

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-----X
JEWISH WAR VETERANS OF THE UNITED
STATES OF AMERICA and MAXWELL
FEURMAN,

Civil No.

Plaintiffs,

COMPLAINT AND EXHIBITS

-against-

UNITED STATES OF AMERICA, JAMES
WEBB, as Secretary of the Navy
and PAUL X. KELLEY,

Defendants.
-----X

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Sec.1331 (Federal question concerning the Constitution of the United States), 28 U.S.C. Sec.1361, (Mandamus against a Federal Officer) and 28 U.S.C. Sec. 1346 as the United States is a party defendant.

VENUE

2. Venue is placed in this District pursuant to the provisions of 28 U.S.C. Sec. 1391 and 28 U.S.C. Sec.1402 in that the organizational Plaintiff's principal office and headquarters are within this District. In addition, the Order complained of was issued from Marine Corp. Headquarters in this district by the

defendant, PAUL X. KELLEY, acting under color of legal authority or in his official capacity.

PARTIES

3. The Plaintiff, JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA ("JWV"), is a corporation chartered by an Act of Congress with its principal and national office located in Washington, D.C.

The Plaintiff, (JWV) was established in 1896 and was formed as a patriotic organization maintaining allegiance to the United States of America and pledging to uphold its Constitution. Among the general purposes in establishing this organization were the following:

(a) To uphold the reputation and integrity of servicemen (and women) of the Jewish faith who have served the nation from its inception.

(b) To combat bigotry or discrimination within the military, whatever its origin or source.

(c) To preserve the records of patriotic service performed by military personnel of the Jewish faith, maintaining records of outstanding medals, honors, accolades or achievements.

(d) Honoring the memories and protecting memorials and gravesites of those co-religionists who made the supreme sacrifice for their country.

(e) Counseling and assisting the wounded, maimed and crippled servicemen of all wars, as well as assisting those families whose members were and are missing in action.

(f) Inform its members concerning veterans' benefits and promoting legislation protecting the rights of veterans.

4. These aims and objectives are currently pursued actively in conjunction with the general business and operations of JWV.

5. The Plaintiff, MAXWELL FEURMAN, is a resident of the State of Hawaii, and is a fully enrolled member in good standing in the Plaintiff organization. He is a retired Sergeant Major in the United States Army.

6. The Defendant, PAUL X. KELLEY, was at all times mentioned hereunder, and is presently, the Commandant of the United States Marine Corp., acting in his official capacity from U.S. Marine Corp. Headquarters in Washington, D.C.

7. The Defendant, JAMES WEBB, is presently the Secretary of the Navy and is being joined in this action in his official capacity, though he was not in his official position at the time the Order complained of was issued on or about July 2, 1986.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, JEWISH
WAR VETERANS OF THE UNITED STATES
OF AMERICA

8. On or about July 2, 1986, the Defendant, General PAUL X. KELLEY, acting under color of his authority as Commandant

of the United States Marine Corp., issued an Order countermanding all previously issued orders of his subordinate officers, maintaining in place a 65 foot high illuminated Latin cross which stands alone on Borderlon Field at Camp H.M. Smith, Hawaii (Exhibit A).

9. Camp H.M. Smith is a Marine Corp. base located on the Island of Oahu in suburban Honolulu. It is also the headquarters of the United States Forces in the Pacific.

10. This 65 foot Latin cross displayed at Camp Smith was erected and maintained with United States government public funds. It is illuminated at night and is prominently positioned to be seen, not only by personnel and employees at the base, but by other visitors and residents of Oahu. It is visible from a nearby freeway and from other roads and areas in Oahu.

11. In or about May or June of 1986, following a report of the Judge Advocate General of the Navy, whose office rendered an opinion that the display of this Latin cross at Camp H.M. Smith was unconstitutional and violative of the First Amendment, the Commander of the Marine Corp. Bases, Pacific, and in turn, Col. Gene Castagnetti, the base Commander, ordered the cross to be dismantled and removed.

12. This cross is presently standing at Camp H.M. Smith and is prominently displayed and maintained with public funds, pursuant to the Order of defendant, General KELLEY, issued at Marine Corp. headquarters, countermanding all previous orders.

13. It is contended that the Latin cross is a religious symbol and emblem of Christianity. It is a general representation and embodiment of the Christian faith which is universally recognized and uniformly respected by all Christian denominations.

14. It is further contended that the erection, maintenance and display of any religious symbol, such as the cross in question, on any United States government military facility or property, is violative of the establishment clause contained in the First Amendment of the United States Constitution.

15. The prominent display of this principal symbol of Christianity conveys the message of governmental support and partiality for Christianity over all other religions, and in effect, prohibits the free exercise of other beliefs or religious persuasions.

16. The Plaintiff (JWV) initially became aware of the maintenance of this symbol when its national convention in 1986 was held in Honolulu. The national leadership of the Plaintiff has resolved not to hold any future conventions in Hawaii until there is some resolution of the present issue.

17. The Plaintiff (JWV) also became aware of the maintenance of this symbol from complaints by its members and other citizens objecting to this governmental endorsement of a religion.

18. The Defendant, PAUL X. KELLEY, has indicated that the subject cross is an "ecumenical memorial" to those who died in Vietnam and is lighted nightly as a beacon of hope for the safe

return of our prisoners of war and missing in action of all faiths." (Exhibit B)

19. That the Order of July 2, 1986 by the defendant, PAUL X. KELLEY, was not a military decision in the traditional sense, as it can only result in reduced cohesiveness, divisiveness among religious and political beliefs and governmental entanglement with religion.

20. That the defendant, PAUL X. KELLEY, exceeded his authority and did not make a "military decision" by ignoring the opinion of the Judge Advocate General.

21. The Plaintiff is threatened to be, is presently, or will be damaged in its reputation, property and public benefit interests, should this issue not be resolved.

22. The Constitutional infringement as aforesaid has or will completely frustrate the Plaintiff's aims and objectives with a consequent drain on its resources. The act complained of may further interfere with its ability to raise funds, collect dues or increase and attract further membership. Such an unconstitutional act may also interfere with the organization's relationship with its members and the general restlessness of its constituency. With its aims and objectives frustrated, the organization would be seen as impotent.

23. The organization Plaintiff also brings this action on behalf of its members in conjunction with the Co-Plaintiff, MAXWELL FEURMAN.

24, There is no adequate remedy at law for this violation of the Constitution, other than a mandatory injunction for the removal of this religious symbol and an order enjoining the further display of this symbol by the Defendants.

25. The Plaintiff will be irreparably damaged if an injunction or Writ of Mandamus is not issued by this Court.

AS AND FOR A SECOND CAUSE OF
ACTION ON BEHALF OF THE PLAIN-
TIF, MAXWELL FEURMAN

26. The Plaintiff, MAXWELL FEURMAN, reiterates and re-alleges all of the allegations contained in paragraphs "1", "2", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "19", "20", "24" and "25" as if the same was set out at length.

27. The Plaintiff has the right to use the clubs and facilities of Camp Smith, as a veteran attaining the rank of Sergeant Major. He has the privilege of using the clubs and facilities of all military installations, but has declined to use the facilities of Camp Smith until such time as the subject religious symbol is removed.

28. On the occasions of Plaintiff's visits to Oahu for shopping and for other purposes, he seeks to and alters his travel route so as to avoid areas where the cross is visible, such as Pearl Ridge Shopping Center, Pearl Harbor and Aloha Stadium.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs request judgment as follows:

1. A Declaratory Judgment stating that the display, erection and maintenance of the cross at Camp H.M. Smith, Hawaii, is unconstitutional, being in violation of the First Amendment to the United States Constitution.

2. A temporary and then a permanent injunction, removing the cross from its present location at Camp H.M. Smith and enjoining the defendants from erecting or maintaining the cross or any religious symbol at Camp H.M. Smith or any military base or facility.

3. A Writ of Mandamus to the Secretary of the Navy to order removal of the cross at Camp H.M. Smith forthwith.

4. Grant Plaintiffs reasonable attorneys' fees and costs together with such other relief as this Court deems necessary, equitable and just.

Dated: May 15, 1986

ROSE & KOERNER
26 Court Street
Brooklyn, New York 11235
Attorneys for Plaintiffs

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U.S. MARINE CORPS NEWS



PUBLIC AFFAIRS DIVISION, (CODE PAM) HEADQUARTERS MARINE CORPS WASHINGTON, D.C. 20380-0001

SUBJ: CAMP SMITH CROSS
RELEASE NO. AR-45-86

HQMC, Washington, D.C. July 2 (MCNews) -- After additional historical research into the origin and purpose of the cross at Camp H.M. Smith, Hawaii, the Commandant of the Marine Corps has determined that it should remain in place.

The cross was dedicated over 20 years ago as a ecumenical memorial to honor those Marines and sailors of Fleet Marine Force, Pacific, who had made the supreme sacrifice in Vietnam. In 1972, after the departure of Marines from Southeast Asia, the cross became a beacon of hope for the safe return of our prisoners of war and missing in action from all the Armed Forces and of all faiths.

In announcing his decision, the Commandant said, "It is my sincerest hope that this cross will serve in the future as a non-sectarian symbol of our national resolve to obtain a full accounting of American servicemen still missing or unaccounted for in Southeast Asia."

-30-

EXHIBIT A



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D.C. 20380-0001

IN REPLY REFER TO

JAR1

Ser: 6009

7 AUG 1986

The Honorable Stephen J. Solarz
House of Representatives
Washington, DC 20515

Dear Mr. Solarz:

Thank you for your letter of July 23, 1986, in which you requested, based on information provided by Mr. Ronald J. Koerner, that I reconsider my decision to retain the memorial cross at Bordelon Field on Camp Smith in Hawaii. The following additional information may assist you in understanding the non-sectarian nature of the memorial and my decision to preserve it.

The cross was dedicated as an ecumenical memorial to Marines and sailors of the Fleet Marine Force, Pacific, in 1966. The cross was erected at government expense by order of the Commanding General, Fleet Marine Force, Pacific, and the Federal Government pays for its maintenance. Although dedicated to those who made the supreme sacrifice in Vietnam, since 1972 it has been lighted nightly as a beacon of hope for the safe return of our prisoners of war and missing in action of all faiths.

The Judge Advocate General's (JAG) opinion you cite in your letter was formulated without an understanding of the origin or purpose of the cross or of its continuing, legitimate, secular function as a symbol of hope for the missing in action in the Vietnam conflict. In view of the JAG opinion, however, the Commander, Marine Corps Bases, Pacific, felt constrained to dismantle the cross. Following announcement of its proposed removal, the information concerning its origin and purpose came to light and rendered inaccurate the underlying premise of the JAG opinion.

Therefore, since the cross was not erected, and is not maintained, to advance religion, I have decided that it will continue to stand as a non-sectarian symbol of our national resolve to obtain a full accounting of American service members still listed as missing in action in Vietnam. A suit recently filed by the American Civil Liberties Union should result in judicial determination of the issue.

Your interest in this matter is appreciated. I trust that the foregoing information assists you in advising Mr. Koerner.

Respectfully,



P. X. KELLEY

General, U.S. Marine Corps
Commandant of the Marine Corps