



November 12, 2013

The Hon. John McHugh
Secretary of the Army
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Dear Secretary McHugh:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we are writing to commend you for issuing the Memorandum on Standardization of Equal Opportunity Training within the Army of October 18, 2013. We strongly support standardizing these programs of instruction and training plans, which we believe will help avoid the concerns that prompted the memorandum.

We, like others, have had concerns about reports in the media over the past several months of presentations given by Equal Opportunity staff that contained information about “hate groups” and “religious extremism” that was unnecessary and potentially harmful to both civil liberties in the military and morale. The presentations attempted to describe what constitutes a “hate group” and “religious extremism” but identified numerous groups, religions and causes, some of which may be controversial, but are entirely lawful and receive full constitutional protection. To the extent these trainings served to dissuade personnel from engaging in lawful associational or expressive activities, they raise serious concerns under the First Amendment.

Soldiers reflect the great diversity of our nation—coming from myriad backgrounds with varied experiences and holding a multitude of political and religious beliefs. You are absolutely right to adopt policies that promote honorable service and a corps that treats all personnel with dignity and respect. The Equal Opportunity trainings are a valuable means of accomplishing this. They are a way the Army can share its goals, beliefs and values, including fair treatment and equal opportunity for all soldiers. They also help eliminate discriminatory behaviors or practices that undermine mutual respect and trust.

But, by presenting incorrect information that prompts criticism, the laudable goals of the entire Equal Opportunity program are unnecessarily put at risk.

As you move forward to create standardized programs of instruction and training plans, we urge you to consider three issues.

First, when conducting Equal Opportunity trainings, especially regarding the Army's policy on participation in "extremist organizations and activities,"¹ it is essential to include specific instruction on the First Amendment rights of soldiers. Soldiers have a First Amendment right to associate freely, and the Army must be diligent to prevent interference with that right. To be sure, certain affinity groups espouse objectionable views. In practice, however, labeling an organization as a "hate group" or "extremist" is subjective and the results could be troublingly over-inclusive. The inherent vagueness of the terms will invariably sweep in organizations on both the left and right engaged in what some may view as controversial, but lawful and constitutionally protected, advocacy and association.² It also invites discriminatory and selective discipline by commanders, regardless of political or religious viewpoint, who object to the ideological or religious views of their subordinates.

Just as troubling, it necessitates a searching inquiry by commanders into the associational and expressive activities of their troops. To the extent an individual soldier's actions harm good order and discipline, interfere with mission accomplishment, or are criminal, the Uniform Code of Military Justice is well suited to address any issue. But no soldier should be punished for mere thought, no matter how deplorable, or membership in a lawful group, no matter how controversial.³

¹ Army Regulations define these terms as ones that "advocate racial, gender or ethnic hatred or intolerance; advocate, create, or engage in illegal discrimination based on race, color, gender, religion, or national origin, or advocate the use of force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or any State by unlawful means." U.S. Dep't of Army, Reg. 600-20, Army Command Policy, §4-12(a) (Sept. 20, 2012).

² For instance, with respect to the left, right-wing critics refer to groups advocating for religious liberty, including the separation of church and state as "hate groups." See Matt Schneider, *Tea Party Nation President: NAACP, DHS and ACLU are 'Liberal Hate Groups'*, Mediaite, (Dec. 30, 2010, 3:02 PM), <http://bit.ly/e8Ch0m>; Judson Phillips, *The Top Five Liberal Hate Groups*, Tea Party Nation (Dec. 29, 2010, 8:16 AM), <http://bit.ly/fTssyO>; Coulter: *ACLU is 'America's Leading Anti-Christian Hate Group'*, Media Matters (Dec. 16, 2009, 9:36 AM), <http://bit.ly/17fMUWz>; Steve Bussey, *Religious Bigots & Hate Groups Attack Gov. Perry*, Steve Bussey (Aug. 6, 2011), <http://bit.ly/16twhWG> (identifying the Secular Coalition for America and Americans United for Separation of Church and State as hate groups). On the right, similar claims are frequently levied against conservative organizations, including Christian organizations, often because of opposition to religious pluralism and religiously informed positions on issues like abortion or LGBT equality. The label is applied all too freely to disfavored and controversial groups, especially on the internet, which is why the soldiers' reliance on internet research that may be biased, disputed or inaccurate as a primary source for content was particularly troubling.

³ When the Department of Defense first promulgated its policy permitting service members' membership, but limiting their participation, in "hate groups," the ACLU expressed concern that the policy may be overly broad. See *A.C.L.U. Criticizes Pentagon 'Hate' Group Policy*, U.P.I., Oct. 30, 1986, available at <http://nyti.ms/1ce5IHj>.

Second, presenting information about religions, beliefs and practices must be done with sensitivity, objectivity and a commitment to accuracy. According to reports, at least one of the presentations⁴ is another example of military and law enforcement training materials that present views that mischaracterize and malign religions and religious practices.⁵ Some presentations have even suggested that all adherents of a particular faith are the enemy.⁶ This clearly undermines the goals of the Army's Equal Opportunity program. Indeed, the inclusion of inaccurate information undermines the opportunity in these trainings to inform commanders of their responsibility to provide appropriate accommodations of religious practices, such as time off for religious observance, allowances for dietary practices, and head coverings or beards that are neat and well-groomed in appearance and do not interfere with the proper functioning of protective clothing or equipment.

Third, we fear that the unnecessary and negative attention created by presenting inaccurate information jeopardizes other important Army goals and values.

The Army strives to maximize human potential and to ensure fair treatment and equal opportunity for all persons based solely on merit, fitness, and capability in support of readiness. It seeks to eliminate personal, social and institutional barriers that prevent anyone from rising to the highest level of responsibility possible. And, it admirably endeavors to maintain an environment that fosters dignity, mutual respect and trust. Now that the Armed Forces have successfully transitioned to open service for lesbian, gay and bisexual soldiers following the repeal of the "Don't Ask, Don't Tell" policy, the Army should add sexual orientation to its nondiscrimination standards⁷—ensuring that the goals of fair treatment and equal opportunity are inclusive of and apply equally to all soldiers.

Rather than rely on inconsistent material prepared through haphazard research, produced without command oversight or approval, the better course will certainly be standardized programs of instruction and training plans. In addition to officials identified in the October 18 memorandum, we urge you to consult with the General Counsel, as well as experts inside and outside the military, to carry out the task. This will further ensure that the presentations are not just consistent and carefully prepared, but that they are legally accurate. This will better serve the Army's goals.

We would be happy to discuss this further with you and stand ready to work with you to accomplish this task.

⁴ See presentation on "Extremism and Extremist Organizations," <http://bit.ly/17ifjHQ> (last visited Nov. 12, 2013).

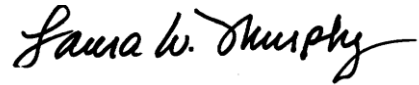
⁵ *E.g.*, Spencer Ackerman, *FBI 'Islam 101' Guide Depicted Muslims as 7th-Century Simpletons*, Wired Danger Room (July 27, 2011, 1:27 PM), <http://wrld.cm/pHcM2t>.

⁶ *E.g.*, Noah Schachtman & Spencer Ackerman, *U.S. Military Taught Officers: Use 'Hiroshima' Tactics for 'Total War' on Islam*, Wired Danger Room (May 10, 2012, 4:00 AM), <http://wrld.cm/KoDSr7>.

⁷ This recommendation applies equally to all branches of the military and we urge that sexual orientation be added to the list of enumerated characteristics protected from discrimination under the Military Equal Opportunity Program.

Please contact Gabe Rottman, 202-675-2325, grottman@dcacclu.org, or Dena Sher, 202-715-0829, dsher@dcacclu.org for comment or questions.

Sincerely,



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Dena Sher
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cc: Chief of Staff of the Army
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