

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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STUDENT MEMBERS OF SAME :
(STUDENT/FACULTY ALLIANCE FOR MILITARY :
EQUALITY), a Yale Law School student organization, and : 3:03 CV 1867 (JCH)
OUTLAWS, a Yale Law School student organization, :
Plaintiff, :
- against - : April 8, 2004
DONALD H. RUMSFELD, in his capacity as U.S. :
Secretary of Defense. :
Defendant. :
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LOCAL RULE 56(a)(1) STATEMENT

Plaintiffs OutLaws and Student Members of SAME (Student/Faculty Alliance for Military Equality) (“SAME”) contend that there is no genuine issue to be tried with respect to the following material facts:

The Parties

1. SAME is an officially recognized student organization of Yale Law School. Declaration of Darren Cohen, dated February 18, 2004, ¶ 10.¹
2. SAME has forty-eight members who come from each class at the law school who are gay, lesbian, bisexual or straight. *Id.* ¶ 11.
3. One of SAME’s purposes is to promote through education and activism the message of nondiscrimination at the law school. *Id.* ¶¶ 9, 13.

¹ Witness declarations are attached in alphabetical order to the Declaration of Carmine D. Boccuzzi, dated April 7, 2004 (“Boccuzzi Decl.”).

4. OutLaws is an officially recognized student organization of Yale Law School. Declaration of Michael Kavey, dated February 18, 2004, ¶ 3 (“Kavey Decl.”).

5. Approximately thirty students are official members of OutLaws, and each member of OutLaws is gay, lesbian or bisexual, although not every student member is open about his or her sexual orientation. Id. ¶ 5.

6. OutLaws’ membership includes students from each class at the law school. Id. ¶ 5.

7. One goal of OutLaws is to educate the Yale Law School and wider community about legal issues affecting gay, lesbian, bisexual and transgender persons. Id. ¶ 4.

8. The memberships of both SAME and also OutLaws include students who chose to attend Yale Law School because its nondiscrimination policy protects students from discrimination on the basis of sexual orientation. Declaration of Fadi Hanna, dated February 18, 2004, ¶¶ 3-5, 10 (“Hanna Decl.”); Declaration of Heather Sias, dated February 19, 2004, ¶¶ 1-3; Declaration of John Tye, dated February 17, 2004, ¶¶ 1, 3-4.

Federal Funding at Yale University

9. Yale University and its various schools and departments receive over \$200 million in federal funding for such matters as biological and medical research, including but not limited to research on AIDS, asthma, and cancer. Research grants are also awarded for many other areas of research, including such non-medical fields as particle physics. Declaration of John Maloney, dated April 5, 2004, ¶¶ 18-19.

10. None of Yale University’s federal funding is granted pursuant to a program whose purpose is the recruitment of law school students for military service as members of the Judge Advocate General’s Corps. Id. ¶ 20.

11. Yale Law School does not use any federal funding for the purpose of employer recruiting of law school students or placement of law school students with employers. Id. ¶ 20.

The Nondiscrimination Policy at Yale Law School

12. In 1978, Yale Law School amended its nondiscrimination policy to include sexual orientation as a protected category. Declaration of Robert A. Burt, dated April 6, 2004, ¶ 8 (“Burt Decl.”); 1978-1979 Yale Law School Bulletin at 108-109 (Boccuzzi Decl. Ex. A).

13. The current version of Yale Law School’s nondiscrimination policy states: “Yale Law School is committed to a policy against discrimination based upon age, color, handicap or disability, ethnic or national origin, race, religion, religious creed, gender (including discrimination taking the form of sexual harassment), marital, parental or veteran status, sexual orientation, or the prejudice of clients.” 2003-2004 Yale Law School Bulletin at 129 (Burt Decl. Ex. D).

14. The Yale Law School nondiscrimination policy applies to all activities at the law school. Burt Decl. ¶ 6.

Recruiting at Yale Law School

15. The Career Development Office (“CDO”) at Yale Law School sponsors two interview programs each year, the Fall Interview Program (“FIP”) and the Spring Interview Program (“SIP”). Declaration of Barbara Safriet, dated April 5, 2004, ¶ 3 (“Safriet Decl.”); Declaration of Theresa Bryant, dated April 5, 2004, ¶ 3 (“Bryant Decl.”).

16. FIP and SIP interviews take place at the Holiday Inn, a hotel near the law school campus, but not on the campus of Yale Law School or Yale University. Safriet Decl. ¶ 3; Bryant Decl. ¶ 3.

17. The activities of the CDO, including FIP and SIP, are conducted in accordance with the Yale Law School nondiscrimination policy. Safriet Decl. ¶ 4; Bryant Decl. ¶ 6.

18. Specifically, the CDO requires that all employers who take part in CDO-sponsored interview programs, such as FIP and SIP, sign a form (the “Nondiscrimination Form”) affirming that their employment practices conform with the nondiscrimination policy. Safriet Decl. ¶ 5; Bryant Decl. ¶ 6.

19. Employers who do not or cannot sign the Nondiscrimination Form are not permitted to participate in FIP or SIP. Safriet Decl. ¶ 5; Bryant Decl. ¶ 6.

20. Regardless of whether an employer signs the Form, all employers are permitted to meet with students or student groups on campus at the invitation of any student or student group. Safriet Decl. ¶ 7; Bryant Decl. ¶¶ 9-10.

21. Students’ names, places of residence, levels of education, academic majors and degrees are publicly available in the Yale Law School Facebook, a publication containing student and faculty information published by the law school. Bryant Decl. ¶ 11.

22. E-mail addresses and mailing addresses for individual students are available through the Yale University website, and listed telephone numbers can also be obtained by calling the Yale University telephone operator. *Id.* ¶ 11.

Military Recruiting at the Law School

23. Boccuzzi Decl. Exhibit J is a true and correct printout of the website <http://www.jag.navy.mil/Careers/CareersFAQ3.htm>.

24. Military recruiters have refused to sign the Nondiscrimination Form affirming that their employment practices conform with the nondiscrimination policy, or else

have signed an altered version. Safriet Decl. ¶ 6; Bryant Decl. ¶ 12; see also Letter from Tracy to Keidel of June 15, 2001 (Boccuzzi Decl Ex. D); 10 U.S.C. § 654.

25. Because the military recruiters cannot sign the Nondiscrimination Form, from 1978, up to and including 2001, the military was not permitted to participate in FIP or SIP. Safriet Decl. ¶ 6; Bryant Decl. ¶ 12; see also Letter from Studley to Clausen of May 8, 1994 (Boccuzzi Decl Ex. L); Letter from Studley to Joy of June 30, 1986 (Boccuzzi Decl. Ex. M).

26. On or about May 29, 2002, Col. Tate sent a letter to President Levin. (“May 29, 2002 Letter”) (Boccuzzi Decl. Ex. G).

27. In response to the May 29, 2002 Letter, the faculty of Yale Law School voted to suspend the nondiscrimination policy as it applies to military participation in FIP and SIP. Burt Decl. ¶ 21.

28. Attached as Exhibits B-C, E-F, H-I, K and N to the Boccuzzi Declaration

are true and correct copies of the following documents:

EXHIBIT	DOCUMENT
B	Yale Law School Nondiscrimination Form, as executed by Kristen Keidel of the U.S. Navy JAG Corps on June 20, 2001
C	Letter dated December 17, 2001 from Col. Clyde J. Tate, II to Yale University President Richard C. Levin.
E	Letter dated January 14, 2002 from President Levin to Col. Tate.
F	Letter dated March 31, 1998 from Yale Law School Associate Dean Barbara J. Safriet to Lt. Col. Moore.
H	Letter dated January 6, 2003 from Army Col. Michele M. Miller to President Levin.
I	Letter dated May 29, 2003 from Deputy Under Secretary of Defense (Military Personnel Policy) William J. Carr to President Levin.
K	Printout of the website http://www.earlham.edu/policies/rel-life.html .
N	Letter dated March 16, 1998 from Army Lt. Col. Diana Moore to Yale Law School Dean Anthony Kronman.

Effects of Military Participation in FIP and SIP on the Law School Community

29. Since the fall of 2002, military recruiters have been permitted to participate, and have participated, in each FIP and SIP sponsored by the CDO. Safriet Decl. ¶ 6; Bryant Decl. ¶ 13.

30. To date, no Yale Law School student has accepted employment with the military as a result of the military's participation in FIP or SIP. Bryant Decl. ¶ 15.

31. Since the military first began to participate in FIP and SIP, OutLaws has been forced to speak in favor of the nondiscrimination policy and against military participation in the interview programs in order to distance itself from the message that discrimination on the basis of sexual orientation is acceptable. Kavey Decl. ¶ 11.

32. Part of SAME's mission is to counteract the military's message of discrimination that the law school is being forced to support through the military's participation in the interview programs. Hanna Decl. ¶ 11.

33. Now that the military participates in FIP and SIP, an employer who will not hire for a permanent position an otherwise interested student because of that student's sexual orientation is permitted to participate in the law school's official interview programs.

Declaration of Adam Sofen, dated February 18, 2004, ¶ 6.

Dated: Bridgeport, Connecticut
April 8, 2004

Respectfully submitted,

COHEN AND WOLF, P.C.

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