

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, 172d Stryker Brigade Combat Team, Camp Liberty, Baghdad, Iraq
(Appointing authority)

on 04 October 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 Camp Striker, Baghdad, Iraq at 1650
(Place) (Time)

on 04 October 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 1730 on 06 October 2006
(Time) (Date)
and completed findings and recommendations at 1000 on 07 October 2006
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

		YES	NO ^{1/}	NA ^{2/}
1	Inclosures <i>(para 3-15, AR 15-6)</i>			
	Are the following inclosed and numbered consecutively with Roman numerals: <i>(Attached in order listed)</i>			
	a. The letter of appointment or a summary of oral appointment data?	X		
	b. Copy of notice to respondent, if any? <i>(See item 9, below)</i>			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 <i>(Certificate, if statement provided orally)?</i>	X		
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered <i>(e.g., absence of material witnesses)?</i>			X
	g. Information as to sessions of a formal board not included on page 1 of this report?			X
	h. Any other significant papers <i>(other than evidence)</i> relating to administrative aspects of the investigation or board?			X

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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		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?	×		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	×		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	×		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			×
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	×		
	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?	×		
	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)?			×
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			×
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:

At approximately 1328 on 03 October 2006, B/4-23 IN's TAC was conducting a patrol in the Bayaa area in South-West Baghdad. CPT (b)(3), (b)(6) the Company Commander, was riding in the squad leader hatch of the lead of a three Stryker patrol. Due to a mechanical fault in his vehicle, B66, CPT (b)(3), (b)(6) was riding in the B13 Stryker of 1st Platoon. The crew consisted of the driver, SPC (b)(3), (b)(6) and the vehicle commander, CPL (b)(3), (b)(6) (Enclosures III, V, IX, XII).

Bayaa has seen a surge in Extra Judicial Killings (EJK) in the previous sixty days, which is the primary reason 4-23 IN was tasked to conduct operations in the area. The Battalion began conducting operations in the area on 30 September 2006, four days prior to the incident (Enclosures XX, XXI).

As the patrol was moving in the vicinity of Route (b)(2)High B13 pulled behind a yellow minivan with one occupant. CPT (b)(3), (b)(6) observed the driver move an AK-47 assault rifle to the van's passenger seat. CP (b)(3), (b)(6) did not observe a weapon, but stated the Remote Weapon System obscured his vision. CPT (b)(3), (b)(6) instructed the driver to honk the horn and he then displayed a closed fist and open palm hand signal to persuade the driver to stop. The van sped up and weaved between traffic in an obvious attempt to flee the Stryker (Enclosures V-XIV).

B13 chased the van for several blocks when CPT (b)(3), (b)(6) attempted to disable the van by firing one round from his M4 at the right rear tire of the van. B13 had been chasing the van between 250m to 700m and approximately 45 seconds (statements vary on route, distance, and time of the chase) when the round was fired. B13 was estimated at traveling between 20-40 mph and was 40-50m from van (Enclosures VI, X, XIII).

There were several cars that had pulled off to the side of the road during the chase and some pedestrians either on the sidewalk or looking down the street from courtyards. The statements conflict on the number of vehicles and pedestrians in the area at the time the incident occurred. There were also several barricades and cars on the street that the Stryker was forced to maneuver around (Enclosures VI, X, XIII).

After B13 ceased the chase due to losing the van, they returned to the neighborhood in which CPT (b)(3), (b)(6) fired the round. (b)(6) (b)(6) an 18 years old, local national had been shot in the lower left torso, presumably by CPT (b)(3), (b)(6) one round. (b)(6) (b)(6) was transported to the Yarmook Hospital by family or neighbors. At the hospital, the doctor suspected the round punctured his liver and he was prepping to conduct surgery. (b)(6) subsequently died at the hospital (Enclosures V, VII, IX, XII). (b)(6) (b)(6) family received a \$2,500.00 condolence payment on 07 October 2006.

The area where the incident occurred has had an elevated level of violence in the previous sixty days. A historic body dumping location was templated by the Battalion S2 approximately 400m South-East of the location of the incident and approximately 500-600m from where the van was first spotted. Additionally, three bodies have been found within 500 meters of the incident in the last 90 days, which averages out to one per month (Enclosures XV, XXI).

The incident occurred at approximately 1330, which is in accordance with the Battalion S2's templated high body dumping times of 0600-1600. However this is a ten hour window that encompassed most of the daylight hours (Enclosure XXI).

The vehicle engaged had one person in it and is not consistent with the profile of EJK body dumping, which usually involves multiple persons and often involves multiple vehicles. There is no reason to believe the driver was conducting an EJK body drop as suspected by CPT (b)(3), (b)(6) (Enclosure V). The vehicle make and color did not fit any vehicles on the BOLO list (Enclosure XV). Although the suspect was allegedly armed and therefore violated the MNC-I Weapons Policy dated 9 August 2006, there was no reason to believe he was involved in EJK activity.

CPT (b)(3), (b)(6) has over thirteen months of company command experience in theater and has received or given several classes on the MNC-I ROE, which states "If individuals pose a threat to Coalition Forces by committing a hostile act or demonstrating hostile intent, US Forces may use force, up to and including deadly force, to eliminate the threat." (Enclosure XVIII)

FINDINGS CONTINUED ON LAST PAGE

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

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

CPT (b)(3), (b)(6) discharged his M4 at a fleeing vehicle with the intent to disable it. This shot resulted in the unintended death of (b)(6) (b)(6) an Iraqi bystander. The engagement occurred in an area of Baghdad with increased EJKs incidents, but the unidentified suspect (not (b)(6)) did not fit the profile for an EJK body dumping. CPT (b)(3), (b)(6) saw that the suspect had an AK-47 rifle with him in the van, but did not perceive a hostile act or hostile intent directed towards himself or his patrol. By engaging this vehicle CPT (b)(3), (b)(6) (b)(5) violated the ROE, and violated an order. I recommend CPT (b)(3), (b)(6) (b)(5)

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

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.)

(Recorder)

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

(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

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

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.)

(Member)

(Member)

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

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.)

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FINDINGS CONTINUED.

No hostile act or intent was displayed by the driver. This is corroborated by CPT (b)(3), (b)(6) statement; "He was not demonstrating hostile intent to my element by fleeing. If I had felt hostile intent it would have been when he brandished the AK-47 to the passenger seat while I was 15m behind him. I did not feel hostile intent at that time." (Enclosure V)

Additionally, the MNC-I Rules of Engagement (ROE) permits the use of up to deadly force in the instance of Third Party Violence and states: "Within Iraq, necessary force, up to and including deadly force, may be used against individuals or groups of individuals who commit, or are about to commit, an act that is likely to cause death or serious bodily harm to another. When time and circumstances permit, use graduated measures of force in accordance with Par. 3.g.(1) above." (Enclosure XVIII)

CPT (b)(3), (b)(6) states one of the reasons he engaged the vehicle was because "the driver almost hit several pedestrians and vehicles during the chase. Many LN's were literally jumping out to the way." (Enclosure V). This claim about pedestrians was not corroborated by the B13 crew. CPT (b)(3), (b)(6) does not recall seeing any pedestrians and SR (b)(3), (b)(6) made no mention of pedestrians when directly asked the question. However, he did state that "If cars had not quickly [gotten] out of the way, the van would have hit a number of them." (Enclosure V, X, XIII). It can be reasoned that the fleeing vehicle posed a threat to third parties because they were at risk of being struck by the fleeing vehicle.

On 20 September 2006, CPT (b)(3), (b)(6) received an email addressing engaging fleeing vehicles from the 172d SBCT Commander, Colonel (b)(3), (b)(6). The email originated from the MND-B Commander, Major General Thurman on 19 September 2006 and stated; "We do not shoot unarmed persons who have not committed a hostile act and are running away from the scene of an incident. If a hostile act or hostile intent does not exist, then Soldiers should not be firing their weapons at fleeing persons." (Enclosure XVI)

Additionally an attached Information Paper from the MND-B SJA was attached to the email. The Information Paper covered vignettes that specifically dealt with fleeing suspects (Enclosure XVII). MG Thurman's order was reinforced by the 4-23 IN Battalion Commander, Lieutenant Colonel (b)(3), (b)(6) at the battalion's update brief on or about 20 September 2006 (Investigating Officer was present).