



*Via Email Only*

17 April 2017

Marguerite C. Garrison  
Deputy Inspector General  
for Administrative Investigations  
Room 15D27, West Tower  
4800 Mark Center Drive  
Alexandria, VA 22350

RE: *Amended* MRFF Complaint, Your Case # 20170404-042380

Dear Ms. Garrison:

I am again writing on behalf of the *Military Religious Freedom Foundation* [MRFF], which I represent in this matter. In reference to MRFF's pending complaint, referenced above, MRFF respectfully supplements the information previously provided to your office and also wishes to *amend* its complain to cover a subsequent, but related matter, which we discuss in detail below.

In that regard – and please do not infer that I am attempting to tell you or your staff how to do your job – I would respectfully also request that you also review the matters herein for a *possible* referral to the DoD Office of General Counsel/Standards of Conduct Office [SOCO], as the two officers involved herein appear to be in violation of the relevant DoD *Standards of Ethical Conduct*, contained in 5 C.F.R. Part 2635, *Governmental Ethics*. MRFF suggests this because its pending complaint against Lt Col Jonathan C. Dowty, USAF, and now, Chaplain (Captain) Sonny L. Hernandez, USAFR, provides reasonable cause to believe that their conduct fails to comply with basic federal ethical principles.

On behalf of my client, we are requesting that your office further investigate the Air Force's failure (or indifference) to comply with DoDD 1020.02E, *Diversity Management and Equal Opportunity in the DoD*, (current through NOV 2016), as implemented by Air Force Instruction [AFI] 1-1, *Air Force Standards*, (current through NOV 2014), and AFI 36-7001, *Diversity*, (20 July 2012), specifically as related to Chaplain (Capt) Hernandez.

With respect to MRFF's prior Complaint dated 3 April 2017, we would advise you that Lt Col Dowty has now *amended* his 27 March 2017, blogpost article, titled, "BGEN Kristin Goodwin and the USAFA Honor Code." In his *original* post he stated:

- "How did Col Goodwin – an open homosexual – enter the Air Force *without*

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*lying?*” [Emphasis added].<sup>1</sup>

Sometime *after* 5 April 2017 (the date that the original blogpost was “captured”), it was *amended* by *inter alia* deleting the words “without lying.” So the blogpost now reads as follows:

- “How was Col Goodwin – an open homosexual – able to enter the Air Force?”<sup>2</sup>

Notably, his current blogpost with this article makes no mention of his having edited the original blogpost article, which MRFF respectfully suggests is less than candid. MRFF would also note that by altering the original blogpost *without attribution* to the change, from a military evidence law perspective, that *conduct* – the alteration – may be viewed as an *admission by conduct* or *consciousness of guilt*.<sup>3</sup>

Additionally, we request that your office ascertain why no corrective action, to include UCMJ proceedings, has been taken against Chaplain (Captain) Sonny L. Hernandez, USAFR, who in conjunction with Lt Col Dowty, also appears to have violated the above-referenced regulations. Furthermore, there is reasonable cause to believe that he also may be in violation of Article 88, UCMJ, *Contempt Towards Officials*;<sup>4</sup> Article 89, UCMJ, *Disrespect Toward a Superior Commissioned Officer*; Article 92, UCMJ, *Failure to Obey Order or Regulation*; Article 133, *Conduct Unbecoming an Officer and Gentleman*; and Article 134, *Conduct Prejudicial to Good Order and Discipline*. We will address these issues in more detail below.

## SUPPLEMENT TO COMPLAINT

After MRFF filed its Complaint herein dated 3 April 2017, one of Lt Col Dowty’s surrogate authors on his “Christian Fighter Pilot” [CFP] blog, Chaplain (Capt) Sonny L. Hernandez, USAFR,<sup>5</sup> replied in Lt Col Dowty’s defense. In a blog-post dated 7 April 2017, and entitled, “*BREAKING: Mikey Weinstein and the USAFA Commandant’s Homosexuality*,”<sup>6</sup> he proceeded in MRFF’s opinion

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<sup>1</sup> That post is “captured” here:

<https://web-beta.archive.org/web/20170405051149/http://christianfighterpilot.com/2017/03/27/bgen-kristin-goodwin-and-the-usafa-honor-code/> [Last accessed: 17 April 2017]. MRFF would note that for reasons unknown, the “Wayback Machine” “capture” deletes the dashes which *were* in the original version.

<sup>2</sup> Available at:

<http://christianfighterpilot.com/2017/03/27/bgen-kristin-goodwin-and-the-usafa-honor-code/> [Last accessed: 17 April 2017].

<sup>3</sup> See, e.g., *United States v. Trimper*, 28 M.J. 460, 467 n. 6 (CMA 1989).

<sup>4</sup> This reads in relevant part: “Any commissioned officer who uses contemptuous words against the . . . Secretary of Defense . . . shall be punished as a court-martial may direct.”

<sup>5</sup> 445<sup>th</sup> Airlift Wing, Wright-Patterson AFB, OH. MRFF refers to him as a “surrogate author” because according to MRFF’s count, he has posted articles on the CFP blog at least 26 times since July of 2015.

<sup>6</sup> Available at:

<http://christianfighterpilot.com/2017/04/07/breaking-mikey-weinstein-and-the-usafa-commandants-homosexuality/> [Last accessed: 14 April 2017] [Hereinafter referred to as “Breaking”].

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to continue the illegal assault on Brig Gen (Sel) Kristin E. Goodwin and her sexual orientation. By virtue of malapropistic logic, Chaplain Hernandez claims that Lt Col Dowty was *not* calling Brig Gen (Sel) Goodwin a “liar,” but had merely “posed a rhetorical question – by definition, one whose precise answer isn’t relevant or easy to determine – to inspire discussion on philosophy . . . .”<sup>7</sup> One merely needs to read Lt Col Dowty’s attack on Brig Gen (Sel) Goodwin<sup>8</sup> to see that *he* was not at all interested in any philosophical discussion. His sole reference to philosophy was this: “No doubt someone will work a *hypothetical* story into an early Philosophy class . . . .” MRFF however, respectfully submits that Chaplain Hernandez’s definition of “rhetorical” is not consistent with the tenor, tone and words used by Lt Col Dowty, and that the correct definition of a “rhetorical question” that applies here is this:

“[A] question asked solely to produce an effect *or to make an assertion* and not to elicit a reply, as ‘What is so rare as a day in June?’”[Emphasis added].<sup>9</sup>

MRFF respectfully submits that the only informed, logical and rational reading of Lt Col Dowty’s blog-post is that he *was* “mak[ing] an assertion” that Brig Gen (Sel) Goodwin *was* a “liar;” *was* “liv[ing] a lie” while an Air Force Academy (AFA) Cadet; and that she lacked “integrity.” That is MRFF’s core complaint – defaming and disrespecting her in that fashion and openly ignoring both the DoD and AF regulations on diversity and equal opportunity, particularly her irrelevant sexual orientation.

## **AMENDED SUPPLEMENTAL COMPLAINT**

**A. Chaplain (Capt) Sonny L. Hernandez, USAFR.** The MRFF respectfully submits that he via his blog-post article referenced above (published on the internet on 7 April 2017), and its specific contents, appears to be in substantial violation of the DoD’s *Diversity* and *Equal Opportunity* programs and policies, as implemented by DoD and AF regulations. His commentary can reasonably be considered as violations of numerous punitive articles of the UCMJ, as delineated in MRFF’s prior Complaint and again, below.

Furthermore, under the circumstances, the failure of Chaplain (Capt) Hernandez’s chain-of-command to (a) ensure compliance by him with the DoD and AF *Diversity* and *Equal Opportunity* programs, policies, and regulations; and (b) take appropriate corrective action *after* his actions herein, not only implicitly condones his diatribe, but undermines Brig Gen (Sel) Goodwin’s authority as the nominee for the AFA’s Commandant of Cadets. It also creates a hostile and untenable environment for all of MRFF’s clients at the AFA, especially for cadet-clients and in particular

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<sup>7</sup> *Id.* He however, cites no reference for his definitional claim.

<sup>8</sup> The undersigned wants to make it clear that Brig Gen (Sel) Goodwin is *not* a client of MRFF, nor is she a client of the undersigned. She, however, has relayed to MRFF that she remains amenable to being interviewed by your investigators.

<sup>9</sup> “Rhetorical question.” Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/rhetorical-question> (accessed: April 13, 2017).

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LBGTQ cadet-clients. Not only does this compromise the mission of the AFA,<sup>10</sup> to include its diversity program, but it also tends to stigmatize the very cadets that the Diversity and Equal Opportunity program and policies were designed to protect.

B. As a commissioned officer in the Air Force, Chaplain Hernandez is bound by and obligated to follow the ethical standards contained in 5 C.F.R. Part 2635, DoD and AF regulations, and the UCMJ, even while in a Reserve status. These include the following basic ethical *principles*:

1. Public service as a commissioned officer is a *public trust*, requiring officers to place loyalty to the Constitution, applicable laws and regulations, and core ethical principles, above their *personal* interests.
  - MRFF respectfully submits that while Chaplain Hernandez may *personally believe* that his religious beliefs and commitments take a higher precedence than the law and federal ethical standards (a right that is guaranteed to him under the First Amendment), he has no *legal* or *ethical* right while in the status of a commissioned officer, to ignore or disobey such laws in violation of his oath as an officer.<sup>11</sup> If his religious beliefs conflict with his military obligations, he should either resign his commission or face a separation for cause proceeding.
2. Acting *impartially* and not giving preferential treatment to any individual;
  - MRFF respectfully submits that both Lt Col Dowty and Chaplain Hernandez *overtly* give preferences to those who share their bigoted, homophobic, misogynistic “religious” beliefs. For example, in his blog-post defending Lt Col Dowty’s attacks on Brig Gen (Sel) Goodwin’s nomination to be the Commandant at the AF Academy, Chaplain Hernandez, says: “Leaders should be

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<sup>10</sup> The AFA’s *Mission Statement Reads*: “To educate, train and inspire men and women to become officers of character motivated to lead the United States Air Force in service to our nation.” Available at: [http://www.academyadmissions.com/wp-content/uploads/2012/05/AFA10-201 In the Spotlight Diversity at the Air Force Academy.pdf](http://www.academyadmissions.com/wp-content/uploads/2012/05/AFA10-201%20In%20the%20Spotlight%20Diversity%20at%20the%20Air%20Force%20Academy.pdf) [Last accessed: 14 April 2017].

<sup>11</sup> The legally mandated oath of office for commissioned officers is contained in 5 U.S.C. § 3331, and reads:

“I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, *without any mental reservation* or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” [emphasis added].

MRFF respectfully submits that even a cursory review of Chaplain Hernandez’s recent pontifications amply demonstrate his “mental reservations” in supporting basic Constitutional and ethical principles – concepts *mandated* by law.

promoted because of their honor, not homosexuality. . . . If you are not with Christ, then you are against him.”<sup>12</sup> Not only does that continue the attack against Brig Gen (Sel) Goodwin, but it discriminates against all “non-Christian” religions, *e.g.*, Hinduism, Islam, Judaism, as well as atheists, agnostics, etc., *all of whom* proudly serve in the U.S. military.

- MRFF also respectfully submits that both Lt Col Dowty and Chaplain Hernandez *overtly* give preferences to *male* (but not female) chaplains. In another of Lt Col Dowty’s posts on his CFP blog, with commentary by Chaplain Hernandez titled, *Kansas Army National Guard Commissions Female Chaplain*,<sup>13</sup> he (without any attribution) claimed: “While every Christian denomination represented in the military accepts a *male* pastoral leader, ***a substantial percentage do not accept female pastoral leaders.***” [Emphasis added]<sup>14</sup> This clearly includes both Lt Col Dowty and Chaplain (Capt) Hernandez.

Chaplain Hernandez continued with what can only be characterized in MRFF’s opinion as overt misogyny in his commentary:

I always get nervous when I see female pastors/chaplains. Here is why everyone should as well:

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Second, ***the office is permitted for men only***, and women are prohibited from teaching (1 Timothy 2:12) [Emphasis added].

Third, ***people should be very worried when they see women pastors/chaplains teaching.*** Why? It could be God’s judgment upon them (Isaiah 3, “...and women rule over them”)! [Emphasis added].<sup>15</sup>

Advocating outright gender discrimination MRFF respectfully

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<sup>12</sup> See “Breaking,” fn. 6, *supra*.

<sup>13</sup> Available at: <http://christianfighterpilot.com/2017/01/23/kansas-army-national-guard-commissions-female-chaplain/#more-39597> [Last accessed: 15 April 2017] [Hereinafter “Kansas Chaplain”].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

submits is not tolerable in the U.S. military and clearly reflects a pure sexist *partiality* in the name of *their* religious beliefs – again, ignoring the multitudes of servicemembers of non-Christian faiths or those who have no religious beliefs or agendas, or to include those who have no reservations about serving under female leaders and commanders.

3. Adherence to *all laws and regulations* that provide *equal opportunity* for *all Americans* (including servicemembers) “regardless of [their] . . . religion, sex . . . .”

- MRFF submits that a cursory reading of both Lt Col Dowty and Chaplain Hernandez’s blogposts, noted above, can only lead a rational and literate person to conclude that they are advocating *ignoring* anti-discrimination laws and regulations, to include the DoD and AF regulations on *diversity* and *equal opportunity*. That is fine as a civilian, but it is *illegal* for commissioned officers who openly identify themselves as such, to advocate against such laws and policies.
- MRFF also respectfully submits that such advocacy by Lt Col Dowty and Chaplain Hernandez contains an ironic hypocrisy, for in their zeal to proselytize their version of Christianity, they ignore the purported teachings of their Bible where Christ is reported to have said to the Pharisees, “Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.”<sup>16</sup> MRFF offers that quotation not to promote any religion or belief, but rather to point out that even *their brand* of religion teaches that there is no absolute incompatibility between military programs and policies and their *private, personal* religious beliefs. But, when they openly and publicly advocate that such beliefs overcome or supercede valid laws and regulations, they ignore our fundamental Constitutional and legal principles separating the church and state and seriously undermine good order and discipline within the military. This is why MRFF respectfully requests a full investigation by your office (and if merited, by SOCO as well) into these matters.

4. Avoiding any actions creating the *appearance* of violating any laws, regulations, or *Standards of Ethical Conduct*.

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<sup>16</sup> Matthew 22:21 (KJV).

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- Even if one concludes that the commentaries noted herein somehow do not constitute direct violations, MRFF respectfully suggests that anyone conversant in the English language cannot fail to see that their blogposts clearly and unequivocally give the appearances of such – again, something that your office is respectfully requested to investigate and make appropriate Findings and Recommendations.
5. Using their Government positions, title, or authority in a manner that *could be construed to imply* that their units or the Air Force endorses their personal activities and religious beliefs.<sup>17</sup>

Title 5, C.F.R. § 2635(b), *in general* allows one to use their military title or position for “teaching, speaking and writing purposes.” However, there are two important and relevant caveats to this:

1. It is *prohibited* where “the subject of the activity deals in significant part with ... (2) *any* ongoing or announced policy, program or operation of the agency ...” [5 C.F.R. § 2635.807(a)(2)(E)(2)] [Emphasis added];
  - Both Lt Col Dowty and Chaplain Hernandez’s blogposts noted above, directly deal with the “ongoing” DoD and AF’s diversity, equal opportunity, and ethical policies and programs.
  - Lt Col Dowty publicly identifies himself as a “military fighter pilot” and as the “author of christianfighterpilot.com;”<sup>18</sup>
2. Where the “title or position is given no more prominence than other significant biographical details.” [5 C.F.R. §2635.807].
  - Chaplain Hernandez’s standard “Bio” for his CFP postings reads as follows:

Chaplain (Capt) Sonny Hernandez is a US Air Force Reserve Chaplain assigned to Wright-Patterson Air Force Base, Ohio. In April 2015, he was selected as the Air Force Life Cycle Management Center

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<sup>17</sup> The foregoing was extracted from the Department of Justice’s *Summary – Executive Branch Standards of Ethical Conduct*, available at: <https://www.justice.gov/jmd/principles-ethical-conduct> [Last accessed: 15 April 2017].

<sup>18</sup> See, e.g., [http://www.yatesba.com/clientimages/20862/2016\\_promo\\_pack/aug\\_sept/yates%20baptist%20association%20upcoming%20events\\_aug-sept\\_2016.pdf](http://www.yatesba.com/clientimages/20862/2016_promo_pack/aug_sept/yates%20baptist%20association%20upcoming%20events_aug-sept_2016.pdf) [Last accessed: 15 April 2017] Scroll to page 20. MRFF would also note that Lt Col Dowty to be wearing his issued AF Flight Suit uniform, while promoting a purely civilian event.

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Individual Mobilization Augmentee Company Grade Officer of the Year, and in May 2016, he was selected as 445th Airlift Wing CGO of the Quarter, first quarter. Hernandez earned a Doctorate from Tennessee Temple University in Chattanooga, Tennessee.<sup>19</sup>

MRFF notes that of the 69 words in his “Bio,” all but 11 (or 84%), refer to some aspect of his Air Force rank, position or career. The “other significant biographical detail[]” is his reference to his doctoral degree, or 16%. MRFF respectfully submits that this is in violation of 5 C.F.R. §2635.807, as noted above.

MRFF’s prior and pending Complaint here notes in detail AFI 1-1’s restrictions on the use of *social media* by AF members. That has recently been supplemented by AFI 35-107, *Public Web and Social Communication* (17 March 2017), where ¶ 5.5 states in relevant part: “Do not post any defamatory, libelous . . . or otherwise offensive . . . material.” MRFF respectfully submits that this new AFI reinforces its position stated in our prior Complaint dated 3 April 2017, attacking Brig Gen (Sel) Goodwin’s nomination for promotion and to be the next AFA Commandant.

Chaplain Hernandez in one of his surrogate postings on Lt Col Dowty’s CFP blog is titled, *The Transgender (Homosexual) Lifestyle: A Military Chaplain’s Perspective*, (26 July 2016)[Emphasis added].<sup>20</sup> The blogpost begins by noting that then Secretary of Defense, Ash Carter’s 30 June 2016 announcement that *transgender* servicemembers would be allowed to openly serve in the U.S. military. After what MRFF submits is a diatribe attacking and condemning then Secretary Carter’s policy, something that in MRFF’s opinion, appears to violate Article 88, UCMJ,<sup>21</sup> both in spirit and its language. There, amongst other *offensive* material [discussed in greater detail below], Chaplain Hernandez pronounces:

Transgender theology teaches that “God makes mistakes” which means that God is not sovereign . . . Christian chaplains must remain faithful to uphold the sovereignty of God and His Word. Another implication is that the government is adopting an official theological position that nullifies

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<sup>19</sup> See, e.g.:

<http://christianfighterpilot.com/2017/04/07/breaking-mikey-weinstein-and-the-usafa-commandants-homosexuality/> [Last accessed: 15 April 2017].

<sup>20</sup> Available at:

<http://christianfighterpilot.com/2016/07/26/the-transgender-homosexual-lifestyle-a-military-chaplains-perspective/> [Last accessed: 15 April 2017] [Hereinafter referred to as “Transgender Lifestyle.”]

<sup>21</sup> See, fn. 4, *supra*.



Garrison, Letter 9.

Scripture.<sup>22</sup>

In fact, MRFF respectfully notes, it is *not* “[t]ransgender theology” that is purportedly in error, but rather Chaplain Hernandez’s failure to acknowledge that *his* god does indeed make mistakes, something that *his* Bible attributes to Jesus himself, telling his disciples:

***For there are some eunuchs, which were so born from their mother's womb:*** and there are some eunuchs, which were made eunuchs of men: and there be eunuchs, which have made themselves eunuchs for the kingdom of heaven's sake. [Emphasis added].<sup>23</sup>

Again, MRFF offers that quotation not to promote any religion or belief, but rather to point out that even *their brand* of religion, indeed, their own Bible, contradicts his attack on his perceived “[t]ransgender theology,” and his claim of biblical infallibility.<sup>24</sup>

Chaplain Hernandez concludes his criticism of the former Secretary of Defense by stating, “As a military chaplain . . . I stand firm that the transgender lifestyle is not Christian, but corrupt.”<sup>25</sup> MRFF respectfully (and rhetorically) asks, how can this Chaplain remain a commissioned officer in the USAFR when he *publicly* rejects and condemns *official* DoD and AF policies on diversity and equal opportunity, while signing his blogposts by identifying himself as a USAFR Chaplain Captain, his Base of assignment and two AF “awards?” Hence, MRFF’s Complaint.

As if that were not enough to debilitate “unit cohesion,” “good order and discipline,” and *esprit de corps* in MRFF’s opinion, the reader comments following his vitriol directed at *official* policies, amply in MRFF’s view, demonstrate the corrosive effects he and his blogpost have on *other* military members. For example, one commentator noted:

Chaps, God may be loving, but you are just a judgmental [redacted]. ***In an armed forces uniform no less. I am never going to visit a chaplain,*** because obviously you are all just Westboro Baptist converts.

\* \* \* \* \*

Your words have affected me deeply. I am angered, because a person who claims to follow an ethos of love can’t find it within himself to be loving. I am disappointed, because the level of education you require to be an officer

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<sup>22</sup> *Id.* This claim by Chaplain Hernandez, *implies* a violation of the First Amendment’s *Establishment* clause, which legally, simply is not justified under the facts.

<sup>23</sup> Matthew 19:12 (KJV).

<sup>24</sup> MRFF wants to make it clear that these remarks are *not* an attack on any persons *personal* religious beliefs which subscribe to the infallibility theory of the Bible. MRFF’s point here is directed at Chaplain Hernandez’s criticism of his then superior [See, Article 88, UCMJ, *supra*] Secretary of Defense Ash Carter in Chaplain (Capt) Hernandez’s capacity as a “military chaplain.”

<sup>25</sup> Transgender Lifestyle, fn. 20, *supra*.

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didn't give you better critical reasoning skills. *I am saddened, because the military allowed a fundamentalist bible-thumping semi-literate like yourself to be a leader of people.*

Mostly, I am disgusted that men like you refuse to take any responsibility for your behavior just because "only God can judge me", and *because I need spiritual leadership and I am presented with people like you . . .* [Emphasis added].<sup>26</sup>

Another reader reacted as follow:

Very sickening perspective of a diluted (sic) individuals mindset. This article only hopes to achieve fear and instill segregation amongst the LGBT community and the religious communities. If you choose to hide behind a particular religions archaic ideology and pick and choose which religious practices and values to abide or treat others by at your convenience, *please refrain from enlisting in the military service.* [Emphasis added].<sup>27</sup>

MRFF respectfully submits that the last phrase is telling: ". . . please refrain from enlisting in the military service."<sup>28</sup>

Perhaps more significant in MRFF's opinion is the following reaction:

Respectfully, Sir, you are entitled to your opinion as a private citizen. You may even publish as a private citizen. However, you cannot affiliate yourself with the military when doing so. Even having your disclaimer does not absolve you of this duty. *By stating that you are a Chaplain currently serving, you are tying these comments to the Air Force.* This is essentially speaking at a rally or protest, while wearing the uniform, but trying to tell everyone that you don't speak for the Air Force.

I do not agree with your opinions, but I believe you are entitled to have them and voice them, in appropriate forums. *I would kindly ask that you remove your current military affiliation.* [Emphasis added].<sup>29</sup>

Mr. Trumble later, again commented as pertinent here:

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<sup>26</sup> Identified as "Aubrey Shay" (27 July 2016 / 5:35 pm).

<sup>27</sup> Identified as "Lindsey Muller" (26 July 2016 / 5:42 pm).

<sup>28</sup> *Id.*

<sup>29</sup> Identified as "Jason Trumble" (26 July 2016 / 7:22 pm).

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***As a Chaplain, you are called to serve, and obligated to help all under your care, regardless of their gender identity (sic), sexual orientation, or religious beliefs.*** As such, you should not allow your personal religious beliefs to prevent you from conducting yourself as a military chaplain, which asks for more than just to preach your denominations dogma. Your guidance and counseling go beyond dogma. [Emphasis added]

\* \* \* \* \*

It is a wrong, however, to force others to allow them special privilege to force others to follow their dogma (sic). . . . Religious law and civil law are two separate entites (sic); the State, being a non-religious civil institution, defines marriage for recognition by the State and for its legal requirements.<sup>30</sup>

Furthermore in this regard, MRFF would offer the comments of yet another reader:

***. . . We do not need chaplains like you in our Armed Forces,*** and your commissioning should be revoked and I hope it is. ***You have no place in today's military. You should be someone that we can turn to in a time of need and not be judged of (sic) criticized about our life choices and lifestyle.*** Shame on you "chaps". I'll make it my duty to be sure you are removed from the military I so greatly serve out and proud in.

Signed,  
Your fellow christian brother.<sup>31</sup>

Lastly, MRFF would point out the exchange one "KZ" and "SH" [Chaplain (Capt) Sonny Hernandez]:

Sir,

While I'm glad of your conviction to your god (it's nice to believe and have faith in something). I'll ask you to please NEVER warn an LGBT of going to hell and if an LGBT person comes to you, please direct them to an LGBT friendly Chaplin. They are there because they want your help, not a warning.

V/r,  
A transgender sailor.<sup>32</sup>

Chaplain (Capt) Hernandez responds:

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<sup>30</sup> Trumble at 26 July 2016 / 8:09 pm.

<sup>31</sup> Identified as MF (27 July 2016 / 5:14 am).

<sup>32</sup> Identified as "KZ" (27 July 2016 / 9:40 am).

Garrison, Letter 12.

#TransgenderSailor

I have the Holy scripture to direct my conduct on how I counsel. You are entitled to your opinion, but my authority rests on the testimony of Scripture, not the opinions of others. ***This is the role of the conservative, military chaplain.***

Respectfully,<sup>33</sup>

That attitude, publicly expressed, in MRFF's opinion, violates DoD's core policy pertaining to military chaplains, discussed below.

Next, Lt Col Dowty and Chaplain Hernandez provide what MRFF respectfully suggests is an overt, misogynistic, sexist blogpost and reply, entitled, *Kansas Army National Guard Commissions Female Chaplain*.<sup>34</sup> Lt Col Dowty states there:

***. . . there are some who advocate that chaplains should be able to meet the needs of all of their troops***, and a "minority" chaplain actually undermines that cause. While every Christian denomination represented in the military accepts a *male* pastoral leader, a substantial percentage do not accept *female* pastoral leaders. [Emphasis added].<sup>35</sup>

MRFF respectfully submits that by publicly disagreeing with the premise that "chaplains should be able to meet the needs of all of their troops. . . ." Lt Col Dowty appears to rebuke clear DoD policy, viz.:

#### 4. Policy

It is DoD policy that the Chaplaincies of the Military Departments:

\* \* \* \* \*

4.2. ***Shall serve*** a religiously diverse population. . . [Emphasis added].<sup>36</sup>

Air Force policy is in accord. See, AFPD 52-2, *Accommodation of Religious Practices in the Air Force*, (17 February 2016).

Chaplain Hernandez's comments (24 January 2017 / 1:12 am) are, MRFF submits, something out of the Stone Age where cave men drug "their" women around by their hair. His comments are

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<sup>33</sup> Emphasis added (27 July 2016 / 12:03 pm).

<sup>34</sup> See Kansas Chaplain, fn. 13, *supra*.

<sup>35</sup> *Id.*

<sup>36</sup> DoDD 1304.19, ¶ 4 (June 11, 2004).

Garrison, Letter 13.

*why* MRFF suggests that Chaplain (Capt) Hernandez should be fully investigated to ascertain if he *continues* to meed the mind-set of a military chaplain in today's diverse military population and, whether he should remain a commissioned officer. He stated in full:

I always get nervous when I see female pastors/chaplains. Here is why everyone should as well:

First, women are not called to be pastors, and since a chaplain is supposed to be a pastor in uniform—it exposes their rebellion.

Second, the office is permitted for men only, and women are prohibited from teaching (1 Timothy 2:12).

Third, people should be very worried when they see women pastors/chaplains teaching. Why? It could be God's judgment upon them (Isaiah 3, "...and women rule over them")!<sup>37</sup>

MRFF respectfully submits that the misogynistic attitudes displayed by Chaplain (Capt) Hernandez's blogpost above, have no place in the Air Force in general, and in its Chaplains Corps in particular.

### C. Legal.<sup>38</sup>

While Chaplain Hernandez as a citizen has basic First Amendment rights, as a uniformed, commissioned officer in our Armed Forces, those rights may be (and have been) circumscribed in ways inapplicable to civilians. The Supreme Court of the United States in a case styled as, *Parker v. Levy*, 417 U.S. 733 (1974), noted three principles as to why a servicemember's First Amendment rights may *constitutionally* be limited:

- *First*, "This Court has long recognized that the military is, by necessity, a specialized society separate from civilian society."<sup>39</sup>
- *Second*, "[The UCMJ] and the various versions of the Articles of War which have preceded it, regulate aspects of the *conduct* of members of the military which in the civilian sphere are left unregulated."<sup>40</sup>

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<sup>37</sup> See Kansas Chaplain, fn. 13, *supra*.

<sup>38</sup> MRFF recognizes that much of this discussion may appear duplicative to that contained in its original Complaint, it is being addressed again herein for ease of reference to the reader *and* to emphasize that MRFF takes the same legal position *vis-a-vis* Chaplain (Capt) Hernandez that it takes against Lt Col Dowty.

<sup>39</sup> 417 U.S. at 743.

<sup>40</sup> *Id.* at 749 [emphasis added].

Garrison, Letter 14.

- *Third,*

While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.<sup>41</sup>

*Parker* quoted with approval from *United States v. Gray*,<sup>42</sup> viz.:

Servicemen, like civilians, are entitled to the constitutional right of free speech. ***The right of free speech, however, is not absolute in either the civilian or military community*** [citations omitted]. . . . ***[S]imilar speech by a subordinate towards a superior in the military can directly undermine the power of command; such speech, therefore, exceeds the limits of free speech that is allowable in the armed forces.*** [Emphasis added]<sup>43</sup>

Returning to Chaplain (Capt) Hernandez's attempt to defend Lt Col Dowty's uninformed and false comments about Brig Gen (Sel) Goodwin,<sup>44</sup> his statements *considered in total* can only be read to mean that he supports and agrees with Lt Col Dowty's false claims that she lied about her sexual orientation on her AFA entrance paperwork in 1989, and thereafter violated the AFA's Honor Code by "living a lie." While both Lt Col Dowty and Chaplain Hernandez have the *private and personal* right to harbor intolerant, if not bigoted, religious views of LGBTQ servicemembers, they do not have any *legal right* as commissioned officers to publicly preach disrespectful views to an audience directed towards members of the U.S. Armed Forces. Such is a significant detriment to good order, morale, unit cohesion and discipline.

The Supreme Court has also specifically addressed this in the case of *Goldman v. Weinberger*, 475 U.S. 503 (1986). There the Court reiterated the principles enumerated in *Parker*:

Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society. The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the

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<sup>41</sup> *Id.* at 758.

<sup>42</sup> 42 C.M.R. 255 (CMA 1970).

<sup>43</sup> *Id.* at 258.

<sup>44</sup> *See, Breaking*, fn. 6, *supra*.

Garrison, Letter 15.

civilian state by the First Amendment; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and *esprit de corps*.<sup>45</sup>

The Court went on to state:

In the context of the present case, when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to ***the professional judgment of military authorities*** concerning the relative importance of a particular military interest.<sup>46</sup>

The “professional judgment” here is expressed in the promulgated *mandatory* diversity and equal opportunity policies, programs and regulations of both the DoD and the AF, as well as DoD’s core policy concerning chaplains, discussed above.

Lastly, consider the Supreme Court case of *Bolden v. Roy*, 476 U.S. 693, 699 (1986), where the Court observed as applicable herein, the following:

Our cases have long recognized a distinction between the freedom of individual *belief*, which is absolute, and the freedom of individual *conduct*, which is not absolute. [emphasis added].

As noted previously, the UCMJ contains numerous punitive (criminal) prohibitions regarding both the language and its context of Lt Col Dowty’s blogpost about Brig Gen (Sel) Goodwin, and now Chaplain (Capt) Hernandez’s attempt to defend such. All respectfully in MRFF’s opinion, merit a vigorous investigation by your office.

Chaplain (Capt) Hernandez’s commentary on Lt Col Dowty’s published denigration and disrespect towards Brig Gen (Sel) Goodwin, by referring to her as a liar and Honor Code violator, violates at least ***five*** punitive provisions of the UCMJ, and it would appear that his chain-of-command may be guilty of *Dereliction of Duty*, under Article 92(3), UCMJ, by failing to ensure compliance the applicable regulations.

### **1. Article 88, UCMJ: Contempt Towards Officials.**

As noted above, the Secretary of Defense is expressly included as a specified “official” in this punitive article of the UCMJ. Chaplain Hernandez’s 26 July 2016, blogpost entitled, *The Transgender (Homosexual) Lifestyle: A **Military Chaplain’s** Perspective*, (26 July 2016)[Emphasis added],<sup>47</sup> expressly attacked in MRFF’s opinion, then SecDef Ash Carter’s decision to allow transgender servicemembers to openly serve in the U.S. military. As the *Manual for Courts-Martial*

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<sup>45</sup> 475 U.S. at 507.

<sup>46</sup> *Id.* Emphasis added.

<sup>47</sup> See, *Transgender Lifestyle*, fn. 20, *supra*.

Garrison, Letter 16.

(2012) [MCM], makes clear, “It is immaterial whether the words are used against the official in an official or private capacity.” MCM, Part IV, ¶ 12(c). The *Manual* continues by explaining:

***Giving broad circulation to a written publication containing contemptuous words*** of the kind made punishable by this article, or the utterance of contemptuous words of this kind in the presence of military subordinates, aggravates the offense. ***The truth or falsity of the statements is immaterial.*** [Emphasis added].<sup>48</sup>

Clearly, publishing something on the world-wide internet is “[g]iving broad circulation” to Chaplain (Capt) Hernandez’s blogpost. The *Military Judges’ Benchbook*,<sup>49</sup> defines “contemptuous” as follows:

“Contemptuous” means insulting, rude, and disdainful conduct, or otherwise disrespectfully attributing to another a quality of meanness, disreputableness, or worthlessness.<sup>50</sup>

If nothing else, MRFF respectfully notes that the following retort by Chaplain Hernandez to the then Secretary of Defense, is contemptuous: “As a military chaplain . . . I stand firm that the transgender lifestyle is not Christian, but corrupt.”<sup>51</sup>

## **2. Article 89, UCMJ: *Disrespect Towards a Superior Commissioned Officer.***

“Disrespect” is behavior, *to include speech*, which detracts from the respect which is due to a superior commissioned officer. Thus, calling Brig Gen (Sel) Goodwin a “liar” or “Honor Code violator” *without a shred of evidence* corroborating those claims [evidence which does not exist because the claims are false], is not only disrespectful, but also defamatory under the circumstances. No person reasonably conversant in the English language could fail to see the overt disrespect displayed by Lt Col Dowty, and as Chaplain Hernandez amplified and repeated in his purported defense of Lt Col Dowty.

The MCM (2012), discusses the “disrespect” component in detail:

Disrespectful behavior is that which detracts from the respect due the authority and person of a superior commissioned officer. ***It may consist of acts or language, however expressed***, and it is immaterial whether they refer to the superior as an officer or as a private individual. ***Disrespect by words***

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<sup>48</sup> MCM, Part IV, ¶ 12(c).

<sup>49</sup> DA Pam 27-9 (2014, as amended).

<sup>50</sup> *Id.* at ¶ 3-12-1.

<sup>51</sup> See, *Transgender Lifestyle*, fn. 20, *supra*.



Garrison, Letter 17.

may be conveyed by abusive epithets or other contemptuous or denunciatory language. Truth is no defense. *Disrespect by acts includes* neglecting the customary salute, or *showing a marked disdain*, indifference, insolence, impertinence, undue familiarity, or other rudeness in the presence of the superior officer. [Emphasis added]<sup>52</sup>

It is important to point out here that the phrase “in the presence of the superior officer” in the last sentence of the above quotation *only* applies to “Disrespect by acts” and not the preceding clause discussing “disrespect by words.” However, even if one were to stretch the plain language of this, disrespectful words or conduct need not always be done “in the presence of the superior officer,” as the next paragraph in the MCM points out:

*It is not essential that the disrespectful behavior be in the presence of the superior*, but ordinarily one should not be held accountable under this article for what was said or done in a purely private conversation. [Emphasis added]<sup>53</sup>

The disrespectful remarks were not only directed to Brig Gen (Sel) Goodwin, but they were directed to anyone in the *world* having internet access. Thus, they can hardly claim that this was a “purely private conversation” in an attempt to escape accountability for their disrespect.

### 3. Article 92, UCMJ: *Failure to Obey Order or Regulation.*

This statute reads in relevant part:

**Any person subject to this chapter who—**

(1) violates or fails to obey any lawful general order or regulation;

\* \* \* \* \*

(3) is derelict in the performance of his duties;  
shall be punished as a court-martial may direct.

A number of such regulations are applicable in this matter:

#### a. DoDD 1020.02E, *Diversity Management and Equal Opportunity in the DoD* (2016).

Paragraph 3(b)(1), of this Directive states that it ensures that “All Service members are afforded equal opportunity in an environment free from . . . unlawful discrimination on the basis of . . . sex (including gender identity), or sexual orientation.” Chaplain (Capt) Hernandez’s actions herein would appear to have clearly created such a hostile environment not only for Brig Gen (Sel) Goodwin, but also for all of MRFF’s LGBTQ clients at the AFA, especially the cadet-clients.

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<sup>52</sup> MCM, Part IV, ¶ 13(c)(3).

<sup>53</sup> *Id.* at ¶ 13(c)(4).

Garrison, Letter 18.

Paragraph 4(b), of this Directive mandates that “. . . commanders and supervisors prominently post and enforce such policies and procedures.” Thus, your office is also respectfully requested to investigate *compliance* by Chaplain Hernandez’s “commanders and supervisors.”

Just to make sure that everyone gets the point, the Directive’s *Glossary* (p. 14) defines “MEO” [Military Equal Opportunity] as:

The right of all Service members to serve, advance, and be evaluated based on only individual merit, fitness, capability, and performance in an environment free from harassment, *including sexual harassment*, and unlawful discrimination on the basis of race, color, national origin, religion, sex (*including gender identity*), or sexual orientation. [Emphasis in original]

**b. AFI 1-1, *Air Force Standards* (2012).**

This regulation begins by stating: “COMPLIANCE WITH THIS PUBLICATION IS MANDATORY.”<sup>54</sup> It then states that:

This instruction is directive in nature and failure to adhere to the standards set out in this instruction can form the basis for adverse action under the Uniform Code of Military Justice (UCMJ).

That language triggers its enforceability under Article 92(1), UCMJ. Of import here, it goes on to state at ¶ 1.8:

***Diversity is a military necessity. Air Force capabilities and warfighting skills are enhanced by diversity among its personnel.*** At its core, such diversity provides our Total Force an aggregation of strengths, perspectives, and capabilities that transcends individual contributions. Air Force personnel who work in a diverse environment learn to maximize individual strengths and to combine individual abilities and perspectives for the good of the mission. Our ability to attract a larger, highly talented, diverse pool of applicants for service with the Air Force, both military and civilian, and develop and retain our current personnel will impact our future Total Force. [Emphasis added]

With that basic premise, AFI 1-1, goes on to discuss the precise scenario at issue herein at ¶ 2.15, entitled, “**Use of Social Media.**” This states in relevant part:

***Compliance with the standards discussed in this instruction does not vary, and is not otherwise dependent on the method of communication used. You***

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<sup>54</sup> All capital letters in original.

Garrison, Letter 19.

***are personally responsible for what you say and post on social networking services and any other medium.*** Regardless of the method of communication used, ***Air Force standards must be observed at all times, both on and off-duty.*** [Emphasis added].

The next three subparagraphs all apply to Lt Col Dowty's blogpost and Chaplain Hernandez's commentary at issue here:

2.15.2. Your obligation to maintain appropriate communication and conduct with officer and enlisted personnel, peers, superiors, and subordinates (to include civilian superiors and subordinates) is applicable whether you communicate via a social networking service or other forms of communication, such as e-mail, instant messaging, or texting.

2.15.3. ***You must avoid offensive and/or inappropriate behavior on social networking platforms*** and through other forms of communication that could bring discredit upon on the Air Force or you as a member of the Air Force, or that would otherwise be harmful to good order and discipline, ***respect for authority***, unit cohesion, morale, mission accomplishment, or the trust and confidence that the public has in the United States Air Force.

2.15.4. ***Airmen who provide commentary and opinions on internet blogs*** that they host or on others' internet blogs, ***may not place comments on those blog sites, which reasonably can be anticipated, or are intended, to degrade morale, good order, and discipline of any members or units in the U.S. Armed Forces, are Service-discrediting***, or would degrade the trust and confidence of the public in the United States Air Force. [Emphasis added]

As proof that Chaplain Hernandez's various postings at issue herein "degrade[d] morale, good order, and discipline" amongst military members, MRFF refers to the *readers'* comments quoted above.

**c. AFI 36-7001, Diversity (2012).**

Again, this regulation begins with the admonition that compliance is mandatory. Its stated purpose in ¶ 1.1, is in relevant part:

Air Force capabilities and war fighting skills are enhanced by diversity among its personnel. At its core, diversity provides our Total Force an aggregation of strengths, perspectives, and capabilities that transcends individual contributions. Air Force personnel who work in a diverse environment learn to maximize individual strengths and to combine individual abilities and perspectives for the good of the mission. Our ability to attract a larger, highly talented, diverse pool of applicants for service with the Air Force, both military and civilian, and develop and retain our current

Garrison, Letter 20.

personnel will impact our future Total Force.

By publicly rejecting diversity within the AF, Chaplain (Capt) Hernandez is the antithesis of the AF's (and DoD's) diversity programs, policies and regulations.

With respect to his chain-of-command, ¶ 1.4.2.1., commands that AF leaders:

Ensure all qualified personnel are welcome in America's Air Force.

Brig Gen (Sel) Goodwin is clearly *not welcome* in either Lt Col Dowty's or Chaplain Hernandez's Air Force!

The next paragraph, ¶ 1.4.2.2, goes on to mandate AF leaders to:

Educate and train all personnel on the importance of diversity, including mutual respect, thus promoting an Air Force culture that values inclusion of all personnel in the Total Force and views diversity and inclusion throughout the workforce as a force multiplier in accomplishing the Air Force mission.

Respectfully, your office needs to investigate *why* both Lt Col Dowty and Chaplain (Capt) Hernandez continue to ignore or reject diversity, and why their superiors have not ensured their compliance with these AF regulations.

#### **4. Article 133, UCMJ, Conduct Unbecoming an Officer and Gentleman.**

The gravamen of this offense in this matter – even in an unofficial or private capacity – is that a *commissioned officer* should not engage in conduct (to include speech) which “seriously compromises the person’s standing as an officer.”<sup>55</sup> Certain actions such as “unfair dealing . . . indecorum . . . [or] injustice”<sup>56</sup> may rise to the level of “Conduct Unbecoming,” something MRFF suggests is clearly demonstrated by the words, tenor, and context of Chaplain Hernandez’s blogposts at issue. One example given in the MCM is “using insulting or *defamatory* language . . . about another officer to other military persons . . . .”<sup>57</sup>

By posting his derogatory remarks about Brig Gen (Sel) Goodwin, Lt Col Dowty dove head first into the cauldron of “Conduct Unbecoming,” and Chaplain Hernandez was right behind him. Their unproven (and false) suggestion that Brig Gen (Sel) Goodwin willfully lied in 1989 and their decision to post unfounded suppositions on the internet for consumption by the world-wide public, including today’s and tomorrow’s Cadet Wing (student body) at the AFA, more than satisfies in MRFF’s opinion, the definition of Conduct Unbecoming an Officer.

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<sup>55</sup> MCM, Part IV, ¶ 59.

<sup>56</sup> *Id.*

<sup>57</sup> MCM, Part IV, ¶ 59(c)(3).

Garrison, Letter 21.

#### **5. Article 134, UCMJ, *The General Article*.**

Here, the applicable subsection is Clause 2, *i.e.*, “Conduct of a nature to bring discredit upon the armed forces.”

Discredit” means to injure the reputation of. This clause of Article 134 makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lower it in public esteem.<sup>58</sup>

The fact that Chaplain (Capt) Hernandez’s *Transgender Lifestyle* blogpost<sup>59</sup> generated numerous hostile responses to his rant, is MRFF respectfully suggests, more than enough “proof” that Chaplain Hernandez’s blogpost at issue here, was “service discrediting,” and merits investigation by your office.

#### **D. The “Disclaimer” Issue.**

As noted above, while Chaplain (Capt) Hernandez utilizes a “disclaimer” on his articles, MRFF respectfully submits that in the totality of circumstances, such is purely pretextual in an attempt to feign compliance with the applicable *Standards of Ethical Conduct*, in his public use of his military rank, position and Base of assignment. Legally, “‘pretext’ means deceit used to cover one’s tracks.”<sup>60</sup> It does not take the proverbial “crystal ball” to see, in MRFF’s opinion, that Chaplain Hernandez’s use of his “disclaimer” was purely pretextual and used solely to feign compliance and to cover his tracks. MRFF respectfully submits that Chaplain Hernandez is using his “disclaimer,” *not* as a legitimate shield for both permissible commentary and the use of his military rank, position and unit, but rather as a sword to cover his contemptuous, defamatory and disrespectful attacks on his superiors, civilian and military, who do not share his homophobic and misogynistic religious beliefs.

#### **E. Consent to Release.**

MRFF, by and through its undersigned counsel, agrees and consents to your office’s release of this document for any purpose deemed appropriate to your investigation.

### **CONCLUSION**

As an aid to your investigation, may I again suggest a Report by the Congressional Research Service, entitled, *Diversity, Inclusion, and Equal Opportunity in the Armed Forces: Background and*

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<sup>58</sup> MCM, Part IV, ¶ 60(c)(3).

<sup>59</sup> See, fn. 20, *supra*.

<sup>60</sup> *Kulumani v. Blue Cross Blue Shield Ass’n*, 224 F.3d 681, 684 (7<sup>th</sup> Cir. 2000), citing *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

Garrison, Letter 22.

*Issues for Congress*, (2016),<sup>61</sup> both for background material and for information and historical background on DoD's protection of one's sexual orientation.

Referring publicly to one's superior commissioned officer as a "liar" is simply not acceptable in an environment that mandates "good order and discipline," obedience, and *esprit de corps*. MRFF respectfully suggests that both Lt Col Dowty and Chaplain (Capt) Hernandez aggravated that situation significantly by ignoring the DoD and AF policies and regulations pertaining to diversity (to include sexual orientation) and equal opportunity by gratuitously referring to Brig Gen (Sel) Goodwin as a "known homosexual," and then throwing in their personal and intolerant religious dogma.

Officers who profoundly disagree with *official* DoD and AF policies, programs, and regulations designed to ensure *diversity* and *equal opportunity* within the U.S. military community have two fundamental choices: (1) accept them; or (2) resign their Commission. But, an officer does *not* display contempt and disrespect for any reason to their superior, commissioned officers, or civilian Secretaries.

Furthermore, MRFF suggests that effective and efficient military leadership does *not* bury its head in the proverbial sand, so as to not "see" and thus, not "know" what their subordinates are doing on social media. Cf. AFI 1-1, ¶ 2.15.4, *supra*. The disrespect here is, as MRFF suggests, open, notorious and appears to be in direct violation of numerous regulations and the UCMJ.

*Public trust* – as noted above – in America's commissioned officer corps, is a vital and basic component of federal ethical standards. That trust was shattered in MRFF's opinion, as exemplified by the readers' comments to Lt Col Dowty's and Chaplain Hernandez's blogposts at issue. Therefore for all of the reasons set forth herein and in MRFF's 3 April 2017 Complaint, a full and vigorous investigation is warranted.

You and your staff are authorized to communicate with me via email regarding this matter.

Respectfully submitted,

/s/ *Donald G. Rehkopf, Jr.*

**DONALD G. REHKOPF, JR.**

Attorney at Law

cc: AFRC/JA (Col Byrne)

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<sup>61</sup> Available at: <https://fas.org/sgp/crs/natsec/R44321.pdf> [Last accessed: 31 March 2017].