

**DEPARTMENT OF THE AIR FORCE  
UNITED STATES AIR FORCE TRIAL JUDICIARY**

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UNITED STATES	)	GOVERNMENT RESPONSE TO
	)	DEFENSE MOTION IN LIMINE
	)	TO EXCLUDE EVIDENCE
MSgt JEFFERY K. ANDERSEN	)	UNDER MIL. R. EVID. 401, 403,
(PACAF)	)	and 404(a)
Joint Base Elmendorf-Richardson, Alaska	)	29 September 2021

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**MOTION**

COMES NOW the United States, by and through counsel, and respectfully requests this Honorable Court DENY the Defense Motion to exclude evidence under Mil. R. Evid. 401, 403, and 404(a).

**SUMMARY**

On 21 May 2021, one charge and thirteen specifications in violation of Article 93, Uniform Code of Military Justice (UCMJ), one charge and one specification in violation of Article 132, UCMJ, and one charge and one specification in violation of Article 92, UCMJ, were referred against MSgt Andersen. The government opposes the exclusion of photographs of a plaque displayed in MSgt Andersen’s office which was inscribed to read ‘SrA Jeff “I Hate Airmen” Andersen.’ The presence of the plaque within MSgt Andersen’s office is relevant to the Article 93 specifications, and the probative value of the photographs is not substantially outweighed by the minimal chance of unfair prejudice.

**FACTS**

1. The Government concurs with the facts stated in paras 1-5 of the defense motion.

**BURDEN**

2. The burden of persuasion rests on the moving party, in this case the Defense. R.C.M. 905(c)(2). The burden as to any factual issue necessary to resolve this motion is by a preponderance of the evidence. R.C.M. 905(c)(1).

**LAW**

3. Relevant evidence is admissible at trial, unless otherwise excluded under the Military Rules of Evidence. M.R.E. 402. Relevant evidence, “has any tendency to make a fact more or less probable” and “the fact is of consequence in determining the action.” M.R.E. 401. There are two parts to relevancy that need to be met: “(1) probative value, the relationship between the

evidence and the proposition it is offered to prove; and (2) materiality, the relationship between the proposition the evidence is offered to prove and the facts at issue in the case.” *United States v. James*, 63 M.J. 217, 221 (C.A.A.F. 2006) (emphasis added).

4. Evidence that is otherwise admissible may be excluded if the probative value of the evidence is substantially outweighed by a danger of one or more of the following: (1) unfair prejudice, (2) confusing the issues, (3) misleading the jury, (4) undue delay, (5) wasting time, or (6) needlessly presenting cumulative evidence.” M.R.E. 403 (emphasis added).

5. In conducting a M.R.E. 403 balancing test, “the military judge should consider the following non-exhaustive list of factors to determine whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice: potential distraction of the factfinder; additional time dedicated to prove the prior conduct; likelihood of less prejudicial evidence; strength of proof of the prior act (i.e., conviction versus gossip); probative weight of the evidence; temporal proximity and frequency of the acts; presence or lack of intervening circumstances; and the relationship between the parties. *United States v. Rowe*, No. ACM 38482, 2015 CCA LEXIS 79 (A.F. Ct. Crim. App. Mar. 3, 2015) (citing, *United States v. Wright*, 53 M.J. 476, 482 (C.A.A.F. 2000).

6. Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait. M.R.E. 404.

## **ARGUMENT**

7. The presence of the large wooden plaque, with the inscription of ‘SrA Jeff “I Hate Airmen” Andersen’ in MSgt Andersen’s office is relevant and its probative value is not substantially outweighed by the minimal danger of unfair prejudice. It is relevant because, even though MSgt Andersen might have received the gift in 2008, he chose to display it in his office as recently as February 2021. The plaque wasn’t tucked away in a corner or kept at home. Instead, it is clearly visible to anyone who might approach MSgt Andersen’s desk. The photograph shows the size of the text, the size of the plaque, and its location among the other items located on that shelf. All of which would be difficult to accurately convey via merely oral testimony. Additionally, there is no danger of unfair prejudice from the presentation of mere words inscribed on a plaque.

8. The photographs of the plaque are not offered as evidence of MSgt Andersen’s character. Rather, they are evidence of the very maltreatment that MSgt Andersen is accused of. Among the thirteen specifications of maltreatment on the charge sheet, five of them directly address the use of abusive language towards his subordinates. The words on the plaque show another example of the types abusive language that MSgt Andersen directed towards his subordinates.

## **RELIEF REQUESTED**

9. The government requests an Article 39(a), UCMJ, hearing to present additional evidence and argument on this motion

Respectfully submitted,

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Trial Counsel

I certify that I have served a true copy (via e-filing and e-mail) of the above to the Military Judge and Defense Counsel on 29 Sep 2021.

EILIF R. VANDERKOLK, Capt, USAF  
Trial Counsel