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AUG 20 1973

The Honorable Henry S. Reuss  
House of Representatives

Dear Mr. Reuss:

This is in response to your letter of April 5, 1973, requesting us to investigate certain allegations regarding discrimination by rank in the enforcement and administration of justice at Fort Campbell, Kentucky. In conducting our investigation, we obtained information on the operation of the U.S. Magistrate system, the magnitude of traffic citations, and the disposition of selected cases involving serious traffic offenses. As a part of our work, we also reviewed records and held discussions with the Chief of Staff, the Provost Marshal, and the Staff Judge Advocate at Fort Campbell. The results of our review are discussed below.

THE MAGISTRATE SYSTEM

On September 15, 1972, Fort Campbell adopted a U.S. Magistrate system of justice under authority of Public Law 90-578, dated October 17, 1968. Under this system, a civil magistrate adjudicates cases involving certain minor offenses, including traffic violations committed on military reservations. Laws of the states in which military reservations are situated are adopted by those reservations so that magistrates may adjudicate and punish offenders to the same extent as under state laws. Some differences in state laws are involved, but for administration of justice under the magistrate system many of these differences have been eliminated.

Fort Campbell is located within the boundaries of the states of Kentucky and Tennessee and is served by the U.S. Magistrates for the Western District of Kentucky and Middle District of Tennessee. As provided by law, a representative of the Fort Campbell's Staff Judge Advocate's Office has been appointed prosecutor. He serves on all magistrate cases involving Army and tenant unit personnel at Fort Campbell.

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The prosecutor makes recommendations to the magistrate court on the dismissal of cases. In those instances where the dismissals are approved by the magistrate, the prosecutor may, at his own discretion, turn the cases over to military unit commanders for adjudication under the Uniform Code of Military Justice. The prosecutor at Fort Campbell advised us that cases turned over to unit commanders generally have involved additional charges punishable only under the Uniform Code, or have lacked sufficient evidence for prosecution in the magistrate court.

Under the magistrate system, the Staff Judge Advocate provides counsel to defendants up to the time their cases go to magistrate court, but defendants generally must provide any in-court defense counsel at their own expense. The magistrate may furnish a defense counsel in exceptional cases, such as where a defendant is facing potential confinement and cannot afford an attorney.

#### EVALUATION OF ALLEGED DISCRIMINATION BY RANK

Our analysis of the magistrate system and the procedures used by the Provost Marshal and Staff Judge Advocate indicated that three separate phases in the processing of traffic violations were most susceptible to discrimination by rank. These are:

- issuance of traffic citations by the Provost Marshal,
- recommendations for dismissal by the prosecutor, and
- assessment of penalties by the magistrates.

Because of inadequate control of citations by the Provost Marshal and lack of documentation explaining the reasons for the prosecutor recommending dismissal of cases, we were unable to determine whether discrimination by rank existed with respect to the issuance of traffic citations or the recommending of dismissals. Regarding cases involving serious traffic offenses, our work showed that there were no discernable patterns of discrimination by rank in the assessment of penalties by the magistrate court at Fort Campbell.

#### Issuance of Traffic Citations

The Provost Marshal is responsible for enforcing traffic regulations and for issuing traffic citations brought before the magistrate court. As of March 31, 1973, 3,556 citations had been issued to

military personnel since the magistrate system became effective on September 15, 1972. Enlisted personnel received 91 percent of these citations and officers received the remaining nine percent.

The following table shows the population figures by rank for the 19,298 Army and Air Force personnel stationed at Fort Campbell.

	<u>Enlisted</u>	<u>Officers</u>	<u>Total</u>
Army	16,762 (88%)	2,267 (12%)	19,029 (100%)
Air Force	250 (93%)	19 (7%)	269 (100%)
Total	<u>17,012 (88%)</u>	<u>2,286 (12%)</u>	<u>19,298 (100%)</u>

Although the percentages of tickets issued are similar to those of the total enlisted personnel and officer population, we found that there was inadequate control over prenumbered traffic citation forms. For example, in a test of a sample of 2,700 citations listed in the Provost Marshal log books, we were unable to locate 645 tickets (24 percent). Although we found no evidence of discrimination by rank in the Army's handling of citations, lack of adequate control over prenumbered forms makes it possible for citations to be issued and subsequently be destroyed without detection. We discussed this matter with officials at Fort Campbell and they agreed to establish and maintain better control over traffic citations forms.

#### Recommendations for Dismissal

The Staff Judge Advocate prosecutor is responsible for administering and recording most legal and procedural aspects of the magistrate system. If he believes the Government's case is insufficient for a conviction or other circumstances warrant dismissal of the case by the magistrate court, he may recommend dismissal. In almost every case, the magistrate approves the prosecutor's recommendation and dismisses the case without reviewing the reason for the dismissal. Subsequently, the prosecutor may refer a dismissed case to a unit commander for action under the Uniform Code of Military Justice.

The following table shows the cases dismissed by the magistrate court that were based on the recommendation of the prosecutor during January through April 1973.

<u>Type of Offense</u>	<u>Cases Dismissed on Recommendation of Prosecutor</u>
Driving while intoxicated	13
Speeding	27
Other moving violations	66
Non moving violations	<u>227</u>
Total	<u>333</u>

The prosecutor had no records showing the reasons or circumstances for any of the 333 dismissals. The absence of such documentation precludes meaningful analysis of individual cases for possible discrimination by rank. We informed responsible officials at Fort Campbell of the necessity to document the reasons for recommended dismissals. They agreed to establish procedures requiring the prosecutor to record and maintain proper documentation.

#### Assessment of Penalties

We reviewed a sample of 145 magistrate court dispositions out of a total of 1,084 cases adjudicated during January through April 1973. These 145 cases involved all traffic offenses in three categories that result in mandatory revocation of post driving privileges. The following table shows these cases by category and by rank.

<u>Category of Offense</u>	<u>Officers</u>	<u>Enlisted</u>	<u>Total</u>
Driving while intoxicated	6	105	111
Reckless or careless driving	0	31	31
Speeding in excess of 25 mph over the limit	<u>0</u>	<u>3</u>	<u>3</u>
Total	<u>6</u>	<u>139</u>	<u>145</u>

The conviction rate for the 111 cases involving driving while intoxicated was 89 percent for enlisted personnel and 67 percent for officers. Due to the small number of officers, the 22 percent difference between the rates does not reflect a meaningful comparison of the conviction rates. The reckless or careless driving charges to the 31 enlisted men resulted in an 80 percent conviction rate and the three charges to enlisted men for speeding resulted in a 100 percent conviction rate.

We did not develop averages for punishment by rank as requested in your letter because of the small number of officers in the sample. We analyzed the penalties assessed for the 111 cases involving driving while intoxicated which indicates that discrimination by rank does not exist. The following table shows the ranges of penalties assessed by rank for the 111 cases involving driving while intoxicated.

	Total Cases	Acquittals or Dismissals	Suspended Sentence	Fines		
				\$100-150	\$151-200	Over \$200
Enlisted	105	12	1	56	23	13
Officers	<u>6</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>1</u>
Total	<u>111</u>	<u>14</u>	<u>1</u>	<u>58</u>	<u>24</u>	<u>14</u>

As indicated above, the results of 111 case reviews did not show discernable patterns of discrimination by rank in the assessment of penalties by the U.S. Magistrates at Fort Campbell.

We trust this information satisfies your request.

Sincerely yours,

*Thomas D. Morris*  
 Thomas D. Morris  
 Assistant Comptroller General