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WITHDRAWAL SHEET

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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
/1. from	Application for Federal Employment (SF 171), 7p total	9/30/81	B6

RESTRICTIONS

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- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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file
V.A.
revised

Memo

from the desk of

COOPER T. HOLT

September 4, 1981

For your information.

Copy

NO52

CHRISTIAN-VA
PHILADELPHIA (AP) -- DAVID A. CHRISTIAN, THE MOST DECORATED
VETERAN OF THE VIETNAM WAR, HAS TURNED DOWN AN OFFER TO BECOME DEPUTY
DIRECTOR OF THE VETERANS ADMINISTRATION BECAUSE OF POLICY DIFFERENCES
WITH THE REAGAN ADMINISTRATION, THE BULLETIN REPORTED TODAY.
SOURCES IN WASHINGTON HAD REPORTED THAT THE LEVITTOWN, PA.,
VETERAN WOULD BE NAMED DEPUTY DIRECTOR OF THE VA AT A SALARY OF
\$55,000 A YEAR.

BUT CHRISTIAN TOLD THE BULLETIN WEDNESDAY THAT HE HAD WITHDRAWN AS
A CANDIDATE FOR THE JOB. THERE WAS NO IMMEDIATE COMMENT FROM
ADMINISTRATION OFFICIALS.

CHRISTIAN, WHO SERVES AS EXECUTIVE DIRECTOR OF THE VIETNAM
VETERANS ORGANIZATION, SAID HE WAS UNHAPPY WITH VA BUDGET CUTS BEING
DISCUSSED AND VIEWS OF TOP REAGAN OFFICIALS ABOUT THE POSSIBLE HEALTH
EFFECTS OF THE HERBICIDE AGENT ORANGE.

MORE THAN 10,000 VETERANS HAVE GONE TO THE VA TO SEEK TREATMENT
FOR MEDICAL PROBLEMS THEY BLAME ON CONTACT WITH AGENT ORANGE, WHICH
WAS SPRAYED WIDELY IN VIETNAM TO KILL VEGETATION. ITS USE WAS STOPPED
AFTER IT WAS DISCOVERED TO BE HAZARDOUS TO HUMANS.

"I LIKE THE PRESIDENT, BUT I DON'T AGREE WITH ALL THE PEOPLE WHO
WORK FOR THE PRESIDENT," SAID CHRISTIAN. "I FIGURED THAT I WOULD DO
A BETTER JOB FOR VIETNAM VETERANS BY BEING A CONSTRUCTIVE CRITIC FROM
THE OUTSIDE."

AP-WH-09-03-81 1229EDT

2580 Carr Court
Lakewood, Colorado 80215

Phillips
Maurice

March 10, 1982

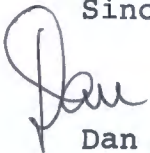
Dear Morton:

Enclosed is a run-down of things I could find on Dean Phillips. Its all stuff that's been printed in the local media over the years. If microfilm copies of any articles on the items with specific dates would help, I can obtain them. Just let me know.

While I couldn't find anything about him specifically working for Sen. Hart, there is no doubt he is a veteran Democratic Party activist, as evidenced by his own candidacy for the state legislature as a Democrat and his work in the Carter-Mondale campaign and subsequent appointments in the VA by them.

Please let me know when I can be helpful. I hope this finds you and Helen well.

Sincerely,



Dan Green

DEAN PHILLIPS

39 years old
BA English Ohio University, Athens, Ohio
MA Social Problems Ohio University
JD University of Denver

Received 14 decorations as paratrooper with 101st airborne division
in Vietnam War

Son of wealthy Ohio physician

Member of MENSA
American Legion
VFW
National Association of Collegiate Veterans
Vietnam Veterans Against the War
United Veterans Committee of Colorado
National Association of Concerned Veterans

Quoted as being "overwhelmed by guilt" as an undergraduate at Ohio University due to rich upbringing and loafing in college while others were bearing society's problems in Vietnam and in the streets, so quit school and went to work in a steel mill "to see how blue collar life was" and was drafted to serve in Vietnam.

Instructor in Sociology, Denver Community College
Instructor in Sociology, University of Colorado at Denver
Veterans Affairs Officer, Denver Community College

POLITICAL ACTIVITIES (In chronological order)

September 9, 1971--Speaking to a meeting of 15 members of the Adams County Young Democrats at the Five-Star Mobile Home Park, Federal Heights, Colorado, debating as a representative of the Vietnam Veterans Against the War, said U.S. involvement was clearly illegal, against the UN Charter, the SEATO treaty and the 1954 Geneva Accords, saying "We violate the hell out of all these."

November 5, 1971--named by GOP Colorado Gov. John Love to a 50-member state task force to find jobs for veterans. A month earlier the Vietnam Veterans Against the War were denied a permit to march in the Veterans Day Parade by Denver Mayor William McNichols and picketed the parade. Responding to criticism of Phillips' appointment by GOP legislators, Love said "I didn't know he was a member of Vietnam Veterans Against the War."

July 1, 1973--Identified by the Denver Post in an article on veterans problems for "his undisputed role as Colorado's leading veteran's rights activist." Phillips was quoted in the article that the draft is racist--you have a much greater chance of getting killed if you're black.

1973-1975--Nominated by Colorado Gov. John Love and confirmed by appointment of President Richard Nixon as member of Denver Draft Board #3.

March 6, 1974--GOP Colorado Gov. John Vanderhoof named him to the Colorado Veterans Affairs Section job representing Vietnam veterans.

March 31, 1974--Announced as candidate for the Democratic nomination for State Representative, Colorado District 11. Lost general election to incumbent Republican Rep. Carol Tempest in November.

June, 1974--Filed suit against the U.S. Labor Department and the Colorado Division of Employment for "non-compliance with the law concerning veterans employment." Suit was settled out of court

November 26, 1974--Phillips blasted President Gerald Ford's veto of the Vietnam Era Veterans Readjustment Assistance Act.

June 7, 1975--Nominated by Sen. Gary Hart to the National Advisory Council of the Senate Veterans Affairs Committee.

July 11, 1975--Resigned as a member of Denver Draft Board #3 because "women don't have proportionate access to veteran's benefits."

October 22, 1975--Testified before Sen. Vance Hartke, chairman of the Senate Veterans Affairs Committee that "It is a national disgrace that an administration that once prided itself on 'law and order' failed to comply with its own law--and that those of us that fought in Vietnam came home to take our own government to court to force it to obey its own laws."

October 26, 1976--Formed "Colorado Veterans for Carter-Mondale" jointly with veteran Colorado Democratic activist Vic Grandy because "of the failure of the Ford Administration to meet veteran's needs."

January 20, 1977--Quoted in the Denver Post as saying he was a leading candidate for Deputy Assistant Labor Secretary in the new Carter administration.

June 6, 1979--While serving as a special assistant to the general counsel of the U.S. Veterans Administration, Phillips was cited by Colorado Governor Richard Lamm with a plaque for his pro-veterans activities during Vietnam Veterans Week, May 28-June 3.

VETERANS ADMINISTRATION
REFERENCE SLIP

TO (Name or title-Mail routing symbol)	INITIALS-DATE
1. Bob Hausenfluck	
2.	
3.	
4.	
5.	

REASON FOR REFERENCE

☐ AS REQUESTED
☐ COMMENTS
☐ CONCURRENCE

☐ FOR YOUR FILES
☐ INFORMATION
☐ NECESSARY ACTION

☐ NOTE AND RETURN
☐ PER CONVERSATION
☐ SIGNATURE

REMARKS

Per your request, attached is the 171 on Dean Phillips, who presently occupies a Schedule A staff assistant slot in the office of the Administrator.

FROM

Joy Cathman

DATE

2/25/82

TEL. EXT.

RONALD W. REAGAN LIBRARY

**THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 1 LISTED ON THE
WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.**

file ~~LA~~ V.A.

Find
Phillips
resume
3/9/82

Dean Phillips
coster schedule C
won GS -13

Assumed Service org slot
~~Off~~

Max Clarendon & now Nimmo

which nets org.

Not allowed to speak

on policy
Fielding ~~back~~
Cochran

Viet Nam Vets against the
War

Gary Hart

converted to Schedule A

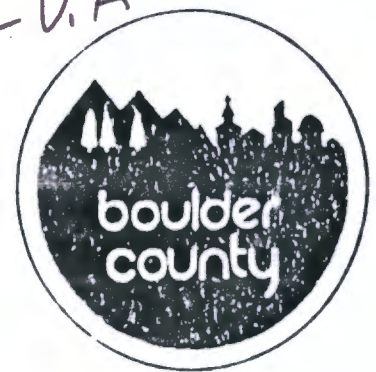
Board of Vets ~~Off~~
Appeals

Larry de Mesa - Agent Orange V.A. effort

file - V.A.

veterans' service office

2750 Spruce Street Boulder, CO 80302 441-3890 & 772-8110



December 8, 1980

Dennis R. Abbey
Veterans Service Officer

Congressman William Ayers,
Reagan V.A. Transition Team Chief
Veterans Administration
810 Vermont Avenue, N. W.
Washington, D. C. 20420

Dear Congressman Ayers:

As the past chairman of "Colorado Veterans for Reagan", I was delighted to learn that you are heading up the transition team for the Veterans Administration. You enjoy a longstanding reputation as a champion of veterans' rights.

I request that in your efforts to oversee an orderly transition, that you take the time to seek the input of Mr. Dean K. Phillips. Because he is currently a "Schedule C", Dean informs me that he plans to submit his resignation upon the appointment of Max Cleland's successor. During his nearly four years with the V.A., Dean served as the special assistant to the General Counsel for two years and special assistant to the Administrator with principle responsibilities for liaison with veterans organizations.

During his years in Washington, D. C. and the five years I knew Dean while he lived in Denver, Colorado, he has done an outstanding job for veterans. Accordingly, I am taking the liberty of enclosing for your review, a four page July, 1979 statement that highlights Dean's efforts in behalf of veterans. Also enclosed are some news clips with my notes in the margin, and a chapter written last year by him on veteran's preference - a subject on which Dean has a national reputation as an expert. As you may know, Dean was in serious trouble with Carter anti-veteran White House people for his efforts in defense of veterans' preference before the U. S. Supreme Court (Feeney vs. Massachusetts), and other matters.

Politically, Dean has supported candidates from either side of the aisle who he has determined to be pro-veteran. In return he has gained the trust and respect of public officials from both major parties in Colorado. Before coming to the Washington, D.C. area, Dean was appointed to the following positions by Republican

Congressman William Ayers,
Reagan V.A. Transition Team Chief
Page Two

12/8/80

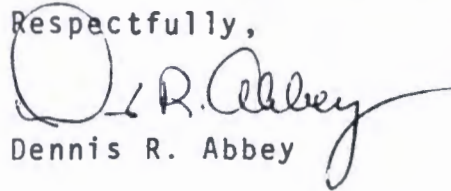
Colorado Governors: Co-Chairman of the Jobs for Veteran's Task Forces legislative committee (1971-74); member of Denver Draft Board #3, (1973-75), and Vice-Chairman of the Colorado Board of Veterans Affairs (1974-77). I am personally aware that in 1974, Dean supported Republican Governor Vanderhoof in his bid for re-election. In 1976, Dean actively supported Republican State Senate candidate James Perrill. That same year, out of frustration over President Ford's veto of the G.I. Bill, Dean assisted for two weeks in what we both knew at the time to be a lost cause - the Colorado Veterans for Carter. I point this out since it would be inaccurate to paint Dean with the same brush as most of the anti-veteran Carter crowd.

You may know that Dean left his native Youngstown, Ohio and the safety of a student draft deferment to enlist in the U. S. Army paratroopers in 1966. He served as a PFC with the 101st Airborne Division in Vietnam in 1967-68 where he won 14 decorations, including the Silver Star Medal.

Earlier this year, as a personal response to the Iranian and Afghanistan crises, Dean enlisted as an infantry Captain in the U. S. Army Reserves. While he expects to return to active duty in the event of another war, Dean has informed me that he intends to continue to work in the area of veterans affairs and live in the Washington, D. C. area. I think it is vital that we communicate with individuals who can assist us in getting veterans affairs back on track. Dean can help us in that mission.

If you wish to contact me personally on this or any other matter, please feel free to call me at my office: (303) 441-3890.

Respectfully,


Dennis R. Abbey

DRA/nb
Attachments

cc: Frank Hamilton, Route 10, North Stewart, Box 7,
Greenburg, Indiana 47240
Howard Vander Clute, Jr., 18 Bryan Drive,
Montvale, N. J. 97645
Joseph Koralewski, 1014 Olson Street,
Toledo, Ohio 43612
Cooper Holt, 200 Maryland Avenue,
Washington, D. C. 20002

Congressman William Ayers,
Reagan V.A. Transition Team Chief
Page Three

12/8/80

cc: (Continued)

Jim Webb, 333-A Cannon House Office Building
Washington, D. C. 20515

Norman Hartnett, 807 Maine,
Washington, D. C. 20024

Dean Phillips, 1700 Sherwood Hall Lane,
Alexandria, Va. 22306

UNITED VETERANS COMMITTEE OF COLORADO



AMERICAN LEGION

VETERANS OF
FOREIGN WARS

DISABLED AMERICAN
VETERANS

AMERICAN GI FORUM

COLORADO
ASSOCIATION OF
COLLEGIATE VETERANS

VETERANS OF WORLD
WAR I, INC

STATEMENT

Pursuant to the unanimous resolution of the United Veterans Committee of Colorado (UVC) dated July 11, 1979 we provide the following statement with respect to the activities of Mr. Dean K. Frank Phillips involving the United Veterans Committee:

1. In 1972, Mr. Phillips joined with Paul Rodden and Don MacMillan in cooperation with the state commanders and representatives of the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the American GI Forum and the Colorado Association of Collegiate Veterans in forming the original United Veterans Committee of Colorado. Phillips' research, taken directly from a 1969 report of the Senate Veterans Affairs Committee, revealed that at that time Colorado ranked 45th out of the 50 states in terms of state expenditures per veteran for veterans services.

The primary purpose of the UVC was to represent the interests of Colorado veterans organizations before the Colorado General Assembly, and to provide unity in the presentation of testimony before that legislature.

2. Phillips served as the elected Executive Secretary of the UVC from its establishment in 1972 until March, 1974.

3. Phillips acted as the Legislative Coordinator of the UVC from June, 1975 until December, 1976.

4. In 1973, Phillips testified before several committees of the Colorado General Assembly concerning House Bill 1144 which liberalized veterans state government re-employment rights, and resulted in more than \$100,000 in back pay being awarded to Colorado veterans who were state government employees prior to Vietnam era service.

Phillips was joined by Fred Rodgers and Robert Litheredge in presenting testimony before the Colorado legislature on this issue.

The legislation was retroactive to 1964. It served as a benchmark for national veterans re-employment rights legislation enacted by the U.S. Congress in 1974 as a provision of Public Law 93-508.

5. In 1973 and 1974, Phillips conducted research and presented much of the UVC oral testimony to several committees of the Colorado General Assembly in support of Senate Bill 39 (enacted in 1974) which created a weighted average tuition waiver for Colorado Vietnam era veterans. This bill resulted in an approximately 13 million dollar tuition waiver program for Vietnam era veterans.

6. In 1974, Phillips was the primary plaintiff in Civil Action 74-F-383, filed in Denver Federal District Court against the U.S. Department of Labor, and the Colorado Division of Employment. The suit alleged that these two agencies failed to comply with Federal law mandating specific employment services to disabled and Vietnam era veterans. The member organizations of the United Veterans Committee unanimously supported the plaintiffs in this suit, which was settled out-of-court in 1975.

Phillips contributed hundreds of hours of legal research in that suit. U.S. Department of Labor officials have reported that a direct result of the lawsuit was an increase by many states in Annual Plans of Service goals for disabled veterans and Vietnam era veterans.

7. In 1974, Phillips began a research and educational campaign to establish a statutory requirement to subject VA decisions to judicial review. In 1976, the UVC adopted a resolution supporting the concept of judicial review. After leaving his active role with the UVC, Phillips, in his position as assistant to the VA General Counsel in Washington, D.C., led a team of VA attorneys in finalizing the VA's own proposal regarding judicial review. That proposal supported a change in Federal law which would subject the VA to court review of its decisions, and at the same time would retain the role of service officers in representing veterans in their claims before the VA.

8. On August 29, 1975, Phillips represented the UVC before the Joint Budget Committee (JBC) of the Colorado General Assembly in support of increased funding of state two-year colleges and technical schools. Phillips forewarned the JBC that if sufficient funding was not provided, such state institutions would be forced to deny applications for admission in violation of the open admissions requirements of Colorado state law.

Through the presentation of his legal research (the legal findings of the Colorado Attorney General's Office were virtually identical), Phillips was successful in convincing the JBC that this potential problem should be addressed quickly, and that action should not be delayed for several weeks as some legislators suggested.

In so doing, Phillips was able to avoid the denial of educational opportunities that would otherwise have affected veterans and non-veterans alike. The resolution of this problem came when, following Phillips' testimony, more than 1.4 million dollars was appropriated by the legislature to maintain the open admissions policy.

This 1975 achievement was especially critical since the delimiting dates of more than 25 percent of post-Korean Conflict veterans and early Vietnam era veterans would be reached by May, 1976.

9. In 1975, Phillips was actively involved in the UVC's successful effort to elevate the state's Section of Veterans Affairs to a higher administrative level. The result was a move of this unit of government to a divisional level within the State Department of Social Services.

10. In 1975, Phillips became engaged in a research and educational effort aimed at defending the veterans preference provisions of federal, state and local law. In that year, the Denver Federal Executive Board, Women's Program Committee had publicly charged that veterans preference in Federal employment unfairly discriminated against women, since comparatively few women had served in the Armed Forces.

Mr. Phillips resigned his membership on Denver Draft Board #3 in protest to that statement of the Women's Program Committee.

In November, 1976, Phillips defended Colorado State Veterans preference provisions in testimony before the State Personnel Board. The Board agreed with the arguments of Phillips and Paul Rodden that the veterans preference provisions in proposed personnel rules under consideration that day should be consistent with the veterans preference provisions of the State Constitution. The Board revised the proposed personnel rules accordingly.

In November, 1978, the VA was the only government agency to recommend in writing that the United States file an Amicus Brief with the U.S. Supreme Court that recommended the upholding of the constitutionality of the Massachusetts veterans preference statute which was before the court at that time.

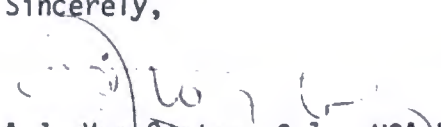
Phillips was one of the VA attorneys who prepared that recommendation. Accordingly, the Solicitor General of the United States filed such an Amicus Brief in December, 1978.

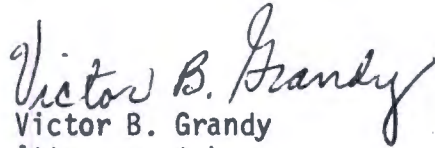
The U.S. Supreme Court upheld the Massachusetts veterans preference law by a 7-2 vote on June 5, 1979. Months earlier, Phillips had correctly predicted that decision.

11. In 1976, Phillips drafted and was instrumental in securing the passage of Senate Bill 3, which created an income tax credit of up to \$400 annually for certain blind and paraplegic Colorado veterans.

In summary, Mr. Phillips, in addition to the research he conducted on the issues described in this statement, between 1973 and 1977 testified on approximately 20 occasions before committees of the Colorado legislature, and four times before committees of the U.S. Congress in support of veterans and their dependents. Throughout those years Phillips worked to unify veterans in support of the goals and objectives described above.

Sincerely,


A.J. Van Oosten, Col., USA Ret.
Chairman, United Veterans Committee
of Colorado


Victor B. Grandy
Attorney-at-Law
Past Chairman (1975-77)
United Veterans Committee
of Colorado

'Voice' of Vets

Phillips Quits

Draft Board

Piqued at criticisms by some women that females don't have proportionate access to veterans' benefits, Colorado's colorful spokesman for young veterans has resigned his position on the Denver Draft Board.

Dean Phillips, 32, a veteran of Vietnam combat and a member of Local Draft Board No. 3 in Denver, announced that he has submitted his resignation to Gov. Dick Lamm and said he will work toward the goal of seeing that women share the responsibilities and the rights of military service.

Nationally Known

Phillips has been a persistent spokesman for the improvement of state and national benefits for Vietnam-era veterans and has obtained changes in Colorado laws and gained national recognition through his efforts.

Discussion on the subject of women's participation in military service has been growing with the expansion of the women's rights movement in Denver, according to Phillips. But his resignation was finally triggered by a remark in a report on the Veterans' Preference Act by the Federal Women's Program Committee of the Denver Federal Executive Board.

The report notes that males are "preferred" under the veterans' law (which gives extra points to veterans applying for federal jobs) and questions whether the law is consistent with equal-employment laws. It noted that those drafted "may have suffered disruptions in their normal life-styles," a phrase to which Phillips took exception.

Less Than Quota

Phillips said draftees certainly did suffer disruptions to their lives. He said he didn't necessarily agree with the preference law, but he added that the number of women serving in the military has been less than the 2 per cent quota established for females. "... the record shows that there was no flood of American females beating down doors of recruiting sergeants to demand entrance into the armed forces during Vietnam," he wrote to Lamm. That, of course, meant that a low percentage of women is eligible for veterans' benefits.

He noted that women serve on draft boards, although they aren't required to register for the draft.

"I will attempt to play a role in changing the law affecting the standby draft so that it will include women as well as men," he told Lamm.

THE STARS AND STRIPES

May 19, 1977 Page one

March 19, 1977

James T. Deal, President
National Association of
Concerned Veterans
1900 L Street, N.W.
Washington, DC 20036

Dear Jim:

I want to personally thank the members of the NACV for the support they have shown me in my candidacy for the position of Deputy Assistant Secretary of Labor for Veterans Employment (DASVE).

As you are aware, the agency has been a problem for its failure to comply with its own laws, as well as its failure to hire Vietnam veterans—less than 1 percent of the Department's employees are Vietnam veterans.

I was interviewed by the Secretary of Labor and his Assistant Secretary for Employment and Training. The interview was at their request and it took place on February 8. I am convinced they will not fill the DASVE slot until this May, and that their appointment, for purely political reasons, will be limited to a member of an ethnic minority group—with very little, if any consideration, given to the candidate's qualifications for the job.

In closing, I am including a mailgram, dated February 8, that Jeffries Carey sent to President Carter regarding this matter. Mr. Carey was the NACV President at the time. His mailgram voices my sentiments far better than I can at this time.

Sincerely,
/s/Dean Frank Phillips

Honorable Jimmy Carter
President of the U.S.
The White House
Washington, DC 20500

I am very much concerned about the pending appointment of a Deputy Assistant Secretary of Labor for Veterans Employment. I am specifically concerned about the qualifications of the individual and the criteria by which he or she will be nominated or selected.

In my opinion, it is imperative that the individual nominated or selected be knowledgeable about the Department, especially the laws, regulations, procedures and guidelines relating to veterans' employment. The individual must know the concerns and problems of the Vietnam and Vietnam-era veterans.

Also, in order to understand and relate to the younger veterans, the nominee should be a veteran of the Vietnam era and should have been actively engaged in enforcing the Affirmative Action provisions of the Vietnam-Era Veterans Readjustment Assistance Act of 1974, which calls for the hiring of veterans by firms awarded Federal contracts.

Mr. President, with the best interest of Vietnam-era veterans at heart, I sincerely hope that the final criteria for selection of an individual to fill the stated position is NOT based upon whether he or she be a minority. Being a minority myself, a Vietnam veteran, and having been active in veterans' affairs for the past six years, I know of only a very few individuals qualified to hold this position who have been totally devoted and committed to the cause of Vietnam era veterans. Mr. President, for the sake of the Vietnam-era veterans, ensure that the most qualified individual is selected, REGARDLESS OF RACE OR NATIONAL ORIGIN.

Most Respectfully,
/s/Jeffries Carey, President
National Association of
Concerned Veterans
1900 L St., NW, Suite 314
Washington, DC 20036

IN PHILLIPS GOT
THE CHAIR WITH
FOR THE CROWD
BUT HE WAS
RIGHT.

Carter Plans Lid On Vets Preference

A March 2, 1978, administration proposal described in this article would cut deeply into veterans' preference in Federal hiring if passed into law. Since P.L. 94-502 ended veterans' preference for those entering military service after October 14, 1976, and under the administration proposal non-disabled veterans' preference expires 10 years after separation from active duty, by the end of FY 1986 only 270,000 such veterans will be eligible for veterans' preference—a dramatic drop from the more than 27 million currently eligible.

Former Chairman of the National Association of Concerned Veterans' Board, Dean K. Phillips, points out, "These projections do not consider the possibility of the United States becoming involved in still another armed conflict—a possibility that is not even casually raised in the September 29, 1977, Comptroller General's report entitled, 'Conflicting Congressional Policies—Veterans' Preference and

Apportionment vs. Equal Employment Opportunity.' This report is often cited as one of the bases for the proposed change in veterans' preference."

While most traditional veterans' service organization leaders have expressed outrage at these proposals to weaken the veterans' preference system, VA Administrator Max Cleland has reportedly agreed with Alan K. Campbell, Chairman of the Civil Service Commission, that "lifetime" veterans' preference should be ended for non-disabled veterans.

Campbell, who has led the attack on the existing preference system, would limit the preference, which gives veterans additional points in their Civil Service tests, to 5 years after discharge. Cleland, when asked to respond to Campbell's proposal, recommended that preference be given for 10 years after discharge for the non-disabled veteran. Campbell now agrees with Cleland that there should be no change in preference currently

granted disabled veterans. Earlier, Campbell reportedly proposed in non-public meetings the weakening of the 10-point preference for those veterans rated less than 30% disabled. Phillips, who currently serves as Special Assistant to VA General Counsel Guy McMichael, stated, when questioned by The Stars and Stripes, that Cleland and McMichael reacted strongly against this proposal, which Campbell subsequently dropped.

Cleland has also agreed with Campbell that there is a need to eliminate the "absolute" preference received by some veterans during departmental layoffs. This form of preference allows veterans who have been in the Civil Service for only three years to retain employment while non-veterans with many more years of Civil Service are laid off. For example: a veteran with 2 years of military service, who has worked for only 3 years in the Civil Service and attained "career status" now has retention rights over a non-

veteran with as many as 20 years of Civil Service employment. Under the Administration's proposal, veterans would be given a flat 5 years of credit for military service for retention purposes. Therefore, in the case of the veteran above, 5 years of credit will be given for 3 years of military service. The 5 years will be added to the veteran's 3 years of Civil Service, to give the veteran retention rights only over those having less than 8 years of Civil Service employment. Thus, a non-veteran with more than eight years of Civil Service employment would then be retained ahead of the above veteran in a reduction in force.

The Administration is not alone in challenging the existing preference system. National pressure groups, including the National Organization for Women (NOW), are also calling for major reform of the system.

NOW leaders believe that the preference given veterans has contributed greatly to the fact that

veterans make up 50% of the Federal work force compared with 23% of the persons working in the private sector. They also agree with Campbell that the preference has been a major factor in the under-representation of women in the Civil Service where they make up 30% of the 2.8 million Federal employees.

Campbell has pointed out that while veterans total only 27% of those who pass Civil Service tests, they comprise 41% of those who are hired. Women, however, who comprise 37% of those who pass Civil Service tests, account for only 31% of those hired.

Some women's groups charge that veterans' preference constitutes discrimination against women. They argue that women have never been drafted, and have always been subject to ceilings and quotas on the number of women who can enlist. It is these circumstances, they say, which have led

See PREFERENCE Pg. 4



Dean K. Phillips



Alan K. Campbell



Lennox E. Gilmer



Max Cleland



Roland R. Mora

PHILLIPS WAS REPRIMANDED
OVER THIS STORY

to the discrimination.

However, Phillips has argued that while the statutory ceiling on female enlistments (which was set at 2% of the Armed Forces for years) was lifted in 1967, female enlistments never reached 2% of the Armed Forces during the rest of the Vietnam War—1968, 1969, 1970, 1971 and 1972. "While I agree that the 2% quota and related regulations were unrealistic and unfair," he said, "I never heard reports of women beating down the doors of draft boards and enlistment offices demanding to serve in Vietnam." (A May 1977 Department of Defense report entitled "Use of Women in The Military" stated that "young women were just not interested in serving, perhaps because of the unpopularity of that war (Korea) at the time. Between 1948 and 1960, even including nurses, the percentage of women in the military never exceeded 2% and averaged 1.2% of total active strength.")

Phillips was the primary plaintiff in a 1974 suit against the Department of Labor alleging failure to adequately provide veterans' employment services mandated by Federal law and has, since 1971, been a figure in the hotly debated veterans' preference issue.

He noted in 1975 while a NACV Board Member, that women's groups were only recently bemoaning the fact that 98% of America's nearly 30 million veterans are men. Some, he says, conclude that veterans' preference is discriminatory against women since only 2% of veterans are women. While participating in the successful defense of the State veterans' preference provisions before the Colorado State Personnel Board in 1976, Phillips testified that the system that resulted in more than 98% of America's veterans being male discriminated against MEN in that 52% of the population was flatly exempted from the draft because they were women. "This was particularly odious," he said, "since women were serving as voting members of draft boards—participating in decisions that sent tens of thousands of young men to be killed or maimed." Phillips noted that by 1970 more than 60% of Army casualties in Vietnam were draftees.

A National Organization for Women 1971 resolution opposed "any state, federal, county or municipal employment law or program giving special preference to veterans". However, NOW softened its opposition to veterans' preference, at least in part, as a result of discussions with Phillips and former NAB official, Loma Allen. A 1976 NOW position paper stated that certain programs designed to assist veterans disabled as a result of military service, and to assist recently discharged veterans were justifiable. Nevertheless, NOW is still seeking major changes in the Civil Service Preference Law.

Few have been able to ignore the controversial preference issue. Roland Mora, Deputy Assistant Secretary for Veterans' Employment, has recently come under attack by some veteran leaders for his response to a reporter's question regarding veterans' preference.

In an article published in the November-December 1977 issue of the National Center Reporter, a publication of the National Center for Community Action, Mora was asked: "Some people call for the end of the 5- and 10-point preference system given to veterans for government jobs. What's your feeling on that? Would that result in more veterans' unemployment?"

Mora's entire answer reads: "I don't know the answer to that. I feel a little bit confused about the whole issue. I find it quite interesting that now there's a lot of veterans' programs that are under attack. Veterans' preference is one of them. VA hospitals are under attack. I think it's kind of systematic of the fact that here is the Vietnam veteran who was free game for everybody. I'm not surprised that the American people were allowed to get away with the kind of discrimination toward the Vietnam veteran. The truth of the matter is that probably veterans' preference has to be looked at. I kind of resent that fact that they're using the women's issue as the excuse. I come from so many minority groups myself that I'm probably disqualified. Add them all up and I'm a majority. The point is that to square one off against the other appears to be what's happening. It's not only unfair, but it's also counterproductive. I've heard the charge that there's a lot of deadwood in government because of veterans' preference. If that's the case, let's clear out the deadwood across the board, totally. It appears that we are just clearing away the veteran deadwood rather than all of it. I think we have to look at the total picture rather than isolating it to the veteran."

Lennox E. Gilmer, NACV's Director at Large for Employment, has sharply criticized Mora's response. "It's incredible," said Gilmer, "that the highest ranking veterans' employment official in the nation is quoted as saying that he doesn't know whether or not an end to the 5- and 10-point preference system would result in more veteran unemployment."

"I could understand confusion if the question concerned modification of the preference system, but the issue raised was not modification, but ending veterans' preference," Gilmer added.

In a memo to NACV President James T. Deal, Phillips analyzed court decisions that challenged the concept of veterans' preference during the 1970s. Sections of that memo are quoted below:

Section 712 of the Civil Rights Act of 1964 as amended exempts veterans' preference from attack under the Act (42 U.S.C., Section 2000(e) et seq.): "Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for veterans."

As a result, the Civil Rights Act has, with one exception, not been utilized as a vehicle for those who would attack veterans' preference. The exception resulted when a non-veteran female attorney successfully utilized Title VII of the Civil Rights Act in alleging sex discrimination with respect to the Veterans Administration's longstanding policy of submitting only names of veterans for appointment to membership of the Board of Veterans Appeals, *Krenser v. Ford*, 429 F. Supp. 699 (1977).

The court held that the policy of total exclusion of non-veterans was not created by statute and therefore the court did not permit the exemption under Section 712 when it ruled in favor of the plaintiff.

Since the Civil Rights Act of 1964 has not provided an effective means of attacking veterans' preference legislation at the Federal, State, or local government levels, other challengers have attempted to utilize the "equal protection" clause in the 14th Amendment of the U.S. Constitution. However, veterans' preference withstood the equal protection argument in the following cases:

1. *Koeflgen v. Jackson*, 353 F. Supp. 243 (1972), affirmed 93 S. Ct. 1502 (1973). This case upheld a Minnesota State preference statute.

2. *Felerman v. Jones*, 356 F. Supp. 252 (1973) upheld a Pennsylvania State preference statute.

3. *Rios v. Dillman*, 699 F. 2d 329 (1974) upheld an El Paso, Texas, municipal ordinance granting veterans' preference.

The equal protection argument proved temporarily successful, however, in *Anthony v. Massachusetts*, 415 F. Supp. 485 (1976) when a 3-judge panel voted 2-1 to declare "Massachusetts State veterans' preference statute denied women job applicants equal protection of the law." However, a landmark U.S. Supreme Court decision vacated that Massachusetts Federal Court ruling and remanded it with specific instructions, 46 Law Week 3237-38 (October 11, 1977). In so doing, the U.S. Supreme Court directed the Massachusetts Federal Court to apply the doctrine of *Washington v. Davis*, 426 U.S. 229 (1976). Thus, if it could not prove an actual intent to discriminate in the passage of the preference statute, the Massachusetts Federal Court could not declare it a denial of equal protection.

Phillips concludes that this landmark decision should put to rest equal protection arguments by future attackers of veterans' preference.

He also pointed to a New Jersey Supreme Court decision rendered February 6, 1978, *Ballou v. State of New Jersey*, (argued October 17, 1977, A-102 - September term, 1977), in which the court voted 8-0 to deny the non-veteran female plaintiff's allegation that the New Jersey State veterans' preference provisions authorized in the State Constitution denied her equal protection under the 14th Amendment of the U.S. Constitution. Predictably, the State Supreme Court rejected this position, relying upon the *Washington v. Davis* doctrine.

With the Civil Rights Act and the equal protection clause of the Constitution of little use to challengers of veterans' preference legislation, their final avenue appears to be proposed changes in the preference statutes themselves through new legislation as in the case of the March 2 Administration proposal.

Vets Sue President Carter

Illegal Lobbying & Failure To Respond To FOI Request Claimed

The American Legion, Department of Colorado; The American G. I. Forum-Colorado; The Marine Corps League, Department of Colorado; The Paralyzed Veterans of America, Mountain States Chapter and four individual Vietnam era veterans filed suit Wednesday, August 9, 1978 in Denver Federal District Court against President Jimmy Carter, Hamilton Jordan, Assistant to the President; and Richard A. Pettigrew, Special Assistant to the President for Reorganization, for lobbying in violation of 18 USC 1913 and Public Law 95-81, Section 607 (a), and for failure to comply with the Freedom of Information Act, 5 USC 551.

The veterans' suit alleges that Congressionally appropriated funds were used by the White House to lobby for President Carter's Civil Service reform proposal. Among a number of items included in the reform package is the modification and limitation of non-disabled veterans' preference points.

On August 11, 1978, a vote of 357-18 on the Floor of the U.S. House of Representatives insured that the House of Representatives will take the reform legislation up late in the week of August 14, 1978.

The plaintiffs say their civil action does not involve the merits of veterans' preference, only the manner in which the White House has conducted its promotion of veterans' preference modifications.

White House Lobbying

The veteran's lawsuit, Gilmer, Hudson, et al vs Carter, Jordan, Pettigrew (Civil Action 78-313, Denver Federal District Court), alleges several instances of White House lobbying. For example, on May 25, 1978, Defendant Richard Pettigrew, Special Assistant to the President for Reorganization, called a meeting in Denver, Colorado to which the veterans claim he nearly exclusively invited women's organizations and leaders, and Colorado Congressional legislative aides. Mr. Pettigrew was the featured speaker. The veterans say that during this meeting, the participants were led to believe that the modification of veterans preference would improve women's opportunities to gain civil service employment. In addition, incorrect and misleading information was provided to support those contentions.

During and following the meeting, the veterans claim that efforts were made to correct the misinformation disseminated by Mr. Pettigrew. A letter from the United Veterans Committee of Colorado was sent to the White House about May 31, 1978 by the United Veterans Committee of Colorado, requesting information under the Freedom of Information Act. The Congresspersons have also requested a White House response to the UVC letter. But the White House has yet to respond, say the plaintiffs, and has continued to disseminate similar misinformation.

More recently Mr. Len Gilmer (former Employment Director of the National Association of Concerned Veterans, and the Past Chairman of the plaintiff's committee formed out of Civil Action 74-F-383 (Phillips, et al vs Brennan, et al filed in Colorado against the U.S. Department of Labor) stated that he received a "Dear Friend" letter from Mr. Pettigrew on White House stationery. This letter, dated July 31, 1978 referred to the administration of lifetime preference as "a matter of important concern to Vietnam-era veterans".

The letter went on to state, "When the State of Oregon adopted a 15-year, one time provision, the average age of veterans competing for State jobs in Oregon dropped from 43-34.... Further, the percentage of existing Oregon employees competing for other State jobs dropped from 25 percent to five percent." Pettigrew's letter stated that this data provided "a recent demonstration of the effect" of the administration's proposed Veterans Preference Modifications. Mr. Gilmer called Pettigrew's statements a clear attempt to persuade Vietnam veterans through propaganda based on false information to support the President's Veterans Preference Modifications.

Gilmer says the Oregon Administrator of the State Division of Personnel, in a phone conversation on August 2, claimed that the Legislation referred to by Pettigrew - House Bill 3470, which became effective October of 1977 had been in place less than a year and that no studies of its effects on competition by veterans in the State Personnel system had been conducted by his agency. He further stated that no information on this subject had been authorized for release by his office.

WHILE ON PERSONAL LEAVE
 PHILLIPS ASSISTED IN THE
 PREPARATION OF THIS SUIT.
 GILMER & HUDSON WILL
 CONFIRM THIS

United Veterans Committee Of CO Votes To Censure Rep. Schroeder

[The following is the action taken by the United Veterans Committee of Colorado and their position paper.]

WHEREAS, U.S. Representative Patricia Schroeder (Colorado) introduced the Administration's compromise amendment on the administration's proposed veterans preference modification before the House Post Office and Civil Service Committee, and that amendment was subsequently adopted by that committee, and

WHEREAS, the compromise amendment limited 1 point veterans preference to one time use within a 15 year period immediately following separation from military service, and

WHEREAS, prior to offering the Administration compromise amendment, U.S. Representative Patricia Schroeder ignored input from her veteran constituents with expertise in this area despite several attempts made by knowledgeable veterans with residence in her district to reach her through her staff for several months preceding her offering the Administration amendment, and

WHEREAS, U.S. Representative Patricia Schroeder used false and misleading statements in support of the amendment she offered on behalf of the Administration, therefore

BE IT RESOLVED, the United Veterans Committee of Colorado hereby objects to the conduct of Representative Patricia Schroeder and hereby censures her for the same, and

BE IT FURTHER RESOLVED, that the United Veterans Committee of Colorado hereby calls upon Representative Patricia Schroeder to correct her false and/or misleading statements (specified in the United Veterans Committee of Colorado position paper accompanying this resolution) as they concern veterans preference modification, and

BE IT FURTHER RESOLVED, that the United Veterans Committee of Colorado hereby calls upon Representative Patricia Schroeder to reassess her position in light of the attached United Veterans Committee of Colorado veterans preference modification position paper.

Member Organizations of the United Veterans Committee of Colorado: American GI Forum; American Legion; Colorado Association of Concerned Veterans; Colorado Council of Military Organizations; Disabled American Veterans; Marine Corps League; Paralyzed Veterans of America; Mountain States Chapter; Veterans of Foreign Wars; and World War I Veterans.

The above organizations have organizational memberships totaling approximately 76,000.

PHILIPS
CENSURE
DRAFTED THIS
RESOLUTION



"To Care For Him Who Shall
Have Borne The Battle And
For His Widow And His Orphan"
Abraham Lincoln

THE ONLY NATIONAL VETERANS' NEWSPAPER

WASHINGTON, DC, THURSDAY, OCTOBER 26, 1978

50¢ PER COPY

For VRA Jobs

Agencies To Establish Goals And Timetables For Hiring Of VE Vets

THE WHITE HOUSE

WASHINGTON

October 10, 1978

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

A major goal of this Administration has been to insure that employment opportunities for Veterans are concentrated on those areas where there is the most need—Vietnam-era and disabled Veterans.

As you are aware, since 1970, Federal agencies have had the authority to appoint certain Vietnam-era Veterans—generally with less than 14 years formal education and within one year after separation from active duty—to jobs at levels up through GS-5. In turn, these appointments can be converted to career-conditional positions. Administration supported legislation now pending in House-Senate conference would further extend and liberalize this authority by allowing appointments up to GS-7 and by removing the education limitation for disabled Veterans.

In 1974, the Congress charged the Civil Service Commission with responsibility for the evaluation of this program as it is implemented by your agencies. The Commission is mandated with obtaining, on at least a semi-annual basis, reports from Federal agencies with respect to their records of these Veterans' readjustment appointments and resulting conversions to career-conditional positions.

I am concerned with the wide disparity between agencies in the utilization of Veterans readjustment and resulting career-conditional conversion appointments. While some agencies have done a commendable job others have virtually ignored the Veterans readjustment and career-conditional appointment program. Access to Federal employment can be enhanced for Vietnam-era and disabled Veterans with fuller utilization of the Veterans readjustment appointment authority outlined in 38 U.S.C. section 2014.

I have directed the Chairman of the Civil Service Commission to contact each agency with a request for a specific plan of action to include goals and timetables for the implementation of the Veterans readjustment program. I expect your full cooperation on this matter.

/s/ Jimmy Carter

[EDITOR'S NOTE: The bill allowing appointments up to GS-7 awaits the President's signature.]

PHILIP
LETTER
REQUEST
DRAFTED THIS
AT GUY MEMPHIS

PHILLIPS &
MCMICHAELS
DRAFTED THE
JUSTICE DEPT. BRIEF.

Justice Backs Veterans' Job Law, White House Aides Upset

By Kathy Sawyer

Washington Post Staff Writer

Over the objections of some White House aides, the Justice Department yesterday filed a legal brief with the Supreme Court contending that laws that give veterans a preference in government jobs are constitutional.

News of the department's position stirred indignation among women's groups and some federal officials who have fought to have such preferences curtailed.

Throughout the debate over civil service reorganization, earlier this year, President Carter had called for cutbacks in the lifelong job preferences extended to 30 million veterans, a group that is 98 percent male and 92 percent white. That issue was the only minor one the president lost when Congress approved the historic civil service legislation in October.

Several White House aides spent the weekend trying to talk the office of the solicitor general out of filing the brief, or at least into modifying it substantially because they feel it does not accurately reflect the president's views, White House sources said. The offices of Stuart Eizenstat, Carter's top domestic policy adviser, counsel to the president Robert Lipshutz and Sarah Weddington, Carter's adviser on women's issues, were doing the "dickering" for the White House, the sources said.

Deputy Solicitor General Frank H. Easterbrook, who wrote the brief, said his office views the brief as "completely supporting the president's position."

The real question here," he said, "goes to who's in charge here: the president and the Congress, or the judicial branch? We're saying it's not the courts . . . If somebody is going

to change these statutes, it should be the president and the Congress."

The Justice Department filed the brief as a friend of the court in the case of Helen B. Feeney, a former Massachusetts state employee who was stymied in her attempts to change jobs when veterans were given preference over her.

A U.S. court in Massachusetts last spring ruled that the state's veterans preference statute was unconstitutional because it "deprives women of equal protection of the law."

The Justice Department brief has been in the works since Oct. 10, when the Supreme Court agreed to hear the case, Easterbrook said. He and other government sources said the brief had been circulated widely for comment and that certain changes had been made along the way in response to the concerns of the White House and other agencies.

"I assume the President could have instructed us not to file the brief," Easterbrook said. However, he noted also that one of the articles of impeachment against President Richard Nixon contained the argument that the president was "trying to tell the Justice Department what to do."

The 38-page Justice Department brief states that the U.S. "has an interest in participating in the case in order to defend those portions of the federal veterans preference laws that might be affected by the court's ruling."

If the court finds in favor of Massachusetts, it could jeopardize the whole range of U.S. benefits given to veterans in housing, education and numerous other categories, according to Easterbrook and other officials.

The Justice Department argument, as summed up in the brief, is that the state did not "purposefully discrimi-

nate against women" in enacting the statute and that "only purposeful discrimination violates the equal protection clause" of the Constitution. Moreover, the brief contends that governments have legitimate reasons for adopting veterans' statutes.

Any discrimination resulting from the statute, however unintentionally, is partly a result of women's exclusion from the military, the brief states, adding that "it is by no means clear that the restrictions on women's participation in the military are unconstitutional."

Sometimes, the brief said, "military gender distinctions operate to the disadvantage of men, not in their favor."

Although the brief upholds the constitutionality of the concept of veterans preferences, Easterbrook said, it does not hold that all veterans preference statutes necessarily are constitutional.

A number of executive branch officials, including several women, and women's group leaders said over the weekend that they were dismayed to learn of the brief's thrust.

"It's absurd to have these people in the solicitor general's office taking a position opposite to that of the president," said Judith Lichtman, executive director of the women's Legal Defense Fund.

Some sources suggested the solicitor general's office is developing a "history of differing with the administration position, and they cited previous Supreme Court cases—one involving the snail darter and the Bakke case, involving so-called reverse discrimination—in which this had occurred.

Easterbrook and other government sources responded that such disagreements "happen all the time," as part of standard operating procedures.

Carter Still Upset By Veterans' Rule

By Kathy Sawyer

Washington Post Staff Writer

President Carter, displeased by a Justice Department brief that appeared to conflict with his views on veterans preference laws, said yesterday that he still believes such laws should be curtailed.

The brief, filed Monday with the U.S. Supreme Court, said that such laws, which grant preferential job treatment for veterans, are constitutional.

Carter had sought to curtail the preferential rights for able-bodied veterans while increasing them for the smaller numbers of disabled and Vietnam era veterans.

When he learned about the brief on Monday, one administration official said, the president was concerned not so much with its substance but with the likelihood that, through headlines and "15-second news broadcasts" it would be misinterpreted as a change in the administration's position.

Neither the president nor Attorney General Griffin Bell was aware of the brief's contents until Monday, the day the U.S. solicitor general's office filed it, according to officials of both the White House and the Justice Department.

"There has been a problem with the solicitor general's office not consulting with the people who ought to know," one administration official said.

"There is a degree of independence in (that office) that is of concern among White House aides," said another.

In a statement issued yesterday through White House press secretary Jody Powell, Carter said the attorney general has advised him that "the Justice Department brief in no way conflicts with the president's policy on veterans preference in federal employment."

Carter went on to say that a federal law granting preferential job treatment for nondisabled veterans "unduly interferes with employment opportunities for women and minorities and with efficient and businesslike management."

The reason the Justice Department brief does not conflict with the president's position is that it merely upholds the constitutionality of the concept of preferential job treatment for veterans. The brief thereby reasserts that it is the president and Congress, not the courts, who must make any changes in the laws, according to officials of both the White House and the Justice Department.

Also yesterday, the Justice Department said that Bell had invited women's rights groups to submit a legal memorandum on the case, which involves a challenge to a Massachusetts veterans preference law by a woman who consistently was passed up for job opportunities in favor of veterans. Bell said he would consider that memorandum "in evaluating any possible government options for further participation in the case."

The White House had helped set up a meeting yesterday morning between Bell and representatives of the women's groups, which have fought for modifications in the veterans preference laws, officials said.

"I'm not confident, but I'm hopeful, that Justice would be persuaded (by the memo) to reevaluate its position," said Judith Lichtman, who represented the Women's Legal Defense Fund at the meeting.

Bell, concerned about the lack of notice to himself on the brief, yesterday asked Solicitor General Wade H. McCree to give him "the same notice he gives to other agencies" when requesting comments on any legal action, according to Justice Department spokesman Terry Adamson.

"The attorney general must then bear the responsibility for any communication with the White House, as he deems necessary," Adamson said.

Officials at both the White House and the Justice Department emphasized their desire to "insulate" the solicitor general's office from undue political influence.

The Stars and Stripes

The National Tribune

THE ONLY NATIONAL VETERANS' NEWSPAPER

"To Care For Us
Have Honor Us
For Our Wounds
Honor Us"

Page 7

WASHINGTON, DC, THURSDAY, FEBRUARY 15, 1979

DASVE Office Inoperable

Last August Phillips Warned DOL Still Vulnerable To Lawsuit

Last summer saw the inevitable demise of the Carter Administration's first Deputy Assistant Secretary of Labor for Veterans Employment (DASVE) Roland R. Mora. And, more recently the demise of Mora's last appointee, David A. Christian. The Department of Labor (DOL) then sought recommendations from major veterans' organizations of individuals to fill the DASVE position.

As a result Earnest Green, Assistant Secretary of Labor for Employment and Training interviewed candidates on August 29, 1978 for the DASVE slot. For some reason, Green, himself a non-veteran, insisted on interviewing the candidates without any other DOL official or anyone else present. Also, Green limited the interviews for the highest ranking veterans employment position in the Federal government to twenty minutes per candidate.

During these interviews Green reportedly asked each of the candidates to submit to him within a few days a paper of not more than

three pages which outlined their view on how the DASVE should function.

Nearly six months have elapsed since the August interviews and DOL has yet to formally announce a replacement for Mora. For that reason The Stars and Stripes has attempted to obtain copies of the papers the DASVE candidates had written at Green's request.

In addition to our February 8th request to Green's Department of Labor office for copies, we have been able to reach most candidates. One such paper, of 2 1/2 pages in length, that we have received was written by Dean K. Phillips. On February 13th Phillips stated that he had no expectations or current interest in getting the job. He hopes that all veterans will be able to support the new DASVE and that the new DASVE will carry out the functions of the DASVE office mandated by law.

No stranger to veterans employment matters, Phillips spearheaded a lawsuit against DOL and its Colorado State agency five years

ago that cited DOL's failure to comply with federal law requiring employment services to Vietnam and disabled veterans. The suit was settled out of court in 1975 only after the State defendant turned around and sued DOL claiming lack of adequate funding and direction. For the past five years Phillips has been recognized by many veterans' organizations as an expert in the field of veterans' preference laws. A decorated former U.S. Army paratrooper, Phillips served in Vietnam with the 101st Airborne Division in 1967-68. He is a life member of the DAV, VFW, American Legion and NACV.

After earning his law degree from the University of Denver in 1976, Phillips moved to the Washington area and is serving as the Special Assistant to the Veterans Administration General Counsel.

Phillips' 2 1/2 page paper dated August 31, 1978 and written at Earnest Green's request follows:

POSITION PAPER

The Deputy Assistant Secretary of Labor for Veterans' Employment

[DASVE]

Dean K. Phillips, Esq.

August 31, 1978

Office Phone: (202) 380-3688

The Statutory responsibilities of the DASVE as set forth in 38 U.S.C. 2002A require that he or she be the principal advisor to the Secretary with respect to the formulation and implementation of all departmental policies and procedures to carry out the purposes of 38 U.S.C. chapters 41, 42, and 43 and all other Department of Labor (DOL) programs to the extent they affect veterans.

38 U.S.C. CHAPTER 41—"JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS." The DASVE does not run a delivery system. Rather his duties are advisory and his only direct administrative charge is with respect to 230 or so employees of the Veterans Employment Service (VES). Accordingly, the DASVE must work (through the Assistant Secretary) with the individual program administrators within the Employment and Train-

ing Administration (ETA) to insure that there is the properly managed basic delivery of services to veterans in a matter that complies with the intent of Congress and that these services are concentrated on those veterans identified by DOL as in particular need of intensive employment and training services—such as Vietnam Era and Disabled Veterans. In this respect, the DASVE and VES should become a more integral part of ETA.

The FY 1977 ETA record was much improved over other years—I understand that applications inactivated with some services ran 62.7% for Vietnam Era Veterans while for the Economically Disadvantaged, women, and all applicants the percentages were 53.1, 51.2, and 51.4, respectively. With respect to job placements for more than 150 days duration, Vietnam Era Veterans were at the top of the list with 23.3% of applicants to only 16.3% for all applicants. With

adequate leadership from the DASVE, this performance could be considerably improved. Otherwise, DOL still faces the possibility of a lawsuit for failure to fully comply with the letter of 38 U.S.C., Chapter 41, Section 2007(a). VES personnel must monitor the quality of services of and provide technical assistance to those involved in Employment Service (ES) and Comprehensive Employment and Training Act (CETA) delivery systems. The current VES evaluation system for ES does not adequately reflect changes in the ES system such as the use of the job bank or anticipated changes such as the job match system. There is virtually no effective VES monitoring mechanism for CETA. Because of this and the expanding role of CETA in ETA, Regional, State, and Assistant State Directors for Veterans Employment must be trained with respect to the details of CETA at a level at least commensurate with their counterparts in other ETA programs.

A major tightening of the VES management system is imperative. The VES Director position should be retained. Functionally, he would be the operations officer for day-to-day activities so that the DASVE could address broader issues such as programmatic policy with the Assistant Secretary. There should be more accountability of field activities. Travel funds should be concentrated on valid technical assistance and monitoring functions of local program activities. The evaluation procedure and format from the Local Veteran Employment Representative (LVER) through state and regional supervisors should be restructured as stated above and made more uniform. The current thrust of DOL should be to de-emphasize public service employment training in favor of private sector employment training. Since Bureau of Labor Statistics data indicate that Vietnam Era Veterans have an increasingly less severe aggregate unemployment problem, CETA should be refocused to meet the problem areas head-on—the severely disabled and minority veterans. The retraining of the VES staff and field personnel in CETA should enhance their capacity to provide technical assistance to CETA Prime Sponsors in the identification of target veterans and in the development of program models that, short of creating separate delivery systems, could address needs unique to particular localities.

38 U.S.C. CHAPTER 43—“EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS.” 38 U.S.C. 2012 requires veterans employment emphasis under Federal Contracts. The DASVE should work in close consultation both with officials of the office of Federal Contract Compliance at the Employment Standards Administration where compliance responsibilities lie and ES officials since eligible employers must register job openings with State ES directors. New hires should be carefully tracked against job orders placed with State ES agencies if this statute is to be effectively implemented.

38 U.S.C. 2014 VETERANS READJUSTMENT APPOINTMENT (VRA) deals with the employment of disabled and Vietnam Era Veterans by the Federal Government. A review of civil service data indicates that Federal agencies employ a great number of veterans (50% of the federal work force). However, a surprisingly small percent of these veterans (less than 10%) served during the Vietnam Era. The Administration Proposal to modify veterans preference has aroused the ire of major veterans organizations who do not feel it will enhance the opportunities of Vietnam Era Veterans to garner federal employment. The Administration has countered with H.R. 5029, Section 401, which would liberalize and expand the Veterans Readjustment Appointment (VRA) hiring authority codified under 38 U.S.C. 2014(b). Under this program Federal Agencies since 1970 have had the authority to hire noncompetitively at levels through GS-5 certain disabled and Vietnam Era veterans. Furthermore, after a period of successful employment of 34 months, VRA appointees can be converted by an agency to a career conditional slot.

Unfortunately the VRA program has been virtually ignored by many agencies. The Civil Service Commission reports the following numbers of VRA hires for FY 1977: GAO 1, State Department 4, AID 0, DOL 24, HUD 10, EPA 12, NLRB 0, SBA 17. Because of better performances of other agencies there were 15,696 VRA hires and 7,441 conversions to career conditional slots during FY 1977. However, for the first time since 1972, the VRA program accounted for less than 3% of all government hires during a fiscal year.

As the highest ranking Veterans Employment official in Government, the DASVE should play a leadership role in providing information that would lead to the passage of the language of H.R. 5029, Section 401. He should then work closely with the Civil Service Commissioner and Assistant Secretary to insure that each agency establish realistic goals and timetables to insure that total VRA appointments and conversions for FY 1979 and FY 1980 are increased by at least 50% over FY 1977. This would both set an example for the private sector and enhance the Administration's credibility with major Veterans Organizations who view the proposed modifications of veterans' preference with a particularly jaundiced eye.

38 U.S.C. CHAPTER 43—“REEMPLOYMENT RIGHTS.” With the passage of P.L. 93-506 DOL jurisdiction in such cases was expanded to state and local governments. I was involved in the drafting of that language as the result of the 1973 Colorado Statutory change several of us secured—retroactive to August 5, 1964. However, access to comprehensive information is necessary before I can make further recommendations.

SPECIAL PROGRAMS. The Disabled Veterans Outreach Program (DVOP) should be more tightly monitored and should have better direction. The emphasis should shift from outreach to private sector job development.

The HIRE II program if effectively administered may serve as a prototype Prime Sponsors can use in developing future local veterans programs under CETA Titles II and VII. This is particularly applicable for CETA linkups under VA OJT programs as mandated by PL 94-444.

The P.L. 93-507 Section 104 (b) outreach and public information program is included in S.2570 Title III and H.R. 12452 Title III. This authority could provide the means for the development of short term 1 year model programs that could be subsequently funded by local CETA Prime Sponsors to meet a variety of local needs. It was missed by the former DASVE to develop a separate delivery system for Veterans and to create a grass roots constituency loyal to and dependant upon him for funding. If DOL agrees to continue funding under this authority, the procedure should be de-politicized and replaced by one utilizing competitive bidding through a panel that evaluates bids based upon merit under uniform criteria.

April 26, 1979

page 2

Phillips Tells VES Supreme Court Will Uphold Veterans' Preference

The United States Supreme Court will probably uphold the constitutionality of the "absolute" Massachusetts veterans' preference statute in a landmark decision sometime in June or July according to Dean K. Phillips, an attorney and former vice chairman of the Colorado Board of Veterans' Affairs.

Phillips, at the invitation of the Deputy Assistant Secretary of Labor for Veterans Employment Dr. Dennis R. Wyant, addressed the 1979 Veterans Employment Service annual training conference in Phoenix, Arizona on April 10, 1979 on the matter of Veterans' Preference.

Phillips reported that the Massachusetts case (*Feeney v. Commonwealth*) would turn on whether the State Legislature intended to discriminate against women as a class when it enacted the veterans' preference statute at issue. He reported that on March 29, 1976, the lower court, in originally ruling 2-1 that the statute denied women equal protection of the law (as provided for in the 14th amendment to the Constitution), conceded that the Massachusetts preference law "...was not enacted for the purpose of disqualifying women from receiving civil service appointments..."

The case had then been appealed to the U.S. Supreme Court which ruled on October 11, 1977, that the lower court had not proven intent to discriminate. The Supreme Court then vacated the lower court order and remanded the case back to the lower court, instructing it to rule on whether Massachusetts had intended to discriminate against women in passing the statute. The Supreme Court cited *Washington v. Davis* as a guideline which stood for the proposition that a neutral statute resulting in a disproportionate impact on a protected class is not denying that class equal protection of the law unless it can be proven that the legislature actually intended that the legislation be discriminatory.

The lower court held on May 2, 1978 that the Massachusetts legislature had intended to discriminate against women in passing the statute and once again ruled that it denied women equal protection. The lower court cited as evidence that the state legislature intended to discriminate the fact that 98% of America's veterans are males. It reasoned that an "absolute" form of veterans' preference would discriminate against females as a class. The court further wrote that women had been precluded by statute from comprising more than 2% of the military from 1948-1967.



Dean K. Phillips

Phillips pointed out that the 2% statutory bar was lifted by Congress in 1967 but that women had not comprised 2% of the military until 1973—six years later. He reported that women were subjected to higher enlistment standards and had 65% of MOS's closed to them until 1972. However, women filed no lawsuits from 1964-1971 alleging that higher enlistment statutes, regulations, and policies denied them equal employment opportunity in enlisting in the military.

Phillips also pointed out that men had been victims of "perhaps the most sexist institution in the country's history—the draft, which was used to select only men to be killed and crippled in combat."

Phillips reported that the draft was used to secure combat arms personnel for Vietnam in the late 1960's and early 1970's as very few men enlisted for combat arms. By 1969 Phillips reported that 62% of U.S. Army casualties were draftees. He further reported that the casualty rate for Blacks exceeded their percentage of Vietnam forces by 30%. He also took issue with language in the lower court ruling in 1976 which read the "...women have always been ineligible for the draft." Phillips asserted that more correct language would have stated that women were never subjected to the draft.

Phillips, who served in Vietnam in 1967-68 with a paratroop reconnaissance platoon, stated that the military currently was comprised of only 6.6% women and that long range plans called for women to make up only 10-11% of the military. He expressed concern that for those MOS's that do require considerable physical strength women have not been judged on the basis of individual ability but have been excluded as a class. Under

the Civil Rights Act of 1964 private industry is required to have examinations certified as job related. He did state that a 1978 class action suit filed by Navy women (*Owens v. Brown*) in Washington federal court was successful in overturning a statute that had limited assignment of women to hospital ships and transports.

In closing remarks, Phillips stressed the difference between constitutional questions and policy questions with respect to veterans' preference legislation and expressed a concern that if the Massachusetts statute were declared unconstitutional, then less absolute forms of preference might be subject to the same fate.

On June 5, 1979
(*Massachusetts v. Feeney* 442 U.S. 256)
the U.S. Supreme Court voted 7 to 2 to uphold the constitutionality of veterans preference.

The Star and Stripes

WASHINGTON, DC, THURSDAY, JUNE 14, 1979

Court Upholds Preference 7-2

In a landmark decision on June 5, 1979, the U.S. Supreme Court voted 7-2 to uphold the constitutionality of the Massachusetts "absolute" veteran's preference statute stating that it did not impermissibly discriminate against women.

The ruling reversed the lower court's decision and remanded it to that court for further proceedings. Four other states—New Jersey, South Dakota, Washington and Utah—also have laws requiring that veterans who qualify for civil service jobs be considered for appointment ahead of any persons who also qualify, but have not served in the military.

While Federal Veterans' Preference statutes add 10 points to passing scores of disabled veterans (about 5% of all veterans) and place those with compensable disabilities ahead of all other job applicants, non-disabled veterans receive 5 points added to passing test scores but are not placed at the top of Civil Service lists. Thus, under Federal law, only those disabled veterans with compensable disabilities receive "absolute" preference.

The new ruling based on the Massachusetts statute states that all disabled and non-disabled veterans with passing test scores must be ranked ahead of non-veterans, even if the non-veteran scored far higher on the competitive examination.

What Massachusetts has done, the court declared, is to provide "a preference for veterans of either sex, not for men over women." Justice Potter Stewart, speaking for the majority, said that giving veterans a "substantial edge" in government jobs "may reflect unwise policy," but it is not a form of unconstitutional sex bias.

The court rejected the challenge of a Dracut, MA woman, Helen B. Feeney, who has been challenging the Massachusetts veterans' preference law for the past four years.

In Massachusetts, veterans have a lifetime advantage over all other persons seeking jobs with the state government. Feeney had contended that the legislature adopted the law in 1884 with the express intent to give men an advantage over women in the state's civil service ranks.

The Supreme Court said that she was wrong in that argument. Although the majority of the court conceded that women are at a disadvantage in the armed services, and have been historically, "the history of discrimination against women in the military is not on trial in this case."

The Massachusetts case first gained national attention as *Anthony v. Massachusetts*, 415 F. Supp. 485 (1976) when a three Federal Judge panel voted 3-1 to declare that the "absolute" Massachusetts preference was unconstitutional in that it denied women equal protection of the law as guaranteed by the 14th amendment.

While the court acknowledged that the Massachusetts statute... "was not enacted for the purpose of disqualifying women from receiving civil service appointments," it held that the current formula was too severe and suggested a point system similar to that utilized by the Federal Government as an acceptable alternative.

Because of the constitutional question involved, the Massachusetts Attorney General appealed the District Court decision directly to the U.S. Supreme Court.

On October 11, 1977 the U.S. Supreme Court by a vote of 6-3 vacated the lower court order and remanded the case back to that court with specific instructions 46 Law Week 5237-38.

These instructions directed the lower court to apply the *Washington v. Davis*, 426 U.S. 229 (1976) doctrine which held that in order to prove a claim of invidious discrimination under the equal protection argument, there must be proof that there was an actual intent to discriminate on the part of the legislature when it enacted the Veterans' Preference statute.

Since in its March 1976 decision the lower court had conceded that the Massachusetts legislature had not intended to discriminate against women when it passed the Veterans' Preference statute, it appeared that upon remand, the lower court would apply *Washington v. Davis* and uphold the constitutionality of the Veterans' Preference statute. (See *The Stars and Stripes* October 20, 1977 issue quoting April 24, 1976 memorandum analyzing the 1976 Massachusetts decision by Dean K. Phillips, Esq. and *The Stars and Stripes* March 9, 1978.)

However, on May 3, 1978, in applying the *Washington v. Davis* Doctrine, the lower court ruled 2-1 that the Massachusetts legislature intended to discriminate in passing an absolute Veterans' Preference statute. The majority justified this conclusion by claiming that since 98% are female, the legislature "intended" to injure the employment interests of women in passing an "absolute" Veterans' Preference law *Feeney v. Massachusetts*, 451 Supp. 143 (1978).

In June 1978, the Attorney General of Massachusetts appealed this latest decision and on October 16, 1978, the U.S. Supreme Court agreed to hear the case.

In December 1978, the Solicitor General filed a 42 page brief with the Supreme Court which defended the general concept of Veterans' Preference and requested that the Supreme Court uphold the constitutionality of the "absolute" Massachusetts Veterans' Preference statute. He contended that the lower court's distinction between "purpose and intent is illusory" and that it could not properly conclude that the Veterans' Preference statute's adverse effect on women was intended by the legislature.

Prior to filing his December 1978 amicus brief, the Solicitor General requested memos from the various government agencies suggesting what official position of the United States should be on the constitutionality of preference. All agencies but the VA and DOL reportedly suggested that the Solicitor file no brief and thus take no position.

The DOL suggested that a government brief be filed recommending that the Veterans' Preference statute in question be declared unconstitutional.

The VA, unlike all other agencies, suggested that a government brief be filed recommending that the constitutionality of the Massachusetts law be upheld. Reportedly, the VA position expressed a concern that if the Massachusetts statute were declared unconstitutional, then the door would be open for subsequent suits which would attack less absolute veterans' preference statutes on constitutional grounds.

Dean K. Phillips, Special Assistant to the VA General Counsel, in an address before the 1979 Veteran and Employment Service annual training conference in Phoenix, AZ, accurately predicted that the Massachusetts case would turn on whether the State Legislature intended to discriminate against women as a class when it enacted the statute at issue.

At the time, Phillips pointed out that the draft was used to secure combat arms personnel for Vietnam in the late 60's and early 70's since very few men enlisted for combat arms. He took issue with the lower court's language in their 1976 ruling which read "women have always been ineligible for the draft." Phillips asserted that more correct language would have stated that women were never subjected to the draft.

Currently, approximately 6.6% of the military is comprised of women. Long range plans call for women to make up only 10-11% of the services.



THE COMMONWEALTH OF MASSACHUSETTS

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FRANCIS X. BELLOTTI
ATTORNEY GENERAL

February 25, 1980

Dean K. Phillips
1700 Sherwood Hall Lane
Alexandria, Virginia 22306

Dear Dean:

I have just finished reading the final draft of your illuminating chapter written for "Strangers at Home: Vietnam Veterans Since the War". Thank you once again for your note of special acknowledgment.

It has occurred to me that I have never provided you with a similar written "thank you" for your personal involvement in the Feeney case. Presenting that case to the Supreme Court of the United States was deeply satisfying, but the effort was certainly made easier by the ready availability of crucial statistics not only from your agency, but from your personal writing. Equally important to the Commonwealth's success was the amicus brief filed by the Solicitor General. That brief reinforced many of the arguments I made to the Court and was certainly of material assistance to the Commonwealth's defense of our veteran preference statute. I know that you and your agency were instrumental in convincing the Solicitor General to file that brief and, on behalf of the many veterans whose interests I represented before the Court, I thank you for your active role of advocacy.

As you know, the Feeney case has been appealed to the Supreme Court once again. This time the appeal raises only a single discrete procedural issue and I think it unlikely that the Court will note probable jurisdiction. In the event the Court does note jurisdiction, however, I am confident I can count on you for assistance once again.
Thanks.

Very truly yours,

Thomas R. Kiley
First Assistant Attorney General