

# Between a Rock and a Hard Place: Law Schools and Military Recruiting in the Wake of the Solomon Amendment

by William Chamberlain and Mark Weber

Those of you who attended the session on this complex issue at the NALP conference last spring in Boston are aware that the future of the amendment and its various interpretations remain in doubt. As career services directors charged with the task of advising our deans on this issue, we need up-to-date information and would appreciate definitive answers. At the conference, we presented a short history of the amendments, both I and II, discussed the AALS reaction, and surveyed many responses to the issues from various law schools. This article will review our presentation which, due to the bountiful conference programming, not everyone was able to attend and will bring you up to date on things that have happened (or not) since April. Please feel free to contact either of us if you have any questions.

The controversy originated in the AALS decision in 1990 to ban discrimination based on sexual orientation in its member law schools. *See* Bylaw 6-4, amended, 1990 and Executive Committee Regulation 6.19. There were exemptions granted to institutions that could not comply with this ban due to religious or university-wide policies. The exemptions were granted with the explicit caveat that those schools must take action to ameliorate the effects of discrimination against gays and lesbians.

In 1995, Congress passed Solomon I, which threatened cutting off Department of Defense funds to any school that did not allow the military to recruit on campus. The military was trying to recoup from a period of declining enlistment. This portion of Solomon makes a certain amount of sense — the military should be able cut off DOD funds from any school where the military is not allowed to interview.

Solomon I, however, did not have the desired effect since most law schools do not depend on DOD funding. Solomon II was then enacted, which broadened the types of funding at risk to include federally funded student aid (chiefly Perkins loans and work-study grants) and funding from other governmental agencies such as HHS.

AALS recognized that Solomon II put law schools in a bind — either schools could remain true to their nondiscrimination policies and risk the loss of a portion of federally-funded financial aid or allow the military on-campus despite the military's blatant discrimination. AALS reluctantly agreed to a compromise that allowed schools that permitted the military on-campus to be in provisional compliance with AALS policy provided that the schools take ameliorative action. *See* AALS Deans' Memoranda 97-46 and 98-23.

In October 1999, an amendment proposed by Representative Barney Frank of Massachusetts was passed which carved out a safe harbor for student aid funding. Schools that now banned the military would no longer be at risk for losing their student aid. The door remained open for loss of funding to the school from DOD, HHS, DOL, and other agencies.

AALS announced a change in policy early in 2000. *See* AALS Deans' Memorandum 00-2. Schools should now ban the military since student aid was no longer at risk. Before this policy could take effect, however, the military promulgated a set of interim regulations under Solomon that interpreted the amendment to include not only a law school but also the larger institution in its grasp. Therefore, if a law school denied access to the military, funds to the

larger university would be at risk, including funding from DOD, DOE, and HHS. While student loans were still safe, this threat to other units of the university caused AALS to revert to its former policy of allowing the military to interview and compensate gay and lesbian students through amelioration. *See* AALS Deans' Memorandum 00-6.

This remains the status quo. AALS filed objections to the DOD interim regulations and to date those regulations have not been finalized. *See* AALS Deans' Memorandum 00-11. No other agency has adopted DOD's interpretation of the "sub-unit exemption." There have been murmurs in Congress about an effort to overturn the Frank amendment, but nothing concrete has been proposed so far.

Non-independent law schools, with few exceptions, are allowing the military on-campus and participating in some form of amelioration. Independent law schools are free to ban the military. Vermont Law School has taken this route. Other law schools are considering banning the military completely. According to a recent survey, four law schools completely ban the military from campus; three of these are "sub-elements" of larger entities.

While discrimination against gays and lesbians is publicly denounced at most schools, the military is a source of employment, particularly at independent schools. This issue has further ramifications for us as career services directors. Aren't we supposed to be maximizing employment opportunities for all of our students?

Law schools have been creative in responding to the requirement of amelioration. At minimum under AALS standards, schools must display a disclaimer that clearly states that the military is being allowed to interview on campus in spite of the inability to sign the school's nondiscrimination policy because of the threat of loss of federal funds. This disclaimer is to be placed on every notice about the military and on the doors of the interview rooms and be prominently displayed in career services offices. Other schools have sponsored programs on the Solomon issue, have met with their gay and lesbian student groups, have coordinated panels on "being out in the workplace," and have included gay or lesbian speakers on routine

programs such as "life in small firms." Some schools have faculty/student/administration committees that focus on the school's response. At one school, an alum has established scholarships to allow two students to intern at Lambda Legal Defense for the summer.

Some schools have managed to limit the military's access. According to the military, access to facilities and student information must be identical to that accorded to private employers. Some schools have reached an agreement with the military that the military will interview at ROTC headquarters rather than at the school or will use an alternate facility to avoid causing a disturbance. Most schools are treating the military as they would any other employer, but some schools are providing less information on the military and others are notifying student groups of the dates that military interviewers will be on campus so that they can stage a protest. Most recently, New York University successfully discouraged the Air Force from interviewing on-campus.

Several schools have initiated dialogues between the recruiters and the students. This is particularly effective when the recruiter is an alum. At John Marshall, for example, three military recruiters met with a group of students in a session attended by many non-gay students that was surprisingly civil and open on both sides. Many of the recruiters themselves disagree with the military's "don't ask, don't tell" policy. Encouraging such dialogues provides an alternative for those schools where protests, for whatever reason, will not be effective. A dialogue can serve as the first step in overcoming the hatred, fear and misunderstanding that underlie the military's current policy. ■

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