

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

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

SECTION I - APPOINTMENT

Appointed by [REDACTED] COL. AR, Commander, 3 BCT, 1st Armored Division
(Appointing authority)on 29 June 05 (Date) (Attach inclosure 1 Letter of appointment or summary of oral appointment data) (See para 5-15, AR 15-6.)

SECTION II - SESSIONS

The investigation (board) commenced at Camp [REDACTED] Iraq at 1100 hrs
(Place) (Time)on 30 June 05 (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 1130 on 15 July 2005
(Time) (Date)and completed findings and recommendations at 2100 on 15 July 2005
(Time) (Date)

SECTION III. CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

	YES	NO ¹	NA ²
1. Inclosures (para 1-15, 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 para 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 (Complete, if statements 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 sheet² 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.

2 Exhibits (para 3-16, AR 15-6)		YES	NO	NA ²
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 nature 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 3-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-3b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2b, AR 15-6)?			
7	Were notaries, 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 enclosure describe how they familiarized themselves with that evidence (para 5-3d, 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, for, 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 adviser or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a	Was the challenge properly decided 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 1-8b, 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 enclosure or exhibit to it (para 5-11, AR 15-6)?			
FOOTNOTES: 1 Explain all negative answers on an attached sheet. 2 Use of the word "not" constitutes a positive representation that the circumstance described in the question did not occur in this investigation or hearing.				

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

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

1. Conclusions. Members of 2/H/1 Cav acted within the Rules of Engagement and used proper escalation of force in the shooting of a local national while on a mounted patrol on 27 June 2005.
2. Sequence of Events. The sequence of events that led to the incident follows. At approximately 271030 JUN 05, 2/H/1 Cav was on patrol on Rte [REDACTED] when they identified a PIED. As they stopped, secured and investigated the site, a second IED detonated near one of their dismounts (SPC [REDACTED]) who received minor wounds to one hand. Immediately after detonation, the patrol identified a Blue Bongo truck fleeing from the scene to the southwest. H-24 and H-25 chased the fleeing truck after checking on SPC [REDACTED] (exhibit D-G). In order to stop the truck, SPC [REDACTED], HQ 25 gunner fired a warning burst from his M240B. The truck did not stop. (exhibit F, G) He then shot out the left rear tire. The vehicle continued to move until it was stopped by dump trucks in the road, at which point one occupant got out and fled to the east while the truck was still coming to a halt. The other two occupants then got out of the truck. SGT [REDACTED] yelled to stop in Arabic and SPC [REDACTED] did the same in English. SGT [REDACTED] then fired several warning shots with his M4 into a berm. (exhibit F, G) The first occupant continued to flee; the second two got down on the ground. When SGT [REDACTED] identified the first occupant failing to stop, and recognizing that they couldn't catch him, he ordered SPC [REDACTED] to shoot. SPC [REDACTED] engaged the individual who died of his wounds shortly thereafter. Upon searching the vehicle, the platoon could not find the detonating device. The platoon could not thoroughly search the canal for discarded contraband due to its depth and the density of the vegetation. (see also exhibit B)
3. The platoon used proper escalation of force. To stop the vehicle, they fired warning shots first and then disabled the vehicle only after it did not stop. They could not shout at, demonstrate their weapons to or block the fleeing vehicle. To stop the vehicle's occupants, they yelled verbal warnings to stop and fired warning shots prior to engaging. That two of the occupants responded indicates that proper escalation was used.
4. The patrol had positive ID of the subject vehicle and its occupants. The Blue Bongo was the only vehicle that fled the area and it did so at a high rate of speed immediately after the detonation of the IED. No other vehicles fled, nor was there any other identifiable triggerman. This led the platoon to believe that these were in fact the triggermen and had committed a hostile act. They used proper escalation of force and the vehicle continued to flee at a high rate of speed, further increasing the likelihood in their minds that the occupants had committed the hostile act. They also positively identified all three occupants as they exited the vehicle.
5. In the minds of the platoon members, the local national did commit a hostile act by detonating an IED on the platoon. While he did not pose a current threat by trying to evade the platoon, in their minds, he had committed a hostile act and failure to stop him would have enabled him to conduct future hostile acts on Coalition Forces.
6. The on scene commander did attempt to minimize collateral damage. While firing at the vehicle, the platoon only shot out a tire. No other vehicles or structures were damaged. No personnel or structures other than the intended target were hit with direct fire.
7. Unit SOP. The platoon follows the standard "shout, show, shove, shoot a warning shot, shoot a disabling shot, shoot to kill" SOP for engagements of local nationals.
8. There were no Law of War violations. The patrol engaged a legitimate military target and minimized collateral damage. (See Continuation Page)

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

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

1. No individuals be punished under the UCMJ for this shooting. The soldiers acted within the ROE.
2. The operational lesson to be learned is that Coalition Forces must continue to inform the Iraqi population that if they flee the sight of a significant act, they put themselves at more risk than if they stay in place and cooperate with the coalition forces on the ground. The Iraqi people must understand that coalition forces are here to help them and innocent Iraqis have nothing to fear from CF. Fleeing the scene of an attack on CF only makes them look suspect. Recommend as part of the IO campaign, that LNs are informed not to flee CF forces. It is in their best interests to work with CF and help identify the AIF.

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

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member of 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)

MAJ, EN

(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.)

Concur with IO. No further action taken. Based on all witness statements, the men in the Blue Boys Truck were likely participating in the IED attack against Wilson. Recommend no action taken against anyone involved except the two men in the future court martial.

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9. The other contributing factors that, if changed, could have altered the outcome are as follows. First, the unit could have elected to simply not engage the fleeing suspect. However, at that time, in the minds of the soldiers on the ground, the suspect had just attacked them and failure to engage him would have enabled the individual to escape and conduct future AIF activity on coalition forces. The other factor that, if changed, could have altered the outcome is that the individual could not have fled the site, either in the vehicle or on foot. However, given the resources the platoon had at the time, they could have done nothing differently to prevent the individuals from fleeing. If they had aviation on site, aviation could have tracked the individual and vectored the platoon in on him. This was not the case.

Exhibits

- A - Appointment Orders
- B - Incident Illustration (2 pages)
- C - Incident photos (6 Pages)
- D - Sworn Statement and questions (LT [REDACTED])
- E - Sworn Statement and questions (SFC [REDACTED])
- F - Sworn Statement and questions (SGT [REDACTED])
- G - Sworn Statement (SFC [REDACTED])
- H - Original SIR submitted by [REDACTED]
- I - MNCI ROE Card (22 May 05)



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS
3RD BRIGADE, 1ST ARMORED DIVISION
CAMP [REDACTED] IRAQ
[REDACTED]

AFZN-BB-C3

29 June 2006

MEMORANDUM FOR MAJ [REDACTED] 70th EN Bn, 3 BCT, 1st AD, [REDACTED]
[REDACTED]

SUBJECT: Appointment as Investigating Officer

1. Pursuant to AR 15-6, paragraph 2-1, you are hereby appointed as an investigating officer to investigate the shooting and killing of a local national by elements of H Troop, 1st Cavalry, which occurred on 27 June 2005.
2. In your investigation, use procedures under AR 15-6, Chapter 4, for an informal board of officers. All witness statements will be sworn, and you will follow the procedures in AR 15-6, paragraph 3-7e for Privacy Act statements. If the person you are interviewing states that he/she does not know anything about the allegations, prepare a sworn statement to that effect for the witness to sign. If, in the course of your investigation, you suspect a soldier has committed an offense under the UCMJ, you must advise and read him/her their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate, prior to conducting any interview.
3. During your investigation, answer the following questions:
 - a. What was the sequence of events that led up to the incident?
 - b. Did the soldiers involved properly escalate the use of force?
 - c. Did the H Troop soldiers have Positive Identification (were they reasonable certain that the object of attack was a legitimate military target) before engaging the local national?
 - d. Did the local national pose a threat by committing a hostile act or by demonstrating hostile intent?
 - e. Did the On Scene Commander attempt to minimize collateral damage?
 - f. What is the unit's Standard Operating Procedure (SOP) prior to engaging a Local National?
 - g. Were there any Law of War violations?

AFZN-BB-CO

SUBJECT: Appointment as Investigating Officer

- h. Are there any operational lessons that should be captured and disseminated?
 - i. Were there any other contributing factors that, if changed, could have altered the outcome?
4. If it becomes evident that there is possible misconduct outside the scope of your investigation, notify the appointing authority immediately. If during your investigation you become aware of information that needs command attention, immediately notify the appointing authority for guidance.
5. Contact the Command Judge Advocate, CPT [REDACTED], for legal guidance prior to starting your investigation. CPT [REDACTED] is located in Bldg 72 and his phone number is VOIP: [REDACTED]
6. Submit your findings and recommendations on DA Form 1574 to CPT [REDACTED] for legal review no later than 7 July 2005.

[REDACTED]
[REDACTED]
COL, AR
Commanding

IED DETONATION SITE
ON

Exhibit C - Photographs

IED DETONATION SITE