

STATEMENT OF
REAR ADMIRAL CLIFFORD F. DeWOLF
BEFORE THE MILITARY PERSONNEL SUBCOMMITTEE OF
THE HOUSE COMMITTEE ON ARMED SERVICES

11 JUNE 1979

Mr. Chairman and Members of the Committee:

I am Rear Admiral Clifford F. DeWolf, Chief Counsel of the U. S. Coast Guard. Thank you for the opportunity to express the views of the U. S. Coast Guard, Department of Transportation on Section 801 of S. 428 which proposes amendments to Articles 2 and 36 of the Uniform Code of Military Justice.

The proposed amendment to Article 2 is designed to eliminate the disruption to and undermining of military discipline in the armed forces caused by United States v. Catlow and United States v. Russo and their progeny. It would do so by codifying the prior law concerning the validity of an enlistment established in 1890 by the Supreme Court in In Re Grimley, and breathe new life into the historic doctrine of constructive enlistment. The disruption caused by the Catlow-Russo line of decisions becomes painfully obvious to a commanding officer when he sees a member of his command return from a court-martial with a smile on his face

and the word spreads like wildfire that he could not be prosecuted on the charges referred and is immune from prosecution under the UCMJ for any future misconduct while still a member because his recruiter, three years ago, didn't follow regulations. . .

Perhaps not as disruptive, but certainly disturbing, is the lack of predictability ever present whenever the validity of an enlistment and the consequent jurisdiction over a "member" is dependent on law made and frequently changed by judicial decision. While it perhaps could be said that the U. S. Court of Military Appeals has backed off some in some recent cases from its original approach in Russo, those same cases serve to illustrate that changes are still being made. That lack of predictability breeds contempt for our system of military justice in a critical area where the predictability of judicial decisions is a must.

Turning to the proposed amendment to Article 36, I can add very little to what has been or will be stated by the representatives of the other armed forces appearing here today. I believe the President has the authority to regulate the procedural aspects of courts-martial at all stages. I believe Congress fully intended that to be the case when the present Article 36, UCMJ, was enacted. However, the U. S. Court of Military Appeals has recently questioned whether the President has the authority to regulate the

pretrial and post trial procedures. It is not advantageous to wait for the Court to so hold and then react, after the fact, in an attempt to fill the gaps that will be immediately created should such a decision be forthcoming. The proposed amendment would clarify the congressional intent that the President has full regulatory authority in this area. Moreover, it would prevent serious disruption to a military justice system that needs more certainty and less upheaval.

For the foregoing reasons, I support these proposed amendments to the UCMJ and urge their enactment.

Thank you Mr. Chairman.