

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
FORUM FOR ACADEMIC AND INSTITUTIONAL :
RIGHTS, INC., SOCIETY OF AMERICAN LAW :
TEACHERS, INC., et al., :

Plaintiffs, :

v. :

DONALD H. RUMSFELD, in his capacity as U.S. :
Secretary of Defense, et al., :

Defendants. :
-----X

03 Civ. 4422 (JCL)

**DECLARATION OF E. JOSHUA ROSENKRANZ IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED COMPLAINT**

I, E. Joshua Rosenkranz, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a shareholder at Heller, Ehrman, White & McAuliffe LLP, attorneys for the Plaintiffs in this action. I make this reply declaration on information and belief in opposition to the Government's second motion to dismiss.
2. The delay engendered by the Government's renewed motion to dismiss – raising only arguments that either were fully litigated or could have been raised in the first, and second, round of briefing – is contributing to the ongoing violation of Plaintiffs' First Amendment rights. As we have noted in the past, even as the military's fall visits to campuses are winding down, the military is expecting continuing support from law schools with a view toward the upcoming spring schedule. They expect that law schools will continue to post and disseminate their literature and make plans to arrange interviews for the imminent spring recruiting seasons.
3. Indeed, just three days ago, the military accelerated the schedule. In an October 20, 2003 email, Deputy Staff Judge Advocate Major James P. Kennedy informed career services

offices across the nation that the deadline for the Air Force's summer intern program is November 17, "less than a month away." He directed the career services officers, "I am afraid that unless you actively convey [this information] to your students some interested students might not get the word." A true and correct copy of this email is attached at Exhibit 1.

4. As of today, FAIR has 14 members, and numerous law schools are actively contemplating joining. At least one member of FAIR, a school that has been identified to the Court in camera, is a stand-alone law school. At least one other member, NYU School of Law, the most recent member to step-forward and publicly identify itself, has an independent corporate status. NYU School of Law was separately incorporated as "The New York University School of Law Foundation" in 1948. It has its own board of trustees and operates pursuant to a formal contract with New York University.

5. The Government is incorrect in asserting that the parent institutions, and not the law schools themselves, are the ones that typically make the ultimate decision to suspend the *law schools'* non-discrimination policies and accommodate military recruiters. To take one example from among the few publicly identified members of FAIR: Dean Harold Krent of the Chicago-Kent College of Law decided *together with* the president of the Illinois Institute of Technology (the College of Law's parent institution) and *after consultation with* College of Law's faculty, that Chicago-Kent would suspend its non-discrimination policy as to the military.


6. Based upon my numerous conversations about the Solomon Amendment with deans, university administrators, and law professors on campuses across the nation, I can say with confidence that this is the norm. The typical university is not a command-and-control environment. University presidents know that law faculties and law deans jealously guard their prerogative to shape their own academic environments and are supremely sensitive to those

prerogatives. In the typical university, the president does not purport to make the ultimate decision on whether to suspend a law school policy. He urges, he begs, he cajoles, he persuades. But at the end of the day the vast majority of law schools that suspended their policies, did so themselves, by vote of the law school faculty, often out of concern that their own expressive activity would compromise the careers and work of colleagues across campus.

7. I have represented to this Court, both in prior submissions and at the October 10, 2003 hearing on the pending motions, that FAIR members fear retribution if their identities are disclosed. Those statement were true when I made them, and continue to be true of most FAIR members. Four members of FAIR -- Golden Gate School of Law, the Whittier Law School Faculty, the Chicago-Kent College of Law Faculty, and New York University School of Law -- have publicly identified themselves as members of FAIR. I have personally spoken to law deans of some of these schools who have confirmed that their initial intention to keep their identities secret was the product of concerns about retribution against themselves and against their broader institutions, and that they continue to fear retribution now that they have identified themselves publicly. They have stood up – despite the fears – because they did not want to risk letting the Government insulate itself from review of an ongoing First Amendment violation. Other members of FAIR have continued to express concerns about retaliation and wish to retain their anonymity.

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

Executed on October 23, 2003
in New York, New York


F. Joshua Rosenkranz

From: Kennedy James P Maj 305 AMW/JA [James.Kennedy@mcguire.af.mil]
Sent: Monday, October 20, 2003 4:23 PM
To: Kennedy James P Maj 305 AMW/JA
Cc: Turner Lisa L Lt Col 305 AMW/JA; Kennedy James P Maj 305
Subject: USAF - summer intern program - deadline in NOVEMBER

Greetings, Career Services offices --

First, thank you again for all your assistance in the Fall interview program -- it was great to meet so many talented and impressive law students.

Second, a couple of important points for your 2Ls to keep in mind about the Air Force Summer Intern program. I am afraid that unless you actively convey these to your students some interested students might not get the word:

1. **The deadline is 17 NOVEMBER -- less than a month away.** Last year it was in February, and they might assume that this year will be the same.
2. The application process is not the same as for 3Ls who apply for JAG positions. The intern application can be found at the linked website (not in the AF JAG brochure). Also, there is no interview involved.

The internship program is a fantastic opportunity to get a first-hand JAG experience without incurring an active-duty service commitment. You may have 3Ls who did the Air Force internship last year -- if so, I'd like to suggest that you encourage them to make themselves available to tell interested 2Ls what they thought about it. Interested students may also contact me, or they can contact HQ USAF/JAX with their questions.

The job announcement can be found at: <http://jobsearch.usajobs.opm.gov/jobsearch.asp?q=summer+intern+air+force&salmin=&salmx=&FedEmp=N&sort=rv&vw=d&brd=3876&ss=0&FedPub=Y&SUBMI>

//s//

JAMES P. KENNEDY, Maj, USAF
Deputy Staff Judge Advocate
305 AMW/JA, 2901 Falcon Lane, McGuire AFB, NJ 08641
DSN 312-650-8020/2010, fax - 6866 or -5312. Commercial: 609-754-xxxx