

DEPARTMENT OF THE ARMY  
2D BRIGADE, 4<sup>TH</sup> INFANTRY DIVISION (MECHANIZED)  
BAQUBAH AIRFIELD, IRAQ

AFYB-AR-CDR

23 November 2003

MEMORANDUM FOR MAJ [REDACTED] Headquarters and Headquarters Company, 2d  
Brigade, 4<sup>th</sup> Infantry Division (Mechanized), Fort Hood, Texas 76544

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as an investigating officer to conduct a formal investigation pursuant to AR 15-6 (Procedures for Investigating Officers and Boards of Officers) on the circumstances surrounding the capture and detention of [REDACTED] and his two sons [REDACTED] on 22 November 2003.
2. All witness statements will be sworn and recorded on DA Form 2823 if possible and you will obtain Privacy Act Statements from all witnesses who complete a written statement. If, in the course of your investigation, you come to suspect that an individual may be criminally responsible, you will advise that individual of their rights under Article 31, UCMJ, or the Fifth Amendment as appropriate. Use the DA Form 3881 to advise soldier of rights.
3. Legal advice and assistance must be obtained from the Office of the Staff Judge Advocate before you take any action on this matter. Consult with your legal advisor (CPT [REDACTED] HHC, 2d BCT) prior to your investigation. You will familiarize yourself with the provisions of AR 15-6 and the Guide for Informal 15-6 Investigations.
4. Your report, together with all evidence marked as exhibits, will be submitted to me on DA Form 1574 no later than 2000 hours on 30 November 2003. Submit any requests for delay to me either orally or in writing. You will obtain a written legal review prior to submitting the completed investigation.

[REDACTED]  
COL. AR  
Commanding

**REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS**

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

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

**SECTION I - APPOINTMENT**

Appointed by Colonel [REDACTED] Commander, 2d Brigade, 4th Infantry Division (Mechanized), Baqubah, Iraq  
(Appointing authority)

on 23 NOV03/25 NOV 03 (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)  
(Date)

**SECTION II - SESSIONS**

The (investigation) (board) commenced at Baqubah, Iraq at 0900  
(Place) (Time)

on 24 NOV03 (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.)

Major [REDACTED] HHC, 2d Brigade, 4th Infantry Division, Investigating Officer

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 0900 on 4 DEC 03  
(Time) (Date)  
and completed findings and recommendations at 1600 on 4 DEC 03  
(Time) (Date)

**SECTION III - CHECKLIST FOR PROCEEDINGS**

A. COMPLETE IN ALL CASES	YES	NO
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)		
c. Other correspondence with respondent or counsel, if any?		
d. All other written communications to or from the appointing authority?	X	
e. Privacy Act Statements (Certificate, if statement provided orally)?		
f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?		
g. Information as to sessions of a formal board not included on page 1 of this report?		
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?		

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
<b>2 Exhibits (para 3-16, AR 15-6)</b>			
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 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)?		
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?		
<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>			
<b>9 Notice to respondents (para 5-5, AR 15-6):</b>			
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)?		
<b>11 Counsel (para 5-6, AR 15-6):</b>			
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)?		
<b>FOOTNOTES:</b> 1 Explain all negative answers on an attached sheet. 2 Use of the "No" 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, AR 15-6)

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

Findings (Appointment Letter Dated 23 November 2003)

-Two of the three Iraqis captured on 22 November 2003 sustained significant trauma to the head after being detained by Alpha Company, 588th Engineer Battalion.

- [REDACTED] may have received some of their injuries while the assault team was sweeping through the house, after direct fire contact was initiated by the Iraqis. Video images and sworn statements do not prove or disprove

-The injury to [REDACTED] left eye took place outside the house. [REDACTED] was kicked in the left side of the head by CPT [REDACTED]. The kick was a reaction after [REDACTED] grabbed CPT [REDACTED] weapon while SSG [REDACTED] was trying to secure and handle the prisoner.

-Not all injuries sustained by [REDACTED] were a result of him resisting arrest.

-Not all injuries sustained by [REDACTED] were a result of him resisting arrest and grabbing CPT [REDACTED] weapon.

-PFC [REDACTED] admitted under oath, after being read his rights, that he kicked [REDACTED] in the back of the head while the unit was transporting the prisoners from FOB Gabe to FOB Warhorse on 22 November 2003.

-PFC [REDACTED] admitted under oath, after being read his rights, that he struck [REDACTED] in the back of the head with his hand while the unit was transporting the prisoners from FOB Gabe to FOB Warhorse on 22 November 2003.

-One injury sustained by [REDACTED] was not unaccounted for from this investigation. A cut to [REDACTED] lower left lip did not appear in video footage of [REDACTED] at the Badger Detention Facility at 220500CNOV03. The cut does appear on a photo taken by 978th MP Company at FOB Warhorse Detention Facility at 221651CNOV03. [REDACTED] medical treatment records from the 588th Engineer Battalion Aid Station did not reflect a cut to the lower lip. E Company, 204th FSB Aid Station reflected the cut to [REDACTED] lower left lip. The injury occurred after 0500 hours and before 1726 hours on 22 November 2003. No one admitted to striking [REDACTED] in the mouth area during this time.

\*\*\* Findings (Appointment Letter Dated 25 November 2003) SEE ATTACHED PAGE

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

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

Recommendations (Appointment Letter Dated 23 November 2003)

-CPT [REDACTED] Alpha Company Commander, 588th Engineer Battalion, be issued a letter of reprimand for failure to safeguard enemy prisoners of war on 22 November 2003, violation of AR 190-8, paragraph 2.a.

-PFC [REDACTED] receive non-judicial punishment for striking an enemy prisoner of war, who was handcuffed and sitting in the back of a vehicle, while being transported to FOB Warhorse on 22 November 2003.

-PFC [REDACTED] receive non-judicial punishment for striking an enemy prisoner of war, who was handcuffed and sitting in the back of a vehicle, while being transported to FOB Warhorse on 22 November 2003.

-All soldiers who participated in the raid and transfer of prisoners on 22 November 2003 be individually counseled by the Company Commander and First Sergeant (verbal and written) on the proper handling of enemy prisoners of war.

\*\*\* Recommendations (Appointment Letter Dated 25 November 2003) SEE ATTACHED PAGE

