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

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DUE JUSTICE

Amelioration for Law School Compliance with the Solomon Amendment

A HANDBOOK FOR LAW SCHOOLS

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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. Marcossan*, 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.nglftf.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).