

Ortag re: approp. victories

→ DoJ wants to cover civilians
(^{then} think their language does that)

EC:
→ If students covered in same way as other
people (under conduct not becoming regs).

We may need an exemption for education programs
for national origin that we operate.

EC to talk to Helen @ DoD

DOD
Foreign nat.
Rel/S.O.

10/2/98

2 issues < Beef up Title IX reggs
Provide Title IX / Title VI protection w/in the federal sector

Was decided that this e.o. would only apply to civilian programs.

Bob W. (?) — That e.o. would not cover military academies or programs.
Elenak. ✓

Women's groups wanted to get to DoD K-12 schools. Didn't care about anything beyond that.

Nothing in UCMJ that directly addresses discrimination.

§ 892 (Article 92) > conduct unbecoming an officer.
§ 933 (Article 133) > ~~for~~

Q: If branches have directives/reggs on non-discrimination,

Not Title VIII and not those that are "in the military"
(includes w/in the academies)

Decision not to cover the academies (?)

Why not (?)

Rationale: members of academies become
uniformed military personnel

CRT: would not have a problem w/ covering the military
academies.

They wanted to reach civilians and state & local
govts. being trained or educated
by military academies

Why does DoD want exemption for civilians = state/locals (?)

Double
check

fed. employees
being trained by
DoD

that if an ^{civilian} employee of agency X and go for an
educ. training program @ agency Y ^(DoD) and suffer
discrimination, can sue ~~the~~ agency Y under
Title VII.

CRT: ~~we~~ have agreed to exempting uniformed military
personnel, but not civilian personnel.

Under this
order:

Fed employees trained by DoD would not be covered
by this order, but covered by Title VII.

→ [state and locals (?)]

Coverage of military academies (?)

Is exemption from Title IX consistent w/ our
position in VMI (?)

single
sex
classrooms or
schools (?)

There may be some military training @ academies
(that may be single sex).

E.O. 3-305

BIA schools sometimes separate boys/girls

An exception

to conform w/
tribal custom

for
Combat (?)

Does Title IX itself exempt the academies? Yes.

But why should that decide the issue?

Title IX also doesn't cover these programs

Q: are these educational institutions or military training

Students @ academies are included ~~as~~ (in statute) as part of uniformed service.

Are we prepared to extend Title IX / VI protections to uniformed members of military depts.?

Regs / Directives & interpreting UCMJ re: sex/race discrimination

National origin

Want to allow U.S. to discrimin based on national origin. (training Chilean anti-terrorists)

Sex Origin / Religion

THE WHITE HOUSE

WASHINGTON

June 17, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Strengthening Title IX Enforcement and Addressing Discrimination on the Basis of Sex, Race, Color, and National Origin in Federally Conducted Education Programs and Activities

As we commemorate the 25th anniversary of Title IX of the Education Amendments of 1972, we should pause to recognize the significant progress our Nation has made in increasing educational possibilities for women and girls and recommit ourselves to the goals of this important legislation. Title IX has broken down barriers and expanded opportunities -- opening classroom doors, playing fields, and even the frontiers of space to women and girls across this country.

My Administration is working hard to expand further opportunities for women and girls. We have stepped up enforcement of civil rights statutes in areas such as access to advanced math and science programs. We have issued policy guidance on racial and sexual harassment and on ensuring equal opportunities in intercollegiate athletics. We have aggressively litigated cases presenting significant issues of discrimination, including cases challenging the exclusion of women from the Virginia Military Institute and the Citadel. My Administration has also sponsored an education campaign to help young girls build skills, confidence, and good health. Finally, my Administration has reaped the benefits of an ever-increasing pool of superbly qualified women, making it possible for me to appoint record numbers of women to my Cabinet, judicial posts, and to high levels of decision-making throughout the Federal Government.

Yet more needs to be done. Our Nation can reach its full potential only when all of our citizens have the opportunity to reach their full potential and contribute to our society. Today, I am announcing two important next steps in our fight to reach true equality in education.

First, I am directing executive departments and agencies to develop vigorous, new Title IX enforcement plans. We must ensure that all Federal agencies that provide financial assistance to education programs or activities take all necessary steps to ensure that programs and institutions receiving Federal money do not discriminate on the basis of sex.

I therefore direct all heads of executive departments and agencies that provide financial assistance to education programs or activities, following consultation with the Attorney General, to report to me within 90 days on measures to ensure effective enforcement of Title IX. This should include a description of department or agency priorities for enforcement, methods to make recipients of Federal financial assistance aware of their obligation not to discriminate, and grievance procedures to handle Title IX complaints. In accordance with Executive Order 12250, the Attorney General should coordinate implementation of these measures.

Second, I am asking executive departments and agencies to take appropriate action against discrimination in education programs or activities conducted by the Federal Government. Currently, Title IX generally prohibits discrimination based on sex -- and Title VI of the Civil Rights Act of 1964 generally prohibits discrimination on the basis of race, color, or national origin -- in education programs or activities that receive Federal financial assistance. However, these laws do not apply to comparable education programs or activities that are conducted by the Federal Government. I believe it is essential that the Federal Government hold itself to the same principles of nondiscrimination in educational opportunities that we now apply to education programs and activities of State and local governments and private institutions receiving Federal financial assistance.

Applying these principles to appropriate Federally conducted education programs and activities will complement existing laws and regulations that prohibit other forms of discrimination in Federally conducted education programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973) and discrimination based on race, color, religion, sex, or national origin against Federal employees (prohibited by Title VII of the Civil Rights Act of 1964).

I therefore direct all heads of executive departments and agencies to report to the Attorney General within 60 days:

(2) describing any substantive or procedural issues that might arise under these education programs or activities related to prohibiting discrimination based on sex, race, color, and national origin in the program or activity, in order to aid in determining where application of remedial efforts would be appropriate.

On the basis of these reports, I intend to issue an Executive order implementing appropriate restrictions against sex, race, color, and national origin discrimination in Federally conducted education programs. I direct the Attorney General to report to me within 60 days after receiving these reports with the results of her review and a proposal for an appropriate and effective Executive order.

William A. Carter

NATION BASED ON NDNESS

ation; exceptions.
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commencing planned change

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RENCES

for the homeless, see 42 USCA § 290

services Act, see 42 USCA § 10406.

USCA § 1577.

block grants, see 42 USCA § 708.

es block grants, see 42 USCA § 300w-7.

20 USCA §§ 3041, 3042.

Insurance Association, see 20 USCA

STED LEGAL RESEARCH

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1681. Sex

Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be
cluded from participation in, be denied the benefits of, or be
subjected to discrimination under any education program or activi-
ty receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this sec-
tion shall apply only to institutions of vocational education,
professional education, and graduate higher education, and to
public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admis- sions

in regard to admissions to educational institutions, this sec-
tion shall not apply (A) for one year from June 23, 1972, nor
for six years after June 23, 1972, in the case of an educational
institution which has begun the process of changing from being
an institution which admits only students of one sex to being an
institution which admits students of both sexes, but only if it is
carrying out a plan for such a change which is approved by the
Secretary of Education or (B) for seven years from the date an
educational institution begins the process of changing from
being an institution which admits only students of only one sex
to being an institution which admits students of both sexes, but
only if it is carrying out a plan for such a change which is
approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution
which is controlled by a religious organization if the applica-
tion of this subsection would not be consistent with the reli-
gious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably

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42 USCA s 2000e-16

42 U.S.C.A. § 2000e-16

**This document has been amended. Use UPDATE.
See SCOPE for more information.**

**UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER VI--EQUAL EMPLOYMENT OPPORTUNITIES**

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Current through P.L. 105-175, approved 5-11-98

§ 2000e-16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, and in the Government Printing Office, the General Accounting Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers, issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section

through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall--

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity

Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.. [FN1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

CREDIT(S)

1998 Electronic Update

(Pub.L. 88-352, Title VII, § 717, as added Pub.L. 92-261, § 11, Mar. 24, 1972, 86 Stat. 111, and amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 96-191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub.L. 102-166, Title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub.L. 104-1, Title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8.)

[FN1] So in original.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. House Report No. 92-238 and Conference Report No. 92-899, see 1972 U.S. Code Cong. and Adm. News, p. 2137.

1980 Acts. Senate Report No. 96-540, see 1980 U.S. Code Cong. and Adm. News, p. 50.

1991 Acts. House Report No. 102-40 (Parts I and II), Interpretative Memorandum, and Statement by President, see 1991 U.S. Code Cong. and Adm. News, p. 549.

1995 Acts. Related House No. 104-650 (Parts I and II) and Related Senate Report No. 104-397, see 1995 U.S. Code Cong. and Adm. News, p. 3

References in Text

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

"This Act", referred to in subsec. (e), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title of 1964 Acts note set out under section 2000a of this title and Tables.

Amendments

1995 Amendments. Subsec. (a). Pub.L. 104-1, § 201(c)(1), inserted provisions relating to Government Printing Office and General Accounting Office and struck out provisions relating to legislative branch.

1991 Amendments. Subsec. (c). Pub.L. 102-166, § 114(1), increased time within which aggrieved employee or applicant may file civil action from within 30 days of receipt of notice of final action to within 90 days of receipt of such notice.

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5 USCA s 102

5 U.S.C.A. § 102

**UNITED STATES CODE ANNOTATED
TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART I--THE AGENCIES GENERALLY
CHAPTER 1--ORGANIZATION**

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Current through P.L. 105-175, approved 5-11-98

§ 102. Military departments

The military departments are:

The Department of the Army.

The Department of the Navy.

The Department of the Air Force.

CREDIT(S)

1996 Main Volume

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 378.)

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1966 Acts. The section is supplied to avoid the necessity for defining "military departments" each time it is used in this title. See section 101(8) of title 10.

CROSS REFERENCES

"Agency of the United States" as meaning a military department as defined in this section for purposes of immunity of witnesses provisions, see 18 USCA § 6001.

Attorney General to advise Secretaries of military departments, see 28 USCA § 513.

Discrimination prohibited in personnel actions affecting military department employees or applicants for employment on account of--

Age, see 29 USCA § 633a.

Race, color, religion, sex, or national origin, see 42 USCA § 2000e-16.

"Employee" as meaning civilian in military departments defined under this section for purposes of Fair Labor Standards Act provisions, see 29 USCA § 203.

"Executive agency" as meaning military department as defined in this section for purposes of provisions relating to--

Office of Federal Procurement Policy, see 41 USCA § 403.

Public contract disputes, see 41 USCA § 601.

"Executive or military department" as meaning any agency listed under this section for purposes of flag display provisions, see 36 USCA § 175.

"Federal agency" as meaning military department as defined in this section for purposes of provisions relating to--

Passenger carrier use, see 31 USCA § 1344.

Patent rights in inventions made with Federal assistance, see 35 USCA § 201.

Small business research and development aid, see 15 USCA § 638.

Technology innovation, see 15 USCA § 3703.

"Federal executive agency" as meaning military department as defined in this section for purposes of provisions relating to--

Tax-related returns involving persons receiving Federal executive agency contracts, see 26 USCA § 6050M.

Veterans' employment and reemployment rights, see 38 USCA § 4303.

"Government" and "entity of the Government" as including any military department as defined by this section for purposes of Committee for Purchase from the Blind and Other Severely Handicapped provisions, see 41 USCA § 486.

Organization--

Air Force, see 10 USCA § 8011 et seq.

Army, see 10 USCA § 3011 et seq.

Navy, see 10 USCA § 5011 et seq.

Spent nuclear fuel generated or owned by any department of United States under this section--

Interim Storage Fund, see 42 USCA § 10156.

Nuclear Waste Fund, see 42 USCA § 10222.

LIBRARY REFERENCES

Administrative Law

National defense, see 32 CFR §§ 626.1 et seq. and 627.1 et seq.

American Digest System

Establishment and organization of armed services, see Armed Services k4.

Encyclopedias

Composition or constituent elements of armed services, see C.J.S. Armed Services §§ 13 to 17.

Military departments, see C.J.S. Armed Services § 19.

15 Am Jur 2d, Civil Rights §§ 98, 295

21 Am Jur 2d, Criminal Law § 217

Texts and Treatises

16 Fed Proc, L Ed, Government Officers and Employees, § 40:241

2 Fed Proc L Ed, Administrative Procedure (1994) § 2:23

2 Fed Proc, L Ed, Administrative Procedure, § 2:271

33 Fed Proc, L Ed, Witnesses, §§ 80:150, 170

Bkr-L Ed, Statutes and Rules § 64:51

NOTES OF DECISIONS

**Army and Air Force Exchange Service 2
Personnel within section 1**

5 USCA § 102

END OF DOCUMENT

1. Personnel within section

"Military departments" referred in this section describing military departments of country include not only uniformed personnel of various ranks and grades but also men and women employed in civilian capacities; term "military department" as thus defined is not interchangeable with term "armed forces" as defined in general military law. Johnson v. Alexander, C.A.8 (Mo.) 1978, 572 F.2d 1219, certiorari denied 99 S.Ct. 579, 439 U.S. 986, 58 L.Ed.2d 658, rehearing denied 99 S.Ct. 1061, 439 U.S. 1135, 59 L.Ed.2d 98.

2. Army and Air Force Exchange Service

In determining proper defendant to be sued, Army & Air Force Exchange Service by statutory definition is not executive department, military department, executive agency, or independent establishment, and commander of AAFES was accordingly not head of department, agency, or unit, so as to make him proper defendant, in employment discrimination action under the Age Discrimination in Employment Act, Title VII, and the Rehabilitation Act. Honeycutt v. Long, C.A.5 (Tex.) 1988, 861 F.2d 1346.

5 U.S.C.A. § 102

1984 Amendment

Pub. L. 98-525, Title VII, § 705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted "Members of the Selected Reserve" for "Enlisted Members of the Selected Reserve of the Ready Reserve" in item for chapter 106.

Pub. L. 98-525, Title XII, § 1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

1983 Amendment

Pub. L. 98-94, Title IX, § 925(a)(2), Title XII, § 1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted "or" for "and" in item for chapter 60.

ORGANIZATION AND GENERAL MILITARY POWERS

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HISTORICAL AND STATUTORY NOTES

port for" for "Cooperation With" and "Agencies" for "Officials" in item for chapter 18.

1987 Amendment

Pub. L. 100-180, Div. A, Title III, § 332(c), Dec. 4, 1987, 101 Stat. 1080, substituted "Humanitarian and Other Assistance" for "Humanitarian and Civic Assistance Provided in Conjunction With Military Operations" in item for chapter 20.

Pub. L. 100-26, § 9(b)(4), Apr. 21, 1987, 101 Stat. 287, added item for chapter 21.

1986 Amendment

Pub. L. 99-661, Div. A, Title III, § 333(a)(2), Nov. 14, 1986, 100 Stat. 3859, added item for chapter 20.

Pub. L. 99-433, Title VI, § 605(a), Oct. 1, 1986, 100 Stat. 1075a, added items for chapters 2 and 6, inserted "and Functions" in item for chapter 3, substituted "Office of the Secretary of Defense" for "Department of Defense" in item for chapter 4, substituted "151" for "141" as section number in item for chapter 5, reenacted item for chapter 7 without change, and inserted "and Department of Defense Field Activities" in item for chapter 8.

-190, Div. A, 1991, 105 Stat. t Matters" for ating to chap-

XI, § 1104(b), stituted "Sup-

CHAPTER 1—DEFINITIONS

§ 101. Definitions

(a) In general.—The following definitions apply in this title:

(1) The term "United States", in a geographic sense, means the States and the District of Columbia.

(2) The term "Territory" (except as provided in section 101(1) of title 32 for laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States) means any Territory organized after August 10, 1956, so long as it remains a Territory.

(3) The term "possessions" includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Territory or Commonwealth.

(4) The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) The term "uniformed services" means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.

(6) The term "department", when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(7) The term "executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(8) The term "military departments" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(9) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(10) The term "service acquisition executive" means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department.

(11) The term "Defense Agency" means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term "Department of Defense Field Activity" means an organizational entity of the Department of Defense—

§ 801. Article 1—Definitions

In this chapter:

(1) The term "Judge Advocate General" means, severally, the Judge Advocate General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term "record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

(As amended Dec. 6, 1983, Pub.L. 98-209, §§ 2(a), 6(a), 98 Stat. 1393, 1400; Dec. 4, 1987, Pub.L. 100-180, Div. A, Title XII, § 1231(17), 101 Stat. 1161; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1233(f)(1), 102 Stat. 2057; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1141(b), 110 Stat. 467; Oct. 11, 1996, Pub.L. 104-287, § 7(5), 110 Stat. 3400.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 11(y) of the Atomic Energy Act of 1954, referred to in par. (15), is section 11(y) of Act Aug. 1, 1946, c. 724, as added and amended, which is classified to section 2014(y) of Title 42, The Public Health and Welfare.

1996 Amendments

Pars. (15), (16). Pub.L. 104-106, § 1141(b), added pars. (15) and (16).

10 § 801

Note 19

ry interpretation. *Stout v. Hancock*, C.C. A.S.C.1944, 146 F.2d 741, certiorari denied 65 S.Ct. 1086, 325 U.S. 850, 89 L.Ed. 1971.

Interpretation of this chapter by the President and the military authority is entitled to great weight. *Liles v. U.S.*, D.C.N.C.1957, 153 F.Supp. 54.

GENERAL MILITARY LAW SUBT.

Rulings of administrative officers charged with execution of statutes affecting the Army are entitled to great weight. *Richardson v. Zuppann*, D.C.Pa.1949, 81 F.Supp. 809, affirmed 174 F.2d 829.

§ 802. Art. 2. Persons subject to this chapter.

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

Rulings of administrative officers with execution of statutes affecting are entitled to great weight. *Rich v. Zuppann*, D.C.Pa.1949, 81 F.Supp. 174 F.2d 829.

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the control of the Secretary of

United States and outside the following: Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) of this section and a change of status from civilian to member of the armed forces shall be effective upon taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

Aug. 10, 1956, c. 1041, 70A Stat. 37; June 25, 1959, Pub.L. 86-70, § 6(b), 73 Stat. 412; July 12, 1960, Pub.L. 86-624, § 4(b), 74 Stat. 411; Sept. 7, 1962, Pub.L. 87-651, Title I, § 104, 76 Stat. 508; Nov. 2, 1966, Pub.L. 89-718, § 8(a), 80 Stat. 1117; Nov. 9, 1979, Pub.L. 96-107, Title VIII, § 801(a), 93 Stat. 810; Dec. 12, 1980, Pub.L. 96-513, Title V, § 511(24), 94 Stat. 2922; Oct. 12, 1982, Pub.L. 97-295, § 6(b), 96 Stat. 1314.

Historical and Revision Notes

1956 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
502	50:552.	May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

Explanatory Notes

In clause (1) [subsec. (a)(1)], the words "members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8) [subsec. (a)(1) and (8)], the words "of the United States" are omitted as surplusage.

In clause (3) [subsec. (a)(3)], the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4) [subsec. (a)(4)], the word "reserve" is omitted as surplusage.

In clauses (4) and (5) [subsec. (a)(4) and (5)], the word "members" is substituted for the word "personnel".

In clause (8) [subsec. (a)(8)] the word "members" is substituted for the word "personnel".

In clauses (11) and (12) [subsec. (a)(11) and (12)], the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of", "all", and "territories" are omitted as surplusage.

In clause (12) [subsec. (a)(12)], the words, "Secretary concerned" are substituted for the words "Secretary of a Department".

CROSS REFERENCES

Judge Advocates General of Army, Navy, and Air Force, see 10 USCA §§ 3037, 5148, 8037.

WEST'S FEDERAL PRACTICE MANUAL

Extent of judicial functions of Claims Court in military pay cases, see § 1865.

LAW REVIEW AND JOURNAL COMMENTARIES

Fact finding in the courts of military review. Judge John Powers, 44 Baylor L.Rev. 457 (1992).

Making intramilitary tort law more civil: A proposed reform of the Feres doctrine. David Schwartz, 95 Yale L.J. 992 (1986).

Military justice: Removing the probability of unfairness. 63 U.Cin.L.Rev. 439 (1994).

NOTES OF DECISIONS

Military judge 20

9. — Force and effect

Juhl v. U.S., Ct.Cl.1967, 383 F.2d 1009, 181 Ct.Cl. 210, certiorari granted 88 S.Ct. 1635, 390 U.S. 1038, 20 L.Ed.2d 300, reversed on other grounds 89 S.Ct. 528, 393 U.S. 348, 21 L.Ed.2d 537, [main volume] on remand 187 Ct.Cl. 727.

Although it was not error for convening authority to assign all marines to court-martial of naval officer since marines were members of same armed force as naval officer, such action presented image of unfairness and attitude of unnecessary inflexibility where large concentration of naval personnel was within hour's driving time of situs of the trial. U.S. v. Negron, NCMCMR 1984, 19 M.J. 629.

15. Accuser

Person who has been ordered or coerced into preferring charges becomes "accuser" and, therefore, is disqualified from acting as convening authority. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

Alleged improper action by battalion commander, who lacked authority to convene special court-martial empowered to impose bad-conduct discharge, did not give rise to potential error in

referral of charges, because even if battalion commander was de facto accuser, he was not convening authority. U.S. v. Drayton, ACMR 1994, 39 M.J. 871, review granted 43 M.J. 170, affirmed 45 M.J. 180.

Lieutenant general was "accuser" lacking authority to convene court-martial to enforce his own order not to operate privately owned vehicle on base for two years; lieutenant general was so closely connected to the offense that reasonable person could conclude that lieutenant general had personal interest in the matter. U.S. v. Byers, ACMR 1992, 34 M.J. 923, reconsideration denied, review granted in part 36 M.J. 32, set aside 37 M.J. 73.

Convening authority was an accuser and disqualified to convene court-martial where convening authority was person who directed that charges nominally be signed and sworn to by another and had an interest other than official interest in prosecution of accused. U.S. v. Corcoran, CMA 1984, 17 M.J. 137.

20. Military judge

Appellate military judge is not "military judge" within meaning of rule entitling party to voir dire of military judge regarding possible ground for disqualification. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

[See main volume for text of (1) and (2)]

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

[See main volume for text of (4) to (10)]

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

CR REFERENCES

Army, Navy, and
37, 5148, 8037.

FEDERAL PRACTICE MANUAL

Claims Court in

VIEW AND JOURNAL COMMENTARIES

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ctrine. David

NOTES OF DECISIONS

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wealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

[See main volume for text of (c)]

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

- (A) investigation under section 832 of this title (article 32);
- (B) trial by court-martial; or
- (C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

- (A) on active duty; or
- (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

- (A) be sentenced to confinement; or
- (B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(As amended Dec. 6, 1983, Pub.L. 98-209, § 13(a), 97 Stat. 1408; Nov. 14, 1986, Pub.L. 99-661, Div. A, Title VIII, § 804(a), 100 Stat. 3906; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1234(a)(1), 102 Stat. 2059; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1133(b), 110 Stat. 466.)

HISTORICAL AND STATUTORY NOTES

1996 Amendments

Subsec. (e). Pub.L. 104-106, § 1133(b), added
subsec. (e).

1988 Amendment

Subsec. (a)(11), (12). Pub.L. 100-456 struck
out "the Canal Zone," following "and outside".

1986 Amendment

Subsec. (a)(3). Pub.L. 99-661, § 804(a)(1),
substituted "on inactive-duty training, but in the
case of members of the Army National Guard of
the United States or the Air National Guard of
the United States only when in Federal service"
for "they are on inactive duty training autho-
rized by written orders which are voluntarily
accepted by them and which specify that they
are subject to this chapter".

Subsec. (d). Pub.L. 99-661, § 804(a)(2), ad-
ded subsec. (d).

1983 Amendment

Subsec. (a)(11). Pub.L. 98-209, § 13(a)(1)(A),
substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the
Commonwealth of" before "Puerto Rico".

Subsec. (a)(12). Pub.L. 98-209, § 13(a)(1)(A),
substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the
Commonwealth of" before "Puerto Rico".

Subsec. (b). Pub.L. 98-209, § 13(a)(2), struck
out "of this section" following "subsection (a)".

Effective Date of 1986 Amendment

Section 804(e) of Pub.L. 99-661 provided that:
"The amendments made by subsections (a)
[amending subsec. (a)(3) and enacting subsec. (d)
of this section] and (b) [enacting section 803(d)
of this title] shall apply only to an offense com-
mitted on or after the effective date of this title
[as provided in section 808 of Pub.L. 99-661, set
out as a note hereunder]."

Section 808 of Pub.L. 99-661 provided that:
"Except as provided in sections 802(b), 805(c),
and 807(b) [set out as notes under sections 850a,
843, and 806 of this title, respectively], this title
and the amendments made by this title [amend-
ing sections 802(a)(3), 825, 860, 936, and 937 of

FORCE MANAGEMENT
POLICYASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

31 DEC 1997

Bill Lann Lee, Esquire
Acting Assistant Attorney General
Civil Rights Division
Washington, D.C. 20530

Dear Mr. Lee:

This letter responds to questions raised by your office regarding completion by the Department of Defense of its inventory of the civilian education programs or activities it conducts, in support of the President's initiative related to preventing discrimination in civilian education programs or activities conducted by the Federal Government. It also completes the inventory of civilian education programs or activities conducted by the Department of Defense.

The Department of Defense fully supports this initiative, as announced by the President. I and my staff on August 25 provided to you with an interim listing of those civilian education programs or activities conducted by the Department of Defense which meet the definition of "education program or activity" contained in the President's letter of June 17, 1997 and the guidance you provided in your letter of July 14, 1997. With the attached submissions from the National Guard Bureau and the Director, Defense Research and Engineering, you have my assurance, as requested by your staff, that the Department of Defense inventory listing now is complete. The survey referenced in our August 25 letter produced no additional civilian education programs or activities for inclusion in the inventory.

Since the question of scope appears to have resurfaced, however, let me take this opportunity to reiterate the views of the Department of Defense regarding this matter. It is our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.

The President's memorandum does not refer to or contemplate addressing education programs or activities whose primary purpose is to train military members, e.g. "military" training and education programs or activities, as opposed to "civilian" training and education programs and activities. My understanding is based on the President's June 17, 1997 memorandum (especially paragraph (1) on page 3) and on discussions between our respective offices and the White House, before the President's initiative was announced, over how best to handle the exclusion of these military education and training programs. We have used this



understanding in developing the inventory listing initially provided to your office in August and completed today.

It also is important to note that military personnel are not Department of Defense or Military Service "employees." Military personnel are subject to and protected by the Uniform Code of Military Justice (UCMJ) (10 U.S.C. chapter 47). They are individuals who have voluntarily enlisted or accepted appointment into the armed forces of the United States, thereby changing their status from "civilian" to "member of the armed forces" and subjecting themselves to military authority, including the potential for criminal prosecution under the UCMJ. Unlike "employees," they cannot unilaterally change their status or resign from their positions ("quit their jobs") at any time.

In addition, the armed forces, themselves, are based on a unique construct of command authority, known as the military chain of command, enforced through the UCMJ. Military members are both subject to and protected by the UCMJ. Conduct which prejudices the good order and discipline of the armed forces, including prohibited discrimination, already can be charged as a crime under the UCMJ. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the command structure, to enforce prohibitions against discrimination, including those based on race, sex, national origin and color. Superimposing external structures on the armed forces in order to duplicate prohibitions against discrimination in military training and education programs is unnecessary and could significantly damage the military command structure.

Military training and education programs are governed generally and, in some cases, specifically, by statute, in particular title 10 of the U.S. Code. The purposes of these programs are often conceptually and substantively different than those of programs conducted for civilians, whether they are civilian Government employees or members of the public. Additionally, military training and education, particularly basic training, advanced individual training, advanced skills training, officer candidate training, and the senior service schools, are intended to teach and enhance skills which those entering the military do not possess, e.g., military discipline, military combat and combat support, and military command.

In addition to, and apart from, the matter of military training and education programs, I also would like to respond to the President's direction that the Department identify and describe those substantive and procedural issues which we anticipate might arise as a result an initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education programs and activities (as you further defined them in your July 14 letter). Initially, we note that this initiative could run counter in certain respects to Congressionally mandated preference programs, such as the National Security Agency's Undergraduate Training and Assistance Program and the Defense Intelligence Agency's Undergraduate Training Program. These programs, which require that preferences be accorded to certain minority groups, provide, *inter alia*, funding for the undergraduate education of individuals who will subsequently work in

certain fields for NSA and DIA. A Presidential executive order mandating that the Department not discriminate based on race, sex, color or national origin in these education and training programs might be read as conflicting with such requirements.

Your July 14 letter asked that, for purposes of this initiative, the Department of Defense list in its inventory of Federally conducted education and training programs its occupational training programs attended by any student who is not a Department of Defense employee, whether that student is an employee of other Federal agency, a State or local agency, or a member of the public. We are concerned that including internal Department of Defense education and training programs directed at Department of Defense civilian employees, which also may be open to some civilian employees of other agencies, could have a substantially negative impact on those programs. Since all Federal employees already have substantive statutory protections, their inclusion would not support the goal of the President's initiative of expanding the scope of protection against discrimination based on sex, race, color and national origin to include education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. It would provide, in effect, duplicative protections, with the potential for duplicative and, possibly, contradictory remedies.

We are concerned that, if the approach envisaged by the July 14 letter were adopted, organizations of the Federal Government, including the Department of Defense components, would close their education and training programs to civilian employees of sister agencies. This would deny all employees involved, both Defense and non-Defense personnel, the benefits and richness of experience that such joint training can provide. It also may force agencies which currently rely on these training and education programs to expend additional resources either to establish training programs of their own or to contract for training.

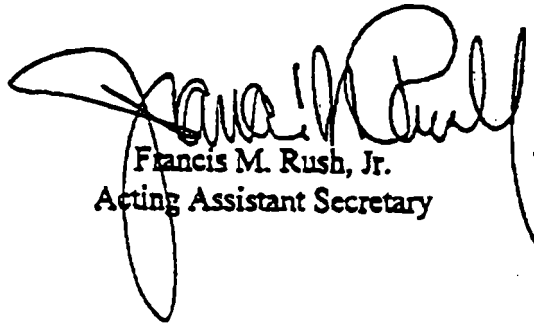
Alternatively, it may eliminate these training opportunities for outside employees all together. This would be particularly harmful for those communities of interest which cross Departmental and agency lines, such as the Intelligence Community, the Drug Enforcement community, and the Counter-Terrorism community. It would also run counter to current initiatives within these communities to foster joint training and educational opportunities in order to further broad Governmental objectives in each of these areas.

In sum, this Department fully supports the President's initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education and training programs, such as the Department of Defense Dependents Schools and the Department of Defense Domestic Dependent Elementary and Secondary Schools. We do not support changing the scope of this initiative to include military training and education programs. In addition, we have concerns regarding the potential conflict between an imprecisely drafted executive order and existing Congressional mandates for preferences for minorities in certain Department of Defense education programs. We also are concerned that inclusion of education and training programs established by the Department of Defense for its civilian employees that also are open to civilian employees of other Government agencies will have the effect of closing

training opportunities to those non-Defense employees, as well as running counter to other current initiatives that foster joint participation in training and education opportunities in various interdepartmental communities of interest within the Executive Branch.

The letter has been coordinated with the Office of the General Counsel of the Department of Defense.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis M. Rush, Jr.", with a large, stylized flourish extending from the bottom left.

Francis M. Rush, Jr.
Acting Assistant Secretary

Attachment:

cc (with attachment):

General Counsel, DoD

David Ogden, Esquire

Counselor to the Attorney General

Loretta King, Esquire

Deputy Assistant Attorney General (Civil Rights)

Name of Agency: National Guard Bureau Counterdrug Directorate

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies, and Possible Impediments
Multijurisdictional Counterdrug Task Force Training (MCTFT)	\$3,824,000. Courses are provided tuition-free.	13,800 (E) Federal, State and Local Police Officers in Conventional Classes; 400 (E) in Law Enforcement Distance Learning and 25,000 (E) Drug Demand Reduction Community Coalition personnel.	To instruct Law Enforcement Officers to investigate and prosecute narcotic cases within a multijurisdictional counterdrug task force, and how to avail their agencies to military support resources.	Congressionally directed. MCTFT will not discriminate on the basis of race, color, religion, sex, age, national origin, marital status, or against any qualified handicapped individual, in its employment and/or admission practices and treatment of students.
National Interagency Civil-Military Institute (NICI)	\$3 Million. Courses are provided tuition-free.	867 (A) Federal, State and Local Police Officers, DoD personnel involved in the Counterdrug field, Drug Demand Reduction personnel and community coalitions.	Provide training to military and civilian leaders on the interagency processes required for effective military support to civil authorities thus enhancing the interoperability of the military with Federal, State and Local counterdrug operations, Demand Reduction Activities and Disaster/Civil Emergency Support.	32 USC 112. Students are admitted to courses provided by NICI without regard to their race, sex, color, religion, age, marital status or national origin.
Regional Counterdrug Training Academy (RCTA)	\$2,924,000. Courses are provided tuition-free.	2013 (A) State and Local Police Officers and DoD Counterdrug personnel.	Develop and provide Counterdrug Training to State, Local and Municipal Law Enforcement agencies, and to DoD personnel involved in Counterdrug activities.	Congressionally directed. Students are admitted to courses provided by RCTA without regard to their race, sex, color, religion, age, marital status or national origin.

Name of Agency: National Guard Bureau

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies and Possible Impediments
National Guard ChalleNGe Program	\$37,360,300	The program is conducted in 15 states and a maximum of 3642 students may enroll in the program per year. Nationwide, the program employees approximately 600 state employees.	The program provides military based training, supervised work experience in community services and conservation projects to civilian youth who cease to attend secondary school before graduating so as to improve skills and employment potential.	Currently, the authority for the program 32 USC 501. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.
National Guard STARBASE Program	\$3,394,000	The program is conducted in 14 states and territories with an approximate enrollment of 20,000 students per year. Nationwide, the program employs approximately 56 state employees.	The program is for youth kindergarten through grade 12 and is designed to expose classes and teachers of inner-city schools to real world applications of math and science through "hands on" learning, simulations and experiments in aviation and space related fields.	Authority for the program is Section 211 of Title 10. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.

FORCE MANAGEMENT
POLICYASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

5 1 950 1997

Bill Lann Lee, Esquire
Acting Assistant Attorney General
Civil Rights Division
Washington, D.C. 20530

Dear Mr. Lee:

This letter responds to questions raised by your office regarding completion by the Department of Defense of its inventory of the civilian education programs or activities it conducts, in support of the President's initiative related to preventing discrimination in civilian education programs or activities conducted by the Federal Government. It also completes the inventory of civilian education programs or activities conducted by the Department of Defense.

The Department of Defense fully supports this initiative, as announced by the President. I and my staff on August 25 provided to you with an interim listing of those civilian education programs or activities conducted by the Department of Defense which meet the definition of "education program or activity" contained in the President's letter of June 17, 1997 and the guidance you provided in your letter of July 14, 1997. With the attached submissions from the National Guard Bureau and the Director, Defense Research and Engineering, you have my assurance, as requested by your staff, that the Department of Defense inventory listing now is complete. The survey referenced in our August 25 letter produced no additional civilian education programs or activities for inclusion in the inventory.

Since the question of scope appears to have resurfaced, however, let me take this opportunity to reiterate the views of the Department of Defense regarding this matter. It is our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.

The President's memorandum does not refer to or contemplate addressing education programs or activities whose primary purpose is to train military members, e.g. "military" training and education programs or activities, as opposed to "civilian" training and education programs and activities. My understanding is based on the President's June 17, 1997 memorandum (especially paragraph (1) on page 3) and on discussions between our respective offices and the White House, before the President's initiative was announced, over how best to handle the exclusion of these military education and training programs. We have used this



understanding in developing the inventory listing initially provided to your office in August and completed today.

It also is important to note that military personnel are not Department of Defense or Military Service "employees." Military personnel are subject to and protected by the Uniform Code of Military Justice (UCMJ) (10 U.S.C. chapter 47). They are individuals who have voluntarily enlisted or accepted appointment into the armed forces of the United States, thereby changing their status from "civilian" to "member of the armed forces" and subjecting themselves to military authority, including the potential for criminal prosecution under the UCMJ. Unlike "employees," they cannot unilaterally change their status or resign from their positions ("quit their jobs") at any time.

In addition, the armed forces, themselves, are based on a unique construct of command authority, known as the military chain of command, enforced through the UCMJ. Military members are both subject to and protected by the UCMJ. Conduct which prejudices the good order and discipline of the armed forces, including prohibited discrimination, already can be charged as a crime under the UCMJ. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the command structure, to enforce prohibitions against discrimination, including those based on race, sex, national origin and color. Superimposing external structures on the armed forces in order to duplicate prohibitions against discrimination in military training and education programs is unnecessary and could significantly damage the military command structure.

Military training and education programs are governed generally and, in some cases, specifically, by statute, in particular title 10 of the U.S. Code. The purposes of these programs are often conceptually and substantively different than those of programs conducted for civilians, whether they are civilian Government employees or members of the public. Additionally, military training and education, particularly basic training, advanced individual training, advanced skills training, officer candidate training, and the senior service schools, are intended to teach and enhance skills which those entering the military do not possess, e.g., military discipline, military combat and combat support, and military command.

In addition to, and apart from, the matter of military training and education programs, I also would like to respond to the President's direction that the Department identify and describe those substantive and procedural issues which we anticipate might arise as a result an initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education programs and activities (as you further defined them in your July 14 letter). Initially, we note that this initiative could run counter in certain respects to Congressionally mandated preference programs, such as the National Security Agency's Undergraduate Training and Assistance Program and the Defense Intelligence Agency's Undergraduate Training Program. These programs, which require that preferences be accorded to certain minority groups, provide, *inter alia*, funding for the undergraduate education of individuals who will subsequently work in

certain fields for NSA and DLA. A Presidential executive order mandating that the Department not discriminate based on race, sex, color or national origin in these education and training programs might be read as conflicting with such requirements.

Your July 14 letter asked that, for purposes of this initiative, the Department of Defense list in its inventory of Federally conducted education and training programs its occupational training programs attended by any student who is not a Department of Defense employee, whether that student is an employee of other Federal agency, a State or local agency, or a member of the public. We are concerned that including internal Department of Defense education and training programs directed at Department of Defense civilian employees, which also may be open to some civilian employees of other agencies, could have a substantially negative impact on those programs. Since all Federal employees already have substantive statutory protections, their inclusion would not support the goal of the President's initiative of expanding the scope of protection against discrimination based on sex, race, color and national origin to include education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. It would provide, in effect, duplicative protections, with the potential for duplicative and, possibly, contradictory remedies.

We are concerned that, if the approach envisaged by the July 14 letter were adopted, organizations of the Federal Government, including the Department of Defense components, would close their education and training programs to civilian employees of sister agencies. This would deny all employees involved, both Defense and non-Defense personnel, the benefits and richness of experience that such joint training can provide. It also may force agencies which currently rely on these training and education programs to expend additional resources either to establish training programs of their own or to contract for training.

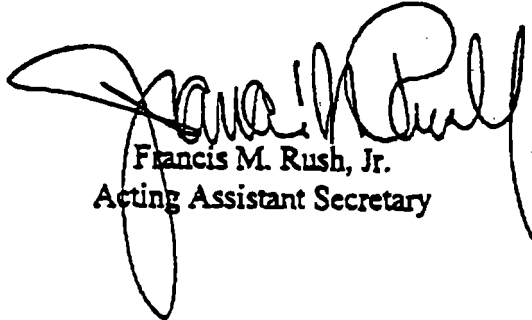
Alternatively, it may eliminate these training opportunities for outside employees all together. This would be particularly harmful for those communities of interest which cross Departmental and agency lines, such as the Intelligence Community, the Drug Enforcement community, and the Counter-Terrorism community. It would also run counter to current initiatives within these communities to foster joint training and educational opportunities in order to further broad Governmental objectives in each of these areas.

In sum, this Department fully supports the President's initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education and training programs, such as the Department of Defense Dependents Schools and the Department of Defense Domestic Dependent Elementary and Secondary Schools. We do not support changing the scope of this initiative to include military training and education programs. In addition, we have concerns regarding the potential conflict between an imprecisely drafted executive order and existing Congressional mandates for preferences for minorities in certain Department of Defense education programs. We also are concerned that inclusion of education and training programs established by the Department of Defense for its civilian employees that also are open to civilian employees of other Government agencies will have the effect of closing

training opportunities to those non-Defense employees, as well as running counter to other current initiatives that foster joint participation in training and education opportunities in various interdepartmental communities of interest within the Executive Branch.

The letter has been coordinated with the Office of the General Counsel of the Department of Defense.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis M. Rush, Jr.", with a large, stylized flourish extending from the bottom left.

Francis M. Rush, Jr.
Acting Assistant Secretary

Attachment:

cc (with attachment):

General Counsel, DoD

David Ogden, Esquire

Counselor to the Attorney General

Loretta King, Esquire

Deputy Assistant Attorney General (Civil Rights)

Name of Agency: National Guard Bureau Counterdrug Directorate

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies, and Possible Impediments
Multijurisdictional Counterdrug Task Force Training (MCTFT)	\$3,824,000. Courses are provided tuition-free.	13,800 (E) Federal, State and Local Police Officers in Conventional Classes; 400 (E) in Law Enforcement Distance Learning and 25,000 (E) Drug Demand Reduction Community Coalition personnel.	To instruct Law Enforcement Officers to investigate and prosecute narcotic cases within a multijurisdictional counterdrug task force, and how to avail their agencies to military support resources.	Congressionally directed. MCTFT will not discriminate on the basis of race, color, religion, sex, age, national origin, marital status, or against any qualified handicapped individual, in its employment and/or admission practices and treatment of students.
National Interagency Civil-Military Institute (NICI)	\$3 Million. Courses are provided tuition-free.	867 (A) Federal, State and Local Police Officers, DoD personnel involved in the Counterdrug field, Drug Demand Reduction personnel and community coalitions.	Provide training to military and civilian leaders on the interagency processes required for effective military support to civil authorities thus enhancing the interoperability of the military with Federal, State and Local counterdrug operations, Demand Reduction Activities and Disaster/Civil Emergency Support.	32 USC 112. Students are admitted to courses provided by NICI without regard to their race, sex, color, religion, age, marital status or national origin.
Regional Counterdrug Training Academy (RCTA)	\$2,924,000. Courses are provided tuition-free.	2013 (A) State and Local Police Officers and DoD Counterdrug personnel.	Develop and provide Counterdrug Training to State, Local and Municipal Law Enforcement agencies, and to DoD personnel involved in Counterdrug activities.	Congressionally directed. Students are admitted to courses provided by RCTA without regard to their race, sex, color, religion, age, marital status or national origin.

Name of Agency: National Guard Bureau

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies and Possible Impediments
National Guard Challenge Program	\$37,360,300	The program is conducted in 15 states and a maximum of 3642 students may enroll in the program per year. Nationwide, the program employees approximately 600 state employees.	The program provides military based training, supervised work experience in community services and conservation projects to civilian youth who cease to attend secondary school before graduating so as to improve skills and employment potential.	Currently, the authority for the program 32 USC 501. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.
National Guard STARBASE Program	\$3,394,000	The program is conducted in 14 states and territories with an approximate enrollment of 20,000 students per year. Nationwide, the program employs approximately 56 state employees.	The program is for youth kindergarten through grade 12 and is designed to expose classes and teachers of inner-city schools to real world applications of math and science through "hands on" learning, simulations and experiments in aviation and space related fields.	Authority for the program is Section 215 of Title 10. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.

§ 801. Article 1—Definitions

In this chapter:

(1) The term "Judge Advocate General" means, severally, the Judge Advocate General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term "record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

(As amended Dec. 6, 1983, Pub.L. 98-209, §§ 2(a), 6(a), 98 Stat. 1393, 1400; Dec. 4, 1987, Pub.L. 100-180, Div. A, Title XII, § 1231(17), 101 Stat. 1161; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1233(f)(1), 102 Stat. 2057; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1141(b), 110 Stat. 467; Oct. 11, 1996, Pub.L. 104-287, § 7(5), 110 Stat. 3400.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 11(y) of the Atomic Energy Act of 1954, referred to in par. (15), is section 11(y) of Act Aug. 1, 1946, c. 724, as added and amended, which is classified to section 2014(y) of Title 42, The Public Health and Welfare.

1996 Amendments

Pars. (15), (16). Pub.L. 104-106, § 1141(b), added pars. (15) and (16).

Note 19

ry interpretation. *Stout v. Hancock*, C.C. A.S.C.1944, 146 F.2d 741, certiorari denied 65 S.Ct. 1086, 325 U.S. 850, 89 L.Ed. 1971.

Interpretation of this chapter by the President and the military authority is entitled to great weight. *Liles v. U.S.*, D.C.N.C.1957, 153 F.Supp. 54.

Rulings of administrative officers charged with execution of statutes affecting the Army are entitled to great weight. *Richardson v. Zuppann*, D.C.Pa.1949, 81 F.Supp. 809, affirmed 174 F.2d 829.

§ 802. Art. 2. Persons subject to this chapter.

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

Rulings of administrative officers with execution of statutes affecting are entitled to great weight. *Rich Zuppann*, D.C.Pa.1949, 81 F.Supp. 174 F.2d 829.

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ment to which the United States is bound by the rule of international law, persons reserved or acquired for the control of the Secretary of Defense, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) of this section and a change of status from civilian to member of the armed forces shall be effective upon taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

Aug. 10, 1956, c. 1041, 70A Stat. 37; June 25, 1959, Pub.L. 86-70, § 6(b), 73 Stat. 42; July 12, 1960, Pub.L. 86-624, § 4(b), 74 Stat. 411; Sept. 7, 1962, Pub.L. 87-651, Title I, § 104, 76 Stat. 508; Nov. 2, 1966, Pub.L. 89-718, § 8(a), 80 Stat. 1117; Nov. 9, 1979, Pub.L. 96-107, Title VIII, § 801(a), 93 Stat. 810; Dec. 12, 1980, Pub.L. 96-513, Title V, § 511(24), 94 Stat. 2922; Oct. 12, 1982, Pub.L. 97-295, § 6(b), 96 Stat. 1314.

Historical and Revision Notes

1956 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
505.52.		May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

Explanatory Notes

In clause (1) [subsec. (a)(1)], the words "members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "states".

In clauses (1) and (8) [subsec. (a)(1) and (8)], the words "of the United States" are omitted as surplusage.

In clause (3) [subsec. (a)(3)], the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4) [subsec. (a)(4)], the word "reserve" is omitted as surplusage.

In clauses (4) and (5) [subsec. (a)(4) and (5)], the word "members" is substituted for the word "personnel".

In clause (8) [subsec. (a)(8)] the word "members" is substituted for the word "personnel".

In clauses (11) and (12) [subsec. (a)(11) and (12)], the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of", "all", and "territories" are omitted as surplusage.

In clause (12) [subsec. (a)(12)], the words, "Secretary concerned" are substituted for the words "Secretary of a Department".

CROSS REFERENCES

Judge Advocates General of Army, Navy, and Air Force, see 10 USCA §§ 3037, 5148, 8037.

WEST'S FEDERAL PRACTICE MANUAL

Extent of judicial functions of Claims Court in military pay cases, see § 1865.

LAW REVIEW AND JOURNAL COMMENTARIES

Fact finding in the courts of military review. Judge John Powers, 44 Baylor L.Rev. 457 (1992).

Making intramilitary tort law more civil: A proposed reform of the Feres doctrine. David Schwartz, 95 Yale L.J. 992 (1986).

Military justice: Removing the probability of unfairness. 63 U.Cin.L.Rev. 439 (1994).

NOTES OF DECISIONS

Military judge 20

9. — Force and effect

Juhl v. U.S., Ct.Cl.1967, 383 F.2d 1009, 181 Ct.Cl. 210, certiorari granted 88 S.Ct. 1635, 390 U.S. 1038, 20 L.Ed.2d 300, reversed on other grounds 89 S.Ct. 528, 393 U.S. 348, 21 L.Ed.2d 537, [main volume] on remand 187 Ct.Cl. 727.

Although it was not error for convening authority to assign all marines to court-martial of naval officer since marines were members of same armed force as naval officer, such action presented image of unfairness and attitude of unnecessary inflexibility where large concentration of naval personnel was within hour's driving time of situs of the trial. U.S. v. Negron, NCMCMR 1984, 19 M.J. 629.

15. Accuser

Person who has been ordered or coerced into preferring charges becomes "accuser" and, therefore, is disqualified from acting as convening authority. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

Alleged improper action by battalion commander, who lacked authority to convene special court-martial empowered to impose bad-conduct discharge, did not give rise to potential error in

referral of charges, because even if battalion commander was de facto accuser, he was not convening authority. U.S. v. Drayton, ACMR 1994, 39 M.J. 871, review granted 43 M.J. 170, affirmed 45 M.J. 180.

Lieutenant general was "accuser" lacking authority to convene court-martial to enforce his own order not to operate privately owned vehicle on base for two years; lieutenant general was so closely connected to the offense that reasonable person could conclude that lieutenant general had personal interest in the matter. U.S. v. Byers, ACMR 1992, 34 M.J. 923, reconsideration denied, review granted in part 36 M.J. 32, set aside 37 M.J. 73.

Convening authority was an accuser and disqualified to convene court-martial where convening authority was person who directed that charges nominally be signed and sworn to by another and had an interest other than official interest in prosecution of accused. U.S. v. Corcoran, CMA 1984, 17 M.J. 137.

20. Military judge

Appellate military judge is not "military judge" within meaning of rule entitling party to voir dire of military judge regarding possible ground for disqualification. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

[See main volume for text of (1) and (2)]

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

[See main volume for text of (4) to (10)]

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

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FEDERAL PRACTICE MANUAL

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VIEW AND JOURNAL COMMENTARIES

Military review. Military justice: Removing the probability of
L.Rev. 457 unfairness. 63 U.Cin.L.Rev. 439 (1994).

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NOTES OF DECISIONS

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(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

[See main volume for text of (c)]

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(As amended Dec. 6, 1983, Pub.L. 98-209, § 13(a), 97 Stat. 1408; Nov. 14, 1986, Pub.L. 99-661, Div. A, Title VIII, § 804(a), 100 Stat. 3906; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1234(a)(1), 102 Stat. 2059; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1133(b), 110 Stat. 466.)

HISTORICAL AND STATUTORY NOTES

1996 Amendments

Subsec. (e). Pub.L. 104-106, § 1133(b), added subsec. (e).

1988 Amendment

Subsec. (a)(11), (12). Pub.L. 100-456 struck out "the Canal Zone," following "and outside".

1986 Amendment

Subsec. (a)(3). Pub.L. 99-661, § 804(a)(1), substituted "on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service" for "they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter".

Subsec. (d). Pub.L. 99-661, § 804(a)(2), added subsec. (d).

1983 Amendment

Subsec. (a)(11). Pub.L. 98-209, § 13(a)(1)(A), substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the Commonwealth of" before "Puerto Rico".

Subsec. (a)(12). Pub.L. 98-209, § 13(a)(1)(A), substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the Commonwealth of" before "Puerto Rico".

Subsec. (b). Pub.L. 98-209, § 13(a)(2), struck out "of this section" following "subsection (a)".

Effective Date of 1986 Amendment

Section 804(e) of Pub.L. 99-661 provided that: "The amendments made by subsections (a) [amending subsec. (a)(3) and enacting subsec. (d) of this section] and (b) [enacting section 803(d) of this title] shall apply only to an offense committed on or after the effective date of this title [as provided in section 808 of Pub.L. 99-661, set out as a note hereunder]."

Section 808 of Pub.L. 99-661 provided that: "Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806 of this title, respectively], this title and the amendments made by this title [amending sections 802(a)(3), 825, 860, 936, and 937 of

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42 USCA s 2000e-16

42 U.S.C.A. § 2000e-16

This document has been amended. Use UPDATE.

See SCOPE for more information.

**UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER VI--EQUAL EMPLOYMENT OPPORTUNITIES**

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Current through P.L. 105-175, approved 5-11-98

§ 2000e-16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, and in the Government Printing Office, the General Accounting Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers, issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section

through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall--

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity

Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.. [FN1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

CREDIT(S)

1998 Electronic Update

(Pub.L. 88-352, Title VII, § 717, as added Pub.L. 92-261, § 11, Mar. 24, 1972, 86 Stat. 111, and amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 96-191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub.L. 102-166, Title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub.L. 104-1, Title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8.)

[FN1] So in original.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. House Report No. 92-238 and Conference Report No. 92-899, see 1972 U.S. Code Cong. and Adm. News, p. 2137.

1980 Acts. Senate Report No. 96-540, see 1980 U.S. Code Cong. and Adm. News, p. 50.

1991 Acts. House Report No. 102-40 (Parts I and II), Interpretative Memorandum, and Statement by President, see 1991 U.S. Code Cong. and Adm. News, p. 549.

1995 Acts. Related House No. 104-650 (Parts I and II) and Related Senate Report No. 104-397, see 1995 U.S. Code Cong. and Adm. News, p. 3

References in Text

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

"This Act", referred to in subsec. (e), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title of 1964 Acts note set out under section 2000a of this title and Tables.

Amendments

1995 Amendments. Subsec. (a). Pub.L. 104-1, § 201(c)(1), inserted provisions relating to Government Printing Office and General Accounting Office and struck out provisions relating to legislative branch.

1991 Amendments. Subsec. (c). Pub.L. 102-166, § 114(1), increased time within which aggrieved employee or applicant may file civil action from within 30 days of receipt of notice of final action to within 90 days of receipt of such notice.

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or the homeless, see 42 USCA § 290
ces Act, see 42 USCA § 10406.
USCA § 1577.
ock grants, see 42 USCA § 708.
s block grants, see 42 USCA § 300w-7.
O USCA §§ 3041, 3042.
Insurance Association, see 20 USCA

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1681. Sex

(A) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be
excluded from participation in, be denied the benefits of, or be
subjected to discrimination under any education program or activi-
ty receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this sec-
tion shall apply only to institutions of vocational education,
professional education, and graduate higher education, and to
public institutions of undergraduate higher education;

**(2) Educational institutions commencing planned change in admis-
sions**

in regard to admissions to educational institutions, this sec-
tion shall not apply (A) for one year from June 23, 1972, nor
for six years after June 23, 1972, in the case of an educational
institution which has begun the process of changing from being
an institution which admits only students of one sex to being an
institution which admits students of both sexes, but only if it is
carrying out a plan for such a change which is approved by the
Secretary of Education or (B) for seven years from the date an
educational institution begins the process of changing from
being an institution which admits only students of only one sex
to being an institution which admits students of both sexes, but
only if it is carrying out a plan for such a change which is
approved by the Secretary of Education, whichever is the later;

**(3) Educational institutions of religious organizations with contrary
religious tenets**

this section shall not apply to an educational institution
which is controlled by a religious organization if the applica-
tion of this subsection would not be consistent with the reli-
gious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably

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