

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 [redacted] (Appointing authority)

on 26 OCT 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 FOB [redacted] Iraq (Place) at 0900 (Time)

on 27 OCT 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 1300 (Time) on 27 OCT 05 (Date) and completed findings and recommendations at 1700 (Time) on 27 OCT 05 (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.

		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 5-3, 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, AP 15-6)

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

that the escalation of force incident on 26 OCT 05 resulting in the death of two Iraqi local nationals and the wounding of two Iraqi local nationals by 3/A/1-64 AR was not the result of negligence and that the Rules of Engagement were properly followed.

On 26 Oct 05 at 1800, A company departed for OBJ [REDACTED] in order to identify IED cells and activity in [REDACTED]. A deliberate planning process was conducted and a mission backbrief was executed. (Exhibit C) 3rd Platoon, A Company occupied OBJ [REDACTED] IAW the scheme of maneuver shown in Exhibit B. M1114 A35 was positioned on PL [REDACTED] oriented to the southwest. As per company SOP, three lines of colored chemlights were placed across the roadway to warn local nationals of the ongoing coalition operation and to provide clear delineation for ROE responses. At [REDACTED] meters from [REDACTED], a line of red chemlights was placed to warn local nationals of coalition presence and to provide a [REDACTED] for [REDACTED] (Exhibit D). At [REDACTED] meters from A35, a line of blue chemlights was placed to further warn local nationals and to demarcate where the [REDACTED] was located for the U.S. forces. Lastly, at 50 meters in front of [REDACTED], a [REDACTED] of green chemlights and traffic cones was placed to provide one final [REDACTED] and to mark the [REDACTED]. Additionally, A35 was parked in the open with its flashing hazard lights turned on. (Exhibit D) At approximately 1845, vehicle headlights approached [REDACTED] blocking position. Initially the crew of [REDACTED], SGT [REDACTED] and PFC [REDACTED], attempted to warn the approaching vehicle (blue [REDACTED] truck) by flashing the M1114's headlights and flashing PFC [REDACTED] urefire light. As the vehicle neared the line of red chemlights, PFC [REDACTED] fired a round from his shotgun into the air to warn the vehicle's driver as per SOP. (Exhibit E) This vehicle then recognized the situation and came to a stop. A vehicle (KIA Sportage) behind the first vehicle, which was not visible to the crew of [REDACTED], then pulled around the bongo truck in order to pass it. It first became visible to the crew of [REDACTED] as it passed the line of red chemlights. PFC [REDACTED] immediately fired a warning shot into the air with his shotgun per SOP. The Sportage failed to halt. As the vehicle neared the [REDACTED] of chemlights, PFC [REDACTED] fired a burst of 7.62mm with his M240B into the pavement to the right side (gunner's perspective) of the Sportage. As the shots were being fired, the Sportage turned to its left (vehicle driver perspective) into the line of fire. As a result of this maneuver, the ricocheting bullets struck the Sportage. The vehicle then came to a halt just before the [REDACTED] of chemlights. The forces on the ground then moved to the vehicle to assess the situation. Inside the Sportage were two local national children KIA ([REDACTED] (male) and [REDACTED] (female)) and two local nationals wounded ([REDACTED] (mother) and [REDACTED] (male child)). (Exhibit A) The casualties were quickly assessed, treated and evacuated to FOB [REDACTED] for further treatment. Both WIA are currently at the [REDACTED] CSH and in stable condition.

The crew of [REDACTED] followed the ROE in this incident. The blocking position they established was not fully in compliance with TCP standards published in Brigade FRAGOs [REDACTED] and [REDACTED] to OPORD [REDACTED]. The published standards by both brigade and division focus on Traffic Control Points (TCPs) which have the purpose of controlling and/or inspecting vehicles in a specific area. Thus the guidelines provided focus on [REDACTED] that are not applicable to blocking positions. Brigade FRAGO [REDACTED] does state that 'snap TCPs' should have a mechanism that "will cause a vehicle to stop or be damaged prior to reaching a point where shots must be fired." Though still not addressing blocking points, I believe this same concept can be applied to blocking positions. Despite the fact that the blocking position was not IAW the TCP standard, I believe that [REDACTED] met the intent of the standard. They had clearly marked [REDACTED] and visible hazard indicators (vehicle hazard lights). The escalation of force on the bongo truck was executed with precision and resulted in the desired result of a non-incident. The obstructed view of the KIA Sportage and its impatient and poor driving skills resulted in the hastened encounter and subsequent engagement. With only a little over 100 meters between the potential hostile threat and the U.S. vehicle, SOP and ROE dictated that warning shots be utilized. The rapid turn of the vehicle caused it to move into the line of warning shots resulting in injury and death. The one area that could be improved is the use of a disabling or warning barrier as published in the new Division FRAGO [REDACTED] which addresses blocking positions as well as TCPs. A limited number of spikes strips were finally distributed in September to the battalion and these can help address that issue to a degree though the number is not sufficient for all situations. (cont.)

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

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

that no further action be taken. The ROE was properly followed and a potentially hostile vehicle stopped with no injuries to U.S. forces. I recommend that traffic cones be placed in the first row [REDACTED] of chemlights in order to help mark the presence of U.S. forces and that laser pointing devices be present at all blocking positions to assist with visual warning. Additionally, the company SOP for blocking positions should incorporate a disruption barrier of some type (spike strips, sandbags, etc.) with METT-TC factored into the mission planning to account for different situations that may arise. Overall, A Company's SOP is sound and should be continued in the future for force protection needs.

AR 15-6 Investigation Findings Continuation Sheet
26 OCT 05 Escalation of Force – A/1-64 AR

In lieu of spike strips, a line of sandbags or a similarly portable disruption barrier could serve to provide further warning to local national drivers. Of course these TTPs are mitigated by the limitations of the dense urban terrain and the limited visibility during night operations. [REDACTED]

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)



MAJ _____
(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.)



Classified Documents Removed



DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST BATTALION, 64TH ARMOR REGIMENT
2D BRIGADE COMBAT TEAM
3D INFANTRY DIVISION
CAMP [REDACTED] IRAQ
APO AE [REDACTED]

REPLY TO
ATTENTION OF:

AFZP-VBI.-C

27 October 2005

MEMORANDUM FOR Commander, 2d Brigade Combat Team, Camp [REDACTED] Iraq

SUBJECT: Recommendation in the case of the Alpha Company Escalation of Force Incident on 26 October

1. I have reviewed the attached AR 15-6 Investigation in its entirety. After considering the findings and recommendation of the Investigating Officer, I make the following recommendation:

Sir, I concur fully with the findings of NAI [REDACTED]. The company mission was thoroughly planned, briefed to me and fully rehearsed. Company and battalion SOP regarding visual warnings for the outer cordons was followed. Proximate cause appears to have been the impatience of the Iraqi driver who sped past a stopped truck. I believe ROE were followed and all Soldiers acted correctly despite the tragic outcome.

2. POC for this memorandum is the undersigned.

[REDACTED]

LTC, AR
Commanding

Article 15-6 Investigation Timeline

MAJ [REDACTED]

- 261845Oct05 - Escalation of force incident by 3/A/1-64 AR on OBJ [REDACTED]
- 262100Oct05 - MAJ [REDACTED] is appointed AR 15-6 Investigating Officer.
- 270900Oct05 - Began investigation
- 270930Oct05 - Conducted follow-up interview with 1LT [REDACTED] 3/A/1-64 AR
- 271000Oct05 - Conducted follow-up interview with PFC [REDACTED] 3/A/1-64 AR
- 271030Oct05 - Conducted follow-up interview with SGT [REDACTED] 3/A/1-64 AR
- 271100Oct05 - Conducted interview with CPT [REDACTED] A/1-64 AR
- 271300Oct05 - Investigation Complete

List of Exhibits - 3/A/1-64 AR 15-6 Investigation

- A. Commander's Incident Report dated 26 Oct 05.
- B. [REDACTED]
- C. Mission Brief for A/1-64 AR, Operation [REDACTED]
- D. Sworn Statement by SGT [REDACTED] TC A35, 3/A/1-64 AR
- E. Sworn Statement by PFC [REDACTED] Gunner A35, 3/A/1-64 AR
- F. Sworn Statement by PFC [REDACTED] medic, 3/A/1-64 AR
- G. Sworn Statement by SPO [REDACTED] medic 3/A/1-64 AR

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

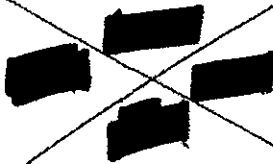
AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION: Camp [redacted] Baghdad, Iraq
2. DATE (YYYYMMDD): 2005/11/03
3. TIME: 2000
4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME: [redacted]
6. SSN: [redacted]
7. GRADE/STATUS: O-3
8. ORGANIZATION OR ADDRESS: A/1-64 ARMOR, 2D BDE, 3ID

9. I, [redacted], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

The company TTP for night-time TCP/Escalation of Force revolves around a graduated response based on the distance of an oncoming potential threat vehicle to the stationary friendly vehicle/element. When possible, a [redacted] method of visual signals is used distinguish a [redacted] another [redacted] which I describe as the [redacted] and a [redacted]. These [redacted] can be distinguished by cones, concertina wire, or chemlights depending on the situation and circumstances. Ideally the [redacted] line is [redacted] from the friendly element/vehicle, the next line, what I call the [redacted] is approx [redacted] out and the [redacted] is at around the [redacted]. When a vehicle approaches the [redacted], the actions taken are to flash the headlights or gain the drivers attention with a laser pointer. When the vehicle crosses the [redacted] ideally [redacted] warning shots are fired into the air or M16/M4 shots are fired warning shots are fired into the air. The next elevated response is to shoot to disable to car then to kill the occupants if the vehicle does not stop. All measures are taken to get the attention of the driver and shots to disable/kill are the last response when the friendly element feels threatened. The time that a vehicle can travel from the [redacted] is merely a matter of seconds depending on the vehicle speed.

Nothing Follows



10. EXHIBIT
11. INITIALS OF PERSON MAKING STATEMENT: [redacted]
PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSM).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION: CAMP [REDACTED]
2. DATE (YYYYMMDD): 2005 11 3
3. TIME: 1916
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: [REDACTED]
6. SSN: [REDACTED]
7. GRADE/STATUS: O-2/1LT
8. ORGANIZATION OR ADDRESS: A Co 1-64 AR 2 BDE 3 ID

I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

THE COMPANY TTP FOR NIGHT ESCALATION OF FORCE IS A SERIES OF [REDACTED] ARE MADE WITH [REDACTED] SEPARATION BETWEEN THEM. THE FIRST IN A [REDACTED] ESTABLISHED APPROXIMATELY [REDACTED] OUT FROM THE VEHICLE. AT THAT LINE, HULL LIGHTS ARE FLASHED, ALONG WITH TAG LIGHTS. THE SECOND [REDACTED] IS APPROXIMATELY [REDACTED] OUT. AT THAT [REDACTED] WARNING SHOTS ARE FIRED, 5.56 OR 7.62 OFF TO THE SIDE OF THE VEHICLE. THE LAST [REDACTED] IS THE [REDACTED] APPROXIMATELY [REDACTED] OUT. CROSSING THIS [REDACTED] AUTHORIZES DEADLY FORCE WHERE 7.62 IS FIRED TO DISABLE THE VEHICLE. PROPER ESCALATION OF FORCE TTP'S WERE FOLLOWED ON OCT 26 2005. THE 7.62 WARNING SHOTS FIRED, AFTER THE [REDACTED], RICOCHETED AND STRUCK THE VEHICLE.

NOTHING FOLLOWS

10. EXHIBIT:
11. INITIALS OF PERSON MAKING STATEMENT: [REDACTED]
PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING *STATEMENT TAKEN AT DATED
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF [REDACTED] TAKEN AT 1916 DATED 7805 11 3

9. STATEMENT (Continued)

[REDACTED]

[REDACTED]

[REDACTED]

NOTHING
FOLLOWS

[REDACTED]

[REDACTED]

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE 2 OF 3 PAGES

9. STATEMENT (Continued)

[REDACTED] #
Nothing follows
[REDACTED]

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 3rd day of Nov 05 at Camp [REDACTED] [REDACTED]

[REDACTED]
(Signature of Person Administering Oath)

[REDACTED] MAJ
(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT
[REDACTED]

PAGE 3 OF 3 PAGES

Article 15-6 Investigation Timeline

MAJ Paul Maxwell

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