

April 24, 2002

To my fellow L55 Classmates:

I feel compelled, as a matter of principle, to resign as Class Agent. I want you to understand my reasons.

This decision is not an easy one for me. You know that, from almost our graduation (at least from about the time I returned from serving in the Air Force), I have not hesitated in my support of Yale Law School, both in personal contributions and in my duties as Class Agent, repeatedly requesting your contributions.

I learned late last year that Yale Law School bars the U.S. Military from participating in the employment interviewing program for law students. The reason for this discrimination against our military forces is that the "don't ask, don't tell" policy of the U.S. Military is regarded as violative of the Law School's self-imposed rule that it will provide this service only to potential employers who do not discriminate on the basis of, among other factors, sexual orientation.

When I first learned this, I wrote Dean Kronman, explaining my disagreement with this policy discriminating against the U.S Military. I provide two basic reasons:

1. I have always believed that a basic tenet of Yale Law School is teaching the right of all students to have, express, and learn about views with which others might disagree -- including on the issue of homosexual rights. A corollary is the respect given to the students' right of free choice, to say and to listen to, and invite to speak (even one-on-one in an interview) those expressing, an opinion, unencumbered by rules of what is supposedly politically correct imposed by administration, faculty or other students. Our courts have upheld this right even for high school students. See, *e.g.*, *Chambers v. Babbitt*, 145 F. Supp.2d 1068, 1073 (D. Minn. 2001):

"Maintaining a school community of tolerance includes the tolerance of such viewpoints as expressed by 'Straight Pride.' While the sentiment behind the 'Straight Pride' message appears to be one of intolerance, the responsibility remains with the school and its community to maintain an environment open to diversity and to educate and support its students as they confront ideas different from their own."

That description of the responsibilities of an educational institution should apply, in my view, to Yale Law School as well.

2. Having learned of this Yale Law School policy after the unfortunate events of September 11<sup>th</sup>, and our country's reliance and burden imposed on our military, it is unthinkable that Yale Law School would make it more difficult for our military to recruit first rate people (my description of Yale Law School students). Can you imagine Yale Law School refusing to allow the U.S. military to interview students during World War II because of the much more stringent and clear anti-homosexual policy at that time? I cannot. And I believe that our country is again fighting an enemy which avows our destruction -- making this discrimination against our military equally unthinkable.

Dean Kronman, whom I respect and regard as both a born leader and a fine human being, has been very courteous in responding to my letters -- indeed visiting with me in New York for a thorough discussion. But, in the end, my requests to have the policy changed or, as an opener, to have public discussion of this issue among students, faculty members, and alumni (I volunteered), were rejected in favor of the status quo.

Dean Kronman has argued to me that the Law School's discrimination against the U.S. Military is not very substantial. He points out that "the Law School makes it easy for any employer, regardless of its hiring practices, to contact our students directly." Thus, he argues, that it is only "a difference of kind . . . between providing employers with the information they need to contact our students on their own," and the Law School's interviewing program which is "sponsored and directly organized by the Law School." If there is no real difference, why discriminate against the military? Of course, there is a material impact -- it sends the politically correct message to the students that Yale Law School does not approve of service in the military. A student has the right to that view, just as a student has the right to choose the military without interference, by suggestion, implicit or express, that the Law School does not approve that choice.

With regard to the argument that the policy is required in order to avoid "appearing to invite ... all students notwithstanding that the prospective employer [the U.S. military] had a hidden intention of" not hiring "a predetermined group [homosexuals] from among these applicants": first, it is inconceivable that Yale Law School students are unaware of the "don't ask don't tell" policy (I do not dwell on the issue whether that policy in fact precludes any person from employment because of sexual persuasion); and second, I suggested that, if that were a real worry, a policy of full disclosure would solve it.

I applaud Dean Kronman's defense, in his last letter to me, of "freedom of expression" at the Law School, which "requires that, short of physical violence, anyone be permitted to say anything in any forum sponsored by the School." That means that the Law School would allow any invited speaker, whether for or against, for example, homosexuality, to use Law School-provided rooms, chairs, etc.; the Law School properly would not prohibit that speaker's access to the Law School on the ground that students could set up a locale outside of the School to hear the speaker. That discriminatory treatment of the U.S. Military should also not be sanctioned.

It is because of the Law School's anti-U.S. military policy -- inimical to my understanding of academic freedom and our obligation as responsible citizens to support our military with the most capable human resources -- that I am resigning as Class Agent and will not further contribute until our Law School reverses its position.

I would, of course, be happy to receive any comments. Also, I hope to continue to see you at reunions.

Sincerely,

GW:jm

Gerald Walpin

P.S. If you would like to see a copy of the correspondence that I had with Dean Kronman in this regard, I would be happy to send it to you on request.

April 3, 2002

Mr. Gerald Walpin  
575 Madison Avenue  
New York, NY 10022

Dear Jerry,

At the beginning of the spring term, I asked my colleague Bo Burt, currently the Chair of the Law School's Placement Policy Committee, to explore whether the School should consider revising its current practice of requiring all employers who participate in the interviewing process managed by the School's Career Development Office to sign a form declaring that they do not discriminate on the basis of race, ethnicity, religion, sex, or sexual preference. I told Bo that in addressing this issue, I wanted him to consult with the members of his Committee and with other faculty and staff, as he thought appropriate.

I asked Bo to undertake this assignment for two reasons. First, any change in the School's existing placement policy could only be accomplished by a vote of the faculty and any proposal to make such a change would, in the normal course, come from the Placement Policy Committee, which is a committee of the faculty appointed by the dean (in this case, by me last July). Second, I wanted an independent check on my own views. I wanted the question that you and I have discussed to be given a fresh review. In explaining to Bo the nature of his assignment, I stated my views, did the best I could to state the case of abolishing the School's anti-discrimination requirement, declared the question to be, in my own mind, a close one, and urged Bo to consider it afresh and to give no special weight to my own position. Without mentioning you by name, I told Bo that a concerned alumnus had challenged the appropriateness of our anti-discrimination policy and that I had discussed the matter with him.

Yesterday I received a letter from Bo stating it to be the view of all with whom he spoke, on the Committee and off, that the Law School should not eliminate its current anti-discrimination requirement in CDO sponsored interviewing. I have inclosed a copy of Bo's letter so that you might have a clear idea of the reasoning behind his judgment.

The judgment, as you know, is one I share. Because my own reasons are quite close to those outlined in Bo's letter, I don't think it necessary that I repeat them in detail here. To Bo's letter, I would add only a few brief observations of my own.

Letter to Gerald Walpin  
April 3, 2002

Page two

First, I draw a distinction between freedom of expression and freedom of access to opportunities the Law School makes available and supports. Freedom of expression requires that, short of physical violence, anyone be permitted to say anything in any forum sponsored by the School. That is a principle the School, and I, embrace with deep conviction, and that I am prepared to defend against all the assaults on it in the name of "community," "sympathy" and the like-all the values that have been invoked on behalf of the so-called "speech codes" that have been adopted in recent years at other institutions. When it comes to freedom of access, however-to the freedom of students to take classes, attend special lectures, work as research assistants for members of the faculty and, in general, to take advantage of all opportunities the Law School affords them-I strongly believe that a principle of non-discrimination must be respected: that these opportunities must be open to all students on equal terms, regardless of their race, gender, ethnicity, religion or sexual preference.

Second, I believe that any activity sponsored and directly organized by the Law School, as CDO's off-campus interviewing program is, must be counted as an opportunity afforded by the School to its students, and hence subject to the same non-discrimination requirement that all such opportunities should be.

Third, as Bo's letter emphasizes, the Law school makes it easy for any employer, regardless of its hiring practices, to contact our students directly, and to identify those student who may have a special interest in its work. If it is objected that this too is a form of Law School support, indistinguishable in principle from the support we provide to the employers in the CDO managed interviewing process, I would respond that there is a difference in kind between the two, between providing employers with the information they need to contact our students on their own, and structuring these contacts themselves, as we do in the CDO process-a difference large enough to make the latter, but not former, a Law School sponsored opportunity subject to the School's policy of equality of opportunity.

I have given this matter considerable thought, Jerry, and have asked others on the faculty to do so as well, in a spirit of independent inquiry. Given the Law School's commitment to equality of opportunity in all aspects of its own institutional life, and its preparedness, at the same time, to make it as easy as possible for all other students, including those who do not share this commitment, to shape their professional careers, the current regime, though not free of tension seems to me the best one we could have. This tension could, I suppose, be eliminated, in one direction or the other, but only by sacrificing something of value to the School and its students. The result would be, perhaps, a more consistent practice, but a less humane and morally responsive one-a practice of the sort that Burke criticized as having virtues more metaphysical than real.

Letter to Gerald Walpin  
April 3, 2002

Page three

Thanks for your patience in waiting for a reply. I value enormously your good will and devotion to the School. Needless to say, I would be happy to talk with you further about Bo's letter, my letter, or any of the questions surrounding this difficult issue.

Best,

Tony Kronnman

Attachment

April 2, 2002

Dean Anthony Kronman  
Yale Law School

Dear Tony:

As you requested, I convened a meeting with faculty members and administrators – Vicki Schultz, Carroll Lucht, Barbara Safriet, Steve Yandle and Terri Bryant – to advise whether you should direct the Placement Policy Committee to re-examine the Law School's current, longstanding non-discrimination policy regarding prospective employers.

The current policy offers the assistance of our Career Development Office in scheduling employment interviews with our students only to prospective employers who do not categorically refuse employment based on applicants' race, ethnicity, religious preference, gender or sexual preference. Our assistance to qualifying employers provides nothing more than this: a listing on the computerized interview schedule so that any student may choose a time to meet with the prospective employer. We do not permit any employment interviews to be conducted in law school facilities; all such interviews must take place "off-campus," typically in downtown hotel rooms rented for this purpose. Moreover, on request, our CDO provides full contact information to both qualifying and non-qualifying employers regarding all of our students (name, e-mail address, and expected date of graduation). CDO also provides all prospective employers, on request, a listing of all student organizations so that any employer can initiate contact based on the special interests of the student members of the organizations.

Our policy thus does not bar access by any prospective employer to any student. Our policy does demand, however, that all of our students who choose to consult the interview schedule administered by our Career Development Office have an equal opportunity to be interviewed by all listed prospective employers. If we were to permit interview listings by discriminating employers, two options would present themselves: either the employer would explicitly avow its restrictive hiring policy or its policy would not be avowed but would nonetheless guide its offers of employment. The first option is unacceptable on the basis of our commitment as an educational institution to all of our students; Yale Law School welcomes and supports each of its students and withholds no institutional benefit from any of them based on their race, ethnicity, religious preference, gender or sexual preference. The idea that the Law School would actively administer an interviewing schedule that bestows special advantages to some students based on these characteristics directly violates our commitment to equality among our students. The second option is, if anything, even more offensive to our educational mission, since it would implicate the Law School in a falsehood by appearing to invite scheduled

interviews with all students notwithstanding that the prospective employer had a hidden intention of hiring only a predetermined group from among these applicants.

We acknowledge that some of our students might be interested in securing employment with employers who do follow a restrictive hiring policy. We do not impose any obstacles on these students in seeking out such employers and, though our policy of providing information regarding both individual students and student organizations to any requesting employer, we permit the possibility that restrictive employers might initiate contact with potentially interested students. But the interests of some of our students to take advantage of discriminatory preferential treatment by prospective employers should not, in our judgment, take precedence over the educational responsibility of the Yale Law School in all of its institutional activities to provide equal treatment to all of our students, regardless of race, ethnicity, religious preference, gender or sexual preference.

On these grounds we have unanimously concluded that the current policy should not be changed and, accordingly, we recommend that you do not initiate a re-examination of this policy by the Policy Placement Committee.

Sincerely,

Robert A. Burt