

Sexual Orientation and Gender Identity

Newsletter of the
Association of American Law Schools Section on
Sexual Orientation and Gender Identity Issues

Fall 2006

A Message from the Section Chair:
Accepting the Court's Invitation

The only thing worse than being talked about is not being talked about
-- Oscar Wilde

Opponents of the Solomon Amendment in the SOGII section and much of the legal academy were sorely disappointed with the Supreme Court's ruling in *Rumsfeld v. FAIR*, 126 S. Ct. 1297 (2006). The Court held that the Solomon Amendment did not violate law schools' First Amendment freedoms of speech and association, rejecting law schools' arguments that conditioning university funding on allowing military recruitment on campus forced schools to endorse the military's anti gay policies, in direct contravention of the schools' commitments to nondiscrimination. But there's more to say about this speech case.

The Supreme Court invited students, administrators, and faculty who oppose the Solomon Amendment and/or the Don't Ask Don't Tell Policy (DADT) to remedy what they take to be "bad speech" and unwanted association with more speech and association:

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.

Moreover, "[s]tudents and faculty are free to associate to voice their disapproval of the military's message." While the SOGII Section, the FAIR litigants, *amici*, the Society for American Law Teachers, and others who worked on and watched the case disagree with

its core holding, we remain dedicated to continuing to oppose DADT and the Solomon Amendment. Indeed, the Court's invitation for more speech charts the course for future advocacy and activism. As Oscar Wilde knew, even before he lost his own trial for gross indecency a century ago, there are worse things than being talked about.

The talk lawyers, law students, administrators, and activists will engage in post *Rumsfeld v. FAIR* may well extend beyond the Solomon Amendment to the Don't Ask/Don't Tell policy itself, and spill outside of law schools into the legislative and executive processes. Law schools across the country now must determine the substance and format of that speech. Recognizing that this conversation has the unique applicability to the entire legal academy, the SOGII Section has organized a special three-hour session titled *Accepting the Court's Invitation* on the future direction of military recruitment and the DADT policy at the Annual Meeting in Washington D.C. Given the magnitude of the case, the SOGII section is also sponsoring a luncheon at which members and allies can discuss this and other issues. Please mark your calendars for the Solomon Amendment session and two other SOGII events at the Annual Meeting:

- *Accepting the Court's Invitation*: Wednesday, January 3, 2007, from 2:00 to 5:00 p.m.;
- *SOGII business meeting*: Wednesday, January 3, 2007, at 6:30 p.m.; and
- *SOGII luncheon*: Friday January 5, 2007, from 12:15 to 1:30 p.m.

The panel *Accepting the Court's Invitation* will tackle the issue in three segments. First, **David Hall** and **Shalanda Baker**, two former service members, will describe how the ban operates on the ground. **Sharon Alexander**, attorney and policy director of the Servicemembers Legal Defense Network, will discuss current litigation challenging the DADT policy and a blueprint for student, administration, and faculty action. Second, **Kate Martin**, Director of the Center for National Security Studies, will discuss implications of military surveillance of opposition to DADT and the Solomon Amendment, including Department of Defense domestic surveillance of law student protestors at UCSC, Berkeley, and NYU. The third and final section will provide a blueprint for responding to the Court's invitation. **James Leipold**, Executive Director of the National Association for Law Placement (NALP), will describe amelioration best practices, and faculty from a range of law schools [**Kathleen Clark** (Washington University School of Law), **Chai Feldblum** (Georgetown), **Alan Minuskin** (Boston College), **Joan Schaffner** (George Washington University), and **Joe Zengerle** (George Mason University)] will discuss their schools' responses to the Solomon Amendment and DADT. **Martha Ertman** (Utah) will chair the session.

The broad applicability of the issue promises to create a lively exchange in which participants leave the session with specific plans for how they and their schools can accept the court's invitation to speak further on DADT and the Solomon Amendment. Because this issue engages the entire academy, selected papers from the panel are slated for publication in the *Journal of Legal Education*.

Oscar Wilde taught us that the only way to get rid of temptation is to yield to it. The insights and style SOGII members bring to the table are bound to be outstanding as we yield to the temptation to participate fully in all three SOGII events this January. After all, as Wilde also observed, “nothing succeeds like excess.”

Martha M. Ertman
University of Utah, S.J. Quinney College of Law
Visiting Professor, The George Washington University School of Law

Section Programs at the Annual Meeting

Accepting the Court’s Invitation: Law Schools Respond to the Solomon Amendment Case

Wednesday, January 3, 2007, 2:00 to 5:00 p.m.

Marriott Wardman Park Hotel, Maryland Suite A, Lobby Level

[See the “Message from the Chair” for a full description of the panel and the names of panelists. See also solomonresponse.org for general background information and resources.]

Section Business Meeting

Wednesday, January 3, 2007, 6:30 to 7:30 p.m.

Marriott Wardman Park Hotel, Maryland Suite A, Lobby Level

The Section will hold an extended business meeting (in the same room as the earlier program on the Solomon Amendment).

Section Luncheon

Friday, January 5, 2007, 12:15 to 1:30 p.m.

Marriott Wardman Park Hotel, Washington Room 2, Exhibition Level

This is a ticketed event (cost \$60.00) and tickets must be purchased in advance. **Include this luncheon (Event Number 1416) in your early AALS registration.** A limited number of tickets *may* be available on-site until 12:15 p.m. of the previous day, Thursday, January 4, but don’t risk being disappointed. Section Chair-Elect Danielle Kie Hart is organizing a program for the SOGII luncheon.

Other Programs of Interest at the AALS Annual Meeting

The Recognition of Same-Sex Marriage: Conflicts Law and Public Policy in a Globalizing Society

Friday, January 5, 2007

3:30 to 5:15 p.m.

Delaware Suite A, Lobby Level, Marriott Wardman Park Hotel

A program sponsored by the AALS Section on Conflict of Laws will be of interest to members of the AALS Section on Sexual Orientation and Gender Identity Issues. The panel will examine the conflict of laws relevant to same-sex marriage, including whether *Lawrence* and *Romer* have redrawn the constitutional limits on a state's right to deny recognition of a same-sex marriage celebrated elsewhere.

The panelists will consider whether traditional conflicts techniques adequately address substantive issues such as succession and custody rights. The panelists will also use the issue of same-sex marriage as a window onto some broader questions regarding the role of conflicts law in resolving policy differences within a globalizing society. They plan to address how limits within a union (such as the U.S. federal system or the European Union) affect the ability of an individual governmental unit to assert local public policy in denying recognition to the acts of another unit.

Among other questions that the panel will consider are whether there is still a viable distinction between interstate and international public policy, whether state and national choice of law regimes can be successful in reconciling the imperatives of globalization, and whether divergent regimes may eventually give way to multilateral choice of law treaties.

The panel moderator will be **Hannah L. Buxbaum** (Indiana University School of Law-Bloomington), and speakers include **Katharina Boele-Woelki** (Professor, Molengraaff Instituut, Utrecht University, Utrecht, Netherlands); **Larry D. Kramer** (Stanford Law School); and **Tobias Barrington Wolff** (University of California at Davis School of Law). The Section on Conflict of Laws will also hold its business meeting at the conclusion of the program. Papers from the panel will be published in the *Indiana Law Journal*.

New Frontiers in Private Ordering

Friday, January 5, 2007

1:30 to 3: 15 p.m.

Virginia Suite B, Lobby Level, Marriott Wardman Park Hotel

The Section on Contracts program will be of interest to SOGII members. It will explore ways in which contracts (real or metaphorical) are being used to deal with problems that public law might tackle but is not addressing effectively. A “new frontier” in private ordering can involve, among other possibilities, an unusual purpose of contracting or an unusual subject matter of the contract.

Presentations will include two invited papers and two papers picked from responses to a call for papers. The first invited paper will be based on a book by Professors **Ian Ayres** (Yale) and **Jennifer Brown** (Quinnipiac), *Straightforward: How to Mobilize Heterosexual Support for Gay Rights* (Princeton University Press 2005), which suggests ways for people to “contract” around homophobia by, for example, buying products with the “fair employment mark” indicating that the seller does not discriminate on the basis of sexual orientation. Their new paper will discuss how an employer who adopts the mark can restrict, better quantify, and better control litigation risk than under existing nondiscrimination policies.

The other invited paper is by Professor **Michele Goodwin** (DePaul) and is a spin-off from her book *Black Markets: The Supply and Demand of Body Parts* (Cambridge University Press 2006), which is on trade in human organs and raises race and class issues concerning this trade. Her new paper will focus on the promise of negotiated sales of body parts as a means to better serve the interests of both sellers and buyers. Drawing on the example of negotiation in the reproductive realm, the paper will develop the argument that selective private ordering in intimate spaces can better serve the poor and racial minorities than public ordering. The *Arizona Law Review* has agreed to publish the papers.

ABA Adopts Policy on Gender Identity

The House of Delegates of the American Bar Association adopted a new resolution at its annual meeting in August 2006 to make it official ABA policy to urge “federal, state, local, and territorial governments to enact legislation prohibiting discrimination on the basis of actual or perceived gender identity or expression, in employment, housing and public accommodations.” A link to the recommendation and full report (as well as earlier ABA reports and recommendations on sexual orientation and gender identity) are available at the website of the Sexual Orientation and Gender Identity Committee of the American Bar Association Section on Individual Rights and Responsibilities. (See the “Update Your Rolodex” section of this newsletter).

Update Your Rolodex!

Many national, state, and local organizations offer excellent materials, guest speakers, and updates with analysis of significant legal developments. If you are teaching a course involving issues of sexual orientation or gender identity, you may wish to contact a national or local office to ask for class handouts, copies of amicus briefs, newsletters, and other materials. (Apologies to organizations not listed – there is always another issue, so send your contact information to the newsletter editor.)

Lambda Legal Defense and Education Fund (“Lambda Legal”) has one national office, four regional offices, and a website at www.lambda-legal.org.

National Headquarters

120 Wall Street, Suite 1500
New York, NY 10005-3904
tel 212-809-8585
fax 212-809-0055

Midwest Regional Office

11 East Adams, Suite 1008
Chicago, IL 60603-6303
tel 312-663-4413
fax 312-663-4307

South Central Regional Office

3500 Oak Lawn Avenue,
Suite 500
Dallas, TX 75219-6722
tel 214-219-8585
fax 214-219-4455

Western Regional Office

3325 Wilshire Boulevard,
Suite 1300
Los Angeles, CA 90010-1729
tel 213-382-7600
fax 213-351-6050

Southern Regional Office

730 Peachtree Street, NE,
Suite 1070
Atlanta, GA 30308-1210
tel 404-897-1880
fax 404-897-1884

The National Lesbian and Gay Law Association (“NLGLA”) organizes an annual “Lavender Law” Conference that includes a special focus on hiring LGBT law students. The 2007 conference will be held in Chicago (from September 6-8, 2007).

National Lesbian and Gay Law Association
601 Thirteenth Street, N.W., Suite 1170 South
Washington, D.C. 20005-3823
(p) 202.637.6384
(e) info@nlgla.org
www.nlgla.org

The Sexual Orientation and Gender Identity Committee of the American Bar Association Section on Individual Rights and Responsibilities works to protect and advance the rights of gay, lesbian, bisexual and transgender (GLBT) persons by educating the legal profession, by developing, implementing and disseminating policies supporting equal justice under law without regard to one's sexual orientation or gender identity, and by filing amicus curiae briefs. If you are a member of the ABA Section on Individual Rights and Responsibilities, you can join the committee (at no extra charge) simply by visiting the committee website. The

website also has links to ABA reports and recommendations on issues relating to sexual orientation and gender identity. *Select the “Sexual Orientation” link on this website: www.abanet.org/irr/committeehome.html*

The ACLU Lesbian Gay Bisexual Transgender Project fights discrimination and moves public opinion on LGBT rights through the courts, legislatures, and public education. Learn more at www.aclu.org/lgbt/index.html. The website includes a very helpful “Case Profiles” section.

The Gay and Lesbian Alliance Against Defamation (GLAAD) promotes fair, accurate, and inclusive representation of people and events in the media as a means of eliminating homophobia and discrimination based on gender identity and sexual orientation. Visit their glaad.org or contact one their offices.

GLAAD
5455 Wilshire Blvd, #1500
Los Angeles, CA 90036
phone: (323) 933-2240
fax: (323) 933-2241

GLAAD
248 West 35th Street, 8th Floor
New York, NY 10001
phone: (212) 629-3322
fax: (212) 629-3225

The Human Rights Campaign is a national advocacy organization that claims to have more than 600,000 members. It has a number of useful publications and resources, including *LAWbriefs*, a quarterly publication summarizing major developments in GLBT legal issues. The publication covers case law as well as legislation and includes information ranging from family law to discrimination protections to international legal developments.

Human Rights Campaign
1640 Rhode Island Avenue NW
Washington, DC 20036-3278
Tel: (202) 268-4160 or toll-free (800) 777-4723
Fax: (202) 347-5323
Website: www.hrg.org

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender, and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity, or HIV-status. Through education, outreach, advocacy, and the maintenance of a nationwide network of resources, the organization provide information and support to advocates, attorneys, politicians and those threatened by the discriminatory impact of U.S. immigration law. Their website includes “resources for lawyers.”

Immigration Equality
350 West 31st Street, Suite 505
New York, NY 10001
Tel: (212) 714-2904
Website: www.immigrationequality.org

The National Center for Lesbian Rights is a national legal resource center committed to advancing the rights and safety of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Visit their website at www.nclrights.org or contact a regional office.

NCLR Headquarters
870 Market St., Suite 370
San Francisco, CA 94102
Phone: 415.392.6257
Fax: 415.392.8442
Email: info@nclrights.org

Florida Regional Office
3170 3rd Ave. North
St. Petersburg, FL 33713
Phone: 727.490.4260
Fax: 727.490.4806
Email: tpowell@nclrights.org

D.C. Regional Office
1325 Massachusetts Ave., NW,
Suite 600
Washington, D.C. 20005
Phone: 202.737.0012
Email: sminter@nclrights.org

The National Gay and Lesbian Task Force was founded as the first national lesbian, gay, bisexual and transgender civil rights and advocacy organization. Its "Creating Change" Conference is inspirational and attracts more than 2,000 attendees. Visit www.thetaskforce.org or contact one of the offices bellow. **The 2006 Creating Change Conference will be in Kansas City from November 8-12, 2006**

NGLTF - DC
1325 Massachusetts Ave.
NW, Suite 600
Washington, DC 20005
Phone: 202.393.5177
Fax: 202.393.2241

NGLTF - Cambridge, MA
1151 Massachusetts Ave.
Cambridge, MA 02138
Phone: 617.492.6393
Fax: 617.492.0175

NGLTF - Miami, FL
3510 Biscayne Blvd Suite
#206
Miami, FL 33137
Phone: 305.571.1924
Fax: 305.571.7298

NGLTF - NY
80 Maiden Lane, Suite 1504
New York, NY 10038
Phone: 212.604.9830
Fax: 212.604.9831

NGLTF - Los Angeles, CA
8704 Santa Monica Blvd,
#200
West Hollywood, CA 90069
Phone: 310.855.7380
Fax: 310.358.9415

NGLTF - Minneapolis, MN
810 West 31st Street
Minneapolis, MN 55408
Phone: 612.821.4397
Fax: 612.821.4397

Servicemembers Legal Defense Network (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.

SLDN
PO Box 65301
Washington DC 20035-5301
Tel: (202) 328-3244 or (202) 328-FAIR
Fax: (202) 797-1635
Email: sldn@sldn.org
Website: www.sldn.org

Solomonresponse.org collects a wealth of information and resources for law schools on how to respond to *Rumsfeld v. FAIR*. The website includes information about the case and materials that law schools and student organizations can use to ameliorate the effects of the Solomon Amendment.

Casebook Updates

Arthur Leonard (New York Law School) and **Patricia Cain (University of Iowa)** authored a **2006 Case Supplement** to their casebook on *Sexuality Law* (**Carolina Academic Press 2005**). There is also a **2006 Teachers' Manual** available. Contact Carolina Academic Press, 700 Kent Street, Durham, NC 27701, tel. (919) 489-7486 to obtain review copies for classroom adoption, or also visit www.cap-press.com.

William N. Eskridge, Jr. (Yale Law School) and **Nan D. Hunter (Brooklyn Law School)** have a **2005 Supplement** to the Second Edition of their book, *Sexuality, Gender, and the Law* (Foundation Press 2003). A teacher's manual is also available. Faculty can request review copies at fdpress.com.

Positions Available

Human Rights Watch - Lesbian, Gay, Bisexual and Transgender Rights Program (New York Office)

Human Rights Watch ("HRW") is an international human rights monitoring and advocacy organization. HRW's Lesbian, Gay, Bisexual, and Transgender ("LGBT") Rights program is seeking a **Researcher** to focus on human rights abuses related to sexual orientation and gender identity and expression worldwide. The Researcher will be based preferably in HRW's New York headquarters, although other locations may be considered. **Qualifications:** An advanced degree in law, public health, international relations, gender studies, or a related field, and two to three years of experience in human rights, with a preferred emphasis in LGBT rights, gender, sexual rights, or a closely related area, are required. **APPLY** by emailing a letter of interest, resume, names or letters of reference, and a brief writing sample by **October 16, 2006 to** lgbt@hrw.org. Please use "LGBT Researcher Application" as the subject of your email. Only complete applications will be reviewed.

The University of Memphis

The University of Memphis, Cecil C. Humphreys School of Law is engaged in a national search to fill one or more entry-level and lateral positions. The School of Law has a strong institutional commitment to the diversity of its faculty and is very interested in receiving expressions of interest from persons who will add to its diversity. Likely curricular needs include debtor-creditor law, secured transactions, remedies, professional responsibility, and clinical education. Interested candidates should contact Kevin Smith at (901) 678-3230 or ksmith@memphis.edu.

AALS Section on Sexual Orientation and Gender Identity Issues

Chair	<p>Martha M. Ertman Visiting Professor, George Washington University Law School 2000 H St., N.W. Washington, DC 20052 (202) 994-0701 Email mertman@law.gwu.edu</p>
Chair-Elect	<p>Danielle Kie Hart Southwestern Law School 3050 Wilshire Boulevard Los Angeles, CA 90010-1106 Ph (213) 738-5720 Email dhart@swlaw.edu</p>
Immediate Past Chair	<p>David B. Cruz, University of Southern California Gould School of Law Ph (213) 740-6830 Email dcruz@law.usc.edu</p>
Executive Committee (Above Officers and the Following Persons)	<p>George Eugene Edwards, Indiana University School of Law, Indianapolis Email gedwards@indiana.edu</p> <p>Adele M. Morrison, Northern Illinois University College of Law Email amorrison@niu.edu</p> <p>Joan E. Schaffner, The George Washington University Law School Email jschaf@law.gwu.edu</p>
Newsletter Editor	<p>Mark E. Wojcik The John Marshall Law School 315 S. Plymouth Court Chicago, IL 60604 Ph: (312) 987-2391 Email: 7wojcik@jmls.edu</p>

Mandatory Disclaimer: Any views expressed in this newsletter are not necessarily those of the Association of American Law Schools or its Section on Sexual Orientation and Gender Identity Issues.