



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

Wednesday, August 31, 2016

Glenn A. Fine
Inspector General, Department of Defense
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear Honorable Glenn Fine:

It has come to my attention that the American Center for Law and Justice (ACLJ) recently submitted to you a position statement urging you to disregard the Military Religious Freedom Foundation's (MRFF) recent demand for further investigation into the actions of Major Steve Lewis at the Reserve National Security Space Institute (RNSSI). Although we at MRFF believe that you will see Major Lewis's display of a highlighted Bible in a common work area for the constitutional violation that it is, I would like to briefly respond to the arguments presented by the ACLJ.

This Case Does Not Involve the "Passive Display of a Bible"

In their letter, the ACLJ describes Major Lewis's actions as "passive" or "mere" at least fourteen times. However, this is an attempt to perform a magic trick – one they hope will transform an intentional constitutional violation into an innocent expression of personal beliefs. By simply repeating the word "passive," the ACLJ hopes to create the impression that Major Lewis simply left his Bible on his desk after taking a personal moment to reflect on its passages. That, however, is not the case.

Instead, Major Lewis intentionally left a highlighted Bible in a public work area open to the same pages every day. His intent was clearly to have others in the work area notice those particular passages and, therefore, his act was far from passive. Even if he did not force those under his command to sit and read the Bible or listen to him discuss the highlighted passages, such measures of coercion are not required for an act to constitute a violation of the Establishment Clause.

Put simply, the ACLJ can describe Major Lewis's conduct as "passive" until they run out of breath – it will not have the desired effect of changing the facts.

Major Lewis's Actions Violated the Establishment Clause, Controlling Federal Case Law, and Air Force Regulations

The ACLJ erroneously claims that Major Lewis's actions were private expression and could not be reasonably understood to constitute government expression. Essentially, they claim that Major Lewis – as a military leader – is not a state actor and his actions could only violate the Constitution if he had “placed the Bible on his desk at the behest of a Government agent.” This assertion is patently false.

It is undisputed that the military is a government entity and, therefore, if the military were to endorse one religion over others it would violate the Establishment Clause. The military obviously cannot act on its own, but must necessarily act through the actions of its leaders, such as Major Lewis. As a supervisor at the RNSSI, Major Lewis is a state actor and his actions are attributable to the Air Force. *See Lee v. Weisman*, 505 U.S. 577, 112 S.Ct. 2649 (1992) (stating that, from a constitutional perspective, the decision of a school principal was attributable to the State, such that it was as if a state statute decreed the prayer must occur).

Since Major Lewis was clearly acting as an agent of the military, the next question is whether or not his actions violated the Establishment Clause. An act or policy of a government entity violates the Establishment Clause if any one of the following is shown: (1) its purpose is not secular; (2) its principal/primary effect either advances or inhibits religion; or (3) it fosters an excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). There is clearly no secular purpose for keeping a Bible in a common work area, its presence plainly advances religion, and the endorsement of the particular highlighted passages creates an excessive entanglement with religion.

Air Force Regulations similarly prohibit military leaders from giving the impression that they are officially endorsing a particular religion over others. Even the case law cited by the ACLJ states that the government must remain neutral in matters of religion, yet they argue that the “neutral” choice is allowing a Bible to remain in a common work area.

It should also be noted that MRFF received over thirty-three complaints about Major Lewis's Bible, the majority of which came from people under his command. Therefore, his actions obviously have more than an illusory impact on the morale at the RNSSI.

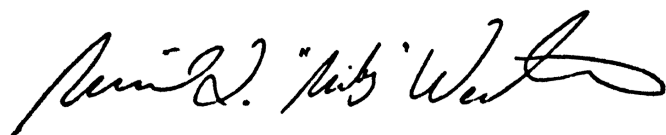
The ACLJ's Defamatory Statements Against me, Mikey Weinstein, Are An Attempt to Distract From Real Constitutional Issues

Approximately three pages of the ACLJ's letter are devoted to false and defamatory statements about me and my organization. The quotes they use are intentionally taken out of context in an

effort to prejudice you against me and the work of MRFF. Sir, this is nothing more than an attempt to distract you from the facts of this case.

As explained above, the ACLJ has misrepresented both the facts and the law regarding Major Lewis's actions. They have already discredited themselves in this matter and I respectfully submit that their claims against me are similarly without merit. I will not waste your time by attempting to respond to each of their false allegations. The work of MRFF speaks for itself and I would be happy to provide you with information about our successes if you would like to know more about us.

Respectfully,



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CC:

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Chairman of the Joint Chiefs of Staff – General Joseph F. Dunford, Jr.
Secretary of the Air Force – Deborah Lee James
Chief of Staff, United States Air Force – General David L. Goldfein
Randal G. Mathis, Mathis & Donheiser P.C. – MRFF Lead Trial Counsel