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THE STATUS OF AMELIORATION AT U.S. LAW SCHOOLS: OPPORTUNITY FOR ADVOCACY

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In 1993 Congress passed the “Don’t Ask, Don’t Tell” policy, which made official the U.S. military’s policy of refusing to recruit and employ openly gay individuals. Some law schools barred military recruiters’ access to campuses, and in response, Congress passed the Solomon Amendment, making the receipt of federal funding conditional on the equal treatment of military recruiters on campus. Because “Don’t Ask, Don’t Tell” violates nondiscrimination policies adopted by American Association of Law Schools (AALS) and its member institutions, AALS requires member schools to mitigate the presence of military recruiters on campus. This paper evaluates the status of amelioration efforts to alleviate the effects of “Don’t Ask, Don’t Tell” and makes recommendations for additional action. Furthermore, the authors argue that post-secondary institutions should also engage in efforts to challenge the constraints of the Solomon Amendment and ultimately advocate for the repeal of “Don’t Ask, Don’t Tell.”

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INTRODUCTION

Most accredited U.S. law schools have nondiscrimination policies that prohibit discrimination based upon sexual orientation. These policies apply broadly to law schools' administrative actions, including the decision of which employers to invite for on-campus recruiting. Employers that practice any form of discrimination which violates the law schools' policies cannot conduct on-campus student recruitment. As written, law schools' policies appear to extend to all categories of employers, including the U.S. military. However, given the constraints of the "Don't Ask, Don't Tell" policy (DADT) that prohibits the recruitment or hiring of openly gay individuals into the military, the U.S. military cannot comply with law schools' nondiscrimination policies. This puts law schools in the difficult position of deciding whether to honor their nondiscrimination policies or to allow military recruiting on campus. Worried that law schools would ban on-campus military recruiting altogether, Congress passed the Solomon Amendment, which denies certain federal funds to post-secondary institutions that prevent access to military recruiters. The amendment was intended to force post-secondary institutions to accommodate recruiters by placing a significant financial burden on schools that refuse to comply. Law schools have generally abided by the Solomon Amendment and allowed military recruiters on campus. However, they also employ a variety of techniques to mitigate and counteract the effects of DADT on students and campus environments.

We, the authors, strongly oppose both DADT and the Solomon Amendment. However, this paper does not analyze the complexities of the military policy or the legality of controlling recruitment policies through federal funding requirements. Rather, we evaluate the actions of law schools to abide by their own nondiscrimination policies, even in the face of federal law that is ostensibly incompatible. Law schools' nondiscrimination policies make the explicit assumption that discrimination based on sexual orientation is in conflict with the values of higher education as codified in their school policies. For law schools to honor their policies and foster the kind of educational environment that the policies are designed to facilitate, they must find innovative ways to respond to the inherent tension between their policies and federal law.

To understand the different ways that law schools react to DADT and the military's presence on campus, this paper analyzes two sources of data. First, a large survey conducted by the Association for Legal Career Professionals, previously known as the National Association for Law Placement (hereinafter NALP), provides national data about the prevalence and types of efforts employed by law schools to mitigate the effects of the policy. Second, we interviewed staff and students at several law schools to gather data that could provide anecdotal evidence to help illuminate the findings of the NALP data. Using both types of data, we evaluate the status of efforts undertaken by law schools to ameliorate the incongruence between law schools' nondiscrimination policies and presence of military recruiters on campuses. Finally, we provide law schools and higher education institutions with policy recommendations to mitigate the presence of military recruiters, maintain fidelity to their own nondiscrimination policies, and ultimately advocate for the repeal of DADT.

BACKGROUND: “DON’T ASK, DON’T TELL”

For decades, the military maintained an unofficial policy of refusing to recruit openly gay individuals. In 1993, this policy was codified with the passage of DADT (10 U.S.C. Section 654). Implemented by President Clinton, DADT prohibits a homosexual person from disclosing their sexual orientation or engaging in homosexual behaviors while serving in the military. Superior officers may not inquire about sexual orientation or initiate an investigation of a service member without evidence of prohibited homosexual behaviors. However, even the suspicion of homosexual behavior is enough to trigger an investigation. Specifically, DADT prohibits anyone who “demonstrate(s) a propensity or intent to engage in homosexual acts” because it “would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability” (10 U.S.C. Section 654). The military will discharge individuals who engage in “homosexual conduct” deemed as: a homosexual act, a statement that the member is homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender. It is estimated that more than 12,500 men and women have been discharged from the military since DADT was passed and that the government has spent at least \$364 million as a result of the policy (Servicemembers Legal Defense Fund Network and The Palm Center, 2006). The military’s exclusion of gay men and lesbians is also used to justify other actions, such as the codification of the Boy Scouts’ exclusionary policies and the denial of civilian job rights to gay individuals (Osburn, 2003).

U.S. Law Schools

For more than thirty years, many U.S. law schools have adopted the nondiscrimination policy outlined in the by-laws of the American Association of Law Schools (AALS). As a non-profit, self-governing association of law schools, AALS currently has 172 members. Of the law schools that are accredited by the American Bar Association, 86 percent are members of AALS. Law schools are eligible for AALS membership based upon several criteria, including adherence to the association’s regulations and by-laws, which prohibit discrimination on the basis of race, color, religion, national origin, sex, age, handicap, or disability. In 1990, AALS added sexual orientation to this policy. It states:

A member school shall provide equality of opportunity in legal education for all persons, including faculty and employees with respect to hiring, continuation, promotion and tenure, applicants for admission, enrolled students, and graduates without discrimination or segregation on the ground of race, color, religion, national origin, sex, age, disability, or sexual orientation (AALS, Bylaw 6-4).

As a member of AALS, law schools must require all employers and recruiters who conduct on-campus interviews to adhere to the same nondiscrimination policy. Because of DADT and its ban on recruiting and employing openly gay individuals, military recruiters are unable to sign off on this AALS requirement. As a result, law schools often find themselves in a position where their adopted nondiscrimination policies and membership in AALS ostensibly require them to refuse on-campus access to military recruiters. Prior to 1995, some law schools participated in efforts that prevented military recruiters from visiting campus because of this conflict. In response to these actions, Congress passed the Solomon Amendment (10 U.S.C.

Section 983). The Solomon Amendment makes on-campus access for military recruiters a condition for the receipt of federal funding from the Department of Defense and other federal agencies.

The amendment has been revisited several times since its passage. In 1996, it was expanded to include, “institutions of higher education that prevent ROTC access or military recruiting on campus” (10 U.S.C. Section 983). Three years later, Congress altered the amendment to exclude financial aid from the categories of funds that could be withheld. Most importantly, the Solomon Amendment does not limit the loss of funds solely to law schools. Federal funding to the entire institution could potentially be withheld if any single unit or school within the university violates the law by denying access to military recruiters. Therefore, the Solomon Amendment affects all public and private higher education institutions that receive federal funding. At the University of Michigan, for example, this would mean the loss of more than \$730 million in federal funding (University of Michigan Budget Detail). Harvard University could potentially lose more than \$500 million (Harvard University, Office of the Controller, 2009). In 2005, Congress strengthened the Solomon Amendment by requiring that universities provide the military with an opportunity to recruit in equal quality and scope as any other employer (10 U.S.C. Section 983(b)).

The potential combined loss of hundreds of millions of dollars of federal funding presents a difficult situation for AALS members. Law schools must choose between allowing military recruiters on campus in violation of AALS nondiscrimination policy or risk losing federal dollars for their entire university. This loss of funds would impact the daily operation of schools and would affect critical areas such as research and development and building projects (Springer, 2005 and Schaen, 1997). The loss of funds would impede individual law school and university operations but would also be a devastating blow to their educational mission as they will be unable to provide the same level of education to students and support to faculty. Therefore, to avoid this untenable outcome, law schools have had to exempt military recruiters from nondiscrimination policies to ensure that university federal funding is not jeopardized.

Recognizing this conflict for their member schools, AALS amended its nondiscrimination policy in 1997 to provide a noncompliance exemption for law schools to permit the military to recruit on campus. Exemptions were contingent on action by law schools to mitigate or “ameliorate” the effects of DADT and the military’s campus recruitment. These efforts represent an attempt to counter the message being conveyed by the presence of military recruiters. In a 1997 letter written by AALS, executive director Carl Monk stated:

Because the Executive Committee concluded that some schools would find it extremely difficult to forgo these funds, it has decided to excuse noncompliance . . . only for military recruiters, as long as a school provides “amelioration” in a form that both expresses publicly the law schools’ disapproval of the discrimination against gays and lesbians by the military and provides a safe and protective atmosphere for gay and lesbian students (Association of American Law Schools, 1997).

As part of these amelioration efforts, law schools are required by AALS to post a flier in interview areas and on interview doors stating that military practices with regard to sexual orientation are inconsistent with the law school's nondiscrimination policy. To gauge whether law schools are adequately fulfilling the amelioration requirement, AALS takes a case-by-case approach to ensure continued, visible action. Besides the posting requirements, AALS has carefully avoided stipulating specific required amelioration efforts, recognizing that member schools need to consider what kinds of activities are appropriate in the context of their individual communities (AALS, Memo 02-03, 2002). As a result, the tone, form, and content of such ameliorative efforts have remained largely fluid and open to interpretation by each school and their unique student body and institutional climate.

To provide some guidelines to law schools, AALS published a handbook entitled *Due Justice: Amelioration for Law School Compliance with the Solomon Amendment*. This handbook contains recommendations for administrators, faculty, and students to guide them in amelioration efforts (Feldblum and Boucai, 2003). A sampling of the recommendations includes:

- Send a letter from deans to students detailing the history of the school's nondiscrimination policies, the enactment of the Solomon Amendments, the change of campus policies in response, and the school's commitment to creating a hospitable educational environment for all students;
- Host student forums at which students and others can discuss discrimination by the military;
- Establish programs which teach faculty, staff, and students about sexual orientation and trains them to respond sensitively to the concerns of gay men and lesbians;
- Actively support gay and lesbian student organizations;
- Fund students to attend conferences that allow them to establish networking connections with many lawyers throughout the nation who are openly gay, lesbian, or bisexual;
- Establish a permanent faculty-student-staff task force to develop and implement a series of active institutional and individual counter-measures;
- Participate in challenges to both the Solomon Amendment and the policy of discrimination by the military;
- Sponsor or support on-campus conferences or symposia on gay and lesbian legal issues.

AALS emphasizes that law schools should undertake meaningful, constructive actions and that law students themselves should not be solely responsible for initiating these efforts. Of course, these are merely recommendations; none of the individual activities are specifically required. While AALS does not provide specific examples of activities that would *not* fulfill the requirement, they do state that activities that go unnoticed, do not have a long-term impact, and/or place a burden upon students do not fulfill the ameliorative requirements. Though not an exhaustive list, AALS's recommendations provide a few ways in which law schools can effectively mitigate the presence of military recruiters.

Recent Challenges to “Don’t Ask, Don’t Tell”

In response to the Solomon Amendment’s impact on educational institutions’ ability to enforce nondiscrimination policies, a group of law school faculty and administrators created the Forum for Academic and Institutional Rights (FAIR). FAIR currently consists of thirty-six law schools and law faculties whose mission is to promote academic freedom and support educational institutions opposing discrimination. As their first act, FAIR brought a legal challenge against the Solomon Amendment, seeking to defend law school efforts and protests against military recruiters. In 2003 FAIR brought suit against the Secretary of Defense and other government officials arguing that the Solomon Amendment, with its restrictions on the receipt of funds, “compels institutions of higher education” to use their own resources to “propagate a message that the institutions abhor” (SolomonResponse.org). FAIR argued that,

Antidiscrimination policies at law schools are a part of a considered pedagogical approach to teach by example, and the enforcement of the Solomon Amendment violates academic freedom and shared governance by forcing law school administrators and faculty to abandon mutually agreed upon pedagogical strategies for teaching ethics, justice and civil rights, (Springer 2005).

In November 2004, the Third Circuit Court of Appeals reversed a District Court ruling and remanded the case back to the District Court with an order to issue a preliminary injunction against the enforcement of the Solomon Amendment. This action prevented the government from withholding funds from universities that refused to grant access to military recruiters, pending further litigation. The Third Circuit held that the Solomon Amendment likely violated the First Amendment by restricting schools’ rights of “expressive association” and forcing schools to assist in the military’s “expressive conduct” of recruiting. The government appealed, and after granting certiorari, the U.S. Supreme Court issued a unanimous opinion in March 2006 reversing the Third Circuit ruling. The Supreme Court concluded that “because Congress could require law schools to provide equal access to military recruiters without violating the schools’ freedoms of speech or association, the Court of Appeals erred” (*Rumsfeld v. FAIR*, 547 U.S. 47 (2006)). The requirement to provide access to military recruiters, in the Court’s opinion, did not restrict the law schools’ freedom of speech since, “the Solomon Amendment neither limits what law schools may say nor requires them to say anything. Law schools remain free under the statute to express whatever views they may have on the military’s congressionally mandated employment policy, all the while retaining eligibility for federal funds” (*Rumsfeld v. FAIR*, 547 U.S. 47 (2006)). Rather than regulating speech, the Solomon Amendment “affects what law schools must do – afford equal access to military recruiters – not what they may or may not say” (*Rumsfeld v. FAIR*, 547 U.S. 47 (2006)).

While the Supreme Court essentially upheld the Solomon Amendment, the unanimous ruling also clearly stated that students, faculty, and administrators are free to protest the presence of military recruiters on campus without fear of reprisal. Law schools must make adequate on-campus recruiting opportunities available to military recruiters, but they may express their displeasure with the military’s policies without fear of jeopardizing federal funds for the entire university. By legitimizing law schools’ ability to protest, the Supreme Court ruling opened the

door for law schools to conduct AALS-required amelioration efforts and to exercise their opposition to the military's discriminatory recruitment policies without fear of recrimination.

DATA SOURCES AND METHODOLOGY

To gauge the status of amelioration efforts on law school campuses, we analyzed quantitative data obtained from the December 2006 NALP survey. Founded in 1971, NALP is dedicated to facilitating legal career counseling and planning, recruitment, and retention, and the professional development of law students and lawyers (NALP, 2009). Currently, NALP has 192 U.S. law school members. The 2006 survey provides a national perspective on amelioration efforts at member law schools. The survey was sent to the chief career services officer at all NALP member law schools, which includes law schools that are not AALS members. Career services offices are often responsible for amelioration efforts, and the survey recipients were encouraged to share copies of the survey with LGBT student organizations, as well as interested faculty and staff, before submitting final responses.

NALP's survey data were obtained for this paper from staff prior to publication in *Amelioration Best Practices Guide* (NALP, 2007). In this report, NALP found that only a very small number of law schools undertook any new initiatives following the Supreme Court's decision in *Rumsfeld v. FAIR*. Some schools reported a sense of resignation and a lack of enthusiasm for new amelioration initiatives as a result of the Supreme Court decision. From their results, NALP made three suggestions that law schools can implement: (1) convene on an annual basis to evaluate the relevancy and weight of current ameliorative practices; (2) actively engage students, faculty, and staff to devise strategies for individually and collectively working with Congress to repeal the military's ban on LGBT personnel; and (3) continue to actively recruit LGBT students and remain engaged with LGBT students as to the types of support they need and desire.

NALP splits amelioration behaviors into two broad categories: acts of protest and collective acts of amelioration. A student picket line outside an interview room is an example of an act of protest. Collective acts of amelioration, on the other hand, have a more educational and reparative tone, such as providing funding for LGBT students to attend Lavender Law, a National LGBT Bar Association Career Fair and Conference, or hosting a panel about DADT. The NALP survey included questions about both types of activities. Yet, NALP researchers acknowledge that distinguishing between actions taken by individuals as acts of protest and those undertaken by an institution as an ameliorative effort may be difficult. While the distinction was not always clear between the two, NALP hoped to identify efforts that truly attempted to mitigate or correct for the military's presence on campus in addition to expressed displeasure with the military's recruitment policies.

The NALP survey had a 58 percent response rate with 112 out of 192 NALP member law schools submitting a completed survey. Law schools that responded to the survey were distributed evenly across all of NALP's five geographic regions (Northeast, Mid-Atlantic, Southeast, Midwest, West/Rocky Mountains) and were further categorized based on size (the number of JD students), location (urban/suburban/rural), and type of law school (public/private). Of course, there is an inherent self-selection bias in relying on data from only those law schools

that responded; however, since survey responses were distributed evenly across NALP's categories, we will treat the survey as sufficiently representative of what is occurring across the country to warrant a careful analysis. Moreover, since this type of information is difficult to come by, the survey results are needed to fill a void in knowledge about amelioration efforts on law school campuses.

The broad nature of the NALP data precluded the acquisition of specific information about student perceptions and individual school experiences. In an effort to fill in the gaps, we supplemented the data with semi-structured open interviews with individual law school administrators and students at two public law schools and one private law school. Initially, four law schools were chosen to provide a broad cross-section of the composition of American law schools: two private top-tier law schools (one on each coast) and two public law schools (one regionally and one nationally ranked). These specific law schools were chosen because one or both of the authors knew a student or staff member who could assist in contacting the necessary staff and student groups. Schools were assured that any identifying information would be removed from their responses in hopes that responses would be candid and provide an accurate portrayal of activities on campus. Obtaining results from students and administrators of these law schools proved difficult. Therefore, student groups and administrators at five additional law schools, three public and two private, were contacted in an effort to ensure a broad cross-section of information and data. These law schools were chosen because they were of similar size and academic prestige to the original four law schools selected to be a part of the study. Overall, of the nine law schools contacted, three law schools responded.

Email was used as the primary source of communication with law school administrators and students. Their email addresses were obtained via individual law school websites. Messages were sent directly to the Director of Career Services at the law schools and phone conversations were used to follow-up after initial email contact. Questions for career services staff focused on amelioration efforts they have conducted; what funding, if any, they provide; where funding sources originate; and what challenges they have faced when trying to ameliorate the presence of military recruitment. The presidents or co-chairs of the lesbian, gay, bisexual, and transgender (LGBT) student groups served as the student contacts and were also contacted via email. Student groups were asked questions about their perceptions of efforts put forth by the law school and their evaluation of such actions (Appendix). As stated earlier, obtaining the cooperation of respondents was difficult; thus, we were only able to conduct a small number of interviews. Administrators at one large private institution and two student organizations at a mid-sized and large public university responded to our emails and phone calls.

In addition to law schools, the National Lesbian and Gay Law Association (NLGLA) was also contacted to provide insight into national amelioration efforts, perceptions of those efforts, and recommendations on how to recruit additional respondents for our study. NLGLA sponsors an annual conference for LGBT law students called Lavender Law that provides additional career services opportunities and panels on issues in both LGBT-related policy and issues affecting LGBT lawyers. The majority of law schools provide funding for their LGBT students to attend Lavender Law as a part of their amelioration activities (Table 1). In our communication with the NLGLA we were given no recommendations on how to recruit more respondents. Rather, NLGLA postulated three reasons for the low response rate of law schools and law

student organizations: (1) lack of time and resources, (2) the lack of a single organization or clearinghouse to engage with law schools on this issue, and (3) the potential audience for related research is largely self-selected and, thus, limited.

Limitations

We acknowledge that there are limitations to this study that may affect our ability to generalize with respect to the survey and interview results. Most importantly, the NALP survey was not specifically designed to be a social science research survey. It was meant to be an informal survey to gauge current amelioration practices at U.S. law schools and determine if the practices have changed since the FAIR decision. It asked specific questions about particular activities and did not include measures to gauge participants' perceptions of these activities or their potential impact. Moreover, the NALP survey was directed toward career service offices, who were asked to share the surveys with students. Given that student groups were not directly approached, the student responses, or their absence, should be weighed carefully. It is difficult to know to what extent the NALP survey accurately represent student perceptions and reactions.

While the NALP data provides useful anecdotal information on the prevalence of amelioration activities on law school campuses, it does have significant limitations. The NALP data suggests that efforts vary across campuses but the survey did not include information on staff and student perceptions of these efforts, or information about any unmet student needs. Additionally, the NALP data presents a nationwide picture of what law schools are doing, but it does not provide evidence for individual school actions. For example, it is not possible to know whether a law school that circulates or posts the law school's nondiscrimination policy also conducts a teach-in, debate, or panel discussion on DADT. There could be a group of law schools that participate in many of these activities while other law schools do not. While AALS emphasizes that individual law schools should tailor their amelioration activities to their own school within reason, without more in-depth data, it is difficult to get a full sense of the activities at individual schools. The NALP survey results may in fact provide this information but that data has not been synthesized or made publicly available. Thus, the published reports of the NALP's survey, which we highlight here, do not convey the extent to which AALS's case-by-case approach is being implemented in law schools across the United States.

Interviews with individual law schools help to supplement NALP survey data and allow us to identify challenges and successes within specific law schools as opposed to across institutions generally. These interviews may be limited, however, in their applicability. First, the selection process for law schools surveyed and the small number of interviews conducted at each law school is a key limitation. Clearly, with more time, funding, the support of a national organization with credibility, or an existing relationship with law schools, there might have been more face-to-face conversations with both administrators and student groups. Moreover, working with an official research institute may have encouraged responses on the part of both administration and student groups. However, while the sample size is small, the anecdotal interview data provides an interesting snapshot of amelioration at specific law schools. Furthermore, the results provide a preliminary understanding of the status of amelioration at U.S. law schools, which can aid in the development of a more comprehensive study.

RESULTS

NALP Survey Results

The survey results indicate that the bulk of law schools undertake activities that seek to promote a welcoming and supportive environment for LGBT students (Leipold 2007). Table 1 depicts the various activities occurring at law schools and the percent of respondents engaging in each activity, which include supporting an LGBT student organization and promoting outreach to LGBT students. We classify the activities in the NALP survey into three categories: AALS required actions, “supportive” actions, and “direct” actions. Required actions are activities that AALS requires of their member schools. Supportive actions are activities that staff and faculty have undertaken to increase the supportive environment for LGBT students through increased funding and dissemination of information. Direct actions are activities that directly address the repeal the DADT and Solomon Amendment through petitions and lobbying Congress.

Table 1. Staff and Faculty Responses: Activities Undertaken at Law Schools.

Activity	% Participating
<i>AALS Required Actions</i>	
Circulating or posting the law school’s nondiscrimination policy	96
Circulating or posting a statement specifically addressing military recruiting on campus	82
<i>Supportive Actions</i>	
Hosting, co-sponsoring, moderating, or participating in an event organized by the LGBT student organization	77
Promoting faculty and staff outreach to LGBT students	68
Funding LGBT students to attend off-campus events or programming (e.g. Lavender Law)	55
Displaying Rainbow Flags, “Safe Zone” signs, or other expressions of solidarity with LGBT students	50
Circulating or posting a letter from the dean stating the law school’s position on military hiring policies	48
Funding one or more fellowships for summer or post-graduate work on GLBT issues	15
<i>Direct Actions</i>	
Establishing a Solomon Amendment task force (or similar group focused on ameliorative efforts)	33
Submitting letters, editorials, or articles to local or national media outlets about the Solomon Amendment and military recruiting	20
Circulating a petition or similar document expressing opposition to the Solomon Amendment	19
Lobbying or otherwise contacting members of Congress about the “Don’t Ask, Don’t Tell” policy	5

Of the required actions, over 95 percent of respondents reported that they circulated or posted the law schools nondiscrimination policy as a response to the Solomon Amendment or to support their LGBT students. Furthermore, 82 percent of respondents circulated or posted a statement specifically addressing military recruitment on campus. While this percentage is high, there was a sizeable minority of law schools, nearly one out of five, that did not specifically address military recruitment on campus. This is a disappointing number, given the robust policies of both AALS and law schools. Even though these two required actions are very different (i.e., displaying the nondiscrimination policy versus directly addressing the Solomon Amendment and DADT), the results indicate that the majority of law school administrations have instituted amelioration activities as directed by AALS.

Many law schools try to foster a welcoming and diverse educational environment for LGBT students. In many cases, such efforts also fulfill AALS's amelioration requirements, one of which is to support and welcome LGBT students. For example, 77 percent of schools have faculty or staff hosting or co-sponsoring an event organized by the LGBT student organizations and 68 percent report promoting "outreach to LGBT students." Similarly, a majority of staff and faculty display expressions of solidarity with LGBT students, which may take the form of a letter to the student newspaper or attending a rally, and provide funding for LGBT students to attend off-campus events or programming. However, it is not clear that these are efforts specifically designed to fulfill the AALS amelioration requirements. Whether these activities are designed to fulfill AALS requirements or to create a stronger sense of community is ultimately a nonissue if LGBT students feel supported and welcomed in their law schools. Efforts that are targeted toward career opportunities, however, are more limited. Only 15 percent of law schools report providing funding for summer or post-graduate work on LGBT issues. Such funding could be seen as an effort to mitigate the inability of openly gay law students to obtain summer internships or employment with the military. On the other hand, roughly half of survey respondents noted that the dean circulates a letter addressing the law schools position on military hiring policies. While not required by AALS, this action could be interpreted as a direct attempt to ameliorate the military's presence on campus.

In terms of direct amelioration activities toward the repeal of DADT and the Solomon Amendment, few law schools are participating. Only 5 percent indicate that they lobby or otherwise contact members of Congress about DADT, while one third have established a Solomon Amendment task force that focuses of amelioration efforts. Less than one quarter of law schools have staff or faculty who have circulated petitions (19 percent) or published articles expressing opposition to the Solomon Amendment (20 percent). In general, the results indicate that law school administrations participate in required and supportive actions as opposed to efforts that directly relate to the opposition and repeal of DADT and the Solomon Amendment.

The NALP survey uses the 2006 *Rumsfeld v. FAIR* Supreme Court decision as a key point in time, asking law schools to designate activities conducted before and after the ruling. For each ameliorative activity listed in the survey, including those above, anywhere from 1 to 8 percent of law schools initiated additional activities after the Supreme Court ruling. Table 2 shows the top five new activities/responses law schools initiated after the ruling. The activity most respondents carried out was the sponsorship of panels with LGBT attorneys discussing their careers (8 percent). Other activities included an LGBT attorney-student mentorship

program (6 percent), funding to attend Lavender Law (5 percent), sponsoring events with LGBT advocacy organizations (5 percent), and panel discussions on DADT (5 percent). New amelioration responses after the *Rumsfield v. FAIR* ruling indicate that law schools mainly took supportive action aimed at increasing awareness of the policy and support for LGBT students.

Table 2. Staff and Faculty Responses: Type of New initiatives Undertaken by Law Schools Post *Rumsfield v. FAIR*

Activity	% Participating
<i>Supportive Actions:</i>	
Panel discussion or other event with LGBT attorneys discussing their careers	8
LGBT attorney-student mentoring program	6
Funding LGBT students to attend off-campus events such as Lavender Law	5
Sponsoring events with local LGBT advocacy organizations and conducting a teach-in or debate	5
Panel discussion on DADT	5

As articulated in the Supreme Court decision, law schools are unequivocally able to protest the military’s presence so long as they allow recruiters on campus. As a result, the NALP survey found that students at some institutions are more excited to develop their own forms of amelioration and education on the Solomon Amendment. An anonymous student responded to the survey saying, “The Supreme Court decision energized our [LGBT student organization] – prompting them to begin outreach to the law school community toward increasing awareness of Solomon Amendment and ‘Don’t Ask, Don’t Tell’ issues” (NALP, 2007). Table 3 displays student activities in response to the Solomon Amendment, before and after the ruling. In particular, the number of campuses that held student protests and had student-staffed informational tables went up by almost 10 percent (Leipold, 2007). Student responses ranged from attempts to increase awareness of the Solomon Amendment through the distribution of pins, stickers, emails, or information materials, to direct actions geared at repealing DADT through lobbying and contacting congressional members.

Table 3. Student Responses: Activities Undertaken by Law Schools

Activity	% Participating		
	Initiated Prior to <i>Rumsfield v. FAIR</i>	Initiated After <i>Rumsfield v. FAIR</i>	Not in practice
<i>Supportive Actions:</i>			
Staffing informational tables	30	8	62
Promoting widespread awareness among other students by:			
Distributing pins and stickers	32	6	63
Email	39	6	55
Disseminating information about recent surveillance of GLBT student groups by the Pentagon	5	7	88

<i>Direct Actions:</i>			
Protesting or picketing military recruiters on campus	25	8	67
Lobbying or otherwise contacting members of Congress about DADT	14	6	80

While some law schools have responded to the Supreme Court decision with renewed action in regards to amelioration and DADT, the NALP survey researchers suggest the 2006 Supreme Court decision may “have produced a sense of resignation that has actually served to diminish the commitment to acts of protest and amelioration” (Leipold, 2007). For some law schools, the ruling may have added to a feeling that DADT was immutable and that efforts to work against it were futile.

INTERVIEWS WITH U.S. LAW SCHOOLS

Administrative efforts at a large, private, tier one institution

Of the three law schools interviewed individually, a career services official at one large, private, tier one law school defined amelioration efforts as:

Activities undertaken by the Law School to ameliorate the overt discrimination that some of our students experience because of the military’s hiring practices, including activities that offer additional career development opportunities to those students and express the Law School’s support for those students’ right to be treated equally by employers.

For this particular law school, four key initiatives are undertaken to address the military recruiters’ presence on campus. First, the law school posts the nondiscrimination policy near the area where interviews take place and on each interviewer’s door. Second, the dean of the law school distributes a letter to the student body before the beginning of on-campus interviewing (OCI) reaffirming the school’s commitment to nondiscrimination and explaining the school’s obligations under the Solomon Amendment. Third, the career services office works with members of the LGBT law student organization to send two members to the Lavender Law Conference as well as sponsor a panel workshop entitled “To Be Out or Not in the Job Search.” This panel is usually held just before the commencement of Fall OCI. Finally, the LGBT law student group is asked to recommend any additional activities to the career services staff to support these actions.

This institution indicates that the LGBT law student group has not been especially active on this issue or proposed any additional ideas, despite offers of support. In addition, administrators expressed some reservation that initiating the majority of amelioration activities might draw undesired attention to LGBT law students. The administrators at this school may be aware of underlying tensions or issues that LGBT law students may be facing, such as discrimination or a hostile climate. If the LGBT law students are not themselves a visible or outspoken student group, then schools, such as this one, may be tentative to want to draw undue attention to this minority group. Rather, there is some discussion of waiting for students to initiate activities beyond what the career services office already carries out. This school’s

response highlights the need for communication between students and administration, as encouraged by AALS regarding amelioration. A candid discussion between the administration and LGBT students may help to clarify if the students are sensitive to additional attention or if the students are not particularly interested in DADT and the Solomon Amendment. At this particular law school, if there is truly a concern about bringing unwanted attention to the LGBT students, more academic activities focused on the legal issues surrounding DADT and the Solomon Amendment may be more appropriate. Such efforts may encourage further discussion of these issues and work to create a climate of diversity and inclusion in which LGBT students may feel more comfortable voicing their concerns on this issue and others.

As one law school administrator stated, the real challenge “is the lack of student interest in doing much more than the basic sign-posting.” This sentiment is echoed in the NALP results, where one school commented, “The students seem more interested in issues relating to gay marriage and the intersection of race and sexual orientation than in the military” (Leipold, 2007). Certainly, students may engage with a wide range of issues, whether they are issues that are currently in the media or the courts or issues that may have arisen on campus. The requirement for schools to adequately educate and ameliorate the military’s presence on campus and DADT, however, is not one that can be ignored by law schools. While the LGBT student organization has been somewhat inactive on this issue of DADT, another law student group, the National Lawyers Guild, a progressive organization advocating for political and economic change, has taken a role in addressing DADT and the Solomon Amendment on campus. This particular student organization has planned events to bring attention to the discriminatory practices of the military that address DADT and the Solomon Amendment. In the NALP survey, the only student responses came from the LGBT student organization. It did not include other law student organizations that also care about this issue. Therefore, this interview suggests that law school administrators can and should collaborate with other student organizations, in addition to LGBT students, to design and execute amelioration efforts.

At this particular institution, the law school students, staff, faculty, and administrators, as well as the university itself, are perceived to be very supportive of amelioration efforts. However, “a few years ago, some [law] students objected to the school using law school funds for amelioration efforts.” The students objected to student fees being used to fund amelioration activities. The source of funding for amelioration activities is a concern that did not arise in the NALP survey. AALS does not provide its member law schools with funding for amelioration activities. Rather, funding for these activities may come from the overall budget for student career services or student activities, which are derived from a variety of sources, including student fees. When asked about challenges the law school faced when initiating or participating in amelioration efforts, this institution stated, “there haven’t been that many challenges other than the one year of significant opposition and tension” and lack of student interest.

Efforts by the administration at this large, private, tier one law school confirm the NALP results. This interview also illuminates a tension between administrators wanting to be supportive of their LGBT students and perceived apathy on the part of LGBT students towards the issue. This interview suggests that administrators must carefully balance the needs of students and the requirements of AALS. The task of ameliorating the presence of military recruiters has created a complex relationship for law school administrators and students.

However, since we were unable to interview LGBT students at this particular institution, it is hard to speculate if the students truly are ambivalent or apathetic or if the administration simply perceives them to be that way.

Student perceptions at public institutions

Of the two responses received from LGBT student organizations, one was from a regional, state university law school in an urban location. This organization indicated that they felt the law school was initiating many amelioration activities. Upon initially entering the law school, the co-chair of the LGBT law student organization commented that there were no noticeable signs of protest or amelioration when military recruiters came to campus. After this particular student inquired with career services, “they [career services] quickly apologized and submitted new flyers and clearly spelled out that [the institution] itself does not conform to any of the views and/or opinions of the military and are merely allowing the recruiters to conduct their recruitment because they must do so.” Other efforts identified by the student organization focused on the law school’s effort to feature speakers “of all backgrounds and beliefs” and “helping bring in speakers for our group itself.” This organization did not express any feelings of disappointment with administrative actions nor did it recommend any additional efforts. These sentiments were not apparent in the NALP survey, but are noteworthy. Clearly a dialogue between the administration and law students must occur. The extent to which the administration remains open to student feedback is an important component in crafting an effective amelioration strategy to fulfill the AALS requirements and attain the overall goal of mitigating the effects of the military’s presence on law school campuses.

This school’s experiences are contrasted with a tier one, nationally ranked public institution located in the same state. The LGBT law student organization at this law school indicates overall satisfaction with the proactive and progressive efforts taken by the administration. The career services office fulfills the baseline requirements by distributing an email stating the law school’s policy against discrimination and explaining the obligations with regards to military recruitment. However, this law school takes amelioration efforts a step further in response to student organizational efforts and requests. The main vehicle for amelioration at this law school is financial funding for LGBT students to attend several LGBT-related conferences and events. In 2006, the law school allocated roughly \$6,000 for students to attend the Lavender Law Conference and funded two teams to compete in the annual National Sexual Orientation Moot Court competition at the University of California at Los Angeles. Both events provide educational opportunities for students interested in the intersection of LGBT issues and the law, as well as additional access to recruiters from national law firms. Moreover, this law school established a unique summer fellowship program which funds student employment at a LGBT law related organization during the summer. Founded in 2006, this fellowship, named for a gay service member who was dismissed from the military, totaled \$3,500. Unlike the regional state law school, this second law school has made a substantial financial commitment in support of LGBT students. This could be attributable to its larger size and endowment allowing this particular law school to provide more generous financial aid to its students.

At this institution, students have played a key role in advocating for greater amelioration efforts and institutional visibility on the issue of the Solomon Amendment and DADT. Members of the LGBT student group indicate that they appreciate the administration's support and fulfillment of requests such as the funding of summer fellowships. Students reported feelings of frustration that the faculty and administration at peer institutions are perceived to participate more in public discussions of DADT than their school. The students would like to see more faculty support within the law school and university-wide on the issue of DADT, as well as on a national level in the form of membership in FAIR or other similar organizations.

What emerges from these comments is a sense that students are keenly aware of activities occurring at peer institutions' law schools. Students at this law school may be able to use this information to work with their own administration to improve their amelioration efforts. Interestingly, many of these public law school's peer law schools are private institutions. While the NALP survey does not provide data to support this, and our limited interviews provide a cursory review, it may be that there are unique limitations imposed upon public institutions in their ability to vocally oppose and visibility advocate against the Solomon Amendment and DADT. Public institutions, in general, are more constrained in their ability to use funds and to take stances on controversial issues. These institutions are ultimately accountable to the public at large and by the politicians who often control funding. Meanwhile, private institutions are generally constrained by their own internal leadership, alumni, and donors.

This LGBT student organization holds a yearly conversation about the form and tone of the student-led protests of the military presence during OCI. The co-chair indicates that there have been students who advocate for more vocal protests, which would disrupt the recruitment process by the military. For example, several students suggest that openly gay and lesbian students should fill up the interview slots with military recruiters as a way to stifle recruitment efforts. This suggestion was not approved by the student organization because it anticipated that such a move would be met with great resistance from the administration. Instead, the organization sets up tables outside the area where recruitment takes place and provides students who are interviewing and others with information about the military's recruitment policies. This organization also plans lectures and teach-ins for fellow students and faculty on DADT, the Solomon Amendment and other LGBT legal topics. The internal conversations occurring in this student group reflect the tension inherent in amelioration efforts. There is a fine line between expressing frustration with the military policies, working to educate fellow students about DADT, or advocate to change the military policy, and engaging in activities that might jeopardize the administration's support or the university's funding.

Emerging Issues

While the specific interviews admittedly have their limitations, they nonetheless illuminate issues and questions that are not immediately apparent from the large, national NALP survey. First, there is a tension between what law schools are required to do in terms of AALS amelioration guidelines and the interest of the student body. In some ways, AALS addresses this issue by stating that students themselves should not be forced to take on the task of crafting amelioration strategies. Yet, if law schools do not sense any student interest or demand, it is logical to question the utility of a law school undertaking such activities. Moreover, as one law

school administrator disclosed, “If LGBT students do not express interest in amelioration activities, [law] schools may be fearful of bringing undue attention to a small group of students.” The lack of student interest or engagement could be related to the overall climate on a law school’s campus. If students do not feel institutionally supported or welcomed in the law school environment, they may not feel comfortable advocating for more amelioration activities to mitigate the military presence on campus. It may also be simply that students are not interested in the issue. As the NALP researchers indicated in their study, other issues such as marriage equality and parenting rights may be more interesting to students. It is clear that student have an important role in amelioration activities; however, law schools should not be forced to push issues onto students. And yet, AALS requires law schools to conduct amelioration activities in order to educate and express disapproval for the policy.

Second, the NALP survey provides quantitative data indicating that the types of amelioration activities at law schools vary greatly. The interviews provide examples of the range of activities that law schools and law students undertake as part of the AALS requirements. We identify three broad types of activities taken by law schools: AALS required activities; supportive measures that attempt to foster a welcoming environment for LGBT law students and provide them with additional career and mentorship guidance; and direct ameliorative activities, which seek to impact the local, regional, and national discourse on the issues of the Solomon Amendment and DADT. Both the NALP data and the interviews indicate that the majority of law schools participate in the AALS required and supportive actions. However, few law schools engage in visible and overt efforts to overturn the Solomon Amendment or to alter the military’s policy.

The NALP survey provides a national picture about law school activities, but no information about what individual law schools do or the tensions that may arise in devising an effective and thoughtful amelioration strategy. The interviews provide insight into the inter-institutional conversations that occur surrounding DADT and the Solomon Amendment. One of these tensions is funding for amelioration efforts. Because law schools vary greatly but must adhere to the same AALS standards, financial resources available to private and large institutions may allow for more dedicated support (i.e., generous funding for students to attend conferences or participate in summer internships).

Another tension identified by the interviews occurs between private and public institution efforts to directly address DADT. Private institutions may be less constrained by state government or political pressure than public institutions. Therefore, private schools can carry out direct amelioration activities, such as publicly participating in lawsuits or becoming members of FAIR. For example, while over 60 percent of the FAIR members are public law schools, less than 30 percent of members willing to be named publicly are public institutions. With the NALP data and interviews as a backdrop, we suggest two areas for improvement and provide recommendations for AALS and law schools to resolve the conflict between their nondiscrimination policies and DADT.

POLICY RECOMMENDATIONS

Improving Amelioration Efforts on Law School Campuses

AALS and its member law schools should forge a mutual understanding about the best ways to ameliorate the military's presence on campus. AALS, in conjunction with its members, should develop more clearly articulated and comprehensive guidelines for law schools. AALS has only identified one required action as a minimum amelioration standard; its remaining recommendations are only suggestions. The NALP survey and the interviews suggest that efforts vary greatly among law school campuses. In some cases, law schools are heeding many of the suggestions, while other law schools, perhaps in response to lack of student interest, are focusing on the single minimum AALS requirement. AALS, in conjunction with its member schools, should develop more comprehensive guidelines and requirements, including a baseline, for amelioration activities. This baseline plan could require the circulation of nondiscrimination policies plus a set number of panels or educational events addressing DADT. Once law schools fulfill these requirements, they would then have the option of selecting from a range of other suggested, additional activities including: funding summer fellowships, sending students to LGBT conferences, or convening an annual conference on the Solomon Amendment, DADT, or other issues affecting LGBT students. The development of such requirements and guidelines would be mediated through AALS leadership, comprised of member schools. With this process, AALS and law schools could clearly articulate the activities necessary to fulfill the amelioration requirement and address issues on a case-by-case basis. AALS's new policy on amelioration could require that member law schools submit a yearly review and evaluation of their activities. This process would continue to allow law schools to tailor their activities to particular student needs and provide an opportunity to have a dialogue with the law school community about best practices.

AALS and its member schools should also make a point of revisiting the requirements of amelioration and the expectations of law schools as a result of the Supreme Court's decision. The NALP survey found that the Court's decision led to mixed results in amelioration efforts at law schools. According to the NALP study, some law schools reported resignation instead of a renewed sense of advocacy. Other law schools are confused about the current state of the law. In the NALP survey, one law school responded that they no longer posted the nondiscrimination policy near the interview rooms stating, "Career Services was advised post-*[Rumsfeld v. FAIR]* that we must treat the military equally as any other employer. Therefore we discontinued the practice of posting [our nondiscrimination] notices on the doors of the interviewing recruiters" (Leipold, 2007). The Supreme Court decision clearly states that law schools must treat military recruiters equally in regards to the facilities and treatment of other recruiters. But, the Court also clearly states that law schools are still permitted to express their disagreement with the military's policy, which AALS requires law school to do through amelioration efforts. AALS must make this point clear.

Law schools also need guidance on how to find a balance between administrative action and student responsibility in amelioration efforts. It is apparent from both the NALP data and interviews that student involvement plays a critical role in the extent to which law schools undertake amelioration efforts and participate in the debate surrounding the Solomon

Amendment and DADT. Some law schools view student involvement as a validation of their amelioration activities and a guiding force to keep efforts moving forward. These schools also remain responsive to student requests and suggestions for further action.

Law school administrators need to remain attuned to student needs and desires by establishing open lines of communications with student groups about amelioration activities and their planning. However, waiting for student organizations to take the lead on DADT may be asking too much and could be an inappropriate placement of responsibility. AALS member schools have a commitment to nondiscrimination on their own campuses and fulfilling amelioration requirements is part of that commitment, regardless of whether law students demand such action. Of the law schools interviewed, it was evident that amelioration efforts were largely championed by the administration. While administrators reported some reservation about LGBT student apathy towards amelioration, it was more important that career services administrators continue to provide open lines of communication for their students and encourage suggestions for additional amelioration activities. Furthermore, it is important for administrators to be cognizant of their college campus environment. Relying on students to step forward and express their needs may be unrealistic on campuses where gay rights may be a controversial issue among students, faculty, or others. Knowing they have the support of their law school, students on these campuses may grow more comfortable and feel compelled to voice their concerns.

Student organizations and individual students may be more willing to initiate amelioration activities with more, visible support of the law faculty. This sentiment is demonstrated in the individual interviews and NALP survey, with one student noting:

It would be nice to have more faculty support. We didn't see anyone but [a career services staff member] at the protests or wearing buttons. Lots of faculty signed [an] anti-Solomon letter, but we don't see much more support than that. Among the most shameful times in our nation's history are those where discrimination against minority groups is condoned or ignored. This is one of those times and we should be ashamed...

This response highlights that some law students want the law school administration and faculty, not just career services, to be more enthusiastic and vocal about amelioration activities. While law professors are entitled to their own perspectives on DADT, schools should create spaces for students and faculty with similar views to meet and work together on this issue. AALS suggests that law schools create a task force to clarify the objectives of amelioration on campuses and give voice to law students, faculty, and administration. However, NALP's survey indicates that only 35 percent of law schools (who responded) have done so. We recommend that AALS require law schools to develop an internal working group, consisting of law school students, administrators, and staff to ensure the continuity and consistency in amelioration efforts, as well as provide space for critical dialogue about the effectiveness of such actions.

Working for the Repeal of “Don’t Ask, Don’t Tell”

While amelioration efforts serve the important purpose of resolving the inconsistency between law schools’ nondiscrimination policies and the military’s hiring practices, law schools specifically, and post-secondary institutions more broadly, need to work to address the underlying issues which necessitate amelioration: the Solomon Amendment and DADT. We contend that AALS and member laws school take on more direct action to encourage the repeal of DADT by lobbying Congress both individually and through coalitions with other universities and external organizations. Given the large number of institutions affected by the Solomon Amendment’s federal funding restrictions, law schools and post-secondary institutions could form a large, powerful coalition advocating for federal policy change (Valdes, 1998).

Lobbying at the national level is common practice for post-secondary institutions. In the past, universities have joined together to lobby against legislation limiting federal funding on stem cell research and several institutions have been at the forefront of defending affirmative action practices before the Supreme Court. While DADT is certainly a unique issue, this internal military policy that discriminates against one’s sexual orientation directly threatens post-secondary institutions and their financial livelihood as well as the education of thousands of students. We argue that universities need to take leadership in advocating for change.

Now is the time for universities to connect with allies in the civil rights, human rights, and advocacy communities to work for the full repeal of DADT. Coalitions of organizations outside of higher education should be formed to supplement universities’ efforts. For example, LGBT organizations such as Human Rights Campaign and National Gay and Lesbian Task Force are currently working on issues related to DADT. Also, AALS has a lobbying arm, which could be mobilized in conjunction with other education lobbying organizations that work on behalf of colleges and universities across the country. Establishing these partnerships would give broader context to the problems with DADT and the Solomon Amendment beyond discrimination facing gay service members and military recruitment at law schools.

As part of his stated agenda, President Barack Obama expresses a desire to repeal DADT (Presidential Website). While the feasibility of this policy reversal remains in question, now is the time for universities to voice their support for action. Institutions of higher education should use their collective power to push for reversal of this discriminatory policy, as they have long served as catalysts and innovators in championing rights for individuals.

CONCLUSION

The implementation of DADT and subsequent passage of the Solomon Amendment created a stark tension between law schools’ nondiscrimination policies and on-campus military recruitment. Using results from a national survey conducted by the NALP and individual interviews, there are a variety of ways that law schools mitigate this tension. Actions such as lectures and educational panels can help educate future lawyers about DADT. At the same time, activities that offer job opportunities and career guidance to LGBT students can provide real amelioration to individuals against whom the military would discriminate. No *one* combination of activities will work at all law schools, but law schools should be encouraged and supported to

construct an appropriate strategy that will achieve the goal of ameliorating the presence of the military on campus.

Meanwhile, with DADT being debated in the court of public opinion, AALS, in conjunction with its member schools and their students, should take this opportunity to work for the repeal of this discriminatory policy. As the NALP study champions, “if the new Congress does not hear from us on this issue, then we will have abdicated a historic responsibility. As an educational tool, this provides an ideal moment for engaging students in the process of tackling legislative change” (Leipold, 2007). By working with other organizations and educational institutions, law schools, law students, and post-secondary institutions can make a substantive difference.

APPENDIX

Questions for Law Schools and Administration

1. Does the law school initiate or participate in Amelioration efforts when Military recruiters are on campus for OCI (On-Campus Interviews) and/or throughout the year? If yes, please explain. If no, please go down to question 6.
2. Do you work with student groups, if so who? How were these groups selected?
3. Are there funds available for amelioration efforts? If so, how much and where does the money come from?
4. What has been the feedback received (re: Amelioration efforts) from the general student, staff, faculty, and University community?
5. What challenges has the law school faced when initiating or participating in Amelioration efforts?
6. If the law school has not initiated in or participated in Amelioration efforts, why? What are the challenges?

Questions for Student groups

1. Does the law school initiate or participate in Amelioration efforts when Military recruiters are on campus for OCI (On-Campus Interviews) and/or throughout the year? If yes, please explain. If no, please go down to question 5.
2. Do you feel the law school has done a good job in its amelioration efforts?
3. What else would you like to see the law school do?
4. In your opinion, has the law school been receptive to your needs?
5. If your law school has not initiated in or participated in Amelioration efforts, why do think that this is so? What has been the institutional response?

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