

June 13, 2006

General Robert R. Allardice
Director, Airman Development & Sustainment
Deputy Chief of Staff, Manpower and Personnel
Headquarters
United States Air Force
The Pentagon
Washington, DC

Dear General Allardice:

On behalf of the American Jewish Congress, American Jewish Committee, Anti-Defamation League and the Religious Action Center of Reform Judaism, we write to extend our appreciation for your letter of May 15, 2006, soliciting our views concerning training methods to implement the *Revised Interim Guidelines Concerning Free Exercise of Religion*.

Your letter implements a promise made to our organizations by the Secretary of the Air Force to solicit our views and those of others concerning the actual implementation of the Guidelines. As I am sure you are aware, our organizations all recognized that the revised Guidelines went a substantial way towards alleviating concerns that had arisen in the context of the Air Force Academy and beyond. After meeting with the Secretary, our organizations believe that proper implementation of the training program contemplated in your letter is crucial to eliminating any remaining shortcomings in the Guidelines and making sure that they are something more than fine-sounding rhetoric.

We have several specific suggestions to make:

- (1) There are models in the employment sector on which to draw with regard to religion. Notable among these are President Clinton's *Guidelines on Religion In The Federal Workplace*. (The Guidelines are available on line at <http://clinton2.nara.gov/WH/New/html/19970819-3275.html>) These guidelines contain numerous hypothetical problems and proposed solutions. Most, but not all, of these can readily be adopted for military use.

There are, as you no doubt know, all sorts of training materials concerning sexual harassment in the workplace. Some of these may be useful in preparing Air Force materials training regarding religion, but we caution against their wholesale transfer to the religious context. There is little public value in sexually suggestive remarks, so that private employers may well be entitled to ban all sexually suggestive remarks from the workplace as a prophylactic against actual illegal activity.

That is not the case with religion. Religious speech is affirmatively valued and protected by the Constitution. The Air Force is properly committed to protecting the

free exercise of religion of its enlisted and commissioned personnel. It cannot carry out that commitment if it adopts blanket rules against religious speech in its workplace.

Several years ago, the EEOC conflated rules about religion and sexual harassment. In the ensuing public and congressional controversy, the EEOC was forced to withdraw its guidelines on religious harassment altogether, and has never sought to address it again. The Air Force should not repeat the EEOC's mistake.

There is an additional reason why the simple transposition of workplace rules to the Air Force would not work. The civilian worker is present in the average workplace for only a few hours a day. Whatever legitimate restrictions are placed on her religious activity in the workplace do not interfere with her ability to meet her religious and spiritual needs elsewhere. This is not true of military personnel, whose lives are subject to a far greater degree of control by the Air Force, and whose day extends well beyond 9 to 5.

The fact that the Air Force is a "total institution," to borrow a term from contemporary sociology, means that rules applicable to the ordinary workplace will be too restrictive in some ways and not protective enough in others regards, especially because of the far greater control higher ranking personnel have over the lives and careers of lower ranking personnel. Then, too, civilian employment offers nothing comparable to the group living and military rituals which are so crucial to the effective functioning of the military. The point is, to paraphrase General Rives at our meeting with the Secretary, to assure airmen that their military careers will not be affected by their religious practices and beliefs (or lack thereof).

We think that for all these reasons, the Air Force needs to take great care in modeling its training materials on existing employment-related materials, making substantial adaptations for the special circumstances of the military.

- (2) Also relevant are materials designed to introduce college and high schools students to the problems of living and functioning in a diverse environment. The Anti-Defamation League has produced a widely-used (and widely praised) set of such materials, *A WORLD OF DIFFERENCE Institute*; and the American Jewish Committee has a similarly acclaimed program, *Hands Across The Campus*. These materials can be adapted for military use.
- (3) We think—and our experience both in helping to draft *Guidelines on Religion In The Federal Workplace* and in counseling employers and employees over the years confirms—that the most difficult problems will arise in delineating the line between real (or legitimately perceived) supervisory pressure to accept certain religious premises and legitimate and free-willed conversation between people in the same workplace, who despite differences in rank, are in practice speaking as equals.

In this regard, there are two urgent tasks: one, and perhaps the most urgent, is to alert supervisors that whatever their intentions and perceptions, those they supervise (and rate) may perceive any discussion of religion by the supervisor as inherently coercive. The greater the gap between ranks, the greater the likelihood of this perception existing. At some point, the gap may be so great as to justify even a total ban on

religious speech. No matter what a three-star general or drill sergeant says to newly commissioned second lieutenants or recruits about the voluntariness of his endorsement of a particular religion, those hearing religious remarks from a person of such rank will not likely regard them as an invitation that can be refused.

The second part of this aspect of training is a series of scenarios. These scenarios, in our view, must extend beyond the “workplace” as it were, into the “living together” aspects of military life. Here the problem is not only the ability of superiors to command adherence to a particular religion, but the ability of “group think” to ostracize or pressure those members of a unit with different religious practice or views. We are not suggesting that religious majorities should be silenced, but they need to understand the difference between what is legitimate expression of religious differences and what amounts to religious harassment or religiously-based *de facto* exclusion from the group.

Conversely, those who are religious minorities need both to be reassured that they may practice their faith openly and that they, too, need to do so in ways that are not unnecessarily offensive or burdensome to others.

- (4) An important skill to be taught is respect for the right of Air Force personnel to “say no” and to have that “no” respected. As all of us have recognized both in writing and in the course of meetings with Air Force leadership, the freedom of religion necessarily includes the right of members of the Air Force (where actual or implied coercion is absent) to discuss religious matters with their willing colleagues. The concomitant right must be a right not to listen. And that means that the ‘listener’ has a right to request that such targeted discussions (or discussion aimed at a captive audience) stop upon request. We think the training materials need to inform members of the Air Force that they have a right to say no, and concomitantly that other members must respect the assertion of that right.
- (5) We have repeatedly insisted that the availability of a grievance or complaint procedure is an important element of the Guidelines. Active-duty personnel must know how to invoke the grievance procedure and that they may do so in good faith without any penalty or retaliatory harm to their careers. We think it will be useful to have both formal and informal avenues for pursuing grievances. To the greatest extent possible, the protection of anonymity, especially before a decision is made to file a formal grievance, will be helpful.
- (6) Finally, we know that an important and indispensable, but for some, controversial, aspect of the Guidelines are the limits on the “right” of chaplains to pray as they see fit using particular or parochial forms, even at official events at which attendance is mandatory. We believe no such right exists, and if chaplains were to pray in particularistic fashion in the latter circumstances they would be violating the rights of their listeners.

It would be worthwhile for the Air Force to include in its training for chaplains reference to the recent decision of the United States Supreme Court in *Garcette v. Ceballos* (2006), holding unreservedly that the First Amendment does not “prohibit managerial discipline based on employee expressions made pursuant to official

responsibilities,” and that “restricting speech that owes its existence to a public employee’s professed responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.” A chaplain praying at mandatory events speaks only in carrying out his official “professional responsibilities” and hence restrictions on that speech do not “infringe any liberties the employee might have enjoyed as a private citizen.”

We hope our comments are helpful. We are available for any further assistance we can render.

Sincerely,

American Jewish Congress
American Jewish Committee
Anti-Defamation League
Religious Action Center, Union of Reform Judaism

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