

Information Paper

AFYB-JA

9 June 2010

SUBJECT: Command Involvement in Religious Activities on Fort Carson

1. PURPOSE: To provide information regarding religious activities on Fort Carson and the role of the command in regulating these activities.

2. DISCUSSION:

a. References: AR 165-1, Army Chaplain Corps Activity, 3 December 2009. AR 600-20, Army Command Policy

b. The U.S. Army Chaplaincy is an instrumentality of the U.S. Government created to ensure that the free exercise rights of religion are not abridged. The Chaplaincy is established by 10 U.S.C. 3073, 3547, and 3581 and has been upheld as constitutional by the U.S. Court of Appeals for the Second Circuit in the case of *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985).

c. AR 165-1 promulgates the duties of Army Chaplains. It requires Chaplains to minister to personnel of their unit and to facilitate the free-exercise rights of all personnel regardless of religious affiliation. AR 600-20 states the Army will approve requests for accommodation of religious practices unless the accommodation will have an adverse impact on military necessity. While not included in the December 2009 update of AR 165-1, the historic regulatory language stated, "Military and patriotic ceremonies may require a chaplain to provide an invocation, reading, prayer, or benediction. Such occasions are not considered to be religious services."

d. Government actions must have a secular purpose, have a primary effect that neither advances nor inhibits religion, and must not involve excessive government entanglement with religion. This is the three part constitutional test set forth in the U.S. Supreme Court case of *Lemon v. Kurtzman*, 403 U.S. 602 (1977). This case has been interpreted to allow a secular holiday display with a mixture of religious and non-religious symbols, but not allow purely religious holiday displays.

e. Recently, the Supreme Court decided to allow a 75 year old 6 ½ foot cross erected in the Mojave Desert to honor veterans to remain. The Court stated "the goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm. The Constitution does not oblige government to avoid any public acknowledgment of religion's role in society." *Salazar v. Buono*, 559 U.S. ____ (2010).

f. The Fort Carson IG Section reports only 2 cases since 2008 regarding the subject of religion, neither of which fit Mr Weinstein's area of interest. One involved a Chaplain's assertion of his freedom of speech and Fort Carson's alleged interference with this speech, and

the other involved a civilian who wanted receipts for the tithes and offerings to Fort Carson chapels.

3. For further information on regulating religious activities, contact