

# Inspector General

United States  
Department *of* Defense





INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

MAR 26 2007

MEMORANDUM FOR ACTING SECRETARY OF THE ARMY

SUBJECT: Review of Matters Related to the Death of Corporal Patrick Tillman,  
U.S. Army

This report provides the results of a review, which we initiated at the request of the Army Inspector General, of actions taken by the chain of command following the friendly fire death of Corporal Patrick Tillman in Afghanistan on April 22, 2004. Our review sought to determine whether investigations were adequate, whether Army notification of next of kin complied with regulations, and whether documentation to justify the posthumous award of the Silver Star was accurate. In addition, this report provides a summary of the concurrent investigation by the Army Criminal Investigation Command into the facts and circumstances of Corporal Tillman's death (full report issued separately). We concur with the results of that investigation.

First, we wish to express our sympathy to the Tillman family over the loss of a husband, son, and brother. We regret the length of time taken to put to rest lingering concerns regarding the nature of Corporal Tillman's death and the associated frustration endured by the family over the past 3 years.

Our review found that Corporal Tillman's chain of command made critical errors in reporting Corporal Tillman's death and in assigning investigative jurisdiction in the days following his death, and bears ultimate responsibility for the inaccuracies, misunderstandings, and perceptions of concealment that led to our review. Those errors, in part, contributed to omissions and inadequacies in the three investigations that followed Corporal Tillman's death. Additionally, we concluded that Army officials failed to properly update family members when an investigation was initiated into Corporal Tillman's death and that the justification for his Silver Star contained inaccuracies.

We recommend that you consider appropriate corrective action with respect to officials whom we identified as accountable for the regulatory violations and errors in judgment that are described in this review. Additionally, we recommend that you initiate a review of the Silver Star award to ensure that it meets regulatory requirements. We note that the Army has already taken action to delay approval of posthumous valor awards until completion of pending investigations and has strengthened guidance concerning next of kin notifications.

We appreciate the courtesies extended to our investigative staff. Should you have any questions, please contact me or Mr. John R. Crane, Assistant Inspector General, Communications and Congressional Liaison, at (703) 604-8324.

  
Thomas F. Gimble  
Acting

cc: Chairman, Joint Chiefs of Staff

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## *FOREWORD*

The course of this review, in particular the central issues, was framed through a series of requests from the Army Inspector General, Members of Congress, and the family of Corporal Patrick Tillman concerning Corporal Tillman's death by friendly fire while participating in combat operations in Afghanistan on April 22, 2004.

Within 30 days thereafter, Corporal Tillman's death was investigated twice by Army officers under the provisions of Army Regulation 15-6, "Procedures for Investigating Officers and Boards of Officers." Because of unresolved concerns regarding the nature of Corporal Tillman's death and its aftermath, a third investigation was completed by an Army general officer in January 2005. However, by letter dated April 21, 2005, Mr. [REDACTED] father of Corporal Tillman, raised significant issues with the results of that investigation.

By memorandum dated June 2, 2005, the Army Inspector General requested that this Office conduct an independent review of concerns expressed by Mr. [REDACTED]. After completing an initial assessment, we requested that the Army Criminal Investigation Command conduct a full investigation into the facts and circumstances of Corporal Tillman's death. Concurrently, we conducted a review of the three investigations noted above, the adequacy of Army notifications to the Tillman family in the weeks following his death, and the basis for the posthumous award of the Silver Star.

Several Members of Congress also questioned the series of events that led to Corporal Tillman's death, subsequent investigations, the need to establish accountability in matters concerning the death and its aftermath, and the possibility of an Army cover-up. Correspondence to this Office from Senator John McCain in July 2005 and Representative Michael M. Honda in August 2005 questioned specific findings of the investigations. Correspondence from Senator Charles Grassley, Representative Zoe Lofgren, and Representatives Honda, Ike Skelton, Christopher Shays, and Dennis Kucinich in March 2006 reiterated those concerns, requested further explanations regarding Army actions taken following Corporal Tillman's death, and asked for briefings after we completed our work.

In addition, the Senate Armed Services Committee, the House Armed Services Committee, and the Subcommittee on National Security, Emerging Threats, and International Relations (House Committee on Government Reform) requested the results of our review.

This report provides the results of our review and summarizes results of the concurrent investigation by the Army Criminal Investigation Command. The full Army Criminal Investigation Command report is being issued separately. We concur with the results of that investigation. Although some of the Army activities related to Corporal Tillman's death remain classified, this report is unclassified to promote maximum utility and avoid delays that would attend a classified issuance.

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List of Acronyms

<u>Acronym</u>	<u>Refers to:</u>
1LT	First Lieutenant (Army)
1SG	First Sergeant (Army)
ACM	Anti-Coalition Members
AFME	Armed Forces Medical Examiner
AMF	Afghan Military Forces
AR	Army Regulation
BG	Brigadier General (Army)
CAO	Casualty Assistance Officer
CENTCOM	U.S. Central Command
CID	Army Criminal Investigation Command
CMAOC	Casualty and Memorial Affairs Operations Center
COL	Colonel (Army)
CPL	Corporal (Army)
CPT	Captain (Army)
CW3	Chief Warrant Officer Three (Army)
DA	Department of the Army
DoD	Department of Defense
DoDI	Department of Defense Instruction
E-1	Enemy Position 1
E-3	Enemy Position 3
FOB	Forward Operating Base
GCMCA	General Court-Martial Convening Authority
GEN	General (Army)
LTC	Lieutenant Colonel (Army)
LTG	Lieutenant General (Army)
MAJ	Major (Army)
MajGen	Major General (Marine Corps)
MG	Major General (Army)
MOLLE	Modular Lightweight Load-Carrying Equipment
NCO	Noncommissioned Officer
NOK	Next of Kin
P4	Personal For
PFC	Private First Class (Army)
PNOK	Primary Next of Kin
SFC	Sergeant First Class (Army)
SOCOM	U.S. Special Operations Command
SOP	Standard Operating Procedure
SPC	Specialist (Army)
SSG	Staff Sergeant (Army)
UNK	Unknown
USASOC	U.S. Army Special Operations Command

REVIEW OF MATTERS RELATED  
TO THE DEATH OF  
CORPORAL PATRICK TILLMAN, U.S. ARMY

I. INTRODUCTION AND SUMMARY

We initiated the review to address allegations that three sequential investigations into the “friendly fire” death of Corporal (CPL) Patrick Tillman, U.S. Army, on April 22, 2004, in Afghanistan, did not meet established investigative standards and, therefore, failed to disclose relevant facts of his death or assign requisite accountability. Additionally, our review sought to determine whether those investigations, as well as the delayed notifications to CPL Tillman’s family members and the posthumous award of the Silver Star based on erroneous information, were indicative of an Army effort to conceal the circumstances of CPL Tillman’s death or possible misconduct by those involved.<sup>1</sup> In doing so, we focused our review on the following specific issues:

- Did responsible officials comply with applicable standards for investigating friendly fire deaths?
- Did responsible officials comply with applicable standards for notification of next of kin of CPL Tillman’s death and related investigations?
- Did responsible officials comply with applicable standards for award of the Silver Star to CPL Tillman?

Apart from those issues, our initial assessment found that questions remained regarding the events that transpired during the course of the friendly fire incident itself, particularly with respect to conduct of the Service members involved. Because of its investigative capability and independence, we requested the Army Criminal Investigation Command (CID) to investigate the circumstances of CPL Tillman’s death and the death and injuries to others in the incident. After conducting extensive investigative work, including restaging of the incident on-site, the Army CID found insufficient evidence to support any further action under the Uniform Code of Military Justice.<sup>2</sup> We concur with that conclusion and have provided a summary of those investigative results at Appendix A to this report. The Army CID will issue its full report separately.

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<sup>1</sup> We initiated our review in response to a request from the Army Inspector General, who determined that an independent examination was needed after the third Army investigation failed to resolve issues raised by the Tillman family.

<sup>2</sup> Based on initial Army investigations, some of the Service members involved in the incident received non-judicial punishment for dereliction of duty under Article 15 of the Uniform Code of Military Justice.



Our review concluded that CPL Tillman's chain of command made critical errors in reporting CPL Tillman's death and in assigning investigative jurisdiction in the days following his death, and bears ultimate responsibility for the inaccuracies, misunderstandings, and perceptions of concealment that led to our investigation. For example, CPL Tillman's chain of command failed to timely report suspected death by friendly fire. Established Army policy required notification of death by friendly fire, which was suspected the day following the incident, up through the chain of command as well as to the Army Safety Center.<sup>3</sup> In turn, DoD guidance required that the Combatant Commander convene a legal investigation and authorized the cognizant Service to convene any safety investigation required by its regulations. The safety investigation required by Army regulations would have been conducted by a board of trained, experienced investigators who would have collected, processed, and retained forensic evidence, and coordinated with criminal investigative authorities if warranted. Both legal and safety investigations would have been independent of CPL Tillman's immediate chain of command and, therefore, not vulnerable to accusations that command Service members were shielded from culpability.

None of CPL Tillman's superiors complied with these requirements. Instead, after clear evidence of fratricide emerged the day following the incident, CPL Tillman's battalion commander (a lieutenant colonel three levels below the Combatant Commander), with the concurrence of his regimental commander, appointed a subordinate Army captain to investigate. That investigation, completed in about 2 weeks, determined CPL Tillman's death was fratricide caused by leadership failures and tactical errors. Dissatisfied with the thoroughness of that investigation, CPL Tillman's regimental commander (a colonel) ordered his own executive officer (a lieutenant colonel) to conduct a second investigation. That investigation, building on the first, was completed in 9 days, confirmed death by friendly fire, and provided expanded findings on the contributing tactical errors. No independent investigator; that is, outside CPL Tillman's immediate chain of command, was appointed by appropriate authority until 6 months after CPL Tillman's death. A safety investigation was not initiated until nearly 6 months after the incident when most of the forensic evidence had been destroyed. Expertise available from the Army CID was not obtained until we initiated this review.

We concluded that the first two investigations, conducted by officers in CPL Tillman's battalion and regiment under Army Regulation (AR) 15-6, "Procedures for Investigating Officers and Boards of Officers," were tainted by the failure to preserve evidence, a lack of thoroughness, the failure to pursue logical investigative leads, and conclusions that were open to challenge based on the evidence provided. More significantly, neither investigator visited the site to visually reenact the incident, secure physical evidence, take photographs, or obtain accurate measurements. In addition, the first investigating officer, with advice from his legal advisor, withheld information concerning suspected fratricide from medical examiners who raised questions based on anomalies they discovered during the autopsy. As a result, the first two investigations lacked credibility and contributed to perceptions that Army officials were purposefully withholding key information concerning CPL Tillman's death.

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<sup>3</sup> In 2005 the Army Safety Center was renamed the Army Combat Readiness Center.

In November 2004, because of lingering concerns regarding CPL Tillman's death, the Acting Secretary of the Army directed that Lieutenant General (LTG) Phillip R. Kensinger, Jr., Commander, U.S. Army Special Operations Command (Airborne) (USASOC), conduct a third investigation. LTG Kensinger appointed a subordinate, Brigadier General (BG) Gary M. Jones, Commander, U.S. Army Special Forces Command (Airborne), to conduct the investigation. BG Jones' investigation was more thorough than the first two, included an on-site visit, and was pronounced legally sufficient by LTG Kensinger's Staff Judge Advocate in January 2005.

Subsequent review by the Army Inspector General raised concerns which caused BG Jones to conduct additional investigative work and file supplementary information. However, weaknesses remained. Like the first two investigators, he also failed to interview some witnesses who were part of the unit that fired on CPL Tillman's position. He did not assess accountability for failures by the chain of command (including LTG Kensinger) to comply with Army policy for reporting and investigating friendly fire incidents, to coordinate with other investigative authorities, to provide timely information concerning suspected friendly fire to CPL Tillman's next of kin, and to ensure accuracy in documentation submitted in support of the Silver Star.

Notwithstanding our conclusions with respect to these three investigations, we emphasize that all investigators established the basic facts of CPL Tillman's death -- that it was caused by friendly fire, that occupants of one vehicle in CPL Tillman's platoon were responsible, and that circumstances on the ground at the time caused those occupants to misidentify friendly forces as hostile. None of the investigations suggested that CPL Tillman's death was other than accidental. Our review, as well as the investigation recently completed by the Army CID, obtained no evidence contrary to those key findings.

CPL Tillman's family members were not told of the investigations and subsequent fratricide determination until 35 days after CPL Tillman's death, despite Army regulations that require next of kin be advised of additional information concerning a Service member's death as that information becomes available. Because CPL Tillman's regimental commander desired to keep information concerning the death "close hold" until investigative results were finalized, no "supplemental reports" were issued to correct initial reports that CPL Tillman's death was caused by enemy fire. Although LTG Kensinger knew friendly fire was suspected and under investigation before he served as the Army representative at CPL Tillman's memorial service on May 3, 2004, he decided to withhold notification from family members until all facts concerning the incident could be verified. Certain senior Army officials were aware of the friendly fire investigation in early May, but none took measures to ensure that family members were, at a minimum, advised that CPL Tillman's death was under review. We find no reasonable explanation for these failures to comply with Army regulations.

Finally, the citation and narrative justification submitted to support the Silver Star awarded to CPL Tillman contained inaccurate information -- particularly with respect to descriptions that suggested CPL Tillman performed heroically in the face of, and was killed by, enemy fire. The two supporting valorous witness statements stamped "original signed" were attributed to two of CPL Tillman's platoon members, but were drafted by others and contained inaccurate information. The posthumous presentation of the Silver Star to CPL Tillman as if he



had been killed by the enemy was ill-advised and contributed to continuing mistrust of Army representations to family members, especially since LTG Kensinger and other officials knew at the time that friendly fire was the likely cause of his death.

We recommend that the Acting Secretary of the Army take appropriate corrective action with respect to officials whom we identified as accountable for the regulatory violations and errors in judgment that are described in this review. Additionally, we recommend that the Acting Secretary initiate a review of the Silver Star award to ensure that it meets regulatory requirements. We note that the Army already has taken action to delay approval of posthumous valor awards until completion of pending investigations and has strengthened guidance concerning next of kin notifications.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

## II. BACKGROUND

On April 22, 2004, the 2nd Platoon, A Company, 2nd Battalion, 75th Ranger Regiment was conducting operations in the vicinity of Magarah, Afghanistan. Because of difficulties caused by an inoperable tactical vehicle, and the mission to achieve an established objective by nightfall, the platoon ground assault convoy, consisting of 41 Army Rangers, 4 Afghan Military Forces (AMF) soldiers, and 12 vehicles, was split into 2 groups or "serials."<sup>4</sup>

Serial 1 consisted of 19 Rangers traveling in 4 U.S. vehicles and 2 AMF vehicles, including First Lieutenant (1LT) [REDACTED] (the Platoon Leader), CPL Tillman; and 4 AMF soldiers.<sup>5</sup> Serial 2, commanded by Sergeant First Class (SFC) [REDACTED] (the Platoon Sergeant), consisted of 22 Rangers and two local Afghans traveling in 4 U.S. vehicles and a privately owned local vehicle (referred to as a "jinga" or "jingle" truck). The jinga truck, driven by a local Afghan, was towing a fifth (inoperable) U.S. vehicle.

After the split, Serial 1 traveled down the canyon road without incident arriving in the vicinity of the village of Manah. Serial 2, however, did not proceed along the separate planned route because SFC [REDACTED] believed the risk of accidental injury or death to be too great given the terrain. Therefore, SFC [REDACTED] ordered Serial 2 to travel down the same canyon road that Serial 1 had taken earlier.

While traveling down the canyon road, Serial 2 came under attack from enemy mortar or rocket propelled grenades and small arms fire originating from the top of the canyon walls. Upon hearing the attack behind them, Serial 1 personnel, led by Staff Sergeant (SSG) [REDACTED] (the squad leader), dismounted their vehicles and moved on foot

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<sup>4</sup> Service members involved in this incident were at the time members of the U.S. Army, 75th Ranger Regiment, and its subordinate units unless otherwise identified.

<sup>5</sup> 1LT [REDACTED] like many other Service members involved in the friendly fire incident and its aftermath, has since been promoted. However, in this report, we will identify Service members using the rank and position that they held at the time of events at issue unless otherwise noted.

through a small (6-building) village to an elevated spur overlooking the canyon road below and across from the southern ridgeline. CPL Tillman, Private First Class (PFC) [REDACTED] and an AMF soldier positioned themselves on the forward slope of the spur visible from and exposed to the canyon road below. 1LT [REDACTED] and Specialist (SPC) [REDACTED] (the Radio Operator), having been delayed by handling communications devices, were positioned at the base of a building in the village some distance below and to the rear of SSG [REDACTED] and other Serial 1 personnel.

The first U.S. vehicle in Serial 2 was led by SSG [REDACTED] (the squad leader), with a driver and five other occupants. As SSG [REDACTED] and his crew moved down the canyon road, they fired their weapons in suppressive fire along the canyon walls. When SSG [REDACTED]'s vehicle exited the narrow portion of the canyon road below the spur where CPL Tillman and his team were located, occupants saw muzzle flashes coming from that position. SSG [REDACTED] and his team directed their fire toward the muzzle flashes killing both CPL Tillman and the AMF soldier. As SSG [REDACTED]'s vehicle proceeded past the spur toward the village, the vehicle occupants continued to fire on the building in the settlement hitting 1LT [REDACTED] in the face and SPC [REDACTED] in the knee and chest with small arms fire.

A chronology of events following the incident is provided as Appendix B to this report.

### III. SCOPE

In the course of our review, we interviewed 106 witnesses with knowledge of the matters under review, including soldiers from CPL Tillman's platoon, the chain of command of the 75th Ranger Regiment, the Commander, Joint Task Force (the operational commander over the Ranger Regiment in Afghanistan), and the former Commander, USASOC, who had administrative control of the Rangers. We also interviewed the Army officers who conducted the three command investigations of the friendly fire incident; the Army Chief of Staff; the Commander, U.S. Central Command (CENTCOM), who had overall operational control of the Rangers; and the Commander, U.S. Special Operations Command (SOCOM). To further address matters which arose during the review we also conducted 42 follow-up interviews. In addition, we reviewed each of the earlier investigations and all of the documents associated with those investigations, as well as relevant e-mail messages and internal documents within the operational and administrative chains of command of the Ranger Regiment and similar communications within the Department of the Army.

As indicated above, inconsistencies in prior testimonial accounts of the incident, the failure to preserve forensic evidence, and alleged deficiencies in the investigations ultimately led to allegations that Army officials may have been attempting to conceal misconduct on the part of Service members who were involved in the fratricide and its aftermath. In an effort to obtain maximum evidence to resolve those matters, we requested that the Army CID investigate CPL Tillman's death and the death and injuries to the other soldiers. That investigative work was undertaken concurrent with our review. A summary of results is provided at Appendix A. A full report is being issued separately.

#### IV. FINDINGS AND ANALYSIS

##### A. Did responsible officials comply with applicable standards for investigating friendly fire deaths?

Responsible officials failed to comply with applicable standards for investigating friendly fire deaths. Lack of timely notification from the chain of command that friendly fire was suspected delayed Army Safety Center involvement and prevented CENTCOM from convening a legal investigation. Neither of the first two investigating officers was properly appointed, visited the scene, preserved physical evidence, identified and interviewed all relevant witnesses, or resolved factual inconsistencies among witness statements. The second investigating officer drew conclusions not supported by evidence included in his report. Additionally, Ranger Regiment personnel withheld from the Armed Forces Medical Examiner (AFME) and Army CID the fact that friendly fire was suspected.

The final investigating officer, a general officer, failed to interview all of the Rangers involved to resolve the uncertainty in the sequence of events that occurred on April 22, 2004; failed to apply relevant standards and assign accountability for the mishandling of physical evidence; failed to fully address the next of kin notification issue as a violation of applicable regulations; failed to pursue inaccuracies related to the Silver Star award, reached findings not supported by testimony, and, in fact, exacerbated the situation by sharing those findings on the Silver Star with family members, senior Army officials, and Members of Congress during official briefings; and failed to pursue misrepresentations on the part of LTG Kensinger related to the next of kin notification issue. Further, LTG Kensinger provided misleading testimony to the third investigating officer and this Office when he denied that he knew friendly fire was suspected before the memorial service for CPL Tillman.

#### Standards

*Note: The following standards set forth requirements for reporting and investigating incidents where the suspected cause of death is friendly fire. We examined the three command investigations conducted with regard to CPL Tillman in light of those standards.*

#### **Department of Defense Instruction (DoDI) 6055.7, "Accident Investigation, Reporting, and Record Keeping," dated October 3, 2000**

The Instruction applies to all DoD Components, to include the Military Departments and Combatant Commands, and sets forth DoD guidance for safety and legal investigations of accidents.<sup>6</sup> As to the relationship between the two types of investigations, the Instruction states at Subsection 5.2.6, "The safety investigation is the primary investigation and shall control all witnesses and evidence."

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<sup>6</sup> A "safety" investigation is conducted to determine the cause of an accident with the sole purpose of preventing future accidents. In general, safety investigation reports are privileged and not releasable outside safety channels. A "legal" investigation is undertaken to inquire into all the facts and circumstances surrounding an accident, as well as to obtain and preserve all available evidence for use in litigation, claims, disciplinary actions, or adverse administrative actions.

With regard to friendly fire incidents, the Instruction directs that DoD Components “shall prepare” a legal investigation report, in addition to any authorized safety investigation report, in “all suspected cases of Friendly Fire.” The Instruction further directs the Heads of DoD Components to comply with Section E4.7, “Investigating Friendly Fire Accidents,” which states,

For all accidents falling within the definition of Friendly Fire, the Combatant Commander will convene a legal investigation to determine the facts of the incident and guide further action. In consultation with the Combatant Commander, Service or other commanders may convene a safety investigation as required.

The Instruction defines “Friendly Fire” as,

A circumstance in which a member of a U.S. or friendly military force are mistakenly or accidentally killed or injured in action by U.S. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force.

The Instruction is silent on the procedures to be used to conduct legal investigations into friendly fire incidents, but notes generally at Section 4.6 that legal investigations are to inquire into facts and circumstances as well as “to obtain and preserve all available evidence” for use in administrative actions, litigation, and claims. Further, Sections 5, “Responsibilities,” and Enclosure 4, “Procedures,” require that the Heads of DoD Components establish procedures implementing the Instruction, to include developing time lines for routinely updating the primary next of kin of accident fatalities regarding the status of safety and legal investigations.<sup>7</sup>

**DoDI 5154.30, “Armed Forces Institute of Pathology,” dated March 18, 2003**

Enclosure 2, “The AFME System,” charges the AFME to conduct forensic investigations, to include autopsies, to determine the manner and cause of death in all cases where an active duty Service member is killed. Paragraph E2.2.6 directs that the AFME shall receive notification of the deaths of all Service members on active duty, and shall have the authority to review all pertinent information, to include investigative reports, photographs, and evidence.

**Army Regulation (AR) 15-6, “Procedures for Investigating Officers and Boards of Officers,” dated September 30, 1996**

The Regulation establishes Army procedures for administrative investigations and boards of officers that are not specifically authorized by any other directive. The stated purpose of AR 15-6 investigations and boards is to ascertain facts, make recommendations, and report them to the appointing authority. Introductory language in the Regulation notes that investigations or

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<sup>7</sup> The phrase “primary next of kin” is defined in DoDI 1300.18, “Military Personnel Casualty Matters, Policies, and Procedures,” as the unremarried surviving spouse.

boards appointed under a specific regulation or directive may apply AR 15-6 procedures, and that, in the case of conflicting provisions, the more specific regulation takes precedence over the terms of AR 15-6.

Recognizing the existence of other investigations, Subparagraph 1-4.d, "Concurrent investigations," directs appointing authorities, investigating officers, and boards

[W]ill ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, . . . or an investigation being conducted by a criminal investigative [activity]. In cases of concurrent or subsequent investigations, coordination with the other command or agency should be made to avoid duplication of investigative effort, where possible.

With regard to specific responsibilities, Paragraph 1-5, "Function of investigations and boards," establishes the duty of the investigating officer or board to

Ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

Subparagraph 2-1.a, "Authority to appoint," directs that only a general court-martial convening authority (GCMCA) may appoint an investigation or board for incidents resulting in the death of one or more persons. With regard to qualifications, Subparagraph 2-1.c, "Who may be appointed," requires that investigating officers and board members,

[S]hall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service, and temperament, [and]

[W]ill be senior to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations may be made, [with limited exception].

Subparagraph 2-1.c continues, that should an investigating officer discover during the investigation that completion of the investigation requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse to, a person senior to the investigating officer, he must report that fact to the appointing authority. The appointing authority is then obligated to appoint a more senior investigating officer or conduct a separate inquiry into the matters pertaining to that person.

With regard to standard of proof, findings, and recommendations, Paragraphs 3-9, "Findings," and 3-10, "Recommendations," require that findings be supported by the preponderance of the evidence of record in the report, and that recommendations be consistent with those findings.

Paragraph 3-15, "Exhibits," details the handling of evidence and its inclusion in the investigating officer's written report. With regard to physical objects, Subparagraph 3-15.b, "Real evidence," highlights the importance of including clear and accurate written descriptions or depictions (such as photographs) of physical evidence in the report. The Subparagraph further stresses, "The real evidence itself should be preserved, including chain of custody where appropriate, for use if further proceedings are necessary." The exhibit in the report should tell where the real evidence can be found, and after final action has been taken in the case, the evidence should be disposed of as for provided in Army regulation.

**AR 385-40, "Accident Reporting and Records," dated November 1, 1994**

The Regulation defines "accident" as "an unplanned event that causes personal injury or illness, or property damage." Paragraph 2-2, "Accident and incident classes," groups accidents into four classes according to their consequences. An accident resulting in a fatality qualifies as a "Class A" accident, the most serious of the four classes.

In addressing fratricide, the Regulation notes that DoDI 6055. 7 is the primary authority for investigating and reporting friendly fire accidents. Subparagraph 2-4.q, "Fratricide," states that friendly fire accidents are "special situations" that must be reported promptly and investigated thoroughly with both a safety investigation conducted under the provisions of the Regulation and a legal investigation conducted under the provisions of the Regulation and AR 15-6.<sup>8</sup>

Paragraph 1-4, "Responsibilities," requires commanders at all levels to comply with the Regulation's accident reporting and investigating requirements, and specifically charges commanders of Army Major Commands to ensure that accidents are investigated and analyzed. Paragraph 3-2, "Commander's responsibility," provides general guidance and requires the commander who first becomes aware of any Army Class A accident to immediately notify, through the chain of command, the Commander, Army Safety Center. Should a Class A accident occur in combat, Paragraph 3-5 still requires immediate notification of the Army Safety Center designated contact, unless the senior tactical commander waives notification based on his determination that the situation, conditions, and/or time does not permit normal reporting and investigation. The senior tactical commander's decision to waive normal reporting and investigating must be reported in writing along with the commander's name and rank.

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<sup>8</sup> Army publications refer to "legal" and "safety" investigations as "collateral" and "accident" investigations, respectively.



Paragraph 1-8, "Collateral investigation and reports," states that the safety investigation board has priority over the legal investigation, and Paragraph 1-9, "Accident investigation board appointing authority," directs, in relevant part, that the commander having general court-martial jurisdiction over the unit responsible for the operation or personnel involved in the accident appoint the safety investigation board.

Chapter 4 details guidance for safety investigations, and, in Paragraph 4-3, "Class A and B Accident Investigations," provides for two different procedures for safety investigations of accidents: a centralized accident investigation<sup>9</sup> or an installation-level accident investigation. Both centralized and installation-level investigations require the appointing authority to appoint a safety investigation board of three or more members. However, in a centralized investigation the Commander, Army Safety Center, provides to the appointing authority Safety Center personnel to serve as board members and identifies to the appointing authority any special requirements and qualifications for local board members. The Regulation empowers the Commander, Army Safety Center, to determine whether a centralized or installation-level investigation will be conducted, and directs him to make that determination "upon notification of a Class A or B accident." Finally with regard to safety investigation boards, Paragraph 4-2 requires board members to be from organizations other than the activity or unit incurring the accident and to be screened to ensure that no member has an interest in the accident that may bias the outcome of the investigation.

With regard to gathering evidence at the accident scene, Paragraph 4-5, "Accident scene preservation," provides that where the situation does not permit the scene to be preserved, Military Police or CID personnel will remove all items of evidence needed for their investigation and, whenever possible, will photograph the items before they are collected. Debris that must be moved will be stored in a secure area and guarded until released by the board president. The appointing authority will ensure that photos are taken and a sketch of the scene is made with sufficient detail and measurements to allow a scale drawing to be made. Further, all damage and ground markings incident to the accident will be identified and photographed before measurement and cleanup of the accident scene. The sketch and photographs will be provided to the president of the board as soon as possible after arrival.

**AR 600-8-1, "Personal Affairs, Army Casualty Operations/Assistance/Insurance," dated October 20, 1994**

The Regulation prescribes policies and tasks governing U.S. Army casualty operations. The Regulation reiterates the requirement that fatal accidents be investigated with both safety and legal investigations. Paragraph 2-12, "Casualty reporting during hostilities," states, in part, at subparagraph d:

All suspected friendly fire incidents will require an AR 15-6 investigation. A board of officers will be appointed under AR 15-6 to inquire into the suspected friendly fire incident. The board will be

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<sup>9</sup> A later paragraph of the Regulation refers to the centralized investigation as a "USASC [U.S. Army Safety Center] accident investigation board."

appointed by the commander having general court martial jurisdiction over the unit to which the casualty was assigned (or a higher authority designated by a commander authorized to make such designation). . . . The board will consist of not less than three commissioned officers (field grade recommended).

**AR 600-34, “Fatal Training/Operational Accident Presentations to the Next of Kin,” dated January 2, 2003**

The Regulation provides Army guidance on legal investigations of fatal accidents and presentations on such accidents to a soldier’s next of kin. Paragraph 1-15, “The appointing/approving authorities of the [legal] investigation,” mandates the appointment of investigating officers in accordance with the Regulation and AR 15-6.<sup>10</sup>

Paragraph 1-18, “Concept,” directs legal investigations “conducted under the provisions of AR 15-6, AR 385-40, and this regulation” in “all suspected cases of friendly fire.” The paragraph also states that the investigating officer in a legal investigation is “usually appointed by the general court-martial convening authority (GCMCA) [of the unit concerned], [and] will conduct a timely and accurate [legal] investigation of the mishap.” Further, the Regulation states that the Director of Army Safety initiates a safety investigation concurrent with the legal investigation, and, given the time sensitivity, safety, and readiness implications of the investigation’s findings, the safety investigation process “is given primacy in access to evidence, witnesses, and the mishap scene.”

Chapter 3, “[Legal] Investigations,” notes that DoDI 6055.7 requires each Service to conduct both a safety and legal investigation into certain types of accidents, and that the guidance for conducting legal investigations is explained in AR 385-40, AR 27-20 [Claims], “and in the case of fatal training/operational accidents, this regulation.”

**AR 735-5, “Policies and Procedures for Property Accountability,” dated June 10, 2002**

The Regulation establishes Army policies and procedures for accounting for Army property, to include property that is damaged or destroyed. Paragraph 14-19, “Destruction of contaminated clothing and equipment,” authorizes replacement of contaminated individual clothing and an adjustment to property records for contaminated organizational clothing and individual equipment destroyed by direction of medical authority. The destruction must be documented in a memorandum signed by the unit commander which names the medical officer who directed the destruction.

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<sup>10</sup> With regard to the appointment of single investigating officer versus a board of officers, we find AR 600-34 (which requires only a single investigating officer) to be controlling in this case rather than AR 600-8-1 (which requires a board of officers). AR 600-34 specifically addresses legal investigations of friendly fire cases and was published more recently than AR 600-8-1. Additionally, the most recent version of AR 600-8-1, dated April 7, 2006, gives the appointing authority the option of appointing either a single officer or a board of at least three officers to inquire into the suspected friendly fire incident.

**Joint Publication 4-06, "Joint Tactics, Techniques, and Procedures for Mortuary Affairs in Joint Operations," dated August 28, 1996**

Appendix B, Subparagraph 4.a, "Personal Effects on Remains," states that when the remains of deceased personnel arrive at the unit marshalling area, staff should check the remains for personal effects and organizational equipment. The paragraph further directs,

Remove serviceable organizational and government equipment from the remains and return serviceable equipment to the appropriate supply activity. Unserviceable equipment and all clothing are left on the remains.

**USASOC Regulation 385-1, "Safety – Accident Prevention and Reporting," dated March 1, 2000**

The Regulation applies to USASOC subordinate commands, to include the 75th Ranger Regiment. Subparagraph 1-5.f charges commanders to ensure that the accident investigation and reporting requirements of AR 385-40 and this regulation are accomplished. Similarly, Paragraph 3-1 charges all USASOC units to comply with the requirements of AR 385-40 and this regulation, and Paragraph 3-3 requires all Army accidents to be investigated and reported to the immediate commander whose operation, personnel, or equipment is involved, and to the USASOC Safety Office. Subparagraph 3-6.g requires major subordinate units to establish procedures to ensure a unit experiencing an accident involving a fatality immediately notifies the USASOC Emergency Operations Center.

Facts

As a preliminary matter, to understand who was responsible to report and investigate CPL Tillman's death, it is important to note that military forces are generally subject to multiple chains of command and control, with the two principal ones being the operational chain of command and the administrative chain of command. The operational chain of command exercises operational control over assigned forces. Operational control normally provides full authority to organize commands and forces and to employ those forces as the commander in operational control considers necessary to accomplish assigned missions. It does not, in and of itself, include authoritative direction for logistics or matters of administration, discipline, internal organization, or unit training.

The operational chain of command for CPL Tillman's unit -- 2nd Platoon, A Company, 2nd Battalion, 75th Ranger Regiment -- for the operation during which he was killed was

1. Headquarters, Operations Team
2. Headquarters, 75th Ranger Regiment (Forward)
3. Headquarters, Joint Task Force
4. CENTCOM

The first GCMCA in that operational chain of command was the Commander, CENTCOM.

The administrative chain of command exercises administrative control over assigned forces. Administrative control is the direction or exercise of authority over subordinate or other organizations in respect to administration and support, including discipline, personnel management, control of resources and equipment, and other matters not included in the operational missions of the subordinate or other organizations. The administrative chain of command for CPL Tillman's unit was

1. Commander, 2nd Battalion, 75th Ranger Regiment
2. Commander, 75th Ranger Regiment
3. Commander, USASOC

The first GCMCA in the administrative chain of command was the Commander, USASOC. As a further point, we note that as a command within the Department of the Army, USASOC (as well as its subordinate units such as the 75th Ranger Regiment) is subject to Department of the Army regulations and guidance.

1. Captain [REDACTED]'s Investigation

Facts

Testimony established that on the evening of April 22, 2004, after the incident that killed CPL Tillman and the AMF Soldier, and wounded 1LT [REDACTED] and SPC [REDACTED], both First Sergeant (1SG) [REDACTED] Company First Sergeant, and Captain (CPT) [REDACTED] [REDACTED] Commander, A Company, traveled separately to join 2nd Platoon at the scene. That night PFC [REDACTED] told 1SG [REDACTED] that PFC [REDACTED] believed he was fired on by members of Serial 2. At approximately sunrise on April 23, 1SG [REDACTED] told CPT [REDACTED] that 1SG [REDACTED] suspected the incident involved fratricide.

On the morning of April 23, 2004, Lieutenant Colonel (LTC) [REDACTED] Commander, 2nd Battalion, who had been several miles away from the site on patrol with B Company, also arrived at the scene. Shortly after his arrival, LTC [REDACTED] heard individually from CPT [REDACTED], 1SG [REDACTED], and Command Sergeant Major [REDACTED], Regimental Sergeant Major (who was with Serial 2 on April 22), that each believed the incident was possible fratricide and should be investigated. LTC [REDACTED] testified that he decided to initiate an investigation and appointed as investigating officer CPT [REDACTED] Commander, Headquarters and Headquarters Company, 2nd Battalion, who was located at the battalion forward operating base (FOB). By midday on April 23, LTC [REDACTED] informed Colonel (COL) James C. Nixon, Commander, 75th Ranger Regiment, who was operating from a separate location in Afghanistan, that LTC [REDACTED] suspected fratricide and had initiated an investigation.

Soldiers from 2nd Platoon remained in the field to conduct operations on April 23, 2004, and returned to the battalion FOB before dawn on April 24. On April 25, Major (MAJ) [REDACTED], Operations Officer, 2nd Battalion, conducted an After Action Review of the ambush and incident with members of 2nd Platoon. The battalion chaplain and regimental chaplain conducted a Critical Incident Stress Debriefing with 2nd Platoon on April 26 or 27.

In addition to LTC [REDACTED]'s April 23 oral appointment of CPT [REDACTED] as investigating officer, COL Nixon issued his own memorandum dated April 29, 2004, appointing CPT [REDACTED] pursuant to AR 15-6 to investigate CPL Tillman's death. The appointment memorandum directed CPT [REDACTED] to make findings and recommendations on:

- The significant tactical events that occurred before, during, and after CPL Tillman's death;
- The circumstances that surrounded CPL Tillman's death;
- Any evidence that indicated CPL Tillman's death was the result of friendly fire or fratricide;
- Any evidence of negligence that may have contributed to CPL Tillman's death; and
- Any other issues, circumstances, or events relating to CPL Tillman's death that warranted further investigation.

We note that after a wide-ranging effort, to include data calls, computer searches, and witness interviews, we were unable to locate an intact copy of CPT [REDACTED]'s draft report of investigation. According to testimony, CPT [REDACTED] submitted to COL Nixon through MAJ [REDACTED] Regimental Judge Advocate, a binder containing his draft report of investigation, to include findings and recommendations, witness statements, maps, diagrams, and photographs. However, we found that neither CPT [REDACTED] nor any organization retained an intact copy of CPT [REDACTED]'s submission. We were able to piece together from various sources what we confirmed were CPT [REDACTED]'s findings and recommendations, the photographs, and copies of statements and interviews of 19 witnesses. Sixteen of those witnesses were members of Serials 1 and 2 (to include PFC [REDACTED], SSG [REDACTED], Squad Leader, 3rd Squad, 2nd Platoon; SSG [REDACTED], Squad Leader, 1st Squad, 2nd Platoon; and five of the six other soldiers in SSG [REDACTED]'s vehicle) and three witnesses located at the battalion FOB during the incident (to include MAJ [REDACTED], CPT [REDACTED], and CPT [REDACTED], Executive Officer, A Company). Witness statements taken from two of the soldiers in Serial 2 (SSG [REDACTED] and SFC [REDACTED], Headquarters and Headquarters Company, 2nd Battalion), mentioned Ranger snipers firing during the engagement. Fifteen of the witness statements and interviews were dated April 26, 2004, with the balance of the statements dated later.

CPT [REDACTED]'s draft report included 12 pages of narrative factual findings and 2 pages of recommendations. The draft report stated in a section labeled "Background," that CPL Tillman's death "was likely the result of fratricide," the fratricide was not "intentional or the result of any one individual's actions," and "communication failures, human error, poor fire discipline, and the 'fog of war' all played varying roles in CPL Tillman's death."

While not highlighted in any particular manner in the draft report, contained within the pages of narrative factual findings were the following points:

- PFC [REDACTED] "clearly identified" Rangers in Serial 2's lead vehicle "firing all their weapon systems at their fighting position."
- CPL Tillman "was most likely mortally wounded during this sequence of firing [from Serial 2's lead vehicle]."
- SPC [REDACTED], who was on the ridgeline, watched as SSG [REDACTED] "got out of his vehicle and started to shoot at his position."
- SSG [REDACTED] "mistakenly identified" the AMF soldier "as an enemy soldier and engaged him with small arms fire."
- The approximate distance from the lead vehicle to where the AMF soldier was killed was "less than 100m [meters]."
- SSG [REDACTED]'s vehicle "continued to fire well past the ridgeline where SSG [REDACTED]'s squad was positioned and continued to recklessly fire at the buildings in the village," which was "less than 200 meters away."<sup>11</sup>
- "There is strong evidence that friendly fire wounded both 1LT [REDACTED] and SPC [REDACTED]"
- Contributing factors such as "lack of positive target identification measures," "failure to adhere to unit SOPs [standard operating procedures]," and "the inability of leaders to maintain situational awareness in a combat environment," "led to the tragic death of CPL Pat Tillman, the AMF soldier, and the accidental shooting of 1LT [REDACTED] and SPC [REDACTED]"
- Soldiers did not "intentionally fire at friendly forces nor was there criminal intent involved."<sup>12</sup>
- "Leadership played a critical role and contributed to the fratricide incident that killed CPL Tillman."

<sup>11</sup> Elsewhere in his findings, CPT [REDACTED] characterized the soldiers as firing "negligently" at the village.

<sup>12</sup> CPT [REDACTED] testified that he defined "criminal intent" as a soldier going out on the mission that day with the intent to kill a specific individual.



- With regard to the decision to split the platoon, MAJ [REDACTED] told CPT [REDACTED] he did not want 2nd Platoon's operation delayed, and 1LT [REDACTED] understood it was CPT [REDACTED]'s order that 2nd Platoon be split into two sections and initiate movement during daylight.

In testimony to this Office, CPT [REDACTED] stated that as the assigned AR 15-6 investigating officer, he was directed to gather all the facts surrounding CPL Tillman's death and to make recommendations. He said he initially understood the incident was a firefight with enemy forces, but shortly after being orally appointed by LTC [REDACTED], learned that the case could potentially be a fratricide. While he had no formal training in conducting AR 15-6 investigations, he said he had previously conducted approximately 10 such investigations into allegations of lost or damaged Government property, and had reviewed AR 15-6 before initiating this investigation.

In discussing how he conducted the investigation, CPT [REDACTED] told us he prioritized which soldiers he would interview based on the person's location during the firefight, starting with those who could see the entire engagement. He said he determined SSG [REDACTED], PFC [REDACTED] and SSG [REDACTED] were the first witnesses to be interviewed. CPT [REDACTED] testified that on 2nd Platoon's return to the battalion FOB, he had the witnesses write statements and he also interviewed them. He said he observed that some of the statements were illegible because the soldiers had just returned from their operation and had no sleep. CPT [REDACTED] said he created typed versions of the witness statements based on the handwritten versions and voice recordings of his interviews. He stated that he had witnesses review their typed statements for accuracy before they signed them, and he thereafter deleted the voice recordings of the interviews. CPT [REDACTED] said he also had the witnesses confirm information they provided in their statements, as well as his understanding of the events, by reviewing a diagram of the scene he had prepared based on their testimony.

In response to our questions, CPT [REDACTED] testified that while he was aware that there were Ranger snipers in Serial 2, he did not interview the snipers and did not know whether they fired any rounds during the incident involving CPL Tillman. Additionally, CPT [REDACTED] stated that he believed he asked the soldiers he interviewed whether there was any animosity or jealousy in the unit towards CPL Tillman. In that regard, CPT [REDACTED] told us, "[E]veryone would agree that Pat Tillman was a very respected individual" and platoon members of all ranks "looked up to him."

CPT [REDACTED] stated that he did not visit the site during his investigation because of a number of factors, to include the operating tempo and his belief he had sufficient information based on witness statements, maps, and satellite imagery. He said in hindsight he wished he had the opportunity to return to the site with a security element, to walk the area to get a better understanding of what happened, and to formulate additional questions for witnesses.

On the topic of physical or "real" evidence, CPT [REDACTED] acknowledged that he was aware of the requirement in AR 15-6 to obtain, depict, and preserve real evidence. CPT [REDACTED] confirmed that 1SG [REDACTED] gave him a .50 caliber bullet which 1SG [REDACTED] said he pulled from the rock CPL Tillman was positioned behind during the incident, but CPT [REDACTED] did not recall what

happened to the bullet. He also recalled 1SG [REDACTED] showing him a flash bang grenade that belonged to CPL Tillman with an apparent bullet hole in it; CPT [REDACTED] believed the grenade was destroyed because it was volatile. Further, CPT [REDACTED] told us that he never saw, asked about, or knew what happened to CPL Tillman's helmet, nor did he recall whether he viewed CPL Tillman's body armor. CPT [REDACTED] also confirmed he received several photographs of the scene from 1SG [REDACTED].

CPT [REDACTED] further testified that 1SG [REDACTED] showed him CPL Tillman's Modular Lightweight Load-Carrying Equipment (MOLLE) vest, which was stored in a plastic bag. CPT [REDACTED] stated that the mesh lining of the MOLLE vest contained multiple entry and exit tears from bullets and fragments. While he could not recall the exact number of entry and exit tears, he estimated that there were more than 10. CPT [REDACTED] stated he also recalled a discussion with 1SG [REDACTED] about what looked to be green-tipped bullet fragments located in the MOLLE vest. In response to our question, CPT [REDACTED] stated that such fragments would indicate friendly fire.

CPT [REDACTED] told us that he understood CPL Tillman's uniform and military equipment were burned by someone in the unit, but he did not know who, when, or who approved the destruction. He said he could not explain why no photographs were taken of uniform or military equipment before their destruction, but he stated the uniform and military equipment were not kept as evidence because he believed bodily material left on the items presented a biohazard.

With regard to specific findings contained in his draft report, CPT [REDACTED] said he based his determination of distances on eyewitness statements rather than physical measurements, and relied on eyewitness accounts rather than physical evidence to conclude CPL Tillman's death was caused by friendly fire. Similarly, CPT [REDACTED] testified that he based his conclusion that enemy were present that day solely on eyewitness testimony, as neither he nor any of the eyewitnesses collected any physical evidence that indicated any enemy forces were at the scene. CPT [REDACTED] recalled that he found nothing during his investigation that led him to believe there was criminal intent involved, and he never suspected anyone of committing a criminal offense. However, he said he thought his investigation concluded there was "gross negligence," and he believed he recommended that headquarters further investigate to determine whether there was criminal intent. CPT [REDACTED] explained that he defined "gross negligence" as going outside the scope of one's duties and responsibilities and not following standard operating procedures. Our review of CPT [REDACTED]'s findings and recommendations disclosed no mention of "gross negligence" and no recommendation for further investigation to determine criminal intent. Rather, CPT [REDACTED]'s draft report stated in its findings that soldiers did not "intentionally fire at friendly forces, nor was there criminal intent involved."

CPT [REDACTED] told us that he believed he was given sufficient time to gather the facts and circumstances of the event and recalled he took approximately 14 days to complete the investigation. He testified that no one attempted to, or actually did, influence his findings or recommendations, and he was never asked to change any information in his draft report. He also stated that he had no concern during his investigation about interviewing MAJ [REDACTED] who outranked him, and that MAJ [REDACTED] never used his position against him. CPT [REDACTED] also testified that he never suspected anyone, subordinate or senior, attempted to conceal information or cover up any fact or misconduct.

Finally, with regard to the whereabouts of an intact copy of his draft report, CPT [REDACTED] testified that he believed he gave the binder containing his draft report and supporting documents to MAJ [REDACTED] or LTC [REDACTED], Executive Officer, 75th Ranger Regiment, and may have also given LTC [REDACTED] the witness statements and electronic copies of files related to the initial investigation, once LTC [REDACTED] was appointed as investigating officer. According to CPT [REDACTED] he then deleted the majority of the files related to his investigation from his thumb drive. He said he retained copies of his draft report on the thumb drive for a period of time, provided paper copies of those documents to BG Jones during his investigation, and then deleted the files from the thumb drive after meeting with BG Jones.

MAJ [REDACTED] provided legal advice on the AR 15-6 investigations of CPT [REDACTED] and LTC [REDACTED]. With regard to CPT [REDACTED]'s investigation, MAJ [REDACTED] testified that he was not informed immediately about CPL Tillman's death and the initial investigation. He told us that at the direction of COL Nixon, Commander, 75th Ranger Regiment, he went from the regiment's location to the battalion FOB approximately 3 to 6 days after the incident to provide legal advice to CPT [REDACTED] on his investigation. MAJ [REDACTED] recalled that by the time he arrived at the FOB, CPT [REDACTED] had already taken statements from some soldiers, and had photographs of the scene and diagrams of 2nd Platoon's configuration. MAJ [REDACTED] stated that he gave CPT [REDACTED] general guidance on conducting investigations, but did not discuss collecting or processing evidence from the scene, or collecting other physical evidence. He believed he remained at the FOB assisting CPT [REDACTED] for approximately 48 hours.

MAJ [REDACTED] told us that he understood LTC [REDACTED], Commander, 2nd Battalion, 75th Ranger Regiment, appointed CPT [REDACTED] as an AR 15-6 investigating officer, and that he was surprised to learn that COL Nixon also issued a written order appointing CPT [REDACTED] as the investigating officer. MAJ [REDACTED] testified that he did not recall drafting COL Nixon's memorandum appointing CPT [REDACTED] and offered that the 75th Ranger Regiment Personnel Officer may have prepared that memorandum. However, MAJ [REDACTED] acknowledged that he "probably" drafted the memorandum signed by COL Nixon appointing LTC [REDACTED] as the second AR 15-6 investigating officer.

MAJ [REDACTED] stated that at the time of CPT [REDACTED] and LTC [REDACTED]'s investigations, MAJ [REDACTED] did not know that Army regulations required a GCMCA to appoint the investigating officer in a case of fratricide. He testified he only learned of that requirement from LTC [REDACTED], Legal Advisor, Joint Task Force, when LTC [REDACTED] reviewed LTC [REDACTED]'s completed AR 15-6 report.

As to the initial investigation, MAJ [REDACTED] stated that his focus was assisting CPT [REDACTED] with packaging the information he had gathered in a way that answered COL Nixon's primary questions of whether the incident was friendly fire, and if so, how the incident happened. MAJ [REDACTED] said that without deleting information, he helped CPT [REDACTED] edit his work into a readable product that conveyed what CPT [REDACTED] found had happened during the incident.

MAJ [REDACTED] testified that after reviewing CPT [REDACTED]'s draft report, he agreed with CPT [REDACTED]'s conclusion that the incident was the result of friendly fire. However, MAJ [REDACTED] said he did not believe CPT [REDACTED] did a sufficient job interviewing CPT [REDACTED] and MAJ [REDACTED] on the issue of splitting the platoon, nor did CPT [REDACTED]'s report fully address responsibility for splitting the platoon or the role that action played in the incident. MAJ [REDACTED] attributed these deficiencies to CPT [REDACTED]'s lack of experience, and concluded there was a need for additional investigation.

MAJ [REDACTED] testified that he discussed his assessment of CPT [REDACTED]'s work with COL Nixon, who had also read CPT [REDACTED]'s draft report. MAJ [REDACTED] said the impression he received from that discussion was that COL Nixon was not satisfied with CPT [REDACTED]'s work since it did not fully address the issue of who was responsible for several of the decisions that led up to the shooting. As a result, COL Nixon directed LTC [REDACTED] to conduct another AR 15-6 investigation.

We also interviewed LTC [REDACTED] about CPT [REDACTED]'s investigation. LTC [REDACTED] related that COL Nixon concurred with LTC [REDACTED]'s decision to conduct an AR 15-6 investigation into the incident and to provide a report to COL Nixon. LTC [REDACTED] said that as the 2nd Battalion Commander, and based on his experience investigating other matters, he believed at the time he had the authority to direct a commander's inquiry or informal AR 15-6 investigation into the death of CPL Tillman. He added that while he had no prior experience with friendly fire investigations and was not aware of the requirement that a GCMCA must appoint the investigator, he believed he was acting as a responsible commander by investigating the matter.

LTC [REDACTED] testified that he selected CPT [REDACTED] as investigating officer because he was the most senior battalion member available to him at the FOB, and he believed that CPT [REDACTED] was qualified to conduct the investigation. LTC [REDACTED] said that at the start of the investigation, he instructed CPT [REDACTED] to find the truth about what happened in the death of CPL Tillman, told CPT [REDACTED] he suspected fratricide, and noted several concerns about possible contributing factors.

LTC [REDACTED] recalled that CPT [REDACTED] gave him what CPT [REDACTED] considered his final draft report, which included several pages of findings and diagrams. According to LTC [REDACTED], the draft report needed to be edited and finalized into a more readable form; however, it was clear to him from the information contained in the draft report that CPL Tillman died by friendly fire. LTC [REDACTED] said he believed it was important to get the information to COL Nixon promptly, so he forwarded the draft by e-mail message to COL Nixon for review. LTC [REDACTED] testified that almost immediately, COL Nixon instructed LTC [REDACTED] not to publish CPT [REDACTED]'s submission, and informed LTC [REDACTED] that the 75th Ranger Regiment would appoint another investigating officer further removed from the situation, who could examine a broader view of events.

In his testimony to this Office, COL Nixon said he directed LTC [REDACTED] to initiate an investigation into CPL Tillman's death, that LTC [REDACTED] chose CPT [REDACTED] as the investigating officer, and that COL Nixon agreed with the selection. COL Nixon stated that he followed up by sending a memorandum to CPT [REDACTED] appointing him as an AR 15-6 investigating officer and identifying the scope of the investigation. COL Nixon told us that CPT [REDACTED] was conducting the

AR 15-6 investigation on his behalf, and that MAJ [REDACTED] or LTC [REDACTED] would have prepared the appointment memorandum for his signature. COL Nixon further testified that he wanted the 2nd Battalion to initiate the investigation for a number of reasons: the site of the incident was difficult to get to and a long distance from the 75th Ranger Regiment Headquarters, it would have taken 3 to 4 days to get an investigating officer from the Regiment to the site to start work, the 2nd Battalion was already at the site, and it seemed best to get the investigation started while the incident was fresh in the soldiers' minds.

With regard to his appointment of officers to investigate CPL Tillman's death, COL Nixon testified that he had never appointed an investigating officer in a friendly fire incident and was not aware that Army regulations required a GCMCA to make such appointments. Similarly, he said he was not aware of the requirement to notify the Army Safety Center so that a separate safety investigation could be initiated. COL Nixon stated that he consulted both MAJ [REDACTED] and LTC [REDACTED] to determine what actions he was required to take as commander. He said based on guidance he received from the attorneys and LTC [REDACTED], he thought he was doing what was required, and was within his authority to direct the investigation of CPL Tillman's death and appoint investigating officers.

COL Nixon stated that the main focus of CPT [REDACTED]'s investigation was to determine whether the event was friendly or enemy fire and how it happened. Though the appointment memorandums only mentioned CPL Tillman, COL Nixon noted that neither CPT [REDACTED]'s nor LTC [REDACTED]'s investigation was limited to the death of CPL Tillman and should have also encompassed the death of the AMF soldier and wounding of 1LT [REDACTED] and SPC [REDACTED].

COL Nixon said that when he reviewed CPT [REDACTED]'s draft report he did not find the work thorough or complete and concluded further investigation by someone more senior from the regimental level was required. He said CPT [REDACTED] focused on events leading up to the incident, - to include the individual actions of the platoon leader, rather than the friendly fire incident itself. Additionally, he said CPT [REDACTED] failed to explain how he reached his conclusions, and made assertions and stated conclusions that were not supported by the witness statements. COL Nixon said that after reading CPT [REDACTED]'s draft report it was still not clear in his mind what happened on the ground that day, and, given the firing in multiple directions during the incident, the possibility existed that friendly fire could have been mixed with enemy fire. As a result of these deficiencies, COL Nixon said he pulled the investigation to the regimental level and appointed LTC [REDACTED] to investigate the matter. COL Nixon stated that he did not consider CPT [REDACTED]'s effort a completed investigation because he did not approve CPT [REDACTED]'s draft report before pulling the investigation to the regimental level. COL Nixon opined that in hindsight, CPT [REDACTED] did not have the experience to investigate the matter.

COL Nixon also acknowledged that within days after CPL Tillman's death, he instructed Ranger personnel not to release outside of the unit information that there was an ongoing friendly fire investigation into the incident. He explained that his underlying intent was to limit the release of information until they understood what occurred during the incident. He said that he was concerned that any leaked information would appear in the press before the investigation was completed, and before the Army could officially inform the Tillman family of the investigation's results.

We found that as a result of the desire to keep information close-hold, the key fact that friendly fire was suspected was not passed to the AFME or CID at the time. Evidence established that in conducting the autopsy of CPL Tillman's remains on April 27, 2004, the AFME found the grouping of the bullet wounds in close proximity on CPL Tillman's forehead to be inconsistent with wounds expected from a firefight with the enemy at a distance. To resolve his concerns on the matter, the AFME sought additional information on CPL Tillman's death from Army Casualty and Memorial Affairs Operations Center (CMAOC). When that office had no new information, the AFME asked CID for assistance. In responding to a CID request on behalf of the AFME, MAJ [REDACTED] disclosed on April 30, 2004, that the unit had an open investigation into the "tactical environment" and "circumstances surrounding Ranger Tillman's death," but did not disclose they suspected friendly fire. MAJ [REDACTED] reported the details of his meeting to LTC [REDACTED] the Joint Task Force legal advisor, who complimented MAJ [REDACTED] on his handling of the matter and recommended CPT [REDACTED] interview the medical examiner conducting the autopsy.

Similarly, CPT [REDACTED] did not disclose to the AFME that the unit suspected friendly fire when he requested a copy of the preliminary autopsy for inclusion in his report. CPT [REDACTED] explained to us that he did not tell the AFME about suspected friendly fire because he did want to sensationalize the matter before his report was completed. This failure to provide relevant information about suspected friendly fire hindered the AFME from accomplishing the forensic investigation into the cause and manner of death and delayed the completion of the final autopsy report until July 22, 2004.

COL Nixon told us that throughout the processes related to CPL Tillman's death, he wanted to do what was right for the family, and believed it was proper that they first heard about the matter from the Army rather than from another source. He testified that he was not aware that the AFME requested information about CPL Tillman's death from CPT [REDACTED] or MAJ [REDACTED] but, had he known, he would have provided the information.

Finally, COL Nixon stated that he and others made a number of unintentional mistakes throughout the process, largely because they were not aware of specific regulatory requirements. He highlighted that he made decisions in this case based on information he had available at the time, and said that from the beginning and throughout the process he made it clear to his staff that his intent was to do the right thing legally, morally, and ethically, to include doing what was right for the family and the unit. He noted that throughout the process, the 75th Ranger Regiment was operating with limited resources in a combat zone at multiple locations in the CENTCOM area of responsibility.

Collection and Destruction of Evidence. Additionally, we interviewed witnesses about the collection and destruction of physical evidence related to the incident. 1SG [REDACTED] testified to us that at sunrise on April 23, 2004, he and PFC [REDACTED] returned to the vicinity of the spur where he had PFC [REDACTED] point out what had happened the day before. 1SG [REDACTED] said he then walked the scene, to include down on the road where he observed bullet casings from 5.56 mm and .50 caliber rounds, and up on the spur where he pulled a .50 caliber bullet from the rock behind which CPL Tillman had been positioned. According to 1SG [REDACTED], he and Command Sergeant Major [REDACTED] found additional physical remains, which 1SG [REDACTED] placed in a plastic



zip lock bag, secured in an empty ammunition can, and gave to a unit chaplain to take to the battalion FOB medical facility to be added to CPL Tillman's remains. 1SG [REDACTED] also said he took approximately 10 digital photographs of the scene, and later gave the disk containing the photographs and the .50 caliber bullet to CPT [REDACTED]. 1SG [REDACTED] said that he did not know what CPT [REDACTED] did with the .50 caliber round.

With regard to CPL Tillman's gear, 1SG [REDACTED] testified that the blood soaked MOLLE vest (which was worn over top of body armor) and Desert Camouflage Uniform shirt and pants were in a black plastic bag stored temporarily in the A Company supply tent at the battalion FOB. SFC [REDACTED], Platoon Sergeant, 3rd Platoon, A Company, transported CPL Tillman's MOLLE vest and helmet in the bag from the field to the FOB where he brought it to the supply tent. CPL Tillman's uniform was likewise taken to the supply tent. 1SG [REDACTED] recalled that on approximately April 25 or 26, 2004, the supply clerk asked what he should do with the items as they were giving off a strong odor. 1SG [REDACTED] told us that given the condition of the items, it was unsanitary and inappropriate to continue to store them in the tent with other soldiers, so he planned to dispose of them.

1SG [REDACTED] testified that as SFC [REDACTED] and he examined and inventoried the equipment, he sent for CPT [REDACTED] to show him the equipment. According to 1SG [REDACTED] he and SFC [REDACTED] observed holes in the MOLLE vest produced from 5.56 mm rounds and a bullet hole through the fuse head of a flash bang grenade. 1SG [REDACTED] said that he also found green-tipped bullet fragments -- small pieces of bullet jacketing with green paint on them -- in a vest pocket and on the orange signal panel stored in another pocket. 1SG [REDACTED] told us that seeing the green tips reaffirmed his earlier conclusion that CPL Tillman was killed by friendly fire.

1SG [REDACTED] stated that he and SFC [REDACTED] showed the MOLLE vest, uniform, grenade, and bullet fragments to CPT [REDACTED]. CPT [REDACTED] asked CPT [REDACTED] if he needed any of the items for his investigation; and told CPT [REDACTED] that they planned to burn the MOLLE vest and uniform if they were not needed. According to 1SG [REDACTED], CPT [REDACTED] said that he did not need the MOLLE vest or uniform as he already had everything he needed. 1SG [REDACTED] said he then burned the vest and uniform.

1SG [REDACTED] testified to us that he also offered the bullet fragments to CPT [REDACTED], but did not recall if he took them. He told us that he did not offer the flash bang to CPT [REDACTED] since it was still live, but instead directed SFC [REDACTED] to take it to Explosive Ordnance Disposal personnel to be destroyed. With regard to CPL Tillman's helmet, which had also been stored in the plastic bag with the MOLLE vest, 1SG [REDACTED] and SFC [REDACTED] stated that they washed it off and returned the helmet to the A Company supply clerk. 1SG [REDACTED] said they did not ask CPT [REDACTED] before cleaning the helmet.

In response to our question, 1SG [REDACTED] denied that he burned the MOLLE vest and uniform to conceal that CPL Tillman's death was caused by friendly fire. 1SG [REDACTED] stated that it was clear to him at that point that the platoon's friendly fire killed CPL Tillman. He said after offering the items to CPT [REDACTED] to be included as part of his investigation and being declined, there was no need to retain the items.

On the subject of CPL Tillman's Ranger Body Armor, 1SG [REDACTED] First Sergeant, Headquarters and Headquarters Company, 2nd Battalion, testified that on the evening of April 22, 2004, at the battalion FOB, he was summoned to the temporary morgue in the Forward Surgical Team facility to identify CPL Tillman's remains and to take custody of CPL Tillman's gear. 1SG [REDACTED] said he identified CPL Tillman, and removed only the gloves CPL Tillman was wearing and his Ranger Body Armor, which he believed had several pouches attached. According to 1SG [REDACTED], there was no helmet or weapon with CPL Tillman, and when 1SG [REDACTED] left, CPL Tillman's boots and Desert Camouflage Uniform shirt and pants were still on his body. 1SG [REDACTED] said he placed the Ranger Body Armor in a plastic bag and the last he saw of it was when he gave the bag to CPT [REDACTED], Supply Officer, 2nd Battalion.

CPT [REDACTED] confirmed in testimony that 1SG [REDACTED] gave him CPL Tillman's Ranger Body Armor with several pouches attached. He said he also recalled receiving a Desert Camouflage Uniform shirt and pair of pants. CPT [REDACTED] stated that because the equipment and clothing had blood and other bodily material on it, he considered it a biohazard, and he and the staff sergeant who worked with him in supply [whom we identified as SSG [REDACTED]] burned the Ranger Body Armor and clothing within 12 to 24 hours of receiving it. He testified that he patted down the items to ensure any unit property was removed before placing the items in the 55-gallon burn barrel for destruction.<sup>13</sup>

Witnesses testified that CPL Tillman maintained a personal journal and that, after his death, unit personnel searched for the journal but failed to locate it. SFC [REDACTED] and 1SG [REDACTED] testified they searched CPL Tillman's belongings, to include his rucksack, duffle bags, and equipment, without finding the journal. 1SG [REDACTED] further stated that before burning the MOLLE vest and uniform, he put on rubber gloves and went through all of the pockets on the Desert Camouflage Uniform shirt and pants and the pouches of the MOLLE vest several times specifically looking for the journal, but did not find it.

Two other Rangers each reported locating a memo pad or notebook in equipment CPL Tillman was wearing at the time of his death. SSG [REDACTED] who assisted CPT [REDACTED] stated he found a small memo pad in the pocket of CPL Tillman's Ranger Body Armor vest cover. He described the pad as an olive drab colored field weatherproof memo pad approximately two inches by four inches by one-quarter inch thick with light green pages marked with grid lines. He said he did not see a name on the pad and only examined the first few pages which contained what appeared to be hand written notes from an operational briefing. SSG [REDACTED] stated that because of the operational information in the memo pad, he burned it along with the clothing and Ranger Body Armor. Additionally, SFC [REDACTED] recalled finding a notebook, pens, and pencils in one of the pouches of CPL Tillman's MOLLE vest. He testified that he placed the items in a zip lock bag, which he gave to SFC [REDACTED]. When asked about this, SFC [REDACTED] stated he did not receive those items from SFC [REDACTED] and would have remembered such an event since he had been searching for the journal. We could not resolve this discrepancy in testimony.

<sup>13</sup> We were unable to resolve the discrepancy in testimony indicating that CPL Tillman's uniform was burned on two occasions, first by CPT [REDACTED] and SSG [REDACTED], and later by 1SG [REDACTED].

CENTCOM Involvement. We also interviewed a number of witnesses from CENTCOM with regard to the role of the Combatant Commander in investigating friendly fire incidents. According to testimony from three judge advocates who served in the CENTCOM legal office at the time -- the Staff Judge Advocate, the Deputy Staff Judge Advocate, and the Assistant Staff Judge Advocate responsible for reviewing friendly fire investigations -- the command had an established procedure for directing friendly fire investigations. On receipt of notification of a suspected friendly fire incident, CENTCOM attorneys worked through the Chief of Staff to immediately dispatch a message to the Service component commander directing him to appoint an investigating officer to conduct an investigation. CENTCOM established suspense dates for each investigation, tracked investigation status in a log, and required the Chief of Staff's approval for any requested extensions. The investigation of CPL Tillman's death did not follow this process.

The preponderance of witness testimony established that the earliest date on which CENTCOM attorneys were aware that friendly fire was suspected in the death of CPL Tillman was May 25, 2004. On that day, LTC [REDACTED] delivered to the CENTCOM Deputy Staff Judge Advocate at the Command's Forward Headquarters in Qatar, a copy of LTC [REDACTED]'s completed AR 15-6 investigation endorsed by Major General (MG) Stanley McChrystal, U.S. Army, Commander, Joint Task Force. LTC [REDACTED] told us that he did not brief the CENTCOM attorneys earlier on the friendly fire investigation of CPL Tillman's death because when he attempted to the Staff Judge Advocate was not available, and LTC [REDACTED] did not know whether the other attorneys had the required security access. LTC [REDACTED] also stated he was concerned about leaks of the information, and he did not want to be blamed as the source.

The CENTCOM Deputy Staff Judge Advocate transmitted the report to CENTCOM Headquarters (Rear) in Tampa, Florida, for review. Pursuant to a delegation of authority from General (GEN) John P. Abizaid, U.S. Army, Commander, CENTCOM, who was forward in the CENTCOM area of operations at the time, Major General (MajGen) John Sattler, U.S. Marine Corps, Director of Operations, CENTCOM, signed a memorandum dated May 28, 2004, approving the investigation.

With regard to his knowledge of CPL Tillman's death, on interview with us, GEN Abizaid testified that MG McChrystal informed him of CPL Tillman's death while they were in Qatar for a meeting at the time CPL Tillman was killed. GEN Abizaid said that he understood the action resulted in other casualties, but he received no details and did not know friendly fire was suspected. With regard to MG McChrystal's April 29, 2004, "Personal For" (P4) message notifying GEN Abizaid and others that a pending investigation "will find that it is highly possible that Corporal Tillman was killed by friendly fire," GEN Abizaid told us there was a delay of 10-20 days in his receipt of the message because he was in Iraq. GEN Abizaid said that he found out about the suspicion of fratricide sometime between May 6-13, 2004, while he was forward in Iraq, when the P4 message caught up to him. He told us that after receiving the message, he did not question the content, but spoke to his staff only about the untimely delivery of the message. The CENTCOM Staff Judge Advocate confirmed that GEN Abizaid did not receive the P4 in a timely manner and had discussed that issue with his staff.

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In testimony, neither MajGen Sattler nor GEN Abizaid was aware of the requirement in DoDI 6055.7 that the Combatant Commander convene the legal investigation into friendly fire accidents. However, GEN Abizaid testified that he thought a DoD directive required him as the combatant commander to review the investigation where friendly fire was suspected, but he was not certain whether he had delegated to subordinate commanders his authority to convene legal investigations into friendly fire incidents. Our interviews and records reviews disclosed no written guidance from CENTCOM implementing the requirements of DoDI 6055.7.

Safety Investigation. On August 17, 2004, through her casualty assistance officer, Mrs. [REDACTED], CPL Tillman's widow, requested a copy of the Army safety investigation report on the incident. As a result of that request, Army officials discovered that no commander in CPL Tillman's chain of command had notified the Army Safety Center of the suspected fratricide. LTG Kensinger, the first GCMCA in CPL Tillman's administrative chain of command, did not appoint a safety investigation board until after his command notified the Army Safety Center on October 4, 2004 of CPL Tillman's friendly fire death. By undated memorandum, LTG Kensinger appointed a five-member centralized accident investigation board, whose president and recorder were from the Army Safety Center. LTG Kensinger ultimately approved the board's December 2004 report.

#### Discussion of CPT [REDACTED]'s Investigation

We identified three critical errors at the outset of the investigation process that significantly contributed to the inaccuracies, misunderstandings, and perceptions of concealment that led to our review: the failure of CPL Tillman's chain of command to notify the Army Safety Center of suspected fratricide, the failure of LTG Kensinger to appoint a safety board to investigate the fratricide incident, and the failure of the regiment to notify CENTCOM of the suspected fratricide in order that CENTCOM could convene a legal investigation.

We determined that COL Nixon bore primary accountability for the failures to notify required organizations. For an accident involving a fatality, USASOC Regulation 385-1 requires the commander to ensure immediate notification of the USASOC Emergency Operations Center and USASOC Safety Office. COL Nixon failed to make these notifications or to direct his staff to do so. Further, AR 385-40 requires the commander who first became aware of a fatal accident to immediately notify, through his existing chain of command, the Commander, Army Safety Center. Evidence established that not later than April 25, 2004, COL Nixon notified BG Howard Yellen, Deputy Commander, USASOC, who, in turn, notified LTG Kensinger of suspected fratricide. However, neither notified the USASOC Safety Office and no one from USASOC notified the Army Safety Center. While AR 385-40 permits the senior tactical commander to waive immediate notification in a fatal combat accident, we found that COL Nixon was not aware of the reporting requirement or the waiver authority.

We also determined LTG Kensinger failed to timely appoint a safety investigation board to examine the incident as he was required to do by Army regulation. AR 385-40, paragraph 1-9, directs the commander having GCMCA over the unit responsible for the operation or personnel involved in the accident to appoint the safety investigation board. As the Army commander with GCMCA over the 75th Ranger Regiment (the unit responsible for the personnel involved),

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LTG Kensinger was obliged to appoint a safety investigation board of at least three members to investigate the friendly fire death of CPL Tillman. LTG Kensinger knew that friendly fire was suspected no later than April 25, 2004, yet failed to appoint a safety investigation board until well after Mrs. [REDACTED] requested a copy of a completed safety report in August 2004.

Timely notification to the Commander, Army Safety Center, as required by AR 385-40, was vital to the fidelity of the investigative process in this case. From a practical standpoint, the lack of notice prevented the Commander, Army Safety Center, from discussing with LTG Kensinger his duty to appoint a safety investigation board comprised of members "from organizations other than the activity or unit incurring the accident." More significantly, without notice of the incident, the Commander, Army Safety Center, could not assess whether Safety Center involvement in the investigation was warranted. That assessment could have directed a centralized investigation that placed trained, experienced Safety Center investigators on the investigation board appointed by LTG Kensinger. We note that the safety investigation of the incident which was ultimately completed in late 2004 employed a centralized accident investigation board presided over by an officer from the Army Safety Center.

Additionally, without timely notification that friendly fire was suspected, GEN Abizaid and his staff at CENTCOM could not convene a legal investigation as required by DoDI 6055.7. CENTCOM had an established procedure in place to direct and track friendly fire investigations, and, based on past practice, had they been notified they would have convened an investigation in this case. We found however, that while CENTCOM had that procedure, CENTCOM failed to issue that procedure and additional implementing guidance required by DoDI 6055.7 in writing.

In our view, a GCMCA appointed safety investigation compliant with Army regulations would have been conducted by a board of trained, experienced investigators who would have collected, processed, and retained forensic evidence, and would have coordinated with other investigative authorities if warranted. Since both DoD and Army guidance give a safety investigation primacy over a legal investigation, an initial safety investigation in this case would have helped avoid a number of the deficiencies in the initial legal investigations discussed below. Similarly, a legal investigation convened in accordance with CENTCOM established practice, would have directed the senior Army component commander in the CENTCOM operational area to appoint an officer to investigate. That senior Army commander would have customarily been a GCMCA with the authority and span of control to appoint an officer of appropriate seniority, objectivity, and experience to investigate this complex event. Both a GCMCA appointed safety board and legal investigation would have been independent of CPL Tillman's immediate chain of command and, therefore, not vulnerable to accusations that command Service members were shielded from culpability.

In detailing our findings and conclusions concerning CPT [REDACTED] and LTC [REDACTED]'s administrative investigations of the friendly fire incident, we acknowledge the context under which the officers were operating. The time periods to conduct the investigations were short and the investigations were conducted while Ranger units, including CPL Tillman's platoon, were engaged in ongoing combat missions in a hostile area. It was within this environment that both officers addressed the fundamental issue with which they were charged: whether CPL Tillman's death was the result of friendly fire. Both officers' core findings of fact -- that friendly fire from

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soldiers in SSG [REDACTED]'s vehicle killed CPL Tillman and the AMF soldier, and wounded 1LT [REDACTED] and SPC [REDACTED] -- have been corroborated by successive investigations, to include the most recent investigation by Army CID.

Nevertheless, we concluded CPT [REDACTED]'s investigation was deficient in a number of areas.

- LTC [REDACTED] and COL Nixon lacked the authority to appoint CPT [REDACTED] to investigate the suspected friendly fire incident. LTC [REDACTED] orally appointed CPT [REDACTED] as investigating officer on April 23, 2004, and COL Nixon appointed CPT [REDACTED] in writing on April 29. Neither appointing officer was a GCMCA, as required by AR 15-6 and AR 600-8-1 to be the appointing authority for a friendly fire legal investigation. Additionally, neither officer made his appointment at the direction of the Commander, CENTCOM, who was charged by DoDI 6055.7 to convene the legal investigation into a friendly fire incident.
- CPT [REDACTED] failed to visit the scene to visually reenact the incident, secure physical evidence, take photographs, or obtain accurate measurements. AR 15-6 charges an investigating officer to "ascertain the facts" and "ascertain and consider the evidence on all sides of each issue, thoroughly and impartially." Given the serious nature of any friendly fire case, in general, and the complexity of this case, in particular, it was incumbent on CPT [REDACTED] to visit the scene of the incident to gather evidence critical to a comprehensive investigation.
- CPT [REDACTED] failed to interview a number of relevant witnesses, to include a seventh soldier riding in SSG [REDACTED]'s vehicle during the incident, two snipers identified to CPT [REDACTED] in the witness statements of SSG [REDACTED] and SFC [REDACTED] three of the four soldiers in the vehicle directly behind SSG [REDACTED]'s vehicle, and SPC [REDACTED]. While an investigating officer has the discretion to determine which witnesses to interview, the questioning of these particular witnesses was both logical and critical to a comprehensive investigation. Failure to interview these witnesses resulted in a less than thorough investigation.
- CPT [REDACTED] failed to preserve or document real evidence. AR 15-6 directs the investigating officer to preserve real evidence and include in his report accurate written descriptions or photographs of such evidence. Real evidence -- to include CPL Tillman's Ranger Body Armor, MOLLE vest, Desert Camouflage Uniform shirt and pants, helmet, a .50 caliber bullet, and green-tipped bullet fragments -- were lost or destroyed without even being photographed or forwarded to the AFME. Retaining such evidence would have bolstered the credibility of the investigation itself, while the forensic examination of such evidence would have strengthened the conclusion that CPL Tillman died as the result of friendly fire and could have more definitively



determined which weapons caused his death. Additional unit personnel were equally accountable for failing to comply with applicable guidance on the proper handling of CPL Tillman's equipment and uniform.

- Joint Publication 4-06 requires that all clothing and unserviceable equipment be left on the soldier's remains, and only serviceable organizational and government equipment be removed. Contrary to this direction, unidentified personnel removed from CPL Tillman his unserviceable MOLLE vest and uniform, and 1SG [REDACTED] removed CPL Tillman's unserviceable Ranger Body Armor. Those items should have been left on CPL Tillman's remains to assist the AFME in carrying out his duties.
- AR 735-5 authorizes the documented destruction of contaminated clothing and equipment at the direction of medical authority. Without such documentation or direction, CPT [REDACTED] burned CPL Tillman's Ranger Body Armor, and 1SG [REDACTED], with the knowledge of CPT [REDACTED], burned CPL Tillman's MOLLE vest and uniform.
- CPT [REDACTED] was not senior in rank to several officers who were the subject of the investigation. AR 15-6 requires the investigating officer to be senior in rank to any person whose conduct or performance may be investigated. During the course of his investigation, CPT [REDACTED] interviewed his senior, MAJ [REDACTED], and two contemporaries, CPTs [REDACTED] and [REDACTED]. CPT [REDACTED] failed to raise this issue to the appointing authority during the investigation, as he was required to do by AR 15-6. Further, both LTC [REDACTED] and COL Nixon knew or should have known at the time each appointed CPT [REDACTED] that the investigation would require interviews with, and examining the actions of, the major and captains.
- CPT [REDACTED] was denied the opportunity to complete witnesses' interviews before the witnesses had the opportunity to review and discuss the incident as a group on April 25, 2004, during MAJ [REDACTED]'s After Action Review.
- CPT [REDACTED] failed to address inconsistencies among witness statements, to include whether SSG [REDACTED] got out of his vehicle to shoot at the AMF soldier, CPL Tillman, and PFC [REDACTED]; whether SSG [REDACTED]'s vehicle stopped at any point between passing the jinga truck and stopping past the village; and whether the firing from SSG [REDACTED]'s vehicle stopped for any period of time between exiting the canyon and its ultimate cease fire.
- CPT [REDACTED] and MAJ [REDACTED], with the apparent concurrence of LTC [REDACTED], withheld from the AFME and CID the fact that friendly fire was suspected in the death of CPL Tillman, thereby impeding completion of the AFME's forensic investigation and final autopsy report.

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## 2. LTC [REDACTED]'s Investigation

### Facts

After concluding CPT [REDACTED]'s investigation was deficient, COL Nixon appointed LTC [REDACTED] as AR 15-6 investigating officer into the events and circumstances of CPL Tillman's death. COL Nixon's May 8, 2004, appointment memorandum directed LTC [REDACTED] to submit findings and recommendations with regard to

- Any significant events that occurred before, during, and after CPL Tillman's death;
- Any circumstances that may have led to or contributed to CPL Tillman's death; and
- Any evidence that indicates CPL Tillman's death was the result of 'friendly fire' or fratricide.

LTC [REDACTED]'s undated report of investigation was completed 8 days later on May 16, 2004, and included statements of 19 soldiers. Eighteen of those statements were originally taken by CPT [REDACTED] as part of his investigation and incorporated into LTC [REDACTED]'s report. The nineteenth statement came from 1LT [REDACTED]. LTC [REDACTED] asked additional questions of 14 of the original 18 witnesses, appending their responses to their previous statements.

The report began with the overall finding that "CPL Tillman's death was the result of fratricide during an extremely chaotic enemy ambush," and listed three major contributing factors: insufficient command and control measures established at the headquarters, company, and platoon level; failure to execute fire control/fire distribution procedures to standard at the squad levels; and failure to positively identify targets as friend or foe at the individual level. LTC [REDACTED] followed his detailed narrative findings with nine conclusions, the majority of which dealt with splitting and tracking the platoon. His three conclusions directly addressing the shooting of friendly personnel are summarized as follows:

- SSG [REDACTED] failed to maintain his situational awareness and became "tunnel visioned" on the AMF soldier he engaged. SSG [REDACTED] failed to properly identify his target, who was 200 meters away, and focused only on the AK-47 muzzle flashes and the shape of the figure holding the weapon. SSG [REDACTED] failed to direct the fires of his squad, who fired without his command or positive target identification.
- SSG [REDACTED] was not in control of his squad's fires. For at least two of SSG [REDACTED]'s machine-gunnings, it was their first fire-fight. SSG [REDACTED] should have been aware of this fact, and closely supervised where his M2 .50 caliber and M240B machine guns were firing. His failure to do so resulted in the deaths of CPL Tillman and the AMF soldier, and the serious wounding of 1LT [REDACTED] and SPC [REDACTED].

- SPCs [REDACTED], [REDACTED], and [REDACTED] failed to positively identify their respective targets and exercise good fire discipline. Their collective failure to exercise fire discipline, by confirming the identity of their targets resulted in the shootings of CPL Tillman, 1LT [REDACTED], and SPC [REDACTED] and the directing of fire on SSG [REDACTED] and his squad.

Finally, in his report, LTC [REDACTED] recommended disciplinary action against seven Rangers, to include holding SSG [REDACTED] "fully accountable for dereliction of duty as a Squad Leader in a combat environment."

In sworn testimony to this Office, LTC [REDACTED] stated that he received no additional verbal or written orders or guidance from any superiors pertinent to his appointment. He explained that while his focus was CPL Tillman's death, he believed he was also required to investigate and report on the killing of the AMF soldier and the wounding of 1LT [REDACTED] and SPC [REDACTED].

LTC [REDACTED] said that he had no formal training in conducting investigations but had conducted numerous AR 15-6 investigations on issues such as "property damage" throughout his military career. He said that based on that experience, he was familiar with the contents of AR 15-6, and did not review it or any other Army regulations in conjunction with his investigation. He added that he relied on MAJ [REDACTED], who was assisting him, to be knowledgeable of applicable regulations. According to LTC [REDACTED] he did not go to the scene of the incident since he believed CPT [REDACTED] had done so, and, on the advice of MAJ [REDACTED] did not read any portion of CPT [REDACTED]'s draft report except for the statements taken from soldiers.

LTC [REDACTED] stated that he was not aware that physical evidence had been collected, turned over to CPT [REDACTED] and not retained. Like CPT [REDACTED], LTC [REDACTED] said that he based his findings and conclusions on the statements that had been provided, rather than physical evidence or measurements. LTC [REDACTED] also told us he believed SSG [REDACTED]'s actions were grossly negligent, and he believed he used those words in his report. However, our review of LTC [REDACTED]'s report determined that he did not make that assertion.

We interviewed LTC [REDACTED], who served as Legal Advisor for the Joint Task Force, with regard to the appointment of LTC [REDACTED] as the investigating officer in this case. LTC [REDACTED] related he was aware that neither COL Nixon nor MG McChrystal was a GCMCA and therefore in accordance with AR 15-6, could not be the appointing authority for this type of investigation. LTC [REDACTED] testified that "to the best of [his] recollection" he called CENTCOM and briefed MAJ [REDACTED], U.S. Army, Assistant Staff Judge Advocate, that he had a "high visibility, high profile investigation," or a "high visibility, high profile, potential friendly fire investigation." LTC [REDACTED] said that he told her that since he did not have a GCMCA available, he planned to have a colonel who was a commander appoint the investigating officer and forward the completed report to the GCMCA for approval. LTC [REDACTED] testified that he did not tell MAJ [REDACTED] that CPL Tillman was the individual who had been killed.

LTC [REDACTED] also related that once LTC [REDACTED] completed his investigation, he conducted an extensive legal review of the report and allied documents and spent several hours with LTC [REDACTED] discussing his findings and recommendations. LTC [REDACTED] explained that LTC [REDACTED]'s investigation was ultimately reviewed and endorsed by COL Nixon and MG McChrystal and finally approved by MajGen Sattler on behalf of GEN Abizaid.

On interview with us, MAJ [REDACTED] did not corroborate LTC [REDACTED]'s recollection. She testified that she remembered LTC [REDACTED] calling her in Qatar to ask a general question about CENTCOM reporting requirements; however, she did not recall LTC [REDACTED] mentioning a high profile friendly fire investigation to which a colonel in command would appoint the investigating officer and forward the results. MAJ [REDACTED] clarified that while she did not recall such a conversation with LTC [REDACTED], "it could have happened" and "wouldn't have been out of the ordinary."

#### Discussion of LTC [REDACTED]'s Investigation

We concluded LTC [REDACTED]'s investigation was deficient in a number of respects, to include several deficiencies shared with CPT [REDACTED]'s investigation.

- COL Nixon lacked the authority to appoint LTC [REDACTED] to investigate the suspected friendly fire incident because he was not a GCMCA, and did not make the appointment at the direction of the Commander, CENTCOM.
- LTC [REDACTED] failed to visit the scene to visually reenact the incident, secure physical evidence, take photographs, or obtain accurate measurements. LTC [REDACTED] assumed CPT [REDACTED] had visited the scene, but did not interview CPT [REDACTED] to clarify this or other matters.
- LTC [REDACTED] failed to identify and interview relevant witnesses, to include the same witnesses overlooked by CPT [REDACTED].
- LTC [REDACTED] failed to address the same inconsistencies in witness statements overlooked by CPT [REDACTED], to include whether SSG [REDACTED] got out of his vehicle to shoot, whether SSG [REDACTED]'s vehicle stopped, and whether the firing from SSG [REDACTED]'s vehicle stopped for any period of time. LTC [REDACTED] also failed to address a significant factual inconsistency in statements he obtained. SSG [REDACTED] stated that he was 200 meters away from CPL Tillman's position when he fired, while SPC [REDACTED] (who was in SSG [REDACTED]'s vehicle) told LTC [REDACTED] they were 100 meters away.
- LTC [REDACTED] failed to address inconsistencies between his conclusions and those in CPT [REDACTED]'s report. The most significant being the distance from which SSG [REDACTED] and his squad fired on CPL Tillman's position (200 meters according to LTC [REDACTED] versus 100 meters according to CPT [REDACTED]).

- LTC [REDACTED] drew conclusions in his report that were not based on evidence included with the report. For example, in his section labeled "Enemy Composition and Disposition during the Ambush," LTC [REDACTED] stated that one group of enemy personnel involved in the ambush consisted of "3-6 ACM [anti-coalition members] and a mortar tube with six rounds was positioned on the southern ridge. Group 2, consisting of 6-8 ACM with small caliber weapons positioned on the northern ridge. Both groups were able to see the movement of Serial 2 into the ambush kill zone and were able to over watch the village that 1LT [REDACTED] and SSG [REDACTED] were attempting to command, control and provide over watching fires from." These details were not documented in LTC [REDACTED]'s investigation.

### 3. BG Jones' Investigation

#### Facts

On November 3, 2004, because of continuing concerns regarding CPL Tillman's death expressed by the Tillman family and Members of Congress, Mr. R. L. Brownlee, then Acting Secretary of the Army, directed that LTG Kensinger conduct a third investigation. By memorandum dated November 8, 2004, LTG Kensinger appointed BG Gary M. Jones, Commander, U.S. Army Special Forces Command, as Investigating Officer. Among other matters, he directed that BG Jones' investigation include:

- a timeline of events depicting when the nature of a fratricide incident became known at various levels of the chain of command;
- copies of relevant reports made to and by the chain of command; and
- a determination of whether before October 2004, any responsible command knew or was aware of any reluctance to report the true facts of the incident.

LTG Kensinger also directed BG Jones to "address to the greatest extent practicable, each of Mrs. [REDACTED]'s questions in her 5 October 2004 email to Senator McCain." In that regard, Mrs. [REDACTED] posed a series of questions regarding the death of her son. The appointment memorandum directed that BG Jones' responses to those questions provide "a better understanding of how the command dealt with this incident publicly, in the press, and privately, with the family," while explaining "the command relationships between all relevant organizations that did or should have reported, investigated, and processed requisite actions upon the discovery of a potential fratricide event." In sworn testimony, BG Jones stated that he did not receive any instructions or orders from LTG Kensinger or any other Army or DoD leader, apart from the appointment memorandum.

LTG Kensinger appointed LTC [REDACTED] Staff Judge Advocate, U.S. Army Special Forces Command, to serve as legal advisor during the investigation. In his testimony to us, BG Jones stated that he considered LTC [REDACTED] the best choice for this assignment because LTC [REDACTED] had been a judge and had a good legal understanding of, "what we should tackle." Additionally, BG Jones noted that LTC [REDACTED] "was not going to bend to any type of influence or pressure that might be brought to bear on him."

Based on testimony and the investigative file, we provide the following summary of BG Jones' investigative activities from the date of his appointment to January 7, 2005, when he issued his report:

- He received and examined the appointment letter, read AR 15-6, and reviewed documentation compiled during the investigations conducted by LTC [REDACTED] and CPT [REDACTED]
- In mid-November 2004, he and LTC [REDACTED] traveled to Fort Lewis, Washington, where they conducted 22 interviews with members of the 75th Ranger Regiment, starting with SPC [REDACTED] (CPL Patrick Tillman's brother) because his statement implied that certain aspects of the incident were overlooked during the first two investigations. BG Jones explained that, in most cases, they obtained verbatim transcripts of the interviews.
- As a result of the Fort Lewis interviews, BG Jones identified potential weaknesses in CPT [REDACTED]'s investigation. He recalled that some of the statements made by witnesses at Fort Lewis did not agree with the facts as reported in the first AR 15-6 investigation. BG Jones noted there were also details mentioned by CPT [REDACTED] that were not addressed in LTC [REDACTED]'s investigation. For example, BG Jones recalled that CPT [REDACTED] raised issues concerning a smoke grenade and the destruction of a vest and potential green-tipped fragments, which were not further addressed by LTC [REDACTED]
- At the end of November 2004, BG Jones and LTC [REDACTED] traveled to Afghanistan with two soldiers who were involved in the friendly fire incident: SSG [REDACTED] (CPL Tillman's squad leader while both were in Serial 1) and SFC [REDACTED] (Transport Commander in the Serial 2 vehicle directly behind SSG [REDACTED]'s vehicle).
- While at the scene, BG Jones testified that he took measurements and photographs; walked the canyon, ridgeline, and village; looked for trace evidence (for example, spent rounds); and tried to determine the origin of weapon fire based upon bullet holes at certain locations. However, he stated that he did not uncover any physical evidence that would assist in determining the precise source of fire to CPL Tillman's position.
- BG Jones completed his investigation with additional interviews at Fort Benning, Georgia. During the course of investigation, BG Jones conducted over 60 interviews, including 26 out of the 40 Rangers who were members of either Serials 1 or 2.

By memorandum dated January 7, 2005, BG Jones provided the results of his investigation to the Commander, USASOC. Primary findings of that memorandum report follow:

- CPL Tillman died as the result of friendly fire directed at him by occupants of SSG [REDACTED]'s vehicle. The firing commenced as soon as SSG [REDACTED]'s vehicle exited

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the canyon when vehicle occupants sighted muzzle flashes and personnel at CPL Tillman's location and misidentified those personnel as a hostile force. Because the vehicle continued traveling at a speed of 25-30 miles per hour, occupants had visibility of and directed fire at CPL Tillman's position for only 4-5 seconds, after which their view was obstructed and they directed their fire at SSG [REDACTED] position and the village. The lighting conditions at the time were such that SSG [REDACTED]'s crew was generally unable to distinguish features on personnel at CPL Tillman's location, just shapes. CPL Tillman was likely struck by American 5.56 mm or 7.62 mm rounds.

- The incident was investigated immediately thereafter by CPT [REDACTED] and LTC [REDACTED]. Although, the investigating officers were not appointed by a GCMCA as required by Army regulations, LTC [REDACTED]'s investigation was approved on May 28, 2004, by a GCMCA's designee. BG Jones recommended that regulations be clarified regarding the appointing authority in cases where operational and administrative commanders differ, but rendered no evaluation concerning the thoroughness or quality of the first two AR 15-6 investigations.
- Seven Rangers were either reprimanded or received nonjudicial punishment as a result of the incident. BG Jones rendered no opinion regarding accountability or culpability.
- There was no reluctance by any command to report the facts of the incident. BG Jones opined that any failure to immediately tell the family of suspected fratricide was the result of a desire to avoid giving the family an inaccurate or incomplete picture prior to completing an investigation, as well as the "ambiguity" in regulations that govern family notification. BG Jones concluded that LTG Kensinger, senior Army representative at the memorial service, was not aware of possible fratricide until after the memorial service was over. Noting that "nothing has contributed more to an atmosphere of suspicion by the family" than the failure to provide immediate notification of suspected fratricide, BG Jones recommended that regulations be clarified to allow such notification "as soon as deemed reasonable by the commander."
- CPT [REDACTED], the Battalion Supply Officer, improperly burned CPL Tillman's Ranger Body Armor and some personal items without required written authorization. 1SG [REDACTED] and SFC [REDACTED] burned CPL Tillman's uniforms and equipment at the same location used by CPT [REDACTED]. 1SG [REDACTED] was convinced that the death was fratricide and determined there was no further need to retain the items. BG Jones recommended that all clothing and equipment of the deceased be retained for evidentiary value and forwarded to either the AFME or a law enforcement agency, as appropriate.

- The Silver Star award was expeditiously processed to comply with standard regimental practice of presenting awards at the funeral or memorial service. The award was based on anecdotal information the Company Commander gathered from multiple soldiers who were at the scene and not based on the results of any investigation. In addressing the allegation that CPL Tillman's death was "embellished," BG Jones opined that CPL Tillman's "audacious plan" to assault enemy positions was "worthy of a Silver Star."

On January 10, 2005, the USASOC Staff Judge Advocate conducted a legal review and found that the investigation complied with legal requirements, that any errors in the investigation were harmless, sufficient evidence supports the findings, and recommendations are consistent with his findings. He recommended the report be approved and forwarded to the Army Inspector General for review. Additional information requested by the Army Inspector General was provided on March 9, 2005.

#### Discussion of BG Jones' Investigation

We found that BG Jones' investigation accurately established the facts of CPL Tillman's death -- that it was caused by friendly fire, that occupants of one vehicle in CPL Tillman's platoon were responsible, and that circumstances on the ground at the time caused those occupants to misidentify friendly forces as hostile. As had CPT [REDACTED] and LTC [REDACTED], BG Jones determined that CPL Tillman's death was accidental, rather than deliberate or intentional. Neither our review, nor the concurrent investigation by the Army CID found evidence that would contradict those fundamental conclusions.

Nevertheless our review of BG Jones' investigation identified deficiencies in terms of the level of thoroughness required by AR 15-6, as well as the failure to adequately address issues raised by Mrs. [REDACTED] and others. Those deficiencies contributed to lingering speculation that Army officials were concealing relevant information concerning CPL Tillman's death. We address deficiencies in BG Jones' investigation as follows:

Resolution of issues concerning the incident itself. The Acting Secretary of the Army appointed LTG Kensinger to conduct additional investigative work because of uncertainty regarding the sequence of events that occurred on April 22, 2004 (as demonstrated, in part, by the questions raised by Mrs. [REDACTED]), and because of conflicts in testimony from knowledgeable witnesses, particularly Rangers involved in the incident. For example, the nature and extent of hostile fire was not clearly established; reports of visibility at the time varied; some witnesses indicated that SSG [REDACTED]'s vehicle stopped and occupants dismounted during the firing episode, while other witnesses indicated that the vehicle proceeded without stopping; sources of friendly fire other than SSG [REDACTED]'s vehicle were suggested since activities by occupants of other vehicles in Serial 2 were not established.

In our view, the requirements of AR 15-6 mandated that BG Jones pursue all investigative leads and interview as many knowledgeable witnesses as possible in order to establish, with greatest possible certainty, the precise nature of events on April 22, 2004. Doing



so would hopefully capture any observations not previously obtained and avoid the implication that evidence to resolve issues in dispute was ignored. However, BG Jones interviewed only 26 of the surviving 40 Rangers who rode in Serials 1 and 2. Witnesses not interviewed included:

- Seven Rangers in Serial 1 -- the vehicle convoy that preceded Serial 2 through the canyon and proceeded past the village before stopping and hearing extensive gunfire directed at Serial 2. A contingent of Rangers from Serial 1, including CPL Tillman, dismounted and returned to the ridge overlooking the canyon exit to engage hostile forces. All members of Serial 1 witnessed at least some aspect of the incident. Of note, SPC [REDACTED] was not interviewed, even though he had previously told CPT [REDACTED] that a vehicle with a ".50 cal" stopped and the transport commander got out and fired toward his (SPC [REDACTED]'s) position.
- Six Rangers in Serial 2. One occupant of SSG [REDACTED]'s vehicle, SPC [REDACTED], was not interviewed by BG Jones (or by the previous two investigators). As disparities continued to exist concerning actions by occupants of SSG [REDACTED]'s vehicle, all occupants should have been interviewed. Additionally, BG Jones did not interview two snipers (SPC [REDACTED] and SPC [REDACTED]) who occupied the vehicle following SSG [REDACTED], nor the driver of that vehicle (PFC [REDACTED]). Given the proximity of that vehicle to the incident, coupled with the pattern of CPL Tillman's wounds (3 forehead wounds within an approximate 2-inch diameter), the possibility of sniper fire toward his position should have been considered and all occupants of that vehicle interviewed. Finally, BG Jones interviewed only one of the four occupants of the fourth vehicle in Serial 2, who may have observed the occupants of SSG [REDACTED]'s vehicle during the incident or overheard comments made immediately thereafter.

Handling of physical evidence. As described in previous sections of this report, CPL Tillman's uniform, body armor, and MOLLE vest were promptly removed and subsequently destroyed in the days following his death. Other physical evidence from the scene, including a .50 caliber round removed from a rock where CPL Tillman was located, was not retained.<sup>14</sup> BG Jones noted that the failure to preserve this evidence contributed to perceptions that "the Army was trying to hide that this was a fratricide."

Concluding that "nothing could be further from the truth," BG Jones explained that the destruction of CPL Tillman's uniform and equipment occurred because: (1) CPL Tillman's death had already been established as fratricide by Service members who performed the destruction and who, therefore, saw no need to retain evidence; (2) the retained items were permeated with blood and posed a biological hazard; and (3) retaining the physical evidence "could have had a significant negative impact on the morale of CPL Tillman's unit." Without reference to regulatory guidance, BG Jones recommended that, in future cases, all clothing and equipment be retained and provided to appropriate medical or law enforcement activities.

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<sup>14</sup> A .50 caliber round would have been fired by U.S. forces.

In rendering these findings, BG Jones failed to acknowledge the following regulations or other guidance which required retention of this evidence:

- AR 15-6 describes “real evidence” as physical objects and states that real evidence should be preserved, including “chain of custody, where appropriate, for use if further proceedings are necessary.”
- Joint Publication 4-06, “Joint Tactics, Techniques, and Procedures for Mortuary Affairs in Joint Operations,” Appendix B, “Personnel Effects,” dated August 28, 1996, states, “Remove serviceable organizational and government equipment from the remains and return serviceable equipment to the appropriate supply activity. Unserviceable equipment and all clothing are left on the remains.”
- Memorandum of December 3, 2003, from the Under Secretary of Defense for Personnel Readiness to the Service Secretaries stating:

[T]he remains of all Service members who die in a theater of combat operations will be placed in a human remains pouch with minimum handling consistent with personnel safety. The remains will then be sent to the AFME or the designated representative for forensic examination before being released to the preparing mortuary.

- Army Field Manual 27-1, “Legal Guide for Commanders, Preservation of Physical Evidence,” states,

You must preserve and safeguard in your custody any physical evidence of an offense. . . . Physical evidence must be carefully marked, to ensure later identification, and recorded on a chain of custody document. (See AR 195-5.) The chain of custody document, such as Department of the Army (DA) Form 4137, is a record of everyone who has handled an item from when it was originally identified as evidence until the trial. Physical evidence should then be turned over to professional investigators as soon as possible. Perishable and unstable evidence requires special attention for preservation.

In view of this guidance, BG Jones was in a position to render a finding that those personnel involved violated regulations by removing and destroying CPL Tillman’s clothing, equipment, and other physical evidence. His recommendation that that clothing and equipment be retained was unnecessary and incorrectly implied that no guidance on the topic existed when, in fact, the guidance was clear. Finally, BG Jones inaccurately attributed the decision to destroy CPL Tillman’s clothing and equipment to 1SG [REDACTED]. However, as discussed in the previous section of this report, 1SG [REDACTED] brought physical evidence to the attention of CPT [REDACTED] as the AR 15-6 investigating officer. CPT [REDACTED] decided that he had no further need of the items.

Notification to family members at the time fratricide was suspected. BG Jones found no indication that commanders were reluctant to report the friendly fire nature of CPL Tillman's death. He attributed the failure to immediately tell the family to a desire to first gather all available facts in order to avoid providing inaccurate information. However, as detailed in the following section of this report, we concluded that the failure to so inform the family was inconsistent with DoD and Army regulations and contributed significantly to the distrust that the Tillman family continues to hold against the Army. Curiously, BG Jones' recommendation that commanders be allowed to provide such notification "as soon as deemed reasonable," does nothing to resolve the situation that he found here. In this case, none of the commanders "deemed reasonable" immediate notification to family members.

LTG Kensinger's role in the failure to notify family members. Not only did BG Jones fail to fully address the next of kin notification issue, but, more significantly, he failed to address misrepresentations on the part of LTG Kensinger in the matter. In that regard, LTG Kensinger told BG Jones that he was first alerted to the possibility of fratricide by COL [REDACTED] Deputy Commander, 75th Regiment, on the night before the memorial service and, based on that informal notification, did not consider it appropriate to advise the family. Although BG Jones obtained some evidence that LTG Kensinger may have learned of suspected fratricide several days before the memorial service, he failed to pursue appropriate investigative leads and ultimately accepted LTG Kensinger's testimony as accurate.

One key factor in establishing LTG Kensinger's knowledge of fratricide was a P4 message, sent by MG McChrystal on April 29, 2004, to Commanders, CENTCOM, SOCOM, and USASOC, telling them that an ongoing investigation "will find that it is highly possible" that CPL Tillman was "killed by friendly fire." In his testimony to BG Jones, LTG Kensinger recalled that he was not given the P4 message when it arrived at USASOC, but first learned of it on May 4, 2004, after returning to headquarters and following up on the informal notification he had received from COL [REDACTED]

However, during BG Jones' investigation, Chief Warrant Officer Three (CW3) [REDACTED] Special Programs Division, USASOC, testified that he placed a copy of the P4 message in LTG Kensinger's briefing book, which he believed LTG Kensinger would have reviewed prior to departing for the memorial service.<sup>15</sup> BG Jones did not pursue the matter. That is, he did not question other witnesses on the USASOC staff to determine whether LTG Kensinger actually reviewed the briefing book prior to his departure or otherwise learned of the suspected friendly fire from staff members before departing for the memorial service. When we questioned BG Jones on the matter, he testified:

Well, if GEN Kensinger told me that he did not review it until the 4th [of May]; I believe what GEN Kensinger told me. . . . I don't think his [CW3 [REDACTED] s] statement says that he personally was

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<sup>15</sup> Since completion of BG Jones' investigation now required him to examine the conduct of LTG Kensinger (a person senior to him and also the appointing authority for the investigation), BG Jones was obliged to bring the matter to the attention of Army leaders at a level of command above LTG Kensinger.

there to see GEN Kensinger read it. . . . [CW3 ██████████] does not say he was in the room . . . didn't say that he stands there and watches him read these documents, so I don't know that.

We found compelling evidence that LTG Kensinger learned of suspected fratricide well before the memorial service and provided misleading testimony to both BG Jones and to our investigators on that issue. In addition to the possible offense under Article 107, Uniform Code of Military Justice, "False official statements," this is a serious matter because USASOC, which LTG Kensinger commanded at the time, was responsible under Army regulations for notifying family members when new information was available concerning a Service member death. Evidence that LTG Kensinger knew of the suspected fratricide before he departed for the memorial service and misrepresented his knowledge in that regard follows:

- According to his calendar, LTG Kensinger was at USASOC from April 30 through May 3, 2004, when he departed for the memorial service in San Jose, California, which presumably would have put him in regular contact with his staff.
- LTC ██████████, Chief, Special Programs Division, USASOC, told us that he personally delivered the P4 message to LTG Kensinger on the morning of April 30, 2004, (a Friday). LTC ██████████ recalled that, after reading the message, LTG Kensinger stated that he wished they had not told him that (or words to that effect), and warned LTC ██████████ to safeguard the information against leaks.
- COL ██████████'s testimony directly conflicted with LTG Kensinger's recollection that he [LTG Kensinger] first learned friendly fire was suspected in CPL Tillman's death from COL ██████████ on the night before the memorial service. Rather, COL ██████████ stated that he was unaware of possible fratricide until after the memorial service when LTG Kensinger told him that an investigation into the matter had been initiated. COL Nixon (COL ██████████'s superior) told us he "limited the number of people that were involved" and did not advise COL ██████████ of the investigation before COL ██████████ departed for the memorial service.
- BG Yellen, then Deputy Commander, USASOC, testified that COL Nixon advised him of CPL Tillman's death on April 23, 2004, and the initiation of an investigation into friendly fire about 24 hours later. BG Yellen stated that he informed LTG Kensinger about the initiation of an investigation the same day that he learned of it from COL Nixon.

During his initial testimony to us, LTG Kensinger reiterated his recollection that he first learned of suspected fratricide from COL ██████████ the night before the memorial service and first became aware of the P4 message on returning to USASOC. When we confronted LTG Kensinger with the foregoing evidence, he maintained that his testimony to BG Jones reflected his recollection at the time. However, he acknowledged that his recollection could have been inaccurate, indicating he did not doubt the truthfulness of the people we interviewed.

We found LTG Kensinger's explanation unpersuasive and concluded that he misrepresented his knowledge on the matter. Further, as discussed in Section IV.B. of this report, he and COL Nixon are accountable for the failure to properly update the Tillman family when an investigation was initiated into CPL Tillman's death.

Alleged embellishment of the Silver Star. As set forth in Section IV.C. of this report, the documentation submitted to obtain approval of the Silver Star contained materially inaccurate statements. Although BG Jones had the opportunity to correct the record given concerns raised by Mrs. [REDACTED] he took no action to do so. Of significance, he interviewed the two Rangers whose valorous witness statements were attached to award justification, but he did not question them regarding the genesis or accuracy of their statements. (In their testimony to us, the two Rangers did not recall writing or signing those statements.) Rather, BG Jones accepted the Silver Star documentation as reasonably representative of the events attending the death of CPL Tillman and focused on CPL Tillman's "audacious plan" to engage the enemy as deserving of a Silver Star.

In that regard, Army regulations provide that an award is based on a Service member's achievements, not his or her intentions.<sup>16</sup> Moreover, BG Jones' conclusion that CPL Tillman's plan to engage the enemy was in the "minds" of CPL Tillman's commanders when they recommended a Silver Star was inconsistent with the testimony provided by those commanders. That testimony indicated they believed CPL Tillman's actions prior to death justified the Silver Star, apart from any plan he may have had to engage the enemy. Further, BG Jones disregarded testimony indicating that SSG [REDACTED] disapproved CPL Tillman's plan to assault enemy locations. Significantly, BG Jones shared those findings regarding the Silver Star with family members, senior Army officials, and Members of Congress during official briefings.

B. Did responsible officials comply with applicable standards for notification of next of kin with regard to CPL Tillman's death and related investigations?

Responsible officials violated DoD policy and Army regulations by failing to notify the primary next of kin as soon as they reasonably suspected friendly fire. We found the regimental commander accountable for the decision to delay notification until the completion of a friendly fire death investigation. We also found the Commander, USASOC, as the commander with administrative control over the 75th Ranger Regiment, accountable for this failure.

#### Standards

#### **DoD Instruction 1300.18, "Military Personnel Casualty Matters, Policies, and Procedures," dated December 12, 2000**

This Instruction provides guidance to the Military Services for notifying the next of kin of a military member's death. DoD policy is that next of kin "shall be notified as promptly as possible in a dignified, humane, professional, empathic, and understanding manner,"

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<sup>16</sup> The governing Army regulation provides that a Silver Star award requires demonstration of "gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force."

(Paragraph 4.1). The notification to next of kin will include “[a]ll facts and circumstances on the casualty incident known at the time . . . ,” (Subparagraph 6.1.1.2.). As “additional information becomes available, the Military Service concerned shall inform the NOK [next of kin] . . . ,” (Subparagraph 6.1.2.4).

**AR 600-8-1, “Personal Affairs, Army Casualty Operations/Assistance/Insurance,”  
dated October 20, 1994**

This Regulation sets forth Army procedures for notifying next of kin in a timely manner of a Service member’s death. During hostilities, this Regulation requires that the unit report the cause and circumstances of the death, and specify the “inflicting force” causing the death. Units are to submit reports to the battalion level “without delay or as the battlefield situation permits,” (Subparagraph 1-15.i). That information is then transmitted to the Department of the Army level “Casualty Operations Center within 24 hours from the time of the incident,” (Subparagraph 1-15.i), and the Casualty Operations Center uses the information on the cause and circumstances of the death to ensure that the next of kin are provided accurate information about their family member’s death.

If friendly fire is suspected, but not yet confirmed, the “inflicting force” that caused the death will be listed as “UNK” for unknown, (Subparagraph 2-12.d). When the required investigation into the death is completed, and the “inflicting force” is determined, a “supplemental casualty report” will be generated that removes “UNK” and identifies the inflicting force, (Subparagraph 2-12.d).

Army representatives making initial notification to next of kin are instructed to provide information in a prepared format depending on the cause of death. For suspected friendly fire death cases, the “casualty notifier” is to tell the next of kin that the soldier’s “death is a result of suspected friendly fire. A formal investigation is being conducted. You will be further advised as additional information is received . . . ,” (Subparagraph 4-13.a(4)(b)).

**AR 600-34, “Fatal Training/Operational Accident Presentations to the Next of Kin,”  
dated January 2, 2003**

This Regulation implements the duties imposed by Congress in Public Law 102-484, the National Defense Authorization Act for Fiscal Year 1993, as well as the requirements of DoDI 1300.18, above, (Paragraph 1-1). Congress and DoD directed that bereaved families be kept informed as additional information about the cause of death becomes known.

This Regulation requires that “within a reasonable period of time after family members are notified of the death of a soldier, but not more than 30 days after the date of the notification, the . . . CAO [Casualty Assistance Officer] . . . will ensure that the PNOK [primary next of kin] and other family members designated by the PNOK” are informed of the “investigations, the names of the agencies conducting the investigations, and the existence of any reports by such agencies that have been or will be issued as a result of the investigations,” (Subparagraph 3-7.a).

Subparagraph 1-18.b provides that "Releasable information will be provided to the primary next of kin, and other family members designated by the primary next of kin, through periodic updates while the collateral investigation [i.e., the AR 15-6 investigation] is ongoing. . . ." Subparagraph 4-2.e provides that the updates to next of kin "will include information concerning the progress of the investigation, but will not include any information relative to the results of the investigation." The information released to the primary next of kin is prepared by the Public Affairs Office (PAO) at "the direction of the appointing/approving authority," in what are called "scripts" or the approved language for release. Once prepared, the "script will be given to the Human Resources Command (HRC) [Casualty and] Memorial Affairs Operations Center (CMAOC) who will instruct the CAO on its delivery to the PNOK."

Once the investigation into cause of death is completed, this Regulation requires "a standard process for presenting the results" of an investigation to the primary next of kin "in a timely, equitable, and professional manner," (Subparagraph 1-17.a(1)). The presentation, for any "suspected cases of friendly fire" is to be "delivered to the PNOK, and other family members designated by the PNOK, before results is released to Congress, the media, or the public," (Subparagraph 1-18.b). This presentation is to be delivered in person. The Army requires that the presentation team include a briefer, the family's Casualty Affairs Officer, and a chaplain, (paragraph 2-3.a). The briefer is the "appropriate brigade-level commander in the grade of colonel (or higher)," (Subparagraph 4-2.a(2)).

#### Facts

CPL Patrick Tillman died at approximately 6:45 p.m. local Afghanistan time, on April 22, 2004. PFC [REDACTED], who was near CPL Tillman when he died, informed the company first sergeant the night of the incident that he and CPL Tillman were fired on by a Serial 2 vehicle. The first sergeant informed the company commander and they in turn informed the battalion commander, LTC [REDACTED], at about 10:00 a.m. on April 23, 2004, when he arrived at the scene of the incident. LTC [REDACTED] ordered an investigation of the incident in the afternoon of April 23, 2004.

Medical personnel at the Forward Surgical Team facility at the battalion FOB received CPL Tillman's body when it arrived by helicopter about 90 minutes after the incident. The battalion personnel noncommissioned officer (NCO) sent a notice of CPL Tillman's death to the Joint Task Force, the headquarters with operational control of combat operations involving the 75th Ranger Regiment. This casualty message was based on the report from the Forward Surgical Team personnel that listed CPL Tillman as killed in action.

The Joint Task Force Chief of Staff approved transmission of the casualty report of CPL Tillman's death at about 10:30 p.m. local time, April 22, 2004. This report listed the cause of death, or the "inflicting force," as "enemy forces." The Joint Task Force casualty report for CPL Tillman was sent to USASOC at Fort Bragg, North Carolina, which forwarded it to the Army Human Resources Command CMAOC, which then generated the "initial casualty report."

The CMAOC initial casualty report was sent to the regional Casualty Assistance Command at Fort Lewis, Washington, the home station of CPL Tillman's 2nd Battalion, 75th Ranger Regiment. The Fort Lewis Casualty Assistance Command assigned Army notification teams to provide notification of CPL Tillman's death (that is, "killed in action by enemy fire") to his widow, the primary next of kin, and to his parents, the secondary next of kin. These notifications were completed by early evening Pacific Daylight Time, April 22, 2004.

The regimental commander, COL Nixon, testified that when he learned from the battalion commander that friendly fire was suspected, he limited the number of Rangers within the regiment who knew that an investigation of friendly fire had been initiated. COL Nixon testified that he "compartmented" the information flow to prevent outside communication, because he believed he owed the Tillman family "our best view of what had occurred on the ground in a very complicated situation . . . and to get it to the family before it leaked to the press or came through some other route." COL Nixon testified that this "meant that the people that needed to know, whether it was in A Company, 2nd Ranger Battalion, the Ranger Regiment, or the Joint Task Force, were the people [who] continue[d] to be informed throughout."

The battalion and regimental personnel NCOs testified that they were not among the Rangers informed of the friendly fire investigation. The regimental personnel NCO testified that he was trained to file a supplemental casualty report changing the inflicting force from "enemy forces" to "UNK" or unknown in the case of suspected friendly fire. Because the personnel NCOs at the battalion, regiment, and Joint Task Force levels of command, were unaware that friendly fire was suspected, they did not file a supplemental casualty report to change the inflicting force from "enemy forces" to "UNK."<sup>17</sup> As a result, the CMAOC was unaware of suspected friendly fire and did not alert the regional Casualty Assistance Command to notify CPL Tillman's widow or parents, as it was their practice to do upon receipt of a supplemental casualty report listing "UNK."

On April 29, 2004, MG McChrystal sent a P4 message to the Commanders, CENTCOM, SOCOM, and USASOC, telling them that a friendly fire investigation "will find that it is highly possible" that CPL Tillman was "killed by friendly fire." MG McChrystal testified that he sent this message for two reasons: (1) to alert his higher chain of command that friendly fire was suspected; and (2) to reinforce his view that the probable fratricide did not detract from the Silver Star nomination he had sent forward on April 28, 2004, based on CPL Tillman's valor in the face of the enemy.

MG McChrystal stated, and the text of the P4 message confirmed, that his alert to his higher chain of command was also to allow the receiving commanders to warn the Acting Secretary of the Army and the President of the United States about comments they might make in speeches to preclude embarrassment if the public found out friendly fire was involved. MG McChrystal further testified that he assumed the Tillman family had been notified of the investigation into suspected friendly fire because SPC [REDACTED] served in his brother's platoon and accompanied CPL Tillman's remains to the United States.

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<sup>17</sup> Personnel at USASOC filed a supplemental casualty report on June 3, 2004, that changed "enemy forces" to "UNK," but at this point, the Army already had disclosed the results of the regimental AR 15-6 investigation which identified the inflicting force as "friendly."



The Commander, SOCOM, replied to the P4 message agreeing that the finding of friendly fire in no way detracted from CPL Tillman's valor. The Commander, CENTCOM, testified that he did not receive the P4 message until 10 to 20 days after it was sent because of his travel within the CENTCOM area of operations. In sworn testimony, LTG Kensinger, Commander, USASOC, stated he did not believe he reviewed the P4 message until around May 4, 2004, when he returned from representing the Army at CPL Tillman's May 3, 2004, memorial service in San Jose, California. LTG Kensinger told BG Jones that he first learned of the possibility of fratricide on May 3, 2004, when he was informed by the Deputy Commander of the 75th Ranger Regiment at the memorial service.

Based on our investigation, and additional interviews, we determined that LTG Kensinger actually reviewed MG McChrystal's April 29, 2004, P4 message on April 30, 2004, 3 days before he departed for the memorial service. We also determined that LTG Kensinger's deputy commander informed him on approximately April 25, 2004, that friendly fire was suspected, after receiving notice from COL Nixon.<sup>18</sup>

Regardless of whether LTG Kensinger first learned of suspected friendly fire on April 25, 2004, from his deputy commander, or on April 30, 2004, when he reviewed the P4 message of MG McChrystal, LTG Kensinger testified that he made a conscious decision not to inform the Tillman family on May 3, 2004. LTG Kensinger testified that he decided not to tell the Tillman family because friendly fire had not yet been confirmed, the AR 15-6 investigation was not yet completed, and it was just "not the right time" to do so.

COL Nixon approved the regimental AR 15-6 investigation on May 17, 2004, and forwarded it to MG McChrystal, who concurred with the results and submitted the report to CENTCOM. On May 28, 2004, by delegation of authority from the CENTCOM commander, MajGen Sattler, the Director of Operations, approved the regimental AR 15-6 investigation. The 75th Ranger Regiment did not complete a supplemental casualty report to identify the "inflicting force" as friendly fire, in accordance with AR 600-8-1.

The regiment provided personal notification to CPL Tillman's widow, the primary next of kin, after the 2nd Battalion, 75th Ranger Regiment returned to Fort Lewis from Afghanistan. LTC [REDACTED] CPL Tillman's battalion commander, personally briefed SPC [REDACTED] on the night of May 26, 2004, and then, accompanied by SPC [REDACTED] he provided a detailed explanation of the facts and circumstances of CPL Tillman's death to his widow on May 27, 2004. LTC [REDACTED] then flew to California, where he provided a similar detailed notification and explanation to CPL Tillman's parents on May 29, 2004. LTC [REDACTED]'s notification of suspected friendly fire to primary and secondary next of kin, occurred 35 and 37 days respectively, after the initial casualty notification.

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<sup>18</sup> LTG Kensinger's prior knowledge of suspected friendly fire, and prior review of the P4 message, indicate that he misled BG Jones and our investigators when he provided his sworn testimony. We discuss LTG Kensinger's misrepresentations in Section IV.A. of this report.

On June 16, 2004, COL Nixon, accompanied by LTC [REDACTED], provided the primary and secondary next of kin a formal presentation of the CENTCOM approved AR 15-6 investigation results. That presentation was coordinated in advance with CMAOC and with BG Gina Farrisee, Commander, Army Human Resources Command, in accordance with AR 600-34, paragraphs 1-18.c and 2-1. COL Nixon's formal presentation included briefing slides summarizing the findings and conclusions of the regimental investigation, as well as pictures taken at the site of the incident, and maps detailing the routes of the two serials.

We interviewed CPL Tillman's entire chain of command, including the company, battalion and regimental commanders, the Joint Task Force commander, and the Commander, USASOC, LTG Kensinger. Each commander testified that he was unaware of the supplemental casualty report requirements of AR 600-8-1. Each commander also testified that he was unaware of the DoD and Army requirement to notify family members of suspected fratricide and of any ongoing investigation within a reasonable period of time, not to exceed 30 days of the initial notification of death.

In his investigation, BG Jones found that the chain of command's failure to inform the family was based on "a desire to obtain all the facts prior to telling the family it was a fratricide, as well as a perception that there was some regulatory prohibition against telling the family until the conclusion of the collateral investigation." BG Jones later modified the second part of his finding, concluding that "no one in the chain of command specifically relied on any regulation to say they either could or could not release to the family that this was a suspected fratricide."

BG Jones also concluded that there was ambiguity in Army regulations and that where a command learns of suspected friendly fire after the initial next of kin notification, the command could interpret regulations to prohibit notification of next of kin until completion of the AR 15-6 investigation. BG Jones reached this conclusion by reviewing and comparing AR 600-8-1 and AR 600-34. BG Jones first noted that AR 600-8-1 provided only one approved statement for notification to next of kin of a death by friendly fire. The approved statement presumed that friendly fire was suspected at the outset. AR 600-8-1 did not contain an alternative approved statement for use in notifying next of kin of suspected friendly fire after initial notification. BG Jones combined the absence of an alternative notification statement in AR 600-8-1, with the presence of two paragraphs in AR 600-34 that he believed justified delaying release of an AR 15-6 investigation. One paragraph addressed delaying release of the AR 15-6 investigation if the release "will interfere with other ongoing investigations," and the other paragraph provided that next of kin are to be told the status of an ongoing investigation but not its results.

To remedy this perceived ambiguity, BG Jones recommended new language for both regulations "to provide the deceased soldier's commander the flexibility to tell the family of the potential for fratricide, as early as deemed reasonable." BG Jones' recommended language stated, "Nothing . . . shall be interpreted to restrict a commander's ability to inform a deceased soldier's next of kin . . . as soon as deemed reasonable by the commander."

LTG Stanley Green, the Army Inspector General, reviewed BG Jones' initial AR 15-6 investigation and requested additional investigation, to include more information concerning notification of next of kin in CPL Tillman's death. One of BG Jones' additional findings was

that CPL Tillman's chain of command was unaware of the need to file a supplemental casualty report where friendly fire is suspected. BG Jones briefed the results of his initial and supplemental AR 15-6 investigation to Dr. Francis J. Harvey, then Secretary of the Army, on March 23, 2005, to include his findings and conclusions concerning next of kin notification.

Based on BG Jones's briefing, Secretary Harvey directed LTG Green to conduct a top-to-bottom review of the Army's Casualty Reporting System. In June 2005, LTG Green submitted his results and made two recommendations directly relevant to this issue.<sup>19</sup> The new AR 600-8-1, "Army Casualty Program," published on April 7, 2006, implements most of the recommendations made by LTG Green, and better clarifies a unit's responsibilities in regard to notifying next of kin in suspected friendly fire incidents.

## Discussion

### Initial Notification

Army policy requires units to report all casualties to the battalion level commander without delay (AR 600-8-1, Subparagraph 1-15.i (20 Oct 1994)). Each higher level of command is to expedite the processing of casualty reports so that they can be submitted to the Department of the Army level CMAOC within 24 hours.

The regiment's initial casualty message was based on the report from the Forward Surgical Team at the battalion FOB, where CPL Tillman's remains had been transported by medical evacuation helicopter. That report listed CPL Tillman as killed in action. The Joint Task Force used that information to notify USASOC which used that information to notify the CMAOC. At the time the CMAOC was notified, no commander in CPL Tillman's chain of command suspected friendly fire. That suspicion arose the next day when PFC [REDACTED]'s observations reached the company commander.

We concluded that CPL Tillman's chain of command completed the initial notification of death, in accordance with Army policy and regulation, providing information they believed to be accurate at that time. Based on that information, the primary and secondary next of kin were notified that CPL Tillman had been killed in action by enemy forces.

### Failure to Notify Next of Kin of Suspected Fratricide

AR 600-8-1, paragraph 2-34, requires that a supplemental casualty report be filed whenever additional information or corrected information is known by the unit. In particular, although AR 600-8-1, paragraph 2-12.d (covering reporting of friendly fire casualties), does not specifically address filing a supplemental casualty report, it does require a unit to list the "inflicting force" as "UNK" instead of "enemy forces" when friendly fire is suspected. Such a change constitutes "additional language" correcting the initial casualty report.

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<sup>19</sup> On June 28, 2005, Secretary Harvey approved LTG Green's recommendations that AR 600-8-1 be revised to include a separate chapter or paragraph outlining actions taken when friendly fire incidents occur and a statement referencing AR 600-34, "Fatal Training/Operational Accident Presentations to the Next of Kin," Section 3, paragraph 1-18.

COL Nixon failed to comply with the requirements of AR 600-8-1 in not ensuring that a supplemental casualty report was filed as soon as he suspected friendly fire. Although COL Nixon would not be expected to complete the supplemental casualty report himself, or to specifically direct its completion, as the commander, COL Nixon is accountable for the proper functioning of his personnel office. More particularly, he is accountable because his decision to limit the Rangers with knowledge of the friendly fire investigation deprived his personnel NCOs of information directly relevant to their duties.

The regiment personnel NCOs were trained to file supplemental casualty reports for any additional or correcting information. In particular, the regiment personnel NCO was trained to file a supplemental casualty report changing the inflicting force from "enemy forces" to "UNK" once informed that friendly fire was suspected. If the 75th Ranger Regiment filed a supplemental casualty report listing the inflicting force as "UNK," the CMAOC would have directed the Fort Lewis Casualty Assistance Command to notify CPL Tillman's widow and parents that friendly fire was suspected and was under investigation.

COL Nixon's decision to limit access was not, in itself, an improper decision. Matters under investigation are routinely limited to those with a "need to know." If COL Nixon had informed his regiment personnel NCO, he would have filed the supplemental casualty report under AR 600-8-1, and CPL Tillman's widow and family would have been notified of suspected friendly fire and that an investigation was under way. CPL Tillman's next of kin, however, would not have been given the details surrounding his death until the investigation was complete. Neither AR 600-8-1 nor AR 600-34, required the Casualty Affairs Officer or the chain of command to provide the specific details, or to answer questions about the incident, until the investigation report was complete and approved and a formal presentation was made. COL Nixon testified that he limited access so that he could ensure that CPL Tillman's family was informed by the command after an official investigation, and not from an unauthorized and incomplete release of information from another source. COL Nixon's adherence to Army regulations, however, would not have been inconsistent with his intent to avoid unauthorized disclosures.

As the commander, COL Nixon is accountable for his command's untimely notification. However, we find insufficient basis to conclude that COL Nixon delayed next of kin notification of suspected friendly fire for an inappropriate motive. We reached this determination after examining COL Nixon's actions upon receiving notice from LTC [REDACTED]:

- he immediately agreed to the initial appointment of an investigating officer;
- he informed his higher commanders, MG McChrystal and BG Yellen, that he suspected friendly fire, within 2 days of CPL Tillman's death;
- he appointed his own investigating officer when he was not satisfied with the thoroughness of the battalion investigation;

- he drafted language for MG McChrystal's P4 message that alerted the commanders of SOCOM and CENTCOM, and LTG Kensinger, that it was "highly possible" an investigation would find that CPL Tillman died by friendly fire;
- he submitted the regimental investigation that found CPL Tillman was killed by friendly fire through MG McChrystal to the Commander, CENTCOM, for approval; and
- he had LTC [REDACTED] personally explain to SPC [REDACTED], CPL Tillman's widow, and CPL Tillman's parents, the results of the regimental investigation after he had approved it, but while it was awaiting approval at CENTCOM.

LTG Kensinger is also accountable for the failure to notify the family. As the USASOC commander, with administrative control of the 75th Ranger Regiment, LTG Kensinger was responsible for the initial notification of the primary and secondary next of kin. As the administrative control commander, he also was responsible for all necessary supplemental casualty reports, including the required supplemental casualty report for suspected friendly fire. The obligation of USASOC to file a supplemental casualty report arose as early as April 25, 2004, when we determined by a preponderance of the evidence, that LTG Kensinger's deputy commander informed him of suspected friendly fire. Certainly by April 30, 2004, when we determined LTG Kensinger read MG McChrystal's P4 message, LTG Kensinger had an obligation to inform the family. Like COL Nixon, LTG Kensinger consciously chose not to tell the Tillman family. Unlike COL Nixon or LTC [REDACTED], who were still engaged in combat operations in Afghanistan, LTG Kensinger was in a position not just to initiate notification by the family CAO; LTG Kensinger personally could have informed the family before or immediately after the memorial ceremony.

We recommend that the Acting Secretary of the Army review the decisions of COL Nixon and LTG Kensinger to not inform the Tillman family of suspected friendly fire in accordance with Army regulations, and take action he deems appropriate.

We have determined that the Army has taken corrective action to address the issue of timely notification of next of kin in friendly fire deaths, both by regulatory changes, and by mandating casualty notification training for commanders at all levels.

C. Did responsible officials comply with applicable standards for award of the Silver Star to CPL Tillman?

Responsible officials failed to comply with the Army military award regulation when they submitted a Silver Star recommendation that included inaccurate information and a misleading citation that implied CPL Tillman died by enemy fire. This failure materially contributed to the Tillman family distrust of Army representations concerning the death of CPL Tillman.

Standards**DoD Manual 1348.33-M, “Manual of Military Decorations and Awards,” dated September 1996**

This Manual sets out DoD standards for the award of DoD military decorations. It also sets out the procedures for recommending and approving DoD military decorations. At Appendix 1, Paragraph AP1.2.12., the Manual sets out the criteria for the award of the Silver Star for Army personnel, in accordance with Title 10, United States Code, Section 8746. The Silver Star may be awarded to “any individual...who distinguishes himself . . . by gallantry in action . . . [a]gainst an enemy of the United States . . .,” (Subparagraphs AP1.2.12.2.2. and AP1.2.12.2.2.1).

**AR 600-8-22, “Military Awards,” dated February 25, 1995<sup>20</sup>**

This Regulation establishes the award criteria for Army military decorations and sets out the procedures for recommending, processing, and approving decorations. Army policy for all military decorations is that “the decision to award an individual a decoration and the decision as to which award is appropriate are . . . subjective decisions made by the commander having award approval authority,” (Subparagraph 3-1.c).

The Army criteria for award of the Silver Star is, “a person who, while serving in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force . . .,” (Subparagraph 3-9.b). The regulation provides some definition of the required level of gallantry by contrasting it with award of the Distinguished Service Cross: “while of a lesser degree than that required for the Distinguished Service Cross, must nevertheless have been performed with marked distinction.”

DA Form 638 is used to “initiate, process, and approve award recommendations . . . to include valor and heroism decorations,” (Subparagraph 3-18.a). A properly prepared award recommendation will include: (1) DA Form 638; (2) a narrative justification; (3) the proposed citation; (4) support documents (optional); and (5) eyewitness statements in the form of certificates, affidavits, or sworn statements, (optional for the Silver Star and lesser awards), (Subparagraph 3-18.u).

The required narrative for a valor award “must contain a description of the following elements: terrain and weather . . . ; enemy conditions, to include morale, proximity, firepower, casualties and situation prior to, during and after the act; the effect of the act on the enemy; the action of comrades in the immediate vicinity of the act and the degree of their participation in the act; . . . the degree to which the act was voluntary; the degree to which the act was outstanding and exceeded what was normally expected of the individual; all unusual circumstances; and overall effects or results of the act,” (Subparagraph 3-18.r).

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<sup>20</sup> A revision of AR 600-8-22 was issued on December 11, 2006. The 1995 version was in effect at the time of CPL Tillman’s posthumous Silver Star award.

Facts

Our review disclosed the award citation, narrative justification, and two valorous award witness statements submitted in support of the award contained inaccurate information. Further, the narrative justification and the citation implied that CPL Tillman died by enemy fire. The following factual summary explains how the award recommendation was drafted and processed to the Acting Secretary of the Army, the approval authority. At the time he approved the award, the Acting Secretary was unaware that friendly fire was suspected in CPL Tillman's death.

At about 6:45 p.m., Afghanistan local time, on April 22, 2004, CPL Tillman died of gunshot wounds. MAJ [REDACTED], Operations Officer, 2nd Battalion, testified that he was at the battalion FOB when CPL Tillman's body arrived by medical evacuation helicopter at about 8:10 p.m. that night. MAJ [REDACTED] stated that he went to the Forward Surgical Team facility where he placed an American flag on CPL Tillman's body, and spoke to SPC [REDACTED] once he arrived at the battalion FOB. MAJ [REDACTED] also spoke that night with 1LT [REDACTED] CPL Tillman's platoon leader, who had been wounded and was being treated at the Forward Surgical Team facility. MAJ [REDACTED] spoke to 1LT [REDACTED] about an enemy ambush that occurred before CPL Tillman died, about 1LT [REDACTED]'s wounds, and about CPL Tillman's death.

CPL Tillman's company commander, CPT [REDACTED], testified that he believed he began work on an award recommendation for a Bronze Star Medal with V device for valor. CPT [REDACTED] testified that he completed a draft citation, some portion of the required narrative justification, and a draft DA Form 638, Recommendation for Award. CPT [REDACTED] submitted his drafts electronically to the battalion within a few days of the incident after speaking with Rangers from the platoon, reviewing statements that they wrote, and attending an After Action Review. He further testified that within this time frame, LTC [REDACTED], CPL Tillman's battalion commander, called to ask if he could support a Silver Star award recommendation and, when he told LTC [REDACTED] that he could, LTC [REDACTED] advised him that MAJ [REDACTED] would complete the Silver Star recommendation. MAJ [REDACTED] testified that LTC [REDACTED] tasked him to prepare a posthumous Silver Star award recommendation.

CPT [REDACTED] testified that by the morning of April 23, 2004, he knew that friendly fire was suspected in CPL Tillman's death and he reported that information to LTC [REDACTED] by 10:00 a.m. that morning. Despite that knowledge, CPT [REDACTED] believed that CPL Tillman's actions before his death on April 22, 2004, coupled with the sacrifice of his life defending his fellow Rangers, merited the Silver Star. In our interview, CPT [REDACTED] conceded there were inaccuracies in the narrative justification that he assisted MAJ [REDACTED] with, and in the final citation that supported the Silver Star, but he noted that his contribution to the narrative justification was completed within just a few days of CPL Tillman's death with information that he believed was accurate at that time.

In his sworn testimony to BG Jones on November 16, 2004, MAJ [REDACTED] testified that CPT [REDACTED] gave him a draft narrative and citation for a Bronze Star Medal and provided information he had gained from interviews of CPL Tillman's platoon members. MAJ [REDACTED] said he believed that he and CPT [REDACTED] began a draft on the evening CPL Tillman died.

Later that evening, MAJ [REDACTED] sent CPT [REDACTED] to the scene of CPL Tillman's death to collect more information. At the time that CPT [REDACTED] departed, neither he nor MAJ [REDACTED] knew that friendly fire was suspected. MAJ [REDACTED] composed his first draft with CPT [REDACTED] and 1LT [REDACTED]'s input.

1LT [REDACTED] believed for about 10 days that enemy fire, rather than friendly fire, had caused his wounds. While at the Forward Surgical Team facility the night of the incident, 1LT [REDACTED] told MAJ [REDACTED] about the incoming fire that wounded him and discussed CPL Tillman's actions before his death. 1LT [REDACTED] told MAJ [REDACTED] that CPL Tillman assaulted to the north, then turned around and fired on the southern ridgeline because he was receiving fire. MAJ [REDACTED] testified that he did not realize at the time he drafted the narrative justification that 1LT [REDACTED] had not been in a position to see what CPL Tillman had done.

MAJ [REDACTED] testified that he spoke to LTC [REDACTED] on April 23, 2004, and LTC [REDACTED] informed him that he suspected friendly fire. MAJ [REDACTED] discounted LTC [REDACTED]'s initial suspicion because he had spoken to 1LT [REDACTED] who firmly believed that enemy fire caused CPL Tillman's death. On April 25, 2004, MAJ [REDACTED] testified he attended an emotional platoon After Action Review and learned from the platoon members that LTC [REDACTED]'s initial suspicion of friendly fire was valid. MAJ [REDACTED] testified that he revised the first draft of his narrative justification upon his return from the After Action Review. He testified that he carefully prepared the narrative to avoid stating that the enemy had killed CPL Tillman and distinctly remembered removing a phrase asserting that CPL Tillman died "by enemy fire." When we pointed out the inaccuracies contained in the narrative and final citation of the Silver Star award, MAJ [REDACTED] conceded the inaccuracies "armed with 20/20 hindsight," but stated that he believed the drafts he prepared during the initial time period were accurate.

The regimental personnel NCO testified that regimental policy in April 2004 required two valorous award witness statements to accompany all valor award recommendations, although Army regulations do not require them. MAJ [REDACTED] testified that he did not direct the preparation of valorous award witness statements. Both MAJ [REDACTED] and CPT [REDACTED] testified that the electronic drafts they sent to the regiment did not have valorous award witness statements attached, and both testified they did not see or review the valorous award witness statements attributed to SGT [REDACTED] or PFC [REDACTED] and submitted with the Silver Star recommendation package by the regiment.<sup>21</sup>

MAJ [REDACTED] and LTC [REDACTED] expedited processing CPL Tillman's Silver Star award in order to seek approval at the Department of the Army level prior to any funeral or memorial service. Their actions were consistent with an unwritten regiment policy to have all posthumous awards available for presentation at a Ranger's funeral or memorial service.

As stated previously, LTC [REDACTED] knew by about 10:00 a.m., on April 23, 2004, that friendly fire was suspected. LTC [REDACTED] ordered an investigation by mid-afternoon April 23, 2004, and notified COL Nixon the same day. When we interviewed LTC [REDACTED] on October 16, 2006, LTC [REDACTED] testified that he reviewed the criteria for the Silver Star when he returned to the battalion FOB on April 24, 2004. LTC [REDACTED]'s review convinced him that CPL Tillman's

<sup>21</sup> The valorous award witness statements were unsigned and stamped "Original Signed."



actions, before he died by friendly fire, merited the Silver Star. LTC [REDACTED] then called COL Nixon and explained why he believed a Silver Star was merited. COL Nixon told him that he would support the Silver Star if LTC [REDACTED] believed it was merited.

In sworn testimony to BG Jones on November 24, 2004, LTC [REDACTED] explained why he nominated CPL Tillman for the Silver Star. LTC [REDACTED] stated,

Pat Tillman dismounted off of vehicles; took charge of three guys. With no radio, no orders, he bounded up this hill and was orienting fire I know for sure as we discussed here, between E-1 [enemy position 1] and E-3 [enemy position 3]. As they were getting fired on, he exposed himself two or three different times to friendly fire but still a courageous act and out here to save his buddy's life.

In our interview, LTC [REDACTED] provided a similar rationale for recommending the Silver Star. LTC [REDACTED] testified that he considered and placed value on the information provided by PFC [REDACTED] who had been next to CPL Tillman, and who stated that he would have died if not for CPL Tillman's actions.

When we pointed out the inaccuracies in CPL Tillman's award citation, narrative, and attached valorous award witness statements, LTC [REDACTED] conceded the inaccuracies but testified that he believes the "the essence of what Pat did is represented in that narrative [and] that citation." Further, LTC [REDACTED] testified that the award would still be justified if the inaccuracies are cleared up and replaced by witness statements obtained by the later AR 15-6 investigations. LTC [REDACTED] asserted that CPL Tillman's valor would still be sufficient to merit a Silver Star, or at a minimum, the Bronze Star Medal with V device for valor. He testified that CPL Tillman's "valor is indisputable."

On April 27, 2004, MAJ [REDACTED] electronically submitted to LTC [REDACTED] CPL Tillman's draft Silver Star citation and the narrative justification (see narrative justification at Appendix G).<sup>22</sup> MAJ [REDACTED]'s draft citation does not contain the actions described in the narrative, specific acts by CPL Tillman while under fire, or contributions to the survival of CPL Tillman's comrades (see Appendix F, citation comparison, left column). LTC [REDACTED] testified that he left MAJ [REDACTED]'s narrative unchanged, but made substantial edits to the citation (see Appendix F, citation comparison, center column).

The narrative justification composed by MAJ [REDACTED] included the following statements: "As a result of CPL Tillman's efforts and heroic actions, the trail element of the platoon was able to maneuver through the ambush to positions of relative safety without suffering a single casualty"; "As the trail element of the platoon attempted to push through the ambush, the fighting that ensued at CPL Tillman's position increased in intensity"; "During the assault, CPL Tillman was shot and killed"; "CPL Tillman gave his own life to protect his fellow

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<sup>22</sup> LTC [REDACTED] was appointed the second AR 15-6 investigating officer on May 8, 2004.

Rangers, both within his fire team and the members of his platoon trapped in an ambush kill zone”; and “Through his selfless service and disregard for his own safety, he is personally responsible for saving numerous lives,” (see narrative justification at Appendix G).

LTC [REDACTED] said that he used the narrative and the two valorous award witness statements attributed to SGT [REDACTED] and PFC [REDACTED] to edit the citation. We interviewed SGT [REDACTED] and PFC [REDACTED], the two Rangers who purportedly signed the two valorous award witness statements attached to CPL Tillman’s Silver Star recommendation. PFC [REDACTED] recalled writing about CPL Tillman’s actions, and specifically recalled writing that CPL Tillman’s actions saved his life, but PFC [REDACTED] stated that he did not sign the valorous award witness statement sent with CPL Tillman’s Silver Star recommendation. PFC [REDACTED] also pointed out parts he knows he did not write and parts that were not accurate.

SGT [REDACTED] was not as clear about writing a statement to support the award, but he testified that he might have.<sup>23</sup> He testified that he did not sign such a statement. SGT [REDACTED] confirmed some parts of the valorous award witness statement as accurate and he identified other parts that he might have written. But SGT [REDACTED] also pointed out parts that were inaccurate, in that he was unable to see CPL Tillman’s actions from his location. Finally, SGT [REDACTED] pointed to a phrase “in the most gallant Ranger fashion” that he found “hokey” and stated that it was a phrase that he would not have written. Based on our interviews, we believe the purported statements of SGT [REDACTED] and PFC [REDACTED] were submitted to LTC [REDACTED] by personnel NCOs at 2nd Battalion or at the Regiment, but we were not able to identify the specific drafter.

COL Nixon, like LTC [REDACTED], believed that CPL Tillman’s actions before his death justified award of the Silver Star. When we interviewed COL Nixon, he testified that he reviewed the award recommendation package and had based his recommendation on CPL Tillman’s actions before his death. COL Nixon testified that he did not believe that CPL Tillman’s death by friendly fire should prevent his valor from being recognized by the Silver Star. COL Nixon conceded the inaccuracies that the later investigations have shown. COL Nixon also agreed that there was a need to re-look and correct the citation, narrative justification, and valorous award witness statements. COL Nixon testified that he recommended the award because he believed CPL Tillman’s actions merited it, and not because of any concern for his [COL Nixon’s] personal reputation or the reputation of the Rangers after news of CPL Tillman’s death by friendly fire became public.

On April 28, 2004, the regiment personnel NCO electronically submitted through operational channels, the Silver Star recommendation that included: (1) a DA Form 638, with recommendations of COL Nixon and MG McChrystal; (2) a Silver Star citation edited by LTC [REDACTED] (see Appendix F, center column); (3) the unedited narrative justification prepared by MAJ [REDACTED] (see Appendix G); and (4) two unsigned, but stamped “original signed” “Valorous Award Witness” statements attributed to SGT [REDACTED] and PFC [REDACTED]. The recommendation package was not processed through LTG Kensinger’s headquarters.

<sup>23</sup> We note that both SGT [REDACTED] and PFC [REDACTED] authored and signed sworn statements as part of CPT [REDACTED]’s AR 15-6 investigation that was in process at the same time the Silver Star documentation was being compiled.

Personnel at the operational headquarters or at the Army Human Resources Command made further edits to the Silver Star citation, (see Appendix F, right column). At Army Human Resources Command, a Department of the Army Awards Board reviewed the Silver Star recommendation and recommended approval. On April 29, 2004, BG Gina Farrisee, Commander, Army Human Resources Command, forwarded the award to Mr. R. L. Brownlee, the Acting Secretary of the Army, who approved CPL Tillman's posthumous Silver Star. At the time, neither BG Farrisee nor Acting Secretary Brownlee was aware that friendly fire was suspected. BG Farrisee testified that if she had known friendly fire was suspected, and that an investigation was underway, she probably would have held the award recommendation until completion of the investigation. BG Farrisee testified that a Silver Star could be merited in a friendly fire incident, though she did not address the specific facts of CPL Tillman's death in giving that opinion.

On April 29, 2004, MG McChrystal, the operational commander above COL Nixon, sent a P4 message to LTG Kensinger and the commanders of SOCOM and CENTCOM, to alert them that CPL Tillman had been recommended for a Silver Star, although it was "highly possible" that an investigation would find that he died by friendly fire. MG McChrystal advised his higher commanders that he nevertheless believed CPL Tillman deserved the award. MG McChrystal alerted them in part so that they could inform the President or the Acting Secretary of the Army, in case they chose to make remarks that might prove embarrassing if the public learned that CPL Tillman died by friendly fire.<sup>24</sup>

One part of BG Jones' AR 15-6 investigation attempted to answer questions asked by CPL Tillman's mother. In a separate document attached to his report, BG Jones answered these questions. Concerning the Silver Star, Mrs. [REDACTED] asked "Why was CPL Tillman's death so embellished by the military?" BG Jones found that CPL Tillman intended to lead "an assault on the enemy positions on the Southern Ridgeline." BG Jones stated that CPL Tillman's plan was "audacious" and an "aggressive maneuver, at the risk of his own life, to bring the fight to the enemy," and that CPL Tillman's commanders considered this plan as "worthy of a Silver Star." We asked CPT [REDACTED], LTC [REDACTED], and COL Nixon whether they considered CPL Tillman's intention to assault the southern ridgeline in nominating him for the Silver Star. All three testified that they did not consider any intent of CPL Tillman to assault the southern ridgeline, but based their recommendations for the award on his personal actions to defend Serial 2 prior to his death and his actions in the face of intense friendly fire to save PFC [REDACTED]

### Discussion

We concluded that the Silver Star citation and supporting documents had materially inaccurate statements and erroneously implied that CPL Tillman died by enemy fire. We also concluded that his immediate superiors believed his actions merited the award, and, based on the limited information available at the time, constructed an account of the incident that they assumed to be reasonably correct. Other revisions, as the award recommendation was processed, compounded the inaccuracies. LTC [REDACTED], COL Nixon, and MG McChrystal are accountable

<sup>24</sup> The timing and motivation of MG McChrystal is covered in more detail in the section that addresses notification of next of kin. In this same section, LTG Kensinger's review of this P4 message and earlier notice of suspected friendly fire is also addressed.

for the inaccurate award recommendation. Additionally, MG McChrystal and LTG Kensinger are accountable for the failure to inform the award approval authority (Acting Secretary Brownlee) of suspected friendly fire before he approved the award or before the award was presented.

The criteria for a Silver Star requires a demonstration of "gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force . . .," (AR 600-8-22, subparagraph 3-9.b). The form or level of gallantry is not defined, other than that the gallantry must be "with marked distinction." The approval authority for an Army military award has discretion in making these "subjective decisions," (AR 600-8-22, subparagraph 3-1.c). The criteria listed above does not preclude an award of the Silver Star to a soldier who dies from friendly fire, if the soldier's actions prior to his death otherwise demonstrate gallantry of marked distinction. The Secretary of the Army is the approval authority for award of the Silver Star.

CPL Tillman's commanders were confronted with information about an enemy ambush and friendly fire incident that proved to be very confusing. CPL Tillman's award recommendation package was rushed to ensure that the Acting Secretary of the Army could consider and approve it before a scheduled memorial service. The regimental commander, COL Nixon, decided not to notify the family that friendly fire was suspected until the investigation was completed.<sup>25</sup> Our review of CPL Tillman's award recommendation revealed several materially inaccurate statements. For example, in the case of the statement attributed to SGT [REDACTED] certain assertions could not be true because he was on the other side of a ridge from CPL Tillman and could not see what had happened to him. Further, we concluded that an uninformed reader could reasonably infer that CPL Tillman had been killed by enemy fire although a careful review of the narrative and citation shows no direct assertion that he was killed by enemy fire. As a result, the narrative justification and citation were misleading. In our interviews, all of the commanders who recommended CPL Tillman for the Silver Star now concede these inaccuracies.

The citation asserts that "While mortally wounded, his audacious leadership and courageous example under fire inspired his men to fight with great risk to their own safety." We now know that CPL Tillman's head wounds would have killed him instantly and would not have allowed him to inspire others while "mortally wounded." This phrasing occurred in a final edit at either the operational headquarters or Army Human Resources Command, where they would not have known the exact nature of his wounds. The citation also asserts that "Corporal Tillman put himself in the line of devastating enemy fire as he maneuvered his Fire Team to a covered position." The only devastating fire CPL Tillman received was friendly fire. We understand from our interviews that CPL Tillman's commanders were referring to CPL Tillman and the other Serial 1 Rangers running up to the ridge and spur to provide covering fire for Serial 2. The Serial 1 Rangers on the ridge and spur did not receive "devastating enemy fire." Some of the ambushed Serial 2 Rangers in the canyon may have perceived the incoming enemy mortar or rocket-propelled grenades and small arms fire as "devastating," and the platoon leader, wounded in the village by the friendly fire of Serial 2, thought he was hit by "intense" enemy fire. The

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<sup>25</sup> See Section IV.B. of this report on notification of next of kin that address COL Nixon's reasons for not notifying the family before completion of the regimental AR 15-6 investigation.

Serial 1 Rangers, on the ridge with CPL Tillman did not experience that level of enemy fire, and the Ranger with CPL Tillman later testified that they did not receive enemy fire at their position.

The narrative justification, which was not edited after it left Afghanistan, also contains several materially inaccurate statements. The narrative asserts that as Serial 2 attempted to "push through the ambush, the fighting that ensued at CPL Tillman's position increased in intensity." In fact, after Serial 2 escaped the ambush, enemy fire did not increase; any increase in the "intensity" of fighting occurred because CPL Tillman and the AMF soldier were mistaken for the enemy and were fired on by Serial 2. The narrative also asserts that CPL Tillman's "efforts and heroic actions" allowed Serial 2 to "maneuver through the ambush to positions of relative safety without suffering a single casualty." The platoon members knew the evening of CPL Tillman's death that no one in Serial 2 was injured, and while many facts were not yet clearly known, it probably was understood then that Serial 2 drove its way out of the ambush without any apparent assistance from Serial 1. The narrative omitted the fact that Serial 1 suffered multiple casualties in the incident, including the deaths of CPL Tillman and the AMF soldier, and the wounds suffered by 1LT [REDACTED] and the radio operator. A third assertion is that "In the face of mortal danger, CPL Tillman illustrated he would not fail his comrades. During the assault, CPL Tillman was shot and killed." This assertion is not preceded by any description of an assault by CPL Tillman or an assault by the enemy, and it does not explain who killed him or how he was killed. It was known then that CPL Tillman was stationary, awaiting Serial 2, and the only assault would have been Serial 2's firing on him.

In our interview, LTC [REDACTED] CPL Tillman's battalion commander, conceded each of the inaccuracies, but he maintained that if all of these inaccuracies were corrected, CPL Tillman's valor was indisputable and he deserved to be recognized by award of the Silver Star. COL Nixon and MG McChrystal agree. These commanders testified that they relied upon four main factors to conclude that CPL Tillman deserved the Silver Star at the time, and still does today.

Those four factors are: (1) CPL Tillman and the other Rangers with him, rushed to the defense of Serial 2 when they heard the explosions and small arms fire from the enemy ambush; (2) these Rangers, including CPL Tillman, did so without regard for their personal safety, in the face of enemy fire; (3) CPL Tillman, on his own initiative, to provide additional covering fire for Serial 2, moved to a position over the military crest from the other Rangers, exposing himself to potential enemy fire from the southern ridgeline; and (4) CPL Tillman took valorous action to identify himself as friendly, when he faced the deadly fire from Serial 2, actions which PFC [REDACTED] believed saved his life. CPL Tillman's commanders did not directly, or clearly, state these four factors in the award recommendation.

Later investigations have shown that the enemy fire from the northern ridgeline was too far away to be effective (affecting factor 2); however, that was not known by the commanders at the time they submitted the award recommendation. Further, it is arguable whether that knowledge changes their assessment of CPL Tillman's valor. The commanders were judging CPL Tillman's willingness to run toward and face enemy fire in an effort to save fellow Rangers, first along the northern ridgeline where the enemy ambushed Serial 2, and later, when he exposed himself to potential enemy fire from the southern ridgeline. CPL Tillman and

PFC [REDACTED] would not know whether the enemy fire would prove light, moderate, devastating or ineffective, until they had reached and occupied their positions. After all of the investigations, including our own, three of the four factors remain factually accurate, while one can be said to be inaccurate in part, in that enemy fire has now been shown to have been ineffective.

CPL Tillman's commanders testified that the enemy fire he actually received does not alter the valor he displayed in facing the enemy fire. On the basis of those four factors, and though he died by friendly fire, the commanders testified that the award approving authority could properly approve a Silver Star, with a corrected narrative justification and citation.

Subparagraph 3-1.c of AR 600-8-22 recognizes that the decision to approve an individual award is discretionary and "subjective," even if all of the award criteria are met.

Acting Secretary Brownlee still might have approved the award had he known that friendly fire was suspected; however, he could not exercise his discretion properly when he was kept in ignorance of important facts. More likely, as BG Farrisee testified, if she had known that a friendly fire investigation was underway, she would have recommended that no decision be made until the investigation was completed.

LTC [REDACTED] COL Nixon, and MG McChrystal are accountable for the inaccurate and misleading assertions contained in the award recommendation package. COL Nixon either should have delayed submission of the recommendation until completion of the Regimental AR 15-6 investigation he appointed, which would have allowed him to accurately state that CPL Tillman died by friendly fire, or he should have immediately alerted the approving authority, the Acting Secretary of the Army. The investigation report also would have cleared up some of the inaccuracies, though not all, as many facts of the ambush and friendly fire incident have become clear only after BG Jones, the Army CID, and this Office, completed their investigations.

We found that COL Nixon delayed the communication of suspected friendly fire outside of his chain of command because he decided that he had to complete the AR 15-6 investigation first. The fact that COL Nixon helped draft the P4 message that MG McChrystal sent to the commanders of SOCOM, CENTCOM, and USASOC, indicated that COL Nixon understood how controversial an award of the Silver Star in a friendly fire incident might be. The P4 message specifically advised the recipients to alert the President and Acting Secretary Brownlee, so that they would not be embarrassed by comments they might make where not realizing that friendly fire was "highly possible."

We disagree with COL Nixon's decision to pursue approval of the award before informing the family that friendly fire was suspected. COL Nixon testified that his past experience convinced him that valor awards should be presented at a memorial service or funeral where a Soldier's family would be gathered together, and not delayed until completion of an investigation. COL Nixon wanted CPL Tillman's widow and family to know how bravely he had fought, and COL Nixon testified that in the case of such displayed valor, it should not matter whether he died by friendly or enemy fire. While he thought it should not matter whether CPL Tillman died by friendly fire, COL Nixon's decision resulted in the family believing they had been purposely misled.

If COL Nixon, or a representative, had explained why the award was merited despite his friendly fire death on the basis of the four factors articulated above, the family might have understood. As it was, the expedited processing, without informing the family of suspected friendly fire, and without articulating the four factors, defeated COL Nixon's purpose, and caused the family to question COL Nixon's, and the Army's, true motives.

We also found MG McChrystal accountable for not notifying the award processing channels that friendly fire was suspected to ensure that the recommendation was considered based on accurate information. We recognize that MG McChrystal's P4 message specifically referred to his Silver Star recommendation of April 28, 2004, and was an attempt to notify the Acting Secretary, through higher level commanders. But the P4 message requested his higher commanders to alert the senior officials so they would not be embarrassed by remarks concerning CPL Tillman's death should the public find out friendly fire was involved. The P4 message did not request or suggest any action to correct the information in the award recommendation package.

Finally, LTG Kensinger had an obligation to notify Acting Secretary Brownlee when he first received information of suspected friendly fire in CPL Tillman's death, but certainly no later than his receipt of the P4 message. LTG Kensinger knew 3 days prior to the memorial service that the Acting Secretary was most likely unaware of the suspicion of friendly fire when he approved the award, and he should have provided the Acting Secretary notice as the senior Army commander in CPL Tillman's chain of command.<sup>26</sup> Indeed, as the only recipient of the P4 message in the "Army" chain of command, it was LTG Kensinger's duty to provide the notice to the Acting Secretary of the Army, as the P4 message called for, alerting the Acting Secretary and his staff to this issue. Acting Secretary Brownlee approved the Silver Star on April 29, 2004.

We concluded that LTG Kensinger reviewed the P4 message on April 30, 2004, after the Acting Secretary approved the award, but before the memorial service on May 3, 2004. We also concluded that LTG Kensinger was aware sometime on April 25, 2004, that friendly fire was suspected. Because LTG Kensinger's headquarters did not process CPL Tillman's recommendation package, we do not find LTG Kensinger shares accountability for the inaccuracies in that package.

Secretary of the Army Harvey directed a change for future approval of Army posthumous valor awards, to address circumstances like CPL Tillman's award. Secretary Harvey directed that no posthumous valor awards could be approved while an AR 15-6 friendly fire investigation was still pending. The recent edition of AR 600-8-22, Military Awards, incorporates Secretary Harvey's direction. Subparagraph 3-19.v provides that "[p]osthumous valor awards must always reflect accurately the actual events and circumstances for which the award is being presented." Further, the award approval authority is now required to review the completed AR 15-6 investigation before approving a posthumous valor award and must reflect that he or she reviewed the report on the award recommendation paperwork itself.

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<sup>26</sup> Although Generals Brown and Abizaid were Army generals senior in rank to LTG Kensinger, they served in joint billets reporting to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff. Of the three addressees on the P4 message, only LTG Kensinger reported to the Acting Secretary of the Army through the Army Chief of Staff.

We recommend that the Acting Secretary of the Army, the approval authority for the Silver Star, review CPL Tillman's valorous award recommendation and take appropriate action after considering an accurate analysis of the facts and circumstances leading to CPL Tillman's death by friendly fire on April 22, 2004.

We also recommend that the Acting Secretary address and take action as he deems appropriate for the failure of LTC [REDACTED], COL Nixon, and MG McChrystal, to submit an accurate Silver Star recommendation, that either recognized CPL Tillman's death by friendly fire, or alerted Acting Secretary Brownlee to the special circumstances of a pending friendly fire investigation, in advance of his considering CPL Tillman's Silver Star recommendation.

We further recommend that the Acting Secretary address and take action as he deems appropriate for LTG Kensinger's failure to alert Acting Secretary Brownlee that friendly fire was suspected.

## V. CONCLUSIONS

A. COL Nixon failed to initiate, through the chain of command, timely notification to the Army Safety Center and CENTCOM of suspected friendly fire in CPL Tillman's death. As a result, neither organization could comply with its respective responsibility to assess the need for a centralized safety investigation or to convene a legal investigation.

B. CENTCOM failed to issue written implementing guidance required by DoDI 6055.7, "Accident Investigation, Reporting, and Record Keeping."

C. Each of the three AR 15-6 investigations conducted into the death of CPL Tillman was deficient, and thereby contributed to inaccuracies, misunderstandings, and perceptions of concealment. Those deficiencies included:

- CPT [REDACTED] and LTC [REDACTED] were not appointed as investigating officers by a GCMCA or at the direction of the CENTCOM Commander.
- CPT [REDACTED] and LTC [REDACTED] failed to visit the scene to visually reenact the incident, secure physical evidence, take photographs, or obtain accurate measurements.
- CPT [REDACTED] and LTC [REDACTED] failed to interview all relevant witnesses and address inconsistencies in witness testimony.
- CPT [REDACTED] failed to preserve or document real evidence.
- CPT [REDACTED] and MAJ [REDACTED], with the apparent concurrence of LTC [REDACTED] withheld from the AFME and CID the fact that friendly fire was suspected in the death of CPL Tillman, thereby impeding completion of the AFME's final autopsy report.



- LTC [REDACTED] drew conclusions not supported by evidence included in his report.
- BG Jones failed to interview all of the Rangers in Serials 1 and 2 to resolve the uncertainty in the sequence of events that occurred on April 22, 2004.
- BG Jones failed to apply relevant standards and assign accountability for the mishandling of physical evidence in the days following CPL Tillman's death.
- BG Jones failed to fully address the next of kin notification issue as a violation of applicable regulations.
- BG Jones failed to pursue inaccuracies related to the Silver Star award, reached findings not supported by testimony, and, in fact, exacerbated the situation by sharing those findings with family members, senior Army officials, and Members of Congress during official briefings.
- BG Jones failed to pursue misrepresentations on the part of LTG Kensinger related to the next of kin notification issue.

D. LTG Kensinger failed to timely appoint a safety board to investigate the fratricide incident as required by Army regulation.

E. LTG Kensinger provided misleading testimony to BG Jones and this Office when he denied that he knew friendly fire was suspected before the memorial service for CPL Tillman.

F. Responsible Army officials failed to notify the primary next of kin as soon as they reasonably suspected friendly fire.

- COL Nixon was accountable for his decision to delay notification to the primary next of kin until the completion of the friendly fire investigation.
- LTG Kensinger was also accountable as he was the commander with administrative control over the 75th Ranger Regiment, and was in a position to inform the primary next of kin prior to or immediately after CPL Tillman's memorial service but decided not to do so.

G. Responsible officials failed to comply with the Army military award regulation when they submitted a Silver Star recommendation that included inaccurate information and a misleading citation that implied CPL Tillman died by enemy fire.

- LTC [REDACTED], COL Nixon, and MG McChrystal are accountable for the inaccurate award recommendation.

- MG McChrystal and LTG Kensinger are accountable for the failure to inform the award approval authority (Acting Secretary Brownlee) of suspected friendly fire.

## VI. RECOMMENDATIONS

We recommend that the Acting Secretary of the Army take appropriate corrective action with respect to the officials whom we identified as accountable for the regulatory violations and errors in judgment that are described in this review. Additionally we recommend that the Acting Secretary initiate a review of the Silver Star award to ensure that it meets regulatory requirements. We note that the Army has already taken action to delay approval of posthumous valor awards until completion of pending investigations and has strengthened guidance concerning next of kin notifications.

We recommend that the Commander, CENTCOM, issue written implementing guidance required by DoDI 6055.7.

**Appendix A**  
**Summary of**  
**Army Criminal Investigation Command Report**

# U.S. ARMY CRIMINAL INVESTIGATION COMMAND

## EXECUTIVE SUMMARY

**Background.** In response to requests from the Inspector General of the Army and members of Congress, in August 2005, the DODIG initiated a review of Army investigations of CPL Patrick D. Tillman's death, and the death and injuries of others. Based on their ongoing review, the DODIG requested on 3 March 2006, that the Commander, US Army Criminal Investigation Command, initiate a criminal investigation into CPL Tillman's death and the death and injuries to others.

In response to this request, CID initiated a criminal investigation on 6 March 2006. As part of the investigation, CID deployed seven special agents and two crime lab examiners from the US Army Criminal Investigation Laboratory (USACIL) to Afghanistan on 17-29 April 2006 to conduct a death scene examination. Accompanying the agents into Afghanistan were two Soldiers who were eyewitnesses to the events on 22 April 2004, when CPL Tillman was killed. While in Afghanistan, over 80 interviews were conducted, to include identifying and interviewing an Afghan doctor who allegedly passed information to the Rangers prior to the incident; identifying and interviewing the truck driver who accompanied the Rangers; and determining the identity of the Afghanistan soldier who was also killed during the incident. In addition to the interviews, forensic processing of the death scene included video reenactments, rock and soil samples from CPL Tillman's position, and trajectory analysis.

Concurrent and subsequent to the on-scene examination in Afghanistan, CID special agents conducted over 160 direct and indirect witness interviews; reviewed all previous investigations, applicable rules of engagement and standard operating procedures; and processed evidence at the USACIL and a specialty metallurgic laboratory.

### **Results.**

On 22 Apr 04, a platoon of Co A, 2/75th Ranger Regiment was tasked to conduct overwatch operations near the village of Manah, Afghanistan. During the course of the movement, one of their vehicles became disabled. After coordination to extract the disabled vehicle was unsuccessful, a decision was made to split the platoon. Serial 1 was tasked to depart and begin the overwatch operations, while Serial 2 was tasked to transport the disabled vehicle, with the assistance of a local "jingle" truck, to a pre-designated location for pick up.

After the two Serials separated, and due to terrain concerns, Serial 2 changed its route and embarked on the identical route Serial 1 had taken. Members of Serial 2 relayed the change of route, but due to terrain, their communications were not acknowledged, and Serial 2 had no communication with Serial 1 until after the incident.

During the movement through a canyon road (a washed out trail), Serial 2 was ambushed and became engaged in a running gun battle with enemy combatants. Serial 1 had passed through the same canyon without incident and was approximately 1,000 meters ahead of Serial 2. Upon hearing the gunfire and sporadic radio communication from Serial 2, Serial 1 dismounted their vehicles and moved on foot to a more advantageous position to provide overwatch and fire support for Serial 2's movement out of the ambush. CPL Tillman placed himself and a PFC into a position at the end of a rocky ridge and directed their fire at enemy positions. AMF Soldier Thani, armed with an AK-47, was next to CPL Tillman's position, but not under the direction or control of CPL Tillman. The AMF Soldier Thani reportedly fired at random enemy positions

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## U.S. ARMY CRIMINAL INVESTIGATION COMMAND

across the wadi where Serial 2 was about to emerge from the canyon ambush area. Serial 1 unsuccessfully attempted to make radio contact with Serial 2 to advise them of their position. When the first vehicle of Serial 2 exited the canyon, coming into view of CPL Tillman's position, the personnel in the vehicle, not knowing Serial 1 was in the immediate area, observed what they thought to be an enemy combatant (Thani) firing his AK-47 rifle directly over their vehicle. Personnel in the first vehicle then returned fire on AMF Thani and CPL Tillman's position, as well as on other nearby positions. After members of Serial 2 identified friendly forces in the area, a cease fire was secured. A search of the scene revealed CPL Tillman and AMF Soldier Thani were mortally wounded, and two other U.S. Soldiers were wounded.

### **Findings.**

Investigation determined that members of Serial 2 did not commit the offenses of Negligent Homicide or Aggravated Assault. It was determined that although CPL Tillman and AMF Soldier Thani were killed during the incident, members of Serial 2 believed they were under enemy fire and were returning fire at enemy combatants. Under extreme circumstances and in a very compressed time frame, the members of Serial 2 had a reasonable belief that death or harm was about to be inflicted on them and believed it was necessary to defend themselves.

Additional contributors to the incident were poor visibility, a lack of communication between the Serials, and the unexpected presence of AMF Soldier Thani. Prior to this incident, AMF Soldiers were not integrated or trained as fire team members in this Ranger platoon. There is overwhelming evidence to substantiate CPL Tillman's and AMF Soldier Thani's deaths, as well as the injuries sustained by the other two U.S. Soldiers, were caused by friendly fire.

## **Appendix B**

### **Chronology**

#### **April 22, 2004.**

- CPL Tillman is killed in action in Afghanistan.
- After the incident, 1SG [REDACTED], the company first sergeant, and, CPT [REDACTED], the company commander, deploy separately to the scene.
- Joint Task Force Chief of Staff, COL [REDACTED] approves transmission of the "Real World Casualty Report 001." This report reflects the deaths and injuries as caused by enemy fire.
- Initial Casualty Report is issued to [REDACTED], the primary next of kin. Initial Casualty Report indicates cause as enemy fire.
- PFC [REDACTED] informs 1SG [REDACTED] company first sergeant, of the possibility of friendly fire from a Serial Two vehicle.

#### **April 23, 2004.**

- 1SG [REDACTED], the company first sergeant, walks Canyon Road, the area where CPL Tillman is killed in action. He finds American cartridge cases from SSG [REDACTED]'s Ground Mobile Vehicle. He also removes an American .50 caliber bullet from the rock next to CPL Tillman's position.
- 1SG [REDACTED], the company first sergeant, informs CPT [REDACTED] company commander, that fratricide is the suspected cause of death.
- LTC [REDACTED], the battalion commander, arrives at the scene of the incident.
- 1SG [REDACTED], the company first sergeant, informs CSM [REDACTED], the regimental command sergeant major, that fratricide is the suspected cause of death.
- CSM [REDACTED], the regimental command sergeant major, and 1SG [REDACTED], the company first sergeant, informs LTC [REDACTED], the battalion commander, of the suspected fratricide. CSM [REDACTED] recommends an investigation.
- LTC [REDACTED], the battalion commander, and CSM [REDACTED], the regimental command sergeant major, tell COL Nixon, Commander, 75th Ranger Regiment, that he suspects fratricide and that an investigation was initiated.
- LTC [REDACTED] Commander, 2nd Battalion, 75th Ranger Regiments verbally assigns CPT [REDACTED] Commander, Headquarters & Headquarters Company, 2/75th Ranger Battalion, to conduct an AR 15-6 investigation. Subsequently, COL Nixon appoints CPT [REDACTED] by memorandum dated April 29, 2004.
- COL Nixon, Commander, 75th Ranger Regiment, calls MG McChrystal, Commander, Joint Task Force, to inform him of CPL Tillman's death.

- MG McChrystal, Commander, Joint Task Force, while meeting with GEN Abizaid, Commander, Central Command, tells him CPL Tillman was killed in action.

**April 24, 2004.**

- 2nd Platoon (CPL Tillman's Platoon) returns to the battalion Forward Operation Base.

**April 25, 2004.**

- 1SG [REDACTED], the company first sergeant, finds evidence of American ammunition in CPL Tillman's MOLLE vest and evidence of a flash-bang grenade that had been impacted by a bullet.
- No later than April 25, 2004, COL Nixon, Commander, 75th Ranger Regiment, informs MG McChrystal, Commander, Joint Task Force, and BG Yellen, Deputy Commander, Army Special Operations Command, that fratricide is suspected and that an investigation was initiated. MG McChrystal concurs with this decision.

**April 27, 2004.**

- Armed Forces Medical Examiner conducts autopsy at Dover Air Force Base, DE.
- Not later than April 27, 2004, CPT [REDACTED], Alpha Company Commander, gathers anecdotal information for recommendation of the Bronze Star Medal for valor from Rangers who were present at the incident and provides draft narrative and justification to MAJ [REDACTED], Operations Officer, and LTC [REDACTED], battalion commander.
- Not later than April 27, 2004, LTC [REDACTED], battalion commander, and CPT [REDACTED], Alpha Company Commander, determine that CPL Tillman should be recommended for the Silver Star for valor, rather than the Bronze Star.
- MAJ [REDACTED] drafts Silver Star citation and narrative on orders from LTC [REDACTED], battalion commander.
- MAJ [REDACTED] sends draft Silver Star award citation and narrative to the LTC [REDACTED], Executive Officer, 75th Ranger Regiment. No valorous witness statements are included in the Silver Star recommendation package.
- No later than April 27, 2004, Personnel Staff Noncommissioned Officer, 75th Ranger Regiment, provided the two valorous witness statements to LTC [REDACTED], Executive Officer, 75th Ranger Regiment.
- COL Nixon, regimental commander, approves the Silver Star citation.
- Special Agent [REDACTED], the Armed Forces Institute of Pathology Criminal Investigative Division agent, requests assistance from Special Agent [REDACTED], HQ Army Criminal Investigation Division Command, to explain and understand CPL Tillman's unusual wound pattern.

**April 28, 2004.**

- MG McChrystal, Commander, Joint Task Force, approves the Silver Star citation.
- Personnel Staff Noncommissioned Officer, 75th Ranger Regiment, forwards the award recommendation to operational headquarters for further processing.

**April 29, 2004.**

- Operational headquarters state-side faxes the Silver Star award recommendation to Army Human Resources Command in Alexandria, VA. Silver Star is later approved by Acting Secretary of the Army Brownlee.
- The first follow-up casualty status report is released by SFC [REDACTED] of the Army Compartmented Element for the Army Special Operations Command, to other units. The follow-up casualty updated information from the initial casualty report, as information was gathered. This casualty status report updated information such as rank and home of record, however, it still stated the cause of death from enemy fire.
- MG McChrystal, Commander, Joint Task Force, sends a "Personal For" message to the GEN Abizaid, Commander, Central Command, GEN Brown, Commander, Special Operations Command, and LTG Kensinger, Commander, Army Special Operations Command, telling them friendly fire would be the likely outcome of the pending investigation, however, the fratricide should not take away from the valorous Silver Star award. The report recommends the addressees warn the Secretary of the Army and the President to deter embarrassment in their possible speeches.

**April 30, 2004.**

- GEN Brown, Commander, Special Operations Command, responds to MG McChrystal's "Personal For" message. GEN Brown's response states that he understands the possibility of fratricide. He also states that the fratricide in no way detracts from CPL Tillman's heroism in the face of the enemy.
- Army Special Operations Command Public Affairs Office dispatches a press release announcing the award of the Silver Star to CPL Tillman. CPL Tillman is posthumously awarded the Silver Star, Meritorious Service Medal, the Army Good Conduct Medal, and the Purple Heart.
- Officer in Charge of Army Special Operations Command Army Compartmented Element Message Center, LTC [REDACTED], personally delivers the "Personal For" Message from MG McChrystal, Commander, Joint Task Force, to LTG Kensinger, Commander, Army Special Operations Command, and witnesses LTG Kensinger reading the message.

**May 3, 2004.**

- CPL Tillman memorial service is held in San Jose, CA.

**May 4, 2004.**

- CPT [REDACTED] submits his AR 15-6 recommendations and findings to COL Nixon.

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**May 7, 2004.**

- SFC [REDACTED] releases the second supplemental casualty status report. The second supplemental casualty report still state casualties were inflicted by enemy fire. The second supplemental casualty report updated field 61, the incident remark field, and field 39, the circumstances. Other minor changes are made as well.

**May 8, 2004.**

- After reviewing CPT [REDACTED]'s investigation, COL Nixon, Commander, 75th Ranger Regiment, appoints his Executive Officer, LTC [REDACTED], to continue CPT [REDACTED]'s AR 15-6 investigation because of his dissatisfaction with the thoroughness of the initial investigative work. COL Nixon notifies BG Yellen, Deputy Commander, Army Special Operations Command and MG McChrystal, Commander, Joint Task Force, of the appointment.

**May 16, 2004.**

- LTC [REDACTED] Executive Officer, 75th Ranger Regiment completes the AR 15-6 legal investigation. The legal investigation concludes friendly fire from Serial Two, SSG [REDACTED]'s vehicle, killed CPL Tillman.

**May 16, 2004.**

- Some time between May 16 and 20, GEN Abizaid, Commander, Central Command, receives the "Personal For" message transmitted by MG McChrystal, Commander, Joint Task Force, on April 29, 2004.

**May 17, 2004.**

- LTC [REDACTED], Legal Advisor, Joint Task Force, is forwarded LTC [REDACTED]'s AR 15-6 investigation. He conducts a legal review of the investigation, and approves it.
- No earlier than May 17, 2004, COL Nixon, regimental commander, approves LTC [REDACTED]'s investigation and forwards the investigation to MG McChrystal, Commander, Joint Task Force.

**May 25, 2004.**

- MG McChrystal, Commander, Joint Task Force, endorses and concurs with the AR 15-6 investigation and forwards it to GEN Abizaid, Commander, Central Command.

**May 26, 2004.**

- LTC [REDACTED], battalion commander, informs [REDACTED] that friendly fire, not enemy fire, killed CPL Pat Tillman.

**May 27, 2004.**

- LTG Kensinger, Commander, Army Special Operations Command contacts BG Farrisee, Commander, Army Human Resources Command, for advice on how to proceed in informing the next of kin of the friendly fire that caused CPL Tillman's death.
- LTC [REDACTED], battalion commander, briefs [REDACTED] of the circumstances and the friendly fire of her husband's death.

**May 28, 2004.**

- MajGen John Sattler, United States Marine Corps, Director of Operations, Central Command, approves the second AR 15-6 investigation, through the issuance of the Memorandum, Subject: Report of Fratricide Investigation. In this memorandum, he certifies that the investigation was conducted in accordance with DoD Instruction 6055.7. The memorandum and investigation is forwarded to the Commanders of the Joint Task Force, Army Special Operations Command, and Special Operations Command.
- GEN Abizaid, Commander, Central Command, approves the completed legal investigation.
- Mrs. [REDACTED] receives a call from a reporter when the story leaked. Mrs. [REDACTED] calls [REDACTED] and he informs his mother of the friendly fire that killed CPL Tillman.

**May 29, 2004.**

- LTG Kensinger, Commander, Army Special Operations Command, conducts press conference to confirm that CPL Tillman was killed by friendly fire.
- LTC [REDACTED], battalion commander, and [REDACTED] separately brief [REDACTED], [REDACTED], and [REDACTED] of the fratricide that caused CPL Tillman's death.

**June 3, 2004.**

- The third supplemental casualty report changes the inflicting force to "unknown." An "unknown" status indicates a pending determination.

**June 16, 2004.**

- COL Nixon, regimental commander, briefs the Tillman family on the events surrounding CPL Tillman's death.

**October 4, 2004.**

- Acting Secretary of the Army Brownlee briefs Senator McCain on the concerns of the Tillman family.

**October 5, 2004.**

- Mrs. [REDACTED] sends Senator McCain an e-mail with questions surrounding CPL Tillman's death.

**October 7, 2004.**

- Mrs. [REDACTED] sends Senator McCain an e-mail with additional questions surrounding CPL Tillman's death.

**October 13, 2004.**

- Senator McCain forwards Mrs. [REDACTED]'s questions to Acting Secretary of the Army Brownlee and requests an investigation.

**November 3, 2004.**

- Acting Secretary of the Army Mr. Brownlee directs LTG Kensinger, Commander, Army Special Operations Command, to conduct an additional inquiry of the AR 15-6 investigation and to answer questions from the Tillman family.

**November 8, 2004.**

- LTG Kensinger, Commander, Army Special Operations Command, appoints BG Jones, Commander, Army Special Forces Command, as the AR 15-6 investigating officer.

**January 7, 2005.**

- BG Jones, Commander, Special Forces Command, submits the AR 15-6 investigation to LTG Kensinger, Commander, Army Special Operations Command.

**January 10, 2005.**

- COL [REDACTED], Staff Judge Advocate, completes the legal review of BG Jones', Commander, Army Special Forces Command, AR 15-6 investigation and determines that the investigation is legally sufficient.
- LTG Kensinger, Commander, Army Special Operations Command, approves the AR 15-6, and forwards the investigation to LTG Stanley Green, Army Inspector General.

**February 7, 2005.**

- The Army Inspector General, LTG Stanley Green, reviewed the AR 15-6 investigation and requested LTG Kensinger, Commander, Army Special Operations Command, conduct additional work.

**March 3, 2005.**

- BG Jones, Commander, Special Forces Command, sends memorandum to LTG Kensinger, Commander, Army Special Operations Command, detailing the results of his follow-up work.

**March 8, 2005.**

- LTG Kensinger, Commander, Army Special Operations Command, forwards the completed AR 15-6 investigation and results to the Army Inspector General, LTG Stanley Green.

**March 9, 2005.**

- Army Inspector General, LTG Stanley Green, received and reviewed the additional information from LTG Kensinger's completed investigation.

**March 16, 2005.**

- Army Inspector General, LTG Stanley Green, determined that all issues were fully addressed in LTG Kensinger's AR 15-6 investigation.

**April 21, 2005.**

- In a letter addressed to BG Jones, Commander, Special Forces Command, Mr. [REDACTED] accused BG Jones of failing to properly investigate his son's death.

**May 12, 2005.**

- BG Jones, Commander, Army Special Forces Command, refers Mr. [REDACTED] s, letter to LTG Stanley Green, Army Inspector General. BG Jones' Staff Judge Advocate, LTC [REDACTED] forwards Mr. [REDACTED] s letter to his supervising Judge Advocate.

**May 26, 2005.**

- LTG Stanley Green, Army Inspector General, receives BG Jones' referral.

**June 2, 2005.**

- LTG Stanley Green, Army Inspector General, refers [REDACTED] s complaint letter to the DoD Inspector General.

**June 6, 2005.**

- The Deputy DoD Inspector General for Investigations requests Investigative Policy and Oversight review the matter under the purview of investigative oversight.

**March 3, 2006.**

- Deputy Inspector General for Policy and Oversight requests Army Criminal Investigation Command to initiate a criminal investigation into CPL Tillman's death and the death and injuries to the other soldiers.

## **Appendix C**

### **Fratricide Investigation Process**

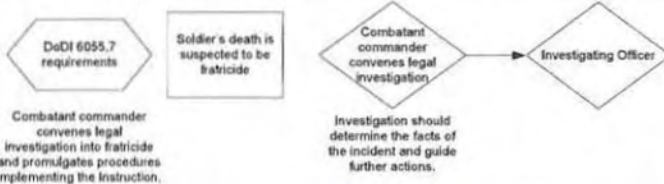
The following chart illustrates the ways in which organizations did not fully comply with the requirements of the process for investigating the fratricide of Corporal Patrick Tillman.

The chart is divided into 2 sections: the top section depicts the established process for investigating fratricide, and the bottom section shows the process used to investigate the death of Corporal Patrick Tillman. The chart's key can be found in the lower left-hand corner of the page.

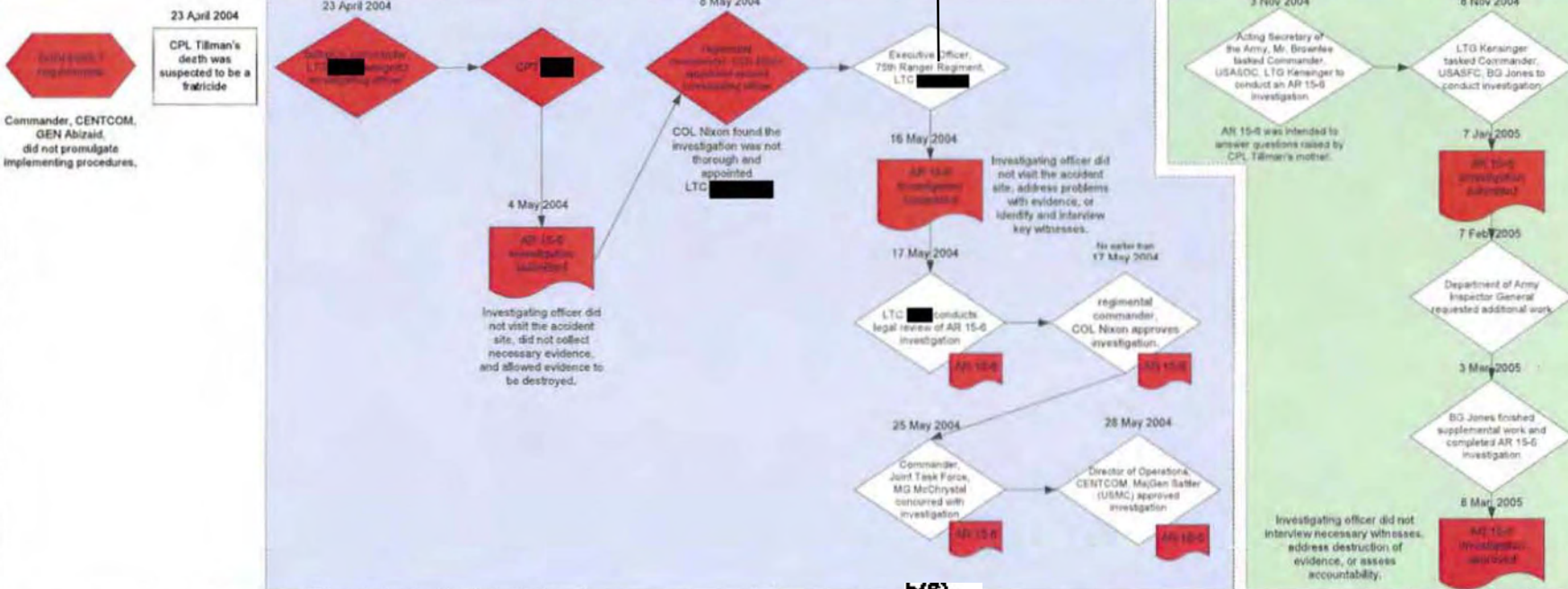
The events have been placed on the chart in chronological order as they should happen in the top section, and as they did happen in the bottom section. The red shapes on the chart show a deviation from the established process.

# Fratricide Investigation Process

Process for investigating fratricide



Process used to investigate the death of CPL Tillman



KEY:  
 [Red box] = not in compliance with DoD and/or Army regulations  
 [Green box] = events surrounding USASOC AR 15-6 investigation  
 [Blue box] = events surrounding Regimental AR 15-6 investigation

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1 Commander, 75th Ranger Regiment, COL Nixon, formally appointed CPT [redacted] as AR 15-6 investigating officer by memorandum, dated April 29, 2004.

## **Appendix D**

### **Casualty Reporting and**

### **Next of Kin Notification Process**

The following chart illustrates the ways in which the Army did not fully comply with DoD and Army requirements for casualty reporting and next of kin notification in the death of Corporal Patrick Tillman.

The chart is divided into 4 sections: the top section depicts the Army's initial casualty reporting process followed by the actual process used to report the death of Corporal Patrick Tillman below it, the third section from the top shows the Army's supplemental casualty report process for suspected friendly fire followed by the actual process used in the death of Corporal Patrick Tillman. The chart's key can be found in the lower left-hand corner of the page.

The events have been placed on the chart in chronological order as they should happen in the top half of each section and as they did happen in the bottom half of each section. The red shapes on the chart show a deviation from the Army process.



[illegible]

**Red** = not in compliance with DoD and/or Army regulations

**Blue** = events related to the initial casualty report process

**Yellow** = events related to the supplemental casualty report process

[illegible]

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## **Appendix E**

### **Silver Star Award Process**

The following chart illustrates the ways in which the Army did not fully comply with DoD and Army requirements for the award of the Silver Star to Corporal Patrick Tillman.

The chart is divided into 3 sections: the top section depicts the Army's award process, the middle section shows any special requirements of the 75th Ranger Regiment, and the bottom section shows the process used by the Army in the case of Corporal Patrick Tillman. The chart's key can be found in the lower left-hand corner of the page.

The events have been placed on the chart in chronological order as they should happen in the top section, and as they did happen in the bottom section. The colored shapes in the top section have matching colored shapes in the bottom section in order to show who was required to perform an action and who actually performed that action. The red shapes on the chart show a deviation from the Army process.

```

graph TD
    A[Soldier performs act] -- prepares --> B[DA Form 638]
    B -- submitted to --> C[Recommender's Commander]
    C -- forward to --> D[Higher Authority]
    D -- approve --> E[Award Approval Authority]
    E -- approve --> F[Silver Star]
    B -- Used to initiate, process and approve award recommendations for all U.S. Army individual recommendations --> G[Valour witness statements]
    G -- Optional for Silver Star awards --> F
  
```

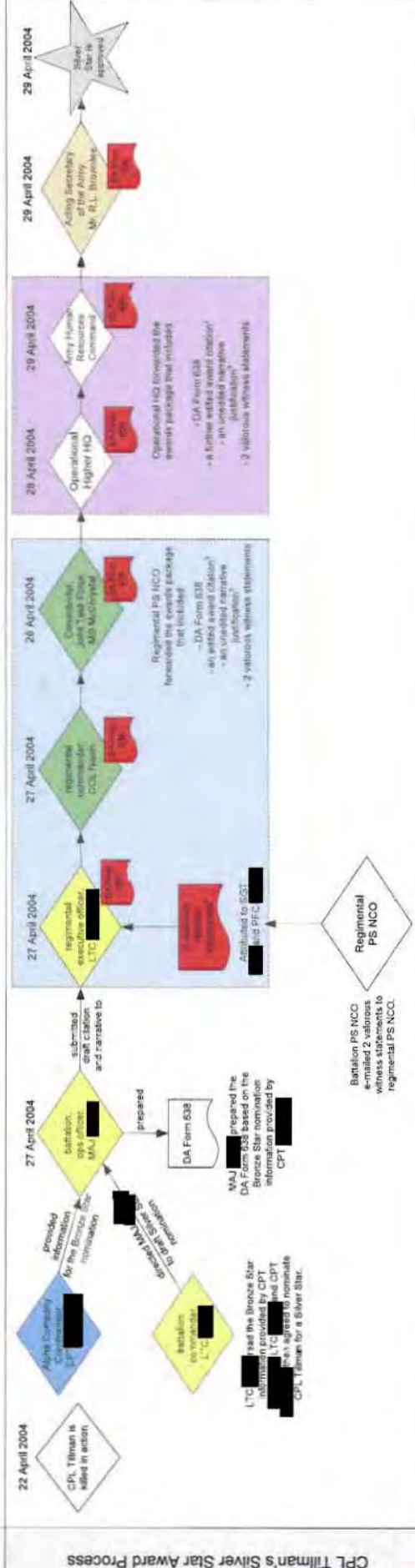
Silver Star is awarded for gallantry in action against an enemy of the U.S. while engaged in military operations involving conflict with an opposing foreign force. The action must be performed with marked distinction.

Used to initiate, process and approve award recommendations for all U.S. Army individual recommendations

Valour witness statements

Optional for Silver Star awards

**75<sup>th</sup> Ranger  
Regiment Valor  
Award Template**



<sup>1</sup>According to SGT [REDACTED] and PFC [REDACTED] the 2 valorous witness statements attributed to them contained inaccurate information. We were not able to identify the individuals responsible for completing the statements attributed to SGT [REDACTED] and PFC [REDACTED].

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**KEY:**

-  not in compliance with DAD and/or Army regulations
-  award station was edited during this time period to reflect an increase in CPL Tiltman's accomplishments
-  award station was edited again during this time period to reflect an increase in CPL Tiltman's accomplishments

## Appendix F

### Silver Star Award Details

#### Side by Side Comparison of Edited Award Citations

Citation drafted by Battalion Operations Officer	Citation as edited at 75th Ranger Regiment	Citation as appears on award approved by HQDA
<p>For exceptionally valorous achievement as a rifle team leader for Alpha Company, 2d Battalion, 75th Ranger Regiment during Operation Enduring Freedom. During this period, Corporal Tillman's leadership as a rifle team leader during combat operations contributed to the overall success of the Joint Task Force. His outstanding leadership, dedication to duty, and commitment to excellence contributed to mission success on every level. His efforts helped in the ongoing war on terrorism and significantly improved the combat capability of the Joint Task Force. Corporal Tillman's distinctive accomplishments reflect great credit upon himself, this command, and the United States Army. Period: 22 April 2004.<sup>1</sup></p>	<p>For gallantry in action against an armed enemy, while serving as a Ranger Rifle Team Leader during Operation Enduring Freedom on 22 April 2004. Caught between the crossfire of an enemy near ambush, Corporal Tillman put himself in the line of devastating enemy fire as he maneuvered his fire team to a covered position from which they could effectively employ their weapons on known enemy positions. His audacious leadership and courageous example under fire inspired his men to fight at great risk to their own personal safety, resulting in the enemy's withdrawal, his Platoon's safe passage from the ambush kill zone, and his mortal wound. Corporal Tillman's personal courage, tactical expertise, and professional competence directly contributed to his Platoon's overall success and survival. In making the ultimate sacrifice for his Team and Platoon, Corporal Patrick D. Tillman reflected great credit upon himself, the Joint Task Force, and the United States Army.<sup>2</sup></p>	<p>For gallantry in action on 22 April 2004 against an armed enemy while serving as a Rifle Team Leader in support of Operation Enduring Freedom. Corporal Tillman put himself in the line of devastating enemy fire as he maneuvered his Fire Team to a covered position from which they could effectively employ their weapons on known enemy positions. While mortally wounded, his audacious leadership and courageous example under fire inspired his men to fight with great risk to their own personal safety, resulting in the enemy's withdrawal and his platoon's safe passage from the ambush kill zone. Corporal Tillman's personal courage, tactical expertise and professional competence directly contributed to this platoon's overall success and survival. Through his distinctive accomplishments, Corporal Tillman brought credit upon himself, the 75th Ranger Regiment, and the United States Army.<sup>3</sup></p>

<sup>1</sup> April 27, 2004, 12:35 PM, email message, Subject: CPL Tillman Award, Attachment: Tillman Award Memo.doc.

<sup>2</sup> April 28, 2004, 5:14 PM, email message, Subject: CPL Tillman Silver Star, Attachment: Tillman Silver Star.doc

<sup>3</sup> April 30, 2004, Silver Star award citation as approved by HQ DA.

## Appendix G

### Justification Submitted to Support Silver Star



#### Enclosure 1 Narrative

Corporal Patrick D. Tillman served as a Rifle Team Leader for [REDACTED] 75<sup>th</sup> Ranger Regiment in support of OPERATION ENDURING FREEDOM from 7 April 2004 to 22 April 2004. During this period, CPL Tillman was responsible for leading his [REDACTED] during numerous combat operations including Air Assault Raids, Mounted and Dismounted patrols, and Ground Assault Convoys. Although a junior ranking Ranger, CPL Tillman displayed the maturity and "cool under fire" mentality normally seen in seasoned Ranger NCOs.

On 22 April, 2004, CPL Tillman's [REDACTED] was conducting a Ground Assault Convoy in vicinity of [REDACTED] near the town of [REDACTED] Afghanistan. The [REDACTED] was split into two sections, separated by several hundred meters. CPL Tillman's team was a part of the lead section moving to clear a village in their zone, while the trail section was escorting a disabled vehicle to a maintenance contact team north of their zone. As the [REDACTED] was moving through an area of highly restrictive terrain, the trail section came under attack, receiving suppressive mortar and small arms fire. The nature of the cavernous terrain made it extremely difficult to target the enemy positions, and there was no room for the Rangers of this trail element to maneuver out of the [REDACTED] zone.

CPL Tillman's element was already safely through the ambush [REDACTED] zone, and his selfless actions that followed embodied every aspect of the Ranger Creed. Without regard for his own personal safety and thinking only of his fellow Rangers trapped in the ambush, CPL Tillman dismounted and maneuvered his team up a hill towards the enemy's location. As CPL Tillman crested the hill, he maneuvered his team into positions to suppress the enemy in order to allow the rest of the convoy to escape the ambush. Only after his team engaged this well-armed enemy did it appear that the enemy's volume of fire into the [REDACTED] zone diminished. Above the din of battle, CPL Tillman was heard issuing fire commands to take the fight to an enemy on the dominating high ground. Always leading from the front, CPL Tillman aggressively maneuvered his team against the enemy positions up the steep slope and personally emplaced each member of his team under the best cover available in the area for their protection. CPL Tillman took up his own position behind the [REDACTED] automatic weapon that he was carrying to direct the fires of his team. As a result of CPL Tillman's efforts and heroic actions, the trail element of the [REDACTED] was able to maneuver through the ambush to positions of relative safety without suffering a single casualty.

As the trail element of the [REDACTED] attempted to push through the ambush, the fighting that ensued at CPL Tillman's position increased in intensity. CPL Tillman focused all of his efforts on keeping the men of his team safe while continuing to press the attack himself without regard for his personal safety. In the face of mortal danger, CPL Tillman illustrated that he would not fail his comrades. During the assault, CPL Tillman was shot and killed.

CPL Tillman gave his own life to protect his fellow Rangers, both within his fire team and the members of his [REDACTED] trapped in an ambush kill zone. The fact that no one in his team or in the trail element of the [REDACTED] was injured is a direct result of CPL Tillman's leadership and heroic actions. Through his selfless service and disregard for his own safety, he is personally responsible for saving numerous lives. His actions are in keeping with the highest standards of the United States Army and are fully deserving of the Silver Star Medal.





# Inspector General Department *of* Defense