



Testimony

Before the Subcommittee on Immigration and Claims,
Committee on the Judiciary,
House of Representatives

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OPERATION PROVIDE COMFORT

Review of U.S. Air Force Investigation of Black Hawk Fratricide Incident

Statement of Eljay B. Bowron
Assistant Comptroller General for Special Investigations
Office of Special Investigations



Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you today on our review of the military investigations of what has become known as the Black Hawk fratricide incident. My testimony this morning is a brief summary of the work we reported on in November 1997, and I would ask that that report¹ be inserted into the record. As you know, our work did not address victim compensation issues. The Subcommittee on Military Personnel, House Committee on National Security asked us to determine if the Air Force's Aircraft Accident Investigation Board investigation of the fratricide had met its objectives and if the resulting Uniform Code of Military Justice (UCMJ) investigations had followed established guidelines. We were also asked to determine whether military officials had improperly or unlawfully influenced these investigations.

Mr. Chairman, this morning I will briefly discuss some background information on the incident and the subsequent military investigations and then discuss the results of our review.

Background

On April 14, 1994, two U.S. Army Black Hawk helicopters and their crews assigned to Operation Provide Comfort were transporting U.S., United Kingdom, French, and Turkish military officers; Kurdish representatives; and a U.S. political advisor in northern Iraq. Concurrently, a U.S. Air Force Airborne Warning and Control Systems (AWACS) aircraft was flying over Turkey to provide airborne threat warning and control for Operation Provide Comfort aircraft, including the Black Hawk helicopters. The pilots of two U.S. F-15 fighters patrolling the area misidentified the Black Hawks as Iraqi Hind helicopters and shot them down, killing all 26 individuals aboard.

Later that day, the U.S. Secretary of Defense ordered an investigation that resulted in the convening of an Aircraft Accident Investigation Board,² which made information more readily available to the public than would a

¹See Operation Provide Comfort: Review of U.S. Air Force Investigation of Black Hawk Fratricide Incident ([GAO/OSI-98-4](#), Nov. 5, 1997).

²A primary purpose of an Aircraft Accident Investigation Board, in accordance with Air Force Regulation 110-14 (since replaced by Air Force Instruction 51-503), is to gather and preserve evidence for claims, litigations, and disciplinary and administrative needs.

Safety Board Investigation.³ The Aircraft Accident Investigation Board report and the required Board President's opinion, issued May 27, 1994, identified "a chain of events" as the incident's cause: beginning with the Combined Task Force's failure to provide clear guidance to its component organizations, the components' misunderstanding of their responsibilities, Operation Provide Comfort's failure to integrate Army helicopter and Air Force operations, AWACS crew mistakes, and ending with the F-15 lead pilot's misidentification of the helicopters and the wingman's failure to notify the lead pilot of his inability to positively identify the helicopters.

On the basis of the Board report, the Secretary of Defense directed applicable military commands to determine if UCMJ⁴ violations had occurred. Subsequently, the commands appointed Inquiry Officers and Investigating Officers to investigate 14 officers. The UCMJ process resulted in the following: one officer was tried by court-martial, resulting in an acquittal; one officer received nonjudicial punishment under Article 15,⁵ consisting of a letter of reprimand; and nine others received administrative letters of either reprimand, admonition, or counseling. No adverse action was taken against the remaining three officers.

Results of GAO Review of the Air Force Investigation

The Aircraft Accident Investigation Board was properly convened and met the objective as set forth in Air Force Regulation 110-14 of conducting an extensive investigation that preserved evidence of the facts surrounding the incident. We found that the Board report focused on, among other matters, command and control problems, including individuals' lack of knowledge of specific procedures. The report, however, (1) did not discuss the F-15 pilots' responsibility, under the Airspace Control Order,⁶ to report to the Airborne Command Element⁷ when encountering an

³Under a Safety Board Investigation, a promise of confidentiality is given to all witnesses; and privileged information is protected from disclosure outside the Air Force Safety Board Investigation community. Therefore, restrictions are placed on the dissemination of the information obtained and the resulting report.

⁴UCMJ, 10 USC § 801 et seq., governs the conduct of military personnel. It contains both substantive and procedural law applicable to the military justice process and administration. It also describes the system of military courts, defines offenses, authorizes punishment, and provides statutory due-process safeguards.

⁵Nonjudicial punishment under Article 15 is generally appropriate when administrative corrective actions are inadequate and a trial by court-martial is not necessary.

⁶The Airspace Control Order provided rules and procedures for all aircrews.

⁷The Airborne Command Element on board the AWACS acted as the eyes and ears of the Combined Forces Air Component Director of Operations and operated in a reactive mode.

unknown aircraft in the tactical area of responsibility (TAOR),⁸ which the pilots did not do, and (2) cited a Combined Forces Air Component Commander's statement that inaccurately portrayed the Airborne Command Element as not having authority to stop the incident, even though evidence that the Airborne Command Element had the authority was available to the Board. Further, the Board President erroneously concluded that the Black Hawks' use of an incorrect electronic identification code in the TAOR resulted in the F-15 pilots not receiving an electronic response when they attempted to interrogate the helicopters.

Additionally, the Board report and opinion did not discuss a perceived general lack of discipline in the F-15 pilot community in Operation Provide Comfort and a perceived urgency by the F-15 pilots to engage during the shootdown, both of which had been raised by family members and others. While an examination of these issues was not required under Air Force Regulation 110-14, the regulation did not preclude it; and we found the issues relevant to our review.

In response to our inquiries, Operation Provide Comfort officials stated that the pilots' failure on April 14, 1994, to contact the Airborne Command Element was the result of a lack of F-15 mission discipline in Operation Provide Comfort at the time of the incident. In addition, Operation Provide Comfort officials stated that, in their view, there was no reason for the F-15 pilots' urgency to engage. These issues are not inconsistent with the Board President's conclusion regarding the chain of events that led to the misidentification and shootdown of the Black Hawks. Including them in the Board's report, however, may have raised additional questions about the actions and inactions of the F-15 pilots and the Airborne Command Element that could have been useful in subsequent administrative and disciplinary actions.

During our review of the Aircraft Accident Investigation Board process, we found no evidence of improper or unlawful command influence. That review included access to, among others, Board members, technical advisers, and investigative staff as well as investigative documents.

Regarding the questions concerning the subsequent UCMJ process and improper or unlawful command influence during that process, we determined the following. UCMJ investigations complied with provisions of the UCMJ and the Manual for Courts-Martial. Based on a review of the

⁸The TAOR was the air space north of 36 degrees north latitude in Iraq from which Iraqi aircraft were prohibited.

summary reports of investigation, a statement by the AWACS Investigating Officer, and stipulations by several of the officials involved in UCMJ investigations, we found no evidence of improper or unlawful command influence.

However, we were unable to obtain confirmation from applicable UCMJ Convening Authorities, Inquiry Officers, and Investigating Officers about whether the consideration and disposition of suspected offenses under the UCMJ were the result of improper or unlawful command influence. This occurred because the Department of Defense, concerned about any congressional intrusion into the deliberative process, denied our request to interview these officials.

Finally, immediately following the accident and as the result of additional reviews and analyses, the Department of Defense and the Air Force took hundreds of corrective actions, including insertion of Black Hawk flight times on the daily Air Tasking Order,⁹ to help prevent a similar shootdown. The Air Force Chief of Staff also took additional personnel actions, including issuing letters of evaluation. He took these actions after finding that a number of individuals' performance evaluations had not reflected previous administrative actions taken as a result of the individuals' failure to meet Air Force standards.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you and other members of the Subcommittee may have.

⁹The Combined Task Force flying operations for all aircraft were scheduled on a daily Air Tasking Order, which listed information pertinent to each day's flight operations, or "mission package," such as flying times. In the case of the Black Hawk helicopters, the notation "as required" was included rather than specific flying times due to the uncertainty of their schedules.

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