

Report on ROTC Recruitment on Campus

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UCSC Career Center Policy

Career Center guidelines have been established in accordance with the suggested principles of the National Association of Colleges and Employers (NACE) and the policies of other University of California campuses.

Career Center facilities and job listing services are not available to employers who unlawfully discriminate in the selection of employees on the basis of national origin, race, religion, sex, sexual orientation, disability, age or any other basis prohibited by applicable law

NACE Principles for Employment Professionals

6. Employment professionals will maintain equal employment opportunity (EEO) compliance and follow affirmative action principles in recruiting activities in a manner that includes the following:

a) Recruiting, interviewing, and hiring individuals without regard to race, color, national origin, religion, age, gender, sexual orientation, or disability, and providing reasonable accommodations upon request;

b) Reviewing selection criteria for adverse impact based upon the student's race, color, national origin, religion, age, gender, sexual orientation, or disability;

NACE Principles for Career Service Professionals

6. Career services professionals will maintain EEO compliance and follow affirmative action principles in career services activities in a manner that includes the following:

a) Referring all interested students for employment opportunities without regard to race, color, national origin, religion, age, gender, sexual orientation, or disability, and providing reasonable accommodations upon request;

b) Notifying employing organizations of any selection procedures that appear to have an adverse impact based upon the student's race, color, national origin, religion, age, gender, sexual orientation, or disability;

12. Career services professionals will promote and encourage acceptance of these principles throughout their educational institution, and will respond to reports of noncompliance.

1984 UCOP Letter to Chancellors

July 27, 1984

CHANCELLORS

Dear Colleagues:

On June 17, 1983, the Board of Regents approved a [policy statement](#) which read, in part:

It is the intent and direction of the Board of Regents that the University's policy against legally impermissible, arbitrary, or unreasonable discriminatory practices shall be understood and applied so as to prohibit discrimination on the basis of sexual orientation. As specified in that policy, all groups operating under The Regents, including administration, faculty, student governments, University-owned residence halls, and

programs sponsored by the University, are governed by this policy of nondiscrimination. [Emphasis added]

Current Department of Defense policy states that "homosexuality is incompatible with military service." Because of the policy, which has been unsuccessfully challenged in Court, homosexuals may not serve in the armed forces; nor will the armed forces recruit homosexuals. The Department has also issued a regulation which states that funds appropriated by the Department may not be used at any institution of higher learning or a "subordinate element" of the institution "if military recruiting personnel are being barred by the policy of the institution from the premises of the institution."

You may remember that in February, 1984 I reported to The Regents on the implementation of the 1983 policy on sexual orientation. My report stated, in part, that the University policy permitting on-campus recruitment by military recruiters was not inconsistent with The Regents policy statement on sexual orientation. The Regents policy statement applies specifically to groups operating under The Regents and does not speak to the use of University facilities by groups or individuals not operating under The Regents. It was not the purpose of The Regents policy to establish employment criteria for third parties which exceed or are inconsistent with these otherwise provided under law. Beyond that, military recruiters are officials of the United States Government engaged in lawful pursuits as part of their official duty, and it would be inappropriate for the University to interfere with their recruitment activities.

Accordingly, campus recruitment programs which are open to employers generally shall not exclude military recruiters or other employers because of practices that are not impermissible under law. Placement centers may require employers to certify that in using University facilities they will not engage in discriminatory employment practices in violation of applicable federal or state law. [A model statement of compliance appropriate for this purpose is attached.](#)

Sincerely,

David Pierpont Gardner

STATEMENT OF COMPLIANCE

As a condition to [employer's] use of [unit or department's] facilities, employer agrees that in conducting its efforts to recruit University of California students as prospective employees it will not engage in legally impermissible discriminatory practices.

POLICY ON NONDISCRIMINATION ON BASIS OF SEXUAL ORIENTATION

Approved June 17, 1983

It is the intent and direction of the Board of Regents that the University's policy against legally impermissible, arbitrary, or unreasonable discriminatory practices shall be understood and applied so as to prohibit discrimination on the basis of sexual orientation. As specified in that policy, all groups operating under The Regents, including administration, faculty, student governments, University-owned residence halls, and programs sponsored by the University, are governed by this policy of nondiscrimination.

The policy and its specific application to sexual orientation discrimination shall be appropriately publicized and disseminated within the University.

The President shall review University nondiscrimination policy statements and revise such statements as appropriate to include sexual orientation among listings of prohibited forms of discrimination. The President is requested to report to the Board of Regents at its February 1984 meeting actions taken regarding this matter.

AALS Position on the Military's "Don't ask, don't tell" Policy

Under AALS Memorandum 96-15, the AALS has taken the position that the so-called "don't ask, don't tell" policy (10 U.S.C. s 654) still requires military recruiters "to operate in a fashion that constitutes discrimination on the basis of sexual orientation, since gay and lesbian individuals bear a special burden that denies equal opportunity in a military employment setting."

Carl C. Monk, the AALS Executive Director, stated in a memorandum dated August 13, 1997, to all deans of member and fee-paid schools, that the AALS Executive Committee will:

excuse non-compliance with Executive Committee Regulation 6.19 only for military recruiters, as long as a school provides '**amelioration**' in a form that both expresses publicly the law school's disapproval of the discrimination against gays and lesbians by the military and provides a safe and protective atmosphere for gay and lesbian students. (emphasis added)

That is, "schools that choose not to comply [with Regulation 6.19] will have their noncompliance excused so long as they engage in appropriate activities to **ameliorate** the negative effects that granting access to the military has on the quality of the learning environment for its students, particularly its gay and lesbian students." (emphasis added)

Ameliorative Measures

- Posting notices alerting students, and everyone else in the law school community, that the military discriminates on a basis not permitted by the school's nondiscrimination policy and the AALS bylaws, and that the school is permitting the military to interview only because of the loss of funds that would otherwise be imposed under the Solomon Amendment (Although the AALS generally does not mandate any particular type of amelioration, some posting of this type is required.);
- Sending a letter from deans to students, detailing the history of the school's nondiscrimination policies; the enactment of the Solomon amendments; the change of campus policies in response; and the commitment to creating a hospitable educational environment for all students;
- Sending letters from law faculty to members of Congress, protesting the military's policy of discriminating against gays and lesbians, expressing disapproval of the Solomon amendments, and asking that they repeal the Solomon-Pombo amendment;
- Establishing a bulletin board on which to encourage faculty and students to express their views about military policies;
- Hosting student forums at which students and others can discuss discrimination by the military;
- Establishing a "Safe Zone" program which teaches faculty, staff, and students about sexual orientation and trains them to respond sensitively to the concerns of gays and lesbians;
- Actively supporting gay and lesbian student organizations;
- Funding students to attend the annual Lavender Law conferences, allowing them to establish networking connections with many lawyers throughout the nation who are openly gay, lesbian, or bisexual;
- Exploring possibilities for fund exchanges within the university to see whether exposure to Solomon Amendment sanction might be reduced to a level at which the school could resume application of its nondiscrimination policy to military recruiters;

- Establishing a permanent faculty-student-staff task force to develop and implement a series of active institutional and individual counter-measures;
- Participating in legal and political challenges both to the Solomon Amendment and the policy of discrimination by the military;
- Providing funding and support for an annual symposium on the issues raised by the Solomon Amendment;
- Purchasing tickets for a fund-raising event each year for a gay and lesbian legal organization.

Dean Robert C. Clark Announces Change to HLS Military Recruiting Policy

August 26, 2002 -- 1:30 p.m.

The following is a memo from Dean Robert C. Clark to the Harvard Law School community outlining changes to the school's military recruiting policy for the 2002-2003 academic year.

This academic year, for the first time since this School adopted a policy prohibiting discrimination on the basis of sexual orientation, the U.S. military will be allowed access to the facilities and services of the Law School's Office of Career Services ("OCS"). Because of the significance of this decision, I write to inform you of the history of this issue at the Law School and the path that led to this course of action.

At the outset, I would emphasize that the decision is the product of intense discussion and careful deliberation after the military raised the issue with new rigor this year. Regrettably, no reasonable alternative was available that could satisfy the disparate views on this issue. I have personally struggled with this issue, because I recognize the pain that some members of the community (especially our gay and lesbian students) will endure because of the change in practice. For many of us, a policy of nondiscrimination on the basis of sexual orientation reflects a fundamental moral value. There are numerous ways to express this value and pursue its implementation, however. Our decision to permit military recruiters access to the facilities and services of OCS does not reduce the Law School's commitment to the goal of nondiscrimination on the basis of sexual orientation.

Our policy has long provided that any employer who recruits at Harvard Law School and utilizes the services of OCS must sign a statement indicating that it does not discriminate on various bases, including on the basis of sexual orientation. Because the military has not signed such a statement, it has not been permitted to utilize the services of OCS in the past.

At issue for several years, however, has been the interpretation of a federal statute commonly known as the Solomon Amendment. This statute, enacted in 1996, denies certain federal funds to an educational institution that "prohibits or in effect prevents" military recruiting. The regulations implementing the statute state that if an educational institution does not provide "requested access" to campus, the institution will lose its federal funds unless the institution can demonstrate "that the degree of access by military recruiters is at least equal in quality and scope to that afforded to other employers." 32 C.F.R. 216.4(c)(3).

In 1998, the Air Force asked us for information to determine whether we were in compliance with the Solomon Amendment. I responded at that time by pointing out that the military has been able to recruit effectively at the Law School via a different route—namely, the Harvard Law School Veterans Association ("HLSVA"), a recognized student organization. As you may know, any official student organization at the Law School may invite any person or organization onto campus. HLSVA has invited military recruiters and has facilitated their efforts at HLS. In 1998, after I explained our nondiscrimination policy for OCS and the practice of having the military recruit through HLSVA, the Air Force determined that we were in compliance with the Solomon Amendment.

In December 2001, the Air Force made another inquiry on the subject. Our initial response mirrored the response we sent in 1998. However, although our practices had not changed since then, apparently the Air Force's interpretation of the Solomon Amendment had changed. On May 29, 2002, the Air Force notified me that it no longer views our policy as being in compliance with the law. The Air Force's letter said that unless the School showed by July 1, 2002 that our "policies and practices had been modified to conform with federal requirements" they would "forward this matter to the Office of the Secretary of Defense with a recommendation of funding denial."

In light of the Solomon Amendment, our refusal to permit military recruiters access to the services of OCS would make the entire University ineligible for appropriations from the Departments of Defense, Transportation, Health and Human Services, Education and related agencies. The Law School does not receive significant federal funding, and our participation in federally sponsored student loan programs would not be at risk. The University, however, annually receives approximately \$328 million from the federal government, which comprises approximately 16% of its operating budget.

Because our recruitment practices have implications well beyond the Law School, I went outside (as well as inside) the Law School to discuss this issue. In summary, I studied the matter with the University's General Counsel extensively over the summer, and I consulted with Harvard's President. I also met with the Law School Placement Committee and took counsel from other faculty members and senior administrators of the Law School. At my request, the Placement Committee contacted the leadership of HLS LAMBDA, to inform them of the situation and solicit their input to our response. In reply to our request for more time to study the issue, the Air Force granted us a one-month extension, and on

July 29th I informed the Air Force of our decision to permit military recruiters to use OCS.

In the end, the decision to allow the military to recruit on campus recognizes the extraordinary impact a prohibition of recruitment through OCS would have had on the University. I believe a significant majority of the Law School's students, faculty and staff oppose all forms of discrimination based on sexual orientation. At the same time, most of us reluctantly accept the reality that this University cannot afford the loss of federal funds. Harvard University, one of the nation's premier research institutions, would be adversely impacted by the abrupt termination of millions of dollars in federal funding. To say that this decision is just about money trivializes the significance these funds have on students' educations, faculty careers, and scientific research that can lead to cures to life-threatening illnesses and debilitating diseases.

As a citizen, I am convinced that military service is both honorable and essential to the well being of our country. I am deeply grateful for the sacrifices made by military personnel and the security and other benefits they provide to all of us. As Dean of Harvard Law School, I am also very proud of each and every graduate who has gone into military service, and I hope the number increases. Precisely because of this respect for military service, I believe that one way or another, all students should have access to these exceptional opportunities to serve their country.

This year and in future years, the Law School will welcome the military to recruit through OCS. Our decision to allow the military to recruit through OCS, however, does not imply that we support the military's personnel policies. The Law School condemns the military's discriminatory practices and remains committed to the principle of equal opportunity for all persons, without discrimination on the basis of sexual orientation. We are dedicated not only to the rule of law, but also to the advancement of a just society.

Going forward, I will be working with the leadership of LAMBDA and other HLS student organizations, and with our faculty and administrators, to discuss constructive measures that the Law School can take in support of its nondiscrimination policy. A society that discriminates on the basis of sexual orientation--- or that tolerates discrimination by its members---is not a just society. I am hopeful that in the very near future the United States military will adhere to the fundamental principles of equal opportunity and nondiscrimination.