

Fielding Requests for Use of Government Resources: Is the Event Official or Unofficial?

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*There is something about a sense of entitlement and of having great power that skews people's judgement.*¹

I. Introduction

The new aide to the Deputy Commanding General (DCG) knocks on your office door. The DCG will be promoted to Major General next Friday. The following evening he will host a small gathering at his quarters. Glancing down at his green notebook, the aide reads you the DCG's request list: the band's jazz pieces to play background music; Soldiers to serve food, tend bar, and valet cars; and, Department of Public Works (DPW) to put port-o-johns in the backyard. "Oh, and I almost forgot," the aide exclaims, "he also wants his assistant to send out the invitations through official mail. Do you see any issues?"

Judge advocates (JAs) must frequently review requests to use government resources, often for events appearing unofficial in nature. Recent high-profile investigations regarding the use of government resources for personal benefit² highlight the importance of effectively advising senior officials about these requests.³ The proactive JA

should be integrated into the unit or installation planning process to spot potential issues with improper use of government resources and resolve problems before they occur.⁴ Often, well-meaning commanders and staffs unintentionally misuse government resources due to lack of awareness rather than malicious intent.

Even when not used for personal gain, government employees may violate rules when they use resources to primarily benefit a private organization⁵ or other non-federal entity (NFE).⁶ Rules differ depending on the type of resource,⁷ the type of function,⁸ and even the type of NFE.⁹

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¹ Margaret Collins & Gopal Ratnam, *Robert Gates Says Power Can Skew a General's Judgment*, BLOOMBERG BUSINESSWEEK, Nov. 15, 2012, <http://www.bloomberg.com/news/2012-11-15/panetta-asks-for-review-of-officers-ethics-amid-turmoil.html> (quoting former U.S. defense secretary Robert Gates's comments at a conference in Chicago where he "cited recent cases of generals criticized for lavish spending of public funds").

² See Inspector Gen., U.S. Dep't of Def., No. 11-119226-153, Report of Investigation: General William E. Ward, U.S. Army, Commander, U.S. AFRICOM (26 June 2012), available at http://www.dodig.mil/fo/foia/pdfs/wardroi_redacted.pdf [hereinafter DoD IG ROI—Gen. Ward] (finding that General Ward misused Government funds, aircraft, vehicles, personnel, and his position for personal use); Inspector Gen., U.S. Dep't of Def., No. 11H118481105, Report of Investigation: Admiral James G. Stavridis, U.S. Navy, Commander, U.S. EUCOM (3 May 2012), available at [http://www.dodig.mil/fo/foia/PDFs/AdmStavridisROI\(FINAL\)_Redacted.pdf](http://www.dodig.mil/fo/foia/PDFs/AdmStavridisROI(FINAL)_Redacted.pdf) [hereinafter DoD IG ROI—Adm. Stavridis] (finding that Admiral Stavridis misused Government aircraft and cellular telephones for personal use); see also Tom Vanden Brock, *Sense of Entitlement Behind Military Ethics Scandals?* USA TODAY, Nov. 14, 2012, <http://www.usa-today.com/story/news/nation/2012/11/13/generals-behavior-military-petraeus-allen/1702119/> (reporting that General Ward was ordered to repay the government \$82,000).

³ The DoD IG Investigation of General Ward revealed that the AFRICOM Staff Judge Advocate (SJA) often reviewed the Invitational Travel Orders permitting Mrs. Ward to accompany General Ward on official travel. See DoD IG ROI—Gen. Ward, *supra* note 2, at 11. While the exact wording of the legal advice was redacted for Freedom of Information Act (FOIA) release, the SJA opined that some trips were unofficial and his advice was not followed. See *id.* at 36, 46. In other instances General Ward slightly altered trips, such as adding a meeting to give the trip legitimacy. See *id.* at

37, 41, 42, 44. The DoD Inspector General (IG) determined that these trips were unofficial and constituted misuse of resources and travel funds. *Id.* at 42, 44; see also U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY 6-1, 6-24 (18 Mar. 2013) [hereinafter FM 1-04], at vi ("To succeed in today's operational environment, judge advocates are master general practitioners effective in their roles as lawyers, ethics advisors, counselors, and rule of law practitioners.").

⁴ See FM 1-04 *supra* note 3 (stating that JAs participate in the planning process by providing analysis and contemporaneous legal advice during the plan development phase and should become involved early to resolve issues before they become "mission stoppers" or result in courses of action that are not legally supportable).

⁵ See U.S. DEP'T OF DEF., 5500.7-R, JOINT ETHICS REGULATION (JER) para. 3-303b. (30 Aug. 1993) (C7, 17 Nov. 2011) [hereinafter JER] (prohibiting the use of personnel to support the unofficial activity of another DoD employee in support of non-Federal entities (NFEs)); Inspector Gen., U.S. Dep't of Def., No. H11L120171242, Report of Investigation: Lieutenant General David H. Huntoon, U.S. Army, Superintendent, U.S. Military Academy, at 26 (1 May 2012), available at <http://www.dodig.mil/foia/ERR/H11L120171242.pdf> [hereinafter DoD IG ROI—Lt. Gen. Huntoon] (holding that government personnel were misused to prepare and serve meals for the West Point Women's Club annual charity fundraiser).

⁶ See JER, *supra* note 5, para. 1-221 (defining non-Federal entity (NFE) 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").

⁷ Compare U.S. DEP'T OF ARMY, REG. 58-1, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para. 2-3 (12 Jun. 2014) [hereinafter AR 58-1] (restricting use of Army-owned or controlled non-tactical vehicles (NTVs) to official purposes and not authorizing any personal use) with JER, *supra* note 5, para. 2-301 (authorizing use of federal communications systems, such as telephones and internet systems, for some personal use such as "e-mailing directions to visiting relatives," provided certain conditions are met).

⁸ See AR 58-1, *supra* note 7, paras. 2-3, 2-4 (permitting transportation by Army-owned vehicle to a retirement ceremony but not to private social functions).

⁹ See JER, *supra* note 5, at paras. 3-202b, 3-210 (describing certain non-federal entities that are authorized by statute to receive special support). Compare U.S. DEP'T OF DEF., INSTR. 5410.19, PUBLIC AFFAIRS

Judge advocates must possess a firm grasp of the rules and a solid understanding of the analytical framework in order to accurately and efficiently process these requests. Official and unofficial events are distinguishable based upon their purpose, funding, and sponsor.¹⁰ Government resources may only be used for official events, unless an exception permits their use for unofficial events.¹¹ This primer defines official, unofficial events, and government resources, and provides general rules regarding their use. Part II establishes a test to determine whether resources may support an event. Part III examines frequently-encountered events¹² and the resources authorized to support them. Finally, Part IV revisits and analyzes the opening scenario.

II. Framework and Analysis¹³

A. Framework

Properly analyzing requests to use government resources¹⁴ begins with the Principles of Ethical Conduct¹⁵ because statute and regulation cannot foresee and capture the infinite and creative ways commanders and senior officials seek to use resources. These principles guide JAs and commanders where law and regulation are silent or inconclusive.¹⁶ Even where actions could be explained or

justified, the ethics principles require employees to guard against the perception of illegality or impropriety.¹⁷

The ninth principle of ethical conduct states that employees have a responsibility to “protect and conserve Federal property and shall not use it for other than authorized activities.”¹⁸ The Standards of Conduct for Executive Branch Employees reiterate this language, prohibiting the use of government property for anything other than “authorized purposes.”¹⁹ Authorized purposes are “those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.”²⁰

The ability to use government resources depends on whether a specific law or regulation allows the contemplated use.²¹ This requirement for affirmative authority contrasts other areas of the law, where conduct is legal, unless prohibited.²² Analyzing a use of resource request begins with fiscal law and the principle that positive authority must support a decision to spend funds, rather than authorizing expenditures because no law or regulation prohibits it.²³

Of course, statute and regulation do not list every permissible use of government resources, and often

COMMUNITY RELATIONS POLICY IMPLEMENTATION enclosure 10 (13 Nov. 2001) [hereinafter DoDI 5410.19] (detailing transportation, communication, medical, administrative and security support authorized for annual conventions of certain designated national military associations), with JER, *supra* note 5, para. 3-211 (containing the rules for limited logistical support to NFEs not authorized specialized support as per other guidance).

¹⁰ See discussion *infra* Part II.B.

¹¹ See *id.*

¹² This article does not address government resource support to NFE fundraisers. For a detailed treatment of this topic, see Teresa A. Smith, *Everything You Always Wanted to Know About Official Support to Non-Federal Entity Fundraisers*, ARMY LAW., Feb. 2000, at 1.

¹³ A table of commonly-used resources is available at Appendix B.

¹⁴ Government resources include all real and personal property the Government owns or leases, such as government-issued cellular phones and government vehicles, and intangible property interests purchased with government funds, such as employee time, use of a subordinate’s time, and services of contractor personnel. See 5 C.F.R. §§ 2635.704 -705 (2014).

¹⁵ Exec. Order No. 12,731, pt. 1 (Oct. 17, 1990), reprinted in 5 C.F.R. § 2635.101(b)(1)–(14) (2014). See also Memorandum from Sec’y of Def., to Secretaries of the Military Departments et al., subject: Ethics, Integrity, and Accountability (2 May 2012).

¹⁶ For example, Army regulation does not state whether or not an employee may travel by government vehicle to a NFE event where the employee will act as a guest speaker. See AR 58-1, *supra* note 7, paras. 2-3, 2-4. The Office of Government Ethics provided some clarification stating that employees may utilize a government vehicle to travel to a NFE event where the employee will present information on behalf of the agency in an official capacity, on official time. See Memorandum from General Counsel, Office of Gov’t Ethics, to Designated Agency Ethics Officials, subject: Speaking and Similar Engagements Involving Presentation of Information on Behalf

of the Agency (7 Sept. 2012).

¹⁷ 5 C.F.R. § 2635.101(b)(14) (2014).

¹⁸ 5 C.F.R. § 2635.101(b)(9) (2014). Though perhaps overlooked, government employees and their use of ‘on-the-clock’ or official time are also government resources. The fifth ethics principle reminds employees that government time must be used in an “honest effort to perform official duties.” *Id.* § 2635.101(b)(5). There is also an affirmative obligation to disclose “waste and abuse” of government resources. *Id.* § 2635.101(b)(11).

¹⁹ *Id.* § 2635.704(a).

²⁰ *Id.* § 2635.704(b)(2).

²¹ See *id.*

²² Criminal law contains the most prevalent example of this legal framework, providing that conduct may not be prosecuted or punished absent a specific prohibition applicable at the time of the conduct. See U.S. CONST. art. I, § 9, cl. 3 (prohibiting states from enacting ex post facto laws). Ex Post Facto laws are those “done or made after the fact; having retroactive force or effect.” BLACK’S LAW DICTIONARY 661 (9th ed. 2009). See also Beth Van Schaack, *Crimen Sine Lege: Judicial Lawmaking at the Intersection of Law and Morals*, 97 GEO. L.J. 119, 121 (2008) (“One of the most fundamental defenses to a criminal prosecution is that of *nullum crimen sine lege, nulla poena sine lege* (‘no crime without law, no punishment without law’). In its simplest translation, this Latin maxim asserts the ex post facto prohibition: that conduct must be criminalized and penalties fixed in advance of any criminal prosecution.”) (quoting PAUL JOHANN ANSELM RITTER VON FEUERBACH, *LEHRBUCH DES GEMEINEN IN DEUTSCHLAND GÜLTIGEN PEINLICHEN RECHTS* (1801)).

²³ See *United States v. MacCollum*, 426 U.S. 317, 321 (1976) (“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”).

generally state that government resources must be used for “official purposes.”²⁴ Many regulations charge commanders with deciding whether a function is “official,” for the purpose of whether a particular resource can be used.²⁵ Because the regulations do not universally define “official purposes” or “official use,” they create the appearance that the term “official use” is resource-dependent.²⁶ Several authorities induce additional confusion by using the term “authorized uses” under the same heading as “official uses.”²⁷ In light of the various definitions and usages of ‘official,’ ‘authorized,’ and ‘unofficial,’ a three-part test that examines an event’s purpose, funding, and sponsor will help properly determine whether government resources may be used.²⁸

²⁴ JER, *supra* note 5, para. 2-301b (stating that “[f]ederal Government resources, including personnel, equipment, and property, shall be used by DoD employees for official purposes only,” except for certain authorized uses that are listed therein); AR 58-1, *supra* note 7, para. 2-3 (stating that “[t]he use of Army-owned or controlled nontactical vehicles is restricted to official purposes only,” but listing examples of authorized use); U.S. DEP’T OF ARMY, REG. 25-1, ARMY INFORMATION TECHNOLOGY para. 5-3f (25 June 2013) [hereinafter AR 25-1] (restricting multimedia and visual information products and services to official use).

²⁵ See U.S. DEP’T OF ARMY, REG. 360-1, THE ARMY PUBLIC AFFAIRS PROGRAM para. 7-2 (25 May 2011) [hereinafter AR 360-1] (delegating authority to local commanders to decide whether resources such as ceremonial troop units may participate in parades, sporting events, or at shopping malls); U.S. DEP’T OF ARMY, REG. 220-90, ARMY BANDS para. 2-2 (14 Dec. 2007) [hereinafter AR 220-90] (“The commanding general responsible for a band will decide in accordance with applicable regulations what events are ‘official’ and authorized band support before committing the band.”); AR 58-1, *supra* note 7, para. 2-3 (referring to public ceremonies, military field demonstrations, and parades in stating that “[a] commander, or his or her principal staff officer, will determine whether the event in question is of significantly high interest as to warrant the use of official Government transportation for general attendance”).

²⁶ See U.S. DEP’T OF DEF., 4500.36-R, MANAGEMENT, ACQUISITION AND USE OF MOTOR VEHICLES para. C2.5 (16 Mar. 2007) [hereinafter DoD 4500.36-R] (defining “official purposes only” as those necessary to perform one’s agency mission as authorized by that agency) (citing U.S. GEN. SERVICES ADMIN. FINANCIAL MANAGEMENT REGULATION § 102-34.200); DoDI 5410.19, *supra* note 9, enclosure 2, para. E2.1.22.7 (defining “Official DoD Event (Function)” as “[a]n event sponsored by the Department of Defense, a DoD Component, or a command using appropriated funds, conducted in support of an assigned mission, including purposes of esprit de corps, primarily for active duty personnel (including Federalized National Guard members) and civil service personnel, dependants, and guests”); *id.* para. E2.1.22.8 (defining “Official Federal Government Event (Function)” as “[a]n event sponsored solely by an element of the Federal Government and paid for solely with appropriated funds, in which officials of any branch of the Federal Government are involved in the performance of their official duties”); AR 220-90, *supra* note 25, para. 2-2 (14 Dec. 2007) (stating that events promoting morale of an entire military population, supporting recruiting, or improving community relations may be deemed ‘official’).

²⁷ See AR 220-90, *supra* note 25, para. 2-3b (grouping both official military functions and official civil ceremonies and functions under the same heading of “[a]uthorized participation”); AR 58-1, *supra* note 7, para. 2-3 (listing public ceremonies and official internal ceremonies under the same heading of “official ceremonies”).

²⁸ A graphic explaining official, authorized and unofficial uses of government resources is provided at Appendix 1.

B. Analysis

Judge Advocates can determine the official or unofficial nature of an event by examining its purpose, funding, and sponsor.²⁹

1. Purpose

First, determining an event’s purpose should not occur in a vacuum and often requires active engagement to ascertain the commander’s intent.³⁰ Official events are necessary to perform the Department of Defense (DoD) mission or conduct DoD business.³¹ Mission accomplishment includes activities related to morale, welfare, and *esprit de corps* of service members.³² Commanders have considerable discretion in deciding whether government resources are necessary to execute the mission.³³ This discretionary authority mirrors the necessary expense doctrine of the fiscal law purpose test.³⁴ General purpose appropriations, such as Operations and Maintenance, Army (OMA), do not list all possible expenditures, but expenditures against that appropriation must bear a logical relationship to the appropriation’s language.³⁵ Similarly, government employees may only use government resources in a manner consistent with the purposes for which they were acquired.³⁶

²⁹ See sources cited *supra* note 26 and accompanying text.

³⁰ See FM 1-04, *supra* note 3, para. 6-4 (“Legal advice is based upon an understanding of the commander’s intent and is shaped by situational awareness of events occurring in the operational environment.”)

³¹ See DoD 4500.36-R, *supra* note 26, para. C2.5 (defining official purposes to mean “to perform the mission of the DoD components as authorized by the DoD components”); JER, *supra* note 5, para. 2-301 (defining “official use” of communications systems as those “necessary in the interest of the Federal Government”).

³² See U.S. DEP’T OF DEF., DIR. 1015.10, MILITARY MORALE, WELFARE AND RECREATION (MWR) PROGRAMS para. 4 (6 Jul. 2009) (C1, 6 May 2011) [hereinafter DoDI 1015.10] (stating that DoD policy requires the military components to establish MWR programs in order to “maintain individual, family, and mission readiness” and recognizing that “[m]ilitary MWR programs...are an integral part of the military and benefits package”).

³³ See DoD 4500-36-R, *supra* note 26, para. C2.5.1 (“The determination as to whether a particular use is official is a matter of administrative discretion to be exercised within applicable laws and regulations.”) *But see* AR 220-90, *supra* note 25, para. 2-2 (“Commanders are not authorized to declare an event, or any portion of it, ‘official’ if the sole purpose in doing so is to reduce the cost of a social event to participants or to avoid hiring of civilian musicians.”).

³⁴ See 1 U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-261SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW ch. 4, pt. B, sec. 1, at 4-19 – 4-20 (3d ed. 2004 & Supp. 2013), available at <http://www.gao.gov/legal/redbook/redbook.html>.

³⁵ See *id.* at 4-22.

³⁶ See DoD 4500.36-R, *supra* note 26, para. C2.5.1 (listing criteria for deciding whether to use Government vehicles, including whether the use is “essential to the successful completion of a DoD function, activity, or

Unofficial events are not necessary to the DoD mission and serve commercial, political, entertainment, personal, or social purposes.³⁷ The Government Accountability Office outlined some events that are inappropriate for use of government resources—purely social events where an individual attends in his personal capacity; purely political events, such as fundraisers or party meetings; events people attend because of their ethnic, religious, or educational background, and not to carry out official duties; and private or non-profit fundraisers.³⁸

2. Funding Source and Sponsor

After examining an event's purpose, establish the source of the event's funding and its sponsor. Government funds, either appropriated³⁹ or non-appropriated,⁴⁰ cover expenses

operation” and “consistent with the purpose for which the motor vehicle was acquired”).

³⁷ See, e.g., DoDI 5410.19, *supra* note 9, enclosure 2, para. E2.1.8 (stating that concerts, dinners and other entertainment performances sponsored by NFEs are not authorized for musical, marching, or other personnel units); AR 58-1, *supra* note 7, para. 2-4b (“Official motor vehicle transportation requirements do not include: transportation to private social functions; personal errands or side trips for unofficial purposes; transportation of dependants or visitors without an accompanying official; or in support of non-DoD activities unless specifically approved under the provisions of Army Regulations.”); AR 220-90, *supra* note 25, para. 2-4 (prohibiting Army bands from participating in political meetings, events to stimulate sales or commercial business, or events that would selectively benefit any person, group or corporation); AR 360-1, *supra* note 25, para. 7-3f (prohibiting Army musicians from participating in events for commercial interests).

³⁸ Letter to the Head of an Agency, Dir., Off. of Gov’t Ethics (OGE), No. 85 X 9 (12 July 1985).

³⁹ See DoDI 5410.19, *supra* note 9, enclosure 2, paras. E2.1.22.7—8 (defining official events as events using appropriated funds); AR 220-90, *supra* note 24, glossary (defining “official military function” as “[a] military sponsored event that uses appropriated funds . . . and which has been designated as ‘official’ in accordance with paragraph 2-3”). Dividing official events from unofficial events on the basis of an event’s funding presumes that appropriated funds (APFs) are properly expended for the official event in the first place. Authorization for Temporary Duty (TDY) entitlements or travel costs should not be used as a gauge of the official nature of an event the traveler attends because TDY funds can be used to pay for official participation in unofficial events. See JER, *supra* note 5, para. 3-211a. Instead look to the funds paying for the event the employee will attend. The request to travel in an official capacity to support an unofficial event, such as a speaker at a NFE event, must first go through the legal and ethical analysis of whether or not logistical support can be provided under JER para. 3-211a. Under a separate analysis, TDY travel authorization and entitlements can be authorized only where an employee’s travel to attend is “necessary to conduct official Gov’t business.” See U.S. DEP’T OF DEF., JOINT FEDERAL TRAVEL REGULATIONS, UNIFORMED SERVICE MEMBERS, vol. 1, para. U4000 (10 Oct. 2012) (C327, 1 Mar. 2014) [hereinafter JFTR], available at [http://www.defensetravel.dod.mil/Docs/perdiem/JFTR\(Ch1-10\).pdf](http://www.defensetravel.dod.mil/Docs/perdiem/JFTR(Ch1-10).pdf).

⁴⁰ See U.S. DEP’T OF ARMY, REG. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NON-APPROPRIATED FUND INSTRUMENTALITIES para. 6-1 (24 Sept. 2010) [hereinafter AR 215-1] (describing the criteria for unit funds, which are appropriated or non-appropriated funds used to host recreational events for the collective benefit of all unit members); *id.* para. 8-29 (stating that unit-level programs, such as

of official events. A unit, DoD agency, or element of the Federal government sponsors official events.⁴¹ Use of these benchmarks captures official morale, welfare and *esprit de corps* events,⁴² officially programmed public affairs activities,⁴³ and official social events to extend diplomatic courtesies to non-DoD guests.⁴⁴

On the other hand, personal funds,⁴⁵ informal funds,⁴⁶ or NFE funds,⁴⁷ fund unofficial events. Using these types of private funds to pay for an official event violates fiscal law by augmenting a unit’s operating budget.⁴⁸ A private organization, individual, or NFE sponsors unofficial events.⁴⁹ Unless authorized by written agreement, DoD

welcome home celebrations, may be funded with appropriated funds (APFs), as category A mission essential activities, or with non-appropriated funds (NAFs), where APFs are not available).

⁴¹ See DoDI 5410.19, *supra* note 9, enclosure 2, paras. E2.1.22.7—8; U.S. DEP’T OF DEF., DIR. 5410.18, PUBLIC AFFAIRS COMMUNITY RELATIONS POLICY para. 4.8.15 (20 Nov. 2001) (certified current 30 May 2007) [hereinafter DoDD 5410.18] (“To receive DoD support as an Official Federal Government Event, activities hosted by the Congress or other Federal Agency must be sponsored solely by a member of Congress, the Secretary of the U.S. Senate or the Secretary of the U.S. House of Representatives, or by a senior official of another Federal Agency, acting in an official capacity, and be paid for solely with appropriated funds of the requesting Federal Agency.”).

⁴² See AR 215-1, *supra* note 40, para. 1-8 (stating that the Army Morale, Welfare, and Recreation (MWR) program directly supports Soldier and unit readiness); *id.* para. 5-1 (explaining that the basic financial standard for all categories of MWR programs is to use APFs to fund 100 percent of the costs).

⁴³ See DoDD 5410.18, *supra* note 41, para. 4.2.1.

⁴⁴ See U.S. Dep’t of Army, Reg. 37-47, Official Representation Funds of the Secretary of the Army para. 2-1a (28 Sept. 2012) [hereinafter AR 37-47].

⁴⁵ For example, personal funds can be used to pay for unofficial social luncheons hosted at one’s home. See DoD IG ROI—Lt. Gen. Huntoon, *supra* note 5, at 26 (explaining how Lieutenant General Huntoon used his personal funds to pay for the War College Ladies Luncheon, an event the DoD IG determined to be unofficial); see also Colonel Malcolm H. Squires, Jr. & Lieutenant Colonel Linda K. Webster, *Business Entertainment Expense Deductions by Service Members*, ARMY LAW., Dec. 1996, at 13, 17 (asserting that individual service members should be able to deduct the “costs of dining-ins or dining-outs, hails and farewells, promotion parties, retirement parties, and similar functions of a ‘mandatory’ nature” as business expenses).

⁴⁶ Informal funds can be used for a host of unofficial activities, such as social activities not authorized APF support. See U.S. DEP’T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE app. J, paras. J-2e, J-7 (13 Mar. 2013) [hereinafter AR 608-1]; U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 4-20 (6 Nov. 2014) [hereinafter AR 600-20].

⁴⁷ The Association of the United States Army’s (AUSA) Annual Meeting provides an example. See generally Headquarters, Dep’t of the Army, Operations Order for Army Participation in the 2013 Association of the Army’s (AUSA) Annual Meeting, Annex W (Legal Guidance) (2013).

⁴⁸ See Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b) (2006).

⁴⁹ See AR 360-1, *supra* note 25, para. 3-2 (providing examples of various types of NFE organizations that sponsor community relations events).

organizations and NFEs may not co-sponsor an event.⁵⁰ With few exceptions, government resources can support government-funded, government-sponsored events.⁵¹

3. Exceptions Authorizing Use

When an event's purpose, funding source, and sponsor lead to a determination that an event is unofficial, the final step of the three-part test requires examining the regulations for an exception authorizing the use. Government resources may support unofficial events, but only where law or regulation affirmatively authorizes the use.⁵² The Joint Ethics Regulation (JER) sets out the four basic authorized use exceptions: communications systems,⁵³ official time,⁵⁴ logistical support to NFE events,⁵⁵ and other government resources.⁵⁶ The JER also lists NFEs who share a special relationship with the DoD, entitling them to receive exceptional levels of official resource support.⁵⁷

The exceptions for authorized use of communications systems and other federal government resources allow minor personal uses of office equipment at no additional cost to the government.⁵⁸ The exception for use of official time permits

employees to participate in non-profit professional associations and learned societies,⁵⁹ and to prepare, present, and publish papers in professional journals.⁶⁰ Supervisors can also permit employees to attend NFE meetings and training, on official time, to gather valuable information for the DoD.⁶¹

The exception for logistical support to NFE events applies to the bulk of requests for support to unofficial events. It authorizes commanders to provide DoD employees as speakers, panel members, or other participants, DoD facilities and equipment, and the services of DoD employees to help make proper use of the equipment.⁶² Unofficial public events that showcase DoD's color guards, marching units, and parachute teams may be authorized under this exception.⁶³ A commander's decision to provide logistical support to a NFE event requires an analysis of the factors listed in JER 3-211a.⁶⁴ The service regulations governing the requested resources, such as those covering vehicles,⁶⁵ the band,⁶⁶ or a public speaker,⁶⁷ may further limit use of resources. The regulations provide abundant examples of unofficial uses, restrictions, and unauthorized practices.⁶⁸ The following section discusses events that

⁵⁰ See JER, *supra* note 5, para. 3-206 (stating the rule and criteria for an exception including a written co-sponsorship agreement); U.S. DEP'T OF ARMY, DIR. 2014-01, ARMY CONFERENCE POLICY 22 (18 Dec. 2013) [hereinafter ARMY DIR. 2014-01] (explaining requirements for co-sponsored conferences).

⁵¹ See AR 220-90, *supra* note 25, para. 2-3; AR 58-1, *supra* note 7, para. 2-3a; AR 360-1, *supra* note 25, para. 7-2a. But see e.g., U.S. DEP'T OF ARMY, DIR. 2007-01, POLICY FOR TRAVEL BY DEP'T OF THE ARMY OFFICIALS 4 (25 Jan. 2007) [hereinafter ARMY DIR. 2007-01] (distinguishing retirement and change of command ceremonies as only being considered "official events" for the senior official formally representing the Department of the Army when using government aircraft); AR 360-1, *supra* note 25, para. 7-3a (prohibiting Army musicians on official duty from providing background, dinner, or dance music at events funded solely by NAFs).

⁵² See *supra* notes 18-21 and accompanying text.

⁵³ See JER, *supra* note 5, para. 2-301a.

⁵⁴ See *id.* para. 3-300.

⁵⁵ See *id.* para. 3-211a.

⁵⁶ See *id.* para. 2-301b (such as typewriters, calculators, libraries and other similar resources and facilities).

⁵⁷ See *id.* para. 3-212. For instance statute authorizes the Secretary of the Army to provide the following support to annual conventions of military associations, such as the AUSA Annual Meeting: limited air and ground transportation; communications; medical assistance; administrative support; and security support. See 10 U.S.C. § 2558 (2006). Non-Federal entities operating on DoD installations also enjoy special support. See U.S. DEP'T OF DEF., INSTR. 1000.15, PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS enclosure 3 (24 Oct. 2008) [hereinafter DoDI 1000.15]; U.S. DEP'T OF ARMY, REG. 210-22, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS (22 Oct. 2001) [hereinafter AR 210-22].

⁵⁸ See JER, *supra* note 5, para. 2-301.

⁵⁹ See *id.* para. 3-300b.

⁶⁰ See *id.* (also permitting use of administrative support personnel to assist with papers and presentations).

⁶¹ Employees may attend meetings, conferences, or similar events sponsored by NFEs in an official capacity to receive training or gather information of value to the DoD even if not acting as an official speaker or other participant. See *id.* para. 3-200. But see ARMY DIR. 2014-01, *supra* note 50, at 23—26.

⁶² See JER, *supra* note 5, para. 3-211a(2); DoDI 5410.19, *supra* note 9, enclosure 2, para. E2.1.60; see also AR 58-1, *supra* note 7, para. 2-3a (authorizing official participants to travel by government vehicle).

⁶³ See JER, *supra* note 5, para. 3-211a.

⁶⁴ See *id.* para. 3-211a(1)—(7) (permitting logistical support of NFE events where the head of the DoD command or organization determines all of the following: (1) support does not interfere with official duties or detract from readiness; (2) the event serves DoD community relations or public affairs; (3) the event is proper for association with the DoD and Military Department concerned; (4) the event benefits the local civilian community, command providing support, or DoD; (5) the command/organization is able and willing to provide support to comparable events; (6) the proposed use of the resources is not restricted by other law or regulation; and, (7) the event will not charge an admission fee above reasonable costs of sponsoring the event).

⁶⁵ See AR 58-1, *supra* note 7.

⁶⁶ See AR 220-90, *supra* note 25.

⁶⁷ See AR 360-1, *supra* note 25.

⁶⁸ See JER, *supra* note 5, para. 2-301 (stating that DoD employees such as secretaries, clerks, and military aides, many not be used to support the unofficial activity of another DoD employee in support of NFEs absent specific exceptions); U.S. DEP'T OF ARMY, REG. 25-2, INFORMATION ASSURANCE para. 4-5r (24 Oct. 2007) (RAR 23 Mar. 2009) [hereinafter AR 25-2] (prohibiting use of government communication systems for

require units to closely walk the line between their official and unofficial nature, thus raising frequent questions regarding use of government resources.

III. Common Events Requesting Use of Resources⁶⁹

Having set forth a test that distinguishes official events from unofficial events, the next portion of this article applies the test to frequently-encountered events that present JAs with challenging questions regarding the use of government resources. Many of these events have both unofficial and official purposes and/or sponsors.⁷⁰ Application of the test allows JAs to decide if an event is official or unofficial, or where combined, to carefully segregate each event into its official and unofficial portion(s), determine whether government resources may be authorized, and if authorized, define the portion(s) during which government resources may be used.⁷¹

A. Official Ceremonies and Receptions

When analyzing a request for government resources, JAs must differentiate official ceremonies from their closely-related social receptions, which are generally conducted afterwards. Ceremonies conducted pursuant to officially-regulated events, such as change of command, change of responsibility, unit activation, deactivation, promotion, and retirement,⁷² are official events.⁷³ Award ceremonies are also official events, as regulation states that the presentation

of awards should be conducted with an “appropriate air of formality and fitting ceremony.”⁷⁴ Appropriated funds pay for these ceremonies because they are necessary to carry out an authorized function, such as the turnover of a unit’s commander.⁷⁵ Military units execute these ceremonies as part of official internal business.⁷⁶ Government resources properly support these official ceremonies because they are government-sponsored, officially-funded, and necessary to execute an authorized mission.⁷⁷

Announcements of official ceremonies, such as a change of command,⁷⁸ can be sent through official mail and may state the location and time of a “directly related reception,” so long as there are no additional costs, advertisements, or endorsements.⁷⁹ The commander’s staff can avoid pitfalls when planning an official ceremony by using the magic words, “a reception will be held directly following the ceremony,” on the same cardstock or e-mail⁸⁰ as the official ceremony announcement.

Judge advocates can use the three-part test to distinguish official ceremonies, which are authorized government resources, from the social receptions that traditionally follow. The purpose, funding source, and sponsor of social receptions show that such events are unofficial functions,

pornography, copyright infringement, gambling, chain letters, unofficial advertising, or violations of law); AR 220-90, *supra* note 25, para. 2-4 (prohibiting use of the band for political meetings, motion picture premieres, fashion shows, beauty pageants, etc.); ARMY DIR. 2007-01, *supra* note 51, at 4 (limiting use of government aircraft for travel to retirements, change of command ceremonies, and funerals to the senior official formally representing the Department of the Army).

⁶⁹ Practice pointers about how to approach these issues are available in Appendix C.

⁷⁰ See discussion *infra* Part III.A., E., and F.

⁷¹ See discussion *infra* Part III.E.

⁷² See U.S. DEP’T OF ARMY, REG. 600-25, SALUTES, HONORS, AND VISITS OF COURTESY para. 6-4 (24 Sept. 2004) (“Military personnel being retired after long and faithful service will be given appropriate recognition at retirement to include reviews, ceremonies, or other similar functions.”).

⁷³ See AR 58-1, *supra* note 7, para. 2-3a(2); AR 220-90, *supra* note 25, paras. 1-5a(4), 2-3(a); AR 360-1, *supra* note 25, para. 7-2a. Army Directive limits use of government aircraft to travel to funerals, retirements, and change of command ceremonies, stating that such travel is only considered “official” for the senior official formally representing the Department of the Army. All other travelers who accompany the official representative must reimburse the government for the equivalent full coach fare. See ARMY DIR. 2007-01, *supra* note 51, at 4. Funerals are authorized other official support such as funeral honors details. See U.S. DEP’T OF ARMY, REG. 600-8-1, ARMY CASUALTY PROGRAM para. 2-12 (30 Apr. 2007) [hereinafter AR 600-8-1].

⁷⁴ U.S. DEP’T OF ARMY, REG. 600-8-22, MILITARY AWARDS para. 1-32 (11 Dec. 2006) (RAR 24 June 2013) [hereinafter AR 600-8-22].

⁷⁵ See AR 600-20, *supra* note 46, para. 1-5.

⁷⁶ See AR 58-1, *supra* note 7, para. 2-3a(2); U.S. DEP’T OF ARMY, FIELD MANUAL 3-21.5, DRILL AND CEREMONIES ch. 10 (7 July 2003) (C1, 12 Apr. 2006).

⁷⁷ See *supra* note 73 and accompanying text.

⁷⁸ See U.S. DEP’T OF DEF., 4525.8-M, DoD OFFICIAL MAIL MANUAL para. C.1.3.10 (26 Dec. 2001) [hereinafter DoD 4525.8-M]; U.S. DEP’T OF ARMY, REG. 25-51, OFFICIAL MAIL AND DISTRIBUTION MANAGEMENT para. 2-20e (14 Jan. 2015) [hereinafter AR 25-51]; see also Availability of Funds for Printing Invitations to Coast Guard Change of Command Ceremony, Comp. Gen. B-186998, Nov. 9, 1976, 56 Comp. Gen. 81 (permitting use of appropriated funds for printing change of command ceremony invitations).

⁷⁹ See DoD 4525.8-M, *supra* note 78, para. C.1.3.10; AR 25-51, *supra* note 78, para. 2-20e. But see *id.* para. C.1.4.6 (prohibiting official mail for “invitations to social functions to satisfy personal social obligations, even if they are the result of an official position. For example, Christmas parties and receptions hosted by senior commanders are not official business”); AR 25-51, *supra* note 78, para. 2-21f (mirroring the language of the DoD Manual); *id.* para. 2-21h (listing “retirement announcements” as an unauthorized use of official mail).

⁸⁰ Adding reception information to an e-mailed announcement mirrors the official mail use rule, and also meets the requirements for incidental personal use of government communications systems. See JER, *supra* note 5, para. 2-301a. A separate email for the reception that is sent to a large group would likely violate the JER prohibition on communications that overburden the system. See *id.* para. 2-301a(e). Upon the occasion of a subordinate’s promotion, commanders can also send a congratulatory note through official mail for *esprit de corps*. See AR 25-51, *supra* note 78, para. 2-21g (also authorizing letters of condolence).

and, therefore, the host is not authorized to use government resources, absent an exception.⁸¹ The individual promoted, or the incoming commander, typically pays for such receptions with personal funds,⁸² and hosts them for customary entertainment purposes⁸³ unnecessary to the function of his or her position. Official representation funds may not pay for these events.⁸⁴

Commanders should carefully weigh a decision to provide logistical support to social receptions given the personal social nature⁸⁵ and frequency of these events. These events rarely satisfy the JER criteria permitting support to a NFE event⁸⁶ because they do not serve community relations, public affairs, or military training interests,⁸⁷ and do not fit within customary public affairs or community relations activities envisioned by the exception.⁸⁸ Additionally, providing support to every individual promotion or retirement party may be too burdensome on limited resources.⁸⁹ The rank or position of the party's host should not alter this analysis.⁹⁰

⁸¹ See AR 58-1, *supra* note 7, para. 2-4b ("Official motor vehicle transportation requirements do not include: transportation to private social functions...."); DoD 4525.8-M, *supra* note 78, para. C.1.4.6 (prohibiting official mail to be used for "invitations to social functions").

⁸² Food and refreshments normally form the basis for the cost of such events. Appropriated funds are not generally authorized to purchase food. See Department of The Army—Claim of the Hyatt Regency Hotel, Comp. Gen. B-230382, Dec. 22, 1989 (unpub.) (reiterating that APFs cannot pay for "entertainment" expenses such as buffets, refreshments and coffee, unless specifically authorized by statute); see also Squires & Webster, *supra* note 45, at 17 (stating that individuals pay for promotion, retirement, and change of command parties with personal funds).

⁸³ See Squires & Webster, *supra* note 45, at 17 (stating that promotion, retirement and change of command parties are functions of a 'mandatory' nature as a result of military customs and courtesies).

⁸⁴ See AR 37-47, *supra* note 44, para. 2-10b (2) (stating that Official Representation Funds (ORF) will not be used to pay for "receptions and similar expenses in connection with ceremonies for the retirement of DoD personnel, change of command, or activation, deactivation, or disestablishment of a command or agency").

⁸⁵ See *supra* note 38 and accompanying text.

⁸⁶ See JER, *supra* note 5, para. 3-211a (1)–(7).

⁸⁷ See *id.* para. 3-211a(2).

⁸⁸ See *id.* para. 3-211a(6).

⁸⁹ See *id.* para. 3-211a(5) ("[t]he DoD Component command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar non-Federal entities"). A commander's decision to provide logistical support to unofficial events requires that the commander be willing and able to provide the same benefit to all similar personnel and events. It may, for example, be entirely possible to allow promoted Soldiers to use a conference room for social receptions after the ceremonies, but the commander must weigh the possibility of numerous similar requests into the analysis to grant the use to the first Soldier.

⁹⁰ Though guidance regarding rank or position preferences is not specifically mentioned in the exception for logistical support, other resource regulations guard against such a practice. See AR 58-1, *supra* note 7, para.

Finally, commanders may not task subordinates to work unofficial social receptions.⁹¹ The JER prohibits use of government time or personnel for other than official duties or authorized uses "because of the potential for significant cost to the Federal Government, and the potential for abuse."⁹² The law also proscribes this conduct, stating that "[n]o officer of the Army may use an enlisted member of the Army as a servant."⁹³

B. Family Readiness Group (FRG) Events

Like official ceremonies and unofficial receptions, FRG activities require careful distinction between their official and unofficial nature to protect against misuse of government resources. Family Readiness Groups perform an important official mission,⁹⁴ but typically sponsor unofficial events as well.⁹⁵ In their official capacity, FRGs help the commander maintain Soldier and Family readiness throughout the deployment cycle by facilitating effective communication and assisting Soldiers and Family members.⁹⁶ When conducting activities that serve this official mission,⁹⁷ FRGs act in their official role, and receive

2-4a ("Vehicles will not be provided when the justification is based solely on reasons of rank, position, prestige, or personal convenience.").

⁹¹ See U.S. DEP'T OF DEF., INSTR. 1315.09, UTILIZATION OF ENLISTED PERSONNEL ON PERSONAL STAFFS OF GENERAL AND FLAG OFFICERS enclosure 3, paras. 1.e., 3 (6 Mar. 2015) [hereinafter DoDI 1315.09] (providing that enlisted aides may not be used for duties that only serve a General Officer's personal benefit or have no substantive connection with the General Officer's official duties and responsibilities). But see *id.* enclosure 3, para. 1.h. (authorizing General Officers to employ enlisted aides in a voluntary, paid, off-duty status).

⁹² JER, *supra* note 5, para. 3-303.

⁹³ 10 USC § 3639 (2006); see also DoD IG ROI—Lt. Gen. Huntoon, *supra* note 5, at 25–27 (finding that Lieutenant General Huntoon misused subordinates to prepare and serve food at three unofficial social events and an unofficial charitable fund-raising dinner; to teach driving lessons to a family member; and to care for a friend's cats). The DoD IG concluded that the luncheons were a misuse of official time because they occurred during the duty day. The other events, as they were conducted outside duty hours, were considered a misuse of his official position to induce subordinates to perform services, and—even if they volunteered—an improper acceptance of gifts from subordinates. See *id.* at 28–29. The investigation of General Ward revealed that members of his staff acted as unofficial aides to Mrs. Ward: carrying and loading her groceries, driving her to personal social engagements, and picking-up her dry cleaning. See DoD IG ROI—Gen. Ward, *supra* note 2, at 45.

⁹⁴ See AR 608-1, *supra* note 46, app. J, paras. J-1, J-2.

⁹⁵ See *id.* para. J-2e (describing such events as enhancing camaraderie, and reducing stress and family loneliness during deployments).

⁹⁶ See *id.* para. J-1b.

⁹⁷ See *id.* para. J-2d (listing mission-essential FRG activities, including "FRG member meetings, FRG staff and committee meetings, publication and distribution of FRG newsletters, maintenance of updated Family rosters and Family readiness information, establishment of FRG member telephone trees and e-mail distribution lists, and scheduling educational briefings for FRG members").

appropriated fund (APF) support and full use of government resources, including facilities, vehicles, and office equipment.⁹⁸ The purpose, funding, and sponsor of such events—all three prongs of the test—lead one to conclude that the event is official and permitted use of government resources.

Family Readiness Groups also coordinate unofficial activities, such as parties, social outings, and fundraisers—but these functions are not part of their official duties.⁹⁹ Family Readiness Group informal funds sponsor and pay for these events.¹⁰⁰ Therefore, the FRG may not use government resources to support these unofficial activities,¹⁰¹ absent an exception.

C. Training Events

Training events, like official ceremonies and FRG functions, may have closely-related unofficial social or entertainment components. Training events can occur both on and off the military installation; events such as staff rides frequently involve significant travel.¹⁰² While staff rides form part of a professional development program¹⁰³ and serve legitimate training requirements,¹⁰⁴ they may misuse travel entitlements and resources for social purposes.

Official training events constitute part of a unit's government-funded operating expenses¹⁰⁵ and may involve

government resources when executed for an official purpose.¹⁰⁶ Similarly, staff ride attendees may travel by government vehicle¹⁰⁷ and receive TDY entitlements,¹⁰⁸ where the staff ride will provide robust training. Robust training requires individual study and preparation before the culminating trip to visit the site of a military campaign.¹⁰⁹ Examining the agenda for a staff ride may reveal travel to entertainment venues or social events where use of government vehicles—even where attendees are in a TDY status—¹¹⁰ constitutes misuse. Judge advocates should highlight these unofficial events to protect commanders from potential violations.¹¹¹

D. Morale, Welfare, Recreation (MWR) and *Esprit de Corps* Events

In contrast to the unofficial social and entertainment events covered thus far, the DoD sponsors official athletic, recreation and entertainment programs it deems essential to sustaining the health and readiness of service members.¹¹² Commanders may request resources for official MWR programs, such as vehicles to transport Soldiers to “Commander’s Cup” competitions.¹¹³ Morale, Welfare and Recreation events are sponsored by a federal government entity; however, as they receive a portion of their funding from NAF activities,¹¹⁴ regulations restrict the ability to use some resources for MWR events.¹¹⁵

⁹⁸ See *id.* para. J-3; see also Major Laura A. Grace, Good Idea Fairies: How Family Readiness Groups and Related Private Organizations Can Work Together to Execute the Good Ideas, ARMY. LAW., Sept. 2012, at 25, 27, 30.

⁹⁹ See AR 608-1, *supra* note 46, paras. J-2e, J-7; Grace, *supra* note 98, at 26.

¹⁰⁰ See AR 608-1, *supra* note 45, para. J-7.

¹⁰¹ See *id.* paras. J-2c, J-3. But see para. J-3b (authorizing unofficial information in FRG newsletters provided such information does not exceed twenty percent of the print space for official information, increase costs, or contain advertisements).

¹⁰² See WILLIAM G. ROBERTSON, THE STAFF RIDE 5 (Ctr. for Mil. Hist. Pub. 70-21, 1987) (1944), available at http://www.history.army.mil/html/books/070/70-21/CMH_Pub_70-21.pdf (defining a staff ride as a “systematic preliminary study of a selected campaign, an extensive visit to the actual sites associated with that campaign, and an opportunity to integrate the lessons derived from each”).

¹⁰³ See U.S. DEP’T OF ARMY, REG. 350-1, ARMY TRAINING AND LEADER DEVELOPMENT para. 4-8c (19 Aug. 2014) [hereinafter AR 350-1] (directing commanders to conduct professional leader development).

¹⁰⁴ See *id.* para. 2-44f (8) (directing commanders to conduct individual and collective training events throughout the year).

¹⁰⁵ See U.S. DEP’T OF DEF., REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION vol. 2A, ch. 1, para. 010201 (last modified Nov. 2012) [hereinafter FMR], available at <http://comptroller.defense.gov/fmr.aspx>.

¹⁰⁶ See *supra* note 24 and accompanying text.

¹⁰⁷ See *id.*

¹⁰⁸ See JTR, *supra* note 39, para. 4000.

¹⁰⁹ See ROBERTSON, *supra* note 102, at 5.

¹¹⁰ See AR 58-1, *supra* note 7, para. 2-3j(2) (prohibiting travel by government vehicle for entertainment purposes, such as concerts or sporting events). But see *id.* (permitting travel for comfort and health, including travel to eating establishments).

¹¹¹ See DoD IG—ROI Adm. Stavridis, *supra* note 2, at 17—18. In analyzing whether Admiral Stavridis misused government aircraft, the DoD IG stated that even where a trip may be beneficial to DoD or help to develop a strong relationship with other important individuals who may also be in attendance at an event, the guiding principle was whether the travel was “essential for the furtherance of Government business.” *Id.* at 18. Furthering government business may not be merely remote or incidentally associated with a trip. *Id.* The DoD IG used this test to determine that Admiral Stardivis’ trip to Burgundy, France, for induction into the Brotherhood, a wine and cuisine enthusiast’s club, was unofficial travel in violation of applicable regulations, despite the fact that he conversed with a French government official seated at the same table. *Id.*

¹¹² See DoDI 1015.10, *supra* note 32, at para. 4.

¹¹³ See, e.g., Fort Bliss Family and Morale, Welfare & Recreation, <http://www.blissmwr.com/intramurals/> (last visited Jan. 23, 2015) (highlighting Fort Bliss Commander’s Cup standings).

¹¹⁴ See AR 215-1, *supra* note 40, paras. 3-7 to 3-9 (defining Category A programs as mission-sustaining activities that are funded almost entirely with APF, and Category B and C programs as not directly related to mission but still eligible for APF support where they are unable to generate enough

An exception authorizes bus transportation for Soldiers and dependents to travel to MWR events designed to enhance morale, welfare, and *esprit de corps*.¹¹⁶ When analyzing whether to commit these resources, the commander must prioritize mission-essential needs for government vehicles above MWR events; he or she may not procure additional vehicles for MWR purposes.¹¹⁷ In isolated or remote duty locations, government vehicles purchased with APFs can support a wider range of morale activities.¹¹⁸

Official MWR activities also include unit organization days and welcome home ceremonies, which qualify for APF support and use of government resources.¹¹⁹ To meet criteria, unit personnel must plan and host these activities on the installation¹²⁰ for the collective benefit of all unit members.¹²¹ In some cases, however, units plan elaborate, personally-funded recreational trips that do not meet regulatory criteria for unit funds and cannot use official resources, such as vehicles.¹²²

revenue independently); *id.* app. D (outlining funding authorizations for each line item of MWR programs).

¹¹⁵ See *id.* para. 13-4a (restricting use of government vehicles purchased with APF for MWR programs except buses which may be used); DoD 4525.8-M, *supra* note 78, para. C.1.4.1. (stating that APF postage may not be used to in support of NAF Instrumentalities (NAFIs)); AR 360-1, *supra* note 25, para. 7-3a (prohibiting Army bands from providing background, dinner, or dance music at events funded solely by NAFs); Memorandum from Deputy Commanding Gen., Dep't of Army, U.S. Army IMCOM, to Director, Northeast Region et al., subject: Army 10-Miler (undated) (prohibiting APF from paying travel costs to the Army 10-Miler).

¹¹⁶ See AR 58-1, *supra* note 7, para. 5-5 (including events such as a chaplain's marriage retreat, an installation-sponsored team's competition in an athletic event, and DoD personnel and family members cheering on a command-sponsored team's participation in a local sporting event).

¹¹⁷ See *id.* para. 2-3e.

¹¹⁸ See Major Thomas H. Dobbs, The Use of Government-Owned Vehicles for the Comfort or Health and Welfare of Personnel in Deployed or Remote Locations, ARMY LAW., Apr. 2007, at 1.

¹¹⁹ See AR 215-1, *supra* note 40, para. 8-29 (authorizing APF support for unit-level activities as category A mission essential programs that "maintain mission readiness, improve unit teamwork, and create esprit [sic] de corps. Espirit [sic] de corps may include such activities as welcome home celebrations"); AR 220-90, *supra* note 25, para. 2-3a(4) (authorizing bands to play at military-sponsored athletic competitions and organization days on the installation).

¹²⁰ See AR 215-1, *supra* note 40, para. 8-16j (defining unit recreation activities as planned and conducted by unit personnel in the unit area).

¹²¹ See *id.* para. 6-1c (requiring that unit funds collectively benefit all unit members for off-duty recreational purposes; afford an opportunity for all unit members to participate in any planned events; and activities must relate to the morale, welfare, and recreation of the unit).

¹²² See Military and Civil Law Division, U.S. Army Europe, *Organization Days Versus "Organization Daze,"* ARMY LAW., Aug. 2007, at 60, 61 [hereinafter *Organization Daze*].

E. Unit Social Events: Military Balls, Dining-Ins, and Hail and Farewells

In addition to unofficial recreational trips, units also plan elaborate social and entertainment events to promote cohesion and *esprit de corps*; these events also raise many questions as to the use of government resources. Generally, military balls and similarly-designed events are social events, which are not considered official activities.¹²³ Ticket sales, unit informal funds, or private organization funds pay for the cost of sponsoring these events.¹²⁴ As unofficial events, government resources can only support such events where specifically authorized.¹²⁵

Commanders may designate a portion of a unit ball as mandatory unit training or professional leader development.¹²⁶ This 'official' portion of the event—usually an introduction comprised of patriotic music, the presentation of colors and an official speech—can utilize such resources as the band and color guard; government equipment to print an official program; and, government vehicles to transport the equipment and official speaker.¹²⁷ However, the remaining portions of the event—serving social and entertainment purposes—are unofficial. Relabeling unofficial events as "training," or requiring attendance to secure official resources will create misuse.¹²⁸ Commanders may not require Soldiers to purchase a ticket for the official portion of the ball.¹²⁹

Hails and Farewells foster unit cohesion by welcoming

¹²³ See AR 25-1, *supra* note 24, para. 5-3f ("As a general rule, social events such as military balls and hails and farewells are unofficial and considered entertainment except where Nationally or historically significant."); *Organization Daze*, *supra* note 122, at 61 ("This office has generally concluded that hails and farewells, dining ins/outs, military balls, holiday office parties, and social events at private or government quarters are not official organization events or functions.").

¹²⁴ See AR 608-1, *supra* note 46, app. J, para. J-7c(2) (informal funds intended for unofficial FRG social activities can be used to fund welcome and farewell events).

¹²⁵ See 5 CFR § 2635.704 (2014).

¹²⁶ See AR 350-1, *supra* note 103, para. 4-8c.

¹²⁷ See AR 58-1, *supra* note 7, para. 2-3 (stating that vehicles are to be used for official purposes); AR 360-1, *supra* note 25, para. 7-2e (authorizing musical, ceremonial, and troop unit support for traditional military events such as military balls and dining-ins); *id.* para. 6-3a (stating that official public speaking is mission related and may be charged against normal travel and per diem accounts); AR 25-2, *supra* note 68, para. 4-5r(4) (stating that government communications equipment is to be used for official and authorized purposes).

¹²⁸ See AR 220-90, *supra* note 25, para. 2-2 ("Commanders are not authorized to declare an event, or any portion of it, 'official' if the sole purpose in doing so is to reduce the cost of a social event to participants or to avoid hiring of civilian musicians."); *Organization Daze*, *supra* note 122, at 61.

¹²⁹ See *supra* note 48.

incoming unit members and their families and recognizing departing ones.¹³⁰ Depending on how the unit or FRG informal fund was established,¹³¹ it can pay for the cost of these events, or attendees may pay out-of-pocket for individual expenses.¹³² Where commanders combine these unofficial team-building events with award ceremonies for departing members, the event assumes an ‘official’ nature.¹³³ Like unit balls, government resources may only support official portions of the event, such as the award ceremonies. Official portions should be open to all unit members and may not require expenditure of personal or informal funds to attend.¹³⁴ Commanders can avoid allegations of misuse of resources by clearly delineating between unofficial and official events.

Despite the general prohibition on the use of government resources for unofficial purposes, the JER permits commanders to provide limited logistical support to unofficial NFE events.¹³⁵ The commander can determine that the unit ball or hail and farewell meet the rule’s criteria.¹³⁶ However, resource-specific service regulations further limit support that may be provided. Regulation restricts multimedia and visual information personnel from providing services such as videography to the unit ball or hail and farewell.¹³⁷ Bands cannot play background or dance music.¹³⁸ And, government vehicles may not transport attendees to or from the social function,¹³⁹ other than those participating in an official portion, such as the band or guest speaker.¹⁴⁰ Finally, with regard to planning these events,

staff cannot use the government vehicle, official duty time, or communications resources to conduct unofficial business, such as extensive comparison shopping of entertainment options.¹⁴¹ A decision to provide logistical support to a unit’s social event does not squarely meet the criteria of JER 3-211a because these events are only tenuously related to the military’s public affairs and community relations mission.¹⁴² The next section, however, examines the broad authority¹⁴³ under JER 3-211a to provide government resources to events in furtherance of community relations.

F. Community Relations Events

Community engagement events are a primary function of the Army’s public affairs mission to keep the American public informed and confident in the capabilities and readiness of its armed forces.¹⁴⁴ Public affairs resources include bands, aviation assets, color guards, marching units, casket teams, firing details, salute batteries, and parachute teams.¹⁴⁵ At a NFE conference, seminar, or convention, such resources include exhibits, displays,¹⁴⁶ and DoD personnel to serve as official speakers.¹⁴⁷

The Army’s Office of Public Affairs specifically pre-programs large outreach events involving the Army’s elite ceremonial units and funds them with OMA appropriations.¹⁴⁸ Unplanned requests for incidental support to NFE events comprise the remaining community relations support. Event sponsors must bear the costs of participation in such events,¹⁴⁹ even where the unit initially advances

¹³⁰ See U.S. ARMY WAR COLLEGE, MILITARY FAMILY PROGRAM, BATTLE BOOK FOR THE COMPANY COMMANDER SPOUSE, at 51 (2010), available at <http://www.carlisle.army.mil/orgs/SLDR/mfpPublications.htm>.

¹³¹ See AR 608-1, *supra* note 46, app. J, para. J-7c(2); AR 600-20, *supra* note 46, para. 4-20.

¹³² See BATTLE BOOK FOR THE COMPANY COMMANDER SPOUSE, *supra* note 130, at 51 (“Unit members and guests share the planning and cost of these get-togethers.”).

¹³³ See AR 600-8-22, *supra* note 74, para. 1-32.

¹³⁴ Personnel may pay out-of-pocket expenses to bring food or for the cost of food and alcohol purchased at such an event, and so long as there are no costs of attend the award ceremony this would not constitute an augmentation violation. See Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b) (2006).

¹³⁵ See JER, *supra* note 5, para. 3-211a.

¹³⁶ See *supra* note 64 and accompanying text.

¹³⁷ See AR 25-1, *supra* note 24, para. 5-3f.

¹³⁸ See AR 360-1, *supra* note 25, para. 7-3a.

¹³⁹ See AR 58-1, *supra* note 7, para. 2-4b; see also ARMY DIR. 2007-01, *supra* note 51, at 26 (elevating approval for use of government vehicles to travel to official after-hours functions to the installation commander or his delegate).

¹⁴⁰ See AR 58-1, *supra* note 7, para. 2-3.

¹⁴¹ See *id.* para. 2-4e (prohibiting use of government vehicles to conduct business for unofficial functions); JER, *supra* note 5, paras. 2-301b, 3-305b (prohibiting DoD employees from supporting the unofficial activity of another DoD employee in support of NFEs, or for any other non-Federal purpose); *id.* para. 2-301a (permitting communications resources to be used for official and authorized incidental personal uses only).

¹⁴² See JER, *supra* note 5, para. 3-211a(2).

¹⁴³ See DoDD 5410.18, *supra* note 41, para. 4.1.

¹⁴⁴ See AR 360-1, *supra* note 25, para. 1-6; see also *id.* para. 7-2c (noting that these events also serve as an important recruiting tool).

¹⁴⁵ See DoDI 5410.19, *supra* note 9, enclosure 2, para. E2.1.8.

¹⁴⁶ See *id.* para. E2.1.6; AR 360-1, *supra* note 25, para. 7-7.

¹⁴⁷ See AR 360-1, *supra* note 25, para. 6-2.

¹⁴⁸ See DoDD 5410.18, *supra* note 41, para. 4.2.1. Operating budgets allocate funds for pre-programmed community outreach events. For instance, the Secretary of the Army validated the Army’s fiscal year fourteen outreach plan, which includes the Golden Knights and Army Command Jump Team’s participation in civilian air shows and Division Open Houses, the U.S. Military Academy (USMA) Black Knights Cadet Parachute Team jumps at USMA home games, and premier ceremonial unit tours such as the United States Army Field Band Spring and Fall Tours, just to name a few. See E-mail from Major General Gary J. Volesky, Chief, Army Pub. Aff. (CPA), CPA Sends (undated) (on file with author).

¹⁴⁹ See AR 360-1, *supra* note 25, para. 4-2.

OMA funds.¹⁵⁰ While pre-programmed community relations events constitute official functions, NFEs sponsor and fund incidental support activities, making them unofficial events. Support to these unofficial events must satisfy the criteria of JER 3-211a,¹⁵¹ and any limiting criteria contained in regulations governing the requested resource.¹⁵²

Regulations outline overarching rules for public affairs support, which may help quickly spot the unauthorized functions.¹⁵³ Support for community events that deny equal opportunity for admission, serve a limited audience of personnel, or serve political or commercial purposes do not qualify for support.¹⁵⁴ Commanders may not endorse or show preferential treatment to particular organizations or events.¹⁵⁵ Public affairs resources cannot compete with local businesses capable of providing the same support.¹⁵⁶ Finally, a decision to provide support may not interfere with the unit's operational mission or readiness.¹⁵⁷

Government vehicles can transport official participants and their equipment to community relations events, such as public ceremonies, parades, and demonstrations.¹⁵⁸ A commander can also authorize government transportation to high-interest public events for non-participating audience members, where the event warrants use of official government transportation for general attendance.¹⁵⁹ Non-

Federal entities may offer to pay the costs of attendance at unofficial events; an employee can accept the gift where an ethics official determines the event meets widely-attended gathering (WAG) criteria.¹⁶⁰ Unless officially speaking or presenting, the restriction on travel in a personal capacity precludes invitees from using a government vehicle to attend WAGs.¹⁶¹

In reviewing requests to support community relations events, beware of nuances for events honoring certain holidays¹⁶² and special statutory relationships with NFEs.¹⁶³ In addition, in some years fiscal constraints affect the ability to provide community relations support.¹⁶⁴ Legal opinions should outline policy restrictions resulting from continuing resolution authority,¹⁶⁵ sequestration,¹⁶⁶ or operational mission priorities.¹⁶⁷

meets criteria).

¹⁶⁰ See 5 C.F.R. § 2635.204(g)(2) (2014).

¹⁶¹ See *id.* § 2635.204(g). While an ethics official finds that attendance at the event serves the agency's interest, the invitee accepts the gift of free attendance and attends in his personal capacity, unless officially presenting information on behalf of the agency. See Memorandum from General Counsel, Office of Gov't Ethics, to Designated Agency Ethics Officials, subject: Speaking and Similar Engagements Involving Presentation of Information on Behalf of the Agency (7 Sept. 2012); see also Memorandum from Dep. Gen. Counsel, Dep't of Army, to Principal Officials of Headquarters, Dep't of Army et. al., subject: Blanket Determination for Specified Events Sponsored by the Army Association of the United States (7 Aug. 2013). A separate statute authorized transportation support to the AUSA event. See 10 U.S.C. § 2558 (2006). A NFE may offer to pay travel expenses where a DoD employee is an official participant. Acceptance is permitted with advance approval and an ethics opinion. See 13 U.S.C. § 1353 (2006); JER, *supra* note 5, para. 4-100c(2).

¹⁶² See DoDD 5410.18, *supra* note 41, para. 4.7 (Veterans' Day and Armed Forces Day).

¹⁶³ See 10 U.S.C. § 2558 (2006); DoDD 5410.18, *supra* note 41, paras. 4.10—4.11 (National Military Association Annual Conferences and Veterans' Organization conventions).

¹⁶⁴ See Memorandum from Sec'y of Def., to Secretaries of the Military Departments, et al., subject: Department of Defense Fiscal Year 2014 Outreach Activities (30 Sept. 2013) ("It is unfortunate that sequestration restrictions have kept us from connecting with nearly a half billion people worldwide over the last six months, and required us to withdraw support from more than 2,800 outreach events throughout the country.")

¹⁶⁵ See, e.g., All Army Activities Message 253/2013, 030321Z Oct 13, U.S. Dep't of Army, subject: FRAGO 2 to HQDA EXORD 228-13 Continuation of Operations in the Absence of Available Appropriations (restricting conference attendance and participation as a speaker and/or panel member).

¹⁶⁶ See, e.g., Memorandum from Under Sec'y of Def. Comptroller, to Secretaries of the Military Departments, et al., subject: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013 (23 May 2013) (prohibiting all military support to non-DoD organizations and special events for outreach purposes beyond the local travel area).

¹⁶⁷ See U.S. DEP'T OF ARMY, DIR. 2010-08, ARMY AIRCRAFT USE FOR PUBLIC AFFAIRS MISSIONS 1 (2 Nov. 2010) (removing Army aviation support for civilian public affairs missions to focus on operational needs and predeployment training requirements).

¹⁵⁰ See DoDD 5410.18, *supra* note 41, para. 4.2.1; AR 360-1, *supra* note 25, para. 4-2.

¹⁵¹ See *supra* note 64 and accompanying text.

¹⁵² See DoDD 5410.18, *supra* note 41, DoDI 5410.19, *supra* note 9, AR 360-1, *supra* note 25; AR 220-90, *supra* note 25. Provision of support to a local government for community relations should be distinguished from providing equipment to assist local governments with essential functions. See U.S. DEP'T OF DEF., DIR. 3025.18, DEFENSE SUPPORT OF CIVIL AUTHORITIES (29 Dec. 2010) (C1, 21 Sept. 2012).

¹⁵³ See generally DoDI 5410.19, *supra* note 9, enclosure 13 (containing a checklist to assist with evaluating whether community relations support can be provided in accordance with guidelines).

¹⁵⁴ See DoDI 5410.19, *supra* note 9, paras. 6.7.2—5, AR 360-1, *supra* note 25, paras. 3-1c, 3-2.

¹⁵⁵ See DoDI 5410.19, *supra* note 9, paras. 6.7.1—2; AR 360-1, *supra* note 25, paras. 3-1d, 3-2.

¹⁵⁶ See DoDI 5410.19, *supra* note 9, enclosure 8, para. E8.3.3; AR 360-1, *supra* note 25, para. 3-21.

¹⁵⁷ See DoDD 5410.18, *supra* note 41, para. 4.2.4.1.1; AR 360-1, *supra* note 25, para. 3-1e.

¹⁵⁸ For example, official participants may be members of bands, a color guard, or an official speaker. Public ceremonies, military field demonstrations, and parades must be "directly related to official activities" in order to permit transportation of participants by Government vehicle. See AR 58-1, *supra* note 7, para. 2-3a; ARMY DIR. 2007-01, *supra* note 51, at 26.

¹⁵⁹ See AR 58-1, *supra* note 7, para. 2-3a(1) (requiring both senior public affairs and legal review prior to a commander's determination that the event

IV. Conclusion

You promise the DCG's aide your opinion later today and he departs your office. You initially want to determine whether the promotion party is official or unofficial. The party appears purely social, but the aide mentioned the DCG's plan to invite some people he knows through his official position. You wonder if the event could be considered an official social function—but a cursory search reveals that social receptions to entertain friends and family do not qualify for the use of Official Representation Funds.¹⁶⁸ The aide also told you the DCG will pay out-of-pocket for food and alcohol—another indicator that the function is unofficial.¹⁶⁹ The party will be held a full day after the official promotion ceremony, so it appears distinct and separate from any official event you can see at this point.¹⁷⁰

Having determined that the party is unofficial, you look to the regulations for exceptions. The Standards of Conduct and JER prohibit employees from influencing subordinates to use official time to perform unofficial duties.¹⁷¹ The DoD's enlisted aide regulation bars officers from using enlisted members as servants for personal benefit, but they can be paid for voluntary off-duty service.¹⁷² You determine that Soldiers, including the DCG's aide, cannot be tasked to valet cars, prepare food, or otherwise work the party, but can be hired on a voluntary basis and paid fair compensation.

The requests for logistical support, including the band and port-o-johns, must be analyzed under the criteria in JER 3-211a—logistical support to NFE events.¹⁷³ The DCG, acting in his personal capacity to host an unofficial party, can be viewed as a NFE.¹⁷⁴ However, you find it unlikely that this party meets the criteria because the party is a small gathering, and only a few invitees work with the DCG in any official capacity. This event does not serve the DoD's community interests or military training interests.¹⁷⁵ Additionally, providing this support to the DCG's promotion party starts down a slippery slope that could result in

numerous senior officials requesting band and DPW support for social events.¹⁷⁶ Finally, you think it unlikely that this party falls within customary community relations or public affairs activities contemplated under this exception and the underlying statute allowing this support.¹⁷⁷ Army regulation also restricts the band from playing background music,¹⁷⁸ but states that band members can play at the party, using their own equipment, with or without pay.¹⁷⁹

Given all the recent DoD Inspector General (IG) investigations about senior officials misusing subordinates for personal benefit,¹⁸⁰ you advise the DCG to compensate the band members and enlisted Soldiers who choose to participate at the same rate he would pay if he were to hire an outside company. You also recommend a safer course of action—hiring a quartet unaffiliated with the band, and an independent full-service catering company—to avoid perceptions that band members and enlisted staff were tasked to work at an unofficial event. It is easier to hire an outside company than to explain the payment of the band and enlisted aides to the IG, while he examines the fairness of their compensation.¹⁸¹

Finally, you examine the official mail piece. The DoD and Army regulations permit an official ceremony announcement to state the time and location of a “directly related reception,”¹⁸² but later state that receptions hosted by senior officials, even if associated with an official position, are not permissible for appropriated fund postage.¹⁸³ You conclude that this party is a separate social event, rather than a directly-related reception, and you advise against any use of official mail, or other government communications channels,¹⁸⁴ to send out invitations. Overall, you determine that this event does not qualify for any authorized uses of government resources. Before you send off your opinion you decide to brief your Staff Judge Advocate on your

¹⁶⁸ See AR 37-47, *supra* note 44, para. 2-10a(2)—(3).

¹⁶⁹ See discussion *supra* Part II.B.2.

¹⁷⁰ See discussion *supra* Part III.A.

¹⁷¹ See 5 C.F.R. § 2635.705 (2014); JER, *supra* note 5, para. 3-303b (punitive provision).

¹⁷² See DoDI 1315.09, *supra* note 91, enclosure 3, paras. 1.e., 1.h., 3; see also discussion *supra* Part III.A.

¹⁷³ See JER, *supra* note 5, para. 3-211a; see also discussion *supra* Part III.A.

¹⁷⁴ See JER, *supra* note 5, para. 1-217.

¹⁷⁵ See *id.* para. 3-211a(2) (“DoD community relations with the immediate community and/or legitimate DoD public affairs or military training interests are served by the support.”).

¹⁷⁶ See *id.* para. 3-211a(5) (“The DoD Component command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar non-Federal entities.”).

¹⁷⁷ See *id.* para. 3-211a(6) (“[t]he use is not restricted by other statutes (see 10 U.S.C. 2012...which limits support that is not based on customary community relations or public affairs activities) or regulations.”).

¹⁷⁸ See AR 220-90, *supra* note 25, para. 2-4a.

¹⁷⁹ See *id.* para. 2-31.

¹⁸⁰ See *supra* note 93 and accompanying text.

¹⁸¹ See DoDI 1315.09, *supra* note 91, enclosure 3, para. 1.h.(2).

¹⁸² DoD 4525.8-M, *supra* note 78, para. C1.3.10; AR 25-51, *supra* note 78, para. 2-20e; see also discussion *supra* Part III.A.

¹⁸³ See DoD 4525.8-M, *supra* note 78, para. C1.4.6; AR 25-51, *supra* note 78, para. 2-21f.

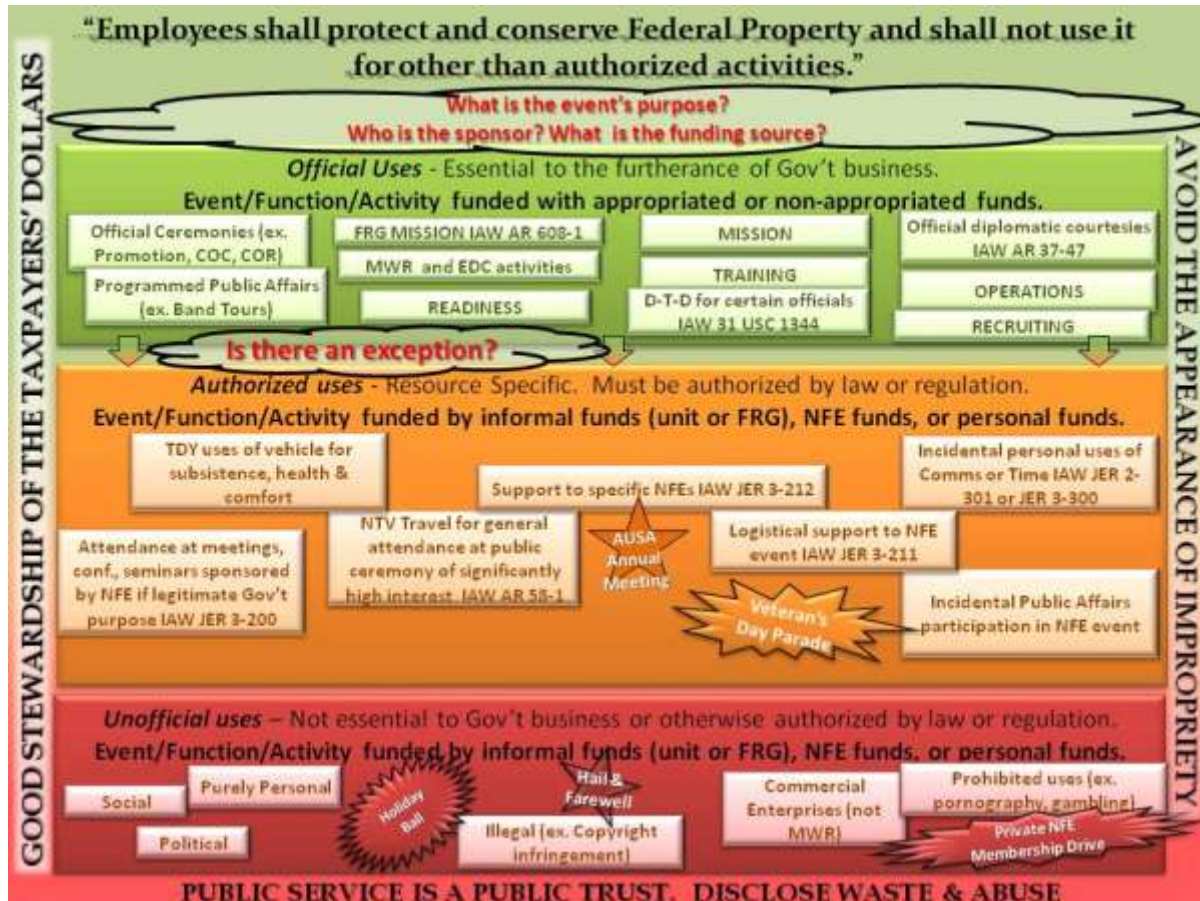
¹⁸⁴ See JER, *supra* note 5, para. 2-301a(e) (prohibiting personal communications that overburden the system).

findings and give him a copy of your legal opinion, as the DCG may give him a call.

Completing your analysis in this thorough and analytical fashion should assure the DCG that the legal office has thought through all the legal and ethical issues, protecting him from allegations of misuse, and safeguarding the public trust against perceptions of impropriety.

Appendix A

Use of Government Resources Graphic



KEY:

AR = Army Regulation

COC = Change of Command

COR = Change of Responsibility

D-T-D = Domicile to Duty

EDC = *Esprit de Corps*

IAW = In accordance with

MWR = Morale, Welfare, and Recreation

NFE = Non-Federal Entity

FRG = Family Readiness Group

Appendix B

Table of Commonly-Used Resources

RESOURCE	LAW	REGULATION	OTHER GUIDANCE
Military Aircraft		<p>OMB Circular No. A-126, “Improving the Management and Use of Government Aircraft” (22 May 92)</p> <p>DoDD 4500.56 “DoD Policy on the Use of Government Aircraft and Air Travel” (C3, 24 Jun 14)</p> <p>DoDD 4515.13-R “Air Transportation Eligibility” (C3, 9 Apr 98)</p> <p>DoDI 4500.43 “Operational Support Airlift” (C1, 26 Jun 13)</p> <p>Army Directive (AD) 2007-01 “Sec Army Policy for Travel by DA Officials” (25 Jan 07)</p> <p>AR 95-1 “Flight Regulations” (11 Mar 14)</p>	
Government Vehicles	<p>31 USC 1344, Passenger Carrier Use</p> <p>10 USC § 2637, Transportation in Certain Areas Outside the United States</p> <p>39 USC § 1349-1351, Adverse Personnel Actions, Criminal Penalty, & Reports on Violations</p>	<p>DoDD 4500.36-R “Management, Acquisition, and Use of Motor Vehicles” (16 Mar 07)</p> <p>DoDI 4500.36 “Acquisition, Management, and Use of Non-Tactical Vehicles” (C1, 25 Oct 13)</p> <p>Joint Travel Regulations (JTR)</p> <p>AD 2007-01 “Sec Army Policy for Travel by DA Officials” (25 Jan 07)</p> <p>AR 58-1, “Management, Acquisition, and Use of Motor Vehicles” (12 Jun 14)</p> <p>Air Force Instruction (AFI) 24-301, “Vehicle Instruction” (cert. current 17 Aug 12) (contains useful guidance for official use determinations)</p>	<p>U.S. Civilian Board of Contract Appeals, CBCA 2852-TRAV, (28 Aug 12) (rental vehicle fees for personal use)</p> <p>Office of Government Ethics (OGE), No. 85 X 9 (12 Jul. 85) (use of government vehicles)</p> <p>Memorandum from General Counsel, Office of Gov’t Ethics, to Designated Agency Ethics Officials, subject: Speaking and Similar Engagements Involving Presentation of Information on Behalf of the Agency (7 Sept. 2012) (use of government vehicles)</p>
Public Affairs Resources	10 USC § 2012, Support and Services for Eligible Organizations Outside Department of Defense	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov. 11), para. 3-211 (logistical support to NFE events)</p> <p>DoDD 5410.18 “Public Affairs Community Policy” (cert. current 30 May 07)</p> <p>DoDI 5410.19 “Public Affairs Community Relations Policy Implementation” (13 Nov 01)</p> <p>AD 2008-01 “Army Aircraft Use for Public Affairs Mission” (02 Nov 10)</p>	

		AR 360-1 "The Public Affairs Program" (25 May 11)	
		AR 220-90 "Army Bands" (14 Dec 07)	
RESOURCE	LAW	REGULATION	OTHER GUIDANCE
Non-Federal Entities	10 USC § 2558, National Military Associations, Assistance at National Conventions	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-212 (special relationships)</p> <p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-211 (logistical support to NFE events)</p> <p>DoDD 1000.26E "Support for Non-Federal Entities Authorized to Operate on DoD Installations" (2 Feb 07)</p> <p>DoDI 1000.15 "Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations" (24 Oct 08)</p> <p>AR 210-22 "Private Organizations on Department of the Army Installations" (22 Oct 01)</p>	
Communication Resources		<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 2-301a</p> <p>Fed. Prop. Mgmt. Reg. § 101-35.201-2, Authorized Use of Long Distance Telephone Services, Collection for Unauthorized Use</p> <p>AR 25-1 "Army Information Technology" (25 Jun 13)</p> <p>AR 25-2 "Information Assurance" (RAR 23 Mar 09)</p>	
Personnel & Time	5 USC § 4110, Expenses of Attendance at Meetings	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-300, 3-303</p> <p>5 CFR § 251.202, Agency Support to Organizations Representing Federal Employees and Other Organizations</p> <p>5 CFR § 2635.705, Use of Official Time</p> <p>DoDI 1315.09 "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers" (6 Mar 15)</p>	
Official Mail		<p>DoD 4525.8-M "DoD Official Mail Manual" (26 Dec 01)</p> <p>AR 25-51 "Official Mail and Distribution Management" (14 Jan 15)</p>	
Resources Generally		5 CFR § 2635.704, Use of Government Property	

		Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 2-301b AR 608-1, App. J “Army Community Service” (13 Mar 13) (FRGs)	
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Appendix C

Practice Pointers

A. Intake

A request to use government resources cannot be comprehensively and accurately analyzed without complete information about the nature of the event and the specific support requested. Gathering this information requires a systematic process for request intake. Personnel requesting armed forces participation in public or NFE events should fill out the standard form for support—DD Form 2536.¹⁸³ For installations where it is not a standard practice, promoting use of the standard form may require JAs to insist that garrison or unit personnel who initially field such requests require its use when interfacing with NFEs. Use of such a form ensures consideration of JER 3-21 1a criteria;¹⁸⁴ comparable treatment for similarly-situated NFEs and events;¹⁸⁵ a historical record, especially where the legal review is later attached; and, efficient processing of requests. For these same reasons, JAs are encouraged to develop and use a standardized form for requests to provide support to unit events, such as the military ball or unit's organization day.¹⁸⁶

B. Research

Thorough research of regulatory resources and advisory opinions, and consultation with the field, will help JAs arrive at the best solution for use of resources. Judge advocates should begin with the overarching rules contained in the law and Code of Federal Regulations and then systematically work through the JER, DoD, and service regulations for a particular resource.¹⁸⁷ Judge advocates should also search the Office of Government Ethics legal advisories¹⁸⁸ and Government Accountability Office legal decisions¹⁸⁹ databases, where regulations are silent or inconclusive.¹⁹⁰ To ensure some degree of uniformity across the field for events that share similar characteristics, JAs should reach out to fellow Brigade JAs within the unit and reach up to administrative law attorneys at the installation or higher headquarters, as they have likely fielded a similar request. The Administrative Law Group on milSuite¹⁹¹ also serves as a great resource and contains numerous

¹⁸³ U.S. DEP'T OF DEF., FORM 2536, REQUEST FOR ARMED FORCES PARTICIPATION IN PUBLIC EVENTS (Oct. 2010).

¹⁸⁴ See *supra* note 63 and accompanying text.

¹⁸⁵ See *supra* note 174 and accompanying text.

¹⁸⁶ These forms should be standardized across units to the extent possible. For instance, each Brigade Judge Advocate within a Division on the same installation should be utilizing a common form.

¹⁸⁷ See discussion *supra* Part II.A.

¹⁸⁸ U.S. OFFICE OF GOV'T ETHICS, LEGAL ADVISORIES, <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/> (last visited Jan. 23, 2015).

¹⁸⁹ U.S. GOV'T ACCOUNTABILITY OFFICE, <http://www.gao.gov/> (last visited Jan. 23, 2015).

¹⁹⁰ See *supra* note 15 and accompanying text.

¹⁹¹ JAG CONNECT—ADMINISTRATIVE LAW, <https://www.milsuite.mil/book/groups/jagconnect-army-administrative-law> (last visited Jan. 23, 2015).

discussions regarding the official or unofficial nature of particular events such as military balls¹⁹² or staff rides.¹⁹³

C. The Legal Review

When writing the legal opinion, set out the general rules for using government resources and any applicable ethics principles that apply.¹⁹⁴ With respect to unofficial events, these general rules and principles set a tone for the opinion and inform the reader that he or she is generally working within an *exception* to the general rule.¹⁹⁵ Highlight any guidance in the regulation regarding how questions of interpretation should be viewed, if the proposed use does not squarely fit within an authorized purpose.¹⁹⁶

Clearly identify the exception that authorizes the use and set out a detailed analysis of how the proposed use meets each factor of any limiting criteria.¹⁹⁷ Provide the commander with courses of action and outline the risks associated with each one. If there are any relevant examples of similar conduct that have come under scrutiny and investigation, point out these examples,¹⁹⁸ even where an investigation was unsubstantiated, but received media coverage.¹⁹⁹ Include the ethics²⁰⁰ principle regarding the appearance of impropriety, where applicable. Even where a particular use of a resource is technically legal and may fit within an authorized use, will it appear as though there was impropriety or illegality? Does it appear to the average observer that the use was provided because of rank or personal convenience?²⁰¹ Lastly, outline any current fiscal restrictions on use of the resource.²⁰²

D. Prevention

¹⁹² See, e.g., Peter Grayson, et al, *Military Balls*, JAG CONNECT—ADMINISTRATIVE LAW (Oct. 11, 2012, 8:38 AM), <https://www.milsuite.mil/book/thread/25539>.

¹⁹³ See, e.g., Mark Robinson, et al, *Staff Ride Legal Analysis*, JAG CONNECT—ADMINISTRATIVE LAW (Oct. 14, 2014, 6:24 AM), <https://www.milsuite.mil/book/thread/131886?sr=stream&ru=148960>.

¹⁹⁴ See *supra* notes 17-20.

¹⁹⁵ See discussion *supra* Part.II.B.3.

¹⁹⁶ See generally DoD 4500.36-R, *supra* note 25, para. C2.5 (stating that questions regarding official use of a government vehicle should be decided in favor of “strict compliance” with law and regulation); Army Dir. 2007-01, *supra* note 50 (“Accordingly, the terms of this policy must be complied with strictly and the terms permitting use of departmental transportation resources construed narrowly.”).

¹⁹⁷ See *supra* note 63 and accompanying text.

¹⁹⁸ See sources cited *supra* note 2 and accompanying text.

¹⁹⁹ Craig Whitlock & Rajiv Chandrasekaran, *Scandal Probe Ensnarcs Commander of U.S., NATO Troops in Afghanistan*, WASHINGTON POST, Nov. 13, 2012, http://www.washingtonpost.com/world/national-security/scandal-probe-ensnares-commander-of-us-nato-troops-in-afghanistan/2012/11/13/a2a27232-2d7d-11e2-a99d-5c4203af7b7a_story.html (explaining how the Federal Bureau of Investigation uncovered twenty to thirty thousand pages of documents containing government e-mails that showed inappropriate conversations between General Allen and Jill Kelley, a woman whose report of harassment identified General Petraeus’s mistress).

²⁰⁰ See source cited *supra* note 16 and accompanying text.

²⁰¹ See *supra* note 88 and accompanying text.

²⁰² See sources cited *supra* notes 163-165.

Judge advocates must be proactive in spotting the potential issues for the command through active engagement in the planning process.²⁰³ To achieve this objective, JAs should attend the Interim Progress Reviews (IPRs) and read any Operations Orders (OPORDs) published regarding official events.²⁰⁴ Coordinate with the aide and the support staff if you support a general officer. Tie in with the S3 at the Brigade and stay abreast of key events. Know when key events will occur, such as changes of command, and disseminate a few pointers to the staff to avoid common pitfalls.²⁰⁵ Provide desk-side ethics briefings to new entrant financial disclosure filers²⁰⁶ and emphasize recent ethical hiccups. Judge Advocates need not wait to approach the yearly ethics training deadlines and can get ahead of the issues.

The DoD IG investigation of General Ward also chronicled the failure to follow legal advice and the lack of protection afforded a commander's decision where it ignores legal advice.²⁰⁷ Judge Advocates must build trust, rapport, and credibility with the commander to foster a relationship where the commander comes to rely upon the advice of his lawyer. Early and frequent interaction to help the commander legally and ethically achieve his or her objectives will cultivate this relationship.

²⁰³ See FM 1-04, *supra* note 4, ch. 6.

²⁰⁴ See *id.*

²⁰⁵ See *id.*

²⁰⁶ See 5 C.F.R. § 2634.201 (2014) (public financial disclosure requirements); *id.* § 2634.903 (confidential financial disclosure requirements).

²⁰⁷ See *supra* note 3 and accompanying text.