

Section IV FINDINGS

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I, [redacted] find that the majority of evidence collected and analyzed in my investigation leads to the conclusion that the accusation of mistreatment of detainees on the morning of 29JUL03 by [redacted] or by any other member of 2nd Platoon, 94th Military Police Company while taking part in a raid conducted by Thunder Squadron, 3rd ACR was unsubstantiated. While the AR 15-6 standard of proof is "more probable than not", based on my analysis, I find that it is "highly probable" that no mistreatment of detainees occurred.

In my opinion, a combination of misperception and miscommunication was the root cause of the initial accusations against [redacted]. Based on sworn statements taken and questions asked of witnesses and participants in the actual events of the morning of 29JUL03 there is very little evidence which proves that a detainee was abused. I will give a synopsis of what I believe happened and why based on my investigation and then I will address individual issues that stand out in the investigation and explain them.

At approximately 0900, 29JUL03, the principal witness, [redacted] was approximately 70 meters away (exhibits II, IV and XII) from two detainees on the grounded and looking around his area. The two soldiers guarding the detainees were [redacted]. [redacted] was moving around the area providing general security. [redacted] perceived movement from his peripheral vision what he perceived to be a foot moving back and forth. What he saw was [redacted] placing his foot on the detainee's upper back after the detainee had rolled to his side and was fooling around with his flexicuffs. At this time, [redacted] had been under orders by Special Forces soldiers to keep the detainees still and to ensure that the detainees did not observe them in the continuation of their mission (exhibit XII). The detainee needed to be face down and [redacted] was worried that he (detainee) may get free from his flexicuffs and attempt to grab his ([redacted] weapon. He kept his hands on his weapon, and used his foot on the detainee's upper back to stop the detainee from rolling over and pushed him back on his chest. He then quickly tightened the flexicuffs. The distance between [redacted] and the fact that the detainees were facing toward [redacted] would have made it very difficult for him to tell with certainty where exactly [redacted] had placed his foot. A foot eight inches forward or back at approximately 70 meters without a cross-section view is difficult to observe. The detainees were facing [redacted] so he could not see the foot in reference to the length of the detainee's body. No other soldier involved even thought they saw [redacted] kick a detainee. The only other soldier who recalls a foot in contact with a detainee was [redacted] who did recall seeing [redacted] use his foot to stop a detainee from rolling over as well as [redacted] who was next to him (exhibit VII) but never saw [redacted] kick a detainee. [redacted] himself in his initial statements to [redacted] and [redacted] said he saw a soldier "appearing" to kick a detainee. He also said in his statement to me when asked if he saw a soldier kick a detainee and stand on his neck or head that he could not say for certain whether he saw the soldier actually kick and that he saw the soldiers foot somewhere on the "upper part" of the torso (Exhibit XII). At this point [redacted] started yelling at the soldiers

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guarding the detainees and that he was going to kick the soldiers. He started yelling about the Geneva conventions and got into an argument with what turned out to be [REDACTED] about it. At this point [REDACTED] tensions were rising more. He then started yelling for [REDACTED]. All this time, [REDACTED] is becoming increasingly agitated with what he perceived to be abuse. When [REDACTED] came over and found out what was the problem, he told [REDACTED] that he may have misinterpreted things. This got [REDACTED] even more upset (exhibit VII). What needs to be noted here is that even though [REDACTED] is very upset and has accused one of [REDACTED] soldiers of abuse of a detainee, [REDACTED] took the accusation, even though he doubted it, seriously enough to walk over and tell his own soldiers ([REDACTED]) to stop kicking the detainee (exhibits X, VIII, XII). This is very important in his defense. He thought it important enough that if even a hint of impropriety was evident, he was erring on the side of caution and instead of disregarding a questionable accusation, on the off chance that the accusation was true told his own soldiers to stop. The soldiers were taken aback and flatly denied kicking the detainee (exhibit VIII, X). This shows that [REDACTED] took these accusations seriously against his own soldiers. It seems highly unlikely that he would then, just a couple of minutes later blatantly mistreat a detainee by rubbing his face in the dirt in front of [REDACTED] after he knew that [REDACTED] was on the lookout for what he perceived to be abuse of detainees. By his [REDACTED] own admission, he did use his hand to turn a detainees face forward after the detainee was trying to look back (exhibit XII). He did this while he was attempting to loosen the zip ties on a detainee who was complaining about them being too tight (exhibit VIII, XII) ([REDACTED] in the earlier scenario had tightened the zip ties). A guy who is callous about the welfare of detainees under his control and apathetic to soldiers kicking them is not going to worry about zip ties being too tight. Also, the detainee said "thank you mister" after [REDACTED] reapplied zip cuffs (exhibit XII). A detainee is not going to thank him if he had just shoved his face in the ground. At this point [REDACTED] who is "mad that [REDACTED] called me out in front of people" (exhibit XII) goes back to [REDACTED] in the Humvee and yells at him to "stay in his lane". I believe that at this point [REDACTED] was livid and this comment put him over the edge. Also, [REDACTED] remembers [REDACTED] yelling at [REDACTED] to "get a new pair of glasses" (exhibit VIII) after he had gone over and found out that his soldiers were not kicking detainees. Because of the confrontations that had already gone on and because of what he perceived to see, I believe that [REDACTED] by this point had lost some objectivity. It should be noted that [REDACTED] has been known to become righteously indignant when he feels he or someone has been wronged or soldiers are not acting correctly. He can get and stay angry and that may have clouded his judgment here. The discrepancy here is the approximately five hour window between when the event occurred and when he spoke to [REDACTED] at Rifles base. The reason is that he had not calmed down yet and had not started to view the situation objectively. "I was furious and angry when talking to [REDACTED]" is what he stated to me when I asked about the discrepancy between then and now (exhibit XII). [REDACTED] didn't like what he saw. This was exacerbated by personal confrontations with a couple of soldiers. [REDACTED] has a strong temper and I believe felt personally challenged by [REDACTED] and part of his comments to [REDACTED] were as much venting steam as legitimate complaints. In [REDACTED] defense in case an issue of unfounded accusations comes up, in the initial statement made by [REDACTED]

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[redacted], both of whom initially heard [redacted] complaint on day of the event (Exhibits I & II). [redacted] statement said that [redacted] saw a soldier "appear to be kicking" a detainee. Also, when [redacted] were dispatched to Maddog to take [redacted] statement, [redacted] also wrote that [redacted] stated that the soldier "appeared to kick" the detainee (exhibit IV). When I questioned [redacted] on whether he saw a soldier kick a detainee he said that at the time all he saw was "foot movement" and "at the time it appeared to me it was kicking". When asked what he knows he saw, all he knows is that the soldier had his foot "somewhere on the upper part of the detainee" (exhibit XII). In fact, and even according to [redacted] [redacted] did not actually see [redacted] kick a detainee or [redacted] rub one's face in the ground.

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Conflicts/Discrepancies

1. [redacted] "backtracking" after confronted by [redacted] and [redacted] about the incident after he realized it was "official". The fact that [redacted] started to back down on the "details" of his story does not mean that he had in fact witnessed abuse of detainees and was trying to downplay it so that other soldiers did not get in trouble. Another explanation, and in my opinion the actual one, is that he realized that his statements made in anger had morphed into accusations of specific misconduct that he in fact did not witness, and that because he had said some things in anger to some other soldiers he had created a snowball effect and realized he better do what he could to slow it down. This is difficult because in this situation he may have been confronted with pride which would not allow him to come right out and say that he in fact did not see what he said he did. This combined with the fact that he was angry at [redacted] because of their confrontation may have clouded his judgment.

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- 2. **Distance-** Even if [redacted] was insistent that he in fact did see this abuse occur, the distance (possibly up to 100M away) would in itself be an issue.
- 3. **Statements-** The fact the [redacted] seemed righteously indignant does not mean that he was right. Plus all statements made to me verified that he in fact did not see with any certainty an actual kick or and actual rubbing of a face in the dirt.
- 4. **Geneva Convention statements-** These are made in the context of an argument in which [redacted] is yelling about soldiers not following Geneva convention and another soldier being upset that he is accusing one of his own unfairly. [redacted] remembers yelling back at [redacted] but not the statement about "they don't follow the Geneva conventions, why should we". Even if he did say that, it is just a counter to an accusation against a fellow soldier, not a good or a smart one, but nonetheless just a comment. That in itself is evidence of nothing but poor choice of words and judgment.
- 5. **Verbal abuse of detainees-** I explored this after reading [redacted] statement of what he overheard as he was walking past what turned out to be [redacted] and [redacted] near the detainees. [redacted] "overheard comments similar to" "you got a fuckin' problem" and some other non-niceties (exhibit VI). He does not remember exactly was said but that the soldiers were not talking nicely and that he heard profanities (exhibit XII). [redacted] readily admits that he told a detainee that if he could "complete a

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sentence in English they could get someplace”(exhibit IX). There may be some sensitivity issues but remember, these guys couldn't speak English. Hence, they couldn't understand what was being said even if they were being sworn at which there is not enough evidence to support happened. Either way, even though it is just some guys blowing off steam, it warrants further discussion in recommendations for preventive measures.

6. **Operation Thunder Payback-** At first glance the name of the operation is ominous sounding. Visions of “take no prisoners speeches” are easy to see. However, nowhere in the Squadron OPORD in either the Mission Statement or CMDRs Intent does it make mention of “payback” or “revenge” for the death of Fox 6 even though it is obviously implied in the name of the operation(exhibit 13). I attempted to get an idea of the way the troops were briefed and what their role was in this operation by question 3 on my questionnaire that I gave out to some of the soldiers interviewed. What I concluded from that is that both the MPs from 1st Plt and 2nd Plt were under the same understanding as to the reasons for the raid(get the guys who killed Fox 6) and the behavior to be taken(same as any other raid, no special treatment). What I was looking for was some type of “motivational” speech which may have led me to believe that command wanted “special” treatment for these guys if caught. I found nothing of the sort(exhibit XIV). In fact, [redacted] stated that [redacted] the leader of the raid and a personal friend of FOX 6, went up to the detainee captured who was suspected of masterminding the attack after he was put in the vehicle and said his peace to him without raising his voice or any physical act then went about his business(exhibit XII). By all accounts, this raid was conducted in a professional manner.

7. **Treatment of detainees-**Based on the answers to my questionnaire and to my questions I am comfortable that our soldiers to have a better than average knowledge of and understanding of why detainees need to be treated humanely.

8. ~~**[redacted] refusal to waive rights, fill out a sworn statement or answer questionnaire-** After [redacted] requested to speak with an attorney after being read his rights waiver I was immediately suspicious. [redacted] informed me at the chow hall the next day that I could still ask [redacted] questions and that he could answer me willingly if he wished and that he did not have to answer anything he did not want to. I informed [redacted] of this and he agreed to listen to my questions and understood he only needed to answer ones he felt comfortable with. [redacted] did in fact answer my questions and his answers bolstered the case in his defense as well as [redacted] and further convinced me that a personality clash with [redacted] was the catalyst which caused this to roll forward, not actual witnessed mistreatment of detainees. It turns out [redacted] was worried about the effect of things and hence, his desire to speak to an attorney. If anything, [redacted] should be commended for his concern for the welfare of the detainees by being willing to tell his own soldiers not to kick the detainees without evidence that they were and by being willing to loosen the zip ties of a detainee when he complained about their being too tight.~~

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Section V
Recommendations

1. While no wrongdoing was committed and subsequently, no grounds for further investigation or punishment is in order, the proper treatment of detainees is still something that we, as MPs need to make sure we are above reproach on. I believe that this situation can be used to reinforce the importance of correct treatment of detainees. While there is not evidence of any type of systemic problem, I believe that a mandatory 15 minute discussion/question answer session at squad level and above and overseen by an E-7 or above would help to reinforce the importance of, and correct procedures for treating detainees humanely. It is like continuing education for us. Plus, It would keep us sharp so we can help educate other soldiers on correct treatment of detainees. Two soldiers brought up in their answers that they had witnessed other 3ACR soldiers "mistreating" (subjective word)(specific instance not recalled) detainees. While the word is subjective, it is still a good thing for our soldiers to be up on proper treatment so they can spot check other soldiers if the need arises. It needs to be noted that if this recommendation is adopted that all soldiers know that it does not imply wrongdoing on the part of 2nd platoon soldiers, just that the situation brought to the company's attention the continuing importance of this subject.
2. All Soldiers involved in the incident need to sit down as soon as possible to discuss the situation. What they saw; what they perceived and the reasons for it. We cannot afford to have any bad blood between platoons. I would say all soldiers involved in all or part of the situation should be there: [REDACTED] and [REDACTED]. Preferably, as much of first and second as possible as most soldiers know what is going on and it's better for as little speculation as possible to take place. I think this all would have been avoided if this was done after the raid at an AAR and [REDACTED] and [REDACTED] hashed this miscommunication out. Also [REDACTED] had willingly offered to go with [REDACTED] to talk to [REDACTED]. Instead, soldiers went their separate ways and tempers seethed.
3. Soldiers need to be briefed on the importance of perception. What they do and how others may look at it and what the effects may be. They also should be briefed on the importance of analyzing before jumping to conclusions and attempt to look at situations which they themselves are involved in like an objective third party. This applies particularly to [REDACTED] as his heart was in the right place but he allowed himself to get a bit carried away. Also, the soldiers that [REDACTED] overheard, [REDACTED] and [REDACTED]; if they were not saying anything, he would not have heard anything. [REDACTED], while he committed not wrongdoing, did not need to make the statement about speaking one sentence in English. (He should not be singled out). However, this should also be spoken about in the treatment of detainee Q&A session. If you say only what is absolutely necessary, not what you want to, you can't go wrong.

Q&A 6-7-7d

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DA form 1574 Section III Explanation Sheet

A1a & A1e- The letter of Appointment is not numbered with a Roman numeral. Also, the privacy act statements and rights warning statements are not together but rather separated individually as the first page of the statement of each soldier interviewed. [REDACTED] is separate as he does not have a sworn statement. They are numbered consecutively with Roman numerals.

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		YES	NO ¹⁾	NA ²⁾
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			X
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			X
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	X		
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
	b. Was the date of delivery at least five working days prior to the first session of the board?			
	c. Does each letter of notification indicate -			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
	d. Was the respondent provided a copy of all unclassified documents in the case file?			
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?			
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

FOOTNOTES: 1) Explain all negative answers on an attached sheet.
2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board), having carefully considered the evidence, finds:
SEE ATTACHED SHEET

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:
SEE ATTACHED SHEET