

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

FORUM FOR ACADEMIC AND INSTITUTIONAL
RIGHTS, a New Jersey membership corporation; SOCIETY
OF AMERICAN LAW TEACHERS, a New York corporation;
COALITION FOR EQUALITY, a Massachusetts association;
RUTGERS GAY AND LESBIAN CAUCUS, a New Jersey
association; PAM NICKISHER, a New Jersey resident;
LESLIE FISCHER, a Pennsylvania resident; MICHAEL
BLAUSCHILD, a New Jersey resident; ERWIN
CHEMERINSKY, a California resident; and SYLVIA LAW,
a New York resident,

Plaintiffs-Appellants,

v.

DONALD H. RUMSFELD, in his capacity as U.S. Secretary of
Defense; ROD PAIGE, in his capacity as U.S. Secretary of
Education; ELAINE CHAO, in her capacity as U.S. Secretary of
Labor; TOMMY THOMPSON, in his capacity as U.S. Secretary of
Health and Human Services; NORMAN Y. MINETA, in his capacity
as U.S. Secretary of Transportation; and TOM RIDGE, in his capacity
as U.S. Secretary of Homeland Security,

Defendants-Appellees.

No. 03-4433

DECLARATION OF RDML JEFFREY L. FOWLER, USN

I, Jeffrey L. Fowler, hereby declare and say:

1. I am Rear Admiral Jeffrey L. Fowler, U. S. Navy, Commander, Navy Recruiting Command. My responsibilities include managing the recruitment of men and women for officer and enlisted programs in the regular and reserve components of the Navy, including the recruitment of applicants to the Navy's Judge Advocate General's Corps.

2. I am submitting this declaration, pursuant to 28 U.S.C. 1746, in support of the government's motion to stay the mandate in this case. I make the following statements based on my personal knowledge and information made available to me in my official capacity. The purpose of this declaration is to inform the court regarding the following matters: (1) the role and importance of judge advocates in the mission of the Navy; (2) the demand of the Navy Judge Advocate General's Corps (Navy JAG Corps) for new judge advocates; (3) the process for recruiting judge advocates; (4) the role of campus recruiting in the selection process; (5) the adverse impact that would arise if the Navy JAG Corps' access to law school campuses and students were restricted; and (6) the limitations of alternative means of recruiting.

Role and importance of Navy JAGs

1. The Navy JAG Corps has approximately 740 Judge Advocates on active duty and 410 drilling Reserve Judge Advocates. Judge Advocates provide direct advice and assistance on a daily basis to combatant commanders on issues ranging from military justice to rules of engagement, real-time target assessments, reviews of target lists, helping to establish war crime tribunals in Iraq and Afghanistan, interpretation of international treaties and advice under the law of armed conflict, to name but a few. The complexity, depth and breadth of the issues that Navy JAGs are required to provide advice on and participate in, often while serving in independent duty with at sea and overseas forces, require the finest possible naval officers and attorneys. Approximately 70 Navy Judge Advocates are serving worldwide and are forward deployed as part of the War on Terror. As part of their responsibility to support the Navy's combat mission, Navy JAGs are serving in Iraq and Afghanistan and are attached to SEAL (Sea, Air, Land) teams, Amphibious Ready Groups (ARGs), Expeditionary Strike Groups (ESGs), and various operational commands throughout the world. Navy JAGs are also providing training to military

commanders and host nation judicial officers in the operation of military and civilian courts through a wide variety of commands supporting Eastern Europe, the Middle East and elsewhere.

Demand For New JAGs

2. The Navy JAG Corps generally averages about 350-400 JAG applications each year and hires approximately 60 new accessions each year. Of that annual total, approximately 50 new accessions are recruited during their second and third year of law school. Of the applications received, over 50% had their first meeting with Navy personnel during an on-campus interview.

Process For Recruiting JAGs

3. Interested law students learn about potential employment opportunities with the Navy JAG Corps by various means, including on-campus recruiting and the Corps web site, where students can download the commissioning application and gather the requested supporting documentation. The on-campus interview is a critical part of this process. Following the on-campus interview, the law students meet (either on- or off-campus) with a local Officer Program Recruiter, who assists the interested applicant in completing the application and submitting the finished package to Commander, Navy Recruiting Command (CNRC). A selection board composed of 5-6 Judge Advocates reviews all applications. If the JAGC Professional Recommendation board selects an interested candidate, the candidate undergoes a comprehensive medical and security screening that evaluates the candidate's ability to serve. If no issues are identified during the screening process, the applicant will be finally selected by my command and offered a commission as a Judge Advocate in the Navy. From beginning to end, this process generally takes 3-6 months.

Role of Campus Recruiting In the JAG Selection Process

4. On an annual basis, over 75% of the 188 American Bar Association accredited law schools are visited by Navy JAGs for recruiting purposes. These campus-recruiting visits are conducted by active duty and reserve JAG officers who either live or serve in geographic proximity to each school. These campus visits are the most effective tool for Judge Advocates to meet with prospective applicants and discuss a potential career in the JAG Corps. The details of campus visits vary from one school to another. However, in most cases, campus recruiting involves either a group briefing for interested candidates or a one-on-one interview between potential applicants and Judge Advocates. While other recruiting tools are available, including the JAG website, word of mouth, written media, TV, and radio, the most effective method of recruiting potential applicants is to meet with them in person and explain to them what a JAG career would entail and how to go about submitting an application. This exchange is our best tool for recruiting highly qualified Judge Advocates.

Adverse Impact Of Restrictions On Access To Campuses And Students

5. The denial of equal access to law school campuses hampers the ability of the Navy JAG Corps to recruit the highest caliber candidates and, ultimately, the Navy's ability to staff our offices with the best possible personnel to enable the Navy to accomplish its mission. Access to law students that is inferior to that provided to other employers precludes Navy JAG Corps recruiters from being able to reach potentially interested students in the manner that is most convenient and attractive to the students themselves. Many employers engage in on-campus recruiting because it is easy for students who are at the school for classes or studying to also interview with an employer there. If military recruiters are required to meet with students at a different location, it creates an obstacle to reaching students that other employers do not have to

overcome. More generally, it places other employers at a competitive advantage over the military.


6. Complete exclusion from law school campuses would have an immediate and significant impact on our ability to continue to recruit bright and talented officers into the Navy JAG Corps. While many law students are interested in opportunities and adventures that a possible military career may offer, we are competing with other employers for the same pool of talented law students. Many law firms and corporate employers often hire new associates at higher salaries and require less personal sacrifices than the military, especially in light of the ongoing conflicts in Iraq and Afghanistan. We cannot negotiate salaries, and the negotiation of duty station locations is often limited. In order to compete with other employers, Navy Judge Advocates need a direct forum in which to communicate the many advantages of military service, such as public service, significant responsibility early on, adventure, travel opportunities, and the prestige associated with military service. If that direct line of communication is broken off, it will almost certainly affect the numbers of applications we receive from qualified young attorneys and law students. As different employers compete to hire qualified new attorneys, law firms and corporate employers will be at a significant advantage over the military, impairing our ability to convey the great advantages and opportunities of a legal career in the Armed Forces.

Drawbacks Of Alternative Means Of Recruiting

7. With the assistance of active duty and reserve JAGS, the Navy JAG Corps is able to visit most law schools in the country and make the most of a limited recruiting budget. There is no adequate substitute for a personal dialogue between a current Judge Advocate and an interested candidate. Many of our recruiters are junior officers who, two or three years ago, were in the same situation as current law students. They can relate to the applicant and speak to them

sincerely from their recent experiences. They can answer questions that arise immediately and remove some of the confusion that may exist regarding what Judge Advocates actually do. Beyond the additional expense involved, neither a TV commercial, a radio advertisement, nor a website can provide the same type of information and target the appropriate audience in the same manner as campus visits do. The ability to proudly walk onto a law school campus, in uniform, and openly talk to a potential applicant is essential to our ability to highlight the many rewards and advantages of a career as a Judge Advocate. There is no adequate substitute.

I declare under penalty of perjury that the foregoing is true and correct.



JEFFREY L. FOWLER
RDML, USN
Commander, Navy Recruiting Command

Executed this 11th day of January, 2005