

# AALS-SOGI Newsletter

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

Spring 2011

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## *Don't Ask, Don't Tell . . . Isn't Dead Yet – Law Schools Need Interim Guidance on Amelioration*

By Mark E. Wojcik, The John Marshall Law School—Chicago

Military recruiting has been the long-term symbol of on-campus discrimination based on sexual orientation. Today, the “Don’t Ask, Don’t Tell” Policy is on its deathbed. But it hasn’t quite been repealed, and law schools have a continuing duty to ameliorate discrimination against LGBT students, staff, and faculty.

In February, the leadership of the AALS Section on Sexual Orientation and Gender Identity sent a letter to AALS President Michael A. Olivas (University of Houston Law Center) and AALS Executive Director Susan Westerberg Prather. In that letter, the section leaders asked the AALS Executive Committee to provide AALS member schools with guidance concerning their current amelioration obligations with respect to military recruiting.

The letter noted that although Congress has set into motion the eventual repeal of “Don’t Ask, Don’t Tell,” the DADT policy remains in effect until the new policy is

implemented. Indeed, even this year the military has continued to pursue some discharge prosecutions under DADT. Because it remains unclear whether the military can or will hire openly LGBT students and graduates, the section leaders called upon the AALS Executive Committee to provide interim guidance to member law schools about their obligations during this pre-implementation period.

Here are some excerpts from the letter sent by section leadership to the AALS in February:

It is our understanding that law schools should continue their amelioration efforts, as required by the AALS, with respect to military recruiting during the spring recruitment period. More generally, so long as the repeal of the historically discriminatory policy has not been implemented, law schools should still be expected to post the required notices when the military recruits on campus. These notices, of

course, can reflect the current state of the law. In other words, the notice should include the historic fact that the military recruitment policies under DADT violated the school's own non-discrimination policy as to LGBT job candidates – which is essentially what their historic posting burden has always been. The notice should also state that the discriminatory law has been repealed, but that the repeal has not yet been implemented.

Because it remains unclear whether the military can or will hire openly LGBT candidates during this interim period, the military may continue to be in violation of the school's non-discrimination policy. Students should be made aware of this current state of affairs.

In addition, law schools should continue during this period to provide other ameliorative efforts, as described in AALS policies. As always, such efforts should include, among other things,

providing help to LGBT job applicants to help offset the discriminatory impact of DADT.

The letter concluded that AALS member schools might “incorrectly believe that they no longer have an obligation to ameliorate in the wake of DADT's repeal.” To avert that misunderstanding, the section leaders urged the AALS to provide guidance to AALS member schools as soon as possible.

Readers of this newsletter can assist the section by advising the section leaders of any issues that have arisen in relation to AALS member schools and military recruitment of law students and graduates.

Our military will be better off when it stops discriminating against servicemembers based on their actual or perceived sexual orientation – factors irrelevant to the military mission. This section has fought a long battle to promote equality and end discrimination in the military and on law school campuses.

## ***From the Section Chair*** **Programs Proposed for the 2012 Annual Meeting**

By J. Kelly Strader, Southwestern University School of Law

The AALS Section on Sexual Orientation and Gender Identity has proposed two panels for the 2012 Annual Meeting, which will be held in Washington, D.C. from Wednesday,

January 4 to Sunday, January 8, 2012. The Section will also co-sponsor a program to mark the 40th anniversary of the federal law prohibiting sex discrimination in education.

The main panel proposed by the section is on the subject of Violence and the LGBT Community: Bullying, Bashing, and Sexual Assault. The panel will focus on hot topic issues surrounding hate crimes, violence, and the LGBT community. Issues will include bullying, cyberbullying, gay bashing, the so-called “gay panic” defense, prison violence, same-sex sexual assault, and other issues. The panel will also discuss underlying causes of violence, law enforcement indifference, and hostility to victims of violence. The panelists will include Bennett Capers (Hofstra University School of Law), James Esseks (Director of the ACLU National LGBT and AIDS Rights Projects), Dean Darby Dickerson (Stetson University College of Law), Cynthia Lee (The George Washington University Law School), and Margaret Winter (ACLU National Prison Project). Section Chair Kelly Strader will moderate. The section will hold its business meeting at the conclusion of this panel.

A second panel proposed for Washington is tentatively called “Out in the Classroom and in Academe.” This panel, which will be part of the AALS conference theme, which focuses on academic freedom in the legal academy. The panel will place the experiences, stories, and scholarship of sexual minorities at the center of the discussion. The panel will bring together leading legal academics who

have written on the challenges that gay, lesbian, bisexual, transgendered, and queer law professors face as teachers, scholars, and colleagues in the legal academy. The panelists are Jessica Feinberg (Mercer University Law School), Angela Gilmore (Nova Southeastern), Christine Littleton (UCLA), Dean Spade (Seattle University School of Law), and former Section Chair Frank Valdes (University of Miami School of Law). Section Treasurer Saru Matambanadzo (Tulane University) will moderate.

Because it is a second panel, it may be scheduled for Sunday morning on January 8, 2012. (Because this panel relates to the conference theme, we have requested a more convenient time slot; stay tuned.) When you book your flights to Washington, please book a Sunday afternoon flight so that you can attend the panel in case it is scheduled for Sunday morning.

In addition to its own two programs, the section plans to co-sponsor an extended, half-day program with the AALS Section on Education Law and the AALS Section on Sports Law. The program is called “An Examination of Title IX on its 40th Anniversary” and it will examine contemporary issues in Title IX law, including athletic participation, single-sex education, and bullying and harassment – all in the context of U.S. schools, colleges, and universities.

# Save the Date: Lav Law Conference

The next Lavender Law Conference and Career Fair, an event organized by the National LGBT Bar Association, will be held on September 8-10, 2011 in Los Angeles, California.

## From the Newsletter Editor

By Mark E. Wojcik, The John Marshall Law School—Chicago

Section Chair Kelly Strader asked me to revive our section newsletter. I didn't really expect to be doing so (having already served as section chair several years ago), but I know that the newsletter allows section members to communicate with each other and that it also helps inform others who want to try to keep up with the changes in our field.

Legal issues relating to sexual orientation and gender identity change so quickly these days—mostly (but not always) for the better. It seems almost impossible to keep up with all of the changes in state and

federal courts, state legislatures, and in foreign and international developments. Although we cannot keep track of everything, we can at least provide some information about developments in the field of legal education and within the AALS.

But to share information, we need your help. We invite you to contribute short articles, updates, news of upcoming conferences, and calls for papers. You can also tell us about your promotions, new publications, and other significant events that you would like to share with the readers of this newsletter.

## New Resources

***Out Serve Launches a New Magazine for Gay Military.*** A new newsletter for active military personnel who are LGBT is now available. Free electronic subscriptions are also available to civilian supporters. Get more information about the magazine and current issues facing LGBT military personnel at [outserve.org](http://outserve.org).

***Out at Work.*** A DVD documentary called “Out at Work” is now available from [www.newday.com](http://www.newday.com) for \$195 for universities (or \$99 for community organizations). It is described as “the classic documentary on gay and lesbian workplace discrimination.” The story involves Cheryl Summerville, a cook at a Cracker Barrel restaurant in Georgia who received a termination paper in 1992 stating that she

was being fired for “failing to demonstrate normal heterosexual values.” She discovered that it was legal in 40 states to fire someone based on their sexual orientation. The 56-minute video documents her story and two others as they seek workplace safety, job security, and benefits for LGBT workers. The DVD includes “2009 updates.” Also on the DVD is a second film called “Out at Work: America Undercover,” a 58-minute HBO special including the “shocking story of stock trader Mark Anderson’s brutal harassment at Cantor Fitzgerald.” The video can be used by student organizations and in connection with classes on sexual orientation law.

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### ***Mandatory Disclaimer***

*Views are expressed in this newsletter are not necessarily those of the Association of American Law Schools, its leadership, or even the Section on Sexual Orientation and Gender Identity Issues.*