

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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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.

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No. 03-4433

**DECLARATION OF MAJOR GENERAL JACK L. RIVES:**

I, Major General Jack L. Rives, hereby declare and say:

1. I am assigned as the Deputy Judge Advocate General of the U.S. Air Force and am currently performing the duties of The Judge Advocate General (TJAG) of the U.S. Air Force per 10 U.S.C. § 8037. In that capacity, I serve as the legal advisor of the Secretary of the Air Force and all officers and agencies of the Air Force. I direct Air Force officers designated as judge advocates (JAGs) in the performance of their duties. These duties include the provision of

legal services by more than 2,200 Air Force active duty and Air Reserve Component (ARC) judge advocates, as well as supervision of over 300 civilian attorneys, 1,400 active duty and ARC enlisted paralegals and 600 additional civilian employees. I am statutorily responsible for supervision of the administration of military justice throughout the Air Force, and I formulate and implement plans in coordination with Deputy Chief of Staff, Personnel, for the acquisition, training, utilization, and professional development of judge advocates, to include recruiting and accessing all active-duty and ARC 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 the mission of the Air Force; (2) the requirements of the Air Force Judge Advocate General's Corps (AF JAG Corps) for new judge advocates; (3) the process for recruiting judge advocates; (4) the role of campus recruiting in the selection process; (5) alternative methods of recruiting; and (6) the adverse impact that would arise if the AF JAG Corps' access to law school campuses and students were restricted.

#### Role and Importance of Air Force Judge Advocates

3. Today, the Air Force Judge Advocate General's Corps has more than 2,200 active duty, Air Force Reserve, and Air National Guard JAGs serving in approximately 200 locations worldwide. This force of judge advocates supports a full spectrum of domestic and international military operations ranging from combat operations to humanitarian civic assistance and disaster relief operations. As a global air and space force, the Air Force relies on mission-ready counsel fully engaged in areas from homeland defense to close air support; from contingency contracting

to research and development; from legal assistance to military justice; and from land use to international agreements.

4. All Air Force JAGs contribute to operational success. Air Force judge advocates are fully integrated at all levels of command and bolster mission effectiveness through diverse fields of practice in wide-ranging areas of criminal law, legal assistance, tort litigation and claims, government procurement law, fiscal law, federal labor law, environmental law, international law, aircraft accident investigations, and rules governing the application and use of force. From the seasoned veteran to the newest lawyer, Air Force JAGs employ their legal skills to help accomplish the Air Force mission.

5. Air Force JAGs enable commanders to field a disciplined military force. To that end, JAGs assist commanders in the administration of military justice in order to maintain morale, good order, and discipline within the ranks. By providing the full breadth of services in this arena, Air Force JAGs assist commanders with a military justice system that is fair and progressive, both in fact and in perception. The ability to fairly and equitably address misconduct and simultaneously deter others from wrongdoing ultimately bolsters the operational effectiveness of our military by maintaining the trust between service members, host nations, and the American people, thereby strengthening the national security of the United States.

6. Air Force JAGs contribute to global military operations. Effective counsel enables air and space forces to accomplish their mission within a legally permissible environment. Air Force JAG involvement continues to increase as our nation faces an increasingly asymmetric threat. More than 240 Air Force JAGs provide a permanent forward presence in over 40 locations in 19 foreign countries.

7. During all contemporary operations from Operation DESERT STORM to Operation IRAQI FREEDOM, Air Force JAGs continue to provide mission-ready support to fighters both at home stations and in an expeditionary capacity. In the Global War on Terrorism, Air Force JAGs are serving in more than 15 deployed locations throughout Southwest and Central Asia from Iraq to Kyrgyzstan in direct support of more than 14,000 Airmen. In addition, Air Force JAGs in Iraq are working closely with other US and foreign militaries, governments, and agencies in support of elections. These activities represent only a sample of the daily tasks performed at home and abroad by Air Force JAGs.

#### Demand for new JAGs

8. The AF JAG Corps must recruit approximately 120 new JAGs each year to properly sustain the forces needed to execute its worldwide mission. The Corps competes with other legal employers for applicants through the process I describe below. In that competitive environment, we seek the same access to law school campuses afforded to other employers so that we can interview and access a sufficient number of top-quality attorneys for America's Air Force. An unsuccessful recruiting year, either in terms of quality or quantity of applicants, can harm the JAG Corps' force structure for 20 years or longer.

#### The Process for Recruiting New JAGs

9. More than three-fourths of the current AF active duty JAG force came on active duty via the Direct Appointment Program (DAP). The remaining JAGs were accessed through various programs that permit entry from other active duty career fields and the Reserve Officer Training Corps program.

10. Eligible applicants can apply to one of the six annual direct appointment selection boards, which are held every other month. If selected, law students are brought on active duty

after they have passed the bar, and attorneys are usually commissioned within a few months of the selection board.

11. To meet a selection board, applicants must complete the requisite forms and submit them during a formal interview with a Staff Judge Advocate (SJA) at designated installations. The SJA is the highest-ranking judge advocate serving a commander, typically the chief legal counsel to an Air Force wing commander, and it is the SJA's responsibility to conduct the formal accession interview. SJAs submit formal, standardized reports on each applicant following the interview. Because it represents the "eyes-on" assessment of an experienced judge advocate leader in the field, the SJA interview report is a critical component of the aspiring JAG's application package.

12. Many applicants and potential applicants desire to meet with a JAG prior to compiling the lengthy application documents and arranging a formal accession interview with an SJA, which entails travel to the closest Air Force base. Air Force legal offices across the country are dedicated to supporting Air Force operations and are not structured to recruit on a full-time basis. Hence, the demand for face-to-face interaction is instead met via the national on-campus interview process at law schools. Interested potential applicant who contact the Air Force and request to meet with an active duty JAG can sign up for on-campus interviews at their respective law schools.

#### The Role of Campus Recruiting in the JAG Selection Process

13. The on-campus interview (OCI) program is the centerpiece of AF JAG Corps recruiting. On-campus interviews are conducted at 186 of the 188 ABA-accredited law schools and are coordinated directly through each law school's career services office (CSO). (Two ABA-accredited schools do not allow military recruiters and have been denied Federal funding,

consistent with the Solomon Amendment.) On-campus interviews are the primary method that the U.S. legal community uses to recruit and hire new attorneys. Law schools have, in the past, voluntarily adhered to restrictions on OCIs imposed by the National Association for Law Placement's (NALP) *Principles and Standards for Law Recruiting and Law Placement* (<http://www.nalp.org/pands/pands.htm>) as well as by the American Association of Law Schools' (AALS) bylaws.

14. It is the Air Force JAG Corps' goal to conduct on-campus interviews at every ABA-accredited law school in the United States both in the spring and in the fall. The Air Force does not have a dedicated recruiting cadre such as the Army's Field Screening Officers (FSOs). Instead, recruiting responsibility for the 188 law schools is divided among 58 Air Force legal offices based on geographical proximity. For example, the legal office at Cannon Air Force Base, New Mexico, has recruiting responsibility for Texas Tech Law School (in Lubbock, Texas), while the Ellsworth Air Force Base, South Dakota, legal office is responsible for the University of South Dakota Law School (in Vermillion, South Dakota).

15. The OCI process, supplemented by job fairs and legal consortia, provides the most efficient and effective means by which the AF JAG Corps can compete with higher paying employers and meet the strong demand for face-to-face interaction with interested applicants. The 58 Air Force legal offices with recruiting responsibility for one or more law schools take one JAG out of their operational duties twice a year to meet with potential applicants at their respective law schools.

16. On-campus interviews occur in the "spring" (mid-January through mid-March) and "fall" (end of August through end of October), with fall recruiting being the most robust. According to the NALP guidelines, only second- and third-year students can register for fall

interviews. Usually, legal employers must register in July for the fall recruiting season and in December for the spring season. Law schools, through their career service offices, post job postings and collect resumes from interested students and send them to employers who then pick students to interview. Career service offices also maintain recruiting materials for students year-round, such as brochures and posters.

17. In general, on-campus interviews are of two types: “initial” and formal “accession” interviews. During OCIs, the Air Force conducts only initial interviews. In one full day of typical recruiting at an average law school, one JAG will conduct approximately 20 initial interviews which cover topics such as the types of law that JAGs practice, what the first assignment is like, and the application process. This initial interview is critical to answer students’ questions concerning how a JAG’s life differs from working in a civilian law firm. JAGs also present the interested student with a “JAG Brochure,” which includes a CD-ROM outlining JAG life in the Air Force.

18. During the fall 2003 recruiting season, active-duty JAG officers personally interviewed 2,298 law students via on-campus interviews at 169 ABA-accredited law schools and participation in approximately 29 special recruiting events/job fairs. During the spring 2004 recruiting season, active-duty JAG officers personally interviewed 1,383 law students via visits to 149 law schools and participation in 23 recruiting events/job fairs. During the fall 2004 recruiting season, active-duty JAG officers personally interviewed 2,275 law students via on-campus interviews at 182 law schools and participation in 40 special recruiting events/fairs.

19. In anonymous questionnaires completed by newly accessed JAGs, over 43% of the JAGs who have been selected from 2000 through 2004 stated their face-to-face on-campus interviews were critical in their decision to apply (and prompted them to schedule a formal SJA

interview at which they submitted the required application paperwork). On-campus interviews, usually conducted by young JAGs in the first few years of their service, allow a law student to interact with someone close to their peer group who was, relatively recently, “in their shoes” in law school. This type of exchange is invaluable in conveying what joining the JAG Corps really means, on both personal and professional levels, because the students are more comfortable with (and identify with) the young JAG visiting their school.

#### Alternative Recruiting Methods

20. The AF JAG Corps already employs a number of methods to supplement on-campus interviews as a means of recruiting new JAGs. These additional methods augment OCIs, but cannot adequately replace them.

21. Major law student and legal associations, such as the National Black Law Students Association and the Hispanic National Bar Association (HNBA), host both regional and national job fairs for both law students and recent graduates. Additionally, many law schools host regional job fairs in conjunction with other law schools, especially in the spring, which either replace or supplement OCIs. Law schools also often host career panels and other “meet the employer” type events. For example, the Massachusetts Law School Consortium, comprised of Massachusetts law schools, hosts the “Careers in Government and Public Interest Law Event” every spring at which the AF JAG Corps interviews interested students. The Chief of Recruiting, Professional Development Division, Office of The Judge Advocate General, centrally manages JAG participation in the major recruiting events, such as the HNBA national convention (which includes a job fair). However, if law schools bar military recruiters from engaging in on-campus recruiting interviews, these entities could impose, and on at least one

occasion in the past have imposed, similar limitations on military participation in job fairs and career panels.

22. The AF JAG Corps prepares and distributes the JAG Brochure, a comprehensive application/information package that is produced semi-annually. Approximately 900-1000 copies are mailed out each month in response to email and phone requests.

23. The AF JAG Corps public website and other JAG recruiting materials provide a toll-free number (1-800-JAG-USAF) that is answered by the Chief of Recruiting or her administrative assistant, to provide guidance on completing applications and answer other questions from potential applicants.

24. The AF JAG Corps also disseminates information about legal careers through Internet job postings. The JAG Corps purchases subscriptions to three job posting sites for legal employers: eAttorney (Martindale Hubble), HotJobs (Yahoo), and Monster.com. The JAG Corps also posts job listings on several free sites, including the ABA job site.

25. Every fall, the AF JAG Corps sends approximately 60,000 “direct mail” letters to second- and third-year law students and attorneys under age 35. These mailings direct recipients to visit the public website for more information concerning joining the JAG Corps.

26. The AF JAG Corps website (<http://www.jagusaf.hq.af.mil>) provides comprehensive information covering application procedures, and also allows visitors to complete on-line questionnaires requesting more information. The Chief of Recruiting answers these requests.

28. In the 2003-2004 media cycle, the AF JAG Corps advertised in four legal publications (eighteen ads). The JAG Corps utilizes publications that reach law students and young lawyers to build awareness of the career opportunities available through service as an AF JAG.

29. In 2003, the AF JAG Corps initiated a nationwide summer internship program that places 50 law students (between their second and third years of law school) at Air Force installations across the continental United States, where they perform legal clerkship duties under the supervision of active-duty JAGs. Over 50% of these interns have applied to the JAG Corps with a 50% selection rate. The JAG Corps depends heavily on on-campus interviews to attract summer interns as well as JAGs.

30. In June 2004, the AF JAG Corps hosted its third annual "Career Services Officer Conference." Twenty career service officers from law schools across the U.S. visit the Air Force JAG School at Maxwell Air Force Base, Alabama, for two days of briefings about our practice and a tour of a base legal office, with the goal of enhancing their understanding of the JAG Corps.

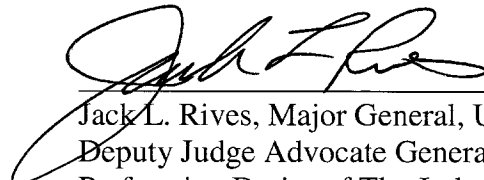
#### Adverse Impact Of Restrictions On Access To Campuses And Students

31. If access to the national on-campus interviewing system is significantly restricted or denied, our ability to contribute to the national security of the United States will be degraded. The AF JAG Corps will be placed at a competitive disadvantage in its search for high-quality attorneys to support the Air Force mission. As explained above, the OCI system is the cornerstone of AF JAG Corps recruiting, with more than 43% of recent JAGs stating that their face-to-face on-campus interviews were critical to their decision to apply. If law schools bar military recruiters from the on-campus interview process and associated job fairs, the loss of face-to-face interaction with law students, when other employers have this ready access to potential applicants, would be detrimental to AF JAG Corps recruiting and accessions efforts. When the number of qualified applicants drops below a certain point, the Corps has, in the past, elected to reduce accessions, rather than bring on attorneys of lower caliber than the mission

demands. If OCIs are no longer possible, the number of applicants can be expected to drop and we could see a return to that environment -- which would degrade the quality of Air Force legal services.

32. We make substantial efforts to supplement the efficiency and effectiveness of the OCI, but there is no method or combination of methods that could replace it if it were lost. The OCI system is uniquely tailored to fit in the busy law student's demanding schedule, and on-campus access provides a form of direct visibility to the AF JAG Corps that off-campus alternatives cannot match.

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

  
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Jack L. Rives, Major General, USAF  
Deputy Judge Advocate General  
Performing Duties of The Judge Advocate General  
10 U.S.C. § 8037

Executed this 12<sup>th</sup> day of January, 2005