

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. ) No. 03-4433  
 )  
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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**DECLARATION OF MAJOR GENERAL THOMAS J. ROMIG**

I, Thomas J. Romig, hereby declare and say:

1. I am The Judge Advocate General of the United States Army. I am the leader of the Army's legal corps and am directly responsible for recruiting, training, assigning, supervising and the overall career management of all active duty and reserve component judge advocates, civilian attorneys, and warrant officers. I supervise the Army Judge Advocate Recruiting Office. I am also responsible for the training, career development and professional supervision of all

active duty and reserve component paralegals. I am responsible for the legal education of active duty and reserve component Army judge advocates, civilian attorneys and selected senior commanders, as well as all graduate legal education for the DoD, through The Judge Advocate General's Legal Center and School.

2. My responsibilities include serving as Legal Advisor to the Chief of Staff of the Army and the Army staff, and Legal Advisor on military justice matters to the Secretary of the Army. Additionally, I am responsible for the provision of all legal services throughout the Army, including the administration of Military Justice, through the appointment of Judges, Trial Counsel, Defense Counsel, Appellate Counsel and Staff Judge Advocates; Administrative Law (including Law of Military Installations and Military Personnel Law); Civil Law (including Contract and Fiscal Law, Environmental Law, and Civil Litigation); Legal Assistance; Labor and Employment Law; Health Law; International Law (including the Law of War program, legal review of all new weapons systems; and review and negotiation of Status of Forces Agreements and other international agreements); Operational Law (including review of all Army plans, Rules of Engagement, and legal support to military operations); Domestic Operational Law; Regulatory and Intellectual Property Law; Intelligence Law; Space Law; Information Law; and Army legal support to joint operations. I am also responsible for the establishment of appellate courts and review of post trial matters, including setting aside Courts-Martial findings or sentences, where appropriate. Further, I am responsible for Courts of Inquiry and Military Commissions, legal review of Intelligence Oversight matters and serve on the UCMJ Code Committee. Finally, I am responsible for the administration of the Army's worldwide Claims program, review of all proposed legislation affecting the Army, and all civil litigation for and against the Army

(including environmental litigation, tort litigation, military personnel litigation, civilian personnel litigation, contract appeals, and general litigation).

3. 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 Army; (2) the demand of the Army Judge Advocate General's Corps (Army JAG Corps) for new judge advocates; (3) the process for recruiting judge advocates; (4) the role of on-campus recruiting in the selection process; (5) the adverse impact that would arise if the Army JAG Corps' access to law school campuses and students were restricted; and (6) the limitations of alternative means of recruiting.

**The Role and Importance of Judge Advocates (Military Attorneys)**

4. At this time, 1,542 judge advocates serve on active duty in the U.S. Army, while 2,849 serve in the Army Reserve and National Guard. Currently, 256 judge advocates are deployed abroad in support of current Army operations in countries such as Iraq, Afghanistan, Kuwait, Bosnia, and Kosovo.

5. Judge advocates advise commanders and their staffs during the full spectrum of military operations, from offensive and defensive combat operations to stability and support operations. Judge advocates go wherever the Army goes, whether responding to renewed threats in the Middle East or Northwest Asia, or becoming actively involved in non-combat missions, from humanitarian aid and disaster relief to nation building and peace operations. For example, judge advocates were involved in humanitarian and disaster relief missions in the Dominican Republic in 1965, Samoa in 1989, and Bangladesh in 1991. From 1995 through 2004, judge

advocates also played an important role in operations in the Balkans. In the fall of 1998, judge advocates used their expertise in international and civil law to help five Central American countries recover from Hurricane Mitch.

6. In Operation Iraqi Freedom and Operation Enduring Freedom, military units conducted the full spectrum of military operations simultaneously, from offensive operations against suspected terrorist cells to civil affairs projects rebuilding local communities. Judge advocates are tasked with providing support to their commanders and fellow soldiers across this entire spectrum of activity, ensuring that the fundamental rights of all individuals are safeguarded and respected.

7. During the early phases of combat operations, judge advocates provided critical international law support involving such topics as the legal basis for the use of force, rules of engagement, capitulation, parole and local cease fire agreements, civilians on the battlefield, war crimes investigations, negotiations with armed groups, the wearing of nonstandard uniforms, and child soldiers on the battlefield. Judge advocates are critical and much relied upon members of the military commander's staff, and move when and where their units move. In addition to their more conventional roles of providing support in the areas of criminal law, legal assistance, international law, administrative law, environmental law, and claims, judge advocates in today's operational Army perform the following roles:

(A) **Judicial Reconstruction:** Judge advocates have been responsible for rebuilding the Iraqi court system and continue to manage dockets and prisoner flow in several areas, integrating the judicial, corrections, and policing functions.

(B) **Government Operations:** Judge advocates have assisted in the promulgation of occupation orders and have assisted the newly emerging Iraqi government at all levels, from

municipal to national. Judge advocates are also involved in fostering intra-governmental relations.

**(C) Counter-Smuggling Operations:** Judge advocates designed and implemented the legal regime to stop the smuggling of Iraqi oil. This includes Task Force (TF) judge advocates boarding vessels to conduct vessel seizure and confiscation hearings.

**(D) Special Prosecutions:** Judge advocates designed and implemented the Special Prosecution Task Force, designed to prosecute persons involved in organized crime and offenses against security.

**(E) Psychological and Information Operations and Public Affairs:** Judge advocates are extensively involved in non-kinetic targeting decisions as members of the Information Operations Working Group or Effects Coordination Cell. Judge advocates also spend a significant amount of time preparing senior leaders for press briefings and performing public affairs responsibilities with respect to public safety, public order, weapons restrictions, and curfews.

**(F) Promotion of Commerce and Privatization:** Judge advocates are involved in all legal aspects of reestablishing commerce and power distribution and in privatizing former purely governmental functions.

**(G) Anti-corruption and De-Baathification:** Judge advocates are working to establish systems and structures to eliminate pervasive corruption and to deal with former high-level Baath leaders.

**(H) Political/Military Advisors and Liaisons:** Judge advocates at all levels advise commanders on the political and social effects of their actions. Additionally, they assist in

formulating strategies to engage the Iraqi populace in the reconstruction and governance of their country.

8. The current commander of the Multinational Security Transition Command in Iraq has repeatedly credited some of the 101st Airborne Division's most important successes in Northern Iraq to the robust legal team that he assembled. These successes help underscore the value of military lawyers in current and future operations in the global war on terrorism and beyond.

#### **Demand for New Judge Advocates**

9. Based on current operational requirements and projections for the future, the Army has directed the JAG Corps to increase its end-strength of judge advocates by the end of Fiscal Year (FY) 2007. To meet this additional demand for judge advocates, the JAG Corps must increase the number of attorneys accessed onto active duty. On average, the Army accesses 150 active duty judge advocates and 120 reserve judge advocates per year. In FY 2004 through FY 2007, the Army will access an additional 50 active duty officers per year, for a total of 200 judge advocates, above its current recruiting goals to meet the FY 2007 Army judge advocate requirements.

#### **Process for Recruiting Judge Advocates**

10. The Army is not a traditional law firm and must recruit lawyers who will serve as commissioned military officers. Sixty percent of all new judge advocates are recruited from the civilian ranks. The men and women who are selected undergo rigorous military training, focused on soldier and leadership skills, in order to become qualified judge advocates.

11. Generally, a law student interested in becoming a judge advocate completes a standard form application. The student is also personally interviewed by a JAG Corps Field

Screening Officer who prepares an evaluation report. The application and interview report are considered by a selection board that meets twice a year in Washington, D.C. If selected by the board, the candidate must meet the Army's medical and weight standards and be able to obtain a security clearance before being accessed into the Army.

12. Law students without a military background learn about the JAG Corps from their school's career services office and from on-campus contact with the Field Screening Officer. As a uniformed judge advocate, the Field Screening Officer performs vital recruiting duties merely by his or her presence on campus. He or she conducts informational seminars about the JAG Corps and provides a human face to the Army. The Field Screening Officer is often the first judge advocate whom a law student has ever met. The Army has approximately 80 Field Screening Officers who visit most of the 188 American Bar Association (ABA) accredited law schools at least twice a year. Field Screening Officers are carefully selected to reflect the JAG Corps' diversity and have served in a variety of judge advocate assignments.

13. Field Screening Officers are also instrumental in recruiting and evaluating law students for participation in the Army JAG Corps summer internship program. The Army JAG Corps hires 100 law students each summer to work as legal interns in JAG Corps offices worldwide. Students interested in an internship must complete an application and be interviewed by a Field Screening Officer, typically conducted at the law school in the course of on-campus recruiting.

#### **Role of On-Campus Recruiting in the Judge Advocate Selection Process**

14. The Army JAG Corps recruiting process relies on the assistance of law school Career Services Directors. Each summer the JAG Corps hosts a conference for Career Services Directors designed to educate them about the life of an Army judge advocate and JAG Corps

opportunities. Career Services Directors display JAG Corps informational brochures in their campus offices and facilitate the Field Screening Officer's campus visits.

15. The JAG Corps recruiting process also targets students directly. Our recruiting surveys indicate that the on-campus presence of JAG recruiters attending job fairs, briefing law student organizations, and conducting on-campus interviews appeals to many law students who had never previously considered a career in the JAG Corps. The recruiting program is thus a critical tool not only in enhancing the academic quality of the applicant pool, but, especially as it pertains to the summer internship program, in maximizing our ability to reach out to the widest, most diverse audience possible, thereby increasing our ability to field a legal corps representative of the country it serves.

16. Army Field Screening Officers conducted approximately 41 on-campus law student interviews at law schools in New Jersey, Pennsylvania and Delaware in the fall of 2004. Thirty-three of those interviewed subsequently applied for a JAG Corps position. Overall, Army Field Screening Officers conducted 824 law student interviews last fall, the majority of which were conducted on-campus (some law schools do not have on-campus interviews for any employer). Four hundred fifty-one of those candidates interviewed subsequently applied to the JAG Corps.

17. Army Field Screening Officers conducted approximately 66 on-campus law student interviews for internship positions at New Jersey, Pennsylvania and Delaware law schools in the fall of 2004. Twenty-one of those interviewed subsequently applied to the JAG Corps' Summer Intern Program. Overall, Army Field Screening Officers conducted approximately 874 law student interviews for internship positions last fall, the majority of which were conducted on-campus. Three hundred fifty-one of those interviewed subsequently applied for the JAG Corps' Summer Intern Program.

**Adverse Impact of Restrictions on Campus Access  
and Drawbacks of Alternative Means of Recruiting**

18. Since the enactment of the Solomon Amendment, most law schools have accommodated the military's on-campus recruiting efforts. Consequently, the Army JAG Corps' current recruiting program is based almost entirely on direct contact with the Career Services Directors and law students on campus.

19. Without on-campus access to law students and the Career Services Directors, the Army JAG Corps will receive applications only from those already familiar with the military. This is a considerably smaller pool of applicants. A smaller pool of applicants during a time when the Army JAG Corps not only must meet its usual annual hiring requirements, but also must access an additional 200 attorneys, will necessarily result in the accession of less talented attorneys. The military cannot afford to recruit and access less talented candidates, given the complexities and demands of today's military environment.

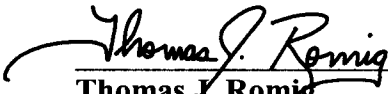
20. If on-campus recruiting is curtailed, the Department of Defense does not have other recruiting options at its disposal that would be equally effective in reaching and attracting talented law students. Direct campus access to law students and the Career Services Director is the key to effective JAG Corps recruiting. It is the physical presence of the uniformed law school alumnae and judge advocate, and the JAG Corps brochure that a law student picks up from the career services office, that spark the interest of law students in military service as an attorney.

21. Even if campus access is not denied completely, recruiting will suffer if Army Field Screening Officers are denied the same kind of access that law schools provide to other recruiters. Unequal access puts the Army at a competitive disadvantage in reaching and attracting qualified students needed to meet recruiting goals.

22. The interest that is developed by the on-campus presence of military recruiters cannot be replaced by print or radio advertising alone. The Army already spends a considerable amount of money advertising in key law student publications. It is unrealistic to expect that JAG Corps recruiters could “piggyback” on the recruiting efforts of non-JAG Corps recruiters in the Army. Moreover, DoD cannot create a bonus or scholarship program in time to meet its current accession needs.

23. Field Screening Officers are currently working with Career Services Directors for the spring 2005 recruiting season. The JAG Corps’ ability to meet its recruiting mission -- to attract and recruit a large, qualified, and diverse applicant pool in sufficient number to meet strength requirements -- will be degraded if the Government is enjoined from enforcing the requirements of the Solomon Amendment. While the Army may meet its numerical goals for JAG Corps accessions, one way or another, it will not recruit the same quality of applicants without equal campus access.

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

  
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Thomas J. Romig  
Major General, U.S. Army

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