

To: The Penn Law Community
From: Michael A. Fitts, Dean
Date: March 20, 2003
Re: Military Recruiting

For many years, the University of Pennsylvania Law School has had a policy which prohibits the use of our Career Planning & Placement Offices by employers who discriminate on the basis of race, color, sex, sexual or affectional orientation, religion, age, national origin, or disability. We have consistently enforced this policy.

Recruiters from various branches of the military have not been able to certify their compliance with our Non-Discrimination Policy, due to the "don't ask, don't tell" policy, which prohibits openly gay members of our society from serving our country in the armed forces, including in the Judge Advocate General Corps. Military recruiters have accordingly not been permitted to use the Law School's Career Planning & Placement Office services.

In 1995, and again in 1997, the federal government passed Legislation (known as the "Solomon Amendments") that sought to deny federal funding to schools that did not provide military employers full access to their students for recruiting purposes. At that time, and in consideration of the fact that student financial aid funding might well be at risk, the Law School instituted a one year exception to our Non-Discrimination Policy, allowed the military to recruit at the Law School that year, and undertook an exhaustive look at possible long-term policies which might address the conflict between our policy and the military's demands.

After considering that the resultant loss of funds to the Law School could exceed \$500,000, including financial aid support to students, the Law School worked with the University to devise a plan to provide military recruiters full access to Law students without violating our policy. The University's Non-Discrimination Policy does have exceptions for military recruiters. Accordingly, the University's Office of Career Services undertook to provide the military access to Law students through their facilities. This process has worked well for several years.

This spring, the Air Force JAG lodged a complaint with President Rodin, arguing that our present plan does not comply with the Solomon Amendments nor with the Department of Defense regulations enforcing that legislation (32 CFR 216). The Air

Force asked for a clarification of our policy and an explanation of the ways in which it treats military recruiters differently from other recruiters.

President Rodin engaged the University's General Counsel, Wendy White L'75, to review the matter. Over the past year, the Air Force has challenged the recruiting policies of many other national law schools. Procedures for handling these challenges have been established. In part, it appears that a negative review by the Department of Defense to a school's recruiting policy would immediately terminate federal funding to that University as a whole. (The 2000 Department of Defense regulations changed the earlier interpretation on funding to indicate that if any "sub-unit" within a University did not allow military recruiters, funds to that entire University, rather than just to the sub-unit, would be forfeited.) This would obviously amount to a loss of many millions of dollars to the University, dollars that support on-going research, teaching, and student financial aid programs. To our knowledge, all of our peer institutions who have been faced with a similar challenge during the past year have agreed to accept the Department of Defense's position.

The President and I believe we are currently complying with the Solomon Amendments by providing full access to law students by military recruiters at the Central University. Nevertheless, on the advice of the General Counsel, and with the threat of the loss in millions of dollars in federal grants, the President has required the Law School not to apply its non-discrimination policy to military recruiters. We thus will allow military recruiters to interview at the Law School through our Career Planning and Placement Office, like all other recruiters.

I announce this necessary change to our policy with deep sadness. Our Non-Discrimination Policy is intended to express our deeply held commitment that discrimination in employment is a grievous wrong. As a community, the Law School has long viewed discrimination on the basis of sexual preference as unacceptable and at odds with the ideals of equal respect for our students and the best aspirations of our profession.

It is also troubling that this change to our policy, forcing us to host employers who will not provide equal access in opportunities to all of our students, is required by the federal government's threat to withhold funding. It is bad precedent to have the government interfere in the policies of an institution dedicated to research, teaching, and the advancement of knowledge by virtue of its fiscal policies. That the military, backed by federal legislation, has taken this action undermines the heart of academic freedom in our nation's universities.

In the recruiting season ahead, military recruiters will have access to our students through the Law School's Career Planning & Placement Office. As is required by the Association of American Law Schools and, more importantly, as is proper in support of our Policy, we will be taking ameliorative action, including the posting of information about the military's discrimination policies with their recruiting materials, and presenting programs on topics of relevance throughout the year. CP&P will be working closely with students and student groups on developing and presenting these programs.

The University of Pennsylvania Law School, however, remains steadfast in its commitment to our Non-Discrimination Policy. We will continue to endorse and enforce the Policy in all other areas. We continue to hold high its ideals, those of affording equal access to all of our students. Nothing in our actions today should be viewed as undermining that commitment.