



REPLY TO
ATTENTION OF

**HEADQUARTERS
MULTI-NATIONAL CORPS - IRAQ
BAGHDAD, IRAQ
APO AE 09342**

FICI-JA-AL

9 March 2005

MEMORANDUM FOR Commander, 42nd Military Police Brigade, Camp Victory, Baghdad, Iraq, APO AE 09342

SUBJECT: Report of AR 15-6 Investigation into the Shooting of Two Iraqi Civilians, Resulting in a Fatality, on 20 Feb 05 along Rte 6, Vic MN 686767

1. I have reviewed the Report of Investigation concerning the facts and circumstances surrounding the shooting of two Iraqi civilians resulting in a fatality, on 20 February 2005 along Rte 6, Vic MN 686767. I find that it is legally sufficient. Note that the investigating officer needs to sign the DA Form 1574, "Report of Proceedings," Section VI, "Authentication."

a. The findings of the Investigating Officer are supported by a preponderance of the evidence as contained in the exhibits.

b. There were no material errors present which would affect the findings and recommendations.

c. The actions taken during this investigation comply with the legal and procedural requirements of AR 15-6.

d. The recommendations of the Investigating Officer are consistent with the findings.

2. Recommend the Appointing Authority approve the findings and recommendations by taking the following actions:

a. Strike through the inapplicable language at the top of Section VIII, DA Form 1574, so that it reads "The findings and recommendations of the investigating officer are approved."

b. Sign above your signature block at the bottom of Section VIII, DA Form 1574.

3. The POC for this action is LTC [redacted] at [redacted]@iraq.centcom.mil or DSN [redacted]

FOR THE STAFF JUDGE ADVOCATE:

[redacted]
(b)(3), b(6)

LTC, JA
Administrative Law Attorney

Encl
DA Form 1574 w/ encl



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 42ND MILITARY POLICE BRIGADE
CAMP VICTORY, IRAQ
APO AE 09342

AFZH-MP

MEMORANDUM FOR Major [REDACTED] (b)(3), b(6), Headquarters and Headquarters Company, 42nd Military Police Brigade

SUBJECT: Appointment AR 15-6 Investigating Officer

1. Reference: AR 15-6, Procedure for Investigating Officers and Boards of Officers, 11 May 1988, with Change 1, 30 October 1996.
2. I appoint you to conduct an investigation to determine the facts and make recommendations concerning circumstances surrounding the killing of a twelve year old boy and the wounding of an Iraqi national by members of 630th Military Police Company on [REDACTED] (b)(2) High. This investigation will also cover: whether the 630th was in its assigned sector when it engaged the vehicle; where the twelve year old victim was sitting in the vehicle; what aggressive actions were taken by the driver; how many rounds were fired and by whom; what characteristic of the vehicle made soldiers believe that it was a VBIED; the distance at which the 630th engaged the vehicle; the clearing of weapons in the battle space, reporting procedures of the unit, whether each soldier involved was qualified on the individual weapons system he or she was firing, and the Warning Shot Standard Operating Procedures of the unit.
3. SSG [REDACTED] (b)(3), b(6), the 42nd Military Police Brigade paralegal, has a copy of AR 15-6 for your assistance. You may consult the MNC-I OSJA Administrative Law Division for an initial brief. You are authorized to investigate issues(s) that arise during your investigation that are related to the primary purpose of your investigation.
4. During the course of your investigation, you will record all interviews on DA Form 2823 (Sworn Statement). If, during any interview, you suspect a violation of the UCMJ by the person you are interviewing, you are required to stop the interview, and advise the interviewee of their Article 31(b) rights, using a DA Form 3881 (Right Warning Waiver Certificate). You may continue to interview that person if they agree to make further statements. If you have any questions about whether or not the person made a knowing and valid waiver, terminate the interview and contact your legal advisor. You will advise all persons being interviewed that their statements can be discovered under the Freedom of Information Act, and you will further advise them that any actions taken in reprisal against them for making a statement should be reported immediately to their Commander, the Office of the Inspector General, or to the Office of the Staff Judge Advocate. Per Article 136.b.(4) and 136.b.(6) of the UCMJ, you are authorized, as an Investigating Officer, to swear a witness to their statement.

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AFZH-MP
SUBJECT: Appointment AR 15-6 Investigating Officer

5. In accordance with AR 15-6, provide me with your honest factual findings. Ensure your recommendations are consistent with those factual findings. This is your primary duty until you complete it, and you will submit a chronology of your actions along with your completed report. The report of investigation will be submitted to the appointing authority NLT 8 March 2005. Requests for extension must be made in writing to the undersigned.

(b)(3), b(6)

(3), b(

COL, MP
Commanding

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) 42nd MP Brigade Commander
(Appointing authority)

on 20 FEB 2005 (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 Headquarters, Camp Rustimah, Baghdad, Iraq at 1600
(Place) (Time)

on 21 Feb 2005 (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.)

N/A

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

N/A

The (investigating officer) (board) finished gathering/hearing evidence at 1520 on 22 February 2005
(Time) (Date)

and completed findings and recommendations at 2340 on 6 March 2005
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO ^{1/}	NA ^{2/}
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: 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?	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 Attachment 2

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

In view of the above findings, the (investigating officer) (board) recommends:
See Attachment 3

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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)

(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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1. FACTS:

a. What occurred?:

On 20 Feb 05 around 1100 hours a local national (b)(6) Toyota pickup truck was fired upon by the 630th MP CO element parked on the side of the road at (b)(2) High (b)(2) High while the squad conducted a relief stop prior to patrolling North, back to Camp Rustamiyah.

b. How did it occur?:

3rd Squad, 2nd Platoon, 630th MP CO halted their patrol for a bathroom break along (b)(2) High heading Northbound when a (b)(6) local national Toyota pickup truck did not stop after the other traffic stopped behind the convoy. The gunner (SPC (b)(3), b(6)) of the rear vehicle used hand and arm signals, shouted stop in Arabic, and shot warning shots to the front of the vehicle from about (b)(2)High away as it approached the convoy from the opposite side of the road, going North in the Southbound lane. Finally, the gunner shot into the cab of the vehicle killing a child, approx (b)(6) old, and injuring the driver with a wound to his right shoulder. Additionally, after hearing the gunner open fire, the driver (SPC (b)(3), b(6)) shot one round from his M4 as he was outside of the military vehicle. The LN (b)(6) truck came to a final stop across from the squad's military vehicles approx. (b)(2)High away on the opposite side of the road (see exhibit Y, page 5).

SPC (b)(3), b(6) shot the M249 slung from his body not mounted on the vehicle turret. The M2, which was not used in the incident, was mounted on the turret (see exhibit Y, page 6).

c. Who was involved?:

- SPC (b)(3), b(6) – Engaged near or at LN (b)(6) truck with 22 rounds of (b)(2)High linked with his M249 (see exhibits J-L).
- SPC (b)(3), b(6) – Engaged LN white truck with 1 round of (b)(2)High with his M4 carbine (see exhibits H-I).
- SGT (b)(3), b(6) – Team leader of vehicle that engaged LN (b)(6) truck, assessed casualties and KIA (see exhibits E-G).
- SSG (b)(3), b(6) – Squad leader and patrol leader for mission, assessed the damage of incident and reported back to higher HQs for assistance and secured the scene until escorted IPs arrived around 1400 hrs (see exhibits C-D) .
- 2LT (b)(3), b(6) – Platoon leader and OIC of the Soldiers involved, witnessed actions after the shooting, controlled the situation until additional MP forces and IPs arrived at the scene (see exhibits A-B) .

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

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

2. FINDINGS:

a. 630th MP Company was operating within their assigned sector (see exhibits N-Q).

(b)(2) High tasked to conduct MMSO/AS operations on (b)(2) High to the town of Sarabadi (b)(2) High, see exhibit N. Incident happened within this boundary at (b)(2) High, which is about 1 KM inside the boundary (see exhibit Q).

b. The facts show that the 12-year-old victim was sitting in the passenger area of the cab when the incident occurred. After the vehicle had stopped and SGT (b)(3), b(6) approached the vehicle, the driver of the vehicle opened the passenger door and the body almost fell out onto the ground.

c. (b) (5)
(b) (5) When the squad had all of the LN vehicles to the rear stopped (see exhibit Y, page 1-2), the (b)(6) truck drove around to the left side of the stopped vehicles and proceeded to drive northbound on the southbound lane at about 30 MPH and did not adhere to SPC (b)(3), b(6) hand and arm signals and calls in Arabic to stop. Warning shots were fired in front of the vehicle before shooting the two occupants in the cab of the vehicle before the driver stopped the vehicle. The gunner, SPC (b)(3), b(6) observed tanks in the bed of the vehicle during this incident (see exhibit Y, pages 2-4).

d. There were 22, 5.56 linked rounds fired by SPC (b)(3), b(6) from the M249 (see exhibit M), for which he has an improperly filled out weapons qualification card, dated 3 FEB 04 (see exhibit R). He is also an M2 gunner. He has not qualified on the M2, but he did conduct familiarization fire on 13 JUN 04 at Butler Range (see exhibit T).

e. SPC (b)(3), b(6) fired one round from his M4 Carbine. He is on record in the 630th MP CO database as qualifying marksman on 5 MAR 04 (see exhibit S). No weapons qualification card is on file for SPC (b)(3), b(6). Very few qualification cards are on file at the Company HQs, they are kept back in Germany, however the operations sergeant MSG (b)(3), b(6) does have a company database with weapon qualification data.

f. (b) (5), (b)(6)
(b)(5)

g. (b) (5)
(b) (5)

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

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

(b) (5), (b)(3), (b)(6)

h. (b) (5)

(b)(5)

(b)(5) no bullet holes are seen in the hood of the vehicle (see exhibits Y, pages 1-3). All noticeable shots into the vehicle are into the side and front glass. (b) (5), (b)(2) High

(b) (5), (b)(2) High

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

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

3. RECOMMENDATIONS: Based off the facts and findings of this investigation the following recommendations are:

(b) (5), (b)(2) High, (b)(3), (b)(6)

(b) (5), (b)(2) High

(b) (5), (b)(2) High

(b) (5), (b)(2) High, (b)(3), (b)(6)