

Harvard and the Military - Four Difficult Decades

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Over the past 40 years Harvard has had a complex and difficult relationship with the Reserve Officer Training Corps (ROTC) and with military recruiters. ROTC was asked to leave Harvard in 1969. This decision was based primarily on opposition to the Vietnam War. From 1971 on Harvard students have been allowed to enroll in the MIT ROTC program but there has been no program at Harvard. Harvard course credit is given for ROTC-related courses that receive MIT credit.

In 1985 Harvard adopted a policy barring discrimination against gays and lesbians within the University community. The military did then and still does overtly discriminate against gays and lesbians; now under a federal law referred to as "Don't Ask, Don't Tell," which allows gays and lesbians to serve as long as they don't reveal their sexual orientation. If they are found out, they are permanently separated.

At some point in the 1980s Harvard began making a payment to MIT of more than \$100,000 per year to help defray the portion of the administrative expenses of their ROTC program attributable to Harvard participants. In 1994, President Neil Rudenstine initially decided that Harvard would continue these payments. After strong objections from the Faculty of Arts and Sciences (FAS) and Harvard's gay community, Acting President Albert Carnesale (President Rudenstine was on medical leave) announced in 1995 that payments to MIT would be made by a group of supportive Harvard alumni, not by the University itself. Dean of Students Harry Lewis also confirmed to the Caucus that Harvard would no longer officially participate in the ROTC commissioning ceremonies.

Meanwhile, in 1990, the Association of American Law Schools (AALS) added sexual orientation to its nondiscrimination policy, which required all member schools to facilitate recruiting only by employers who certified that their organizations did not discriminate. Since the military could not so certify, it was barred from most law school recruiting programs, including the program at Harvard Law School (HLS). This prevented the military from being listed in the regular recruiting schedule and from using the facilities and services of the HLS Office of Career Services. HLS did and does, however, allow military recruiters to be invited on campus by a student group as a matter of freedom of speech.

In 1995, Congress passed a measure called the "Solomon Amendment," which provided that certain federal funds would be withheld from an educational institution which either refused to host a ROTC program or barred military recruiters from campus. The initial measure was poorly worded but in subsequent years the provision has been strengthened. Now it states in substance that a university can lose nearly all of its federal funding if it rejects either military recruiters or a ROTC program.

The military sought access to the HLS Office of Career Services in 1998 but HLS adhered to its nondiscrimination policy on the ground that free speech access adequately met the requirements of the then current version of the Solomon Amendment. Other

Harvard schools have similar policies concerning recruiting on behalf of discriminatory employers but the issue has been sharply focused only at HLS.

In 2001, two new factors emerged -- the 9/11 attacks and President Lawrence Summers. The terrorist attacks fueled an ongoing effort by "Cap" Weinberger and other alumni to bring ROTC back to Harvard. Summers repeatedly expressed sympathy for this objective, and routinely spoke at ROTC commissioning ceremonies in Harvard Yard in violation of the earlier agreement. Summers initially signaled his intention to resume making the MIT payment directly, but FAS faculty members felt this was their decision to make. And in light of Summers' resignation, there is little likelihood that such action will be taken.

In 2002, the military threatened Harvard with the loss of hundreds of millions of federal funding under a strengthened version of the Solomon Amendment if HLS continued to refuse cooperation with military recruiters. Harvard acquiesced, along with almost all other law schools. Other schools, most notably NYU Law School, joined in a group called FAIR to challenge the Solomon Amendment as an unconstitutional violation of their freedom of speech. Despite a request from a majority of the Law School faculty, amongst other Harvard groups, President Summers refused to allow Harvard Law School to join this association.

In November 2004, the Third Circuit Court of Appeals granted a preliminary injunction against enforcement of the Solomon Amendment in the FAIR suit. The court found that the plaintiffs were likely to succeed in their claim that the statute violated their freedom of expression. HLS Dean Elena Kagan immediately announced the suspension of cooperation with military recruiters (while still allowing them to come on campus if invited by a student group). Harvard was one of the first universities to take this position. In the summer of 2005, Harvard was again threatened by the Defense Department with the loss of \$450+ million in federal funding unless military recruiters were officially welcomed on campus. Harvard again acquiesced. The Supreme Court granted the Justice Department a hearing of the case and oral arguments were scheduled for December 6, 2005. On September 21, 2005, Harvard joined with a number of other universities in filing an amicus brief. In the oral arguments, the justices signaled their skepticism for overturning Solomon, and on March 6, 2006, handed down a decision in *Rumsfeld v. FAIR* that upheld Solomon.

On the ROTC front, there is no sign that the military intends to bring a full program back to Harvard -- the MIT arrangement works well for them -- but in November 2004, it was announced that the military at some point intends to ask the Harvard administration to establish an ROTC office at Harvard, with university support. This would constitute direct Harvard support for a program that discriminates against its own gay and lesbian students, in violation of the principle and policy of non-discrimination.

Since 1983 the Caucus has been fighting for Harvard to do the right thing. The root of the problem, however, is not with the university, but with the "Don't Ask, Don't Tell" law. If it were repealed, allowing gay men and lesbians to serve openly in the armed forces, then the discrimination issue would disappear. While some of our members would be welcoming others would still oppose ROTC and military recruiting on anti-

war grounds, but the Harvard Gay & Lesbian Caucus as an organization would take no position on the return of a non-discriminating military to Harvard.