

August 26, 2009

Memorandum to Members of the Washington University Law Community

From: Kent Syverud

Re: Military Recruiting

I write to update members of the law school community on the school's policies concerning non-discrimination and the violation of these policies by the United States Armed Forces. These policies have not changed in several years, but every year they provoke a lot of questions and concern.

Both our University and our law school have a policy of non-discrimination on the basis of race, color, religion, national origin, sex, disability, age, and sexual orientation. The policy is important, involves deeply held moral values, and applies to all aspects of the school, including our career services. Our school deeply opposes discrimination, and we do not want it to occur on our premises or to our students. Thus, employers who refuse to certify their compliance with the policy are not allowed to use our facilities to recruit law students.

Many of the most crucial legal jobs in the United States today are in the United States Armed Forces. There is a long tradition of our students and alumni receiving extraordinary training and work opportunities, and giving outstanding service to their country, through employment in the Armed Services, including in the Judge Advocate General Corps. The Armed Forces have a ban on open service by gays, lesbians, and bisexuals, codified by Congress in 1993. This constitutes discrimination in violation of our school policy, because openly heterosexual law students and lawyers are recruited and retained by the military. This discrimination causes an array of significant harms. The one of greatest concern to me is the harm to gay, lesbian, and bisexual students who would otherwise be able to obtain outstanding training and to offer great service to their country. The Department of Defense has taken the position that these harms are mitigated by a "Don't Ask, Don't Tell" policy and outweighed by the perceived benefits of the discrimination to the Armed Services.

Like most legal educators, I oppose the military's gay ban. Nevertheless, that ban has been enacted into a condition on federal funding that our law school, like almost all law schools, has been practically compelled to observe. Under the Solomon Amendment, Congress in 1995 directed that specified federal funds be withheld from law schools that impose restrictions on access to military recruiters different from those applicable to

other recruiters. In 2000, The Department of Defense adopted a regulation which withheld federal funds from all parts of a University whose law school so restricted access to military recruiters. The Supreme Court of the United States rejected legal challenges to these Department of Defense policies in 2006.

Washington University receives very substantial federal funding and support that would be jeopardized were the law school to apply our non-discrimination policy as written to the United States Armed Forces. At issue, in the words of my predecessor, are “careers, the education of students, residents, interns, and fellows; patient care; and potential cures to devastating diseases.” For that reason, the University and law school in 2000 decided to afford military recruiters access to students for recruiting purposes. The law school continues to do so today.

The law school does not condone discrimination in violation of our policies and does not support the “Don’t Ask, Don’t Tell” policy. Consistent with these values and like all other members of the American Association of Law Schools, the law school takes steps to ameliorate the impact of this situation. Among those steps, you will see notices in our building and on our website – including this notice – indicating that the military recruitment policies are inconsistent with our school non-discrimination policy.

I encourage you to contact me with any questions or concerns.