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## Colliding cultures

### Law schools fight the military over gay rights

By Alex Kingsbury

**A**s hard as it might seem to persuade law students to forgo fat-paying private-sector jobs to become military lawyers, it has to get harder still when students and professors start picketing you, right? But Maj. Joseph Dene, who heads law school recruiting efforts for the Air Force's Judge Advocate General, or JAG, Corps, says he isn't fazed. Those protesting the military's "Don't ask, don't tell" policy aimed at gay enlistees are generally respectful, he says, and his interview slots are always booked solid: "Sometimes there is so much interest that we have to bring along a second officer to meet with all the students."

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But all that could change, Dene fears, if a Supreme Court case being argued this week results in military recruiters being banished outright from some college campuses. At issue is the constitutionality of the Solomon Amendment, a decade-old law that allows Congress to withhold federal funds from colleges that bar military recruiters. In the 1960s, barring ROTC units and military recruiters served as a means for colleges to protest the Vietnam War. Now, some law schools want to limit access to recruiters because of the military's ban on openly gay personnel. Giving recruiters access to students violates campus rules against supporting discriminatory employers, the colleges argue. And, some believe, successfully defending their recruiting restrictions in court could ultimately force the military to change its policies. "This is just one step down the road toward getting rid of 'Don't ask, don't tell,'" says Chai Feldblum, a professor at the Georgetown University Law Center who helped organize the lawsuit.

The roots of the case go back to 1994, when several schools expelled, or threatened to expel, military recruiters because of the armed services' newly codified policy on homosexuals. Congress quickly passed the Solomon Amendment to combat what many lawmakers saw as

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antimilitary bias on campuses. Colleges, said Rep. Richard Pombo, a cosponsor of the bill, "need to be put on notice that their policies of ambivalence or hostility toward our nation's armed services do not go unnoticed." The law allowed the government to withhold federal funds for everything from student aid to Defense Department research grants.

**Access.** Even after the law passed, the Pentagon seemed content to accept recruiting restrictions at some schools, ranging from an outright ban to limits on which buildings they could use to meet with students. But after the terrorist attacks of 2001, the military sent letters to several law schools warning that recruiters were being unfairly denied equal access, an action that prompted a lawsuit by a group that represents 38 law schools. The American Association of University Professors, Harvard, Yale, and other schools have filed amicus briefs in support of the suit. Allowing military recruiters on campus compels the law schools to implicitly endorse a discriminatory policy and thus infringes on their First Amendment right to free speech, they contend. Ironically, one of the strongest

arguments for barring recruiters comes from the high court's 2000 ruling that the Boy Scouts have a First Amendment right to ban gay troop leaders. Law schools argue that they should have the same rights of "expressive association."

The government and its supporters maintain that allowing recruiters on campus is an acceptable condition to attach to billions of taxpayer dollars. "It is hypocritical that schools are more than happy to accept money, yet will not agree to the conditions," says Anne Neal, president of the traditionalist American Council of Trustees and Alumni, which sent scores of pro-recruiting letters to the trustees and alumni of schools involved in the case.

For their part, JAG officers say they need full access to the best and brightest law students. "We want a JAG corps with a diversity of educational experience," says Dene. If the Supreme Court's decision next year doesn't let the military into every U.S. law school, from Ivies to state flagships, he fears the armed services will be diminished in unexpected ways.

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