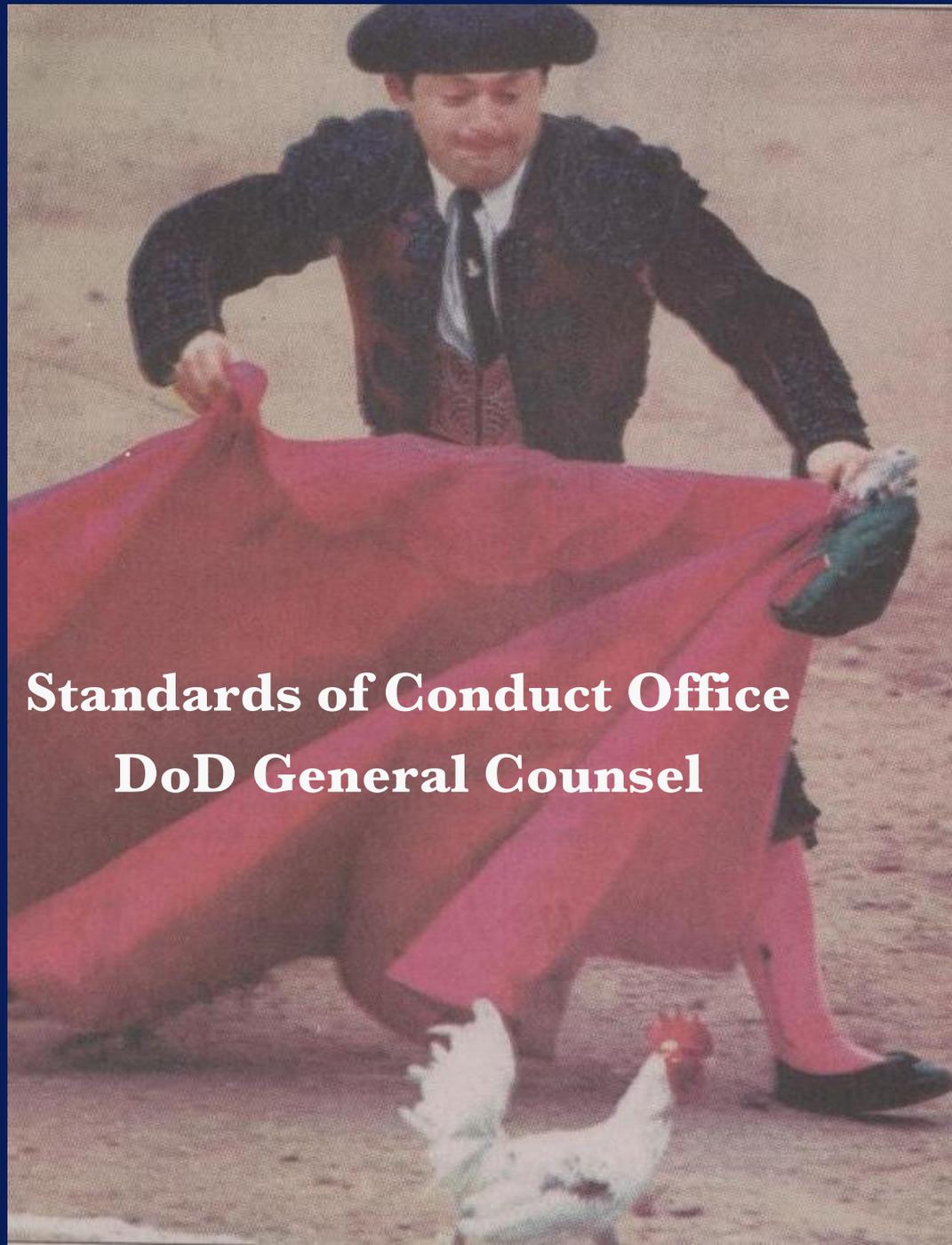


Relations with Non-Federal Entities

Standards of Conduct Office
DoD General Counsel



Why Non-Federal Entities?

→ SJA's tell me:

- Toughest issues
- Lots of questions about lots of NFEs
- High pucker-factor (CG's personal interest)

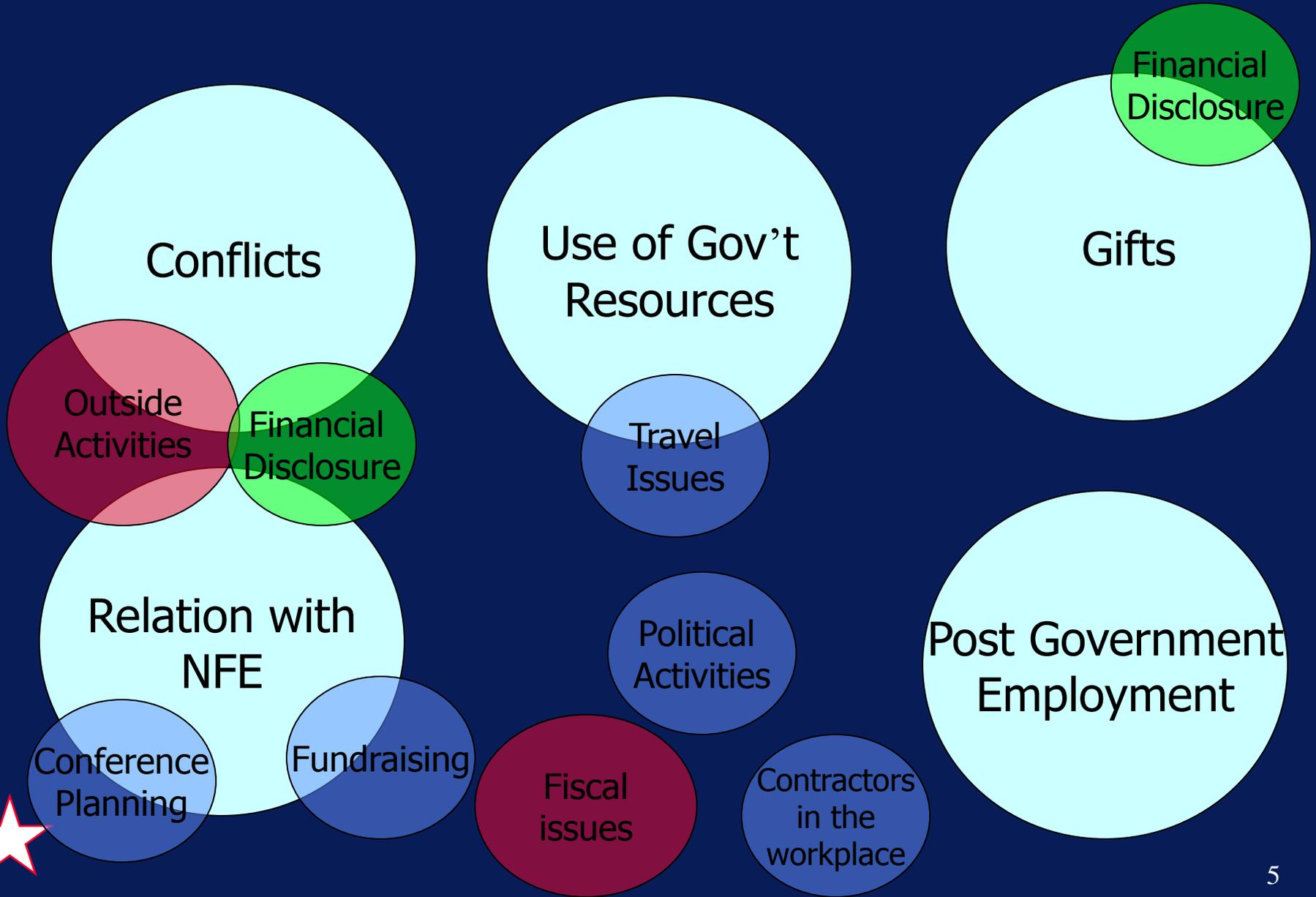


Goals of Presentation

- Introduce “Relations with NFEs”
Chapter
- Introduce framework for analysis
 - (Where do I start???)
- Tackle common problems together



Ethics Counselor Course



What is an NFE?

Any organization or individual other than the U.S. Government.

- Charities and not-for-profit groups.
- Professional associations.
- Local and state governments.
- Spouses' clubs.
- Commercial enterprises.



Examples of NFEs

- AUSA, Navy League, Air Force Association
- Spouses' clubs
- USO
- Military relief societies
- American Red Cross
- Commercial vendors



What do NFEs Want?

- Government property (things)
- Government personnel
- Official endorsement
- Official sanction (Use of Seal)
- Information

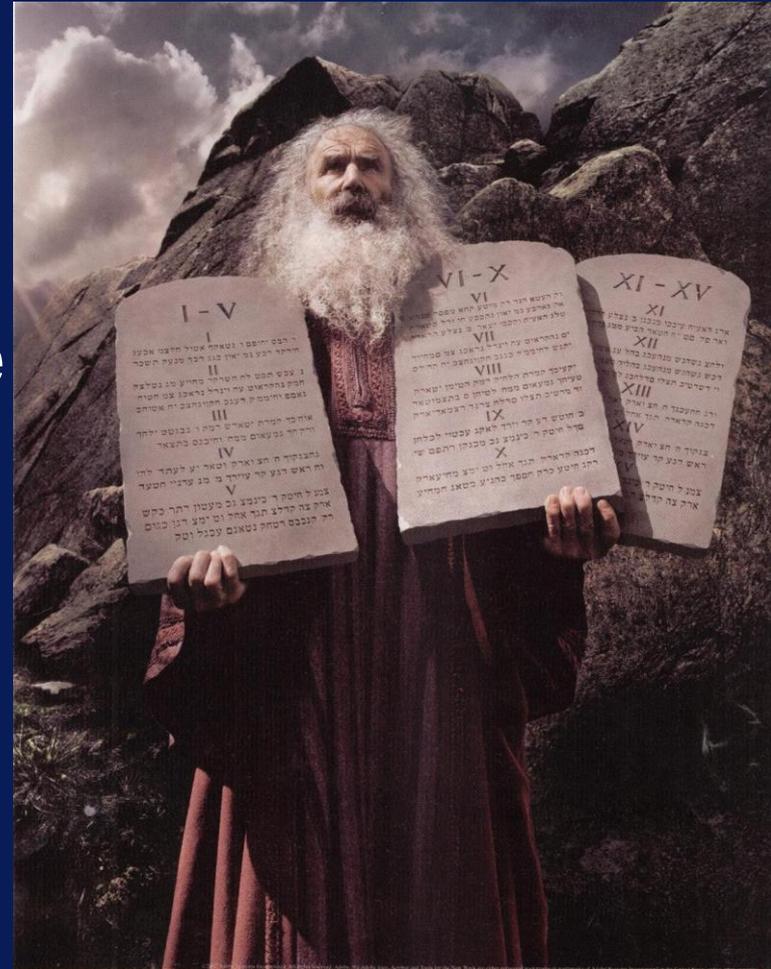
References

- Use of Government resources
- Preferential treatment
- Conflicts of Interest
- Military Department guidance
- Internet locations of guidance



Principles

- Use Gov't property for authorized purposes only
- May not use public office for private gain
- Preferential treatment prohibited
- No official actions that conflict with personal financial interests



Authorities to Render Support: Use of Gov't Resources

→ Government resources, time, or equipment may not be used for unauthorized purposes

(31 U.S.C. 1301)

→ (Teaching point: It's the taxpayers' money, Stupid!)



Attend Meetings

→ Official Capacity

- ∞ Supervisors **may** authorize attendance in an official capacity at Government expense when it serves official purpose
- ∞ No cost if also legitimate purpose
- ∞ Limited audience/special access

→ Personal Capacity – Must be clear



Represent DoD



→ Official Capacity

- ☞ Serving on Boards, Councils, etc

- ☞ If directly serve, duty of loyalty

- ☞ Solution – Liaisons, JER 3-201

- Heads of DoD organizations may appoint when there is a **significant and continuing** DoD interest

- Represent DoD's interests to the NFE



Official Liaison

- No fiduciary duty, so no conflict of interest
- Discuss mutual interests and non-binding
- Official duty, so
 - ☞ Official time and resources
 - ☞ Use official title & position
- **NO management!!**
- Limited personal liability
- YES! YES! YES! YES! YES!



Serving With NFEs

→ Personal Capacity

- ⌘ When hold position of trust, 208 disqualification
- ⌘ When active participation, 502 disqualification
- ⌘ Do not represent NFE to the Feds
- ⌘ Do not solicit subordinates or prohibited sources



Serving With NFEs

→ Personal Capacity

- ❧ No preferential treatment
- ❧ No endorsement, no use of titles
- ❧ No coercion
- ❧ No use of resources
- ❧ No disclosure of non-public info
- ❧ Disclosure of position
- ❧ Personal liability



Community Support Activities

- Promote civic awareness
- Uncompensated public service
- Supervisors may grant **excused absence** – JER 3-300.c
 - Voter registration drives
 - Blood drives
 - Emergency support



Professional Associations

- Supervisors may grant **excused absence**
 - ☞ Non-profit, reasonable time
- May also grant **support services**
 - ☞ Papers published in professional journals or presented at events
 - ☞ If they relate to official duties, benefit agency, do not interfere with duties
 - Compensation barred by 5 CFR 2635.807



Use of Gov't Resources

- Supervisors may grant DoD personnel limited use of resources, **NOT** personnel
- DoD personnel may use to support their personal activities with NFEs
- NFEs may not use directly
- Restrictions in Chapter “Use or Government Resources”



Advise NFEs

→ Official Capacity

☞ Generally, DoD does NOT advise DoD contractors!!

- Conflicts of interest
- Preferential treatment
- Non-public information

☞ User groups/customer panels

- Include consultation in the contract



Advise NFEs

→ Personal Capacity

- ☞ Exclusively outside the scope

- ☞ Strongly discourage with DoD contractors

- Academic/professional associations may be ok, even when they are DoD contractors



Participating With NFEs

Professional/Standard Setting

→ Official Capacity

- ☞ Head of DoD organization may authorize active participation
- ☞ Must concern the mission
- ☞ Vote, but not manage

→ Personal Capacity

- ☞ Exclusively outside the scope





Management of NFEs



Management of NFEs

Official Capacity

DoD personnel **prohibited** from managing or serving in position of trust with NFEs



Management of NFEs

→ Official Capacity, Problems:

- Conflict of Interest (18 U.S.C. 208)
 - Fiduciary duty to NFE
- Confusing allegiance
- Confused public
- Issues



Management of NFEs

Exception **ONLY** by statute and
with DoD GC approval

→ Express Statutory Authority

→ Implied Statutory Authority

∞ Written request to the DoD GC



Management of NFEs

- Designated Entities - JER 3-202
USC 1033(b) & 1589(b)
- Service Secretaries, with DoD GC concurrence, may authorize managing
 - Relief societies



Management of NFEs

- International athletic competition
- Academy-related associations
- Entities that regulate military medical care
- Foreign groups that promote understanding with US military
- ➔ Appropriated Funds only in direct support, not travel



Management of NFEs

→ Personal Capacity

- ❖ Except for JER 3-210 organizations, may not serve if offered because of assignment/position
- ❖ Exclusively outside the scope



Management of NFEs

- ❖ FO and GO may not accept compensation for boards of directors
- ❖ 3 & 4 stars – SASC prohibits if DoD contractor or focus on military members



→ Must report on financial disclosure report



Supporting NFE Events

→ Official DoD Conferences

⌘ DoD may collect fees!!!!

⌘ AND, use them to pay for the conference, 22 U.S.C. 2262

⌘ But, any excess – to the Treasury

→ Chapter on Conference Planning



Co-Managed Events

- Because DoD may now collect fees, encourage clients to do own conferences
- Treat as official DoD event
 - ↻ May use seals and endorse
 - ↻ 10 U.S.C. 2262 applies
- Co-sponsor may collect fees
- DoD may not commingle funds
- Concern about excessive fees – back to the Treasury!



Co-Managed Events

- Prohibited except under JER 3-206
 - ☞ Must be strong mutual interest
 - ☞ Bona fide - equitably develop substantive aspects or provide **substantial** logistical support
 - ☞ Written MOU
 - ☞ Fees cover only reasonable costs
 - ☞ NFE is recognized and approved



Training Conferences

- May speak or participate when
 - ∞ substantial portion of attendees are DoD personnel (20%+, rule of thumb)
 - ∞ primary purpose is training or education of DoD personnel
 - ∞ conference meets all training criteria
- Management responsibility – speak and weigh value



Authorized Support to NFEs

→ Generally, prohibited!

- ⌘ May not use DoD resources, time, equipment for unauthorized purpose
- ⌘ No preferential treatment
- ⌘ No endorsement
- ⌘ Improper use of appropriated funds



Support Authorized by Statute

Exceptions that eat the rule!

→ Statutory authorizations

∞ Particularized support

∞ List in DoDI 1000.15

∞ Medical

∞ Scouting

∞ National Military Associations

∞ Etc, etc



Support Authorized by Statute

- Annual DoD Authorization Act
- Annual DoD Appropriations Act

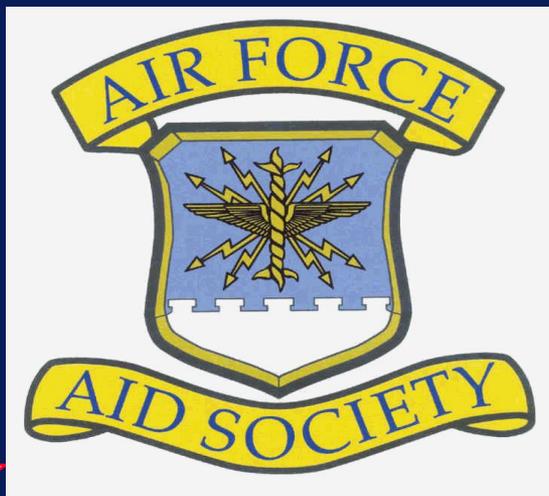
E.g.,

2006, youth organizations
D-Day museum - opening



Military Relief Societies

- Authority to endorse membership drives and fundraising (when among own members) – JER 3-210
- Support in service regulations



Private Organizations on DoD Installations

- DoDI 1000.15 imposes requirements
- No special privileges (JER applies)
- Must not appear to be official
- Require approval by installation commander



Innovative Readiness Training

- DoDD 1100.20
- Must fulfill, and be incidental to, valid training requirement
- Must be authorized by statute
- May not compete with private enterprise
- ASD(RA) approval required
- Guidance on-line (see Deskbook)
- Examples: construction and medical



Other Support to NFEs

General Restrictions

→ Solicitation of Speaking Opportunity

⌘ Prohibited!

→ DoD Seals, emblems, logos

⌘ NFE event not official, so can't use



General Restrictions Endorsements

Official endorsements are

PROHIBITED



(in most circumstances)



Endorsements

- Using official title, position, organization name or other authority
- NFE, event, product, service, etc
- Know it when you see it!
- Allowed when authorized by statute or documenting compliance or recognition



Why
are endorsements
Prohibited?



Endorsements

- They state or suggest official certification or approval (FDA)
- They portray the item as public rather than commercial
- They give preferential treatment
- They may improperly coerce DoD personnel





DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

DEC 12 2012

REPLY TO
ATTENTION OF:

MEMORANDUM FOR THE ARMY

SUBJECT: Private Organization Membership Campaigns

As the world's premier ground fighting force, the United States Army is well-organized, equipped, and trained to succeed in any mission it is asked to perform both today and in the future, even as an already complex strategic environment continues to adapt and evolve. Many private organizations have been supporters of our success. These organizations tirelessly advocate to help in a variety of ways from shaping defense policy to positively improving the professional and personal well-being of soldiers, civilians, and their families. These private organizations enjoy close, historical ties with the military community. Many are composed largely of serving and retired military and civilian personnel from all of the components. As you know, official Army support to private organizations is strictly regulated (see DoD 5500.7-R, *Joint Ethics Regulation* and AR 600-20, *Army Command Policy*).

In spite of our best efforts, many soldiers perceive that they are being coerced to join certain organizations and that their membership in such organizations is tracked. Any coercion, real or perceived, is unacceptable and does not befit this magnificent Army. Any practice that involves or implies compulsion, coercion, undue influence, or reprisal in the conduct of membership campaigns is strictly prohibited. This prohibition includes holding repeated orientations or meetings, or counseling those who have decided not to join after being provided information about the organization. It also includes using membership statistics when evaluating an individual's duty performance. While you may discuss the general merits and benefits of joining and participating in private organizations, without showing favoritism for one organization over another, all of your actions must be done within the limits of the standards of conduct principles discussed above.

Senior leaders will ensure that the chain of command implements and abides by the standards of conduct involving private organization membership campaigns so that soldiers' rights are protected. Ethics counselors are available to assist with training regarding these rules.

ERIC K. SHINSEKI
General, U.S. Army
Chief of Staff

Thomas E. White
Secretary of the Army



Requests for Endorsement

1. Explicit Endorsement
2. Implied Endorsement
 - Honorary Chairman
 - Presenting an Award
3. OGE 5 CFR 2635.702(c) and JER 3-209 and 300.a(1)

NO ENDORSEMENTS!



Think a women's college won't prepare you for the *real world*?



Candy Crowley '70
Senior Political Correspondent
CNN

First, let's define our terms. In the *real world*, women often earn less than men—sometimes significantly less—for comparable work. They also hold far fewer senior positions in business, and in governing and legislative bodies. That's the *real world*.



Carolyn Aldigé '67
Founder and President
Cancer Research Foundation
of America

Now consider this: while only 2% of all female college graduates attended women's colleges, they make up 20% of the women in Congress and nearly a third of a *Business Week* list of rising women stars. The first woman named as United States Secretary of State? First woman selected as the CEO of a commercial airline? First woman appointed to a presidential cabinet post? All women's college graduates.



Suzanne Patrick '77
Deputy Under Secretary of Defense
for Industrial Policy

The bottom line? Randolph-Macon Woman's College won't just prepare you for the real world.

We'll prepare you to change it.



Logistical Support (cont.)

- Not barred by statute or regulation
- Admission:
 - Free, or
 - Reasonably covers only
 - costs of event or
 - portion of event in which DoD participates, or
 - Exceeds costs of event, but support is reduced from limited to incidental



Logistical Support (cont.)

→ So what's reasonable?

- \$645 a day for **ALL** attendees at all times in the DC area
- May adjust up by % increase that location's per diem exceeds DC's
- Will be adjusted every 3 years by minimal value under Foreign Gifts

So what's incidental?

- Negligible or minimal impact



Requests for DoD Property

- Use JER 3-211 analysis
- Meeting rooms, Naval vessels for parties, medical supplies, etc



- Don't forget!! Applicable regulations for motor vehicles, MWR facilities (golf courses), GSA buildings, etc.



Personnel Support

→ Official Capacity

- ☞ Marriage of JER and Public Affairs Regulations
- ☞ Incidental – DoD speaker support is 20% or less of total speakers
- ☞ If meet reasonable cost, may exceed incidental, but may NOT exceed substantial (co-sponsorship)



Personnel Support

→ Other than speaking



- Bands – generally patriotic opener only. *Statute* prohibits use at activity not paid for by appropriated funds.
- Menial purposes prohibited (ushers, guards, escorts) (DoD 5410.18, 4.2.16)



Personnel Support

→ Personal Capacity

⌘ Compensation – Official Duties

⌘ Education/expertise exception

⌘ Personal travel expenses

- Relation to compensation



Logistical Support (cont.)

→ So what's reasonable?

- \$645 a day for **ALL** attendees at all times in the DC area
- May adjust up by % increase that location's per diem exceeds DC's
- Will be adjusted every 3 years by minimal value under Foreign Gifts

So what's incidental?

- Negligible or minimal impact



Requests for DoD Property

- Use JER 3-211 analysis
- Meeting rooms, Naval vessels for parties, medical supplies, etc



- Don't forget!! Applicable regulations for motor vehicles, MWR facilities (golf courses), GSA buildings, etc.



Personnel Support

→ Official Capacity

- ☞ Marriage of JER and Public Affairs Regulations
- ☞ Incidental – DoD speaker support is 20% or less of total speakers
- ☞ If meet reasonable cost, may exceed incidental, but may NOT exceed substantial (co-sponsorship)



Personnel Support

→ Other than speaking



- Bands – generally patriotic opener only. *Statute* prohibits use at activity not paid for by appropriated funds.
- Menial purposes prohibited (ushers, guards, escorts) (DoD 5410.18, 4.2.16)



Personnel Support

→ Personal Capacity

⌘ Compensation – Official Duties

⌘ Education/expertise exception

⌘ Personal travel expenses

- Relation to compensation



Other Support to NFE Events

Co-Located Events

- Official DoD Event and NFE event held at the same time at the same location
- If not co-managed, then not the exact same space at the same time!
- Separate and distinct – refer to appropriate section for each



Partisan Political Activity

- No participation in partisan political activities, **BUT**:
 - ❖ May brief political groups on national defense and foreign policy
 - ❖ May participate in town-hall meetings with Members of Congress
- See Political Activities Chapter



Military Insignia and Commercial Advertising

- NFEs are prohibited from using
 - ☞ DoD personnel in official capacity
 - ☞ Identifiable DoD resources
 - ☞ Images of DoD personnel or resources
- In commercial, advertising, marketing or promotional activities



Relevant U.S. Laws

→ 10 U.S.C. 771

☞ Only Members may wear an official uniform

→ 15 U.S.C. 1125

☞ In commercial advertising, prohibits false/misleading representation or deception re connection or sponsorship

→ 15 U.S.C. 45(a)

☞ Prohibits false or misleading advertising



Relevant DoD Regulations

- *Joint Ethics Regulation, 3-209 and 3-300*
 - ↻ Official capacity and personal capacity:
Prohibition of endorsement
- DoDI 5410.20, *Public Affairs Relations with Business and NGOs Representing Business*
 - ↻ Requires advance approval by the Office of the Assistant Secretary of Defense, Public Affairs, for use of DoD materiel, including uniforms and insignia, in any commercial advertising or promotional activity



Relevant DoD Regulations

- Five considerations in reviewing such requests:
 - ❧ Does the proposed material or use serve the Government's interest
 - ❧ Is the proposed material or use in 'good taste'
 - ❧ Is the proposed use devoid of suggestion or implication of endorsement
 - ❧ Does the proposed material or use incorporate a disclaimer
 - ❧ Does the proposed material or use make or imply any 'misleading' claims



Relevant DoD Regulations

→ DoD Directive 1344.1, Wearing of the Uniform.

Prohibited:

In connection with private employment or commercial interests;

When an inference of official sponsorship may be drawn; and

When wearing would bring discredit on the Armed Forces.

Applies to active duty, reserve and retired members.

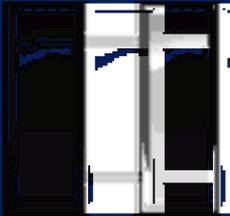
Each Service also has separate regulations with similar wording.



Seals



Insignia



Use of Service Members

- DoD Mission – Take and Post Images
- Privacy and Publicity Interests –
 - ∞ Individual Government Personnel
 - ∞ Separate State Laws
- Model Releases –
 - ∞ Responsibility of Entity Wanting to Use Images



Best Practices

→ Consider Class Bs or Class Cs

→ Consider Profiles

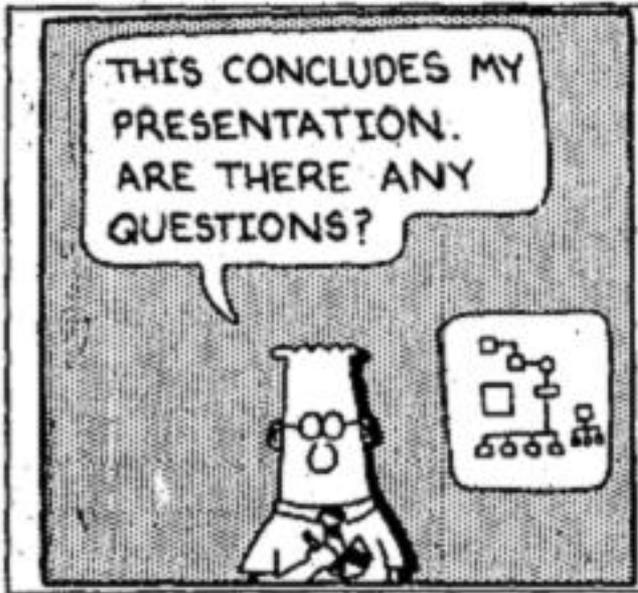
→ Be Careful About Unit Patches

→ Consult with OSD-PA – **In Advance**



THE END

DILBERT SCOTT ADAMS



THANK GOODNESS!

