

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 Brigadier Walter E. General Gaskin, United States Marine Corps

I, Walter E. Gaskin, hereby declare and say:

1. I, Walter E. Gaskin, am the Commanding General, Marine Corps Recruiting Command. I am responsible for all aspects of Marine Corps recruiting, to include the recruiting of judge advocates.

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 accomplishing the mission of the Marine Corps; (2) the demand within the Marine 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 occur if Marine Corps access to law school campuses and students was restricted; and (6) the limitations of alternative means of recruiting.

Role and importance of Marine Corps Judge Advocates

1. I have been informed that the Marine Corps has approximately 414 active duty judge advocates. Judge advocates provide direct advice and assistance on a daily basis to combatant commanders on issues ranging from military justice to the rules of engagement, from interpretation of international treaties to advice on the law of armed conflict. Marine judge advocates assigned to Marine Corps installations advise commanders on environmental law matters, labor law issues, international agreements and a myriad of other issues. Additionally, Marine judge advocates represent Marines at courts-martial and administrative hearings while others serve as prosecuting attorneys. I have been informed that approximately 100 Marine judge advocates are serving worldwide and are forward deployed as part of the Global War on Terrorism. As part of their responsibility supporting the Marine Corps's combat mission, judge advocates are serving in Iraq, Afghanistan, the Horn of Africa, and are attached to Marine Expeditionary Units, Embassies, and various operational commands throughout the world. Finally, Marine judge advocates serve as legal assistance attorneys. They assist in the deployment of Marines by ensuring that a host of legal matters, to include addressing pending civil matters and preparing and executing wills and powers of attorney, are completed prior to a

Marine's deployment. Additionally, these attorneys provide legal support to family members of deployed Marines and Marines who are not deployed.

Demand For New Judge Advocates

2. The United States Marine Corps generally averages about 200 applications to the Marine Corps Law Accession Programs each year, which ultimately results in approximately 40 accessions each year. Of that annual total, approximately 20 accessions are recruited during their second and third year of law school.

Process For Recruiting Marine Corps Judge Advocates

3. The Marine Corps Recruiting Command (MCRC), located at Quantico, Virginia, is responsible for recruiting qualified Marine Corps judge advocates. There are approximately 71 Officer Selection Officers (OSOs) within MCRC who are tasked with recruiting judge advocates.

4. Interested law students learn about potential employment opportunities as a Marine Corps judge advocate by various means, including on-campus recruiting, legal fairs, and the U.S. Marine Corps website, where law students can find information about the various commissioning programs and the role of a Marine Corps judge advocate. Of these methods, on-campus recruiting is the preferred and most successful method of establishing initial contact with interested and potentially qualified applicants. On-campus visits provide the Marine Corps OSO the ability to personally provide information about Marine Corps Law Programs to interested law students. After initial contact is established, law students meet with the OSO who then screens the applicant and assists in initiating the process to become a Marine Corps judge advocate. This process includes a comprehensive physical fitness, medical and security screening. After this process is complete, the final application package is submitted to the appropriate district and

region, where all applications are reviewed by a Selection Board tasked with selecting the most qualified applicants. This process generally takes 2-6 months.

Role of Campus Recruiting In the Marine Corps Judge Advocate Selection Process

5. On-campus recruiting visits are the most effective tool for OSOs to establish initial contact with prospective applicants and discuss a potential career as a Marine Corps judge advocate. The details of campus visits vary from one school to another. In most cases, however, campus recruiting involves either a group briefing for interested candidates or a one-on-one interview between the potential applicants and active duty Marine Corps judge advocates. While other recruiting tools are available, including the USMC 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 career as a Marine Corps judge advocate 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

6. The denial of equal access to law school campuses hampers the ability of military recruiters to recruit high-quality applicants and, ultimately, our ability to staff the Marine Corps with the qualified personnel needed to successfully accomplish the Marine Corps mission. Access to law students that is inferior to that provided to other employers precludes the Marine Corps from being able to reach potentially interested students in the manner that is most convenient and attractive to the students. Employers engage in on-campus recruiting primarily because it's easy for students who are at the school for classes or studying to also interview with a potential employer. 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.

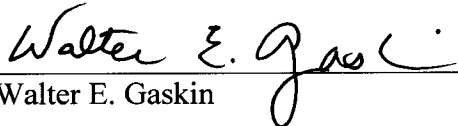
7. Complete exclusion from law school campuses would have an immediate and significant impact on our ability to continue to recruit bright and talented officers as Marine Corps judge advocates. While many law students are interested in the opportunities and adventures that a military career offers, we 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 for positions that require significantly less personal sacrifice 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, Marine Corps recruiters and judge advocates need a direct forum in which to communicate the many advantages of military service. If that direct line of communication is terminated, it will likely reduce the number of applications we receive from qualified 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

8. OSOs are responsible for recruiting judge advocates and are able to visit most law schools in the country and make the most of a limited recruiting budget. While the majority of the OSOs responsible for recruiting judge advocates are not judge advocates themselves, they have access to judge advocates who often accompany and provide support to the OSO's in their on-campus recruiting visits. OSOs responsible for recruiting judge advocates have to screen potential applicants for the qualifications necessary to become Marine Corps Officers as well as

their qualifications to become judge advocates in the Marine Corps. There is no adequate substitute for a personal dialogue between an OSO and an interested candidate. This personal dialogue allows the OSO to 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 Marine Corps 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.


Walter E. Gaskin

Executed this 11th day of January, 2005