
B15

Department of the Army Inspector General Action Request System

Friday, December 8, 2006

Electronic 1559

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FJ040152

Case Number : FJ040152 Close Date : 28-October-2004 Open Date : 23-April-2004

Suspense Date : External Suspense Date :

Complaint Made To : Army IG Receipt Mode : Walk-In

Case Status : Closed Non-IG Referral :

Initiator Information Name Last : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
Acknowledge Date : 23-April-2004 Home UIC : Race : Caucasian

Complainant Information Name Last : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
Home UIC : Race : Caucasian

Case Label : [REDACTED] Home IG : FJ

Problem Area : Assault/drunk & disorderly/cofc

Notification Date : 27-October-2004 Inspector General : [REDACTED]

Location : Fort Bragg, North Carolina

Subject Information : Last Name : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
Race : Unknown Organization ID : XVIII Airborne Corps & Ft. Bragg

Function Information : Function : YB Commander's Action/Decision
Organization ID : XVIII Airborne Corps & Ft. Bragg
Determination : Substantiated User Data : TIM Category : C
Operation :

Subject Information : Last Name : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
Race : Unknown Organization ID : XVIII Airborne Corps & Ft. Bragg

10-15a

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EWIRIT 8-13

Function Information : Function : ZD Other UCMJ/Crim Violations
 Organization ID : XVIII Airborne Corps & Ft. Bragg
 Determination : Not Substantiated User Data : TIM Category : C
 Operation :

Function : ZD Other UCMJ/Crim Violations
 Organization ID : XVIII Airborne Corps & Ft. Bragg
 Determination : Not Substantiated User Data : TIM Category : C
 Operation :

Function : ZB Harassment/Maltreatment
 Organization ID : XVIII Airborne Corps & Ft. Bragg
 Determination : Substantiated User Data : TIM Category : C
 Operation :

Subject Information : Last Name : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
 Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
 Race : Unknown Organization ID : XVIII Airborne Corps & Ft. Bragg

Function Information : Function : ZD Other UCMJ/Crim Violations
 Organization ID : XVIII Airborne Corps & Ft. Bragg
 Determination : Not Substantiated User Data : TIM Category : C
 Operation :

Function : ZD Other UCMJ/Crim Violations
 Organization ID : XVIII Airborne Corps & Ft. Bragg
 Determination : Not Substantiated User Data : TIM Category : C
 Operation :

Subject Information : Last Name : [REDACTED] First : [REDACTED] M.I. : [REDACTED] SSN : [REDACTED]
 Component : Active Army Grade : [REDACTED] Gender : [REDACTED]
 Race : Unknown Organization ID : XVIII Airborne Corps & Ft. Bragg

Function Information : Function : ZD Other UCMJ/Crim Violations
 Organization ID : XVIII Airborne Corps & Ft. Bragg

Determination : User Data : TIM Category :
 Operation :

Function :
 Organization ID :
 Determination : User Data : TIM Category :
 Operation :

Other Issues
 or
Allegations :

Function : Nonjudicial Punishment
 Determination :
 User Data : TIM Category : Operation :
 Organization ID : XVIII Airborne Corps & Ft. Bragg

Function : Commander's Action/Decision
 Determination :
 User Data : TIM Category : Operation :
 Organization ID : XVIII Airborne Corps & Ft. Bragg

Function : Commander's Action/Decision
 Determination :
 User Data : TIM Category : Operation :
 Organization ID : XVIII Airborne Corps & Ft. Bragg

Synopsis :

assigned to B/327 SIG BN contacted the XVIII Airborne Corps and Fort Bragg Inspector General to complain about his Company Commander vacating suspended punishment from a previously imposed Article 15 based on a 2 Apr 04 incident in which alleges three NCOs assaulted him. During the course of preliminary analysis, the Corps IG identified 5 allegations of assault by three different NCOs against two different soldiers, including Corps IG also identified issues involving the consumption of alcohol while deployed, the appropriateness of vacating the suspended punishment, and the actions of the chain of command during and after the 2 Apr 04 incident. The Corps IG referred the allegations and issues to the 35 SIG BDE Commander for appropriate action o/a 29 Apr 04. His 22 Jul 04 response indicated 3 new allegations against the 327 SIG BN Commander, and two of the three NCOs. The 35 SIG BDE Commander provided documentation of command actions on the three new allegations to the IG o/a 8 Sep 04. conducted the IG inquiry.

Standards

Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful

for the use of violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault.

Paragraph 2-1a(13), AR 600-100 states all leaders are responsible for treating subordinates with dignity, respect, fairness, and consistency.

XVII Airborne Corps and Fort Bragg Policy Number 42 states "Personnel will not purchase, possess, or consume alcoholic beverages during deployments or exercises without the prior approval of the first colonel in their chain of command. ... This policy is punitive. Violations of this policy may result in adverse administrative action or punishment under Article 92 of the Uniform Code of Military Justice.

XVIII Airborne Corps and Fort Bragg Supplement 1 to AR 27-10 states that the Commander, XVIII Airborne Corps and Fort Bragg, reserves the authority to impose nonjudicial punishment on, or otherwise dispose of cases of misconduct committed by commissioned officers, warrant officers, sergeants major, first sergeants, and master sergeants of this command.

Paragraph 3-25, AR 27-10 states, "A commander may vacate any suspended punishment ... provided the punishment is of the type and amount the commander could impose and where the commander has determined that the soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period. The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unworn statements; the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension." The paragraph goes on to state, "If the suspended punishment is of the kind set forth in Articles 15 (e)(1) through (7), UCMJ, the soldier should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut the information on which the proposed vacation is based." Finally, the paragraph indicates "Failure to provide notification and an opportunity to appear or otherwise respond to the basis of a proposed vacation may result in the record of punishment being inadmissible in a subsequent court-martial, but will not, by itself, render a vacation action void."

Article 92 (Failure to Obey Order or Regulation), UCMJ states that if a soldier issues a lawful order, the accused had knowledge of the lawful order and had a duty to obey the order, and the accused failed to obey the order; then the accused is in violation of Article 92, UCMJ.

Paragraph 4-4a(2), AR 600-20 states that commanders and leaders in the Army will take action consistent with Army regulation in any case where a soldier's conduct violates good order and military discipline.

Paragraph 5-8b, AR 600-20 states that when commanders are apprised of complaints or accusations against military personnel, they will be expected to inquire into the matter and attempt a resolution. When a written complaint or accusation is received against military personnel, commanding officers of units or installations will investigate the complaint when warranted. If the commander believes the complaint does not warrant an investigation, the statement, "does not warrant investigation" will be recorded on the complaint, followed by the initials of the commander or an officer designated by the commander. All complaints will be acknowledged and/or documented in writing.

Allegations

Allegation 1. The allegation that (b)(7)(C) B/327 SIG BN, improperly, with unlawful force or violence, wrapped his arm around the neck of (b)(7)(C) B/327 SIG BN, in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ was not substantiated. In his response to the IG, the 35 SIG BDE Commander stated, (b)(7)(C) did not use unlawful force or violence by putting his hands on (b)(7)(C) B Co, 327th Sig Bn, in violation of Article 128, UCMJ." (ZD/N)

Allegation 2. The allegation that (b)(7)(C) B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to (b)(7)(C) B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated. In his response to the IG, the 35 SIG BDE Commander stated, (b)(7)(C) did not improperly offer with unlawful force or violence to do bodily harm to (b)(7)(C) B

C o,327th Sig Bn, in violation of Article 128, UCMJ." (ZD/N)

A. Allegation 3. The allegation that [REDACTED] B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to [REDACTED] B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated. In his response to the IG, the 35 SIG BDE Commander stated, [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B C o,327th Sig Bn, in violation of Article 128, UCMJ." (ZD/N)

A. Allegation 4. The allegation that [REDACTED] B/327 SIG BN, improperly grabbed [REDACTED] B/327 SIG BN, with unlawful force or violence in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ was not substantiated. The 35 SIG BDE IO determined, "The allegation is unfounded." The preponderance of credible evidence indicates that [REDACTED] did not improperly grab [REDACTED] with unlawful force or violence in an effort to do bodily harm to him. (ZD/N)

A. Allegation 5. The allegation that [REDACTED] B/327 SIG BN, improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated. The 35 SIG BDE IO determined, "The allegation is unfounded. [REDACTED] own statement ... makes no such allegation. No other statements taken from witnesses corroborate this allegation." The preponderance of credible evidence indicates that [REDACTED] did not improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] (ZD/N)

A. Allegation 6. The allegation that [REDACTED] B/327 SIG BN, improperly failed to treat [REDACTED] B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100 was substantiated. The 35 SIG BDE IO determined, [REDACTED] used inappropriate language and aggressive behavior towards both [REDACTED] and [REDACTED]. [REDACTED] also admonished [REDACTED] in writing for "unprofessional conduct." This admonishment further stated, "Your failure in this matter leads one to question your judgment, and your ability as a leader." Finally, the admonishment was given to [REDACTED] because his "verbal statements to [REDACTED] ... was perceived as threatening towards the soldier and only added to the misconduct of the situation." The preponderance of credible evidence indicates that [REDACTED] did not treat [REDACTED] with dignity, respect, fairness, and consistency. (ZB/S)

A. Allegation 7. The allegation that [REDACTED] B/327 SIG BN, improperly failed to treat [REDACTED] B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100 was substantiated. The 35 SIG BDE IO determined, [REDACTED] put his hands on [REDACTED] in some manner. His actions although not rising to the level of assault, are inappropriate for an NCO." This was in response to the IG's question, "Did leaders in B/327 Signal Bn fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how?" [REDACTED] also admonished [REDACTED] in writing for "unprofessional conduct." This admonishment further stated, "Your failure in this matter leads one to question your judgment, and your ability as a leader." Finally, the admonishment was given to [REDACTED] because he "improperly put your hands on [REDACTED] in an attempt to calm him. Your actions were interpreted as threatening toward the soldier and in turn, multiple members of your unit acted improperly." The preponderance of credible evidence indicates that [REDACTED] did not treat [REDACTED] with dignity, respect, fairness, and consistency. (ZB/S)

A. Allegation 8. The allegation that [REDACTED] the 327 SIG BN Commander, improperly authorized the consumption of alcohol by 327 SIG BN soldiers while deployed or on field exercises in violation of XVIII Airborne Corps and Fort Bragg Policy Number 42 was substantiated. The 35 SIG BDE IO determined that [REDACTED] approved the consumption of alcohol by soldiers in his battalion while participating in an R&R trip to New Orleans at the conclusion of a deployment to JRTC, Fort Polk, LA. XVIII Airborne Corps and Fort Bragg Policy Number 42 states that only the "first colonel in their chain of command" had the authority to grant such an approval and that violation of this policy is punitive. The preponderance of credible evidence indicates that [REDACTED] violated XVIII Airborne Corps and Fort Bragg Policy Number 42. (YB/S)

Other Matters.

Issue 1. The information provided by the complainant to the IG indicated that virtually all of the soldiers from B/317 SIG BN who traveled to New Orleans from JRTC for R&R, to include officers, NCOs, and the 327 Signal Battalion XO, [REDACTED] were "intoxicated" at the formation to load the busses for the return trip to JRTC. The referral to the 35 SIG BDE Commander asked if this consumption of alcohol was IAW Fort Bragg Master Policy Number 42; who authorized the consumption of alcohol during this trip and what safeguards were in place to ensure the good order, discipline, and the health and welfare of the soldiers? Allegation 8 above clarifies that the consumption of alcohol was not IAW Fort Bragg Master Policy Number 42 because [REDACTED] not the first colonel in the chain of command, authorized it. However, there were safeguards in place to ensure the good order, discipline, and the health and welfare of the soldiers as evidenced in the 35 SIG BDE CI. Apparently, these safeguards were insufficient to prevent the altercation that resulted in this complaint to the IG; but there were safeguards in place. After receiving the authority to dispose of [REDACTED] misconduct from the XVIII Airborne Corps and Fort Bragg Commander, [REDACTED] the 35 SIG BDE Commander, issued [REDACTED] a Memorandum of Admonishment.

Issue 2. Why was [REDACTED] suspended punishment from his Article 15 vacated following the incident in which he alleges 3 different NCOs assaulted him? Was it appropriate? In his complaint to the IG, [REDACTED] painted a picture of a soldier in the middle of a drunken melee who was trying to protect himself from "violent NCOs" and in fear for his personal safety. [REDACTED] additionally complained that he did not think that his behavior that night warranted the vacation of his suspended Article 15 punishment. The preponderance of credible evidence indicates that the vacation of [REDACTED] suspended punishment was justified by his violation of Article 92, UCMJ when he failed to obey the orders of two NCOs, was properly adjudicated by the Company Commander, [REDACTED] and was a decision within [REDACTED] discretion to make. (JE1/A)

Issue 3. [REDACTED] claimed that when he approached [REDACTED] the 327 Signal Bn Commander, on the open door policy with witnesses and complained about the assault and the vacated punishment he "laughed" at him and would not listen to the three witnesses whom [REDACTED] claims could corroborate his version of facts. What action did [REDACTED] take IAW paragraphs 4-4a(2) and 5-8b, AR 600-20 pursuant to [REDACTED] complaint? If [REDACTED] did not listen to the 3 witnesses, why did he not? The preponderance of credible evidence indicates that [REDACTED] took appropriate action UP AR 600-20 pursuant to [REDACTED] complaint. The 35 SIG BDE IO, [REDACTED] states in his report, [REDACTED] read the written complaint tendered by [REDACTED] and began his own informal inquiry IAW AR 600-20 para 5-8. He did not speak with [REDACTED] three witnesses." This establishes that [REDACTED] was appraised in writing of a complaint against military personnel. [REDACTED] original complaint to the IG indicated his contention that his complaint against the NCOs he alleged assaulted him constituted a breach of good order and military discipline. The record also establishes that [REDACTED] inquired into the matter and attempted a resolution in the form of an informal commander's inquiry which he documented in an unsigned document dated 12 Apr 04. It is not at all clear why [REDACTED] did not speak with [REDACTED] three witnesses and [REDACTED] or [REDACTED] never answered that question; but, there is no standard that requires [REDACTED] to listen to the three witnesses while conducting his informal commander's inquiry. Since [REDACTED] interviewed all of the available witnesses listed by [REDACTED] in his testimony to [REDACTED] it would appear that this lack of thoroughness on the part of [REDACTED] has been remedied. [REDACTED] was the commander authorized by AR 27-10 to vacate the suspension and there is no appeal of the decision allowed for in AR 27-10. As such, there was nothing that [REDACTED] could do in response to [REDACTED] complaint about the appropriateness of the vacation of the suspended punishment. [REDACTED] did inquire into the matter and attempt a resolution as was required by AR 600-20. Finally, the 35 SIG BDE IO stated, [REDACTED] and [REDACTED] did not laugh at [REDACTED] " (YB/A)

Issue 4. [REDACTED] also complained that the assaults he alleged occurred within the view of [REDACTED] Company Commander, B/327 Signal Bn. What actions did [REDACTED] take consistent with Army regulation to restore good order and discipline when he observed the melee described by [REDACTED] in which [REDACTED] claims to have been assaulted? The preponderance of credible evidence indicates that [REDACTED] took action consistent with Army regulation to restore good order and military discipline IAW paragraph 4-4a(2), AR 600-20. The 35 SIG BDE IO stated, [REDACTED] addressed the group and was able

to calm them down. He also addressed [REDACTED] and [REDACTED] to calm them down. Lastly, he assisted with throwing [REDACTED] to the bus." (YB/A)

Issue 5. Did leaders in B/327 Signal Bn fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how? This issue was addressed as allegations 6 and 7 above.

Notifying the complainant and subject/suspects of the results of the inquiry closed the case.

End-of-Report

1 Records

12/8/2006 [REDACTED] printed case notes for FORSCOM IG [REDACTED]. No notes were previously recorded.

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DEPARTMENT OF THE ARMY
HEADQUARTERS, XVIII AIRBORNE CORPS AND FORT BRAGG
FORT BRAGG NC 28310

AFZA-IG

7 December 2006

Subject: Addendum to Report of Investigative Inquiry (ROII) FJ 04-0152

1. On 23 April 2004, [REDACTED], assigned to B Company, 327th Signal Battalion, came to the XVIII Airborne Corps and Fort Bragg Inspector General's Office (FBIGO) and filed a complaint (FJ 04-0152). After a preliminary analysis was completed, a Request for Commander's Inquiry was delivered to the 35th Signal Brigade Commander, [REDACTED]. In the Request for Commander's Inquiry the following issue, which is the basis of this memo, was asked to be addressed: Did the leaders of B/327th fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency IAW AR 600-100?

2. The issue was addressed in the Commander's Inquiry (CI). Both the Inquiring Officers (IO) findings and the response from the 35th Signal Brigade Commander concluded that [REDACTED] B/327 Signal Battalion, did put his hands on [REDACTED] in some manner. The IO concluded that the limited amount of force did not violate Article 128 (Assault) of the UCMJ; however, it was inappropriate for an NCO.

3. The FBIGO used the findings of the Commander's Inquiry and wrote an ROII. The initial allegation of assault against [REDACTED] was unsubstantiated; however based on the findings of the CI and IAW paragraph 4-4b, AR 20-1 the allegations, 6 and 7 in the ROII, dated 26 October 2004, were formulated and substantiated against [REDACTED] (formally SGT) and [REDACTED], B/327 Signal Battalion for failing to treat [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a (13), AR 600-100.

4. On 17 November 2006, this office was informed by the Department of the Army Inspector General's Office (DAIG) that during a post board screen the DAIG legal advisor determined that "the commander's inquiry was not asked to address this allegation and consequently did not". It followed that the command's legal review did not address this allegation and no legal review was located in the FBIGO file for case number FJ 04-0152. DAIG requested the FBIGO prepare an addendum and request a legal review to the addendum and the allegations formulated from the CI dated 24 May 2004.

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AFZA-IG

Subject: Addendum to Report of Investigative Inquiry (ROII) FJ 04-0152

6. On 4 December 2006 the FBIGO reviewed case number FJ 04-0152 and found that not only was allegation (#6) against [REDACTED] formulated after the completion of the CI, but the same offense was also formulated into an allegation against [REDACTED] and substantiated without legal review.

7. Based on the facts presented in the CI (Exhibit E-3 of ROII) there was sufficient evidence to formulate and substantiate the two allegations included in the ROII. There appears to be error in requesting a legal review for the ROII dated 26 October 2004, which was completed by [REDACTED] Assistant IG, and approved by [REDACTED] Deputy Inspector General.

8. On 7 December 2006, the FBIGO sent this addendum, the ROII and attachments to the XVIII Airborne Corps SJA for a legal review on the substantiated allegations.

[REDACTED]

Chief, Inquiries & Investigations

[REDACTED]

Inspector General

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DEPARTMENT OF THE ARMY
HEADQUARTERS, XVIII AIRBORNE CORPS AND FORT BRAGG
FORT BRAGG NC 28310

AFZA-IG

7 December 2006

MEMORANDUM FOR Staff Judge Advocate (AFZA-JA), Fort Bragg, NC 28310

Subject: Request for legal review

1. Request SJA conduct a legal sufficiency review of the attached addendum and allegations six and seven of Report of Investigative Inquiry (ROII) FJ 04-0152.

2. On 17 November 2006, this office was informed by the Department of the Army Inspector General's Office (DAIG) that during a post board screen the DAIG legal advisor determined that "the commander's inquiry was not asked to address any allegation against [REDACTED] B/327 Signal Battalion, (now [REDACTED]) and consequently did not". It followed that the commands legal review also did not address the allegation. DAIG stated that it appeared that the FBIGO formulated the allegation against [REDACTED] after the completion of the CI, and then concluded, without legal review, that substantiation was appropriate, to the point of notifying [REDACTED] of this,

3. On 4 December 2006 the undersigned reviewed the FBIGO file for this case (FJ 04-0152), and found that not only was the allegation (#6) against [REDACTED] formulated after the completion of the CI, but the same offense was formulated into an allegation against [REDACTED] and also substantiated without legal review.

4. The Fort Bragg Inspector General requests a legal review be completed on the substantiated allegations previously mentioned and the attached addendum so the case can be properly closed.

5. The POC is the undersigned, [REDACTED]

[REDACTED]

Chief, Inquiries & Investigations

Encl 2

1. ROII (FJ 04-0152)
2. Addendum, 7 Dec 06

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REPORT OF INVESTIGATIVE INQUIRY

26 October 2004

FJ 04-0152

INTRODUCTION

1. [REDACTED] assigned to B Company, 327th Signal Battalion (B/327 SIG BN) contacted the XVIII Airborne Corps and Fort Bragg Inspector General (Corps IG) to complain about his Company Commander vacating Columbus' suspended punishment from a previously imposed Article 15 based on a 2 Apr 04 incident in which [REDACTED] alleges he was assaulted by three NCOs. During the course of preliminary analysis, the Corps IG identified 5 allegations of assault by three different NCOs against two different soldiers, including [REDACTED]. [REDACTED] Corps IG also identified issues involving the consumption of alcohol while deployed, the appropriateness of vacating the suspended punishment, and the actions of the chain of command during and after the 2 Apr 04 incident. The Corps IG referred the allegations and issues to the 35th Signal Brigade (35 SIG BDE) Commander, [REDACTED] for appropriate action o/a 29 Apr 04. His 22 Jul 04 response indicated 3 new allegations against the 327th Signal Battalion (327 SIG BN) Commander, [REDACTED] and two of the three NCOs. The 35 SIG BDE Commander provided documentation of command actions on the three new allegations to the IG o/a 8 Sep 04.

CONSIDERATION OF ALLEGATIONS

2. Allegation 1: That [REDACTED] B/327 SIG BN, improperly, with unlawful force or violence, wrapped his arm around the neck of [REDACTED] B/327 SIG BN, in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ.

a. Evidence:

(1) Complaint. In his complaint to the IG (exhibit C), [REDACTED] stated that [REDACTED] "turned around and started to wrap his arms around my neck."

(2) Standard. Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault (exhibit D-1).

(3) Documentary Evidence.

1

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(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

b. Discussion: In his response to the IG, the 35 SIG BDE Commander stated, [REDACTED] did not use unlawful force or violence by putting his hands on [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ."

c. Conclusion: The allegation that [REDACTED] B/327 SIG BN, improperly, with unlawful force or violence, wrapped his arm around the neck of [REDACTED] B/327 SIG BN, in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ was not substantiated.

3. Allegation 2: That [REDACTED] B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to [REDACTED] B/327 SIG BN, in violation of Article 128 (Assault), UCMJ.

a. Evidence:

(1) Complaint. In his complaint to the IG (exhibit C), [REDACTED] stated, "A couple of soldiers tried to grab me to go on the bus but I had to wait. One of those soldiers was [REDACTED] tried to fight with [REDACTED] at the time but he was soon focused on me."

(2) Standard. Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault (exhibit D-1).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

b. **Discussion:** In his response to the IG, the 35 SIG BDE Commander stated, (b)(7)(C) did not improperly offer with unlawful force or violence to do bodily harm to (b)(7)(C) B Co, 327th Sig Bn, in violation of Article 128, UCMJ.”

c. **Conclusion:** The allegation that (b)(7)(C) B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to (b)(7)(C) B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated.

4. Allegation 3: That (b)(7)(C) B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to (b)(7)(C) B/327 SIG BN, in violation of Article 128 (Assault), UCMJ.

a. **Evidence:**

(1) **Complaint.** In his complaint to the IG (exhibit C), (b)(7)(C) stated, “Once (b)(7)(C) grabbed (b)(7)(C) to get out of there (sic) (b)(7)(C) came after me. (b)(7)(C) was walking up to me and yelling, ‘You want to fight NCOs then come on.’ ... As (b)(7)(C) and (b)(7)(C) came closer I was backing away in fear that I would once again have two or more violent NCOs trying to ‘jump’ me.”

(2) **Standard.** Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault (exhibit D-1).

(3) **Documentary Evidence.**

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander’s Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander’s Inquiry (exhibit E-2).

b. **Discussion:** In his response to the IG, the 35 SIG BDE Commander stated, (b)(7)(C) did not improperly offer with unlawful force or violence to do bodily harm to (b)(7)(C) B Co, 327th Sig Bn, in violation of Article 128, UCMJ.”

c. **Conclusion:** The allegation that (b)(7)(C) B/327 SIG BN, improperly offered with unlawful force or violence to do bodily harm to (b)(7)(C) B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated.

3. Allegation 4: That [REDACTED] B/327 SIG BN, improperly grabbed [REDACTED] B/327 SIG BN, with unlawful force or violence in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ.

a. Evidence:

(1) Complaint. In his complaint to the IG (exhibit C), [REDACTED] stated, "A couple of soldiers tried to grab me to go on the bus but I had to wait. One of those soldiers was [REDACTED] tried to fight with [REDACTED] at the time but he was soon focused on me. When [REDACTED] laid off of [REDACTED] grabbed hold of [REDACTED] physically and calling him a piece of shit E-4 and such."

(2) Standard. Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault (exhibit D-1).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

(c) Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

b. Discussion: In his response to the IG, the 35 SIG BDE Commander stated, [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ." Unfortunately, that is not the allegation against [REDACTED] was alleged to have improperly grabbed [REDACTED] with unlawful force or violence in an effort to do bodily harm to him, which is also in violation of Article 128, UCMJ. However, if you look at the actual report to [REDACTED] by his IO, [REDACTED] you will see that [REDACTED] determines, "The allegation is unfounded." The preponderance of credible evidence indicates that [REDACTED] did not improperly grab [REDACTED] with unlawful force or violence in an effort to do bodily harm to him.

c. Conclusion: The allegation that [REDACTED] B/327 SIG BN, improperly grabbed [REDACTED] B/327 SIG BN, with unlawful force or violence in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ was not substantiated.

6. Allegation 5: That [REDACTED] B/327 SIG BN, improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] B/327 SIG BN, in violation of Article 128 (Assault), UCMJ.

a. Evidence:

(1) Complaint. In his complaint to the IG (exhibit C), [REDACTED] stated, "Once [REDACTED] grabbed [REDACTED] to get out of there (sic) [REDACTED] came after me. [REDACTED] was walking up to me and yelling, 'You want to fight NCOs then come on.' ... As [REDACTED] and [REDACTED] came closer I was backing away in fear that I would once again have two or more violent NCOs trying to 'jump' me."

(2) Standard. Article 128 (Assault), UCMJ states that any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault (exhibit D-1).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

(c) Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

b. Discussion: In his response to the IG, the 35 SIG BDE Commander stated, "[REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ." Unfortunately, that is not the allegation against [REDACTED] [REDACTED] was alleged to have improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] which is also in violation of Article 128, UCMJ. However, if you look at the actual report to [REDACTED] by his IO, [REDACTED] you will see that [REDACTED] determines, "The allegation is unfounded. [REDACTED] own statement ... makes no such allegation. No

other statements taken from witnesses corroborate this allegation." The preponderance of credible evidence indicates that [REDACTED] did not improperly attempted with unlawful force or violence to do bodily harm to [REDACTED]

c. Conclusion: The allegation that [REDACTED] B/327 SIG BN, improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] B/327 SIG BN, in violation of Article 128 (Assault), UCMJ was not substantiated.

7. Allegation 6: That [REDACTED] B/327 SIG BN, improperly failed to treat [REDACTED] B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100.

a. Evidence:

(1) Complaint. [REDACTED] report (exhibit E-3) to the 35 SIG BDE Commander responded to the issue identified by Corps IG, "Did leaders in B/327 Signal Bn fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how?" The response was "Yes. [REDACTED] put his hands on [REDACTED] in some manner. His actions although not rising to the level of assault, are inappropriate for an NCO. Statements also suggest that [REDACTED] used inappropriate language and aggressive behavior towards both [REDACTED] and [REDACTED]. In both instances, alcohol is not an excuse for the lack of exercising fair and consistent NCO command authority."

(2) Standard. Paragraph 2-1a(13), AR 600-100 states all leaders are responsible for treating subordinates with dignity, respect, fairness, and consistency (exhibit D-2).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

(c) Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

(d) Memorandum, HQ 35 Signal BDE, AFZA-SC-C, no date, subject: Memorandum of Concern (exhibit E-4).

b. Discussion: The 35 SIG BDE Commander's Inquiry (CI) determined, [REDACTED] used inappropriate language and aggressive behavior towards both [REDACTED] and [REDACTED]. [REDACTED] also admonished [REDACTED] in writing for "unprofessional conduct." This admonishment further stated, "Your failure in this matter leads one to question your judgment, and your ability as a leader." Finally, the admonishment was given to [REDACTED] because his "verbal statements to [REDACTED] ... was perceived as threatening towards the soldier and only added to the misconduct of the situation." The preponderance of credible evidence indicates that [REDACTED] did not treat [REDACTED] with dignity, respect, fairness, and consistency.

c. Conclusion: The allegation that [REDACTED] B/327 SIG BN, improperly failed to treat [REDACTED] B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100 was substantiated.

8. Allegation 7: That [REDACTED] B/327 SIG BN, improperly failed to treat [REDACTED] B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100.

a. Evidence:

(1) Complaint. [REDACTED] report (exhibit E-3) to the 35 SIG BDE Commander responded to the issue identified by Corps IG, "Did leaders in B/327 Signal Bn fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how?" The response was "Yes. [REDACTED] put his hands on [REDACTED] in some manner. His actions although not rising to the level of assault, are inappropriate for an NCO. Statements also suggest that [REDACTED] used inappropriate language and aggressive behavior towards both [REDACTED] and [REDACTED]. In both instances, alcohol is not an excuse for the lack of exercising fair and consistent NCO command authority."

(2) Standard. Paragraph 2-1a(13), AR 600-100 states all leaders are responsible for treating subordinates with dignity, respect, fairness, and consistency (exhibit D-2).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

(c) Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

(d) Memorandum, HQ 35 Signal BDE, AFZA-SC-C, no date, subject: Memorandum of Concern (exhibit E-5).

b. **Discussion:** The 35 SIG BDE Commander's Inquiry (CI) determined, (b)(7)(C) (b)(7)(C) put his hands on (b)(7)(C) in some manner. His actions although not rising to the level of assault, are inappropriate for an NCO." This was in response to the IG's question, "Did leaders in B/327 Signal Bn fail to treat (b)(7)(C) or (b)(7)(C) with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how?" (b)(7)(C) also admonished (b)(7)(C) in writing for "unprofessional conduct." This admonishment further stated, "Your failure in this matter leads one to question your judgment, and your ability as a leader." Finally, the admonishment was given to (b)(7)(C) because he "improperly put your hands on (b)(7)(C) in an attempt to calm him. Your actions were interpreted as threatening toward the soldier and in turn, multiple members of your unit acted improperly." The preponderance of credible evidence indicates that (b)(7)(C) did not treat (b)(7)(C) with dignity, respect, fairness, and consistency.

c. **Conclusion:** The allegation that (b)(7)(C) B/327 SIG BN, improperly failed to treat (b)(7)(C) B/327 SIG BN, with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100 was substantiated.

9. **Allegation 8:** That (b)(7)(C) the 327 SIG BN Commander, improperly authorized the consumption of alcohol by 327 SIG BN soldiers while deployed or on field exercises in violation of XVIII Airborne Corps and Fort Bragg Policy Number 42.

a. **Evidence:**

(1) **Complaint.** (b)(7)(C) report (exhibit E-3) to the 35 SIG BDE Commander responded to the issue identified by Corps IG, "Was this consumption of alcohol IAW Fort Bragg Master Policy Number 42? Who authorized the consumption of alcohol during this trip and what safeguards were in place to ensure the good order, discipline, and the health

and welfare of the soldiers?" The response was, "No. [REDACTED] was unaware of this policy and approved the consumption of alcohol himself. ... [REDACTED] instructed [REDACTED] to conduct a safety briefing and mandated that a field grade officer [REDACTED] supervise the trip."

(2) Standards.

(a) XVIII Airborne Corps and Fort Bragg Policy Number 42 states "Personnel will not purchase, posses, or consume alcoholic beverages during deployments or exercises without the prior approval of the first colonel in their chain of command. ... This policy is punitive. Violations of this policy may result in adverse administrative action or punishment under Article 92 of the Uniform Code of Military Justice (exhibit D-3).

(b) XVIII Airborne Corps and Fort Bragg Supplement 1 to AR 27-10 states that the Commander, XVIII Airborne Corps and Fort Bragg, reserves the authority to impose nonjudicial punishment on, or otherwise dispose of cases of misconduct committed by commissioned officers, warrant officers, sergeants major, first sergeants, and master sergeants of this command (exhibit D-4).

(3) Documentary Evidence.

(a) Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

(b) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

(c) Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

(d) Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 7 Sep 04, subject: Request Authority for Administrative Action (exhibit E-6).

(e) Memorandum, HQ XVIII ABN Corps, AFZA-JA-C, 8 Sep 04, subject: Disposition of Commissioned Officer Misconduct - [REDACTED] Headquarters and Headquarters Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North Carolina 28310 (exhibit E-7).

(f) Memorandum, HQ 35 Signal BDE, AFZA-SC-C, 9 Sep 04, subject: Memorandum of Concern (exhibit E-8).

b. Discussion: The 35 SIG BDE CI determined that [REDACTED] approved the consumption of alcohol by soldiers in his battalion while participating in an R&R trip to New Orleans at the conclusion of a deployment to JRTC, Fort Polk, LA. XVIII Airborne Corps and Fort Bragg Policy Number 42 states that only the "first colonel in their chain of command" had the authority to grant such an approval and that violation of this policy is punitive. The preponderance of credible evidence indicates that [REDACTED] violated XVIII Airborne Corps and Fort Bragg Policy Number 42.

c. Conclusion: The allegation that [REDACTED] the 327 SIG BN Commander, improperly authorized the consumption of alcohol by 327 SIG BN soldiers while deployed or on field exercises in violation of XVIII Airborne Corps and Fort Bragg Policy Number 42 was substantiated.

10. Other Matters.

a. Issue 1. The information provided by the complainant to the IG indicated that virtually all of the soldiers from B/327 SIG BN who traveled to New Orleans from JRTC for R&R, to include officers, NCOs, and the 327 Signal Battalion XO, [REDACTED] were "intoxicated" at the formation to load the busses for the return trip to JRTC. The referral to the 35 SIG BDE Commander asked if this consumption of alcohol was IAW Fort Bragg Master Policy Number 42; who authorized the consumption of alcohol during this trip and what safeguards were in place to ensure the good order, discipline, and the health and welfare of the soldiers? Allegation 8 above clarifies that the consumption of alcohol was not IAW Fort Bragg Master Policy Number 42 because [REDACTED] not the first colonel in the chain of command, authorized it. However, there were safeguards in place to ensure the good order, discipline, and the health and welfare of the soldiers as evidenced in the 35 SIG BDE CI (exhibit E-3). Apparently, these safeguards were insufficient to prevent the altercation that resulted in this complaint to the IG; but there were safeguards in place. After receiving the authority to dispose of [REDACTED] misconduct from the XVIII Airborne Corps and Fort Bragg Commander, [REDACTED] (exhibit E-7), COL Ellis, the 35 SIG BDE Commander, issued [REDACTED] a Memorandum of Admonishment (exhibit E-8).

b. Issue 2. Why was [REDACTED] suspended punishment from his Article 15 vacated following the incident in which he alleges 3 different NCOs assaulted him? Was it appropriate?

(1). Evidence:

(a) **Complaint.** In his complaint to the IG (exhibit C), [REDACTED] painted a picture of a soldier in the middle of a drunken melee who was trying to protect himself from "violent NCOs" and in fear for his personal safety. [REDACTED] additionally complained that he did not think that his behavior that night warranted the vacation of his suspended Article 15 punishment.

(b) **Standards.**

(1) Paragraph 3-25, AR 27-10 states, "A commander may vacate any suspended punishment ... provided the punishment is of the type and amount the commander could impose and where the commander has determined that the soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period. The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unworn statements; the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension." The paragraph goes on to state, "If the suspended punishment is of the kind set forth in Articles 15 (e)(1) through (7), UCMJ, the soldier should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut the information on which the proposed vacation is based." Finally, the paragraph indicates "Failure to provide notification and an opportunity to appear or otherwise respond to the basis of a proposed vacation may result in the record of punishment being inadmissible in a subsequent court-martial, but will not, by itself, render a vacation action void (exhibit D-5)."

(2) Article 92 (Failure to Obey Order or Regulation), UCMJ states that if a soldier issues a lawful order, the accused had knowledge of the lawful order and had a duty to obey the order, and the accused failed to obey the order; then the accused is in violation of Article 92, UCMJ (exhibit D-6).

(c) **Documentary Evidence.**

-1- Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

-2- Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

-3- Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

-4- Unsigned document entitled "Commander's informal investigation" purported to have been written by (b)(7)(C) dtd 12 April 04 (exhibit E-9).

(2) Discussion: The preponderance of credible evidence indicates that the vacation of (b)(7)(C) suspended punishment was justified by his violation of Article 92, UCMJ when he failed to obey the orders of two NCOs, was properly adjudicated by the Company Commander, (b)(7)(C) and was a decision within (b)(7)(C) discretion to make.

(a) (b)(7)(C) report (exhibit E-3) to the 35 SIG BDE Commander responded to the issue identified by Corps IG, "Why was (b)(7)(C) suspended punishment from his Article 15 vacated following the incident in which he alleges 3 different NCOs assaulted him? Was it appropriate?" The response was, (b)(7)(C) Article 15 suspension was vacated for disrespect to two NCOs, (b)(7)(C) and (b)(7)(C) conduct justified the vacation of suspended punishment. The orders given to him by (b)(7)(C) and (b)(7)(C) were lawful and he was duty bound to comply, which he failed to do. The vacation of the suspension although appropriate, could have been handled differently. The NCOs involved were exercising command authority, but their level of intoxication calls into question their behavior."

(b) In his sworn statement to (b)(7)(C), (b)(7)(C) included in memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3), stated that (b)(7)(C) had him to appear before him to discuss the proposed vacation. "During my reading by (b)(7)(C), (b)(7)(C) states, indicating that he was appearing before (b)(7)(C) "he made some remarks to justify his decision." Although there is no corroborating evidence to verify the purpose of this "reading", it is reasonable to conclude that the purpose of the "reading" was for (b)(7)(C) to allow (b)(7)(C) his opportunity to appear before him and rebut the information on which the proposed vacation was based. I also note that per AR 27-10, even if (b)(7)(C) did not provide (b)(7)(C) notification and an opportunity to rebut, that failure, by itself, would not render a vacation action void.

(c) Finally, since (b)(7)(C) was the commander authorized by AR 27-10 to vacate the suspension, he had the authority to make this decision and there is no appeal of the decision allowed for in AR 27-10. In the 12 Apr 04 "informal investigation" by (b)(7)(C) (exhibit E-9), (b)(7)(C) expresses his opinion that, "If it was me I would not punish (b)(7)(C) unless he was willing to do the same punishment to (b)(7)(C) (sic)." However, (b)(7)(C) is acting in the capacity of a mentor and senior commander to (b)(7)(C) not

-1- Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

-2- Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

-3- Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

-4- Unsigned document entitled "Commander's informal investigation" purported to have been written by [REDACTED] dtd 12 April 04 (exhibit E-9).

-5- E-mail from [REDACTED] to [REDACTED] dtd 27 Aug 04, subject: 327th Sig Bn Commander's Inquiry (exhibit E-10).

(2) Discussion: The preponderance of credible evidence indicates that [REDACTED] took appropriate action UP AR 600-20 pursuant to [REDACTED] complaint.

(a) In memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3), [REDACTED] states, [REDACTED] read the written complaint tendered by [REDACTED], and began his own informal inquiry IAW AR 600-20 para 5-8. He did not speak with [REDACTED] three witnesses." This establishes that [REDACTED] was appraised in writing of a complaint against military personnel. [REDACTED] original complaint to the IG (exhibit C) indicated his contention that his complaint against the NCOs he alleged assaulted him constituted a breach of good order and military discipline. The record also establishes that [REDACTED] inquired into the matter and attempted a resolution in the form of an informal commander's inquiry which he documented in an unsigned document dated 12 Apr 04 (exhibit E-9).

(b) It is not at all clear why [REDACTED] did not speak with [REDACTED] three witnesses and that question was never answered by [REDACTED] or [REDACTED]. That being said, there is no standard that requires [REDACTED] to listen to the three witnesses while conducting his informal commander's inquiry. It strains credulity to presume that such an inquiry would be complete or impartial without listening to all the witnesses, but the decision on whom to speak to in an informal commander's inquiry is a matter of the commander's discretion. Since [REDACTED] interviewed all of the available witnesses listed by [REDACTED] in his testimony to [REDACTED] it would appear that this lack of thoroughness on the part of [REDACTED] has been remedied.

(c) Paragraph 10b above establishes that [REDACTED] was the commander authorized by AR 27-10 to vacate the suspension and there is no appeal of the decision allowed for in AR 27-10. As such, there was nothing that [REDACTED] could do in response to [REDACTED] complaint about the appropriateness of the vacation of the suspended punishment. [REDACTED] did inquire into the matter and attempt a resolution as was required by AR 600-20. This is corroborated by [REDACTED] 12 April 04 unsigned document entitled "Commander's informal investigation" (exhibit E-9). It is apparent from [REDACTED] 27 Aug 04 e-mail (exhibit E-10) that [REDACTED] wrote the document o/a 26 Aug 04, not o/a 12 Apr 04; but it still meets the requirements of paragraph 5-8b, AR 600-20 (exhibit D-8) to document the complaint in writing.

(d) Finally, in memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3), [REDACTED] states, [REDACTED] and [REDACTED] did not laugh at [REDACTED].

(3) Conclusion: The preponderance of credible evidence indicates that [REDACTED] took appropriate action UP AR 600-20 pursuant to [REDACTED] complaint.

d. Issue 4. [REDACTED] alleges that the assaults he complains of occurred within the view of [REDACTED] Company Commander, B/327 Signal Bn. What actions did [REDACTED] take consistent with Army regulation to restore good order and discipline when he observed the melee described by [REDACTED] in which [REDACTED] claims to have been assaulted?

(b) Standard. Paragraph 4-4a(2), AR 600-20 states that commanders and leaders in the Army will take action consistent with Army regulation in any case where a soldier's conduct violates good order and military discipline (exhibit D-7).

(c) **Documentary Evidence.**

-1- Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action (exhibit E-1).

-2- Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry (exhibit E-2).

-3- Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3).

(2) Discussion: The preponderance of credible evidence indicates that [REDACTED] took action consistent with Army regulation to restore good order and military discipline IAW paragraph 4-4a(2), AR 600-20. In memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry (exhibit E-3), LTC Stidham states, [REDACTED] addressed the group and was able to calm them down. He also addressed [REDACTED] and [REDACTED] to calm them down. Lastly, he assisted with moving [REDACTED] to the bus."

(3) Conclusion: The preponderance of credible evidence indicates that [REDACTED] took action consistent with Army regulation to restore good order and military discipline IAW paragraph 4-4a(2), AR 600-20.

e. Issue 5. Did leaders in B/327 Signal Bn fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how? This issue was addressed as allegations in paragraphs 7 and 8 above.

5. Recommendations.

- a. This report be approved and the case closed.
- b. No further action necessary.

CONCUR:

[REDACTED]

//Inquiry Officer

[REDACTED]

Deputy Inspector General

Encl
Exhibit List

- A. Not used.
- B. Not used.
- C. Original Complaint.

Exhibit List (cont.)

D. Standards.

- D-1. Article 128 (Assault), UCMJ.
- D-2. Paragraph 2-1a(13), AR 600-100.
- D-3. XVIII Airborne Corps and Fort Bragg Policy Number 42.
- D-4. XVIII Airborne Corps and Fort Bragg Supplement 1 to AR 27-10.
- D-5. Paragraph 3-25, AR 27-10.
- D-6. Article 92 (Failure to Obey Order or Regulation), UCMJ.
- D-7. Paragraph 4-4, AR 600-20.
- D-8. Paragraph 5-8, AR 600-20.

E. Documentary Evidence.

- E-1. Memorandum, HQ XVIII ABN Corps, AFZA-IG, 29 Apr 04, subject: Request for Commander's Action.
- E-2. Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 22 Jul 04, subject: Results of Commander's Inquiry.
- E-3. Memorandum, HQ 35 Signal BDE, AFZA-AS, 24 May 04, subject: 327th Signal Battalion Commander's Inquiry.
- E-4. Memorandum, HQ 35 Signal BDE, AFZA-SC-C, no date, subject: Memorandum of Concern.
- E-5. Memorandum, HQ 35 Signal BDE, AFZA-SC-C, no date, subject: Memorandum of Concern.
- E-6. Memorandum, HQ 35 Signal BDE, AFZA-AS-C, 7 Sep 04, subject: Request Authority for Administrative Action.
- E-7. Memorandum, HQ XVIII ABN Corps, AFZA-JA-C, 8 Sep 04, subject: Disposition of Commissioned Officer Misconduct - [REDACTED] Headquarters and Headquarters Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North Carolina 28310.
- E-8. Memorandum, HQ 35 Signal BDE, AFZA-SC-C, 9 Sep 04, subject: Memorandum of Concern.
- E-9. Unsigned document entitled "Commander's informal investigation" purported to have been written by [REDACTED] dtd 12 April 04.
- E-10. E-mail from [REDACTED] to [REDACTED] dtd 27 Aug 04, subject: 327th Sig Bn Commander's Inquiry.

INSPECTOR GENERAL ACTION REQUEST

For use of this form see AR 20-1; the proponent agency is the OIG

DATA REQUIRED BY THE PRIVACY ACT OF 1974

PRIORITY: Title 10, USC, Section 3020.
ORIGINAL PURPOSE: To secure sufficient information to make inquiry into the matters presented and to provide a response to the requester(s) and/or take action to correct deficiencies.

ROUTINE USE: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and in certain cases in trial by court martial other military matters as authorized by the Uniform Code of Military Justice.

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTER, ACCOMPLISHMENT OF THE REQUESTED ACTION(S) AND RESPONSE TO THE REQUESTER.

LAST NAME - FIRST NAME - MIDDLE INITIAL <small>(b)(7)(C)</small>	GRADE <small>(b)(7)(C)</small>	SSN <small>(b)(7)(C)</small>	DUTY TELEPHONE <small>(b)(7)(C)</small>
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COMPLETE PRESENT MILITARY ADDRESS (If no military address, state current civilian address, including Zip Code.)
(b)(7)(C)

SPECIFIC ACTION REQUESTED

Investigation of received counseling statement was it deserved and handled properly. Negative counseling caused lift of suspension of Article 15. Loss of one pay grade and 7 days pay.

ADDITIONAL INFORMATION PERTAINING TO THIS REQUEST (Use additional sheets if necessary; list enclosures if applicable.)

see Attached

(b)(7)(C)

B/ 327 513

(b)(7)(C)

? Bn XO senior person present

talked to Bn Cdr CSM ^{O/A 10 Apr} ~~2-3 days after course~~

only 1 NCO was not drinking

DO NOT consent to the release of information contained within this Inspector General Action Request and the use of my name during the IG Inquiry

Have you taken action to resolve this issue/complaint through your chain of command/NCO support channel? **YES** or NO

(b)(7)(C)

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. I fully understand that I may be held accountable for any statements which are proved to be knowingly untruthful.

SIGNATURE
(b)(7)(C)

DATE
23 Apr 04

B75c
EXC

I disagree with the punishment that is being recommended. I have had problems with giving the proper respect before, but this time was not a fall back since my improvements in my opinion. I have worked hard to soldier back and have shown great improvements on meeting the standard. These changes were not made out of fear as one may have thought. It was made primarily on focus and where I want to go in the Army.

There were a chain of events that created the whole situation and were made drastically out of control. Standing in formation I was noticing everything that was going on. Lower ranking NCOs and soldiers alike were cutting up in the formation making it hard for [REDACTED] to be able get the accountability of everyone. So I yelled out for everyone to shut their mouths and settle down. [REDACTED] immediately told me to shut the f--- up. I turned away and just stood there. The commotion got worse and I shook my head and said "These people make me 'feel' like knocking them out." [REDACTED] yelled "At Ease, You aren't going to do shit [REDACTED]" He continued on yelling when [REDACTED] turned around and started to wrap his arms around my neck. This situation got out of hand when I tried to tell [REDACTED] to get his hands off of me since I felt threatened by him because he was in a bar earlier and was kicked out for punching many of our own personnel in the company. Every time I told that [REDACTED] to let go of me [REDACTED] told me to at ease. Finally I stepped back and pushed the NCO off of me after the third request. As soon as that happened NCOs were yelling at me in formation directly in my face and I was grabbed several times. It was a "bum rush" so I can't point out who was jerking on my arms and clothing. Each of them had been drinking. I was told to get behind formation and when I was finally let to go the formation broke and went onto the busses. A couple of soldiers tried to grab me to go on the bus but I had to wait. One of those soldiers was [REDACTED] tried to fight with [REDACTED] at the time but he soon focused on me. When [REDACTED] laid off of [REDACTED] grabbed hold of [REDACTED] physically and calling him a piece of shit E-4 and such. Once [REDACTED] grabbed [REDACTED] to get out of there [REDACTED] came after me. [REDACTED] was walking up to me and yelling, "You want to fight NCOs then come on." [REDACTED] is the one that came up to me calmly to talk to me. But I was feeling threatened of bodily harm due to previously being wrongfully handled and the violence that was occurring by some who were under the influence. I tried to point this out to [REDACTED] to look at the things that were going on but he didn't look since he was only focused on me. As [REDACTED] and [REDACTED] came closer I was backing away in fear that I would once again have two more violent NCOs trying to "jump" me. It was a dangerous situation and watching what they were doing to another soldier instilled a fear of bodily harm by the actions that had taken place.

I was wrong by not going to parade rest for [REDACTED] There was no intent for disrespect at all. I was just trying to point to him what was happening and to let him no the fear I had and get away from those who were showing strong potential to do harm. I was singled out from the incident in formation as trying to fight everyone, when I only defended myself from a violent person while they were under the influence. Then when one NCO tried to talk to me two other violent NCOs were coming after me. I was being forced in a situation that had a great potential to be hostile. As stated before. I do not believe my actions are deserving of punishment, all I was doing was trying to prevent anything from getting violent since not many were doing anything to stop it.

[REDACTED]

DEVELOPMENTAL COUNSELING FORM

For use of this form, see FM 22-100; the proponent agency is TRADOC

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 5 USC 301, Departmental Regulations; 10 USC 3013, Secretary of the Army and E.O. 9397 (SSN)
PRINCIPAL PURPOSE: To assist leaders in conducting and recording counseling data pertaining to subordinates.
ROUTINE USES: For subordinate leader development IAW FM 22-100. Leaders should use this form as necessary.
DISCLOSURE: Disclosure is voluntary.

PART I - ADMINISTRATIVE DATA

Name (Last, First, MI) <small>(b)(7)(C)</small>	Rank/Grade <small>(b)(7)(C)</small>	Social Security No. <small>(b)(7)(C)</small>	Date of Counseling 05 APRIL 04
Organization B CO, 327TH SIGNAL BATTALION (ABN)		Name and Title of Counselor <small>(b)(7)(C)</small>	

PART II - BACKGROUND INFORMATION

Purpose of Counseling: (Leader states the reason for the counseling, e.g., performance/professional growth or event-oriented counseling, and includes the leader's facts and observations prior to the counseling.)

Violation of Article 92 Under the Uniform Code of Military Justice: Failure to Obey an order or regulation

PART III - SUMMARY OF COUNSELING

Complete this section during or immediately subsequent to counseling.

Key Points of Discussion:

On Friday, 03 April 2004, during the Company trip to New Orleans. While (b)(7)(C) was accounting for personnel there was an incident in formation and you were told to step out of formation. (b)(7)(C) and (b)(7)(C) tried to talk to and calm you down, you continue to be disgruntled, disruptive, and did not want to hear what anyone had to say. You were told to "at ease" several times and you didn't. You failed to obey direct order given by two Non-Commissioned Officers, when you were ordered to "at ease" and you continued to run off at the mouth. This type of behavior will not be tolerated from you or any other soldier in the platoon. Your behavior, lack of discipline and respect not only was an embarrassment to the platoon but to the whole Company. There has been other incidents where you failed to "at ease" when told to do so, and I will not allow you to tarnish the platoon's reputation in upholding high standards and discipline, always using the total soldier concept anymore. If you were a true soldier, as you would put it, the situation would have never escalated to this degree.

I am counseling you for the conduct noted above. Due to this conduct, action may be initiated to separate you from the Army under AR 635-200, Chapters 5, 9, 13, or 14. If you are involuntarily separated, you could receive an Honorable discharge, a General, under honorable conditions, discharge, or an Under Other Than Honorable conditions discharge. An Honorable discharge may be awarded under any provision. A General discharge may be awarded for separation under Chapter 14. If you receive an Honorable discharge, you will be qualified for most benefits resulting from military service. An involuntary Honorable discharge, however, will disqualify you from reenlistment for some period of time and may disqualify you from receiving transitional benefits (e.g., commissary, housing, and health benefits) and the Montgomery G.I. Bill. If you receive a General discharge, you will be disqualified from reenlisting in the service for some period of time and you will be ineligible for some benefits including the Montgomery G.I. Bill. If you receive an Under Other Than Honorable conditions discharge, you will be ineligible for reenlistment and for most benefits including payment of accrued leave, transportation of dependents and household goods to home, transitional benefits and the Montgomery G.I. Bill. You may also face difficulty in obtaining civilian employment, as employers have low regard for the General and Under Other Than Honorable conditions discharges. Although there are agencies to which you may apply to have the character of your discharge changed, it is unlikely that any such applications will be successful.

OTHER INSTRUCTIONS

This form will be destroyed upon: reassignment (other than rehabilitative transfers), separation at ETS, or upon retirement. For separation requirements and notification of loss of benefits/consequences see local directives and AR 635-200.

Plan of Action: (Outlines actions that the subordinate will do after the counseling session to reach the agreed upon goals). The actions must be specific enough to modify or maintain the subordinate's behavior and include a specified time line for implementation and assessment (Part IV below.)

1. Removal of suspension on previous Company grade Article 15.
2. Bar to Re-enlistment.

Session Closing: (The leader summarizes the key points of the session and checks if the subordinate understands the plan of action. The subordinate agrees/disagrees and provides remarks if appropriate.)

Individual counseled: I agree disagree with the information above.

Individual counseled remarks:

Signature of Individual Counseled: _____ Date: _____

Leader Responsibilities: (Leader's responsibilities in implementing the plan of action.)

Signature of Counselor: _____ Date: _____

PART IV - ASSESSMENT OF THE PLAN OF ACTION

Assessment: (Did the plan of action achieve the desired results? This section is completed by both the leader and the individual counseled and provides useful information for follow-up counseling.)

Counselor: _____ Individual Counseled: _____ Date of Assessment: _____

Note: Both the counselor and the individual counseled should retain a record of the counseling.



DEPARTMENT OF THE ARMY
HEADQUARTERS, XVIII AIRBORNE CORPS AND FORT BRAGG
FORT BRAGG NC 28310

S: JUN 04 2004

APR 19 2004

AFZA-IG

MEMORANDUM FOR Commander, 35th Signal Brigade, Fort Bragg, NC 28310

SUBJECT: Request for Commander's Action

1. The XVIII Airborne Corps and Fort Bragg Inspector General received complaints alleging misconduct by members of your command. In accordance with AR 20-1, we are referring the matters to your command for appropriate action. A Commander's Inquiry will protect the rights of the soldier and the best interests of the Army. You should seek legal advice prior to beginning the inquiry and obtain a legal review for legal sufficiency prior to forwarding the inquiry to this office.
2. Request you provide a complete copy of your inquiry to this office when completed. The results of your action will be used as the basis for our response and notification to the subjects of the inquiry. Your response should clearly indicate your findings and include a discussion of punitive actions if warranted and corrective action(s) planned or taken to preclude recurrence, if any. Please include the SSNs of the subjects in your reply; they will be required to close the case. Please see paragraph 1-11, AR 600-8-2 for guidance on the submission of DA Form 268, Report to Suspend Favorable Personnel Actions (Flag), for soldiers under investigation.
3. The person you appoint as your inquiry officer (IO) should contact the IG POC below prior to beginning the inquiry to exchange relevant information and discuss and clarify matters of concern. The IG POC will provide you or your IO further details subject to the restrictions of AR 20-1.
4. Request your inquiry address, at a minimum, the following allegations and issues.
 - a. Allegation 1: That [REDACTED], B/327 Signal Bn, improperly, with unlawful force or violence, wrapped his arm around the neck of [REDACTED] B/327 Signal Bn, in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ.

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This document contains information
EXEMPT FROM MANDATORY DISCLOSURE
under FOIA. Exemptions 5, 6, & 7 apply.

B-152

E-1

AFZA-IG

SUBJECT: Request for Commander's Action

b. Allegation 2: That [REDACTED] B/327 Signal Bn, improperly offered with unlawful force or violence to do bodily harm to [REDACTED] B/327 Signal Bn, in violation of Article 128 (Assault), UCMJ.

c. Allegation 3: That [REDACTED] improperly offered with unlawful force or violence to do bodily harm to [REDACTED] in violation of Article 128 (Assault), UCMJ.

d. Allegation 4: That [REDACTED] B/327 Signal Bn, improperly grabbed [REDACTED] with unlawful force or violence in an effort to do bodily harm to him in violation of Article 128 (Assault), UCMJ.

e. Allegation 5: That [REDACTED] B/327 Signal Bn, improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] in violation of Article 128 (Assault), UCMJ.

f. Issue 1. The information that we have indicates that virtually all of the soldiers from B/327 Signal Bn who traveled to New Orleans from JRTC for R&R, to include officers, NCOs, and the 327 Signal Bn XO, [REDACTED], were "intoxicated" at the formation to load the busses for the return trip to JRTC. Was this consumption of alcohol IAW Fort Bragg Master Policy Number 42? Who authorized the consumption of alcohol during this trip and what safeguards were in place to ensure the good order, discipline, and the health and welfare of the soldiers?

g. Issue 2. Why was [REDACTED] suspended punishment from his Article 15 vacated following the incident in which he alleges 3 different NCOs assaulted him? Was it appropriate?

h. Issue 3. When [REDACTED] approached on the open door policy the 327 Signal Bn Commander, [REDACTED] and [REDACTED] with witnesses and complained about the assault and the vacated punishment; he claims they "laughed" at him and would not listen to the 3 witnesses whom [REDACTED] claims can corroborate his version of facts. What action did [REDACTED] take IAW paragraphs 4-4 and 5-8, AR 600-20 pursuant to [REDACTED] complaint? If [REDACTED] did not listen to the 3 witnesses, why did he not?

i. Issue 4. [REDACTED] alleges that the assaults he complains of occurred within the view of [REDACTED] Company Commander, B/327 Signal Bn. What actions did

AFZA-IG

SUBJECT: Request for Commander's Action

(b)(7)(C) take consistent with Army regulation to restore good order and discipline when he observed the melee described by (b)(7)(C) in which (b)(7)(C) claims to have been assaulted?

j. Did leaders in B/327 Signal Bn fail to treat (b)(7)(C) or (b)(7)(C) with dignity, respect, fairness, and consistency in violation of paragraph 2-1a(13), AR 600-100? If so, who specifically and how?

5. This Inspector General document contains privileged information and will be protected in accordance with paragraphs 3-4 and 3-5, AR 20-1. Dissemination of this document will be restricted to the absolute minimum consistent with your requirement to provide a reply and will be returned to this office when your action is complete. Unauthorized retention or reproduction of IG documents is strictly prohibited.

6. POC this headquarters is (b)(7)(C)

(b)(7)(C)

Inspector General



DEPARTMENT OF THE ARMY
XVIII AIRBORNE CORPS AND FORT BRAGG
FORT BRAGG, NORTH CAROLINA 28310-5000

REPLY TO
ATTENTION OF:

AFZA-AS-C

22 JUL 2004

MEMORANDUM FOR Inspector General, XVIII Airborne Corps, Fort Bragg, NC, 28310

SUBJECT: Result of Commander's Inquiry

1. A Commander's Inquiry was conducted in response to the complaint your office received concerning alleged misconduct by members of the 327th Signal Battalion.
2. As a result of the inquiry I have determined the following:
 - a. Allegation 1 – **UNSUBSTANTIATED.** [REDACTED] did not use unlawful force by putting his hands on [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ.
 - b. Allegation 2 – **UNSUBSTANTIATED.** [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ.
 - c. Allegation 3 – **UNSUBSTANTIATED.** [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ.
 - d. Allegation 4 – **UNSUBSTANTIATED.** [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ.
 - e. Allegation 5 – **UNSUBSTANTIATED.** [REDACTED] did not improperly offer with unlawful force or violence to do bodily harm to [REDACTED] B Co, 327th Sig Bn, in violation of Article 128, UCMJ.
3. I concur with the finding of the investigating officer that [REDACTED] and [REDACTED] were exercising command authority, but their levels of intoxication definitely calls into question their behavior. These Noncommissioned Officers will be given memorandums of concern which will be placed in their local counseling files. Additionally, I am mandating that the 327th Signal Battalion Chain of Command review the policy on drinking during both field and rotational training exercises.

B-15e-1

E-2

AFZA-AS-C

SUBJECT: Result of Commander's Inquiry

4. POC for this action is the undersigned at 

Encls
nc



Commanding



DEPARTMENT OF DEFENSE
HEADQUARTERS, 35TH SIGNAL BRIGADE (CORPS) (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28310-5000

AFZA-AS

24 May 2004

MEMORANDUM THRU Commander, 35TH Signal Brigade, Fort Bragg, North Carolina 28310-5000

FOR Commander, XVIII Airborne Corps, Attn: AFZA-IG, Fort Bragg, North Carolina 28310-5000

SUBJECT: 327TH Signal Battalion Commander's Inquiry

1. I have investigated the complaint alleging misconduct by members of the 327th Signal Battalion. I provide the following findings:

a. Allegation #1: That [REDACTED] B/327th Signal Battalion, improperly, with unlawful force or violence, wrapped his arm around the neck of [REDACTED] B/327th Signal Battalion, in an effort to do bodily harm to him in violation of Article 128 (Assault) of the UCMJ.

The allegation is unfounded. My investigation shows that [REDACTED] did put his hands on [REDACTED] in an attempt to calm him down. Statements by [REDACTED] (Exhibit 7), [REDACTED] (Exhibit 12), [REDACTED] (Exhibit 16), [REDACTED] (Exhibit 17), [REDACTED] (Exhibit 19), [REDACTED] (Exhibit 20), and [REDACTED] (Exhibit 24) consistently corroborate this information. Statements are inconsistent in the exact body position where [REDACTED] put his hands. [REDACTED] statement (Exhibit 23) is the only statement that varies. It states that [REDACTED] took a swing at [REDACTED]. However, no other statements or interviews corroborate this information. [REDACTED] limited use of force was lawful because it was reasonable under the circumstances and used only in an attempt to calm [REDACTED] down. [REDACTED] limited use of force is therefore not a violation of Article 128 (Assault) of the UCMJ.

b. Allegation #2: That [REDACTED] B/327th Signal Battalion, improperly offered with unlawful force or violence to do bodily harm to [REDACTED] B/327th Signal Battalion, in violation of Article 128 (Assault) of the UCMJ.

The allegation is unfounded. [REDACTED] statement (Exhibit 16) makes no such allegation, stating merely that he had "words" with [REDACTED]. There is no record of these "words" being accompanied by a menacing act or gesture. Therefore, SFC Phillips did not violate Article 128 (Assault) of the UCMJ.

c. Allegation #3. That [REDACTED] improperly offered with unlawful force or violence to do bodily harm to [REDACTED] B/327th Signal Battalion, in violation of Article 128 (Assault) of the UCMJ.

The allegation is unfounded. [REDACTED] own statement (Exhibit 3) makes no such allegation, only stating that [REDACTED] said the words "I am going to kick your ass". No other statements taken from witnesses corroborate this allegation. There is no record of these "words" being accompanied by a menacing act or gesture. Therefore, [REDACTED] did not violate Article 128 (Assault) of the UCMJ.

b15e2 E-3

AFZA-AS

SUBJECT: 327TH Signal Battalion Commander's Inquiry

d. Allegation #4. That [REDACTED] B/327th Signal Battalion, improperly grabbed [REDACTED] with unlawful force or violence in a effort to do bodily harm to him in violation of Article 128 (Assault) of the UCMJ. The allegation is unfounded. [REDACTED] statement (Exhibit 16) fails to make this allegation. It states that [REDACTED] without intent to do harm grabbed [REDACTED] by the arm to explain that he was being disrespectful to an NCO.

e. Allegation #5: That [REDACTED] B/327th Signal Battalion improperly attempted with unlawful force or violence to do bodily harm to [REDACTED] in violation of Article 128 (Assault) of the UCMJ.

The allegation is unfounded. [REDACTED] own statement (Exhibit 3) makes no such allegation. No other statements taken from witnesses corroborate this allegation.

2. In addition to the above findings, the following issues are addressed:

- a. Was the consumption of alcohol IAW Fort Bragg Master Policy #42? No. [REDACTED] was unaware of this policy and approved the consumption of alcohol himself.
- b. What safeguards were put into place to ensure good order, discipline, and the health and welfare of soldiers? [REDACTED] instructed [REDACTED] to conduct a safety briefing and mandated that a field grade officer [REDACTED] supervise the trip. [REDACTED] did not put additional safeguards into place (drinking limits, assigning designated non-drinkers) other than asking each participant to act like an adult.
- c. Why [REDACTED] suspended punishment from his Article 15 was vacated following the incident in which he alleges three different NCOs assaulted him? Was it appropriate? [REDACTED] Article 15 suspension was vacated for disrespect to two NCOs, [REDACTED] and [REDACTED]. [REDACTED] conduct justified the vacation of his suspended punishment. The orders given to him by [REDACTED] and [REDACTED] were lawful and he was duty bound to comply, which he failed to do. The vacation of the suspension although appropriate, could have been handled differently. The NCOs involved were exercising command authority, but their level of intoxication calls into question their behavior.
- d. What actions did [REDACTED] take when approached by [REDACTED] under his open door policy? [REDACTED] and [REDACTED] did not laugh at [REDACTED]. [REDACTED] read the written complaint tendered by [REDACTED] and began his own informal inquiry IAW AR600-20 para 5-8. He did not speak with [REDACTED] three witnesses.
- e. What actions did [REDACTED] take to restore good order and discipline? [REDACTED] addressed the group and was able to calm them down. He also addressed [REDACTED] and [REDACTED] to calm them down. Lastly, he assisted with moving [REDACTED] to the bus.
- f. Did the leaders of B/327th fail to treat [REDACTED] or [REDACTED] with dignity, respect, fairness, and consistency IAW AR600-100? Yes. [REDACTED] put his hands on [REDACTED] in some manner. His actions although not rising to the level of assault, are inappropriate for an NCO. Statements also suggest that [REDACTED] used inappropriate language and aggressive behavior towards both [REDACTED] and [REDACTED]. In both instances, alcohol is not an excuse for the lack of exercising fair and consistent NCO command authority.

AFZA-AS

SUBJECT: 327TH Signal Battalion Commander's Inquiry

3. POC for this action is the undersigned at [REDACTED]

[REDACTED]

Deputy Commander

Encl

Exhibits 1-24

Exhibits

1. Appointment Letter
2. [REDACTED] Rights Warning
3. [REDACTED] Sworn Statement
4. [REDACTED] Counseling Statement (Copy)
5. [REDACTED] Matters Presented to the Chain of Command
6. [REDACTED] Rights Warning
7. [REDACTED] Sworn Statement
8. [REDACTED] Rights Warning
9. [REDACTED] Sworn Statement
10. [REDACTED] Rights Warning
11. [REDACTED] Sworn Statement
12. [REDACTED] Sworn Statement
13. [REDACTED] Sworn Statement
14. [REDACTED] Sworn Statement
15. [REDACTED] Rights Warning
16. [REDACTED] Sworn Statement
17. [REDACTED] Sworn Statement
18. [REDACTED] Sworn Statement
19. [REDACTED] Sworn Statement
20. [REDACTED] Sworn Statement
21. [REDACTED] Sworn Statement
22. [REDACTED] Sworn Statement
23. [REDACTED] Sworn Statement
24. [REDACTED] Sworn Statement



DEPARTMENT OF THE ARMY
HEADQUARTERS, 35TH SIGNAL BRIGADE (CORPS) (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28310-5000

REPLY TO
ATTENTION OF:

AJZA-AS-C

7 September 2004

MEMORANDUM FOR Commanding General, XVIII Airborne Corps, Fort Bragg, NC, 28310

SUBJECT: Request Authority for Administrative Action

1. PURPOSE: The purpose of this memorandum is to request permission to take administrative action concerning [REDACTED]

2. DISCUSSION:

a. A Commander's Inquiry was conducted in response to the complaint received by XVIII Airborne Corps Inspector General's Office concerning alleged misconduct by members of the 327th Signal Battalion. The investigation focused on five (5) allegations of improper conduct resulting from consumption of alcohol during a bus trip to New Orleans, Louisiana for R&R from the Joint Readiness Training Center on 2 April 2004.

b. All five (5) allegations investigated were **UNSUBSTANTIATED**. Additionally, I concur with the finding of the investigating officer that [REDACTED] and [REDACTED] were exercising command authority, but their levels of intoxication definitely calls into question their behavior. These Noncommissioned Officers were given memorandums of concern placed in their local counseling files.

c. The investigation revealed that [REDACTED] had no knowledge of XVIII Airborne Corps Master Policy #42 that designates the first Colonel in the chain of command as approval authority for consumption of alcoholic beverages during deployments or exercises. [REDACTED] improperly granted authority for consumption of alcohol. [REDACTED] did ensure his company commander properly emphasized safety to their soldiers and [REDACTED] the Battalion S-3, served as Officer-in-Charge of all soldiers while on the trip. Additionally, I mandated that the 327th Signal Battalion Chain of Command review the policy on drinking during both field and rotational training exercises.

d. I request authority to issue a Brigade Commander memorandum of admonishment for [REDACTED]. He did institute proper control measures for the safety as well as command and control of the soldiers while on pass, however, he should not have authorized consumption of alcohol.

4. RECOMMENDATION: That you delegate authority for administrative action concerning [REDACTED] to Commander, 35th Signal Brigade.

B-75f

AFZA-AS-C

SUBJECT: Result of Commander's Inquiry

4. POC for this action is the undersigned at 

Encls
nc



Commanding

08 SEP 2004

MEMORANDUM FOR Commander, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina, 28310

SUBJECT: Disposition of Commissioned Officer Misconduct - [REDACTED]
[REDACTED] Headquarters and Headquarters Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North Carolina 28310

1. Purpose. To obtain your action on the disposition of allegations of misconduct pertaining to [REDACTED] Headquarters and Headquarters Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North Carolina 28310.

2. Facts.

a. A Commander's Inquiry was conducted in response to the complaint received by XVIII Airborne Corps Inspector General's Office concerning alleged misconduct by members of the 327th Signal Battalion. The investigation focused on five (5) allegations of improper conduct resulting from consumption of alcohol during a bus trip to New Orleans, Louisiana for R&R from the Joint Readiness Training Center on 2 April 2004. (TAB B)

b. All five (5) allegations investigated were UNSUBSTANTIATED. Additionally, [REDACTED] concurs with the finding of the investigating officer that [REDACTED] and [REDACTED] were exercising command authority, but their levels of intoxication definitely calls into question their behavior. These Noncommissioned Officers were given memorandums of concern placed in their local counseling files.

c. The investigation revealed that [REDACTED] had no knowledge of XVIII Airborne Corps Master Policy #42 that designates the first colonel in the chain of command as approval authority for consumption of alcoholic beverages during deployments or exercises. [REDACTED] improperly granted authority for consumption of alcohol. [REDACTED] did ensure his company commanders properly emphasized safety to their soldiers and [REDACTED] served as Officer-in-Charge of all soldiers while on the trip. Additionally, [REDACTED] mandated that the 327th Signal Battalion Chain of Command review the policy on drinking during both field and rotational training exercises.

B-759

AF2A-JA-C

SUBJECT: Disposition of Commissioned Officer Misconduct - [REDACTED]
[REDACTED], Headquarters and Headquarters
Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North
Carolina 28310

d. [REDACTED] requests authority to issue a Brigade
Commander memorandum of admonishment for [REDACTED]
[REDACTED] did institute proper control measures for the safety
as well as command and control of the soldiers while on pass,
however, he should not have authorized consumption of alcohol.
(TAB A)

3. Opinion. Disposition can best be resolved through delegation to
the Commander, 35th Signal Brigade, [REDACTED]

4. Staff Judge Advocate Recommendation. Delegate authority to the
Commander, 35th Signal Brigade, to dispose of the allegations of
misconduct in the manner he deems appropriate. This may be
accomplished by signing the action below.

Encls
as

[REDACTED]

Staff Judge Advocate

ACTION OF THE GENERAL COURT-MARTIAL CONVENING AUTHORITY:

The recommendation of the Staff Judge Advocate is approved.

[REDACTED]

Commanding

10 8 SEP 2004

USA

AFZA-JA-C

MEMORANDUM FOR Commander, 35th Signal Brigade, Fort Bragg, North Carolina 28310

SUBJECT: Disposition of Commissioned Officer Misconduct - [REDACTED]
[REDACTED] Headquarters and Headquarters Company, 327th Signal Battalion, 35th Signal Brigade, Fort Bragg, North Carolina 28310

I have reviewed the case of [REDACTED] and return the matter to the Commander, 35th Signal Brigade Commander, to take administrative action he deems appropriate.

[REDACTED]

SEP 2004

Commanding

B-152

28 June 2004

MEMORANDUM FOR Commander, 35th Signal Brigade, Fort Bragg, North Carolina 28310

SUBJECT: Review of AR 15-6 Investigation (327th Signal Battalion)

1. This office has reviewed the Report of Proceedings of the Investigating Officer concerning allegations arising from the 327th Signal Battalion's recent trip to New Orleans, and finds that it is legally sufficient.

a. The findings of the Investigating Officer are supported by a preponderance of the evidence as contained in the exhibits.

b. There were no material errors present which would affect the findings and recommendations.

c. The actions taken during this proceeding comply with legal and procedural requirements of AR 15-6.

d. The recommendations of the Investigating Officer are consistent with the findings.

2. Unless instructed to do so by the appointing authority, there is no requirement that the memorandum be directed to the XVIII Airborne Corps Commander. Instead the memorandum should be addressed solely to the 35th Signal Brigade Commander.

3. POC for this memorandum is (b)(7)(C) at (b)(7)(C) or (b)(7)(C)

(b)(7)(C)

Chief, Administrative Law

B-15i



DEPARTMENT OF THE ARMY
HEADQUARTERS, 35th SIGNAL BRIGADE (CORPS) (AIRBORNE) AND FORT BRAGG
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO
ATTENTION OF:

AFZA-SC-C

9 September 2004

MEMORANDUM FOR (b)(7)(C) Commander, 327th Signal
Battalion (Airborne), Fort Bragg, North Carolina 28310-5000

SUBJECT: Memorandum of Admonishment

1. While serving as Commander for 327th Signal Battalion (Airborne), you authorized an R&R trip to New Orleans at the conclusion of a rotation at the Joint Readiness Training Center (JRTC), Fort Polk, Louisiana. Without prior knowledge of the provisions of Fort Bragg Master Policy 42, dated 1 March 2003, you also improperly granted permission for consumption of alcohol. Despite efforts to implement measures to ensure the safety and control of these soldiers, the consumption of alcohol led to unprofessional conduct amongst a small number of soldiers.
2. You are hereby admonished for your improper conduct. As a Battalion Commander, you are expected to adhere to XVIII Airborne Corps policies. Prior to granting authority to consume alcohol, you should have ensured compliance with any and all guidelines from our higher headquarters.
3. This is an administrative action and not punishment under the Uniform Code of Military Justice. I intend to file this admonishment in your local counseling file.
4. Should you choose to submit matters concerning this admonishment, you have five days from the receipt of this admonishment to respond, as prescribed by Army Regulation 600-37, paragraph 3-6.

(b)(7)(C)

Commanding

B-15j

MEMORANDUM FOR Commander, 35th Signal Brigade (Corps) (Airborne), Fort Bragg, North Carolina 28310

1. I have read, understand, and acknowledge receipt of the memorandum of admonishment on 9-9-09.

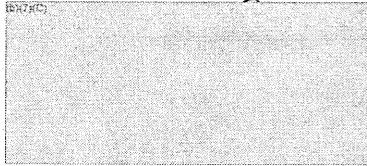
2. I understand that I have five days to submit matters in rebuttal to this admonishment.

 I understand that if I elect to submit matters and fail to do so within the prescribed time, my right is forfeited.

4. Initial one:

a. _____ I elect to make a statement.

b. _____ I submit the attached statement or document(s) in my behalf.



Commanding