

An Open Letter to the USC Law School Community

August 19, 2002

I am writing to provide you with information regarding the decision to allow recruiters from branches of the United States Department of Defense to participate in the Law School's career services programs, including the On-Campus Interviewing Program. The University Provost has directed this decision based on advice of the University General Counsel. That direction was in response to the recent notification by the Department of the Air Force that it considers us to be out of compliance with federal regulations regarding recruitment of law students, and that it is preparing recommendations for the Secretary of Defense to deny federal funding to the entire University unless we allow military recruiters full access to our programs and facilities. The General Counsel indicates that such a denial of funding would result in the loss of approximately 300 to 500 million dollars in federal funding to the University.

The crux of the disagreement is that the Law School's longstanding non-discrimination policy requires employers who interview on campus to certify that they do not discriminate in employment based on a variety of criteria, including age, disability and sexual orientation. Recruiters representing the military admit that they discriminate on the basis of those criteria and consequently cannot certify that they do not discriminate. In response, several Law School administrators and I have worked hard to develop procedures that we maintain are in compliance with the federal regulations, and that have been successful in achieving two important goals: first, our practices have allowed our students who were interested in pursuing military employment to secure such employment without unnecessary difficulty; and second, our practices allowed us to maintain our firm commitment to our longstanding non-discrimination policy. Because of our creative efforts to meet both those goals, we had hoped the Department of the Air Force would agree with us that our procedures comply with the federal regulations, just as the Department of the Army had previously concluded. Indeed, we made a variety of efforts to convince the Department of the Air Force that our procedures are in compliance with the federal regulations, including discussions with the Office of the General Counsel of the Department of Defense. Notwithstanding our efforts, the Department of the Air Force affirmed its conclusion that we are not in compliance.

Therefore, I regret to announce that I have instructed the Law School administrative staff to allow military recruiters full access to the Law School's facilities and programs. Because of the complexity of the issues involved, I hope you will read the information in this memorandum. It explains how we reached this unfortunate result.

History of Non-Discrimination at USC Law School

For many years, USC Law School has had a non-discrimination policy as follows:

The Law School is firmly committed to a policy against discrimination based on ethnicity, national origin, disability, race, religion, gender, sexual orientation or age. Accordingly, the career services facilities of the Law School are available to employers whose practices are consistent with this policy.

Our practice has been to require employers who use our Career Services Office (“CSO”) to certify that they do not discriminate in violation of our policy. The reason behind applying our policy to employers is one of fairness to our students: we recruit and enroll students based in part on our non-discrimination policies; and we wish to assure our students that they will receive equal treatment while enrolled at USC. Therefore, we consider it inappropriate to provide services to any employer whom we know has an affirmative policy of discriminating against certain of our students in violation of our non-discrimination policy. Each year several military employers indicate that they are not able to certify that they are in compliance with our policies because they discriminate on the basis of age, disability or sexual orientation.

Although we support our policy strongly, we have not been unreasonable or inflexible in our implementation of the policy; we have used the policy as a tool to educate employers, and we have not made it unnecessarily difficult for our students to investigate possible employment with employers who do not comply with our non-discrimination policies. Out of deference to those interested in serving in the military, we have made it relatively easy for military recruiters to gain access to—and to hire—our students; but we have not allowed those employers to recruit in the same location as other employers participating in the CSO On-Campus Interviewing Program (“OCI”).

National Policies Regarding Non-Discrimination and Military Recruitment

In 1990, the Association of American Law Schools (“AALS”) adopted bylaws that prohibited member schools from discriminating on the basis of sexual orientation. Our previously existing policy was in compliance with those AALS bylaws.

In 1995, Congress passed legislation known as Solomon I which threatened to cut off Department of Defense (“DoD”) funding to any school that did not allow the military to recruit on campus. In 1997, Congress enacted Solomon II which broadened the types of funding put at risk to include federally guaranteed student loans, federal work-study funds, and federal research funds. In response, the AALS reluctantly agreed to allow schools that permitted the military on campus to be in provisional compliance with AALS policy, provided that the schools take “ameliorative action.” Ameliorative actions may include, but are not limited to the following:

- posting notices alerting students that the military discriminates on a basis not permitted by the school’s or AALS’ policies;
- hosting discussion sessions and bulletin boards for faculty and students to discuss these issues; and
- active support of gay and lesbian student organizations.

In October of 1999, Congress passed legislation that carved out a safe-harbor for student aid funding, but left other federal funding still at risk for a school that did not allow the military to recruit on campus. In 2000, the DoD promulgated regulations making clear that federal funding to the entire university is threatened if the law school does not allow the military to recruit on campus with access “equal in quality and scope to that afforded to other employers.” Those regulations remain in effect today.

In response to the various federal laws that were enacted, the vast majority of law schools changed their policies to allow military recruiters to have access to their career services facilities and programs. They also enacted a variety of amelioration programs as recommended by the AALS. We remained one of only a small number of schools that continued to restrict access to employers who were not in compliance with the non-discrimination policy.

USC's Policy-Exception for Military Recruiters

After the adoption of Solomon II, the increased likelihood of losing University-wide federal funding prompted us to implement an exception to our non-discrimination policy specifically for military recruiters. Under this policy-exception, when a military recruiter who wished to interview our students contacted us, we took the following steps:

1. We provided the military recruiter with our standard employer information and materials.
2. We referred the military recruiter to the ROTC offices (conveniently located on campus) for scheduling of appropriate interview space. The recruiters were familiar with this process and the ROTC offices.
3. We posted a notice to students indicating that the military recruiter would be visiting the campus to interview interested students. The notice was posted in our weekly career services newsletter along with all other employer announcements.
4. We provided all students with information about how to apply for an interview with the military recruiter.
5. We made available to all students the materials provided by the military recruiter.

The practical result of our implementation of the policy-exception for military recruiters was that our students received ready access to the materials and interviews with military recruiters. (The ROTC offices are conveniently located on campus so students can easily participate in the interviews. In contrast, all other employers using our OCI have interviewed students in the Radisson Hotel across Figueroa Street.) This process has been quite successful for the military. The result of these arrangements is that a number of our students and graduates have been hired by the military. Specifically, between 1997 and 2001, nine of our graduates were hired by the military; and between 1994 and 1996, three of our graduates were hired by the military. None of our graduates had been hired by the military between 1990 and 1993.

Although some military recruiters have complained about our policy, they have generally been satisfied since they were achieving their goal of hiring our students and graduates. On more than one occasion, a military recruiter has initially notified us that our policy was not in compliance with the DoD regulations, but upon review of our policy-exception has later accepted our arrangements and acknowledged that they work well. This experience is different from the experiences at many other law schools that allowed the military to recruit on campus. At a number of schools, the result of the military "forcing" itself on campus has been that many students and faculty have protested when the military interviewed. In some instances, students who would otherwise have interviewed with the military have stayed away so as to steer clear of the controversy. Our policy-exception for the military has avoided that result up until now.

Furthermore—and perhaps of most significance—in 1998, the Department of the Army concluded that our policy-exception was in compliance with the federal regulations. Lieutenant Robin L. Hall, Chief of the Judge Advocate Recruiting Office for the Department of the Army, wrote on August 31, 1998, "Thank you for providing our military recruiters a degree of access to students that is equal in quality and scope to that afforded to other employers, consistent with the regulations...." That interpretation made good sense to us since the DoD regulations require that military recruiters have access to law students that is "...equal in quality and scope to that afforded other employers...."

Recent Developments

On December 17, 2001, USAF Colonel Daniel B. Fincher wrote to President Sample asking for a clarification of our policies regarding military recruiters. In response, the USC General Counsel, Todd Dickey, conferred with us; we provided the information regarding our successful policy-exception. On December 21, 2001, Mr. Dickey responded to Colonel Fincher; in his letter, Mr. Dickey provided a statement of our non-discrimination policy, and further indicated that, "In response to changes in federal law ... we implemented an exception to our non-discrimination policy specifically for military recruiters." Mr. Dickey's letter provided details about our implementation of the policy-exception.

On May 30, 2002, Mr. Dickey received a letter from Colonel Fincher indicating that his review of Mr. Dickey's December letter and reports from his field instructors led him to conclude that we are not in compliance with federal law and regulations regarding military recruitment. Colonel Fincher's letter further indicated, "If the law school allows the military full access to the services of the Career Services Office, the students, and the law school, your institution will be in compliance with federal law." Colonel Fincher's letter stated that if we did not modify our practices prior to July 1, 2002, he would forward this matter to the Secretary of Defense with a recommendation to deny funding to the University. Mr. Dickey's office informed us that such a denial of funding to the University would result in the loss of approximately 300 to 500 million dollars in federal funding.

In response, lawyers in Mr. Dickey's office sought and received an extension of the deadline until August 15, 2002. With our strong support and assistance, lawyers in Mr. Dickey's office contacted the Department of the Air Force to advocate that our policy-exception does in fact comply with the regulations, and that our practices satisfied two important goals: first, our practices allowed our students who were interested in pursuing military employment to secure such employment without unnecessary difficulty; and second, our practices allowed us to maintain our firm commitment to our longstanding non-discrimination policy. In addition to making these arguments with Colonel Fincher, similar arguments were made with the General Counsel of the Air Force.

In the end, the conclusion of the Air Force decision-makers was not affected by the data showing that our policy-exception effectively allows the military to achieve its goal of hiring our students and graduates. The Air Force General Counsel, Mary L. Walker, acknowledged as much in her letter of August 13, 2002, in which she stated, "While we understand JAG recruiters and USC students may face protests if they participate in your OCI program, it is important the United States Air Force be treated the same as any other employer..." In my view it is regrettable and shortsighted that the Air Force has placed adherence to its policy of discrimination above achieving its goal of hiring our students and graduates.

Lawyers in Mr. Dickey's office also lobbied Mr. Reed, a senior attorney in the Office of the General Counsel of the Department of Defense, further arguing the Law School's position. Mr. Reed stated that the Department of Defense would not interfere with the Air Force's decision, and that the only way to ascertain the Secretary of Defense's position on the matter would be if we prohibited the Air Force from participating in OCI, and the Air Force recommended to the Secretary that our federal funding be revoked for non-compliance. At that point, the Secretary would conduct a "case file review," by which it would compare our position regarding recruiting with that of the Air Force, and then make a determination as to whether we were in compliance with the Solomon Act. As we feared, Mr. Reed confirmed that Department of Defense regulations do not provide an opportunity for a school to "cure" its perceived non-compliance to avoid losing federal funding after a branch of the military has recommended to the Secretary that the school's funding be revoked. While we may request that the Secretary advise us of his decision prior to any action being taken with regard to our federal funding, there is no requirement that he do so.

While sympathetic to our position, Mr. Reed stated that in today's military climate, the Department of Defense "has the resolve to use whatever legal avenues are made available" to it – including the Solomon Act. He said that the current mood in the Department of Defense is that it "doesn't want to play games" with the law schools, and expects the law schools to abide by all of the protections the Solomon Act has to offer. In his view, because Congress has consistently been strengthening the Solomon Act over the past several years, Congress would disapprove if the Department of Defense did not take full advantage of the Solomon Act's protections, and the Department likely will not risk offending Congress because it continually goes before Congress for funding and other assistance. In short, while Mr. Reed would not predict how the Secretary would rule on the Law School's practice of conducting military recruiting at our ROTC facilities, his statements implied that now is not the time to challenge the Air Force on this issue. Because of the dire effect on the University of alleged non-compliance, the Provost has determined that we must at this time comply with the Air Force directive.

In practical terms, this means that military recruiters will now be allowed to participate in all Career Services Office programs, including the Fall On-Campus Interviewing Program. Because this participation is a violation of our own non-discrimination policy, I have instructed the Dean of Students and the Career Services staff to implement the following amelioration programs:

1. Post notices during the fall OCI program regarding our non-discrimination policy and the military's non-compliance. Such notices will be posted in any location where information about the military recruitment is posted.
2. Conduct existing and newly designed workshops, both independently and with student group co-sponsorship, including:
 - A. "To Be 'Out' or Not in the Recruiting Process" (scheduled for September 4);
 - B. "Information about the Solomon Amendment"(tentatively scheduled for September 5); and
 - C. A presentation on diversity issues co-sponsored by student organizations.
3. Remind students of the complaint-procedures in place regarding discrimination in interviewing.
4. Work with student leadership of various student organizations, including the Student Bar Association and the Gay and Lesbian Law Union, in order to:
 - A. Help students understand the new procedures;
 - B. Offer assistance to students with concerns about the procedures; and
 - C. Remind students of the availability of CSO counselors to support them in their individual job searches.
5. Continue to research the amelioration efforts at other law schools, and augment our own amelioration actions if we learn of any additional programming that has proven successful at other schools.

In addition to those specific efforts, I welcome your suggestions of other amelioration efforts we might pursue. Please feel free to communicate your suggestions and comments to me directly, or to Dean Rob Saltzman or Dean Lisa Mead.

Our Commitment to Non-Discrimination

Notwithstanding this decision, I assure you that the Law School and I remain fully and firmly committed to a policy against discrimination based on ethnicity, national origin, disability, race, religion, gender,

sexual orientation or age. Unlike many other law schools, USC Law School has an admirable history of enrolling women and minority students throughout our over one-hundred years. Throughout our history, we have had students and faculty who have disabilities, who are “non-traditional” in age, and who are openly gay or lesbian. In recent years, we have enrolled one of the most diverse student populations among any of the nation’s finest law schools. Our significant success in enrolling such a diverse student population is due in no small part to our firm commitment to—and demonstrated practice of—equal treatment for all of our enrolled students. I remain especially proud of that history and I strongly hope that this new policy mandated by the federal government will not be misunderstood as any lessening of our firm commitment to non-discrimination and diversity. I welcome your joining me in looking forward to the day when we can again fully implement our non-discrimination policy.

Sincerely,
Matt Spitzer
Matthew L. Spitzer
Dean