

Subject: [HLS] Military Recruiting

Date: Wednesday, October 1, 2008 9:45 AM

From: Elena Kagan <[REDACTED]@hls.harvard.edu>

Reply-To: "Elena Kagan" <[REDACTED]@hls.harvard.edu>

To: <[REDACTED]@hls.harvard.edu>

Conversation: Military Recruiting

To all members of the HLS community:

As many of you know, the U.S. military will be recruiting on campus today as part of our normal OCI process. I write to give newcomers to our community some background on this issue, as well as to state some views on the matter.

The Law School's anti-discrimination policy, adopted in 1979, provides that any employer that uses the services of OCS to recruit at the school must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. As a result of this policy, the military was barred for many years from using the services of OCS. The military retained full access to our students (and vice versa) through the good offices of the Harvard Law School Veterans Association, which essentially took the place of OCS in enabling interviews to occur.

In 2002, a ruling by the Department of Defense made clear that unless the Law School lifted its general ban for the military, the entire university would lose federal funding under a statute known as the Solomon Amendment. In 2006, the Supreme Court, in *Rumsfeld v. FAIR*, upheld the Solomon Amendment against legal challenge.

As a result, the Law School now includes recruiters from the military in its regular interviewing process. Although the Law School receives very little federal funding, the University as a whole receives about 15% of its operating budget from such funds, with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research. Like all other law schools that are part of larger universities, we determined that we could not place these research funds in jeopardy.

This is a difficult issue, so let me say a few words on what I believe to be the core matter. I believe discrimination against gays and lesbians seeking to enter military service is wrong — both unwise and unjust. And this wrong harms the fabric of our own community by denying an opportunity to some of our students that other of our students have. The military is a noble profession, which provides extraordinary service to each of us every day. But this simple fact heightens, rather than excuses, the inequity in this case. The Law School remains firmly committed to the principle of equal opportunity for all persons, without regard to sexual orientation. And I look forward to the time when all our students can pursue any career path they desire, including the path—as deeply honorable as any I can imagine—of devoting their professional lives to the defense of this country.

Best,
Elena Kagan

Subject: [HLS] Military Recruitment
Date: Thursday, September 27, 2007 11:45 AM
From: Elena Kagan <[REDACTED]du>
Reply-To: "Elena Kagan" <[REDACTED]du>
To: [REDACTED]un1 [REDACTED]u>
Conversation: Military Recruitment

To all members of the HLS community:

As many of you know, the U.S. military will be recruiting on campus today, consistent with the Supreme Court's decision in *Rumsfeld v. FAIR*, which upheld the Solomon Amendment, as interpreted by the Government, against legal challenge. For those of you new to this issue, the Solomon Amendment denies federal funds to any university that prohibits military recruiters "from gaining access to campuses, or access to students . . . on campuses, for purposes of military recruiting, in a manner that is at least equal in quality or scope to the access to campuses and to students that is provided to any other employer." This Amendment effectively prevents the Law School from enforcing against military recruiters its general anti-discrimination policy, which requires that any employer using the Office of Career Services to recruit at the School must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. Although the Law School receives none of the federal funds that the Amendment threatens to cut off, the University as a whole receives about 15% of its operating budget from such funds, with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research. Like all other law schools that are part of larger universities, we determined that we could not place these research funds in jeopardy. I have said before how much I regret making this exception to our anti-discrimination policy. I believe discrimination against gays and lesbians seeking to enter military service is wrong – both unwise and unjust. And this wrong harms the fabric of our own community by denying an opportunity to some of our students that other of our students have. The military is a noble profession, which provides extraordinary service to each of us every day. But this simple fact heightens, rather than excuses, the inequity in this case. The Law School remains firmly committed to the principle of equal opportunity for all persons, without regard to sexual orientation. And I look forward to the time when all our students can pursue any career path they desire, including the path of devoting their professional lives to the defense of this country.

Best,
Elena Kagan

Subject: [HLS] Solomon Amendment

Date: Tuesday, March 7, 2006 9:16 AM

From: [REDACTED] u

[REDACTED] u

To: <[REDACTED] u>

Conversation: [HLS] Solomon Amendment

To members of the HLS community:

As most of you know by now, the Supreme Court in *Rumsfeld v. FAIR* yesterday upheld the Solomon Amendment, as interpreted by the U.S. Government, against legal challenge. I am disappointed by this decision, which rejected the statutory claim presented by a group of Harvard Law School professors as amici, as well as the constitutional claim raised by FAIR. In the wake of this decision, Harvard Law School will continue to provide Career Services assistance to the military, as the School does to non-discriminating employers. At the same time, I hope that many members of the Harvard Law School community will accept the Court's invitation to express their views clearly and forcefully regarding the military's discriminatory employment policy. As I have said before, I believe that policy is profoundly wrong -- both unwise and unjust -- and I look forward to the day when all our students, regardless of sexual orientation, will be able to serve and defend this country in the armed services.

Best,
Elena Kagan

Subject: [HLS] military recruiting
Date: Tuesday, October 3, 2006 12:48 PM
From: Elena Kagan <[REDACTED]>
Reply-To: Elena Kagan <[REDACTED]>
To: <[REDACTED]>
Conversation: [HLS] military recruiting

To all members of the HLS community:

As many of you know, the U.S. military will be recruiting on campus today, consistent with the Supreme Court's decision last spring in *Rumsfeld v. FAIR*, which upheld the Solomon Amendment, as interpreted by the Government, against First Amendment challenge.

For those of you new to this issue, the Solomon Amendment denies federal funds to any university that prohibits military recruiters "from gaining access to campuses, or access to students . . . on campuses, for purposes of military recruiting, in a manner that is at least equal in quality or scope to the access to campuses and to students that is provided to any other employer." This Amendment effectively prevents the Law School from enforcing against military recruiters its general anti-discrimination policy, which requires that any employer using the Offices of Career Services to recruit at the School must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. Although the Law School receives none of the federal funds that the Amendment threatens to cut off, the University as a whole receives about 15% of its operating budget from such funds, with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research. Like all other law schools that are part of universities, we determined that we could not place these research funds in jeopardy. A majority of HLS faculty members, including me, filed an amicus brief in *Rumsfeld v. FAIR* to challenge the Government's enforcement of the Solomon Amendment against us and other law schools. The Supreme Court, however, unanimously rejected this challenge on all grounds presented.

I have said before how much I regret making this exception to our antidiscrimination policy. I believe discrimination against gays and lesbians seeking to enter military service is wrong – both unwise and unjust. And this wrong harms the fabric of our own community by denying an opportunity to some of our students that other of our students have. The military is a noble profession, which provides extraordinary service to each of us every day. But this simple fact heightens, rather than excuses, the inequity in this case. The Law School remains firmly committed to the principle of equal opportunity for all persons, without regard to sexual orientation. And I look forward to the time when all our students can pursue any career path they desire, including the path of devoting their professional lives to the defense of the country.

Best,
Elena Kagan

Subject: [HLS] Military Recruiting

Date: Tuesday, September 20, 2005 5:36 PM

From: [REDACTED]@hls.harvard.edu

Reply-To: [REDACTED]@hls.harvard.edu

To: [REDACTED] >

Conversation: [HLS] Military Recruiting

To all members of the HLS community:

I write to let you know that this fall, the Office of Career Services (OCS) will provide assistance to the U.S. military in recruiting students, as it has done for most of the past three years. This email gives newcomers to our community some background on this issue, describes recent developments affecting it, and states my own views on the matter.

The Law School's anti-discrimination policy, adopted in 1979, provides that any employer that uses the services of OCS to recruit at the school must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. As a result of this policy, the military was barred for many years from using the services of OCS. The military retained full access to our students (and vice versa) through the good offices of the Harvard Law School Veterans Association, which essentially took the place of OCS in enabling interviews to occur.

In 2002, the then-Dean of the Law School, Robert Clark, in consultation with other officers of the University, reluctantly created an exception from the law school's general anti-discrimination policy for the military. The Dean took this action because of a new ruling by the Department of Defense stating that unless the Law School lifted its ban, the entire University would lose federal funding under a statute known as the Solomon Amendment. (This amendment denies federal funds to an educational institution that "prohibits or in effect prevents" military recruiting.) The Law School's own resources were not at risk: we do not receive any of the kinds of federal funding that the Amendment threatens to cut off. The University, however, receives about 15% of its operating budget from the federal government, with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research. The Dean determined (as did all other law school deans) that he should make an exception to the School's anti-discrimination policy in the face of this threat to the University's funding and research activities.

I continued this exception in effect, for the same reasons, through the 2003 and 2004 fall recruiting seasons. In the meantime, a consortium of law schools and law school faculty members (FAIR) brought suit challenging the Defense Department's policy on constitutional grounds. Harvard Law School is not a member of FAIR, but 54 faculty members, including me, filed an amicus brief in that suit articulating different, statutory grounds for overturning the Department's policy. In November 2004, the Court of Appeals for the Third Circuit issued a decision in the FAIR case, holding that the Defense Department's policy violates First Amendment freedoms. The Supreme Court granted review of this decision; the Third Circuit's ruling is stayed pending the Supreme Court's decision, which is expected later this year. (Much the same group of HLS faculty members, including me, will file an amicus brief tomorrow in the Supreme Court litigation. I also understand that the University expects to join an amicus brief filed by Yale and other universities.) Although the Supreme Court's action meant that no injunction applied against the Department of Defense, I reinstated the application of our anti-discrimination policy to the military (after appropriate consultation with University officials) in the wake of the Third Circuit's decision; as a result, the military did not receive OCS assistance during our spring 2005 recruiting season. My hope in taking this action was that the Department would choose not to enforce its interpretation of the Solomon Amendment while the Third Circuit opinion stood. Over the summer, however, the Department of Defense notified the University that it would withhold all possible funds if the Law School continued to bar the military from receiving OCS services. As a result, I have decided (again, after appropriate consultation) that we should lift our ban and except the military from our general non-discrimination policy. This will mean that the military will receive OCS assistance during the fall 2005 recruiting season.

I have said before how much I regret making this exception to our antidiscrimination policy. I believe the military's discriminatory employment policy is deeply wrong ^ both unwise and unjust. And this wrong tears at the fabric of our own community by denying an opportunity to some of our students that other of our students have. The importance of the military to our society ^ and the great service that members of the military provide to all the rest of us ^ heightens, rather than excuses, this inequity. The Law School remains firmly committed to the principle of equal opportunity for all persons, without regard to sexual orientation. And I look forward to the time when all our students can

pursue any career path they desire, including the path of devoting their professional lives to the defense of their country.

Best,
Elena Kagan

Subject: [HLS] Military Recruiting

Date: Tuesday, September 28, 2004 11:09 AM

From: [REDACTED] u
[REDACTED].edu

To: <[REDACTED] u>

Conversation: [HLS] Military Recruiting

To the HLS community:

As some of you know, the U.S. military will begin recruiting on campus today, as it has in the last two recruiting seasons, notwithstanding the Law School's anti-discrimination policy. I write to give newcomers to this community some background on this issue and to share with all of you some of my own views about it.

The Law School's anti-discrimination policy, adopted in 1979, provides that any employer who recruits at the School and uses the services of the Office of Career Services (OCS) must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. As a result of this policy, the military was barred for many years from using the services of OCS. Two years ago, the Law School, in consultation with the University, lifted this ban for the military, thus creating a significant exception to its anti-discrimination policy (which now will be reflected in all our statements of the policy). The Law School took this action because of a new ruling by the Department of Defense stating that unless the Law School took this action, the entire University would lose federal funding under a statute known as the Solomon Amendment. (This Amendment denies federal funds to an educational institution that "prohibits or in effect prevents" military recruiting.) The Law School does not receive significant federal funding, and our federally sponsored student loan programs would not have been at risk. The University, however, receives about 16% of its operating budget from the federal government, with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research. The Law School made an exception to its anti-discrimination policy, as all other law schools with similar policies did, in the face of this threat to the University's funding and so to its research and educational activities.

This exception runs contrary to the Law School's basic principles. The Law School is committed to the principle of equal opportunity for all persons, without discrimination on the basis of sexual orientation. As a result, the

Law School is opposed to the military's discriminatory employment practices. No one should understand the presence of the military on campus as reflecting a change in the strength of this opposition. But for the coercion effected by the Department of Defense's interpretation of the Solomon Amendment, the Law School would refuse to provide OCS support to the military because of the discrimination it daily practices. Although the Law School itself (as a component of the University) cannot take legal action against this governmental coercion, 54 individual faculty members, including me, have filed an amicus curiae brief contesting its legality in a suit challenging the Solomon Amendment. We will continue to look for avenues to press our views on the subject.

In my own view, the military's recruitment policy is both unjust and unwise. The military's policy deprives many men and women of courage and character from having the opportunity to serve their country in the greatest way possible, while depriving each of the rest of us of what these individuals could contribute. And this fundamental wrong tears at the fabric of our own community, because some of our members cannot, while others can, devote their professional careers to the defense of their country.

I understand that the military's presence on campus feels alienating to many here, especially our LGBT students. I hope that each of us, this week and always, can help to send a contrary and stronger message: that we are an inclusive community, believing deeply in the capacity and right of all our students to pursue the professional careers they desire.

I invite all of you to get in touch with me if you any questions or comments on this issue. In addition, Ellen Cosgrove, our Dean of Students, serves as a resource for students who have interests or issues relating to sexual orientation.

Best,
Elena Kagan

Date: Mon, 6 Oct 2003 08:03:20 -0400 (ET/PT)
To: [REDACTED]
From: [REDACTED]
Subject: [REDACTED] edu
Reply-To: [REDACTED]@harvard.edu

To the HLS community:

As many of you know, the U.S. military began to recruit on campus Friday, as it also did last year, notwithstanding the Law School's anti-discrimination policy. I write to give newcomers to this community some background on this issue and to express to all of you some of my own views about it.

The Law School's anti-discrimination policy, adopted in 1979, provides that any employer who recruits at the School and uses the services of OCS must sign a statement indicating that it does not discriminate on various bases, including sexual orientation. As a result of this policy, the military was barred for many years from using the services of OCS. Last year, the Dean of Law School, in consultation with other officers of the University, reluctantly lifted this ban for the military. The Dean took this action because of a new ruling by the Department of Defense stating that unless the Law School took this action, the entire University would lose federal funding under a statute known as the Solomon Amendment. (This amendment denies federal funds to an educational institution that "prohibits or in effect prevents" military recruiting.) The Law School does not receive significant federal funding, and our federally sponsored student loan programs would not have been at risk. The University, however, receives about 16% of its operating budget from the federal government (with the Medical School and the School of Public Health receiving by far the largest share of this money for scientific and medical research). The Dean determined, as did all his counterparts at other law schools, that he should make an exception to the School's anti-discrimination policy in the face of this threat to the University's funding. I left this exception in force this year, once again because of the enormous adverse impact a prohibition of military recruitment would have on the research and educational missions of other parts of the University.

This action causes me deep distress, as I know it does a great many others. I abhor the military's discriminatory recruitment policy. The importance of the military to our society -- and the extraordinary service that members of the military provide to all the rest of us -- makes this discrimination more, not less, repugnant. The military's policy deprives many men and women of courage and character from having the opportunity to serve their country in the greatest way possible. This is a profound wrong -- a moral injustice of the first order. And it is a wrong that tears at the fabric of our own community, because some of our members cannot, while others can, devote their professional careers to their country.

The Law School remains committed to the principle of equal opportunity for all persons, without discrimination on the basis of sexual orientation. As a result, the Law School remains opposed to the military's discriminatory employment practices. No one should understand the presence of the military on campus as reflecting any change in the strength of this opposition.

I invite all of you to email me if you have any questions or comments

on this important matter. I also invite you, if you wish to learn more about these issues, to attend a conference sponsored by Lambda on the military's recruitment policies and the Solomon amendment, to be held on October 10 and 11.

Thank you very much.

Elena Kagan