

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]
[REDACTED]

DOCKET NUMBER: 97-03217

COUNSEL: NONE

FEB 7 9 1999

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The Letter of Reprimand (LOR), dated 23 July 1997, be declared void and removed from his records.
2. The Unfavorable Information File (UIF) the LOR generated be removed,
- 3 The Officer Performance Report (OPR) rendered for the period 22 March 1997 through 22 September 1997, be removed from his records.
4. The Promotion Recommendation Form (PRF) prepared for the Calendar Year 1997B (CY97B) Central Colonel Selection Board, be removed from his records,

APPLICANT CONTENDS THAT:

The LOR contains multiple serious errors, misstatements of fact, and crucial omissions.

The applicant states that key evidence was lost, intentionally excluded from consideration, or disregarded. Important conclusions are unsupported by the facts. In sum, the LOR is fatally defective and should be withdrawn in its entirety. The evidence conclusively disproves every allegation in the LOR. In addition, the process was unfair and unjust, including use of conflicting legal advice and premature cancellation of his Permanent Change of Station (PCS) assignment before he could even respond.

The applicant states the LOR totally ignores the religious aspect of his association with Capt B---, which is absolutely essential to understanding what happened. He never addressed any communication to Capt B--- as "Dear" or "My Dear" or anything of the kind, nor did he close any communication with "Love, John!" "Love, John K!" or anything similar, until after this healing blessing. He is a member of the Church of Jesus Christ of Latter-day Saints, the LDS (Mormon) Church, and holds the Holy Melchizedek Priesthood within the LDS Church, and the office of

High Priest within the Melchizedek Priesthood. Simply put, the Priesthood is the power of men to act on behalf of God on earth, under proper authority. Priesthood holders can baptize, confirm, bless the Sacrament (communion), and administer healing blessings on the sick and afflicted. Sometimes, by God's power, truly miraculous healings result. That is what happened when he blessed Capt B---

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

On 23 July 1997, the applicant, a lieutenant colonel, received an LOR from his commander for fostering an unprofessional relationship with a subordinate for favoritism, and for creating the appearance of favoritism. He also received a referral OPR and a "Do Not Promote" recommendation on the PRF prepared for the CY97B board. In addition, Section IV of the PRF contains a reference to the fact that the applicant was formally reprimanded for the unprofessional relationship with a subordinate junior officer.

The applicant was subsequently considered below-the-promotion-zone (BPZ) and not selected for promotion by the CY97B Central Colonel Selection Board.

A resume of applicant's OPRs since 1987 is as follows:

<u>PERIOD ENDING</u>	<u>EVALUATION</u>
8 May 87	1-1-1
8 Jan 88 w/LOE	1-1-1
1 Jul 88	1-1-1
1 Jul 89	Meets Standards (MS)
1 Jul 90	MS
31 Mar 91	MS
31 Mar 92	MS
15 Aug 92	MS
22 Jun 94	MS
10 Apr 95	MS
21 Mar 96	MS
* 21 Mar 97	MS
22 Sep 97 (Referral)	MS on all factors except Leadership Skills, Professional Qualities, and Judgement and Decisions

* Top report reviewed by the CY97B Col Board.

AIR FORCE EVALUATION:

The Chief, Promotion, Evaluation & Recognition Division, AFPC/DPPPA, reviewed this application and notes that in February 1996, the Chief of Staff initiated a new policy which states that LORs are considered in the evaluation process for Promotion Recommendation Forms (PRFs), filed in officer selection records (OSRs) (at the commander's discretion), and that establishment of an unfavorable information file (UIF) is mandatory. The LOR will remain in the UIF for four years or for one PCS, plus one year, whichever is later,

AFPC/DPPPA states that if the applicant believes his next OPR or PRF has been adversely affected by the LOR, then he may submit an appeal once either of these documents has been made a matter of record. They stress that in order to successfully challenge the validity of a performance report, it is imperative to hear from all of the evaluators concerned - not necessarily for support, but at least for clarification/explanation. If he is successful in obtaining these statements, then he must submit his appeal under the provisions of AFI 36-2401.

A complete copy of the Air Force evaluation is attached at Exhibit C.

The Staff Judge Advocate, AFPC/JA reviewed this application and states that although the applicant's conduct towards Captain B--- may have been well intentioned, it was nonetheless "unduly familiar" and unprofessional." The evidence is not merely sufficient, it is overwhelming. The applicant's undue familiarity with Captain B---, as well as other subordinates, created favoritism and/or the appearance of favoritism and caused derision and mistrust amongst his staff. The applicant's seeming patriarchal desire to be involved in the personal lives of selected staff members, specifically, Captain B---, detracted from his ability to impartially manage his duties and undermined his authority as a Lieutenant Colonel in the Air Force and as the 50th Space Wing Staff Judge Advocate. His naive and sophomoric demonstrations of "love" and "friendship" for his subordinates went well beyond acceptable personal behavior between superiors and subordinates,

AFPC/JA notes that the applicant points out that "unprofessional relationships" are defined by paragraph 2.2 of AFI 36-2909. They note that an "unprofessional" relationship concerning an Air Force officer, is one which detracts from that officer's authority as a superior, or results in or reasonably creates the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. Paragraph 2.2 of AFI 36-2909. There is little doubt in their minds that the preponderance of the evidence supports the opinion that the applicant not only fostered, but pursued a personal relationship with a subordinate, Captain Cynthia B---. Administrative actions (such as an LOR), must not be "arbitrary

and capricious" and need be supported by substantial evidence. Accordingly, they believe the decision to offer the applicant an LOR on 23 July 1997 for "fostering an unprofessional relationship with a subordinate" for "favoritism" and for "creating the appearance of favoritism," is supported by substantial evidence." In their view, the applicant should feel most fortunate that his actions did not result in more severe administrative or punitive action; indeed, the LOR represented the minimal redress of the applicant's behavior in view of his rank and position as a Staff Judge Advocate. The evidence of record illustrates the type of preventable career-threatening and mission denigrating turmoil that can occur as the result of an unduly familiar relationship between a military superior and his or her subordinates. It is apparent from reading the statements of all persons involved that no one attributes any malicious or nefarious intent to the applicant's conduct. To the contrary, most found the applicant to be a caring and compassionate man, to a fault. However, almost all also agreed that his relationship with Captain B--- went far beyond the normal boundaries of a superior - subordinate relationship. Most of the applicant's staff, including Captain B---," also believed that he treated her differently (better) than others. What is especially troublesome about this case is the fact the applicant apparently does not recognize the true nature of what he has done. It is their opinion, that all relevant administrative procedures were substantially followed and that the commander's decision to give the applicant an LOR was proper and supported by substantial evidence. Therefore, they recommend denial of his request.

A complete copy of the Air Force evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states the following:

a. The advisory opinion and the LOR adopt the hearsay allegations made by Capt B--- without even mentioning the fact that at least five of her colleagues testified that they consider her a manipulative, dishonest liar, that she was under the influence of multiple powerful mind and mood-altering drugs throughout the key period of time, and that she consistently refused to answer even one question from him or his defense counsel.

b. The advisory opinion and the LOR ignore the fact that 10 out of 12 members of his office swore that there was no unprofessional relationship and no favoritism whatsoever, nor even any appearance thereof. On the contrary, 10 out of 12 members of his office testified that he was an outstanding, fair-minded, compassionate leader. His two Wing Commanders at Falcon

AFB who had time to get to know him, consider him the greatest judge advocate they have ever known.

c. The advisory opinion and the LOR narrowly focus on one or two instances in which he treated Capt B--- well, while totally ignoring the massive evidence that he treated his other three officers at least as well if not better. No reasonable definition of "favoritism" can possibly apply to such a situation, yet this seemingly obvious point is utterly ignored.

d. The advisory opinion and the LOR completely disregard the evidence that he handled all officer OPRs fairly, and that after Wing policy on OPR content finally became available in June 1997, both Capt B---'s revised OPR and all other OPRs he subsequently wrote reflected the less flowery, more fact-packed philosophy desired by the Wing leaders. Also, the revised version of Capt B---'s OPR was comparable in strength to the initial draft, and there was absolutely no downgrading, nor any even remotely possible motive on his part to do so.

e. The applicable instruction, AFI 36-2909, in paragraph 8, mandates that issues of unprofessional relationships are to be addressed informally, at the lowest possible level, and only if that fails to correct the problem is any more formal action called for. However, his case was handled, by a staff judge advocate with multiple extremely severe conflicts of interest, as if he had been previously counseled by his Commander to change his behavior, and did not.

f. The advisory opinion and the LOR either disregard or dismiss key evidence as to his religious beliefs and the healing blessing he bestowed on the critically ill Capt B--- to help save her life when she was diagnosed with a life-threatening brain tumor. This evidence is utterly central to an understanding of the situation that brought Capt B--- to initiate the false allegations against him. The miraculous healing of Capt B--- was a very emotional turning point that deeply affected everyone involved.

The applicant's complete response is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Having carefully considered all the evidence in this case, we are not persuaded that the applicant's commander's decision to give him

an LOR for fostering an unprofessional relationship with a subordinate, for favoritism, and for creating the appearance of favoritism constituted either an error or an abuse of his discretion. Therefore, we agree with the recommendation of the AFPC/SJA and adopt its rationale for our conclusion that the applicant has failed to sustain his burden of establishing the existence of either an error or an injustice warranting favorable action on his requests.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

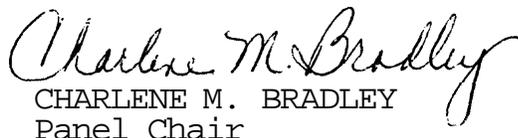
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 10 November 1998, under the provisions of AFI 36-2603:

Ms. Charlene M. Bradley, Panel Chair
Mr. Joseph G. Diamond, Member
Mr. Terry A. Yonkers, Member
Mr. Phillip E. Horton, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 24 Oct 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPA, dated 1 Dec 97.
- Exhibit D. Letter, AFPC/JA, dated 4 Feb 98, w/atchs.
- Exhibit E. Letter, AFBCMR, dated 16 Feb 98.
- Exhibit F. Letter, Applicant, dated 4 Mar 98, w/atch.


CHARLENE M. BRADLEY
Panel Chair