



LGBTQ+ Best Practices for Law Schools: A Guide to Institutional Equity

A publication of
The National LGBT Bar Association and Foundation
April 2019



INTRODUCTION

Law schools serve a fundamental purpose in American life – a purpose that impacts virtually every aspect of how we live our everyday lives. Law schools, as the gateway to the legal system, set the tone for how their students think about their future roles as those who will build upon our nation’s legal heritage and craft the path ahead that will define the rights and responsibilities for themselves, their fellow citizens, and our future generations. Legal education institutions and the people leading and teaching within them don’t only teach cold facts and principles of law: they push – they shape – they question – they breathe life into the law – they inspire. In raising questions and expecting students to explore the nuances that will help them become honed advocates, they are sharing critically important values and setting a tone for their students’ careers, and ultimately their lives.

One of the core American legal principles taught in all law schools is that all people are created equal, and that no person should be denied equal protection of the laws. Yet that principle – that deeply American value – must also be taught with an eye to the reality that our society and our legal system have, in fact, regularly and systematically discriminated against many groups of people throughout our system. It is only relatively recently that we have begun to address those long-held biases and inequities through civil rights laws and through the implementation of policies and procedures designed to address the actuality that while people are equal, they are not the same, they are not similarly situated, and they are not treated equally.

Lesbian, gay, bisexual, transgender, and queer-identifying (LGBTQ+) people are one such minority population that has faced historic discrimination in virtually every aspect of their lives, and which have only very recently been recognized by some jurisdictions as people who warrant equal protection of the laws. Without question, LGBTQ+ people are now more accepted throughout society than in any time in history. Corporations and Congressional Representatives fly Pride flags at their offices and sponsor LGBTQ+ organizational events, an increasing number of school districts are enacting gender-neutral and gender-inclusive restroom policies, and marriage equality is the law of the land.

Yet this rosy picture is only part of the reality. Everyday rights that most people take for granted remain perilously insecure for LGBTQ+ people, particularly those outside of major urban centers. The right to marriage equality is still under attack in 2019 by those who seek to overturn it and who advocate for LGBTQ+ exceptions to the rights that have traditionally come with marriage. [As of April 2019](#), LGBTQ+ people still have no nationwide federal protections against workplace discrimination, 26 states still lack a statewide ban on sexual orientation and gender identity workplace discrimination, and an additional state protects only LGB people and not transgender people from

discrimination in the workplace. The rights of LGBTQ+ people to access places of public accommodation and service providers – including educational institutions, as well as restaurants, medical facilities, and more -- are likewise not comprehensive and secure, and are threatened in the courts in a number of jurisdictions. LGBTQ+ people's right to parent is similarly threatened on a regular basis in the courts and through legislative and regulatory efforts, and organizations that ban LGBTQ+ people from adopting or fostering still receive government funding in some jurisdictions. Transgender people in particular have been subjected to repeated legislative, judicial, and ballot-box attacks in states across the country as well as in the federal government over the past few years, as those who oppose their receiving equal treatment under the laws push back against the progress that has been made as American society overall has become more inclusive and accepting. Moreover, LGBTQ+ people with intersectional minority identities – such as LGBTQ+ people of color, those with disabilities, those who are immigrants, and those living with HIV – are particularly vulnerable.¹

Law schools have a critical role to play in ensuring that all LGBTQ+ people are safe, that they are not subjected to discrimination, and that they are able to thrive in American society. Schools can readily impart these goals through their curriculum and by supporting student advocacy efforts to help normalize the vision of full equality in the legal system. Yet equally importantly, law schools also can convey the importance of LGBTQ+ inclusion by signaling throughout every aspect of the law school environment that LGBTQ+ people are seen and valued and supported for who they are, with full respect for the identities they bring to their legal education experience. Law schools have the power to bring LGBTQ+ people into their institution through a welcoming and inclusive admissions process, to ensure their safety and well-being at school through a registration process that shares appropriate names and pronouns with faculty and by incorporating inclusive restroom policies, to hire LGBTQ+ faculty and respect their identities and family needs, and to help LGBTQ+ students gain jobs where they will be treated fairly and respected.

The National LGBT Bar Association and Foundation has developed this Best Practices toolkit to assist law schools in fully accepting and supporting their LGBTQ+ students, faculty, and staff. We encourage you to read it and share it with your key administrators as well as your faculty, to reach out to your sister law schools to assess what they doing and learn from their successes, and to reach out to us with questions and suggestions for improving this publication.

¹ For more information on the legal status of LGBTQ+ people nationally on a number of legal fronts, see the Movement Advancement Project's set of equality maps, available at <http://www.lgbtmap.org/equality-maps>. For information specific to your state, visit Lambda Legal's "In Your State," at <https://www.lambdalegal.org/states-regions/in-your-state>, as well as the Human Rights Campaign's "See What's Happening In Your State", <https://www.hrc.org/>.

I. OVERARCHING ISSUES

Institutional equity for LGBTQ+ students, faculty, and staff within law schools is a multifaceted issue, reaching into every aspect of law school life. Equity for all within a law school environment encompasses admissions, employment, classroom teaching and learning, course offerings, career services support, extracurricular opportunities, healthcare coverage and access, equal housing options where offered, and more. It's essential that law school administrators ensure that the policies governing the school are designed to ensure full and equitable access to all services, benefits, rights and privileges offered within the community - taking into account that members of the law school community, particularly those who are members of historically marginalized communities such as those who are LGBTQ+ - are not always similarly situated to those in the majority, and that it may be necessary to re-evaluate and adapt long-held assumptions and ways of doing things in order to fully support all members of the community in their law school tenure and future legal career.

A. Nondiscrimination and Diversity Statements

The National LGBT Bar urges all law schools to explicitly include “sexual orientation” and “gender identity and/or expression” in their nondiscrimination statements.² Taking this step not only holds schools accountable for this expression of values, it also sends a message of inclusivity and acceptance to their LGBTQ+ and ally community members. Because this issue is relevant to students, faculty, and staff, the LGBT Bar encourages all law schools to ban discrimination on the basis of sexual orientation and gender identity/expression in all of the school’s equal opportunity statements – those relating to admissions, employment, housing, and others. The more evident it is to students, faculty, and staff that their identities are not only protected but welcomed at their institution, the more they are able to bring their full selves to school and work, and the more academic and professional success will be achieved by all.

It also matters to LGBTQ+ students and faculty to see themselves reflected in the school’s diversity statements, and to be included in campus diversity events. Often, such statements and events focus solely on other highly marginalized populations and don’t acknowledge that LGBTQ+ people have also been historically ignored or disenfranchised, or don’t acknowledge that some community members have multiple

² Law schools are indeed required by the American Bar Association to expressly bar discrimination in admissions on the basis of sexual orientation. (See ABA Standards and Rules of Procedure, Standard 205 (b), prohibiting “discrimination or segregation on the basis of...sexual orientation...”.) Moreover, law schools which are members of the American Association of Law Schools are required to prohibit discrimination on the basis of gender identity and expression as well. (See AALS Bylaws, Article 6 § 6-3 (a), noting that equal opportunity should be given to all regardless of gender, including identity and expression, and sexual orientation.)

and intersectional identities, including LGBTQ+ people of color or LGBTQ+ people with disabilities. Be sure to be inclusive of these community members and their needs as well.

B. Gender Inclusive Language

As language evolves, so do the terms and ways in which people – particularly those who do not fall on the gender binary - want to be addressed. Instead of being referred to by either “He” or “She” pronouns, some students may prefer to be addressed by their name directly, or by other pronouns such as “They/Them”. Students may prefer to use alternative honorifics such as “Mx.” (pronounced “Mix”) instead of “Mr./ Ms./Mrs.” It is important for faculty and staff to familiarize themselves with these alternative forms of address, and for the law school administration to expect that faculty honor the need of any students to be addressed in accordance with their identity. See Section VIII.C. (“Pronouns and Name Usage”) below for more information on appropriate and affirming identity language.

C. Appoint an LGBTQ+ Inclusion Point Person

An important step in improving institutional equity within law schools is to appoint a staff member with strong LGBTQ+ competency who can serve as the point person for all LGBTQ+ community members, particularly for transgender and gender non-conforming faculty/staff/student needs. While your law school’s larger university may have a staff position like this, it is beneficial to have a point person within the law school to address the needs of LGBTQ+ community members directly.

D. Equity and Inclusion Training

Most workplaces the size of typical law schools now mandate racial and sexual harassment trainings for staff and faculty at least every two to three years. Be sure that your institution’s trainings are conducted by LGBTQ+ competent trainers, and that they are designed to cover both harassment and bias against LGBTQ+ people and same-sex sexual harassment. The LGBT Bar strongly suggests that LGBTQ+-specific equity trainings are held at least every other year for faculty and staff, and that students receive equity and anti-harassment training as part of student orientation each year.

II. ADMISSIONS

We all know that first impressions matter – a lot. That applies as much to how your school presents its commitment to full inclusion and equality for its LGBTQ+ members as it does to how it presents the strength of its faculty and breadth of its course offerings. LGBTQ+ equality matters at your school, so be sure to show it in all of your outreach efforts, and ensure that your school’s Admissions team members are well-supported

with resources and materials that demonstrate this commitment to inclusion. Remember that you're sending an important signal to all prospective students – not just those who are LGBTQ+ themselves – about your school's values, and thereby setting a tone of acceptance that will positively infuse the entire campus experience. Also remember that your Admissions efforts should be the outward face that reflects a deeply baked-in system of inclusion and equity – the face isn't enough on its own.

You can flag prospective students to your school's commitment to LGBTQ+ equality in a number of ways. Start by developing LGBTQ+ recruitment materials, highlighting the ways in which your law school supports LGBTQ+ students and faculty and linking to your school's results on the National LGBT Bar's [Campus Climate Survey](#) and the Law School Admissions Council's (LSAC) [LGBTQ+ Guide to Law Schools](#). Dedicate a page of your website to profiling LGBTQ-related programming (such as course offerings, recent lectures, scholarship opportunities, etc.) at your school, details about your school's Pride celebrations, and testimonials and pictures from your LGBTQ+ student group members, out LGBTQ+ faculty, and any alumni who are interested in participating. Include a letter from your LGBTQ+ student group to prospective students in your recruitment packets, and another one in your welcome packet that details information about the group's upcoming meetings and activities. (We strongly recommend that you consider having these letters come not just from the LGBTQ+ group, but by all the student identity groups including those supporting students of color, women, and those of religious minorities – in recognition that people have intersectional identities and that these student groups ideally are working both individually and in tandem to support all of their minority-group colleagues regardless of whether they are members.) In all your campus tour and welcome materials, include campus maps that mark where gender-neutral bathrooms are located and that state your school's inclusive bathroom policy (and be sure there is clear signage within the building as well). If you offer opportunities for applicants to meet with current students or if you hold informational panels for prospective students, be sure that you include members of your student LGBTQ+ group to share their insights about LGBTQ+ life at your school.

Provided that you are confident that your admissions system is well-designed to be free of LGBTQ+ bias so that applicants and students will be safe if they self-identify, include an optional space in your school application materials for students to identify themselves as LGBTQ+ and to tell you their preferred name if it differs from their legal name, as well as their pronouns and choice of honorifics (see Section VIII.C. below for more information). Be sure that this information is readily updateable by the student, and that all information from the application materials is smoothly transferred to the registration arm of the school after the student is accepted to facilitate respectful administration and classroom interactions.

If you are seeking to recruit LGBTQ+ students, consider branching out beyond your usual networks. In addition to recruiting with key pre-law advisor networks such as

PLANC and highlighting your school's desire to outreach to minority students including those who are LGBTQ+, consider sending information about your law school and its LGBTQ+ commitment to LGBTQ+ resource centers at undergraduate institutions and to LGBTQ+ student groups at the undergraduate schools from which you draw the greatest population of applicants.

Be sure your admissions staff is fully trained to be sensitive to LGBTQ+ issues as well as the risks of implicit bias, and if your school incorporates an interview process, be sure that all interviewer are similarly trained. (You may want to draw from your LGBTQ+ alumni network or your local LGBTQ+ bar association to assist with the application review process to ensure that reviewers/interviewers are as diverse as the applicant pool.) Your school representatives should all be fully conversant about issues that impact LGBTQ+ students (from gender-neutral bathroom facilities, to the location of the greater university's Pride center, to a discussion of benefits available to same-sex partners of students), and comfortable talking about those issues both when questions arise and also as part of the general school overview, including during law school orientation proceedings.

III. FACULTY AND STAFF

Institutional equity requires consideration of the needs of all community members, including faculty and staff. It's entirely appropriate and legal in United States jurisdictions to invite employees to identify their sexual orientation and gender identity in self-identification studies, as long as those polls are both voluntary and provide an option of confidentiality. Some organizations push back against the notion of these "Self-ID" polls with respect to sexual orientation and gender identity even as they undertake them regularly with respect to employee's racial and ethnic identity and their sex. The reality is that the needs of people who aren't seen are often not considered to be important, and one of the most critical first steps to increasing diversity and supporting minority populations including LGBTQ+ status is knowing in what numbers they are present within your institution. If you know that LGBTQ+ people are at your school, you need to ensure that you're taking appropriate steps to fully support them. If you don't know that LGBTQ+ people are at your school, you may need to start considering why they aren't there, or why they don't feel safe enough to be out. Asking about sexual orientation and gender identity in the right context, with appropriate consent and privacy safeguards where requested, is a strong indicator to all community members that the school cares about its LGBTQ+ constituencies. More information on Self-ID programs is available [here](#).

Equity for faculty, of course, begins with the hiring process. Ensure that your school's entire faculty – not just the hiring committee – is trained regularly on implicit bias (for race and gender as well as sexual orientation) Insist that your school build a diverse pool

of applicants to choose from, and reach out to non-traditional communities to add to that pool. Be sure that over time, you're tracking the demographics of your pool of applicants and checking regularly to see whether people of particular demographics are held to different hiring qualifications standards. For more helpful insights on "interrupting bias" in hiring as well as in compensation and performance evaluation and other stages of career development, read [this report on Bias Interrupters](#) from the Center for Worklife Law at UC Hastings College of Law.

IV. COURSE OFFERINGS

If your law school does not already offer an LGBTQ-specific course, consider offering one, taught either by a full-time faculty member with relevant expertise or by an adjunct professor drawn from the local LGBTQ+ legal community. Be sure that the course is fully inclusive of transgender and bisexual legal issues, not just those relevant to gay and lesbian people. You might consider offering a clinical program that focuses on LGBTQ+ legal issues for community members (such as obtaining legal name changes and changing gender markers on official documents, filing adoption petitions, and helping transgender and gender non-conforming prisoners obtain appropriate housing and health care.)

V. HEALTHCARE AND OTHER BENEFITS

Ensuring that all of your healthcare policies are inclusive of the health needs of transgender and LGBTQ+ faculty, staff, and students, as well as any employees or students living with HIV, in terms of both their individual needs and their partners' (whether legally married or not). Healthcare coverage for transgender individuals (including hormone replacement therapy and gender transition coverage) is routinely excluded from many healthcare policies; likewise, some policies do not cover payment for medications used by those with HIV or medications like PrEP that are used to prevent transmission of HIV. Ensuring that these individuals have the necessary healthcare coverage they need is critically important to their success in their academic or professional endeavors at your school. In addition, some health plans exclude same-sex couples from fertility treatments that are otherwise covered for different-sex couples, in that they require that the couple have tried 'traditional' sexual reproductive efforts for a specified period of time before coverage kicks in – an option unavailable to same-sex couples.

While marriage equality has been legalized federally, LGBTQ+ couples still routinely face significant barriers to equality within marriage in a number of contexts; moreover, because legal inequities still exist for LGBTQ+ people in various contexts (including international and US adoptions, ability to provide foster care from certain religiously affiliated agencies, etc.) some couples may elect not to marry. Be sure that your school's

benefits plan fully covers LGBTQ+ couples, whether married or in long term partnerships, in all benefits relating to family, health, and partner benefits (including fee waivers, day care availability, gym privileges, and other fringe benefits). Be sure, too, that your parental leave plans provide the same benefits regardless of gender and that they cover adoption leave in the same way they cover leave for births.

VI. HOUSING

If your law school offers on campus housing to law students, ensuring the safety and equity of those students' experiences is crucial. Transgender and gender non-binary/non-conforming students in particular face challenges in getting safe and affirming campus housing, and, due to a number of challenges relating to family rejection, early homelessness, employment discrimination, and more, may also find it harder to afford private housing options and thus need to access less-expensive campus housing if available. Gender neutral housing options, such as the ability to live with someone of the same or different sex and/or gender, should be made available to students if at all possible. Additionally, housing options for same-sex couples should be made available for students in long term partnerships or marriages. Implementing gender neutral housing gives students more freedom to choose who they are more comfortable living with – and ultimately benefits all students, not only those who identify as LGBTQ+.

VII. SUPPORTING LGBTQ+ STUDENTS OUTSIDE OF THE CLASSROOM

A. Support Your Law School's LGBTQ+ Student Group

Most – though not all - ABA-accredited law schools now have an active LGBTQ+ student group. Some of these groups have been well-established for years, with Student Bar Association or administration funding and with strong leadership structures that put together visible programming every school year. Others are fledging and may struggle from year to year, particularly if few students are “out” with their LGBTQ+ status or if the group leaders have perceived a lack of administrative support. Some groups are designed solely to be supportive of their students, while others engage in regular activism. These student groups can be the first and only place where LGBTQ+ students find a supportive group of people with whom they can be their authentic selves. They can also be an important place for people who identify as allies of the LGBTQ+ community to find an activism home.

Law school administration can take important steps to assist these groups to thrive. First, be sure that the group has a faculty or administrator mentor, ideally one who identifies as LGBTQ+ or, if need be, who has a demonstrated record of allyship. Mentors don't need to attend group meetings, but they serve as a sounding board for the group

leadership and can help liaise with the administration and faculty if issues of concern arise. Second, be sure the group has a source of funding to put on programming, whether from the SBA or another source. Third, ensure that the group has an identified school email address that continues from year to year, rather than having to rely on the student leadership to use their own email for communications. Having a continuous email home for communications that can be accessed from year to year is the best way to ensure continuity with the group even when leadership changes, and having that be a school address rather than a gmail or outlook address sends a strong message that the school approves of and supports the group (as well as being helpful if passwords need to be reset). Last, be sure to show official school support for the student group's activities – it's hugely impactful when key administrators and faculty show up for events that are planned or even partake in the programming when invited.

Please be sure your student group is aware of the National LGBT Bar's Law School Affiliate program. The Bar shares an "Action of the Month" toolkit with its affiliate members, sends monthly emails with information about other student groups around the country to help with national networking efforts, periodically provides discounts on LGBT Bar membership to students who are part of the groups, sends information about internships, scholarships and writing competitions, shares special opportunities and information about the Bar's Lavender Law Annual Meeting and Career Fair (as well as free registration!), and more. Visit our website for a list of [current law school affiliate groups](#) and to submit an application to become an affiliate.

If your school does not currently have an active LGBTQ+ student group and a student expresses interest in starting one, visit the LGBT Bar's website for an [FAQ sheet](#) that provides tips for starting one. You'll also likely need to fill that gap by holding educational events at least annually on LGBTQ+ related topics until an active student group is established. Feel free to contact the National LGBT Bar Association for help with planning such events.

B. Career Planning

Career services officers are often some of the most identity-affirming administrators on law school campuses, helping LGBTQ+ students seek out fulfilling job opportunities that match their skills and qualification and also enable them to be out and proud at work. The [National Association of Law Placement](#) (NALP) provides a number of helpful [resources](#) through its Diversity Section and Lesbian, Gay, Bisexual, and Trans (LGBTQ) Work Group to [inform and assist](#) career services officers in supporting their LGBTQ+ students, and should be the first stop for building an inclusive career services plan.

1. Support Student Attendance at the National LGBT Bar's Annual Lavender Law® Conference and Career Fair

The National LGBT Bar Association works closely with NALP and with career services officers at law schools around the country to support law students in attending the LGBT Bar's annual [Lavender Law® Conference and Career Fair](#). Lavender Law® is the largest LGBTQ+ legal conference in the country, with approximately 1700 attendees attending annually, including about 400 law students. The Conference is comprised of two full days of LGBTQ+ legal programming taught by the top experts in the country drawn from academia, nonprofit advocacy groups, government, and private practice, all of which is available to attending law students. The Bar also incorporates a half day of career planning programming specific to law students, followed by a luncheon for students to mingle with legal recruiters, followed by the half-day career fair with approximate 200 legal employers from all employment sectors present and available for interview with students. Law student members of the LGBT Bar (\$40 annually – group discounts available) may attend Lavender Law at no charge; they need only provide a resume and register. (Note that individual membership is different from student group affiliate membership, mentioned above.) Many Career Services offices support their students by underwriting their membership in the Bar or, even more helpfully, by underwriting their travel and accommodations costs for the conference.

2. Help Students Navigate LGBTQ+ Identity During A Job Search

Making the decision whether to be “out” on one’s resume and during a job search process is an intensely personal one for a law student. Career Services offices can help by partnering with the school’s LGBTQ+ student group to put on a panel with local LGBTQ+ attorneys and employers to discuss the pros and cons, and to provide advice for students who do choose to be out as to how to best answer interview questions and position their activism work during a job search.

3. Provide Mentoring & Networking Opportunities

All law students need mentoring and networking opportunities to help them gain confidence, experience, summer opportunities, and permanent jobs. It’s particularly important for members of minority populations, including LGBTQ+ students, to see themselves reflected in their mentors, and to have opportunities to network in spaces that they know are safe and inclusive. If your community – or a major metropolitan community nearby - has a LGBTQ+ lawyers’ association, take time to forge connections with that group and to find connection points for your students, or seek out members of the group to visit your school to talk with your LGBTQ+ students. (Visit the National LGBT Bar’s website for a list of [state and local LGBTQ+ bar associations](#).)

4. Create an Alumni Network

If your school or your LGBTQ+ student group does not already have a list of LGBTQ+ alumni, have your alumni relations office work with the LGBTQ+ student group and your Career Services office to start one. Create a Google doc or an online registration portal to facilitate easy sign up, and reach back to your known superstars as well as the past few years of student group leadership to ask for help in building the list (you can also advertise it in the alumni newsletters, or ask your state bar association to include your request in their monthly outreach.) Once you have built a solid list of alumni, invite them back to school for an educational panel and reception celebrating your school's LGBTQ+ history. Even if your history hasn't been fully inclusive until recently, you will be sending a very important message to your alumni and your current students about the value of your LGBTQ+ community, and you may be surprised to learn that there was a thriving community of students well before a formal group was created.

VIII. Fostering a Safe and Welcoming Community for Transgender and Gender Non-Binary/Non-Conforming Law Students

It is critical that law schools cultivate a welcoming and safe campus environment for transgender and gender non-binary/non-conforming ("TGNC") law students. Success in school depends on students' ability to focus on studies and extracurricular activities rather than their safety or the judgment of their faculty and peers. Living and acting consistently with one's gender identity is a key aspect of transitioning and living authentically for many TGNC individuals. Accurately expressing one's identity is also critical to mental health - and invites a diversity of thought in and out of the classroom.

In this section, you will find a guide on how to craft your law school's policies in a way that ensures all students, regardless of their gender identity, feel welcome and supported. These are vital steps to ensure your law school treats TGNC students with respect and dignity.

A. Provide Transgender and Gender Non-Binary/Non-Conforming Competency Training for Faculty and Administrative Staff

The first step in ensuring your institution is welcoming, supportive, and respectful of transgender and gender non-conforming students is to ensure your faculty and administrative staff are well-versed in definitions and issues surrounding such identities. This training should be separate from general LGBTQ+ training, as TGNC students face a unique set of challenges and have certain needs that cisgender lesbian, gay, bisexual, and/or queer students often do not.

Trainings by experienced professionals can improve your staff and faculty's understanding of TGNC experiences, as well as decrease the chance of unintentional disrespectful behavior or discriminatory action borne from ignorance on the topic. Requiring trainings also demonstrates a clear dedication to creating a welcoming environment and will make students feel that their needs are taken seriously. Many trainings provide tangible evidence of completion - such a sticker that can be placed on a faculty or staff members' office door or a logo that can be placed in an email signature - which provide visual cues to let students know they are supported, welcomed, and understood.

Such trainings should cover the following subjects:

- Essential terminology and definitions, as well as basic knowledge of the history and current state of TGNC issues in a broad context that addresses the breadth of the challenges and discrimination faced by TGNC people.
 - Keep in mind that trans identity is not about an individual's body matching their gender. It is about how an individual feels, personally identifies and views themselves. As such, be as inclusive as possible in how your administration defines TGNC, even if the legal definition that may apply in your state is more restrictive.
- The campus-related needs of TGNC students (regarding name and gender changes, restroom policy, pronoun and name use, healthcare, harassment and violence, etc.). Particular attention should be paid to the mental and physical health and safety of TGNC students on and off campus, as well as a commitment to attracting and retaining TGNC students in the admissions process.
- Current and future policies, including your school's nondiscrimination or grievance policies.
- Staff and faculty should be made aware of your school's plan to handle student transition, including but not limited to:
 - How a student notifies faculty and staff that they are transitioning;
 - What must be done internally to ensure a student's transition is reflected in official records and documents with minimal burden upon the student (reflecting the reality that some jurisdictions create high legal barriers to those seeking changes in documentation);
 - How a student's privacy will be respected at all stages, including in the writing of letters of recommendation and after graduation.

A key goal of this training should be ensuring all staff and faculty are aware that discrimination and harassment have no place on your campus and will not be tolerated,

and an enforcement of an ethic of centering the student's well-being and self-identified gender affirmation. Be firm in your commitment to creating a welcoming and affirming campus for all students.

B. Institute Restroom Policies Respectful of Transgender and Gender Non-Binary/Non-Conforming Students' Identities

The most important thing to recognize when it comes to gender-affirming restroom policies on campus is that these policies are not simply about restroom access. Allowing TGNC students to use the restroom that best suits their gender identity or to choose, but not be forced, to use a gender-neutral restroom is a small part of a larger campus climate. These policies reflect whether or not a law school campus is accessible to and validates all students. If restroom policy is not respectful of gender identity, then classrooms, housing, and academic buildings are inherently not respectful of gender identity.

Inclusive restroom policies are essential to ensuring that TGNC students feel welcome on campus and are healthy. When schools have a culture or policies that do not explicitly support TGNC students, these students may elect to simply not use public restrooms out of fear or discomfort. Ignoring bodily needs is bad for student health - whether that means not using the restroom when needed or limiting intake of liquids to avoid needing to use the restroom. Moreover, having a written restroom policy that is inclusive and affirming of TGNC students protects students from harassment and discrimination.

There are two key components to TGNC friendly restroom policy: Gender Inclusive (Neutral) Restrooms, and Restroom Use According to Self-Identified Gender.

1. Gender Inclusive Restrooms

Gender inclusive restrooms are not a new phenomenon - they've existed in public spaces for years for families with young children of the opposite gender, for people with disabilities who need a caregiver's assistance, and for others who feel discomfort in a large, multi-person public restroom. They also present a healthy alternative to gender-nonconforming and non-binary students who don't feel comfortable using any available restrooms labeled as "Men's" or "Women's." Single-stall gender inclusive restrooms should be accessible and prevalent on campuses. However, no student should be forced to use such a space if they prefer to use the restrooms labeled for Women and/or Men.

Policy Recommendations:

- All single-occupancy restrooms should use gender inclusive signage. For example, rather than labeling such restrooms as "Men" and "Women,"

instead label them simply as “Restroom.” (Please note that there is no uniform way to label a gender inclusive restroom and signage specifications will depend on state and local laws and policies.)

- Consider building entirely gender inclusive single-stall restrooms in all new law school buildings and those under renovation, rather than having gendered bathrooms.
- Have a policy requiring at least one easily accessible gender inclusive restroom in all newly constructed and renovated law school-owned buildings; ideally at least one per floor and at least one available for faculty if faculty use different restroom facilities than do students. These facilities should be comparable to other gendered facilities in terms of building location, and should be disabled-accessible.
- Add or assign single-occupancy, gender inclusive restrooms in all existing law school-owned buildings in locations that are easily accessible.
- Create an interactive, online, and easily accessible map of all single-stall and gender inclusive restrooms on campus.

2. Restroom Use According to Self-Identified Gender

Using the restroom that corresponds to an individual’s gender identity, regardless of what gender they were assigned at birth, is crucial to that individual’s wellbeing. While gender inclusive restrooms can provide a viable or even welcome option to TGNC students, students should not be forced to use this separate option if they prefer to use gendered facilities that match their gender identity. Schools should enact policies that support TGNC students’ ability to use the restroom that aligns best with their gender identity, as determined by each individual student. The relegation of TGNC students to only gender inclusive restrooms can be isolating and reinforces their exclusion on campus. A policy not only allowing but encouraging students to use public facilities that align with their gender identity is essential to truly making your campus accessible and welcoming to all students, and to letting all students know that TGNC students are supported by the school administration. Here is what you can do to support TGNC students at your law school:

Policy Recommendations:

- Ensure that your campus non-discrimination policy prohibits discrimination on the basis of gender identity or expression. Such policies

support individuals using the restroom that corresponds to their gender identity.

- Include appropriate signage. Make it clear that gendered restrooms are open to all with the corresponding, self-determined gender identity. Additionally, consider specifically adding gender inclusive restrooms beyond the Men’s Room and Women’s Room.
 - There are many ways to label gender inclusive restrooms. In California, the standard is to label inclusive restrooms with “All-Gender,” or “All-Gender Single-Occupancy” signs. In the District of Columbia, all single stall restrooms must be labelled “Restroom” rather than “Men” or “Women”. In Vermont, all public single stall restrooms must simply have some form of an all gender indicator.
 - Please note that state laws vary and often specify what language may or may not be used as restroom indicators. Before implementing any policy, ensure your proposed plan complies with any such laws.
- Ensure that individuals are explicitly invited to use the restroom that corresponds to their gender identity and that harassment or questioning will not be tolerated.
- School administration and faculty are responsible for finding restroom solutions that are safe, convenient, and respect TGNC students’ dignity. Students should not need to solve this potential problem themselves.

C. Pronouns and Name Usage

Every student has the right to be addressed by the name and pronouns that reflect their self-determined gender identity.

Misgendering happens when an individual’s pronouns are not respected, either intentionally or by unintentionally making an assumption about that person’s gender. While misgendering may not always be a deliberate act of harassment or bullying, it is almost always a painful experience for TGNC individuals. Misgendering can trigger gender dysphoria, may “out” an individual to others without their permission in potentially unsafe environments, may result in TGNC people feeling targeted and humiliated, and may make TGNC individuals feel erased because their gender identity is ignored.

Cisgender individuals who are eager to make their TGNC friends, peers, and colleagues feel safe and seen may have anxiety regarding unintentional misgendering. Training helps reduce this chance of accidental misgendering, and following the lead of a TGNC person is always the right thing to do with respect to their pronouns and name. Law school administrators can set the right example and avoid discomfort and harm by having a transparent process in place for TGNC students, staff and administrators to inform the school of the name, pronouns, and honorific titles they wish to use in school. That information should be included on class rosters and shared with professors. Set the expectation that the students' choices will be respected in and out of the classroom.

The formalities of law classes can sometimes lead to challenges when it comes to misgendering. However, there are institutional policies and initiatives that can be put in place to avoid misgendering and "deadnaming" in class. Here are some ways that your law school can better institutionally support TGNC students when it comes to gender markers, names and pronouns:

- Collect and distribute class rosters of students' names and pronouns, as determined by students. Encourage, and enforce when needed, the use of correct names and pronouns by faculty in the classroom. For example, faculty can call students by their first name (as determined by the student) rather than Ms. or Mr. Another option is to use the prefix "Mx." when referring to TGNC students, provided it is what a given student has requested. Again, pronouns and gendered terms should never be assumed - always ask.
- Implement and enforce a system to handle complaints regarding faculty members or administration officials who do not respect students' pronouns and names. This should include a way for students to safely report harassment regarding names and pronouns without fear of academic or social retribution. Occasional mistakes can be understandable; repeated, ongoing misnaming and misgendering can rise to the level of harassment and result in serious trauma and interference with educational goals for TGNC individuals.

Outside, as well as inside, the classroom, the best practice for ensuring that students are not misgendered is to ask all students for their preferred name usage and their pronouns, and to use those consistently. When navigating pronouns and gendered terms when such information is not known, however, don't assume anything or default to gender neutral language (they/them/their). Instead, consider these tips for how to respect others' identities:

- Listen for what pronouns others use to refer to an individual (note that this runs the risk of perpetrating misgendering, however).

- Introduce yourself (particularly on the first day of class or in orientation sessions) with your pronouns, and ask about others' pronouns. This demonstrates that you are not assuming anyone's pronouns and are not questioning a specific individual's gender identity. (Note that the term "preferred pronouns" is disfavored because it implies that whether to use it is optional - simply ask "what are your pronouns?")
- If you use the wrong pronoun, apologize immediately but briefly, and continue the conversation using the correct pronouns. Do not apologize profusely or make your apology about yourself and your embarrassment, as that draws out the moment and puts the TGNC person in the position of having to make you feel better; simply apologize and work harder next time.
- At events, encourage attendees to include pronouns and, if used at your school, honorifics (Mx., Ms., Mr. and Mrs.) on name-tags.
- Include your pronouns in the signature line of your emails.

Don't share an individual's birth name (sometimes referred to as their "deadname") without that person's explicit permission. Keep in mind that a TGNC may be "out" in some settings but not in others, so ask before referencing their TGNC status in places where it may not be known (including to parents, prospective employers, etc.) Here are some ways your administration can sensitively handle legal and informal name changes:

- If possible, rely on passport and driver's licenses for required identification documents. Such documents are easier for individuals to amend than birth certificates. Relying on passports and driver's licenses often makes official identification processes more streamlined and less invasive.
- Eliminate arbitrary gender markers wherever possible. While it is desirable for numerous diversity goals to collect information about students' legal gender in the admissions process, it is rarely productive or necessary to label a student's legal gender in other law school settings such as class rosters or ID cards (in contrast, it can be helpful to label their personal pronouns and choice of honorific.)
- Create a process to update and amend records for student name changes. This should also correspond with a process through which students can receive a new identification card if they need to update the name, gender marker, and/or the photo attached. Students should also have the ability to adjust their email address if that email address includes a student's name.

- Implement a policy regarding how to handle legal name changes and informal name changes. Many TGNC individuals change their name as they begin to transition. This is an important part of transitioning that should be respected, even when an individual has not legally changed their name or their gender.³
 - One option is to clearly differentiate between a student’s legal name and the name they choose on all official documents and school identification items. For example, one way to navigate this is by using an individual’s legal name on official documentation if said individual has not legally changed their name while using their chosen name on materials used publicly or in the classroom. This form can then be given to the Registrar who updates the appropriate information. Ultimately, your admissions office must decide the best way to handle such situations - but inclusion and acceptance should be central in your problem solving.
 - Make your name change policies clear to students, and make them readily available online.

Whether or not you are around a TGNC individual, you should always use said individual’s correct pronouns and choice of name (regardless of whether they have had a legal name change). Use the language that you know a person is comfortable with even when they aren’t in the room.

CONCLUSION

The National LGBT Bar Association is committed to ensuring the safety and well-being of all LGBTQ+ law students, and our team is available to help your school administration and your LGBTQ+ and allied students and faculty as you work for the betterment of your school’s campus climate and your greater state and local environment as it impacts your community. For more information, visit our website at www.lgbtbar.org or contact us at (202) 637-7661. We thank you for your work for equality and full inclusion at your school.

³ See, for example, the [University of Maryland’s form](#) for students who wish to change their primary name.

Table 8. LGBT Lawyers – 2018

Firm Size	Firms of 100 or Fewer Lawyers		Firms of 101-250 Lawyers		Firms of 251-500 Lawyers		Firms of 501-700 Lawyers		
	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total
1-99	2.11%	45	2.08%	130	1.88%	158	1.87%	105	1.93%
100-250	3.80	39	2.99	90	2.25	194	3.25	210	4.02
251-500	2.37	6	0.77	33	1.98	61	2.38	44	2.24
501-700	2.86	90	2.12	253	2.01	413	2.43	359	3.59
700+	5.73	4	1.94	17	3.77	38	5.11	42	5.32

* Lawyers are based on 914 offices/firms reporting counts, including zero, in all lawyer categories. Summer associates are based on 594 offices/firms with a summer program and reporting counts, including zero. Overall, there were 98,942 lawyers and 5,807 summer associates.



OFFICE OF THE DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

March 12, 2019

MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM)-19-004 – Military Service by Transgender Persons and Persons with Gender Dysphoria

References: See Attachment 1.

Purpose. This DTM:

- Implements the policy in the February 22, 2018 Secretary of Defense Memorandum and the February 2018 DoD Report and Recommendations on Military Service by Transgender Persons, assigns responsibilities, and prescribes procedures regarding the standards for accession, retention, separation, in-service transition, and medical care for Service members and applicants with gender dysphoria, as applicable.
- Approves updates to the separation processing guidance in DoD Instructions (DoDIs) 1332.14 and 1332.30. These DoDIs will be administratively changed in accordance with Attachment 4 of this DTM; the changes will be effective 30 days after publication of this DTM.
- Is effective April 12, 2019. This DTM will be incorporated into DoDIs 1300.28, 1332.14, 1332.30, and 6130.03, and supersedes any contradictory



guidance in those publications. This DTM will expire effective March 12, 2020.

Applicability. This DTM applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

Definitions. See Glossary.

Policy. It is DoD policy that:

- Service in the Military Services is open to all persons who can meet the high standards for military service and readiness without special accommodations.
- All Service members and applicants for accession to the Military Services must be treated with dignity and respect. No person, solely on the basis of his or her gender identity, will be:
 - Denied accession into the Military Services;
 - Involuntarily separated or discharged from the Military Services;
 - Denied reenlistment or continuation of service in the Military Services; or
 - Subjected to adverse action or mistreatment.
- Except where a provision of policy has granted an exception, transgender Service members or applicants for accession to the Military Services must be subject to the same standards as all other persons.
 - When a standard, requirement, or policy depends on whether the individual is a male or a female (e.g., medical fitness for duty; physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards), all persons will be subject to the standard, requirement, or policy associated with their biological sex.
 - Transgender persons may seek waivers or exceptions to these or any other standards, requirements, or policies on the same terms as any other person.
- Service members who access in their preferred gender or received a diagnosis of gender dysphoria from, or had such diagnosis confirmed by, a military

medical provider before the effective date of this DTM will be allowed to continue serving in the military pursuant to the policies and procedures in effect before the effective date of this DTM.

- Accession and retention standards for gender dysphoria and the treatment of gender dysphoria will be aligned with analogous conditions and treatments, including stability periods and surgical procedures.

Responsibilities. See Attachment 2.

Procedures. See Attachment 3.

Information Collections. The requests for medical reports and history referred to in Paragraph 2.b. of Attachment 3 do not require licensing with a report control symbol in accordance with Paragraph 1.b.(13) in Enclosure 3 of Volume 1 of DoD Manual 8910.01.

Releasability. Cleared for public release. Available on the DoD Issuances Website at <https://www.esd.whs.mil/DD/>.



David L. Norquist
Performing the Duties of the
Deputy Secretary of Defense

Attachments:
As stated

cc:
Secretary of Homeland Security
Commandant, U.S. Coast Guard

ATTACHMENT 1

REFERENCES

- Assistant Secretary of Defense for Health Affairs Memorandum, "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members," July 29, 2016
- Commandant Instruction M1850.2 (series), "Physical Disability Evaluation System," May 19, 2006
- Department of Defense, "Department of Defense Report and Recommendations on Military Service by Transgender Persons," February 2018
- Department of Defense, "Transgender Service in the U.S. Military Implementation Handbook," September 30, 2016
- Directive-type Memorandum 16-005, "Military Service of Transgender Service Members," June 30, 2016
- DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003
- DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019
- DoD Instruction 1300.28, "In-Service Transition for Transgender Service Members," June 30, 2016
- DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended
- DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014, as amended
- DoD Instruction 1332.30, "Commissioned Officer Administrative Separations," May 11, 2018
- DoD Instruction 1332.45, "Retention Determinations For Non-Deployable Service Members," July 30, 2018
- DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," May 6, 2018
- DoD Instruction 6490.10, "Continuity of Behavioral Health Care for Transferring and Transitioning Service Members," March 26, 2012, as amended
- DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended
- Secretary of Defense Memorandum, "Military Service by Transgender Individuals," February 22, 2018
- United States Code, Title 10, Section 1074
- United States Department of Defense, "Transgender Service in the U.S. Military Implementation Handbook," September 30, 2016

ATTACHMENT 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

a. Will revise DoDIs 1300.28, 1332.14, 1332.30, and 6130.03, consistent with this DTM. Unless otherwise specified in this DTM, if these issuances are inconsistent with this DTM, this DTM will govern.

b. Will revise the U.S. DoD Transgender Service in the U.S. Military Implementation Handbook, consistent with this DTM.

c. Will disseminate the revised handbook to all Military Departments and the United States Coast Guard (USCG).

2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS. Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Health Affairs will issue medical guidance as appropriate.

3. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. As necessary and appropriate, will develop implementing guidance for their respective Departments and Services consistent with the policies and procedures in this DTM.

b. May grant waivers in accordance with Paragraph 3 in Attachment 3 of this DTM, in whole or in part, in individual cases. Waiver authority permitting an applicant or Service member, who is not exempt pursuant to this policy, to serve in his or her preferred gender may be delegated, in writing, no lower than the Military Service Personnel Chiefs. All other waiver authority remains with the Service-designated waiver authority.

4. COMMANDANT, USCG. The Commandant, USCG:

a. As necessary and appropriate, will develop implementing guidance for the USCG consistent with the policies and procedures in this DTM.

b. May grant waivers in accordance with Paragraph 3 in Attachment 3 of this DTM, in whole or in part, in individual cases. Waiver authority permitting an applicant or Service member, who is not exempt pursuant to this policy, to serve in his or her preferred gender may

not be delegated lower than the Assistant Commandant for Human Resources. All other waiver authority remains with the Service-designated waiver authority.

ATTACHMENT 3

PROCEDURES

1. SECTION I: EXEMPT INDIVIDUALS.

a. Applicability. Individuals are exempt from Paragraph 2 of this attachment if they, before the effective date of this DTM:

(1) Entered into a contract for enlistment into the Military Services using DD Form 4, "Enlistment/Reenlistment Document Armed Forces of the United States," available on the DoD Forms Management Program website at <https://www.esd.whs.mil/Directives/forms/>, or an equivalent, or were selected for entrance into an officer commissioning program through a selection board or similar process; and

(2) Either:

(a) Were medically qualified for Military Service or selected for entrance into an officer commissioning program in their preferred gender in accordance with DTM-16-005; or

(b) As a Service member, received a diagnosis of gender dysphoria from, or had such diagnosis confirmed, by a military medical provider.

b. Appointment, Enlistment, or Induction into the Military Services. Individuals who are exempt will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with DoDI 6130.03:

(1) A history of gender dysphoria is disqualifying, unless, as certified by a licensed mental health provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.

(2) A history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider:

(a) The applicant has completed all medical treatment associated with the applicant's gender transition; and

(b) The applicant has been stable in the preferred gender for 18 months; and

(c) If the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

(3) A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider:

(a) A period of 18 months has elapsed since the date of the most recent of any such surgery; and

(b) No functional limitations or complications persist and any additional surgery is not required.

c. In-Service Transition. Service members who are exempt may continue to receive all medically necessary treatment, as defined in DoDI 1300.28, to protect the health of the individual, obtain a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS) in accordance with DoDI 1300.28; and serve in their preferred gender.

d. Separation And Retention. Service members who are exempt:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

(2) May be retained without a waiver pursuant to this DTM. A Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to his or her gender identity or gender transition should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected for reasons unrelated to gender identity or gender transition.

2. SECTION II: NONEXEMPT INDIVIDUALS.

a. Applicability. Individuals are not exempt if they do not meet the criteria in Paragraph 1.a. of this attachment.

b. Appointment, Enlistment, or Induction into the Military Services. Individuals who are not exempt will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with DoDI 6130.03:

(1) A history or diagnosis of gender dysphoria is disqualifying unless:

(a) As certified by a licensed mental health provider, the applicant demonstrates 36 consecutive months of stability in the applicant's biological sex immediately preceding submission of the application without clinically significant distress or impairment in social, occupational, or other important areas of functioning; and

(b) The applicant demonstrates that the applicant has not transitioned to his or her preferred gender and a licensed medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

(c) The applicant is willing and able to adhere to all applicable standards, including the standards associated with the applicant's biological sex.

(2) A history of cross-sex hormone therapy or a history of sex reassignment or genital reconstruction surgery is disqualifying.

(3) The accession standards will be reviewed no later than 24 months from the effective date of this DTM, and every 24 months thereafter, and may be maintained or changed, as appropriate, to ensure:

(a) Consistency with applicable medical standards and clinical practices; and

(b) The readiness and combat effectiveness of the Military Services.

c. In-Service Transition. Individuals who are not exempt must adhere, like all other Service members, to the standards associated with their biological sex. These nonexempt Service members may consult with a military medical provider, receive a diagnosis of gender dysphoria, and receive mental health counseling, but may not obtain a gender marker change in DEERS or serve in their preferred gender.

d. Retention. Service members who are not exempt may be retained without a waiver if they receive a diagnosis of gender dysphoria on or after the effective date of this DTM, provided that:

(1) A military medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

(2) The Service member is willing and able to adhere to all applicable standards, including the standards associated with his or her biological sex.

e. Separation. Service members who are not exempt:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely based on gender identity.

(2) May not be separated solely based on a diagnosis of gender dysphoria without first being medically evaluated for possible referral to the Disability Evaluation System (DES) pursuant to DoDI 1332.18 or the USCG Physical Disability Evaluation System (PDES), pursuant to Commandant Instruction (COMDTINST) M1850.2 (series).

(3) If referral to the DES is not appropriate in accordance with DoDI 1332.18 or the USCG PDES, in accordance with COMDTINST M1850.2 (series), may be subject to processing for administration separation in accordance with Attachment 4 and the following guidance:

(a) The Secretary of the Military Department concerned or the Commandant, USCG, may authorize separation based on conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty.

1. Service members are ineligible for referral to the DES or USCG PDES when they have a condition not constituting a physical disability as described in DoDI 1332.18 or COMDTINST M1850.2 (series).

2. Service members may be referred to the DES or USCG PDES if they have a diagnosis of gender dysphoria and of co-morbidities that are appropriate for disability evaluation processing in accordance with DoDI 1332.18 or COMDTINST M1850.2 (series), before processing for administrative separation.

(b) Service members with a diagnosis of gender dysphoria may be subject to the initiation of administrative separation processing in accordance with Paragraph 2.e. of this attachment if they are unable or unwilling to adhere to all applicable standards, including the standards associated with their biological sex.

(c) Nothing in this guidance precludes appropriate disciplinary action for Service members who refuse orders from lawful authority to comply with applicable standards.

3. SECTION III. ADDITIONAL POLICY GUIDANCE.

a. Waivers.

(1) The Military Departments and the USCG may grant waivers, in whole or in part, to the requirements in this attachment in individual cases.

(2) If a waiver is granted permitting an applicant or Service member, who is not exempt under Paragraph 1 of this attachment, to serve in his or her preferred gender, such an individual will be considered from that point forward to be exempt in accordance with Paragraph 1.

(3) The provisions concerning who may qualify as exempt under Paragraph 1.a. of this attachment may not be waived; a person who is exempt under Paragraph 1.a. may not have his or her exempt status revoked.

b. Medical Policy.

(1) For Service members who have been diagnosed with gender dysphoria and are exempt, the Military Departments and Services will handle requests for medical care and treatment in accordance with DoDI 1300.28 and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum.

(2) For Service members who have been diagnosed with gender dysphoria and are not exempt, the Military Departments and the USCG:

(a) Will provide necessary care consistent with Section 1074 of Title 10, United States Code and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum for as long as the individual remains a Service member as set forth in a medical treatment plan developed with the military medical provider and provided to the commander.

(b) Will take appropriate action to facilitate the continuity of health care consistent with DoDI 6490.10 if the Service member is to be separated from military service.

c. Equal Opportunity. The DoD and the USCG provide equal opportunity to all Service members, in an environment free from harassment and discrimination on the basis of race, color, national origin, religion, sex, gender identity, or sexual orientation.

d. Protection of Personally Identifiable Information (PII) and Protected Health Information.

(1) The Military Departments and the USCG will:

(a) In accordance with DoDI 5400.11, in cases where there is a need to collect, use, maintain, or disseminate PII in accordance with this issuance or Military Department and Service regulations, policies, or guidance, protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII.

(b) Maintain such PII so as to protect the individual's rights, consistent with federal law and policy.

(2) Disclosure of protected health information will be consistent with DoD 6025.18-R.

e. Education And Training. Revised training will occur at the Military Department's and USCG's discretion.

f. Other. The Military Departments and Military Services recognize a Service member's status as male or female by the member's gender marker in the DEERS.

(1) The Military Services apply all standards that involve consideration of the Service member's status as male or female on the basis of the member's gender marker in DEERS such as:

(a) Uniforms and grooming.

(b) Body composition assessment.

(c) Physical readiness testing.

(d) Military Personnel Drug Abuse Testing Program participation.

(2) As to facilities subject to regulation by the Military Departments and the USCG, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

ATTACHMENT 4

PROCESSING CHANGES TO DoDIs 1332.14 AND 1332.30

1. The following will be added to DoD Instruction 1332.14, Enclosure 3, Paragraph 3.a.(8):

“(h) The Secretary concerned may authorize separation on the basis of conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty based on a diagnosis of gender dysphoria where the Service member is unable or unwilling to adhere to all applicable standards, including the standards associated with his or her biological sex, or seeks transition to another gender.

1. Separation processing will not be initiated until the enlisted Service member has been formally counseled on his or her failure to adhere to such standards and has been given an opportunity to correct those deficiencies, or has been formally counseled that his or her indication that he or she is unable or unwilling to adhere to such standards may lead to processing for administrative separation and has been given an opportunity to correct those deficiencies.

2. Separation processing will not be initiated until the enlisted Service member has been counseled in writing that the condition does not qualify as a disability.”

2. The following will be added to DoD Instruction 1332.30, Paragraph 9.2.d.:

“d. The Secretary concerned may authorize separation of a commissioned officer on the basis of conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty based on a diagnosis of gender dysphoria where the commissioned officer is unable or unwilling to adhere to all applicable standards, including the standards associated with his or her biological sex, or seeks transition to another gender.

- (1) Separation processing will not be initiated until the commissioned officer has been formally counseled on his or her failure to adhere to such standards and has been given an opportunity to correct those deficiencies, or has been formally counseled that his or her indication that he or she is unable or unwilling to adhere to such standards may lead to processing for administrative separation and has been given an opportunity to correct those deficiencies.

- (2) Separation processing will not be initiated until the commissioned officer has been counseled in writing that the condition does not qualify as a disability.”

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DEERS	Defense Enrollment Eligibility Reporting System
DES	Disability Evaluation System
DoDI	DoD instruction
DTM	directive-type memorandum
PDES	Physical Disability Evaluation System
PII	personally identifiable information
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this issuance.

biological sex. A person's biological status as male or female based on chromosomes, gonads, hormones, and genitals.

cross-sex hormone therapy. The use of feminizing hormones in an individual with a biological sex of male or the use of masculinizing hormones in an individual with a biological sex of female.

gender identity. An individual's internal or personal sense of gender, which may or may not match the individual's biological sex.

gender marker. Data element in DEERS that identifies a Service member's status as male or female.

gender transition. A form of treatment for the medical condition of gender dysphoria may involve:

Social transition, also known as "real life experience," to allow the patient to live and work in his or her preferred gender without any cross-sex hormone treatment or surgery and may also include a legal change of gender, including changing gender on a passport, birth certificate, or through a court order; or

Medical transition to align secondary sex characteristics with the patient's preferred gender using any combination of cross sex hormone therapy or surgical and cosmetic procedures; or

Surgical transition, also known as sex reassignment surgery, to make the physical body, both primary and secondary sex characteristics, resemble as closely as possible the patient's preferred gender.

PII. Information used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information. PII includes any information that is linked or linkable to a specified individual, alone, or when combined with other personal or identifying information.

preferred gender. The gender with which an individual identifies.

stable or stability. The absence of clinically significant distress or impairment in social, occupational, or other important areas of functioning associated with a marked incongruence between an individual's experienced or expressed gender and the individual's biological sex.

transgender. Individuals who identify with a gender that differs from their biological sex.

2003

Due Justice: Amelioration for Law School Compliance with the Solomon Amendment: A Handbook for Law Schools

Chai Rachel Feldblum

Michael Boucai
mboucai@buffalo.edu

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/other_scholarship

Part of the [Legal Education Commons](#)

Recommended Citation

Chai R. Feldblum & Michael Boucai, *Due Justice: Amelioration for Law School Compliance with the Solomon Amendment: A Handbook for Law Schools*, *Due Justice: Amelioration for Law School Compliance with the Solomon Amendment: A Handbook for Law Schools* (2003).

Available at: https://digitalcommons.law.buffalo.edu/other_scholarship/4

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Other Scholarship by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

DUE JUSTICE

Amelioration for Law School Compliance with the Solomon Amendment

A HANDBOOK FOR LAW SCHOOLS

Chai Rachel Feldblum

Professor, Georgetown University Law Center

Michael Boucai

Public Interest Law Scholar, Georgetown University Law Center

TABLE OF CONTENTS

Letter from Chai Rachel Feldblum and Michael Boucai, Georgetown University Law Center	3
AALS response to Discriminatory Military Recruiting	4
Amelioration: A Requirement and an Opportunity	7
First Steps: The Option of Compliance with AALS Nondiscrimination Rules	9
Amelioration Recommendations	
The Administrative Response	10
Suggestions for Law Faculties	17
The Role of Students	19
Resources	21

September 10, 2003

In August 2003, the American Association of Law Schools (AALS) acted affirmatively on a request to offer greater assistance to law schools engaging in “Solomon amelioration” activities. Part of the proposal to the AALS was a version of this handbook, offering suggestions for various response activities during military recruitment on law school campuses. The AALS Executive Committee has adopted parts of this handbook as the association’s official guidance on Solomon amelioration.

Our protests against military recruitment at law schools have as their object two distinct, but deeply intertwining, sources of anger. The first is the Solomon Amendment, a law that represents governmental coercion at its most blatant and ignoble. The second is the “Don’t Ask, Don’t Tell” policy itself, which is premised upon and reinforces, in the military and in the larger culture, disdain for gay, lesbian, and bisexual people.

Discrimination, prejudice, and intimidation are insidious, even ubiquitous, in our culture. But it is not often that such elements crystallize in a way that allows opponents to directly articulate dissent and forcefully mitigate the harms of such elements. The “one-two punch” of “Don’t Ask, Don’t Tell” and the Solomon Amendment results in precisely this kind of opportunity. Both the policy and the law are *destructive* to the principles of our Constitution, the fabric of our communities, and the lives of LGBT students, service members, and Americans. But because the policy and the law coalesce in discriminatory recruitment at law schools, they provide us with an opportunity for *constructive* resistance, a chance for all of us—teachers, students and administrators—to express *our* views about equality, liberty, and dignity of all people, including sexual minorities.

This handbook and its accompanying website (www.solomonresponse.org) are chock-full of suggestions for effective amelioration activities. We hope it is helpful to you. We look forward to hearing that you have been joined by many people wearing buttons, signing petitions, leading and attending teach-ins, chanting, demonstrating, and educating. And, most especially, we look forward to the day when no one, including the Armed Forces, tells lesbian, gay, and bisexual people that being all you can be means being what you are not.

Chai Rachel Feldblum

Michael D. Boucai

AALS RESPONSE TO DISCRIMINATORY MILITARY RECRUITMENT

In 1990, the House of Representatives of the American Association of Law Schools unanimously voted to amend AALS Bylaw 6-4, adding sexual orientation to its nondiscrimination policy. Bylaw 6-4 had previously prohibited discrimination by law schools on the basis of race, nationality, religion, and gender. To enforce this bylaw, the AALS Executive Committee subsequently enacted Regulation 6.19, which requires employers who recruit at law schools to provide written assurance that they do not discriminate on any of the grounds prohibited by AALS Bylaw 6-4.

For much of the past century, the United States Armed Forces imposed, with varying degrees of vigilance, an administrative ban on homosexual service members. In 1993, following initial efforts by President William Clinton to allow gay people to serve openly in the armed forces, the military (with President Clinton's endorsement) adopted the "Don't Ask-Don't Tell-Don't Pursue" policy. This policy, unlike its predecessor, allowed gay people to serve in the military as long as they were silent about the fact that they were gay. The United States Congress codified the "Don't Ask-Don't Tell-Don't Pursue" policy in fall 1993.

Since 1994, according to official data released by the Department of Defense, more than 8300 gay men, lesbians, and bisexuals have been discharged from the Armed Forces for openly stating their sexual orientation.¹ Because the policy of the Armed Services permits gay individuals to serve only if they refrain from being honest about their sexual orientation, while not requiring similar restraint and dissimulation from heterosexual individuals, the policy discriminates on the basis of sexual orientation. Moreover, given the difficulty of keeping secret a central part of one's life, the "Don't Ask-Don't Tell" policy operates in practice as an outright ban on the service of gay individuals who would like to serve their country in the military.

Because the "Don't Ask-Don't Tell" policy discriminates on the basis of sexual orientation, the Armed Forces were unable to confirm compliance with the AALS nondiscrimination requirements called for by Regulation 6.19. The AALS therefore insisted that the military, like other discriminatory employers, be barred from recruiting on law school campuses.

The refusal of most law schools to welcome recruiters from the Armed Forces provoked a serious backlash from Congress. In 1995, Congress passed the first of the so-called Solomon

¹ Servicemembers Legal Defense Network, *Conduct Unbecoming: The Ninth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass,"* 2002.

Amendments, denying schools that barred military recruiters from campus any funds from the Department of Defense. The next year, Congress extended the law's reach to include funds from the Departments of Education, Labor, and Health and Human Services. This second Solomon legislation put law schools at risk of losing federal financial aid monies that are critical to many students. The new law forced schools to choose between protecting students who are on financial aid from economic and educational hardship and protecting students who are gay or lesbian from discrimination.

In response to the dishonorable but potent threat posed by the Solomon Amendment, the AALS amended its nondiscrimination policy in 1997 to excuse noncompliance with AALS Bylaw 6-4 to the extent the law imposed severe punishment for barring military recruitment. This excusal was contingent upon a law school's satisfactory completion, each year, of a "duty to ameliorate" the effects of the military discrimination they now unwillingly hosted. Specifically, the AALS Executive Committee asked schools to publicly express their disapproval of the discrimination against gay men, lesbians and bisexuals, and to take affirmative measures to provide a safe and protective atmosphere for sexual minority students.

In 1999, a repeal campaign was successful in removing student financial aid from the reach of the Solomon Amendments. The AALS response to this change was swift and decisive. Speaking for the Executive Committee, the AALS' Executive Director Carl Monk notified law school deans in 2000 that the removal "of the student aid portion of the Amendment enables law schools to deny access to the military for recruiting purposes without jeopardizing any student aid funds."² A return to compliance with the entirety of Bylaw 6-4 was announced by the AALS and was in turn enacted by law schools nationwide.

In the waning days of the Clinton administration, the Department of Defense issued a new regulatory interpretation of the Solomon Amendment. Under this interpretation, an entire university (and not just a law school associated with the university) would experience a loss of federal funds were military recruiters not provided full and equal access to law students. This deprivation, if enforced, would have resulted in severe financial losses to hundreds of universities, losses that would in turn have caused genuine damage to students, faculty, and scholarship generally. Harvard Law School, one of the first institutions notified by the Department of Defense of the law

² Carl Monk, Executive Committee Policy Regarding "Solomon Amendment," Memo Deans of Member Schools, 24 January 2000.

school's possible non-compliance with the Solomon Amendment, estimated that Harvard University stood to lose \$328 million under the Defense Department's new interpretation of the law.³

The impact of the new agency interpretation of the Solomon Amendment would have been equally serious (albeit at lower absolute numbers in most cases) at numerous American universities. For this reason, the AALS again amended its nondiscrimination policy to provide an excusal of military recruitment in exchange for ameliorative efforts on the part of law schools. This is the situation as it stands today.

³ Memo from Dean Robert Clark to the Harvard Law School Community, 26 August 2002. www.law.harvard.edu/news/2002/08/26_military.html

AMELIORATION: A REQUIREMENT AND AN OPPORTUNITY

The decade-long history of the AALS' resistance to military discrimination demonstrates the deep reluctance of that organization to tolerate any deviation from its stated nondiscrimination policy. Only deeply coercive measures have compelled the AALS to retreat from its commitment to formal equality. As its former President Dale Whitman observed, however, allowing discriminatory employers to recruit on law campuses provides member schools the *opportunity* to achieve, through their Solomon Amendment amelioration efforts, something *beyond* formal equality. Amelioration activities are the payments law schools make for noncompliance with the AALS's full nondiscrimination policy. But these payments, through the large-scale and long-term impact they can have on a law school community, are themselves the compensation these communities receive for their forced complicity in unfairness.

The AALS does not impose specific requirements for Solomon amelioration activities on member law schools. The only requirement is that law schools must post a public notice stating that the military practices with regard to sexual orientation are inconsistent with the law school's nondiscrimination policy under AALS Bylaw 6-4(b) and (2). *Simply posting such a notice, however, is not sufficient to satisfy the amelioration obligation.* Other affirmative measures, all within the discretion of the member school to adopt, are required as well.

The Association's Executive Committee has identified certain types of additional amelioration responses that would *not* be sufficient to meet a school's obligation. These include:

- Activities that are likely to go unnoticed by a substantial portion of the community and are unlikely, standing alone, to have a significant impact on the environment (*pro forma* activities);
- Activities that are not part of a deliberate planning process and are, thus, less likely to have a long-term positive impact on the environment (*ad hoc* activities); and
- Activities in which the burden is placed upon students to raise issues and concerns about discrimination on the basis of sexual orientation (*student-driven* activities).

The recommendations contained in this handbook are meant to facilitate the AALS' requirement that Solomon amelioration activities be varied in content, sustained over time, and substantial in their effects. **This handbook provides a menu of options to inform and improve the choices each school must make every year.**

Under the AALS' requirements, law schools retain considerable discretion in determining which amelioration activities are right for their particular communities and circumstances. Law schools should, however, enact as many of the following recommendations as their circumstances allow. Every school should have as its aim an ameliorative effort that is as comprehensive and creative as possible.

It is important to remember that fundamental values of our legal profession— equality, liberty, and human dignity— are at stake in the question of military discrimination against gay men, lesbians, and bisexuals. Because law school communities are microcosms of our general society, one should expect a range of views on the part of faculty, students and staff regarding the acceptability of homosexuality. But amelioration efforts taken by the law school are expected to reflect the principle that while individuals may adhere to whatever personal view they wish (and such individuals should experience no adverse action for their points of view), **the position of the law school should be the one reflected in its adherence to the AALS Bylaw— that discrimination on the basis of sexual orientation is unacceptable in our legal system.**

FIRST STEPS:

THE OPTION OF COMPLIANCE WITH THE AALS NONDISCRIMINATION RULES

Implicit in amelioration is the fact that a law school would not, consistent with the AALS policy, permit military recruiters to use its placement services were it not for the financial penalty that might be imposed upon the school for noncompliance with the Solomon Amendment. The following are initial steps a school should take annually to ensure it does not needlessly or too easily acquiesce in discriminatory military recruitment.

Step 1: An Administrative Accounting

Before deciding to permit the military to interview students using law school facilities, each school should examine the actual extent of federal funds at risk of loss and to explore ways of avoiding such loss by turning to alternative sources.⁴

Step 2: Making the Choice to Comply or Not Comply with the Solomon Amendment

A law school should determine whether it, and the institution with which it is affiliated, can withstand the consequences of compliance with the AALS Regulations and noncompliance with the Solomon Amendment. Only in the event that a law school and/or its parent institution cannot reasonably withstand the effects of losing federal funds should a law school turn to ameliorative activities. Law school and university administrations are encouraged to engage their communities in drawing conclusions from the accounting of funds that may be lost.

⁴ Carl Monk, 'Military Recruiting at Law School Career Services Offices,' Statement from AALS Executive Director to Deans of Member and Fee-Paid Schools, 13 August 1997.

AMELIORATION: THE ADMINISTRATIVE RESPONSE

The responsibility for Solomon amelioration activities falls on law school administrations, and deans and their offices are expected to take the lead in directing amelioration efforts. This responsibility should not be shifted to students or faculty. Administrations should, of course, encourage involvement by law school faculty, staff, and students and should support additional initiatives by such groups that further the goals of Solomon amelioration.

Required Notice of Opposition to Military Discrimination and Recruiting

As noted above, the sole specific amelioration requirement imposed by the AALS is that each school must inform its students and others in the law school community that the military discriminates on a basis not permitted by the school's nondiscrimination rules and the AALS Bylaws. The law school community should also be informed that the military is permitted to recruit on campus because of the probable loss of federal funds were the recruiters to be barred. Examples of such notices, in the form of deans' letters to law school communities, are available at www.solomonresponse.org.

As further noted above, a notice is a necessary, but not sufficient, condition for fulfilling the amelioration requirement. Listed below are three options a law school administration may choose to adopt to underscore the message of the notice:

✓ **Conspicuous notice of zero-tolerance for discrimination.**

The law school's nondiscrimination policy should appear on all official law school materials, including those used by Admissions and Career Services Offices. The policy should be widely posted year-round throughout the law school campus, and should be particularly visible during military recruitment visits. Examples of non-discrimination policies are available at www.solomonresponse.org.

✓ **Circulation of a letter from the law school dean.**

The law school dean should widely distribute a letter to the law school community explaining the military recruiters' presence on campus, the school's opposition to the military's discriminatory policy, and the need for the school to engage in ameliorative efforts under the AALS guidelines. The letter should clearly state the administration's intention to

take all reasonable measures to ameliorate the presence of military recruiters on campus and should invite input and participation from all members of the law school community.

Examples of such letters are available at www.solomonresponse.org.

✓ **Organization of programming to coincide with military visits.**

The law school administration should sponsor a program providing information about the military's discriminatory employment policy immediately preceding, or coinciding with, the military recruitment visits. The program should include participants directly affected by the military's policy (i.e., openly gay individuals), as well as individuals knowledgeable about the military's policy. The program should also include participants knowledgeable about the range and type of discrimination experienced by gay individuals in other sectors of society.

Note about Programming.

Most programs sponsored by a law school are designed to provide members of the law school community with different perspectives on an issue. A program on affirmative action might be expected to include supporters and opponents of affirmative action; a program on abortion might be expected to include supporters and opponents of government regulation of abortion; and a program on gay rights might be expected to include supporters and opponents of gay rights. Such diversity of views is often a hallmark of law school programming.

When military recruiters appear on campus, however, one point of view is already in plain view and supported by the United States government: that the service of openly gay individuals is destructive to the military. Thus, a program sponsored by the law school should be designed to *ameliorate* the adverse effects of such a view and to communicate the law school's *disagreement* with that point of view. At a minimum, therefore, where there is a panel of speakers, the law school should ensure that an official representative of the law school administration, preferably the dean, clearly indicates that the law school opposes the policy of discriminating against gay people in the military. Moreover, a law school can legitimately choose not to include any panelists supporting the military's policy in the program, since that point of view will have already received ample "air space" through the presence of military recruiters. Anecdotal evidence indicates it is often difficult to find individuals willing to publicly support the Solomon Amendment or the "Don't Ask Don't

'Tell" policy in a panel setting. Law schools thus need not feel they must expend excessive energy to find such individuals in order to have a "balanced" program.

Scheduling and Advance Notice of Military Recruitment Visits

In order to ensure the most effective amelioration responses during visits by military recruiters, law schools should:

✓ **Coordinate military visits well in advance.**

Law school administrations, and particularly the Offices of Career Services, should do their utmost to schedule all military branches to recruit on the same day each semester or each year. This will avoid an unnecessary multiplication of ameliorative responses.

✓ **Provide advance notice to law school and university communities of military visits.**

Once the dates for military recruitment have been finalized, notice should be given immediately to the law school community in general and to its lesbian and gay community in particular. A conversation between representatives from the Dean's Office, the Office of Career Services, and affected campus groups may well be in order at this stage. In any event, in order to ensure that amelioration efforts will be effective, there should be some formal, advance notice to students and faculty of the upcoming military recruitment.

✓ **Establish a Solomon Amelioration Task Force**

Law schools should expect to be dealing annually with Solomon amelioration efforts for as long as the provision remains in effect. Thus, administrations may wish to aim for organizational efficiency over time by establishing a Solomon Amelioration Task Force consisting of law school officials, faculty, staff, and students. Such a task force might review the numerous options set forth above and below and provide recommendations to the law school dean. In addition, a task force can help ensure active input of gay and lesbian student groups and/or individual gay, lesbian, bisexual and transgendered students. Such input has proven vital to the success of many school's efforts, and a lack of input has sometimes resulted in a mediocre response by a law school or in enmity arising between an administration and its students. (See additional guidance below on Solomon Amelioration Task Forces.)

Support for Protests Against Military Recruitment

At many law schools, the arrival of military recruiters on campus has been met by vocal demonstrations on the part of students and faculty. While an administration may not want to organize the protests against the discriminatory recruitment itself (although doing so would be lovely), an administration should certainly consider the following options as part of its ameliorative efforts:

✓ **Approval of reasonable funding requests from protest organizers.**

Make school monies available for nonviolent demonstrations. This would include funds for buttons, t-shirts, posters, materials, and audio equipment. Administrations willing to make funds available for such purposes should inform members of the law school community involved in coordinating protest activities of the availability of funds. (Alternatively, members of the administration and faculty may wish to take up a voluntary collection to help the students.)

✓ **Support of Teach-Ins on “Don’t Ask-Don’t Tell” and the Solomon Amendments.**

Support faculty who wish to present teach-ins on the myriad legal questions posed by “Don’t Ask-Don’t Tell” and the Solomon Amendments. Forms of support may include: copying materials used in the teach-in; providing a forum easily accessible to members of the law school and surrounding communities; publicizing the event; and informing faculty members who wish to reschedule their classes so that students can attend the teach-in that such rescheduling is permitted. (More information on Teach-ins is available in this handbook and at www.solomonresponse.org.)

✓ **Attendance/Speaking at the Protest and the Teach-Ins.**

Attend the demonstration and/or teach-ins and speak at the events. Simple attendance by the dean and other law school officials is often very rewarding for protest attendees, particularly gay, lesbian, bisexual, and transgendered students. A speech in support of the activities is also often greatly appreciated.

Amelioration Efforts by Offices of Career Services

The Office of Career Services is the law school department most directly implicated in the recruitment of law students by discriminatory military employers. Following are a number of options such offices can adopt to compensate, to some extent, the lesbian and gay students they serve.

✓ **Organize mentoring programs for lesbian and gay students.**

Career counselors can organize or assist in creating a mentoring program in which sexual minority students enter into mentoring relationships with members of a local or state LGBT Bar Association. The program can be coordinated with the campus LGBT group or, where such a group does not exist, with students who express interest in response to a general communication from the career office. These contacts provide an excellent opportunity for law students to interact with practitioners who are open and honest about their sexual orientation. The networking aspect of mentoring programs also provides targeted compensation for employment opportunities denied lesbian and gay law students by the military.

✓ **Send sexual minority students to LGBT-specific networking events.**

Offices of Career Services should ask their administrations for sufficient resources to regularly send sexual minority students to local and national LGBT job fairs, as well as to events like the annual Lavender Law Conference, where gay-identified and gay-friendly employers are present. Career Services offices may also wish to purchase tickets for lesbian and gay students to attend political, educational, or fundraising events held by organizations concerned with gay and lesbian rights. Like the mentoring programs recommended above, these networking opportunities can be a useful antidote to the employment discrimination mandated by “Don’t Ask-Don’t Tell.”

✓ **Provide students information about employers’ nondiscrimination policies.**

When employers recruit at school-sponsored job fairs and the like, students are often provided informational packets about the firms and organizations with which they might interview. Although all employers (except for the military) will have signed a statement

affirming they do not discriminate on the bases prohibited by the AALS, not all of them will have promulgated nondiscrimination policies of their own; those that have such policies in place will not always have covered all of the categories contained in the AALS provision. Offices of Career Services should ask all recruiting employers to furnish whatever official nondiscrimination policy they have promulgated. Copies of these policies should be included in the information packets provided to students.

Enhancement of lesbian and gay comfort, visibility, and scholarship on campus

One of the purposes of Solomon amelioration activities is to rectify the damage done by discriminatory military recruitment on gay and lesbian students' (often already tenuous) feeling of security and comfort on law school campuses. A sense of safety and belonging is vital to these individuals' sense of personal worth, to their pride and honesty about who they are, and to their potential contributions— as openly gay, lesbian, bisexual and transgendered men and women— to law, to their law schools, and to legal scholarship. Following are some options for enhancing such students' sense of comfort:

✓ **Sponsor lesbian- and gay-related programming.**

Law school administrations should arrange, and encourage their faculty and students to organize and participate in, programming related to anti-gay discrimination. Schools should not only sponsor forums on the military's policy, but should also organize panels that foster discussion more generally about discrimination based on sexual orientation and gender identity and expression.

✓ **Actively support gay and lesbian student organizations.**

Administrations should support LGBT student organizations, helping to plan or sponsor programming suggested by those groups and, most especially, actively seeking their input in fashioning the school's Solomon amelioration activities. The presence of an active lesbian and gay student organization is often indicative of a hospitable environment created by a law school.

✓ **Ensure incoming classes understand the school's commitment to the safety and**

comfort of its sexual minority community members.

Information about sexual orientation and diversity should be incorporated into the school's annual orientation programs and activities. The school's intolerance of behavior that is intentionally threatening to lesbian, gay, bisexual, and transgender students should be made clear to all incoming classes, and the availability of resources for sexual minority students should be well-publicized.

✓ **Ensure lesbian, gay, and transgender visibility in the curriculum.**

Law schools should offer courses on sexual orientation and the law (or sexuality, gender and the law) every year and permanent faculty who engage in scholarship in the field should teach those courses. Relevant legal issues pertaining to lesbian, gay, and transgender people should be integrated into other courses, including those in standard first-year curricula.

Establishment of a Solomon Amelioration “Task Force”

As noted above, because law schools must deal annually with Solomon amelioration activities, administrations may choose to establish a Solomon Amelioration Task Force. Ideally, the Task Force should be chaired by a member of the faculty who reports to the law school dean or to an administrator associated with the dean's office.

Task Force members should formulate the law school's amelioration strategies and annually adjust those strategies in light of their own and other schools' experiences. The Task Force should also author an annual report on the school's Solomon amelioration efforts and should circulate that report to faculty and administrators. Such reports can be useful in demonstrating a school's compliance with the amelioration requirement and in advising other law schools about effective amelioration responses.

SUGGESTIONS FOR FACULTY

Law faculties should participate in the Solomon amelioration efforts of their schools. There are numerous ways individual professors can be involved and some of those options are listed below.

Faculties can also play a vital role in ensuring the integrity of their school's administrative response. In some law schools, faculties have a significant role in setting school policy. In such schools, the law faculty must be familiar with what is expected from the school administration for purposes of Solomon amelioration. Even in schools not characterized by faculty governance, faculty members should take an active role in ensuring the school's amelioration efforts are successful and responsive to concerned communities.

For faculty members who wish to take an active role in Solomon amelioration activities, we make the following recommendations:

✓ **Serve as a member or as the Chair of your school's Solomon Amelioration Task Force.**

If your school establishes a Solomon Amelioration Task Force, agree to chair the committee or become an active member of it.

✓ **Organize a Teach-In.**

A teach-in is an educational and political event in which participants approach the subject of their protest through academic inquiry. The need to develop Solomon amelioration activities provides an ideal opportunity for law faculty to inform their communities about the intricate legal issues raised by the military's "Don't Ask-Don't Tell" policy and by the Solomon Amendment.

Teach-ins can focus on the various constitutional issues raised by these legislative enactments, including first amendment concerns, privacy issues, and equal protection concerns. A teach-in could also focus on the administrative law and statutory interpretation issues raised by the Department of Defense's interpretation of the Solomon Amendment or on standing concerns that may be raised when individual professors and students, as

compared to law schools, seek to challenge the Solomon amendment. Reading materials for four teach-ins -- one with a first amendment focus; one with a privacy and equal protection focus; one with an administrative law focus and one with a standing focus -- are available at www.solomonresponse.org.

✓ **Help reach 100% participation in a faculty resolution.**

Draft, circulate and/or sign a faculty resolution protesting the military's "Don't Ask-Don't Tell" policy and the Solomon amendments. Such a resolution can be a means of educating faculty colleagues about the military's discriminatory policy, as well as educating the larger law school community. Reaching 100% participation (or as close to that as possible) among faculty signatories sends an important message of support to lesbian and gay students during the recruitment season. Be sure to prominently post the faculty resolution during the military recruitment day(s). Examples of faculty resolutions are available at www.solomonresponse.org

✓ **Encourage your law school to join FAIR.**

Law schools and law faculties can use their talents and influence to support legal and political challenges to the Solomon Amendment and to the underlying military policy. Law faculties and students should urge their schools to join FAIR, the Forum for Academic and Institutional Rights. Questions and answers about FAIR and potential Solomon Amendment litigation are available at www.solomonresponse.org. Law professors are also in a unique position to produce scholarship on the subject and to advise activists working in the legislatures or the courts.

✓ **Organize and participate in lesbian- and gay-related programming.**

Plan and participate in panels, speeches, conferences, and symposia about discrimination based on sexual orientation – in the military context as well as elsewhere. Programming of this kind can constitute an effective amelioration response but it is most successful when it has the active support of law faculty.

THE ROLE OF LAW STUDENTS

The ultimate responsibility for satisfactory Solomon amelioration activities lies with law school administrations—not with law students. Nonetheless, students will necessarily provide much of the energy, hard work, numbers, and outrage that go into a successful amelioration campaign. If school administrators do not actively seek student involvement, students themselves should insist upon such involvement.

Here are some recommendations for concerned law students:

✓ **Read this Handbook and use it well.**

Students interested in the military recruitment issue are encouraged to become knowledgeable with regard to the amelioration efforts required by the AALS. After carefully reading this Handbook, students should remind law school administrators of the obligations they must fulfill and of the many efforts they might undertake. Students should always feel welcome to take part in the planning of amelioration activities, to make requests for new or different responses, and to take the lead in organizing demonstrations and teach-ins.

✓ **Join your school's Solomon Amelioration Task Force.**

If your law school establishes a Solomon Amelioration Task Force, at least one student should serve on that Task Force. The student should, where possible, be a leader in the lesbian and gay student community on campus, with ties and accountability to his or her peers. The students on the Task Force should provide their fellow students, both gay and non-gay, with the opportunity to participate in Solomon amelioration; should arrange student meetings to discuss questions and issues that may arise; and should delegate work to as many students as are willing to be involved.

✓ **Write letters and circulate a student resolution/petition.**

Students can write letters to their members of Congress, protesting the military's policy of discrimination against gay men and lesbians, expressing disapproval of the Solomon amendments, and asking for the repeal of both statutes. A student resolution on these issues can be drafted, signed by as many students as possible, and prominently posted during

military recruitment visits. If there is no faculty resolution being prepared, the student resolution can be circulated among the faculty for signatures.

Students who sign letters or resolutions should be asked whether they are willing to have their names and email addresses forwarded to legal and political gay rights organizations via Professor Chai Feldblum (feldblum@law.georgetown.edu). This will enable those organizations to stay in touch with an ever-growing body of supportive law students and, ultimately, lawyers.

Examples of letters and resolutions are available at www.solomonresponse.org.

✓ **Ask for the support of non-LGBT student organizations.**

At some schools, organizations like the Student Bar Association, the Black Law Students Association, the American Constitution Society, and the law school's women's group have drafted their own resolutions protesting military recruitment. These documents can be publicized to the law school community and provided to visiting recruiters.

✓ **Encourage your peers to attend amelioration events.**

A protest is nothing without protesters, and panels are meaningless without an audience. Make sure your peers turn out for amelioration activities, especially those whose success depends upon widespread student attendance. Let your friends know their presence at these events is important to you.

✓ **Keep tabs on your school's progress.**

Appoint a student to keep track of your school's amelioration efforts. A checklist of all the recommendations contained in this handbook is posted at www.solomonresponse.org. The student in charge of monitoring the school's response should fill out the check list and email it at the end of each year to Professor Chai Feldblum (feldblum@law.georgetown.edu). Schools that have fulfilled a substantial number of handbook recommendations will be placed on the web site's honor roll for that particular year.

RESOURCES

For additional materials to aid in your amelioration efforts, refer to www.solomonresponse.org, where you will find:

- *Student and faculty resolutions and petitions*
- *Letters from law school deans*
- *Protest and demonstration materials, including supplemental recommendations for students; photographs and descriptions of past protests; fact-sheets on Solomon, 'Don't Ask, Don't Tell,' and antigay discrimination; materials for teach-ins; and buttons, posters, and tee-shirt designs to order or download online.*

For additional information on gays in the military, the Solomon Amendments, and antigay discrimination in general, please refer to these resources:

Organizations Working on Solomon and 'Don't Ask, Don't Tell'

Solomon Amendment

Society of American Law Teachers (SALT) – www.salt.org/solomon

An excellent resource on the Solomon Amendment and related topics.

Resist Discrimination – www.resistdiscrimination.org

A site created by Harvard Law School's Lambda group; offers some information about the Solomon response at Harvard and includes an online petition protesting the Solomon Amendment and 'Don't Ask, Don't Tell.'

Don't Ask, Don't Tell

Servicemembers Legal Defense Network (SLDN) – www.sldn.org

SLDN is a national, non-profit legal services, watchdog and policy organization dedicated to ending discrimination against and harassment of military personnel affected by "Don't Ask, Don't Tell" and related forms of intolerance.

Center for Study of Sexual Minorities in the Military -

www.gaymilitary.ucsb.edu/index.htm

An academic research center that promotes the interdisciplinary analysis of lesbian, gay, bisexual, transgendered and other marginalized sexual identities in the armed forces. Contains many excellent resources, including publications on the effects of the policy and the effects of lifting similar bans in other countries.)

Lift the Ban - www.lifttheban.org

Sponsors a petition to Congress and periodically posts relevant news related to the military's policy.

Archival Resources on 'Don't Ask Don't Tell'

Don't Ask, Don't Tell, Don't Pursue Database – www.dont.stanford.edu

A thorough database developed by the Stanford Law School Library containing primary materials on the U.S. military's policy on sexual orientation, from World War I to the present, including: legislation; regulations; internal directives of service branches; materials on particular service members' proceedings (from hearing board transcripts to litigation papers and court decisions); policy documents generated by the military, Congress, the Department of Defense and other offices of the Executive branch; and advocacy documents submitted to government entities.

Cornell University – <http://rnc.library.cornell.edu/HSC>

As of September 2003, Cornell University is the recipient of all the primary materials of Professor Chai Feldblum relating to the effort by the Campaign for Military Service (CMS) to assist President Clinton in his stated desire to lift the ban on gay service members. (Professor Feldblum was the Legal Director for CMS.) These materials includes all documents used to lobby Congress and raise public awareness in 1993, as well as internal documents detailing efforts to propose alternatives to the Don't Ask Don't Tell policy. Access to such documents can be arranged by contacting Brenda Marston, Curator, Human Sexuality Collection, at bjm4@cornell.edu.

Scholarship on 'Don't Ask, Don't Tell' and the Solomon Amendment

Books

Aaron Belkin and Geoffrey Bateman, [Don't Ask, Don't Tell: Debating the Gay Ban in the Military](#).

Janet Halley, [Don't: A Readers Guide to the Military's Anti-Gay Policy](#).

Randy Shilts, [Conduct Unbecoming: Gays and Lesbians in the U.S. Military](#).

Joseph Steffan, [Gays and the Military: Joseph Steffan versus the United States](#).

Law Review Articles

Solomon Amendment

Amy Kapczynski, *Queer Brinksmanship: Citizenship and the Solomon Wars*, 112 YALE L. J. 673 (2002).

Robin Ingle, *Gays in the Military: A Policy Analysis of "Don't Ask, Don't Tell" and the Solomon Amendment*, 20 HAMLINE J. PUB. L. & POL'Y 89 (1998).

Sylvia Law, *Civil Rights under Attack by the Military*, 7 WASH. U. J.L. & POL'Y 117 (2001).

Richard Schaen, *Challenging "Don't Ask, Don't Tell": The Future of Military Recruitment on Public Law School Campuses*, 65 U. CIN. L. REV. 1359 (1997).

Francisco Valdes, *Solomon's Shames: Law as Might and Inequality*, 23 T. MARSHALL L. REV. 351 (1998).

Don't Ask, Don't Tell

William M. Aguiar, *Rejection of Equal Protection for Lesbians, Gay Men, and Bisexuals in the Military*, 64 GEO. WASH. L. REV. 1091 (1996).

Alicia Christina Almeida, *Thomasson v. Perry: Has the Fourth Circuit Taken "Don't Ask, Don't Tell" Too Literally?*, 75 N.C. L. REV. 967 (1997).

Larry Cata Backer, *Toleration, Suppression, and the Public/Private Divide: "Homosexuals" through Military Eyes*, 34 TULSA L.J. 537 (1999).

Holly Baldwin, *"Don't Ask, Don't Tell": Lesbians Challenge the New Military Policy*, 10 BERKELEY WOMEN'S L.J. 148 (1995).

David M. Bessho, *The Military's Ban on Homosexuals: Suspect, Constitutional, or Both?*, 12 GA. ST. U. L. REV. 845 (1996).

Stefanie L. Bishop, *U.S. & Great Britain: Restrictions on Homosexuals in the Military as a Barricade to Effectiveness*, 14 DICK. J. INT'L L. 613 (1996).

Alafair S. R. Burke, *A Few Straight Men: Homosexuals in the Military and Equal Protection*, 6 STAN. L. & POL'Y REV. 109 (1994).

Captain John A. Carr, *The Difference Between Can and Should: Able v. United States and the Continuing Debate About Homosexual Conduct in the Military*, 46 A.F. L. REV. 1 (1999).

David Cole & William N. Eskridge, Jr., *From Hand-Holding to Sodomy: First Amendment Protection of Homosexual (Expressive) Conduct*, 29 HARV. C.R.-C.L. L. REV. 319 (1994).

Victoria P. Coombs, *Status Versus Conduct: Constitutional Jurisprudence Meets Prejudice in Steffan v. Perry*, 1995 UTAH L. REV. 593 (1995).

Melinda S. Cooper, *Equal Protection and Sexual Orientation in Military and Security Contexts: An Analysis of Recent Federal Decisions*, 3 LAW & SEXUALITY 201 (1993).

Christin M. Damiano, *Lesbian Baiting in the Military: Institutionalized Sexual Harassment Under “Don’t Ask, Don’t Tell, Don’t Pursue,”* 7 AM. U. J. GENDER SOC. POL’Y & L. 499 (1999).

R.L. Evans, *U.S. Military Policies Concerning Homosexuals: Development, Implementation, and Outcomes*, 11 LAW & SEXUALITY 113 (2002).

Spiro P. Fotopoulos, *The Beginning of the End for the Military’s Traditional Policy on Homosexuals: Steffan v. Aspin*, 29 WAKE FOREST L. REV. 661 (1994).

Taylor Flynn, *Of Communism, Treason, and Addiction: An Evaluation of Novel Challenges to the Military’s Anti-Gay Policy*, 80 IOWA L. REV. 979 (1995).

Gary Frost, *Steffan v. Aspin: Gays in the Military Win a Victory – Or Did They?* 30 TULSA L.J. 171 (1994).

Kelly E. Henriksen, *Gays, the Military, and Judicial Deference: When the Courts Must Reclaim Equal Protection as Their Area of Expertise*, 9 ADMIN L. J. AM. U. 1273 (1996).

Kay Kavanagh, *Don’t Ask, Don’t Tell: Deception Required, Disclosure Denied*, 1 PSYCHOL. PUB. POL’Y & L. 142 (1995).

Walter John Krygowski, *Homosexuality and the Military Mission: the Failure of the “Don’t Ask, Don’t Tell” Policy*, 20 U. DAYTON L. REV. 875 (1995).

Andrew Koppelman, *Gaze in the Military: A Response to Professor Woodruff*, 64 UMKC L. REV. 179 (1995).

Joe Kracht, *It Will Take More than an Order: What the Commander in Chief Will Need to Overturn the Ban*, 25 T. JEFFERSON L. REV. 247 (2002).

John H.R. Lanou, *Restricted Expression and Immunosuppression: How “Don’t Ask, Don’t Tell” May Harm Military Readiness by Increasing the Risk of Cancer and Infectious Diseases in Homosexuals*, 10 GEO. MASON L. REV. 1 (2001).

Debra A. Luker, *The Homosexual Law and Policy in the Military: “Don’t Ask, Don’t Tell, Don’t Pursue, Don’t Harass” ... Don’t Be Absurd!*, 3 SCHOLAR 267 (2001).

Alfonso Madrid, *Rational Basis Review Goes Back to the Dentist’s Chair: Can the Toothless test of Heller v. Doe Keep Gays in the Military?*, 4 TEMP. POL. & CIV. RTS. L. REV. 167 (1994).

Samuel A. Marcossan, *A Price Too High: Enforcing the Ban on Gays and Lesbians in the Military and the Inevitability of Intrusiveness*, 64 UMKC L. REV. 59 (1995).

Samuel A. Marcossan, *Before We Change the Subject ... A Reply to Mr. Young*, 64 UMKC L. REV. 117 (1995).

Celena R. Mayo, *The Road Not Taken: Able v. United States, Equal Protection, Due Deference, and Rational Basis Review*, 16 N.Y.L. SCH. J. HUM. RTS. 407 (1999).

- Diane H. Mazur, *Re-Making Distinctions on the Basis of Sex: Must Gay Women Be Admitted to the Military Even If Gay Men Are Not?*, 58 OHIO ST. L.J. 953 (1997).
- Diane H. Mazur, *The Unknown Soldier: A Critique of "Gays in the Military" Scholarship and Litigation*, 29 U.C. DAVIS L. REV. 223 (1996).
- Kenneth S. McLaughlin, Jr., *Challenging the Constitutionality of President Clinton's Compromise: A Practical Alternative to the Military's "Don't Ask, Don't Tell" Policy*, 28 J. MARSHALL L. REV. 179 (1994).
- Major Meier, *"Don't Ask, Don't Tell" Held Constitutional: Now What?*, 1999-FEB ARMY LAW. 46 (1999).
- Scott Morris, *Europe Enters a New Millennium with Gays in the Military While the United States Drowns in "Don't Ask, Don't Tell": Twin Decisions by the European Court of Human Rights*, 9 AM. U. J. GENDER SOC. POL'Y & LAW 423 (2001).
- Arthur Murphy, Leslie MacRae, and William A. Woodruff, *Gays in the Military: What About Morality, Ethics, Character, and Honor?* 99 DICK. L. REV. 331 (1995).
- Steven S. Neff, *Steffan v. Aspin: A Court's Unfortunate Reading of Reasonableness Out of the Military's Sensible Ban on Homosexuals*, 45 MERCER L. REV. 1123 (1994).
- Peter Nixen, *The Gay Blade Unsheathed: Unmaking the Morality of Military Manhood in the 1990s, an Examination of the U.S. Military Ban on Gays*, 62 UMKC L. REV. 715 (1994).
- Huong Thien Nguyen, *Irrational Prejudice: The Military's Exclusion of Gay, Lesbian, and Bisexual Service Members after Romer v. Evans*, 28 HASTINGS CONST. L.Q. 461 (2001).
- C. Dixon Osburn, *A Policy in Desperate Search of a Rationale: the Military's Policy on Lesbians, Gays and Bisexuals*, 64 UMKC L. REV. 199 (1995).
- Daniel R. Plane, *Don't Mess with "Don't Ask, Don't Tell,"* 79 MARQ. L. REV. 377 (1995).
- Ivan L. Preston, *Puffery and Other "Loop-hole" Claims: How the Law's "Don't Ask, Don't Tell" Policy Condone Falsity in Advertising*, 18 J.L. & COM. 49 (1998).
- Raymond Psonak, *"Don't Ask, Don't Tell, Don't Discharge," at Least in Europe: A Comparison of the Policies of Homosexuals in the Military in the United States and Europe after Grady v. United Kingdom*, 33 CONN. L. REV. 357 (2000).
- Julie Yuki Ralston, *Geishas, Gays, and Grunts: What the Exploitation of Asian Pacific Women Reveals about Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members*, 16 LAW & INEQ. 661 (1998).
- Montrece McNeill Ransom, *The Boy's Club: How "Don't Ask, Don't Tell" Creates a Double-Bind for Military Women*, 25 LAW & PSYCHOL. REV. 161 (2001).
- Carl Riehl, *Uncle Sam Has to Want You: The Right of Gay Men and Lesbians (and All Other Americans) to Bear Arms in the Military*, 26 RUTGERS L.R. 343 (1995).

Kalyani Robbins, *Framers' Intent and Military Power: Has Supreme Court Deference to the Military Gone Too Far?*, 78 OR. L. REV. 767.

William Rubenstein, "Don't Ask, Don't Tell," 79 A.B.A. J. 55 (1993).

Sam Ruby, "Don't Ask, Don't Tell" and the National Guard: Federal Policies on Homosexuality in the Military vs. the Militia Clauses of the Constitution, 85 CAL. L. REV. 955 (1997).

David A. Schlueter, *Gays and Lesbians in the Military: A Rationally Based Solution to a Legal Rubik's Cube*, 29 WAKE FOREST L. REV. 393 (1994).

Aaron A. Seamon, *The Flawed Compromise of 10 U.S.C. § 654: An Assessment of the Military's "Don't Ask, Don't Tell" Policy*, 24 U. DAYTON L. REV. 319 (1999).

Paul Siegel, *Second Hand Prejudice, Racial Analogies and Shared Showers: Why "Don't Ask, Don't Tell" Won't Sell*, 9 NOTRE DAME J.L. ETHICS & PUB. POL'Y 185, (1995).

Jeffrey T. Spoeri, *The Pennsylvania Avenue Tug-of-War: The President Versus Congress Over the Ban on Homosexuals in the Military*, 45 WASH. U. J. URB. & CONTEMP. L. 174 (1994).

Robert D. Stone, *The American Military: We're Looking for a Few Good [Straight] Men*, 29 GONZ. L. REV. 133 (1993/1994).

Mark Strasser, *Unconstitutional? Don't Ask; If It Is, Don't Tell: On Deference, Rationality, and the Constitution*, 66 U. COLO. L. REV. 375 (1995).

Theresa M. Suozzi, *Don't Ask, Don't Tell, or Lie-n-Hide? Congressional Codification of Military Exclusion: A Constitutional Analysis*, 1 SYRACUSE J. LEGIS. & POL'Y 169 (1995).

Glenn D. Todd, *Don't Ask, Don't Tell, Don't Pursue: Is the Military's New Policy Towards Gays and Lesbians a Step Forward or a Status Quo?*, 23 CAP. U. L. REV. 723 (1994).

Francisco Valdes, *Sexual Minorities in the Military: Charting the Constitutional Frontiers of Status and Conduct*, 27 CREIGHTON L. REV. 381 (1994).

Scott W. Wachs, *Slamming the Closet Door Shut: Able, Thomasson, and the Reality of "Don't Ask, Don't Tell"*, 41 N.Y. L. SCH. L. REV. 309 (1996).

Melissa Wells-Petry, *Sneaking a Wink at Homosexuals? Three Case Studies on Policies Concerning Homosexuality in the United States Armed Forces*, 64 UMKC L. REV. 3 (1995).

Kenneth Williams, *Gays in the Military: The Legal Issues*, 28 U.S.F. L. REV. 919 (1994).

Tobias Barrington Wolff, *Compelled Affirmations, Free Speech, and the U.S. Military's Don't Ask, Don't Tell Policy*, 63 BROOK. L. REV. 1141 (1997).

William A. Woodruff, *Homosexuality and Military Service: Legislation, Implementation, and Litigation*, 64 UMKC L. REV. 121 (1995).

Gary L. Young, Jr., *The Price of Public Endorsement: A Reply to Mr. Marcossou*, 64 UMKC L. REV. 99 (1995).

Alan N. Yount, *Don't Ask, Don't Tell: The Same Old Policy in a New Uniform?*, 12 J. CONTEMP. HEALTH L. & POL'Y 215 (1995).

Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell,"* 108 YALE L. J. 485 (1998).

Conferences and Symposia on Solomon and 'Don't Ask, Don't Tell'

Hofstra Law School, Sept 18-20 2003.

Panels on:

“Revisiting 1993: Examining the Policy Justifications in Light of Experience”

“2003: Global and National Developments Related to the Policy”

”The Collateral Impacts of the Policy on ROTC and Universities”

Email James Garland (james.a.garland@hofstra.edu) for more information.

Harvard Law School, October 10-11 2003

'Don't Ask, Don't Tell'/Solomon Amendment Conference

Panels on:

“Solomon Amendment Litigation Strategy”

“Don't Ask, Don't Tell – Policy Arguments”

"Gays in the military. Why this battle? Where to go from here?"

E-mail Adam Teicholtz (ateichol@law.harvard.edu) for more information.

LGBT Legal & Political Organizations

ACLU Lesbian & Gay Rights Project –

<http://www.aclu.org/LesbianGayRights/LesbianGayRightsMain.cfm>

Working in coordination with the ACLU's affiliates nationwide, the Project coordinates an extensive legal program and conducts a broad range of public policy and public education activities. The Project targets five areas for its litigation, lobbying, and public education activities: discrimination; family and relationships, including marriage; lesbian and gay teens and young adults; laws which criminalize sexual intimacy; and expression and association.

Gay and Lesbian Advocates and Defenders – www.glad.org

New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. GLAD has been a leader in bringing cases involving marriage and challenges to discrimination against transgendered people.

Human Rights Campaign (HRC) – www.hrc.org

America's largest gay and lesbian organization, HRC lobbies Congress; mobilizes grassroots action in diverse communities; invests strategically to elect a fair-minded Congress; and increases public understanding through innovative education and communication strategies.

Lambda Legal Defense and Education Fund – www.lambdalegal.org

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, the transgendered, and people with HIV or AIDS through impact litigation, education, and public policy work.

National Center for Lesbian Rights (NCLR) – www.nclrights.org

NCLR is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. In addition, NCLR provides representation and resources to gay men, and bisexual and transgender individuals on key issues that also significantly advance lesbian rights.

National Gay & Lesbian Task Force (NGLTF) – www.nglhf.org

NGLTF is the oldest continuously operating national organization working for the civil rights of gay, lesbian, bisexual and transgender people. Focusing on grass-roots organizing, it also hosts the first legislative lawyer transgender civil rights project.

Please send amelioration updates, ideas, suggestions, etc. to Professor Chai Feldblum (feldblum@law.georgetown.edu).