



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1920
JAMO
SFP 01 2004

SECOND ENDORSEMENT on SMBR ltr 1920 SJA of 21 Jun 04

From: Commandant of the Marine Corps
To: Assistant Secretary of the Navy (M&RA)

Subj: REPORT OF BOARD OF INQUIRY IN THE CASE OF (b)(6)
(b)(6) USMCR

1. Forwarded for review and final action.
2. The basic correspondence is the Board of Inquiry (BOI) report in (b)(6) case.
3. A brief chronology of this case follows:
 - a. On 23 June 2003, while serving as a Combined Anti-Armor Platoon Commander in Iraq, (b)(6) and (b)(6) Marines detained four Iraqi men for looting. (b)(6) directed that the men be searched, stripped of their clothes (except for their shoes and underwear), and then released.
 - b. On 28 June 2003, (b)(6) and (b)(6) Marines fired upon and disabled a truck that attempted to speed through their checkpoint. Two Iraqi men, wounded by the Marines' fire, were given medical treatment and evacuated. The vehicle was searched for possible intelligence and intelligence support was requested. While searching the vehicle, the Marines uncovered clothing and seat cushions described as filthy and covered with unidentified stains. When it appeared that no intelligence could be gathered from these articles, (b)(6) ordered them burned. (b)(6) explained that this precautionary measure was intended to prevent the spread of fleas, lice, fruit flies and the disease *leishmaniasis*, an ailment becoming more common among the military in Southwest Asia. (b)(6) also contended that such articles were commonly used by insurgents to conceal explosives on the sides of roads in other parts of Iraq. All other confiscated articles were turned into military intelligence.
 - c. On 1 August 2003, the Commanding General, 1st Marine Division imposed nonjudicial punishment upon (b)(6) and found (b)(6) guilty of violating Articles 103 (failing to report

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (b)(6)
(b)(6) USMCR

and turn over captured property) and 133 (conduct unbecoming) of the Uniform Code of Military Justice. The Commanding General, 1st Marine Division awarded (b)(6) forfeiture of \$2,034.00 pay per month for 1 month and a Letter of Censure. (b)(6) did not appeal (b)(6) nonjudicial punishment.

d. On 6 August 2003, (b)(6) submitted an unqualified resignation in lieu of administrative separation processing for cause. (b)(6) acknowledged that if (b)(6) resignation request was approved, (b)(6) service would be characterized as Honorable.

e. On 8 October 2003, (b)(6) was demobilized and returned to the cognizance of U.S. Marine Corps Forces, Reserve.

f. On 9 October 2003, my predecessor recommended that (b)(6) resignation request be approved and that (b)(6) be separated with an Honorable characterization of service.

g. On 6 November 2003, you disapproved (b)(6) resignation request and directed (b)(6) to show cause for retention at a board of inquiry.

h. On 1 December 2003, my predecessor directed the Commander, U.S. Marine Corps Forces, Reserve to convene a board of inquiry.

i. On 6 April 2004, the board of inquiry substantiated the allegations of misconduct and recommended that (b)(6) be separated with an Honorable characterization of service. However, one of the members submitted a minority report in which he substantiated the allegations of misconduct but recommended retention.

j. On 19 July 2004, Commander, Marine Forces Reserve recommended that the findings of the board of inquiry be approved and that (b)(6) be separated with an Honorable characterization of service.

4. After careful review of the applicable law and regulations, (b)(6) statements during (b)(6) nonjudicial punishment, the statements of (b)(6) character witnesses, the transcript of the board of inquiry and the recommendations of the chain of command, I am satisfied that (b)(6) involuntary

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separation with an Honorable characterization of service should be approved.

5. In accordance with reference (a), I recommend that you approve (b)(6) involuntary separation, and that (b)(6) service be characterized as Honorable. Your approval of this recommendation will effect the recommended action. The separation code will be GNC1 (b)(2)High.

H. P. Osman

H. P. OSMAN

Deputy Commandant for
Manpower and Reserve Affairs


SEP --8 2004

APPROVED/~~DISAPPROVED~~

W. A. Navas, Jr.

William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

**HEADQUARTERS MARINE CORPS ROUTING SHEET (5211)
NAVMC HQ 335 (REV. 06-03)**

						1 DATE: AUG 20 2004	
2 OPERATION CODE						3 SUBJECT:	
X - ORIGINATOR OF OFFICE APPROXING ROUTING SHEET A - APPROPRIATE ACTION B - GUIDANCE C - SIGNATURE D - COMMENT E - RECOMMENDATION F - CONCURRENCE			G - INFORMATION H - RETURN TO: PENTAGON, Room 5C840 I - INITIAL J - DISPOSITION K - DECISION L - RETENTION O - (OTHER)			SHOW CAUSE DECISION IN THE CASE OF (b)(6) JSMCR (b)(6)	
ROUTING - Use numbers to show order of routing							
4	5 OPR	6. ADDRESSEES		7 DATE		8 INITIALS	
RT	CODE			IN	OUT	CONCUR	NONCONCUR
////		COMMANDANT	CMC				
////		MILITARY SECY	MLSEC				
////		ASST COMMANDANT	ACMC				
////		MILITARY ASST	MILASST				
////		DIR MARCORSTAFF	DMCS				
		EXEC EDITOR	EDITOR				
2	KCH	DC, M&RA	M&RA	8/20	9/11		
		DC, I&L	L				
		DC, PP&O	P				
		DC, AVN	A				
		DC, P&R	R				
		DIR, I	I				
		DIR, C4	C4				
		DC, CDC	CDC				
1	DEF	DIR, MM	MM	8.22			
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		DIR PA	PA				
		DIR AR	AR				
		IGMC	IG				
		COUNSEL FOR CMC	CL				
		DIR HEALTH SERV	HS				
		CHAPLAIN	REL				
		DIR SPL PROJ	SPD				
		SGTMAJ/MARCOR	SGTMAJ				
		MCRG	MCRG				
		MCLC	LC				
		HQBN	HQBN				
		MARBKS	MARBKS				
		SAFETY	SD				
		SJA TO CMC	JA				
	XX	DEP TO SJA	JA-1				
		RES AFF	JA-1R				
		LEG ADMIN OFF	JA-2				
		LEG SVC CHIEF	JA-3				
		ADMIN BR	JAA				
		CDC	JAC				
		LEG ASST BR	JAL				
	X	ML LAW BR	JAM				
		OPLAW BR	JAO				
		RES/CIV LAW BR	JAR				
		JA SUPPORT BR	JAS				
		JA INFO/PLANS BR	JAI				
						9 NATURE OF ACTION REQUIRED ROUTINE URGENT	
						ORIGINATOR'S INITIALS [Redacted]	
						DUE DATE (If any) [Redacted]	
10 REFERENCES HELD BY (Name, Grade, Office Code, Telephone ext) [Redacted]							
11 REMARKS AND SIGNATURE (If additional space is necessary, attach plain paper)							
1. This action is referred to DC M&RA, for decision as the Show Cause Authority for officer separations.							
2. A synopsis and recommended disposition are provided at Tab A.							
 J. C. MALLON Acting							
Dir _____ DepDir _____ AdminOff [Redacted] 8/26 AdminCh [Redacted] 08/24/55/T 8/24 PersSgtMaj _____ Copy to _____							
[HQMC JA (05)]							
ACTION OFFICER: (Name, Grade, Office Code, Telephone ext) [Redacted] Capt, JAM [Redacted]							

040830145 (B)

Subj: **SHOW CAUSE DECISION IN THE CASE OF** (b)(6)
(b)(6) **USMCR**

Background: In Jun 03, SNO was deployed to Al Kut, Iraq, as a CAAT Platoon Commander in support of OIF I. At that time, SNO's company was responsible for the security of two large Ammunition Supply Points (ASPs) containing a variety of Iraqi and, periodically, U.S. ammunition. Iraqi civilians frequently intruded into the ASPs for the purpose of gathering empty canisters and live ammunition. The standard operating procedure for treatment of repeat Iraqi trespassers was to take them to the local Iraqi police station. According to SNO, such action had been ineffective in the past as the trespassers were typically released shortly after they were brought in and proceeded immediately back to the site of their offense.

First Incident: On 23 Jun 03, SNO was informed by (b)(6) Marines that they had apprehended four Iraqi men trespassing in the ASP. Three of the detainees had been apprehended several times earlier that day while trespassing upon the same ASP. SNO ordered that the detainees be stripped down to underclothes and shoes, escorted from the company position and released. The detainees reportedly boarded buses and a taxicab and departed the area. No further instances involving those individuals were reported.

Second Incident: On 28 Jun 03, while SNO and (b)(6) Marines were manning a vehicle checkpoint, a large, multi-trailer truck sped up to run through the checkpoint. The Marines opened fire on the engine and tires of the truck and it stopped in a nearby ditch. SNO called for medical support for the injured driver and passenger. The vehicle was searched for possible intelligence and intelligence support was requested.

While searching the vehicle, the Marines uncovered clothing and seat cushions described as filthy and covered with unidentified stains. When it appeared that no intelligence could be gathered from these articles, SNO ordered them burned. SNO explained that this precautionary measure was intended to prevent the spread of fleas, lice, fruit flies and the disease *leishmaniasis*, an ailment becoming more common among the military in Southwest Asia. SNO also contended that such articles were commonly used by insurgents to conceal explosives on the sides of roads in other parts of Iraq. All other confiscated articles were turned into military intelligence.

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Disciplinary Action (Tab C): NJP held on 1 Aug 03.

Charges:

	<u>Plea</u>	<u>Finding</u>	<u>Appeal/Status</u>
Art. 103 (failing to report and turn over captured property)	Guilty	Guilty	Not appealed
Art. 133 (conduct unbecoming)	Not Guilty	Guilty	Not appealed

Punishment: Forfeiture of \$2,034.00 pay per month for 1 month and a Letter of Censure.

Resignation Request: On 6 Aug 03, SNO submitted an unqualified resignation request in lieu of further administrative separation processing. On 10 Aug 03, CG, 1st MarDiv recommended that SNO's resignation request be approved and that (b)(6) be separated with an Honorable characterization of service. On 30 Aug 03, CG, I MEF recommended that SNO's resignation request be approved and that (b)(6) be separated with an Honorable characterization of service. On 8 Oct 03, SNO was demobilized and transferred back to the SMCR. On 9 Oct 03, your predecessor recommended that SNO's resignation be approved and (b)(6) be separated with an Honorable characterization of service. On 6 Nov 03, ASN (M&RA) disapproved SNO's resignation request and directed (b)(6) to show cause for retention at a BOI.

BOI: COMMARFORRES convened a BOI on 6 Apr 04. The Board substantiated the allegations of misconduct and recommended that SNO be separated with an Honorable characterization of service. However, one member submitted a minority report, substantiating the misconduct, but recommending that SNO be retained.

Chain of Command Recommendation:

» COMMARFORRES recommends that (b)(5)

(b)(5)

Options: (b)(5)

(b)(5)

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SJA to CMC Comment: (b)(5)

(b)(5)

SJA to CMC Recommendation: That you approve the recommendations of the Board and separate SNO with an Honorable characterization of service. If you agree, please sign the correspondence at Tab B.


J. C. MALLON
Acting

Dir MM Recommendation:

Separate with Hon


C. P. O'CONNOR Acting

Close case _____