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**ASYMMETRIC THREATS TO THE UNITED STATES ARMY
CHAPLAINCY IN THE 21ST CENTURY**

BY

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Asymmetric Threats to the United States Army Chaplaincy in the 21st Century

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ABSTRACT

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On 23 November 1979, a civil law suit was filed claiming that the Army Chaplaincy violated the establishment clause of the First Amendment. After six years of legal battle the plaintiffs dropped the case subsequent to the ruling by the Second Circuit court in favor of the Chaplaincy. Consequently, since the case did not go before the Supreme Court, the litigation produced no clear mandate regarding the constitutionality of the Chaplaincy.

The Army Chaplaincy functions as an instrument of the U.S. Government to ensure the protection of the soldiers' religious free exercise rights. In performing this function, chaplains, as federally employed clergy, conduct their business within the dynamic tension that exists between the establishment clause and the free exercise clause.

This paper examines a number of legal decisions that have implications for the Army Chaplaincy. These implications could impact the future existence of the Chaplaincy or the way it provides religious support to the Army.

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ASYMETRIC THREATS TO THE UNITED STATES ARMY CHAPLAINCY OF THE 21ST CENTURY

INTRODUCTION AND PROBLEM TO BE CONSIDERED

When you are about to go into battle, the priest shall come forward and address the Army. He shall say: "hear, O Israel, today you are going into battle against your enemies. Do not be afraid; do not be terrified or give way to panic before them. For the Lord your God is the one who goes with you to fight for you against your enemies to give you victory."¹

—God to Moses

At the beginning of Chaplaincy history, in 1775, chaplains did not join the Continental Army because they were recruited by their churches or by the government. They went to the Army because the soldiers, who were frequently from their communities and congregations, asked and expected their pastors to go with them. Soldiers did not want to die without benefit of clergy. Most of the clergy, avid supporters of the American cause, responded willingly.²

—Chaplain (Colonel) John W. Brinsfield

For as long as there have been soldiers, there have been chaplains; holy³ men and women going into battle sometimes as combatants or even combat leaders, but always as spiritual care givers. Throughout history, it has not mattered whether the soldier viewed the chaplain as a spiritual charm or someone helping bridge the gap between God and man, the chaplain was welcome as the soldier performed the most deadly vocation in history.

The men and women of the United States Army Chaplain Corps proudly see themselves as the second oldest corps in the Army, second only to the Infantry and predating the official founding of the country itself.⁴ Chaplains see themselves as important because soldiers and their constitutional religious rights and spiritual well being are important. While a commander's impact may span a number of years, a chaplain's impact could well be for an eternity.

The Chaplain Corps proclaims that it brings God to the soldier and the soldier to God. This is accomplished in two ways. First, there is the presence of the chaplain in the unit. He or she is fully integrated into the unit activities both in garrison and the battlefield. The chaplain is a member of the commander's staff with direct access to the commander on behalf of the soldier. The chaplain has free access to the soldier in the workplace on behalf of the commander.

Second, the chaplain provides worship or worship opportunities for the soldiers and their families. The chaplain ensures that worship opportunities are available in garrison through the unit religious program and through the installation chaplain's execution of the installation commander's religious

program. The unit chaplain goes on all unit deployments to care for the soldiers' religious needs away from home.

By these means, the Chaplaincy seeks to meet its goal of providing "the highest quality ministry to America's Army with trained and ready personnel responsive in any contingency."⁵ In providing this ministry, the chaplain performs a dual role of staff officer and religious leader carrying out the commander's religious program. The chaplain does not own the religious program; it is the responsibility of the commander. The chaplain is the staff officer who carries out the commander's religious program.

This writer believes that a healthy and institutionally embedded and involved Chaplaincy is absolutely essential if the nation is going to have a healthy, values oriented, capable Army. This paper will examine several legal cases that have implications for the Chaplaincy. It will attempt to consider some potential problems that could conceivably threaten the future existence or effectiveness of the United States Army Chaplaincy as it is known today.

These potential threats are considered to be asymmetric because they come from within the Army Chaplaincy itself and the manner in which business is conducted. They are potential threats only because one can not predict the future, foresee changes to regulations, Army needs, and the nation's values, or know what legal challenges will become court cases, or know how courts will rule. The threats dealt with here are identified as challenges that the Chaplaincy's strategic leaders and thinkers may need to deal with deliberately as Chaplaincy force protection issues. These threats are also presented with the author's humble knowledge that others may totally disagree that they are threats, and they may be right.

A HISTORICAL LEGAL CHALLENGE TO THE CONSTITUTIONALITY OF THE ARMY CHAPLAINCY

This is a civil action for declaratory and injunctive relief brought by federal taxpayers challenging the constitutionality of the United States Army's religious support program. Plaintiffs seek (i) a judgment declaring that the Chaplaincy program constitutes an establishment of religion in violation of the First Amendment of the United States Constitution, and (ii) an injunction restraining the defendants from approving or otherwise providing funds or support in any respect to religious activities in the Army.⁶

—Joel Katcoff and Allen M. Wieder, Plaintiffs, Civil Action 79C2986, November 23, 1979.

On 23 November 1979, Joel Katcoff and Allen M. Weider filed a civil law suit claiming that the Army Chaplaincy violated the establishment clause of the First Amendment.⁷ After six years of legal battle the plaintiffs dropped the case subsequent to the ruling by the Second Circuit Court in favor of the Chaplaincy. But the victory was a dubious one since "no clear constitutional mandate emerged from the litigation. . . . for only the Supreme Court can ultimately determine constitutional legality, and the case never reached that level."⁸

This particular court battle was based entirely on the First Amendment to the Constitution of the United States. The amendment declares, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" ⁹ The plaintiffs based their attack on the establishment clause while the defendants based their defense on the free exercise clause.

It may be fairly noted here that the phrase "separation of Church and State" does not occur in the Constitution. In 1952, Justice Douglas went so far as to state for the Court, "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State." ¹⁰

The Chaplaincy viewed the court case with great seriousness. In a letter, Chaplain (Major General) Kermit D. Johnson, then Chief of Chaplains, stated, "The court challenge to the Constitutionality of the Chaplaincy is the single most critical issue facing us at this time. The future of the Chaplaincy rests of the outcome of this case." ¹¹ Six years later when the case was dropped, then Chief of Chaplains Pat Hessian wanted the litigation to continue to the Supreme Court believing that an absolute, final, and favorable decision would result. ¹²

Hessian may well have been right in wanting a final resolution to the Constitutionality issue and in believing the court would be favorable to the Chaplaincy. In an earlier "establishment" case, *School District of Abington Township v. Schempp*, Justice Goldberg stated, "It seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains . . ." ¹³ In the same case, Justice William Brennan wrote concerning the conflict between establishment and free exercise:

There are certain practices, conceivably violative of the Establishment Clause, the striking down of which might seriously interfere with certain religious liberties also protected by the First Amendment. Provisions for churches and chaplains at military establishments for those in the armed services may afford one such example. The like provision by state and federal governments for chaplains in penal institutions may afford another example. It is argued that such provisions may be assumed to contravene the Establishment Clause, yet be sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause. Since government has deprived such persons of the opportunity to practice their faith at places of their choice, the argument runs, government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be. ¹⁴

In a similar approach, Justice Stewart pointed out, "Spending federal funds to employ chaplains for the armed forces might be said to violate the Establishment Clause. Yet a lonely soldier stationed at some faraway outpost could surely complain that a government which did not provide him the opportunity for pastoral guidance was affirmatively prohibiting the free exercise of his religion." ¹⁵

In *Katcoff v. Marsh* the opinion of the court (consisting of Chief Judge Wilfred Fienberg, and Circuit Judges Walter R. Mansfield and Thomas J. Meskill) was written by Judge Mansfield. He stated, "This appeal raises the question of whether Congress and the United States Army ("Army"), in furnishing chaplains as part of our armed forces to enable soldiers to practice the religions of their choice, violate the Constitution. We hold that, except in a few respects that require further consideration, they do not." ¹⁶

The few respects requiring further consideration were two issues of concern to Chief Judge Feinberg and Circuit Judge Mansfield. They ordered a remand with Circuit Judge Meskill dissenting on the need for the remand. Judge Mansfield expressed the concern of the majority that, "In a few areas, however, the reasonable necessity for certain activities of the military chaplaincy is not readily apparent."¹⁷ There were two areas to which he referred. First, in some large urban centers, such as the Pentagon, there are plenty of civilian clergy and facilities available to soldiers. Second, chaplains minister to retired military personnel and their families.

Judge Meskill dissented, believing that no remand was required and that the plaintiffs (who, he pointed out, had never served in the military) alternative proposal of civilian churches taking over the responsibilities of the Army Chaplaincy bordered on the frivolous.¹⁸

Then Chief of Chaplains Pat Hessian answered the two issues in an affidavit. He pointed out that no Chaplaincy programs were directed solely to retirees and that they were the backbone of the chapel volunteer program.¹⁹ He concluded by arguing "that only specially trained military chaplains were able to minister effectively to soldiers, even when the setting was an urban one."²⁰

Speaking for the court, Judge Mansfield pointed out the Free Exercise Clause "obligates congress, upon creating an army, to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations is not available to them."²¹ He further stated that, "Members of the Supreme Court have pointed to Congress' provision of churches and chaplains at military establishments as an example of an appropriate accommodation between the two Clauses."²²

The case Judge Mansfield was referring to, School District of Abington v. Schempp, was decided in 1963. In that case, the Supreme Court acknowledged that with military service, "the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths."²³

POTENTIAL FUTURE CONSTITUTIONAL/LEGAL CHALLENGES

... there are certain vulnerabilities to the Chaplaincy as an institution. There also may be limits to what the Chaplain Corps can do and retain protection under the Constitution. While the threat of the courts evaluating every program has been reduced, it undoubtedly will surface again in any new court challenge. The future of the Chaplaincy, as well as its past, will rest squarely on the support and good will of Congress, and on the Chaplaincy's ability to remain focused on providing for the free exercise of religion for soldiers as the legal basis for the existence of a uniformed ministry in the military.²⁴

—Chaplain (Colonel) John W. Brinsfield

Just as the majority two judges in *Katcoff v. Marsh* wanted to remand certain issues, there are still potential First Amendment potholes in the road ahead for the Chaplaincy. This section will attempt to identify some possible situations that could bring about legal challenges.

There is a dynamic tension between the establishment clause and the free exercise clause of the First Amendment. This tension creates a tightrope for chaplains to walk as they go about their business as federally employed clergy seeking to provide the right balance in ministry so as not to offend either "church" or "state."

"In striking a balance between the 'establishment' and 'free exercise' clauses, the Army chaplaincy, in providing religious services and ministries to the command, is an instrument of the U.S. Government to ensure that soldier's religious 'free exercise' rights are protected."²⁵ In order to do this, the Chaplaincy claims that "chaplains are trained to avoid even the appearance of any establishment of religion."²⁶

One wonders how well this is accomplished when even the Supreme Court wrestles with the inherent conflict between the establishment clause and the free exercise clause. Justice Burger, in a case regarding tax exemptions for religious organizations, complains:

The Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution. The sweep of the absolute prohibitions in the Religion Clauses may have been calculated; but the purpose was to state an objective, not to write a statute. In attempting to articulate the scope of the two Religion Clauses, the Court's opinions reflect the limitations inherent in formulating general principles on a case-by-case basis. The considerable internal inconsistency in the opinions of the Court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles.

The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.²⁷

Regarding the complexity of the two clauses, Justice Steward opined:

It is, I think, a fallacious oversimplification to regard these two provisions as establishing a single constitutional standard of 'separation of church and state,' which can be mechanically applied in every case to delineate the required boundaries between government and religion. We err in the first place if we do not recognize, as a matter of history and as a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways. Secondly, the fact is that while in many contexts the Establishment Clause and the Free Exercise Clause fully complement each other, there are areas in which a doctrinaire reading of the Establishment clause leads to irreconcilable conflict with the Free Exercise Clause.²⁸

Justice Brennan believed that, "These two proscriptions are to be read together, and in light of the single end which they are designed to serve. The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end."²⁹ No doubt the very existence of the Chaplaincy is based on fulfilling that basic purpose. But that is much easier said than done when it comes to staying balanced on the tightrope between the two clauses.

Explaining the difficulty involved for himself as a Justice, Brennan also summarizes the dilemma facing the Chaplaincy:

The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief. But devotion even to these simply stated objectives presents no easy course, for the unavoidable accommodations necessary to achieve the maximum enjoyment of each and all of them are often difficult of discernment. There is for me no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible.³⁰

Justice Brennan's difficulty in determining the permissible from the impermissible is surely compounded exponentially for the chaplain making decisions without the benefit of legal training. He next speaks concerning attitude:

It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.³¹

If, as Justice Brennan warns, government through untutored devotion to neutrality can make a constitutional error, how about an untutored chaplain or one whose devotion to religion blinds him or her to the tutoring? Such errors could place the Chaplaincy in grave danger of legal consequences.

The litigation brought about by *Katcoff* and *Wieder* was a case involving outsiders with no real knowledge of the Chaplaincy. *Drazin* and *Currey* tell of an investigation into the misuse of government funds by a senior chaplain during the early years of *Katcoff v. Marsh*.³² *Drazin* "concluded that the misuse resulted from a lack of sensitivity to the problems, ignorance of the law, overzealousness [*sic*] for religion, and the generally misguided and improvident view that whatever a chaplain considered to be good and righteous and needed must be an acceptable item of purchase."³³

This situation, unfortunately not as uncommon as it should be,³⁴ was the type of illegal activity that the plaintiffs in *Katcoff* could conceivably use against the Chaplaincy. *Drazin* and *Curry* point out the obvious, "Once again the thought occurred to more than one of those working for the defense that if the Chaplaincy were ever destroyed, the damage would probably be done from within rather than by hostile outsiders."³⁵

The possibility of one or more chaplains bringing about the end of the chaplaincy as it exists today is not so very far-fetched. This could happen in one of a number of ways. Litigation regarding the constitutionality of the Chaplaincy itself would probably not be successful if the above quoted sentiments of the Supreme Court continue to exist within its members. Litigation regarding the First Amendment and certain practices within the Chaplaincy would be more likely. The Chaplaincy and the Army have probably not seen the end of legal challenges.

Another possibility, which will be explored later, is that the Chaplaincy, by its practices or the actions of some of its chaplains, could render itself ineffective or irrelevant to the needs of the Army.

A legal challenge brought by a chaplain, a group of chaplains, or even an endorsing agent or faith group would carry the weight of first hand information only available to an insider. Such a challenge would be empowered by plaintiffs with a systems and operational understanding of both the Chaplaincy and the Army.

For a legal challenge to hurt or change the current Chaplaincy, it would not have to challenge the constitutionality of the institution. For a case to impact the institution, it would merely have to establish that the Chaplaincy violates or has allowed one or more of its chaplains to violate one or the other or both of the clauses of the First Amendment.

As already mentioned, the Chaplaincy claims to train its chaplains to avoid even the appearance of any establishment of religion. One would assume they are equally well trained in free exercise rights as well. This would cover the chaplains' need for knowledge of the First Amendment as it pertains to their duties as prescribed by law. Supervisory chaplains would need to be especially well versed in these areas and be constantly vigilant in policing and training.

In researching this paper, the author discovered that every legal case is decided based on the legal twists and turns of many preceding cases. The legal trail of important and related information utilized in making a legal decision can be immense. At the present time, the author is unaware of any mechanism within the Chaplaincy that would keep supervisory chaplains up to date regarding judicial decisions that could possibly impact the chaplaincy if it were brought to court again. At the very least, newly accessed chaplains should be made familiar with *Katcoff*.

Also, the complexity of First Amendment issues and interpretations is colossal. True competence in this area is difficult indeed to come by, especially for an Army chaplain. Justice Brennan stated in a dissent regarding a case concerning free speech, "To be sure, generals and admirals, not federal judges, are expert about military needs. But it is equally true that judges, not military officers, possess the competence and authority to interpret and apply the First Amendment."³⁶

Justice Brennan continues with a warning that should be heeded by the Chaplaincy in looking at itself:

Moreover, in the context of this case, the expertise of military officials is, to a great degree, tainted by the natural self-interest that inevitably influences their exercise of the power to control expression. Partiality must be expected Larger, but vaguely defined, interests in discipline or military efficiency may all too easily become identified with officials' personal or bureaucratic preferences.³⁷

This quote brings to mind Drazin's conclusion in investigating the illegal use of federal funds by a chaplain. Ignorance and an over zealotry for religion too often allows a chaplain to feel that whatever he or she does is in the name of God Himself and therefore righteous. But either ignorance or too much zeal, even when pursuing a good end, if it results in malfeasance, can be absolutely devastating at times to the overall cause.

The abuse of position or unethical use of money can be avoided only by vigilant scrutiny of funds by the Chaplaincy Program Budget Advisory Committee and audits and inspections from Major Command Chaplains. Chaplaincy Program Budget Advisory Committee members must be educated as to their duties and willing to speak out (for this to happen they must be empowered by the system). Unfortunately, the Chaplaincy Program Budget Advisory Committee does not have the power or, in many cases, the information regarding spending that the old Chaplains Fund Council had. A recent situation involving the deliberate illegal use of funds resulted in a prison term for the Installation Chaplain involved. One can only wonder where the Fund Manager and Fund Clerk were in the process and why they did not spot the abuse.

Another area where the Chaplaincy must take care is the equal treatment of all faith groups. Before *Katcoff v. Marsh* the Army Chaplaincy recognized only four "Major Faith Groups" (Catholic, Protestant, Orthodox, and Jewish). As Chaplain Don Hanchett pointed out, since *Katcoff* "the Army Chaplaincy has had to reconsider many of its views and some of its practices that continue to have potential impact on 'establishment of religion' and 'free exercise of religion' issues."³⁸

In a case regarding religious dietary requirements, the United States Court of Appeals for the Fifth Circuit stated that "providing alternatives acceptable to practitioners of 'majority' religions while failing to provide alternatives acceptable to practitioners of less common, even unique, religions poses serious Equal Protection/First Amendment Establishment concerns."³⁹ Writing in a dissent on a case regarding equal access to a prison chapel by all religious sects, Mr. Justice Rehnquist said, "Presumably prison officials are not obligated to provide facilities for any particular denominational services within a prison, although once they undertake to provide them for some they must make only such reasonable distinctions as may survive analysis under the Equal Protection Clause."⁴⁰

Speaking about the issue of the Army Chaplaincy recognizing only four Major Faith Groups, Hanchett continued:

This orientation was open to challenge and it was determined to be potentially discriminatory. It suggested that if a denomination was not one of the four labeled "Major Faith Groups" it must be a "Minor Faith Group." (This gave the appearance of "first class" and "second class" groups.) In practice, Catholic, Jewish, and Orthodox programs in the Army were given funding for their distinctive activities, while all other faith groups were lumped under the "Protestant" umbrella. Within the "Protestant" group, only the "general Protestant" or "Collective Protestant" programs and activities were resourced with appropriated funds. . . . This practice was more the result of a traditional way of resourcing the religious mission of the military, than it was an intentional effort to be discriminatory. Nevertheless, the practice did discriminate and there was a need for change in order to "fairly and equitably" meet the "free exercise" needs of soldiers without being victimized by potential "establishment of religion" conflicts. The concern remains that the government not be placed in a position where it appears that it is giving preferential treatment to one religious group over another.⁴¹

In reaction to *Katcoff v. Marsh*, this former mode of operating was changed, or at least the language in the regulation was changed. The current regulation states, "The Army recognizes that religion is constitutionally protected and does not favor one form of religious expression over another.

Accordingly, all religious denominations are viewed as distinctive faith groups and all soldiers are entitled to chaplain services and support."⁴²

The problem this obviously constitutional approach presents is one of balance and fairness. The difficulty faced by the Chaplaincy is seen in the religious demographics of the Army. As of January 2000, the Army⁴³ lists 17 denominations with over 3000 soldiers on active duty (this includes the categories of No Preference Recorded, No Religious Preference, Other religions, and Unknown). The total number of denominations for active duty soldiers is 168 (to include the above listed categories and the additional one of Atheist).

As of January 2000, the Chaplaincy roles listed 1278 chaplains endorsed by 104 denominations.⁴⁴ (Amazingly the first two categories recorded are No Preference Recorded, with one chaplain, and No Religious Preference, with two chaplains. This must be an administrative mistake since a recognized faith group must officially endorse every chaplain).

In view of the fact that the Army cannot compel any faith group to provide chaplains and relies totally on volunteers, the numbers presented actually provide a very healthy balance. The constitutional tension occurs when one considers what resources and support the Army provides faith groups with a large number of adherents versus what it provides smaller groups in a constrained resources environment. And one cannot forget the bottom line that even in a resource rich environment, perfection could not be achieved. The Supreme Court recognizes this as it states that what is required must be reasonable opportunities:

Although it is not necessary that every religious sect or group within a state prison—however few in numbers—have identical facilities or personnel, or that a special chapel or place of worship be provided for every faith regardless of size, or that a chaplain, priest, or minister be provided without regard for the extent of the demand, nevertheless, reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments, without fear of penalty.⁴⁵

Still, the Chaplaincy must be both wise and fair in order not to create a constitutional problem for the Government that supports it. In *Everson v. Board of Education*, Justice Black succinctly stated, "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."⁴⁶ Justice Douglas put it this way, "We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."⁴⁷

For the Army to provide a balance of faith group representation among its chaplains, caution must be exercised to avoid showing "partiality to any one group." The courts have consistently ruled that a chaplain is a chaplain and must care for the needs of all and not just the chaplain's particular faith group.

In a case regarding the Florida Department of Corrections having only two non-Protestant chaplains and one prison having only Southern Baptist chaplains, United States District Judge Susan H. Black wrote:

If the Court requires the Department of Corrections to hire a Roman Catholic chaplain or to transfer a Roman Catholic chaplain to Florida State Prison to satisfy Plaintiff's needs, then if other prisoners of various faiths are not similarly accommodated, they will perceive that the Roman Catholics are being favored over other religions. As noted in *O'Lone*, special arrangements for one group creates problems with other groups. *O'Lone v. Estate of Shabazz*, 107 S. Ct. at 2406. . . . In the case at bar, the Florida Department of Corrections is not under an affirmative duty to provide the Catholic Plaintiff with a Roman Catholic priest. Florida State Prison allows outside religious leaders to visit Plaintiff on a regular basis to address Plaintiff's religious needs. All inmates have equal access to outside religious representatives. Additionally, all inmates have equal access to institutional chaplains. . . . Reasonable opportunities have been afforded to Plaintiff to exercise his faith and Plaintiff has not been denied equal protection of the laws. . . . The fact that the Department of Corrections employs three chaplains at Florida State Prison, who happen to be of the Baptist faith, does not mean that the prison has set up the Baptist faith as an institutional religion or as a preferred religion. The Department of Corrections' chaplains are instructed to attempt to meet the needs of the inmates, but if they are not capable of doing so, they are instructed to secure a citizen volunteer priest, minister or rabbi for the inmates. They are also instructed to avoid derogatory statements about other religions and to be aware of other faiths. . . . The fact that the Protestant chaplains are unable to satisfy Plaintiff's spiritual needs due to their Protestant background and are unable to provide Plaintiff with the Sacraments due to Plaintiff's beliefs does not mean that the Department of Corrections has discriminated against Plaintiff. The Department of Corrections has secured a Catholic priest volunteer to attend to the needs of Plaintiff and other Catholic inmates.⁴⁸

In a case another case regarding a prison Chaplaincy, United states District Judge John H. Pratt decided that Lorton Prison's policy of hiring chaplains based on denomination violated Title VII of the Civil Rights Act of 1964. He wrote that since a chaplain is by definition a clergyman:

On first impression, therefore, it might seem illogical for the District to select prison chaplains on anything other than a denominational basis. Given the widely varying beliefs and practices of the various religious denominations, and the many tenets and ceremonies unique to each, one recoils at the thought of hiring chaplains on a generic basis, without regard to their chosen religious affiliation.

On closer examination of the role played by the Department's prison chaplains, however, it becomes evident that the defendants have not sustained their burden of demonstrating the necessity of a denominational hiring policy. Indeed, a hard look at the realities of the actual practices at Lorton suggests the contrary. First, the nature of the chaplain's duties suggest that an applicant's religious affiliation is, at best, a matter of secondary importance. Lorton chaplains are recruited and hired on a facility-wide basis, and are entrusted with the task of "planning, directing, and maintaining a total Religion program" for all inmates in a particular section who request such services, whatever their respective denominations might be. . . . This does not mean, of course, that chaplains administer to every religious need of each inmate within their jurisdiction. . . . For such services, bound up as they are in the tenets and customs of their respective religions, chaplains enlist the services of volunteers or other prison employees who adhere to the appropriate faith. . . . Conspicuously absent from the vacancy announcement's list of specified duties is any suggestion that chaplains are to preside over all services within their jurisdiction, or that their activities are governed by their denominational preferences. . . . In fact the scope of a Lorton chaplain's duties is much broader. . . . Defendants have not even hinted, however, that satisfactory performance of these multiple and varied tasks depends upon the chaplain's particular religious beliefs. Indeed, many, if not most, of these functions presumably could be performed by a religious guidance counselor or administrator in lieu of a priest, rabbi, imam or minister.⁴⁹

The complexity of providing chaplains in fair proportions to the population served without violating either clause of the First Amendment is demonstrated throughout court decisions. In one of the notes to his decision, District Judge Pratt said, "The department's policy might stand on more solid ground if it claimed to recruit chaplains in some proportion to the denominational breakdown of Lorton inmates."⁵⁰ In contrast to Pratt's comment, Circuit Judge Merritt speaking for the Court concerning religious resource allocation in a religious liberty case, stated:

First, we do not think that either the prisons or the courts must engage in the type of strict numerical analysis the plaintiffs propose or create a system of ratios or quotas in order to comply with the dictates of the Equal Protection Clause. Requiring prisons to maintain comprehensive records as to the religious composition of their populations and to allocate resources for religious activities accordingly would undoubtedly spark countless claims by various groups that they were not receiving their fair share. Moreover, predicating resource allocation on such an elusive standard as the numbers of regularly practicing inmates would compel prison officials and courts to scrutinize the consistency of individual inmates' religious practices and to decide controversies regarding the precise contours of the various competing religious groups. Furthermore, the constant turnover of prison populations would render wholly impracticable any attempt to require that the religious resource allocation scheme conform exactly to the denominational distribution present in a prison at any given time. Adoption of plaintiffs' position would, therefore, embroil the prisons and courts in dangerous and inappropriate areas of inquiry and would prove exceedingly difficult to implement in an orderly and even handed fashion.⁵¹

Complete fairness is unattainable; reasonable fairness is perhaps the more realistic goal. Earlier in the opinion, Judge Merritt stated that the free exercise clause "does not require the defendants to provide a Muslim leader at state expense any more than it requires them to provide a Catholic Priest or a Jewish rabbi or a minister for all of the various denominations of the Protestant religion. . . . The Free Exercise Clause guarantees a liberty interest, a substantive right; that clause does not insure that all sects will be treated alike in all respects."⁵² Dissenting in this case, Circuit Judge Jones stated, "When a state institution fails to afford inmates of various denominations *comparable* opportunity to pursue their faith, the giving of preferential treatment to one religious denomination constitutes the basis for an establishment clause violation."⁵³

Concerning fairness in the hiring of prison chaplains, Circuit Judge Posner was blunt in presenting the Court's assessment. "Prisons are entitled to employ chaplains and need not employ chaplains of each and every faith to which prisoners might happen to subscribe, but may not discriminate against minority faiths except to the extent required by the exigencies of prison administration."⁵⁴ Earlier he stated that, "The potential financial burden on small sects of providing visiting ministers to prison – the prison authorities deem them 'volunteers' and will not compensate them even to the extent of reimbursing them for their expenses, while picking up the full tab for full-time chaplains for Catholic and Protestant ministers – is troubling."⁵⁵

Today, the Army Chaplaincy makes special efforts in recruiting and retaining certain "shortage faith group" chaplains. But not all unrepresented or under represented faith groups are classified as shortage

faith groups and thus are not given special attention. This occurs in spite of the fact that there are around 60 faith groups with soldiers on active duty without chaplains from those faith groups.

The same is true with contract civilian clergy. These contracts are not centrally managed but are requested by installation chaplains and approved by the major command chaplain. Consequently, no one reviews, or even knows the number of, contracts Army wide. In this situation, It is difficult to guarantee fairness to small faith groups in need of a contract clergy. Some faith groups have many contracts throughout the Army, even in urban settings where there are numerous civilian churches available. Due to fiscal constraints, other faith groups are only allowed to begin a worship service if chaplains of their faith are available to lead the service. They are then often forced to shut down worship services when the chaplain of their faith changes duty stations. One can only wonder if these practices would bear up under legal scrutiny.

What are constitutionally and legally complex issues for the Army are even more so for a supervisory chaplain. For a supervisory chaplain to walk the tightrope of "showing no partiality to any one group," he or she must have wisdom, knowledge, and sensitivity. Basically, what the system does for or allows for one group, it must have a compelling reason not to do for all if requested. Grave difficulties arise when seeking to meet the needs of both large and small groups. Some groups are well connected, having commanders or chaplains within their congregation, and some are without congregants who know the system and can represent the group's needs adequately. The system is not perfect nor are the individuals within it. Genuine care and concern for the needs and rights of all must go into decisions that provide less sufficiently for some than for others.

THE EFFECTIVENESS/LEGITIMACY OF THE CHAPLAINCY

To the extent that military chaplains act like civilian clergy and minister only to members of their own denomination, they are weakening the legal basis and moral foundation of the chaplaincy.⁵⁶

—Chaplain (Colonel) Wayne E. Kuehne

A good chaplain is worth more than his weight in gold.⁵⁷

—General Dwight D. Eisenhower

Every chaplain has known a commander who has had nothing but good experiences with chaplains and a commander who has little use for the chaplaincy because of an ineffective chaplain who worked for him or her. Every chaplain has also worked for strong and weak chaplain supervisors and supportive and unsupportive commanders. The ineffective, weak chaplain captain is discouraging. The ineffective, weak chaplain colonel is devastating to morale and the goal of developing a strong future senior leadership for

the Chaplaincy.⁵⁸ If the Army leaders do not see the Chaplaincy as strong and effective, as the Army continues to both lose and reallocate personnel positions, chaplain positions on both the TDA and TOE will be obvious targets without defenders.

On December 18, 1944, George Marshall wrote a confidential memorandum to Secretary of War Stimson regarding the Army Chaplain Corps. The memorandum was a response to one written for Stimson by Charles B. Burlingham, a trustee of St. John the Divine Episcopal Cathedral.

The basic difficulty in the corps, Burlingham stated, was the caliber of the chaplains recruited, which varied greatly. Second, the quality of the Regular Army chaplains, who held practically all of the key administrative posts in the corps, was too often below that of the chaplains from civilian life that they supervised. Third, a disproportionate share of key administrative posts in the corps were held by Roman Catholics, and too often they were incapable of appreciating the viewpoint of the Protestant churches. For example, there were continual complaints about the distribution of literature by Catholic chaplains which attacked the Protestant faith, and William R. Arnold, the chief of Chaplains since 1937, had taken only mild action to stop this.⁵⁹

In his memorandum, Marshall expressed his concerns regarding senior chaplains.

There has been no question in my mind from the start that we labor under the serious disadvantage of mediocrity in the senior ranks of the Chaplain service. It has not been an easy thing to handle and could not be met in quite the same drastic fashion I followed with troop commands. Chaplain Arnold is well aware of this and has been, I am quite certain, embarrassed by the fact that certain of his assistants were not up to the desired standard. . . . While I have not the data to support this statement I rather imagine he has used Catholic chaplains sometimes in key positions because of his inability to get the right man in the Protestant ranks. In my opinion, and speaking very frankly, the great weakness in the matter has been that of the Protestant churches in the selection of their ministry. The Catholic system provides a much higher average of leadership, judging by my own experiences, and the Protestant churches are too kindhearted in their admission of lame ducks.⁶⁰

Marshall was sufficiently concerned that he ordered his G-1, Major General Henry, to conduct a confidential survey that would look at the selection and assignment of supervisory chaplains. Henry's report stated that he "could not find any data that would lead one to believe that any particular church group can be charged with providing poorer quality chaplains than any other group."⁶¹

Marshall's frustration demonstrates that poor quality chaplains discourage not only soldiers, but general officers as well.

As noted earlier, chaplains in the Army ensure the free exercise rights of all. They are required by law to hold religious services, whenever practicable, for the command to which they are assigned and to do burial services for the soldiers of the command who die.⁶² In *Katcoff v. Marsh*, Judge Mansfield plainly states, "The primary function of the military chaplain is to engage in activities designed to meet the religious needs of a pluralistic military community, including military personnel and their dependents."⁶³ Later he bluntly points out, "No chaplain is authorized to proselytize soldiers or their families."⁶⁴

When it is used in a positive manner, religion has incredible power to reach out and unite people of different backgrounds. It can bring peace and healing to those who hurt through a message of love and

forgiveness that leads to wholeness. But when it is sectarian and pushy in a negative manner, proselytizing and alienating, religion can drive permanent wedges of separation between people of similar backgrounds by creating distrust, division, and devastation.

Strong sectarian attitudes tend to separate many religions. Amazingly, strong sectarian attitudes also separate many, if not most, of the groups within the same religion. These attitudes, while at times very unhealthy, may arise from the need to protect the group's distinct identity and to ensure survival. Few, if any, faith groups are very open to new ideas, new interpretations of the faith, or to change in general. Orthodoxy is demanded; heterodoxy unwelcome. This closed mindedness seeks to bring in converts who must conform their beliefs to those held by the group at large. Proselytizing takes place in the name of evangelism.

It is from these faith groups that the Army obtains its chaplains. They come from a setting of separation and denominational isolation into a setting of pluralism where cooperation and unity of effort is an absolute necessity. Transforming a civilian religious leader who has only given spiritual care to his or her particular group into an Army chaplain whose flock is a very religiously diverse unit can be an awesome task. The chaplain who does not grow and expand (something the faith group may not appreciate), but continues to operate out of a sectarian attitude, will not be able to provide adequate spiritual care to the diverse population of a unit.

The Chaplaincy has taken great pride in its unofficial motto of, "Cooperation without Compromise." As any married couple knows, such cooperation does not go very far or accomplish very much that is positive. Perhaps a better motto for healthy ministry in a pluralistic environment would be, "Cooperation Through Compromise Whenever and Wherever Possible!"⁶⁵

A frightened soldier preparing to go out on night patrol or a dying soldier on the battlefield would not find much spiritual assurance from a chaplain with a strong sectarian attitude. Commanders want and expect chaplains to take care of all of their soldiers, not just a few. A Muslim or Jewish soldier would not want to hear a distinctively Christian prayer as he lay dying, nor would a Christian soldier welcome an Islamic prayer. Can or will the unit chaplain recite a prayer from a different religious tradition in order to provide comfort in such a situation? If not, is the chaplain really carrying out the commander's religious program?

Perhaps the worst possible scenario would be for a chaplain to seek to use such a moment to proselytize. To do so would clearly be unconstitutional for a federally employed chaplain. In *Marsh v. Chambers*, the majority opinion by Justice Burger stated:

The content of the prayer delivered by a chaplain paid to deliver opening prayers to state legislature is not of concern to judges in determining whether the practice of having a paid chaplain is violative of the establishment clause of the First Amendment as applied to the states by the Fourteenth Amendment where there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.⁶⁶

Drazin and Currey, commenting on this quotation from *Marsh*, point out, "If the word 'chaplaincy' is substituted for 'prayer,' one can readily see the danger to the very existence of the chaplaincy in the modern Army in the years ahead presented by chaplains who insist that proselytizing and evangelism is their mission within the chaplaincy."⁶⁷ Unfortunately, some chaplains and some faith groups, ignorant or uncaring of the legal implications, do see proselytizing and evangelism as their main mission in the Army.

Sectarian chaplains hurt the Chaplaincy and present an example of ineffective spiritual care to both soldiers and Army leaders. Most Army leaders would rather not have a chaplain if their only other choice would be to have a very narrow minded one. Some faith groups, perhaps even most, give chaplains to the Army without understanding the constitutional issues or the Title 10 legal duties required of a chaplain. Many faith groups give ecclesiastical endorsement to a chaplain expecting the chaplain to represent their group and minister primarily to their own soldiers. Drazin and Currey maintain that this view is a misunderstanding of the concept of ecclesiastical endorsement.

Many believe an endorsement means they will "represent" their religious organization while in the military. This is not true. From a legal point of view, a chaplain who officially represented his church or synagogue in the military would create excessive entanglement between church and state. Such entanglement, by Supreme Court definition, would be a violation of the establishment clause of the First Amendment to the Constitution. To avoid this difficulty, an endorsement, by definition, is nothing more than a statement or affidavit by a recognized religious body that the applicant is a member of the clergy. . . . While it is true that most chaplains retain a close relationship with their denominational bodies, this is a personal and unofficial choice and, as such, is not excessive entanglement.

From a factual, practical, and non-legal viewpoint, chaplains do not represent their denomination and receive orders, not from their church or synagogue, but from their military commanders. If commanders order chaplains to do something that violates their religious convictions, they have the same free exercise problem faced by other soldiers. They have no special protection under law simply because they are chaplains. At best, they receive special consideration from commanders because they are fellow officers. Thus, when chaplains protect the free exercise rights of other military personnel, they are protecting their own as well.⁶⁸

In support of these comments, the Army requires an endorsement for its chaplains, but will not pay for attendance at a denominational conference even when the faith group endorsing the chaplain requires attendance in order to maintain the endorsement. Also, the Army does not recognize religious titles. Although it is violated by many chaplains and others, the chaplains' regulation states, "The proper title for a chaplain is 'chaplain' regardless of military rank or professional title."⁶⁹ This provides for unity and a nonsectarian environment within the Chaplaincy.

Speaking concerning the danger of sectarian chaplains, Chaplain (Colonel) Wayne Kuehne, then Director of Plans, Policy Development, and Training at the Office of the Chief of Chaplains, succinctly declared, "To the extent that military chaplains act like civilian clergy and minister only to members of their own denomination, they are weakening the legal basis and moral foundation of the chaplaincy."⁷⁰

Unfortunately, such chaplains do exist at all levels of the Army. Thankfully, their numbers are small. But as such chaplains move up in the system, they are, by necessity of rank, placed into supervisory positions where they demoralize subordinate chaplains and or soldiers and family members in collective worship services.

As Drazin and Currey pointed out earlier, chaplains who have a mission of proselytizing and evangelism threaten the existence of the chaplaincy. In spite of this threat, some churches even require that as a mission for their chaplains. The Army employs chaplains to be pastors who provide pastoral or spiritual care to all. In worship, pastors feed the flock. Evangelists should be out of the worship setting seeking to share their message to those who are lost. For one who is called to pastor a flock to seek to evangelize it, cheapens the calling and creates sectarian divisions.

Sectarian chaplains and chaplains who are ignorant of Army Regulations and the constitutional issues faced by the Chaplaincy cause commanders and soldiers to question the legitimacy and effectiveness of the Chaplaincy as a whole.

Complaints about Collective Protestant services generally come concerning three areas: a new chaplain makes too many changes to an already established service; the sermon is too long; and, the sermon is too evangelistic, seeking to save the lost rather than to feed the flock. Insensitivity to the situation and unique environment and lack of self-restraint on the part of a few chaplains regarding sermons and public prayers can cause great angst and frustration among soldiers and commanders.

Due to the insensitivity and lack of self-restraint of a few chaplains, some commanders do not allow prayers at changes of command and other ceremonies. One commander demanded that prayers offered at changes of command and other ceremonies be limited to 45 seconds. When the chaplains were told the new rule, they were outraged until the supervisory chaplain reminded them that the Lord's Prayer was just about 20 seconds and that prayers at changes of command were allowed only by the discretion of the commander.

When chaplains come into a public speaking situation, great care must be made not to offend or bring about hostility towards the Chaplaincy. A chaplain loses credibility if he or she abuses the opportunity to build good will and support for the overall religious program of both the unit and the installation. If the Chaplaincy loses credibility with the command or within the Army itself, positions will be lost, constitutional issues will arise, and the religious support mission will become all the more difficult.

CONCLUSION

The journey, the pilgrimage of the Chaplaincy, will not end as long as soldiers desire the direction, encouragement and comfort of God's Word. . . . The Army contains the People of God. The history of the Chaplaincy in its best sense is the record of the religious leaders and their people journeying together to do the work of God and Country to build a stronger and more peaceful world.⁷¹

—Chaplain (Colonel) John W. Brinsfield, Jr.

Over the past few decades the United States has experienced a moral decay within its foundational institutions. Respect for others and moral responsibilities have been eroded within the institutions of marriage, family, religion, and government; institutions essential to the country's well being. Because of this, the maintenance of the Army's value system and spiritual health is a necessary and constant need. Chaplains help to meet that need.

The legal pitfalls faced by the Chaplaincy are legion. Court cases that have implications for the way the Chaplaincy does business abound and seem to be without end. This research paper has superficially touched on only a few of many such cases reviewed by the author that have implications for the Army Chaplaincy. Great care must be taken by the senior leadership of the Chaplaincy in both safeguarding the institution itself and in maintaining its health by maturing junior chaplains and enabling them to minister effectively in a pluralistic setting unique to the military.

Perhaps the greatest value the Chaplaincy brings to the Army with its many deployments is collective worship opportunities. If a unit chaplain provides only for his or her own sectarian followers, the bulk of the unit's soldiers miss the opportunity to freely exercise their religious beliefs. Collective worship is offered by Christian, Jewish, and Islamic chaplains to all within these worship traditions. Not all needs will be perfectly met, but the opportunity to meet one's God in worship with other believers will be provided in the best way possible under the circumstances. Sensitivity and a desire to seek the higher ground will keep the chaplain away from distinctively sectarian worship practices or interpretations in a collective setting. The best chaplain is one who is chaplain to all, even though he or she is rabbi, minister, priest, or imam to a few.

Great care must be given by the United States Army Chaplain Center and School to help new chaplains understand worship and preaching in a pluralistic setting. Churches teach ministers to preach in a very narrow setting. The Army must teach its chaplains to function in a very different and unique setting in order to maintain the constitutionality and effectiveness of its Chaplaincy.

It may be of great benefit to the Chaplaincy if the Chief of Chaplains would provide better definition and guidance concerning collective services. This would allow worshippers to find a comforting similarity in services throughout the Army. Collective services occur in Christian, Jewish, and Islamic traditions both in garrison and in the field. In addition to the broader collective Christian service, there are also collective services in the Protestant, Gospel, Contemporary, and Pentecostal traditions. Guidance on these services could include what chaplains would fit into the orthodoxy of each service, length of service, general essential elements of the service, and length of sermon. Care must be taken to ensure that both the guidance and the chaplains leading collective services are sufficiently broad enough to appeal to the widest population of the Protestant faith so as to avoid the appearance of the establishment of religion. For Christians desiring weekly communion, this observance could be offered immediately before or after the main worship service. Such guidance would provide familiarity and stability in worship to the worshippers as they move from post to post.

Aside from public prayers (another situation where restraint and sensitivity must be exercised), worship is perhaps the most visible time for the chaplain to be before the most people. A 15 minute sermon utilizes over 83 hours of the congregants' time if there are 250 people in attendance. That figure is doubled for a 30 minute sermon. The use of the worshippers' time is an awesome responsibility for the chaplain. Only vigilant supervision and training by the senior chaplains can insure that their time is well spent.

Because of the tremendous importance of worship and preaching and the supervision of worship and preaching, rigorous selectivity should go into the assignment of chaplains to preaching and supervisory positions. The credibility of the Chaplaincy rests upon the worship and preaching experiences it provides for soldiers and their families.

Supervisory chaplains must be wise and set the example. Installation chaplains must actively supervise the entire religious program, to include all worship and preaching in collective settings. Soldiers and their families should be able to expect a similar and uplifting worship experience as they transfer to different units and assignments within the Army.

Unlike the Army at large, the Chaplaincy does not have the luxury of mentoring two down and coaching one down. All chaplain leaders must be involved with all of the subordinate chaplains within their sphere of influence. The stakes are too high not to succeed. The Army needs a healthy Chaplaincy and the soldiers deserve the most meaningful worship experiences possible.

Above all else, the Chaplaincy must always remember the difference between its mission and that of a civilian faith group. That difference is clearly defined in the *Katcoff* opinion by Circuit Judge Mansfield, "The primary function of the military chaplain is to engage in activities designed to meet the religious needs of a pluralistic military community."⁷²

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ENDNOTES

¹ Deut. 20:2-4 NIV.

² John W. Brinsfield, Jr., Encouraging Faith, Supporting Soldiers: A History of the United States Army Chaplaincy 1975 – 1995 (Washington, D.C.: Office of the Chief of Chaplains, Department of the Army, 1997), 381.

³ Holy is used in the sense of devoted to the work of God and is not meant to imply spiritual superiority.

⁴ Department of the Army, Chaplain Activities in the United States Army, Army Regulation 165-1 (Washington, D.C.: U.S. Department of the Army, 27 February 1998), 1. According to this Army Regulation, the United States Army Chaplain Corps was officially established on 29 July 1775.

⁵ "Chaplain support for Force XXI, A Journey Encouraging Faith, Sustaining Hope," Chief of Chaplains White Paper (April 1995): 2.

⁶ *United States District Court for the Eastern District Court of New York*, Joel Katcoff and Allen M. Wieder, Plaintiffs, against Clifford L. Alexander, Jr., Secretary of the Army, and the Department of Defense, Defendants. Civil Action 79C2986, November 23, 1979; quoted in John W. Brinsfield, Jr., Encouraging Faith, Supporting Soldiers: A History of the United States Army Chaplaincy 1975 – 1995 (Washington, D.C.: Office of the Chief of Chaplains, Department of the Army, 1997), 122.

⁷ Israel Drazin and Cecil B. Currey, For God and Country, the History of a Constitutional Challenge to the Army Chaplaincy (Hoboken, New Jersey: KTAV Publishing House, Inc., 1995), 1.

⁸ *Ibid.*, 205.

⁹ U.S. Constitution, amend. 1.

¹⁰ *Zorach v. Clauson*, 343 U.S. 306 (1952).

¹¹ Drazin, 218.

¹² *Ibid.*, 204.

¹³ *School District of Abington Township v. Schempp*, 374 U.S. 203; 83 S. Ct., (1963).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Katcoff v. Marsh*, 755 F.2d 233 (2d Cir. 1985).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Drazin and Currey, 202-203.

²⁰ Ibid., 203.

²¹ Katcoff.

²² Ibid.

²³ School District of Abington Township.

²⁴ Brinsfield, 130.

²⁵ Chaplain Activities in the United States Army, 1.

²⁶ Ibid.

²⁷ *Waltz v. Tax Commission of the City of New York*, 397 U.S. 664; 90 S. Ct. 1409 (1970).

²⁸ School District of Abington Township.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Drazin and Curry, 128-129. One must assume the misuse was by a senior chaplain since the Installation Chaplain controls the funds and reviews all expenditures.

³³ Ibid.

³⁴ This is not meant to imply that the misuse of funds is common within the Chaplaincy, it is not. It is meant to say that one would ideally hope that all chaplains would be both completely honest and perfectly knowledgeable regarding the use of both appropriated and nonappropriated funds. Unfortunately, misuse does occur due to both ignorance and criminal intent. When misuse does occur on the part of a senior chaplain, subordinate chaplains are usually discouraged and demoralized by the bad example.

³⁵ Ibid., 129

³⁶ *Brown, Et Al. v. Glines*, 444 U.S. 348; 100 S. Ct. 594, (1980).

³⁷ Ibid.

³⁸ Chaplain (Lieutenant Colonel) Donald G. Hanchett, Resourcing the Religious Mission of the Army to the Year 2000 and Beyond: Significant Concerns and Issues, Study Project, (Carlisle Barracks, PA, U.S. Army War College, 1993), 25.

³⁹ *Udey v. Kastner*, 805 F.2d 1218 (5th Cir. 1986).

⁴⁰ *Cruz v. Beto*, 405 U.S. 319; 92 S. Ct. 1079 (1972).

⁴¹ Hanchett, 25-26.

⁴² Chaplain Activities in the United States Army, 3.

⁴³ The information presented came from the Office of the Chief of Chaplains.

⁴⁴ Ibid.

⁴⁵ Cruz.

⁴⁶ *Everson v. Board of Education of the Township of Ewing, et. al.*, 330 U.S. 1; 67 S Ct. 504; (1947).

⁴⁷ *Zorach*.

⁴⁸ *Card v. Dugger*, 709 F. Supp. 1098 (U.S. Dist. 1988).

⁴⁹ *Rasul v. District of Columbia*, 680 F. Supp. 436 (U. S. Dist., 1988).

⁵⁰ Ibid.

⁵¹ *Thompson, et. al. v. Commonwealth Of Kentucky*, 712 F.2d 1078 (6th Cir. 1983).

⁵² Ibid.

⁵³ Ibid.

⁵⁴ *Johnson-Bey v. Lane*, 863 F.2d 1308 (7th Cir. 1988).

⁵⁵ Ibid.

⁵⁶ Chaplain (Colonel) Wayne E. Kuehne, "Ministry Team Issues," briefing slides with scripted commentary, Washington, D.C., National Conference on Ministry to the Armed Forces, 6 December 1995. Chaplain Kuehne was then the Director of Plans, Policy Development, and Training in the Office of the Army Chief of Chaplains.

⁵⁷ General Dwight D. Eisenhower, Circular Letter, No. 310, 1376; quoted in Chaplain (Colonel) Wayne E. Kuehne, Faith and the Soldier: Religious Support on the Airland Battlefield, Study Project, (Carlisle Barracks, PA, U.S. Army War College, 1988), 6.

⁵⁸ Chaplain Activities in the United States Army, 10.

⁵⁹ Larry I. Bland, ed., The Papers of George Catlett Marshall (Baltimore: The Johns Hopkins University Press, 1996), 4:700.

⁶⁰ Ibid., 4:699.

⁶¹ Ibid., 4:700.

⁶² U.S. Congress, House, Committee on Armed Services, Title 10, United States Code Armed Forces, Committee Print, 106th Cong., 1st sess., February 1999, 1269.

⁶³ Katcoff.

⁶⁴ Ibid.

⁶⁵ The concept of cooperation with compromise may not be a welcome attitude for certain faith groups and their chaplains if they believe that all of their views and practices are perfect and ordained by God.

⁶⁶ Marsh v. Chambers, 463 U.S. 783; 103 S. Ct. 3330 (1983).

⁶⁷ Drazin, 229.

⁶⁸ Drazin, 209-210.

⁶⁹ Chaplain Activities in the United States Army, 4.

⁷⁰ Chaplain (Colonel) Wayne E. Kuehne, "Ministry Team Issues," briefing slides with scripted commentary, Washington, D.C., National Conference on Ministry to the Armed Forces, 6 December 1995. Chaplain Kuehne was then the Director of Plans, Policy Development, and Training in the Office of the Army Chief of Chaplains.

⁷¹ Brinsfield, Jr., 382-382.

⁷² Katcoff.

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