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Inspector General

United States Department of Defense



ALLEGED MISCONDUCT:

LIEUTENANT GENERAL FRANCIS H. KEARNEY III, U.S. ARMY

DEPUTY COMMANDER

U.S. SPECIAL OPERATIONS COMMAND

-Worning-

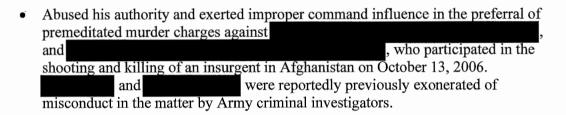
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ALLEGED MISCONDUCT: LIEUTENANT GENERAL FRANCIS H. KEARNEY III, U.S. ARMY DEPUTY COMMANDER U.S. SPECIAL OPERATIONS COMMAND

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that while serving as Commander, Special Operations Command Central (SOCCENT), U.S. Central Command (USCENTCOM), Lieutenant General (LTG) Francis H. Kearney, III, U.S. Army, Deputy Commander, U. S. Special Operations Command (USSOCOM):



 Abused his authority by redeploying Marine Special Operations Company-Foxtrot (MSOC-F) from Afghanistan after they responded to an enemy attack.¹

We did not substantiate the allegations. We concluded that LTG Kearney acted reasonably and within his authority in both matters. We determined that when LTG Kearney was advised of a "reportable incident" related to a possible violation of the Law of War, he had a responsibility under DoD Directive 2311.01E, "DoD Law of War Program," to investigate thoroughly, and where appropriate, remedy by corrective action. He was further required to request formal investigation by the cognizant military criminal investigative organization, and provide for disposition to the respective Military Department, those alleged violations of law for which members are subject to court-martial jurisdiction. Regarding the redeployment of MSOC-F from Afghanistan, we determined that LTG Kearney's actions were appropriate, as they were based on demonstrated command and operational failures within MSOC-F as well as on the recommendations and concurrence of other operational commanders who believed MSOC-F's uncoordinated actions in their battle space were improper and counterproductive to operations.

With respect to the preferral of charges against and and we found that after being made aware of the fatal shooting of a known local Afghan insurgent, LTG Kearney directed an investigation under AR 15-6, "Procedure for Investigating Officers and Boards of Officers," to comply with the DoD Law of War Program, which implements our treaty obligations under the Geneva Conventions. The AR 15-6 investigation concluded that and violated the law of armed conflict (LOAC).

¹ LTG Kearney was a major general at the time of the alleged improprieties and was subsequently promoted to LTG. We will refer to him as LTG Kearney in this report.

Based on that conclusion, LTG Kearney referred the matter to the Army Criminal Investigation Command (Army CIC) in Afghanistan, the cognizant military criminal investigative organization, to determine whether a criminal violation occurred. While the Army's CIC investigation concluded that the actions of and did not violate the rules of engagement, the investigation did not address whether their actions violated the LOAC. We found that in an effort to ensure that the possible LOAC violation was investigated thoroughly, LTG Kearney, with the advice of his Staff Judge Advocate, concluded that a third investigation, under Article 32, UCMJ, was necessary. To initiate that hearing, LTG Kearney decided that appropriate charges should be preferred against the soldiers and those charges should be forwarded for review and appropriate action to the Commander, U.S. Army Special Forces Command (USASFC), who exercised general court-martial convening authority over the soldiers.

The Commander, USASFC, in turn, appointed a senior U.S. Army colonel, who was a Special Forces qualified officer, to conduct the Article 32 investigation. That investigating officer found insufficient evidence of wrongdoing and recommended the charges be dismissed. The Commander, USASFC, dismissed the charges against and accordance with the recommendation of the Article 32 investigating officer.

In view of the questionable circumstances of the shooting incident, the differing conclusions of the AR 15-6 and Army CIC investigations, as well as the contrasting views of military attorneys who advised on those investigations, we concluded that LTG Kearney acted reasonably and in accordance with his command responsibilities under the DoD Law of War Program when he directed the preferral of charges and the forwarding of those charges to the Military Department with the jurisdiction to conduct an independent, objective, and substantially public Article 32 investigation.

We found no evidence that LTG Kearney attempted to influence the results of his command's internal AR 15-6 investigation. Likewise, while LTG Kearney believed the Army's CIC criminal investigation was incomplete, there was no evidence he attempted to improperly influence its conclusions. Further, in seeking to ensure a prompt and thorough investigation of events, LTG Kearney forwarded preferred charges from his operational command to the Commander, USASFC, who had courts-martial jurisdiction over the soldiers, and thereby separated himself from any potential command influence in the matter. We found that LTG Kearney supported the USASFC Article 32, UCMJ, process as the appropriate mechanism to resolve whether a LOAC violation occurred. He likewise supported the resulting recommendations of the USASFC investigating officer and the decision of the convening authority to dismiss those charges.

With respect to the redeployment of MSOC-F, we found that LTG Kearney acted responsibly in the matter, and that his actions were based on continuing operational and command failures within MSOC-F. On March 4, 2007, U.S. Marines from MSOC-F reportedly sustained a Suicide Vehicle Borne Improvised Explosive Device (SVBIED) attack in Nangahar Province, Afghanistan. In response to the attack, MSOC-F conducted a series of follow-on engagements in which a number of Afghan non-combatants were killed. Moreover, on March 9, 2007, MSOC-F was involved in further serious incidents, to include two vehicle rollovers

(resulting in one Marine and two Afghans being injured) and a related escalation of force incident. In the course of these activities, MSOC-F was conducting operations outside their assigned geographic area of responsibility and without the knowledge of, and required prior coordination with, the commander in charge of the geographic area where those incidents occurred. Moreover, during their approximately 3-month assignment in Afghanistan, MSOC-F had reportedly conducted approximately 80 percent of their missions without the knowledge of and proper coordination with the responsible geographic area commander.

We found that LTG Kearney had received complaints regarding MSOC-F from two senior tactical commanders responsible for operations in Afghanistan: the Commander, Task Force (TF) Spartan, Combined Joint Task Force-82 (CJTF-82), who was the geographic area commander, and the Commander, Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A), the special operations commander with operational authority over MSOC-F. Both commanders had recommended to LTG Kearney that MSOC-F be redeployed from Afghanistan. The commanders based their recommendations on MSOC-F's continued failure to properly coordinate their missions and to operate appropriately within their assigned battle space. The incidents of March 4 and 9, 2007, contributed to their loss of trust and confidence in the Commander, MSOC-F, and MSOC-F's performance had an adverse effect on the ability of TF Spartan and CJSOTF-A to accomplish their assigned missions.

We found that while LTG Kearney had considered reassigning MSOC-F within Afghanistan, he determined there was no U.S. commander to whom he could assign the unit. Both Major General (MajGen) Dennis J. Hejlik, U.S. Marine Corps, U.S. Marine Corps Special Operations Command (U.S. MARSOC) and Major General (MG) David M. Rodriguez, U.S. Army, Commander CJTF-82, were aware of and supported LTG Kearney's decision to redeploy the unit. We concluded that under the circumstances, as the commander with overall responsibility for Special Operations Forces in USCENTCOM, LTG Kearney's decision to redeploy MSOC-F from Afghanistan was reasonable and within his authority.

This report sets forth our findings and conclusions based on a preponderance of the evidence standard.

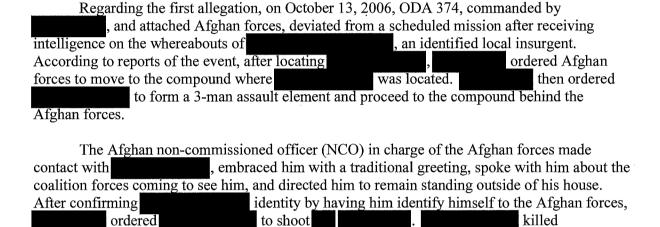
II. BACKGROUND

From March 2005 through July 2007, LTG Kearney commanded SOCCENT, a subordinate unified command of USCENTCOM with forces assigned from the various Services. As Commander, SOCCENT, he was responsible for planning, organizing, coordinating, directing, controlling, and leading Special Operations Forces within the USCENTCOM area of responsibility, and served as the principal advisor to and representative of the Commander, USCENTCOM, regarding all aspects of special operations. LTG Kearney conducted special operations and other activities in support of U.S. objectives in the USCENTCOM area of responsibility, and coordinated with other U.S. and coalition forces to accomplish assigned missions.

Additionally, LTG Kearney exercised operational command of CJSOTF-A. In that capacity, he had the authority to assign missions and reassign forces as necessary. Both military

organizations involved in this case -- Operational Detachment Alpha 374 (ODA 374), 3rd Battalion, 3rd Special Forces Group, USASFC (and and unit), and MSOC-F -- were subordinate units in the operational chain-of-command of CJSOTF-A.

Also relevant to the matters at issue in this report is that, as Commander, SOCCENT, LTG Kearney had no court-martial convening authority. As a result, he was required to forward any court-martial charges to a convening authority with court-martial jurisdiction over the military members for appropriate disposition.

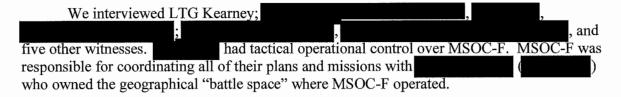


with a single gunshot to the head from a distance of approximately 100 feet.

Regarding the second allegation, MSOC-F, created in 2006, was on its first deployment when the unit arrived in Afghanistan on January 14, 2007. They were expected to be in Afghanistan for approximately 120 days, but were redeployed on March 24, 2007. On March 4, 2007, elements of MSOC-F, commanded by U.S. Marine Corps, reportedly sustained an SVBIED attack in Nangahar Province, Afghanistan. In response, the unit conducted a series of follow-on engagements that subsequently generated numerous reports and allegations that MSOC-F had unlawfully killed Afghan non-combatants. Further, on March 9, 2007, MSOC-F was involved in additional serious incidents which included two vehicle rollovers, with one Marine and two Afghans injured, and a related escalation of force incident. In the course of these activities, MSOC-F was operating outside its assigned geographic area of responsibility and without the knowledge of and required prior coordination with the commander in charge of the geographic area where those incidents occurred.

By letter dated, October 9, 2007, Representative Walter B. Jones, requested this Office investigate allegations that LTG Kearney improperly preferred charges against and, and that LTG Kearney improperly redeployed MSOC-F from Afghanistan. Subsequent correspondence from Representative Solomon Ortiz, Senator Bob Corker, and Representative Dennis Moore, reiterated one or both of Representative Jones' concerns.

III. SCOPE



We also reviewed documents, to include the AR 15-6 and Army CIC investigations into the shooting of the Article 32 investigation, the U.S. Navy Judge Advocate General Manual (JAGMAN) investigation into the circumstances surrounding the MSOC-F response to the SVBIED attack and escalation of force incident, and numerous e-mail messages and documents.

IV. FINDINGS AND ANALYSIS

A. <u>Did LTG Kearney abuse his authority and exert improper command influence in the preferral of charges against two soldiers who were reportedly previously exonerated of misconduct in the matter by Army criminal investigators?</u>

Standards

DoD Directive 2311.01E, "DoD Law of War Program," dated May 9, 2006

Section 3.1 defines the law of war as that part of international law that regulates the conduct of armed hostilities. It is often called the Law of Armed Conflict (LOAC). The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

Section 3.2 defines "reportable incident" as a possible, suspected, or alleged violation of the law of war, for which there is credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during an armed conflict.

Section 4.2 states it is DoD policy that all reportable incidents committed by or against U.S. personnel, enemy persons, or any other individual are reported promptly through their chain of command, investigated thoroughly, and, where appropriate, remedied by corrective action.

Section 5.8 states that the Secretaries of Military Departments will develop internal policies and procedures in support of the DoD Law of War Program to ensure that:

In coordination with the Combatant Commanders, promptly report and investigate reportable incidents committed by or against members of their respective Military Departments or persons accompanying them.

Where appropriate, provide for disposition, under the UCMJ, of cases involving alleged violations of the law of war by members of their respective Military Departments who are subject to court-martial jurisdiction.

Section 6.4 requires that the commander of any unit that obtains information about a reportable incident shall immediately report the incident through the applicable operational command through the most expeditious means.

Section 6.5 requires that those higher authorities receiving an initial report will request a formal investigation by the cognizant military criminal investigative organization.

AR 600-20, "Army Command Policy," dated June 7, 2006

This regulation sets forth general policies and responsibilities of command, which include the well-being of the force, and military discipline and conduct. Of particular relevance is the requirement in Section 5-8 (b), "Complaints or accusations against military personnel," which states that when commanders are apprised of complaints or accusations against military personnel, they are expected to inquire into the matter and attempt a resolution.

UCMJ

Article 32, "Investigation," states that no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.²

Article 37, "Unlawfully Influencing Action of Court," states in part, that unlawful command influence is prohibited. Unlawful command influence occurs when senior personnel, wittingly or unwittingly, have acted to influence court members, witnesses, or others participating in military justice cases. Such unlawful influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military.

Manual for Courts-Martial, United States, (2005 Edition)

The Manual for Courts-Martial, an Executive Order of the President of the United States, is the official guide for the conduct of courts-martial. One component of the Manual is the Rules for Courts-Martial or RCMs.

² The function of the investigation is to ascertain and impartially weigh all available facts in arriving at conclusions and recommendations on whether the charges should go to trial.

RCM 104, "Unlawful Command Influence," states that unlawful command influence is an attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or action of any convening, approving, or reviewing authority with respect to such authority's judicial acts.

RCM 303, "Preliminary Inquiry into Reported Offenses," states that upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.

RCM 307, "Preferral of Charges," states that any person subject to the Uniform Code of Military Justice may prefer charges.

RCM 307(b), "How charges are preferred; oath," requires that the person who prefers charges must:

- (1) Sign the charges and specifications under oath and before a commissioned officer of the armed forces authorized to administer oaths; and
- (2) State that the signer has personal knowledge of or has investigated the matters set forth in the charges and specifications and that they are true in fact to the best of that person's knowledge and belief.

The "Discussion" section following RCM 307(b) states, "The accuser's belief may be based upon reports of others in whole or in part." 3

Facts

On October 22, 2006, LTG Kearney appointed

, to investigate under the provisions of AR 15-6, the facts and circumstances surrounding the fatal shooting of on October 13, 2006.

He advised that , would be his legal advisor during the investigation.

testified that in addition to getting the facts, LTG Kearney instructed him to identify the rules of engagement that applied to ODA 374's mission, and to determine if a LOAC

³ "Accuser" is defined to include a person who signs and swears to charges.

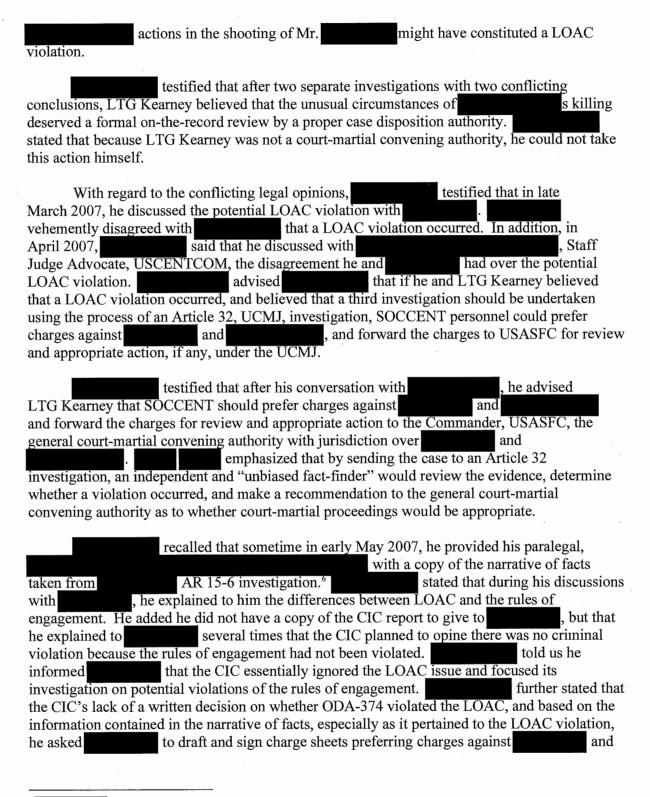
⁴ AR 15-6 procedures generally govern Army investigations requiring detailed fact gathering and analysis and recommendations based on those facts. An "investigation" is simply the process of collecting information for the command, so that the command can make an informed decision.

violation occurred. He testified that at no time during his investigation, did LTG Kearney attempt to influence the investigative process or direct him to achieve a particular result. testified that in his opinion, and recommended that Army CIC LOAC violation when they shot determine if the alleged LOAC violation constituted a criminal offense under the UCMJ. reported that he found competing and contradictory evidence that needed to be reconciled by means of a criminal investigation. He testified LTG Kearney approved his report of investigation and forwarded the report to the Army CIC in Afghanistan.⁵ testified that SOCCENT could not convene courts-martial because the Commander, SOCCENT, was not a court-martial convening authority. He explained that in cases requiring judicial disposition, SOCCENT would forward the cases to the accused's Service testified that in November 2006, after he and for appropriate action. LTG Kearney agreed with findings that a LOAC violation occurred, he provided the Army CIC with a copy of report of investigation and requested that they focus their efforts on the potential LOAC violation. On December 13, 2006, the Army CIC in Afghanistan initiated a criminal investigation. testified he contacted the Army CIC in Afghanistan in March 2007, and learned Army CIC planned to opine that there was no violation of the rules of engagement by explained he was shocked to learn that the Army CIC had members of ODA 374. focused its investigation into potential violations of the rules of engagement and failed to address the potential LOAC violation. He added that he and LTG Kearney agreed with the anticipated Army CIC conclusion that ODA 374 did not violate the rules of engagement, but that LTG Kearney still believed Army CIC should investigate the potential LOAC violation. explained that despite his repeated requests for Army CIC to focus on the potential LOAC violation, Army CIC never addressed the issue. Army CIC completed its final report on April 7, 2007. The report concluded that members of ODA 374 did not violate the rules of engagement and that said he did not receive a copy of the CIC report when it was issued. was lawful. requested, on behalf of LTG Kearney, that Army CIC conduct the Though investigation, Army CIC did not include or SOCCENT on the distribution list of stated that he had to rely instead upon his discussions with the addressees. Staff Judge Advocate, USASFC. Army CIC and provided the legal review of the April 7, 2007 CIC final report. did not receive a copy of the final CIC report until November 2007. The Army CIC report stated that diligent efforts positively identified as an enemy combatant who did not surrender to U.S. or Afghan forces prior to his death. Moreover, Army CIC investigators found that while complied with directions given to him by the Afghan NCO, his actions did not amount to a clear and unequivocal act of submission or surrender. The report stated that military authorities could therefore conclude that

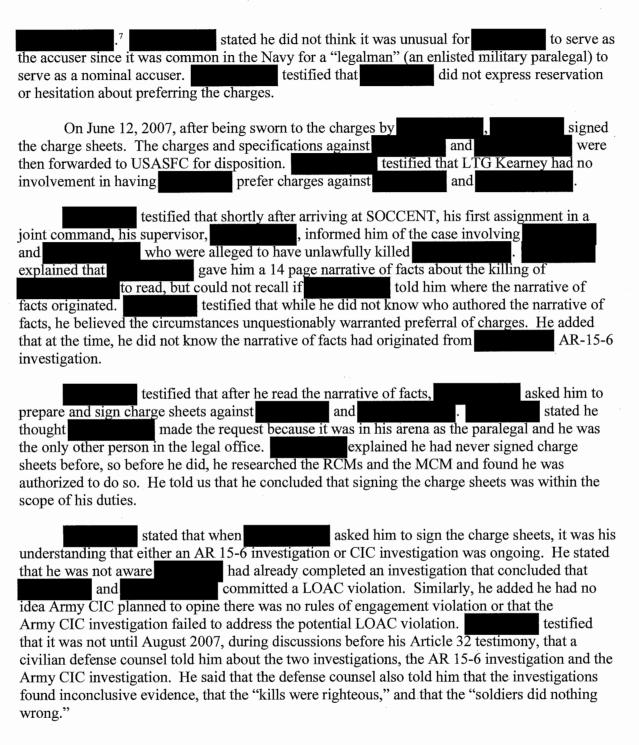
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was a legitimate target. The report did not address whether

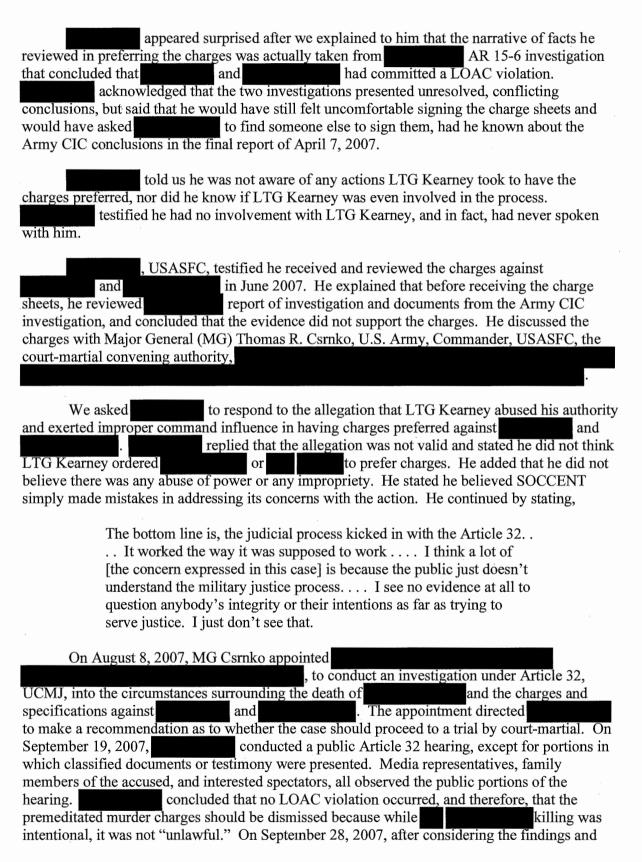
⁵ Portions of AR 15-6 investigation were classified.

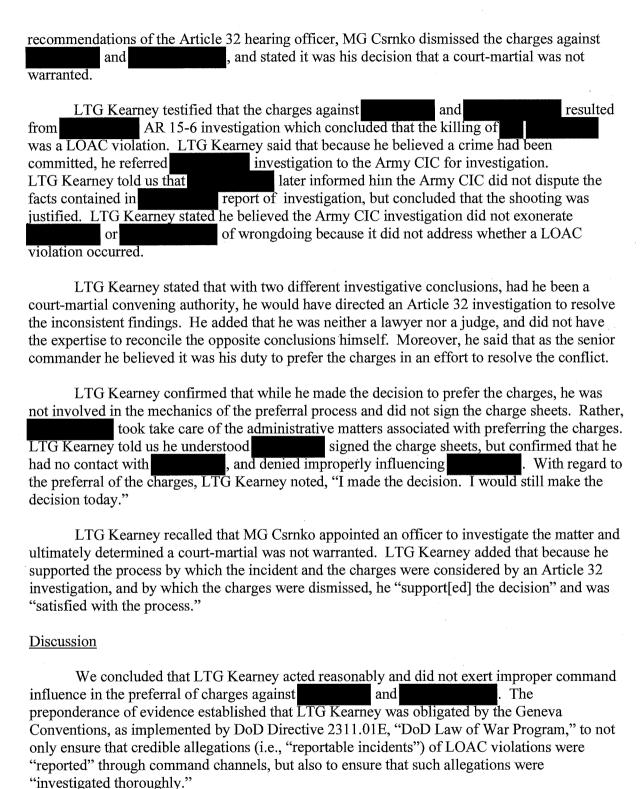


explained that because SOCCENT was a joint command, there was no requirement to use one Service's investigative procedures. He added that investigation was akin to a Navy preliminary inquiry or administrative investigation.



⁷ Preferral of charges is the first formal step in the court-martial process. Preferral of charges consists of drafting a charge sheet containing the charges and specifications against the accused. The charge sheet must be signed by the accuser under oath before a commissioned officer authorized to administer oaths. An "accuser" must have either personal knowledge of a UCMJ offense, or a belief based upon the reports of others, in whole or in part.





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, he complied with his duties under the DoD Law of War Program by using an

We determined that when LTG Kearney became aware of the fatal shooting of

investigation process under AR 15-6 to preliminarily investigate a "reportable incident" of a potential LOAC violation. That investigation concluded that committed a LOAC violation. Based on that investigation, LTG Kearney initiated the next step required by the DoD Law of War Program, which mandates investigation of alleged LOAC violations by a military criminal investigative organization. LTG Kearney acted within his authority by sending the case to the Army CIC, a cognizant military criminal investigative organization, to determine whether the alleged violation was criminal. Although the Army CIC and investigation determined the actions of did not violate the rules of engagement, the investigation did not address LTG Kearney's stated concern of determining whether a LOAC violation occurred. We further concluded that LTG Kearney acted reasonably, within his authority, and upon the advice of his Staff Judge Advocate when he decided charges should be preferred against and . LTG Kearney's actions in this regard were consistent with his duty under the DoD Law of War Program to thoroughly investigate the lawfulness of killing, and were motivated by a valid concern that "lawfulness" had not yet been properly resolved by an independent fact finder. Moreover, DoDD 2311.01E required that cases involving alleged violations of the LOAC be provided to the appropriate court-martial jurisdiction for disposition. As such, we determined that LTG Kearney's actions, in having charges preferred against and and forwarding the case to MG Crsnko for disposition, were appropriate. Moreover, we found no evidence that LTG Kearney influenced, or attempted to influence, any of the investigations. We were unable to resolve the conflict in testimony between and regarding awareness of the status of the AR 15-6 and CIC investigations and their potentially conflicting findings. Additionally, while we note testimony that in retrospect he would have asked someone else to sign the charge sheets, we do not find that his involvement in the process made the preferral of the charges improper. Evidence established that researched the process for preferral of charges in the RCM, was aware of the requirements for signing charge sheets as the accuser, and concluded that he was authorized to do so. He reviewed the narrative of facts from the AR 15-6 investigation which concluded a LOAC violation occurred; he then drafted the charge sheets and signed each under oath. Additionally, testified that he neither spoke with LTG Kearney about the preferral of charges nor was he influenced in that process by LTG Kearney. Moreover, we do not believe that had withdrawn himself from the process his absence would have prevented the preferral of charges in this case. RCM 307 authorizes any person subject to the UCMJ with knowledge of the matter to sign a charge sheet as accuser. The RCM further points out that the accuser's knowledge may be based in whole or in part on the actually asked to be excused from signing the charge sheets, reports of others. Had any other person subject to the code who reviewed the AR 15-6 narrative of facts could have signed the charge sheets as accuser. told us that expressed no reservation about signing the charge sheets as accuser, but if he had, would have

found someone else qualified to accomplish that task. Consequently, we concluded whether or

not was involved in the process, the end result of preferring and forwarding the charges in this case would not have been substantially different or otherwise improper.

Similarly, we determined that the Article 32 investigation directed by the Commander, USASFC, protected the rights of the two accused soldiers, while it also provided a public forum by which the incident could be reviewed to determine whether a LOAC violation occurred.

Article 32 hearing, attended by national media, demonstrated that U.S. forces take seriously their obligations under the LOAC, and provided U.S. commanders a formal report by which they could explain the facts and legal analysis of the situation to all concerned, to include Afghan authorities. Given the nature of the incident itself, the conflicting investigative conclusions, and the disparate views of the attorneys who reviewed the matter, it is our view that the Army and LTG Kearney would have been open to criticism for not acting to resolve the differences with objective finality.

B. <u>Did LTG Kearney abuse his authority by redeploying a Marine Special Operations</u> unit from Afghanistan?

Standard

AR 600-20, "Army Command Policy," dated June 7, 2006

This regulation sets forth general policies and responsibilities of command, which include the well-being of the force, and military discipline and conduct. Of particular relevance is the requirement in Section 5-8 (b), "Complaints or accusations against military personnel," which states when commanders are apprised of complaints or accusations against military personnel, they are expected to inquire into the matter and attempt a resolution.

Joint Publication 1-02, "DoD Dictionary of Military and Associated Terms," May 30, 2008

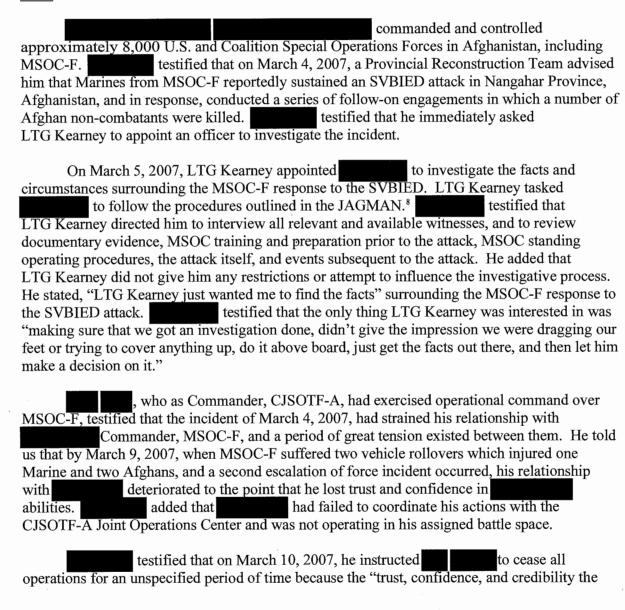
Joint Publication 1-02 contains all approved joint definitions for the DoD. The Joint Publication explains "operational control" as the command authority exercised by the operational chain of command over assigned forces. Operational control normally provides full authority to organize commands and forces and to employ those forces as the commander in operational control considers necessary to accomplish assigned missions.

Joint Publication 3-05, "Doctrine for Joint Special Operations"

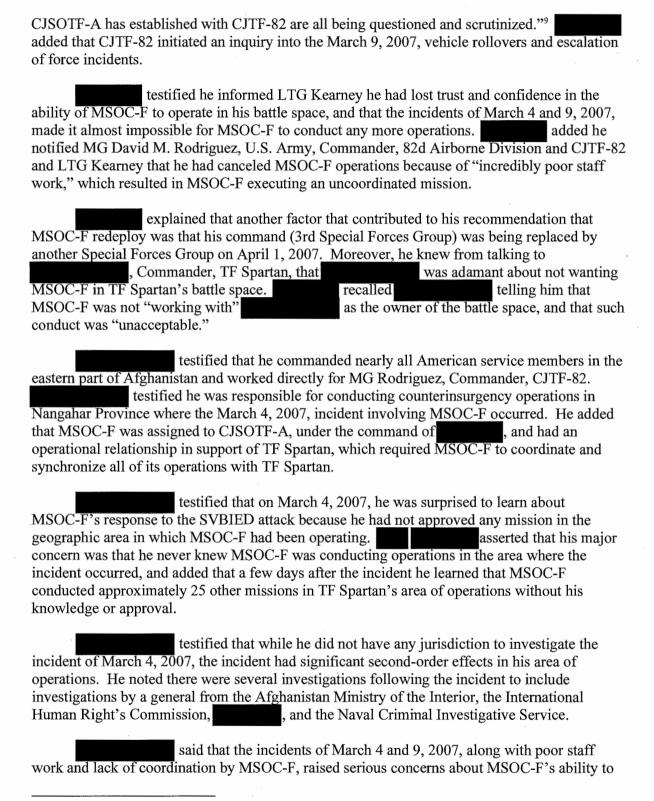
Chapter III, "Command and Control of Special Operations Forces," states at Paragraph 3, "Command and Control of Special Operations Forces in Theater," that geographic combatant commanders have established theater special operations commands as the primary mechanism by which the geographic combatant commander exercises command and control over special operations forces. As the commander of a subunified command, a theater special operations command commander exercises operational control of assigned commands and forces.

As noted in the "BACKGROUND" section of this report, SOCCENT is the subordinate theater special operations command of USCENTCOM. As Commander, SOCCENT, LTG Kearney exercised command and operational control of CJSOTF-A. In that capacity he had the authority to assign missions and reassign forces as necessary. MSOC-F was a subordinate unit in the operational chain of command of CJSOTF-A.

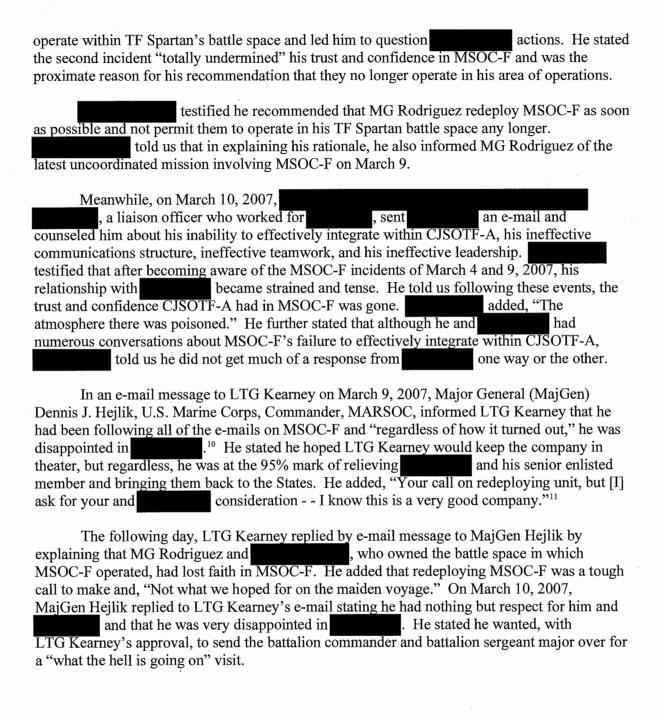
Facts



⁸ The primary purpose of an administrative investigation under the provisions of JAGMAN is to provide the convening authority and reviewing authorities with information regarding a specific incident which occurs in the Department of the Navy. These officials will then make decisions and take appropriate action based upon the information contained within the investigative report.



⁹ CJTF-82 was a U.S. led subordinate formation of the International Security Assistance Force, which served as the National Command Element for U.S. forces in Afghanistan, reporting directly to the Commander, USCENTCOM.



¹⁰ As Commander, MARSOC, MajGen Hejlik's mission was to organize, man, train and equip Marine Special Operations Forces. His subordinate units provided training to foreign military units and performed specific special operations missions. Although the MARSOC Headquarters is a non-deployable unit, MajGen Hejlik's command has the capability to provide intelligence, logistics and fire support coordination to form, deploy, and employ a Joint Special Operations Task Force.

¹¹ In an Associated Press article in November 2007, MajGen Hejlik was quoted as saying, "Obviously it was not my decision to bring the company (MSOC-F) out of theater. It was the theater commander's (LTG Kearney's) decision. I will never second guess the commander on the ground."

LTG Kearney responded by informing MajGen Hejlik of the escalation of force incident involving MSOC-F on March 9, 2007, and that had suspended MSOC-F's operations. LTG Kearney explained to MajGen Hejlik that the only solution at this time was to take MSOC-F out of Afghanistan "sadly because the people have no trust in them." He stated, "I am convinced we need to move them out. I need to look at what the best option is." LTG Kearney told MajGen Hejlik he could send the battalion commander, but it would not salvage anything. He added, "This is a hard one for me, no one wants this to work more than you and I." That same day, MajGen Hejlik replied to LTG Kearney's e-mail stating he "hated this" but understood. MajGen Hejlik stated "I believe you and I prepared the unit correctly but we do need to look at this and make it better."

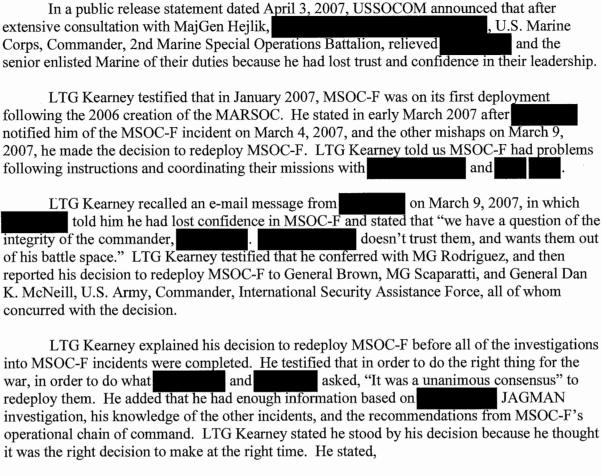
On March 10, 2007, LTG Kearney sent an e-mail message to MG Curtis Scaparrotti, U.S. Army, Director of Operations, USCENTCOM, stating and MG Rodriguez had lost confidence in MSOC-F because of their continual failure in coordinating their operations with and their failure in responding to his corrections and orders. He further stated,

Since the Afghans will not accept [MSOC-F] in the operating area and they will be a negative; I have decided to move them. MG Rodriguez concurs but it is really my decision. I will work on getting them out of Afghanistan.

In a March 10, 2007, e-mail message to General Bryan D. Brown, U.S. Army, Commander, USSOCOM, LTG Kearney stated he intended to redeploy MSOC-F because of multiple incidents. He added that the escalation of force incident involving MSOC-F on March 4, 2007, and the incident in which MSOC-F was involved in an uncoordinated mission in civilian clothes and civilian vehicles on March 9, 2007, was problematic. LTG Kearney explained that MSOC-F was unable to follow instructions, coordinate, and communicate. After receiving LTG Kearney's input, General Brown advised LTG Kearney that he agreed with his decision.

On March 26, 2007, the results of the CJTF-82 inquiry into the incidents of March 9, 2007, involving the vehicle rollovers and escalation of force incidents involving MSOC-F were provided to LTG Kearney. The inquiry concluded was ultimately responsible for the unit's poor reputation and the events of March 9, 2007. Furthermore, it stated, "It was clear, that lost operational control and should be held responsible for his actions and those of his unit."

On March 30, 2007, completed his JAGMAN investigation and concluded that MSOC-F reactions on March 4, 2007, which led to civilian Afghan deaths, were unreasonable under the circumstances. On April 5, 2007, LTG Kearney approved the investigative report and determined that the circumstances surrounding the apparently unlawful killings of March 4, 2007, warranted a further inquiry by the Naval Criminal Investigative Service.



My actions were tactical actions, based on the situation on the ground, no different, made for tactical reasons. I did not take any administrative or other actions against anybody in MSOC-F. I made a tactical commander's decision to respond to the request of the battle space owners to move a unit that they had lost confidence in, out of their battle space.

Discussion

We concluded LTG Kearney's decision to redeploy MSOC-F from Afghanistan was reasonable and within his authority as Commander, SOCCENT. In that capacity, he exercised command and operational control of his subordinate forces (to include MSOC-F), and had the authority to assign missions and reassign those forces as he deemed necessary.

Evidence disclosed that on March 4, 2007, MSOC-F responded to an SVBIED attack in Nangahar Province with a series of follow-on engagements in which a number of Afghan non-combatants were killed. Moreover, on March 9, 2007, MSOC-F was engaged in other serious incidents to include two vehicle rollovers, with one Marine and two Afghans injured, and an

escalation of force incident involving an uncoordinated mission where Marines were conducting an operation in civilian clothes and civilian vehicles outside their assigned area of operation.

We determined that LTG Kearney received complaints from two senior Army tactical commanders whose commands were negatively affected by the incidents involving MSOC-F. Both commanders recommended MSOC-F be redeployed from Afghanistan due to MSOC-F's documented inability to operate appropriately within its assigned battle space, coordinate its missions, and other issues related to the competence of the MSOC-F commander. We concluded that under the circumstances, LTG Kearney's tactical decision in redeploying MSOC-F from Afghanistan was within his broad discretion and did not constitute an abuse of authority.

V. CONCLUSIONS

A. LTG Kearney acted reasonably and did not exert improper command influence in the preferral of charges against two soldiers.

B. LTG Kearney acted reasonably and within his authority by redeploying a Marine Special Operations unit from Afghanistan.

VI. RECOMMENDATIONS

We make no recommendations in this matter.

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