Analysis

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Analysis of Disclosures, Agency Investigation and Reports, and Comments of the Acting Special Counsel

OSC File Nos. DI-06-1645 & DI-06-1904

Summary

Ronald Mansfield, Deputy XVIII Airborne Corps and Fort Bragg Inspector General, and Emmitt Robinson, Assistant Inspector General, who consented to the release of their names, alleged that Colonel (COL) James Huggins, XVIII Airborne Corps and Fort Bragg Inspector General, Department of the Army, 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. Messrs. Mansfield and Robinson contend that these actions demonstrated an abuse of authority and a violation of the due process regulations in Army Regulation 20-1 (AR20-1), Inspector General Activities and Procedures.

The Honorable Francis J. Harvey, Secretary of the Army, tasked the Honorable Ronald J. James, Assistant Secretary of the Army, Manpower and Reserve Affairs, to investigate Mr. Mansfield's and Mr. Robinson's allegations. Assistant Secretary James, in turn, tasked the Department of the Army Inspector General with investigating the allegations. The investigation was conducted by the U.S. Army Forces Command (FORSCOM) Office of Inspector General (OIG). The FORSCOM OIG concluded that none of the allegations were substantiated. On December 21, 2007, Assistant Secretary James reviewed and approved the OIG'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 Whistleblowers' Disclosures

First, Mr. Mansfield and Mr. Robinson alleged that COL Huggins ignored the requirements of AR20-1 and the substantial and preponderant evidence of reprisal in the case of Sergeant First Class (SFC) Shacondra Clark. Dragon Brigade Commander COL Richard Hooker refused to provide SFC Clark with a Complete-the-Record Non-Commissioned Officer Evaluation Report (NCOER) in retaliation for requesting assistance from the OIG and reporting contracting improprieties. The whistleblowers further alleged that COL Hooker delayed the issuance of SFC Clark's Annual NCOER so as to downgrade her duty position from the Brigade S-4 Noncommissioned Officer in Charge (NCOIC) to the Battalion S-4 NCOIC.

Second, Mr. Robinson alleged that Command Sergeant Major (CSM) James Jordan insinuated that he could have transferred SFC Amelia Wilson in reprisal for reporting to the OIG and CSM Jordan that her Unit First Sergeant was mistreating her. Instead of treating the matter as a possible whistleblower reprisal and conducting an investigation consistent with the requirements of AR20-1, COL Huggins directed Mr. Robinson to speak with CSM Jordan about

the Whistleblower Protection Act and the right of every individual to register a complaint with the Inspector General.

Third, Mr. Robinson alleged that COL Huggins delayed an investigation into Battalion Commander Lieutenant Colonel (LTC) Jochen Thomas's physical assault of Staff Sergeant (SSG) Victoria Perez and his inappropriate relationship with a female Staff Sergeant. Mr. Robinson explained 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 a delay, COL Huggins eventually signed the request for a Commander's Inquiry, which substantiated the allegation that LTC Thomas engaged in an improper relationship with a female Staff Sergeant.

Fourth, although COL Huggins eventually agreed to an investigation of LTC Thomas, the preliminary analysis into SSG Perez's allegations provided sufficient evidence to warrant an investigation into allegations that 35th Signal Brigade Commander COL Brian Ellis had prior knowledge of LTC Thomas's misconduct and covered up SSG Perez's complaint. Mr. Robinson alleged that COL Huggins abused his authority by not ordering an investigation into COL Ellis, thereby protecting his colleague.

Fifth, Mr. Robinson alleged that COL Huggins delayed investigating a report that LTC 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 asserted that COL Huggins was attempting to protect LTC Gabrielson.

Department of the Army Report

On December 6, 2006, the whistleblowers' allegations were forwarded to the FORSCOM OIG for investigation. The report did not substantiate the whistleblowers' first allegation that COL Huggins ignored the requirements of AR20-1 and the substantial and preponderant evidence of reprisal in the case of SFC Clark. COL Hooker properly applied the Army Regulation governing NCOERs. SFC Clark was not authorized to receive a Complete-the-Record NCOER for the period between December 2004 and August 2005, because she had already received an Annual NCOER for service in essentially the same duty position. The Army OIG and the Department of Defense OIG agreed with the decision that not providing SFC Clark with a Complete-the-Record NCOER did not constitute whistleblower reprisal and that further investigation was not warranted. SFC Clark received high marks on both her 2005 Annual NCOER and 2004 Annual NCOER, and the delay in issuing SFC Clark's annual evaluation did not constitute either an unfavorable personnel action or the withholding of a favorable personnel action.

The report did not substantiate the second allegation that CSM Jordan insinuated that he could have transferred SFC Wilson to another unit in reprisal for reporting to both the OIG and CSM Jordan that her Unit First Sergeant was mistreating her. On September 1, 2004,

SFC Wilson visited the Fort Bragg OIG. She complained that her chain of command mistreated soldiers across the board, specifically referring to Captain (CPT) Brian Jorgenson and First Sergeant (1SG) James Fulton. SFC Wilson alleged that she was removed from her position as a platoon sergeant and had her NCOER downgraded in reprisal for making a complaint to the Brigade Equal Opportunity (EO) representative in July 2004. The complaint was deemed not to be EO-appropriate and SFC Wilson's allegations were forwarded to her company leadership, including CPT Jorgenson and 1SG Fulton. On August 26, 2004, SFC Wilson received an NCOER from CPT Jorgenson and 1SG Fulton that reflected a downgrade in the evaluation of her performance of duty as platoon sergeant. SFC Wilson subsequently refused an order to report to company formation and sought an audience with CSM Ronald Pflieger. Due to SFC Wilson's failure to follow the order, 1SG Fulton requested that SFC Wilson be removed from B Company and assigned to a lesser position in C Company. The request was granted the next day.

In her September 1, 2004, complaint to the Fort Bragg OIG, SFC Wilson made no allegations against CSM Jordan. SFC Wilson did not make any allegations against CSM Jordan until November 23, 2004, during sworn testimony in which she stated, "if I keep complaining, running to the IG, that [CSM Jordan said he would] move [me] off Fort Bragg because [I] wasn't Fort Bragg material anyway." On October 28, 2005, the Fort Bragg OIG began to investigate SFC Wilson's reprisal allegations. SFC Wilson was re-interviewed on December 1, 2005, after returning from a deployment in Iraq. SFC Wilson denied that any Army official reprised against her for making a protected communication, and stated that she had been informed of her pending reassignment from B Company to C Company before her protected communication with the Brigade EO representative. She explained that the reassignment was not taken in response to her protected communication. Rather, it was based on her poor working relationship with 1SG Fulton. SFC Wilson made no mention of CSM Jordan during this testimony or in her written questionnaire responses related to the testimony.

There was no evidence in SFC Wilson's four Inspector General case files that COL Huggins was ever informed of the outcome of the November 23, 2004, interview—the only interview in which SFC Wilson made an allegation against CSM Jordan. COL Huggins deployed to Iraq on January 24, 2005, and did not return to Fort Bragg until January 21, 2006, by which point the Fort Bragg OIG had declined to take further action on SFC Wilson's retaliation allegations. Because COL Huggins was never informed of SFC Wilson's specific allegations against CSM Jordan, he had no basis on which to direct Mr. Robinson to take any action with regard to CSM Jordan.[1]

The report did not substantiate the third allegation that COL Huggins delayed an investigation into Battalion Commander Lieutenant Col. (LTC) Jochen Thomas's alleged physical assault of SSG Perez or his inappropriate relationship with a female Staff Sergeant. SSG Perez initially made her complaint about the physical assault by LTC Thomas to the Fort

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[1] The report found that the Fort Bragg OIG erred in failing to address SFC Wilson's allegation of reprisal against CSM Jordan during the course of her December 1, 2005, interview. As a result, the Inspector General of the Army will direct the Fort Bragg OIG to reopen SFC Wilson's case to properly address and resolve the potential allegations of reprisal against CSM Jordan.

Bragg OIG on October 19, 2004. The assault occurred while SSG Perez and LTC Thomas were deployed in Iraq in October 2003. SSG Perez had previously reported the incident to COL Bryan Ellis, who conducted an inquiry and determined that the assault was merely a verbal altercation. SSG Perez also alleged that LTC Thomas was engaged in an inappropriate relationship with SSG Renee Nolin. The case notes in SSG Perez's file indicate that the allegations appeared to have merit. On November 22, 2004, COL Huggins submitted a written request to Lieutenant General (LTG) John Vines that LTG Vines direct the Fort Bragg OIG to investigate the allegations made against LTC Thomas. LTG Vines signed the request on the same day he received it.

Based on the interviews conducted during the Fort Bragg OIG investigation, Mr. Robinson believed that there was a strong possibility that the allegations were true, that COL Ellis knew about them, and that COL Ellis never interviewed key witnesses to the case. After Mr. Robinson's interviews, COL Michael Schneider was appointed to conduct an investigation into SSG Perez's allegations on December 17, 2004. LTG Vines approved the findings in COL Schneider's report on January 26, 2005. The report determined that there was insufficient evidence to establish that LTC Thomas had engaged in adultery with SSG Renee Nolin, but the report did find that they engaged in an inappropriate relationship. The report also found that LTC Thomas had assaulted and mistreated SSG Perez. LTC Thomas was issued a reprimand and removed from command on January 26, 2005.

During his interview with the FORSCOM OIG, Mr. Robinson stated that COL Huggins refused to sign Temporary Assistant Inspector General John Hains's request for a Commander's Inquiry into SSG Perez's allegations. Mr. Robinson did not know why COL Huggins refused to do so, but he heard COL Huggins say that he did not want to saddle units with distractions while they are preparing for deployment. Mr. Mansfield corroborated Mr. Robinson's assertion that COL Huggins did not want to burden the 35th Signal Brigade as it prepared for deployment and that COL Huggins directed the closure of the case. Mr. Mansfield stated that it was not until the Fort Bragg OIG learned about an alleged altercation between LTC Thomas and SSG Jason Nolin,[2] that COL Huggins allowed Mr. Mansfield to seek a Commanding General's directive for investigation.

Mr. Hains confirmed that he interviewed SSG Perez about her assault complaint. He initially told her that the allegations were without merit and the Fort Bragg OIG would not investigate them further because they had already been investigated. Mr. Hains proceeded to return the case to Mr. Robinson as a matter for the Assistance section. However, SSG Perez returned again and raised for the first time the allegation about an inappropriate relationship between LTC Thomas and SSG Renee Nolin and the public altercation between LTC Thomas and SSG Jason Nolin. SSG Perez did not have firsthand knowledge of the inappropriate relationship so Mr. Hains and Mr. Robinson conducted follow-on interviews of SSG Renee Nolin and SSG Jason Nolin. Mr. Hains stated that he did not receive any pressure from COL Huggins not to report allegations against LTC Thomas during this inquiry. Mr. Hains further stated that he had no recollection of playing any role in requesting the Commander's

[2] SSG Jason Nolin is SSG Renee Nolin's husband.

Inquiry into SSG Perez's allegations, and he had never been prevented from reporting allegations against field grade officers to the appropriate authority.

LTC Mark Childress testified that COL Huggins was disgusted with LTC Thomas's behavior, viewing it as unacceptable. LTC Childress did not perceive that COL Huggins tried to influence the investigation in any inappropriate manner.

COL Huggins recalled learning about SSG Perez's allegations around the same time he underwent a two-week TDY trip to Iraq between October 25 and November 4, 2004. COL Huggins discussed SSG Perez's allegations with COL Ellis in early November 2004. COL Ellis viewed the allegations as serious enough to warrant a search for a replacement in the event that the inappropriate relationship was substantiated. COL Huggins did not recall his staff advising him to refer the improper relationship to COL Ellis for investigation. Even if he had received such advice, COL Huggins said that he would not have concurred with it, because COL Ellis was "too close" to the matter as LTC Thomas's direct superior. COL Huggins denied ordering the case closed as an Assistance matter and telling anyone not to investigate it. COL Huggins thought Mr. Mansfield was trying to stall the inquiry long enough to delay its resolution until the 35th Signal Brigade's deployment to Iraq. COL Huggins stated that he made it very clear to Mr. Mansfield to move forward on the case so that the Commanding General and Brigade Commander would have sufficient facts to make an informed decision on LTC Thomas's status before the unit's deployment.

COL Ellis testified that COL Huggins brought SSG Perez's allegation about the inappropriate relationship between LTC Thomas and SSG Nolin to his attention in early-to-mid November 2004. COL Huggins told COL Ellis that the Fort Bragg OIG had received unfavorable information about LTC Thomas. COL Ellis offered to investigate the matter, but COL Huggins advised him not to do anything, because COL Huggins intended to seek the Commanding General's advice on the matter.

The report concluded that the allegation that COL Huggins blocked the referral of SSG Perez's allegations was not supported by the evidence. Only slightly more than a month elapsed between the receipt of SSG Perez's complaints on October 19, 2004, and COL Huggins's referral to the highest levels of the chain of command at Fort Bragg on November 22, 2004. The report determined that this length of time was not unreasonable considering that COL Huggins was in Iraq for two of the weeks during this period. COL Huggins also relied on information derived from interviews which took place during this period. Rather than having COL Ellis investigate the allegations, COL Huggins decided the allegations should be investigated at a more senior level, a decision which the report found to be both reasonable and prudent.

The report did not substantiate the fourth allegation that COL Brian Ellis had prior knowledge of LTC Thomas's misconduct, that he covered up SSG Perez's complaint, and that COL Huggins abused his authority by not ordering an investigation into COL Ellis. On June 2, 2004, COL Ellis appointed an officer to inquire into SSG Perez's assault allegation against LTC Thomas. The officer determined that because LTC Thomas had no intent to cause

SSG Perez bodily harm, there was no assault.[3] COL Ellis was not aware of the allegation regarding the inappropriate relationship between LTC Thomas and SSG Nolin until November 2004 when COL Huggins informed him of it. COL Ellis immediately offered to investigate the allegation of the inappropriate relationship, but COL Huggins believed it would be more appropriate to be addressed at the Commanding General level.

The report acknowledged a discrepancy between COL Huggins's claim that COL Ellis had told him (COL Huggins) in November 2004 that there had been previous perceptions of an inappropriate relationship and he (COL Ellis) had conducted a Commander's Inquiry into it. In contrast, COL Ellis testified that he had not previously conducted any type of Commander's Inquiry into the allegation of an inappropriate relationship involving LTC Thomas. The report proffered two possible explanations. First, COL Huggins may have misunderstood COL Ellis's statement that he had directed an investigation into allegations of misconduct against LTC Thomas by interpreting it to include both the assault and the inappropriate relationship when only the assault was investigated. Second, even if COL Huggins's recollection is correct, COL Huggins would have had every reason to believe that COL Ellis had acted appropriately, and COL Huggins would have had no basis on which to assert that COL Ellis covered up LTC Thomas's misconduct.

The evidence indicated that that there was no cover-up of COL Ellis's failure to investigate the inappropriate relationship allegation, because he was not aware of it. Rather, COL Huggins ordered Mr. Mansfield to quickly investigate the allegations so that the Commanding General and COL Ellis could make an informed decision regarding LTC Thomas before his unit deployed.

The report did not substantiate the fifth allegation that COL Huggins delayed investigating a report that LTC Gabrielson condoned the consumption of alcohol while deployed in Louisiana. COL Huggins was allegedly reluctant to sign a request for a Commander's Inquiry, stating that he did not want to burden units while they were preparing for deployment. Mr. Robinson alleged that COL Huggins wanted to protect LTC Gabrielson.

On April 23, 2004, PFC Michael Columbus registered a complaint to the Fort Bragg OIG that he had been assaulted by three non-commissioned officers on April 2, 2004, during a rest and relaxation trip to New Orleans, Louisiana. It was determined that the troops' consumption of alcohol was a factor in the assault. On April 29, 2004, COL Huggins referred the assault allegations to COL Ellis for a Commander's Inquiry. It was not determined until the Commander's Inquiry that LTC Gabrielson approved the troops' consumption of alcohol in violation of XVIII Airborne Corps policy. In the request for a Commander's Inquiry, COL Huggins specifically directed COL Ellis to determine who authorized the consumption of alcohol during the trip.

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[3] COL Schneider's subsequent investigation of this allegation determined that intent to commit bodily harm is not an element of assault under Article 128 of the Uniform Code of Military Justice. As a result, COL Schneider's report determined that LTC Thomas had committed assault based upon the same facts as this inquiry.

The Investigating Officer's report, which was completed on May 24, 2004, substantiated the allegation that LTC Gabrielson permitted his soldiers to consume alcohol. On September 4, 2004, COL Ellis asked the Commanding General for authority to to take administrative action against LTC Gabrielson. The Commanding General granted COL Ellis's request on September 8, 2004, and COL Ellis issued LTC Gabrielson a Memorandum of Admonishment on September 9, 2004.

During his interview with FORSCOM OIG, Mr. Mansfield testified that COL Huggins would not have agreed to refer PFC Columbus's allegations for investigation absent Mr. Hains's insistence. Mr. Hains testified that he learned that LTC Gabrielson was involved only after he received the Investigating Officer's May 24, 2004, report. When Mr. Hains informed COL Huggins that he was going to include the finding against LTC Gabrielson in the Fort Bragg OIG Report of Investigative Inquiry (ROII), COL Huggins "was not happy," but COL Huggins never interfered with Mr. Hains's decision to include the information in the final ROII. COL Huggins testified that he did not delay the investigation into these allegations and would never have tried to protect LTC Gabrielson. The agency's report concluded that there is no evidence that COL Huggins hesitated to refer the allegation regarding alcohol consumption to COL Ellis or that COL Huggins had any interest in protecting LTC Gabrielson.

Mr. Mansfield alleged that COL Huggins removed Mr. Hains in part for Mr. Hains's persistence in pursuing PFC Columbus's allegation. The FORSCOM OIG conducted an investigation into this additional issue sua sponte. Mr. Hains believed that this incident played a role in his dismissal at the end of his probationary period of employment with the Fort Bragg OIG. The FORSCOM OIG's investigation determined that Mr. Mansfield visited the Fort Bragg civilian personnel office and requested assistance in terminating Mr. Hains. Prior to the termination being completed, Mr. Hains voluntarily returned to his prior position at the XVIII Airborne Corps G-3. The FORSCOM OIG's interviews of Ms. Christine Potter, Chief, FORSCOM/Installation Management Agency Team, Fort Bragg Civilian Personnel Advisory Center and Mr. Michael Larson, Fort Bragg Attorney-Adviser, revealed that COL Huggins had no involvement in the effort to terminate Mr. Hains's employment with the Fort Bragg OIG. COL Huggins was deployed to Iraq at the time of Mr. Hains's termination. The FORSCOM OIG concluded that Mr. Mansfield appeared to have engineered the effort to terminate Mr. Hains.

The Whistleblowers' Comments

Messrs. Mansfield and Robinson were provided copies of the agency's report on February 4, 2008, and given the opportunity to comment on it. On May 2, 2008, Mr. Mansfield declined to comment on the report. Mr. Robinson requested six months to draft his comments. At the end of that period, he did not respond to multiple requests for his comments, which were due August 4, 2008.

Acting Special Counsel's Findings

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