

**REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS**

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

**SECTION I - APPOINTMENT**

Appointed by COL (b)(3), (b)(6) Commander, 3RD Heavy Brigade Combat Team, 4TH Infantry Division (MECH)  
(Appointing authority)

on 24 March 2006 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

**SECTION II - SESSIONS**

The (investigation) (board) commenced at FOB Warhorse, IRAQ at 1200 hrs  
(Place) (Time)

on 24 March 2006 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1700 hrs on 15 APRIL 2006  
(Time) (Date)  
and completed findings and recommendations at 1700 hrs on 16 APRIL 2006  
(Time) (Date)

**SECTION III - CHECKLIST FOR PROCEEDINGS**

| A. COMPLETE IN ALL CASES |  | YES | NO <sup>1/</sup> | NA <sup>2/</sup> |
|--------------------------|--|-----|------------------|------------------|
| 1                        | Inclosures (para 3-15, AR 15-6)  |     |                  |                  |
|                          | Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)  |     |                  |                  |
|                          | a. The letter of appointment or a summary of oral appointment data?  | X   |                  |                  |
|                          | b. Copy of notice to respondent, if any? (See item 9, below)   |     |                  | X                |
|                          | c. Other correspondence with respondent or counsel, if any?  |     |                  | X                |
|                          | d. All other written communications to or from the appointing authority?   |     |                  | X                |
|                          | e. Privacy Act Statements (Certificate, if statement provided orally)?   |     |                  | X                |
|                          | f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)? | X   |                  |                  |
|                          | g. Information as to sessions of a formal board not included on page 1 of this report?   |     |                  | X                |
|                          | h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?  |     |                  | X                |

FOOTNOTES: <sup>1/</sup> Explain all negative answers on an attached sheet.  
<sup>2/</sup> 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.

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| 2   | Exhibits (para 3-16, AR 15-6)   | YES | NO | NA |
|---|---|-----|----|----|
|   | 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>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>             |   |     |    |    |
| 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)? |     |    |    |
| <b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b> |   |     |    |    |
| 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 a 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.

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

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

The suspicious vehicle had driven past 1LT (b)(3), (b)(6) and SFC (b)(3), (b)(6) tanks twice at a slow rate of speed. The vehicle had stopped near (b)(2)High for a third time and appeared to have engine trouble. SFC (b)(3), (b)(6) maneuvered his tank and attempted to search the individual and vehicle. While SP (b)(3), (b)(6) was dismounting the tank the individual started to get back in to his vehicle without lowering his hood to the engine compartment. SFC (b)(3), (b)(6) attempted to signal the individual to cease and assist. SFC (b)(3), (b)(6) did not have an interpreter with him at that location (See Exhibit G). The individual disregarded all commands from SFC (b)(3), (b)(6) and continued to get into the vehicle. At that time SFC (b)(3), (b)(6) drew his weapon with intent to use it and repeated verbal and non-verbal warnings. The individual drove away from SFC (b)(3), (b)(6) at a high rate of speed toward Destroyer company's blocking position (b)(3), (b)(6) (See Exhibit G). SFC (b)(3), (b)(6) (b)(2)High where the individual made no attempt to stop or slow down. SFC (b)(3), (b)(6) ordered SGT (b)(3), (b)(6) (b)(2)High. The individual continued to make no attempt to stop or slow down. At that time he ordered SGT (b)(3), (b)(6) and SP (b)(3), (b)(6) to shoot to kill. They open fire for approximately 5 to 10 seconds with two M240Bs. The vehicle slowed and pulled off to the side of the road. SFC (b)(3), (b)(6) maneuvered his tank to the disabled vehicle where they pulled the individual out and rendered aid. SFC (b)(3), (b)(6) ordered that the vehicle be searched and that the medic respond to the scene. There were no weapons or explosive found on the individual or vehicle. The individual died 5 to 10 minutes after the medic arrived.

According to Exhibit A, SFC (b)(3), (b)(6) used hand and arm signals to motion the driver away from his vehicle (White Toyota truck). His statement was supported by Exhibit's B through F and that proper use of force was used to deter the suspect from re-entering his vehicle and speeding away. In Exhibit G, he answered questions to why suspect was such a threat as to give the order to shoot to kill the fleeing suspect? He answered that the suspect had drove past his observation post twice both times moving at an suspiciously slow pace. The third time they approached the vehicle, they noticed the vehicle was stopped with the engine hood compartment propped up as if it was broke down. As they proceeded to dismount their tank to search they suspicious vehicle the military aged male got back in his vehicle disregarding all warnings to cease and desist. The vehicle then began moving south-west on route (b)(2)High towards a blocking position with his engine compartment still propped up. At that time he deemed the vehicle as a possible threat to the blocking position and that the individual would seriously jeopardize the safety of the soldiers on the ground. SFC (b)(3), (b)(6) used proportionate amount of force by firing a (b)(2)High which had no effect on the civilian evading. Not only did SFC (b)(3), (b)(6) fire a (b)(2)High but he then escalated to (b)(2)High. Without success he then gave the order to kill the the individual before he reached the blocking position.

After interviewing SFC (b)(3), (b)(6) requested the past AIF contacts on Route (b)(2)High from 1-68th AR BN S-2 (See Exhibit M). I re-interviewed SFC (b)(3), (b)(6) and PFC (b)(3), (b)(6) to determine how fast the fleeing suspect was traveling as requested by CP (b)(3), (b)(6) Benson, 3rd BDE Leagal Advisor, JAG (See Exhibit H through L). By determining the estimated speed of the vehicle, a time distance analysis can be calculated to determine how long that vehicle would take to reach the blocking position. Exhibit J calculates the two speed variables that SFC (b)(3), (b)(6) and PFC (b)(3), (b)(6) stated in their sworn statements. Keeping in mind that the fleeing vehicle would have continued to gain speed without SFC (b)(3), (b)(6) involvement. Exhibit N is the EOF containing pictures and explaining the incident that was submitted by D Company to 1-68th AR BN.

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

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

(b)(3), (b)(6)

(b)(3), (b)(6)

(b)(3), (b)(6)

(b)(5)

(b)(2)High

(b)(3), (b)(6)

COL, IN  
Commanding

(b)(3), (b)(6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/ substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

\_\_\_\_\_  
(Member) (Member)

To the extent indicated in Inclosure \_\_\_\_\_, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

(b)(3)(b)(6)

\_\_\_\_\_  
(Recorder)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

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