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Analysis of Disclosures, Agency Investigation and Report, and Comments of the Associate Special Counsel

OSC File No. DI-08-2159

Summary

Sheila Ahrens, Division Chief, Human Performance Improvement Center, Department of the Army (Army), Army Training Support Center (ATSC), Fort Eustis, Virginia, disclosed to the Office of Special Counsel (OSC) that Army employees e-mailed pornography and obscene material from government e-mail accounts during official working hours. Ms. Ahrens, who consented to the release of her name, also disclosed that employees shared passwords and Common Access Cards (CAC cards).

The Honorable Preston M. Geren, III, Secretary of the Army, delegated the authority to investigate Ms. Ahrens' allegations to the Honorable Ronald J. James, Assistant Secretary of the Army, Manpower and Reserve Affairs. Assistant Secretary James directed the Office of Army General Counsel, which, in turn, tasked the Office of the Staff Judge Advocate (OSJA), Fort Eustis, with investigating the allegations. OSJA, Headquarters, U.S. Army Training and Doctrine Command (TRADOC), Fort Monroe, Virginia, assumed responsibility for legal oversight of the investigation, because ATSC is an operating agency of TRADOC although it is physically located at Fort Eustis. The Army's report substantiated both allegations. On November 21, 2008, Assistant Secretary James approved the agency's report. Ms. Ahrens declined to comment on the agency's report. OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

Specifically, Ms. Ahrens alleged that ATSC employees sent e-mails containing sexually explicit photographs, jokes, and conversations of an obscene nature from government e-mail accounts during official working hours. Ms. Ahrens submitted documents showing that Video Tele-Training Specialist Kathie Canevari and contractor Johnathan Neil sent e-mails from government e-mail accounts containing explicit pornographic images. She also submitted documents revealing that Ms. Canevari, Mr. Neil, TRADOC G357 employee Charles Bos, Educational Technology Team Chief Walter Breckons, contractor Ron Vass, and contractor Zoltan Varga sent e-mails from government e-mail accounts containing jokes and humor of a sexual nature, discussions of sexual encounters between employees, and other inappropriate material. Ms. Ahrens further submitted home photographs of employees Ms. Canevari and Mr. Bos showing both individuals in various states of undress. Ms. Ahrens found these e-mails and photographs on Ms. Canevari's work computer's hard drive. Ms. Ahrens alleged that these actions violated Army Regulation 25-1, Army Knowledge Management and Information Technology, Chapter 6, Section 6-1f(1) (AR 25-1), and Army Regulation 25-2, Information

Assurance, Chapter 4, Section 4-5r(7) (AR 25-2). AR 25-1 and AR 25-2 prohibit using Army communication systems for uses involving sexually explicit material such as pornography.

Ms. Ahrens also alleged that she witnessed Ms. Canevari using Training Support Acquisition Specialist Kathy McCarthy's and Mr. Breckons' CAC cards and computer passwords in violation of Army regulations between October 2007 and January 2008. Ms. Ahrens stated that the CAC cards, which contain the photograph of the employee, must be inserted into the computer before the system can be accessed. When inserted into the computer, the photograph on the card is visible to individuals in the vicinity. Ms. Ahrens reported seeing Ms. Canevari in Mr. Breckons' office using his computer and e-mail account. Ms. Ahrens stated that she could clearly see Mr. Breckons' CAC card in the access slot. She also asserted that she has witnessed Ms. Canevari using Ms. McCarthy's computer with Ms. McCarthy's CAC card visible in the slot. Ms. Ahrens stated that Ms. Canevari either would have had to know Mr. Breckons and Ms. McCarthy's passwords or been given access to the system by them in order to use their computers in this manner. Ms. Ahrens claimed that the unauthorized use of CAC cards and passwords constituted a violation of AR 25-2, Chapter 4, Sections 4-5a(8), and 4-5s(9). These sections, respectively, prohibit Army personnel and contractors from sharing passwords and accessing other users' e-mail accounts.

Report of the U.S. Department of the Army

The agency's report, which was received on November 26, 2008, confirmed Ms. Ahrens' allegations that employees e-mailed pornography and obscene material from government e-mail accounts during official working hours and that employees shared passwords and CAC cards in violation of AR 25-1 and AR 25-2. Major General Abraham Turner, TRADOC Deputy Chief of Staff, appointed Colonel (COL) John Halstead as an Investigating Officer for Ms. Ahrens' allegations. During the course of the investigation, seventeen persons associated with the allegations were interviewed, including Ms. Canevari, Mr. Breckons, Mr. Bos, Mr. Varga, Mr. Neil, Ms. Ahrens, and Mr. Luciano Iorizzo, Director, ATSC.

Ms. Ahrens discovered the pornographic material and e-mails on Ms. Canevari's computer around May 14, 2008. Ms. Canevari was reassigned from the Video Teletraining Team (VTT) to the Training Support Services Division on February 5, 2008. Ms. Ahrens reviewed Ms. Canevari's VTT computer's hard drive to determine if it contained files related to the historical knowledge of certain workplace programs, including a special project, on which Ms. Canevari had worked. Ms. Ahrens had been given the hard drive by Systems Administrator Marty Stamas after Mr. Stamas had difficultly transferring data from Ms. Canevari's VTT computer to the ATSC shared portal. Ms. Ahrens discovered the images and e-mails after connecting Ms. Canevari's VTT hard drive to her own government laptop.

Ms. Ahrens printed a sample of the offensive material she found on the hard drive and gave it to William Jones, ATSC Deputy Director, on May 19, 2008. Mr. Jones delivered the material to Mr. Iorizzo on May 20, 2008. Mr. Iorizzo consulted the Army Criminal Investigation Division (CID) at Fort Eustis and the ATSC Support Directorate for guidance. Local government attorneys advised Mr. Iorizzo to seize Ms. Canevari's VTT hard drive, Ms. Ahrens'

government computer, and Mr. Breckons' old and new government computers. CID informed Mr. Iorizzo that Ms. Ahrens' actions leading to the discovery of the offensive materials may have been improper. However, CID stated it would become involved only if child pornography was discovered on the hard drive. There is no indication that any child pornography is involved in this matter. During a May 27, 2008, meeting, Mr. Iorizzo read Ms. Ahrens the Table of Penalties for employee misconduct. However, Deputy Commander William Jones and COL Halstead later concluded that Ms. Ahrens was authorized to examine Ms. Canevari's VTT hard drive, because Ms. Ahrens was acting in her supervisory role.

Computer scans were performed on Ms. Canevari's VTT hard drive and new computer, Ms. Ahrens' computer, and Mr. Breckons' old and new computers in May 2008. No additional obscene material was found on Ms. Canevari's new computer and no sexually explicit or inappropriate images were found on Ms. Ahrens' computer or Mr. Breckons' old or new computers. On June 3, 2008, Robert Seger, Assistant Deputy Chief of Staff, Headquarters, TRADOC, directed Mr. Iorizzo to pursue appropriate administrative actions against ATSC employees who had maintained pornography on their computers and determine whether Ms. Canevari had used government travel to facilitate any sexual liaisons with other employees or government contractors. Mr. Iorizzo determined that Ms. Canevari and Mr. Breckons did not improperly use government funds or travel for personal reasons. Ms. Ahrens was not advised of the existence of this investigation and believed that her concerns were not being addressed. Pursuant to the OSC referral, COL Halstead later located additional sexually explicit material on Ms. Canevari's new computer in her "sent" and "deleted" folders.[1]

During his interview, Mr. Bos acknowledged having received "adult explicit material" from Ms. Canevari on his government e-mail account, but he denied forwarding the messages. The evidence contradicts his statement as he sent a clearly sexually suggestive e-mail from his Army e-mail address on November 4, 2003.

Mr. Breckons is now retired and refused to provide a statement to COL Halstead. He referred to Ms. Canevari as a "churchgoing woman" and a "loving grandmother." The evidence contained a significant number of suggestive e-mail messages between Mr. Breckons and Ms. Canevari during 2002, 2005, and 2006. Mr. Breckons was Ms. Canevari's first-line supervisor during this period and the e-mails were exchanged during regular duty hours.

Mr. Varga did not recall receiving sexually explicit e-mails from Ms. Canevari. He stated that he deleted and did not forward any inappropriate e-mails he received. The evidence contradicts his statement as numerous e-mail messages were exchanged between Mr. Varga and Ms. Canevari during duty hours that were sexually suggestive.

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[1] The agency report acknowledged the discrepancy between the findings of the May 2008, searches and COL Halstead's findings of additional explicit material on Ms. Canevari's new computer. The report suggested that additional explicit material could have been added to the computer after the May 2008, searches, or COL Halstead had greater academic training in this area allowing him to discover the additional material.

Mr. Neil admitted sending Ms. Canevari "adult content" e-mail. He indicated that he used three computers at work, including his personal computer. He did not recall ever using government computers to send the "adult content" messages to Ms. Canevari. Nonetheless, Mr. Neil did acknowledge using his Army Knowledge Online e-mail account to send some of the messages.

The investigation uncovered no evidence that Mr. Vass was a member of the armed forces, a federal employee, or a federal contractor employee.

Ms. Canevari admitted having personal photographs on her government computer and forwarding e-mails she knows that she should not have forwarded. She claimed that she was not computer savvy and was unaware that she had made downloads to her computer. She apologized for sending the inappropriate e-mails and stated she would not do so in the future. The evidence indicated that Ms. Canevari forwarded and received numerous sexually explicit and other inappropriate e-mails during regular duty hours.

The report made three findings regarding this allegation. First, Ms. Canevari and Mr. Neil sent e-mails from government e-mail accounts containing explicit pornographic images. Second, Ms. Canevari, Mr. Neil, Mr. Bos, Mr. Breckons, Mr. Varga, and Mr. Vass sent e-mails from government e-mail accounts containing jokes and humor of a sexual nature, discussions of sexual encounters between employees, and other inappropriate material. Third, Ms. Canevari and Mr. Bos appeared in various states of undress in photographs recovered from Ms. Canevari's VTT hard drive.

The report also substantiated Ms. Ahrens' allegation that employees shared passwords and CAC cards. CAC cards are unique, biometric-based cards given to each Army employee. Computer access requires both a CAC card and a unique password. Army Regulation 25-2, paragraphs 4-5a(8) and 4-5s(9), does not allow employees to share CAC cards or passwords.

Ms. Ahrens and Mary Boswell, a federal employee, saw Ms. Canevari using Mr. Breckons' CAC card and e-mail account numerous times. Ms. Ahrens observed this conduct between September and December 2007. Ms. Ahrens and Ms. Boswell also saw Ms. Canevari use Kathy McCarthy's CAC card and e-mail account. Ms. McCarthy is now retired. Conrad Davis, a federal employee, once observed Ms. Canevari using Ms. McCarthy's CAC card, but believed the use was warranted. Ms. Canevari admitted the use of both Ms. McCarthy's and Mr. Breckons' CAC cards and computers while both were present in the office and admitted that she may have used Mr. Breckons' computer to send e-mails when he was not present. She stated that the use of the CAC cards was in the furtherance of office business and not to injure the government.

The report found that Ms. Canevari used Ms. McCarthy's and Mr. Breckons' CAC cards and passwords between October 2007, and January 2008. Witnesses conclusively observed this activity, and Ms. Canevari admitted that she likely engaged in the conduct. The use of another employee's CAC card is a violation of Army Regulation 25-2 even if it is done in furtherance of

mission business. The formal process by which an authorized user may grant another user access to his or her e-mail and computer for work-related purposes was not followed.

The agency attempted to take disciplinary actions against Ms. Canevari. She received a proposed suspension of five days for misuse of government property and conduct unbecoming a federal employee, which is consistent with the recommendation of AR 15-6. Factors considered in proposing the action were her grade, apparent remorsefulness, lack of documented prior misconduct, and command's treatment of similar offenses by other employees in the past. Ms. Canevari retired from federal service on October 31, 2008, prior to her receipt of the memorandum of proposed suspension.

Mr. Iorizzo received a written counseling statement for his failure to provide effective and appropriate leadership and for failing to exercise sound judgment when the matters referred by OSC to the Army were initially presented to him. The action is consistent with the recommendation of AR 15-6. Mr. Bos received a written counseling for sending an inappropriate e-mail to Ms. Canevari in 2003 coupled with his "complete lack of total candor" with COL Halstead. Mr. Breckons retired from government service. Although he clearly engaged in misconduct, he cannot be disciplined for his misconduct, because his is no longer a federal employee.

Professional training from the Equal Employment Opportunity (EEO) staff has been directed to be provided to the ATSC leadership and workforce to ensure that they are aware of and prepared to act on EEO-related matters and other sensitive management issues. The ATSC supervisory structure and ratings schemes have been directed to be reviewed to ensure that all employees and managers are rated by appropriate supervisors and that supervisors are aware of their supervisory responsibilities.

Mr. Neil and Mr. Varga are both federal contractor employees. Both exchanged sexually explicit or suggestive e-mails with Ms. Canevari during duty hours. The results of the investigation were forwarded to the Adjutant General, state of Pennsylvania, Joint Forces Headquarters, Fort Indiantown Gap, Pennsylvania, to ensure that Mr. Neil's current employer, Coalescent Technology, is aware of the misconduct. The Adjutant General advised TRADOC that Mr. Neil's contract was to expire in November 2008, and would not be renewed.[2] The results of the investigation were also provided to the Contracting Officer at ATSC to ensure that Mr. Varga's employer, Wire One, is aware of his misconduct. Because the misconduct occurred under a now-expired contract, ATSC is without a contractual remedy against Mr. Varga or his employer.

Associate Special Counsel's Findings

Based on my review of the original disclosure and the agency's report, I have determined that the agency's report contains all of the information required by statute and the findings appear to be reasonable.

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[2] OSC subsequently verified that this contract was not renewed.