1

TAB 1

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
www.osc.gov

The Special Counsel

November 22, 2006

The Honorable Francis J. Harvey
Secretary
U.S. Department of the Army
1700 Army Pentagon
Washington, D.C. 20310-1700

Re: OSC File Nos. DI-06-1645 and DI-06-1904

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that alleges a serious breach of the duty and ethical obligation of Inspectors General to be "honest brokers and consummate fact finders" and to serve as an "extension of the ... conscience of the commander."[1] In particular, the whistleblowers, Deputy Inspector General Ronald Mansfield and Assistant Inspector General Emmitt Robinson,[2] allege that Colonel James Huggins, XVIII Airborne Corps and Fort Bragg Inspector General (IG), United States Department of the Army, XVIII Airborne Corps and Fort Bragg Office of the Inspector General (OIG), Fort Bragg, North Carolina, breached his duty and violated his ethical obligations as Inspector General by arbitrarily and capriciously delaying, hindering, or failing to order investigations into his colleagues of similar rank. These actions, the whistleblowers contend, not only demonstrate an abuse of authority, but also violate the procedural regulations designed to ensure due process and impartial investigation found in Army Regulation 20-1, Inspector General Activities and Procedures.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

Army Regulation 20-1 (AR 20-1) provides the procedure necessary to ensure fair and efficient investigations into allegations of misconduct. There is little, if any, discretion built

[1] Office of the Inspector General, Welcome, http://wwwpublic.ignet.army.mil/Welc.htm (last visited Nov. 3, 2006).
[2] Mr. Robinson's current contact information is: 6476 Pericat Drive, Fayetteville, NC 28306; telephone number: 910-978-1800. Mr. Mansfield's current contact information is: 762 Magellan Drive, Fayetteville, NC 28311; telephone number: 910-630-3993 (h), 910-797-2937 (c).

into the system. For instance, AR 20-1 ¶ 4-4(c) states that whenever an IG receives an Inspector General Action Request that contains the four elements of an allegation,[3] "the IG *will* use the investigative process detailed in Chapter 8 [emphasis added]." Chapter 8 explains that the investigative process employs two methodologies: an IG investigation and an investigative inquiry. AR 20-1 ¶ 8-1. In addition to the use of these methodologies, AR 20-1 ¶ 8-9(2) requires the IG to use a Preliminary Inquiry or preliminary analysis to determine if there is evidence that supports an allegation of reprisal for whistleblowing.[4] If the preliminary analysis finds evidence that a personnel action was taken, not taken, or threatened in reprisal for whistleblowing, the IG must advise the Department of the Army Inspector General (DAIG) Assistance Division of the matter within two working days. AR 20-1 ¶ 8-9(2). The whistleblowers allege that despite the comprehensive investigatory process the IG is required to follow, Col. Huggins manipulated and disregarded the provisions of AR 20-1 whenever they might negatively affect his colleagues.

First, Messrs. Mansfield and Robinson allege that Col. Huggins ignored the requirements of AR 20-1 and the substantial and preponderant evidence of reprisal in the case of Sergeant First Class Shacondra Clark. They explain that Dragon Brigade Commander Col. Richard Hooker refused to provide SFC Clark with a Complete the Record Non-Commissioned Officer Evaluative Report (NCOER) in retaliation for requesting assistance from the OIG and reporting contracting improprieties. In explaining his refusal to sign the NCOER that had been prepared by SFC Clark's rater, Col. Hooker stated that SFC Clark had been previously evaluated on the position of Battalion S-4 Noncommissioned Officer in Charge (NCOIC) and could not receive a NCOER on the same position. However, after SFC Clark had been transferred, Col. Hooker provided her with a NCOER, but delayed it in order to edit and downgrade SFC Clark's position from the Brigade S-4 NCOIC to the Battalion S-4 NCOIC. The Battalion S-4 NCOIC position was the *same position* for which Col. Hooker refused to sign the initial NCOER, stating at the time that SFC Clark had already been rated on the position.

Col. Hooker's issuance of the second NCOER for the Battalion S-4 NCOIC position contradicted his reasons for earlier refusing to sign the Complete the Record NCOER. This inconsistency raised the specter of reprisal for SFC Clark's whistleblower actions. Although both Mr. Mansfield and Mr. Robinson recommended that a whistleblower advisory be submitted to the DAIG, Col. Huggins instead berated Messrs. Mansfield and Robinson for not preventing Col. Hooker from reprising and ordered the case closed as an assistance issue. By ordering the case closed, the whistleblowers contend, Col. Huggins ignored the evidence and violated AR 20-1 which requires that, in the case of whistleblower reprisal, a prior declination be amended to include any new facts, a new declination be drafted, or a whistleblower advisory be submitted to the DAIG. AR 20-1 ¶ 8-10(c)(4). Messrs. Mansfield and Robinson allege that

[3] The four elements of an allegation as stated in AR 20-1 ¶ 4-4(c) are: 1. Who? 2. Improperly? 3. Did or did not do what? 4. The violation of what standard?

[4] Reprisal for whistleblowing occurs when a personnel action is taken, not taken, or threatened to be taken or not taken in reprisal for communicating information that the disclosing individual reasonably believes constitutes evidence of a violation of law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. (*See* 10 U.S.C. § 1034; *see also* 5 U.S.C. 2302(b)(8)).

Col. Huggins ordered the case closed in order to protect the Dragon Brigade Commander, Col. Hooker.

Similarly, Mr. Robinson alleges that when Sergeant First Class Amelia Wilson informed the OIG and Command Sergeant Major James Jordan that her Unit First Sergeant was mistreating her, Command Sergeant Major Jordan insinuated that he could have her transferred in reprisal for her disclosure of this allegation. Instead of treating this matter as a possible whistleblower reprisal and investigating the matter consistent with the requirements of AR 20-1, Col. Huggins directed Mr. Robinson to speak with Command Sergeant Major Jordan about the Whistleblower Protection Act and the right of every individual to register a complaint with the Inspector General.

Mr. Robinson also alleges that Col. Huggins delayed an investigation into Battalion Commander Lieutenant Col. J. Thomas's alleged physical assault of Staff Sergeant Victoria Perez and his inappropriate relationship with a female Staff Sergeant. Mr. Robinson explains that when SSG Perez informed the OIG of these allegations, Col. Huggins was reluctant to order an investigation, even though a preliminary analysis uncovered sufficient evidence to warrant further investigation. After some delay, he signed the request for a Commander's Inquiry. According to Mr. Robinson, the Commander's Inquiry substantiated the allegations that LTC Thomas had engaged in an improper relationship with a female Staff Sergeant. As a result, LTC Thomas was forced to retire.

Although Col. Huggins eventually agreed to an investigation of LTC Thomas, Mr. Robinson explains that the preliminary analysis into SSG Perez's allegations also provided sufficient evidence to warrant an investigation into the allegation that 35th Signal Brigade Commander Col. Brian Ellis had prior knowledge of LTC Thomas's misconduct and covered up SSG Perez's complaint. The recommendation to Col. Huggins that he order an investigation into Col. Ellis's behavior went unheeded. Mr. Robinson maintains that this failure to take action in light of the evidence of wrongdoing on Col. Ellis's part further indicates that Col. Huggins routinely abuses his authority in order to protect his colleagues.

In addition to this incident, Mr. Robinson also alleges that Col. Huggins delayed investigating a report that Lieutenant Col. Chuck Gabrielson, Commander of the 327th Signal Battalion, had condoned the consumption of alcohol while deployed in Louisiana. When presented with a request for a Commander's Inquiry, Col. Huggins was reluctant to sign the request, stating that he did not want to burden units while they were preparing for deployment. Mr. Robinson asserts that Col. Huggins was attempting to protect LTC Gabrielson.

I have concluded that there is a substantial likelihood that the information Messrs. Mansfield and Robinson provided to OSC discloses violations of law, rule, or regulation and abuse of authority. As previously stated, I am referring this information to you for an investigation of Messrs. Mansfield's and Robinson's allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must

include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation whenever the whistleblower consents to the disclosure of his or her name.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office, will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives. 5 U.S.C. § 1213(e)(3).

Unless classified or prohibited from release by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file numbers in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,

Scott J. Bloch

Enclosure

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency[1] and shall include:

(1) a summary of the information with respect to which the investigation was initiated;

(2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of law, rule or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as:

(A) changes in agency rules, regulations or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and management initiatives that may result from this review.

[1] Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.