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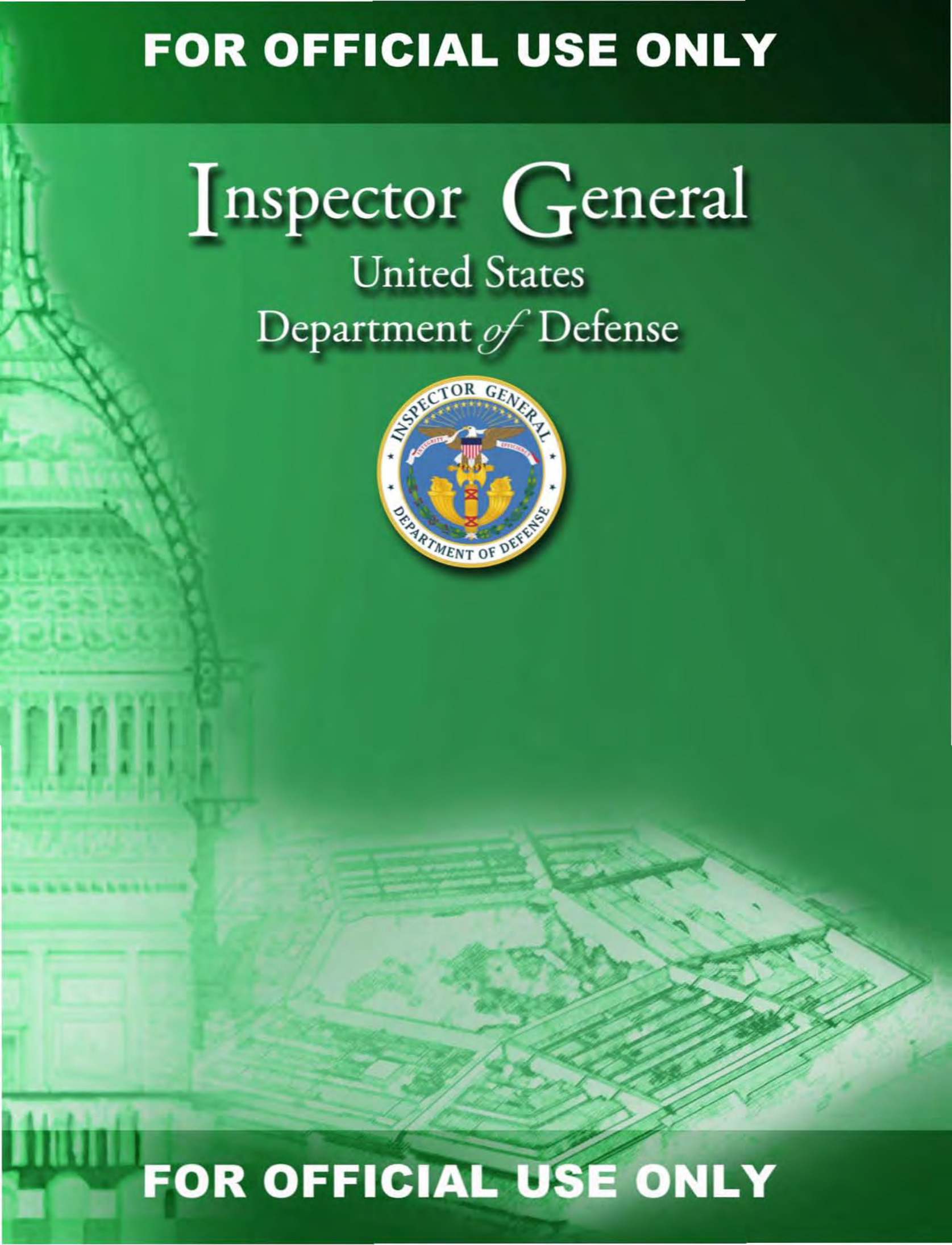
Inspector General

United States Department of Defense



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ALLEGED MISCONDUCT BY DOD OFFICIALS CONCERNING CHRISTIAN EMBASSY

I. INTRODUCTION AND SUMMARY

We initiated the inquiry to address allegations that the following DoD officials improperly appeared in a video promoting Christian Embassy, a non-Federal entity:

- Mr. Preston M. Geren, Acting Secretary of the Army;
- Ms. [redacted] Army Budget Office;
- Major General (Maj Gen) Peter U. Sutton, U.S. Air Force, Office of Defense Cooperation, Turkey;
- Maj Gen John J. Catton, Jr., U.S. Air Force, Director of Requirements, Air Combat Command;
- Brigadier General (BG) Vincent K. Brooks, U.S. Army, Deputy Commanding General (Support), 1st Cavalry Division;
- BG Robert L. Caslen, Jr., U.S. Army, Commandant of Cadets, U.S. Military Academy;
- Chaplain (Colonel) Ralph G. Benson, U.S. Army (Retired), Former Pentagon Chaplain;
- Colonel (Col) [redacted], U.S. Air Force, [redacted] Headquarters Air National Guard;
- Lieutenant Colonel (LTC) [redacted] U.S. Army, Directorate of Operations, Headquarters U.S. Army.

Based on our review of the initial complaint and additional information received shortly after beginning investigative work, we focused our investigation on the following specific allegations:

- DoD civilian officials who appeared in a promotional video for Christian Embassy improperly endorsed and participated with a non-Federal entity. If substantiated, such conduct would violate DoD 5500.7-R, "Joint Ethics Regulation (JER)," Section 2635.702(b), "Appearance of governmental sanction," and Section 3-300.a. on personal participation with a non-Federal entity.
- Military officers who appeared in a promotional video for Christian Embassy improperly endorsed and participated with a non-Federal entity while in uniform. If

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substantiated, such conduct would violate JER Sections 2635.702(b) and 3-300.a., DoD and Service regulations on uniform wear.

- Chaplain Benson provided a selective benefit to Christian Embassy by obtaining permission for Christian Embassy to film in the Pentagon. If substantiated, such conduct would violate provisions of Department of Defense Instruction (DoDI) 5410.19, "Public Affairs Community Relations Policy Implementation," which prohibit granting a selective benefit or preferential treatment to any organization.

We did not substantiate the allegation with regard to Mr. Geren and Ms. [redacted] We found that in 2004 both participated in videotaped interviews with Christian Embassy. Excerpts of those interviews were incorporated into a video shown to audiences at Christian Embassy events to encourage potential supporters to donate time and money, and the video was later posted to Christian Embassy's public Web site. Although Mr. Geren and Ms. [redacted] provided personal endorsements of Christian Embassy, they did so without verbal or visual references to position, title, or DoD. Their interviews were conducted in unidentified hallways rather than Pentagon offices, and neither speaker was surrounded by significant visual references to DoD. We concluded that Mr. Geren and Ms. [redacted] participation in the video was consistent with the JER as they acted in their personal capacities without expressing or implying DoD sanction.

However, we substantiated the allegation with regard to the military officers. The seven officers participated in interviews with Christian Embassy, excerpts of which were also included in the promotional video. The officers were filmed during the duty day, in uniform with rank clearly displayed, in official and often identifiable Pentagon locations. Their remarks conferred approval of and support to Christian Embassy, and the remarks of some officers implied they spoke for a group of senior military leaders rather than just for themselves. None of the officers sought or received approval to participate in the interview in an official capacity or in uniform. The overall circumstances of the interviews emphasized the speakers' military status and affiliation and implied they were acting within the scope of their official positions as DoD spokespersons. Based on these circumstances, we concluded the officers violated JER Sections 2635.702(b), "Appearance of governmental sanction," and 3-300.a. on personal participation in non-Federal entities; DoD Directive (DoDD) 1334.1, "Wearing of the Uniform"; and Army and Air Force uniform standards.

We further concluded that Chaplain Benson provided a selective benefit to Christian Embassy that could not be made available to others without violating DoDI 5410.19, "Public Affairs Community Relations Policy Implementation." Chaplain Benson requested and obtained limited approval for Christian Embassy to film in the Pentagon by mischaracterizing the purpose and proponent of the video. His request implied that the video was being produced to document the Pentagon Chaplain's ministry rather than to promote a non-Federal entity. As a result, Christian Embassy received permission to film and unescorted access to Pentagon areas and personnel that similar organizations would not have received.

We provided each subject the opportunity to comment on our tentative conclusions by letters dated April 25, 2007 (BG Brooks and BG Caslen); April 26, 2007 (Maj Gen Sutton,

Maj Gen Catton, and Col [redacted]; April 27, 2007 (LTC [redacted]; and May 3, 2007 (Chaplain Benson). All provided responses.[1]

Maj Gen Sutton and BG Caslen accepted full responsibility for their actions and committed to be more alert to ethical issues in the future. Each raised, in extenuation and mitigation, the fact that he participated in good faith under the understanding that Chaplain Benson's assertion that the video had been approved, including their own appearances. Additionally, they noted that other senior officers had participated in either this or a previous video. Each respondent also asserted that Christian Embassy appeared to be in some manner supported by or endorsed by DoD. Maj Gen Sutton's counsel provided a separate response alleging the video was authorized and participation was proper.

BG Brooks responded that he believed he was operating within accepted ethical parameters for a Government official and did not need to "pursue a pathway of self-protection through specific permissions." He based this assertion on a number of factors: he viewed Christian Embassy as a sanctioned or endorsed activity within DoD, given its long tenure providing services in the Pentagon; the existence of a prior similar video; the fact that he was not involved in actual coordination of filming; and the number and seniority of individuals who would be filmed. In addition, he argued that he acted in good faith and did not intend to violate any DoD standards.

Maj Gen Catton provided a personal response as well as one each from his civilian and military defense counsel. The responses collectively asserted that: Christian Embassy had become a "quasi-Federal entity"; DoD violated the JER by endorsing Christian Embassy's ministry to General Officers for over 25 years; Maj Gen Catton did not request a legal opinion because the Pentagon Chaplain's office had approved the video; other faiths had filmed videos; he had no reason to know the video was for promotional purposes; his conduct was not for his own private gain, but for the Pentagon Chaplain's office; he had no intent to violate the JER; he considered his participation as part of the Chaplain's program, rather than the program of a non-Federal entity; Christian Embassy had permission to film the video from the Office of the Assistant Secretary of Defense (Public Affairs)(OASD(PA)); he wore his uniform for other religious observances; and, finally, that the potential effect of finding that Maj Gen Catton violated the JER would be to adversely affect a service member's Constitutional right to freely exercise his religion.

Chaplain Benson submitted a response through counsel[2] that asserted in part that this Office violated Chaplain Benson's due process rights; that we lacked authority to investigate any complaint submitted by a non-Federal employee [the complaints against the video were made by religious and other organizations]; and that Chaplain Benson had engaged in speech protected by

[1] While we have included what we believe is a reasonable synopsis of the individuals' responses, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the respondents throughout this report where appropriate and provided a copy of the responses to the cognizant management officials together with this report.

[2] Chaplain Benson and LTC [redacted] were represented by the same attorney. Their responses were substantially similar.

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the Establishment Clause[3] and by his professional status. Further, he alleged that his identification in the video as "Pentagon Chaplain" was not improper and that a reasonable person could not find that the video implied DoD endorsement.

Col [redacted], while asserting that she would seek more guidance in the future if a similar issue arose, nonconcurred with our tentative conclusions, stating that she appeared in other religious or spiritual events in uniform and that her participation in the activities of Christian Embassy was "consistent with her other spiritual activities in the Pentagon and completely proper."

LTC [redacted] provided a response through counsel that asserted in part that this Office violated his due process rights; that our investigator was biased; and that we lacked authority to investigate any complaint submitted by a non-Federal employee. Furthermore, he asserted that his speech was protected under the Establishment Clause. LTC [redacted] contended that no reasonable observer would see his participation in the video as DoD endorsement. Also, he alleged that his participation was exclusively outside the scope of his official position because he was authorized to be identified by rank. Finally, he alleged that he did not improperly appear in uniform because he had no reason to believe there was a need for permission to appear in the video and because his appearance was beneficial to DoD.

None of the respondents provided new or material evidence that would cause us to change our findings in the matter. After carefully considering each response, completing additional fieldwork, and reexamining the evidence, we stand by our conclusions in the matter. We address specific points raised by each respondent below in the "Discussion" sections of this report.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

Christian Embassy is a non-profit, non-Federal religious organization providing religious instruction and fellowship in and around Washington, DC, primarily to officials on Capitol Hill and within the military and diplomatic communities. Christian Embassy has been conducting activities in the Pentagon since 1978. The organization and the salaries of its employees are funded by supporters' donations. Although not affiliated with a particular denomination, Christian Embassy is affiliated with the Campus Crusade for Christ, a worldwide evangelical missionary organization.

Christian Embassy was sponsored into the Pentagon by the Pentagon Chaplain's office, and Christian Embassy employees were sponsored for DoD contractor badges by the Pentagon

[3] U.S. Constitution, Amendment I, states in pertinent part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The first clause is commonly called the "Establishment" clause, while the second is also referred to as the "Free Exercise" clause. We interpret counsel's argument as including both clauses in his allegation of a violation of the Establishment clause.

Chaplain, although they had no contractual relationship with DoD. Those badges authorized unescorted access to the Pentagon and escort privileges.

Christian Embassy regularly hosted a number of activities in the Pentagon, including the Senior Executive Fellowship at 6:30 a.m. on Tuesdays, a prayer breakfast at 7:00 a.m. on Wednesdays, the Flag Officer Fellowship at 6:15 a.m. on Thursdays, and various smaller groups during the lunch hour. The subjects of this investigation had all previously participated in activities of Christian Embassy either at lunchtime or in the morning hours prior to the start of their duty day.

The Pentagon Chaplain's office maintained a Web site with a direct link to Christian Embassy's Bible and Faith Studies, the schedules and content of which were not publicly available. However, the meetings described above were also posted on the Pentagon Chapel's Web site without a disclaimer to avoid a perception that Christian Embassy activities were officially sponsored by the Pentagon Chaplain. We determined that none of the Christian Embassy meetings were organized or conducted by the Pentagon Chaplain's office.

On February 2, 2004, Chaplain Benson sent an e-mail message to Mr. [redacted] OASD(PA), to request approval for Christian Embassy to film within the Pentagon on February 4, 2004, between the hours of 6 a.m. and 3 p.m. Chaplain Benson's request presented the filming to [redacted] as a project for the Pentagon Chaplain's office, giving the impression that the film would be of services or events for archival purposes. Several such events had been filmed in the past. The request stated that Christian Embassy had "volunteered" to help the Pentagon Chaplaincy film aspects of its ministry. Specifically, Chaplain Benson wrote,

> Per your conversation with [redacted] [of Army Public Affairs] and myself Monday 2 February, I am requesting permission for a camera crew of three, from Christian Embassy, 4 Feb 04, from 0600-1500. They will be filming various aspects of our ministry with customers in the building. Christian Embassy has worked through and with our office for over twenty five years and have volunteered to help us on this project. Our office will provide escorts.

Based on that request, Mr. [redacted] granted approval, responding, "Should be no problem, crew must be escorted at all times . . . I will alert the Pentagon Police."[4] Chaplain Benson's request made no mention of the private promotional nature of the video.

We determined that the permission granted to Chaplain Benson was limited in time and scope (9 hours on February 4, 2004, to film aspects of the Pentagon Chaplain's ministry), and contained no authority to conduct interviews of personnel within the Pentagon. Notwithstanding the limited permission, Christian Embassy filmed in the Pentagon, interviewing nine civilian and

[4] Mr. [redacted] has since left OASD(PA). In his response to an e-mail asking about his recollection or any electronic files concerning his approval of the video, Mr. [redacted] stated that he did not recall anything about the matter and had no information on the Christian Embassy approval. Ms. [redacted] who is also mentioned in the e-mail, also had no recollection of the event.

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military personnel on numerous days between February 4, 2004, and approximately December 2004. We received no evidence that Chaplain Benson or Christian Embassy sought any additional permission beyond the approval to film aspects of the Chaplain's ministry on February 4, 2004.

Evidence established that the purpose of the video was not to document the Pentagon Chaplain's ministry, but to promote Christian Embassy to its various audiences at dinners and similar events in order to raise funds and attract supporters. Mr. [redacted] an [redacted] of Christian Embassy, testified that a Christian Embassy employee approached Chaplain Benson to explain that the organization wanted to update a previous promotional video filmed in 2001,[5] and Chaplain Benson agreed to support the project. Mr. [redacted] acknowledged that the purpose of the 2004 filming was to update Christian Embassy's video about its work, and he indicated that Christian Embassy wanted to feature DoD participants at work. Mr. Robert Varney, Executive Director of Christian Embassy, testified that the video was used for Christian Embassy fundraising.

The video did not mention the Pentagon Chaplaincy or cover any other programs offered by the Pentagon Chaplain's office. It included endorsements of Christian Embassy and its services from supporters working on Capitol Hill, other Federal agencies, and embassies, wholly unconnected with the Pentagon Chaplain's ministry. The non-DoD speakers included six Congressmen, two ambassadors, two ambassadors' wives, as well as the Under Secretary for Benefits of the Department of Veterans Affairs and the Administrator of the Environmental Protection Agency.

All of the DoD speakers were filmed at the Pentagon, many in specifically identifiable locations within the Pentagon. All of the military officers participating in the video appeared in military uniforms with visible rank insignia. All of the officers except Chaplain Benson were identified in text boxes by name, rank, and branch of service; Chaplain Benson was identified by name, position, and rank. The video included narration and "sound bites" from DoD personnel. The video prominently featured the DoD seal, military insignia, and similar indicia of military affiliation, including large gold-colored lettering identifying the Office of the Secretary of Defense. It also featured footage of meetings of military personnel in uniform or engaged in daily duties at the Pentagon.

The appearances of several of the DoD officers in the video were emphasized by numerous scenes of other military personnel apparently on duty, military emblems, and symbols. One part of the film, which included interviews of LTC [redacted] BG Caslen, and Maj Gen Catton, was notable for its military focus: it opened with a view of the Pentagon's River entrance. The camera zoomed in on a bronze plaque reading, "Department of Defense." The video then showed 14 individual segments featuring military members, Pentagon activity, and a camouflage-colored Bible, leading to a close-up of the official DoD seal. The camera then went

[5] OASD(PA) had no record of a request for the filming of the earlier video, which also featured senior officers in uniform at the Pentagon. We were unable to obtain a copy of the earlier Christian Embassy video or any information as to how the organization obtained permission to film that version. It is possible, considering its employees' full access pass status and in the pre-9/11 security environment, that permission was not sought.

to an aerial view of the Pentagon, and then faded to focus on LTC [redacted] BG Caslen spoke after LTC [redacted] and, after a short transition featuring a military helicopter flying over the World War II Memorial (in the foreground) and the Washington Monument, Maj Gen Catton's video segment began. We found no evidence that any of the DoD personnel who appeared in the video were designated spokespersons for DoD concerning Christian Embassy or its activities within the Pentagon.

Until publicly posted to the Christian Embassy Web site on November 9, 2006, the video was shown at various times throughout 2005 and 2006 at events to which adherents or potential supporters of Christian Embassy had been invited. The video was not shown in the Pentagon. On or about December 12, 2006, Christian Embassy put a disclaimer on their Web site stating that the views expressed by any Government official on the video were personal and not representative of the Government or any department. By December 15, 2006, Christian Embassy had removed the video from the site entirely. We initiated an investigation on December 12, 2006.

III. SCOPE

We interviewed numerous witnesses including the DoD officials identified above, the current Pentagon Chaplain, the Executive Director of Christian Embassy, Christian Embassy's representative to the Pentagon, and the Director, Audiovisual Services, OASD(PA). Additionally, we consulted with the Office of Government Ethics and reviewed the Christian Embassy video, DoD Directives and Instructions, Service legal opinions, case law, legislative histories, and Pentagon Administrative Instructions.

Having fully considered the facts and circumstances surrounding the filming and broadcast of the video, we determined that DoDD 1300.17, "Accommodation of Religious Practices within the Military Services," dated February 3, 1988, was not germane to this investigation, as the matter did not involve members engaged in religious observance or practice. We also found no evidence that the DoD personnel participated in the video for the purpose of proselytizing, or that the video was shown to audiences within the Pentagon.

Likewise, we did not investigate a potential violation of the JER Section 2635.705, "Use of official time." We recognize that there are circumstances when an employee may properly use Government property or official time for authorized activities other than those directly related to the official duties of the employee's position. However, we also appreciate that it would be virtually impossible to obtain legal or regulatory authorization to engage in conduct that violates the JER. We therefore consider this issue to be subsumed within those discussed below.

Because the promotional video also featured the Administrator of the Environmental Protection Agency and the Under Secretary for Benefits, Department of Veterans Affairs, we coordinated the initiation of this inquiry with the Inspectors General for the Environmental Protection Agency and the Department of Veterans Affairs. This inquiry, however, is limited to issues raised by the appearances of DoD personnel.

IV. FINDINGS AND ANALYSIS

A. Did DoD civilian officials who appeared in a promotional video for Christian Embassy improperly endorse and participate with a non-Federal entity?

Standards

DoD 5500.7-R, JER, dated August 30, 1993

Section 2635.702, "Use of public office for private gain," establishes the general standard that a Government employee shall not use his public office for his own private gain or for the private gain of persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member.

The section further details a series of specific prohibitions that apply the general standard. Most relevant to this case is the specific prohibition contained in Section 2635.702(b), "Appearance of governmental sanction," which provides that, except for limited cases of teaching, speaking, or writing as an outside activity or employment,

> [A]n employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.

Chapter 3, Section 3, of the JER addresses personal participation in non-Federal entities.[6] Section 3-300.a. provides that DoD employees "may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions."

The Section continues that except as provided for with regard to teaching, speaking, or writing as an outside activity or employment,

> DoD employees may not use or allow the use of their official titles, positions or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any non-Federal entity involved. Military grade and military department as part of an individual's name (e.g., Captain Smith, U.S. Navy) may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

[6] The JER at Section 1-221 defines a "non-Federal entity" as a "self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government."

DoDI 5410.15, "DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media," dated March 28, 1989

Section 3, "Policy," paragraph 3.1. permits assistance to non-Government, non-entertainment-oriented media in the form of access to DoD installations, equipment, or personnel for interviews, photo and video opportunities "when it is considered beneficial to the Department of Defense or in the national interest to do so." Paragraph 3.1.3. states that in determining whether to grant such assistance, "There should be no implication or appearance of implication of DoD endorsement or approval of any person, product, partisan or political cause."

Section E2.1.1, "Interviews," provides that on-camera or radio interviews with DoD personnel speaking as official representatives of DoD or one of its Components shall be arranged through the public affairs office of the organization to which the speaker is assigned.

Mr. Geren

Facts

Mr. Geren is a Presidential appointee who has served in the Pentagon as Acting Secretary of the Army since March 9, 2007. Prior to his current position, he served as Under Secretary of the Army beginning February 21, 2006. From September 2001 until assuming the duties as Under Secretary of the Army, Mr. Geren served as Special Assistant to the Secretary of Defense, except for brief duty as Acting Secretary of the Air Force from July 28 through November 2, 2005.

According to his testimony, Mr. Geren first became involved with Christian Embassy while he was a Member of the U.S. Congress,[7] attending Bible study and fellowship activities arranged by Christian Embassy on Capitol Hill. He said that he continued his relationship with Christian Embassy when he began work for DoD in the Pentagon, attending the Senior Executive Fellowship and Bible studies.

With regard to the video, Mr. Geren testified that Mr. [redacted] an [redacted] of Christian Embassy, approached him asking if Mr. Geren would participate in an interview in which he would provide recorded statements for Christian Embassy's supporters. Mr. Geren said he agreed, but that he did not know that the video was to be used in fundraising. The interview, filmed early in 2004 while Mr. Geren was serving as Special Assistant to the Secretary of Defense, was not conducted in Mr. Geren's office, but in a hallway in a location Mr. Geren said he could no longer recall.

His portion of video appeared after footage of Washington, DC, monuments in the evening, the White House, and a Federal agency building. The voiceover leading into Mr. Geren's appearance introduced his segment with the phrase, ". . . alongside Presidential appointees serving in the White House and Federal agencies." His appearance did not mention DoD or the Department of the Army. He was identified in text at shoulder level as "Honorable

[7] Mr. Geren represented the Twelfth Congressional District of Texas in Congress from 1989 through 1997.

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Pete Geren Presidential Appointee," and was followed on the video by the Honorable Dan Cooper, Under Secretary for Benefits, Department of Veterans Affairs, and the Honorable Steven Johnson, Administrator, Environmental Protection Agency.

Mr. Geren was filmed near a display of campaign streamers obscuring the Service flag underneath, with no other indication of his military affiliation. Outside the display of military campaign streamers, there is no visual or spoken reference to DoD or the Army. In the video, Mr. Geren stated,

> The Christian Embassy has been there and has been a rock that I could rely on, been an organization that helped me in my walk with Christ, and I'm just thankful for the service they give; it's a wonderful ministry, a ministry that touches the lives of a lot of folks who have great need.

Mr. Geren testified that he had never seen any part of the video.

Discussion

We concluded that Mr. Geren's involvement with the Christian Embassy video violated no standard. We determined that his appearance was consistent with JER Section 3-300.a. with respect to personal participation with non-Federal entities and Section 2635.702(b), "Appearance of governmental sanction." In that regard, we found that Mr. Geren participated in the interview in his personal capacity, outside the scope of his official position. Moreover, he did not use his Government position or title or any authority associated with his public office to state or imply that DoD endorsed Christian Embassy.

Evidence established that neither Mr. Geren's statements during the interview, nor any visual references from the interview or on the final video identified him by position or title or clearly associated him with DoD. Mr. Geren's statements were a personal endorsement of Christian Embassy in which he spoke solely for himself. His words contained no expressed or implied reference to his position, title, or DoD.

Additionally, Mr. Geren was not filmed in his Pentagon office or with any paraphernalia identifying his position within DoD. The campaign streamers that appeared in the background, although visually striking, did not convey the same message for an individual in civilian attire as they might have for a military member in uniform. For instance, featured next to a person in civilian clothes, they could reasonably be interpreted to acknowledge past service as easily as current affiliation. However, featured near a military member in uniform, such streamers could reasonably be interpreted to emphasize the military status of that member. The scenes both prior to and after Mr. Geren's appearance in the video had no connection with DoD, and although his status as a Presidential appointee was noted in a text box in the video, it was in such a context as to make his connection with or position in DoD speculative.

Ms. [redacted]

Facts

Ms. [redacted] is a member of the Senior Executive Service employed by the Department of the Army in the Pentagon as [redacted] Army Budget Office, since July 1999.

Ms. [redacted] testified that she became involved with Christian Embassy through the former Administrative Assistant of the U.S. Army, who invited her to a Tuesday morning Senior Executive Fellowship. Ms. [redacted] said that she went to the fellowship meeting because she had been experiencing a "spiritual renewal" and believed the meeting might be a good opportunity for networking. She stated that she later attended a Christian Embassy ladies' group in the Pentagon facilitated by Ms. [redacted] a Christian Embassy [redacted] According to Ms. [redacted], Ms. [redacted] asked Ms. [redacted] if she would appear in a new promotional video for supporters of Christian Embassy. Ms. [redacted] told us that she knew the video would be used in fundraising and to attract supporters.

Ms. [redacted] recalled having seen the video with her husband in or around March 2005, and believed that her portion was filmed only a few months prior during the duty day. Ms. [redacted] stated that the interview was informal, in that she was asked to talk about her faith and how Christian Embassy had helped her with her faith in the Pentagon. The interview, about 10 minutes long, was held in a small room with which Ms. [redacted] said she was unfamiliar.

Ms. [redacted] appeared in the video after Maj Gen Sutton, who followed a civilian speaker, Ms. [redacted] from the [redacted] Embassy. A brief black screen separated Ms. [redacted] appearance from that of Maj Gen Sutton. Ms. [redacted] was identified by text that stated, "[redacted] Senior Executive, Pentagon" and was shown sitting in a shadowed area containing no visible military devices or insignia. She was also pictured exiting the Pentagon executive dining facility with another civilian woman. The dining facility itself had no visible military insignia or decoration. In the video, Ms. [redacted] stated,

> Through my relationship with Christian Embassy, my eyes were opened to the fact that even though I was a sinner, Jesus Christ is a very forgiving God and all I have to do is accept him as my savior and he died on the cross for me, personally; that he paid my debt in full and -- it makes me cry -- it's very exciting.

At the end of her statement, the video turned to evening footage of Washington, DC, monuments.

Discussion

We concluded that Ms. [redacted] involvement with the Christian Embassy video violated no standard because, like Mr. Geren, her appearance was consistent with JER Section 3-300.a. on personal participation with non-Federal entities and Section 2635.702(b), "Appearance of governmental sanction." In that regard, we found that Ms. [redacted] participated

in the interview in her personal capacity, outside the scope of her official position. Moreover, she did not use her Government position or title or any authority associated with her public office to state or imply that DoD endorsed Christian Embassy.

While we concluded that Ms. [redacted] speech was an endorsement of Christian Embassy, the preponderance of the evidence established that she spoke for herself and in personal terms without express or implied reference to her position, title, or DoD. Although she was filmed during a standard working day, she was not filmed in her office or with any paraphernalia indicating her position or status. Her own appearance lacked significant visual military reference. Other than the reference to the "Pentagon" in the text that identified her as a Senior Executive, no visual or verbal cues indicated that her personal activity with Christian Embassy was commingled with her official position. Considering also that a black transition screen separated her appearance from that of Maj Gen Sutton, her participation did not appear connected with her official position within DoD or that of Maj Gen Sutton.

B. Did military officers who appeared in a promotional video for Christian Embassy improperly endorse and participate with a non-Federal entity while in uniform?

Standards

The standards cited in Section IV. A. above are applicable to this section, in addition to the following.

DoDD 1334.1, "Wearing of the Uniform," dated August 11, 1969

Paragraph 3.1. of the Directive sets forth several circumstances where the wearing of the military uniform by members of the Armed Forces is prohibited. Of interest here, the Directive prohibits wearing of the uniform,

> 3.1.3. Except when authorized by competent Service authority, when participating in activities such as unofficial public speeches, interviews, picket lines, marches, rallies, or any public demonstration, which may imply Service sanction of the cause for which the demonstration or activity is conducted.

Air Force Instruction (AFI) 36-2903, "Dress and Personal Appearance of Air Force Personnel," dated September 29, 2002[8]

Table 1.3 provides that wear of the Air Force uniform is prohibited when participating in public speeches, interviews, picket lines, marches or rallies, or in any public demonstration when Air Force sanction of the cause for which the activity is conducted may be implied.

[8] The excerpt from AFI 36-2903 standard is applicable only with regard to the facts and circumstances concerning wear of the uniform by Maj Gen Sutton, Maj Gen Catton, and Col [redacted] The subsequent excerpt from Army Regulation (AR) 670-1 is applicable only with regard to the facts and circumstances concerning wear of the uniform by BG Brooks, BG Caslen, Chaplain Benson, and LTC [redacted]

Army Regulation (AR) 670-1, "Wear and Appearance of Army Uniforms and Insignia," dated September 5, 2003

Paragraph 1-10j (2) states that wearing of Army uniforms is prohibited "[w]hen participating in public speeches, interviews, picket lines, marches or rallies, or public demonstrations, except as authorized by competent authority."

Maj Gen Sutton

Facts

Maj Gen Sutton is currently assigned as Chief of the Office of Defense Cooperation, U.S. European Command, Ankara, Turkey, a position he assumed in August 2004. Previously, he was assigned to the Pentagon as the Director of Learning and Force Development, Office of the Deputy Chief of Staff for Personnel, Headquarters U.S. Air Force, starting in August 2002. While at that post, he attended Christian Embassy prayer breakfasts, with which he was familiar from his first tour in the Pentagon as a captain in 1979.

Maj Gen Sutton testified that during his most recent Pentagon assignment he saw a Christian Embassy promotional video that he believed was made in 2001. That version featured at least one U.S. Senator as well as military personnel in uniform in the Pentagon. The military officers featured included Maj Gen Sutton's supervisor, Lieutenant General Richard E. Brown, U.S. Air Force, and several other officers of lesser rank. Maj Gen Sutton testified that he believed the video was a way for Christian Embassy to advertise their activities to an internal audience.

Maj Gen Sutton also testified that as a general officer, he was invited to participate in a Christian Embassy fundraising event in Orlando, Florida, by Mr. [redacted], a Christian Embassy [redacted] Maj Gen Sutton stated that "the idea of going in uniform outside of our building to represent a non-DoD entity," as well as the association with direct fundraising, "raised flags" for him. Maj Gen Sutton said that he consulted the Air Force General Counsel prior to the event and was advised that he would have to attend the event in a leave status and could not wear his uniform. In addition, he said that he was cautioned to declare any travel funds he received on his yearly financial disclosure report.[9] Maj Gen Sutton did not recall if the Orlando event was prior to or after the filming of the video at issue.

According to his testimony, Maj Gen Sutton said that Mr. [redacted] approached him in approximately January 2004 to ask if he would participate in the current video. Maj Gen Sutton stated that he knew Mr. Geren, then Special Assistant to the Secretary of Defense, would be participating in the video. Maj Gen Sutton said that he was also influenced favorably to appear in the video having seen the previous Christian Embassy video that featured Lieutenant General Brown and other uniformed military personnel. In addition, Maj Gen Sutton testified that Mr. [redacted] assured him that Christian Embassy had been authorized to film in the

[9] We confirmed that Maj Gen Sutton declared the value of the benefits received.

Pentagon. Maj Gen Sutton told us that he believed the Pentagon Chaplain co-sponsored Christian Embassy events, and pointed out that Christian Embassy representatives had constant access to the Pentagon and wore approved badges.

Maj Gen Sutton appeared in the interview in his Air Force duty uniform combination with a long-sleeved blue shirt, tie, and rank epaulettes. He testified that, based on what he knew at the time about the filming of the previous video, he did not think it unusual to be filmed in the Pentagon in uniform. Maj Gen Sutton told us that he did not seek counsel prior to his appearance in the promotional video. In fact, he further testified that he would have considered it unusual if he had been told that he could not be in uniform and was then asked to be filmed in the Pentagon wearing civilian clothes. Under those circumstances, he said, he was not sure that he would have agreed.

The video was filmed in the Pentagon in a hallway alcove chosen by a representative of Christian Embassy. In the interview, Maj Gen Sutton appeared in uniform, his rank clearly visible, standing in front of the U.S. and Service flags with abundant campaign streamers. The video also included footage of Maj Gen Sutton in Service dress uniform, complete with decorations, rank, and badges, addressing an audience.

He testified that Christian Embassy representatives asked him questions, and he responded to them. He believed his responses had been edited to provide only that which Christian Embassy needed. In the video, he stated,

> What's important for me in the context of our work here in the Pentagon is to get together with other believers and be encouraged and it makes such a big difference.

In the video, his portion appears after that of the [redacted] of the [redacted] Ambassador and prior to Ms. [redacted]

Maj Gen Sutton testified that while in Turkey in his current duty position, his Turkish driver approached him with an article in the Turkish newspaper "Sabah." That article featured a photograph of Maj Gen Sutton in uniform and described him as a member of a radical fundamentalist sect. The article in the online edition of Sabah also included still photographs taken from the Christian Embassy video. Maj Gen Sutton's duties in Ankara included establishing good relations with his counterparts on the Turkish General Staff. Maj Gen Sutton testified that Turkey is a predominantly Muslim nation, with religious matters being kept strictly separate from matters of state. He said that when the article was published in Sabah, it caused his Turkish counterparts concern and a number of Turkish general officers asked him to explain his participation in the video.

In his testimony Maj Gen Sutton said that he believed his appearance in the promotional video was similar to, for example, a service member wearing a uniform to a church service at a civilian location, or walking to his office in the Pentagon with a Bible in his hand. He testified that no one, orally or in writing, had stated that DoD endorsed Christian Embassy. Asked to comment on the observation that the video seemed to imply endorsement by DoD and

DoD officials, Maj Gen Sutton stated he did not think the video implied DoD endorsement, but that such an impression would be "in the eye of the beholder." He testified that what the video was endorsing is the opportunity of different faith groups to express themselves "and knowing that they're members in the military in a particular kind of faith group": in sum, an endorsement by DoD of the free exercise of religion.

Maj Gen Sutton stated that he did not have the opportunity to review the video or exercise any editorial control over it.

Discussion

We concluded that Maj Gen Sutton improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a, because he failed to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview Maj Gen Sutton, nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because Maj Gen Sutton lacked approval to take part in an official capacity, we concluded his participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of Maj Gen Sutton's personal participation in the videotaped interview contravened this standard by creating the appearance that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.

- He was filmed in Service dress uniform addressing an audience in a meeting place within the Pentagon, as well as an alcove in front of flags and campaign streamers, settings with significant visual impact that conveyed an air of official support for his appearance.

- His address to an audience in Service dress uniform with his rank, decorations, and badges visible suggested to viewers that he participated in Christian Embassy activities and the interview in the normal course of a duty day.

- His remark that, "What's important to me is in the context of our work here in the Pentagon is to get together with other believers and be encouraged and it makes such a big difference," confers approval of and support to Christian Embassy, and implied that he spoke for a group of senior military leaders rather than just for himself.

Significantly, we believe that as a general officer in uniform Maj Gen Sutton could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance,

which are detailed above. Those circumstances implied that he acted with the knowledge and sanction of DoD, and, therefore, within the scope of his official position rather than exclusively outside of it.

In addition, we concluded that Maj Gen Sutton used the authority associated with his public office to imply that DoD endorsed Christian Embassy in violation of JER Section 2635.702(b), "Appearance of governmental sanction." The overall circumstances of Maj Gen Sutton's interview emphasized his military status and affiliation, and, by implication, the authority associated with his public office. As discussed above, his appearance and statements could reasonably be construed to imply that he was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, his actions violated the prohibition of JER Section 2635.702(b).

Finally, because the nature of his appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that Maj Gen Sutton violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AFI 36-2903, "Dress and Personal Appearance of Air Force Personnel."

Response to Tentative Conclusions

By letters dated May 11, 2007, Maj Gen Sutton and his attorney both provided responses to our tentative conclusions. Maj Gen Sutton stated that while he was ultimately responsible for his actions, he agreed to appear in the video based upon assertions by Chaplain Benson and a Christian Embassy employee that Christian Embassy had received express permission to film the video. He apologized for not having verified their assertions, and recognized that his comments could be taken as endorsement of Christian Embassy and its activities. Maj Gen Sutton asserted that he learned from the experience and profoundly regretted any adverse effect on the U.S. Air Force.

Maj Gen Sutton's counsel, on the other hand, responded that Maj Gen Sutton participated in a film that was authorized. Counsel asserted that Maj Gen Sutton appeared in uniform only after such appearance was authorized by "appropriate officials," consistent with past DoD policy and actions. In response to these points, we note that the permission Chaplain Benson obtained from OASD(PA) was limited to filming aspects of the Pentagon Chaplain's ministry on one day in February, and did not include permission for any individual to participate in an interview in uniform. Moreover, Maj Gen Sutton was not authorized by an appropriate official or appointed a DoD representative. Neither Chaplain Benson nor a Christian Embassy employee had even apparent authority to authorize Maj Gen Sutton to participate in an on-camera interview in uniform. Furthermore, while we are aware of the existence of a prior video, in light of current DoD and Service regulations, we do not agree that unapproved participation in an unauthorized videotaped interview for a non-Federal entity is "consistent with past DoD policy and actions" as asserted by Maj Gen Sutton's counsel.

Maj Gen Sutton's counsel also objected to our consideration of Maj Gen Sutton's address in front of an audience, stating that it was filmed without Maj Gen Sutton's knowledge or

consent. Even were this true, the use of the video in conjunction with Maj Gen Sutton's statement implied DoD endorsement.

Finally, Maj Gen Sutton's counsel noted that Maj Gen Sutton's interview was filmed in a public place, which evidenced Maj Gen Sutton's good faith in participating. We stand by our conclusions that he was not authorized to appear in the video in uniform, notwithstanding his intentions. Counsel summarized that Maj Gen Sutton relied on the authority of "those who apparently had permission to approve his activities" and only took part in those activities that were "apparently approved." We remain persuaded that the entities with authority to approve Maj Gen Sutton's appearance in an on-camera interview were those specified in DoDI 5410.15, "DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media" -- the public affairs office of the organization to which the speaker was assigned. The Pentagon Chaplain had no authority, apparent or otherwise, to approve the videotaped interviews of military personnel.

Maj Gen Catton

Facts

Maj Gen Catton is currently assigned as Director of Requirements, Headquarters Air Combat Command, Langley AFB, Virginia. Prior to that assignment, and during the time of the filming of the Christian Embassy video, he was assigned to the Pentagon as the Director, Operational Plans and Joint Force Development, Joint Staff.

Maj Gen Catton told us that he became familiar with Christian Embassy in December 2001 through a friend, also a general officer, who asked him if he would be interested in attending the Flag Officer Fellowships. Maj Gen Catton said that he attended as often as he could, given that his duty day often started in the early morning and by the time of the Fellowship he sometimes already had a conflicting duty commitment. Maj Gen Catton noted that he did not attend any Christian Embassy fundraising dinners, but attended a social event for foreign military attachés hosted by Christian Embassy in the Pentagon during the day.

According to his testimony, Maj Gen Catton said that he was asked to participate in the video by Mr. [redacted] a Christian Embassy [redacted]. Maj Gen Catton added that Mr. [redacted] told him that the Pentagon Chaplain had obtained the permission of the Office of the Secretary of Defense to film within the Pentagon during the duty day. Maj Gen Catton also testified that he did not seek counsel concerning his appearance in the video because the Pentagon Chaplain had obtained permission for the video, and that he thought it would have been "unusual" to "question the integrity of a U.S. Army colonel chaplain as to whether or not he had appropriate authority" to approve the video. Mr. [redacted] then checked Maj Gen Catton's calendar and scheduled the interview a week or two in advance.

Maj Gen Catton testified that Mr. [redacted] and his film crew came to Maj Gen Catton's office on the day of filming and briefly filmed him at work. Maj Gen Catton wore his blue short-sleeved shirt Air Force uniform combination with two-star rank epaulettes in all portions of his video segment. In the beginning of the videotape of the interview, Maj Gen Catton's Joint Staff

badge was visible on his uniform. He was filmed at his desk speaking to an Air Force colonel, with his two-star general's flag prominently displayed. He was also shown in the video at a conference table speaking to a subordinate uniformed officer and a civilian. A military insignia similar to that of Seventh Air Force was visible in the background.

Maj Gen Catton said that after a portion of video was filmed in his office, he was filmed in the Joint Staff Flag Room, a process taking around 20 minutes. With regard to the timeframe of the filming, BG Caslen, who was filmed sometime after July 2004, testified that Maj Gen Catton arrived in the Joint Staff Flag Room to be filmed immediately after BG Caslen's appearance.

Maj Gen Catton's appearance was divided into five consecutive segments on the video. His initial appearance on the video was preceded by those of two fellow officers and more than a dozen scenes of military members, Pentagon activity, and military accoutrements. In that initial appearance, Maj Gen Catton was shown in the Joint Staff Flag Room. Maj Gen Catton spoke throughout each part of his segment, which consisted of several scenes in the Pentagon, apparently filmed during the duty day while he was at work. During these scenes, he stated,

> I found a wonderful opportunity as a Director on the Joint Staff, as I meet the people that come in to my directorate, and I tell them right up front who Jack Catton is, and I start with the fact that I'm an old-fashioned American, and my first priority is my faith in God, then my family, and then country. I share my faith because it describes who I am. I would say Christian Embassy in my interaction with my fellow Flag officers has helped inspire some of that. You know, we talk about that kind of stuff, and I think it's a huge impact because you have many men and women who are seeking God's counsel and wisdom as we advise the Chairman and the Secretary of Defense. Hallelujah!

Discussion

We concluded that Maj Gen Catton improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a., because he failed to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview Maj Gen Catton, nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because he lacked approval to take part in an official capacity, we concluded Maj Gen Catton's participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of Maj Gen Catton's personal participation in the videotaped interview contravened this standard by creating the appearance

that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.
- He identified himself by official position as a Director on the Joint Staff.
- He was filmed in the Joint Staff Flag Room, his office with his two-star general's flag in the background, and a conference room within the Pentagon, all settings with significant visual impact that conveyed an air of official support for his appearance.
- He appeared to participate in the interview in the normal course of a duty day, suggested by the presence of subordinate uniformed military personnel and other personnel in conference with him in his office and a conference room.
- His statements on the video conferred approval of and support to Christian Embassy, and implied that he spoke for a group of senior military leaders rather than just for himself. Specifically, he remarked that his interaction with fellow senior officers through Christian Embassy activities inspired him to share his faith with people that came to his Directorate. He also remarked that this senior level interaction had a "huge impact because you have many men and women who are seeking God's counsel and wisdom as we advise the Chairman and the Secretary of Defense."

Significantly, we believe that as a general officer in uniform he could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance, which are detailed above. Those circumstances implied that he was acting with the knowledge and sanction of DoD, and, therefore, acting within the scope of his official position rather than exclusively outside of it.

Those factors also led us to conclude that Maj Gen Catton used both his official position and the authority associated with his public office to imply that DoD endorsed Christian Embassy, in violation of the JER. He specifically identified himself by his position as a Director on the Joint Staff and connected that position to Christian Embassy activities. The use of official position in connection with personal activities and to imply DoD sanction or endorsement of Christian Embassy violates prohibitions in JER Section 3-300.a. and Section 2635.702(b), "Appearance of governmental sanction." Additionally, the overall circumstances of the interview emphasized his military status and affiliation, and, by implication, the authority associated with Maj Gen Catton's public office. Use of such authority to imply that DoD sanctioned or endorsed the activities of Christian Embassy was a further violation of Section 2635.702(b).

Therefore, because the nature of Maj Gen Catton's appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that he violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AFI 36-2903, "Dress and Personal Appearance of Air Force Personnel."

Response to Tentative Conclusions

By letter dated April 26, 2007, we provided Maj Gen Catton an opportunity to comment on the initial conclusions of our investigation. Maj Gen Catton responded by letter dated May 25, 2007, which also included separate submissions from military and civilian counsel.

Maj Gen Catton asserted that Christian Embassy was treated as an instrumentality of the Pentagon Chaplain's office for over 25 years, and had effectively become a "quasi-Federal entity." We note that at no point did Christian Embassy become a Federal entity. Further, the length of time an organization operates in the Pentagon does not confer Federal status to that organization or provide express or implied approval to engage in activities to support that organization that are specifically prohibited by regulation. For example, Taco Bell provides certain food preparation services to individuals in the Pentagon. Its presence in the Pentagon for any length of time does not imply DoD sanction or confer Federal status to Taco Bell. Maj Gen Catton's endorsement of Taco Bell under circumstances similar to those of the present video would be similarly improper. The fact that Christian Embassy was a non-profit or religious organization, as opposed to a purely commercial one, did not make Christian Embassy less of a non-Federal entity.

Maj Gen Catton stated he did not request a legal opinion because Chaplain Benson and Mr. [redacted] had authorized him to appear and other faiths had filmed videos in the Pentagon. We acknowledge that JER Section 2635.107, "Ethics Advice," provides limited protection from disciplinary action to individuals who, after full disclosure of all circumstances, act in good faith reliance upon advice from their agency ethics official. However, the section does not provide equivalent protection for those acting in reliance upon advice from a chaplain or other person not designated an agency ethics official.

Maj Gen Catton contended that he had no reason to know that the video was for promotional purposes, and that he acted for the benefit of the Pentagon Chaplain's office rather than for his private gain. We believe it was incumbent on Maj Gen Catton to have determined the purpose of the project before participating in the on-camera interview with Christian Embassy. Further, based on his own testimony and the video, the evidence established that Maj Gen Catton had reason to question the purpose of the video as his statements endorsed Christian Embassy, not the Pentagon Chaplaincy or its programs.

Similarly, Maj Gen Catton's assertion that the interview was for "an approved, non-public, internal government video" permitted by OASD(PA) is not supported by the facts of the case. The evidence established that the purpose of the video was to generate financial and personal support for Christian Embassy, a non-Federal entity. The filming of the video exceeded the limited scope, purpose, and time period authorized by OASD(PA) -- 1 day of filming in February to chronicle aspects of the Pentagon Chaplain's ministry. That authorization said nothing about interviewing military members. The professed OASD(PA) authorization did not include Maj Gen Catton's participation, let alone at the late summer or early fall date on which he was filmed.

Maj Gen Catton asserted that he did not intend to violate the JER because he did not voluntarily participate in the activities of a non-Federal entity, but believed he was engaged in a project for the Pentagon Chaplain's office. Contrary to his assertion, the evidence established that Maj Gen Catton voluntarily participated in the Christian Embassy interview in which he endorsed that organization. An employee of Christian Embassy, not the chaplain, had originally asked him to appear in the video, and employees of Christian Embassy, not the chaplain, escorted themselves throughout the entire interview, wherein Maj Gen Catton spoke of Christian Embassy, not the Pentagon Chaplaincy. In addition, the video was used for the gain of Christian Embassy and provided no benefit to DoD. In that regard, Chaplain Benson testified that he did not believe he had received a copy of the video, and that it was never shown in the Pentagon. We determined that Maj Gen Catton's participation was therefore improper, and his conduct violated the JER.

Maj Gen Catton also contended that he wore his uniform for other religious observances, of which this was impliedly one. We acknowledge the appropriateness of military members wearing their uniforms to religious observances; however, we highlight that the Christian Embassy interviews and resultant video were not religious observances or services. Participating in a religious observance or service wherein one professes his religious beliefs is fundamentally different from participating in a videotaped interview in which one comments favorably about a non-Federal entity. A promotional video for a non-Federal entity is not a religious observance and has no related Constitutional dimension. The fact that Christian Embassy is religiously affiliated confers no special standing or protection to personnel who choose to endorse it. Likewise, we do not agree that a finding that Maj Gen Catton violated the JER under the circumstances of this case has any potential to adversely affect service members' Constitutional rights, to include their free exercise of religion.

Finally, we note that the entities with authority to approve Maj Gen Catton's appearance in an on-camera interview were those specified in DoDI 5410.15, "DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media" -- the public affairs office of the organization to which the speaker was assigned. The Pentagon Chaplain had no authority, apparent or otherwise, to approve the videotaped interviews of military personnel.

BG Brooks

Facts

BG Brooks is currently assigned as Deputy Commanding General (Support), 1st Cavalry Division, and Multi-National Division Baghdad, in Baghdad, Iraq. Prior to that duty, he was assigned to the Pentagon in several positions. He testified that he believed that at the time of filming he was transitioning from the position of Deputy Director for Political-Military Affairs for the War on Terrorism, Directorate for Strategic Plans and Policy, Joint Staff, to the Deputy Chief of Public Affairs, Headquarters U.S. Army. Immediately before his current assignment to Baghdad, but after the filming of the video, BG Brooks held the position of Chief of Public Affairs, Headquarters U.S. Army.

BG Brooks testified that he was introduced to Christian Embassy by a West Point classmate, met Mr. [redacted] and joined the Thursday Flag Officer Fellowships. He explained that the Fellowships were breakfast meetings wherein like minded people came together in a spiritual environment to share "spiritually and openly." He added that the group also conducted Bible studies and religiously-oriented book discussions.

BG Brooks further testified that Mr. [redacted] approached him about appearing in the video. BG Brooks said that he knew that a previous video had been done, believed the current video project had been appropriately coordinated, and agreed to participate. BG Brooks also told us that he believed Mr. [redacted] asked him (BG Brooks) to participate due, in part, to his camera presence and previous experience as a spokesman for U.S. Central Command.

BG Brooks was the first military officer to appear on the video. The footage immediately prior to his appearance on the video is of the Office of the Secretary of Defense, featuring the DoD seal, the Secretary's flag, and the office designation in large gold-colored lettering. BG Brooks testified that his own appearance, in an Army uniform combination with long-sleeved green shirt, tie, and brigadier general rank epaulettes, was filmed in front of the Office of the Director of the Joint Staff in the Joint Staff main hallway during the duty day. Other uniformed personnel unconnected with Christian Embassy were present and were visible walking down the hallways. The segment was filmed while BG Brooks responded to questions from a Christian Embassy employee, although the entire interview did not appear in the final video product. BG Brooks stated that he believed the filming took no more than 15 minutes, and also believed only Mr. [redacted] and the film crew were present, not Chaplain Benson.

The Joint Staff hallway in which BG Brooks was filmed is distinguished by a large portrait of a Navy admiral on the wall and Pentagon personnel walking down the hall behind BG Brooks. The segment was followed by a close-up shot of a Bible study sheet. The camera then zoomed out to show uniformed military members gathered around a table. The footage ended by switching to a civilian unaffiliated with DoD. During BG Brooks' initial appearance and during the subsequent Bible study scenes in the video, BG Brooks stated,

> Christian Embassy really gives us a tremendous opportunity here in the Pentagon as leaders that carry a lot of responsibility on our shoulders on a daily basis to stop and reflect and come together with others who are in a similar walk of life and carry similar responsibilities and realize that we have a need for the Lord in our lives.

BG Brooks testified that he recalled asking for legal advice concerning his appearance in the video, but could not recall the name of the legal advisor to whom he spoke, and did not receive written guidance. BG Brooks did not elaborate on what advice, if any, he was given.[10]

[10] Neither the Office of The Judge Advocate General, U.S. Army; the Office of General Counsel, U.S. Army; nor the Designated Agency Ethics Official for the Joint Staff were able to locate any record of an opinion provided for BG Brooks on this matter.

BG Brooks also acknowledged that he had seen the final video product at a Christian Embassy fundraising dinner in the summer of 2005. He added that he had previously received legal advice concerning his appearance at the Christian Embassy evening event. He testified that he attended in his private capacity in civilian clothes, "because it wasn't done during the duty day." He testified that he saw no inconsistency in having the video with him in uniform speaking for Christian Embassy being shown at an event in which he was only permitted to attend in a personal capacity, because the video was showing what Christian Embassy did in the workplace.

Discussion

We concluded that BG Brooks improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a, because he failed to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview BG Brooks, nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because he lacked approval to take part in an official capacity, we concluded BG Brooks' participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of BG Brooks' personal participation in the videotaped interview contravened this standard by creating the appearance that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.
- He was filmed in the Joint Staff hallway of the Pentagon, a setting with significant visual impact that conveyed an air of official support for his appearance.
- The presence of other uniformed military personnel walking the corridor suggested to viewers that he participated in the interview in the normal course of a duty day.
- In stating that Christian Embassy gave "us a tremendous opportunity here in the Pentagon as leaders that carry a lot of responsibility on our shoulders on a daily basis," BG Brooks conferred approval of and support to Christian Embassy, and implied that he spoke for a group of senior military leaders rather than just for himself.

Significantly, we believe that as a general officer in uniform BG Brooks could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance, which are detailed above. Those circumstances implied that he was acting with the knowledge and sanction of

DoD, and, therefore, acting within the scope of his official position rather than exclusively outside of it.

These factors also led us to conclude that BG Brooks used the authority associated with his public office to imply that DoD endorsed Christian Embassy in violation of JER Section 2635.702(b), "Appearance of governmental sanction." The overall circumstances of his interview emphasized his military status and affiliation, and, by implication, the authority associated with his public office. As discussed above, BG Brooks' appearance and statements could reasonably be construed to imply that he was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, his actions violated the prohibition of JER Section 2635.702(b).

Because the nature of BG Brooks' appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that he violated the uniform wear restrictions of DoDD 1334.1, "Wearing the Uniform," and AR 670-1, "Wear and Appearance of Army Uniforms and Insignia."

We note that BG Brooks' regulatory violations were compounded by the fact that he viewed the completed promotional video at a Christian Embassy fundraising dinner in the summer of 2005, after his assumption of duties with Army Public Affairs. At that time he saw firsthand the use to which his interview had been put, and the striking impact of the abundant visual military references throughout the finished product.

Response to Tentative Conclusions

By letter dated April 25, 2007, we provided BG Brooks an opportunity to comment on the initial conclusions of our investigation. In his response, dated May 11, 2007, BG Brooks contended that he was operating within accepted ethical parameters for a government official and did not need to "pursue a pathway of self-protection through specific permissions."

BG Brooks asserted that he believed Christian Embassy to be sanctioned or endorsed by DoD due to numerous factors, to include Christian Embassy's long-standing Pentagon presence, the apparent sponsorship of Christian Embassy by the Pentagon Chaplain, the unescorted access badges provided to Christian Embassy employees, the array of programs offered by Christian Embassy, the existence of a prior similar video, the seniority of the video participants, and his lack of involvement in the coordination of filming. BG Brooks stated that he knew that a previous video had been made, and that he and others would be filmed to update that prior product. In addition, he argued that he acted in good faith and, because he did not intend to violate any DoD standards, believed he was acting properly.

Therefore, BG Brooks concluded, he believed he had been acting within ethical parameters. He did not believe the fact that he saw the finished video at a Christian Embassy dinner to be an aggravating factor, since he did not believe at that time that the video appearance had been improper. Likewise, BG Brooks stated that he appeared in uniform in good faith, and did not see his participation as endorsing Christian Embassy.

After carefully considering BG Brooks' response and reexamining the evidence, we stand by our conclusions. As we addressed in response to Maj Gen Catton's comments, the length of time an organization is permitted to do business within the Pentagon does not confer DoD sponsorship or make that organization a Federal entity. The fact that some Christian Embassy employees held contractor access badges was a clear indication to those who came into contact with those employees that Christian Embassy was a non-Federal entity, and, like a contractor, subject to particular constraints in its relationship with BG Brooks and other DoD personnel. Entities recognized as having a special relationship with DoD (to include the Combined Federal Campaign, United Services Organization, and the Service Relief Societies) are listed in the JER at Sections 3-210 and 3-212: Christian Embassy is not among them.

Likewise, the seniority or number of participants in the video did not relieve BG Brooks of the duty to ensure that his actions were in legal conformity with all applicable standards. In addition, the mere existence of a prior video did not establish that it had been filmed with permission or that the standards in effect at that time had not changed. Furthermore, we were not persuaded that BG Brooks' lack of involvement in the coordination process or his lack of intent to violate the JER legitimized his actions.

Finally, BG Brooks stated that he did not see his participation as an endorsement of Christian Embassy, but rather as providing information about one of many similar organizations. We note that BG Brooks' statement on the video conferred approval of and support to Christian Embassy, rather than unbiased information about the organization. Further, he failed to mention any other organization in his comments. Moreover, in his statement BG Brooks implied he spoke for a group of senior military leaders rather than just for himself.

BG Caslen

Facts

BG Caslen is currently the Commandant of Cadets at the U.S. Military Academy at West Point, New York. Prior to that, and during the time of filming, he was assigned to the Pentagon as the Deputy Director for Political-Military Affairs for the War on Terrorism, Directorate for Strategic Plans and Policy, Joint Staff. He arrived at the Pentagon from his previous assignment at Fort Stewart, Georgia, shortly after the July 4th holiday in 2004.

BG Caslen testified that he was familiar with Christian Embassy through a prior Pentagon assignment from 2000 to 2002. He said that he was previously acquainted with Mr. [redacted] a Christian Embassy [redacted] while Mr. [redacted] was on active duty with the U.S. Army. According to BG Caslen, Mr. [redacted] approached him about appearing in the video and mentioned that BG Brooks had already appeared in it.

BG Caslen testified that he agreed to participate based, in part, on his understanding that other senior personnel whom he respected had agreed to participate -- one of whom was BG Brooks who was serving as Chief of Army Public Affairs -- and his belief that the project had been appropriately coordinated. BG Caslen stated that Christian Embassy had been filming the video in question "for a while" and that his participation occurred in early fall of 2004.

b(6)
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BG Caslen appeared in the video in three scenes: walking down a Joint Staff hallway with Mr. [redacted]; seated in the Joint Staff Flag Room with a large backlit Joint Chiefs of Staff symbol in the background; and walking into the river entrance of the Pentagon on a sunny day. In the hallway, an open door with an entrance mat bearing the Joint Chiefs of Staff symbol shows a lit office beyond. His segment is immediately preceded by that of LTC Morton and followed by that of Maj Gen Catton separated only by a brief shot of the World War II memorial and a military helicopter flying over the Washington Monument in the background.

While BG Caslen walked down the hallway, a narrator stated, "Generals and admirals meet regularly for the Flag Officer Fellowship." The scene changed to BG Caslen seated in the Joint Staff area with the large Joint Chiefs of Staff symbol visible over his shoulder. He stated, "I'll see a brother in the Lord from these Flag fellowship groups, and I immediately feel like I'm being held accountable" -- the scene changed to one of BG Caslen entering the Pentagon -- "because we're the aroma of Jesus Christ." BG Caslen explained that the reference alluded to his commitment to a moral code that included dignity and respect for others in a positive moral and ethical environment, but was made in the belief that the video was for Christian audiences. He asserted that the statement was not intended to persuade people to the Christian faith. Throughout the video, BG Caslen was wearing his Army uniform combination of long-sleeved green shirt, tie, and brigadier general rank epaulettes.

BG Caslen testified that he was unaware of any regulatory guidance on the matter at the time of filming, and appeared in uniform because the interview was scheduled in the middle of the workday. He stated that he consented to appear based in part on the fact that Chaplain Benson confirmed Christian Embassy's authorization to film. However, BG Caslen also testified that he subsequently became aware of additional uniform wear guidance and since that time, has been alert to the issue.

BG Caslen stated that he saw the final video product at a private Christian Embassy fundraising dinner about one year after he participated in the filming, and that he requested the video be removed from the Christian Embassy public Web site when he became aware that it was causing offense to some viewers. Finally, BG Caslen stated that he truly regretted his appearance if it brought any discredit or embarrassment to DoD or the Joint Staff.

Discussion

We concluded that BG Caslen improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a, because he failed to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview him, nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because he lacked approval to take part in an official capacity, we concluded his participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of BG Caslen's personal participation in the videotaped interview contravened this standard by creating the appearance that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.
- He was filmed in the Joint Staff Flag Room of the Pentagon, a setting with significant visual impact that conveyed an air of official support for his appearance.
- His entry into the Pentagon and his walking with Mr. [redacted] past an open, lit office suggested to viewers that he participated in the interview and filming in the normal course of a duty day.
- By speaking of Christian Embassy as a beneficial force in his life, stating "I'll see a brother in the Lord from these Flag Fellowship Groups, and I immediately feel like I'm being held accountable, because we're the aroma of Jesus Christ," he conferred approval of and support to Christian Embassy's activities, and implied that he spoke for a group of senior military leaders rather than just for himself.

Significantly, we believe that as a general officer in uniform he could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance, which are detailed above. Those circumstances implied that he was acting with the knowledge and sanction of DoD, and, therefore, acting within the scope of his official position rather than exclusively outside of it.

For these reasons, we also concluded that BG Caslen used the authority associated with his public office to imply that DoD endorsed Christian Embassy in violation of JER Section 2635.702(b), "Appearance of governmental sanction." The overall circumstances of his interview emphasized his military status and affiliation, and, by implication, the authority associated with his public office. As discussed above, BG Caslen's appearance and statements could reasonably be construed to imply that he was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, BG Caslen's actions violated the prohibition of JER Section 2635.702(b).

Finally, because the nature of BG Caslen's appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that he violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AR 670-1, "Wear and Appearance of Army Uniforms and Insignia."

Response to Tentative Conclusions

By letter dated April 25, 2007, we offered BG Caslen an opportunity to comment on the initial results of our investigation. In a response dated May 3, 2007, BG Caslen wrote that he accepted full responsibility for his actions. He noted, in extenuation and mitigation, that he agreed to take part in the video primarily due to the fact that other senior leaders that he knew, respected, and trusted were appearing in the video. Among these were Mr. Geren; Maj Gen Catton, a Director on the Joint Staff, to whom BG Caslen looked for leadership and example; and BG Caslen's predecessor on the Joint Staff, BG Brooks, who was at the time of the filming the Public Affairs Officer of the Army. BG Caslen pointed out that he believed that if there was any issue about appearing in support of Christian Embassy, the Army Public Affairs Officer would have identified it. Finally, he added, the Pentagon Chaplain had advised him that permission to film had been granted by DoD and that his appearance had been approved.

In conclusion, BG Caslen acknowledged that although he mistakenly relied on the example and judgment of those respected senior leaders, he should have personally reviewed his own circumstances with an ethics counselor before agreeing to appear. BG Caslen stated he never would knowingly violate DoD's guidance and rules on ethics issues, and resolved to consult closely with his ethics advisor in the future as a matter of standard procedure.

Chaplain Benson

Facts

Chaplain Benson retired from the U.S. Army in March of 2006. He is currently the Director of Ministry for the Metropolitan Washington Airports Interfaith Chapels, Inc. From 2002 through March 2006, he served as Pentagon Chaplain. Chaplain Benson testified that his duties as Pentagon Chaplain entailed providing for the free exercise of faith within the Pentagon installation. He testified that Christian Embassy provided programs that were too large for the Chaplain's office to manage, and estimated Christian Embassy programs attracted 200 to 300 attendees over the course of the year.

Chaplain Benson testified that he was asked to speak on the video after a Wednesday Christian Embassy prayer breakfast and participated in the filming at that time. He was featured on the video in his Battle Dress Uniform, an Army camouflage uniform. He testified that he wore that uniform because it was the one prescribed by the Army Chief of Staff for daily duty wear. His uniform displayed the U.S. flag on his shoulder; the lapels carried the embroidered insignia of the chaplains' corps (a cross, indicating his affiliation with the Christian faith) and his rank.

Chaplain Benson testified that he did not seek counsel concerning wearing his uniform because Christian Embassy already had a longstanding presence in the Pentagon Chapel and in the Pentagon community. He stated that if his appearance had been outside the Pentagon, he would have coordinated the appearance through his supervisor, the Administrative Assistant to the Secretary of the Army, who had legal counsel available.

Chaplain Benson told us that to the best of his recollection, a Christian Embassy representative solicited his remarks on the topic of how that organization had helped him provide ministry for the people that work in the Pentagon. He acknowledged that, although he had not considered it previously, the video was intended to give a "positive spin" to Christian Embassy, so that other military officers would see the featured officers and be impressed with Christian Embassy.

In the video, Chaplain Benson was specifically identified by official position as the Pentagon Chaplain in a text box appearing at the beginning of his response. He was filmed in the Pentagon Chapel, although the view as filmed was not readily identifiable as such. His interview was the last on the video. Prior to his appearance, six military officers in uniform appeared on the video, surrounded by visual military references such as DoD and Joint Chiefs of Staff seals, official flags, and video segments of military personnel going about their business in the Pentagon or in group meetings. His remarks on the video included nothing about the Pentagon Chaplaincy or its mission.

Chaplain Benson was filmed seated, speaking to a person off-camera, saying,

> Christian Embassy is a blessing to the Washington area; it's a blessing to our capital, it's a blessing to our country. They are interceding on behalf of people all over the United States, talking to Ambassadors, talking to people in Congress and the Senate, talking to people in the Pentagon, and being able to share the message of Jesus Christ in a very, very important time in our world as we're in a world-wide war on terrorism. What more do we need than Christian people leading us in values? So they're needed in this hour.

Chaplain Benson testified that he did not intend the video to be shown outside the Christian community.

Discussion

We concluded that Chaplain Benson improperly participated in the promotional video of Christian Embassy in violation of JER Section 3-300.a., because he failed to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview Chaplain Benson, nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because he lacked approval to take part in an official capacity, we concluded Chaplain Benson's participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of Chaplain Benson's personal participation in the videotaped interview contravened this standard by creating the appearance

that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.
- He was identified by his official position on the video, which conveyed an air of official support for his appearance.
- He did not refer to any other volunteer organizations or Chaplaincy programs in his remarks, but referred to Christian Embassy's activities within the Pentagon and the National Capital Region.
- His remarks that Christian Embassy was "a blessing to our country" "in a very, very important time in our world as we're in a world-wide war on terrorism" provided a nexus between his military status and the activities of Christian Embassy. Likewise, his rhetorical inquiry, "What more do we need than Christian people leading us in values? So they're needed in this hour," conferred approval of and support to Christian Embassy, and implied that he spoke from an official military perspective as opposed to a personal one.

Significantly, we believe that as a senior officer in uniform Chaplain Benson could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance, which are detailed above. Those circumstances implied that he was acting with the knowledge and sanction of DoD, and, therefore, acting within the scope of his official position rather than exclusively outside of it.

Based on those circumstances, we also concluded that Chaplain Benson used the authority associated with his public office to imply that DoD endorsed Christian Embassy, in violation of JER Section 2635.702(b), "Appearance of Governmental Sanction." The overall circumstances of his interview emphasized his military status and affiliation, and by implication, the authority associated with his public office. As discussed above, Chaplain Benson's appearance, statements, and identification as Pentagon Chaplain could reasonably be construed to imply that he was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, his actions violated the prohibition of JER Section 2635.702(b).

Finally, because the nature of Chaplain Benson's appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that he violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AR 670-1, "Wear and Appearance of Army Uniforms and Insignia."

Response to Tentative Conclusions

By letter dated May 3, 2007, we offered Chaplain Benson an opportunity to comment on the initial results of our investigation. In a response dated May 31, 2007, Chaplain Benson submitted a number of arguments through counsel disputing our tentative conclusions.

Chaplain Benson contended that this Office violated his due process rights by failing to advise him that he might remain silent or to seek counsel; that this Office lacked authority to investigate any complaint submitted by a non-Federal employee; and that his speech was protected by the Establishment Clause due to his professional status. We determined that Chaplain Benson received such notice and opportunity to respond to which he was entitled by law or regulation, and that this Office had authority to conduct the investigation as an exercise of its plenary authority to investigate matters within DoD.[11] We also disagreed with the Chaplain's assertion that his speech was protected by his professional status. Chaplain Benson was authorized to conduct religious duties and perform religious rites and observances in uniform. However, participating in a promotional advertisement for a non-Federal, albeit nonprofit, entity was not part of his official duties.

Regarding our finding that he improperly endorsed and participated in the activities of a non-Federal entity, Chaplain Benson contended that the terms "private gain" and "affiliated" were not defined in JER Section 2635.702.[12] A Christian Embassy employee testified that the video was filmed to attract personal and financial support for that organization. We find such purposes to constitute "gain" within the meaning of the regulation, and determined that "affiliated" maintained its common dictionary definition.

Chaplain Benson also contended that his appearance could not reasonably be construed to imply that the Government sanctioned or endorsed his personal activities. In that regard we note that Chaplain Benson acknowledged in his testimony to us that he could see why some people would see his appearance in the video as an endorsement, and that "obviously [Christian Embassy] should have put some sort of disclaimer before they showed it."

In addition, his response provided numerous theories as to why a reasonable observer would not believe this video implied DoD and Service sanction. We are unpersuaded by all, but address two of the theories as representative. For example, Chaplain Benson asserted that a reasonable observer would have known that he also said positive things at a Jewish Sefer Torah dedication. Because the video was judged on its content, and bore no other information for a viewer, we cannot agree that a reasonable viewer would know anything about the Sefer Torah dedication. In fact, we found that at that dedication, Chaplain Benson did not endorse a particular Jewish organization and, while participating in the ceremony, was engaged in his

[11] IG Act of 1978 (5 U.S.C. App.) states in pertinent part that "the Inspector General of the Department of Defense shall . . . initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate."

[12] LTC [redacted] raised this assertion as well; our response is the same.

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official duties. Conversely, participation in a promotional video for a non-Federal entity was not one of his duties, but, given his statement, military appearance, surrounding symbols, and duty title, a reasonable observer might not recognize that.

Likewise, we disagree that a reasonable observer would immediately notice that the video was "made by Christians for a Christian audience." Due to modern communication technology (to include the World Wide Web) and print media, the video reached a broad audience. Still photos from the video and excerpts of the military members' statements were published as far away as Turkey, to the extent that Maj Gen Sutton was asked to provide explanations to his Turkish counterparts.

In response to our conclusion that he improperly endorsed Christian Embassy, a non-Federal entity, Chaplain Benson contended that because the "Christian church" is also a non-Federal entity, he could not endorse Christianity in uniform without also endorsing a non-Federal entity -- leading to an illogical result. In our view, Chaplain Benson's argument is off the mark. Christian Embassy -- a non-profit, private organization -- falls squarely within the JER definition of a non-Federal entity; the "Christian church" writ large and Christianity do not. Neither are discrete persons or organizations as contemplated by the JER definition.

Also, Chaplain Benson contended that his interview was not public and that, as a result, he was entitled to be in uniform. He cited a prior case investigated by this Office that appeared to him to be similar to the present case. We find the two cases to be dissimilar in facts and circumstances.

Chaplain Benson's further assertion that the filming was for his own ministry is contradicted by the evidence in the case. Chaplain Benson neither discussed his ministry as Pentagon Chaplain during his interview, nor did he obtain a copy of the video for use by DoD. Moreover, his own testimony to us highlighted his prior knowledge of the true promotional purpose of the video. In discussing the manner in which Christian Embassy broached the video project to him, Chaplain Benson testified, "[Christian Embassy] wanted to do a video that they could use to encourage people within Christian Embassy."

Finally, Chaplain Benson characterized the DoD participants' statements as testimonials, not endorsements; stating that if one were to consider the statements to be endorsements, then the Capitol Hill employees who participated in the video would also be "endorsing" Christian Embassy. The preponderance of the evidence in this case supports our conclusion that the DoD participants' statements concerning Christian Embassy constituted endorsements of that non-Federal entity. With regard to participants from organizations other than DoD, we again note that our review is limited to matters within DoD.

Col [redacted]

Facts

Col [redacted] is a member of the Air National Guard currently serving at Andrews AFB, Maryland, as [redacted] for the National Guard Bureau. Prior to that, she was assigned to Headquarters Air Force Installations and Logistics at the Pentagon.

According to Col [redacted] testimony, she first became involved with Christian Embassy while stationed at the Pentagon when she attended the ladies' Bible studies sponsored by Christian Embassy. During her tour at the Pentagon, she was invited to participate in a "missions trip" to Ethiopia, where she spoke on leadership. She said that she took leave in order to take the trip, and that Christian Embassy paid for her food and lodging.[13] She explained that she took leave and wore civilian clothes for the trip to Ethiopia because she recognized it would not be appropriate to wear her uniform in Ethiopia, on what was a personal mission.

Col [redacted] also testified that Mr. [redacted] from Christian Embassy contacted her after she returned to the United States from Ethiopia and asked her to appear in the video. Col [redacted] told us that she believed the purpose of the video was to record her observations of the Ethiopian trip for Christian Embassy. She testified that she discussed the trip by giving responses to Christian Embassy's questions, although the questioner did not appear on the video.

Col [redacted] appeared in the video in several scenes. In her first appearance she was shown seated, wearing an Air Force uniform combination with blue long-sleeved shirt and tie tab with her nametag, rank, and duty badges visible. She appeared to be laughing, responding to the inaudible comment of a subordinate uniformed officer. The scene then changed to show Col [redacted] wearing civilian business attire and holding a microphone as she stood in front of a civilian audience in Ethiopia; the camera scene then changed to feature several photos of what appeared to be local residents. During those two scenes, a narrator stated, "Colonel [redacted] also visited Ethiopia, where she spoke with female businesswomen on leadership. But what was even more significant was her visit to a feeding center for street orphans." The scene changed to one of Col [redacted], in the same uniform, in the Pentagon Chapel, with part of the "United in Memory"[14] stained glass window clearly visible in the background. She was briefly identified by name, rank, and branch of service in a text box at shoulder level. In the video, Col [redacted] stated,

> I wasn't in my comfort zone, but it was important for me to understand the problems in that country and to see the issues that the Ethiopians are dealing with, but without putting that piece together I

[13] Col [redacted] testified that she did not declare the value of benefits paid by the non-Federal entity on her yearly financial disclosure report.

[14] The "United in Memory" window was created by Army chaplains in partnership with a civilian design firm to memorialize the loss of life in the attack on the Pentagon on September 11, 2001. Its creation and placement was widely publicized.

> could not have appreciated what it meant to help those leaders reach out and understand that.

Midway through her speech, the scenes changed to feature several photos of Ethiopians. A black transition screen appeared briefly while the scene finally changed to footage of the Capitol dome.

Col [redacted] testified that she typically wore her uniform to the Pentagon, where she was asked to appear by Mr. [redacted] Because at the time she was filmed Col [redacted] was stationed at Andrews AFB, the transit time to and from the Pentagon inclusive of the time she spent accomplishing the video totaled approximately 3 hours during the duty day. Col [redacted] also stated that she participated in Bible studies in her uniform and went to chapel in her uniform. Further, she testified that she assumed Christian Embassy had the appropriate permissions to film the video and that she had no reason to believe that there was anything unusual about Christian Embassy's activities in that regard.

Discussion

We concluded that Col [redacted] improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a., because she failed to act exclusively outside the scope of her official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview Col [redacted] nor did she request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because she lacked approval to take part in an official capacity, we concluded her participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of Col [redacted] participation in the videotaped interview contravened this standard by creating the appearance that she was acting within the scope of her official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- She appeared in uniform with her rank clearly displayed.
- She was filmed within the Pentagon in a setting with significant visual impact that conveyed an air of official support for her appearance.
- Footage of Col [redacted] with a subordinate officer in uniform suggested to viewers that she participated in Christian Embassy activities and the interview in the normal course of a duty day.
- Her remark that "it was important for me to understand the problems in that country and to see the issues that the Ethiopians are dealing with, but without putting that piece together I could not have appreciated what it meant to help those leaders reach

out and understand that" while in uniform, as contrasted with her earlier appearance in civilian clothes, suggested that understanding of Ethiopians' issues was in some way related to her duties with the Air Force and DoD.

- Her remarks in uniform in the Pentagon concerning the Ethiopia trip conferred approval of and support to Christian Embassy, and implied that she spoke as a senior military leader rather than just for herself personally.

Significantly, we believe that as a senior uniformed officer Col [redacted] could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding her appearance, which are detailed above. Those circumstances implied that she was acting with the knowledge and sanction of DoD, and, therefore, acting within the scope of her official position rather than exclusively outside of it.

Further, Col [redacted] participated in the Ethiopia trip in civilian clothes, recognizing that it would be inappropriate to wear her uniform and that she must be in a leave status. Her speaking of that event for Christian Embassy's records or any other purpose should have been equally in an unofficial capacity. There was no reason for the video to show Col [redacted] in uniform, in an official setting with a uniformed subordinate, other than to indicate her official position. The fact that she spoke of her experiences in Ethiopia commingled the personal and official aspects of her appearance. The official aspect of her appearance was the more striking, as her uniformed official appearances effectively bracketed her civilian appearance. The video gave the appearance that Col [redacted] trip with Christian Embassy was in some way related to her military duties or to the Air Force.

The factors noted above also support our conclusion that Col [redacted] used the authority associated with her public office to imply that DoD endorsed Christian Embassy in violation of JER Section 2635.702(b), "Appearance of governmental sanction." The overall circumstances of her interview emphasized her military status and affiliation, and, by implication, the authority associated with her public office. As discussed above, her appearance and statements could reasonably be construed to imply that she was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, her actions violated the prohibition of JER Section 2635.702(b).

Finally, because the nature of Col [redacted] appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that she violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AFI 36-2903, "Dress and Personal Appearance of Air Force Personnel."

Response to Tentative Conclusions

By letter dated April 26, 2007, we offered Col [redacted] an opportunity to comment on the initial results of our investigation. In her May 6, 2007, response, Col [redacted] disagreed with our tentative conclusions, and stated that she understood that Christian Embassy had been invited by the Chaplain's office to conduct operations in the Pentagon; that the organization was there with DoD's knowledge and authorization, and that its employees held Pentagon access badges. In

addition, she pointed out that she attended other Chaplain-sponsored religious services and similar observances in uniform and during the duty day, and considered that her appearance in the Christian Embassy video was consistent with her other actions supporting spiritual programs in the workplace at the Pentagon. Finally, Col [redacted] asserted that she did not specifically know for what purpose Christian Embassy desired to use the video, and that she had no reason to know of any impropriety in their activities.

After carefully considering Col [redacted] response, we stand by our initial conclusions. As we addressed in response to BG Brooks' comments, the fact that some Christian Embassy employees held contractor access badges was a clear indication to those who came into contact with those employees that Christian Embassy was a non-Federal entity, and, like a contractor, subject to particular constraints in its relationship with Col [redacted] and other DoD personnel.

We found that Col [redacted] was not engaged in religious observance or in official duty, but appeared favorably commenting on a Christian Embassy program in which she participated in a personal capacity. Her appearances and statements in the video impermissibly commingled her official position and personal activities to such an extent as to create the appearance that she was acting within the scope of her official position rather than exclusively outside of it. In addition, because every military officer bears responsibility for his or her actions, Col [redacted] failure to ascertain the extent of the use of her videotaped interview does not excuse her from consequences of her participation.

Finally, while we recognize that individuals may be permitted use of duty time for personal reasons in exceptional circumstances, Col [redacted] had no such permission, nor did she have permission to participate in an interview for any purpose while in uniform.

LTC [redacted]

Facts

LTC [redacted] is currently assigned to the Operations Directorate, Headquarters Department of the Army. Prior to that, and during his participation in the filming of the Christian Embassy video, he was assigned to the Pentagon as a [redacted] Directorate for Command, Control, Communications, and Computer Systems, Joint Staff.

LTC [redacted] testified that he first became involved with Christian Embassy through an acquaintance who knew that LTC [redacted] was a Christian and had attended Bible studies in the past. Through this individual, LTC [redacted] began attending a Bible study sponsored by Christian Embassy in the Pentagon on Thursdays from noon to 1:00 p.m. LTC [redacted] said that when his acquaintance was transferred to another duty location, LTC [redacted] agreed to take over as "facilitator," or leader, of the group, in charge of organizing readings and discussions. LTC [redacted] testified that Christian Embassy representatives usually did not attend the group, but put together and provided the lesson plans and outlines for each week's study. LTC [redacted] stated that that as a facilitator he collected the lesson plans from the Christian Embassy Web site and e-mailed them to other group members to prepare for the group discussion.

LTC [redacted] told us that Mr. [redacted] requested that he appear in the video that was being produced to show potential financial supporters what Christian Embassy did in the Pentagon. LTC [redacted] said that he agreed based in part on his knowledge that Christian Embassy was a nonprofit organization, and because he thought well of the Christian Embassy sponsored Bible study, which was more convenient for him to attend rather than one at a private church after duty hours. LTC [redacted] also testified that at the interview, which he attended in uniform with rank epaulettes, Mr. [redacted] asked a question to which he responded. LTC [redacted] said that at the time, the question and response were both "on camera." He began his remarks as a speaker in a corridor in the Joint Staff area, where the interview was filmed, though the scene changed midway through his remarks to include scenes of a group of uniformed Army, Navy, and Air Force officers, among whom LTC [redacted] appeared to be praying. The scene then returned to LTC [redacted] at the conclusion of his remarks.

LTC [redacted] video segment is the first of three consecutive segments featuring interviews with military participants. The prior segment ended with a black screen. That screen changed to a view of the Pentagon's River entrance. The camera zoomed in on a bronze plaque which read, "Department of Defense." The plaque view transitioned to a montage of 14 individual segments featuring military members, views of officers in meetings or engaging in similar Pentagon activity, and a camouflage-colored Bible. The last scene was a close-up of the official seal of the Department of Defense. The camera then went to an aerial view of the Pentagon, and then faded to LTC [redacted] During the montage of military activity in the Pentagon, a narrator stated,

> There are over 25,000 Department of Defense leaders working in the rings and corridors of the Pentagon. Through Bible studies, discipleship, prayer breakfasts, and outreach events, Christian Embassy is mustering these men and women into an intentional relationship with Jesus Christ.

As the camera focused on LTC [redacted] he stated,

> These godly men are taking godly principles that they are learning in the Christian Embassy Bible studies and they're applying those things to their personal lives, and as a result they're going to go out and they're going to lead men and their soldiers are going to benefit from the fact that they are military men who are also godly men.

LTC [redacted] testified that he did not seek counsel prior to his appearance in the video. LTC [redacted] stated that he supposed, in hindsight, having heard some of the concerns about the video, someone might draw the conclusion that the video seemed to imply DoD endorsement, although he did not perceive the video to be such an endorsement.

Discussion

We concluded that LTC [redacted] improperly participated in the promotional video of Christian Embassy, a non-Federal entity, in violation of JER Section 3-300.a., because he failed

to act exclusively outside the scope of his official position. Although Christian Embassy had received permission to film the Pentagon Chaplain's ministry within the Pentagon itself, it did not likewise receive permission to interview LTC [redacted] nor did he request or receive permission to participate in the interview in uniform, in an official capacity, or within an official venue. Because LTC [redacted] lacked approval to take part in an official capacity, we concluded his participation in the Christian Embassy interview was personal in nature.

Section 3-300.a. of the JER permits DoD employees to voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act "exclusively outside the scope of their official positions." The circumstances of LTC [redacted] personal participation in the videotaped interview contravened this standard by creating the appearance that he was acting within the scope of his official position, rather than exclusively outside of it. This conclusion was based on our determination that:

- He appeared in uniform with his rank clearly displayed.
- He was filmed in the Joint Staff hallway of the Pentagon, a setting with significant visual impact that conveyed an air of official support for his appearance.
- The presence of other uniformed military personnel in a conference room with him in a subsequent shot, as well as his official location, suggested to viewers that he participated in the interview in the normal course of a duty day.
- His statements on the video conferred approval of and support to Christian Embassy, and implied that he spoke for a group of military leaders rather than just for himself. Specifically, he remarked that military personnel were "godly men" who were "taking godly principles that they are learning in the Christian Embassy Bible studies" and "applying those things to their personal lives." LTC [redacted] statement that those personnel would lead and benefit their soldiers as a result of Christian Embassy Bible study activity implied a nexus between Christian Embassy activities and the effectiveness of military leaders.

Significantly, we believe that as a uniformed officer LTC [redacted] could reasonably be perceived by non-DoD audiences to be an official DoD spokesperson. This perception was only enhanced by the additional circumstances surrounding his appearance, which are detailed above. Those circumstances implied that he was acting with the knowledge and sanction of DoD, and, therefore, acting within the scope of his official position rather than exclusively outside of it.

We also concluded that LTC [redacted] used the authority associated with his public office to imply that DoD endorsed Christian Embassy in violation of JER Section 2635.702(b), "Appearance of governmental sanction." The overall circumstances of his interview emphasized his military status and affiliation, and, by implication, the authority associated with his public office. As discussed above, LTC [redacted] appearance and statements could reasonably be construed to imply that he was an official spokesperson who sanctioned or endorsed the activities of Christian Embassy on behalf of DoD. As such, his actions violated the prohibition of JER Section 2635.702(b).

Finally, because the nature of LTC [redacted] appearance in uniform without the required approval implied Service sanction of Christian Embassy, we also concluded that he violated the uniform wear restrictions of DoDD 1334.1, "Wearing of the Uniform," and AR 670-1, "Wear and Appearance of Army Uniforms and Insignia."

Response to Tentative Conclusions

By letter dated April 27, 2007, we offered LTC [redacted] an opportunity to comment on the initial results of our investigation. In his June 1, 2007, response through counsel, LTC [redacted] disagreed with our tentative conclusions. He asserted that this Office violated his due process rights by failing to advise him that he might remain silent or to seek counsel; that our investigator was biased because he used the word "unfortunately" during the interview with regard to LTC [redacted] participation in the video; and that we lacked authority to investigate any complaint submitted by a non-Federal employee. We determined that LTC [redacted] received such notice and opportunity to respond to which he was entitled by law or regulation. We further determined that the investigator's use of the word did not constitute bias, and that this Office had authority to conduct the investigation as an exercise of its plenary authority to investigate matters within DoD.

LTC [redacted] contended that his speech was protected by the Establishment Clause applying a "reasonable observer" standard established by U.S. Supreme Court case law. We reviewed the case law cited in his response, but found the cases unrelated in fact and circumstance to that of the Christian Embassy video.

In addition, LTC [redacted] contended that no reasonable observer would see his participation in the video as DoD endorsement, and asserted that his participation was exclusively outside the scope of his official position because he was authorized to be identified by rank. We determined that his appearance violated the JER not because he was identified by his name and rank, but because his appearance in military uniform under the circumstances detailed above suggested Government endorsement. We disagreed with his assertions concerning what a "reasonable person" would know, particularly the relative importance of a lieutenant colonel in the Pentagon and the assertion that it would be obvious that the video was created for a Christian audience.

Like Chaplain Benson, LTC [redacted] described his case as "analogous" to that of a prior individual investigated by this Office. We find the two cases dissimilar in both facts and circumstances.

LTC [redacted] also alleged that he did not improperly appear in uniform because he had no reason to believe there was a need for permission to appear in the video; and because his appearance was beneficial to DoD. LTC [redacted] contention that no one expressed any concerns to him about his appearance in uniform is irrelevant: whether or not he is familiar with the regulations concerning his dress, appearance, and conduct, he is held to those standards. Moreover, as a general principal, we do not believe that the unauthorized endorsement of a non-Federal entity is in the best interest of DoD.

Finally, LTC [redacted] also contended that he was "neither responsible for where the video was filmed nor responsible for any of the visual effects in the video." We disagree. Every military officer bears responsibility for his or her actions. Having participated in a videotaped interview in uniform, LTC [redacted] failure to ascertain the extent of the use of that appearance does not excuse him from consequences of his participation.

C. Did Chaplain Benson provide a selective benefit to Christian Embassy by obtaining permission for Christian Embassy to film in the Pentagon?

Standards

DoDI 5410.19, "Public Affairs Community Relations Policy Implementation," dated November 13, 2001

Paragraph E2.1.12., "Community Relations Activity," defines the term as

> Any officially planned program, sequence or series of events, or individual action by a DoD Component, unit, or person designed to achieve and maintain good relations with an element of the civilian community or the community at large.

E2.1.52, "Selective Benefit," defines the term as

> Support or assistance that benefits an individual or organization that is not normally available or could not be made available to other individuals or organizations of a similar category.

Paragraph 6.7.2., "Selective Benefit and Preferential Treatment," states

> Community relations activities shall not support, or appear to support, any event that provides a selective benefit to any individual, group, or organization, including any religious or sectarian organization, ideological movement, political campaign or organization, or commercial enterprise, to include a shopping mall or motion picture promotion. When DoD support is provided to one non-Federal entity, the DoD Component commands or organizations providing such support must be able and willing to provide similar support to comparable events sponsored by similar non-Federal entities.

Facts

As detailed above, in Section II, Background, Chaplain Benson requested and received approval from OASD(PA) for a Christian Embassy film crew, escorted by members of the Pentagon Chaplain's office, to film aspects of the Pentagon Chaplain's ministry on February 4,

2004, from 6:00 a.m. through 3:00 p.m. That approval was used to facilitate filming of the Christian Embassy promotional video at issue in this case.

Mr. [redacted] the [redacted] of the Audiovisual branch of OASD (PA), Defense Press Operations, is a current approval authority for filming within the Pentagon. He testified that, in general, filming permission for Pentagon events may be granted for news, informational, or archival purposes. He confirmed that Pentagon religious events were sometimes filmed by civilian media within the Pentagon. However, he noted that documentary filming of these events was not to promote or endorse a particular organization.

In response to our request that he review Chaplain Benson's e-mail request for permission to film, Mr. [redacted] testified that the wording of the e-mail would lead him to believe the film crew intended to go to the Pentagon Chaplain and Chapel to perhaps film some of the Chaplain's assistants setting up for Catholic Mass or another religious service. Mr. [redacted] noted that, if the e-mail request had accurately identified the activity as a promotional video for a non-Federal entity, he would not have approved it and would have expected any requests describing this type of film to be run "up the chain," to be, he believed, denied.

Mr. [redacted] further testified that he had no knowledge of the 2001 Christian Embassy video that featured senior personnel in the Pentagon. Having viewed the 2004 Christian Embassy video, Mr. [redacted] classified the video not as a documentary, but as a promotional video for that organization and its members.

According to Mr. [redacted] (and other knowledgeable witnesses) other religious events were filmed at the Pentagon. Chaplain (Colonel) [redacted] U.S. Army, who succeeded Chaplain Benson as Pentagon Chaplain, provided samples of these films: Al-Jazeera filmed a Muslim observance for broadcast; Headquarters U.S. Army Public Affairs filmed an archival video of the annual Pentagon Iftar dinners;[15] a Jewish organization was permitted to attend, report on, and photograph the Aleph Institute's donation of a Sefer Torah to the Pentagon; the Defense Intelligence Agency Multi-Media Branch filmed a Chaplain's Office Pentagon Prayer Breakfast co-sponsored by Christian Embassy; and Army Television also filmed a National Prayer Breakfast speaker. Although some videos contained footage of military members in uniform participating in religious observances, none of the films contained footage of military members speaking on behalf of a private non-Federal organization as in the Christian Embassy video.

Concerning the issue of escorts, Mr. [redacted] testified that escorts were required from a Public Affairs standpoint not only to allow the crew to access the building, but also to ensure that the crew was filming appropriate things. Chaplain Benson's e-mail message stated that his office would provide escorts for Christian Embassy personnel; however, the testimony of Mr. [redacted] and several of the interviewees established that no employee or officer of the Pentagon Chaplain's office, to include Chaplain Benson, escorted the film crew. Rather, Christian Embassy employees with no official DoD affiliation escorted the crew.

[15] Iftar is the communal meal that breaks the fast each day during the Islamic holy month of Ramadan.

Chaplain Benson testified that Christian Embassy staff told him that the video would be used to encourage other people within Christian Embassy's group. He also testified that, although he did not think he was told "up front" that the video would be promotional in nature, the fact that it was did not surprise him because, as a missionary society, Christian Embassy needed to raise funds and promote itself. Chaplain Benson also told us that in obtaining permission for Christian Embassy to film in the Pentagon, it was not his intention that the organization should take that permission as endorsement by DoD.

He said that other faiths videotaped their ministries; for instance, the Iftar service; a Seder service, and a Hanukkah service, but that no other faith had produced a video like Christian Embassy's promotional video. He further testified that while he had seen the earlier Christian Embassy video in 2002, he had not seen the completed 2004 video, and it had not been shown by Chapel personnel. He conceded that the 2004 video appeared to be for the purposes of Christian Embassy.

Discussion

We concluded that Chaplain Benson provided a selective benefit to Christian Embassy, a non-Federal entity, in violation of DoDI 5410.19, "Public Affairs Community Relations Policy Implementation." Chaplain Benson's official request as Pentagon Chaplain on behalf of Christian Embassy in support of their video provided a benefit to Christian Embassy that could not be made available to others. Because the JER and DoDI 5410.15, "DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media," prohibit official endorsement of non-Federal entities, OASD(PA) staff was without authority to approve the filming of a Christian Embassy promotional video in the Pentagon. OASD(PA)'s approval of Chaplain Benson's request, based on the apparent erroneous belief that he desired assistance in filming an archival video of Pentagon Chaplaincy events, provided an unauthorized selective benefit to Christian Embassy. In addition, Chaplain Benson's failure to escort the Christian Embassy film crew provided additional selective benefit, giving the film crew free reign in the Pentagon when film crews from other organizations were escorted by Public Affairs or other DoD personnel. Mr. [redacted] did not work for Chaplain Benson or DoD, but was allowed unprecedented freedom to film within the Pentagon.

Further, in light of all of the evidence, we determined that Chaplain Benson knew or reasonably should have known that the video was for the promotion of a non-Federal entity. He was aware that other officers were featured in it and he participated personally.

We note that informational videos do not promote or endorse a private organization. For instance, the news network Al-Jazeera was authorized to film Pentagon Muslim service for broadcast and journalists for a Jewish organization were authorized to photograph the installation of a Torah within the Pentagon and include the photos in a news article about the event. Based on our review of these news items, we found that the products were not designed to promote or solicit on behalf of any non-Federal entity, but to disseminate information about current events to interested groups.

We therefore concluded that Chaplain Benson provided a selective benefit to Christian Embassy that was not normally available and could not be made available to other organizations of a similar category.

Response to Tentative Conclusions

By letter dated May 3, 2007, we also offered Chaplain Benson an opportunity to comment on the initial conclusions with respect to this issue. In a response dated May 31, 2007, Chaplain Benson submitted a number of arguments through counsel disputing our tentative conclusion.

Chaplain Benson asserted that the Christian Embassy crew was escorted. However, Chaplain Benson could not name the person who escorted Christian Embassy personnel, responding, "somebody . . . probably somebody who had escort privileges." Except for his own presence during his own participation, a preponderance of the evidence established that Christian Embassy was not accompanied by any individual working for the Chaplain's office. Although Chaplain Benson had granted Christian Embassy escort privileges by sponsoring their contractor badges, they were not members of his office, and did not have authority to videotape or photograph on the Pentagon Reservation without the permission of OASD (PA). Furthermore, Christian Embassy had no permission to film on any date after February 4, 2004.

Chaplain Benson also asserted that the wording of Section 3.1.3 of DoDI 5410.15, "DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media," requires solicitation of direct contributions to the selective benefit of any person or organization in addition to endorsement to constitute a violation of that Instruction. After thoroughly reviewing the provision, we disagree and interpreted the section as listing "solicitation" as one of a number of factors that would adversely affect DoD participation.

V. OTHER MATTERS

During the course of the investigation, we discovered that the Pentagon Chaplain authorized contractor badge status for 34 apparently religiously-affiliated volunteers, to include Christian Embassy employees. Of these 34 volunteers, 19 appear to be Christian clergy, including the retired Chaplain Benson. One is a Rabbi. Five are volunteers unaffiliated with a "parachurch" group. The remaining nine pass holders are affiliated with Navigators, Campus Crusade for Christ (including Christian Embassy), or the Gideons.

The volunteers have no fiscal or fiduciary relationship with DoD. They and similar groups operate at the Pentagon because the Pentagon Chaplain has historically considered the office understaffed to meet the spiritual needs of the Pentagon populace: he has one deputy chaplain and one chapel assistant. Although there are other Services' chaplains at the Pentagon, some of whom minister to Pentagon personnel, the Pentagon Chaplain does not have directional control over other Service chaplains not directly assigned to his office.

Pentagon Administrative Instruction 30, "Security for the Pentagon Reservation," provides descriptions and requirements for a number of access badges. A contractor badge allows unescorted 24-hour Pentagon access, and the privilege to escort no more than 10 people into the Pentagon. Another, and seemingly more appropriate badge for volunteers, is a "Visitor, No Escort Required" pass, which may be certified for up to 1 year. That badge allows building access between 6 a.m. and 8 p.m., and would be sufficient for bona-fide volunteer personnel to access the building for their activities with the Chaplain's Office.

According to the Administrative Instruction, a contractor badge is issued to "personnel under contract to, or assisting, the Department of Defense (contractor, concessionaire, instructor, and maintenance) and who are U.S. citizens, U.S. nationals, naturalized citizens, or immigrant aliens." We are unconvinced that volunteers are included within the intended group of persons "assisting" DoD, despite a frequent "need" for access. All of the stated examples in the Instruction include a fiscal or fiduciary relationship between the pass holder and DoD. Particularly when the volunteer is employed by a private entity, and is engaged in the work of that entity and not that of the DoD when "volunteering," we suggest that a contractor badge is not appropriate for these individuals.

We recommend review of the issuance of contractor passes to volunteers by the Administrative Assistant to the Secretary of the Army, and a review by the Pentagon Force Protection Agency as to whether or not the passes in question should be revoked or modified to a more appropriate pass category.

Further, as noted in Section IV. C. above, the Christian Embassy film crew operated unescorted, giving them free reign to film throughout the Pentagon. We recommend that OASD(PA) review procedures to ensure film crews operating within the Pentagon are appropriately escorted and monitored.

VI. CONCLUSIONS

A. Mr. Geren and Ms. [redacted] did not improperly endorse or participate with a non-Federal entity.

B. Maj Gen Sutton, Maj Gen Catton, BG Brooks, BG Caslen, Chaplain Benson, Col [redacted] and LTC [redacted] improperly endorsed and participated with a non-Federal entity while in uniform while appearing in a promotional video for Christian Embassy.

C. Chaplain Benson provided a selective benefit to Christian Embassy by obtaining permission for Christian Embassy to film a promotional video in the Pentagon.

VII. RECOMMENDATIONS

A. That the Secretary of the Air Force and the Chief of Staff of the Army consider appropriate corrective action with respect to the military officers concerned.

b(6)
b(7)(C)

B. As discussed in the "Other Matters" section of this report, that the Administrative Assistant to the Secretary of the Army and the Pentagon Force Protection Agency initiate inquiries into the manner and appropriateness of issuance of contractor badges to volunteer personnel.

C. As noted in the "Other Matters" section of this report, that OASD(PA) review procedures to ensure film crews operating within the Pentagon are appropriately escorted and monitored.

D. That Col [redacted] confer with her DoD ethics advisor to determine whether she should file an amended Financial Disclosure Report for 2005 to report receipt of travel reimbursement from outside sources in 2004.

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Department of Defense

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