

# UNCLASSIFIED

## 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)	(Investigating Officer or 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.)

ACTION BY APPROVAL AUTHORITY:

I ratify the appointment of the investigating officer, 1LT (b)(3), b(6). I approve the findings (except as follows:)

--Soldiers of 3/B/2-23 IN fired on the van after observing what they believed to be muzzle flashes inside the van. The preponderance of the evidence does not establish that their belief was accurate.)

(b)(2)High

--First and Second Platoons of B/2-23 IN did not have adequate communication or coordination during this mission.)

The recommendation that:

--[7c, 7d] CERP condolence payments NOT be made in this case is (approved) (disapproved) (remanded to the BCT Cdr).

AUG 04 2007

(b)(2)High

I remand the matter to the BCT Cdr for appropriate action.

(b)(3), b(6)

(b)(3)(b)(6)

JOSEPH F. FIL, JR., Major General, USA, Commanding

COL, IN  
Commanding



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
2ND BATTALION, 23RD INFANTRY REGIMENT  
4TH INFANTRY BRIGADE COMBAT TEAM  
FOB FALCON, IRAQ  
APO AE 09361



AFZN-SBR

21 July 2007

MEMORANDUM FOR Commander, MND-B, Camp Liberty, Iraq APO AE 09344

SUBJECT: Investigative AR 15-6 Report – RE: EOF and death/wounding of local nationals involving 2/B/2-23 IN

1. Purpose. The purpose of this document is to report the investigating officer's findings and recommendations concerning the B/2-23 IN EOF incident.
2. Summary. On 8 June, 2007, at approximately 0820, B 23 was in a blocking position on the (b)(2)High. A civilian van was observed maneuvering around the Coalition blocking positions and attempting to gain entry into (b)(2)High. When the van approached within (b)(2)High 3 warning shots were fired. NP elements collocated with 1/B/2-23 IN also fired a number of shots at the van, and were told to cease fire. The van stopped after each warning shot, but moved again after 10 seconds. After the third warning shot, muzzle flashes were observed coming from the front seat, and left rear passenger seat of the vehicle. 3/2/B/2-23 IN engaged the vehicle, setting it on fire, killing one male occupant, and wounding two other local nationals.
  - a. Makeup of the forces involved in this incident, including vehicle and weapon systems.
  - b. Timeline of events that led up to the engagement including the proper application of escalation of force procedures.
  - c. Evaluation of whether OPTEMPO may have contributed to how the Soldiers acted in this incident.
  - d. Recommendation of other tactics, techniques and procedures that may be relevant to preventing future incidents of this sort.

3. Applicable Laws & Regulations. Bullets 3 – 5 of the MNC – I ROE card are as follows:

(b)(2)High

EOF w/1 LN DEATH & 2 LNs INJURED(B/2-23IN), 4-11D, 8 JUN 07

CENTCOM (b)(3), b(6)

(b)(2)High

4. Investigative Procedures. Through the guidance of MAJ (b)(3), b(6) at the 4/1 BDE Legal office at FOB Falcon, I was able to meet with CPT (b)(3), b(6) commander B/2-23 IN. CPT (b)(3), b(6) allowed me to accompany him to COP Blackfoot, where I was able to meet with all personnel involved in the EOF incident. I was also able to meet with 1LT (b)(3), b(6) and SFC (b)(3), b(6) the platoon leader and platoon sergeant of 2/B. 1LT (b)(3), b(6) was interviewed at FOB Falcon while his platoon was QRF for 2-23 IN. I also conducted an interview with the Vehicle Commander of B-23 that was located at FOB Falcon.

5. Witnesses & Evidence.

a. 1LT (b)(3), b(6) 1/B/2-23 IN – 1<sup>st</sup> PL that was on the ground in the vicinity of B 23, and was located close to Iraqi Security Forces (NP) present (b)(2)High of 2<sup>nd</sup> Platoon's blocking position. (Exhibit 1, DA Form 2823)

b. SFC (b)(3), b(6) 2/B/2-23 IN – PSG of 2<sup>nd</sup> Platoon PSG that had direct observation of the incident. (Exhibit 2, DA Form 2823)

c. SSG (b)(3), b(6) 2/B/2-23 IN – Squad Leader of 3/2/B/2-23 IN, and in charge of the vehicle and soldiers involved. (Exhibit 3, DA Form 2823)

d. SGT (b)(3), b(6) 2/B/2-23 IN – Gunner, B 23, 3/2/B/2-23 IN, had direct observation of the vehicle (b)(2)High and engaged the vehicle with (b)(2)High after muzzle flashes were observed. (Exhibit 4, DA Form 2823)

e. SGT (b)(3), b(6) 2/B/2-23 IN – Team Leader, 3/2/B/2-23 IN, used verbal and visual warnings to the van before warning shots were fired. SGT Donnelly fired the three warning shots at the vehicle. (Exhibit 5, DA Form 2823)

f. SPC (b)(3), b(6) 2/B/2-23 IN – Platoon Medic, 2/B/2-23 IN, engaged the vehicle with (b)(2)High after muzzle flashes were observed. (Exhibit 6, DA Form 2823)

g. SPC (b)(3), b(6) 2/B/2-23 IN – Air guard on B 23, engaged the vehicle with (b)(2)High after muzzle flashes were observed. (Exhibit 7, DA Form 2823)



h. PFC (b)(3), b(6) 2/B/2-23 IN, (b)(2)High 3/2/B/2-23 IN, engaged the vehicle (b)(2)High after muzzle flashes were observed. (Exhibit 8, DA Form 2823)

j. SIR – Initial Serious Incident report provided in the investigation packet (Exhibit 9)

k. (b)(2)High

l. EOF diagram – EOF diagram that was used by 2-23 IN for training purposes prior to the event. (Exhibit 11)

m. Storyboard – 2-23 IN storyboard as they knew the events to be immediately following the incident. (Exhibit 12)

n. Daily Log and report from Blackfoot X-ray, recording sitreps and spotreps from platoons to company TOC, DA Form 1594. (Exhibit 13)

#### 6. Findings.

a. 2/B/2-23 IN occupied their blocking position at approximately 0505 on the morning of 8 June, in the vicinity of (b)(2) High 1/B/2-23 IN had dismounted their vehicles and was preparing to start house clearing operations, moving from (b)(2)High 1<sup>st</sup> platoon was augmented with approximately 10 Iraqi National police. To the north of 3/2/B/2-23 IN, C-41 was occupying a blocking position. The vehicle was (b)(2)High and out of the squad leaders' immediate observation. B-41s principal direction of fire was (b)(2)High

(b)(2) High  
(b)(2)High The immediate area around 2<sup>nd</sup> platoon was very active, with the platoon detaining two local nationals with an IED initiation device, 4 local nationals in a vehicle, armed with pistols, and two other local nationals with cell phones and possible IED trigger devices. (Exhibit 13, DA 1594)

b. At approximately 0820, a blue and white mini van containing three local nationals was observed moving from south to north approximately (b)(2)High (b)(2)High B 23 blocking position. The van was driving slowly, and avoided the Coalition force blocking positions (b)(2)High B 23 by maneuvering (b)(2)High. The vehicle was observed at a distance greater than (b)(2)High and continued to approach. The vehicle was observed attempting to bypass B 23 blocking position and enter (b)(2)High where B/2-23 IN was conducting clearing operations. The projected path of the van would take it into (b)(2)High or into the unprotected flank of B-41 with limited time for the crew to conduct EOF procedures.

c. When the vehicle approached (b)(2)High of the squad, attempts were made by B/2-23 IN soldiers on the ground to use verbal and visual warnings to get the



vehicle to leave the area. The squad was certain that the van's destination was to go into (b)(2)High or into the unprotected flank of the MGS vehicle,

d. When the van approached to within (b)(2)High one warning shot was fired to the front of the van by SGT (b)(3), b(6) and it immediately stopped. Due to terrain, if the van continued north, it could easily enter (b)(2)High of close to within (b)(2)High of B-41. (b)(2)High were used to get the driver of the van to depart the area. It appeared that the van's driver would heed the warnings given from 2/B/2-23 and depart the area. After 10 seconds, the driver of the van ignored the warnings, and continued to drive forward.

e. 1LT (b)(3), b(6) heard the NP forces with him fire a warning shot at the van. He ordered his interpreter to tell them to cease fire, and wave the van forward because he did not perceive the van to be a threat.

f. When he observed the van move forward, SGT (b)(3), b(6) fired a second warning shot to the front of the van. The driver of the van immediately stopped and appeared to heed the visual warnings, verbal warnings, and warning shots. Again, hand and arm signals were used to get the driver of the van to depart the area. After approximately 10 seconds, the driver ignored all warnings and continued to drive forward in an attempt to enter (b)(2)High. The van driver's actions placed his vehicle closer to (b)(2)High and B-41.

g. 1LT (b)(3), b(6) once again heard a warning shot fired from his NP elements, and again ordered his interpreter to tell the NPs to cease fire, and not engage the van.

h. When the van moved again, SGT (b)(3), b(6) fired a third warning shot to the front of the van to prevent it from moving any closer to (b)(2)High and B-41. After the warning shot was fired, muzzle flashes were observed coming from the vehicle by SGT (b)(3), b(6) SGT (b)(3), b(6) SPC (b)(3), b(6) SPC (b)(3), b(6) and PFC (b)(3), b(6)

i. 1LT (b)(3), b(6) stated that his NP forces had fired a burst of 3-4 rounds at the van. For the third time, he ordered his NPs to cease fire through his interpreter.

g. After observing muzzle flashes, 2/3/B/2-23 IN returned fire towards the van for approximately 20 -30 seconds, using (b)(2)High B 23, and small arms fire from the dismounted infantry squad.

h. 1LT (b)(3), b(6) from 1<sup>st</sup> platoon immediately ordered all personnel by voice and FM communications to cease-fire because he did not perceive the van to be a threat to coalition forces.

i. The van caught fire and two local nationals were observed to exit the vehicle. The driver of the van was unable to exit the vehicle due to his injuries and burned with the vehicle.

j. B 23<sup>3</sup>(b)(2)High SSG (b)(3), b(6) and a fire team approached the vehicle, detaining the two occupants. Their injuries were reported and SPC (b)(3), b(6) rendered treatment. 1LT (b)(3), b(6) and a fire team from 1<sup>st</sup> platoon also approached the van to render aid to the local nationals. Due to the extent of the injuries, the male and female occupants of the van were CASEVACED to the CSH.

k. It is clear to 3/2/B/2-23 IN that the vehicle was acting in a suspicious manner, attempting to drive around many Coalition blocking positions and enter (b)(2)High where Coalition Force clearing operations were ongoing. The path that the van was following would lead it into (b)(2)High or into (b)(2)High. Before the first warning shot, and after each additional shot, SGT (b)(3), b(6) (b)(2)High to try and get the van to stop. SGT (b)(3), b(6) used the warning shots to stop the van so leaders on the ground could further develop the situation. The squad was using the time gained from the warning shots to assess the threat that the van and its occupants made toward friendly forces in (b)(2)High and B-41. If the van was allowed to close with B-41, the crew of the MGS vehicle would not have the time or distance to go through EOF procedures, and have to destroy the vehicle with direct fire. Additionally, other squads in 2<sup>nd</sup> platoon were being engaged with PSAF at the same time the van approached B 23. 1LT (b)(3), b(6) and members of 1<sup>st</sup> Platoon with NPs in support did not perceive the van to be a threat. 1LT (b)(3), b(6) also believes that the NPs were the first to fire warning shots and engage the vehicle. The failure of the driver to respond to any (b)(2)High displayed confusion on the part of the driver, that was perceived as hostile intent by 3/2/B/2-23 IN. When muzzle flashes were observed coming from the driver's side of the vehicle, that action provided PID for the members of 3<sup>rd</sup> squad, and they engaged the vehicle.

l. 2/B/2-23 IN did not have the opportunity to search the van because of the fire. After completion of operations in (b)(2)High B/2-23 In departed the area. Due to the van being left unsecured overnight, a through search of the van after the fact was not conducted.

m. B/2-23 IN was (b)(2)High on 8 June 2007. The Company Commander utilized his forces within their capability to isolate (b)(2)High with ISF and Coalition Forces. Platoons and

(b)(2)High, (b)(5)

(b)(3), b(6)

(b)(2)High, (b)(5)

c. The members of B/2-23 IN were using warning shots to develop the situation and to stop behavior that would have led to further loss of life. The soldiers on the

ground felt that they were (b)(2)High and have used warning shots previously to modify the behavior of local nationals that were acting suspiciously.

(b)(2)High

q. B/2-23 IN had been in sector since 0200, 8 June. The company had been (b)(2)High for six hours prior to the incident with the van. It is my opinion that the Operations Tempo was not a contributing factor to this incident.

7. Recommendations.

a. Recommend the case be closed

b. A criminal investigation is not necessary as there were no UCMJ violations or criminal intent.

\* c. Recommend the families of the local nationals that were in the van not be given compensation for their injuries.

\* d. I do not recommend that the family of the driver of the Van be compensated for his death as he posed a hostile threat towards Coalition Forces. Furthermore, he was given ample warning to stop his threatening actions and did not.

(b)(2)High, (b)(5) (b)(2) High  
(b)(2) High

8. If you have any further questions or concerns, please contact the undersigned at

(b)(3), b(6) @us.army.mil.

(b)(3), b(6)

PLATOON LEADER





DEPARTMENT OF THE ARMY  
 HEADQUARTERS, 2D BATTALION, 23D INFANTRY REGIMENT  
 4TH INFANTRY BRIGADE COMBAT TEAM  
 FOB FALCON, BAGHDAD, IRAQ APO AE 09361

REPLY TO  
 ATTENTION OF:

AUG 04 2007

AFZH-SBR

MEMORANDUM FOR Commander, 4th Infantry Brigade Combat Team, Multi-National  
 Division Baghdad, FOB Falcon, Baghdad, Iraq, APO AE 09361

SUBJECT: Battalion Commander's Recommendation – AR 15-6 (RE: Escalation of  
 Force Incident, B Co, 2-23 IN)

I recommend the findings and recommendations of the investigating officer be:

Approved.

Disapproved.

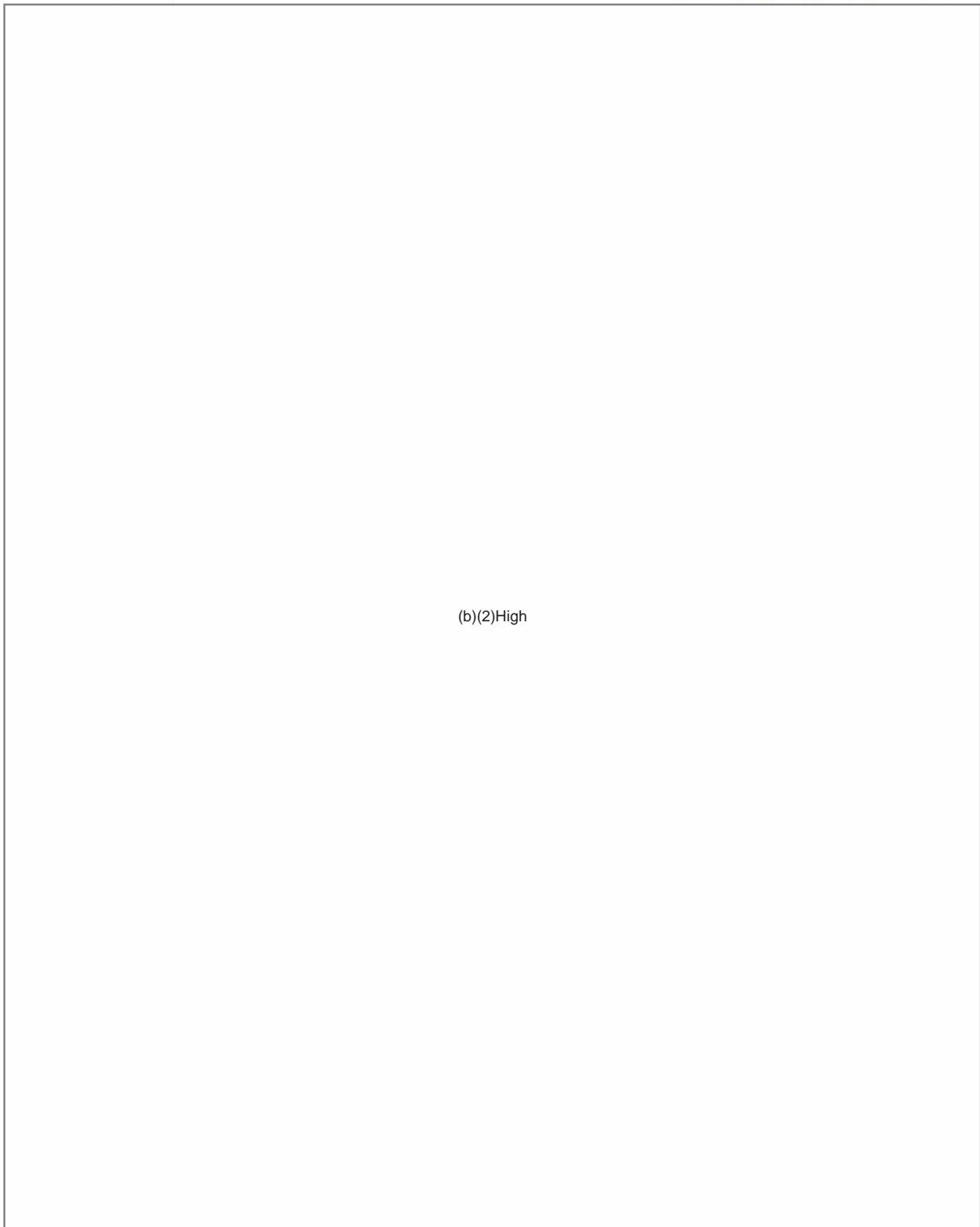
Approved, with the following exceptions/substitutions:

*The Family of the DRIVER of the van will be compensated  
 for his death. The passengers of the van will be  
 compensated for their injuries.*

(b)(2)High

(b)(2)High

(b)(3), b(6)



(b)(2)High

08 JUNE 07 EOF INCIDENT 2ND PLT, 3RD SQUAD, TF 2-23 IN, 4-2 ID

SECRET//REL TO USA IRQ and MCFI//20170531  
For display only to IRQ

UNCLASSIFIED

INCIDENT: EOF  
RESULTS: 1 LN KIA, 2X LN WIA, 1 VEHICLE DESTROYED  
SIGACT/EVENT ID:  
DTG: 080800JUN07  
UNIT: 2/B/2-23 IN 3RD SQUAD  
COMPOSITION: 10 man LP/OP, 3 x ICV Support  
LOCATION: 38S MB  
MISSION OF UNIT:

(b)(2)High  
TIMELINE OF EVENTS:  
9704  
9711  
A BLUE VAN APPROACHED FROM THE (b)(3), (b)(2)H  
AT 0808, SGT (b)(3), (b)(3) YELLED FOR THE VEHICLE  
TO STOP. SGT (b)(3), (b)(3) FLOWED HIS WEAPON. SGT  
(b)(3), (b)(3) FIRED THE 1ST WARNING SHOT. THE VAN  
THEN STOPPED, AND AGAIN STARTED TO DRIVE IN  
THE SAME DIRECTION. SGT (b)(3), (b)(3) FIRED A  
SECOND WARNING SHOT ONCE THE VAN STARTED TO  
MOVE. SGT (b)(3), (b)(3) YELD AGAIN FOR THE VEHICLE  
TO STOP, WHILE SSG (b)(3), (b)(3) SHOWED HIS WEAPON.  
SGT (b)(3), (b)(3) FIRED HIS 3RD WARNING SHOT. AT  
THAT TIME SSG (b)(3), (b)(3) FIRED AT THE LEFT FRONT TIRE.  
AFTER THE SHOT TO THE TIRE A MUZZLE FLASH FROM  
THE VEHICLE WAS SEEN BY SGT (b)(3), (b)(3) SSG  
(b)(3), (b)(3) AND PFC (b)(3), (b)(3) AT THAT TIME ALL THREE  
ENGAGED THE VAN. AS WELL AS B23V, ENGAGED THE  
VAN. THE NP ELEMENTS TO (b)(2)H  
OPENED FIRE UPON HEARING B23V AND B23 FIRING.  
AFTER THE ENGAGEMENT SSG (b)(3), (b)(3) CALLED FOR A  
CEASE FIRE. ONE MALE AND ONE FEMALE EXITED  
THE VAN. THE MALE WAS WAVING HIS HAND AND  
TOOK COVER BEHIND A BERM. THE FEMALE ALSO  
TOOK COVER BEHIND THE SAME BERM. SSG (b)(3), (b)(3)  
ALERTED THE MEDIC AND B23V TO MOVE TO THE  
ENGAGEMENT AREA AND BEGAN TO TREAT THE  
WOUNDED.

CP ASSESSMENT:

EOD ASSESSMENT:

NOT AVAILABLE

ISR UTILIZATION:

NOT AVAILABLE

ENAME:

(b)(3), b(6)

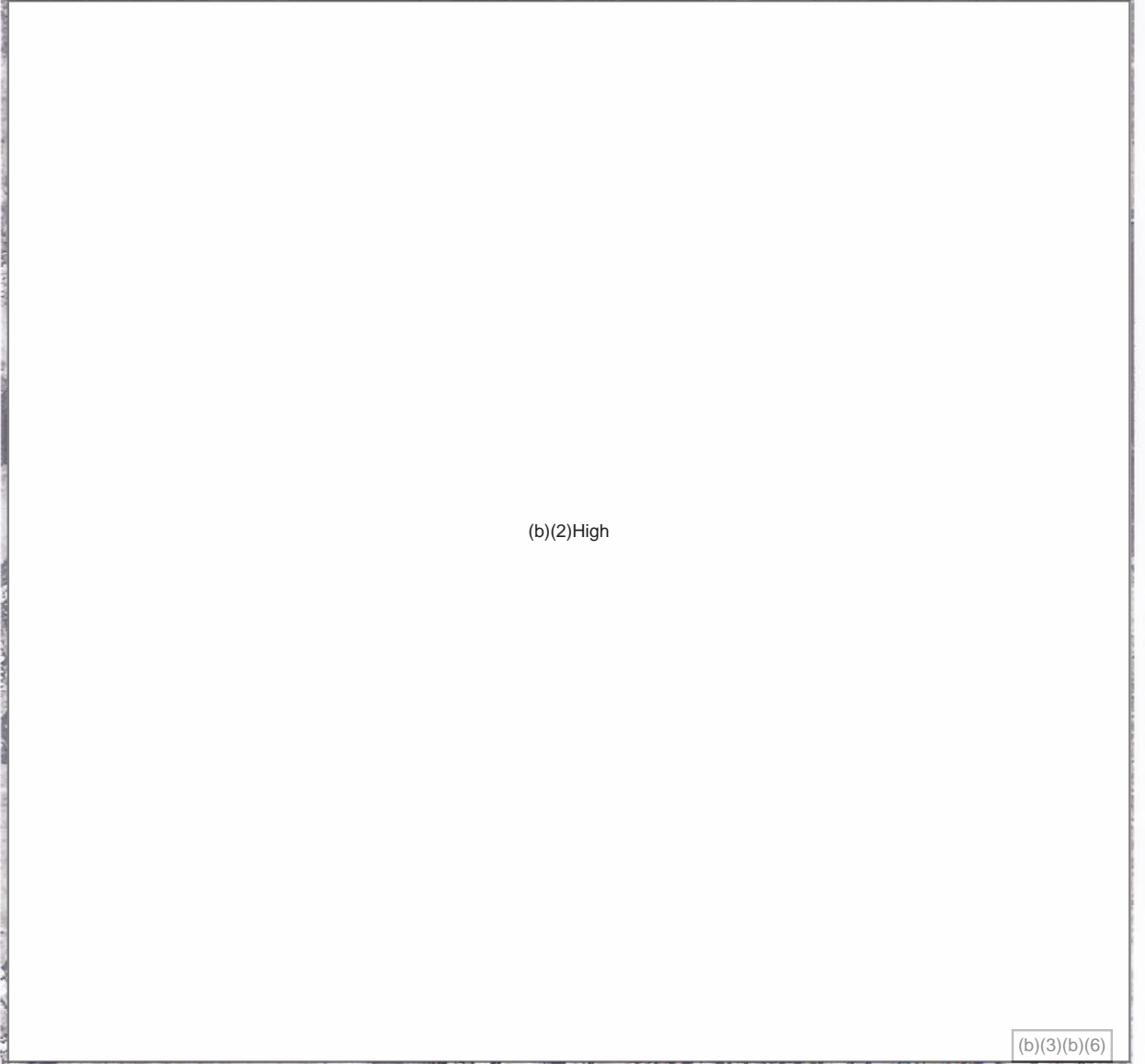
(b)(2)High

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UNCLASSIFIED



(b)(2)High

(b)(2)High

(b)(3)(b)(6)

CENTCOM 012297

UNCLASSIFIED

08 JUNE 07 EVENT US SAF (2 x LN WIA), ZONE 26, RASHID, TF 2-23 IN, 4-2 ID

UNCLASSIFIED

SECRET//REL TO USA, IRQ and MCFII// 20170531  
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INCIDENT: US SAF  
RESULTS: 2 x LN WIA (EVAC TO CSH)

SIGACT/EVENT ID:

DTG: 080820JUN07

UNIT: B/2-23 IN

COMPOSITION: 4 x IGV, 2 x NP Trucks and 10 Shurta

LOCATION:

MISSION OF UNIT:

(b)(2)High

TIMELINE OF EVENTS:

0820: B23 was in a blocking position (b)(2)High when a van approached and tried to enter the cordon. Dismounts around the vehicle motioned the vehicle to stop before the vehicle entered (b)(2)High. B23 fired two warning shots in front of the vehicle. NP assigned to the Assault Force engaged when they say US Forces firing. The B Co PL leading the assault force gave the NP the command to cease fire. The NPs ceased fire. The vehicle stopped momentarily and then started driving in the same direction. Once again B23 and the dismounts motioned and shouted for the vehicle stop. When it did not stop, they fired disabling shots into the vehicle while receiving SAF from the vehicle. Two muzzle flashes were seen coming from two windows in the vehicle. The NP's re-engaged the vehicle after the US disabling shots were fired. The vehicle was engaged by the US forces and NPs, one AIF was KIA, with two other WIA. The vehicle caught fire and moments later there was a secondary explosion, most likely from the fuel tank.

0835: 2 x LN WIA EVACed to Aid Station  
1023: 2 x LN WIA MEDEVAC to CSH

BATTALION S2 ASSESSMENT

(b)(2)High

(b)(2)High

UTILIZATION: None

LENAME:

(b)(2)High

(b)(2)High

(b)(3)(b)(6)

(b)(2)High

(b)(2)High

SECRET//REL TO USA, IRQ and MCFII// 20170531  
For display only to IRQ

UNCLASSIFIED



DEPARTMENT OF THE ARMY  
BRIGADE OPERATIONAL LAW TEAM  
HEADQUARTERS, 4TH INFANTRY BRIGADE COMBAT TEAM  
FOB FALCON, IRAQ APO AE 09361

REPLY TO  
ATTENTION OF:

AFZN-BC-JA

19 June 2007

MEMORANDUM FOR COMMANDER, 4 IBCT, MND-B, FOB Falcon, Iraq APO AE 09361

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

1. Legal Review. In accordance with AR 15-6, paragraph 2-3(b), I have reviewed the AR 15-6 investigation into the facts and circumstances surrounding an Escalation of Force incident involving 2/B/2-23 IN on 8 June 2007. I make the following determinations:

- a. The investigation complies with the legal requirements under AR 15-6.
- b. Errors in the investigation, if any, do not have a material adverse effect on any individual's substantial rights as related to an informal AR 15-6 investigation.
- c. Sufficient evidence supports the Investigating Officer's findings for an informal AR 15-6 investigation but the investigating officer did not include findings on whether or not SGT (b)(3), b(6) had the authority to fire warning shots at the vehicle on three separate occasions.
- d. The recommendations are consistent with the findings. Nevertheless, the commander is not bound by these recommendations as stated below and may find that a condolence payment is appropriate for some or all of the families.

2. Legal Analysis of

(b)(2)High

(b)(3), b(6)

(b)(2)High, (b)(5)

CENTCOM 012299



AFZN-BC-JA

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

(b)(2)High, (b)(5)

AFZN-BC-JA

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

(b)(2)High, (b)(5)

(b)(3), b(6)

AFZN-BC-JA

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

(b)(2)High, (b)(5)

(b)(3), b(6)

2. Approval Authority Action. In accordance with AR 15-6, paragraph 2-3(a), the approval authority is neither bound nor limited by the findings or recommendations of an investigation. Accordingly, the approval authority may take one of several actions in this case:

- a. Adopt the findings and recommendations as they are and take action not inconsistent with the recommendations.
- b. Require the investigating officer to conduct a further investigation and resubmit findings of fact and recommendations.
- c. Substitute findings or recommendations as the appointing authority believes are supported by a preponderance of the evidence.

3. Recommendation. I recommend the following:



AFZN-BC-JA

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

(b)(2)High, (b)(5)

4. The POC for this action is the undersigned at sVOIP: 777-1189 or  
(b)(3), b(6), (b)(2)High. Please call if there are any questions.

(b)(3), b(6)

MAJ, JA  
Brigade Judge Advocate



DEPARTMENT OF THE ARMY  
BRIGADE OPERATIONAL LAW TEAM  
HEADQUARTERS, 4TH INFANTRY BRIGADE COMBAT TEAM  
FOB FALCON, IRAQ APO AE 09361

REPLY TO  
ATTENTION OF:

AFZN-BC-JA

23 July 2007

MEMORANDUM FOR COMMANDER, 4 IBCT, MND-B, FOB Falcon, Iraq APO AE 09361

SUBJECT: Supplementary Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

1. Legal Review. In accordance with AR 15-6, paragraph 2-3(b), I have reviewed the AR 15-6 investigation into the facts and circumstances surrounding an Escalation of Force incident involving 2/B/2-23 IN on 8 June 2007.

a. MAJ [redacted] (b)(3), b(6) Brigade Judge Advocate, conducted the initial review of this investigation and suggested that the investigating officer make three revisions. The investigating officer revised his findings and recommendations.

b. The revised findings and recommendations are supported by a preponderance of the evidence.

c. The recommendations are supported by the findings.

2. Approval Authority Action. In accordance with AR 15-6, paragraph 2-3(a), the approval authority is neither bound nor limited by the findings or recommendations of an investigation. Accordingly, the approval authority may take one of several actions in this case:

a. Adopt the findings and recommendations as they are and take action not inconsistent with the recommendations.

b. Require the investigating officer to conduct a further investigation and resubmit findings of fact and recommendations.

c. Substitute findings or recommendations as the appointing authority believes are supported by a preponderance of the evidence.

3. Recommendation. I recommend that you:

a. Approve the findings and recommendations of the investigating officer.

AFZN-BC-JA

SUBJECT: Legal Review of AR 15-6 Investigation Regarding an Escalation of Force Incident Involving 2/B/2-23 IN, 4th Infantry Brigade Combat Team, Multinational Division-Baghdad, FOB Falcon, Iraq APO AE 09361

b. Forward this investigation to the CDR, MND-B with a request for clarification on the use of warning shots within the MND-B AOR.

4. The POC for this action is the undersigned at SVOIP: 777-1189 or

(b)(3)(b)(6), (b)(2)High

Please

call if there are any questions.

(b)(3), b(6)

CPT, JA  
Operational Law Attorney



**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 Commander, 4th BDE, 1st ID  
(Appointing authority)

on 10 June, 2007 (Date) *(Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See pars 3-15, AR 15-6.)*

**SECTION II - SESSIONS**

The *(investigation) (board)* commenced at \_\_\_\_\_ at \_\_\_\_\_  
(Place) (Time)

on \_\_\_\_\_ (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 \_\_\_\_\_ on \_\_\_\_\_  
(Time) (Date)

and completed findings and recommendations at \_\_\_\_\_ on \_\_\_\_\_  
(Time) (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?
  - 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?
  - 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?

(b)(2) High

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 <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?			
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?			
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?			
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			
	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?			
	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>				
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.				

(b)(2)High

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

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

See attached Memorandum, dated 21 July, 2007.

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

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

See attached memorandum, dated 28 June, 2007.





REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 4TH INFANTRY BRIGADE COMBAT TEAM  
MULTINATIONAL DIVISION-BAGHDAD  
FOB FALCON, IRAQ APO AE 09361  
"DUTY FIRST"

AFZN-BC

9 June 2007

MEMORANDUM FOR 1LT (b)(3), b(6) C Company, 2nd Battalion, 23rd Infantry Regiment, FOB Falcon, Baghdad, Iraq APO AE 09361

SUBJECT: Appointment of AR 15-6 Investigating Officer (RE: Escalation of Force Incident, B Co, 2-23 IN)

1. You are hereby appointed as an investigating officer pursuant to AR 15-6 to conduct an informal investigation into circumstances surrounding an Escalation of Force incident involving members of B Co, 2-23 IN. The incident took place at or near (b)(2) High (b)(2) High at 0820 hours, on 08 June 2007.
2. Specifically, I want you to investigate the circumstances surrounding how the incident took place, whether proper procedures were followed, and whether OPTEMPO may have contributed to the escalation of force. I have enclosed a copy of the Serious Incident Report to assist you with this investigation. You will need to ascertain the specific dates, places, persons, and events associated with this incident.
3. This duty takes precedence over all other duties until you complete your investigation. Upon receipt of this memorandum, promptly contact the Brigade Judge Advocate, Major (b)(3), b(6) / Room 207, 4th IBCT Headquarters Building, FOB Falcon, to receive advice on how you should conduct the investigation under AR 15-6.
4. In your investigation, you must follow the informal procedures described in AR 15-6. I want you to thoroughly investigate this matter and any matters that arise in the course of your investigation. You will interview all witnesses and parties connected with this incident. Pursuant to AR 15-6, paragraph 3-1, and UCMJ, Article 136, you have the authority to administer oaths to witnesses interviewed. Your report will include sworn statements on DA Forms 2823 taken from all relevant sources with knowledge of the incident and the surrounding circumstances.
5. If, when interviewing any Soldier, you reasonably suspect that the individual has committed an offense in violation of the Uniform Code of Military Justice (UCMJ), you must advise that Soldier of his/her rights under Article 31, UCMJ, before asking any further questions. You will use a DA Form 3881 to advise such suspects of their Article 31(b) rights. If you have questions on this issue, consult with the Brigade Judge Advocate.



# UNCLASSIFIED

AFZN-BC

SUBJECT: Appointment as Investigating Officer (RE: Escalation of Force Incident, B Co, 2-23 IN)

6. I have enclosed the incident report which initiated the investigation. You should secure copies of any documents that might substantiate or refute the testimony of the complainant, alleged perpetrator(s), or named witnesses, and include these documents in your final report.

7. When you complete your investigation, you should review the evidence, determine if the investigation adequately addresses the allegations, and make specific findings and recommendations regarding the matters outlined in paragraphs 1 & 2. Your recommendations should include ways, if applicable, to correct systematic, procedural, or training problems contributing to the Escalation of Force incident. When writing your findings, you will need to cite the evidence that supports your findings. You should also attempt to reconcile any conflicting evidence or conflicting statements and identify whom you believe and why.

8. You must provide a Privacy Act statement to a witness if the report of proceedings will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. AR 15-6, Appendix B provides guidance for preparing Privacy Act statements. If any questions arise regarding the need for a Privacy Act statement, consult with the Brigade Judge Advocate.

9. You will thoroughly investigate the above matter and make every effort to obtain the evidence in a timely fashion. Submit your findings and recommendations on DA Form 1574 through the Brigade Judge Advocate to this office within 7 days of receipt of this memorandum. If you need additional time, I must personally approve the extension.

(b)(3), b(6)

COL, IN  
Commanding

EOF w/1 LN DEATH & 2 LNs INJURED(B/2-23IN), 4-11D, 8 JUN 02

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