

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 [REDACTED] Brigade Commander, 3rd Brigade 1st Armored Division
(Appointing authority)

on 19 Sept 05 (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 [REDACTED] Irac (Place) at 1600 (Time)
on 23 September 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 1500 (Time) on 30 Oct 05 (Date)
and completed findings and recommendations at 2000 (Time) on 31 Oct 05 (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

	YES	NO	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?			
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, inequities, 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

² Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation.

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 substantiated 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 manner 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)?				
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 5-3a, 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 or unanswered questions.
2. If a respondent or counsel objects to the question and the question is not asked in this investigation or board.

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

The (investigating officer) (b)(6), having carefully considered the evidence, finds:

See Attachment

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

In view of the above findings, the (investigating officer) (b)(6) recommends:

See Attachment

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.)

[Redacted Signature]

(Recorder)

Major [Redacted]
(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.)

NO action should be taken. It is unlikely that serious in the end shot
the by. However just in case, we can pay to for \$1,500 in inclosure
penalty to his hand.

[Redacted Signature]

The investigating officer, having carefully considered the evidence, finds:

On or about 181115SEP05, an element from Bravo company 2-70th Armor was conducting a patrol north on route [REDACTED] about to merge onto MSR [REDACTED]. The patrol consisted of three tracked vehicles, order of march M1A1, M113, M1A1 led by 2LT [REDACTED]. The second vehicle in the patrol, an M113, suffered a mechanical failure that caused the track to turn sharply to the left, crash through a guardrail and fall off the ramp and onto its side some 15 feet below the onramp (Exhibits B & C).

The two tanks immediately set up security and 2LT [REDACTED] dismounted to check on the personnel in the M113 (Exhibit C). A crowd began to gather about 150 meters to the east of the crash site. 2LT [REDACTED] was under the on-ramp and watching a small crowd form which began encroaching on the secure area when attempted to keep them away by yelling and hand and arm signals then he fired the first warning shot from his M4 rifle into a dirt berm about 40 meters away from himself (Exhibit D). The crowd moved back and soon after he moved back to his tank. Once mounted on his tank he felt another crowd was encroaching from the north and again went through the EOF procedures and fired another warning shot with his M4 into a dirt berm approximately 75-100 meters east of his location (Exhibit E). The crowd again stopped encroaching on the secure area and dispersed. At this point 2LT [REDACTED] dismounted and left his gunner, CPL [REDACTED], in charge of the tank and northern security. After a short period of time CPL [REDACTED] felt the crowd was getting too close and after yelling and using hand and arm signals he fired a warning shot with his M4 into a berm 75-100 meters from his position in the tank (Exhibit E). The next warning shot was fired south and aimed into the curb of the overpass (route [REDACTED]). The warning shot was to get the attention of a car that was speeding toward the southern security tank. CPL [REDACTED] fired the shot in front of the vehicle and into the curb. The vehicle slowed down and stopped at the southern security tank. Once additional security and recovery assets arrived on the scene 2LT [REDACTED] and the remainder of his patrol returned to base.

2LT [REDACTED] and his patrol of three M114s assisted 2LT [REDACTED] in providing security until 2LT [REDACTED] was sent back to base. 2LT [REDACTED] remained on site and provided security during the recovery operations. Approximately an hour and a half after his patrol's arrival on site he was notified by his Platoon Sergeant that some local nationals were saying that their 14 year old son had been shot by Americans (Exhibit F). 2LT [REDACTED] contacted this Battalion Executive Officer to inform him of the allegation. He and MAJ [REDACTED] went to the site where the young man was shot. The victim had already been transported to the hospital. MAJ [REDACTED] told 2LT [REDACTED] to go to the hospital with the father to identify the body. At the hospital 2LT [REDACTED] identified the body with his ID card and did observe a hole in the side of his chest. 2LT [REDACTED] then returned to base.

At no time during any of the warning shots was there any indication that someone had been hit by a warning shot bullet. The location where the young man was shot was approximately 300-350 meters away from the closest security element and in a direction that would be virtually impossible for a ricochet and hit him (Exhibit C). Additionally, it was impossible to determine the type of weapon that caused the fatal shot to the victim,

however it was evident that it was a gunshot wound. I do not believe that the young man was killed by a bullet from any of the warning shots. Both 2LT [REDACTED] and CPL [REDACTED] utilized proper EOF procedures and fired their shots in a direction and location that was appropriate to let the crowd know their intentions and be a safe.

Specified question to answer:

- a. What was the sequence of events that led up to the incident? See above findings.
- b. Did the soldiers involved properly escalate the use of force? Proper EOF was used. Both 2LT [REDACTED] and CPL [REDACTED] used yelling and hand and arm signals prior to firing each warning shot. .
- c. Did the patrol have Positive Identification (were they reasonably certain that they were taking action against a legitimate military target) before engaging? NA
- d. Was deadly force authorized? I do believe deadly force was authorized. I also believe the shots were intended to capture the attention of the crowd and warn them to stop advancing on the secure site. The shots were well aimed and shot into a dirt berm.
- e. Was the use of warning shots appropriate for the situation? Yes. The patrol was in a situation where they had a limited number of personnel to secure the crash site which required them to be very spaced out.
- f. Were there any Law of War violations? No. I do not believe there was any Law of War Violation.
- g. Are there any operational lessons that should be captured and disseminated? The patrol conducted their operations in an excellent manner. They were a small element under extreme circumstances with a large area to secure until assistance arrived.
- h. Were there any other contributing factors that, if changed, could have altered the outcome? No

In view of the above findings, the investigating officer recommends:

No further action required.

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Exhibit A	Appointment Orders
Exhibit B	Area Map
Exhibit C	Area Map
Exhibit D	[REDACTED]
Exhibit E	[REDACTED]
Exhibit F	[REDACTED]
Exhibit G	Commander's Incident Report
Exhibit H	Sworn Statement - 2LT [REDACTED]
Exhibit I	Sworn Statement - CPL [REDACTED]
Exhibit J	Sworn Statement - 2LT [REDACTED]
Exhibit K	Sworn Statement - SGT [REDACTED]



DEPARTMENT OF THE ARMY
HEADQUARTERS
3RD BRIGADE, 1ST ARMORED DIVISION
CAMP [REDACTED] IRAQ 09378

REPLY TO
ATTENTION OF:

AFZN-BB-CO

19 September 2005

MEMORANDUM FOR MAJ [REDACTED], Headquarters, 4th Battalion, 1st Field
Artillery, Camp [REDACTED] Iraq 09378

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 use of deadly force by 2nd Platoon, B Company, 2nd Battalion, 70th Armor Regiment that allegedly caused the death of a local national.
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. In your investigation you need to 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 patrol have Positive Identification (were they reasonably certain that they were taking action against a legitimate military target) before engaging?
 - d. Was deadly force authorized?
 - e. Was the use of warning shots appropriate for the situation?
 - f. Were there any Law of War violations?
 - g. Are there any operational lessons that should be captured and disseminated?
 - h. Were there any other contributing factors that, if changed, could have altered the outcome?

AFZN-BB-CO

SUBJECT: Appointment as Investigatin Officer

4. You may obtain assistance from CPT [REDACTED], the Trial Counsel for 3rd BCT, 1st AD. CPT [REDACTED] will serve as your legal counsel. Prior to starting your investigation, you should contact him at the Brigade Legal Center for legal guidance concerning your investigation.

5. Submit your findings and recommendations on DA Form 1574 to CPT [REDACTED] for legal review no later than 26 September 2005.

[REDACTED]
[REDACTED]
COL, AR
Commanding

3463