1997

Don't Ask Don't Tell: A Discussion about Homosexuality in the Military (Program)

Institute of Bill of Rights Law at the William & Mary Law School
“DON’T ASK, DON’T TELL”

a discussion about
Homosexuality in the Military

KEYNOTE SPEAKER

CHAI FELDBLUM
ASSOCIATE PROFESSOR OF LAW
GEORGETOWN UNIVERSITY LAW CENTER

Also featuring a panel of distinguished experts
and a moot court argument on the constitutionality
of the “Don’t Ask, Don’t Tell” policy.

UNIVERSITY CENTER COMMONWEALTH AUDITORIUM
6:00 to 9:00 P.M. THURSDAY, MARCH 27, 1997
The Institution of Bill of Rights Law was established in 1982 at the College of William and Mary, Marshall-Wythe School of Law, to support research and education on the Constitution and Bill of Rights. The programs and publications of the Institute are designed to enrich the educational experience of law students, broaden public knowledge, promote scholarly research, and facilitate creative public policy solutions to conflicts involving constitutional issues.

The Student Division of the Institute of Bill of Rights Law was established to foster dialogue and promote research among law students. An integral part of the Institute, the Student Division enhances the educational opportunities of students and promotes thoughtful resolution of political and social problems.

**The 1997 Student Symposium**  
**Organization Committee**

Directors: W. Lewis Glenn  
Renee Esfandiary  
Faculty Advisor: Paul Marcus  
Moderator: Neal Devins  
Moot Court Director: Stephanie R. Zapata  
Moot Court Author: Audra A. Dial  
Publicity Director: James Gibson  
Publication Directors: Rachel L. Smith  
Laurie Young  
Logistics Director: Bill Snidow

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- The Institute of Bill of Rights Law  
- The Military Law Society  
- The College of William and Mary Speakers Fund  
- The Student Bar Association

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- Faye Shealy  
- Gloria Todd  
- Charles Young  
- Jayne Barnard  
- Neal Devins  
- Kim Welsh  
- Connie Galloway  
- Mike Grable  
- Eliza Hutchison  
- Tom Krattenmaker  
- Anita Hamlin  
- The Law and Arts Society
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INSTITUTE OF BILL OF RIGHTS LAW

Student Division

“Don’t Ask, Don’t Tell”
A Discussion on Homosexuals in the Military

March 27, 1997

6:00 Welcome
6:05 Opening Address
6:25 Moot Court Exercise
7:05 Deliberation and Decision by Justices
7:20 10 Minute Break
7:30 Panel Discussion and Questions
8:25 Questions from the Audience
8:55 Closing Remarks
**Synopsis of Case**

Major Kerry Weaver was dismissed from the United States Army pursuant to Department of Defense Regulation § 654 ("Don't Ask, Don't Tell Policy"), after she revealed to her commanding officer that she was a lesbian. The Review Board determined that Weaver failed to rebut the presumption created by her statement that she had engaged in or had the propensity to engage in homosexual conduct. Ms. Weaver is appealing a decision from the Fourteenth Circuit which upheld the "Don't Ask, Don't Tell" policy as constitutional.

Ms. Weaver claims that the policy violates her First Amendment right to free speech because she was punished only after she stated that she was homosexual. The Government contests this claim, arguing that the policy is not a speech restriction; instead, the policy is a carefully crafted plan that regulates only homosexual conduct. Ms. Weaver also claims that the policy violates her right to equal protection as guaranteed by the Fourteenth and Fifth Amendments because the policy is applied unequally between homosexuals and heterosexuals, and because the policy is applied unequally among homosexuals, targeting only those who speak out. The Government claims that the policy is applied equally to all members of the military, not just homosexuals. Finally, Ms. Weaver claims that she was denied her constitutional right to due process of law because the presumption is irrebuttable in practice. The Government claims the presumption is rebuttable and that the regulation itself lends guidance on how to effectively rebut the presumption. In addition, the Government claims that heightened deference should be granted to the military in examining the constitutionality of the "Don't Ask, Don't Tell" Policy.

The Court has granted certiorari on the following questions:

1. Whether Department of Defense Regulation § 654 ("Don't Ask, Don't Tell" regulation) violated petitioner's right to free speech as guaranteed by the First Amendment?

2. Whether the military's decisions pertaining to homosexual issues should be given heightened deference from the Court in examining the constitutionality of the "Don't Ask, Don't Tell" regulation?

3. Whether the "Don't Ask, Don't Tell" regulation violates the petitioner's right to due process?
The Advocates

for the petitioner
David W. Lannetti
Allan Palacio

Alternates
Deanna Griffith
Kevin T. Streit

for the respondent
Marte Barnacle
Kevin O'Neill

Alternates
Kellam T. Parks
Michael Pascual

The Justices

Chief Justice Alan J. Meese, Assistant Professor of Law, College of William and Mary
Judy Ledbetter, Adjunct Professor, College of William and Mary
Michael Grable, Third Year Law Student, College of William and Mary
Joseph Kiefer, Second Year Law Student, College of William and Mary
Colleen Kotyk, Second Year Law Student, College of William and Mary

The Panel

Chai Feldblum, Associate Professor of Law, Georgetown University Law Center
C. Dixon Osburn, Co-Executive Director and Co-Founder, Servicemembers Legal Defense Fund
Robert Raben, Democratic Counsel on the House Judiciary Committee's Subcommittee on Courts and Intellectual Property
Anthony J. Steinmeyer, Assistant Director, Appellate Staff, Civil Division, Department of Justice
Melissa Wells-Petry, Founder and Legal Counsel, Family Research Council Military Readiness Project
William A. Woodruff, Professor of Law, Norman Adrian Wiggins School of Law, Campbell University
**BIOGRAPHICAL INFORMATION**

**Neal Devins** is a Professor of Law and Lecturer in Government at the College of William and Mary. Professor Devins received his A.B. from Georgetown and his J.D. from Vanderbilt. Prior to joining the William and Mary faculty in 1987, he was Assistant General Counsel for the United States Commission on Civil Rights, and Project Director for the Institute for Public Policy Studies at Vanderbilt.

**Chai Feldblum** is an Associate Professor of Law at Georgetown University Law Center in Washington, D.C. and Director of the Federal Legislation Clinic at the law school. Professor Feldblum graduated from Barnard College in 1979 and received her J.D. from Harvard Law School in 1985. From 1988 to 1991, Professor Feldblum served as the Legislative Counsel for the ACLU AIDS Project and Lesbian and Gay Rights Project. In 1993, she served as the Legal Director for the Campaign for Military Service. Professor Feldblum now serves as a legal consultant to the Human Rights Campaign.

**Michael Grable** is a third year law student at the College of William and Mary. Mr. Grable is a member of the National Moot Court team and is the Topic and Research Editor of the William and Mary Law Review. He received his A.B. from Duke University.

**Judy Ledbetter** is an Adjunct Professor at the College of William and Mary. Professor Ledbetter received her B.A. from the University of Colorado and her J.D. from the University of California. She formerly served as a trial attorney and as an Assistant Branch Director in the Federal Programs Branch, Civil Division, United States Department of Justice.

**Joseph Kiefer** is a second year law student at the College of William and Mary. Mr. Kiefer is a member of the National Moot Court team. He received his B.S. from the U.S. Naval Academy, and presently serves as a Captain in the United States Air Force.

**Colleen Kotyk** is a second year law student at the College of William and Mary. Ms. Kotyk is a member of the Moot Court team. She received her B.A. (Cum Laude) from Harvard University.

**Alan Meese** is an Assistant Professor of Law at the College of William and Mary. Professor Meese received his A.B. from William and Mary and his J.D. from the University of Chicago, where he was Comment Editor on the Law Review. After law school, he served as a judicial clerk to the Honorable Frank H. Easterbrook of the United States Court of Appeals for the Seventh Circuit and Justice Antonin Scalia of the United States Supreme Court.
C. Dixon Osburn is the Co-Executive Director and Co-Founder of the Servicemembers Legal Defense Network. Mr. Osburn is responsible for all operations and financing of the legal aid and watchdog organization for military members harmed by the “Don’t Ask, Don’t Tell” policy. In 1993 he was an attorney and policy advocate for the Campaign for Military Service. Mr. Osburn received his A.B. with distinction from Stanford University and his J.D./M.B.A. from Georgetown University. In 1994 he was awarded the GAYLAW Distinguished National Service Award.

Robert Raben is the Democratic Counsel on the House Judiciary Committee’s Subcommittee on Courts and Intellectual Property. He has also been Counsel to Congressman Barney Frank (D—MA) for the 103rd, 104th and 105th Congresses. Mr. Raben is an Adjunct Professor of Law at Georgetown Law School, where he teaches Professional Responsibility as well as Sexual Orientation and the Law. He practices law at D.C.’s Arnold and Porter. He is graduate of New York University Law, and the Wharton School of Finance.

Anthony J. Steinmeyer is the Assistant Director, Appellate Staff, Civil Division of the Department of Justice. He served for two years as an Army officer and as an instructor on the appellate advocacy at the Attorney General’s Advocacy Institute, the Department of Justice Legal Education Institute, and at the Army’s Judge Advocate General School. Mr. Steinmeyer has been extensively involved in the court of appeals cases concerning the former and present policies regarding homosexuals in the military. He has participated in the defense of all of the appellate cases involving the current policy. Mr. Steinmeyer received his B.A. from the College of William and Mary and his LL.B. from Harvard Law School.

Melissa Wells-Petry is one of the founders of the Family Research Council Military Readiness Project. She presently serves as the Project’s Legal Counsel. Formerly a Major in the United States Army, she served as a military lawyer in Germany, Panama, Kuwait and at the Pentagon. Mrs. Wells-Petry is the author of Exclusion: Homosexuals and the Right to Serve, a book explaining the legal, social and political bases for the military’s homosexual exclusion policy. Mrs. Wells-Petry is a graduate of the University of Florida and the University of Florida College of Law. She also holds a Masters of Law in Military Law from The Judge Advocate General’s School in Charlottesville, Virginia.

William A. Woodruff is a Professor of Law at the Norman Adrian Wiggins School of Law at Campbell University. Professor Woodruff received his B.A. from the University of Alabama and his J.D. (Magna Cum Laude) from the University of South Carolina. He served as Special Attorney for the United States Department of Justice, and is a former Army officer. From 1991 to 1992, Professor Woodruff served as the Chief of the Litigation Division in the Office of the Judge Advocate General in Washington D.C.
Addendum

Due to unforeseen circumstances, Melissa Wells-Petry is unable to attend the symposium.

We would like to give special thanks to Horace Hunter and Michael Pascual for their assistance as Publicity Chairs.

In addition, we would like thank Krista Newkirk for her last minute help in all areas.