

## **The President's Pleasant Surprise: How LGBT Advocates Ended Don't Ask, Don't Tell**

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*This study assesses the role of LGBT advocates in repealing the military's Don't Ask, Don't Tell policy in the U.S. Congress. It draws on the author's direct involvement with that effort as well as personal interviews and media evidence to consider the contributions of the Obama Administration, members of Congress, the media, and individuals and pressure groups in the repeal process. It argues that repeal succeeded not because of the effective implementation of a White House plan but because the pressure of LGBT advocates ultimately shattered several key obstacles including inadequate messaging and dysfunction and inertia among both politicians and interest groups in Washington. The article offers insight into the role of public pressure in forwarding social change.*

**KEYWORDS** *Don't Ask, Don't Tell, DADT, Obama, media, LGBT advocates, Congress, Pentagon, unit cohesion*

In a December 2010 interview with *The Advocate* the day he signed the bill to repeal the military's Don't Ask, Don't Tell (DADT) policy, President Obama shared his feelings about the successful effort to lift the ban on openly gay service. "Things don't always go according to your plans," he told the magazine's Washington reporter, Kerry Eleveld. "And so when they do—especially in this town—it's pleasantly surprising" (Eleveld, 2010a).

Ending DADT was a major victory for the Obama Administration, and an important campaign promise kept. But for the purposes of understanding how social movements succeed or languish, the narrative that has emerged in the aftermath of this victory—that the White House had a well-designed plan

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from the outset that it successfully implemented despite several obstacles along the way—is at best too simple, and at worst wholly incorrect.<sup>1</sup>

In this study, I argue that repeal succeeded not because of the effective implementation of a White House plan but because the pressure of LGBT equality advocates ultimately shattered several key obstacles. These hurdles included inadequate messaging, the de-prioritization of repeal by Washington actors, and a dysfunctional Congress that feared or neglected gay rights. These obstacles were overcome by forces that were uncoordinated and unpredictable, but that were tied together by the theme of public pressure, particularly through savvy use of the media (as well as, of course, a stroke of luck). The story, thus, sheds insight into the role of public pressure in forwarding social change (for how public opinion affects legislation and how media affect public opinion, see Bryant & Zillmann, 2009; Krimmel, Lax, & Phillips, 2012; Page & Shapiro, 1983).

As advocates surmounted the hurdles, sometimes pressuring each other, repeal moved forward. Because of a multiyear reframing campaign, military and elected officials came to see that supporting repeal was not risky or costly and might even be beneficial, both militarily and politically. Because of a specific tactic involving the dissemination of information about the President's legal authority to suspend discharges by executive order, the White House was thrown on the defensive and was compelled to take repeal seriously. Because activists raised a ruckus throughout 2010, Democratic leaders were forced to respect the political prowess of the lesbian, gay, bisexual, and transgender (LGBT) community and were hard pressed to keep their demands off their agenda.

The White House and the Human Rights Campaign (HRC), the nations' largest LGBT rights organization, long assured the LGBT community that there was a plan for victory (e.g., Bellini, 2009; Stolberg, 2009a)—exactly the same thing had happened in 1993 with the White House and insider gay groups, when Bill Clinton's effort to lift the ban collapsed and yielded DADT. The evidence amassed here questions the viability of that plan, and suggests that whatever that plan was relied on the efforts and impatience of many other actors to meet with success. I do not maintain that there was no plan at all to secure repeal, but that what passed for a plan was vague and ineffective, and was not what ultimately secured repeal.

As a candidate, Barack Obama famously said, "I want you to hold our government accountable. I want you to hold me accountable." He was channeling Franklin D. Roosevelt's entreaty to his base, "I agree with you, I want to do it, now make me do it." Likewise, Bill Clinton implored his base to strengthen his hand by applying public pressure on his left (Adair, 2009; Sirota, 2009). Indeed, there is no shame in being pressured by friends to do the right thing. In a sense, the worst that can be said about the President's plan—and any gap between what was planned and what ended up happening—is that it was implemented sooner than the White House

thought it would be. That would seem nothing to complain about for repeal advocates. But it leaves the story of how it happened—sooner than planned and, for that matter, at all, still untold.

Here, then, is an attempt to tell the story—at least its first chapter—of how a dedicated group of equality advocates successfully pressed the U.S. government to end one of the last forms of government discrimination against its own people. Because I was one of those advocates, I enjoyed a unique perspective on the story I chronicle here. A participant history has both strengths and limitations. My own participation in the effort allows me to draw on years of research, strategy discussions, meeting minutes, conversations with key players, and notes and emails written to or shared with me.<sup>2</sup> Yet, my involvement at the University of California's Palm Center, a think tank focused on DADT, creates some risk that Palm's role will appear disproportionately in the story. I try to guard against that risk with an historian's commitment to documentable evidence and narrative balance. But, if I fall short, I hope it's some compensation that my personal involvement in both strategizing and chronicling the long-term information campaign I document here allows me the opportunity to share the critical role of research advocacy in forwarding a social movement.

One final note: This is not the story of the Washington lobbying campaign for repeal, which was a critical ingredient in ensuring the ban's end. I do not present this study as the full and definitive history of how repeal was won, a fair account of which will, I think, require an in-depth probe of the private conversations and tactics of lobbyists, legislators, the White House and the Pentagon. Although I include some of that here, I determined that it is too soon to tell that full story with the benefit of both the passage of time and the needed candor of the key players. My focus elsewhere should not be read as taking anything away from the essential role and effectiveness of lobbying in the story of repeal.

But I also don't tell that story because the real story of how DADT was repealed is much broader than the Washington lobbying effort, and started much earlier than the 2008 election of Barack Obama. Thus, the focus of this study is on the social movement developments that made it ripe for Washington actors to press ahead successfully with legislative repeal in 2010. Those developments began years earlier, with the long-term strategic information campaign begun at the moment DADT was born.

## THE PUBLIC INFORMATION CAMPAIGN, 1993–2008

### SLDN

In 1993, the day after President Bill Clinton announced DADT, a policy that would be codified into law four months later, Michele Benecke and Dixon Osburn founded Servicemembers Legal Defense Network (SLDN).

An outgrowth of the Campaign for Military Service, the short-lived umbrella group formed to advocate for full repeal in 1993, SLDN developed a strategy focusing on legal aid for affected service members, court challenges to the policy, and media attention to help turn opinion against the ban. “The demise of DADT did not occur in isolation or merely as the fulfillment of a presidential campaign promise,” Benecke (2011) wrote. “It resulted from a deliberate long-term strategy . . . to put an end to the law by turning public opinion against it” (p. 36).

Benecke argued that SLDN’s two-part strategy was to put the military on notice that it was being watched, while bringing national attention to both the suffering and service of gay troops as a way of eroding public support for the policy. SLDN was highly effective at the first goal. Benecke’s (2011) article recalls several important actions SLDN took to hold the military accountable in the early years of DADT, when almost no one else was paying attention to the issue of gay and lesbian troops. The group publicized command actions and inactions; it educated military members about their rights under the new policy and represented them when they needed legal aid; it worked to end witch hunts, ensure proper enforcement, and reduce abuse of the policy; it helped challenge downgraded discharge characterizations. The presence of an effective watchdog group, which used public and private pressure to hold officials accountable, helped improve the safety of military members by making clear that the entire chain of command was under scrutiny (Benecke, 2011).

Throughout the 1990s, public support for lifting the ban grew (e.g. Bicknell, 2000; Healy, 1993; Miller, 1994; Zogby International, 2006). Yet, the achievement of SLDN’s second goal—eroding support for DADT—was limited by the absence of two critical ingredients in the effort. First, there was little actual research allowing the national debate to trade in hard facts. Other nations had ended their bans with no harm to military effectiveness, and empirical research could allow policymakers to predict the same in the United States—if it existed. This question—the potential impact on national security—would become the sole question that mattered for the military and key senators (and, to a large extent, the courts, which would strike down the ban only if they determined it served no compelling governmental purpose) when they took up the issue in 2010.

The second missing ingredient, then, was a reframing of the public debate to appeal to those whose support was most critical to ultimately winning repeal: cultural, political, and military conservatives who either remained skeptical that the ban could be lifted without harming military effectiveness, or who hid behind that rationale to continue to oppose equality. While support for openly gay service grew in the 1990s, the public dialogue that furthered that support was best suited to winning over the low-hanging fruit of liberal sentiment. Given the respect that the culture and politicians conferred on the military and its leaders, it would be critical to

frame the national conversation around the issue of cohesion and security instead of fairness, equality or privacy.<sup>3</sup>

Yet, SLDN's primary frame for indicting the policy—that it treated gay troops unfairly—did not resonate strongly with those who most needed to be convinced to oppose it. In the 1993 debates, wrote Benecke, “there was not yet any national consensus that gay rights issues were civil rights issues. We vowed to change the terms of the debate by putting [LGB] military members front and center . . . This issue simply could not be understood by the courts, Congress, the media and the public without understanding servicemembers' experiences” (2011, p. 41). Typical of the public rhetoric that SLDN used as a result of this framing strategy was Benecke's assertion that “the real issue is that commanders in the field need to know the intent of the policy—that people have a right to privacy,” a message that focused not on ending the policy but enforcing it properly, and not on the policy's harm to the military but its impact on the right of gay troops to be left alone (Benecke, 2011; Priest, 1998).

The problem with framing the issue as a violation of gay rights was that it was convincing only to those who already believed that gay rights were civil rights and, even more importantly, only to those who prioritized gay rights over military readiness. Throughout the 1990s and into the next decade, defenders of the ban succeeded at maintaining support for it by suggesting that, no matter how unfair it may seem to gay troops, the ban was necessary to preserve unit cohesion. Military leaders and their political supporters, as well as culturally and politically conservative Americans generally, cared little about the rights of gay people as long as they thought (or could argue) that equal treatment might put the military at risk. As polls showed, there remained a stubborn gulf between the assumptions of liberals about equality and the beliefs of conservatives that lifting the ban threatened national security, and national security trumped fairness.<sup>4</sup>

## Palm Center

The Palm Center's research helped fill this gap. An academic policy research organization, Palm was devoted to disseminating facts about the service of LGBT troops, particularly in foreign militaries. But Palm played a highly strategic role in the repeal effort. Its model, pioneered by the center's founding director, Aaron Belkin, was not just to conduct research, but to use research aggressively and repeatedly to earn media attention and reframe the national narrative, beating the ban's champions on their own terms. Palm's status as an academic research center—it was housed at University of California, Santa Barbara, until 2011, and then merged with UCLA School of Law's Williams Institute—bolstered its credibility and visibility with the media and, eventually, with the nation's military and political leadership. Its use of data to attract media attention to an issue that, until 2009, generated

little national interest was key, as was its willingness to take the long view and be relentlessly repetitive over time. Its focus on the national security frame instead of the equal rights frame helped orient the national conversation toward the policy's Achilles' Heel—the oft-repeated but never proven assertion that openly gay service harmed unit cohesion, when in fact the policy itself hurt readiness by wasting talent and forcing troops to lie.

In 2000, just after it was founded, Palm released four studies on foreign militaries (in Canada, Israel, Australia, and Britain) showing that when those countries lifted their gay bans, their militaries suffered no harm. Advocates of repeal consistently cited this evidence in the U.S. debate (Blumner, 2003; Gerber, 2003; Martin, 2007; Shalikashvili, 2007). In 2002, Palm worked with SLDN to publicize the stories of clients who were being discharged under the policy. SLDN's quarterly and annual reports contained compelling narratives about the unfairness of the policy, but those stories were not getting the public visibility they deserved. The SLDN strategy of focusing on the privacy rights of gay and lesbian service members, born in the pre-9/11 era, had declining returns, and the post-9/11 era was ripe for tapping into a national security argument about efficacy instead of fairness.

Drawing on SLDN's reports, Palm broke the story of Alastair Gamble, one of seven Arabic language specialists fired for being gay. We built an aggressive media campaign around the story, in which I published a piece in the prestigious *New Republic* magazine to gain visibility with Washington powerbrokers which we then used to secure stories in the Associated Press and on MSNBC, leading to coverage in over 100 newspapers as well as television and radio stations in every major American market. The firing of gay Arabic linguists became a constant trope until the policy's death, with an entire nation lamenting the irrationality of firing capable troops with badly needed skills for reasons having nothing to do with performance or ability.

Increasingly, our national security frame appeared in media stories and editorials of small-town and even conservative newspapers claiming, for instance, that the ban was a stupid waste of critical talent during wartime. The success of the reframing was reflected in polls. By 2003, a Gallup poll put support for openly gay service at 79%, as did a 2005 poll conducted by the University of New Hampshire Survey Center, which also found that even majorities of Republicans and religious people supported repeal. Between 2004 and 2009, support for openly gay service by conservatives and religious people would increase by double digits, moving from under 50% to well over (Belkin, 2008; Greenberger, 2005; Morales, 2009).

In 2005, the Williams Institute, which specialized in LGBT research, began a series of demographic and attitudinal reports on gays in the military that produced sophisticated estimates of the number of gay and lesbian Americans serving in uniform, as well as the number of additional recruits who might join or remain in service if the ban were lifted. The figures were

used effectively to combat assertions that the military could lose members who might leave because they opposed open service.

All the while, Palm and other researchers were conducting, compiling, and communicating evidence showing that gay people did not undermine the military, but that discrimination did. We used the research to get media coverage of an issue that otherwise generated little interest, which was critical to maintaining visibility for the issue and keeping pressure on political and military leaders. The research-generated media complemented the media earned by getting coverage for the stories of unfair treatment of gay troops, often clients of SLDN, which generated further media coverage and legal pressure with ongoing court challenges to the law. What all this meant was that, in 2008, when the world finally did turn to this issue because the political stars had aligned, a powerful record of research was available to the powerbrokers who would be pulling key levers.

### Military Outreach

In 2006, Palm met with the former Chairman of the Joint Chiefs of Staff, John Shalikashvili, for a conversation set up by a retired gay admiral in the Coast Guard, Al Steinman. Palm asked Gen. Shalikashvili if he would submit an op-ed to *The New York Times*, and he agreed. His piece, "Second Thoughts on Gays in the Military" (Shalikashvili, 2007), said that it was time to "consider the evidence that has emerged over the last 14 years" showing the policy was unnecessary and wasted critical talent during wartime. While he previously supported and indeed oversaw the policy, he cited research, polls and stories that had convinced him that gays and lesbians could now "be accepted by their peers." He wrote that, "I now believe that if gay men and lesbians served openly in the United States military, they would not undermine the efficacy of the armed forces. Our military has been stretched thin by our deployments in the Middle East, and we must welcome the service of any American who is willing and able to do the job."

Gen. Shalikashvili was the most senior retired officer ever to call for repeal, and overnight his op-ed became a news item, with coverage by the Associated Press that was carried in hundreds of newspapers, as well as a CNN story that evening in which former Defense Secretary William Cohen also called for repeal. Gen. Shalikashvili's change of heart became one of the most consistently repeated talking points in the repeal effort and it gave added cover for many other voices to support repeal. Key among them was President Obama, who, along with his press secretary, Robert Gibbs, adopted as a mantra that former members of the Joint Chiefs of Staff believe this policy is not working for our national security. The op-ed also unleashed a steadily rising tide of pro-repeal sentiment by other military members and veterans. Building on the Shalikashvili op-ed, Palm developed a military outreach effort designed to educate retired admirals and generals about DADT, and to

collect signatures of those who favored ending it. In November 2008, when that figure crossed one hundred, Palm broke the story in major media outlets including the Associated Press, creating a talking point that over 100 retired generals and admirals now supported repeal.

The year 2008 also saw the release of a Palm Center study authored by a bipartisan group of retired generals and admirals that called for an end to DADT. The report, which subsequently appeared in a major volume published by the military's Air University Press, was based on a year of research including hearings conducted in Washington with an array of experts (Aitken, Alexander, Gard, & Shanahan, 2010). Its initial release was covered in 1,500 media outlets, including over 100 television and radio broadcasts and hundreds of web sources. The report recommended repealing the law and returning authority over the issue to the Pentagon (which, the panel also recommended, should then lift the ban). What they produced was the most far-reaching study calling for repeal by military officers. Their proposal to separate out the repeal of DADT from any new Pentagon policy would ultimately be adopted in 2010.

By the time Barack Obama was elected president, on a platform that included repealing DADT, polls showed that 75% of Americans, including a substantial majority of conservatives, favored repeal. Sentiment within the military was reaching a turning point.

The critical research and advocacy work of groups like Palm, SLDN, and Williams were made possible by another component of the social movement that deserves mention: a funding stream created by the strategic and sustained use of grant making by foundations. In the six years leading up to the 1993 passage of DADT, foundations gave \$150,000 to groups working on ending the ban on gay troops. However, starting in 2004, grant-making foundations awarded over \$1 million each year to organizations working on repeal, mostly—but not exclusively—foundations whose main mission was LGBT equality. In total, between 1995 and 2009, foundations awarded \$10.8 million to the Palm Center and SLDN (Bowen & Lane, 2011).

As part of the long-term information campaign, in the years leading up to repeal, Palm supported the development and publicizing of *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America* (Frank, 2009). The book was published in March 2009, on the same day the repeal bill was introduced by the 111th Congress. It brought together decades of evidence against the need for a ban, as well as research showing the costs of the current policy, and the stories of military careers harmed. It ended with a chapter showing how much had changed since 1993, including a long list of military and political officials who had reversed course and now supported repeal.

Throughout 2009 and 2010, the visibility of *Unfriendly Fire* would help put the issue of DADT and its embarrassing failures on the airwaves and pages of major national media, from the “Daily Show with Jon Stewart” and



the “Rachel Maddow Show” to National Public Radio, from *The New York Times* to *Newsweek*. Writing in the latter, the columnist Anna Quindlen (2009) noted the oddity that Gen. Shalikashvili had endorsed the book, and hence, “the former chairman of the Joint Chiefs of Staff lauds a book that systematically trashes a policy the general once oversaw.” In addition to helping generate public visibility, the book served as a critical blueprint for research by both military officials studying DADT and lawyers challenging it. When the Pentagon created a working group to assess lifting the ban in 2010, *Unfriendly Fire* was widely read within the building, according to a senior Pentagon official, serving as the overview for members of the Pentagon working group, including the most senior officers (senior Pentagon official, personal communication, January 5, 2012). When the Log Cabin Republicans (LCR), a gay Republican group, challenged the policy in federal court, lawyers from White & Case, which represented LCR, said they relied heavily on the book to build their case.<sup>5</sup>

That September, in a stunning rebuke to the policy’s rationale, Judge Virginia Phillips ruled it unconstitutional in an 86-page decision that marked the most thorough challenge to the ban ever. Its contents comprised a tour of a decade of research points, citing the loss of critical medical and language skills; the lowering of standards by granting moral waivers; and the blow to the entire rationale by the proof that the Pentagon retained known gay troops during wartime—uncovered by Palm in 2005. The ruling would throw the Pentagon into disarray, suddenly worried about losing control of the repeal process, and, thus, lighting a fire under military leaders to support a legislative repeal that would accommodate the Pentagon’s wish to maintain control over the ban’s end. The long-term research investment in information about gay service had paid its greatest dividend to date.

## LEVERAGING RESEARCH: 2009

### Political Logjam

On January 9, 2009, incoming White House Press Secretary, Robert Gibbs, responded in a video to a question about whether the new president would end DADT. The response was as clear as day. “You don’t hear politicians give a one-word answer much,” Gibbs said on the video. “But it’s ‘yes’” (Lee, 2009).

Yet, the President and his advisors, many of whom were drawn from the Clinton White House, vividly recalled the firestorm Bill Clinton had encountered when he tried to lift the ban starting in 1992, and the role of that fight in threatening Clinton’s domestic agenda and political fortunes. Few aides were likely arguing that lifting DADT should be first out of the gate.

The year 2009 was not 1993. Two wars and a massive recession had replaced an era of peace and prosperity, and attitudes toward homosexuality

had liberalized substantially in the intervening sixteen years. Yet, the scars of Clinton's defeat in the last effort to end the gay ban meant that, ironically, the climate in the White House itself was more cautious this time around, despite a social context that was far more pro-gay.

The result was a near-consensus among politicians and advocates that Pentagon buy-in was essential for repeal to succeed. That could take time. On February 1, 2009, *The Boston Globe* reported that Obama aides had told Pentagon officials and gay rights advocates that it would need to study the national security implications of lifting the ban before trying to change the law. A senior officer said that assessment might not begin until 2010. The President was reported to have reservations about asking Congress to make a change before the Pentagon could complete a thorough study of the impact of such a step on military discipline. Only afterward would the President make the case to lawmakers for a legislative change. Indeed, Pentagon officials said they had been told by the White House not to expect the administration to act quickly, and that they had been assured they could conduct their own major study of the impact of repeal before a change would occur (Bender, 2009; Bumiller, 2009a).

The vote count in Congress was, at this early date, uncertain. According to press reports, even many Democratic senators were still undecided, including Sen. Evan Bayh (D-IN), Sen. Claire McCaskill (D-MO), and Sen. Ben Nelson (D-NE). Rep. Ike Skelton (D-MO), the powerful Democratic chairman of the House Armed Services Committee, opposed repeal, but had begun to express openness to holding hearings (Bender, 2009).

Assessing the prospects of repeal in Congress, Aaron Belkin, Palm's director, fretted about how to break the logjam. In early March, he addressed a board meeting of SLDN in a Washington hotel. In laying out the strategy he thought was necessary to see movement toward repeal, he introduced the idea that the White House was the main pressure point. "We have to bash the President," he said, later explaining that "bash" was perhaps too strong a word and he meant nothing personal by it (anonymous, personal communication, January 19, 2012). Members of the board roared their opposition. It was still the first hundred days of the Obama administration, and SLDN was, at that point, still hoping to play an inside game. They believed that pressuring Obama would alienate him and make him less, not more, likely to help. Feelings were so strong at the meeting that tears were shed, and Palm lost a major funder over the idea (Belkin, 2011). That meeting in March marked the start of a tactical disagreement within the movement about where, how, and how much to apply pressure to move repeal forward.

### Pentagon Posturing

On March 2, Rep. Ellen Tauscher (D-CA), announced she would introduce legislation to repeal the ban, with 112 cosponsors. Tauscher had first taken

on the issue two years before, and she acknowledged a fight to find enough votes to pass it. She called for a commission led by a former military leader such as Gen. Colin Powell. That day, Thomas F. Vietor, a White House spokesman, said in a statement that the President had “begun consulting closely with [Defense] Secretary Gates and Chairman [of the Joint Chiefs of Staff, Adm. Mike] Mullen so that this change is done in a sensible way” (Phillips, 2009).

Yet, by the end of that month, Defense Secretary Gates was stepping on the brakes. On March 29, he responded to a Fox News question about repeal by saying that dialogue within the administration “has really not progressed very far at this point in the administration. I think the [P]resident and I feel like we’ve got a lot on our plates right now, and let’s push that one down the road a little bit” (*Fox News Sunday*, 2009). The following week, Pentagon spokesperson, Cynthia Smith, confirmed there was no ongoing dialogue about the issue between the President and Secretary, saying that Sec. Gates “has had one brief conversation with the President about ‘Don’t Ask, Don’t Tell’” (Beutler, 2009). This statement contradicted the White House assertion that the President was consulting closely with the defense secretary.

Gates continued to indicate a cautious approach to lifting the ban, with *The New York Times* reporting in April that his remarks “suggested that it might not happen at all.” “If we do it,” he told reporters that month, “it’s important that we do it right, and very carefully.” He cited President Truman’s racial desegregation of the military starting in 1948 and said that process took five years to complete, making some advocates apoplectic about the prospects of imminent repeal (Bumiller, 2009b).

SLDN aired its frustration with the administration’s slow pace in a full-page ad in *Roll Call*, and suggested that the President make his intentions clear by including the removal of DADT in his 2010 defense budget. Yet, the White House declined to offer any signal that that might happen, and may have underestimated the negative press that would ensue.

On May 2, the Associated Press described a deliberate strategy by the White House of trying “to hold off debate on contentious social issues such as abortion, immigration and gay rights” for the first year of his presidency, and focus instead on the economy and global events (Babington, 2009). The piece mentioned that liberals had criticized Obama “for postponing efforts to revamp immigration laws, protect access to abortion and allow gays to serve openly in the military” and that “the President has taken the heat from his political base” for avoiding the issues, but that in general, “the strategy has worked so far” (Babington, 2009). The piece said that gay advocates were “unhappy the administration is moving at a snail’s pace on efforts” to end DADT and cited a Huffington Post piece which lamented that, “when it comes to actual change in the lives of LGBT people, nothing has been done” (Babington, 2009).

On May 7, Belkin wrote a headline piece for the *Huffington Post* announcing that the first discharge of a gay Arabic linguist under President Obama's watch was set to take place (Belkin, 2009a). Seven weeks earlier, the linguist, Army 1st Lt. Dan Choi, had announced he was gay on MSNBC's Rachel Maddow Show. "I am an infantry platoon leader in the New York Army National Guard," said Choi. "And by saying three words to you today, 'I am gay,' those three words are a violation of Title 10 of the U.S. Code. It's a code that is polluted by the people who want us to lie." Choi said it was an "immoral code" that "goes against every single thing that we were taught at West Point with our honor code" (Wolff, 2009). Choi could be volatile and long-winded, but as an Iraq War combat veteran and West Point graduate, he was also well spoken, passionate, persistent and angry—all of which made for great media.

### The Executive Option

Belkin's (2009a) *Huffington Post* piece also announced the impending release of a Palm Center study showing that the President had "statutory, stroke-of-the-pen authority to suspend gay discharges." The study, authored by a team that included top legal and military scholars, explained that President Obama "could simply invoke his authority under federal law (10 USC §12305) to retain any member of the military he believes is essential to national security" (Belkin et al., 2010).<sup>6</sup>

The idea of issuing an executive order suspending the ban, which Palm first mentioned publicly in February was controversial within the repeal movement (Lusero, 2009). While some observers disputed this interpretation of the law, which the Palm legal scholar, Diane Mazur, had noticed and ably defended, no one, including the administration, was able to demonstrate that the statute granting such authority did not apply in the case of DADT. Thus, the debate about whether the President ought to exercise the authority became a political more than a legal one. In addition, many advocates preferred to focus on legislative repeal and worried that executive action would give Congress an excuse for inaction. Jonathan Capehart (2010b) of *The Washington Post* called the executive option a "backdoor maneuver" that would be "the single-most irresponsible action the [P]resident could take." Dixon Osburn (2009), SLDN's former co-director, said an executive order would stand on "shaky legal ground" and would "giv[e] a pass to Congress" by putting the focus on the President. As Belkin had learned firsthand when addressing the SLDN board in March, many activists had little interest at this point in a plan that focused pressure on the President.

Yet, the executive order idea—consistent with Palm's belief that the administration was the critical leverage point in the battle for repeal—was part of a carefully crafted strategy designed not so much to bring about the stop-loss, as to put pressure on the White House to press harder

for legislative repeal. Simply circulating the information that the President, personally, had the authority to do more than he was doing, went the thinking, would generate public pressure for repeal, even if the order were never given.

The Palm strategy was one of the most important developments in generating public pressure for repeal because it allowed thousands of voices to demand something that was actually doable—and, therefore, required answers from elected officials, particularly the President, who had made promises to act but appeared to be stalling. Palm created an explosive combination by telling Choi's powerful story, announcing the pending discharge of the first Arabic linguist under Obama, and showing that the President actually had the power to stop this and all discharges with the stroke of a pen. This new meme—that Obama could personally stop discrimination but was choosing not to—spread quickly. LGBT bloggers' anger filtered up to the mainstream media, and Choi himself exploited media interest in his story through flamboyant performance tactics like chaining himself to the White House fence. When activists became a thorn in the side of the administration the next year, their case was made more viable because of Palm's revelation that the President could take specific steps on his own, without waiting on Congress.

### A Defensive White House

The circulation of the executive option immediately put the administration on the defensive. When *Newsweek's* Anna Quindlen (2009), in her write up of *Unfriendly Fire*, called on the President to “immediately issue an executive order suspending this irrational and prejudiced policy,” White House press secretary Robert Gibbs demanded a correction from the magazine's editor, Jon Meacham. Quindlen told Meacham that was unacceptable since she had not made a mistake, directing her editor to the legal arguments circulated by Palm's legal experts. An angry White House continued to seek a clarification, but *Newsweek* held firm (A. Quindlen, personal communication, April 5, 2012). It was the start of more than a year of obfuscations and stonewalling in which the administration would find itself compelled to engage as it was continually pressed on why the President wasn't doing all he could to stop the discharges.

The constant appearance of the executive option in mainstream media and public discourse, including an uptick in media discussions of DADT in general, demonstrated the sustained impact of the executive option proposal on the repeal effort. Belkin's (2009a) *Huffington Post* article, announcing the executive order legal analysis to be released four days later, both introduced the idea publicly and began the snowballing buzz about the President's authority. The piece, which was elevated to the top headline, received over 1,800 comments; by comparison, another *Huffington Post* piece (2009) about

Choi that ran on the same day received 9 comments. A Lexis-Nexis print and broadcast media search revealed that discussion of DADT shot up directly following the May 7 revelation: In the 106 days between Obama's inauguration and May 7, 2009, the term was mentioned only 5.6 times per day, while in just the 68 days following May 7, mentions more than tripled to 19.1 times per day (Belkin, 2009b).

The night Belkin's (2009a) piece ran, Rep. Joe Sestak went on *The Rachel Maddow Show* to discuss Choi's impending dismissal. Maddow asked the congressman if, as an "interim step," the President "could order the military to stop investigating whether people are gay, just stop implementing the policy for now?" Sestak demurred, saying, "I'm not sure," and expressing concern about subverting the legal process (Wolff, 2009).

The next day, the *San Francisco Chronicle* ran a story citing Belkin and the Palm Center as "the first to call attention to Choi's case" (Lochhead, 2009). That day, when DNC Chairman Tim Kaine stopped in at a gay and lesbian center in Fort Lauderdale, the local press reported he "got a dose of discontent from gay and lesbian voters concerned over what they see as glacial movement on issues they care about." A leader of the local Democratic gay and lesbian club said of the President, "He can fix these things" but "there needs to be a willingness to do it" (Man, 2009).

The executive option created a particular thorn in the side of Press Secretary Robert Gibbs, who had to fend off an almost obsessive focus by the press on why the President was not using his executive authority to fulfill a campaign promise as discharges—which the White House agreed undercut national security—continued.

Before the circulation of the executive option in May, the media continually reported that only Congress could end the ban (e.g., Turpin, 2009). In the President's first 100 days in office, Gibbs was not asked about DADT even once at the White House daily press briefing. Then, starting on May 12, the day after Palm released its study, reporters began grilling Gibbs on why the President was not doing more to stop the discharges (Belkin et al., 2010). "Even some of the President's friends are now saying that he is hedging on his promises on 'don't ask, don't tell,'" said one reporter to Gibbs, also mentioning the firing of gay Arabic linguists. "But we heard from General Jones saying that 'I don't know' when he was asked when it would be overturned. Some people feel that it's really on the back burner." In his reply, Gibbs said that ending the ban would "require more than the snapping of one's fingers" and that, "to get fundamental reform in this instance requires a legislative vehicle." He reiterated that, like "former members of the Joint Chiefs," the President believed the policy was not serving the national interest and that he was working with the current Joint Chiefs and with Congress to end the ban permanently (State Department Documents and Publications, 2009).

The questioning continued, this time with specific reference to the President's authority to suspend discharges without Congress: "He is the

Commander-in-Chief,” said one reporter. “I mean, if the President and the Secretary of Defense can bring about a new leadership in Afghanistan, replace the commanding general there, couldn’t the President and the Secretary of Defense delay any more people getting fired under ‘don’t ask, don’t tell?’” (State Department Documents and Publications, 2009).

On May 15, days later, reporters continued to press the issue. The President is “not standing in the way of the ousting of gays in the military, some of whom are interpreters of Arabic,” said Jonathan Weisman, then of the *Wall Street Journal*, who wanted to know if “we’re seeing a change in attitude toward compromise and a shift toward the middle” since the President’s first 100 days in office (The White House, Office of the Press Secretary, 2009). Tommy Christopher (2009), an America Online White House reporter asked Gibbs to “describe the difference between the President’s decision to intervene with regard to the abuse photos but not to intervene when it comes to discharging otherwise qualified soldiers because they’re gay.” Christopher wanted to know why the President couldn’t “put a moratorium” on discharges while Congress was deciding whether to act (Christopher, 2009; see also The White House, Office of the Press Secretary, 2009).

With *The Daily Show* skewering DADT by mercilessly mocking Choi’s firing as pointless (the segment featured correspondent John Oliver opposing Choi’s presence in the military by simply repeating “well, he’s gay” as his only argument), *The Advocate* cited a “growing chorus of people” calling for an immediate executive order to halt discharges (Eleveld, 2009a). Knights Out, a group of gay, lesbian and bisexual West Point graduates cofounded by Choi, joined with several other vocal veterans groups including the major Progressive, non-gay veterans group, Vote Vets, to flood White House phones asking to stop Choi’s and all future discharges. The California-based online petition group, Courage Campaign, generated over 100,000 signatures calling for a moratorium on firings.

On May 20, Gibbs got it again. Anna Marie Cox of Air America cited three victims of DADT who had all come to the attention of the administration, Dan Choi, Air Force pilot Lt. Col. Victor Fehrenbach and Army 2nd Lt. Sandy Tsao, to whom President Obama wrote a letter saying that Congress must act to stop her discharge. Cox wanted to know, “Is their dismissal a part of his national security strategy or is their dismissal itself a threat to national security? (CQ Transcripts, 2009a).

Then on May 21, Cox asked a series of follow-up questions, marking the fourth time Gibbs faced the issue in 10 days. The tone was becoming increasingly derisive of Gibbs’ repetitive responses about a durable solution that must await congressional action. “I wanted to know if there are any other policies that the [P]resident believes to be, as you said yesterday about ‘don’t ask, don’t tell,’ not in our national interest, but is content to let Congress take the lead on,” said Cox. “And second, President Truman didn’t see it necessary to clear desegregation through Congress, so how is

this different?” (CQ Transcripts, 2009b). In his reply, Gibbs revealed a lack of familiarity with both the basic historical context of Truman’s desegregation order and of the legal basis for an immediate Obama suspension of the gay ban. He said he may have used poor language, but that, again, Congress must act in order to provide a durable solution. “So when can we expect a durable policy on racial desegregation in the military, since that’s never gone through Congress?” Gibbs had no answer. Of course, the major difference between DADT and racial segregation was that the military had never been segregated by statute, and, thus, did not require a statutory change to fully and permanently reverse. Gibbs’ failure to offer that rather obvious response may reflect either how much the line of questioning had put him on the defensive or how little the administration had really looked into the issue to date. Gibbs’ final answer to Cox, who asked if there was legislation pending, suggested the latter. Gibbs’ replied, “I don’t know what’s been introduced in Congress” (CQ Transcripts, 2009b)

Mainstream reporters gave the grilling of the administration broad coverage, casting the White House as on the defensive. *The Wall Street Journal* ran a piece entitled, “Obama Avoids Test on Gays in Military” (Bravin & Meckler, 2009). It reported that the White House was being “pressed to explain whether the administration would intervene to protect Lt. Dan Choi.” The piece also noted that some LGBT observers had noticed that the White House website had been changed, with some of the President’s promises about LGBT issues edited or removed. Among those that were edited out was the commitment to lifting DADT. White House Spokesperson, Ben LaBolt, said the changes were made simply to “reflect the President’s broad agenda,” and that those commitments that were no longer being broadcast on the web had not been lessened (Bravin & Meckler, 2009). Following complaints by LGBT bloggers and advocates, the reference to repeal was restored to the website. Yet the restored language still reflected an alteration—from a full “repeal” of DADT to “changing” the policy “in a sensible way” (Bravin & Meckler, 2009) The new language may have been designed to lay the groundwork for what became the administration’s interim plan on DADT which was to soften its enforcement rather than repeal it outright.

The Associated Press also cast the administration as on the defensive. Covering Gibbs’ press briefing, it ran a piece reporting that the White House “insisted Thursday that officials are working to overturn a policy that bans gays and lesbians from serving openly in the military, pushing back against Pentagon assessments that such efforts were low priorities and Democratic activists’ complaint of slow progress.” It reported that “The administration has drawn criticism from gay and lesbian activists for not moving quickly enough to repeal the policy.” The story then traced the muddled and fitful path of White House and Pentagon responses to queries and criticism about the pace of change, including reversals, back-offs and zig-zags (Elliott, 2009b).



*The Seattle Times* wrote that the “recent coming out by dozens of gay West Point graduates, including Arabic-language specialist Lt. Daniel Choi, put pressure on Congress and the Obama administration White House to make good on promises to repeal the ban and the ‘don’t ask’ policy.” The article paired that analysis with news of the Palm report about Obama’s executive authority to stop the discharges (Williams, 2009).

Throughout June, more and more people joined the call for an executive order stopping all discharges, and a constant drumbeat of media coverage reflected growing criticism of White House inaction. On June 4, Joe Solmonese, president of HRC, which worked closely with the White House, endorsed the executive order on television, saying that the President “has the opportunity to do it” and “I don’t know why he wouldn’t do it.” On the same MSNBC broadcast, Lorri Jean, head of the nation’s largest gay and lesbian community center, in California, endorsed the option. The host, Chris Matthews, even asked about the executive order, showing how widely the option was being circulated (Nichols, 2009).

On June 8, Rachel Maddow asked Rep. Rush Holt, “What happened to the Barack Obama who ran for president who was so against ‘don’t ask, don’t tell?’” (Wolff, 2009). Holt discussed Dan Choi, and said discharges like his could be halted “on a temporary basis from the White House” but also “on a more permanent basis from Congress.” He said that “it would be good to have, you know, a word from leadership, a word from the White House, to move it along.” Asked by Maddow whether he’d support a stop-loss order by the President, he said he would.

Maddow summed up the gap between Obama’s campaign promises and his achievements on DADT this way: “Since he has been a ‘fierce advocate in chief,’ has he repealed the ‘don’t ask, don’t tell’ policy? No. Has he pushed Congress to repeal the policy? Not really. Has he hit the pause button on investigating members of the military to ferret out who’s gay and who’s not? No, he has not. Has he used his stop-loss powers to put a hold on dismissals of people under the policy? No. No, he hasn’t. In fact, as Commander-in-Chief of the Armed Forces, ‘President Fierce Advocate’ actively still is firing people from the U.S. military because they’re gay” (Wolff, 2009).

### Growing Public Pressure

On June 10, *The New York Times* editorial page joined the call, saying that if indeed the President had stop-loss authority, he ought to take that step (*New York Times*, 2009). After publicly criticizing the idea of an executive order as likely to cause an “unnecessary and distracting showdown,” Sarvis of SLDN wrote in a letter to *The New York Times* that he now agreed the President should consider an executive order to “kick-start the legislative process” (“Room for Debate” 2009; Sarvis, 2009). Sen. Harry Reid said at a press conference that, while the Senate had no plans to introduce a companion

repeal bill since he had not identified any sponsors, “My hope is that it can be done administratively” (Eleveld, 2009b) According to a Washington source, Sen. Reid was pushing the repeal issue back into the President’s lap in part out of frustration that the White House was failing to lead on the issue, an approach that dovetailed nicely with Palm’s strategy of putting pressure on the administration (anonymous, personal communication, April 5, 2012). At Palm’s suggestion, Gen. John Shalikashvili published another op-ed in *The Washington Post* citing the “inevitability of change, whether via executive order or legislative repeal” (Shalikashvili, 2009).

On June 22, 77 House members (including one Republican) signed a letter backing Palm’s executive option (“Hastings and 76 Members of Congress,” 2009). Urging the President to use his executive authority to halt discharges, the letter cited Choi’s pending discharge and asked the President “to exercise the maximum discretion legally possible in administering Don’t Ask, Don’t Tell until Congress repeals the law.” The letter, authored by Rep. Alcee Hastings (D-FL), outlined a “bilateral strategy” that, like Palm’s and CAP’s proposal, would halt discharges immediately—thereby demonstrating no harm would ensue—which could help grease the wheels for congressional action.

*Stars and Stripes* ran a story with the subheading, “Obama, Congress and Gates all waiting for the other to make the first move” (Shane, 2009a). The piece said that the “White House and congressional leaders quickly began backing away” from action on repeal, with “each saying they’re waiting for the other to take the first step.” In what the article described as a “hot-potato game between the White House and Capitol Hill” that was “fueling frustration among gay-rights advocates,” Sen. Harry Reid said members of Congress were waiting for the White House to provide a legislative proposal and that Reid was calling for more “presidential leadership and direction” on how to move forward (Shane, 2009a). The White House declined comment, and, at the Pentagon, Sec. Gates said Congress had to act first. Sen. Levin echoed Sen. Reid’s call for White House leadership, with *The Hill* reporting that, while supportive of repeal, he was “noncommittal on a repeal being initiated by Congress. Accordingly, he has shifted the burden onto the White House” (Blake & Tiron, 2009). Levin told reporters in late June that any chance of lifting the ban “requires presidential leadership. This cannot be addressed successfully without that kind of leadership” (Blake & Tiron, 2009).

On June 24, Center for American Progress (CAP, 2009) issued a report laying out a path to end the ban. CAP, which was known to work closely with the Obama administration, nevertheless complained about presidential foot-dragging:

Now is the time for President Obama to fulfill his pledge and begin the process of repealing this outmoded, unfair, unnecessary, and costly law. This is not just a fight about the rights of patriotic American men and women; it is about military readiness as well. Yet, it is puzzling

that there is not a stronger momentum within the administration to begin the process of repealing DADT, given the unacceptable moral and national security implications of DADT, as well as President Obama's stated campaign pledge.

The report went on to detail a plan to end the ban that started with an executive order and continued with legislative repeal (CAP, 2009).

On June 25, several prominent LGBT leaders boycotted an LGBT fundraiser for the DNC in an effort, according to the Associated Press, "to pressure Obama to make good on his promises now" (Elliot, 2009a). Two weeks earlier, the Justice Department had filed a brief defending the Defense of Marriage Act in a legal challenge. While the administration's position, clearly laid out in Obama's campaign, was to oppose DOMA, the Justice Department argued that it was obligated to defend existing laws from legal challenges, except in rare circumstances. Later, the White House would decide this was one of those circumstances, and it, ultimately, stopped defending the law. The brief defending a law the President opposed set off a firestorm in the LGBT community, particularly because its strong wording drew on some of the most offensive ideas about homosexuality, including an apparent comparison of same-sex marriage to incest.

On June 29, the White House hosted a reception marking the 40th anniversary of the Stonewall uprising that marked the birth of the modern gay rights movement. *The New York Times'* coverage of the event noted that LGBT leaders had "grown increasingly impatient and critical" of the President, who had been forced to confront their frustration at the reception. The President, said the article, "directly addressed criticism from gay and lesbian leaders that he had not been a forceful advocate for them," saying, "I know that many in this room don't believe progress has come fast enough," and that he understood their impatience (Stolberg, 2009b).

Referring to repeal of both DADT and DOMA, the piece said the President had been "accused of dragging his feet on both, but especially on 'don't ask, don't tell' because he could use his executive authority to order the military not to enforce the rule." In the Stonewall event, the President again rebuffed that option, saying the best approach was to work with Congress "to see that this change is administered in a practical way and a way that takes over the long term" (Stolberg, 2009b).

Reporters pressed Gibbs several more times as June wound down. On the last day of the month, Gibbs was asked if the President had a timeline on when a plan for repeal would emerge. He did not. It was the twelfth time Gibbs was asked about repeal since the executive order option was circulated on May 7 (CQ Transcripts, 2009c, 2009d).

To be sure, reporters raised many issues at the White House press briefing more often than DADT. For questions about health care, the economy, and foreign policy, a dozen asks in a summer would not be remarkable. But

to go from zero to a dozen mentions of an issue that had not otherwise held national interest immediately after a new executive option was made known is strong evidence of its impact on the conversation. This is corroborated by the specific language of the queries, which involved the explicit grilling of the administration on why the President was not using this executive authority to fulfill a campaign promise.

### Pentagon Response

On June 30, a week after 77 members of Congress had urged executive action, and following more than six weeks of relentless pressure by LGBT voices, Sec. Gates made an announcement: The Pentagon planned to soften enforcement of DADT for the first time ever. The secretary would not release details until the following spring; but in other countries, such steps had often preceded outright ends to the bans. Gates said the step was intended to make enforcement “more humane” (Shane, 2009b). According to a senior Pentagon official, it was, in part, an effort to placate criticism from those frustrated with the slow pace of change toward the administration’s stated goal of repeal. The Pentagon leadership did not believe the ban was going to be lifted and felt pressure to deliver some level of change (senior Pentagon official, personal communication, January 5, 2012). It was the same day that a military board recommended the official discharge of Lt. Dan Choi.

The pressure that was being exerted on political leaders was not only of the short-term variety, and it did not emerge in a vacuum. It was instead a critical turning point in what was actually a decades-long effort by advocates—and ordinary LGBT people—to give respectability to sexual minorities and to make support for their rights a politically advantageous (or at least neutral) position. The recognition by all kinds of national politicians during this period that supporting repeal was not costly and might even be a winning issue for them, while at the same time many of them were coming to see this position personally as morally right, was the essence of that turning point. The progress would be reflected not only in the successful repeal of DADT in 2011, but in a slew of national polls that year finding that, for the first time, a majority of Americans nationwide supported the right of same-sex couples to marry. It would be reflected politically in the administration’s decision two months after signing repeal that, seeing negligible political cost from supporting repeal, it would cease defending DOMA in court. In 2012, Obama would finally come out personally in favor of same-sex marriage, citing, as one inspiration, his concern for the plight of gay troops who fought for freedoms they couldn’t enjoy.

### A New Political Reality

The beginning of that turning point vividly emerged in the press coverage during the summer of 2009. A piece in *Roll Call* (Bendery & Toeplitz, 2009)

reflected a new attitude among politicians, which itself reflected growing public irritation with inaction. The piece described a meeting of Democratic House members to chart a course on gay rights, and noted that the “high level huddle” came after Obama “threw a bone” to the gay community with the extension of federal partner benefits, and “as Democratic candidates in left-leaning states have been embracing key aspects of the gay agenda, including supporting gay marriage.” Rep. Alcee Hastings, who had spearheaded the congressional letter calling on the President to suspend DADT, said that having openly gay elected officials such as Barney Frank, Jared Polis, and Tammy Baldwin had “added a new tone to the committees that they work on. They have brought their partners to Democratic Caucus meetings and here to meet us. That part of it is softening.” He said that more lawmakers were supporting gay rights because of changing public attitudes (Bendery & Toeplitz, 2009).

Barney Frank said that “Democrats are in a very good place” to press ahead with gay rights initiatives, with a pro-gay Democratic President, a strong House vote the previous year on the Employment Non-Discrimination Act (ENDA) and what *Roll Call* paraphrased as “a general shift in public opinion on gay issues” (Bendery & Toeplitz, 2009). The piece said that “public support for gay rights is also becoming politically popular for a few Senate Democrats who might face primary opposition in 2010” and it cited Sen. Kirsten Gillibrand and Roland Burris among its examples (Bendery & Toeplitz, 2009).

The *Roll Call* piece also cited Chris Dodd, who had just changed his position to support same-sex marriage. It quoted a Democratic consultant as saying: “You don’t have to be a rocket scientist to figure out that if you’re in the political fight of your life, the LGBT community is an excellent community to appeal to the Democratic base of voters” (Bendery & Toeplitz, 2009). The article said that Democrats had begun to “see the power of the gay community’s purse,” and quoted another consultant calling the gay community a “compelling voting bloc.” “They are organized. They work hard. They vote and they have money,” the consultant said. “They are a powerful financial institution” (Bendery & Toeplitz 2009).

This was the political context in which Rep. Patrick Murphy (who authored the foreword to this volume) stepped up to take the lead on repeal in the House in July 2009.<sup>7</sup> While Murphy had long opposed DADT as a military officer, he also found repeal to be a politically attractive position. His hometown paper, *The Philadelphia Inquirer*, quoted political analysts who believed that, since his district was moderate on social issues, it was “unlikely his stance will hurt him locally,” and one consultant said that, in embracing repeal, “there’s only upside” (Farrell, 2009).

When Murphy took over as lead sponsor, the bill was still in subcommittee and had 151 cosponsors. Murphy said he would meet individually with lawmakers to build the support needed to win. “It’s not going to happen in

a couple days. It's going to be months," he said. "I'm optimistic that we're going to eventually get this done. No one ever said change was easy" (Farrell, 2009).

On July 2, 2009, Murphy, the HRC, and Servicemembers United announced a joint campaign to urge the end of DADT. It was one of many steps that advocates and veterans, including those working with SLDN, took to bring attention to the costs of the policy and to press elected officials to end it. The media coverage they helped generate, along with the presence of a straight veteran taking the lead on repeal in Congress, was a critical piece of the pressure strategy that was missing from the 1993 failed effort to lift the ban (e.g. Couric, 2009; Welna, 2009).

Murphy opted to keep pressure on his fellow members of Congress, and even pushed back against the use of executive authority, supporting the President's preference for Congress to take the lead. "If the Congress passes a law, he will sign it," Murphy said of the President. "Now it's our job in the Congress to put a bill on his desk to overturn this policy" (Farrell, 2009). But between Murphy's efforts, the veterans' media tour, and the lobbying and media efforts of SLDN and HRC, the press kept pressing on, reporting on the sustained anger of the gay community and the failure of the President to exercise his executive options.

In July, the *New Yorker* covered the boycott of the DNC fundraiser with a particularly helpful summary of where things stood, including mention of the reports from Palm and CAP proposing executive action preceding congressional repeal (Hertzberg, 2009). Hendrick Hertzberg's assessment is worth quoting in full, as it encapsulates what the mainstream media was absorbing about the repeal effort. "A fair test of [the President's] commitment," wrote Hertzberg (2009),

Would be a quick end to the dithering over D.A.D.T. A permanent solution will require an act of Congress, and the Administration is understandably reluctant to seek one at a moment when Congress's plate is already piled to the ceiling. But the President doesn't have to wait. The Palm Center, a public-policy institute at the University of California, Santa Barbara, has made a persuasive case that he can order an immediate halt to involuntary discharges of gay servicemen and servicewomen under the same "stop-loss" law that his predecessor used, less admirably, to force soldiers to extend their enlistments. Last Wednesday, the Center for American Progress, a think tank that has provided many Obama appointees, proposed a plan whereby a stop-loss executive order would be followed by a Presidential panel on implementing repeal and, ultimately, by repeal itself. On Thursday, Robert Gibbs, the White House press secretary, seemed to dismiss the idea ("The Administration believes that this requires a durable legislative solution"), but he also seemed to leave the door ever so slightly ajar ("There could be differences on strategy"). The President should kick that door open, and if he doesn't his

gay supporters and their allies should do a little kicking of their own. The community organizer on Pennsylvania Avenue will get the message.

As Sen. Gillibrand continued courting support from the LGBT community, she began looking for creative ways to push for an end to DADT. She found a warm reception working with gay advocates who felt the current timeline was too slow and risked missing the critical window when Democrats would have the power to get it done. An article in *The Hill* quoted several political analysts saying that supporting gay rights was becoming increasingly important for politicians, especially in Democratic primaries (Blake & Tiron, 2009). "It's not just gay and lesbian and transgender people that are involved," said one. "It's also a lot of people on the left. It's a much bigger audience that cares about all the civil rights issues that gays are involved in" (Blake & Tiron, 2009). It was the start of talk of a so-called enthusiasm gap—disappointment among the liberal base over inadequate progress—that, for the first time, included LGBT equality as a natural metric. Democrats were beginning to have to take notice.

Gillibrand ramped up repeal pressure by proposing legislation to put a moratorium on gay discharges. She dropped the idea when it became clear she didn't have enough votes, but her involvement yielded a commitment from Sen. Carl Levin to hold the first senate hearings on gays in the military since the notorious ones in 1993 that led to the policy in the first place.

HRC was also coming under increasing pressure that summer to push harder for repeal. A number of bloggers and gay activists had been critical of HRC throughout the spring of 2009 for what they saw as an inadequate record of results in the first few months of the Obama Administration. By May, that criticism was spreading. Belkin's (2009a) *Huffington Post* article publicizing the Choi discharge and executive order option had also leveled an accusation at parts of the LGBT movement, saying that "some major gay rights groups are actively lobbying to delay consideration of the issue. They seem to believe that Obama should focus on other gay-rights issues first, and that he shouldn't spend his precious political capital trying to ram a repeal bill through Congress."

## LGBT Priorities

In June, an explosive piece in the *Daily Beast* (Bellini, 2009) reported that gay rights leaders in Washington had "made a deal" with members of Congress "to not push for an end to DADT" until 2010 and that HRC instead wanted Congress to focus on its own goals of passing hate crimes and a federal non-discrimination bill. HRC adamantly denied making such a deal, and the allegation, which the *Beast* said came from "congressional sources," was likely an exaggeration: while no proof of such a "deal," or of the power of HRC to make one, surfaced, an array of sources and evidence show that

HRC had prioritized lobbying for a non-discrimination bill over a repeal bill, in part because its own membership ranked the former over the latter in importance (Bellini, 2009). As a result, the White House felt reassured that it did not need to prioritize repeal in order to keep the LGBT community happy. Indeed, citing Sen. Chuck Schumer, the *Beast* reported that HRC had stated that repeal was not a White House priority (anonymous, personal communication, January 6, 2012; Bellini, 2009; Boland, 2011; Signorile, 2009).<sup>8</sup>

In fact, this order of priorities had been the basic plan since before Obama's inauguration, when House Speaker Nancy Pelosi had met with gay groups and agreed to a timeline that put repeal third, after hate crime and workplace non-discrimination legislation. This plan was reiterated in a June 2009 story by *Stars and Stripes* (Shane, 2009a) reporting that "an official with the House Democratic leadership said the House is committed to repealing 'don't ask' but has agreed with civil rights groups to put new hate crime legislation and a workplace nondiscrimination bill on the legislative calendar before taking up the military issue." It was consistent with an August interview with HRC's Joe Solmonese saying, "I see a road map of six-month windows: the hate crimes bill, then the Employment Non-Discrimination Act, then don't ask, don't tell" (Gilgoff, 2009). It was also consistent with reports that the Pentagon was preparing to back a plan that used 2010 to study the issue and did not move to a vote until 2011, and that Adm. Mullen's lawyers had advised him in a Pentagon memo to delay repeal until at least 2011 (Ambinder, 2010; Shane, 2009a; Gearan, 2010).

There was a logic to putting repeal as the last priority: Both repeal advocates and politicians and their staff generally believed that Pentagon buy-in was needed to ensure enough votes for repeal in Congress, and that building that support would take time and the obligatory study for ground cover. Why not pass other gay rights legislation, some thought, in the meantime? Yet, it was also possible to use that thinking, and the study itself, as a rationalization for inaction on something that was gaining momentum in the public eye, in part because of pressure by advocates who did prioritize repeal. Failing to start—and complete—the obligatory Pentagon study sooner likely meant pushing repeal further and further back, and if the Democrats lost control of the House or a filibuster-proof margin in the Senate (both of which they did), that could mean delaying congressional repeal for years.

The day the *Beast* report came out, HRC requested an interview with the popular gay rights radio host, Michelangelo Signorile, who had, until that day, complained that HRC's director, Joe Solmonese, had "seemingly gone underground" and rebuffed interview requests. The sudden outreach appears to have been an effort to reassure the LGBT community that HRC was with them, and was not advocating against their interests in order to maintain its ties to the White House. Signorile argued that HRC was trying to avoid seeming "irrelevant" as powerful and vocal new LGBT rights organizations



were forming, including the American Foundation for Equal Rights, which was bringing a lawsuit against California's Proposition 8, banning same-sex marriage. (Interestingly, its founder, Chad Griffin, would become the executive director of HRC in 2012.) Signorile also cited calls by new and outsider activist voices for a march on Washington as a show of frustration with the pace of change (Signorile, 2009).

Following the criticism leveled in May and June, HRC also began working with gay veterans, including Servicemembers United, both by helping launch the Voices of Honor tour and by hiring Jarrod Chlapowski, a gay former Army linguist, as a veteran spokesman and advocate. According to several sources, the move was intended, in part, to mollify the criticism that HRC was not doing enough to press for repeal (anonymous, personal communication, December 13, 2011, January 6, 2012).

If the move helped, it didn't help enough. In late July, Andrew Sullivan (2009), a longtime HRC critic whose enormously popular blog President Obama had cited as one of his favorite reads (Korblut & Fletcher, 2010), slammed HRC for hypocrisy. In a post entitled, "HRC And The Stop-Loss Option," he complained bitterly about HRC, saying the group was claiming publicly that it was pressuring the White House for repeal but was privately doing nothing or worse. He suggested people give to other groups who cared more about achieving equality: "They write to say that they are publicly backing it. Joe Solmonese backed it on MSNBC, David Smith did so in the *Washington Blade* and that is their formal position. What they tell administration and congressional Democrats privately is another matter. But read the *Blade* story closely and you begin to see why Aaron Belkin is pissed. It seems to me that the gay rights groups that actually want to change the laws should stop expecting anything from HRC; and that gay donors should contribute to SLDN or Immigration Equality or groups that care more about civil rights" (Sullivan, 2009). By the end of the summer, it was increasingly clear not only to HRC but to the Pentagon, the White House and congressional Democrats, that repeal was gaining momentum and that ignoring it would be politically costly.

On September 24, Sen. Reid sent letters to President Obama and Sec. Gates asking for their views on repeal and reiterating his and Levin's July calls for greater input from the administration (Zimmermann, 2009). "As Congress considers future legislative action, we believe it would be helpful to hear your views on the policy," Reid wrote. "Your leadership in this matter is greatly appreciated and needed at this time." Just before the annual HRC Washington dinner in October, SLDN's Sarvis made his own appeal for stronger political leadership, saying in a press release, "We've seen no action and the clock is ticking. A clear timeline from this White House and Congress is urgently needed" (Servicemembers Legal Defense Network, 2009). At the HRC dinner, President Obama reiterated that, "I will end 'don't ask, don't tell'" (Zimmermann, 2009).

On October 15, Sen. Mark Udall (2009) wrote a letter to the President praising him for his stance at the dinner while pressing him on the “urgency” of action by the administration, and specifically by the Pentagon leadership. “I am now awaiting the Admiral’s views,” Udall wrote of Admiral Mullen’s promise to comment on repeal. “I respectfully request, Mr. President, that you consider asking Secretary Gates and Admiral Mullen to send their views within the next thirty days.” That day, Rep. Murphy announced he’d amassed 180 cosponsors for repeal, 31 more than the previous high of 149. He had collected nearly 40 new cosponsors under his leadership in total.

By November, the senate hearings secured by Sen. Gillibrand were being delayed, but still appeared to be imminent. Aware that he would soon be asked to state his views publicly, Adm. Mullen formed a research group that included representatives from each of the service chiefs’ offices. He wanted to amass all the available research on DADT and the likely impact of getting rid of it. Mullen had spoken with pro-gay veterans in a meeting set up by SLDN, in which he heard firsthand about the costs to integrity of DADT, but he needed to be assured that resolving the integrity issue would not create a readiness issue (Ambinder, 2010; Hirshman, 2012).

In November, *The Hill* reported that both Pelosi and President Obama backed a strategy of repealing the ban as part of the 2010 Defense Authorization Bill, citing a Barney Frank aide (Zimmermann, 2009). It also said that Barney Frank had told *The Advocate* that repeal would be included in the next year’s Defense spending bill. “Military issues are always done as part of the overall authorization bill,” Frank said in the story. “‘Don’t ask, don’t tell’ was always going to be part of the military authorization.” *The Hill* reported 183 cosponsors (Zimmermann, 2009).

As it became increasingly clear that ENDA was not going to get through Congress, and, as the clamoring from the LGBT community continued unabated, both HRC and the White House, along with congressional Democrats, began to understand that a win on a gay rights bill was likely to be helpful, rather than neutral or harmful, to their own fortunes. Political science professors, for instance, noted that Sen. Gillibrand’s adoption of gay rights as a top priority was “good politics, good policy,” and that she was “Exhibit A” of a new kind of Democratic politician who believed they could build support with their base by embracing LGBT equality (Brune, 2009; see also Blake & Tiron, 2009; Gerstein, 2010).

Yet, it was not until the end of 2009 that HRC made repeal a top priority. In December, Solmonese met with Sen. Joseph Lieberman’s office to discuss strategy (HRC background brief, [available from author], December 2011; Boland, 2011). Sen. Lieberman, who had left the Democratic Party to become an Independent, had also become convinced of the benefit of taking the lead on senate repeal, which could help his reputation among liberals and moderates. Lieberman had begun talks in October with the White House, which appeared to want the senator’s centrist credentials helping them make

the lift. By year's end, Lieberman had decided to sponsor a Senate repeal bill, which, with continued prodding by Sen. Gillibrand, he would introduce in March (Hirshman, 2012; Johnson, 2010).

## FINISHING THE JOB: 2010

### HRC Shifts

Politicians' newly positive orientation toward gay rights was also reflected in, and shaped by, polls, public remarks, and media commentary. Growing political support for gay rights issues was, in part, a product of advocates placing the numbers in politicians' laps. A January 2010 Greenberg Quinlan Rosner (2010) poll commissioned by CAP of likely voters showed that support for repeal was "no longer a significant political liability." In one key question, respondents were asked if they would be more or less likely to vote for a politician who supported repeal—regardless of their own position. The poll showed that respondents would be no less likely to vote for congressional supporters of repeal, and the largest category of respondents was "no difference" (Greenberg Quinlan Rosner 2010). As part of its lobbying and pressure strategy, HRC hired the personal pollsters of some of the wavering senators, most of whom found the same results, and were, thus, able to assure the senators that supporting repeal would not hurt them politically.

By the beginning of 2010, HRC was engaged in what its fundraising staff called "a shift of the organizational resources" to focus on repeal. A membership operations staffer told *Fundraising Success Magazine* (Boland, 2011) that in 2010 HRC "just moved a lot of what we might normally be working on and made [repeal] an all hands on deck effort." The magazine, which honored HRC in 2011 as its "Nonprofit Organization of the Year" for its success in repealing DADT, described the quandary HRC faced in 2010, "when something incredibly urgent happens that strikes a critical chord with your organization's mission, but may not be the most top of mind for your supporters" (Boland, 2011). Indeed, although vocal LGBT advocates, particularly in the blogosphere, had clamored for repeal throughout 2009, HRC members had rated the issue eighth on their priority list. The article said that repeal became HRC's "No. 1 priority in 2010 after much internal discussion and debate" that partly revolved around whether repeal was a popular enough issue with its membership for HRC to focus on (Boland, 2011). The organization's director of annual giving said it was the "first time that HRC had mounted an effort of this intensity and scope," and described an "unprecedented" effort to focus on repeal across all of HRC's departments (Boland, 2011). "When this strategy was laid out that we were going to focus on the repeal of don't ask, don't tell," she said, "I have to admit there was a lot of concern. Our most popular issue from a fundraising perspective and

survey responses is marriage equality,” not repeal. They had to make repeal “compelling” to donors and activists, she said (Boland, 2011).

On January 13, 2010, LGBT advocates and funders gathered for a tense meeting at HRC headquarters to discuss the strategy for winning repeal. By then, HRC had received word, according to several people who attended the meeting that the White House was about to tell the groups its plan for repeal. Advocates could be with them or not, but further input—at least on the timeline—was not being invited. Some felt that HRC was trying to get the groups in line to back the White House plan, whatever it was, even if it meant delaying repeal past the timeline that advocates wanted. Little was resolved at the meeting (anonymous, personal communication, December 14, 2011, December 30, 2011).

### State of the Union

On January 27, a major part of the administration’s plan was revealed. President Obama reiterated his pledge to repeal DADT in one of the most prized pieces of rhetorical real estate: the State of the Union address (Obama, 2010a). “This year, I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve the country they love because of who they are,” he said toward the end of his 70-minute remarks. “It’s the right thing to do.” Although the remarks were carefully crafted to emphasize the process of working on repeal during 2010, it was widely reported that the President had promised to actually end the ban within the year, and the wording allowed LGBT advocates to hold his feet to the fire.

Following President Obama’s promise in the State of the Union address, *The New York Times* (2010) lay the burden at the feet of the President, saying he had to do more to press both military leaders and lawmakers to act: “This is a winnable battle, but it will take committed leadership, starting with Mr. Obama, who until Wednesday was not vocal enough on the subject as President. He should prod the Pentagon to speak out, but the military officers will need strong support in Congress.” The *Times* piece also cited research on foreign militaries where open service had been a success: “The policy of drumming gay men and lesbians out of the military is based on prejudice, not performance. Gay people serve openly and effectively in the armies of Britain, Israel, Australia and Canada.”

SLDN also amped up its pressure on the President, both praising his words in the speech and again calling for him to include repeal in the Pentagon spending bill. “We applaud the President tonight for his call to Congress to repeal ‘don’t ask, don’t tell’ this year,” Sarvis said. “We call on the President to repeal the archaic 1993 law in his defense budget currently being drafted; that is probably the only and best moving bill where DADT can be killed this year” (Eleveld, 2010b). The next week, in hearings before the Senate Armed Services Committee, Adm. Mullen became the first

sitting Chairman of the Joint Chiefs of Staff to endorse openly gay service. In poignant, forceful language, Mullen said that there were still questions to be answered and that he was not “all-knowing” about the impact repeal would have on the military. But “speaking for myself and myself only, it is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do” (Barnes, 2010).

Sec. Gates was less personal in his remarks but focused on the fact that repeal was the administration’s position. “The question before us,” he told senators, “is not whether the military prepares to make this change, but how we prepare for it.” Gates announced he would appoint a working group to conduct a 45-day review of the policy that would determine ways the Pentagon could soften enforcement without awaiting congressional action—an idea that had been announced amidst pressure in June 2009 but had not yet been implemented. The new enforcement standards would include raising the level of authority of those who could initiate a discharge inquiry, and tightening the standards of evidence that could trigger a discharge. He also announced a much longer review by the Comprehensive Review Working Group (CRWG) that would be due on December 1st, 2010 three weeks after the midterm election.

In an angry response, Sen. McCain, who had previously said he would listen to the advice of the nation’s top military leaders, told Sec. Gates he was “deeply disappointed” in his testimony. “Your statement obviously is one which is clearly biased, without the view of Congress being taken into consideration.” Vowing to continue what was becoming a crusade to block repeal, he said he was “happy to say that we still have a Congress of the United States that would have to pass a law to repeal ‘don’t ask, don’t tell’ despite your efforts to repeal it in many respects by fiat.”

Despite the ornery McCain, the moment was a high point for the repeal effort. Yet it was also a low point. The one-two punch of the President’s commitment in the State of the Union Address and the supportive testimony of Mullen and Gates buoyed hopes of real progress. Yet the simultaneous announcement that the Pentagon would study the issue for nearly the full year, and only deliver its results in December—half way through a lame duck session of Congress, was a blow to the prospects of getting repeal done this year.

Complicating matters even more, Jim Messina, the President’s deputy chief of staff who had been tasked with handling repeal, convened a meeting at the same time with LGBT groups but shut out SLDN because of the fraying relationship between the group and the White House, which was angry at SLDN’s public criticism (Naff, 2010). At the meeting, described by one attendee as a “definitive shut-down from Messina,” the deputy chief of staff reportedly told them that the President would not put repeal into the Defense Authorization Bill, the most straightforward way to ensure that it was taken up—and passed—by Congress, and a clear signal from the White House that it did not plan to push repeal in 2010. Reports also surfaced that some White

House staff were counseling the President against moving on repeal before 2011, a plan that would be corroborated in complaints by Barney Frank the next month (Eleveld, 2010e).

This was apparently the plan that HRC had told fellow advocates to expect in the January 13 meeting—that 2010 would be spent building Pentagon support for repeal, but that, as part of a deal with Gates, the White House would not press for a congressional vote before 2011, as evidenced by the decision not to put repeal in the 2011 Defense Authorization Bill. Again, there was some logic to the timetable, given the perceived need to build support among the military leadership, but there was equal logic to the alarm bells sounded by advocates warning that pushing repeal beyond 2010 could mean an indefinite delay if the House were to fall into GOP hands or if Democrats were to lose enough seats to make overcoming a filibuster impossible.

LGBT bloggers responded by leading a “blog swarm”—in which numerous bloggers purposely comment on the same story—which focused attention on HRC: “OUR MESSAGE TO HRC IS SIMPLE: Publicly demand that President Obama take the lead in getting DADT repealed this year. 1) That means the President needs to state publicly that he wants Congress to repeal DADT this year; and 2) The President needs to take the lead in working with Congress to make sure the repeal happens” (see <http://www.towleroad.com/2010/02/join-our-blog-swarm-call-hrc-today.html>).

To be sure, getting the support of Mullen and, especially, Gates was a critical accomplishment for the President. Yet according to *National Journal*'s Marc Ambinder, the President “unexpectedly found that he would have no greater ally than” Mullen, who was, therefore, not a particularly heavy lift. Gates, on the other hand, had to be “courted to stay” on as Defense Secretary from the outset. This meant Obama had to work carefully and slowly to build trust with Gates, a Republican appointee, before asking for his support for repeal, which he reportedly broached in their first meeting after the inauguration (Ambinder).

But in getting Gates onboard, Obama found that the Secretary's support came at the cost of moving repeal on Gates' timeline, which was to spend 2010 building cover through the study, and for Congress not to vote on repeal until 2011.<sup>9</sup> In claiming that the administration had a plan for repeal, according to Ambinder, “the White House had not yet adjusted for the possibility that Democrats might lose control” of Congress, a prospect that both history and advocates had warned of as soon as Obama won the White House—historically the party that controls the White House frequently loses seats in the midterm election, and the growth of the anti-government Tea Party starting in 2009 made this prospect abundantly clear. When Messina was asked by senior staff at HRC and CAP what the White House's plan was to repeal DADT in a Republican House, according to Ambinder, “Messina didn't have a good answer” (Ambinder, 2010).

Messina and other White House staff reportedly thought that the reassurance of Obama, Mullen and Gates in the State of the Union and the Senate hearings would mollify activists who were anxious about an inadequate plan to secure repeal. But the timeline that was revealed by the plan—parking repeal in a ten-month study and the refusal of the President to insert repeal into the base Pentagon spending bill—did no such thing. In fact, the Pentagon reportedly “envisaged a two-year process” with legislation being “introduced in 2011.” Advocates, particularly from outside the Beltway, were increasingly convinced either that there was no plan or, if this was the plan, it was a lousy one (Ambinder, 2010).

Indeed, Robert Gibbs had consistently made clear that the White House backed the Pentagon plan to pass repeal in 2011 rather than 2010. When *The Advocate's* Eleveld asked him in February, “Would the [P]resident like to see Congress pass repeal this year?” all Gibbs could muster is, “there is a process that’s under way.” In politispeak, not saying ‘yes’ to a simple question like that means saying ‘no,’ especially for a press secretary who had previously boasted about the rare “one-word answer”—yes—to the question after Obama’s election about whether he still planned to lift the ban. Eleveld then pressed Gibbs, expressing advocates’ “fear that if it doesn’t happen this year, that it very well may not happen throughout the entire first term” because Democrats could lose control of the next Congress (“Federal News Service,” 2010b).

Gibbs’ response—if taken at face value—was revealing. “I don’t think the [P]resident shares that,” he said, referring to the view that 2010 is the last possible window in the near future. Citing public polling, the support of Pentagon leaders, and “strong bipartisan support for its repeal,” he reiterated that “we think it will become law” (“Federal News Service,” 2010b). In April, Eleveld would get further confirmation that the White House was onboard for the Pentagon’s 2011 plan. She asked Gibbs if, before the law is changed, the President was committed to “letting the Pentagon work through its working group process until December 1.” Gibbs replied, “Yes. The President has set forward a process with the Chair of the Joint Chiefs and with the Secretary of Defense to work through this issue” and that is the process “he believes is the best way forward” in trying to change the law (“State Department Documents,” 2010). Could passage in the lame duck have been the plan? If so, it suggests, at best, a very low prioritization of repeal by the administration.

## GetEQUAL

On March 18, Dan Choi, whose pending discharge was still not finalized perhaps because the Pentagon did not welcome the publicity that would bring, chained himself to the White House fence in a direct action coordinated by the newly founded GetEQUAL organization. He was arrested and spent the

night in jail. Choi was a polarizing figure, but he was becoming the face of repeal, inspiring young people, with college groups paying up to \$10,000 to bring him to campus (Wright, 2010), and irritating establishment Washington. As one measure of Choi's influence on the debate, an Army Major pointed out in a *Military Law Review* article that Choi had spoken at over fifty events in 2009 and 2010, had "become the poster-child for repealing DADT," "garnered the support of many influential people in Washington," and that his "defiance marked a new era in DADT reform attempts" (Bunn, 2010).

While many military members regarded Choi's tactics—getting arrested in military uniform—with scorn, they reacted more favorably to the stories of other veteran activists like Mike Almy and Victor Fehrenbach, who were quietly serving their country when they became caught up in the policy's clutches. For the Pentagon and the White House, fielding press inquiries about these service members became harder and harder, as their stories—of selfless patriots needlessly wasted—gained visibility and embarrassed those with the power to make change. The stories of many of these service members were touted in legal challenges brought by SLDN—and eventually LCR—part of their multi-pronged strategy to erode support for the law and overturn it in the courts. According to a senior Pentagon official, leaders at the Pentagon, the White House and in Congress were all feeling the pressure of clamoring by LGBT advocates and media. Increasingly, Pentagon leaders wanted the policy to just go away (senior Pentagon official, personal communication, January 5, 2012).

While the stories of Almy and Fehrenbach were what resonated most in the Pentagon, the tactics of Choi and GetEQUAL, covered widely in the media, were the most provocative. Whatever official Washington said about not responding to public pressure, they were difficult to ignore. Choi's arrest was covered live, and narrated in emotional terms, on CNN: "Look at these pictures," said host Rick Sanchez. "Apparently he's had enough." Sanchez said it was "a difficult story to watch, it's certainly a very emotional one." Gibbs was asked in the briefing room about Choi while he was chained to the fence outside. Early the next morning, White House staff contacted an advisor to GetEQUAL asking for a meeting. At the meeting, the White House staffer and the GetEQUAL advisor agreed, according to the latter, that, in contrast to ENDA, which was expected to be carried forward by Congress, repeal was in the President's court. The White House staffer said he would be talking to others in the administration about what GetEQUAL was demanding, which focused on the President putting repeal in the Defense Authorization Bill. But the administration had already decided not to take that step (GetEQUAL advisor, personal communication, December 14, 2011).

GetEQUAL was not the only group losing patience. SLDN's Sarvis had made clear that the 10-month timeline for the Pentagon study was excessive, and this one-time Beltway insider, who had initially planned to cooperate



with an insider strategy for repeal, no longer trusted that repeal would happen without making trouble. On April 19, *Politico* reported that the White House was quietly urging members of Congress to avoid a vote on repeal until 2011. SLDN's Sarvis wrote an angry public letter to the President, saying: "I am very disturbed by multiple reports from Capitol Hill that your congressional liaison team is urging some Members of Congress to avoid a vote on repeal this year. The upcoming House and Senate votes will be close, and very frankly, Mr. President, we need your help now" (Smith, 2010b). At SLDN, staff discussed how to up the ante as they worried repeal could slip away.

That day, hecklers from GetEQUAL disrupted Obama's remarks at a fundraiser for Sen. Barbara Boxer in California, drowning out his desired message of economic repair. The famously calm-tempered President, visibly rattled, was forced to leave the podium to confirm whether Boxer had opposed DADT in 1993 (she had), before returning to his speech to again tell the hecklers he was already with them (see <http://www.youtube.com/watch?v=eX9AMRV2ZHw>)

According to Ambinder's (2010) interview with Messina, a furious President stepped into his limousine after the event, incredulous about the interruptions. The swearing commander in chief asked Messina, "What is it about what we are doing that they don't get? If they want to protest, they should go protest someone who was against this." The next day, the pressure resumed. Dan Choi and five others in uniform were arrested for again chaining themselves to the White House fence, garnering coverage of that and the Boxer speech disruption as CNN's top prime time political story that night.

### Congressional Chatter

At the same time, the insider-outsider game was yielding fruit, at least with allies in Congress. The March 18 GetEQUAL arrests at the White House had been paired with sit-ins at Speaker Pelosi's office, with the goal of pressing her to move forward with an ENDA vote. By April, with clear evidence that ENDA was stalled, lobbying groups met with Pelosi to press for movement on repeal instead. Pelosi agreed to introduce legislation in the House that would adapt Rep. Murphy's bill to include a delayed implementation as an olive branch to the Pentagon. The idea, first crystallized in a memo by Servicemembers United's Alex Nicholson, was to pass legislation that called for repeal but allowed for a delayed implementation to accommodate the Pentagon's timeline involving a months-long study. Rep. Murphy endorsed the idea, arguing—against pushback from the White House and Pentagon—that he saw no reason why Congress couldn't proceed with a repeal vote at the same time as the Pentagon was conducting its study which, after all, was tasked with assessing not whether to lift the ban, but how (Nicholson, 2010; Rushing & Tiron, 2010).

News that the House planned to move forward with a repeal vote angered Rep. Ike Skelton, the Democratic Chairman of the House Armed Services Committee, and presented the White House with a quandary about how to honor its deal with Gates to wait until 2011. The *Denver Post* (Riley, 2010) reported “The White House is facing a budding revolt over its carefully crafted strategy for repeal of the ban on gays serving openly in the military that would have pushed the decision past the November election.” Congressional staff, said the piece, which also mentioned the heckling of Obama at the Boxer event, said movement toward a vote was “likely to face opposition from the White House, which in February laid a timetable built around an extensive Pentagon study that won’t be completed until Dec. 1st, pushing a final move on the contentious issue past what’s expected to be Democrats’ toughest election cycle in years” (Riley, 2010).

Although Skelton would agree to hearings, he was unlikely to allow repeal to get voted out of his committee. So, the Pelosi plan was to introduce an amendment in the House that would bypass Skelton’s committee. In what appeared to be retaliation, Skelton provoked a public rebuke for the plan from Sec. Gates. As he prepared his Committee to mark up the 2011 Defense spending bill, Skelton asked Gates to share his views on a repeal vote before the Pentagon study was complete in December.

### Gates’ Letter

Gates’ response was unyielding: “I believe in the strongest possible terms that the Department must, prior to any legislative action, be allowed the opportunity to conduct a thorough, objective, and systematic assessment of the impact of such a policy change.” If Congress acted before the study came out in December, the letter said, it “would send a very damaging message to our men and women in uniform that in essence their views, concerns and perspectives do not matter.” The letter was signed by both Gates and Mullen and was addressed to Rep. Skelton, giving him and other Democrats cover for inaction. “Our military must be afforded the opportunity to inform us of their concerns, insights and suggestions if we are to carry out this change successfully,” the letter said (Braiker, 2010).

Gates’ letter sparked anger in the LGBT community and created a crisis in the repeal movement that the White House could not avoid, as the administration now seemed to be squarely standing in the way of repeal. SLDN said that “The President of the United States appears to have reversed himself” from his State of the Union commitment and said it strongly “repudiates . . . a delay game plan” (Braiker, 2010). A statement by Speaker Pelosi said she understood the report was in progress, but that “in the meantime, the administration should immediately place a moratorium on dismissals under this policy until the review has been completed and Congress has acted” (Braiker, 2010). Rep. Murphy also released a statement vowing to press on,

despite Gates' letter. "No more kicking the can down the road," said the statement (Murphy, 2010).

"All hell broke loose between the gay community and the Obama administration on Friday," wrote *The Washington Post's* Jonathan Capehart (Capehart, 2010a). Normally an avid defender of the White House, including having repeatedly impugned LGBT advocates for pressuring the President too hard over DADT (see Capehart, 2009, 2010b), even Capehart now wrote that "I can't say that I blame folks on the front lines of the repeal effort" for their anger (Capehart, 2010a). After reassuring those people for months that the White House was doing all it could to ensure repeal by 2010's end (see Capehart, 2009, 2010b), he had noticed "signs of late that Obama might be willing to let that self-imposed deadline slip" (Capehart, 2010a). He admitted to remaining "a little cranky about protesters focusing all of their attention on Obama," but wrote "the Gates letter is a stark reminder for me that pressure on the [P]resident is paramount if the repeal is to get done" (Capehart, 2010a).

On May 2, Dan Choi and five other service members went back to the White House gates and were arrested for cuffing themselves to the fence for a third time. Taking the bullhorn, Choi addressed the President directly to remind him that he had the authority to stop the discharges: "President Obama, you are the Commander in Chief. You have the power to repeal discrimination, you have the power to follow leadership like President Truman's when he desegregated the armed forces racially, you have the power" (Price, 2010).

By spring 2010, Choi had become the face of DADT and the visuals of coverage of the issue had shifted from an impersonal rainbow or dog tag to the iconic image of a uniformed American chained to the White House fence. Images like these and the ongoing anger that caused them were, according to *National Journal* and other sources, taking a toll on the administration. Footage of Choi was "ubiquitous on TV" and served as a relentless reminder that neither the President's State of the Union promise nor the testimony by Gates and Mullen had quelled disaffection among LGBT advocates (Ambinder, 2010).

Despite the President's deal with Gates to delay repeal until after the study was complete, Jim Messina recognized, according to Ambinder (2010), that a course correction was required. The deputy chief of staff called several meetings that May with the numerous parties involved in repeal. They culminated at the end of the month with what journalist Chris Geidner (2010b) has called "the most deft legislative accomplishment of the Obama administration thus far."

As late as May 21, *The Hill* was reporting that Sec. Gates, "backed by the White House, is opposing any efforts to repeal the ban before the Pentagon has the chance to finish its study on the implementation of repeal by the end of 2010" (Tiron, 2010). The Associated Press reported days later that the

“The White House had hoped lawmakers would delay action until Pentagon officials had completed their study so fellow Democrats would not face criticism that they moved too quickly or too far ahead of public opinion in this election year” (Elliott, 2010).

### Compromise

On May 24, the White House called advocates to a feverish series of meetings as Democratic congressional staff met simultaneously to hammer out a compromise. That compromise, first circulated by CAP in consultation with Sen. Lieberman’s and Rep. Steny Hoyer’s office, would allow a crucial vote to repeal DADT before the next Congress was sworn in, but the actual language of the bill would delay the implementation of repeal until the Pentagon had time to complete its study and certify that its force was ready for the change. It was a variation on the Servicemembers United plan to delay implementation but gave the Pentagon the added leverage of deciding when to implement repeal. Some LGBT advocates decried this provision by pointing out that nothing in the bill ensured the Pentagon would ever decide to lift the ban. A final part of the compromise dropped the non-discrimination language that the legislation had contained since it was first introduced in 2005. Both the Pentagon and some senators were said to have opposed the non-discrimination clause, but, while Pentagon support was always considered crucial, it is unclear if dropping the clause, in retrospect, was necessary to secure the needed votes in Congress (Osborne, 2010). Ultimately, the deal was begrudgingly supported by the all-important defense secretary (Flaherty, 2010). It was passed as an amendment to the National Defense Authorization Act, by the full House on May 27, with 234 voting for it, including 5 Republicans, and 194 against. With the newly announced support of Sen. Ben Nelson and of Sen. Susan Collins, the first Republican to support repeal, the Senate Armed Services Committee voted an identical provision out of committee to await a full senate vote (Herszenhorn & Hulse, 2010).

### Constitutional Challenge

The summer seemed quiet on the repeal front. Only a few reporters and bloggers showed up in Riverside, California, to cover what turned out to be the policy’s gravest test, and one it would miserably fail. In 2004, LCR had filed suit in federal district court challenging the constitutionality of DADT. The suit was delayed for years as the government, first under President Bush and then under President Obama filed motions to dismiss the case—some routine, some rather extraordinary. Finally, in July 2010, the case proceeded to trial.

Less than two months later, on September 9, Judge Virginia Phillips handed down her decision. “The ‘don’t ask, don’t tell’ act infringes the fundamental rights of United States service members in many ways,” wrote Judge Phillips. “In order to justify the encroachment on these rights, defendants faced the burden at trial of showing the ‘don’t ask, don’t tell’ act was necessary to significantly further the government’s important interests in military readiness and unit cohesion. Defendants failed to meet that burden.” The aggregated evidence, wrote Phillips, “directly undermines any contention that the Act furthers the Government’s purpose of military readiness.” Not only did the policy fail to protect national security, concluded Phillips, but it actually undercut it. “The testimony of both its lay and expert witnesses,” wrote Phillips of the plaintiff, “revealed that the Act not only is unnecessary to further unit cohesion, but also harms the Government’s interest” by “impeding the efforts to recruit and retain an all-volunteer military force” and “by causing the discharge of otherwise qualified servicemembers with critical skills” (*Log Cabin Republicans vs. USA and Robert M. Gates, Secretary of Defense*, 2010).

The decision in the LCR case—although it had yet to go through the appeals process—marked the death knell for the ban. For decades, the military and other champions of discrimination had argued that treating gay troops equally would harm readiness, an assertion that bolstered an ingrained cultural narrative that gay people were a threat to American culture. The courts had consistently put their imprimatur on that myth, deferring to military judgment and avoiding a genuine evaluation of what were entirely ungrounded allegations. So long as the military could argue with impunity that open service harmed readiness, the ban was locked into place politically, legally, and culturally. But when provided with rock-solid evidence, in the fact-finding context of a court of law, that the policy did not protect readiness because the presence of gay troops did not harm it—indeed, that the policy itself hurt readiness, it became impossible for the military, cultural conservatives, or Justice Department lawyers to argue that a compelling governmental interest was served by discriminating against gay people. That was the only way that such discrimination could be considered constitutionally valid. In so thoroughly addressing the legal question of the ban’s constitutional validity, the court had definitively answered the political and cultural question of the ban’s continued justifiability.

The court’s momentous decision reflected years of research and debate about the costs, purpose and impact of DADT. Its compelling conclusion that the policy did not further a legitimate governmental purpose crystallized the fruits of a strategic shift in focus by advocates from attacking the ban as a moral violation of fairness to attacking it as a practical violation of national security. It was a conscious move away from using the equal rights lens—that appealed to LGBT and progressive Americans but resonated less with conservative and military audiences—to using the frame

of the ban's supporters—military readiness and national security. The new rhetoric turned the old frame on its head: Gay people don't threaten national security; the ban does—and the deployment of this rhetoric by LGBT advocates in the political arena meant, ultimately, enlisting the government in a successful attack against its own policy. Indeed, Judge Phillips quoted President Obama's indictment of the policy in her decision striking it down: "Defendants have admitted that, far from being necessary to further significantly the Government's interest in military readiness, the Don't Ask, Don't Tell Act actually undermines that interest. President Obama, the Commander-in-Chief of the Armed Forces, stated on June 29, 2009: 'Don't Ask, Don't Tell doesn't contribute to our national security. Preventing patriotic Americans from serving their country weakens our national security . . . Reversing this policy [is] the right thing to do [and] is essential for our national security'" (*Log Cabin Republicans v. USA and Robert M. Gates, Secretary of Defense*, 2010).

While much of the rest of the world coalesced around the court's conclusion that the policy was a failure which must end, the Senate stood firm. On September 21, 2010, in an unexpectedly successful filibuster led by Republicans, the Senate voted to block repeal by opposing the entire Defense spending bill to which it was attached. Repeal was falling victim to traditional politicking, with Republicans adopting a just-say-no strategy of denying the Democratic President a win on anything. *The New York Times* called the vote "more a result of a dispute between Democrats and Republicans over legislative process than a straightforward referendum on whether to" repeal the ban (Herszenhorn, 2010), because Majority Leader Harry Reid chose to attach other provisions to the bill and to limit input by Republicans, which he knew would anger them. Every Republican and two Democrats voted against the bill, which failed 56 to 43. Sen. Susan Collins was among the Republican no votes who some repeal advocates had hoped would vote for the bill. It was the first time in 48 years that the Pentagon spending bill had failed to gain congressional approval.

The court case was exerting enormous pressure on both the White House and the Pentagon to achieve legislative repeal. The White House found it embarrassing to repeatedly have to defend in court a policy that the President had campaigned on eradicating; and the military did not want to be forced to lift the ban by courts under terms it could not control. In October, Judge Phillips issued a worldwide injunction against enforcement of the ban. The ban was lifted for the first time ever. The injunction lasted only eight days until it was stayed by an appeals court. Nevertheless, the suspension showed the world that no harm resulted from a military without DADT.

The court's injunction created a major headache for the Pentagon. *The New York Times* described October's events as a "series of court decisions [that] whipsawed the Pentagon into suspending and then resuming enforcement of the law over the course of little more than a

week, creating bewilderment at recruiting stations and confusion among Defense Department lawyers” (Bumiller, 2010a). Jeh Johnson, the Defense Department’s general counsel and co-chair of the 2010 CRWG, complained to the Senate that “in the space of eight days we had to shift course on the worldwide enforcement of the law twice, and in the space of a month faced the possibility of shifting course four different times” (Bumiller, 2010a). He later recalled that “the LCR case sent us into, frankly, a real panic.” The last thing the military wanted was to have to tell two million people to stop following the law one day, then start the next, then stop and start again. “That had a real impact on Secretary Gates,” said Johnson (Bailey & Barbato, 2011).

Indeed, Gates reacted to the legal developments with increasing alarm, reiterating that the pressure was on Congress to make a decision, but continuing, at least initially, to ask that lawmakers wait until the December 1 study was out before voting on a change. By November, Gates had taken the next step, saying for the first time that he actually backed legislation to lift the ban so as to ward off a court mandate. “I would like to see the repeal of ‘don’t ask, don’t tell,’” he said, “but I’m not sure what the prospects for that are” (Keyes, 2010). On November 10, three weeks before it was due, a draft of the Pentagon study was leaked to *The Washington Post*, which reported that the authors had concluded the ban could be lifted without great risk to the military (O’Keefe & Jaffe, 2010). If authorized by top officials, the leak may have been an effort by the Pentagon to push repeal forward.

The White House also used the occasion of the court case for both tough talk and a reiteration of support for the slow roll through Congress: “Time is running out on the policy of ‘don’t ask, don’t tell,’” said Press Sec. Gibbs, while also saying that the legislative branch should lead the process of change: “The best way to end it is for the Senate to follow the lead of the House of Representatives so that that end can be implemented in a fashion that is consistent with our obligations in fighting two wars.” Yet he also implied the White House had not ruled out the use of other executive actions, which could have referred to a stop-loss order or a decision not to appeal the California court ruling. “Absent that action,” Gibbs said about congressional repeal, “the [P]resident has again set up a process to end this policy” (Richardson, 2010).

Just a week before the midterm election, facing headlines like “Obama’s Go-Slow ‘Don’t Ask, Don’t Tell’ Plan Backfires” (Gerstein, 2010), the White House invited a group of gay advocates and a group of gay and progressive bloggers to meet with the President.<sup>10</sup> The meetings were unusual in that the President himself sat down with activists in the Roosevelt Room for an extended conversation. The blogger meeting was unprecedented. Both were widely seen as efforts by the White House to burnish its bona fides with its base as the growing enthusiasm gap—disaffection with the Obama achievement record among one-time supporters—threatened to bog

Democrats down in the midterm elections. Among the bloggers invited was Joe Sudbay of AMERICAblog, one of the administration's loudest progressive critics, particularly on its record on LGBT rights. The very fact of the meetings suggests the White House took seriously this new breed of progressive writer advocates, and sought to use them as mouthpieces to get its message out: "We hear you and are working on issues you care about." The meeting with gay advocates, which was specifically to discuss the repeal strategy, also may have suggested both that the White House knew how important repeal was to the progressive base, and that it doubted it was going to be able to deliver repeal. At least, the meeting would show, they tried.

### Lame Duck

On election day, the Democrats lost control of the House in a wave election that yielded 63 seats to the GOP.

On November 15, a dozen activists including Dan Choi got arrested once again for chaining themselves to the White House fence. The media coverage was intense (e.g., "Don't Ask, Don't Tell' Arrest Outside White House," 2010; Malveaux, 2010; O'Keefe, 2010; Smith, 2010a). As a gridlocked Congress squabbled, with antics that were bringing its approval numbers toward single digits (Jones, 2010), uniformed Americans were pleading to be able to serve their country at the gate of a President who was refusing to sign a paper halting the discriminatory firings.

On November 30, 2010—one day early—the Pentagon released its nine-month-long comprehensive report on repeal. Symbolic though it may have been, the fact that Sec. Gates allowed the release of the report one day before originally scheduled (and may have authorized the leaking of the report to *The Washington Post*) suggests he was doing his part to move repeal along, as any additional hours could only help in a crowded lame duck session. The report concluded that "the risk of repeal of Don't Ask, Don't Tell to overall military effectiveness is low," and that the military could lift the ban without harming readiness (U.S. Department of Defense, 2010). It cited "a widespread attitude among a solid majority of service members that repeal of Don't Ask, Don't Tell will not have a negative impact on their ability to conduct their military mission." The report discussed the experiences of foreign militaries as well as surveys indicating that most U.S. troops already knew of gay peers in their units—all data points and frames that research advocates like the Palm Center had expressed for years (U.S. Department of Defense, 2010).

President Obama released a statement (2010b) hailing the study and "call[ing] on the Senate to act as soon as possible so I can sign this repeal into law this year." It said the report "confirms that, by every measure—from unit cohesion to recruitment and retention to family readiness—we can transition to a new policy in a responsible manner that ensures our



military strength and national security. And for the first time since this law was enacted seventeen years ago today, both the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have publicly endorsed ending this policy.”

Addressing the Senate following the report's release, Sec. Gates said that repeal “would not be the wrenching, traumatic change that many have feared and predicted [ . . . ] Now that we have completed this review,” he said, “I strongly urge the Senate to pass this legislation” (Federal News Service, 2010a). For Gates, legislative repeal had become “a matter of some urgency because, as we have seen this past year, the judicial branch is becoming involved in this issue, and it is only a matter of time before the federal courts are drawn once more into the fray. Should this happen, there is the very real possibility that this change would be imposed immediately by judicial fiat, by far the most disruptive and damaging scenario I can imagine” (Pellerin, 2010). The irony was not lost on some observers that Gates, who said a week later that he “would hope that [Congress] would” vote for repeal but he was “not particularly optimistic,” was largely responsible for holding back a vote until it was all but too late to have one.

If passing repeal in the lame duck session was part of the Democrats' repeal plan, that was far from clear in the public record. When Wolf Blitzer asked senior White House advisor Valerie Jarrett, “Will you push for repealing ‘don't ask, don't tell’ during the lame duck session?” she merely replied that “the [P]resident has said he wants it repealed as quickly as possible,” that most Americans favor repeal, and that “we do fully intend to push forward” (Blitzer, 2010). Throughout November, the White House continued to back the Pentagon's timeline of awaiting a vote until after it released its report the last day of that month. In early December, Sen. Majority Leader Reid rattled off the priorities he hoped the Senate would address in the rapidly dwindling days of the session including tax cuts, funding the government, renewing the Strategic Arms Reduction Treaty (START), and immigration reform. “That's the plan; we hope we can execute it,” he said, in time to adjourn the week before Christmas. Only when Sen. Carl Levin murmured in his ear that he should “say something about the Defense bill,” did Sen. Reid add that item, which was to include repeal (Eleveld, 2010c).

While the President had worked with the Pentagon since 2009 to line up the support of Sec. Gates and Adm. Mullen, there was little evidence that he was personally involved in whipping up senate votes.<sup>11</sup> That changed in December 2010, when Obama became increasingly involved in the fight for repeal. Obama called both the service chiefs and repeal advocates to White House meetings as soon as the report was released and made clear he did not want to trade repeal for any other administration initiatives (Bumiller, 2010b; O'Keefe & Rucker, 2010). *The Washington Post* reported that President Obama called several senators in December to urge them to support repeal (O'Keefe & Kane, 2010).

Still, even at this late date, according to both White House staff and lawmakers, the START treaty was a higher priority for the administration, which pressed senators to pass that over DADT repeal. Barney Frank said Hoyer was pressured not to push repeal as a stand-alone because it could threaten passage of START (R. Berman, 2010; O’Keefe & Whitlock, 2010).

Lobbying and mobilization efforts by advocates, including HRC, SLDN, Servicemembers United, CAP Action Fund, and Log Cabin Republicans, were intense. HRC took out full-page advertisements in major papers, used tele-marketing and social media, launched field campaigns focusing on states with persuadable senators, created Spanish-language outreach efforts, identified hundreds of pro-repeal veterans to meet with senators, and generated thousands of constituent contacts. In 2010, the group sent 19 million e-mails to members and supporters and 625,000 e-mails to members of Congress. SLDN had recruited Lady Gaga to the cause, deploying her to reach out to her 7 million Twitter followers and help generate additional media for her efforts (Boland, 2011).

Yet, on Thursday, December 9, the Senate again filibustered repeal, failing by three votes to move the measure forward. The newly elected Sen. Joe Manchin (D-WV) was the only Democrat to vote against it. Republicans continued their just-say-no strategy to defeat any goal embraced by Democrats—just as they had sought to do with a healthcare reform plan that was first proposed by Republicans—and were holding any sort of progress hostage to their demands for tax cuts. *The Washington Post* reported that the no vote had “thwarted a months-long push by President Obama and the Democratic leadership to force a vote on the issue” (O’Keefe & Kane, 2010). The President issued a statement saying, “Despite having the bipartisan support of a clear majority of senators, a minority of senators are standing in the way of the funding upon which our troops, veterans and military families depend” (O’Keefe & Kane, 2010).

HRC sent out an e-mail the day of the vote failure pronouncing repeal dead. “The United States Senate has failed our military and failed the American people,” it said. “It appears Congress won’t repeal the law this year” and that the fate of gay troops “now rests in President Obama’s hands” (Aravosis, 2011). Executive action, said Joe Solmonese, is now “imperative in order for him to fulfill his State of the Union promise” to end the ban (O’Keefe & Kane, 2010).

## Death of DADT

Yet, Sens. Lieberman and Collins were already holding a press conference the afternoon of the vote failure promising to introduce a stand-alone bill that was the last chance to get repeal through the Senate. Lieberman, with a major assist from Rep. Steny Hoyer, along with repeal groups, had begun to devise an alternate plan to passing repeal through the Defense Authorization

Act. It involved a stand-alone bill that, contrary to conventional wisdom, might end up the cleaner and more viable path to victory. Hoyer had conversations with five key Republican senators, four of whom committed to supporting the stand-alone bill. He then worked with Pelosi and Murphy to convince his House colleagues to endure another vote on repeal—this time on a stand-alone bill to match the one that Lieberman and Collins would introduce in the Senate. He told Reid of the plan, who said he would try to make time for another repeal vote, which he had the power to expedite using his leadership privileges. The House passed the stand-alone repeal bill, introduced by Hoyer and Murphy just a day before, on December 15. With a tax stand-off resolved, and the repeal measure separated out from the larger defense spending bill, the Senate followed suit on December 18, passing a bill introduced by Lieberman and Collins in a 65-31 vote that included support by eight Republicans. President Obama signed the measure into law on December 22, and the military would eventually implement the repeal on September 20, 2011 (R. Berman, 2010; O'Keefe & Whitlock, 2010; Steinhauer, 2010).

## CONCLUSION

How did repeal happen? Did it indeed go all according to a much-discussed but scarcely revealed plan that the White House and HRC devised and implemented? Or did the President refer to the pleasantly surprising success of repeal because he, along with so many others, was aware that there was no plan that was likely to carry repeal across the finish line? Clearly credit for repeal is due to the powerful lobbying and mobilizing efforts of Washington's LGBT advocacy groups and veterans; to the leadership of Sens. Lieberman, Reid, Levin, Gillibrand, Udall, and—eventually—Collins, and of Speaker Pelosi and Reps. Murphy, Frank, and Hoyer; to the good faith effort by the Pentagon to assess the impact of repeal, read the political tea leaves, and get on the right side of history; and to a President and his staff who believed that repeal was the right thing to do and increasingly saw that it was worth spending political capital to achieve.

But all of this was dependent on a long-term public information campaign that expanded support for repeal into areas that once seemed impenetrable, and a pressure campaign by advocates that moved the ball perpetually forward. The strategic, research-based and media-driven reframing of the national dialogue from one of equal rights to one of the efficacy of the policy and its impact on the nation was critical to this effort. In particular, the Palm Center's focus on the national security frame helped reach moderates and conservatives on their own terms and also insisted that the debate be rooted in facts—never sexy, never sufficient to win a debate, but, ultimately, essential to winning in spheres ranging from the court of law to

the court of public and military opinion. This consistent and strategic presentation of fact was an essential complement to the emotional and political pressure that veterans and groups like SLDN and HRC exerted, often by sharing soldiers' stories on the airwaves, at the Capitol, and in the courts.

The pressure campaign became increasingly strident, broad-based and vocal in 2009 and 2010. In the latter year, it became clear that ENDA was stalled and that hate crime legislation was not enough of a delivery for President Obama, and that not only LGBT Americans but many in Obama's progressive base found it unacceptable not to chalk up a win on ending DADT. This was made even plainer with the December 9 failure to secure repeal as part of the defense spending bill, and when the President cut a deal with congressional Republicans to extend the Bush tax cuts, which further angered his liberal base, now clamoring for a progressive win (A. Berman, 2011).

The tactics deployed by GetEQUAL in March 2010 started months of direct action meant to pressure the White House and congressional Democrats to ensure the timely passage of repeal. The tactics, and their impact, have been debated since they began, as has the role of outsider disruptions in social movements throughout history. It would be impossible to conclude definitively that these tactics were responsible for moving repeal across the finish line in December 2010, and in the view of White House and HRC officials, a sound plan to secure repeal had been in place long before any of the outsider tactics raised their irritating voices.

What we do know, however, as laid out in these pages, strongly suggests a critical role for these pressure tactics. While the White House and its allies claimed the administration and others in Washington did not respond to pressure, White House staff routinely reached out to groups small and large when those groups became, or threatened to become, a nuisance.<sup>12</sup> The President, himself, was personally irked by the disruptions at his speaking events, which pressed him to raise questions to his senior staff about his approach to the issue and to gay voters. The President's deputy chief of staff, Jim Messina, was increasingly frustrated by his collapsing relations with LGBT groups and worried about alienating a vocal constituency, particularly since he hoped to run Obama's reelection campaign (Ambinder, 2010). HRC was concerned by the criticism it was taking from the LGBT community and decided late in 2009 to abruptly switch its lobbying and public education priorities to focus on repeal (Boland, 2011). The Pentagon, according to a senior official there, was feeling pressure from the media chorus of complaints, as well as legal challenges staring them down, and felt compelled to deliver some tangible progress toward softening or ending the ban. Finally, the White House called in gay groups and gay and progressive bloggers for a rare meeting with the President a week before the 2010 midterm elections, a time when the President has no time for anything that is not directly election-related. It was a strong signal that the administration had become

highly concerned by an enthusiasm gap among its base, and was persuaded that a victory on a gay issue was not only beneficial, but essential.

Neither the administration nor HRC ever publicly stated what the plan was, first promised in 2009, to ensure repeal before a GOP House takeover took it off the table indefinitely. But it seems certain what the plan was not: to accept a timetable dictated by the Pentagon that created a study group to give cover to moderate lawmakers that would be due in the final weeks of a lame-duck session of Congress; to back Sec. Gates' wish to delay a vote until then; to reverse that plan six months early amid pressure by Democratic congressional leaders and LGBT advocates by orchestrating a House vote well before the working group released its study; to lose twice on a cloture vote in the Senate that fall; to introduce an immediate stand-alone bill the next day using a rarely invoked tactic to bypass the regular debate process with days to go in the congressional session; and to drag repeal across the finish line the week before Christmas in a lame-duck session of nearly unprecedented legislative productivity (Franke-Ruta, 2010). That was not the plan.<sup>13</sup> As the President had said, success was a pleasant surprise, and it was one made possible by an unprecedented collective campaign of public pressure that held the government accountable to the people it serves.

## NOTES

1. Looking back through the lens of President Obama's dramatic 2012 announcement that he favored same-sex marriage, the gay blogger, Andrew Sullivan (2012), praised the President's evolutionary approach, expressing remorse for his own part in hazing the White House for its slow pace on ending DADT. "We were wrong," he wrote. The President made "the brilliant calculation" to move slowly and ultimately "outmaneuvered Republicans" to clinch victory just before the clock ran.

2. I also draw on 15 background interviews with key players who participated in the repeal effort. I guaranteed them confidentiality so they would feel free, at this early date, to share with me information they felt was critical to the story but that they might not be at liberty to discuss publicly.

3. Lt. Col. Allen Bishop, USA (ret.; 2010), names me as the figure who "perhaps began this line of reasoning" around 2004, referring to casting the argument for repeal in terms of efficacy rather than justice (p. 120). In singling me out, Bishop surely gives me too much credit; but he is correct that the framing was a conscious strategic decision (by me and others) in the years following the 2001 terrorist attacks (see Belkin, 2011).

4. In 1996, one poll found that 91% of liberals favored allowing gays to serve, while only 57% of conservatives did. A 2004 poll put the spread at 83% to 46% (Morales, 2009; Yang, 1999).

5. I served as an expert witness in the case. The other expert witnesses were Aaron Belkin, Elizabeth Hillman, Larry Korb, Robert MacCoun, Alan Okros, and Melissa Sheridan Embser-Herbert.

6. Note that it was not the don't ask, don't tell statute that granted this authority but 10 USC § 12305, a separate statute that overrides any mandate to discharge service members, saying, "Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty . . . , the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States." See 10 USC § 12305, Authority of President to Suspend Certain Laws Relating to Promotion, Retirement, and Separation.

7. Disclosure: I helped organize a fundraiser for Patrick Murphy's first Primary contest.

8. The charge against HRC was echoed in a piece by Michelangelo Signorile (2009) in which Aaron Belkin cited "many offices" on Capitol Hill claiming that gay rights groups were "lobbying against consideration" of repeal at this time.

9. Six sources among my background interviews cited Sec. Gates as the figure who was in control of the timeline through his leverage as head of the Pentagon, whose support most advocates and politicians believed was crucial for repeal.

10. I was among those meeting with the President on October 26, 2010.

11. Organizing for America, the administration's outfit for mobilizing support for its legislative agenda, had swung into action for repeal only around Thanksgiving of 2010 (Geidner, 2010a). The White House said the President telephoned Sen. Carl Levin in November to discuss passing the National Defense Authorization Act with don't ask, don't tell repeal attached, at which point it had the opportunity to recount additional phone calls (Eleveld, 2010d).

12. In addition to GetEQUAL, other repeal advocates received White House emails at key moments in their public advocacy asking about their concerns and sometimes asking them to hold their fire.

13. SLDN's Aubrey Sarvis said in a 2011 interview, "I don't care what anyone says, no one had a secret plan to have two votes in the lame-duck session after the Democrats have lost control of the House." He believed a number of the President's advisers were content to delay repeal beyond 2010, a point corroborated by a Senate staffer who recalls that "The White House staff had to be dragged kicking and screaming the whole way toward repeal" (Hirshman, 2012).

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