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PRIVATE ORGANIZATIONS AND THE NEW AR 210-1

A Thesis

Presented to

The Judge Advocate General's School, United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of either The Judge Advocate General's School, The United States Army, or any other governmental agency.

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PRIVATE ORGANIZATIONS AND THE NEW AR 210-1

by Captain Eva M. Novak

ABSTRACT: This thesis examines the history of logistical support to private organizations, from the 1950's to the new 1989 AR 210-1 pending publication. Specific problem areas remain, and the potential for vast outlays of appropriated funds exists, both in the possibility of special legislation catering to specific organizations, as well as the new regulation's procedures for a memorandum of understanding granting additional support. Despite these dangers, the revisions of AR 210-1 are a step in the right direction. The regulation controls logistical support and removes much discretion from overly generous commanders. The 1989 AR 210-1 should be published as is. Without this stricter oversight, private organizations will continue to divert personnel, facilities, and equipment from the Army mission.

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PRIVATE ORGANIZATIONS AND THE NEW AR 210-1¹

I. INTRODUCTION

A private organization is presently defined as follows:

A self-sustaining, non-Federal entity constituted or established and operated on a DA installation by individuals acting outside any official capacity as officers, employees, or agents of the Federal Government or its instrumentalities. It can be incorporated or unincorporated; and it must have the written consent of the installation commander or higher authority to operate on a DA installation.²

These organizations are divided into several types, and receive varying logistical support as outlined in AR 210-1. The most recent AR 210-1, promulgated in 1981, has been revised and is ready to be printed.³ This 1989 AR 210-1 will restrict several kinds of logistical support previously provided to private organizations. The revisions will also allow expanded support for qualified organizations through a memorandum of understanding to be concluded at the Department of Defense level.

The restrictions on logistical support in the 1989 AR 210-1 are a reflection of the nation's current fiscal problems. One of President Bush's major hurdles as a new President will be to reduce the budget deficit. This austerity theme has built momentum over the last few years, and the Department of Defense will

not be immune from any fiscal reductions. Future budgets will be closely scrutinized to prune any expenses considered non-essential. Local commanders, faced with this belt-tightening, will also review their allocation of funds to assess which expenditures contribute most directly to their mission. Private organizations, some of which in the past have enjoyed extensive logistical support, will likewise feel the pinch.

The new restrictions reflect efforts to make logistical support more frugal yet flexible. Commanders will be expected to abide by the limitations, which are a recognition of the finite nature of defense resources. A letter from the Assistant Secretary of Defense, sent as the final draft of the 1989 AR 210-1 was being prepared, best summarizes the new attitude. The letter urges strict compliance with the regulatory provisions:

Public law forbids providing any DoD support that competes with resources and services commercially available in the public domain, or spends any monies in any way Congress has not authorized for expenditure. Executive order forbids providing any otherwise legal support that confers any explicit or apparent benefit, favor, or endorsement upon any entity. Conversely, DoD personnel are forbidden from taking any action or giving any support to a sponsor (e.g., speaker to a group) that does or seems to benefit or favor themselves.

Services and commands must studiously avoid agreements with private organizations to provide support at an event sponsored by the organization which may be commercially hired or leased, or which is properly the responsibility of the organization or local authorities. This extends to security, transportation, medical and other logistical support. Moreover, the extent of support to be rendered should be in line with the support normally offered other organizations and events. These policies and restrictions pertain to all private organizations, including single-Service affiliated organizations (e.g., Association of the U.S. Army, Air Force Association, Navy League, Marine Corps League, National Guard Association of the United States).⁴

Yet even as the Assistant Secretary of Defense is urging neutrality and frugality, commanders are attempting to circumvent this admonishment. The commander of United States Army Europe (USAREUR) has proposed extensive revisions of the 1989 AR 210-1 which would eliminate the new restrictions and greatly expand the generous grants in the 1981 AR 210-1.⁵ His acknowledged purpose is to thwart Congress' attempts to restrict outlays through a proposal to offset the officially reduced financial support for Government funded morale and welfare activities with increased logistical support for private organizations performing similar health and welfare functions. This

support would be discretionary and vary at each installation based on the perceived benefits provided by each organization.

The 1989 AR 210-1 answers the commander's concerns. The regulation contains procedures for recognizing private organizations that provide significant contributions to the welfare of overseas installations. The Department of Defense will conclude a memorandum of understanding with each private organization delineating the additional support to be provided worldwide. These procedures control the disbursement of funds while preventing the perception of favoritism.

The restrictions on logistical support and the memorandum of understanding procedures allowing increased support are a step in the right direction. They preserve funds for the Army's primary mission, while establishing a mechanism to provide support for truly deserving organizations giving essential morale and welfare benefits. A relapse to the proposed broad discretion would lead to vast outlays⁶ of appropriated funds which Congress intended to preserve for the defense of the nation.

This thesis will briefly examine the history of logistical support provided to private organizations.

The different degrees of support extended to the various types of private organizations will be treated next. Then, the thesis will describe selected problems that remain with this logistical support, the changes in the 1989 AR 210-1, and the proposed revisions. Finally, the thesis will discuss the various methods of enforcing the restrictions on logistical support.

II. HISTORY

A. PREDECESSORS TO AR 210-1

The earliest mention this author found of non-governmental, purely private organizations' receiving officially sanctioned logistical support is in a 1956 installations regulation.⁷ That regulation recognizes two categories: the first included activities of "organizations which supplement[ed] the welfare activities of the Army in accordance with Federal statute, with specific agreements by the Secretary of the Army, or the activities provided for by other departmental regulations."⁸ Examples listed are the Red Cross, the YMCA, banks, and credit unions, each with its own law, special regulation, or Army regulation. These organizations received fairly extensive support, including use, construction, modification, maintenance, and repair of facilities,

utilities, custodial and janitorial services and supplies, and the use of Government-owned portable equipment.⁹

The second category describes "voluntary, self-sustaining associations of individuals established for civic, fraternal, charitable, spiritual, or other cooperative objectives, which are not Government instrumentalities but are permitted to operate on the installation at the discretion of the installation commander and may be furnished a place to meet under authority of AR 230-5."¹⁰ This category also included federal employee unions, and received only facilities for meetings, when space was available, but not equipment, utilities, or custodial or janitorial services.¹¹

Later versions of the 1956 AR 210-55 retained the two categories and provided the same support in virtually identical language.¹²

B. THE 1973 DOD INSTRUCTION AND THE 1974 AR 210-1

By 1973, the profusion of individual agreements with federally sanctioned private organizations, and requests for support from local and national private organizations mandated a comprehensive policy to classify the organizations and establish their support.

Accordingly, the Department of Defense issued an instruction¹³ which created the types of private organizations still in use today, and set out the "minimal logistical support"¹⁴ each was authorized.

The instruction defined private organizations as "generally self-sustaining, non-federal entities, incorporated or not, and constituted or established and operated on a DoD installation with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government."¹⁵ Private organizations were classified into three types: federally sanctioned, Type 1 organizations; nationally affiliated, Type 2 organizations; and local, independent, Type 3 organizations.¹⁶

Logistical support was organized by type: Type 1 received support outlined in separate Department of Defense directives, while Types 2 and 3 received the support described in the instruction itself.¹⁷ Types 2 and 3 were provided the same support, which was indeed minimal: the use of facilities and equipment only, and no direct financial assistance in the form of contributions, dividends, or other donations of monies or other assets. Facilities included government-owned,

portable equipment in place as well as utilities and janitorial supplies. The use of these facilities was not reimbursable if they were used only occasionally, incidental to other uses of the facility, and if the use did not entail added maintenance expenses. If an organization's use was exclusive or full-time, reimbursement for the facilities would be required. Private organizations could also borrow or rent equipment, as long as it was available and statutorily authorized, and as long as they made any repairs or restorations necessary from their use. Otherwise, they had to furnish, procure, and repair equipment, supplies, and other materials at their own expense.¹⁸

The implementing Army regulation followed in 1974.¹⁹ The Type 1 organizations listed included credit unions, banking institutions, the American National Red Cross, and the United Services Organizations, Inc.²⁰ The regulation repeated verbatim the support to be provided Type 2 and Type 3 private organizations. A change later the same year added labor organizations and associations of Department of Defense supervisors and management officials as examples of Type 1 organizations.²¹

C. THE 1978 DOD INSTRUCTION AND THE 1979 AR 210-1

DOD Instruction 1000.15 was reissued in 1978.²²

The new instruction was essentially identical to the old, save for a few cosmetic changes, and an updated list of Type 1 organizations. The instruction limited logistical support to the same two aspects: occasional and nonreimbursable, or exclusive and reimbursable use of facilities, and loan or rent of government equipment, with repair or restorations at no cost to the government.

The implementing AR 210-1 was likewise very similar to its predecessor.²³ The 1989 AR 210-1 defined private organizations as "self-sustaining",²⁴ no longer "generally self-sustaining", and the provision concerning loan or rent of government equipment remained virtually unchanged. The facilities paragraph was slightly expanded: commanders could issue rent-free licences to nonprofit, charitable, or service organizations, who were staffed primarily by volunteers, had DOD membership, used the property for the benefit of the United States, and did not engage in resale activities or activities which competed with other post programs. In addition, thrift shops and some child care centers received rent free space and utilities. All other

organizations that used facilities exclusively remained subject to the lease requirement.²⁵

D. THE 1981 AR 210-1
AND THE 1983 CHANGE TO THE 1978 DOD INSTRUCTION

Commanders perceived substantial morale and welfare benefits from the activities of private organizations, and they were anxious to give additional logistical support to the organizations operating on their installations. Their dissatisfaction with the relatively limited support outlined in the 1979 AR 210-1 is revealed on the cover sheet for the draft revisions of the 1979 AR 210-1: the explicit objectives were to authorize increased support to private organizations.²⁶ After several reviewing offices expressed objections that the revisions extended support beyond that allowed in the DoD Instruction, "[o]bjectionable portions were carefully rewritten to preserve their basic intent yet to bring them in line with existing [Office of the Secretary of Defense] and Army philosophy and policies regarding support for PO's."²⁷

The outcome of these policies favoring increased support was the sweeping new grants of the 1981 AR 210-1: extensive support to qualifying special events,

transportation, utilities, printing and copying services, and postal support each received a paragraph in the new regulation.²⁸ The changes "authorize[d] commanders to provide increased support for PO special events, ... and ma[de] special provisions for national organizations with affiliated chapters (e.g. AUSA)."

To bring about the expanded support that was considered beyond the scope of the DoD Instruction, the 1978 DoD Instruction had to be changed. The resulting 1983 change provided that Type 2 organizations, those affiliated with national headquarters, could apply for additional support for their overseas chapters.²⁹ Their request would be forwarded through command channels, and a memorandum of understanding between the organization and the Department of Defense would set out the additional support authorized.

E. THE 1989 AR 210-1

In 1987, work began to revise the 1981 AR 210-1.³⁰ The logistical support provisions in the final draft of the 1989 AR 210-1 represent a compromise between the desires of overseas commanders to expand support, and general attempts to curtail all non-essential spending. The regulation attempts to strike a balance between general restrictions of

specific logistical support, and possible expansion of support to selected deserving private organizations.

The 1989 AR 210-1 retains the distinction between the different types of private organizations. The support for federally sanctioned, Type 1 private organizations is governed by other regulations. The logistical support for Type 2 and Type 3 private organizations, nationally affiliated and independent organizations, respectively, is governed by the 1989 AR 210-1. In the paragraphs discussing specific logistical support, many aspects are curtailed or restricted, such as printing or transportation. Overseas support is actually expanded in one area: transportation to special events on non-installation sites is granted for the first time. Finally, the regulation clarifies several policies, unrelated to logistical support of private organizations.³¹

A broad, new paragraph appears in the 1989 AR 210-1, which describes procedures for selected private organizations to officially request and receive increased support over that allowed by the basic regulation. These procedures implement the 1983 change to the 1978 DoD Instruction that proposed using memoranda of understanding to set out the services rendered by an organization and the specific additional

support it would be authorized. Overseas commanders will now have official channels for requesting permission to give additional support to certain private organizations, instead of being bound by the inflexible limits of the 1981 AR 210-1.

III. PRESENT SUPPORT

Logistical support to private organizations is governed by both general principles and specific guidelines. The general principles apply to support given to all private organizations, and will be related here by way of background. The specific regulatory guidelines and restrictions vary with the type of organization and the category of support. The various guidelines will be discussed in turn as they relate to each type of private organization.

Several of the general principles governing support demonstrate the ethical constraints under which this support is provided. Yet not all these principles are consistent. For example, "[i]t is Army policy to provide military support for national conventions of veterans' organizations. The type and extent of support requested varies with each organization."³² At the same time, several other principles require that Army participation not selectively benefit any

person, group, or corporation, whether profit or nonprofit; religion, sect, religious or sectarian group, or quasi-religious or ideological movement; fraternal organization; political organization; or commercial venture.³³ Department of the Army personnel must avoid any action that might result in giving preferential treatment to any person or entity, or losing independence or impartiality.³⁴ This personnel policy includes a prohibition against using an official position to induce, coerce, or in any way influence any person, including subordinates, to provide any unauthorized benefits, financial or otherwise, to themselves or others.³⁵ As a result, cosponsorship of meetings by the Army and industry, or by the Army and nongovernmental associations having in their membership entities doing business with or having the potential to do business with DA, is prohibited.³⁶ This policy applies even if the organizations are composed entirely of active duty and retired military personnel.³⁷ These policies mandating strict impartiality and forbidding cosponsorship of any meetings are difficult to reconcile with a policy expressly providing support for conventions of veterans' organizations.

Another source of conflict comes from principles governing the actual support provided. Several regulations contain a prohibition against rendering direct financial assistance to private organizations.³⁸ Yet, extensive indirect financial assistance is encouraged by the many grants of logistical support authorized in the 1981 AR 210-1. Lawful logistical support which saves the private organization vast sums of money can become a thinly disguised form of financial assistance.³⁹

The inherent tensions between allowing discretionary support on the one hand and demanding neutrality and impartiality on the other were recognized in the report from a recent Inspector General review of USAREUR private organizations:

Regulatory guidance that governs POs is not specific enough in certain areas to allow PO coordinators to effectively monitor and oversee the program. In some communities, POs that had the interest of the command group received priority for logistics support. Overseers of POs are reluctant to challenge support provided certain POs because they are afraid they are 'going up against the commander or general.'⁴⁰

With this background, support to the various types of organizations will be described in turn: cooperation with officially sanctioned, Type 1 organizations, logistical support to Type 2 and 3

organizations, underwriting of scouting activities, and finally, the support to be prospectively rendered under the new memorandum of understanding procedures.

A. TYPE 1 PRIVATE ORGANIZATIONS

The Department of Defense has recognized that certain private organizations provide an indispensable service to the Army, actually "conduct[ing] service operations."⁴¹ These organizations are sanctioned by either the Department of Defense or the Department of the Army. This official sanction results in extensive logistical support, as spelled out in individual regulations. Credit unions and the Red Cross are examples of Type 1 business and service organizations, respectively, and the support given each will be describe in turn.

The Department of Defense instruction governing the support of credit unions acknowledges "their unique role in promoting morale and welfare," and authorizes assistance by DoD components at all echelons.⁴² This support includes free office space if at least 95% of the credit union membership is military, federal employees, or their families. The instruction recommends concluding an operating agreement to further specify logistical support. The resulting Army

regulation governs logistical support given credit unions, and includes such additional items as janitorial service, utilities, fixtures, maintenance, and abroad, office space, postal service and autovon phone service.⁴³

Likewise, the DoD recognizes the American National Red Cross as supplementing and otherwise assisting the armed forces in programs relating to the health, welfare, recreation, and morale of military personnel and their dependents.⁴⁴ The separate Red Cross regulation is typical in its grant of extensive peacetime logistical support to service organizations: free office space, including custodial service, maintenance, utilities, and local and autovon telephone service; loans of nonexpendable office equipment; transportation and warehousing of supplies and equipment; transportation of personnel, their automobiles, and their household goods during a change of station and emergency leave; some post exchange and commissary privileges; attendance at DoD schools; and motor vehicle transportation, if available.⁴⁵

Another Type 1 service organization is worthy of mention, as it is expected to be the subject of controversy in the near future: the United Service Organization, Incorporated (USO). The USO is defined

as a voluntary civilian organization through which the people of the United States may serve the religious, spiritual, social, welfare, educational, and entertainment needs of the services.⁴⁶ Like the American National Red Cross,⁴⁷ the USO is a non-governmental, but Congressionally chartered organization.⁴⁸ "The USO mission is to enhance the quality of life of the personnel within the United States Armed Forces military communities and to create a partnership between the armed forces and civilian communities worldwide."⁴⁹

In order to facilitate the accomplishment of the USO mission, the Department of Defense is allowed to make its resources available to the extent compatible with the primary defense mission.⁵⁰ As a result, the Army provides the USO extensive logistical support.⁵¹

On 23 November 1988, this regulatory support was supplanted by a memorandum from the then Secretary of Defense, Frank Carlucci, to the secretaries of the military departments: Mr. Carlucci recognized the contributions of the USO and forthwith effectively changed the Army policy of neutrality.⁵² He authorized Department of Defense officials "to endorse the USO publicly and factually ... and to attend USO

fund-raising events in an official capacity." Attendance of USO events in an official capacity will mean the expenditure of increased travel funds. Endorsement of the USO can also translate into potential increased logistical support for USO functions. As a result, Mr. Carlucci's letter raises questions about future support to the USO, such as the extent and nature of any increased logistical support, possible governmental liability from the actions of a formally sponsored organization, and the effect of the letter on the Army's former policy prohibiting formal endorsement of any organization. As the various service departments scramble to answer these questions and to implement Mr. Carlucci's letter in a change to the current DoD Instruction, the danger of allowing a single organization to win the favor of a person in power becomes readily apparent. The resulting cost to the government of this sweeping change in support may well be extensive, at a time costs should be carefully monitored and restricted.

B. TYPE 2 AND TYPE 3 PRIVATE ORGANIZATIONS

The 1981 AR 210-1 identifies two other categories of private organizations. Type 2 organizations are local affiliations, chapters, lodges, or elements

of private organizations with national or state charters. Type 3 organizations are independent, and have no formal connection with organizations outside the installation.⁵³ The logistical support provided both types is generally the same, except where noted. The memorandum of understanding procedures apply only to Type 2 organizations and will be discussed in a separate subsection.

Many problems remain in the area of support to Type 2 and Type 3 private organizations. The following is a brief discussion of selected problem areas, with summaries of specific principles and regulatory provisions governing present support, and anticipated changes under the 1989 AR 210-1.

1. Membership and Attendance Campaigns

The pending 1989 AR 210-1 contains a new provision specifically addressing membership campaigns. These campaigns and recruitment practices are neither to involve nor give the appearance of involving compulsion, coercion, or influence. The list of prohibited activities includes repeated petitions, orientations, or counseling of persons who have chosen not to join a private organization; the use of

membership statistics by supervisors to influence non-members; and compilation of by-name lists of non-members.⁵⁴

These new membership provisions largely mirror those already contained in a regulation governing Army command policy, which also require membership to be truly voluntary.⁵⁵ The policy regulation, AR 600-20, likewise prohibits the use of compulsion, coercion, influence, or reprisal, repeated membership orientations, and any supervisory influence. It does, however, allow "reasonable efforts" to encourage personnel and inform them of the benefits of membership. This encouragement must also be without coercion.

The only practice found in the 1989 AR 210-1 that is not already prohibited by AR 600-20 is the use of by-name lists of non-members. This prohibition does not represent a significant change, however, as the use of lists has already long been thought to raise significant Privacy Act and First Amendment issues, and has generally been discouraged.⁵⁶ In all other respects, the two regulations generally overlap. Moreover, the 1989 210-1 prohibits only specified activities, and by implication leaves intact the commander's right to use "reasonable efforts" to

"encourage" membership - the very practice that has invited so many past abuses.⁵⁷

Frustrated administrative lawyers can nevertheless find guidance in several administrative opinions containing letters with language considered not legally objectionable. Two examples show acceptably neutral language which still conveys the commander's message concerning membership:

1. I encourage all officers who are not ... members to evaluate the professional value of this worthwhile professional organization. Likewise, I encourage all members to share their knowledge of the [organization's] contributions with other members of our Corps. The basic goals and objectives⁵⁸ of the [organization] are worthy of support.

2. Commanders at all levels should take reasonable steps to inform their personnel regarding the benefits and worthiness of the [association]⁵⁹ and should encourage membership.

Another example encourages participation in an annual meeting:

2. The military and industrial exhibits which this private organization attracts offer an unparalleled opportunity for the professional development of soldiers assigned to the Army Staff. In particular, officers who are serving in assignments unrelated to their basic specialities [sic] will find the displays a convenient way to remain current on issues of importance to the Total Army....

3. Please make every reasonable effort to inform your personnel regarding the benefits of attending this event, and encourage them⁶⁰ to take advantage of this unique opportunity.

A final example is a letter announcing an annual meeting, the date, and the location, and listing in detail the various seminars and activities: the final paragraph of this letter simply reminds commanders to comply with a list of the regulations governing participation in activities and attendance at meetings of private organizations, community relations, and standards of conduct.⁶¹

These examples show that commanders can still use reasonable efforts to encourage membership and participation without employing coercion, compulsion, or the influence of their rank. The 1989 AR 210-1 makes no substantial changes in this area, merely restating the policies found in other regulations. The the integrity of commanders and the vigilance of administrative lawyers will prevent repetition of past abuses and continue to bring improvement in the area of membership and participation in private organizations.

2. The Use of Personnel

Army policy prohibits the use of government personnel, including stenographic services, typing assistance, duplication, and chauffeur services, for any but official Government business.⁶² The 1981 AR

210-1, on the other hand, permits the use of military personnel and appropriated or nonappropriated fund civilians to support special events which may benefit private organizations. Special events are defined as those command approved events on the installation that enhance the morale of the DoD family, and are open to all members of the installation DoD family.⁶³ The 1989 AR 210-1 is thus inconsistent with the general policy.

The 1981 AR 210-1 is also internally inconsistent, with principles both expanding and restricting personnel use. As a general restrictive principle, "APF [appropriated fund] (military or civilian) or NAF [nonappropriated fund] employees will not, as an official duty, be assigned to or work for POs [private organizations]."⁶⁴ Also, personnel supporting special events may only be used to prepare the installation grounds and facilities for the special event. On the other hand, a sweeping provision immediately follows this restriction, stating that the use of special duty enlisted military personnel is allowed by AR 600-200.⁶⁵ This last provision has resulted in the use of personnel far beyond the mere preparation of grounds, and has been the source of much controversy.⁶⁶

Determining the proper use of special duty personnel must begin with an analysis of AR 600-200. This personnel management regulation dictates Army policy on the general use of personnel. The objective of the policy is to insure efficient use of enlisted members in accomplishing the Army mission.⁶⁷ The regulation charges commanders and supervisors at all echelons to use soldiers in properly authorized table of organization or table of distribution positions, consistent with their specialties.⁶⁸ Exceptions must rise to the level of, inter alia, actual combat conditions, special instructions from HQDA, undocumented positions, or an "assignment ... to meet an urgent military requirement to satisfy an exceptional need for special duty."⁶⁹ The glossary defines special duty as "[p]erformance of duty with an organization other than unit to which assigned, while continuing to be administered and accounted for by the unit of assignment. Includes BMM [borrowed military manpower] and troop diversions."

AR 600-200 thus contemplates that special duty personnel will fulfill urgent military requirements on a par with combat, special assignment, or troop diversions. This standard would not permit using soldiers to support a private organization convention

at the expense of the Army mission. The restrictive language of AR 600-200 has not stopped commanders from creatively defining "exceptional needs" and "urgent military requirements." Several examples illustrate the magnitude of unauthorized logistical support contemplated and actually rendered.

In one instance, the National Guard Bureau inquired as to the use of a Criminal Investigation Division (CID) Detachment and a Military Police (MP) company to provide site security and protection for speakers and distinguished guests at a private association meeting, to be held on a civilian commercial location.⁷⁰ The request pointed to similar, actual past use of MP's and CID at an Army private organization conference on a civilian cite as justification for the contemplated duty. The requestor was reminded that the community affairs regulation prohibited the use of Army personnel as ushers, guards, parking lot attendants, runners, messengers, baggage handlers, crowd controllers, or in demeaning or inappropriate capacities to support unofficial programs conducted off military installations.⁷¹ Likewise, the CID regulations provide for protective services for specific individuals only, not general security for conferences or meetings.⁷²

In the same inquiry, military band support was contemplated for various functions during the six-day period of the conference. Musical support is also governed by the community affairs regulation, which authorizes Army musical, ceremonial, and troop unit support and participation for the following: official military functions, parades and ceremonies, and civic events, as long as the participation is limited to patriotic or military programs as opposed to pure entertainment.⁷³ Thus, the regulation prohibits "providing background, dinner, or dance music at luncheons, dinners, receptions, or dances when held in the civilian domain and sponsored and attended by other than military or official Government personnel and their guests. The sponsor's charter or objective will not be grounds for exception."⁷⁴ The duration of participation by Army bands and musicians will not exceed 3 days for each event. This is to insure proper use of Army personnel and resources.⁷⁵ Consistent with these provisions, the opinion cautioned the requestors to make only proper use of the band, and not to exceed three days' support.

In a similar request, the Christian Embassy was hosting a dinner at which they claimed ambassadors and

other politically important persons would be present, and asked for the presence of the Army Strolling Strings. The opinion denied the support, since banquets and dinners are not official civil ceremonies, and the musicians cannot provide background dinner music in any case.⁷⁶

These examples give a taste of the extensive personnel support organizations try to obtain and commanders attempt to give under the 1981 AR 210-1. The justification for this personnel support will change under the 1989 AR 210-1. The regulation retains the use of personnel to prepare installation facilities and grounds for special events only.⁷⁷ The provision allowing special duty enlisted personnel has been eliminated. Commanders will thus have to justify the use of enlisted personnel to support private organizations by resorting to the stricter, more specific provisions governing official duties in other regulations. The elimination of this broad provision should help curb the misuse of personnel.

The proposed USAREUR revisions to the 1989 AR 210-1 would eliminate the restrictions overseas, and officially expand the personnel grants of the 1981 AR 210-1.⁷⁸ The proposal would allow support not only for the carefully defined "special events" on the

installation, but also to all programs, events, and activities which benefit community welfare on and off installations. Personnel would prepare facilities and grounds and restore them after the event.

USAREUR's recommendation has two principle dangers. The first is the potential for vast diversions of wages and work product to organizations which are to be self-sustaining by definition. Funds for activities are to come from "dues, contributions, service charges, fees, or special assessments of members."⁷⁹ Relieving organizations of their clean-up costs puts the burden not on members or users, but on local soldiers and their companies, and ultimately represents a taxpayer subsidy. The second danger is the harm to the civilian sector: the Assistant Secretary of Defense's letter pointed out that commanders should studiously avoid support which can be commercially hired or is the responsibility of the organization or local authorities. The prohibitions mentioned in the community affairs regulation against using Army personnel for guards, baggage handlers, musicians, or demeaning work instead of local authorities or hired civilians is consistent with the Secretary's letter. The proposed support is the responsibility of the organization and can be

commercially hired. Using soldiers affects the local economy and can adversely impact on community relations.

The 1989 AR 210-1 is consistent with the general policy on personnel use, and it should be published as it presently stands. In an era when the efficient use of soldiers and assets is essential, the limited provision for use of personnel will allow the Army to maintain its focus on its primary mission.

3. Printing

Early administrative law opinions show that private organizations were not authorized any printing support. For example, the American Recreation Society, describing itself as "quasi-official", requested printing support in 1959.⁸⁰ The Society did not, however, enjoy official status, nor was it supported by appropriated funds. Printing was denied based on then 44 U.S.C. 219, which prohibited printing any matter except that authorized by law and necessary to the public business.

Despite this continuing requirement that all printing on Government machines be for official business only, an exception was inserted in the 1981 AR 210-1, over legal objections.⁸¹ This exception

allows a private organization to print on government machines any forms or reports needed for its request to obtain permission to operate on post. The exception further grants an organization printing support, up to the value of \$50 per event.⁸² The 1989 AR 210-1 contains a new provision that prohibits all printing and copying services, eliminating the need to establish the value of printing services rendered or the definition of "event." The administrative opinion reviewing the proposed regulation supported this provision, stating that it makes the regulation consistent with other regulations⁸³ and law,⁸⁴ which require Government printing to be used only when necessary to conduct official Department of the Army business. The opinion added that the provision properly eliminated the authority to print permission forms and reports to operate on post: meeting the documentation requirement to qualify for existing on the installation is a private organization's own obligation, and not the Army's official business.⁸⁵ As a result, the 1989 regulation prohibits all printing support.

USAREUR again objects to the 1989 restrictions, and proposes an expansion of the 1981 AR 210-1's printing provisions.⁸⁶ Printing would be provided

for all activities, events, or programs which benefit community welfare, on an installation or off, and an organization would only have to reimburse the government for materials in excess of \$300 per event.

The legality of conducting extensive private printing on official Government machinery aside, the dangers of this proposal are similar to those mentioned in the discussion of the proposed personnel support. Just ten activities per year by the various private organizations at each Army installation using only \$200 of materials each quickly mounts to \$178,000 annually in materials, in addition to the wages and work product of those performing the copying. This business is taken away from the civilian sector. In addition, flyers and other promotional materials printed on government machinery, especially on machines that actually reprint the words "printed at Government expense" on each page, can easily create the perception that the Government is co-sponsoring the event.

An issue remains as to whether private organizations may obtain printing services on a reimbursable basis. Under the 1981 AR 210-1, for example, private organizations in Europe sought to make use of less expensive Government duplicating machines on a reimbursable basis, instead of using

local civilian printing facilities. An opinion interpreted the 1981 regulation, which has no provisions for any reimbursement, as disallowing any support in excess of the \$50 dollar limit, including reimbursable printing.⁸⁷ As the pending regulation likewise contains no arrangements for reimbursable printing, the same principle should apply: the provision should be interpreted as prohibiting all printing and duplication using Government machinery, on either a reimbursable or nonreimbursable basis.

Another issue expected to receive scrutiny in this area is that of defining "official business." In 1981, the Second Army Family Symposium, sponsored by the Officers' Wives Club of the Greater Washington Area and AUSA, requested printing for items allegedly falling within the Army's Public Affairs Program. The resulting opinion⁸⁸ required the Public Affairs office to scrutinize each item for its official value: information papers, flyers, Army bibliographies, and training materials relevant to Department of the Army speakers could be published on Government machines. The program or the agenda for the symposium, on the other hand, were not official business. This avenue of last resort for printing support will no doubt be tested with increasing frequency as private

organizations feel the burden of commercial printing costs.

4. Travel

Even though travel is not listed in AR 210-1 among the forms of logistical support given to private organizations,⁸⁹ it is nevertheless another form of indirect support: travel represents an outlay of actual funds, employee salaries, and missed work product, to the detriment of the Army and the benefit of the private organization. Two aspects of travel, funded travel and the scheduling of official conferences to coincide with private organization meetings, will be discussed in turn.

Military regulation contemplates three forms of travel and designates conditions for each: funded duty travel, unfunded duty travel, and ordinary leave.⁹⁰ Funded temporary duty (TDY) travel should meet the following conditions: the meeting must be of direct and substantial benefit to the approving authority; attendance must be required to accomplish the approving authority's mission and will benefit the approving authority more than the individual; the event should be of a general benefit to the whole community; support and attendance should not selectively benefit or favor

any individual, corporation, political organization, or commercial venture; and funds must be available.⁹¹ Unfunded TDY (unpaid travel not counted as ordinary leave) is permissible when the meeting is of a quasi-official nature and the approving authority will receive some benefit from attendance which is not direct or substantial.⁹² Ordinary leave must be taken for attendance at meetings which are of marginal or no benefit to the approving authority.

The decision as to whether travel is required to accomplish the approving authority's mission and will be of direct and substantial benefit to him or her rests solely with the approving authority. It is not the assessment of an administrative lawyer.⁹³ AR 1-211 cautions that these decisions "must be guided by strict adherence to professional and personal ethics." An administrative law opinion admonishes that a decision approving government funded travel "is a heavy burden, and caution must be exercised to assure that such a determination is well founded."⁹⁴

Another admonishment to strictly scrutinize the actual role of each potential traveler and the benefits of the contemplated travel is found in the most recent DA circular providing guidance for attendance at service-affiliated professional

organization annual meetings.⁹⁵ The circular references AR 1-211 and states: "Personnel attending the annual meeting in other than an official capacity are encouraged to apply for ordinary leave ... or annual leave Consideration may be given to granting Permissive TDY/excused absence Travel under these provisions would be at no expense to the Government."

The language of this circular indicates a clear preference that personnel attending meetings in their personal capacity, not as envoys of their commander, do so at their own cost, on their own time. As travel budgets shrink or fail to grow in future fiscal years, an approving authority's assessment of the benefits of conference travel under AR 1-211 should heed the circular's advice. The approval of travel will no doubt increasingly be held to the light of AR 1-211's strict adherence to professional and personal ethics.

A related issue in the area of travel support is that of scheduling official meetings to coincide with the date and location of annual conferences of private organizations. This area is also currently guided by AR 1-211, which states that official meetings, conferences, or training sessions will not be scheduled either to accommodate or benefit a private

organization, or to circumvent the prerequisites for funded travel under that regulation.⁹⁶

The original rule was that travel to both an official, military conference and a private organization's conference was authorized only if the official schedule was set and travel was approved by a major commander before receipt of the private association's request to meet during or before or after the military conference.⁹⁷ This rule was based on an earlier, stricter version of AR 1-211, which required that "[o]fficial meetings or training courses ... not be scheduled on the same dates as, or immediately before or after, meetings of private organizations to circumvent the requirements of th[at] regulation."⁹⁸ A change made this restriction even more explicit:

Official meetings, conferences or training sessions will not be scheduled to accommodate or benefit a private organization or to circumvent the requirements of this regulation. There must be no basis for accusation of evasion of the purpose and intent of Congress in requiring approval of the Secretary of the Army or his designee for expenses incident to attendance at meetings conducted by private organizations. ... Requests for official conferences, meetings and training sessions must be evaluated carefully to ensure that this is the best way to accomplish the objective. An annual meeting with the purpose of updating personnel in a general sense will not in and of itself be considered sufficient

justification for such official meetings. When an official meeting, conference or training session has been approved as outlined herein, the sponsor thereof is authorized to respond to a subsequent request from a private association to meet at the same time as, or immediately before or after, the official meeting, as appropriate. The sponsor may then decide the extent to which the private association may participate, depending on the local situation and circumstances. Attendance by Army personnel at private association parts of concurrently or sequentially scheduled meetings will be at personal expense unless attendance at government expense is authorized in accordance with para. 4.⁹⁹

Later versions did not incorporate this detailed mandate, but were instead identical to the broad present language.¹⁰⁰ They merely referenced a paragraph of the standards of conduct regulation, which admonished the avoidance of actions which resulted in or created the appearance of the following: using office for private gain, giving preferential treatment, impeding Government efficiency, losing impartiality, making a decision outside official channels, or affecting the confidence of the public in the integrity of the government.¹⁰¹

The travel rule was relaxed somewhat in 1981. The Chief of Staff's office had proposed a change of dates of an official conference to precede that of a private organization. The Inspector General's office then complained that the change created the appearance of

unauthorized benefit to a private organization and thus violated AR 1-211. The resulting administrative opinion,¹⁰² signed by TJAG, described the purpose of AR 1-211 as prohibiting the misuse of funds, rather than prohibiting concurrent or immediately successive meetings. The rationale given for the change was that the new dates would reduce government travel, minimizing both costs and absences from command. Given these grounds, the change did not violate AR 1-211. In Major General Harvey's opinion, the advantages to the government in cost and work product outweighed the disadvantages of the potential perception problem.

With the recognition that it is more efficient, mission allowing, to juggle both conference schedules to coincide, joint conferences are here to stay. The burden remains on the commander, however, to justify the benefits of attendance and the status of each traveller under the requirements of AR 1-211.

5. Transportation

Like logistical printing support, support in the form of transportation has come full circle since the 1950's, when it was forbidden as not being for official business. In 1956, for example, a request for mass transportation to and from a hotel, the Pentagon, and

other sites of scheduled events for an AUSA conference was denied: the administrative opinion emphasized that motor vehicles were to be used exclusively for official purposes, and that AUSA, despite its predominantly military membership, was an activity within the private domain.¹⁰³ The opinion recognized that while AUSA may have had great value to the Army and transportation support would enhance the success of the gathering, "the potential damaging effects to the Department of the Army as a whole that could result from indiscriminate use of official transportation, might well offset any gain realized from supporting the meeting."¹⁰⁴ The opinion stated: "Scheduled bus runs from the Sheraton Park hotel to the Pengagon [sic] building and the use of sedans as requested by the meeting chairman cannot be considered as official business and could undoubtedly embarrass the Department of the Army if this situation became a matter of public issue."¹⁰⁵

The requirement expressed in the 1956 opinion that all transportation be for official business only was strictly adhered to for several decades. The 1974 and 1979 issues of AR 210-1 accordingly had no provisions authorizing any transportation support. The first mention of transportation support came in the

1981 regulation, in keeping with the efforts to render more logistical aid to private organizations. Command-approved, organization-sponsored or cosponsored special events to be conducted on an installation, which will benefit the morale of the installation DoD family, may be furnished government motor vehicles to transport private organization goods and personnel.¹⁰⁶ The transportation cannot harm the installation and command mission nor generate requirements for more vehicles. It may be reimbursable or nonreimbursable at the commander's discretion.

The requirement that transportation only be furnished for special events held on military installations has been strictly construed. In 1988, the CINC, USAREUR, requested an exception to this policy to allow military transportation of members of the American Women's Activities, Germany, to an annual convention held at a civilian site. During the review of the 1989 AR 210-1, USAREUR had proposed just such an exception allowing OCONUS transportation in military buses for special events at non-military sites.¹⁰⁷ The denial of the request¹⁰⁸ emphatically explained the policy of the 1981 AR 210-1:

The implications of underwriting the activities of a large and influential private organization are impolitic given the HQDA and

DOD policy restrictions [] and current Congressional sensitivity to appropriation outlays.

3. Without doubt, private organizations (POs) such as AWAG make numerous and valuable contributions to military quality-of-life. DOD guidance, however, dictates an "arm's length" relationship with POs, one characterized by recognition of their non-governmental nature. Because they are private, and not part of the military structure, these organizations are not entitled to government support either with appropriated (APF) or nonappropriated (NAF) funds. Use of APF would place the Federal Government in the position of illegally subsidizing POs at the taxpayer's expense. The prohibition against the use of NAF beyond that specifically authorized by AR 210-1 is based on similar DOD guidance disallowing the transfer of Government money or other assets to a PO.¹⁰⁹

The pending 1989 AR 210-1 represents a compromise between the request of USAREUR to expand support and the attempt by the Department of the Army to limit outlays and curb misuse. All transportation is to be on a reimbursable basis only.¹¹⁰ USAREUR's request was partially granted, in that transportation may be authorized overseas to support special events at non-military sites.¹¹¹

USAREUR is dissatisfied with this compromise, and has proposed a massive grant of transportation support.¹¹² Transportation would be granted to all programs, events, and activities, on or off the installation. While reimbursement would be left to the

discretion of the command, commanders would actually be "encouraged to support such programs and activities without reimbursement when permitted."¹¹³

The dangers of expending vast taxpayer dollars and stripping substantial business from local companies are readily apparent. The 1989 AR 210-1 strikes a fair balance between USAREUR'S need to hold special events off installations and the Army's need to set limits on this support. Moreover, despite USAREUR's complaint that special events are "narrowly defined",¹¹⁴ the definition in the 1989 AR 210-1 is, in spirit, identical. The 1989 AR 210-1 requires an event to benefit or enhance the morale of the installation DOD family,¹¹⁵ the proposed revision requires it to "benefit[] community welfare."¹¹⁶ The regulation requires command approval, the revision presumes approval or transportation would not be authorized. Finally, USAREUR's concerns about expanded transportation are answered elsewhere in the 1989 AR 210-1. The memorandum of understanding procedures, to be discussed infra, provide for expanded, albeit reimbursable, transportation.

C. "TYPE 4" PRIVATE ORGANIZATIONS: THE SCOUTS

The Boy Scouts of America have long enjoyed extensive support from the Army. This support developed in the 1950's, and encompassed many forms: a designated liaison officer in each command, part of whose official duties were to coordinate scouting activities; cross country rides in jeeps, trucks, and tanks; the showing of training films, such as first aid films; qualified military instructors, complete with classroom training manuals and aids, as well as technical advice in the use of training methods and program activities; encampments using military installations and facilities; flights on Army aircraft; and meals at mess halls at nominal cost.¹¹⁷ In the words of the Adjutant General, "[t]here is no season on scout cooperation. The Department of the Army's invitation to use its facilities and services is a standing one given without restriction of the time of year."¹¹⁸

In 1958, a nonappropriated fund instrumentality (NAFI) was established for the Transatlantic Boy Scout (TAGS) Council and the North Atlantic Girl Scouts (NAGS) Council, primarily to pay the salaries of scout professionals.¹¹⁹ This arrangement continued until the late 1970's and early 1980's, when various offices

questioned the legality of supporting scouting through NAFI's. For example, the DoD Morale, Welfare, and Recreation Coordinating Committee decided on 24 Sept. 1982 that a requested Far East Council scouting NAFI would sanction subsidization of a private organization; instead, they recommended that the Boy and Girl Scouts of America negotiate a memorandum of understanding with DoD similar to that reached with the Red Cross and USO.¹²⁰

This questioning of the support of a private organization through an affiliated NAFI culminated in a legal opinion that the funding was prohibited.¹²¹ The General Counsel determined that the arrangement constituted forbidden financial assistance to a private organization, in violation of the DoD policy, which was "based on law," and could not be waived or modified without express statutory authorization. The memorandum recommended adapting the contractual arrangements that were used for other legitimate morale, welfare, and recreational activities.

The National Defense Authorization Act for Fiscal Year 1989 provides the express statutory authorization to which the General Counsel referred.¹²² This new provision authorizes the Girl Scouts of the United States of America and the Boy Scouts of America to

receive the following support from appropriated funds: transportation of personnel and supplies, a means of communication, and office space, including space for recreational activities, warehousing, and utilities. In addition, salaries may be paid from nonappropriated funds under those regulations the Secretary of Defense prescribes which set out the cooperation and assistance to be provided to these organizations.

The Department of Defense has established a working group to develop an implementing DoD instruction, which will give further guidance on the specifics of logistical support.¹²³ The extent of appropriated fund expenditures for scouting transportation and facilities remains to be seen. The long-term implications are clear: private organizations of all types frustrated with the limits of logistical support afforded by AR 210-1, and Type 2 organizations dissatisfied with efforts to reach a memorandum of understanding for additional support, have an example of direct access to vast, appropriated funds. The use of the legislative process to circumvent regulatory support limitations defeats those who try to maintain strict budgetary oversight.

D. THE MEMORANDUM OF UNDERSTANDING PROCEDURES

A final method of providing support to certain private organizations will be through the new memorandum of understanding procedures.¹²⁴ These provide that overseas Type 2 organizations that are chartered to provide programs relating to the religious, social, welfare, and educational need of soldiers and their families may submit an application to the commander requesting specific additional support. The commander, if he or she approves, will forward the application, describing the services the private organization provides and the availability and estimated cost of giving the additional support. The application will then be forwarded through command channels, if approved, until the Office of the Secretary of Defense enters into a memorandum of understanding with the national headquarters of the private organization. This memorandum will detail the maximum support that commanders can provide to all local affiliated chapters in overseas locations. Commanders may not provide the additional support until after the implementing instructions are disseminated.

Additional support is on a reimbursable basis and may include the following, subject to the status of forces or other country agreement: transportation,

commissary and exchange privileges, medical care, recreational facilities, dependents' schools, utilities, and military banking facilities. This support does not extend the restrictions in the specific support provisions. Thus, the prohibitions against printing, non-reimbursable transportation, or the use of enlisted personnel remain intact. The procedures are also exclusively for Type 2 organizations, so the standard restrictions will still apply to all Type 3 organizations.

A comparison of the support offered under the memorandum of understanding procedures and the support rendered such organizations as the Red Cross reveals that the memorandum of understanding has the potential to create numerous, new, de facto, Type 1 organizations. The potential for extensive expenditures of appropriated funds, when one adds together the numerous branches of even a single, nationally affiliated organization, is vast. Those in the Office of the Secretary of Defense contemplating memoranda of understanding should thus carefully analyze the quality and quantity of services a private organization has to offer before granting additional support. A brief look at past efforts, both successful and unsuccessful, will help put in perspective the

extent of services necessary to grant additional taxpayer support to nationally affiliated private organizations.

In 1975, the Armed Forces Hostess Association asked for designation as a Type 1 private organization under the provisions of the 1974 AR 210-1. The Military District of Washington commanding general made the request by letter, enclosing endorsements from the White House and Chiefs of the military services.¹²⁵ He claimed that these "dedicated wives" provided invaluable information about services and facilities. Their information packets were alleged to have assisted personnel in minimizing household goods shipped and facilitated rapid transition into new assignments. The request was unsuccessful.

In 1978, the Armed Forces Cooperative Insuring Association attempted to obtain statutory Federal recognition. The opinion considered AFCIA to be quite different in nature from the "patriotic societies" or "private corporations established under Federal law" contemplated as Type 1 private organizations: there was thus little chance of the insurance cooperative's obtaining federal status. The requesting individual was referred to the Adjutant General (the then proponent of AR 210-1) and the Office of the Chief of

Legislative Liaison. Direct help by members of the staff of the Judge Advocate General was denied as inappropriate and a probable violation of the directive prohibiting the favoring of one association over another.¹²⁶

Likewise, in 1987, USAREUR in its comments to the proposed AR 210-1 requested that the American Womens' Activities Germany (AWAG) be established as a Type 1 private organization. The proposal was not successful, but the justification given for additional support is illuminating: "AWAG and other similar organizations, such as Red Cross/Army Community Services (ACS), German-American Clubs, Association of the U.S. Army (AUSA), are private organizations in recognition of community contributions [sic], and as such are permitted to receive support not afforded to other PO."¹²⁷ This letter demonstrates both the good intentions of commanders who wish to give additional support to private organizations that they perceive make important contributions to the community, as well as the alarming misperceptions they have as to the extent of their discretion to render this support.

The Army Emergency Relief (AER) on the other hand, was successful in its petition to become a Type 1 private organization, and was added in the 1981 AR

210-1. The implementing regulation recognizes that AER's services are vital to the well-being of soldiers: "Although AER is a private, non-profit corporation, it is, in effect, the US Army's own emergency financial assistance organization."¹²⁸ AER is described as representing a unique and important asset for the Army in demonstrating the interest, involvement, and concern of the Army's leadership in its soldiers.

These examples show the nature of the extensive services required before additional logistical support at taxpayer expense is warranted. On the one hand, a private organization "will not duplicate or compete with the establishment or existence of a NAFI or APF Government function on a DA installation."¹²⁹ On the other hand, the services offered by the private organization must be so essential to the morale and welfare of soldiers¹³⁰ that they form a vital part of the Army's own organization. Should the private organization disband, the Army should suffer a serious loss, necessitating the establishment of substitute procedures and the expenditure of equipment and personnel. A mere inconvenience, or the mere loss of social contacts or alternate sources of educational materials is not

enough to justify the vast costs that a memorandum could incur. A comprehensive cost benefit analysis should thus precede any grant of additional support under the new memorandum of understanding procedures.

IV. ENFORCING SUPPORT

A related problem when one is analyzing changes in support under the new AR 210-1 is that of enforcing these changes. In some ways, enforcement will be easier, since some changes take away the commander's discretion: printing, nonreimbursable transportation, or the use of special duty enlisted personnel, as examples. In other areas, commanders still have broad discretion, and the potential for abuse is still present.

Two provisions presently form the basis for investigating and punishing violations of the logistical support provisions. The standards of conduct regulation and the inspector general report will each be discussed in turn.

A. STANDARDS OF CONDUCT: AR 600-50

AR 600-50 contains both a punitive provision and a built-in reporting mechanism designed to encourage compliance. The punitive provisions, designed to deter

violations by the threat of judicial or administrative actions, will be discussed first, and the reporting requirements, which represent a moral restraint, will then be described.

AR 600-50 by its express terms provides for punishment under the Uniform Code of Military Justice.¹³¹ While the regulation is drafted in broad terms for maximum applicability to a wide variety of fact situations, several specific provisions would apply to the commander tempted to offer excessive support to a favored private organization. Some of these principles have been mentioned earlier in the thesis, but a summary here is useful to underscore the tenor and intent of the regulation.

First, Department of the Army personnel are generally directed to avoid any action, whether or not specifically prohibited by the regulation, that might result in or reasonably be expected to create the appearance of, inter alia, either giving preferential treatment to any person or entity, or losing independence or impartiality.¹³² A related provision describes actual and perceived conflicts of interest: DA personnel are not to engage in a professional activity that places them in a position between private affiliations and the public interest of the United

States as it relates to their duties and responsibilities as DA personnel.¹³³ This conflict of interest provision applies equally to the activities of the employee's or soldier's spouse or family. The USAREUR Inspector General's report provides a useful example of possible or perceived conflict of interest: the report asserts that conflicts arise when community commanders, deputy community commanders, or persons within the command group served as officers of a private organization, especially as president.¹³⁴

The final applicable provision of AR 600-50 prohibits DA personnel from using their official positions to induce, coerce, or in any way influence any person, including subordinates, to provide any unauthorized benefits, financial or otherwise, to themselves or others.¹³⁵ A 1981 opinion provides an example of this conflict: an officer contemplated a position on the board of directors of a private organization.¹³⁶ The opinion cautioned about the potential for violations if the officer were to take any official action that might affect the association. These violations would occur not only in actions that directly affected the association, but also, because the association sold insurance, in any actions pursuant to the officer's supervisory responsibilities over life

insurance matters in the Army. The sample disqualification statement provided in the opinion called for a sweeping disqualification from any direct or indirect official actions regarding or affecting the private organization. Actions were to be handled by the assistant without the officer's knowledge or participation.¹³⁷

The ethical principles in AR 600-50, the administrative law opinion, and the USAREUR IG report raise interesting questions about enforcing the limits on logistical support to private organizations through the impartiality and conflict of interest provisions of AR 600-50. To avoid a conflict, should commanders, or others in a position to authorize logistical support to a private organization, recuse themselves from all decisions involving the private organizations of which they or their family members are officers? On a broader scale, should they disqualify themselves from any decisions that could financially affect any organization in which they hold membership or insurance, such as life or supplemental medical insurance? After all, since organizations are to raise operating funds from dues or assessments on the members, any decision concerning logistical support will have a direct financial effect on all

the members, not just the officers. This argument, carried to the extreme, disqualifies commanders from all decisions regarding logistical support: since commanders are to remain impartial, support to one private organization should be proportionate to support to the others. Thus, a decision about support to one organization, of which they are not members, affects the others, including those of which they are officer/members.

A further issue is one of delegation. While the opinion recommended resolution by the officer's assistant with no knowledge or involvement by the superior, this is not a practical solution on a regular installation. There, a commander, as president or even just a member of a private organization, will automatically have knowledge of his subordinate's decisions regarding the private organization. The solution would then be to forward all decisions representing a conflict to the next higher headquarters.

These questions demonstrate the many logistical hurdles to a strict construction of the conflict of interest provisions on a local level. The number of hurdles, however, shows the unavoidably incestuous relationship between private organizations on

individual installations, and the commanders who would grant them support.

The solution to enforcement of the logistical support limitations of AR 210-1 through the standard of conduct provisions lies in a strict interpretation of the following policy of AR 600-50:

c. ...DA personnel will not make or recommend any expenditure of funds or make or recommend any action known or believed to be in violation of U.S. laws, Executive orders, or applicable directives, instructions, or regulations.

d. If the propriety of a proposed action or decision in terms of the regulation or law is doubtful, DA personnel will consult legal counsel, or if appropriate, the appropriate Ethics Counselor for guidance. This will ensure the proper and lawful conduct of DA programs. ¹³⁸

This policy places the responsibility for compliance not only on commanders, but also on the administrative lawyers. Commanders would be well advised to consider as doubtful the propriety of any decision concerning a private organization of which they or their families are members or officers. They should work closely with their attorneys and Ethics Counselors in reaching any decision concerning logistical support. Commanders who refuse to follow legal advice risk

judicial and administrative punishment for actions known or believed to be in violation of law or regulation.¹³⁹

Besides the punitive provisions, AR 600-50 contains its own reporting mechanism, designed to provide a moral check on questionable actions. Persons who suspect a standards of conduct violation are to notify an Ethics Counselor. The Ethics Counselor's duties include reporting suspected violations to various police authorities and the Inspector General, depending on the nature of the violation. A reported or suspected violation of the prohibition against using an official position to induce someone to provide unauthorized benefits, for example, must be reported to the local Criminal Investigation Division.¹⁴⁰ The Counselor also attempts to resolve non-criminal violations at the local level, and forwards any unresolved cases.¹⁴¹ Local resolution may involve such measures as disqualification, limitation of duties, divestiture, transfer or reassignment, or resignation. Finally, many cases, including those involving any general officer, SES employee, or civilian Presidential appointee, must be reported to the Army General Counsel, regardless of whether the possible violation is locally resolved.¹⁴²

The Ethics Counselor and the reporting requirements in essence represent an attempt to achieve compliance through embarrassment. In theory, a general who knows any suspected violation will be reported to the Army General Counsel, regardless of any later remedial action, is less likely to engage in questionable conduct in the first place. The current emphasis on education in the standards of conduct area, including the semiannual ethics training programs, should establish the Ethics Counselor reporting system as a sufficient detriment to questionable actions.

B. THE INSPECTOR GENERAL'S OFFICE

Another avenue of complaint is the office of the Inspector General (IG). That office is charged with following up reported and suspected abuses of any aspect of the Army's system, as well as the investigation of any hotline tips or complaints. Inspections thus vary in scope: the USAREUR IG inspection reviewed every aspect of private organizations on all installations in Europe. An inspection generated by an Ethics Counselor report or an anonymous complaint would, on the other hand, be much more limited.¹⁴³

An IG report, like an ethics counselor's report, has the potential to be seen by the highest echelons of command. For example, the Assistant Secretary of Defense letter strongly urging strict compliance with logistical support limitations¹⁴⁴ begins with the sentence: "A recent DoD Inspector General Report indicated ignorance or misinterpretation of DoD policy concerning support to private organizations." The Inspector General, like the Ethics Counselor, provides strong moral incentive in theory to comply with the logistical support limitations of AR 210-1. A letter of reprimand or a relief from command based on an investigation from an Ethics Counselor or an Inspector General complaint can quickly derail or even terminate an otherwise stellar career. The threat of exposure, and possible administrative or even judicial or non-judicial punishment should deter commanders from actions suggesting even the appearance of partiality or impropriety.¹⁴⁵

Abuses unfortunately still occur: as the USAREUR IG noted, overseers of private organizations were reluctant to challenge the support granted lest they be seen as opposing the commander. Superiors of a commander are no doubt loathe to punish someone who was only trying to help a worthwhile cause, and had no

direct personal gain in the transaction. Only the vigilance of the inspectors general, the ethics counselors, and legal advisors, will adequately police the violations. The system at present still depends on a commander's education and integrity.

V. CONCLUSION

Because of time and resource limitations, the Army cannot respond positively to all equally valid requests for support. The Army, therefore, should not do for one sponsor what it cannot consider doing for all.¹⁴⁶

Commanders and administrative lawyers should keep this public affairs policy in mind when working with the 1989 AR 210-1. The regulation maintains the independent support agreements concluded with Type 1 organizations. The restrictions on support provided to Type 2 and Type 3 organizations were designed to curb the abuses of the past, and to preserve the Army's finite resources, including manpower, equipment, and facilities, for accomplishment of the Army mission. The memorandum of understanding procedures will give the extra support selected organizations need to provide vital services.

The provisions of the 1989 AR 210-1 are a step in the right direction. They recognize that the Army's funds are limited, yet allow flexibility for support

to organizations that provide valuable services. The proposals of USAREUR represent a regression to the unfettered discretion, favoritism, and fear of enforcement described in the IG report. In violation of the 1981 AR 210-1, they attempt to use private organizations to evade financial restrictions on nonappropriated morale and welfare funds. Similar suggestions for expanded support were rejected in the final draft, and should be rejected now, with the memorandum procedures standing as the proper, authorized means for additional support.

As the 1989 AR 210-1 is published, commanders at all levels need to be aware of the Army's policies toward private organizations. On the upper echelons, proposed support for overseas, nationally affiliated organizations should undergo a strict cost/benefit analysis to insure that the Army's appropriations are wisely spent. Legislations must be closely monitored to make sure the support enacted is proportionate to the services received. On the installation level, commanders and their administrative lawyers must uphold the highest standards of integrity, enforcing these standards with whatever means are appropriate, fostering a climate where the Ethics Counselor and the Inspector General need not report fear or favoritism.

The twin themes of scrutiny and enforcement will insure that deserving organizations receive support for their services, and that public confidence is maintained in the integrity of our commanders.

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2 Army Reg. 210-1, Installations: Private Organizations on Department of the Army Installations, para. 1-4f (15 July 1981) [hereinafter 1981 AR 210-1].

3 The pending regulation will, perhaps optimistically, hereinafter be cited as the 1989 AR 210-1.

4 Letter, Assistant Secretary of Defense (Public Affairs), to Secretaries of the Military Departments, etc., subject: Support to Private Organizations, 7 Jul. 1988.

5 Letter, AEACC, Commander in Chief, United States Army, Europe, and Seventh Army, to Deputy Chief of Staff, Personnel, United States Army, subject: Support for Overseas Private Organizations, 19 Jan. 1989 [hereinafter Proposed USAREUR revisions to the 1989 AR 210-1].

6 A list of problems provided by the United States Army Community and Family Support Center gave examples of alleged past abuses. Some involved the extensive use of Government sedans, aircraft, film and processing, materials for display booths, and computers and wordprocessing. One example estimated the government cost at \$22,367. Three examples of personnel use illustrate the potential for vast outlays of funds appropriated for wages and salaries, and demonstrate the extensive expenditures all the various forms of logistical support represent when considered Army wide:

1. "Soldiers manned ticket sales booths over a two-week period at the PX, commissary, and a military shopping complex, during duty hours, to sell tickets to an AUSA picnic." Assuming only one soldier at each of the three booths, at an average rank of E-4 with only three years in service, the donated sales staff cost the Army \$1904.85 in base pay and quarters allowance, without counting lost work productivity. If this support alone were provided to an AUSA picnic at each Army installation just once per year, lost pay represents \$169,531.65, and the work of approximately 267 soldiers for two weeks is lost as well. (D. Cragg, The Guide to Military Installations (1983) lists 89 Army installations and 213 Air Force, Navy, and Marine installations worldwide.)

2. "At least 50 percent of a secretary's time for a three month period was devoted to administering the NGAUS [National Guard Association of the United States] membership campaign." A GS 05 step 5 would receive a salary of \$4459.50 over three months, so the loss is at least \$2229.75. This support alone repeated in each of the 50 states would consume \$111,487, again not even counting the value of lost work.

3. "Upon request of the AUSA Chapter President, a training holiday was declared on the day of the AUSA picnic (Wednesday), 'to insure that the whole ... community gets the opportunity to participate.'" Assuming again an average of E-4 with only three years in service, a very conservative estimate since all non-commissioned officers earn more and all officers over O2 with four years are paid over twice as much, just one day off in one community of only 5000 soldiers costs \$211,650 in wages, in addition to lost work. Surely even the most determinedly generous commander should have considered this to be excessive support.

7 Army Reg. 210-55, Installations: Financial Support of Morale, Welfare, and Recreational Facilities (26 July 1956) (C4, 14 June 1965) [hereinafter 1956 AR 210-55].

8 Id., para. 7f.

9 Id., Table 1.

10 Id., at para. 7g.

11 Id., at Table 1. The full description of these organizations in another regulation makes it clear that these were the predecessors of modern-day private organization. Spec. Reg. 210-100-1, Installations: Post Restaurants and Nonappropriated Funds for Civilian Employees, para. 65b (26 May 1952) (C1, 19 June 1953).
12 Army Reg. 210-55, Installations: Financial Support for Morale, Welfare, and Recreational Facilities (15 May 1969) (18 June 1970) (12 Jan. 1972) (3 Dec. 1973).
13 Dep't of Defense Instruction 1000.15, Private Organizations on DoD Installations (Oct. 31, 1975) [hereinafter DOD Instruction 1000.15].

14 Id., para. V B8a.

15 Id., para. III D.

16 Id., paras. III E - G.

17 Id., para. VI A.

18 Id., paras. VI B - C.

19 Army Reg. 210-1, Installations: Private Organizations on Department of the Army Installations (7 Mar. 1974) [hereinafter 1974 AR 210-1].

20 Id., para. 3d.

21 Id. (IC, 211301Z Sept. 1974).
22 Dep't of Defense Instruction 1000.15, Private
23 Organizations on DoD Installations (Sept. 22, 1978).
24 Army Reg. 210-1, Installations: Private Organizations
25 on Department of the Army Installations (1 Mar. 1979)
26 [hereinafter 1979 AR 210-1].
27 Id., para. 3c.
28 Id., para. 7.
29 TAGO Form 1-8, Cover Sheet, CCAMD to TAG, subject:
30 Revision of AR 210-1, Private Organizations on DA
31 Installations, 14 Nov. 1980, at 1.
32 Id., at 2.
33 1981 AR 210-1, paras. 4-5, 4-9 through 4-12.
34 1978 DOD Instr. 1000.15, para. G4 (Ch. 1, Apr. 26,
35 1983).
36 Letter, HQ, Community and Family Support Center,
37 DACF-AE-P, 20 Apr. 1987, subject: Proposed Request
38 [sic] of AR 210-1, Private Organizations on Department
39 of the Army Installations.
40 For example, 1989 AR 210-1, para. 2-2, details the
41 qualifications for informal funds such as office coffee
42 funds, and establishes requirements for a
43 representative and formal accounting.
Id., para. 5-4.
Army Reg. 360-61, Army Public Affairs: Community
Relations, para. 2-3a (15 Oct. 1980) [hereinafter AR
360-61].
Army Reg. 600-50, Personnel - General: Standards of
Conduct for Department of the Army Personnel, para.
1-4f (28 Jan. 1988) [hereinafter AR 600-50].
AR 600-50, para. 2-1f.
AR 360-61, para. 5-1c.
Army Reg. 600-20, Personnel - General: Army Command
Policy, para 5-22a(3) (30 Mar. 1988) [hereinafter AR
600-20].
Army Reg. 215-1, Morale, Welfare, and Recreation: The
Administration of Army Morale, Welfare, and Recreation
Activities and Nonappropriated Fund Instrumentalities,
para. 3-15a (6 Nov. 1988); 1981 AR 210-1, para. 4-1b.
List of problems, supra note 6.
AEAIG-I, subject: USAREUR IG Special Inspection of
Private Organizations, Executive Summary, at i, 12 Feb.
1988 [hereinafter USAREUR IG report].
1981 AR 210-1, para. 1-5a.
Dep't of Defense Instruction 1000.10, Procedures
Governing Credit Unions on DoD Installations (Feb. 3,
1986) (Ch. 1, May 14, 1987).
Army Reg. 210-24, Installations: Credit Unions, paras.
3-2, 4-4 (1 Dec. 1982).

44 Dep't of Defense Directive 1330.5, American National
45 Red Cross (Aug. 16, 1969).
46 Army Reg. 930-5, Service Organizations: American
National Red Cross Service Program and Army
Utilization, paras. 3-1 to 3-11, (19 Nov. 1969) (C2, 23
Apr. 1971) (C3, 24 May 1973).
47 Dep't of Defense Directive 1330.12, United Service
48 Organizations, Inc. (Nov. 9, 1987) [hereinafter DOD
49 Dir. 1330.12].
50 36 U.S.C.A. 1 (1988).
51 33 U.S.C.A. 1301 (1988).
52 DOD Dir. 1330.12, para C.
53 36 U.S.C.A. 1308 (1988).
54 Army Reg. 930-1, Service Organizations: Army Use of
55 USO Services (1 Aug. 1983).
56 Letter, The Secretary of Defense, 23 Nov. 1988,
57 subject: DoD Endorsement of the USO.
1981 AR 210-1, para. 1-5b and c.
1989 AR 210-1, para. 2-5d.
AR 600-20, para. 4-11.
See, e.g., DAJA-AL 1981/2366 (6 Mar. 1981).
DAJA-AL 1978/3346, 8 August 1978, for example, frowned
on a letter signed by the installation commander in his
official capacity on official indicia mail, addressed
to specific individuals soliciting their membership in
a private organization. Likewise, DAJA-AL 1987/1867, 2
Jul. 1987, recommended disapproval of part of a Dental
Corps letter establishing membership policy in the
American Dental Association, and allowing only ADA
members to attend the convention on a paid TDY basis.
(See, generally, Travel, infra.)
58 DAJA-AL 1984/1230, 2 Feb. 1984.
59 DAJA-AL 1987/1867, 2 Jul. 1987.
60 DAJA-AL 1987/2537, 19 Oct. 1987.
61 DAJA-AL 1978/3506, 29 Aug. 1978. On the other hand,
the following language was considered to represent the
appearance of an improper endorsement: "Your personal
support of this professional forum is greatly
appreciated. I encourage you to make your personnel
available for participation consistent with primary
mission responsibilities. The continuing dialogue
among C3I [command, control, communication,
intelligence] professionals is an essential factor in
maintaining our national security posture." DAJA-AL
1988/2043, 15 Jul. 1988.
62 AR 600-50, para. 2-4.
63 1981 AR 210-1, para. 4-5.
64 1981 AR 210-1, para. 4-3. This prohibition includes a

ban on appointing a DA representative or local points of contact for a specific private organization, since that person is then, as a part of official duties, working for the organization. See, e.g., DAJA-AL 1987/1867, 2 Jul. 1987.

65

Army Reg. 600-200, Personnel - General: Enlisted Personnel Management System (5 July 1984).

66

List of problems, supra, note 6.

67

Id., para. 3-1a.

68

Id., para. 3-4.

69

AR 600-200, para. 3-4b.

70

DAJA-AL 1987/1145, 2 Mar. 1987.

71

AR 360-61, para. 2-3d.

72

Army Reg. 195-2, Criminal Investigation: Criminal Investigation Activities, para. 3-11 (30 Oct. 1985).

73

AR 360-61, para. 6-6.

74

Id., para. 6-7a.

75

Id., para. 6-7f.

76

DAJA-AL 1988/2419, 23 Aug 1988.

77

1989 AR 210-1, para. 4-5.

78

Proposed revisions, Enclosure, para. 5.

79

1981 AR 210-1, para. 4-1.

80

JAGA 1959/2120, 11 Mar. 1959.

81

DAJA-AL 1980/1120, 20 Feb. 1980.

82

1981 AR 210-1, para. 4-11.

83

Army Reg. 310-1, Military Publications: Publications, Blank Forms, and Printing Management, para. 1-4 (1 Apr. 1980); AR 600-50, para. 2-4.

84

44 U.S.C. 1102 and 1118 (1964 ed.), 1968.

85

DAJA-AL 1987/2681, 17 Nov. 1987.

86

Proposed revisions, Enclosure, para. 4.

87

AEAJA-AL 1987/515, 1 Oct. 1987.

88

DAJA-AL 1981/3901, 2 Oct. 1981.

89

The 1981 and the pending AR 210-1 do mention permissive travel on behalf of scouting organizations; both are silent as to travel to support all other private organizations. 1981 AR 210-1, para. 4-4; 1989 AR 210-1, para. 4-4.

90

Army Reg. 1-211, Administration: Attendance of Military and Civilian Personnel at Private Organization Meetings (1 Dec. 1983) [hereinafter AR 1-211].

91

Id., para. 4 and Table 1.

92

Id., Table 1, defines quasi-official meeting as one where attendance may be beneficial in the normal performance of official duties, but is not required to accomplish the approving authority's mission; such meetings must directly relate to the member's professional background or primary duties and improve

his or her value to the Army, recognizing the hidden costs of this travel, including regular salary and loss of time of employees.

93

DAJA-AL 1982/1419, 19 Mar. 1982. The request for opinion asked whether attendance at a symposium was authorized in a funded TDY status. The opinion reiterates the regulatory provision that dictates that the approving authority, not the legal counsel, must assess the benefit of any proposed travel.

94

95

DAJA-AL 1984/1767, 17 Apr. 1984.

Dep't of Army Cir. 360-88-1, Army Public Affairs: Annual Meetings of National Service-Oriented Organizations, paras. 2, 3 (15 Apr. 1988).

96

97

AR 1-211, para. 7a.

DAJA-AL 1976/6078, 17 Dec. 1976; DAJA-AL 1977/3445, 31 Jan. 1977.

98

Army Reg. 1-211, Administration: Attendance of Military Personnel at Meetings of Technical, Scientific, Professional, and Other Similar Private Organizations, para. 6a(7) (1 June 1973).

99

100

Id. (IC, 311351Z Jan. 1977).

Army Reg. 1-211, Administration: Attendance of Military Personnel at Private Organization Meetings (9 Mar. 1978) (1 Sept. 1978).

101

Army Reg. 600-50, Personnel - General: Standards of Conduct for Department of the Army Personnel, para. 1-3e (20 Oct. 1977).

102

103

DAJA-AL 1981/2895, 12 May 1981.

104

JAGA 1956/5127, 18 Jul. 1956.

105

Id., at 5.

106

Id., at 3.

107

1981 AR 210-1, paras. 4-5a and 4-5b, 4-9.

DA Form 2028, Recommended Changes to Publications and Blank Forms, AR 210-1, to HQDA, DACF-AE-P from ADCSPER-CFS, ODCSPER, USAREUR, 4 Jun. 1987, at 2. DACF-AE-P (AEAGX/17 Mar 88), subject: Request for Exception to Policy, 26 Apr. 1988.

108

109

The author was informed that transportation to the civilian resort hotel, as well as military police guards, were nevertheless furnished for the AWAG conference. See, generally, the discussion of enforcement, infra.

110

111

1989 AR 210-1, para. 4-9.

112

1989 AR 210-1, para. 4-9b.

113

Proposed Revisions, Enclosure, para. 3d.

114

Id.

115

Proposed Revisions, Enclosure, para. 4a.

116

1989 AR 210-1, para. 4-5b.

Id., para. 3d.

117 Letter, AGAM-P, Office of the Adjutant General, U.S. Army, to Regional Commanders in Chief, subject: Army Cooperation with the Boy Scouts of America, 28 Oct. 1955, at Enclosure No. 2, Guide for Army Cooperation with the Boy Scouts of America.

118 Letter, AGAM-P, Office of the Adjutant General, U.S. Army, to Regional Commanders in Chief, subject: Army cooperation with the Boy Scouts of America, 28 Mar. 1956, at 4.

119 Funding of OCONUS Scouting Chronology, provided by Dr. Richard Fafara, Boy Scout Coordinator.

120 Id., at 2.

121 Letter, Office of the General Counsel, to Deputy Assistant Secretary of Defense, subject: Boy Scout Funding Methodology, 9 May 1985.

122 10 U.S.C. 2606.

123 Information Paper, CFSC-AE-P, subject: Overseas Scouting Organizations, 22 Dec. 1988.

124 1989 AR 210-1, para. 4-14.

125 DAJA-AL 1975/4727, 12 Sep. 1975.

126 DAJA-AL 1978/3535, 31 Aug. 1978.

127 Letter, AEAGA-CFSA-B (DACF-AE-P/20 Apr 87), Headquarters, USAREUR, to Commander, US Army Community and Family Support Center, 5 Jun. 1987, subject: Proposed Request [sic] of AR 210-1, Private Organizations on Department of the Army Installations (emphasis added).

128 Army Reg. 930-4, Service Organizations: Army Emergency Relief, para. 1-10a (1 Apr. 1985).

129 1989 AR 210-1, para. 2-2c.

130 This emphasis on soldiers is consistent with the objectives of the Army's morale, welfare, and recreation program, which aim to "[m]aintain among its personnel a high level of esprit de corps, job proficiency, military effectiveness, and educational attainment ... primarily active duty military personnel." Army Reg. 215-1, Morale, Welfare, and Recreation: The Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities, para. 2-3 (6 Nov. 1988) (emphasis added). Accordingly, activities are classified to "[a]ssist in the ... allocation of resource support." Id., para. 2-7. They are ranked from Category A - Mission Sustaining Activities, essential to "promote the physical and mental well-being of the soldier", to Category D - Business Activities, highly desirable as a morale benefit, but "less essential from the perspective of the military mission." Id., paras. 2-9, 2-12.

131 AR 600-50, para 1-1.
132 AR 600-50, para. 1-4f(2) and (4).
133 AR 600-50, para. 2-1b.
134 USAREUR IG Report, at i.
135 AR 600-50, para. 2-1f.
136 DAJA-AL 1981/4015, 22 Oct 1981.
137 See, also, DAJA-AL 1989/1136, 30 Jan. 1989, which
suggested similar disqualifications for an officer
contemplating membership on the board of directors of
another benefit association.
138 AR 600-50, para. 1-4c-d.
139 AR 600-50, Appendix B, contains a digest of conflict of
interest laws, including, at B-4, 18 U.S.C. 208:
Subsection (a) prohibits personnel from participating
in any way in a decision in any matter in which they,
their families or any business or nonprofit
organizations with which they are affiliated have
financial interests. Since money for private
organization activities comes from dues, fees, or
special assessments on members, a commander in a
position to grant logistical support to his or a family
member's private organization has a financial interest
in the decision. The standard is whether a reasonable
person with knowledge of all the facts would conclude
that the person's impartiality might reasonably be
questioned. Center for Auto Safety v. FTC, 586 F.Supp.
1245, 1248 (D.D.C. 1984). While an argument can be
made that violation of the ban on participation could
be prosecuted in a court-martial by assimilating this
statute, any resulting partiality would also violate AR
600-50. Nonjudicial punishment or court-martial would
thus be better based on a violation of a lawful general
regulation.
140 AR 600-50, para. 2-10b(2). Indeed, the CID has titled
several senior officers for giving unauthorized support
to USAREUR private organizations. Letter, AEAJA-AL,
subject: Private Organizations in USAREUR, undated,
reprinted in Office of the Judge Advocate USAREUR,
Administrative Law Division, Administrative Law
Continuing Legal Education 17-20 Jan. 1989 Resource
Materials, JACLET-AL-1, at 373.
141 AR 600-50, para. 2-11.
142 Id., para. 2-10c(3).
143 See generally, Army Reg. 20-1, Assistance, Inspections,
Investigations, and Followup: Inspector General
Activities and Procedures, Chapter 4: Inspector General
Action Request System (6 June 1985).
144 Supra, note 4.
145 Some refer to these internal scrutinizing mechanisms as

the Army's "Jack Anderson test", after a widely read, syndicated journalist/muckraker. His columns occasionally expose questionable Army actions. A litmus test on an action that might create an improper appearance would thus be, "Would you feel comfortable reading about this tomorrow morning in Anderson's column?" See, e.g., Anderson, A Mercedes for the General, Washington Post, Mar. 11, 1989 at F13. AR 360-61, para. 1-5b.

146