and awareness of its unchecked pervasiveness had the expected effect of ongoing injury that too often led to social isolation, a decrease in the desire to serve the military, and a decrease in military performance.140 In one of the few comprehensive studies of actively serving SGIMs during the time of DADT, “more than half of respondents (55 percent) said that they would not stay in the military unless DADT were
Relatively, over one-third attributed their existing mental health conditions to DADT.142

Although the circumstances surrounding the perpetration of discriminatory behaviors could be nearly infinite, the actors generally resort to common methods of abuse.143 In the first-ever Army-wide study of sexual orientation harassment, the Office of Inspector General identified eight basic categories of harassing behavior: (1) offensive speech; (2) offensive or hostile gestures; (3) threats or intimidation; (4) graffiti; (5) vandalism of the victim’s property; (6) physical assault; (7) limiting or denying training and/or career opportunities; and (8) disciplinary action or punishment.144

The military context often provided opportunities for simultaneous forms of harassment.145 Limits on the rights of service members within a hierarchy of rank and responsibility offered various expedient ways for prejudiced perpetrators to ostracize perceived outsiders and misfits.146 Notably, the command structure provided for a special sort of “bureaucratic harassment” in which authorities used regulations creatively to inflict harm under the guise of following standards and regulations.147 Researchers have recognized that many SGIMs were forced out of the military under the pretext of non-discriminatory rules.148 This includes separations for personality disorders, minor misconduct, or other manufactured reasons that appeared legitimate despite homophobic motivations.149

141. ROSTKER ET AL., supra note 92, at 216.
145. For instance, a common form of harassment by superiors was to order suspected SGIM service members to simulate gay sex, often on camera. Joseph Christopher Rocha, Repeal Is a Testament to the Core Values of the United States, in Michael D. Almy, I Hope to Resume My Career as an Officer and Leader, in THE END OF DON’T ASK, DON’T TELL: THE IMPACT IN STUDIES AND PERSONAL ESSAYS OF SERVICE MEMBERS AND VETERANS 176, 176 (J. Ford Huffman & Tammy S. Schultz eds., 2012); see Nikolov, supra note 90, at 78–79 (describing how drill instructors would force recruits “to simulate gay sex on camera”).
147. Id. at 808 (defining “bureaucratic harassment as the purposeful manipulation of legitimate administrative policies and procedures, perpetrated by individuals who hold institutional power over others and used to undermine colleagues’ professional experiences and careers”).
148. Id. at 812.
149. See id. at 807 (providing examples of pretextual harassment “facilitated and
Because a significant amount of abusive anti-gay treatment was based upon perceived violations of gender norms, it is possible to view many of these harassing behaviors as forms of sexual harassment.\textsuperscript{150} Beyond physical assault, perpetrators of SGIM discrimination often adopted methods of sexual abuse motivated by discrimination.\textsuperscript{151} “Lesbian baiting” was a common discrimination technique in which male service members demanded sexual favors from suspected or confirmed lesbian service members to prove that they were not gay.\textsuperscript{152} Such demands were often accompanied by threats to report the victim for being a lesbian if she refused.\textsuperscript{153} “Corrective rape” was a violent form of discrimination in which male service members sexually assaulted suspected or confirmed lesbian service members in order to change their orientation to heterosexual.\textsuperscript{154}

Another aspect of the Perpetrator Hypothesis is the reality that veterans who concealed their SGIM identity were sometimes forced to participate in normative discriminatory behaviors in order to blend in.\textsuperscript{155} These service members routinely participated in the gay jokes and banter which were ubiquitous throughout the military because “otherwise somebody’d suspect you.”\textsuperscript{156} Active participation was hardly limited to verbal insult.\textsuperscript{157} One gay veteran explained how, while serving on an administrative separation board, he felt compelled to vote for the discharge of another gay service member for homosexuality on the basis that: “I was afraid that if I didn’t vote that way, someone might point their finger at me, and say, ‘Well, the reason that you’re not voting him out is because you’re gay

\begin{footnotes}
\item[151] Castro & Goldbach, \textit{supra} note 10, at 148.
\item[152] See Benecke, \textit{supra} note 150, at 57 (observing that “[w]omen [were] often . . . accused of being lesbians when they rebuff sexual advances by men or report sexual abuse”).
\item[153] Id. (“Lesbian baiting is one of the main reasons why women were disproportionately investigated and discharged under DADT and prior policies.”).
\item[155] See, e.g., \textit{JANET E. HALLEY, DON’T: A READER’S GUIDE TO THE MILITARY’S ANTI-GAY POLICY} 3 (1999) (explaining that “Acting viciously anti-gay is probably the best way to avoid this danger of exposure”).
\item[156] Id. A prime strategy to deflect attention was not only to offend, but to “[b]e even more vociferous than anybody else.” \textit{Id}.
\item[157] Id.
\end{footnotes}
Because anti-gay harassment usually occurred in groups of military perpetrators, the pressure to participate extended to any activity undertaken by the group, including filing reports, failing to intervene to stop physical assault, or engaging in physical assault.

SGIM veterans who felt forced to harm other SGIM veterans faced particular difficulties with "ethical compromise[s]" that qualify as "moral injury." The theory of moral injury has been most commonly associated with the behavioral disturbances experienced by veterans who participated in battlefield atrocities. However, combat is not a requirement for moral injury and its adverse effects can be experienced in any situation where a military member violates deeply held moral beliefs. Although moral injury is not a psychiatric diagnosis, it represents a means through which veterans may acquire mental conditions.

D. The “Traumatic” Impact of SGIM Discrimination

Not all distressing events, even when injurious to one’s psyche, meet the diagnostic threshold for “trauma.” The initial PTSD

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158. Livingston et al., supra note 96, at 699.
159. ROSTKER & HARRIS, supra note 92, at 278 (observing that the perpetrators of anti-gay violence and harassment were most often “young males, who often act in groups”).
160. Livingston et al., supra note 96, at 700 (describing the particularly injurious effect of the minority stressor of “betrayal of . . . fellow LGBT [servicemembers] either through acts of commission . . . or omission”).
161. Id. at 699.
164. For example, Stein and colleagues have distinguished “moral injury by self” from “moral injury by others” as sources of trauma and processes that can result in adverse mental health consequences. Nathan R. Stein et al., A Schema for Categorizing Traumatic Military Events, 316 BEHAV. MODIFICATION 787, 802 app. (2012).
165. See id. (identifying different forms of moral injury that have traumatic consequences).
166. See, e.g., Robert T. Carter et al., Race-Based Traumatic Stress, Racial Identity Statuses, and Psychological Functioning: An Exploratory Investigation, 48 PROF’L PSYCH.: RSCH. & PRAC. 30, 31 (2017) (“Stress, trauma, and traumatic stress are further complicated by the subjective nature of such experiences: An event or enduring condition can be experienced as stressful or traumatic by one person, whereas another person undergoing the same or similar experience may not feel the same way.”); Robert T. Carter et al., Initial Development of the Race-Based Traumatic Stress Symptom Scale: Assessing the Emotional Impact of Racism, 5 PSYCH. TRAUMA: THEORY, RSCH., PRAC., & POL’Y 1, 2 (2013)
diagnostic criterion defined traumatic events in a restrictive way through Criterion A1 of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Concerns over the subjectivity of the required causal event led to a view of trauma that required “actual or threatened death or serious injury” to self or others coupled with the reaction of “intense fear, hopelessness, or horror.” The 2013 revision of the DSM definition became even more restrictive by further relegating clinically sufficient trauma to “actual or threatened death, serious injury, or sexual violence.” Some scholars contend that these strict standards essentially preclude a diagnosis of PTSD in response to discrimination because even the most harmful words lack the requisite level of harm. Others contend that discrimination raises different issues that may nonetheless qualify as traumatic given the impact of discriminatory events.

In light of the conflicting theories, it is vital to understand how trauma applies to SGIM discrimination. Growing evidence from the domain of clinical psychology has shown that the occupational hazards (observing that not all victims of discrimination will experience trauma or suffer from psychological injury).


168. Id. (Criterion A2).

169. Id. (Criterion A1).

170. Id. (Criterion A).

171. See, e.g., Anuska Pai, Alina M. Suris & Carol S. North, Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations, 7 BEHAV. SCI. 1, 2, 5 (2017) (observing that the DSM-5 definition of Criterion A trauma “was modified to restrict its inclusiveness” and “[t]he new criteria for trauma and exposure to it further limit the types of events that qualify”); Samantha C. Holmes, Vanessa C. Facemire & Alexis M. DaFonesca, Expanding Criterion A for Posttraumatic Stress Disorder: Considering the Deleterious Impact of Oppression, 22 TRAUMATOLOGY 314, 314 (2016) (“Despite efforts to capture a wide variety of potentially traumatic events, the way Criterion A is currently written fails to include the insidious trauma that is oppression.”);

Robert T. Carter & Thomas D. Scheuermann, Confronting Racism: Integrating Mental Health Research Into Legal Strategies and Reforms 112, 113 (2020) (“We reason that since racism is rarely an experience that involves direct threats to one’s life, it should follow that racism-related stress or race-based trauma would not be associated with PTSD.”).

172. See, e.g., Monica T. Williams, Isha Metzger, Chris Leins & Celina DeLapp, Assessing Racial Trauma Within a DSM-5 Framework: The UConn Racial/Ethnic Stress and Trauma Survey, 3 PRAC. INNOVATIONS 242, 247 (2018) (observing not only that discrimination can be traumatic, but further that “PTSD caused by [it] . . . is likely to be underrecognized due to a lack of awareness among clinicians”); Carter et al., supra note 166, at 31 (identifying various studies demonstrating that “many severe stress experiences may not threaten death or serious physical injury,” including “homelessness, poverty, emotional abuse, neglect, [and] racism”).
of military service can attenuate SGIM veterans’ experiences of events not normally considered traumatic.\footnote{Livingston et al., supra note 96, at 698 (describing a complex interaction of factors that increases susceptibility to risk of traumatic injury).} For instance, research demonstrates a degree of “overlap” and “intersection” between minority stressors, discriminatory policies, and traumatic events, such that an experience might qualify as traumatic when it occurs in the backdrop of DADT.\footnote{Id. at 697, 698 (describing “overlap between discrimination and Criterion A traumatic events” and an “intersecting continuum of adverse experiences” and a “complex intersection of a traumatic experience” that may qualify as trauma even though not normally cognized under Criterion A).} Livingston and colleagues illustrate this point with the example of a service member who has learned of “hate crimes against other LGBT individuals who share the similar minority identities.”\footnote{Id. at 697.} This SGIM stressor, which would not normally be considered traumatizing to other service members, could “be experienced as traumatic due to the implied possibility that these veterans could have been, or become, a target of similar violence.”\footnote{Id.; see also Virginia W. Huynh, Que-Lam Huynh & Mary-Patricia Stein, Not Just Sticks and Stones: Indirect Ethnic Discrimination Leads to Greater Psychological Reactivity, 23 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 423, 426 (2017).}

Some uniquely traumatizing SGIM distal stressors during military service include homosexual discharge and the lasting stigma in military papers and investigations into one’s sexual orientation status.\footnote{See, e.g., Beckman et al., supra note 68, at 182 (identifying particularly impactful SGIM stressors among veterans as “being interrogated about gender identity, being threatened with loss of custody of children or military career, or being forced to undergo psychological treatment”).} Investigations were particularly impactful because of the terrorizing procedures used.\footnote{Id.; see also WILLIAMS & WEINBERG, supra note 4, at 30 (describing common such procedures).} Prior to the DoD’s orders that commanders and law enforcement agencies limit the scope and resources committed to investigations into SGIM status, investigatory efforts were elaborate and often so “ruthless” that “many LGBT service members [left] quietly so as to avoid the inquisition.”\footnote{Myott, supra note 20, at 204. Even though DADT was supposed to be a compromise to protect sexual minorities who did not “tell” or otherwise reveal their orientation or identity, “the 1990s represented an increase in ‘witch hunts’ and unwarranted investigations,” as evident in the rise in homosexual discharges during that time. ROSTKER ET AL., supra note 92, at 48.} Intelligence and criminal investigation units conducted clandestine surveillance of gay bars and other gatherings (even churches) where SGIMs were known to socialize.\footnote{Benecke, supra note 150, at 45; see also RANDY SHILTS, CONDUCT UNBECOMING: GAYS & LESBIANS IN THE U.S. MILITARY, VIETNAM TO THE PERSIAN GULF 80–81 (1993).} Military inspections of housing areas included
review of letters, diaries, and other personal effects.\textsuperscript{181} Widespread dragnets were routinely conducted onboard ships and on military installations with the objective of interviewing hundreds of service members to identify which of them might be or know of SGIM service members.\textsuperscript{182} Even if a veteran was spared identification during an investigation, widespread knowledge of exposed friends required continued hypervigilance in all activities.\textsuperscript{183}

The military perfected these investigations to the point where a mere accusation became a career-ending, self-fulfilling prophecy.\textsuperscript{184} Threats of publicity and criminal prosecution all but guaranteed that many suspected SGIMs would admit to the conduct and waive their rights.\textsuperscript{185} Investigators routinely relied on Article 125 of the UCMJ, which made consensual sodomy punishable with a sentence up to “Dishonorable Discharge, forfeiture of all pay and allowances, and confinement for 5 years,”\textsuperscript{186} to arrest suspected homosexual service members and detain them during marathon interrogation sessions of hours or days.\textsuperscript{187} In some extreme cases, suspected gay service members were forced to wear special patches that resembled the distinctive stars worn by Jewish victims of the Holocaust.\textsuperscript{188} Interrogators

\textsuperscript{181}. See SHILTS, supra note 180, at 80–81.

\textsuperscript{182}. Id. In a notable example, between 1986 and 1988 at Paris Island, South Carolina, the Marine Corps investigated 246 servicewomen on suspicion of homosexuality causing a cascade of military separations, resignations, and prosecutions. See Benecke, supra note 150, at 45 n.56.

\textsuperscript{183}. Pelts et al., supra note 94, at 28. “In addition to the burden of living ‘in the closet,’ many LGB veterans experienced or knew about the sexual harassment of LGB service members, especially during the [DADT] era.” Id.

\textsuperscript{184}. W ILLIAMS & WEINBERG, supra note 4, at viii (“[T]he interrogation procedures and the threats and promises to the accused are designed to intimidate and terrorize so that he waives his rights to a hearing and thus is almost automatically guaranteed [involuntary separation].”).

\textsuperscript{185}. Id.


\textsuperscript{187}. See KUZMA ET AL., supra note 21, at 501. The offense of consensual sodomy was repealed in 2013 in recognition of its discriminatory effects on SGIM service members. Id. Detention was particularly common in the Navy, where suspected sailors were required to be separated from other shipmates, usually in the stockade. See WILLIAMS & WEINBERG, supra note 4, at 111 (discussing naval policy that accused sexual minorities “could not be kept aboard ship and . . . were usually sent to detention barracks”). Research during the 1970s showed that the mean amount of time from accusation to separation was approximately 2.5 months, and that during this time 23% of those awaiting separation were kept at a discharge center, while 16% were kept confined. Id.

\textsuperscript{188}. MARY ANN HUMPHREY, MY COUNTRY, MY RIGHT TO SERVE: EXPERIENCES OF GAY MEN AND WOMEN IN THE MILITARY, WORLD WAR II TO THE PRESENT 9 (1990) (reporting a Sailor’s processing out of the Navy after a gay purge onboard the USS Los Angeles in the 50s: “It took them thirty days to muster me out . . . We were segregated from the other prisoners and assigned what [they] referred to as green stars. It was like the Jews.
frequently threatened to disclose their assumed homosexual status to military peers, friends and family, and reporters at “hometown newspaper[s].”189 Even through the 1990s and the advent of the DADT policy, investigators were directed to “interrogate parents and siblings in homosexual conduct cases.”190

While criminal investigation and arrest are highly stressful experiences normally falling below the threshold for a Criterion A traumatic stressor,191 the arsenal of tools used by military investigators to uncover SGIM status were designed to purge the military of confirmed and suspected sexual minorities.192 Research psychologists have drawn a parallel between the impact of this type of investigation and that of stalking.193 Not only do stalkers use nearly identical tactics as military investigators used during investigations, but stalking victims had nearly identical reactions as SGIM veterans under investigation including symptoms of psychopathology, “long-term fear,” and “social isolation.”194 As early as the 1970s, researchers characterized the investigatory process as “harassment” based on SGIM identity.195 The abusive tactics worsened over successive decades mainly because internal challenges from the military were viewed as “unpatriotic,” and worse yet, “a threat to security.”196

Another factor that can make a seemingly benign event more traumatic for an SGIM veteran during service is the perception of a lack of physical safety or threat of death.197 Increased access to weapons in the military environment alters the calculus that might apply in non-military settings.198 Figure 1(a), below, depicts the illustration

We wore green badges. They weren’t star shaped but circular. The badges were worn at all times.”."

189. LEHRING, supra note 93, at 115.
190. Benecke et al., supra note 139, at 218.
191. Nash et al., supra note 163, at 646.
192. WILLIAMS & WEINBERG, supra note 4, at 114 (“The system is arranged so the homosexual servicemember is isolated, unprotected, and without the support of others. In the atmosphere created by his exposure he, in effect, discharges himself.”).
194. Id. at 508–09.
195. WILLIAMS & WEINBERG, supra note 4, at 103.
196. Id. at 113–14.
197. Benecke, supra note 150, at 70 (observing a military environment in which threats of violence against gays was so pervasive that “many soldiers felt they had no choice but to come out and accept a discharge under DADT as their only recourse to protect their lives”).
198. See Naomi Himmelfarb, Deborah Yaeger & Jim Mintz, Posttraumatic Stress Disorder in Female Veterans with Military and Civilian Sexual Trauma, 19 J. TRAUMATIC STRESS 837, 844 (2006) (finding that greater access to weapons in the military environment increases the risk of a stressful event becoming traumatizing and injurious in its effects).
of a bayonet through a skull with the comment, “No Room Foor [sic] Fags,” which had been left for a suspected gay Marine. The spray-painted message, below in Figure 1(b), “All Fagets [sic] in the Army Will be Killed,” appeared in the vicinity of the Fort Campbell Army facilities where suspected gay soldier Barry Winchell was bludgeoned to death on suspicion of being gay. Because of their location and context, these threats carried an air of greater legitimacy than comments simply made in jest.

**FIGURE 1**

**EXAMPLES OF CONTEXTUAL FACTORS THAT INCREASED PERCEPTIONS OF IMPENDING HARM TO MILITARY SGIMs**

Veterans who witnessed or experienced harassment were not only aware of how rarely SGIM harassment and discrimination were reported but they were also often aware of how rarely perpetrators were

199. **Jeffery M. Cleghorn et al., Conduct Unbecoming: The Ninth Annual Report on “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” 34 (2003).**

200. **Allyson Collins et al., Uniform Discrimination: The “Don’t Ask, Don’t Tell” Policy of the U.S. Military, I (Hum. Rts. Watch 2003).** For a detailed analysis of the anti-gay climate at Fort Campbell, see U.S. DEPT OF ARMY INSPECTOR GEN., FORT CAMPBELL TASK FORCE, DAIG SPECIAL ASSESSMENT/INVESTIGATION OF ALLEGATIONS OF VIOLATIONS OF THE DOD HOMOSEXUAL CONDUCT POLICY AT FORT CAMPBELL, 14, 17–18 (Servicemembers Legal Def. Network 2003). The investigation at Fort Campbell concluded that “[The joking and bantering that occurred prior to July 1999 [when Winchell was murdered] on a regular basis could be viewed as harassment.” See Nomination of Maj. Gen. Robert T. Clark To Be Lieutenant General, 149 Cong. Rec. 167 (Nov. 18, 2003); see also Benecke, supra note 150, at 70 (reporting the words of running cadences at Fort Campbell following Private Winchell’s murder: “Faggot, faggot, down the street. Shot him, shot him, till he retreats.”).

201. Similar forms of harassment included a suspected lesbian service member anonymously “receiving a handmade chopping block along with an article about homosexual beheadings in the middle east.” Nikolov, supra note 90, at 25.
held responsible on the rare occasions when victims filed reports. The deliberate indifference and unresponsiveness to perpetrators ensured ongoing victimization and increased fear of harm.

Notwithstanding the impact of widely perpetrated and well-known witch hunts, the military-specific stressor of combat remains even more exacerbating. Similar to the research on race discrimination in the military, victims of SGIM discrimination perceived less support from their peers, which not only raised concerns of fratricide, but fears of lack of support when fighting the enemy. Just as the Black veteran who had experienced racial discrimination feared that he could not trust White peers in combat, an SGIM Vietnam veteran similarly remarked, “Pretty much the whole year in Vietnam[,] I was more afraid of being killed by somebody in my unit.”

202. In RAND’s 2010 study of reported incidents of SGIM harassment, only one perpetrator was punished out of “62 cases of harassment of a gay service member.” ROSTKER ET AL., supra note 92, at 266.

203. See, e.g., McNamara et al., supra note 84, at 91 (describing how the military system generated a consequential minority stressor through “constricted ability to access legal recourse following victimization”); Livingston et al., supra note 96, at 696 (“[L]ack of [legal] protections in policies and laws can exacerbate documented [mental] health disparities” among SGIM veterans).

204. See, e.g., Pelts et al., supra note 94, at 27 (observing that “the pressure of hiding sexuality exacerbated the stress of combat”); Van Gilder, supra note 95, at 169 (observing the perception of a gay Vietnam veteran that “identity concealment was essential to his survival”).


206. ROSTKER & HARRIS, supra note 92, at 272 (discussing the concern of fratricide of suspected or confirmed sexual minorities in the military based on “people who would put [a suspected SGIM]’s life at risk”); see also Francine Banner, “It’s Not All Flowers and Daisies”: Masculinity, Heteronormativity and the Obscuring of Lesbian Identity in the Repeal of Don’t Ask, Don’t Tell, 24 YALE J. L. & FEMINISM 61, 107 (2012) (describing how an airman had asked for an expedited discharge based on comments of a leader that he should expect “an increase in anti-gay ‘friendly-fire’ deaths after [DADT] was lifted”).

207. See, e.g., Daniel H. Kabat, Steven D. Stellman & Jeanne Mager Stellman, Perceived Racial, Ethnic, and Gender Discrimination Among Male and Female Vietnam Era Veterans and PTSD Symptoms Later in Life, in THE HEALTH AND WELL-BEING OF AGING VETERANS 57, 66 (Avron Spiro III et al. eds., 2018) (“Besides adding another layer of trauma and stress to normal combat stress, experience of discrimination might change the fundamental understanding of one’s place in the war zone and rob an individual of the basic support that might help one cope with the expected combat stresses.”).

208. See, e.g., Stigma-in-Arms, supra note 205, at 147–48 (describing how racial minority veterans feared harm from their peers more than or rather than the enemy, such as a “friendly-fire incident [or] fragging with grenades”).

209. Livingston et al., supra note 96, at 697.
By no means are the effects of SGIM minority discrimination limited to the binary possibilities of PTSD or no PTSD, or trauma or no trauma. Researchers note that anxiety and depression are the most likely consequences of the isolation that accompanies identity concealment. However, PTSD diagnoses remain viable for SGIM discrimination when the survivor’s subjective appraisal of the discriminatory behavior results in a fear of loss of life, serious bodily harm, or sexual assault pursuant to Criterion A. Because events that are traumatic for some will clearly not be traumatic for all, assessment of traumatic discrimination requires the use of more sensitive psychometric tests and the understanding that the psychological etiology of these injuries is far from typical.

In light of the scholarship related to traumatic events for SGIM veterans, I was particularly interested in whether BVA cases addressed the following specific situations and the outcomes of those claims for VA mental health service-connected benefits:

- SGIM veterans who were subjected to surveillance, photographs, sting operations, and lengthy interrogations into sexual orientation or gender identity.
- SGIM veterans who felt forced into marriages of convenience or pregnancy.
- SGIM women veterans forced into sex with men to prove heterosexuality.
- SGIM veterans who had a peer, friend, or relative inform the command of suspected SGIM status.
- SGIM veterans who lived double lives, including those who felt the expectation to participate in SGIM discrimination.
- SGIM veterans who experienced non-sexual extortion as a result of their perceived SGIM status.
- SGIM veterans who experienced sexual assault, followed by threats from the perpetrator to reveal their SGIM status if they reported the assault.

210. See Livingston et al., supra note 115, at 132.
211. See id. (“[C]oncealment itself is often associated with greater anxiety and depression.”); Kavanaugh, supra note 122, at 678 (attributing “elevated rates of depression, [PTSD], and alcohol use” to closeted SGIM veterans’ “high levels of social isolation”).
212. AM. PSYCHIATRIC ASS’N, supra note 170, at Criterion A.
213. See Carter et al., supra note 166, at 2.
214. See Livingston et al., supra note 96, at 700.
The next Part explores how the VA adjudicates mental health claims that include injury resulting from military service and the manner in which I used the VA’s repository of appellate decisions to classify and analyze cases related to SGIM veteran discrimination.

II. RESEARCH METHODOLOGY

A. The VA Framework for Compensating Discriminatory Injuries

Research into the mental health consequences of discrimination is wrought with challenges due to inconsistent standards for evaluating causation of harm. While debates rage in the psychological literature, discriminatory injuries are nevertheless increasingly the subject of civil actions that demand resolution. Notably, the issue has arisen in varied forums including federal lawsuits under Title VII of the Civil Rights Act, common law allegations of intentional infliction of emotional distress, and state workers’ compensation claims. A review of the different fora generally offers two conclusions: (1) most cases fail based on the difficulty of establishing that the conduct in question was sufficiently outrageous to create a hostile working environment; and (2) there are inconsistent approaches to proving sufficient mental injury. Even despite the Supreme Court’s recent affirmation that sexual-orientation and gender-identity discrimination constitute prohibited sex discrimination under Title VII, plaintiffs must still demonstrate that the discriminatory harassment reached the requisite level of severity.

One area of administrative adjudication that has been entirely overlooked to date involves VA claims for mental conditions sustained during military service. The VA’s rules and regulations


218. See id. at 24–86 (2007) (surveying different legal fora in which discriminatory injury is adjudicated and the drawbacks of each legal framework); Carter & Scheuermann, supra note 171, at 35, 184.


221. Carter & Scheuermann, supra note 217, at 31, 34.

222. See Stigma-in-Arms, supra note 205, at 51 (identifying how discrimination-based
provide that any injury incurred or aggravated during the course of active-duty service is compensable under a theory of “service-connection.” While service-connection can be proved in a number of ways, the key elements of direct service-connection are: “(1) the existence of a present disability; (2) inservice incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service.” Theoretically, veterans are helped by one of the most generous burdens of proof in a civil forum, which is that evidence must be at least in equipoise (i.e., that service-connection has been proven “at least as likely as not”).

The basic service-connection standards inform the analysis for mental health conditions as well. However, the rules have been modified to address the special context of PTSD claims. For all other mental health conditions, veterans do not need to prove that a specific event caused their mental health injury. Yet, PTSD claims require the veteran to establish the existence of a causative stressor event. Existence of the stressor is a question of fact for the VA adjudicator and must be demonstrated by “credible supporting evidence” independent of the veteran’s own statement.

The PTSD stressor corroboration requirement is a major obstacle to VA claimants who allege trauma. Because the recent wars have raised greater awareness of combat PTSD, Congress and the VA have liberalized the stressor corroboration requirement with a presumption of a traumatic stressor if the veteran can prove that he or she served in a combat zone and, while there, experienced “fear of

mental health claims, despite the high incidence of military discrimination over the years, “have not been the subject of careful or systematic review by the VA”).


224. Mayes, supra note 167, at 130.


226. See Mayes, supra note 167, at 128 (identifying a higher burden to establish service-connection for PTSD as opposed to depression or other mental health conditions that do not require evidence of a stressor event).

227. Id.

228. Id.

229. 38 C.F.R. § 3.304(f).

230. Id. (identifying the requirement for “credible supporting evidence that the claimed in-service stressor occurred”).

This presumption, introduced in 2010, alleviated the need for veterans to produce evidence of specific events during combat and allowed for greater consideration of the veteran’s self-report. This relaxed rule applies to PTSD caused by an enemy combatant—not trauma inflicted by an enemy adorning the same uniform.

Since 2002, the VA formally codified a separate standard within the PTSD eligibility criteria called “in-service personal assault.” This type of traumatic stressor includes injury caused by “human design that threatens or inflicts harm.” It is the framework through which VA adjudicators review PTSD claims related to physical assault, sexual assault, sexual harassment, and other claims arising from discrimination by perpetrators who are not enemies, including fellow service members. Recurring reports of the high rates of denial in MST cases has attracted the attention of advocates and legislators. Although the rules are more rigid than the combat presumption, two important developments in the area of personal assault include a list of “markers” which provide alternative forms of evidence to corroborate the traumatic stressor, and a rule allowing qualified mental health professionals to opine on causation of the assault survivor’s mental health condition as corroboration of his or her personal account.

232. 38 C.F.R. § 3.304(f)(3).
234. Acevedo v. Shinseki, 25 Vet. App. 286, 291 (2012) (excluding from the definition of “hostile military or terrorist activity” any “nefarious, or even criminal, acts of one service member directed at another service member”).
235. 38 C.F.R. § 3.304(f)(5).
237. See Patton, 12 Vet. App. at 278 (including within the definition of personal assault rape, physical assault and domestic battery, robbery and mugging, stalking, and harassment).
238. See Seamone & Traskey, supra note 231, at 354–56 (discussing obstacles to service-connection and corresponding legislative concern and activity). At times, more than half of all Military Sexual Trauma claims were denied. Julie Dickerson, A Compensation System for Military Victims of Sexual Assault and Harassment, 222 MIL. L. REV. 211, 222–23 (2014) (describing lagging rates of approval compared to other disability claims).
239. See, e.g., Emily Hansen, Comment, Carry That Weight: Victim Privacy Within the Military Sexual Assault Reporting Methods, 28 J. MARSHALL J. COMPUT. & INFO. L. 551, 572–73 (2011) (“Department of Veterans Affairs requirements place an unrealistic, unfair, and discriminatory burden of proof on veterans who suffer from MST . . .”).
240. 38 C.F.R. § 3.304(f)(5); VA ADJUDICATION AND PROCEDURES MANUAL, M21-1MR, Pt. IV, Subpart ii, 1.D.17.g (2021).
241. See Menegassi v. Shinseki, 638 F.3d 1379, 1382 (Fed. Cir. 2011) (permitting a post-service retrospective medical opinion on MST as the causation of PTSD because “medical opinion evidence may be submitted for use in determining whether the occurrence of a stressor is corroborated” under 38 C.F.R. § 3.304(f)(5)).
Markers for traumatic stressors have been developed to account for the fact that personal assault survivors often will not report their victimization due to fears of reprisal and stigma in a close-knit military community where rumors spread like wildfire. Trauma markers have largely been developed with an eye toward sexual assault. Unlike sexually transmitted disease or pregnancy markers, there are no specific trauma markers for race or SGIM discrimination. Discrimination by the military or fellow service members nonetheless is compensable under the VA's standards for mental health injury in general as well as personal assault in the case of PTSD.

B. Identifying Board of Veterans Appeals’ (BVA) Cases

Because the VA has no consolidated reports or summaries of mental health claims related to discrimination, I estimated high value in identifying discrimination appeals and the factors related to their outcome. Under the VA claims framework, the first occasion to access publicly available disability service-connection decisions is at the Board of Veterans' Appeals (BVA) level. Veterans initially apply for benefits at a VA Regional Office close to their residence where a lay adjudicator will determine service-connection of claimed disabilities. Veterans denied at the initial level have various routes of appeal, and the BVA is a more formalized step that


244. Id. (“No markers have been specified for evaluating race or sexual-orientation discrimination, specifically.”).


246. Infra Concluding Remarks and Recommendations (observing the absence of consolidated statistics related to discrimination cases at any level and recommending the consolidation of statistics related to discrimination cases on appeal and especially at VA regional offices to fill an important void).

247. See, e.g., Seamone, supra note 79, at app’x. A & B (exploring how analysis of these cases could help practitioners identify heretofore unidentified standards that might increase the possibility of pleading a better case and obtaining a better outcome).

248. Id. at Section I.C (exploring the VA appellate framework and associated rules in depth).

249. James D. Ridgway, Erratum to: Mind Reading and the Art of Drafting Medical Opinions in Veterans Benefits Claims, 5 PSYCH. INJURY & L. 72, 74 (2012) (“These adjudicators are not attorneys. Although a plurality of [regional office] adjudicators have college degrees, one quarter do not.”).
leads to final agency action. The BVA is comprised of Veterans Law Judges who are required to produce written opinions explaining the reasons and bases for their decisions. Their standard of review for an appeal is de novo, which permits consideration of all evidence submitted without being obligated to accept the same conclusions as the non-lawyer adjudicator. The BVA routinely finds error in appealed cases, remanding back over a third of its docket for issues including the failure to conduct an adequate medical examination.

By 2019 the BVA’s publicly available Decision Search Database archived over one million opinions. Only a fraction of these opinions related to mental health conditions, and a much smaller number addressed discrimination claims. I identified mental health service-connection cases with the help of the Veterans’ Appeals Control and Locator System (VACOLS), the BVA’s own quality control log, which listed docket numbers for all mental health appeals.

Freely available web-scraping and data extraction tools then permitted me to download the text files of all mental health service-connection cases from the BVA’s Decision Search Database. After data cleansing and removal of duplicates, the process resulted in the identification of 123,011 written decisions. I next employed Natural Language Processing (NLP) to identify the discriminatory cases within mental health appeals.

NLP is a computer-aided process that identifies patterns and relationships within and between different text documents. Using the Python software suite of NLP tools, my first step in classifying

254. Stigma-in-Arms, supra note 205, at 63 (identifying 1,059,258 cases as of Feb. 12, 2019).
255. Id. at 63–64.
256. Id. (describing the process of using VACOLS indexing to filter service-connection cases regarding mental health conditions).
257. Id. (describing the use and operation of Scrapinghub and Crawlera).
258. Id. at 65 fig.3.
259. Spencer Williams, Predictive Contracting, 2019 COLUM. BUS. L. REV. 621, 653 (2019) (explaining how this process “enable[s] computers to understand natural language communication . . . based on statistical relationships between components of the text such as individual words, groups of words, word sequencing, and physical layout features like paragraph breaks”).
discrimination cases was the development of regular expression (REGEX) search strings modeled on known discrimination terms. Initial search results netted 2,136 potential SGIM and race discrimination cases out of the 123,011 mental health service-connection opinions. I conducted a more deliberate and methodical examination of the 2,136 cases with a software program called Word2Vec, which vectorizes document text to identify instances of word associations across multidimensional space. This process allowed for the capture of a total of 4,229 potential discrimination cases within the 123,011 appeals.

Machine learning (ML) involves training algorithms to classify text documents. Legal scholars have increasingly employed these methods to classify cases by type and outcome in repositories of judicial decisions. While algorithms can never match the ability of legal practitioners to apply legal analysis and legal reasoning, ML techniques can identify patterns in cases, a process that would be unattainable through classic methods of human review. The ML

260. Stigma-in-Arms, supra note 205, at 67 (manuscript on file with author) (describing the development of search strings).
261. Id. at 67 tbl.4.
263. Stigma-in-Arms, supra note 205, at 65.
264. At its core, ML is a method by which a computer algorithm can conduct self-learning without being explicitly programmed to adapt and adjust assumptions by methodically evaluating text and responding to prediction errors. See OLIVER THEOBALD, MACHINE LEARNING FOR ABSOLUTE BEGINNERS 12–13 (2d ed. 2017). In supervised ML, human beings use known texts as training data to classify unlabeled texts through an iterative process. See Frank Fagan, Big Data Legal Scholarship: Toward a Research Program and Practitioner’s Guide, 20 VA. J. L. & TECH. 1, 33, 74 (2016).
approach adopted in this Article used the method of algorithm agreement that has been popularized in research on accident narratives in occupational safety and medical reports. Within this field, ML has been most successful when multiple algorithms generate comparable classification accuracy rates for the same texts.

While the detailed mechanics of this methodology are reported elsewhere, my research approach used human review by three assistants as a check on the classification process to ensure cases were appropriately classified after algorithmic agreement. I then employed a confusion matrix to identify the overall performance of the ML models. I applied the two best performing models, Term-Frequency Inverse-Document-Frequency (TF-IDF) and Support Vector Machine (SVM), to the corpus of 4,229 discrimination candidate cases identified by NLP. The process ultimately led to the classification of 103 confirmed SGIM discrimination after human review. This same research methodology, when applied to race discrimination cases, identified an additional fifteen cases that involved simultaneous claims for mental health conditions resulting from both race and SGIM discrimination. Those overlapping cases were added to the SGIM discrimination-only category for a grand total of 118 cases involving mental health service-connection claims premised upon SGIM discrimination.

Ultimately, 118 is an extremely small number when compared to the larger population of 123,011 mental health cases. This set is

270. Stigma-in-Arms, supra note 205, at 62–85 (describing the full research methodology).
271. See Vallmuur et al., supra note 268.
272. See, e.g., Xu Zhang, Eric Green, Mei Chen & Reginald R. Souleyrette, Identifying Secondary Crashes Using Text Mining Techniques, 10 J. TRANSP. SAFETY & SEC. 1338, 1347 (2020) (describing the use of this visual tool to identify the performance of different ML models). In sum, different sets of models were tested on all identified discrimination cases, racial discrimination cases, and sexual orientation discrimination cases.
273. Stigma-in-Arms, supra note 205, at 75–76. For a full description of different algorithms used for ML supervised classification, see, for example, Zhang et al., supra note 272 (describing the methodologies for SVM and TF-IDF, as well as Naïve Bayes, Fuzzy Bayes, Bag-of-Words, and Logistic Regression models).
274. See Stigma-in-Arms, supra note 205, at 75.
275. Id. at 79.
276. See id.
277. Id.
much smaller than the 536 racial discrimination cases I identified by using the same combination of algorithms to identify race discrimination cases. Questions naturally arise regarding whether the sample size of 118 is adequately powered to achieve generalizable results. Specifically, a power analysis with an outcome ratio of 60/40 in binary outcomes suggests that at least 351 cases are required to achieve adequate results for generalizable statistical analysis.

While there is reason to question the statistical analyses of SGIM cases, the combined population of 653 discrimination cases is well above the power threshold and has statistical value. In addition, the corpus of SGIM discrimination cases still reflects the “entire population” of cases containing the SGIM discrimination terms, rather than only a random sampling. For these reasons, the empirical results can still reveal important relationships among discrimination and SGIM discrimination cases.

III. RESEARCH RESULTS

Funding and time limitations prevented a rigorous content analysis of the SGIM cases with standardized analytical packages like NVivo. However, through the process of coding cases for statistical analysis of variables, various trends emerged within SGIM discrimination and combined discrimination cases. This Part identifies several trends and concludes with the results of the statistical analyses.

278. See id. at 36.
279. Power analysis is “the process of determining the number of cases or observations that a study would need to achieve the desired level of . . . effective[ness of]” a statistical procedure in identifying real differences between populations. SHIELDS ZEDECK ED., APA DICTIONARY OF STATISTICS AND RESEARCH METHODS 267 (2014).
280. To identify a minimum threshold of 351 cases for adequate statistical power, Gpower analysis was applied with a two-tailed alpha of .5, a beta value of .80, a 60/40 ratio of binary outcomes—approve or deny, n of .25, and the assumption of moderate correlations among covariates (R-Squared Other x = .25). Stigma-in-Arms, supra note 205, at 80; see also Franz Faul, Edgar Erdfelder, Alex Buchner & Albert-Georg Lang, Statistical Power Analysis Using G*Power 3.1: Tests for Correlation and Regression Analyses, 42 BEHAV. RSCH. METHODS 1149, 1149 (2009) (providing methods of power analysis).
283. For examples of comprehensive methods to evaluate qualitative data, see, for example, MATTHEW B. MILES, A. MICHAEL HUBERMAN & JOHNNY SALDAÑA, QUALITATIVE DATA ANALYSIS: A METHODS SOURCEBOOK 209 (3d ed. 2014).
A. General Trends in Outcomes Across Discrimination Cases

It is helpful at the outset to consider the number of approved and denied discrimination appeals over time. Figure 2, below, shows granted and denied appellate outcomes for combined discrimination cases. In the depiction, 2019 marks the end of data collection, rather than a steep drop in appeals.

The above comparison reveals that prior to 2015, the BVA denied a discernably greater number of discrimination-related cases than it had approved. While the BVA denied approximately the same number of discrimination cases that it approved from 2015 through 2016, from 2017 through 2019, the BVA approved substantially more discrimination cases than it denied, representing an unprecedented shift in outcomes in an extremely concentrated period of time.285

285. See id.
These trends in outcomes appear consistent for both SGIM and race discrimination claims, given nearly identical overall approval and denial rates in each instance. As depicted in Figure 3, below, the difference between overall outcomes across discrimination types was proportionately only one percent.

**FIGURE 3**
CASE OUTCOMES BY DISCRIMINATION TYPE

These trends suggest similar dynamics at work in the Board’s consideration of service-connected mental health disorders related to race and SGIM discrimination during military service.

A third examination of outcomes further signals commonalities in adjudicative treatment. Figure 4, below, presents the number of appealed and denied discrimination claims prior to and after DADT’s repeal in 2011.

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286. See id. at 117.
287. Id.
The difference between discrimination case outcomes is statistically significant and quite apparent, $X^2 (1, 653) = 22.66, p < 0.001$.288 The marked success in outcomes following DADT’s repeal extends to race discrimination cases that did not involve claims of overlapping SGIM discrimination.289 Although further statistical analysis did not indicate that DADT’s repeal fully explained the difference in outcomes,290 the profound change in results—for all discrimination types—suggests that DADT’s repeal at the very least heightened awareness of the discriminatory impact of military policies.291

**B. Discrimination Case Attributes**

This subpart focuses notable trends, across cases, including: (1) the most common mental health conditions claimed in relation to

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289. See id.
290. See infra Tables 1 & 2 (finding no significant relationships upon logistic regression analysis).
291. See Stigma-in-Arms, supra note 205, at 120 (observing that “the repeal of DADT may have nevertheless increased BVA judges’ sensitivity to other forms of discrimination and their deleterious effects”).
military discrimination; (2) the types of discriminatory treatment attributed to mental health conditions by claimants; (3) the Board’s manner of assessing the corroboration for claimed PTSD stressor events in discrimination cases; (4) the psychiatric consideration of the nexus between the mental health condition and military service in discrimination cases; and (5) any other observations of note. Although this Article focuses on discrimination against SGIM veterans, racial discrimination cases are cited below to illustrate applicable points and provide additional context.

1. Mental Health Conditions Claimed in Relation to Discrimination

Across discrimination claims in this study, veterans largely alleged that they suffered from PTSD (60%), Depressive Disorders (18%), and Anxiety Disorders (8%) in order of frequency of claimed conditions. To a lesser extent, veterans claimed unspecified Acquired Psychiatric Conditions (6%), Schizophrenia and Psychotic Disorders (5%), and Bipolar and Related Disorders (3%) as a result of discrimination experienced during military service. The vast majority of the time (93%), veterans claimed one or two separate mental health conditions, while far fewer (7%) claimants raised three or more mental health conditions in the same appeal.

Examination of the results of these claims reveals only a small number of conditions were associated with obtaining service-connection on appeal. Although the most frequently claimed, PTSD claims were not the most frequently approved. The most successful conditions appealed to the Board, which were approved in greater proportions than denied, were Anxiety Disorders \( z = 3.68, p < .001 \), Schizophrenia and Psychotic Disorders \( z = 2.00, p < .05 \), and Depressive Disorders \( z = 5.53, p < .001 \). Contrarily, those who claimed unspecified acquired psychiatric disorders related to discrimination were more likely to be denied service-connection \( z = 2.02, p < .05 \). Further analysis of these results demonstrated that veterans who claimed two or more mental health conditions had greater success.

292. *Id.* at 97 fig.7.
293. *Id.*
294. *Id.* at 97.
295. *See id.* at 88 tbl.8.
296. *See id.*
298. *Id.*
on appeal than those who claimed one disorder only ($X^2 (2, 653) = 25.90, p < .001$). Careful review of cases revealed instances where the Board denied a veteran’s PTSD claim due to the absence of adequate stressor corroboration but granted the same veteran’s claim for major depression attributed to the same traumatic discriminatory events.

2. Discriminatory Acts Attributed to Mental Health Conditions

Veterans in SGIM discrimination cases attributed their mental health conditions to a wide range of discriminatory acts and circumstances. Consistent with the military’s surveys of SGIM harassment in the early 2000s, discriminatory acts included slurs and epithets, physical assaults and intimidation, being assigned to humiliating duties, and other forms of abuse that frequently occurred in race discrimination cases.

Aligning with the scholarly and historical research on harassing treatment of SGIM veterans, numerous cases reflected forms of abuse that were specially related to one’s presumed or confirmed SGIM status. For example, one claimant reported anti-gay harassment based on his attendance at a barber school prior to joining the military. Some lesbian service members became pregnant or got married in an effort to conceal their sexual orientation. Others reported that

299. Id.
301. See infra note 303 and accompanying text.
302. See Estrada et al., supra note 144, at 223 (reviewing the classification scheme of the Inspector General’s 2000 study of component-wide harassment incidents and mechanisms).
303. See, e.g., Name Redacted, No. 11-22305 (Bd. Vet. App. June 8, 2011) (noting “taunts and harassments during active duty service,” including “taunts of homosexuality and ‘being odd’”); Name Redacted, No. 08-27374 (Bd. Vet. App. Aug. 13, 2008) (“The veteran contends that her current depression was caused by sexual harassment experienced during service on account of her sexual orientation. She contends that the harassment was continuous, involved the chain of command, and took the form of verbal taunts and threats.”); Name Redacted, No. 11-32928 (Bd. Vet. App. Sept. 7, 2011) (“The veteran contends that he began having depressive symptoms while stationed at Dow Air Force Base in Bangor, Maine, due to a sergeant . . . verbally harassing him with anti-gay epithets.”).
304. See Stigma-in-Arms, supra note 205, at 135 n.19. Aboard ship, for example, this frequently included the threat of being thrown overboard. See id.
305. See, e.g., Name Redacted, No. 12-36487 (Bd. Vet. App. Oct. 22, 2012) (noting that after being relieved of her duties as an Air Force police officer due to an investigation into homosexuality, the veteran “was required to empty the captain’s ashtray, empty the garbage and perform other menial tasks” to the point where “she went home every night disgraced, ashamed, humiliated and embarrassed to be seen by anyone”).
306. See, e.g., Stigma-in-Arms, supra note 205, at 133–43.
307. Name Redacted, No. 11-17521 (Bd. Vet. App. May 6, 2011) (“In particular, he stated that his sexual orientation was questioned because prior to service he had attended school to become a barber.”).
308. See, e.g., Name Redacted, No. 06-09989 (Bd. Vet. App. Apr. 6, 2006) (reporting the
they led double lives and were in constant fear of being discovered. Veterans claimed that they were discriminated against because they associated with a friend who had a known SGIM status. Related to these fears, Veterans claimed discriminatory stressors of learning of the discharge of fellow service members known to be gay or lesbian. In a salient example, a gay attorney in the Army Judge Advocate General’s Corps claimed the stressor of being required to prosecute other gay service members while keeping his own orientation secret, which increased his fears of being discovered. In numerous cases, SGIM veterans claimed stressors involving the military’s investigations into their own sexual orientation, which they attributed to chronic and continuing mental health disorders. For a subset of veterans, the humiliation of the interrogation was less traumatic than the facts that gave rise to the investigation, such as cases where roommates, battle buddies, friends, family, or trusted confidants had informed on them.

stressor that the female veteran received “recurrent accusations of being a lesbian in service” and that she “became pregnant to avoid sexual harassment”).

309. See, e.g., Name Redacted, No. 19-190706 (Bd. Vet. App. Dec. 3, 2019) (explaining that the veteran failed to seek assistance from a chaplain or counselor when he experienced “depression, weight loss, loss of appetite, and insomnia” specifically because “he was worried that he would be discharged” because he was gay); Name Redacted, No. 16-33567 (Bd. Vet. App. Aug. 25, 2016) (noting that the veteran attributed worsening symptoms of anxiety and depression “with having to hide his sexual orientation and with his decision to come out as homosexual to his command and family” during the time of the Don’t Ask, Don’t Tell policy from 1999 to 2000).

310. See, e.g., Name Redacted, No. 07-23802 (Bd. Vet. App. Aug. 1, 2007) (“It was very possible that the veteran’s depression started around the time of his discharge from the service, after he was harassed by his supervisors for his friendship with another sailor, who was allegedly gay.”).

311. See Name Redacted, No. 03-26220 (Bd. Vet. App. Oct. 3, 2003) (remand order) (noting “guilt he was experiencing about the discharge of a friend from service due to homosexuality and of the veteran’s guilt about his own homosexuality”).

312. See Name Redacted, No. 13-29253 (Bd. Vet. App. Sept. 12, 2013) (“He described a climate of anti-gay persecution in the Army, to include derisive stories and insults that left him stressed. He indicated that, as an Army JAG, he had to investigate and prosecute crimes for what were consensual acts. He was in a constant state of terror that he himself would be discovered as a gay male.”).

313. See, e.g., Name Redacted, No. 19-176031 (Bd. Vet. App. Oct. 3, 2019) (addressing the veteran’s stressor of being sexually assaulted and then investigated for homosexuality and subsequently discharged after the perpetrator reported the victim as an aggressor in order to avoid responsibility for the assault); Name Redacted, No. 14-17842 (Bd. Vet. App. Apr. 21, 2014) (reporting the stressor of being interrogated for hours regarding sexual orientation “like [he] had done something wrong,” “labeled [as] a homosexual and sexual deviant,” and “being forced into signing discharge papers stating that he engaged in homosexual activities”).

314. E.g., Name Redacted, No. 08-27269 (Bd. Vet. App. Aug. 13, 2008) (claiming trauma from being interrogated after his roommate walked in on him having sexual relations with a civilian man); Name Redacted, No. 16-37173 (Bd. Vet. App. Sept. 22, 2016) (noting the stressor of being threatened with a court-martial by his commander for fraud in not
The consequences of lesbian baiting were also apparent in the fact patterns where veterans were subject to allegations of homosexuality in retaliation for refusing sexual advances by heterosexual perpetrators.\footnote{E.g., Name Redacted, No. 09-45339 (Bd. Vet. App. Nov. 30, 2009) ("[T]he Veteran asserts that while she was being investigated for homosexual activities at Fort Hood, she was forced to have sex with multiple male soldiers ‘to prove [she] wasn’t gay.’"); Name Redacted, No. 12-18127 (Bd. Vet. App. May 22, 2012) (reporting the stressor of a male airman who “gathered and used evidence of her sexual orientation against” the veteran after “she refused to have sex with him”).} Sometimes, the stressor occurred after the investigation, such as the case where the base Staff Judge Advocate, a colonel, required sexual intercourse in exchange for giving the veteran an Honorable Discharge due to a finding of homosexuality.\footnote{See Name Redacted, No. 09-25873 (Bd. Vet. App. July 10, 2009) ("[S]he was forced to have two sexual encounters with a base colonel in exchange for an honorable discharge.").} Some veterans claimed that receiving a discharge based on homosexuality was the stressor event leading to PTSD.\footnote{See, e.g., Citation No. 12-36487, supra note 305 (noting the trauma of having to fight to get an honorable characterization after being forced to leave the service due to homosexuality, accompanying “ostracism” by military authorities and . . . peers,” and the word “homosexual” emblazoned in “big red letters” on her military discharge certificate); Name Redacted, No. 14-23806 (Bd. Vet. App. June 6, 2014) (obtaining service-connection for major depression based upon receiving an Other Than Honorable Discharge due to homosexual conduct, being unable to obtain a job as a result, and “being ‘treated as a criminal/pariah’ because of the . . . discharge” for years after separation).} In at least one case, the veteran claimed that the stressor was the Navy’s act of notifying his parents through a letter that he had been discharged for homosexuality, resulting in his father disowning the veteran.\footnote{See Name Redacted, No. 10-46476 (Bd. Vet. App. Dec. 13, 2010).} A number of self-identified heterosexual veterans also reported the stressor that they had been falsely accused of being homosexual and suffered a humiliating inquiry.\footnote{See, e.g., Name Redacted, No. 07-04124 (Bd. Vet. App. Feb. 8, 2007) (finding service-connection for MDD based on “false charges of homosexuality brought against him that resulted in his discharge from service”).}

Similar to the experience of some bisexual veterans, a mixed-race sailor claimed the stressor that he faced additional trouble because he was the “go between” for sailors of different races during times of racial tension and was unable to pick a side as the tension increased.\footnote{Name Redacted, No. 14-27971 (Bd. Vet. App. June 19, 2014). Although not specifically referenced in any of the sexual orientation discrimination cases, research supports that similar internal tensions often arose for bisexual veterans who felt pressure from both gay and heterosexual peers to affiliate with their group. See McNamara et al., supra note 84, at 96 (observing that bisexual veterans endorsed “concealment of their identity from lesbian and gay individuals” in addition to heterosexual peers and discussing “feeling pressured from both groups to adopt a monosexual identity to reap the rewards of fitting in with that community”).}
Another variation was discriminatory assault by non-minority service members for following the orders of a higher-ranking minority enlisted service member.321 Service members also reported being sexually assaulted as a form of SGIM discrimination, often with objects in extremely injurious ways.322

3. The BVA’s Evaluation of Stressor Corroboration for PTSD Related to SGIM Discrimination

As discussed previously, PTSD claims require the adjudicator to find sufficient corroboration of an in-service stressor event related to a qualifying mental health diagnosis of PTSD.323 In this regard, lack of corroborating evidence for the stressor event was a leading reason for denial of an appeal.324 The Board has provided examples of sufficient corroborating evidence in the form of names of witnesses, dates and locations of the events, statements of eyewitnesses, contemporaneous letters or journal entries, and photographs.325 To the BVA, these forms of corroborating evidence impose a “low” evidentiary bar on the veteran,326 and represent the reciprocal duty of the claimant to enable the VA to meet its duty to assist.327

Merely referencing the toxic or abusive environment experienced by all SGIM veterans would not appear to be sufficient corroborating evidence of a stressor event.328 For instance, in a case involving an Asian-American/Pacific Islander Vietnam veteran, the Board did not find corroboration in references to a general air of discrimination against minority troops.329 Noting the veteran’s “conten[tion] that every Vietnam veteran knows about the prejudicial attitudes towards Asians that were prevalent in the Armed Forces during that

322. See, e.g., Name Redacted, Citation No. 09-00659 (Bd. Vet. App. Jan. 7, 2009); Name Redacted, Citation No. 15-34577 (Bd. Vet. App. Aug. 13, 2015); Name Redacted, Citation No. 14-46538 (Bd. Vet. App. Oct. 21, 2014); Name Redacted, Citation No. 11-32631 (Bd. Vet. App. Apr. 4, 2011); Name Redacted, Citation No. 06-38068 (Bd. Vet. App. Dec. 7, 2006); Name Redacted, Citation No. 00-04542 (Bd. Vet. App. Feb. 22, 2000).
323. Supra Section II.A.
324. See Mayes, supra note 167, at 129–30.
325. Name Redacted, Citation No. 99-19055 (Bd. Vet. App. July 13, 1999); Name Redacted, Citation No. 17-44884 (Bd. Vet. App. Oct. 10, 2017); see also Name Redacted, Citation No. 04-07911 (Bd. Vet. App. Mar. 26, 2004) (noting the expectation for corroboration of a racism stressor from “contemporaneous letters from family members or statements from service comrades”).
327. See Wood v. Derwinski, 1 Vet. App. 190, 193 (1991) (recognizing that the VA’s duty to assist does not represent “a one-way street”).
329. Id.
time, the Board refused to “take judicial notice” of “unidentified” “standard historic sources” and found no “independent verification of stressors not related to combat.” Similarly, the Board has found that a verified stressor cannot simply be a “generally hostile environment” against a specific minority group.

Stressor corroboration has an important role in the Board’s analysis of discharges based on homosexuality. One of the most crucial considerations in claiming a discriminatory injury is the ability of a qualified mental health examiner to identify the discriminatory experiences during service and show how they led to the veteran’s mental health injury. A representative example exists in comparing two cases in which veterans claimed that they suffered mental illness as a result of the adverse effects of a homosexuality discharge. In both cases, the veterans faced significant obstacles in society following their involuntary separation.

In the first instance, the BVA, “as a matter of law,” rejected the veteran’s claim that she was entitled to service-connection for “being branded by the Navy as a homosexual.” To the Board, “being ‘branded’ anything, per se, is not a chronic disease or injury which is recognized under VA law and regulations as a disability for which disability compensation may be awarded.” Simply put, the medical evidence submitted by the veteran failed to show the psychological impact of such branding. In contrast, the Air Force veteran who alleged her PTSD arose from being discharged for homosexuality succeeded in establishing service-connection for the effects of such branding.

The primary difference between the two cases was that the mental health provider in the latter case linked the “rubber stamped [word] ‘homosexual’ on her permanent DD Form 214 in big red letters” with embarrassment, shame, and anger following service based on

330. Id.
331. Id.
332. Name Redacted, Citation No. 05-22837 (Bd. Vet. App. Aug. 15, 2005).
333. Name Redacted, Citation No. 00-03160 (Bd. Vet. App. Feb. 8, 2000); Name Redacted, Citation No. 12-36487, supra note 305.
334. See, e.g., Citation No. 00-03160, supra note 333; Citation No. 12-36487, supra note 305.
335. See, e.g., Citation No. 00-03160, supra note 333; Citation No. 12-36487, supra note 305.
336. See WILLIAMS & WEINBERG, supra note 63 and accompanying text (describing research results that show increased risk of adverse health and social outcomes for all veterans who were involuntarily separated from the military prior to the completion of their contractual term).
337. Citation No. 00-03160, supra note 333.
338. Id.
339. Id.
340. Citation No. 12-36487, supra note 305.
the “intended prejudice [that the document] would bring against her.” The veteran’s act of burning her discharge papers so that they were not accidentally discovered and her unwillingness to use the DD Form 214 as a tool of re-employment corroborated the impact of the branding as a homosexual on her well-being. Consistent with these case outcomes, veterans in this study were more likely to establish sufficient corroboration when they provided detailed accounts of how they were injured at the psychological level rather than in abstract terms. In sum, the cases did not appear to reflect careful analysis of etiology. These anecdotal accounts may help explain why PTSD claims in discrimination cases result in decreased odds of success on appeal.

The specific quantity and quality of evidence required for sufficient corroboration of an SGIM discrimination stressor event involves a nuanced analysis. Despite the inadequacy of general descriptions of stressors, the highest VA appellate court, the Court of Appeals for Veterans Claims (CAVC), has nevertheless clarified that veterans need not prove every detail of a traumatic event for adequate corroboration. For instance, a veteran’s general statement that he suffered discriminatory oppression would not qualify as a stressor, but a “buddy statement” from a member of the veteran’s unit describing a general atmosphere of homophobic harassment within the unit could serve as sufficient corroboration for the veteran’s more specific allegation. In the race discrimination context, the BVA found sufficient corroboration when a witness attested in writing to “a racially charged atmosphere” in existence at the time where the veteran alleged specific acts of racial discrimination.

In some instances, the BVA has relied upon less common discriminatory trauma markers. One such marker is whether enough evidence has been presented about the discriminatory injury to infer that an incident of the nature alleged commonly occurred under the same circumstances. Notably, in a case where a transgender

341. Id.
342. Id.
343. Citation No. 00-03160, supra note 333; Citation No. 12-36487, supra note 305.
344. Infra Section III.D (summarizing statistical findings and relationships between variables).
346. Name Redacted, Citation No. 08-25400 (Bd. Vet. App. July 30, 2008).
347. Name Redacted, Citation No. 08-10422 (Bd. Vet. App. Mar. 28, 2008).
349. Id. (rejecting magazine articles as corroboration for the stressor of discrimination against an Asian soldier during the Korean War because “there is no way to relate that incident to the veteran,” including any statements of the veteran describing that he had personal knowledge of the events described in the articles).
veteran succeeded in obtaining service-connection of a mental health condition related to harassment of her nonconforming appearance and mannerisms during service, the Board favorably cited her post-service gender reassignment surgery as corroboration of her “life-long history of experiencing gender confusion.” The Board also concluded that it was “not difficult to fathom that this harassment escalated to some form of a physical assault.”

Historical publications and newspaper articles have likewise served as markers for discrimination. However, the publication must be specific enough to encompass the veteran’s individual circumstances. In a notable case, the veteran supplied a scholarly article that “described a history of institutional racism in the military and personal racism between military members.” This Article was offered as corroboration for the veteran’s claimed stressor of “institutional and personal racism” while serving in the Marine Corps to include interracial fights involving death, improvised weapons, and bricks being thrown at him by White soldiers. To the BVA, “the article did not reference any particular events or the general atmosphere of military race relations in Okinawa, Japan, including during the time the Veteran was stationed there.” Numerous cases cited the CAVC case of Cohen v. Brown, which held that “[a]necdotal incidents, although they may be true, are not researchable.” In order to be researched, incidents must be reported and documented.

Beyond corroboration through detailed historical and scholarly publications recounting military discrimination, facts presented by a veteran about his or her life after service could corroborate the discrimination claim. In at least one case involving a lesbian soldier who was separated from the military on grounds of homosexuality, the Board found that certain facts about her life following her separation from service sufficiently corroborated her claim of trauma caused by the circumstances of her discharge. Specifically, the veteran offered into evidence a history of post-service estrangement from her family

350. Name Redacted, Citation No. 10-33511 (Bd. Vet. App. Sept. 7, 2010); see also Name Redacted, Citation No. 16-47102 (Bd. Vet. App. Dec. 16, 2016) (finding corroboration for threats and harassment on the basis of gender identity and being forced to act like a male while in service, in part based on the veteran’s “current status as a transitioning female and the ongoing difficulties she experiences in this situation”).
353. Id.
354. Id.
355. Id.
356. Id.
358. Citation No. 12-36487, supra note 305.
for fear that her discharge for sexual orientation would become known to them upon her return. Purposeful avoidance of her grandmother and family for over a decade and the burning of all of her military records was sufficient corroboration of this traumatic impact.

Other cases involving post-service events as corroboration of in-service trauma addressed the economic and social consequences of a discharge for homosexuality. In one case, the Board acknowledged how the veteran was forced to take lower-paying jobs following service because revealing his discharge certificate during the hiring process would have required him to reveal his sexual orientation. The Board noted both “the psychiatric and economic toll” of the discharge’s nature as factors that supported continued shame and humiliation from discriminatory treatment during service. In some other cases where the veteran simply relied upon the discharge itself for corroboration without evidence of its impact, receipt of a homosexual discharge or less-than-honorable discharge based on homosexuality was not itself accorded any probative weight. The Board even, on occasion, rejected such evidence on the basis that separation procedures were lawful at the time and predicated on sufficient evidence that separation was warranted.

4. Psychiatric Assessment of a PTSD Criterion A Stressor

All claimants for service-connection of a mental health disorder must establish that the condition was incurred or aggravated during military service. While PTSD requires corroboration of a veteran’s account of the stressor event, other mental health disorders do not require the same high degree of proof and the evidence need only show that the disorder was as likely as not linked to military service. In the case of PTSD, while the adjudicator determines the

[359. Id.]
[360. Id. (“The Veteran related that she was too ashamed of having been removed from the military to face her family and grandmother and that she did not want to visit with them for 10 to 12 years after her discharge.”). This fact was also referenced by the mental health evaluator as evidence of social isolation symptoms of PTSD. Id.]
[362. Id. (approving the veteran’s claim for MDD).]
[363. Id.]
[364. See, e.g., Name Redacted, Citation No. 93-07668 (Bd. Vet. App. Apr. 22, 1993) (“[S]ervice administrative proceedings . . . cannot be viewed as a stressor for PTSD.”).]
[365. Id. (observing that the separation proceedings were lawful at the time and based on the veteran’s own admission of pre-service homosexual activity); see also Name Redacted, Citation No. 05-14874 (Bd. Vet. App. June 2, 2005) (attributing the veteran’s in-service mental health problems to “his sexual orientation being in conflict with his religious beliefs,” rather than the allegations of homosexuality leveled against him).]
[366. Mayes, supra note 167, at 130.]
[367. Id.]}
adequacy of the corroboration for the stressor event, mental health examiners must further find that all of the PTSD diagnostic criteria from the DSM-5 have been satisfied.\textsuperscript{368} The examined PTSD cases revealed frequent disagreement between adjudicators and medical examiners even though SGIM veterans had satisfied one or the other requirement.\textsuperscript{369}

In denied appeals, it was frequently the case that psychiatric examiners deemed the veteran’s harassing experience insufficient to meet Criterion A’s requirement for a trauma.\textsuperscript{370} This was true despite the fact that the VA adjudicator believed the veteran met the standard of corroboration for a PTSD stressor event under the VA’s PTSD standard. VA standards specifically list “harassment” as an example of personal assault for PTSD stressor corroboration.\textsuperscript{371} However, in the cases identified by this study, allegations of verbal harassment, alone, resulted in denial of service-connection since the stressor did not meet the diagnostic criteria for PTSD.\textsuperscript{372} For instance, even though a veteran’s account of discriminatory experiences amounted to a continuing chain of “micro insults and macro insults,” in accordance with American Psychological Association standards, the provider concluded that “insults are not necessarily the stuff of trauma.”\textsuperscript{373} The examiner noted that “he had no way of firmly establishing a nexus between the Veteran’s [condition] and the military without resorting to speculation, if not divination.”\textsuperscript{374} Another veteran’s claim was denied because: “[t]he allegation of [verbal] discrimination on its face fails to satisfy the DSM stressor definition criteria . . . .”\textsuperscript{375}

When another veteran claimed the stressor of being harassed for associating with another minority soldier in the early 1950s, the BVA found sufficient corroboration for the personal assault stressor “in light of the era in which the Veteran served and the [recorded]

\textsuperscript{368} Name Redacted, Citation No. 06-12927 (Bd. Vet. App. May 4, 2016) (“[W]hether stressors that occurred were of sufficient gravity to cause or to support a diagnosis of PTSD is a question of fact for medical professionals.”).
\textsuperscript{369} See Citation No. 06-12927, supra note 368.
\textsuperscript{370} See Citation No. 06-12927, supra note 368.
\textsuperscript{371} 38 C.F.R. § 3.304(f)(5).
\textsuperscript{372} See, e.g., Name Redacted, Citation No. 18-119553 (Bd. Vet. App. July 19, 2018); Name Redacted, Citation No. 12-34237 (Bd. Vet. App. Oct. 2, 2012).
\textsuperscript{373} Name Redacted, Citation No. 18-119553 (Bd. Vet. App. July 19, 2018).
\textsuperscript{374} Id. Although this veteran was denied service-connection for PTSD for lack of a sufficient stressor, service-connection was approved for the acquired psychiatric disorder of depressive disorder not otherwise specified, on the basis that the examiner still expressed that “a possibility exists of a connection, but supportive data are not in evidence.” Id.
\textsuperscript{375} See Name Redacted, Citation No. 12-34237, supra note 372 (rejecting the “conclusory” assertion that the veteran lived in fear based on slurs from peers and superiors).
prejudice and animus that was present at the time. Yet, the Board adopted the medical conclusion that the event failed to meet Criterion A since the veteran had only experienced “a sense of being wronged.” These cases reflect incongruence between the VA’s regulatory PTSD stressor standards and the DSM’s trauma standard for diagnosing PTSD when it comes to discriminatory events. These opinions also support the finding that physical assault at least marginally increases the odds of success in discrimination claims, where, for example, homophobic or transphobic verbal harassment was coupled with physical assaults and demonstrated the perpetrator’s motive for the physical violations.

5. Other Notable Observations Related to the BVA’s Adjudication of SGIM Discrimination Claims

Although SGIM veterans were impacted by certain discriminatory acts, careful review of the cases supported particularly distressing effects of harassing behaviors that occurred in the backdrop of a combat zone or in a training environment where the perpetrator had ready access to weapons. This study revealed numerous cases where the veteran specifically indicated no trauma from combat itself, but rather from discrimination occurring in a combat zone. This included the refusal of subordinates to follow orders on discriminatory grounds. Many veterans feared harm from their peers more than the enemy, such as a friendly fire incident or fragging with grenades.

Others experienced commanders confiscating weapons and ammunition from minority troops or ensuring that only non-minority troops were armed. Based on these acts, one victimized veteran

376. Name Redacted, Citation No. 11-19942 (Bd. Vet. App. May 23, 2011).
377. Id.
378. Id.
379. Infra Section III.D (providing statistical results of associations between variables).
381. See, e.g., Citation No. 15-53544, supra note 380; Citation No. 13-02375, supra note 380; Citation No. 98-22706, supra note 380.
382. See, e.g., Citation No. 15-53544, supra note 380 (describing the stressor of having his orders “ignored” as the only Black soldier in his unit).
383. Citation No. 13-02375, supra note 380 (friendly fire due to racism); Name Redacted, Citation No. 98-22706, supra note 380 (race riots involving soldiers rolling grenades into sleeping areas).
384. Name Redacted, Citation No. 09-27184 (Bd. Vet. App. July 21, 2009) (weapon); Name Redacted, Citation No. 08-25400 (Bd. Vet. App. July 20, 2008) (ammunition); Name Redacted, Citation No. 16-22397 (Vet. App. June 3, 2016) (ammunition).
observed that he was “more traumatized by ongoing racial harassment
than combat stressors.” 386 A gay veteran, for example, recounted
discrimination when his commanders purposely sent him on more
dangerous combat missions in Vietnam based on his perceived
sexual orientation. 387 From an evidentiary perspective, it is notewor-
thy that veterans succeeded in establishing the Criterion A stressor
event requirement when they linked discrimination to “psychiatric
symptoms of fear of hostile, military, or terrorist activity during . . .
service” through the “belief that [peers] would not come to [their] aid
if attacked.” 388

C. Relationships Between Case Variables

I performed an empirical analysis of the 653 cases identified by
ML algorithms using a series of nonparametric analyses (chi-square
analyses, Fisher’s exact test, Wilcoxon rank sum tests) to determine
whether success of appeal differed across a number of variables. 389
Although I hypothesized that multiple traumatic events would in-
crease the likelihood of a favorable outcome on appeal, the study
revealed only a marginal difference between number of trauma types
claimed and outcome (W = 44914, p = .08). 390 A more significant
relationship was detected for the incidence of pre-service trauma,
which was negatively associated with success on appeal (X2 (1, 563) = 8.30, p < .01). 391 This result was consistent with my prior research
on cumulative traumatic events, which demonstrated the difficulty
of attributing PTSD to MST when the veteran had been sexually
assaulted prior to enlistment. 392 It appears from the empirical analysis
that prior traumatic events in civilian life created a similar cumulative
trauma dilemma in which VA adjudicators experienced difficulty

387. Name Redacted, Citation No. 03-08538 (Bd. Vet. App. May 6, 2003) (“He was set
up for an undesirable discharge for homosexuality. He also noted that he was sent on
missions considered dangerous, such as guarding a fuel and ammunition dump outside
Hue, which had been taken by the VietCong.”).
388. Name Redacted, Citation No. 17-55758 (Bd. Vet. App. Dec. 5, 2017); see also
Name Redacted, Citation No. 10-04384 (Bd. Vet. App. Jan. 28, 2010);
Name Redacted, Citation No. 02-08066 (Bd. Vet. App. July 18, 2002) (forced to go to the
field due to racism); Name Redacted, Citation No. 04-11021 (Bd. Vet. App. Apr. 27, 2004);
Name Redacted, Citation No. 16-24230 (June 16, 2016); see also Name Redacted, Citation
390. See id. at 92.
391. Id.
392. See, e.g., Seamone & Traskey, supra note 231, at 248–49.
disaggregating the effects of military discrimination. However, on balance, in all discrimination cases, physical assault was positively associated with appeal success ($X^2 (1, 563) = 4.17, p < .05)\textsuperscript{394}.

Recognizing that the VA changed its criteria for assessing PTSD and moved from using the *DSM-IV-TR* to the *DSM-5* in all PTSD service-connection adjudications on August 4, 2014\textsuperscript{395}, the study considered the distribution of all discrimination case outcomes across the current and two previous versions of the *DSM*\textsuperscript{396}. There was a higher likelihood of success after the implementation of the *DSM-5*, relative to before ($X^2 (1, 653) = 33.40, p < 0.001)\textsuperscript{397}. Further inspection of this relationship revealed that it was not specific to PTSD, however\textsuperscript{398}.

### D. Multilevel Logistic Regression Analysis

Logistic regression analysis is appropriate for an exploration of the determinants of case outcomes.\textsuperscript{399} Similar to other empirical legal researchers, this study treated the dichotomous approved/disapproved appeal choices as the dependent variable (i.e., Approved = 1, Denied = 0), and various case characteristics as the independent or predictor variables.\textsuperscript{400} I used theory to include or exclude each independent variable in the regression model.\textsuperscript{401}

\textsuperscript{393.} See *Stigma-in-Arms*, supra note 205, at 127–28.
\textsuperscript{394.} See id. at 92.
\textsuperscript{395.} See *U.S. DEP’T VETERANS AFF.*., *Schedule for Rating Disabilities—Mental Disorders and Definition of Psychosis for Certain VA Purposes*, 79 FED. REG. 45,093 (Aug. 4, 2014).
\textsuperscript{396.} See *Stigma-in-Arms*, supra note 205, at 98.
\textsuperscript{397.} See id.
\textsuperscript{398.} See id.
\textsuperscript{399.} Binomial logistic regression permits the identification of significant relationships between a given characteristic on case outcome while controlling for other characteristics. See *ROBERT M. LAWLESS, JENNIFER K. ROBBENNOLT & THOMAS S. ULEN*, *EMPIRICAL METHODS IN LAW* 298–304 (2d ed. 2016) (acknowledging the appropriateness of this “special” logistic regression analysis in many legal contexts where the “the dependent variable takes on only two (or very few) values”).
\textsuperscript{401.} Prior to conducting logistic regression analysis, I first conducted an exploratory examination of the degree of variability in decisions across judges for a random sample.
The detailed results for the combined discrimination regression model Table 1, below.\textsuperscript{402}

\begin{table}
\caption{LR Model Predicting the Likelihood of Successful Appeals—All Discrimination Cases}
\begin{center}
\begin{tabular}{lcccc}
\hline
Fixed Effects & \textit{b} & \textit{SE} & \textit{OR} & \textit{p} & 95\% CI \\
\hline
Sexual Orientation Discrim. & 0.17 & 0.32 & 1.18 & 0.600 & [-0.46, 0.79] \\
Veteran & Case & & & & \\
Pro se & -0.77 & 0.38 & 0.46 & 0.046* & [-1.52, -0.01] \\
Representation Unknown & 0.41 & 0.48 & 1.50 & 0.397 & [-0.53, 1.34] \\
Female or Transgender & 0.37 & 0.38 & 1.45 & 0.332 & [-0.38, 1.12] \\
Years of Service & -0.00 & 0.02 & 1.00 & 0.971 & [-0.04, 0.04] \\
Trauma-Related & & & & & \\
Preservice Trauma & -0.99 & 0.41 & 0.37 & 0.016* & [-1.79, -0.18] \\
Military Sexual Trauma & 0.29 & 0.40 & 1.34 & 0.473 & [-0.50, 1.08] \\
Administrative Discrim. & 0.03 & 0.37 & 1.03 & 0.940 & [-0.69, 0.74] \\
Physical Assault & 0.58 & 0.31 & 1.78 & 0.068# & [-0.04, 1.19] \\
Combat & 0.86 & 0.50 & 2.36 & 0.087$ & [-0.12, 1.84] \\
Number of Trauma Types & 0.23 & 0.25 & 1.26 & 0.359 & [-0.26, 0.72] \\
Policy-Related & & & & & \\
DADT (Post-Repeal) & 0.10 & 0.39 & 1.10 & 0.809 & [-0.67, 0.86] \\
Draft Era (Post-Draft) & -0.29 & 0.22 & 0.75 & 0.188 & [-0.73, 0.13] \\
DSM Version (V) & 1.09 & 0.57 & 2.98 & 0.055$ & [-0.02, 2.20] \\
Mental Health Related & & & & & \\
MH Claims (2) & 1.16 & 0.27 & 3.20 & 0.000*** & [0.64, 1.69] \\
MH Claims (3/4) & 0.69 & 0.38 & 2.01 & 0.063$ & [-0.04, 1.43] \\
PTSD & -0.66 & 0.30 & 0.51 & 0.025* & [-1.24, -0.08] \\
PTSD * DSM & -0.39 & 0.48 & 0.67 & 0.419 & [-1.33, 0.55] \\
Random Effects & Variance & ICC & & & \\
Judge & 0.49 & 0.12 & & & \\
Year & 0.21 & 0.05 & & & \\
\hline
\end{tabular}
\end{center}
\end{table}

Note. CI = confidence intervals; SE = standard error; MH = Mental Health
\textsuperscript{*}p \leq 0.10, \textsuperscript{*}p < 0.05, \textsuperscript{**}p < 0.01, \textsuperscript{***}p < 0.001

Contrary to the idea that multiple types of trauma were associated with greater severity of injury and therefore success on appeal, the number of trauma types claimed did not significantly correlate with success.\textsuperscript{403} Pre-service trauma was negatively associated with

of 25 judges with at least two decisions per judge. For an in-depth review of the process, see Stigma-in-Arms, supra note 205, at 98–100. The null model indicated that differences across judges accounted for 17% of the total variance in case outcomes (Intraclass Correlation (ICC): .17), suggesting the appropriateness of multilevel modeling. I further developed a model that indicated a better fit with a control for year based on fixed effects for a list of variables and a random intercept for year. \textit{Id.}

403. See \textit{id.} at 100.
success on appeal. Relative to veterans who did not report pre-service trauma, the odds of success for a veteran who did were reduced by 63% ($OR = .37, p = 0.016$). The DSM-5 with its new definition for PTSD was marginally associated with an increased likelihood of success on appeal ($OR = 2.98, p = .055$). Ultimately, the implementation of the DSM-5 was not uniquely beneficial for PTSD claims. Veterans who reported physical assault in addition to discrimination had a higher likelihood of success ($OR = 1.78$) than those who did not, however, this finding was not statistically significant ($p = .068$).

Several unexpected relationships emerged from the data. The odds of success were reduced by 54% for veterans who represented themselves on appeal versus those who had representation ($OR = .46, p = .046$). A greater number of mental health claims were more successful than a single claim. Relative to a single claim, two claims were associated with more than a threefold increase in the odds of success ($OR = 3.20, p < .001$) and three or four claims showed a statistically non-significant increase in the odds of success ($OR = 2.01, p = .06$). Finally, relative to claims for other diagnoses, PTSD claims were associated with a reduced likelihood of success ($OR = .52, p = .025$). There was no significant difference in the likelihood of success of a racial discrimination case and an SGIM discrimination one.

The next step was to conduct a logistic regression analysis on the subset of SGIM discrimination cases. Here, I reduced the number of predictors due to the relatively small number of observations. I dropped variables from the model where no significant relationships emerged. The final model did not include a random intercept for year. As depicted in Table 2, below, the only significant relationship to emerge from this analysis was the number of mental health claims (2 v. 1, $OR = 7.56, p = .01$). PTSD claims were marginally associated with a reduced likelihood of success relative to other types of claims ($OR = .30, p = .06$).

404. Id.
405. See Stigma-in-Arms, supra note 205, at 100.
406. See id.
407. Id.
408. Id.
409. Id.
410. See Stigma-in-Arms, supra note 205, at 100.
411. Id. at 100–01.
412. See id. at 101.
413. See id.
414. See id.
416. See id. at 104–05 tbl.16.
417. See id. at 104.
Unlike the model for discrimination in general, pre-service trauma and pro se representation were not significant in the SGIM model.418 With respect to hypotheses that interrogation and discharge would be associated with increased odds of success on the claim, the likelihood of success did not differ between heterosexual and SGIM veterans, veterans who were interrogated about their sexual orientation and those who were not, and veterans who reported MST versus those who did not.419 Nor after controlling for DSM version, did the likelihood of success differ before and after the repeal of DADT.420 The association between SGIM-based discharge

418. See id.
419. See id.
420. See Stigma-in-Arms, supra note 205, at 104.
and success on appeal was not supported. Based on a priori power calculations, this analysis is underpowered, and therefore the findings of the logistic regression analysis for SGIM discrimination cases must be interpreted with caution.

E. Study Limitations

This study has a number of limits. The chief concern is that judicial opinions do not reflect the entire judicial decision-making process, and lack important information, such as the underlying briefs and exhibits submitted to the court. Beyond this, judges write opinions with different audiences in mind and may omit important information based on the intended audience. Judges may want to avoid controversy by leaving out details regarding discrimination.

In this study, I was forced to exclude over two dozen opinions from the final analysis because the judges provided too little information about the type or method of discrimination claimed to identify how that information factored into the outcome of the claim. Notably, one BVA judge explained that she excised information to spare readers the “vulgar details” of the discriminatory events linked to the veteran’s sexual orientation. All opinions in which judges censored and sanitized content to eliminate mention of SGIM identity would skew the study results and make them less representative of traumatic discrimination cases.

421. See id.
422. See id.
423. See, e.g., Vern R. Walker, Nneka Okpara, Ashtyn Hemendinger & Tauseff Ahmed, Semantic Types for Decomposing Evidence Assessment in Decisions on Veterans’ Disability Claims for PTSD, in THE SECOND WORKSHOP ON AUTOMATED DETECTION, EXTRACTION AND ANALYSIS OF SEMANTIC INFORMATION IN LEGAL TEXTS (ASAIL 2017) 1–2 (June 2017) (discussing various factors that limit the ability to determine the reasons for a judge’s particular decision in BVA cases).
424. See Aletras et al., supra note 265, at 4 (describing documents and arguments not presented in appellate opinions that would provide insight into the determinants of the judicial outcome).
425. See, e.g., LAWRENCE BAUM, JUDGES AND THEIR AUDIENCES: A PERSPECTIVE ON JUDICIAL BEHAVIOR 162–63 (2006) (identifying how judges target different audiences when writing judicial opinions and the manner in which audience ultimately changes the message).
426. See, e.g., Stigma-in-Arms, supra note 205, at 173–74 (relating the experience of a BVA quality control expert that “the Board ‘intentionally’ avoids mention of the . . . sexual orientation of claimants if these characteristics are known specifically to avoid allegations of being biased against the claimants”).
427. See id. at 77–78 (citing examples of censorship and sanitization in which BVA judges used euphemisms for discriminatory treatment (e.g., characterizing a stressor as a mere ‘personality conflict’ or feeling of persecution), overly vague descriptions of discriminatory events (e.g., suffering ‘harassment’ and ‘discrimination’ [with no further detail]), and omission of many facts related to the discrimination altogether).
428. Name Redacted, Citation No. 18-07374 (Bd. Vet. App. Feb. 6, 2018).
This problem of censoring was not limited to judges but extended to the attorneys representing veterans on appeal.430 In one case involving a gay veteran whose claimed stressor event related to fear of being outed after a disclosure to his military psychologist, the Board granted the attorney’s request to disregard the veteran’s sexual orientation in deciding the appeal.431

Another limitation was the inability to identify outcomes of discrimination cases at a level below the BVA.432 Few veterans appeal their denials beyond the Regional Office level.433 The reasons for lack of appeal range from the pain of reliving discriminatory experiences, the perception that the veteran was not found worthy of belief, and the sheer amount of time (as in years) that an appeal takes to reach the BVA.434 Accordingly, the results of this study are limited to the Board’s treatment of discrimination cases, rather than the entire VA’s treatment in general or at the initial stages.435

It is noteworthy that this study was incapable of explaining what caused a case outcome.436 At best, the correlational and regression analyses assist in identifying variables associated with outcomes.437 While the logistic regression models controlled for different variables that may have confounded the results, many undetected factors could have influenced case outcomes, such as the interrelationship between multiple claimed injuries.438

430. See Name Redacted, Citation No. 07-10668 (Bd. Vet. App. Apr. 11, 2007).
431. See id. (conveying the attorney’s argument that “the veteran’s sexual preference is not a relevant factor in adjudicating this claim”).
432. See Stigma-in-Arms, supra note 205, at 34.
433. See Veterans for Common Sense v. Peake, 563 F. Supp. 2d 1049, 1073 (N.D. Cal. 2008), aff’d in part, rev’d in part, and remanded by Veterans for Common Sense v. Shinseki, 644 F.3d 845 (9th Cir. 2011), cert. denied, 568 U.S. 1086 (2013) (reporting that “[o]nly 4% of the total number of claims filed each year actually proceed past the [Notice of Disagreement] to a decision by the BVA”).
435. See, e.g., Mark A. Hall & Ronald F. Wright, Systematic Content Analysis of Judicial Opinions, 96 CAL. L. REV. 63, 92 (2008) (“[W]in/loss records from published opinions do not necessarily tell us about legal disputes that were never filed in court, those that the parties settled, or those that judges resolved without written or published opinions.”).
436. See Stigma-in-Arms, supra note 205, at 175.
438. For instance, a veteran who claimed that he or she was beaten based upon sexual orientation discrimination might have claimed both the disability of a broken jaw as well
A fourth limitation is the inability of ML to detect the nuances of legal texts. In any use of ML, the results are only as good as the inputs. Along these lines, the terms identified by NLP tools like REGEX search strings and Word2Vec were not designed with legal texts in mind and may have missed important terms. After all, training and testing data were drawn entirely from the cases identified through NLP. The next Part incorporates these important limitations in its practical and policy recommendations.

CONCLUDING REMARKS AND RECOMMENDATIONS

No previous studies have examined the manner in which the VA compensates veterans who suffered mental health injury as the result of discrimination. This study highlights that disability compensation is not only theoretically appropriate for but has actually resulted in compensation awards for SGIM veterans who claimed discrimination on account of their presumed or confirmed status. Although the judicial decisions on SGIM are far fewer than racial discrimination, the upward trend in service-connection decisions for all discrimination claims, particularly among decisions reached after the 2011 repeal of DADT, demonstrates the viability and necessity of applying for VA disability compensation.

While this Article began by describing the policy priority to upgrade and correct the discharges for SGIM service members who were involuntarily separated from the military based on anti-gay policies, it further demonstrated that discriminatory mental health injuries extend beyond the 114,000 discharged service members to a population nearly tenfold in number. Not surprisingly, only a fraction of the identified SGIM decisions in this study related to involuntary anti-gay discharges. The vast majority of identified

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439. See Pasquale & Cashwell, supra note 266, at 77 (presenting numerous reasons why ML is not appropriate in legal research).
440. See id. at 65 (observing that ML classifications “are only as good as the training data on which they depend”).
443. See id. at 113.
444. See id. at 51, 202.
445. See id. at 98.
446. Supra Introduction.
447. Supra Part III.
cases, in fact, involved discriminatory injuries suffered by veterans who completed their enlistments. Thus, the considerations addressed in this Article apply equally to those who were discharged under DADT and those who were not, as all veterans must apply for service-connection and be evaluated and determined eligible prior to the extension of disability compensation and other benefits. This Article ultimately helps answer the pressing question of what must be done after honor is restored, and for the hundreds of thousands of veterans who suffered injustice and were impacted by sanctioned discrimination and its outgrowths.

This research supports the development of additional presumptions for service-connection relating to veterans who were subjected to interrogation, involuntary separation, and less-than-honorable discharge. Such polices were implemented in 2018 by the Canadian government to compensate its SGM veterans who were impacted by the Canadian Armed Forces’ gay purges. Members of the class eligible for compensation include:

All current or former members of the [Canadian Armed Forces] . . . who faced threat of sanction, were investigated, were sanctioned, or who were discharged . . . . in connection with the LGBT Purge, by reason of their sexual orientation, gender identity, or gender expression between December 1, 1955 and June 20, 1996.

Under the settlement agreement, compensation is fixed for SGIM veterans who experienced different types of events: “investigation and/or sanction[]” amounting to more than “minimal and routine questioning regarding . . . sexual orientation, gender identity or gender expression” warrants a payment of at least between $5,000 and $10,000, while military discharge results in an additional $50,000. Veterans who also experienced “[e]xceptional [h]arm not
including [e]xceptional [h]arm arising from physical and/or sexual assault” are eligible to receive at least up to an additional $50,000; those who did suffer such Exceptional Harm are eligible for additional compensation up to at least $100,000. Based on several considerations, the maximum allowable compensation for a veteran who suffered discriminatory harm is capped at $175,000.

Not addressed in detail here, the policies developed as a result of the Gay Purge Class Action litigation in Canada also resulted in a letter of apology for each affected veteran, a Canada Pride Citation, and the development of a museum to memorialize the service of LGBT military members. While this Article does not advocate for compensation unrelated to a showing of a mental health disorder and unrelated to a substantiated disability rating level, the Canadian policy provides a basis and justification for systematized recognition of specific traumatic and high-impact discriminatory events on military SGIM veterans. As envisioned, proof of any of these facts should be deemed as adequate corroboration for the PTSD stressor event under VA regulations similar to the current recognition of service in combat.

Along these same lines, this research also supports an additional presumption of service-connection of a mental health condition for any transgender veterans who served in the military through the period of the Trump Administration’s Transgender Ban, especially if such veterans served during the time of prior military policy permitting open transgender service. Fear of loss of one’s career and rejection of value and worth are strongly linked to chronic and adverse health consequences.

Alternatively, for PTSD diagnoses, VA policy should, at the very least, be updated to explicitly recognize specific SGIM discrimination markers to establish traumatic stressors. Research conducted by the VA’s own mental health providers on high-impact and traumatic discriminatory events among SGIM veterans has identified eight items that qualify as Military Distal Minority Stressors and eight items that qualify as Military Proximal Minority Stressors, all of which have been linked to chronic mental health injuries.

456. See Final Settlement Agreement, supra note 452, at 24 § 7.05(4A)–(4B).
457. See id. at 25.
458. See id. at 16 § 5.01(a).
459. See id. at 12 § 4.01.
460. Supra Introduction.
461. Supra Part I.
462. See Beckman et al., supra note 68, at 183–84. An example of a Distal Minority Stress Item is, “Were you ever forced to undergo psychiatric evaluation or receive psychiatric treatment due to your gender identity?” Id. at 185. An example of a Proximal
Considering the difficulty of amending VA standards in consideration of MST, it is unclear whether there is sufficient interest and capability to implement such changes. Accordingly, the subparts below present four recommendations that do not require new rules and which provide an immediate framework to establish service-connection for SGIM veterans who desperately need the benefits they have earned.

A. The Online Digest of SGIM Discrimination Opinions

The shocking appellate case in which an attorney asked the BVA to disregard a gay veteran’s orientation in considering his disability claim based upon SGIM stigma suggests that attorneys may not feel comfortable advocating for these types of claims. This aversion may be due to the lack of any systematic study or evaluative framework to consult when considering the merits of a particular strategy.

To bridge this apparent gap, a list of all docket and citation numbers for BVA opinions relating to SGIM discrimination appears in Appendix A of the Online Supplement. These written decisions may be accessed electronically free of charge at the BVA’s Decision Search Database simply by entering the citation number into the keyword search field.

Recognizing the time and energy required to evaluate individual opinions, Appendix B, also located in the same Online Supplement, does the heavy lifting. Specifically, this Appendix contains a topical index of issues raised in 56 of the 118 cases where the court’s reasoning on an issue was particularly instructive. The Appendix then presents short but detailed summaries of each case in a standardized format, with information including the presiding judge’s name, the type of representation for the veteran, whether the claim was approved or denied, the veteran’s years of service, the location of the discrimination, the veteran’s branch of service, the

Minority Stress Item is, “In the service, I was constantly trying to conceal my gender identity.” Id.

463. See supra notes 227–29 and accompanying text (addressing enduring limitations on MST policy development).
464. See Name Redacted, Citation No. 07-10668 (Bd. Vet. App. Apr. 11, 2007).
466. See Seamone, supra note 79, at 3.
467. See U.S. DEP’T. VETERANS AFFAIRS, THE BOARD OF VETERANS’ APPEALS DECISION SEARCH RESULTS, WWW.VA.GOV (2021), https://www.index.va.gov/search/va/bva.jsp (making available BVA opinion text for search from the 90s through roughly two months prior to one’s access).
468. See Stigma-in-Arms, supra note 205.
469. Id. at 7 app’x. B.
The case summaries in the Online Supplement are presented in a manner similar to a jury verdict reporter or a case digest.472 These tools aim to provide enough substance to assist an advocate, attorney, or even a BVA judge in researching evidentiary and other issues that arose in cases similar to a present claim.473 While these tools have no predictive value beyond their four corners,474 they exist as research aids, and data points to allow for more accurate appraisal of similar cases.475 Empirical legal researchers who evaluate case outcomes have long recommended the development of such tools to augment traditional routes of legal analysis specifically because these systematically derived opinions can assist in identifying “hidden patterns” in the application of legal frameworks.476 In an area such as discrimination, where guidance has been lacking, the tools in this Article should enable attorneys to meet crucial responsibilities to their clients.477 As in the case of jury verdict reporters,

470. See id.
471. Infra Appendix.
472. See Mark K. Osbeck, Lawyer as Soothsayer: Exploring the Important Role of Outcome Prediction in the Practice of Law, 123 PENN. ST. L. REV. 41, 62 (2018) (“The purpose of jury verdict reporters is to provide lawyers with information about how cases that are similar to the cases they are working on have been resolved.”).
473. See id.
474. This limitation is even more true in considering BVA decisions, which, by regulation have no precedential value on other BVA decisions like a binding panel decision of the CAVC would. See Sarah M. Haley, Single Judge Adjudication in the Court of Appeals for Veterans Claims and the Devaluation of Stare Decisis, 56 ADMIN. L. REV. 535 (2004) (exploring salient differences in the VA system of appellate adjudication).
475. See, e.g., Osbeck, supra note 472, at 41 (recognizing statistical analysis of judicial opinions as a “complement [to] the traditional tools in order to power more accurate outcome predictions,” id. at 42); Warner F. Grunbaum & Albert Newhouse, Quantitative Analysis of Judicial Decisions: Some Problems in Prediction, 3 HOUSTON L. REV. 201, 201 (1965) (observing that statistical results are “a supplement to the legal methods and analyses” attorneys traditionally apply).
476. Han-Wei Liu & Ching-Fu Lin, Artificial Intelligence and Global Trade Governance: A Pluralist Agenda, 61 HARV. INT’L L.J. 407, 435 (2020) (noting the ability of NLP and ML analysis “to unveil hidden patterns underlying . . . judicial decisions”); see also Grunbaum & Newhouse, supra note 475, at 201 (“Quantitative techniques have the advantage that general trends can be projected from vast masses of data, and such general trends should serve as an additional aid to the appellate lawyer.”); Sidney Ulmer, Quantitative Analysis of Judicial Process: Some Practical and Theoretical Applications, 28 L. & CONTEMP. PROBS. 164, 166 (1963) (recognizing that judicial opinion data, “when collected in sufficient quantities, will reveal certain patterns or regularities” which “have analytical value”).
477. See Osbeck, supra note 472, at 43–44 (“Lawyers . . . cannot provide effective
the **Online Supplement** exists as a public-facing database where practitioners can add summaries of their own cases at all levels from VA regional offices to the CAVC to provide greater coverage of trends.478

**B. Historical Records to Corroborate SGIM Discrimination**

Whereas the race discrimination cases revealed the corroborative value of scholarly books, DoD reports, and other accounts of discriminatory practices in the military,479 the sexual orientation and gender identity discrimination opinions did not reflect the submission or consideration of similar evidentiary support.480 This is concerning because numerous books and reports offer detailed accounts of SGIM discrimination at specific military installations during specific time spans.481 The series of ten *Conduct Unbecoming* annual reports authored by the organization formerly named the Servicemembers Legal Defense Network (SLDN) provide detailed accounts of discriminatory military practices and incidents from 1993 to 2003.482 In addition, organizations, including the RAND Corporation,483 Human Rights Watch,484 the Palm Center,485 and different Offices of the Inspector General for military departments,486 have all counsel to clients if they cannot accurately assess the potential outcomes of litigation and other legal matters and advise their clients accordingly.


479. See supra Part III.

480. Id.


482. See Tobias Barrington Wolff, *Political Representation and Accountability Under Don’t Ask, Don’t Tell*, 89 IOWA L. REV. 1633, 1640 (2004) (identifying the vital role of these “carefully documented” reports in identifying the implementation and impact of DADT over time).


484. See, e.g., COLLINS ET AL., supra note 200 (reporting on the impact of DADT).

485. See, e.g., Nathaniel Frank, *The Role of Research, Litigation and Comparative International Policy in Ending the U.S. Military’s “Don’t Ask, Don’t Tell” Policy*, 23 SW. J. INT’L L. 141, 146–47 (2017) (describing the pivotal role of the Palm Center in “conduct[ing] research that would have the credibility of a major research university and would showcase the facts on the ground to the public”).

486. See, e.g., U.S. DEP’T OF ARMY, OFF. OF INSPECTOR GEN., PT. CAMPBELL TASK FORCE, DAIG SPECIAL ASSESSMENT OF ALLEGATIONS OF VIOLATIONS OF THE DoD HOMOSEXUAL...
carefully and periodically examined the impact of anti-SGIM policies. Another source of corroboration may exist in the evidence submitted in court challenges to various aspects of the gay and transgender bans.

Practitioners should endeavor to obtain documents that identify the harassing nature of the social climate at the same date, location, and units where the SGIM veteran was assigned. As recommended in the case of racial discrimination, it would similarly serve SGIM veterans and their advocates to consolidate, maintain, and make available data regarding acknowledged and reported military SGIM discrimination incidents. Whether a government agency, university, or private foundation offers this service, consolidation of such evidence for use in VA claims would assist in removing one of the largest obstacles to VA service-connection for discriminatory incidents.

C. Evaluating for and Claiming Other Disorders in Addition to PTSD

Practitioners who represent SGIM veterans who suffered discrimination should take note of the research results regarding the types of claims that are most successful. First, PTSD claims are the most likely to fail in discrimination cases, probably due to the higher burden to prove the traumatic stressor. The greater odds of success in anxiety and depression claims highlight the importance of claiming additional conditions if they are supported as well as asking mental health evaluators to examine for more than one condition. Many of the cases that failed involved only the singular claim for service-connection of PTSD. There were instances when the SGIM discrimination claim was granted on the basis of a different mental health condition even though the additional claim of PTSD

CONDUCT POL’Y AT FORT CAMPBELL (2000). The Army Office of Inspector General, for example, published detailed reports on harassment of LGBT servicemembers at Fort Campbell and the Department of Defense conducted a military-wide study. Id.; see also U.S. DEPT OF DEF., OFF. OF INSPECTOR GEN., EVALUATION REP.: MILITARY ENV’T WITH RESPECT TO THE HOMOSEXUAL CONDUCT POL’Y (2000).

487. See, e.g., Wolff, supra note 482, at 1640 (observing how “the lived experience of servicemembers under the policy has been described by advocacy groups, scholarly commentators, and grassroots organizations alike”).

488. See Frank, supra note 485, at 155 (describing the value of DADT repeal litigation in identifying “evidence regarding the effect of the challenged statute” beyond its legislative history) (internal citation omitted).


490. See supra Part III.

491. See id.

492. See id.

493. See id.
for the discriminatory event had been denied.\footnote{494. See, e.g., Name Redacted, Citation No. 09-42480 (Bd. Vet. App. Nov. 6, 2009) (finding insufficient corroboration for the PTSD stressor event related to undergoing discharge proceedings but granting service-connection for major depression related to sexual orientation discrimination experienced as sexual harassment).} This approach is heavily supported with more than a threefold increase in the odds of success ($\text{OR} = 3.20, p < .001$) when a veteran claimed more than one mental health condition versus only one.\footnote{495. See supra Part III.} Recall that the “sweet spot” was a claim for two mental health conditions in relation to the discrimination.\footnote{496. See id.} The research results similarly indicate that pre-service trauma is associated with denial of a discrimination claim.\footnote{497. See id.} It is crucial, therefore, to identify prior traumatic events in the veteran’s life and ensure that the psychiatric examiner explains why current mental health symptoms are related to the military trauma.\footnote{498. An extensive analysis of this subject and several practical recommendations are presented in Seamone & Traskey, supra note 231, at 347–50.}

Greater coordination with mental health evaluators appears to be absolutely necessary in SGIM discrimination cases.\footnote{499. See id. at 349.} The Board is heavily exposed to traditional claims of trauma exposure, like combat.\footnote{500. See VETERANS’ BENEFITS ADMIN., ANNUAL BENEFITS REPORT, FISCAL YEAR 2020, 97 (2021) (identifying PTSD as the fourth “most prevalent [of all service-connected] disabilities” of all compensation recipients after tinnitus, hearing loss, and limitation of flexion of the knee).} Even though discrimination is the type of injury that the personal assault regulation was designed to address, and the Board is prepared to accept that proof of discrimination may be harder to identify in military records due to non-reporting,\footnote{501. For example, in a case involving the discriminatory events of “taunt[s]” of “KKK innuendoes,” the Board accepted that such events fall within “the category of situations, to include allegations of racism and racial harassment, in which it is not unusual for there to be an absence of service records documenting the events of which the veteran complains.” Name Redacted, Citation No. 08-10422 (Bd. Vet. App. Mar. 28, 2008).} the presentation of discriminatory trauma symptoms is quite “atypical” and requires more analysis and rationale connecting the discriminatory incident to the mental health condition.\footnote{502. Name Redacted, Citation No. 16-43098 (Bd. Vet. App. Nov. 9, 2016) (describing the “atypical” presentation of PTSD and other symptoms related to discrimination in the military).}

**D. Using Objective Measures to Assess Military SGIM Discrimination**

A careful review of the BVA denials reveals multiple mental health examiners who failed to demonstrate the etiology of the...
disorder and how it related to the discriminatory event.\footnote{Supra Part III.} Merely explaining that the veteran received a discharge or was subject to investigation did not have any significant relationship with case outcome.\footnote{Id.} However, evidence of the psychological impact of those events during the times in question had measurable weight in a number of cases.\footnote{Supra Part III.} Careful review of the discrimination cases reveals that the Board is willing to go against its own experience and give weight to favorable medical evidence when it was based upon an articulable rationale.\footnote{Supra Part III.}

For instance, while the Board shared that its experience cautioned against the finding that harassing comments, investigation, and separation based on lesbian orientation were sufficiently traumatic to meet Criterion A, the Board nonetheless accepted the PTSD diagnosis on the basis that the evaluator provided a rationale for the assessment.\footnote{Id.} This reflects the general rule that presence of a traumatic stressor under the Personal Assault regulation is a finding of fact to be made by the adjudicator, but mental health diagnosis is a medical finding strictly reserved for qualified mental health examiners.\footnote{See Name Redacted, Citation No. 06-12927 (Bd. Vet. App. May 4, 2006) (“The question of whether the veteran was exposed to a PTSD stressor in service is a factual one, and VA adjudicators are not bound to accept uncorroborated accounts of stressors or medical opinions based on such accounts.”).} Accordingly, when a VA or other examiner provides a negative opinion on sufficiency of the mental health diagnosis, the Board cannot accept broad generalizations such as “sexual harassment does not qualify as a stressor for diagnosing PTSD,” unless there is a sufficient rationale to show that a favorable diagnosis was insufficient or in error.\footnote{Name Redacted, Citation No. 10-33511 (Sept. 7, 2010).} In such instances, when granting service-connection for SGIM discrimination, the Board often made findings that no evidence was presented to refute the favorable opinion.\footnote{For example, the Board rejected the general argument that sexual harassment
As recently as 2019, the BVA remanded over a third of its appeals based on VA error during initial claims processing.511 One of the primary reasons for the high number of remands is the submission of inadequate medical evidence.512 Many medical opinions are often discounted or disregarded by adjudicators because the opinions lack sufficient explanation of the rationale for the examiner’s conclusion.513 Given the manner in which denied SGIM claims identified by this study frequently reflect insufficient medical opinions,514 examiners must address the unique requirements of these more difficult, atypical, claims in their opinions and reports. Recent research by VA mental health providers who treat SGIM veterans has underscored the need to use assessments that have been developed to evaluate discriminatory experiences within SGIM populations, specifically.515

Fortunately, there are presently measures that are sensitive enough to evaluate trauma and high-impact discriminatory events experienced by different sexual and gender minority groups.516 For example, the Internalized Homonegativity Inventory (INHI) is a
measure with a number of subscales to assess the impact of a gay men’s negative beliefs about themselves and homosexuality in general. Among women, the Lesbian Internalized Homophobia Scale (LIHS) is a separate validated measure that explores similar impacts on gay women. The Bisexual Identity Inventory (BII) builds on these constructs to assess one’s identification as a bisexual person. Later in time, the Multifactor Internalized Homophobia Inventory (MIHI) was adapted to assess both gay men and gay women. The Transgender Identity Survey (TIS) is just one of many measures that assesses the impact of transnegativity on transgender people.

Beyond internalized negative beliefs toward one’s identity, some scales have been developed to assess the impact of minority stress on SGIM persons, such as the Minority Stress Scale. The Trans Discrimination Scale (TDS-21) further explores the impact of discrimination on transgender persons. Also highly relevant, the recently validated 64-item Extent of Concealment Measure (ECM) assesses LGBT identity concealment at cognitive, affective, and

517. Mayfield, supra note 516, at 53.
519. Ron Paul, Nathan Grant Smith, Jonathan J. Mohr & Lori E. Ross, Measuring Dimensions of Bisexual Identity: Initial Development of the Bisexual Identity Inventory, 1 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 452, 460 app. (2014). Studies of bisexual military veterans have highlighted how they have suffered the mental health consequences of trauma at higher levels than some of their SGIM counterparts based on the additional stress of concealing their identities from gays and lesbians in addition to heterosexual service members. See, e.g., McNamara et al., supra note 84, at 91, 96 (documenting, for example, that “bisexual Veterans are at greater risk for depression and PTSD than lesbian and gay Veterans” and attributing this disparity to additional minority stresses from “concealment of their identity from lesbian and gay individuals”).
521. See, e.g., Walter O. Bockting et al., The Transgender Identity Survey: A Measure of Internalized Transphobia, 7 LGBT HEALTH 15 (2020) (describing the 52-item measure with 4 subscales).
522. See, e.g., Andrea N. Pala et al., Validation of the Minority Stress Scale Among Italian Gay and Bisexual Men, 4 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 451 (2017).
behavioral levels.\textsuperscript{524} While some studies of SGIM minority discrimination have identified over 100 aspects of discrimination that may be tested, and through various scales measure different phenomena, the variety of measurements which provide objective factual evidence to support mental health evaluations of SGIM veterans strongly supports their use in these types of claims.\textsuperscript{525}

A careful review of the discrimination cases did not reveal any use of these measures by the examiners who diagnosed SGIM veterans.\textsuperscript{526} This is surprising given that these objective measures are precisely the types of factors that can support the link between military discrimination and present mental health conditions.\textsuperscript{527} Not only should private medical examiners incorporate these measures in their assessments of discrimination cases, but the VA should likewise train its own Compensation and Pension examiners in the use and scoring of these instruments.\textsuperscript{528}

In sum, the explosive growth of states that have enacted laws to restore honor to discharged SGIM veterans, VA Secretary McDonough’s new guidance, as well as the Biden Administration’s efforts to address the impact of discrimination on SGIM veterans, underscores growing concern for the well-being of this population that has too long been a “silent minority.”\textsuperscript{529} Beyond the restoration of honor, monumental challenges face those who continue to fight an internal war years after leaving the military.\textsuperscript{530} Aside from the double- or even triple-closet secreting many SGIM veterans,\textsuperscript{531} Canada’s recent experiences extending compensation revealed a much smaller number of applicants than had been expected based on the re-trauma of confronting past military discrimination.\textsuperscript{532}

\textsuperscript{524} Brennan et al., supra note 100, at 84 tbl.2.
\textsuperscript{526} See, e.g., Name Redacted, Citation No. 16-33567 (Bd. Vet. App. Aug. 25, 2016); Name Redacted, Citation No. 09-42480 (Bd. Vet. App. Nov. 6, 2009).
\textsuperscript{527} See, e.g., Morrison et al., supra note 525.
\textsuperscript{528} See, e.g., Thor Johansen, Core Competencies in VA Compensation and Pension Exams for PTSD and Other Mental Disorders, 10 PSYCH. INJURY & L. 234, 234–35 (2017) (describing the professional education functions of the Disability Examination Management Office in providing web-based and other training for the VA’s Compensation and Pension Examiners).
\textsuperscript{529} Mankowski, supra note 112, at 120.
\textsuperscript{531} Supra Introduction.
\textsuperscript{532} Bronskill, supra note 530 (revealing that “[s]ome victims of the federal government’s
to SGIM veterans, education of veterans’ claims representatives, psychiatric examiners, attorneys, VA adjudicators, and VA judges, it will finally be possible to rectify injustice for all who were adversely impacted by the military’s discriminatory policies and actions and validate the extraordinary sacrifices they made to serve their nation.

The time for action has arrived.

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gay purge were so devastated by the experience that even decades later they needed the help of a therapist to fill out forms to receive financial compensation” and others “were still so mistrustful of the government after being investigated or fired for their sexual orientation that they worried the compensation process was an elaborate ruse to elicit information that would be used to punish them again . . . ”).
## Example of SGIM Discrimination Case Summary

<table>
<thead>
<tr>
<th><strong>Case Information</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case Number and Date:</strong> 12-36487 (10/22/12)</td>
</tr>
<tr>
<td><strong>Regional Office:</strong> Salt Lake City, Utah</td>
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<tr>
<td><strong>Judge:</strong> Mark Halsey</td>
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<tr>
<td><strong>Representation:</strong> Unknown</td>
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<tr>
<td><strong>Sex:</strong> Female</td>
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<tr>
<td><strong>Race:</strong> Unknown</td>
</tr>
<tr>
<td><strong>Branch:</strong> Air Force</td>
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<tr>
<td><strong>Service Dates:</strong> December 1980 to December 1982</td>
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<tr>
<td><strong>Location of Discrimination:</strong> McChord Air Force Base</td>
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<table>
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<tr>
<th><strong>Claim(s)</strong></th>
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<tbody>
<tr>
<td>PTSD (DSM-IV) (Approved) Depression (Approved)</td>
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<tr>
<th><strong>Veteran’s Background</strong></th>
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<tr>
<td>The veteran claimed multiple in-service stressors, specifically the harassment and humiliation she received for accusations of homosexuality. The veteran stated that the OSI opened an investigation into her sexuality. The veteran, who was in military law enforcement had her gun and badge confiscated. Finally, the veteran was coerced into admitting she was a homosexual in order to receive an honorable discharge. As a result of the discharge, the veteran’s DD Form 214 was stamped with the word “homosexual” in big red letters. This humiliated the veteran and made it challenging for her to find a job in a different career field. The veteran’s military personnel record corroborated that she was having trouble adapting to military life through missed appointments.</td>
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<tr>
<th><strong>BVA’s Ruling &amp; Remarks</strong></th>
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<tr>
<td>The Board approved the claim, finding the homosexual label on the DD Form 214 to be probative in verifying the veteran’s in-service stressor. Despite contradicting medical examinations (some indicating the veteran’s PTSD was caused by preservice trauma), the Board gave greater weight to records attributing the PTSD to in-service events. The Board stated: “while noting that the [v]eteran had incidents of childhood abuse, several treatment records strongly suggest that the [v]eteran’s PTSD was caused by harassment while in service.” The Board commented on the validity of the in-service stressor when stating: “while ridicule and offensive comments by others may not be considered by this Board member to be so traumatic as to constitute stressful events sufficient to cause PTSD, several clinicians apparently thought otherwise and found that she in fact had PTSD that was at least in part attributable to her military service.”</td>
</tr>
</tbody>
</table>