

There are a number of topics that I would like to see us address next year. Accordingly, I plan to charge the committees with specific agenda items as well as the normal tasks of our standing committees. I encourage you to bring to the attention of the committees ideas that you have. I will expect committees to meet regularly and prepare reports with recommendations to the faculty. Committee members should plan their calendars to attend committee meetings and share in the work of the committees.

Below are the dates of faculty meetings. Notice I have scheduled them every three weeks. We should be able to conduct law school business during those meetings, especially if the committees are diligent and the faculty gives the committees the deference entitled to them. No classes taught by full-time faculty will be scheduled from 4:00 to 6:00 p.m. on Mondays, so that other faculty meetings may be scheduled when necessary. This time also may be used for committee meetings and informal faculty get-togethers (afternoon "tea").

Faculty Meetings (4:00 p.m. - 5:30 p.m.)

August 25

September 15

October 6

October 27

November 17

December 8

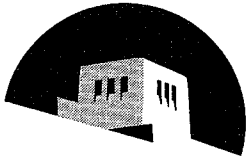
I am looking forward to the new academic year and to working with you in my new capacity. I am confident that we can make this even a better law school than it is if we all bring our ideas and aspirations to the venture.

Sincerely,



Robert J. Desiderio


RJD:mb



The University of New Mexico

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MEMORANDUM

TO: LAW FACULTY
FROM: ROBERT J. DESIDERIO, DEAN 
DATE: August 21, 1997
SUBJECT: FACULTY MEETING

**Faculty Meeting Agenda
Monday, August 25, 1997
Dean's Conference Room
4:00 p.m.**

1. Approval of Minutes of May 5, 1997, Faculty Meeting
2. Dean's Report
3. Military Recruiting on Campus Policy - Report Item (Attachment)
4. Faculty Senate Representative Election
5. Election of Faculty Representative to AALS Annual Meeting
6. 1997-98 Class Schedule
7. New Business

RJD:mb

Attachment

August 25, 1997

Faculty Meeting Minutes
School of Law
Dean's Conference Room, 4:00 p.m.

Present: Bergman, Bobroff, Browde, Burr, Creel, Desiderio, Ellis, Fort, Fritz, Gill, Gonzales, Hall, Hart, Kelly, Kovnat, Land, MacPherson, Martinez, Mathewson, Montoya, Moore, Norwood, Parnall, Rapaport, Schwartz, Taylor, Valencia-Weber.

Student Representatives: Mesco, O'Reilly

Others: Tom See, Karen Solomon

Absent: Blumenfeld, DuMars, Scales, Sedillo Lopez, Utton, Winograd, Zuni.

The meeting was called to order by Dean Robert Desiderio.

A motion was made by Professor Ruth Kovnat and seconded by Professor Margaret Montoya to approve the minutes of the May 5, 1997, faculty meeting as distributed. When voted on, the motion carried.

Dean's Report:

Dean Desiderio welcomed Professors Kip Bobroff and April Land to the law faculty. He also welcomed back Professors Barbara Bergman and Chris Fritz, who were visiting professors at U.C.-Hastings last year, Professor Rob Schwartz, who held the Arthur Grayson Distinguished Visiting Professor of Law and Medicine Chair at Southern Illinois University in Carbondale for the 1996-97 academic year, and Professor Fred Hart, who was on sabbatical last semester.

Dean Desiderio reported that Associate Dean Peter Winograd had left for Boston to attend the funeral of his mother. No details regarding the services were available.

Dean Desiderio announced that the deadline to sign up for work-study assistance is August 25 at 5:00 p.m. Anyone who was on work-study for the summer months will be continued, but there will be a delay in getting new people assigned until Dean Winograd is sure sufficient funds are available.

Dean Desiderio reported that there are 119 students in the new first year class which started last week.

Professor Rob Schwartz was a featured speaker at the Dorothy Turner Memorial Seminar "When Bad Genes Happen to Good People" on August 19, 1997.

Professor Dick Gonzales has been notified of the publication of his 1997 supplement to *Examination of Witnesses*.

Susan Mitchell, Director of Admissions and Financial Aid, received a letter of thanks for the presentation she gave at the 1997 LSAC Annual Educational Conference in Vancouver in May.

Professor Scott Taylor's presentation at the Symposium on Indian Gaming in October, 1996, at Arizona State University, was published in the Spring 1997 issue of the *Arizona State Law Journal*.

The Rozier E. Sanchez Judicial Education Center and Paul Biderman have received the 1997 Judicial Education Award from the judicial division of the American Bar Association. Among the criteria for the award were quality of training sessions and publications, new judge orientation, and mentoring efforts.

Dean Desiderio reported on several administrative changes on main campus—under the new reorganization all the vice presidents will now report to the provost. President Peck has resigned effective next year and a search committee will be formed this fall.

Dean Desiderio reminded faculty members to make individual appointments with him at the beginning of the fall semester to discuss any issues and concerns they may have.

Dean Desiderio announced that Professor Alfred Mathewson has accepted the position of Associate Dean at the Law School. Associate Dean Mathewson will be meeting on a regular basis with Dean Desiderio and Associate Dean Winograd.

Dean Desiderio has begun working on fundraising—the annual library fundraising drive letter is being prepared. The goal is to raise \$75,000, which, with the Regents' match of 1-3, would mean a total of \$100,000 raised for the library. Dean Desiderio announced that Jan Hosea has resigned effective at the end of the year, and that the law school, in conjunction with the main campus development office, will form a search committee to seek her replacement.

The annual Distinguished Achievement Award dinner will be held October 17, 1997, and will honor The Honorable E. L. Mechem, The Honorable Joe Wood, and Russ Moore. The annual campaign letter will go out after the dinner, asking alumni and friends to become a member of the Dean's group with a contribution of \$1,000 a year.

Dean Desiderio reported that because the law school received no money from the legislature last year for an addition to the building, the law school is on the capital projects list again this year. Dean Desiderio will be presenting the request to the CHE meeting on

September 10. The request for additional space comes in part because of the ABA site visit report done in 1993. As a follow-up to this site visit report, an ABA fact finder will visit the law school September 14-16.

Professor Mike Norwood reported on the remodeling of the computer center. At present, there are only a half dozen computers available to students, but Professor Norwood reminded the faculty that there are several computer pods on campus where law students can go to work. Susie Marbury has reduced her hours to half-time, and Toni Hart has been hired as a programmer on a full-time basis. Professor Norwood announced that e-mail distribution lists will be available soon and that starting next month, unclaimed printing will be discarded twice a week.

Dean Desiderio reminded the faculty of the "It's a New Year" party at his home on Sunday, September 7, and asked faculty to R.S.V.P. to Margaret Banek.

Associate Dean Alfred Mathewson expressed his optimism and enthusiasm for his new position and announced that there will be a monthly social gathering on Fridays, late in the afternoon, hosted by a member of the faculty.

Military Recruiting on Campus Policy:

Dean Desiderio reported that he had received a memo from AALS Executive Director Carl Monk (a copy of which was distributed to the faculty) advising law school deans that if they do not permit the military to use their placement facilities they risk losing Perkins funds and work-study moneys that are critical to many of their students. Dean Desiderio will keep the faculty advised on any new developments on this issue.

Election of Faculty Representative to the Budget Committee:

Dean Desiderio reported that he had been asked by Beulah Woodfin, President of the Faculty Senate, to ask the law faculty for a representative for the Budget Committee. Dean Desiderio stated he will reduce the faculty committee obligations to anyone who will serve on this important committee. Professor Suede Kelly said she would be willing to serve, and was elected by acclamation.

Election of Faculty Representative to AALS Annual Meeting:

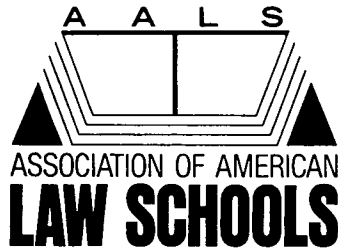
Dean Desiderio asked for nominations for faculty representatives to the AALS Annual Meeting. A motion was made by Professor Scott Taylor to re-elect Associate Dean Peter Winograd to serve as the delegate to the meeting. Professor Sherri Burr nominated Professor Taylor as the alternate. Professor Ruth Kovnat seconded the nominations, and when voted on, the motions carried.

The meeting adjourned at 5:00 p.m.

Respectfully submitted,

Margaret A. Banek
Margaret A. Banek

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August 13, 1997

RECEIVED AUG 18 1997

Memorandum 97-46

To: Deans of Member and Fee-Paid Schools

From: Carl C. Monk *ccm*

Subject: Military Recruiting at Law School Career Services Offices:
Update on Actions Regarding Executive Committee Regulation
6.19, the Obligation to Provide Equal Opportunity to Obtain
Employment Without Discrimination

Since 1990, when the AALS House of Representatives voted unanimously to amend Bylaw 6-4 to add "sexual orientation" to the list of protected categories under the Association's nondiscrimination provisions, the Association has been committed to requiring member schools to take the steps necessary to be in compliance with this policy. Among these steps, the Association has required, pursuant to Executive Committee Regulation 6.19, that employers that seek to use law school career services provide written assurance that they will not discriminate based upon sexual orientation or any other of the protected categories.

Nearly all employers asking to use law school services in recruitment now agree to certify that they do not discriminate on any of the bases enumerated in the bylaw. The troubling exception stems from the federal law that mandates the military to discriminate on the basis of sexual orientation. Accordingly, the difficult issues that our rules have presented involve our ban against military recruiters at member schools.

The United States Congress has sought to penalize the refusal of law schools and many other educational institutions to permit military recruiters to use their placement facilities. It has passed two statutes, the most recent one of which would bar a school that did not permit the military to recruit from receiving federal funds from various agencies, some of which provide money to law schools.

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Because the Executive Committee concluded that some schools would find it extremely difficult to forgo these funds, it has decided to excuse non-compliance with Executive Committee Regulation 6.19 only for military recruiters, as long as a school provides "amelioration" in a form that both expresses publicly the law school's disapproval of the discrimination against gays and lesbians by the military and provides a safe and protective atmosphere for gay and lesbian students.

Under the terms of these statutes, known popularly as the Solomon Amendments, a law school that refuses to permit access to military recruiters will lose funds they receive not only from the Department of Defense but also from the Departments of Education, Labor, Health and Human Services and other "related agencies." These funds include some financial aid for law students.

The Department of Education has not yet issued its regulations pursuant to the statute, but I have been advised by the Department's General Counsel's office that it has determined that Pell Grants and other grants made directly to students will not be affected by this legislation. On the other hand, it has determined that grants for students that are made through the school, such as Perkins Loan Funds and Work-Study funds, are covered by the legislation. Thus, law schools that do not permit the military to use their placement facilities risk losing Perkins funds and Work Study moneys that are critical to many of their students. They also risk losing research and other grants that their faculty obtain through these departments and agencies.

The potential financial consequences to American law students of the expanded Solomon Amendment are ominous. Last year, 140 law schools reported to the American Bar Association that their students received Work-Study funding, in an average amount per school of \$82,810. In addition, 133 law schools received Perkins Loan funds. Although it is not clear how much Perkins funding is at risk at each law school, it is clear that nearly 90 percent of American law schools stand to lose either Work-Study or Perkins Loan funds or both. The AALS has as yet been unable to determine how soon schools that refuse to permit the military to use their facilities are in jeopardy of losing funds or exactly what notice and process schools will receive before funds are terminated. The General Counsel's office in the Department of Education is still working on these issues and intends to issue regulations soon. We will, of course, advise schools as soon as we know more about the process and the timing.

The Executive Committee has considered at length the implications of the Solomon Amendment and the Department of Education's determination that the Amendment includes Perkins Loan and Work-Study funds. The Committee recognizes that the Amendment, as construed, places most law schools in the difficult position of either foregoing financial aid funds that are critical to their students or receiving the financial aid funds but failing to provide an environment that adequately protects its students from the experience of discrimination. The Committee believes that each school must be permitted to decide for itself how to resolve this conflict without being held in impermissible violation of the bylaws. Thus, so long as the Solomon Amendment remains in effect in its current form, each member school will be free to choose whether to continue to comply with the bylaw requirements as it applies to the military. Schools that choose not to comply will have their noncompliance excused so long as they engage

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in appropriate activities to ameliorate the negative effects that granting access to the military has on the quality of the learning environment for its students, particularly its gay and lesbian students.

Before making a decision to permit the military to interview, we urge each school to examine the actual extent of financial aid and other funds that it is at risk of losing, to explore ways of avoiding the loss of funds through turning to alternative sources, and to consider the range of ways that it might adopt to ameliorate the negative effects of granting access, if access were to be granted.

For purposes of compliance with the bylaws, schools that choose to permit access to the military may demonstrate adequate "amelioration" by a number of different actions. As a starting point, each school should assure that all its students, as well as others in the law school community, are informed each year that the military discriminates on a basis not permitted by the school's nondiscrimination rules and the AALS bylaws and that the military is being permitted to interview only because of the loss of funds that would otherwise be imposed under the Solomon Amendment (or, in appropriate cases, because of higher university directives that compel the law school to permit access). Other ameliorative acts that schools might consider include forums or panels for the discussion of the military policy or for the discussion of discrimination based on sexual orientation. Although no specific type of amelioration is required, the Executive Committee will examine the actions schools take in the context of the totality of the school's efforts to support an hospitable environment for its students. In assessing that environment, the Association will consider, among other things, the presence of an active lesbian and gay student organization and the presence of openly lesbian and gay faculty and staff. We would be grateful if schools would advise us of effective amelioration strategies in which they have engaged so that we can periodically share those strategies with other member schools.

As part of its own efforts to enable schools to provide hospitable environments for their students, the AALS has decided to seek permission from the court to file an amicus brief in the case of *Able v. United States*, in which Judge Eugene Nickerson of the Eastern District of New York has recently held that the military's "don't ask, don't tell" policy denies lesbians and gay men the equal protection of the laws. The United States has announced that it will appeal this ruling to the Court of Appeals for the Second Circuit. The AALS interest in the case stems from the fact that the military policy, coupled with the Solomon Amendment, directly affects member schools' capacities to assure a nondiscriminatory environment for their students.

cc: Executive Committee
Membership Review Committee
Chair, Section on Gay and Lesbian Legal Issues
Deans of Fee-Paid, Non-member Schools

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