

# REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

b(1), b(2)

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

## SECTION I - APPOINTMENT

Appointed by

[REDACTED]

(Appointing authority)

on 13 January 2004  
(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 Building 7824 Fort Riley, Kansas  
(Place)

at 1000  
(Time)

on 13 January 24 (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 1700 on 13 FEB 2004  
(Time) (Date)

and completed findings and recommendations at 1100 on 04 March 2004  
(Time) (Date)

## SECTION III - CHECKLIST FOR PROCEEDINGS

### A. COMPLETE IN ALL CASES

	YES	NO <sup>1/</sup>	NA <sup>2/</sup>
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: <sup>1/</sup> Explain all negative answers on an attached sheet.

<sup>2/</sup> 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 <sup>1/</sup>	NA <sup>2/</sup>
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>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>			
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)?			
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b>			
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.

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

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

There is no evidence supports any crime committed in reference to Allegation 1. There was ambiguity in [REDACTED] statements to the soldiers in formation, but there is no clear indication he gave the company unlawful guidance in dealing with Prisoners of War.

There is no evidence supports any crime committed in reference to Allegation 2. All Claims of wrong doing were derived from second and third party information.

There is no evidence supports any crime committed in reference to Allegation 3. Nothing indicates that [REDACTED] was firing at the children. Although, he did demonstrated poor judgment when discharging his sidearm, there are no witnesses other than [REDACTED] and the people climbing over the compound wall.

There is no evidence supports any crime committed in reference to Allegation 4. All claims are based on hearsay, nothing substantiates the claim that [REDACTED] assaulted and murdered a child in Iraq.

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

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

No Administrative Punishment or UCMJ should be implemented against [REDACTED] should be counseled and retrained in addressing formations, especially in intense situations and limit the amount of ambiguity in his comments. [REDACTED] should be counseled about discharging his sidearm and the propriety of his choice to discharge it to scare the Iraqis climbing over the perimeter wall into C Company's compound.

No Administrative Punishment or UCMJ should be implemented against [REDACTED] although he should be counseled regarding his bragging and telling stories and the impact of the rumors he may cause both to himself, unit morale, and the Army.

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

b(6), b(3)

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.)

[Redacted Signature]

4 MAR 84



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 1ST BATTALION, 41ST INFANTRY  
FORT RILEY, KS 66442

b(6), b(3)

AFZN-BB-MP(15-6b)

13 January 2004

MEMORANDUM FOR: [REDACTED] 41<sup>st</sup> Infantry Regiment,  
Fort Riley, Kansas 66442

SUBJECT: Appointment as Investigating Officer

1. Reference: AR 15-6, Procedure for Investigation Officers and Boards of Officers, 30 September 1996.
2. You are hereby appointed as investigating officer pursuant to AR 15-6 to investigate [REDACTED] and [REDACTED].
3. When possible, all witness statements will be sworn. From the evidence, you will make findings whether you believe there is any basis in fact for the allegations made against [REDACTED] and [REDACTED]. You will make recommendations for corrective action as well as for administrative and/or disciplinary action, if appropriate. If you suspect the soldier has violated any Articles under the UCMJ, you must read the soldier his rights.
4. In your investigation, use informal procedures under AR 15-6.
5. Submit your findings and recommendations on DA Form 1574 to the Battalion XO within 14 days.

[REDACTED]

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b(6), b(3)

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 1<sup>st</sup> BATTALION, 41<sup>st</sup> INFANTRY  
3<sup>rd</sup> BRIGADE, 1<sup>st</sup> ARMORED DIVISION  
FORT RILEY, KANSAS 66442

AFZN-BB-MP

4 March, 2004

MEMORANDUM FOR [REDACTED] 41<sup>st</sup> Infantry

SUBJECT: 15-6 Investigation of Alleged War Crimes in Iraq during 1-41<sup>st</sup> Infantry's deployment to Operation Iraqi Freedom (OIF)

Purpose: To determine the validity, if any, of crimes allegedly committed by [REDACTED] and [REDACTED] during the Company's deployment to OIF. On 9 October 2003, [REDACTED] reported the commission of war crimes in Iraq by his Company [REDACTED] and fellow soldiers: Including unlawful guidance in dealing with POWs, firing upon unarmed children, and assault and murder of a child on the perimeter of the Company CP.

1. Background. During OIF C Co. 1-41 IN conducted Combat, Stability, and Support Operations throughout the country including Talil Airbase, Najaf, Nasyria, Karbala, Kifle, As-Samawa, Hillah, and Baghdad.

a. Timeline

- 1) 2 March 2003, C Company 1-41 IN, deploys to Kuwait in support of OIF
- 2) On or about 18 March [REDACTED] and [REDACTED] address the Company about Rules of Engagement
- 3) 21 March 2003, C Company crosses the Iraq border
- 4) 24 March 2003, C Co moves to Talil Air Base
- 5) 24 thru 29 March 2003, [REDACTED] allegedly told [REDACTED] he assaulted an Iraqi child and left him to die on the perimeter
- 6) 24 thru 29 March 2003, [REDACTED] allegedly told [REDACTED] to kill an EPW
- 7) 29 March 2003, C Co moves north to As Samawah
- 8) 2 April 2003 C Co moves to An Najaf
- 9) 5 April Moved to Karbala
- 10) On or about 1 June 2003, C Co moves from Southern FOB back to Kuwait, [REDACTED] fires his sidearm when leaving the compound.
- 11) 22 July 2003 C Co. 1-41 IN returns from OIF

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b. Allegations. Four crimes allegedly occurred during OIF.

1) [REDACTED] alleges in his statement (exhibit 3) that [REDACTED] told [REDACTED] 1-41 IN, in formation prior to entering Iraq, not to take POWs and kill all Enemy whether they are fighting, injured, or surrendering. This allegation violates Rules of Engagement as well as the Geneva Conventions.

2) [REDACTED] alleges in his statement (exhibit 3) that [REDACTED] told [REDACTED] to kill an Enemy WIA, [REDACTED] reported an Enemy WIA after an engagement. This allegation violates Rules of Engagement, the Geneva Conventions, and constitutes an unlawful order under the Uniform Code of Military Justice.

3) [REDACTED] alleges in his statement (exhibit 3) that [REDACTED] illegally discharged his weapon at non-combatants as the Company was leaving their Forward Operating Base (FOB) in Southern Iraq. This allegation violates the Rules of Engagement and the Rules for the use of Force for this operation.

4) [REDACTED] alleges in his statement (exhibit 3) that [REDACTED] attacked and killed an Iraqi boy and left his body in the perimeter concertina wire. This action violates Geneva Convention, Rules of Engagement, Rules for use of Force, and constitutes murder under the Uniform Code of Military Justice.

c. Investigation to Date. Two investigations were conducted on the alleged events.

1) [REDACTED] conducted an informal Commanders inquiry, nothing found to support [REDACTED] allegations (Exhibit 3)

2) The Criminal Investigation Division conducted an investigation Completed on 20 NOV 2003. Results were inconclusive, CID found no evidence to either support or deny [REDACTED] allegations (Exhibit 3).

2. Facts bearing on the case

a. Personnel Interviewed:

- 1) [REDACTED]
- 2) [REDACTED]
- 3) [REDACTED]
- 4) [REDACTED]

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DEPARTMENT OF THE ARMY  
HEADQUARTERS, 1<sup>ST</sup> BATTALION, 41st INFANTRY  
3rd BRIGADE, 1<sup>ST</sup> ARMORED DIVISION  
FORT RILEY, KANSAS 66442

- 5) [REDACTED]
- 6) [REDACTED]
- 7) [REDACTED]
- 8) [REDACTED]
- 9) [REDACTED]
- 10) [REDACTED]
- 11) [REDACTED]
- 12) [REDACTED]
- 13) [REDACTED]
- 14) [REDACTED]
- 15) [REDACTED]
- 16) [REDACTED]
- 17) [REDACTED]
- 18) [REDACTED]
- 19) [REDACTED]
- 20) [REDACTED]
- 21) [REDACTED]
- 22) [REDACTED]
- 23) [REDACTED]
- 24) [REDACTED]
- 25) [REDACTED]
- 26) [REDACTED]
- 27) [REDACTED]
- 28) [REDACTED]
- 29) [REDACTED]
- 30) [REDACTED]
- 31) [REDACTED]
- 32) [REDACTED]
- 33) [REDACTED]
- 34) [REDACTED]
- 35) [REDACTED]
- 36) [REDACTED]

b. Facts

- 1) [REDACTED] addressed the Company Prior to crossing into Iraq, in reference to POWs (Exhibit 38)
- 2) [REDACTED] did ask if [REDACTED] reported 2 KIA, at Talil Airbase, between 24 March and 29 March 2003

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- 3) No one within the conversation concerning the KIA vs. WIA can confirm anything more than a misunderstanding over the radio
- 4) [REDACTED] discharged his weapon while leaving the compound located about 50 K south of Baghdad, on or about 1 June 2003
- 5) [REDACTED] admits to telling stories to new soldiers to "keep them on their toes" (Exhibit 37)
- 6) No witness saw [REDACTED] attack a child
- 7) All of these statements were taken three to four months after the incidents occurred
- 8) [REDACTED] statement was taken after he had gone AWOL and the unit had initiated UCMJ Action

c. Assumptions

- 1) Fog of War impact. Many emotions and activities related to upcoming conflicts and during conflicts affect the way soldiers will interpret what they experience.
- 2) Rumors spread in Iraq, stories change, creates individual bias on events
- 3) In Iraq, as in a training environment, radio traffic and interference affect transmissions
- 4) [REDACTED] statements on POWs likely contained some level of ambiguity causing the comprehension to be individually based
- 5) The statements were taken months after the events occurred, therefore variation in the description of events will occur due to time and memory.

3. Analysis.

a. Allegation 1. [REDACTED] admittedly spoke to C Company and addressed the issue of POWs. The perception of the intent of his guidance varies to each of the soldiers interviewed. Some soldiers believed that they were to speed all POWs to the rear and move forward as in Desert Storm (see [REDACTED] Exhibit 6, [REDACTED] Exhibit 7, [REDACTED] Exhibit 9, [REDACTED])

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b(6), b(3)

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 1<sup>st</sup> BATTALION, 41<sup>st</sup> INFANTRY  
3<sup>rd</sup> BRIGADE, 1<sup>st</sup> ARMORED DIVISION  
FORT RILEY, KANSAS 66442

Exhibit 12, [REDACTED] Exhibit 14, [REDACTED] Exhibit 16, [REDACTED] Exhibit 22, and [REDACTED] Exhibit 33). Some soldiers believed they were to shoot to kill not wound (see [REDACTED] Exhibit 8 and [REDACTED] Exhibit 32); this is the intent of combat engagements at the individual level. Some soldiers thought it was permission to kill all Iraqi's civilians, military, POW, WIAs, children, etc (See [REDACTED] Exhibit 3 and [REDACTED] Exhibit 5). Each soldier perceived this differently; the implication is that there was some level of ambiguity as well as the impact of nerves, fear, adrenaline of the upcoming events filtering the speech to meet each soldier's perception (see [REDACTED] Exhibit 16 and [REDACTED] Exhibit 35).

b. Allegation 2. [REDACTED] and [REDACTED] did have a radio conversation in regards to WIA and KIA. [REDACTED] did ask if it was 2x KIA not 1x WIA and 1x KIA. No one who was a firsthand participant in this conversation views the incident as anything more than a misunderstanding brought on by quality of the communications, misunderstanding of speech, and adrenaline effects. These are all issues that arise when reporting over radios. The only individuals who perceived anything else were third part listeners and not all of them believe they heard a crime.

c. Allegation 3. [REDACTED] admits he did fire warning shots when leaving the compound in Southern Iraq (Exhibit 38). None of the statements indicates firsthand knowledge of anything else. Many of the statements are hearsay; therefore do not provide relevant information as to his targets and intent.

d. Allegation 4. [REDACTED] admits to be a braggart and telling stories (Exhibit 37). [REDACTED] is the only person claiming to have been told firsthand that [REDACTED] attacked a child and left him for dead. [REDACTED] did not see the incident. No witnesses saw the incident. [REDACTED] denies the incident occurred. There is no evidence to support that this incident occurred or was more than a young soldier boasting to make a name for himself.

#### 4. Conclusions.

a. There is no evidence supports any crime committed in reference to Allegation 1. There was ambiguity in [REDACTED] statements to the soldiers in formation.

b. There is no evidence supports any crime committed in reference to Allegation 2.

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c. There is no evidence supports any crime committed in reference to Allegation 3. Nothing indicates that [REDACTED] was firing at the children. He may have demonstrated poor judgment when discharging his sidearm.

d. There is no evidence supports any crime committed in reference to Allegation 4.

5. Recommendations.

a. No Administrative Punishment or UCMJ should be implemented against [REDACTED]. [REDACTED] should be counseled and retrained in addressing formations, especially in intense situations and limit the amount of ambiguity in his comments. [REDACTED] should be counseled about discharging his sidearm and the propriety of his choice to discharge it to scare the Iraqis climbing over the perimeter wall into C Company's compound.

b. No Administrative Punishment or UCMJ should be implemented against [REDACTED], although he should be counseled regarding his bragging and telling stories and the impact of the rumors he may cause both to himself, unit morale, and the Army.

6. Point of contact is the undersigned at 239-4499.

[REDACTED]