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BLUEPRINTS FOR SOUND PUBLIC POLICY

## HERE TODAY, GONE TOMORROW WHY THE US MILITARY'S TRANSGENDER BAN UNRAVELED SO QUICKLY

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## Executive summary

- Social justice campaigns can span generations, and when organized efforts to persuade the Pentagon to lift its transgender ban began in earnest in 2013, significant obstacles prompted some advocates to anticipate that inclusion would take decades to achieve.
- At the outset of the campaign in 2013, obstacles to lifting the ban included a lack of public support; difficulty in identifying currently-serving or recently-discharged transgender service members able to serve as spokespersons; an unfriendly Congress; a small advocacy community; and a Pentagon tradition of foot-dragging in the areas of minority inclusion and nondiscrimination.
- However, in a span of just two years from the summer of 2013 through the summer of 2015, the military made several regulatory changes that partially dismantled its transgender ban, and in July 2015, Defense Secretary Ashton Carter created a working group to study how to repeal the ban.
- Four factors explain why, given that the inclusion of gays and lesbians, African Americans and women in the military required generations, the Pentagon's transgender ban unraveled so quickly.
  - The removal of the ban on women in combat means that whether or not a service member is qualified to do a job depends on merit, not gender, and that gender transition will not automatically require transgender service members to change jobs.
  - A lack of opinion leadership opposed to the inclusion of transgender personnel has prevented the issue from becoming a new battleground in the culture wars.
  - The repeal of DADT put opponents who predicted disaster on the defensive; increased the military's confidence that inclusive policy can be implemented smoothly; discredited the "unit cohesion rationale," the principal argument that opponents of inclusion had offered to make their case; and enabled openly gay and lesbian allies throughout the military to support transgender inclusion.
  - Effective advocacy strategies humanized the issue for journalists and the public at large; proved that transgender service works; and publicly discredited the primary justification for the ban.
- The partial dismantling of the ban has improved the lives of transgender personnel somewhat, but full repeal is required if transgender personnel are to be able to obtain medically necessary health care and to stop serving in silence. Transgender troops will not be safe until inclusive policy takes effect, and opponents signal that they will not attempt to reinstate the ban.

## A surprising puzzle

It is well known among scholars and activists that social justice movements can take a very long time, particularly when they involve efforts to roll back military discrimination. The Army Nurse Corps was founded in 1901, and the 13,000 women who joined the US Navy during World War I became the first women in American history “to be admitted to full military rank and status.”<sup>1</sup> But it took another century for Defense Secretary Ashton Carter to announce on December 3, 2015 that all military positions would be open to women. During that long span, the integration of women in the military proceeded in fits and starts. The Women’s Army Auxiliary Corps was formed in May 1942, but the first women Cadets were not admitted into West Point until 1976. In 1993, the Pentagon finally allowed women to fly in combat missions, but women did not serve on submarines until November 2011. The military formed an official advisory committee on women’s issues in 1951, and a non-profit organization, the Women’s Research & Education Institute, was established in May 1977 and would later become a powerful voice advocating for women in the military.<sup>2</sup> This was a long campaign.

The inclusion of open gay men and lesbians in the military took a long time as well. President Obama signed legislation authorizing the repeal of “don’t ask, don’t tell” (DADT) in 2010, and the law was finally overturned on September 20, 2011. But that civil rights victory took generations to achieve. George Washington drummed a soldier out of the Continental Army for sodomy in 1778, but advocates did not demand equality for another 183 years, at least on an organized basis. Individuals took brave steps in the interim, such as Captain Charity Adams’s refusal to obey a World War II directive to “be alert to homosexual activity” in her unit.<sup>3</sup> But it was not until 1961 that Frank Kameny decided to protest military policies barring gay men and lesbians. Kameny, an astronomer fired by the Army Map Service in 1957 for homosexuality, would picket in front of the White House over the next several years with signs that included: “Homosexual Citizens Want to Serve Their Country Too.” In May 1975 Leonard Matlovich sued the military in an effort to reverse his discharge for homosexuality, and *Time Magazine* featured him on its cover. In September 1991, presidential candidate Bill Clinton promised David Mixner, a leader in the gay community, that he would lift the military’s ban if he were to win the election.<sup>4</sup>

Regardless of where one pegs the starting point of campaigns to include women and gays and lesbians in the armed forces, it is clear that reversing military discrimination takes a very long time. And the same can be said about military discrimination against other minority communities such as Filipinos and African Americans. Achieving equal status with straight, white, Christian service members can take generations. With one exception.

Kristin Beck served as a US Navy SEAL from 1991 to 2001. Beck, whose birth name was Christopher, is a transgender woman who served as a man, having delayed her gender transition until after she completed her military service. In March 2013, she posted a photo of herself as a woman on her LinkedIn profile, and in June 2013, the media gave extensive coverage to a new book about her life. CNN even produced a documentary film about her, narrated by Anderson Cooper and released in 2014.<sup>5</sup> It is not

an overstatement to say that Beck introduced the American public to the issue of transgender military service. Before her story broke, there was little public discussion of military regulations that prohibit anyone who has modified their genitals or who has a transgender identity from joining the military, and that required commanders to fire any transgender service member whose identity was discovered after enlistment. Between January 1, 1992, when Bill Clinton's presidential campaign was in full swing, and June 1, 2013, just before Kristin Beck's story broke in the media, there were 10,990 articles in major American newspapers about gay/lesbian service members or veterans, but there were only 18 stories that mentioned transgender service members or veterans.<sup>6</sup> While three transgender service members sued the Pentagon to challenge the military ban in 1981, 1987 and 2007, and a few groups in the LGBT community had been gearing up to address the ban after the fall of DADT, it is not an exaggeration to say that the campaign to repeal the military's ban on transgender service did not attract much notice, and for all intents and purposes did not even begin, until the media broke Kristin Beck's story in June 2013.

Subsequently, in a period of just two years, the military made three regulatory changes that constituted the partial dismantling of the ban. In August 2014, the Pentagon quietly eliminated its categorical, Department-wide requirement that each Service discharge transgender personnel, and it established new rules requiring the Services to demonstrate, if they opted to continue to fire transgender troops, that transgender identity compromises fitness. In March 2015, the Army announced an interim policy making it more difficult to discharge transgender service members, marking the first time in American history that a Service modified policy in the direction of allowing transgender personnel to serve. And on July 13, 2015, just two years after the media coverage of Kristin Beck's story, Defense Secretary Carter announced a new, Department-wide policy making it more difficult to fire transgender personnel, in effect placing a moratorium on discharges. At the same time, he announced that he would establish a working group to spend six months studying the Pentagon's ban, and that the working group's starting premise would be that transgender personnel should be allowed to serve openly unless "objective, practical impediments are identified."<sup>7</sup>

Finally, in June 2016, the media reported that Secretary Carter would announce the lifting of the ban on July 1.<sup>8</sup> [Author's note: at the time of writing, the new policy has not yet been announced.] Given the generations it took to dismantle discrimination against gay men, lesbians, women and African Americans in the military, and even if opponents of inclusive policy fight back and succeed in reinstating the ban, it is important to ask how and why the campaign to allow transgender personnel to serve openly has achieved its aims so quickly.

### **Obstacles to inclusive policy**

As the LGBT community ramped up efforts on behalf of transgender service members in 2013, I told a donor that it could take 5 to 15 years to convince the Pentagon to lift the ban. There was really no way to know in advance how long the campaign would take, and "5 to 15" was really a numerical way of saying that while it may have been

impossible to specify how long it would take to do this work, I was all but certain that it would take a very long time, and that donors should have very low short-term expectations.

My principal medium-range goal as the Palm Center and other groups launched their campaign was to draw enough public and media attention to the issue that the candidates for President in the 2016 election would be asked about their views during the primaries. My logic was that primary elections are typically low-turnout affairs, and only the most motivated voters show up at the polls.<sup>9</sup> This means that during the primary season, Republican candidates must appease the party's conservative wing while Democratic candidates must play to their progressive base. And that base includes LGBT voters. Which means that during the primary season, each Democratic aspirant typically tries to stand out by seeming more pro-LGBT than the other contenders. My sense was that if a Democratic candidate were asked about transgender military service during the primary season, they would have no choice but to support it. And that rhetoric might lock them in, or at least provide a useful tool to leverage, should they win the general election and become President. Yet during this period at least three big obstacles stood in the way of repeal: public opinion; the balance of power between the White House, Congress, military and LGBT community; and cultural dynamics inside the military.

*(a) Public opinion*

The first and perhaps most formidable barrier was public opinion. In general, the American public was not virulently anti-trans in 2013. But it was not supportive either. Large majorities told pollsters that transgender Americans deserve equal rights and protections available to other citizens. But support for legal protections was skin deep, and most people did not feel strongly about it. As well, there was little public understanding of gender identity. Few people knew a transgender colleague, friend or family member, and there were few transgender icons in popular culture.<sup>10</sup> For many Americans, the lack of familiarity was just that: a source of confusion perhaps, but not much more. For many others, however, confusion was intertwined with a sense of bewilderment and mistrust, and a profound sense of confusion as to how and why someone might not identify with the sex that they were assigned at birth.

Closely related to the absence of strong public support for the repeal of the military ban, the military was discharging very few transgender service members each year, which meant that it would be difficult if not impossible to identify spokespersons to illustrate the costs of the policy to journalists. In the nearly two-decade campaign to repeal DADT, advocates successfully explained the costs and dangers of discrimination by publicizing stories of heroic lesbian and gay service members who had been vital to the war effort, but who were fired for homosexuality. For example, advocates brought considerable media attention to Victor Fehrenbach, a decorated fighter pilot who the military spent \$1 million to train, and who was fired when he acknowledged his sexual orientation while defending himself against a false accusation of sexual assault.<sup>11</sup> The numbers ebbed and flowed, but on average, the military discharged approximately 800 gay and lesbian service members each year under DADT.<sup>12</sup>

Under DADT, advocates had successfully pressured Congress to pass a bill requiring the military to report exactly how many service members it fired each year for homosexuality. In the case of transgender military service, however, no one knows how many personnel are discharged each year, as the Pentagon does not keep track of the total. Allyson Robinson, Policy Director of Sparta, a network of several hundred currently-serving transgender personnel, estimated in 2014 that the military was firing approximately two dozen transgender service members each year. But Bridget Wilson, one of the top experts in the country in the legal defense of LGBT military personnel, stated in a 2013 email that, “I have seen a few [transgender discharges] over the years, probably less than 20 in the past 20 years that were clearly TG [transgender.]”<sup>13</sup>

The Palm Center submitted a Freedom of Information Act Request to try to obtain more precise data from the Pentagon, and a FOIA officer explained in response that the military could not respond to the inquiry because the armed forces do not keep track of the data. Although the military sometimes drags its feet in responding to reasonable FOIA requests, the reply was credible in this case, as there is no required separation code for being transgender. Thus transgender service can be rendered invisible by the vague language of discharges made for the “convenience of the government” based on “conditions and circumstances” assumed to interfere with duty.<sup>14</sup>

Indeed, advocates could not even determine how many people had been denied enlistment for being transgender. The military was able to report in response to a Palm Center Freedom of Information Act request that in 2013, there was 1 applicant who was prohibited from enlisting for “psychosexual dysfunction,” 1 for “dyspareunia [a sexual pain disorder] not due to a general medical condition,” 1 for “fetishism,” 1 for “sexual sadism,” one for “frotterism,” 5 for “paraphilia not otherwise specified,” 510 for “testicles undescended,” and 26 for “pseudohermaphroditism, or pure gonadal dysgenesis.” But the rule that has prohibited transgender individuals from enlisting in the military is worded in a confusing way: An applicant is disqualified if he or she manifests a “[c]urrent or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias.” My Palm Center colleagues learned that in 2013, 1 person had been denied enlistment for that broadly-worded reason. But it is impossible to determine whether that individual was transgender. As well, the military reported that it had prevented 26 people from enlisting due to a “[h]istory of major abnormalities or defects of the genitalia such as change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis,” but there is no way to determine how many, if any, of these individuals were transgender.

The bottom line is that the military was likely prohibiting very few transgender individuals from joining the military on the basis of their gender identity, and was also firing very few currently-serving personnel for being transgender. Research shows that the ban is an arbitrary and counterproductive policy for a host of reasons, but not because of any widespread practice of firing transgender personnel. The low number of discharges presented a problem for advocates, because it would be difficult to identify

spokespersons who could illustrate the costs and dysfunction of the ban by discussing personal stories with reporters.

A final public-opinion-related obstacle was that the groups working on the nearly two-decade campaign to repeal DADT made a conscious decision to downplay discussion of transgender military service during that campaign. As a result, there had been very little discussion or education about the issue among the many journalists, policy analysts, opinion leaders, politicians and military personnel involved in DADT repeal. The main organization working on DADT repeal, Servicemembers Legal Defense Network (SLDN), had a transgender board member, Paula Neira, a graduate of the US Naval Academy who has served as a powerful and eloquent spokesperson for transgender military service. And the Palm Center, another group working on the repeal of DADT, commissioned two academic studies on transgender military service during the aughts.

For the most part, however, DADT repeal advocates remained silent about transgender issues for two reasons. First, DADT was spelled out in Congressional statute, meaning that only Congress or the courts could get rid of it. The Pentagon's ban on transgender personnel, however, is contained in a set of DOD regulations, not a law. And that means that the Commander in Chief or Secretary of Defense can overturn it with the stroke of a pen. Especially given the current stagnation in Congress, regulations are much easier to get rid of than laws. And DADT repeal advocates were afraid that if they elevated the profile of the transgender issue, opponents in Congress would enact the transgender ban into law.

Second, DADT repeal advocates were well aware that ending the gay ban would require the approval of 60 Senators, including conservative Democrats and/or Republicans. As well, advocates knew that their success depended on convincing military brass that allowing gays and lesbians to serve openly would not harm the military. With hindsight, that does not seem like a tough sell. But when DADT was enacted into law, former Chairman of the Joint Chiefs of Staff Colin Powell had helped convince the nation that allowing gays and lesbians to serve openly would undermine the military. As advocates gradually disproved and undercut that idea in the court of public opinion over time, they did not want to make themselves seem too radical. And they believed that if they discussed transgender service during the campaign to repeal DADT, it would be easy for opponents to dismiss them as "San Francisco radicals."

Indeed, even though repeal advocates spent very little time discussing transgender service, the lead opponent of DADT repeal, Elaine Donnelly, referred to the DADT-repeal bill that was under consideration in Congress as the "LGBT law." She said, "Repeal and replacement with the proposed 'LGBT Law' for the military, implementing the agenda of lesbian, gay, bisexual and transgendered groups who endorsed President Obama's campaign, would make military life even more difficult and dangerous."<sup>15</sup> She was trying to make DADT repeal seem radical by suggesting that its elimination would allow transgender personnel to serve openly. Part of the reason she failed is that advocates had deprived her of ammunition by declining to discuss transgender military

service during the nearly two-decade campaign to repeal DADT. So, we had not prepared the public or opinion leaders to consider the issue.

*(b) Balance of power among White House, Congress, Military & LGBT groups*

In addition to public-opinion-related obstacles, the balance of political power in Washington did not seem to be in advocates' favor when they first turned their attention to the transgender ban. The GOP had a solid majority in the House, and the Democratic hold on the Senate seemed quite wobbly and was clearly at risk of disappearing in the 2014 midterm elections. President Obama was entering the sunset years of his time in office, and while the President ended up achieving many accomplishments in 2015 and 2016, presidential power tends to decline with time, peaking in the early years of an administration and diminishing steadily as administrations approach their end. So advocates expected Congress to be hostile, and some feared that the White House would not have much political capital to spare.

The other power-related factor to consider was that the groups working on transgender military service were quite small. The Human Rights Campaign and American Civil Liberties Union were by far the largest, and their contributions have been outstanding. At the same time, while other highly effective organizations such as the National Center for Transgender Equality, National Center for Lesbian Rights, American Military Partners Association, Outserve-SLDN and Transgender Law Center would make valuable contributions as well, none of these organizations had the resources to dedicate much staff time to the issue on a consistent basis, or to specialize in military policy. Sparta, the network of several hundred currently-serving transgender troops, would prove to be invaluable, as discussed below. But Sparta had no paid staff, no office space and almost no money. The Palm Center was the one organization with a paid staff fully dedicated to the issue of transgender military service, but our annual budget of approximately \$700,000 is tiny in comparison to most research institutes and social justice organizations. When one considers that the groups working on marriage equality spent more than one hundred million dollars, it becomes clear that the network of groups working on transgender military service was quite small.<sup>16</sup>

*(c) Military culture*

A third and final obstacle involved military culture and dynamics inside the Pentagon. The US armed forces have never made inclusive policy easy to achieve, and they always have to be dragged kicking and screaming across the line of nondiscrimination. This has been the case with women, African Americans, gays and lesbians, Asian Americans and other groups as well.<sup>17</sup> Books have been written on this point, and without dwelling on details here, the recent spat between the Commandant of the Marine Corps and the Secretary of the Navy illustrates the difficulty. Women have served officially in the military for more than a century, but it wasn't until January 2012 that the administration announced that the military would eliminate its remaining job restrictions that prevented women from serving in ground combat positions. The Services dragged their feet, and more than three years later, the exclusions were still in place. In late 2015, the Marines

released a study ostensibly showing that gender-integrated units would fare worse in combat than men-only units. The problem? The Marines had cherry-picked the data and relied on flawed research design that was biased against successful integration. The civilian Secretary of the Navy took the rare step of chastising the Marine Corps Commandant's position in public, and then on December 3, 2015, Defense Secretary Ashton Carter ordered that all exclusions be eliminated.<sup>18</sup> In a highly visible snub that illustrates how tenuous civilian control of the military can be, the Chairman of the Joint Chiefs of Staff declined to appear alongside Carter when he made his announcement.<sup>19</sup>

Tension between political appointees and permanent staff is common in government agencies, but the military is different because Pentagon brass have a great deal of power over the civilians who are ostensibly their bosses.<sup>20</sup> That power derives in large part from the public's glorification of the military, which means that the top Generals and Admirals are taken very seriously when they testify in Congress and speak to reporters. And because they are presumed to have unique expertise that could be vital to the nation's defense, it can be difficult for civilians to exert control. In the case of the transgender ban, advocates knew that the Obama administration has been the most LGBT-friendly in US history, and that as the White House's representatives in the Pentagon, the Secretary of Defense and the civilians who report to him likely would support transgender repeal. But they also expected the Service Chiefs to be strong opponents, and to have a lot of options to block repeal if they chose to take a stand.

So, looking forward from the vantage point of the 2013 ramping up of efforts to repeal the military's ban, I worried about public opinion and our inability to change it; the balance of power between the GOP-led House, a weakening White House, and a tiny advocacy community; and the Pentagon's well documented and perhaps unparalleled ability to obstruct, particularly with regard to the inclusion of minority personnel.

As if that were not enough, Chelsea Manning's attorney announced on August 22, 2013 that his client is female.<sup>21</sup> (Previously, Manning's first name was Bradley). Manning, who was sentenced to 35 years in prison for leaking documents about US military misconduct in the wars in the Middle East, was a hero to some and a traitor to others. To put it mildly, among military audiences, Manning was not a hero. Manning was so toxic with military audiences that some advocates of repealing the transgender ban were afraid that she would become the permanent face of the movement, and that transgender military service would be conflated in the public's mind with treason..

For all of these reasons, when people inquired in 2013 how long it would take to persuade the military to lift the ban on service by transgender personnel, I sometimes responded, "5 to 15 years."

### **Explanation: why the ban unraveled**

Here I argue that four related but distinct factors contributed to the rapid pace of the ban's demise: removal of the combat exclusion rule against women, lack of anti-transgender

opinion leadership at the federal level, momentum from DADT repeal, and effectiveness of advocacy strategies.

*(a) Removal of the Combat Exclusion Rule against women*

Defense Secretary Ashton Carter announced on December 3, 2015 that all military jobs would be open to women. Although the announcement came late in the Obama administration's second term, military leaders could read the writing on the wall for at least three years, as former Defense Secretary Leon Panetta foreshadowed the change in January 2013, shortly after the President's second inaugural address.<sup>22</sup> Thanks to the elimination of the rule, women are able to serve in the infantry as well as elite special forces such as Army Rangers and Navy SEALs, which is unprecedented in American history.

While the debates over women and transgender personnel in the military are quite distinct, there are nonetheless important connections between the conversations, and the expectation of the combat exclusion rule's elimination during the past several years arguably paved the way for removal of the transgender ban. When Pentagon leaders oppose inclusive policy for minority groups, they have often pointed to administrative burdens and complications that would follow from integration. Because of the deference accorded to Pentagon brass, such concerns have justified delays of years and even decades. The military can drag its feet, in other words, by complaining that inclusive policy will impose administrative burdens that distract commanders from accomplishing their missions.

In the case at hand, the military will define every transgender service member who undergoes gender transition as a woman either before or after the transition, thus putting them on the wrong side of the combat exclusion rule. This means that if the combat exclusion rule were still in place, complicated questions involving duty assignment and occupational specialty would be implicated as soon as the Pentagon allowed personnel to undergo gender transition. For example, if a Navy SEAL whose assigned sex at birth was male underwent gender transition during their military career, would they still be allowed to serve in the special forces after the transition? And if so, what physical standards would apply? In fact, there is a straightforward answer to this question, and other military forces that have allowed transgender personnel to serve have maintained some job restrictions on service by women personnel.<sup>23</sup> That said, if the combat exclusion rule remained in effect, military leaders would be able to blow these concerns out of proportion, and insist that allowing transgender service would pose grave and burdensome complications involving duty assignment and occupational specialty. With the rule's removal, these concerns are off the table as a possible basis for delay or obstructionism.

As well, there is a critical symbolic connection between the removal of the combat exclusion rule and the possibility of service by transgender personnel. In particular, the end of gender-based combat exclusion is premised on the notion that job standards should differ by occupational specialty, not by gender, and that anyone who meets the standards

associated with a particular job should be allowed to do that job. The idea, to take one hypothetical example, is that if all members of infantry units are required to be able to carry an 80-pound backpack, this standard should apply equally to men and women. The standards for any job, in other words, should be gender-neutral, should be tailored to the requirements of that job, and should apply to anyone who seeks to serve in that capacity.

While this idea may seem like common sense, military brass have refused to accept it for decades, and have put up a strenuous fight in defense of the idea that gender itself ought to be a job qualification for certain positions, in addition to ability to do the job. With the elimination of the combat exclusion rule, the Pentagon has been compelled to embrace or at least tolerate the idea that job standards for men and women should be the same. While grooming, uniform, and physical fitness standards still differ by gender, the much more critical question of job standards will be answered in a gender-neutral way. To the extent that the military manages service members as people rather than as men or as women, this helps pave the way for transgender military service, because if men and women have to follow the same rules and are held to the same standards, then it should not matter if a service member is a man or a woman. That idea is at the core of what the military must accept to make transgender military service work.

A final, related point about women in combat involves concerns about mixed genitalia in showers and sleeping quarters, and the fact that some transgender individuals who undergo gender transition do not have surgery. The fact that gender transition does not always involve surgery means that after the lifting of the ban, some male service members will have vaginas while some female personnel will have penises. Opponents of transgender service have objected to the possibility of “penises in women’s showers,” in other words that transgender women with penises cannot and should not live with non-transgender women. Opponents continue to voice such concerns, but the country has just fought two, long wars in which men and women lived together in deployed settings, and close living circumstances of men and women in ground combat are all but inevitable. Now that every occupational specialty is open to all service members regardless of gender, it is more clear than ever that military personnel in combat are going to have to make practical accommodations of privacy whether or not transgender people are present. And this new reality has taken some of the air out of anti-transgender concerns about mixed genitalia in living quarters.

*(b) Lack of opinion leadership opposing repeal*

When President Bill Clinton tried to compel the Pentagon to lift its ban on gay and lesbian service members, he faced an overwhelming coalition of Republicans, conservative Democrats, military leaders, traditional values NGOs, and evangelical and fundamentalist churches.<sup>24</sup> This coalition was aggressive. Religious and civilian leaders loudly complained that the President’s plan meant that the country was falling apart, that Christians and Christian values were under assault, and that God would punish America. To them, the gays-in-the-military debate was not just a contest over public policy, but rather a much more fundamental struggle over the direction of the nation. They rallied millions of supporters who made phone calls and sent letters to Congressional offices.

According to my colleague Dr. Nathaniel Frank, “Even before Clinton’s inauguration in January 1993, [Reverend Jerry] Falwell began a ‘dial-a-lobby’ operation, using his *Old-Time Gospel Hour* program to generate 24,000 signatures on a petition against gay service in a matter of hours. As a result, the week after the inauguration, Congress was besieged with 434,000 phone calls in a single day, overwhelmingly from those against letting gays serve. The number of calls was more than five times the daily average of 80,000.”<sup>25</sup> Traditional values groups such as the Family Research Council reported that the gays-in-the-military debate was one of their largest fundraising bonanzas ever.

Political scientists disagree over the extent to which political leaders shape or reflect public opinion, and the answer seems to depend on the particular context.<sup>26</sup> In some cases, the public does not have strong views of its own unless and until opinion leaders frame the conversation in the media. In others, public opinion is so strong that the elite must follow public preferences, and have little if any leeway to shape public views. In the case at hand, it is fairly clear that before Bill Clinton raised the issue of gays and lesbians in the military in his presidential campaign, members of the public did not think about that issue often, if ever, and that the strong opinions pollsters registered in 1993 reflected, to a large degree, concerns that had been stoked by opinion leaders on both sides.

In the case of transgender military service, by contrast, there has been little if any organized opinion leadership opposing inclusive policy. It is true that Senator James Inhofe as well as two GOP candidates for President, former Arkansas Governor Mike Huckabee and Senator Ted Cruz, said in 2015 that transgender individuals should not be allowed to serve in the military.<sup>27</sup> But there has been no organized effort to whip up the conservative base, or to turn the issue into a battle in the culture war. If anything, GOP leaders probably made an explicit decision not to discuss the issue. While there are no doubt a number of local and statewide initiatives to roll back or oppose LGBT rights, such as the recently successful campaign to defeat the Houston Equal Rights Ordinance, and the ongoing controversy around North Carolina’s effort to force transgender individuals to use the bathroom corresponding to their birth gender, it seems that the GOP has made a calculation that at the federal level, opposing LGBT rights is a losing proposition, perhaps because the public’s increasingly pro-LGBT slant makes opposition look mean-spirited.<sup>28</sup>

When Indiana tried in the spring of 2015 to pass a version of the so-called Religious Freedom Restoration Act (RFRA) that would have legalized anti-LGBT discrimination, a fierce national backlash forced the state to include explicit protections for LGBT citizens in the bill.<sup>29</sup> This is in contrast to previous battles in the culture war such as Karl Rove’s brilliant and aggressive use of statewide anti-gay-marriage bills to mobilize Republican turnout for the 2004 presidential election.<sup>30</sup> When Presidential candidate Jeb Bush said in July 2015 that he is open to transgender military service, he was widely seen as a GOP front runner.<sup>31</sup> Such a reaction would have been absolutely unimaginable in previous presidential election cycles. There have, no doubt, been a few exceptional instances in which the GOP has taken a stand on LGBT issues, including its recent thwarting of the Maloney amendment in the House, but these exceptions are rare.<sup>32</sup>

The GOP, in short, has deliberately declined to provide opinion leadership on the transgender military issue, and the Obama administration has read that signal loud and clear, and exploited it to maximum advantage. Politicians who reward a certain constituency group sometimes coast on the reward for some length of time, because they calculate that since they have recently promoted the well-being of the particular group, they should spend their precious and limited political capital rewarding other communities. After the backlash against the Indiana RFRA, one could imagine that the Obama administration would have stayed silent on LGBT issues for a short while, or at least would have downplayed its pro-LGBT accomplishments. The administration seems to have calculated, however, that the Indiana backlash signaled the GOP's broad retreat from anti-LGBT rhetoric and initiatives in the culture war, at least at the federal level, and just a few days after the Indiana debacle, the President called for the end of conversion or reparative therapies targeted at LGBT youth.<sup>33</sup>

One interesting coda to the discussion about the lack of opposing opinion leadership is that growing public acceptance of transgender individuals does *not* seem to be part of the story as to why the military's transgender ban is crumbling so much faster than DADT. It is certainly the case that public awareness of transgender people and issues has increased over recent years thanks in part to popular television programs such as *Transparent*, *Orange is the New Black*, and *TransAmerica*. *Time Magazine* published a widely-read, May 2014 cover story titled, "The Transgender Tipping Point," with a photo of Laverne Cox on the cover. Jennifer Finney Boylan is a regular contributor to the *New York Times* op-ed page. And Caitlyn Jenner's April 2015 coming out drew intense public interest. All that said, and even though public acceptance of transgender individuals increased by approximately 38% between 2005 and 2011, it seems to have leveled off since then.<sup>34</sup> Acceptance of gay men and lesbians has been considerably higher than acceptance of transgender people. Thus, it cannot be the case that public acceptance explains why the transgender ban has crumbled faster than DADT.

Rather, it seems more plausible to posit that by the beginning of President Obama's second term in office, public acceptance of transgender people was high enough to make it politically safe for officials to accelerate the pace of policy and legal change. As federal and state officials delivered more and more policy victories, politicians gained confidence that they would not be punished at the polls, and over time, conservatives became less likely to resist. Simultaneously, with the recent repeal of DADT and the post-*Windsor* anticipation of victory in the struggle for marriage equality, national LGBT organizations such as the Human Rights Campaign came to place an even greater emphasis on transgender rights. Thus, as far as public opinion goes, the quick demise of the military's transgender ban is not a function of high public acceptance of transgender people, but rather the combination of high-enough public acceptance and the lack of GOP opposition.

*(c) Momentum from DADT repeal<sup>35</sup>*

In September 2012, one year after the repeal of DADT, a group of scholars including military professors from the US Military Academy, US Naval Academy, US Air Force Academy and US Marine Corps War College released a study assessing whether repeal

had compromised the military.<sup>36</sup> The twelve findings of that study, titled *One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness*, are reprinted in their entirety in Appendix A, but the key conclusion was that “the repeal of DADT has had no overall negative impact on military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale.” The study authors knew that their results would be scrutinized, and they wanted to bend over backwards in their search for negative consequences so that no one could accuse them of doing a shoddy job or overlooking evidence that they should have found. So, in order to maximize the likelihood that they would find evidence that repeal had compromised readiness, the professors used ten distinct research strategies, listed in Appendix B, to answer that question.

Of those ten research strategies, one consisted of outreach to 553 out of the 1,167 retired Generals and Admirals who had signed a 2009 statement claiming that DADT repeal “would undermine recruiting and retention, impact leadership at all levels, have adverse effects on the willingness of parents who lend their sons and daughters to military service, and eventually break the All-Volunteer Force.”<sup>37</sup> These 1,167 Generals and Admirals represented the very top of the nation’s military expertise, and included a retired Chairman of the Joint Chiefs of Staff as well as six retired Service Chiefs. To warn that something will “break the All-Volunteer Force” means that it will compromise the security of the United States. Elaine Donnelly, President of the Center for Military Readiness, confirmed that the retired Generals and Admirals were not exaggerating: “The flag and general officers for the military, 1,167 to date, 51 of them former four-stars, said that this law, if repealed, could indeed *break* the All-Volunteer Force. They chose that word very carefully. They have a lot of military experience... and they know what they’re talking about.”<sup>38</sup>

These predictions of disaster were par for the course, as concerns about readiness and cohesion served as the most fundamental and significant rationales for barring LGB troops from serving openly.<sup>39</sup> When former President Bill Clinton tried to compel the Pentagon to allow open service, opponents insisted that doing so would compromise readiness. According to an influential 1993 report by a Pentagon-appointed “Military Working Group” (MWG) comprised of a General or Admiral representing each Service branch, “The presence in the military of individuals identified as homosexuals would have a significantly adverse effect on... the readiness of the force.”<sup>40</sup> More recently, just prior to the repeal of DADT, concerns about unit cohesion played a prominent role in the debate over whether Congress should overturn it. General James Amos, Commandant of the Marine Corps, said in 2010 that, “There is nothing more intimate than young men and young women—and when you talk of infantry, we’re talking about our young men—laying out, sleeping alongside of one another and sharing death, fear and loss of brothers... I don’t know what the effect of [repeal] will be on cohesion. I mean, that’s what we’re looking at. It’s unit cohesion, it’s combat effectiveness.”<sup>41</sup>

Following the repeal of DADT, the authors of the *One Year Out* study wanted to contact as many as possible of the retired Generals and Admirals who had predicted that repeal could “break” the military. They were able to obtain contact information for 553 of the

1,167 signatories, and six months after the repeal of DADT, sent them letters requesting interviews. The authors received responses from 13 retired Generals and Admirals, interviewed 11 of those who responded, and received a written statement from two, both of whom declined a request for additional commentary. None of the retired Generals or Admirals who responded by phone or letter knew of any evidence that repeal had harmed the military. One said that, “I believe evidence is growing that substantiates my initial concerns,” but he declined to elaborate or provide details. None of the others reported any evidence suggesting that the new policy had compromised readiness. One retired Lieutenant General told the study authors that he “had not heard anything or received anything from anyone about having any problems.” A retired Brigadier General said that a friend’s son who is a company commander in Afghanistan told him, “I don’t pay any attention to it. It’s not really an issue.” Another said that there was no indication of any major impact as of yet: “The general perception is that it seems to be working.” Yet another said that he remains opposed to repeal because “homosexual behavior is abnormal,” but he was “not aware of anything positive or negative that has happened.”<sup>42</sup>

It was a big deal that professors from the US Military Academy, US Naval Academy, US Air Force Academy and US Marine Corps War College concluded on the basis of ten research strategies that DADT repeal had had no negative effect on the military, and their findings called into question the expertise and judgment of those who had predicted doom. A few days after the publication of the *One Year Out* study, the *New York Times* ran an editorial that began as follows: “As the country approaches the first anniversary of the repeal of “don’t ask, don’t tell” on Sept. 20, politicians and others who warned of disastrous consequences if gay people were allowed to serve openly in the military are looking pretty foolish. The inaccuracy of their gloomy predictions was underscored last Monday with the publication of a detailed study of the repeal’s impact... [that] concluded that ending don’t ask, don’t tell — and its policy of dishonesty and concealment — has had ‘no overall negative impact on military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale.’”<sup>43</sup> A search of *New York Times* editorials over the past 5 years revealed 70 uses of the word “foolish.” But with only one other exception, there were no other instances in which *Times* editors wrote that people are foolish. The editors referred to ideas, beliefs, plans and claims as foolish, but not people. So, for the editorial page to say that “politicians and others who warned of disastrous consequences if gay people were allowed to serve openly in the military are looking pretty foolish” is strong language.

Momentum from DADT repeal has paved the way for the dismantling of the transgender ban because the opponents of transgender military service are, for the most part, the same people who opposed service by gay men and lesbians, and they have been discredited, and seem to have recognized their loss of leverage. The Pentagon has acquired newfound confidence in its ability to implement inclusive policy without problems. And the principal argument and frame that opponents of inclusion used to make their case, the so-called “unit cohesion rationale,” is toxic inside the Pentagon, such that anyone who claims that inclusion of a prohibited minority group will undermine cohesion runs the risk of being marginalized as “foolish.” Indeed, when the Commandant of the US Marine Corps tried to claim that allowing women to serve in all occupational specialties would

undermine cohesion, the civilian Secretary of the Navy took the rare step of criticizing his position in public.<sup>44</sup>

As well, the military community is now full of openly gay and lesbian allies who are serving with distinction, and who advocate internally for the lifting of the transgender ban. To take one example, Ashton Carter visited US troops stationed in Kandahar, Afghanistan on February 22, 2015, just five days after being sworn in as the new Defense Secretary. During his visit, he took questions from service members, and Lieutenant Commander Jesse Ehrenfeld, an openly gay Navy officer, asked him, “What are your thoughts on transgender service members serving in an austere environment like this here in Kandahar?” Carter’s response made international news: “I come at that from a fundamental starting point. It’s not something I’ve studied a lot since I became secretary of defense. But I come at this kind of question from a fundamental starting point, which is that we want to make our conditions and experience of service as attractive as possible to our best people in our country. And I’m very open-minded about -- otherwise about what their personal lives and proclivities are, provided they can do what we need them to do for us. That’s the important criteria. Are they going to be excellent service members? And I don’t think anything but their suitability for service should preclude them.”<sup>45</sup> Ehrenfeld would go on to play a leading role in convincing the American Medical Association to pass a resolution stating that there is no medically valid reason for firing transgender personnel from the military.

Indeed, openly gay and lesbian members of the military community, like Ehrenfeld, are playing key roles in the campaign to lift the transgender ban, both behind the scenes and in public. Eric Fanning serves as the openly gay Secretary of the US Army, and Fanning has called publicly for the lifting of the ban.<sup>46</sup> Brigadier General Tammy Smith is the first openly-serving lesbian General Officer and Brigadier General, and Randy Taylor is the first openly-serving gay General Officer in the history of the US military. Because they are currently-serving officers, Smith and Taylor cannot openly advocate for changing policy. But within the context of appropriate protocol, they do not shy away from the issue of transgender military service. For example, both have appeared at Pentagon pride events that are explicitly deemed “LGBT pride” ceremonies. Other gay and lesbian officers serve as assistants to senior military leaders, and as members of review committees responsible for overhauling various Pentagon regulations. While their contributions are hidden from public view, they are nonetheless important in shaping opinion within military culture.

It is certainly true that gay men and lesbians were allowed to serve in senior civilian positions prior to the repeal of DADT, and Pete Williams was Assistant Secretary of Defense for Public Affairs in the George HW Bush administration. It is also the case that some gay and lesbian members of the military community are unfamiliar with or unsupportive of transgender military service. That said, openly gay and lesbian men and women throughout the military community are now serving as powerful voices pushing for transgender military service in ways that would have been simply unimaginable prior to the repeal of DADT.

A final connection between DADT repeal and the unraveling of the transgender ban involves confusion between LGB and T. During the campaign to repeal DADT, I made dozens of visits to military universities including West Point, the Air Force Academy and others.<sup>47</sup> During each visit, I outlined the data concerning gays and lesbians in the military, and argued that DADT repeal would not compromise unit cohesion or military readiness. Even in the final months of the policy, when approximately 75 percent of the public, including a majority of Republicans, supported repeal, at least one audience member expressed diehard opposition to the lifting of the ban. There was at least one audience member who expressed this “over my dead body” reaction during every visit to a military university. Which is why it was surprising that during a visit that my colleague Greg Brown and I made to a military university to discuss transgender service in 2014, it was impossible to identify any opposition whatsoever.

That event took place at the Naval Postgraduate School in Monterey, California, where most students are mid-career Navy officers pursuing MA degrees before they return to active service. Students at NPS insisted that lack of privacy in group showers would not pose a problem for personnel serving under their commands. One logistics officer said that it would be possible to construct shower stalls that would afford some privacy. Another mentioned that in the Swedish military, men and women shower together and that it is not a big deal. Somewhat surprisingly, a woman said that she would rather shower with a transgender woman than with a lesbian, because the transgender woman would not necessarily desire her sexually. Another officer said that non-transgender personnel should be required to shower with non-operative and pre-operative transgender recruits during recruit training because drill instructors would be on hand to prevent problems. She said that such a requirement would enable recruits to work through and transcend their discomfort.

This was shocking, given that the national conversation about transgender military service had barely started, especially in light of the fierce opposition to DADT repeal that had always been apparent among a small minority of military personnel, right up to the dying days of the policy. Surprisingly, confusion was playing an important behind-the-scenes role in shaping military attitudes, not just at NPS, but at the other military universities as well. Military personnel seemed to lump transgender people together with gays, lesbians and bisexuals, and to believe that because LGB exclusion is now a thing of the past, and given that T is part of the LGBT community, that T policy should follow suit. One Naval officer at NPS seemed to reflect the position of the other students when she said that the military has already had the conversation about LGBT service, that the matter has been settled, and that T policy should catch up with LGB policy. This claim was inaccurate, because while the military had certainly had a multi-decade conversation about gay and lesbian military service, it had certainly not, as a whole, had a conversation about transgender military service. Part of what's fascinating about this misunderstanding is that some advocates' strategies have been premised on the notion that education and clarification are necessary precursors to the development of good public policy. In the case at hand, however, the inaccurate conflation of the conversations about LGB and T service seems to have accelerated the acceptance of inclusive policy.

#### *(d) Effective advocacy strategies*

The story of the lifting of the transgender ban, as argued above, is a story about organizational dynamics within the Pentagon and in military culture, as well as broader cultural and political dynamics involving the public at large and the lack of GOP opposition. As well, it is a story about social justice advocates who, during a two-year period from 2013 through 2015, pursued at least three important strategies, all of which were effective. There is no way that the strategies could have worked, even partially, if not for the organizational dynamics in the Pentagon and the broader cultural and political trends discussed above. That said, those organizational dynamics and cultural and political shifts would have had no effect on Pentagon policy were it not for the following three strategies that advocates pursued.

##### ➤ Humanized the issue

Perhaps the most important and effective strategy was to provide the issue of transgender military service with a human face. Journalists are unlikely to cover an issue and the public is unlikely to engage with it absent a clear “human interest” angle, a person or group of people affected by that issue. As an example, in 2000 scholars completed an in-depth study arguing that the British military had lifted its ban on gays and lesbians in the military without causing problems. Even though the study was based on a review of hundreds of documents and interviews with dozens of experts, journalists were not interested in it until a British service member agreed to grant an interview.<sup>48</sup>

Providing a human face to personify the issue of transgender military service has been a particularly difficult challenge for two reasons. First, as discussed above, the Pentagon fires very few transgender service members each year, so there is not a ready-made pool of recently-discharged troops who are eager and able to tell their stories. Second, the ban itself makes it almost impossible for currently-serving transgender personnel to grant interviews to journalists, because doing so likely would get them fired. A number of transgender veterans such as Paula Neira and Kristen Beck have bravely served as powerful spokespersons for the issue, and Transgender American Veterans Association (TAVA) has played a helpful and critical role as well. As important as these veteran perspectives have been to the campaign to lift the ban, however, reporters also need to talk to currently-serving transgender personnel to illustrate the current state and impact of the military ban. And without access to transgender service members willing and able to share their personal experiences with journalists, advocates would have a very tough time making the case for lifting the ban in the media.

Advocates and service members found a few solutions for overcoming this obstacle. Most critically, advocates Allyson Robinson, Sue Fulton and Brynn Tannehill created an organization called Sparta (Servicemembers, Partners, and Allies for Respect and Tolerance for All) in 2013 to provide support and networking opportunities primarily to currently serving transgender military personnel. The organization grew quickly to include several hundred members, and hosted the first-ever conference for transgender service members in Houston in January 2014. With a large network of service members,

Sparta has been able to identify transgender personnel who serve under commanders who are reluctant to enforce the ban, and who allow them to speak with members of the media. As well, Sparta has connected reporters with transgender service members who were recently discharged or who are in the process of being discharged. On April 26, 2014, Sparta placed a *Washington Post* story about Landon Wilson, a sailor who served effectively in Afghanistan until the Navy fired him for being transgender.<sup>49</sup> The buzz that the story generated prompted a reporter to ask Defense Secretary Chuck Hagel about the ban, and Hagel responded that he was “open” to a review of the policy.<sup>50</sup> This was the first time that a senior military leader had indicated any such possibility. More recently, Sparta placed a powerful story about Naval Academy graduate Alexandra Marberry in the *Capital Gazette*.<sup>51</sup>

Documentary filmmaker Fiona Dawson has spent the past three years making a film about transgender military service, and the *New York Times* asked her to re-cut some of her footage into a twelve-minute op-doc. *Times* editors posted Dawson’s op-doc alongside a lengthy June 4, 2015 editorial calling for the end of the military’s ban, and the film quickly became one of the *Times*’s most watched op-docs.<sup>52</sup> The op-doc tells the story of two transgender service members, Logan Ireland and Laila Villanueva, who are engaged to be married, and it includes footage of Ireland, carrying a machine gun, on patrol in Afghanistan. Some of the most compelling footage features members of Ireland’s family, who explain that they love their son and are proud of his service, regardless of his gender identity. The op-doc has been making the rounds inside the Pentagon as an introductory opportunity for officials and military leaders who are unfamiliar with the issue to achieve greater understanding.

A related, important strategy to personify and humanize the issue was, perhaps surprisingly, mathematical. Drs. Gary Gates and Jody Herman, UCLA scholars who specialize in estimating the size of difficult-to-count populations, used an ingenious technique to determine the number of transgender personnel serving currently. Because of the ban, it is impossible to use standard surveys to derive an estimate, as it would be unethical to ask survey respondents to indicate their gender identity because doing so could end their careers. Even if their anonymity were protected, accidents can happen, and data files can of course be breached. So, surveys are not an option.

Instead, Gates and Herman used a clever method to “backward-induce” the number in four steps. First, they knew from prior research that there are approximately 700,000 transgender adults in the US. Second, surveys of transgender adults revealed that approximately 20 percent have served in the military. Thus, they estimated that there are approximately  $.2 \times 700,000 = 140,000$  transgender veterans. Third, at the time of their research, the military had approximately 2.4 million personnel, and the nation had approximately 28 million veterans. Hence, among non-transgender Americans, Gates and Herman knew that the ratio of currently-serving-troops to veterans was  $2.4 \text{ million} / 22 \text{ million} = 11\%$ . Finally, they assumed that the ratio of currently-serving-troops to veterans was the same for transgender and non-transgender Americans. If so, the number of currently serving transgender troops can be estimated as approximately  $15,500 = .11 \times 140,000$ .<sup>53</sup>

This 15,500 figure has been cited in almost every story about transgender military service. And in almost every Pentagon meeting, military officials ask how many transgender personnel serve, and how the estimate was derived. Since Gates and Herman first published their research, other estimates of the number of transgender service members have been published.<sup>54</sup> What's important, however, is that if Gates and Herman had not done their research, there would be no way at the outset of the repeal process for Pentagon officials to have gauged the scope of the issue or to have anticipated how much it would cost to provide medical services to transgender personnel after lifting the ban.

On June 24, 2015, Ireland and Villaneuva attended a White House reception, with Ireland attending in uniform. Far from attempting to bury the story, White House staff members directed the two into a side-room where a few, selected guests were invited for a photograph with the President. The story appeared in the media, thus publicly demonstrating the administration's commitment to the end of the ban.<sup>55</sup> Stories like this could not materialize if it were not for the bravery and willingness of currently-serving transgender troops to personify the issue. And advocates could not apply meaningful pressure on the administration to lift the ban without their courage. Current and former US service members Kristin Beck, Jake Eleazer, Sage Fox, Jamie Lee Henry, Logan Ireland, Alexandra Marberry, Paula Neira, Shane Ortega, Laura Perry, Allyson Robinson, Brynn Tannehill, Laila Villanueva, Landon Wilson and others were all highly effective in sharing their stories with the American public.

➤ Proved that transgender service works

Prior to the repeal of DADT, the Pentagon took extensive steps to prepare the troops for the change, and observers have credited the Pentagon's thoughtful implementation as an important factor in avoiding problems during and after the transition. While the Pentagon's training and implementation helped explain the new policy to service members deployed throughout the world, the military could have repealed DADT without any preparation whatsoever. In fact, the military did just that on October 12, 2010, when a federal district court judge found DADT to be unconstitutional.<sup>56</sup> The ban was immediately lifted and remained invalid until October 20, 2010, when a higher court granted the government's motion for a stay of the injunction, but there were no reports of disciplinary or other problems during the brief window. The reason, of course, is that the troops were already well aware that they were serving alongside gays and lesbians, and they did not need any more training to continue to do so than would have been required to prepare them to serve alongside left-handed or blue-eyed peers.<sup>57</sup>

Transgender military service, however, is not quite so simple, because there are a number of administrative issues such as uniform and grooming standards as well as medical issues such as gender transition that require guidelines to help commanders know what to do if and when they are in charge of transgender personnel. When Canada decided to allow transgender service in 1992, it failed to replace its ban with any new, inclusive policy. As a result, commanders, doctors and service members experienced unnecessary confusion.<sup>58</sup> These and other foreign military experiences show that it is not enough to simply get rid of a transgender ban. In addition to eliminating discriminatory policy,

military forces must implement inclusive policy to replace bans, and must clearly articulate that transgender personnel are entitled to equal treatment under the same standards that apply to everyone else.

Despite the importance of replacing a ban with inclusive measures, however, it is nonetheless important for leaders to recognize that the required new policies are not complicated, burdensome, or expensive. Absent widespread understanding of that point, obstructionists could oppose repeal by pointing, inaccurately, to ostensible administrative difficulties associated with eliminating the ban. In the case of DADT repeal, when the district court struck down the ban in 2010, the government claimed that if DADT were not restored immediately, the military would face significant administrative burdens in enforcing inclusive policy. A higher court bought that argument hook, line and sinker, and granted the government's motion for a stay, stating that "a precipitous implementation of the district court's ruling will result in 'immediate harm' and 'irreparable injury' to the military" and accepting the government's claim that "a successful and orderly change in policy of this sort will not only require new policies, but proper training and the guidance of those affected by the change."<sup>59</sup>

To inoculate the potential lifting of the transgender ban against such objections, the key will be not so much to convince military leaders that inclusive policy can work, but rather to convince them that if they complain that inclusive policy cannot work, they will not be taken seriously. And to prevail on that point, drawing attention to foreign military successes is a good option. On October 20, 2014 the American Civil Liberties Union hosted the first-ever conference in the US on service by transgender personnel in foreign military forces. Service members from five nations, including Canada, Australia, the UK, New Zealand and Sweden, appeared in uniform to tell their stories, and Defense Ministries from these countries sent representatives who participated as well. Based on an aggressive media strategy, conference organizers generated newspaper stories and television and radio broadcasts that were distributed globally.<sup>60</sup> The media coverage and the fact that the conference was held in Washington, DC allowed advocates to establish the talking point in the nation's capital that foreign experiences have been successful, and the conference prompted a public statement by Minority Leader Pelosi as well as questioning at the daily White House press briefing as to the rationale for the American ban.<sup>61</sup>

Research was also mobilized to inform the public as well as opinion leaders that transgender military service works. During the summer of 2014, former acting US Army Surgeon General Gale Pollock and National Center for Lesbian Rights Legal Director Shannon Minter co-chaired a distinguished commission of former military leaders and top transgender advocates to study 14 aspects of policy formulation for a non-discriminatory rule on transgender service.<sup>62</sup> The membership of the commission represented a "handshake" among military and transgender leaders as to what would be acceptable to both communities during the implementation process. The commission examined administrative issues such as grooming and physical standards and studied experiences of some of the 18 foreign nations that allow transgender service, as well as lessons learned from US military integration of previously excluded populations,

including gay, lesbian and bisexual personnel. Commissioners concluded that only a few new rules would be needed post-repeal, and that implementation would not be burdensome or complex. The *Washington Post* published a story about the report, which was distributed widely among Pentagon officials and policy analysts serving on the transgender repeal working group.<sup>63</sup>

Finally, I published a peer-reviewed study in the prestigious *New England Journal of Medicine* showing that post-repeal, providing medically necessary transition-related health care to transgender personnel would cost only \$5.6 million per year, which is .01 percent of the military's health care budget.<sup>64</sup> The study predicted, as well, that only 188 transgender personnel will require transition-related care each year. This research helped inoculate the repeal process from concerns that inclusive policy would pose a significant drain on resources during a time of budgetary limitations.

➤ Discredited the ban's justification<sup>65</sup>

US military policies that ban transgender service members do not include rationales that explain why the armed forces prohibit them from serving, and the origins of the policies are unclear. Scholars have traced the first prohibition against "defects of the genitalia such as a change of sex" to military enlistment regulations dated February 10, 1961.<sup>66</sup> "Transvestism" is also prohibited in the February 1961 regulation as part of a section on "sexual deviant practices such as exhibitionism, transvestism, voyeurism, etc." that was included in a more general category of personality disorders. That said, it is not clear that the 1961 prohibitions referred to transgender people. The "transvestism" ban applied to cross-dressing by men who identified as men, not what is thought of today as transgender identity. And in 1961, sex-change operations in adults were rare, while the practice of "fixing" ambiguous genitalia in intersex babies was more common. The latter may have been what the regulation targeted at the time. Decades later, when the military was trying to figure out how to handle transgender personnel, it may have taken advantage of a regulation that seemed to fit well enough ("defects of the genitalia such as a change of sex"), but wasn't originally intended for what we call today a "sex-change operation." Palm Center scholars cannot find any mention of "transsexualism" or gender identity disorder in military regulations until December 1, 1983.<sup>67</sup> In an article published a few months later, three military doctors affiliated with the Walter Reed Army Medical Center wrote that it was unclear before this update that military regulations actually required the discharge of transgender personnel who had not undergone surgery.<sup>68</sup>

Despite the absence of documentation on the original rationale for the ban, it is embedded in medical and other regulations that are designed, broadly speaking, to preserve health and good order. And military representatives have presented rationales via testimony and affidavit in response to transgender individuals who have challenged the ban's lawfulness in court. In *Doe v. Alexander* (1981), a federal district court noted "evidence that transsexuals would require medical maintenance to ensure their correct hormonal balances and continued psychological treatment and that the army would have to acquire the facilities and expertise to treat the endocrinological complications which may stem from the hormone therapy. The army might well conclude that those factors could cause

plaintiff to lose excessive duty time and impair her ability to serve in all corners of the globe.”<sup>69</sup> In testimony for *Leyland v. Orr* (1987), an Air Force consulting physician testified that assigning individuals who had undergone a sex change operation to remote geographic areas, “would be equivalent to placing an individual with known coronary artery disease in a remote location without readily available coronary care.”<sup>70</sup>

And in *DeGroat v. Townsend* (2007), an Air Force consulting physician stated that,

The known and potential complications of sex change operations are many and varied and can affect the long term health and duty performance of the individual. Additionally, many of these patients are maintained on hormone therapy which independently has potential side effects. Further, individuals undergoing male to female gender conversions may encounter prostatic diseases which are more difficult to diagnose and to manage. Air Force duties require individuals from all career fields to serve in a variety of locations around the globe, often changing assignments on short-term notice. Military medical providers in the field are not familiar with the problems these patients may encounter. Individuals who have undergone sex change procedures would not be qualified for world-wide service and if the Air Force assigned them even to remote domestic locations they would be without access to potentially acute specialized tertiary medical care, which would only be available at major medical centers. Overall, it is neither in the best interest of the individual patient to have their access to necessary health care limited during potential Air Force duties, nor is it in the best interest of the Air Force to have to provide the medical care that these individuals may require.<sup>71</sup>

Scholars have been unable to uncover any documentation on the history of the transgender ban or the reasons why it was enacted. Hence, the trial records discussed above offer the only available official rationales for US military policies banning transgender service members.

We had to publicly discredit these medical rationales to make it safe for political and military leaders to get rid of the ban. Otherwise, opponents of inclusive policy would block any effort to allow transgender service by citing medical concerns, and there would be no way to get around that obstacle. When former Defense Secretary Chuck Hagel said in May 2014 that the military’s transgender ban should be reviewed and that he was “open to those assessments,” he added that it would be “a bit more complicated,” as “these issues require medical attention” and “austere locations where we put our men and women in many cases don’t always provide that kind of opportunity.”<sup>72</sup> In June 2015, Pentagon spokesperson Nate Christensen explained that, “Military Service guidelines require separation actions be initiated for transgender Service members serving in the U.S. military, based upon medical concerns.”<sup>73</sup> Clearly, when Pentagon spokespersons try to justify the ban, they do so by expressing concerns about medical complications. Even when offering support for transgender service, Pentagon officials have raised medical concerns. Unless and until we could persuade journalists, opinion leaders and the public at large that medical concerns sustaining the ban are groundless, we could not prove the ban’s irrationality, and its basis in prejudice rather than necessity. We needed to deprive opponents of any reasonable-sounding arguments that they could advance to mask their prejudice.

We based our persuasion strategies on a distinction between scholarly and public knowledge. From this perspective, it would not be enough for scholars and medical professionals to understand that the military's rationale for firing transgender personnel is unfounded. After all, when former President Clinton tried to compel the Pentagon to allow gay men and lesbians to serve openly, scholars understood quite well that doing so would not compromise unit cohesion or military readiness. The military's own research concluded that gay men and lesbians would not harm the armed forces, and the RAND Corporation released a comprehensive study, written by dozens of social scientists, concluding that there was no basis to the claim that allowing gay men and lesbians to serve openly would compromise the armed forces.<sup>74</sup> Even though scholars understood this point clearly, however, opinion leaders who supported sustaining the ban carried the day through the force of repetition. They simply repeated over and over that the lifting of the ban would undermine unit cohesion and readiness. Given that these opinion leaders included well-regarded Pentagon brass such as Colin Powell, journalists printed and reprinted their claims, which subsequently became enshrined in Congressional statute as well as a host of judicial decisions. Whether or not scholars know something is a different question than whether or not the public knows it.

In the case of transgender military service, then, it would not be enough to study the medical rationale behind the ban and to publish scientific papers questioning the plausibility of that rationale. While valuable, such papers would simply sit on library shelves and play no role in informing public and elite opinion. Rather, we had to prevail in the court of public opinion, and demonstrate in a very loud and public way that the Pentagon's rationale for firing transgender personnel is not based on sound data or medical science. We prevailed in two steps.

First, a Palm Center commission including a former US Surgeon General, retired General and Flag officers, and leading scholars studied every aspect of the medical rationale behind the ban, and issued a study concluding that there is no medical rationale for firing transgender personnel.<sup>75</sup> The commission found, among other things, that non-transgender personnel take exactly the same medications that transgender personnel require, even in deployed settings, and that non-transgender personnel are allowed to have reconstructive surgeries that are riskier than most gender-reassignment surgeries, even though the former are cosmetic while the latter are medically necessary. The commission noted that, while some transgender individuals suffer from mental illness, many non-transgender individuals suffer from such illnesses as well, and that the military welcomes their service as long as their conditions are manageable. A version of the commission's report was later published in the nation's most prominent peer-reviewed journal on civil-military relations, *Armed Forces & Society*.<sup>76</sup>

While the study itself was instructive, the key was to attract media attention and to prevent it from sitting on a library shelf. Because the topic was timely and the authors included a former Surgeon General, the top medical official in the United States, the *Associated Press* published a story about the study that was reprinted in hundreds of newspapers throughout the nation.<sup>77</sup> And the *New York Times* published a May 14, 2014 editorial about the study following Secretary Hagel's claim that, although he was open to

reviewing the ban, “complex medical and logistical issues could preclude transgender people from serving in ‘austere’ combat conditions.”<sup>78</sup> According to the *Times* editorial page:

That excuse does not hold up, as a panel of former military officers and experts on gender and health led in part by former Surgeon General Joycelyn Elders concluded in March. “There is no compelling medical rationale for banning transgender military service,” and “eliminating the ban would advance numerous military interests, including enabling commanders to better care for their service members,” the panel said. Its report belongs at the top of Mr. Hagel’s reading list, along with the psychiatric community’s decision a year ago to finally stop mislabeling transgender identity as a mental disorder. As with gay and lesbian soldiers, the issue is not whether transgender people can serve in the armed forces. The point is that they — including the estimated 15,000 of them now serving — have to cover up their identities. Some refrain from seeking necessary hormone treatment or other medical care, suffering anguish and risking their physical and emotional health. And for what? There is “no medical reason to presume transgender individuals are unfit for duty,” the panel wrote. Transgender medical care “is no more specialized or difficult than other sophisticated medical care the military system routinely provides,” even in combat zones. As for gender-changing surgery, the panel noted that some elective cosmetic surgeries allowed at military medical facilities require similar leave time and risk more serious postoperative complications... If Mr. Hagel is still trying to make up his mind, his boss, President Obama, can make it up for him. The question is how fast can the armed forces join the modern world on this issue, not whether they should. The time for lame excuses is long past.<sup>79</sup>

Just two days after the publication of the *New York Times* editorial, the White House announced for the first time in US history that it was open to a review of the military’s ban on transgender personnel.<sup>80</sup> This was the first step in the public dismantling of the medical rationale.

As a second step in the public dismantling of the medical rationale, the Palm Center asked the Gay & Lesbian Medical Association (GLMA) to try to persuade the American Medical Association to pass a resolution affirming the central conclusion of the Elders report, namely that there is no medically valid reason for the military to fire transgender personnel, and stating that transgender service members should receive medically necessary care, just like all other military members, as determined by patient and doctor.<sup>81</sup> Since the draft of the resolution itself would be used as a persuasion tool to convince AMA delegates to cast a vote in support, we used the preamble of the resolution to tell the story, based on research, as to why the military’s ban does not make sense:

Whereas, Military medical regulations bar transgender individuals from enlisting in the military; require them to be discharged if discovered during military service; and prohibit doctors from providing medically necessary treatment for gender dysphoria; and

Whereas, A Commission including a former US Surgeon General and retired General and Flag Officers determined that there is no sound medical rationale for excluding transgender individuals from military service, and a Commission co-

chaired by a former acting US Army Surgeon General determined that providing transgender personnel with medically necessary health care would not be excessively burdensome; and

Whereas, Military medical regulations governing non-transgender-related conditions are updated regularly based on current scientific consensus and best practices, but the same regulations are out of date with respect to medical consensus about gender identity; and

Whereas, Military medical regulations governing non-transgender-related conditions strike a balance in retaining service members whose medical conditions do not significantly impair fitness for duty, but medical rules that apply to transgender personnel require their exclusion regardless of fitness for duty or need for medical care; and

Whereas, Military medical regulations governing non-transgender-related conditions are designed to maintain and restore health, but rules that apply to transgender personnel prohibit military doctors from mitigating distress, despite the availability of treatments for gender dysphoria that are safe, effective, and medically necessary; therefore be it resolved...<sup>82</sup>

Eleven footnotes throughout the preamble referred to 13 scholarly studies and military regulations and demonstrated the veracity of each claim. GLMA officer Brian Hurley, a former member of AMA's House of Delegates, spent almost a year before AMA's annual convention in June 2015 building support for the resolution throughout AMA, and Navy Lieutenant Commander Jesse Ehrenfeld, who had asked Secretary Carter about transgender military service in Khandahar, and who also serves as a senior AMA officer, worked the corridors of the convention, paying particular attention to military delegates. Retired Admiral Alan Steinman, who served as the former Surgeon General equivalent of the Coast Guard, flew to Chicago to testify in person in support of the resolution. And Dr. Jamie Lee Henry, the Army's first out transgender officer and a member of Sparta as well, testified in person along with Admiral Steinman. Simultaneously, the Palm Center asked a group of four retired US Surgeons General to issue a statement in support of the AMA resolution, and they agreed to do so. When the AMA passed its resolution, the *New York Times* published another op-ed on transgender military service:

The American Medical Association on Monday challenged the military's policy barring transgender troops, stating in a resolution that there is "no medically valid reason" to disqualify them from serving. The association urged the Defense Department to offer medical care to transgender troops consistent with the type of treatment that is readily available to civilians. While the Defense Department's health care regulations are designed to "maintain and restore health," the statement notes that military doctors are now barred from providing "safe, effective and medically necessary" treatment to service members who are transgender. President Obama and Secretary of Defense Ashton Carter should move swiftly to repeal that discriminatory policy so that thousands of transgender Americans in uniform have the option to serve openly.<sup>83</sup>

The military's medical departments have their own cultures that are distinct from civilian medicine. That said, the AMA is the nation's most distinguished medical professional association, representing 220,000 physicians, and it is well known for its conservative orientation. And military medical regulations generally follow medical developments in the civilian sector such as updates to the American Psychiatric Association's *Diagnostic and Statistical Manual*.

We discredited the military's medical rationale by producing careful, peer-reviewed research about the quality of the medical science; using that research to generate high-profile media stories about the lack of any medical reason for firing transgender personnel; and convincing high-level validators to amplify the message. These included four former US Surgeons General, a former acting US Army Surgeon General, a former US Coast Guard Surgeon General equivalent, a former Chief of the US Army Nurse Corps, and the American Medical Association, all of whom reinforced the same point: that there is no medically valid reason for the military to fire transgender personnel. Certainly, opponents could continue to cite medical concerns as they resist inclusive policy. But now they know, if they choose to do so, that their concerns will not fly in the court of public opinion.

The key, in depriving opponents of their main argument, was to force them into silence, or into acknowledging that the real reason for the ban is intolerance. Indeed, after the AMA passed its resolution, the *New York Times* editorial board wrote that, "When gays and lesbians were barred from serving openly, some officials at the Pentagon argued preposterously that allowing them to come out would undermine unit cohesion and readiness. When it comes to transgender service, though, officials at the Pentagon aren't even attempting to publicly articulate a defense. That is probably because the primary reason boils down to prejudice and ignorance among some senior leaders about what being transgender is and what it's not."<sup>84</sup> If the medical rationale behind the ban had not been dismantled, Secretary Carter could not have made his July announcement calling for a working group to study how to let transgender personnel serve, and could not have declared that the new working group "will start with the presumption that transgender persons can serve openly without adverse impact."

## **Conclusion**

In just two years, the military made regulatory changes that constituted the partial dismantling of the transgender ban. At the time of the writing of this report (June 2016), the Pentagon has not yet announced the repeal of the ban, and there is certainly a chance that progress could stall, even at this very last minute. That said, the partial dismantling of the ban has taken place quickly, and whether or not Secretary Carter fully eliminates it, it is important to ask why it is unraveling at such a rapid pace.

While it is true that the Pentagon has not discharged many transgender service members, the ban is nevertheless a disastrous policy that makes it quite difficult for the thousands of transgender personnel serving currently to do their jobs. Psychologists have documented the mental health burden that follows from the requirement to live a closeted

life, and the ban has had professional consequences as well, operating like a sword hanging over every transgender service member's shoulder.<sup>85</sup> If a transgender service member tells a trusted friend, supervisor or commander about his or her gender identity, the recipient of the information always has the option to reveal that information, and to use the threat of disclosure for blackmail. Relationships can sour, and if a friendship withers or a trusted confidant feels betrayed for any reason, that person can always retaliate by disclosing the gender identity of their former friend. Transgender personnel know this. And the knowledge is perhaps one of the worst and most harmful aspects of the ban.

When the ban is lifted, transgender service members will be entitled to medically necessary health care, as is every non-transgender service member in the US military. Thus, transgender personnel who need to undergo gender transition will be able to do so without losing their careers. And as was the case with the repeal of DADT, the effects of lifting the ban will ripple far and wide. Both conservatives and liberals have long understood that the military sets a powerful precedent for the civilian sector. Thus, traditional values groups fought tooth and nail to prevent gays and lesbians from serving in the armed forces not so much because they cared about homosexuality in the ranks (although they certainly did), but because they knew that gays and lesbians would never be able to lock in hard-won citizenship rights in other arenas as long as the largest and most respected employer in the nation said they were second-class citizens who must be fired just because of who they are.<sup>86</sup> Scholars have argued that if DADT had not been repealed, the US government would have had an ongoing interest in opposing marriage equality, and the US Supreme Court might have issued more narrow rulings in *United States v. Windsor* and *Obergefell v. Hodges*.<sup>87</sup> It is hard to imagine that the Boy Scouts would have lifted their gay ban if DADT had not been repealed.<sup>88</sup> As Elaine Donnelly said in 2010, "If this kind of [homosexual] agenda is forced upon the Marine Corps, if it's okay for the Marines, then why is it not okay for the local school, the local marriage bureau. Ultimately, all of civilian life would be affected."<sup>89</sup> She was right.

In the case of transgender military service, the lifting of the Pentagon ban will have direct and symbolic ripple effects amplifying far beyond the armed forces. The Veterans Health Administration offers all transition-related health care, with the critical exception of gender-confirming surgery. Once the military offers surgery, it will be all but impossible for VHA to maintain its exclusion, in part thanks to its ongoing efforts to maintain continuity of care with the armed forces, and in part because it will seem like an outlier if it continues to refuse to provide medically necessary surgery. And once the public sees photographs and videos of transgender personnel serving proudly and openly in uniform, many hearts and minds will be changed. And it will become that much harder for the federal government or states or cities to pass discriminatory laws targeting transgender individuals. In modern American history, the right to serve in the armed forces on an equal basis with everyone else has always been a key marker of first-class citizenship.

Whether the military's transgender ban dates back to 1961 or 1983, and even though three service members sued the Pentagon to challenge legality of the ban in 1981, 1987 and 2007, there was no sustained, national conversation about transgender military

service until 2013, when Kristen Beck published her memoir, and no organized effort to get rid of the ban until that time. Just two years later, in July 2015, Defense Secretary Carter announced the formation of a working group to study how to get rid of the ban. In contrast to the campaigns on behalf of military service by women, African Americans and gays and lesbians, all of which took generations, the Pentagon's transgender ban will have been dismantled in a flash, unless the repeal process unravels at the very last minute.

In late 2015, during a Pentagon meeting on the transgender ban, a military official expressed opposition to inclusion in forceful terms, and said that it would never work to have a woman with a penis serving on a submarine. His tone was strident and even accusatory, and his implication was that the handful of advocates in the room did not understand how military culture works. He concluded by looking directly at one of the advocates and demanding, "Have you ever been on a submarine?!" The West Point graduate being addressed paused and then said calmly and with great poise that not only had she been on a submarine, but she remembers visiting a submarine in 1993 when opponents insisted that gay sailors could never serve on them without shattering the crew's cohesion and morale. There was a collective gasp in the room, followed by a silence, and then the conversation moved on to other topics. That was a moment when the military's ban on service by transgender personnel seemed poised to reach the end of its short life.

## **Appendix A: Findings of *One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness***

1. The repeal of DADT has had no overall negative impact on military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment or morale.
2. A comparison of 2011 pre-repeal and 2012 post-repeal survey data shows that service members reported the same level of military readiness after DADT repeal as before it.
3. Even in those units that included openly LGB service members, and that consequently should have been the most likely to experience a drop in cohesion as a result of repeal, cohesion did not decline after the new policy of open service was put into place. In fact, greater openness and honesty resulting from repeal seem to have promoted increased understanding, respect and acceptance.
4. Recruitment was unaffected by the repeal of DADT. In an era when enlistment standards are tightening, service-wide recruitment has remained robust.
5. Retention was unaffected by the repeal of DADT. There was no mass exodus of military members as a result of repeal, and there were only two verifiable resignations linked to the policy change, both military chaplains. Service members were as likely to say that they plan to re-enlist after DADT repeal as was the case pre-repeal.
6. DADT repeal has not been responsible for any new wave of violence or physical abuse among service members. The policy change appears to have enabled some LGB service members to resolve disputes around harassment and bias in ways that were not possible prior to repeal.
7. Service-wide data indicate that overall, force morale did not decrease as a result of the new policy, although repeal produced a decline in individual morale for some service members who personally opposed the policy change and boosted individual morale for others.
8. There was no wave of mass disclosures of sexual orientation after repeal, and a minority of heterosexual service members reported in an independent survey that, after repeal, someone in their unit disclosed being LGB or that an LGB service member joined their unit.
9. Some military members have complained of downsides that followed from the policy change, but others identified upsides, and in no case did negative consequences outweigh benefits. In balance, DADT repeal has enhanced the military's ability to pursue its mission.
10. The findings of this study are consistent with the reported assessments of repeal by military leadership including President Barack Obama, Secretary of Defense Leon Panetta, Chairman of the Joint Chiefs of Staff Martin Dempsey and Marine Corps Commandant James Amos.
11. The findings of this study are consistent with the extensive literature on foreign militaries, which shows uniformly that readiness did not decline after foreign armed forces allowed LGB troops to serve openly.
12. As positive reports about DADT repeal emerged in the media, repeal opponents who predicted that open service would compromise readiness have adjusted their forecasts by emphasizing the possibility of long-term damage that will only become apparent in the future rather than identifiable consequences in the short-term.

**Appendix B:** Research methodology of *One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness*

Study authors used ten distinct research strategies to assess whether or not DADT repeal compromised military readiness, including: (1) Requesting 553 of the retired generals and admirals who predicted that repeal would undermine the military to participate in semi-structured interviews; (2) Requesting semi-structured interviews with every activist and expert that we could identify—22 in total—who opposed repeal publicly; (3) Requesting semi-structured interviews with representatives of 18 watchdog organizations, including opponents and advocates of repeal, who are known for their ability to monitor Pentagon operations; (4) Survey analysis of active-duty service members including closed- and open-ended questions; (5) On-site field observations of four military units; (6) In-depth interviews with 18 scholars and practitioners; (7) In-depth interviews with 62 active-duty service members, heterosexual and LGB, from every service branch, and representing diverse occupational specialties; (8) Content analysis of 462 relevant media articles published during the first 11 months of the research period; (9) Longitudinal secondary source analysis of surveys conducted independently by *Military Times* and OutServe, and of recruitment and retention data released by the Department of Defense; and (10) Pre-test/post-test quasi-experimentation.

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<sup>1</sup> Joshua Goldstein (2001), *War and Gender*, Cambridge, UK: Cambridge University Press, p. 88, citing Mattie Treadwell (1954), *United States Army in World War II, Special Studies: The Women's Army Corps*, Washington, DC: Office of the Chief of Military History, Department of the Army, p. 10.

<sup>2</sup> Mary Katzenstein (1998), *Faithful and Fearless: Moving Feminist Protest inside the Church and Military*, Princeton, NJ: Princeton University.

<sup>3</sup> Leisa Meyer (1996), *Creating GI Jane: Sexuality and Power in the Women's Army Corps during World War II*, New York, NY: Columbia University Press, p. 172, citing Charity Adams Earley (1989), *One Woman's Army: A Black Officer Remembers the WAC*, College Station, TX: Texas A&M University Press, pp. 180-181; Allan Bérubé (1991), *Coming Out Under Fire: The History of Gay Men and Women in World War Two*, New York, NY: The Free Press, p. 133; Nathaniel Frank (2009), *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America*, New York, NY: The Free Press.

<sup>4</sup> Frank (2009), *Unfriendly Fire*; David Johnston (2004), *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*, Chicago, IL: University of Chicago Press.

<sup>5</sup> Kristin Beck and Anne Speckhard (2013), *Warrior Princess: A U.S. Navy SEAL's Journey to Coming Out Transgender*, Villa Park, IL: Advance Press.

<sup>6</sup> The first search terms were "gay soldier\*" or "gay airman" or "gay airmen" or "gay sailor\*" or "gay marine\*" or "gay veteran\*" or "gay service member\*" or "lesbian soldier\*" or "lesbian airman" or "lesbian airmen" or "lesbian sailor\*" or "lesbian marine\*" or "lesbian veteran\*" or "lesbian service member\*" or "homosexual soldier\*" or "homosexual airman" or "homosexual airmen" or "homosexual sailor\*" or "homosexual marine\*" or "homosexual veteran\*" or "homosexual service member\*" or "don't ask, don't tell" or "dadt." The second search terms were "transgender\* soldier\*" or "transgender\* airman" or "transgender\* airmen" or "transgender\* sailor\*" or "transgender\* marine\*" or "transgender\* veteran\*" or "transgender\* service member\*." Search results are meant to be taken illustratively, as different terms would have yielded different results.

<sup>7</sup> For discussions of the regulatory changes, see Diane H. Mazur (October, 2014), *Arbitrary and Capricious: Six Inconsistencies Distinguishing Military Medical Policies for Transgender and Non-Transgender Personnel*, San Francisco, CA: Palm Center, pp. 11-12; Tom Vanden Brook (March 7, 2015), *Army Eases Ban on Transgender Soldiers*, *USA Today*; Statement by Secretary of Defense Ash Carter on DOD Transgender Policy (July 13, 2015), U.S. Department of Defense, Press Operations, Release No: NR-272-15.

<sup>8</sup> Tom Vanden Brook (June 24, 2016), [Ban on Transgender Troops To Be Lifted July 1](#), *USA Today*.

<sup>9</sup> On presidential primaries, see Larry Bartels (1988), *Presidential Primaries and the Dynamics of Public Choice*, Princeton, NJ: Princeton University Press.

<sup>10</sup> Aaron Norton and Gregory M. Herek (2012), *Heterosexuals' Attitudes Toward Transgender People: Findings from a National Probability Sample of U.S. Adults*, *Sex Roles* 68, DOI 10.1007/s11199-011-0110-6; Andrew R. Flores (November, 2014), *National Trends in Public Opinion on LGBT Rights in the United States*, Los Angeles, CA: The Williams Institute.

<sup>11</sup> Bruce Rolfsen (October 21, 2009), *They Asked, He Told, But He Might Get to Stay*, *Air Force Times*.

<sup>12</sup> Gary Gates (September, 2010), *Discharges Under the Don't Ask/Don't Tell Policy: Women and Racial/Ethnic Minorities*, Los Angeles, CA: The Williams Institute.

<sup>13</sup> E-mail correspondence with the author, June 27, 2013.

<sup>14</sup> Department of Defense Instruction 1332.14, *Enlisted Administrative Separations*, Enclosure 3, ¶ 3(a)(8).

<sup>15</sup> Josh Israel (May 23, 2014), *The Woman Who Has Never Stopped Fighting to Keep LGBT Americans Out of the Military*, *ThinkProgress*, available at <http://thinkprogress.org/lgbt/2014/05/23/3439070/elaine-donnelly-center-for-military-readiness/>, accessed December 31, 2015.

<sup>16</sup> *Changing Hearts and Minds: How Philanthropy Helped Love Win* (November 2, 2014), Evelyn and Walter Haas, Jr. Fund, available at <http://www.haasjr.org/resources/changing-hearts-and-minds>, accessed January 7, 2016.

<sup>17</sup> See, for example, Sherie Mershon and Steven Schlossman (1998), *Foxholes & Color Lines: Desegregating the U.S. Armed Forces*, Baltimore, MD: The Johns Hopkins University Press.

<sup>18</sup> Hope Hodge (September 11, 2015), *Navy Secretary Criticizes Marines' Infantry Study in Interview*, *Marine Corps Times*.

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- <sup>19</sup> Mark Thompson (December 3, 2015), Women in Combat: Why the Pentagon Chief Overruled the Marines, *Time*.
- <sup>20</sup> The best analysis of complications that follow from a lack of proper civilian control is Diane H. Mazur (2010), *A More Perfect Military: How the Constitution Can Make Our Military Stronger*, New York: Oxford University Press.
- <sup>21</sup> ‘I Am Chelsea Manning,’ Says Jailed Soldier Formerly Known as Bradley (August 22, 2013), *The Guardian*.
- <sup>22</sup> Elisabeth Bumiller and Thom Shanker (January 23, 2013), Pentagon Is Set to Lift Combat Ban for Women, *New York Times*.
- <sup>23</sup> Major General Gale S. Pollock and Shannon Minter (2014), Report of the Planning Commission on Transgender Military Service, San Francisco, CA: Palm Center, p. 14.
- <sup>24</sup> Frank (2009), *Unfriendly Fire*.
- <sup>25</sup> Frank, *Unfriendly Fire*, p. 33, citing Michael Weisskopf (February 3, 1993), “Energized by Pulpit or Passion, the Public is Calling,” *Washington Post*; Thomas Ricks and Jill Abramson (January 28, 1993), “Clinton Agrees To Compromise On Military Ban,” *Wall Street Journal*.
- <sup>26</sup> For a recent contribution in the debate, see Thomas Knecht (2010), *Paying Attention to Foreign Affairs: How Public Opinion Affects Presidential Decision Making*, State College, PA: The Pennsylvania State University Press.
- <sup>27</sup> Chris Johnson (October 12, 2015), Cruz Blasts Efforts to Lift Trans Military Ban, *Washington Blade*; David McCabe (August 6, 2015), Huckabee Decries the ‘Social Experiment’ of Transgender Troops, *The Hill*.
- <sup>28</sup> Katherine Driessen (November 4, 2015), Houston Equal Rights Ordinance Fails by a Wide Margin, *Houston Chronicle*; Garrett Epps (May 10, 2016), North Carolina’s Bathroom Bill is a Constitutional Monstrosity, *The Atlantic*.
- <sup>29</sup> Campbell Robertson and Richard Pérez-Peña (March 31, 2015), Bills on ‘Religious Freedom’ Upset Capitols in Arkansas and Indiana, *New York Times*.
- <sup>30</sup> Adam Nagourney (November 10, 2004), ‘Moral Values’ Carried Bush, Rove Says, *New York Times*.
- <sup>31</sup> Chris Johnson (June 17, 2015), Jeb Bush Open to Transgender Military Service: Report, *Washington Blade*.
- <sup>32</sup> Rachael Bade, Ben Weyl and John Bresnahan (May 19, 2016), House Erupts in Chaos after LGBT Vote, *Politico*.
- <sup>33</sup> Michael Shear (April 8, 2015), Obama Calls for End to ‘Conversion’ Therapies for Gay and Transgender Youth, *New York Times*.
- <sup>34</sup> In a 2005 survey, on a “feeling thermometer” scale of 0 to 100, the average feeling expressed toward transgender people was 32. By 2011, the average had increased 38%, up to 45. In 2015, it was 43, roughly the same as the 2011 result. By way of comparison, “feeling thermometer” results about gay men and lesbians tend to be 6 to 9 points more positive than about transgender people, and feelings about straight, non-transgender men and women tend to be in the mid 60’s. See Norton and Herek (2012), Heterosexuals’ Attitudes Toward Transgender People; Flores (November, 2014), National Trends in Public Opinion.
- <sup>35</sup> Parts of this discussion are reprinted almost verbatim from Belkin et. al. (September 20, 2012), One Year Out: An Assessment of DADT Repeal’s Impact on Military Readiness, Los Angeles, CA: Palm Center.
- <sup>36</sup> Belkin et. al. (September 20, 2012), One Year Out.
- <sup>37</sup> The statement was released in March 2009, with 1,050 retired Generals and Admirals listed as signatories. Elaine Donnelly reported that by May 2010, 1,167 had signed. It is reprinted in Elaine Donnelly, Defending the Culture of the Military, in James E. Parco and David A. Levy, eds. (2010), *Attitudes Aren’t Free: Thinking Deeply About Diversity in the US Armed Forces*, Maxwell, AL: Air University Press, pp. 233-246.
- <sup>38</sup> See “Elaine Donnelly and Aaron Belkin Debate DADT at Maxwell Air Force Base,” [http://www.youtube.com/watch?v=v4s\\_kkmwEJY&feature=youtu.be](http://www.youtube.com/watch?v=v4s_kkmwEJY&feature=youtu.be), at 26:52, accessed December 31, 2015; emphasis in original.
- <sup>39</sup> Nathaniel Frank (December, 2011), Accountability and DADT: A Framework for Assessing Predictions of Disruption Caused by Openly Gay Military Service, Think Progress, available at <http://thinkprogress.org/wp-content/uploads/2011/12/Accountability-and-DADT.pdf>, accessed January 7, 2016.

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- <sup>40</sup> US Department of Defense, Office of the Secretary of Defense (July 1, 1993), Summary Report of the Military Working Group, p. 12.
- <sup>41</sup> Elliot Spagat (November 6, 2010), “Amos: Wrong Time to Overturn DADT,” *Associated Press*.
- <sup>42</sup> Belkin et. al. (September 20, 2012), One Year Out, pp. 11-12.
- <sup>43</sup> Military Success Story (September 15, 2012), *New York Times*.
- <sup>44</sup> Hodge (September 11, 2015), Navy Secretary Criticizes Marines’ Infantry Study.
- <sup>45</sup> Department of Defense News Transcript (February 22, 2015), Remarks by Secretary Carter at a Troop Event in Kandahar, Afghanistan.
- <sup>46</sup> Chris Johnson (February 18, 2015), Gay Official Named Pentagon Chief of Staff, *Washington Blade*.
- <sup>47</sup> Aaron Belkin (2011), *How We Won: Progressive Lessons from the Repeal of “Don’t Ask, Don’t Tell,”* Huffington Post Social Media Group.
- <sup>48</sup> Sarah Lyall (February 10, 2001), Gays in the British Military – Ask, Tell and Then Move On, *New York Times*.
- <sup>49</sup> Ernesto Londoño (April 26, 2014), For Transgender Service Members, Honesty Can End Career, *The Washington Post*.
- <sup>50</sup> Helene Cooper (May 11, 2014), Hagel ‘Open’ to Reviewing Military’s Ban on Transgender People, *New York Times*.
- <sup>51</sup> Christina Jedra (June 26, 2016), Uncharted Territory: Recent Naval Academy Graduate’s Career Stalled by Defense Department Transgender Policy, *Capital Gazette*.
- <sup>52</sup> Fiona Dawson (June 4, 2015), Transgender, at War and in Love, *New York Times*.
- <sup>53</sup> See Gary Gates and Jody Herman (2014), *Transgender Military Service in the United States*, Los Angeles, CA: The Williams Institute.
- <sup>54</sup> See, for example, Aaron Belkin (August, 2015), Caring for Our Transgender Troops – The Negligible Cost of Transition-Related Care, *New England Journal of Medicine*; and Agnes Schaefer, Radha Iyengar, Srikanth Kadiyala, Jennifer Kavanagh, Charles Engel, Kayla Williams and Amii Kress (March, 2016), Assessing Implications of Allowing Transgender Service Members to Serve, Santa Monica, CA: RAND Corporation. The RAND study has not been cleared for open publication, but was obtained and subsequently released by the *New York Times*.
- <sup>55</sup> Laila Villanueva (July 2, 2015), What Happened When President Obama Met Two Trans Service Members, *Advocate*.
- <sup>56</sup> *Log Cabin Republicans v US*, 716 F. Supp. 2d 884 (C.D. Cal., Oct. 12, 2010), opinion vacated after repeal, 658 F.3d 1162 (9<sup>th</sup> Cir. Sept. 29, 2011).
- <sup>57</sup> Michael Sheridan and Richard Sisk (December 1, 2010), DADT Survey Reveals Military Is OK with Gay Troops, Sec. Def. Gates Urges Congress to Repeal Policy, *Daily News*.
- <sup>58</sup> Alan Okros and Denise Scott (2014), Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness, *Armed Forces & Society*, 1-14, DOI:10.1177/0095327X14535371.
- <sup>59</sup> *Log Cabin Republicans v US*, Order Granting Stay (9<sup>th</sup> Cir., Nov. 1, 2010).
- <sup>60</sup> See, for example, Lesley Clark (October 14, 2014), Transgender Military Personnel Openly Serving in 18 Countries to Convene in DC, *McClatchy*.
- <sup>61</sup> Chris Johnson (October 17, 2014), Pelosi Endorses Openly Trans Military Service, *Washington Blade*.
- <sup>62</sup> Pollock and Minter (2014), Report of the Planning Commission on Transgender Military Service.
- <sup>63</sup> Dan Lamothe (August 25, 2014), The Pentagon Can Easily Drop its Ban on Transgender Troops, Study Finds, *Washington Post Checkpoint*.
- <sup>64</sup> Aaron Belkin (August 12, 2015), Caring for Our Transgender Troops – The Negligible Cost of Transition-Related Care, *New England Journal of Medicine*, DOI: 10.1056/NEJMp1509230.
- <sup>65</sup> Parts of this discussion are reprinted almost verbatim from Dr. Joycelyn Elders, M.D. and Rear Admiral Alan M. Steinman, M.D. (2014), Report of the Transgender Military Service Commission, San Francisco, CA: Palm Center.
- <sup>66</sup> Army Regulation (AR) 40-501 (February 10, 1961), Standards of Medical Fitness, Chapter 2, Section IX, § 2-14(s); Chapter 2, Section XVI, § 2-34(a)(2).
- <sup>67</sup> Army Regulation (AR) 40-501 (December 1, 1983), Standards of Medical Fitness, Chapter 2, Section XVI, § 2-34.2(b).
- <sup>68</sup> Col. Franklin D. Jones, Maj. Michael G. Deeken, and Maj. Steven D. Eshelman (May 1984), Sexual Reassignment Surgery and the Military: Case Reports, *Military Medicine*, Volume 149, 271-75, p. 274.

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- <sup>69</sup> *Doe v. Alexander*, 510 F. Supp. 900 (D. Minn. 1981).
- <sup>70</sup> *Leyland v. Orr*, 828 F. 2d 584 (9<sup>th</sup> Cir. 1987).
- <sup>71</sup> *DeGroat v. Townsend*, 495 F. Supp. 2d 845 (S.D. Ohio 2007).
- <sup>72</sup> “Hagel: Military Should Review Policy on Transgender Individuals,” (May 11, 2014), *Associated Press*.
- <sup>73</sup> Edwin Mora (June 30, 2015), Pentagon: ‘No Ongoing Review’ to Address DOD’s Transgender Policy, *Bribart*.
- <sup>74</sup> National Defense Research Institute (1993), *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment*, Santa Monica, CA: RAND.
- <sup>75</sup> Elders and Steinman (2014), Report of the Transgender Military Service Commission.
- <sup>76</sup> M. Joycelyn Elders, George R. Brown, Eli Coleman, Thomas A. Kolditz, and Alan M. Steinman (2014), Medical Aspects of Transgender Military Service, *Armed Forces and Society*, 1-22.
- <sup>77</sup> Lisa Leff (May 13, 2014), Panel Urges End to U.S. Ban on Transgender Troops, *Associated Press*.
- <sup>78</sup> Discrimination in the Military (May 14, 2014), *New York Times*.
- <sup>79</sup> Discrimination in the Military (May 14, 2014), *New York Times*.
- <sup>80</sup> Justin Snow (May 16, 2014), White House Backs Review of Military’s Transgender Ban, *Metro Weekly*.
- <sup>81</sup> AMA Adopts New Policies to Improve Health of Nation on First Day of Voting at Annual Meeting (June 8, 2015), <http://www.ama-assn.org/ama/pub/news/news/2015/2015-06-08-new-policies-annual-meeting.page>, accessed January 1, 2016.
- <sup>82</sup> American Medical Association House of Delegates (2015), Military Medical Policies Affecting Transgender Individuals, Resolution 011, available at <http://www.palmcenter.org/files/A-15%20Resoultion%20011.pdf>, accessed January 1, 2016.
- <sup>83</sup> What Doctors Say About Transgender Troops (June 9, 2015), *New York Times*.
- <sup>84</sup> What Doctors Say About Transgender Troops (June 9, 2015), *New York Times*.
- <sup>85</sup> Bonnie Moradi (2009), Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans, *Military Psychology* 21, pp. 513-533.
- <sup>86</sup> Anne C. Loveland (1997), *American Evangelicals and the U.S. Military 1942-1993*, Baton Rouge: Louisiana State University Press.
- <sup>87</sup> Diane H. Mazur (April, 2015), The *Windsor* Effect: How Military Policy Change Leads to Civilian Equality, unpublished manuscript.
- <sup>88</sup> Jena McGregor (July 19, 2015), How the Boy Scouts Changed Their Stance on Gay Leaders, *Los Angeles Times*.
- <sup>89</sup> Matt Corley (January 27, 2010). Top DADT Advocate Says Abu Ghraib Abuses Happened Because Women Are Allowed in the Military. Retrieved from <http://thinkprogress.org/politics/2010/01/27/79060/donnelly-abu-ghraib/>, accessed January 1, 2016.