

*Burbank v. Rumsfeld* – Press Release  
(Description of University of Pennsylvania lawsuit challenging the Solomon Amendment)

Press Release

For Further Information Call:

Professor Stephen Burbank: 215-898-7072

Professor Howard Lesnick: 215-898-7495

David Rudovsky: 215-925-4400

*Burbank v. Rumsfeld*

Twenty one law professors and six students from the University of Pennsylvania Law School filed suit today (October 1, 2003) in United States District Court in Philadelphia against the Department of Defense challenging the military's efforts to force the Law School to abandon its anti-discrimination policies.

The lawsuit challenges the decision of the Department of Defense that the Law School is not in compliance with the provisions of the "Solomon Amendment," a federal statute that punishes Universities with a loss of federal grants and contracts if they exclude military recruiters from the campus under policies that prohibit the schools from providing assistance in recruiting to any employer that discriminates on the basis of race, gender, disability or sexual orientation. Penn Law School has a long-standing policy of prohibiting recruitment of students by employers who discriminate and has therefore sought to enforce the policy against the military which discriminates against gays and lesbians in military service.

The Law School has recognized that the military has an interest in recruiting law students and, in an accommodation to the military in 1998, established procedures by which the military could contact and interview students, but without direct assistance from the Law School. This process worked well for five years, but in 2003 the Department of Defense decided that full access to students (which is all the Solomon Amendment requires) was not sufficient and demanded that the Law School treat military recruiters no differently than any other employer. The Department of Defense threatened to cut off over \$500 million in grants and contracts with the University of Pennsylvania under the terms of the Solomon Amendment. The University had no choice but to comply with this threat.

This lawsuit seeks a judicial determination that the policies in effect at Penn Law School for the past five years are consistent with federal law and, in the alternative, that the Solomon Amendment is in violation of the First Amendment as it places an unconstitutional condition on the receipt of federal funds: that the Law School abandon its anti-discrimination policy. The lawsuit was brought to vindicate the plaintiffs' overriding interest in maintaining programs and procedures that are free of discrimination.

Professor Stephen Burbank, one of the faculty plaintiffs, said:

"The defendant's current interpretation of the Solomon Amendment serves no legitimate governmental interest. By contrast, the coercion of the Law School to abandon its policy against non-discrimination – through the threat to terminate hundreds of millions of dollars in federal

*Burbank v. Rumsfeld* – Press Release

(Description of University of Pennsylvania lawsuit challenging the Solomon Amendment)

grants and contracts to the entire University-- inflicts serious harm on the plaintiffs, as it does on other members of this academic community. The policy in question governs all facets of the academic and social life of the Law School; it is a statement of belief in the dignity of all persons and of the importance of commitment to that principle in the education of tomorrow's professionals. Students may justifiably question the institution's commitment to non-discrimination when they observe it violating its own policy. Faculty may do the same. Such questions poison the academic enterprise and make more difficult teaching and learning in pursuit of equal justice under law."

\* \* \*

The plaintiffs in the law suit are represented by David Rudovsky, a Senior Fellow at the Law School, Kermit Roosevelt, an assistant professor of law at Penn Law School, and Richard L Berkman, Juliet Sarkessian, and Tracey R. Gainor from the Dechert law firm in Philadelphia.