

**MEMORANDUM FROM DEFENSE COUNSEL
MARK GOLDSTONE, ESQ.
ANN WILCOX, ESQ.**

TO: INTERESTED PARTIES

DATE: JUNE 29, 2010

**RE: DC v. James E Pietrangelo II, 2010-CTF-4849, 2010-CDC-6973
DC v. Daniel W. Choi, 2010-CDC-4862, 2010-CDC-6972**

SUMMARY OF THE CASES

Lt. Dan Choi and Cpt. James Pietrangelo II are each charged with two counts of Failure to Obey a Lawful Order, pursuant to DC Municipal Regulations (18 DCMR 2000.2 (1995)); these charges stem from arrests at the White House sidewalk, on two separate occasions, March 18, 2010 and April 20, 2010. They face a nonjury trial on both charges, on Wed., July 14, 2010, in Courtroom 120 of DC Superior Court. This Court is located at 500 Indiana Avenue, NW, in Washington, DC. These are relatively minor charges (the Defendants may only be fined, from \$100 to \$1000, and may not receive jail time for these infractions). However, the Defendants seek to use their trials to highlight the ongoing effects of the "Don't Ask, Don't Tell" law and policy of the U.S. Armed Forces toward gay and lesbian servicemembers. They seek to compel the testimony of President Barack Obama who has, on several occasions as President and Commander in Chief (and previously as a Senator and Presidential Candidate) called on the LGBT community to "pressure" him to change the DADT law and policy, thus allowing gay servicemembers to serve their country openly and honorably.

The subpoena of the President is necessary for the defense to prove that Defendants were following and obeying lawful orders or directives by their President and Commander in Chief, and were therefore under an obligation and authority to act as they did in order to pressure him - in a non-violent, visible way - on this important public issue. In addition, these statements support the contention that Defendants were acting out of necessity, in order to prevent discrimination and greater harm to gay servicemembers now serving.

WHY DID WE SUBPOENA THE PRESIDENT?

Defendants in the above-captioned cases seek the testimony of Barack Obama, President of the United States and Commander in Chief of the US Armed Forces, to testify about statements made by him, regarding his support for public pressure to abolish the "Don't Ask, Don't Tell" law and official policy regarding gay and lesbian members of the US Armed Forces. In particular, statements made on June 1, 2009 (Remarks for Pride Month), June 29, 2009 (Remarks for Pride Reception), October 10, 2009 (Human Rights Campaign Dinner).

Below we highlight several, but not all, remarks that will be relied upon for the defense. These remarks are necessary for the defense in that they reflect that Defendants were following and obeying lawful orders or directives by their President and Commander in Chief, and therefore under an obligation and authority to act as they did in order to pressure him in a non-violent visible way, on this important public issue. President Barack Obama's testimony is also necessary for the defense to prove the defense of necessity (which may excuse "illegal" actions which were taken to prevent a greater harm).

“I’m here with a simple message: I’m here with you in that fight. For even as we face extraordinary challenges as a nation, we cannot – and we will not – put aside issues of basic equality. Now, I’ve said this before, I’ll repeat it again – it’s not for me to tell you to be patient, any more than it was for others to counsel patience to African Americans petitioning for equal rights half a century ago. We are moving ahead on ‘don’t ask, don’t tell.’ We should not -- We should not be punishing patriotic Americans who have stepped forward to serve this country. We should be celebrating their willingness to show such courage and selflessness on behalf of their fellow citizens, especially when we’re fighting two wars. We cannot afford to cut from our ranks people with the critical skills we need to fight any more than we can afford – for our military’s integrity – to force those willing to do so into careers encumbered and compromised by having to live a lie. So I’m working with the Pentagon, its leadership and the members of the House and the Senate on ending this policy. Legislation has been introduced in the House to make this happen. I will end Don’t Ask, Don’t Tell. That’s my commitment to you.” -- “Now, I’ve said this before, I’ll repeat it again — it’s not for me to tell you to be patient, any more than it was for others to counsel patience to African Americans petitioning for equal rights half a century ago,” he said. “And that’s why it’s so important that you continue to speak out, that you continue to set an example, that you continue to pressure leaders — including me — and to make the case all across America,” Obama added.”

Office of the Press Secretary (2009, October 10). Remarks by the President at Human Rights Campaign Dinner Retrieved from <http://transcripts.cnn.com/TRANSCRIPTS/0910/10/cnr.05.html>

"And finally, I want to say a word about "don't ask, don't tell." As I said before -- I'll say it again -- I believe "don't ask, don't tell" doesn't contribute to our national security. (Applause.) In fact, I believe preventing patriotic Americans from serving their country weakens our national security. (Applause.) I know that every day that passes without a resolution is a deep disappointment to those men and women who continue to be discharged under this policy -- patriots who often possess critical language skills and years of training and who've served this country well. But what I hope is that these cases underscore the urgency of reversing this policy not just because it's the right thing to do, but because it is essential for our national security."

Office of the Press Secretary (2009, June 29). Remarks by the President Pride Reception Retrieved from <http://www.whitehouse.gov/the-press-office/remarks-president-lgbt-pride-month-reception>

“I want you to hold our government accountable,”“I want you to hold me accountable.”

As Prepared For Delivery (2008, September 17). Remarks of Senator Barack Obama retrieved from <http://www.opednews.com/articles/Failure-to-prosecute-why-by-Don-Smith-090829-170.html>

“As president, I will work with Congress and place the weight of my administration behind enactment of the Military Readiness Enhancement Act, which will make nondiscrimination the official policy of the U.S. military. I will task the Defense Department and the senior command structure in every branch of the armed forces with developing an action plan for the implementation of a full repeal of Don't Ask, Don't Tell. And I will direct my Secretaries of Defense and Homeland Security to develop procedures for taking re-accession requests from those qualified service members who were separated from the armed forces under Don't Ask, Don't Tell and still want to serve their country. The eradication of this policy will require more than just eliminating one statute. It will require the implementation of anti-harassment policies and protocols for dealing with abusive or discriminatory behavior as we transition our armed forces away from a policy of discrimination. The military must be our active partners in developing those policies and protocols. That work should have started long ago. It will start when I take office.”

Prepared Remarks (2007, November 9). Statement by Senator Obama for President Retrieved from <http://www.barackobama.com/people/lgbt/>

"My Administration has partnered with the LGBT community to advance a wide range of initiatives. At the international level, I have joined efforts at the United Nations to decriminalize homosexuality around the world. Here at home, I continue to support measures to bring the full spectrum of equal rights to LGBT Americans. These measures include enhancing hate crimes laws, supporting civil unions and Federal rights for LGBT couples, outlawing discrimination in the workplace, ensuring adoption rights, and ending the existing "Don't Ask, Don't Tell" policy in a way that strengthens our Armed Forces and our national security”

Office of the Press Secretary (2009, June 1). Lesbian, Gay, Bisexual, Transgender Pride Month, 2009 Declaration Retrieved from http://www.whitehouse.gov/the_press_office/Presidential-Proclamation-LGBT-Pride-Month/

If you have any further questions please feel free to contact Defense Counsel: Ann Wilcox, Esq. at 202-441-3265 or Mark Goldstone, Esq. at 301-346-9414.