

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

THE UNITED STATES OF AMERICA)
AND NANCY MELLETTE,)
)
Plaintiffs,)
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v.)
)
JAMES E. JONES, JR., et al.,)
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Defendants.)
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_____)

CIVIL ACTION
NO. 2:93-0488-2

AGREED ORDER OF DISMISSAL

Having considered all the circumstances, the information provided both formally and informally since the May 23, 1997 Consent Order, and the parties' Joint Motion to Dismiss, the Court concludes that The Citadel, the Military College of South Carolina, has met its remedial obligations and complied with applicable federal law.

Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

I. Procedural History

After being denied admission to The Citadel on the basis of sex, Shannon Faulkner filed this suit in March 1993, alleging a violation of the Equal Protection Clause of the Fourteenth Amendment. The United States intervened as plaintiff on June 7, 1993. Following the Supreme Court's decision in United States v. Virginia, 518 U.S. 515 (1996), the Board of Visitors of The Citadel voted to eliminate the gender requirement from its admission policy and to begin accepting qualified women into The Citadel for the 1996-97 school year. On July 27, 1996, the

Board approved a plan for assimilating women beginning with the 1996-97 school year. Following extensive discovery and negotiations over provisions of The Citadel's plan, the parties agreed to an assimilation plan that enumerated 52 specific steps The Citadel would take, titled "Revised Plan for Assimilation of Female Cadets" (the "Revised Plan"). On May 23, 1997, the Court entered a Consent Order, approving the Revised Plan. On May 28, 1998, the Court approved and entered a supplemental agreement regarding The Citadel's obligations to report on its progress in implementing the Revised Plan. This supplemental agreement was entitled "Consent Order as to Reporting Requirements" (the "Reporting Requirements Order").

Since the execution of the Revised Plan and the Reporting Requirements Order, The Citadel has made significant progress in assimilating women into its educational program. The United States, directly and through its experts, has actively monitored this progress. The parties have shared information, raised and responded to ongoing concerns, and worked collaboratively to eliminate vestiges of The Citadel's prior system of exclusion. For example, in March 2001, the United States and its expert visited The Citadel and were provided a full opportunity to meet with school officials and cadets, many of whom shared candid assessments of The Citadel's assimilation efforts. The visit, as well as The Citadel's cooperation and openness in arranging it, helped satisfy the Court and the United States that The Citadel has met its remedial obligations in good faith.

II. Applicable Law

As an institution with a formerly exclusionary policy, The Citadel has an affirmative obligation to "eliminate so far as possible the discriminatory effects of the past and to bar like discrimination in the future." United States v. Virginia, 518 U.S. at 547 (citation and alteration

omitted). The goal of The Citadel’s coeducation efforts must be “to place persons unconstitutionally denied an opportunity or advantage in the position they would have occupied in the absence of discrimination.” Id. (citation and alteration omitted). Specifically, “[i]f policies traceable to the de jure system are still in force and have discriminatory effects, those policies . . . must be reformed to the extent practicable and consistent with sound educational practices.” United States v. Fordice, 505 U.S. 717, 729 (1992). Finally, The Citadel must also demonstrate to the public and the students of the once-excluded group “its good-faith commitment to the whole of the court’s decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.” Freeman v. Pitts, 503 U.S. 467, 491 (1992); see also Bd. of Educ. of Okla. City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50 (1991).

III. Discussion

Applying these legal standards to the progress achieved at The Citadel in assimilating women into its educational program, the Court concludes that The Citadel has met its remedial burden. The following discussion highlights The Citadel’s progress in complying with its obligations under the Revised Plan and equal protection standards. This summary is not an exhaustive recount of all the steps taken by The Citadel, but rather, represents the broad range of the institution’s successes and illustrates its commitment to coeducation, now and in the future.

Nondiscrimination Policies. The Citadel promulgated several policies designed to prohibit discrimination on the basis of sex.¹ In consultation with outside experts, The Citadel

¹The Citadel’s general antidiscrimination policy states:

D. DISCRIMINATION.

also promulgated an appropriate sexual harassment policy.² By committing itself to these principles, The Citadel helped eliminate the vestiges of its prior exclusionary system.

1. The Citadel expressly forbids discrimination by or toward any personnel hired by, affiliated with, or a student at the College because of race, color, religion, sex, or national origin. Leaders have a responsibility to practice the highest standards of fairness and impartiality in the conduct of their duties. Cadets are expected to be actively sensitive to proper leader-subordinate relationships, including issues related to different cultures, gender, race, and religious beliefs.

2. Policy on Prohibition of Sex Discrimination. All activities of the College are equally open to cadets regardless of gender. Accordingly, discrimination against any cadet on the basis of gender is prohibited in recruiting, admissions, access to the barracks, educational programs, and other activities of the campus.

3. Words which denigrate others on the basis of race or ethnicity, religion or gender are unprofessional and disrupt unit performance and cohesion. Similarly, words, symbols, or clothing from recognized hate groups are considered detrimental and will not be tolerated. Furthermore, referring to uniform items, other people, or tasks in terms of body parts, or bodily functions is also unacceptable, and the use of all such language is unauthorized.

Blue Book ch. 1, ¶D, at 8-9 (1999).

²The Citadel's sexual harassment policy provides:

- b. Sexual Harassment. Sexual harassment is prohibited. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - (1) submission to such conduct is made either explicitly or implicitly as a term or condition of a person's employment or other student opportunities;
 - (2) submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an individual's employment, academic standing, or other student opportunities;
 - (3) such conduct has the purpose or effect of unreasonably interfering with a person's work, professional, or academic performance or creating an intimidating, hostile, or offensive work, learning, or social environment.

White Book § IV(13)(b), at 19 (1999).

Student Body. On August 24, 1996, the first coeducational class enrolled in The Citadel, including four female cadets. Over the last five years, the number of women applying to, matriculating into, and graduating from The Citadel has increased. Female cadets now account for 5-6% of the student body. In the 2001-02 school year, 97 of the 1,924 cadets are female. The single-sex classes of cadets have all graduated, and future classes will be trained and led only by coeducational classes that were themselves trained and led by coeducational classes. By design, every company in every battalion is coeducational. Retention rates for male and female cadets are consistently comparable. For example, the most recent report from The Citadel indicates that since the beginning of the 2001-02 school year, the Fourth Class lost 20% of its female cadets and 15% of its male cadets.

Chain of Command. Female cadets have also risen in the chain of command, serving in numerous leadership positions. In 2000-01, for example, the Regimental Executive Officer, the second highest-ranking position in the Corps of Cadets, was a female cadet, and two other female cadets served as Company Commanders. In 2001-02, 16 of the 23 (70%) female First Class cadets are officers. Of the 342 male First Class cadets, 198 (58%) serve as officers. Two First Class female cadets have assumed command of their companies; a Second Class female cadet and a Third Class female cadet hold the highest rank available to their classes. Additionally, The Citadel has made support for assimilation a specific criterion used to evaluate all cadets for leadership positions. The success of female cadets in assuming leadership roles is strong evidence that women are being given an equal opportunity to succeed at The Citadel.

Athletics. The Citadel has developed and implemented an aggressive strategy to establish an appropriate women's athletic program at The Citadel in accordance with the provisions of

Title IX.³ The Citadel currently supports six intercollegiate female teams: cross-country, track, golf, soccer, tennis, and volleyball. In 2000-01, 40 of the 81 female cadets were varsity athletes; seven played two sports. In 2001-02, the number of female varsity athletes has increased to 44; the Fourth Class itself boasts 21 female varsity athletes.

The women's athletic program also includes intramural and club sports. During the fall semester of 2001, 73 female cadets were involved in intramural athletics. That same year, 18 female cadets played club sports, either in the women's basketball club team or in one of 16 coed club teams.

The Citadel is committed to providing the women's athletics program with the support and resources necessary for the program to succeed and grow. For example, assistant coaches for volleyball, soccer and track have recently been hired. The Court and the parties agree that a thriving women's athletics program is essential not only to the success of female cadets, but also to the recruitment of more women to The Citadel in the future.

Extracurricular Activities. Female cadets have become involved in a wide variety of extracurricular activities beyond athletics. Membership in all clubs, societies and other organizations is available to all cadets, regardless of sex.

Although all extracurricular activities are coeducational in theory, not all have become coeducational in fact, a reasonable consequence of the relatively low number of female cadets and their particular interests. For example, no female cadets have yet chosen to compete for selection to the Summerall Guards, the precision drill platoon of The Citadel. However, the

³Pursuant to the Equity in Athletics Disclosure Act of 1994, 20 U.S.C. § 1092, The Citadel files an annual NCAA Gender Equity Survey, which provides information about the athletic program.

organization has revised portions of its policies and procedures to facilitate fairness and encourage female cadets to participate in the competition for membership. Specifically, the Summerall Guards codified its selection criteria, standardized its selection process to maximize objectivity, and codified its haircut policy to incorporate the upper-class haircut standard. Whether or not these changes lead to female cadets competing for the Summerall Guards, The Citadel's willingness to revisit its policies and procedures to ensure fairness is evidence of The Citadel's good faith commitment to barring sex-based discrimination in the future.

Publications and Public Relations. The Citadel revised and updated all of its publications to reflect the shift to coeducation, including recruitment materials, alumni publications, and athletic programs. All official college materials now use gender-neutral terminology. Myriad changes were made to the Blue Book, the regulations and policy guidance for cadets, and to the White Book, the standard operating procedures handbook. The Citadel also created new publications to address coeducation issues, such as the Cadet Handbook on Coeducation, which addresses The Citadel's sexual harassment policy, and the Red Book, which focuses on the policies and procedures of the Fourth Class System. The Citadel's public relations efforts and recruitment campaigns emphasize The Citadel's success in attracting and educating female cadets, as well as the accomplishments of female cadets over the past five years. The Citadel markets itself to the public as "the best coeducational military college in America."

Training and Assessments. The Citadel and its consultants created and implemented a comprehensive training program for new cadets, faculty and staff. The program also includes supplemental and reinforcement training for returning cadets, staff and faculty, and is a part of the leadership training for cadet officers. These training sessions address sexual harassment,

fraternization, date rape, sensitivity and other gender-related issues. Human Affairs Officers and training facilitators receive extensive instruction in how to conduct these training sessions. The Citadel also continuously evaluates and updates its training program.

To help evaluate the progress of its assimilation efforts, The Citadel administers an annual Social Climate Survey that tracks cadets' attitudes towards social issues within the institution, including gender-related issues. The Citadel also created a Coeducation Council to provide another mechanism for discussing lessons learned and for collecting feedback from female cadets. The Council meets twice a semester and submits reports directly to the President each semester. The Citadel is committed to its training program, its annual self-assessments, and the Coeducation Council; these initiatives are a fundamental component of The Citadel's success in eliminating vestiges of the prior system and in demonstrating good faith towards the future of coeducation at The Citadel.

Personnel. Several new staff positions have been created to help facilitate and supervise the progress of coeducation at The Citadel. The Citadel now employs a Special Assistant to the President for Legal Matters and Coeducation, who reports directly to the President on the progress of the assimilation program and has directed The Citadel's compliance with its reporting requirements; an Assistant Commandant of Cadets for Administration and Coeducation; a Title IX Coordinator; an Admissions and Recruitment Officer who coordinates all female recruiting and admissions efforts; and a full-time nurse practitioner who, under the supervision of The Citadel's doctor, supervises female health care. The Citadel also hired an Ombudsman, who is properly trained and maintains a visible presence on campus, to provide confidential support and counseling to cadets on a range of issues including sexual harassment and discrimination.

Additional female Tactical Officers were hired such that every battalion now has a woman assigned as either a Tactical Officer, Company Officer, or Academic Advisor. Since the execution of the Revised Plan, The Citadel Board of Visitors has included women as advisory members. In 2000, the Board elected its first female permanent member, who is serving a six-year term and enjoys full voting privileges. Finally, The Citadel plans to hire a Senior Women's Administrator in the Athletic Department by the beginning of the 2002-03 school year.

Facilities. The Citadel has made all the facilities modifications necessary to accommodate a coeducational Corps of Cadets, including building female latrines and providing latches, modesty screens, and window blinds in all barracks. The Citadel is nearing completion of a \$750,000 Women's Athletic Facility, which includes women's locker rooms, a lounge mezzanine area, coaches' offices, coaches' locker rooms, storage, and conference rooms. The medical facilities have also been reconfigured to provide privacy for male and female patients.

Miscellaneous Policies and Practices. Among the many other policies and practices related to the assimilation of women into The Citadel, the following are some noteworthy changes and successes. (1) The Citadel implemented a pregnancy policy, consistent with the requirements of Title IX, that treats pregnancy as a temporary disability.⁴ (2) The Citadel has

⁴The Citadel's pregnancy policy states:

RR. PREGNANCY POLICY. Pregnancy is considered by The Citadel to be a temporary disability. Once a cadet is known to be pregnant, the college physician will consider at what point to put them in a Temporary Disability States (TDS) (See paragraph KK.3.f.). Pregnancy, in itself, is not a punishable offense. Hence, no cadet is disciplined solely for becoming pregnant or for causing another person to become pregnant. On the other hand, the state of being pregnant may effectively preclude one (at a medically determined point in the pregnancy) from performing cadet duties and meeting the standards expected of a cadet and will be treated the same as other temporary disabilities.

adopted the U.S. Army's physical fitness standards for both men and women. Female cadets pass the Physical Training tests at a 97% rate. (3) The Citadel created a standardized female version of The Citadel Ring as an option for female cadets. A committee of female cadets and staff approved the ring, and also created procedures to modify it at the request of future classes of female cadets. (4) Several of the endowed scholarships available to cadets were originally restricted to male applicants. The Citadel has taken affirmative steps to remove gender restrictions from these scholarships: 12 agreed to remove the restrictions, and The Citadel intends to take legal action to remove the restrictions on the 16 for which there are no living contacts. Five scholarships continue to exclude women.⁵

Reporting compliance. Finally, The Citadel has complied with its obligations under the

Once it is discovered that a female cadet is pregnant, she is referred to the college physician. The physician will verify the pregnancy and determine at what point the cadet is placed in TDS. The pregnant cadet has the following options:

1. To remain in school as long as she does not miss more than 3 weeks of school per semester.
2. Voluntarily withdraw from The Citadel. Readmission procedures will be the same as stated in the temporary disability policy for all cadets.
3. A cadet who desires to remain in school but who exceeds the trigger point for time in temporary disability status, excused military duty (XMD), or excused physical training (XPT) status may be sent to appear before a Standing MRB using the same procedure as for any cadet in the category.

Blue Book ch. 3, ¶RR, at 42. Furthermore, The Citadel has promulgated a flexible policy regarding all temporary disabilities that recognizes the "recovery time required to warrant placing a cadet on TDS will vary with the disease or injury and with the duties, training, or classes the cadet will be required to miss." *Id.* ch. 3, ¶KK(3)(f), at 35.

⁵In 2001-02, the gender-restricted scholarships amounted to \$18,830, which represents .02% of the total grants awarded. In total, female cadets received \$518,047, or 6.5% of the total grants awarded.

Reporting Requirements Order, providing comprehensive quarterly reports in a timely fashion. In addition, The Citadel has supplied the United States and its expert representatives with additional information and clarifications upon request. The Citadel's fulfillment of its reporting obligations demonstrates its good faith effort to work with the Court and the United States to fulfill its obligations.

IV. Conclusion

As the preceding summary of progress demonstrates, The Citadel has eliminated to the extent practicable the discriminatory effects of the past and placed its female cadets "in the position they would have occupied in the absence of discrimination." United States v. Virginia, 518 U.S. at 547 (citation and alteration omitted). Furthermore, The Citadel has demonstrated good faith in its assimilation of women and is committed to "bar[ring] like discrimination in the future" by maintaining the assimilation initiatives described above. Id. The United States, having assessed The Citadel's policies, procedures and practices, believes that The Citadel's remedial efforts comport with equal protection standards and warrant dismissal.

For the reasons stated above, the Court concludes that The Citadel has met its remedial obligations. This case is therefore DISMISSED as to all parties with prejudice.

AND IT IS SO ORDERED.

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

February ___, 2002
Charleston, South Carolina

We consent:

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