

Our determination to slay the beast of constitutional violation was firm. Leslie thought it was an advantage that the Department of Defense lawyers didn't know who he was or what his testimony would be. He entered the court room in uniform, with his nametag removed. A judge advocate general colonel quickly approached him and asked who he was and what he was doing there. To both mine and the colonel's astonishment, Leslie told him that was for him alone to know and yours to find out.

When the colonel reminded him that he had a right to know the identity of prospective witnesses, Leslie retorted that it was improper for counsel to speak directly to opposing witnesses, and his question should be properly made to plaintiff's counsel, not directly to the witness. Leslie was, of course, right about that, and standing in that court room within a month of his scheduled departure for his voluntary tour in Vietnam, he was in no mood to be polite. Our budding relationship with the chain of command was not getting any friendlier.

Leslie testified in great detail about cadets sleeping in chapel services, how they resented forced religion, and he cited the Van Atta survey on cadet attitudes about compulsory chapel from his research project in a leadership class at West Point. He pointed out that if a cadet failed to stand and recite the prayers and codes, he could be written up for that offense and walk the area. He made the point of chapel's ineffectiveness at any potentially valid training purpose, leaving its only purpose to require a religious participation in worship despite any cadet objections.

Second Lieutenant Leslie's testimony, and mine that day as well, was contradicted by officers of much higher rank. Admiral Moorer, Chairman of the Joint Chiefs of Staff, took time away from his duties running the Pentagon and providing for

the country's defense to personally contradict us. We witnessed his concocted testimony with its argument that the military, as part of the executive branch of government, had its own authority for training future officers who would lead the military in ways that achieved its purposes. It did not need either Constitutional guidance or restraint.

There was no forced religion in the military, according to Admiral Moorer. His testimony was based as well on Article I, Section 8 of the Constitution, providing that Congress could "make rules for the government and regulation of land and naval forces." He said the military was carrying out that authorization with no religious purpose.

Judge Corcoran, in his decision later, quoted Admiral Moorer this way:

The purpose, of course, is to enhance his leadership and command ability by putting him in a position where he can get a feel, an understanding of the impact of religion on the various types of individuals and so he can see this in operation; and, consequently, as he acts as a leader in later years, he will appreciate this impact that religion will have on so many people.

[T]hat is the sole purpose. We are in the process of developing leaders and this is a vital part of the overall leadership package; and that is the sole purpose. *Anderson v. Laird*, 316 F. Supp. 1081 (D.D.C. 1970) at 1089.

The Assistant Secretary of Defense for Manpower and Reserve Affairs, Roger Kelly, also left his Pentagon office to add to Admiral Moorer's testimony, as did Vice Admiral James Calvert, Superintendent of the Naval Academy. Judge Corcoran also quoted Secretary Kelly:

The institutional judgment of the Department of Defense as to the primary effect of required chapel attendance is to develop in those required to attend chapel an understanding of the religious beliefs and the spiritual value systems of other midshipmen and cadets. \* \* \*

It meant primary effect of requiring attendance at chapel is to instill in a midshipman the understanding of the religious beliefs of others. *Anderson v. Laird*, 316 F. Supp. 1081 (D.D.C. 1970) at 1090.

Their party line was clear, and as I heard it live in the courtroom, I was most astonished at how untruthful it was. It is understandable that two sides in litigation will have different views, but facts are facts and without a clear and truthful factual base, justice becomes much harder. I understood later that their testimony was rehearsed to make a point so that the purpose and effect tests of legal precedent could be called upon to skirt a more plain or literal application of the First Amendment.

They were resting on their power, not their truth, and like Colonel Ross, they didn't give a damn what the Constitution said about religious freedom in our country.

I was truly shocked and horrified. I don't know then the long-held legal adage, when you are weak on the facts, argue the law. But in this case, the government was weak on both the law and the facts. They relied on the law by lying about the facts.

It is one thing for an aberrant Colonel, irritated at cadets under his command for causing trouble in his unit, to go overboard. It is quite another for the highest officers in the Pentagon to depart from truth in a federal courtroom. From the second row behind the attorneys' tables, live and in person, I felt the hostility directed right at us. I could plainly see the power unhinged, and it was like trying to dodge a lightning bolt at close range. I was spinning in place by witnessing a manipulation of truth in the defense of raw power unrestrained by constitutional law.

This was not the American Dream. It was coercion and abuse of power. It stepped back toward the unification of church and state that existed for centuries in

Europe. It ignored the breakthroughs toward religious freedom achieved in the American Revolution. It corrupted the ideals that made us free.

Others did stand up on behalf of the First Amendment's freedom of religion clause. I was relieved and proud that groups such as the Baptist Joint Committee were stepping forward and writing *amicus* briefs in support of religious freedom. The military chaplains' organization and every major religious group all stepped up. These groups relied on the legal history of religious freedom in our country, one of our founding principles and practices. They also reinforced the argument that religion itself is voluntary by its nature, dependent on each individual's approaches to it.

There was, however, one great religious exception. We met Bob Timberg that day, a Naval Academy graduate and Marine veteran in Vietnam, and the only newspaper reporter covering the case in the courtroom. He had spoken to Billy Graham at a recent chapel service at Annapolis and expected different fireworks from him.<sup>34</sup> To Timberg's routine question about the chapel case at Annapolis, Graham had exploded with criticism of those of us questioning the practice. Graham questioned the religious convictions of those involved in the suit, saying: "What kind of religious convictions? Communism is a religion, too." He went on to characterize the chapel case as an attack to force all chaplains out of the military, and according to Timberg: "The nation's best known (and probably best-loved) religious leader had literally portrayed seven service academy men in good standing as little more than Communist dupes conspiring to rid the armed forces of its chaplains."<sup>35</sup>

We learned from Timberg that Graham was that very day spending the night in the family quarters of the White House with Richard Nixon. The next morning he walked

out by the portico of the White House and repeated his Communist charge to the press at the White House.

I was encouraged by what I had heard from religious leaders in court, especially by the almost universal support of religious freedom by the country's various religious groups. My Baptist roots were shaken, though, by the minority religious view of the well-known preacher, Billy Graham. If his public criticism was so harsh, what opinion had he privately expressed to the Commander in Chief in the privacy of the White House family quarters? With Billy Graham and Alexander Haig both in the White House expressing such views, I knew I could not expect much kindness from the chain of command.