

Friday, March 22, 2019



MILITARY RELIGIOUS FREEDOM
f o u n d a t i o n

**MRFF REQUESTS
OFFICIAL HEARING BEFORE
UNITED STATES COMMISSION
ON CIVIL RIGHTS**



MILITARY RELIGIOUS FREEDOM
f o u n d a t i o n

Thursday, March 21, 2019

United States Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425

Honorable Commissioners,

As a well-known, prominent guardian of civil rights in the Federal government, especially in the United States military, we respectfully ask that you urgently consider our objections to the Department of the Air Force's recently published Opinion of The Judge Advocate General (AFJAGAF), legalizing religious evangelizing and proselytizing at change of command and promotion ceremonies in violation of the First Amendment's Establishment Clause. An AFJAGAF opinion is definitive, controlling guidance to United States Air Force (USAF) commanders. It is "controlling legal guidance" that must be obeyed by USAF commanders, unless overruled by the Air Force General Counsel's Office, which has elected to not issue contrary guidance in this case.

Over the years, we have made repeated complaints with the Department of Defense and the Department of the Air Force on religious matters in violation of the Establishment Clause. Due to our complaints being routinely minimized and rejected by DOD and USAF, we now seek your review. We feel we have exhausted administrative review at DOD and USAF levels, and therefore, seek your intercession. We would greatly appreciate it if you convened a hearing to review this matter. We would happily testify before the Commission, and we are certain DOD and USAF officials would feel compelled to accept your invitation to similarly testify and attempt to justify their violation of the Establishment Clause.

The attached Opinion of The Judge Advocate General of the Air Force (OPJAGAF) reaches an extremely ominous and utterly unconstitutional conclusion; to wit, that United States Air Force (USAF) commanders may now publicly endorse the specific name of their personal gods or deities at their official USAF Change of Command ceremonies and promotion ceremonies. (See attachment 1 to read the OPJAGAF.) This OPJAGAF now serves as the controlling legal authority, permitting violations of the Establishment Clause by all Air Force members at change of command ceremonies and promotion ceremonies.

13170-B CENTRAL AVENUE SE, SUITE 255, ALBUQUERQUE, NM 87123 800-736-5169
WWW.MILITARYRELIGIOUSFREEDOM.ORG

[Click to Enlarge and Read Entire Letter](#)

Opinion of The Judge Advocate General of the Air Force (OPJAGAF), 2018-52, 19 December 2018

OpJAGAF 2018-52, 19 December 2018, CONSTITUTIONAL LAW

TOPIC

Changes of Command and the First Amendment

Text of the decision

During a recent change of command, the incoming wing commander stated, "First I'd like to thank God for the many blessings He's given me and my family and the guidance in my life." The commander proceeded to thank the many people who helped him along the way and closed with mission-focused remarks. Within approximately ten minutes of the conclusion of the change of command ceremony, at the same venue, the commander was promoted to the next higher grade. At this personal promotion ceremony, the commander said:

So first off, I just want to remind everyone I just took the oath of office to support and defend the Constitution of the United States and one of those things in the Constitution is our Freedom of Religion, and so I wholeheartedly agree with that and I believe that the diversity we have in the United States is incredible and I will defend that right with my life. But today, today is a little personal for me, so I just want to thank my God Jesus for his salvation and the things that he's done in my life and the blessings he's given me and my family."

This OpJAGAF is in response to your request for guidance on whether a commander violates the Establishment Clause of the First Amendment and Air Force Instruction 1-1, *Air Force Standards*, 7 August 2012, Incorporating Change 1, 12 November 2014, if he or she thanks God and/or has an invocation at a change of command ceremony. It also addresses whether the analysis changes if the change of command is followed immediately by a personal promotion ceremony.

We conclude a commander may: briefly thank a Supreme Being (either generally, such as Providence, that Almighty Being, our Lord, or the Supreme Author of All Good; or specifically, such as Allah, Brahman, Christ, Ganesh, God, Yahweh, or even Beelzebub), have an invocation, and choose whomever he or she would like to provide the invocation. If the commander holds a personal promotion ceremony on the same day, a significant break must occur between the change of command and promotion ceremony in order for the commander to be freer in expressing his or her personal religious beliefs. If a break does not occur, the commander must limit his or her religious comments to comments that are appropriate at the official change of command.

Discussion

Changes of command are official events. The primary purpose is "to allow subordinates to witness the formality of command change from one officer to another. The ceremony should be official,

[Click to Enlarge and Read Document](#)

Parker v. Levy, 417 U.S. 733 (1974)

(Excerpt from MRFF's Letter to United States Commission on Civil Rights)

In *Parker v. Levy, 417 U.S. 733 (1974)*, the United States Supreme Court absolutely and quite conclusively defined the limits of First Amendment freedoms for military members. As such the Supreme Court's opinion serves as incontrovertible, controlling law regarding when free exercise of religion in the military is constrained by the Establishment Clause of the First Amendment. The Court concluded that First Amendment freedoms (such as the religious Free Exercise Clause) are restricted when such speech begins to degrade morale, good order and discipline in

the Armed Forces. The Court limited the First Amendment freedoms of military members to the higher necessity of defending the Nation by maintaining morale, good order and discipline of members of the Armed Forces, who are charged with defending the survival of the nation and thus, the survival of the Constitutional freedoms for its civilian citizens. Indeed, one of the most conservative Chief Justices in the history of the United States Supreme Court, Chief Justice William Rehnquist, authored that seminal.

U.S. Supreme Court

Parker v. Levy, 417 U.S. 733 (1974)

Parker v. Levy

No. 73-206

Argued February 20, 1974

Decided June 19, 1974

417 U.S. 733

APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Syllabus

Article 90(2) of the Uniform Code of Military Justice (Code) provides for punishment of any person subject to the Code who "willfully disobeys a lawful command of his superior commissioned officer"; Art. 133 punishes a commissioned officer for "conduct unbecoming an officer and a gentleman"; and Art. 134 (the general article) punishes any person subject to the Code for, *inter alia*, "all disorders and neglects to the prejudice of good order and discipline in the armed forces," though not specifically mentioned in the Code. Appellee, an Army physician assigned to a hospital, was convicted by a general court-martial of violating Art. 90(2) for disobeying the hospital commandant's order to establish a training program for Special Forces aide men, and of violating Arts. 133 and 134 for making public statements urging Negro enlisted men to refuse to obey orders to go to Vietnam and referring to Special Forces personnel as "liars and thieves," "killers of peasants," and "murderers of women and children." After his conviction was sustained within the military and he exhausted this avenue of relief, appellee sought habeas corpus relief in the District Court, challenging his conviction on the ground that both Art. 133 and Art. 134 are "void for vagueness" under the Due Process Clause of the Fifth Amendment and overbroad in violation of the First Amendment. The District Court denied relief, but the Court of Appeals reversed, holding that Arts. 133 and 134 are void for vagueness, that, while appellee's conduct fell within an example of Art. 134 violations contained in the Manual for Courts-Martial, the possibility that the articles would be applied to others' future conduct as to which there was insufficient warning, or which was within the area of protected First Amendment expression, was enough to give appellee standing to challenge both articles on their face, and that the joint consideration of the Art. 90 charges gave rise to a "reasonable possibility" that appellee's right to a fair trial was prejudiced, so that a new trial was required.

[Click to Enlarge and Read Case](#)

AIR FORCE LEGAL OPINION LEAKED TO MRFF - REVEALS APPROVAL OF RELIGIOUS EXPRESSION

"In apparent defiance of its own regulations and the First Amendment, the judge advocate general (JAG) of the Air Force has issued an opinion approving religious expression during an official change of command ceremony.

***The opinion** (click to read), which was leaked to the Military Religious Freedom Foundation (emphasis added) (and a copy of which was shared with this reporter),*

allows even more expansive expression during a purportedly “private” promotion ceremony, conducted after a mere ten-minute break.”

-Excerpt from Religion Dispatches Article.



RELIGION DISPATCHES COVERS MRFF ON HOMEPAGE Leaked Air Force Legal Opinion Approves Religious Expression

By: Paul Rosenberg

Thursday, February 21, 2019

According to a retired attorney for the DOD, "When you proselytize as a commander...you necessarily send doubts to the subordinates that you oversee about your impartiality and thus degrade good order and discipline, and in turn degrade combat capability."

In apparent defiance of its own regulations and the First Amendment, the judge advocate general (JAG) of the Air Force has issued an opinion approving religious expression during an official change of command ceremony.

The opinion, which was leaked to the Military Religious Freedom Foundation (and a copy of which was shared with this reporter), allows even more expansive expression during a purportedly “private” promotion ceremony, conducted after a mere ten-minute break. Going beyond lax enforcement of recent cases, **MRFF President Mikey Weinstein called it “a direct and defiant nuclear attack**

against the First Amendment's separation of church and state.”

“The JAG opinion is definitely wrong,” Andrew Seidel, counsel for the Freedom From Religion Foundation told RD. Alex Luchenitser, associate legal director for Americans United for Separation of Church and State , agreed.

“We think this opinion is unconstitutional, that this violates the religious freedom and the separation of church and state,” Luchenitser said.

[...]

[Click to Read on Religion Dispatches](#)

RELATED: MIKEY's OP-ED - 6/23/18

USAF Embarrasses Itself With Statement Allowing God-Drenched Flag Folding Ceremony – AGAIN. Fundamentalist First Liberty Institute Pounces with Glee on New Poster Child

[Click to Read on MRFF](#)



"Michael L. Weinstein - Wikipedia"

On March 15, 2019 at 3:37:07 AM MDT, (name withheld) wrote,

Sorry about you and your family being harassed at the academy being called such filth Not all Christians are that way but if you can defend someone on what they wear and then take away what people like to read I'm just wondering how fair is that The hatred is from the Devil He hates GOD chosen ones and will use any person to do such evil acts I do pray that you see the LIGHT In GOD we trust Shalom

To See Response From
MRFF Advisory Board Member Mike Farrell:

[Click to Read in Inbox](#)

MRFF Information/Contact:
(505) 250-7727

SUPPORT MRFF!
Your Generous Support Allows us to Continue
our Fight in the Courts and in the Media

[Make a Donation](#)

[Join MRFF's Constitution Society \(Recurring Donation\)](#)

[Help Build the Wall : Donate a "Brick"!](#)

