

## **Recruiter Resistance: Law Schools Are Asked to Accept Discrimination**

By Michael Rooke-Ley

This is not an issue to divide liberals and conservatives. This is not an issue of military preparedness, nor is it a referendum on the war in Iraq. It is a question of values -- values at the heart of America's tradition.

At its noblest, the practice of law, like that of medicine, has been a public service profession, in which lawyers seek to provide an effective voice for those seeking justice, regardless of their station in life. As the public has recognized, lawyers have not always lived up to these aspirations, and, in particular, the Watergate scandal in the 1970's served to light a fire under those of us who train lawyers. In law schools across the country, a greater emphasis has been placed on the teaching of legal ethics and fundamental principles of justice and equality...and, in turn, on practicing what we preach. Into what had been an overwhelmingly white, male profession, we worked hard to bring significant numbers of women and people of color into our student bodies and, in turn, into the legal profession.

Part of our work as law professors always has been to encourage prospective employers to come to our campuses, interview our fine students and, hopefully, offer them employment. In days of old, some employers wanted to interview only our male students ("Our corporate clients want real lawyers, not lady lawyers"); others were not interested in students of color. As teachers of the law, we were rightly accused of hypocrisy when we allowed this discrimination to continue under our own roofs while espousing justice and equality in the classroom.

Law schools around the country began adopting non-discrimination policies, telling prospective employers that -- if they wished to use our facilities and take advantage of the support and publicity which we always provided -- they would have to agree not to discriminate on the basis of race, nationality, sexual orientation, religion, gender and the like. We wanted all our students to be eligible to apply for interviews, and while only some would ultimately succeed on the basis of legitimate criteria such as their academic records, work experience and personal attributes, we did not want any student arbitrarily excluded on the basis of irrelevant and immutable characteristics. These concerns are now reflected in a mandatory, nation-wide non-discrimination policy adopted by the Association of American Law Schools.

Unfortunately, a few employers were unwilling to sign off on a non-discrimination policy and chose to no longer conduct law school campus interviewing. The military has been unwilling to comply because it chooses to only hire law school graduates who are heterosexuals. Many of our gay and lesbian students come from military families, have great respect for the military and would like to consider service as a military lawyer with the Judge Advocate General's (JAG's) office. But simply because of their sexual orientation, irrespective of their academic achievements and other accomplishments, the military refuses to give them a chance.

In the 1990's, Congress enacted federal laws called the Solomon Amendments, which gave the Defense Department the power to cut off all federal funding to universities (in some schools, hundreds of millions of dollars for projects as diverse as AIDS research, particle accelerators, and the causes of urban poverty) if they or their law schools enforced their non-discrimination policies against the military -- that is, if law schools refused to give military recruiters the same assistance which

they gave to other employers. A handful of congressmen, though fully aware that the schools' non-discrimination policies were having not the slightest effect on JAG recruitment, were somehow interpreting the policies as unpatriotic slaps at the military and sought to, in their words, "send a message over the walls of the ivory tower" that there would be "a price to pay." In response, our nation's largest organization of law professors (SALT) and a coalition of law schools (FAIR) sued.

Ruling in our favor last month, the 3rd Circuit Court of Appeals recognized that, by forcing law schools (under threat of massive funding cut-offs) to provide publicity, scheduling, interview rooms and other usual services to a discriminatory employer, the military was mandating that schools promote a message ("discrimination is acceptable") which we find abhorrent. We were being required to help the military discriminate against our own students. As every civics student knows, the right to free speech under the 1st amendment includes the right not to be compelled to speak against one's will.

Some have argued, "If the schools don't want to assist in military recruiting, they shouldn't accept federal funds." But the court quickly dismissed that logic, noting that the federal funds at stake were not designated for campus interviewing by the military, but, rather, for the full gamut of unrelated projects and grants university-wide. Most of us receive some kind of government benefits -- driver's licenses, Social Security, Medicare, public housing, educational loans, business subsidies -- which, of course, cannot and should not be denied to those who speak out against some aspect of government policy.

The greatest irony, perhaps, is that all this legal hoopla doesn't have any bearing whatsoever on the government's ability to recruit lawyers. There is simply no evidence suggesting that the presence or absence of our assistance will in any way effect the success of the military's recruiting efforts. The idea that a law student contemplating a job with the Judge Advocate General's office would not be willing to walk across the street, or to another campus building, to meet a recruiter is absurd. Permitting law schools to abide by their non-discrimination policies will have absolutely no bearing on recruiting, and the military knows it. Rather, certain members of Congress, in a fit of post-9/11 patriotic fervor, have sought to punish law schools. We trust that reasonable minds -- in Congress, in the courts and in America's heartland -- will prevail.

-- Michael Rooke-Ley, professor of law emeritus, is currently a visiting professor at Seattle University School of Law and is an immediate past president of the Society of American Law Teachers.