

CORRECTING THE RECORD: ELENA KAGAN ENFORCED HARVARD'S ANTIDISCRIMINATION POLICY

RHETORIC: Republican Senators claim that Elena Kagan, in protest of the military's discriminatory Don't Ask, Don't Tell policy, was advancing a personal, anti-military agenda and violated the law.

Elena Kagan: In Her Own Words

"Senator Leahy, military recruiters had access to Harvard students every single day I was dean...I'm confident that the military had access to our students and our students had access to the military throughout my entire deanship. And that's incredibly important because the military should have the best and brightest people it can possibly have in its forces." -- Elena Kagan, June 29, 2010

Elena Kagan enforced Harvard's longstanding antidiscrimination policy, not her personal agenda.

FACT: Harvard Law School implemented its non-discrimination policy in 1979, and like many law schools throughout the country, the school requires employers to sign a statement that they do not discriminate.

- Harvard Law School adopted its nondiscrimination policy in 1979, long before Elena Kagan ever attended Harvard Law School as a student, and two decades before she became an acting professor and ultimately its dean. Under Don't, Ask Don't Tell, gays and lesbians are not allowed to serve openly in the military.

FACT: Kagan's position was in line with those of her predecessor, Dean Robert Clark, and Harvard President Larry Summers, both of whom worked to reconcile Harvard Law's competing goals of promoting military recruiting but also enforcing policies against discrimination in recruiting.

- In 1998, the Department of Defense determined that Harvard's alternative arrangement for military recruitment **complied with the Solomon Amendment**, and an Air Force JAG recruiter wrote to Dean Clark, thanking him for "providing our military recruiters a **degree of access to students that is equal in quality and scope to that afforded to other employers.**" (Letter from an Air Force JAG Recruiter to Dean Robert Clark, Aug. 31, 1998)
- **Harvard Law School's policy successfully providing alternative access to military recruiters was in place until 2002, when the Department of Defense changed course, requiring stricter enforcement of the Solomon Amendment.** Despite the successful policy that was already in place, Dean Clark reluctantly permitted military recruiters to use OCS so that Harvard University as a whole would not lose its federal funding. **This was the same policy to which the law school briefly returned in spring 2005 when a federal appeals court had ruled the Solomon Amendment to be unconstitutional.**

Elena Kagan ensured the military had access to Harvard Law School students.

- In a *Washington Post* op-ed, one Harvard Law School veteran stated, "In my opinion, **Kagan's positions never affected the services' ability to recruit at Harvard.** Behind the scenes, the dean **ensured that our tiny HLS Veterans Association never lacked for funds or access to facilities.** Recruiters simply could not use the school's Office of Career Services." (Capt. Robert Merrill, "A Veteran's Harvard Ally - Elena Kagan," May 21, 2010)
- Kagan ensured that the **military had access to Harvard Law School students and campus** through the school's Veterans Association. Capt. Merrill said, "**If anything, Kagan was an activist in ensuring that military recruiters had viable access to students and facilities.**"