

STATEMENT OF

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

TAKEN AT

2047

DATED

2007/204

9. STATEMENT (Continued)

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

AFFIDAVIT

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

I, _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE.

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

(Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6th day of December, 2007 at Phoenix, Arizona

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

(Signature)

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

Art 136 (b)(4) UCMJ (Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

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

PAGE 2 OF 2 PAGES

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION: Camp Liberty, Baghdad
2. DATE (YYYYMMDD): 20071209
3. TIME: 0854
4. FILE NUMBER:
7. GRADE/STATUS: E4
2SCR Camp Liberty

I, (b)(3)(b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
1. How far were you from the vehicle when it was shot? Give or take (b)(2) High
2. Where were you observing from? The Reg. TAC H65 vehicle VC hatch.
3. What equipment were you using to view / observe the sector? None.
4. Approximately how fast was the vehicle going when it was shot? I couldn't tell. I was not looking what was the maximum speed of the car? before the vehicle was shot.
5. What efforts did you see taken to get the vehicle to stop? I was not looking before the shot.
6. What other personnel were able to view the vehicles approach? The other RSS (b)(2)High There were people on the ground, but they were attending to the recovery of (b)(2)High The car was about (b)(2) High from the Humvee.

10. EXHIBIT: C-9
11. S OF PERSON MAKING STATEMENT: (b)(3)(b)(6)
PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF (b)(3)(b)(6), TAKEN AT _____ DATED _____
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION: ECP 3
2. DATE (YYYYMMDD): 20071206
3. TIME: 2030
4. FILE NUMBER:
5. LAST NAME FIRST NAME MIDDLE NAME: (b)(3)(b)(6)
7. GRADE/STATUS: E-4
8. ORGANIZATION OR ADDRESS: RHHT 2SCR

9. I, (b)(3)(b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
At location ECP 3 at 1900-1930 hours, an EOF occurred. There was a downed (b)(2)High that was towed back and awaiting assistance to be brought into Liberty. (b)(2)High, RSS, was called in to assist the regimental TAC to retrieve the downed vehicle. I was located south of (b)(2)High away in (b)(2)High HQ-6S.
There were a lot of local Iraqi cars that were allowed through the area without incident. Around 1930, I witnessed a white car come towards my location. There were two RSS (b)(2)High in front of my (b)(2)High Facing South towards the vehicle. My (b)(2)High was also faced towards the south. As the vehicle approached, it slowed down to a reasonable speed and slowly approached the two RSS vehicles. When it was about (b)(2)High away, a dismounted personnel from RSS waved his arms in a up and down motion to signal the car. As the

10. EXHIBIT: CID
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3)(b)(6)
PAGE 1 OF 3 PAGES
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF

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

TAKEN AT

2030

DATED

2007 12 06

9. STATEMENT (Continued)

Vehicle slowed down more, the vehicle at my right as I was facing the vehicle fired one shot from the (b)(2)High. Immediately, the car stopped, and the female passenger in the front right seat exited the vehicle with her hands in the air. She had blood on her shoulder and all over her hands. At this point, more dismounted personnel approached the car and began interrogating the situation. The vehicle did not, from my view, in any way ~~pose~~ ^{possess} a threat to the Soldiers or the vehicles in the area. Afterward, the wounded were ~~evacuated~~ in my Stryker to the TMC on liberty (b)(3)(b)(6) evacuated

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

INITIALS OF PERSON MAKING STATEMENT

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

PAGE

2 OF 3

PAGES

STATEMENT OF _____ (b)(3)(b)(6) _____ TAKEN AT 2030 DATED 06 Dec 2007

9. STATEMENT (Continued)

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

AFFIDAVIT

I, _____ (b)(3)(b)(6) _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR

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

(signature of Person making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6th day of December, 2007 at Parma Liberty Law

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

(signature of Person Administering Oath)

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

(Typed Name of Person Administering Oath) CPT

Art 136 (b)(4) UCMJ
(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

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

PAGE 3 OF 3 PAGES

SWORN STATEMENT

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PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

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ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION Camp Liberty, Baghdad	2. DATE (YYYYMMDD) 08 Dec 2007	3. TIME 1800	4. FILE NUMBER
5. LAST NAME FIRST NAME MIDDLE NAME (b)(3)(b)(6)		7. GRADE/STATUS SPC	
8. ORGANIZATION OR ADDRESS RHHY, 2SCR			

9. I, (b)(3)(b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

- (b)(2) High Away from the vehicle when it was shot
- I was in drivers hatchback (b)(2)High pulling security towards south of Thunders
- The car was going approximately (b)(2)High and slowed down to (b)(2)High as it got closer
- I witnessed a dismounted personal signal with both arms for the vehicle to slow down, the car slowed down, then within 2-3seconds, the (b)(2)High on my right fired one shot from (b)(2)High
- I witnessed the event through (b)(2)High as the event happened
- Sgt. (b)(3), (b)(6) was in the truck with me as the gunner, he was the only TAC personnel in the AO as far as I know

Nothing Follows
(b)(3)(b)(6)

10. EXHIBIT C10	11. INITIALS OF MAKING STATEMENT (b)(3)(b)(6)	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF (b)(3)(b)(6) TAKEN AT 1800 DATED 08 Dec 2007

9. STATEMENT (Continued)

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

AFFIDAVIT

I, (b)(3)(b)(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(b)(3)(b)(6)
(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 8th day of December, 2007 at Camp Liberty, Iraq

(b)(3)(b)(6)
(Signature of Person Administering Oath)

(b)(3)(b)(6)
(Typed Name of Person Administering Oath)

Article 136 (b)(4) UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT	PAGE	OF	PAGES
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SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
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ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION Camp Liberty, Baghdad	2. DATE (YYYYMMDD) 2007/12/06	3. TIME 2300	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3)(b)(6)	6. SSN	7. GRADE/STATUS CPT	
6. ORGANIZATION OR ADDRESS RTAC, RHHT, 2SCR			

9. I, (b)(3)(b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 06DEC07 at 1400 the Regimental Tactical Assault Command Post (RTAC) was returning to Victory Base Camp (VBC) with a battle damaged (b)(2)High En route, MAJ (b)(3)(b)(6) (Dragoon 3) contacted the Regimental Tactical Operations Center (RTOC-Dragoon 26) and notified the RTOC that the condition of the damaged (b)(2)High in tow would not allow passage through (b)(2)High The Regimental Support Squadron (RSS) was notified by the RTOC that the RTAC needed support in recovering the damaged (b)(2)High through (b)(2)High The RSS dispatched (b)(2)High to conduct a linkup with the RTAC on (b)(2)High approximately (b)(2)High outside (b)(2)High

The (b)(2)High were in line with HQ63, towing HQ64, and HQ65 pulling rear security facing south on (b)(2)High when the RSS recovery team arrived. Their initial assessment required HQ63 to unhook the tow bars and allow (b)(2)High to maneuver the damaged (b)(2)High onto the flatbed of the (b)(2)High HQ63 then pushed forward to pull security in the direction of travel to the north, on (b)(2)High (b)(2)High One of the two gun trucks pushed south of the (b)(2)High convoy and secured the southern approach on (b)(2)High Road on the left side of the road, facing traffic, augmenting rear security provided by HQ65. The second gun truck was used to project light on the recovery operation. After approximately two hours trying to recover the damaged (b)(2)High the decision was made by MAJ (b)(3)(b)(6) to begin to allow traffic to precede through our element in a deliberate manner. Initially five cars were allow to pass south and the flow of traffic began to move.

At approximately 1840, about 45 minutes after we began to allow movement of vehicles, I was given instructions to confirm the security situation and check the southern side of the convoy. Going with me to check security was SPC (b)(3)(b)(6) who was also aboard the HQ63 (b)(2)High We stepped off the ramp of HQ63, when one (b)(2)High report was heard from the direction of the south. Initial confusion with a report of "it is just a warning shot (pause) oh shit, get the aid bags!" was heard from SPC (b)(3)(b)(6) located to my right who had a better view of the incident at first. We ran quickly to a white car that was stationary in the north bound lane.

Initial assessment of the car was that there was no visible damage other than a shattered rear window and a bullet hole in the front passenger headrest. It was later, after looking at photos of the vehicle I would identify the entry point of the bullet just below the front window near the wiper blade. The doors were open and the car was already being approached by personnel from the RTAC with random NCOs from the recovery team.

Both medics (SPC (b)(3)(b)(6) and the medic from the recovery team) were on scene, quickly rendering aid to the passenger in the front right seat. The victim was an older woman (approx (b)(6) years of age) who was in the process of getting out of the car and lying down on the ground as per instructions from the medical personnel. She was wounded in the neck, bleeding profusely and was also missing her right thumb.

10. EXHIBIT C11	11. INITIALS (b)(3)(b)(6)	12. MAKING STATEMENT	PAGE 1 OF 2 PAGES
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SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

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

(Recorder)

ILT (b)(3)(b)(6)
(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

APPROVAL

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

I ratify the appointment of the investigating officer, 1LT (b)(3)(b)(6)
I approve the "Summary" and "Findings."

The recommendation that:

-A condolence payment be made to the family of the deceased man, (b)(6) is
(approved) (disapproved) (remanded to the BCT Cdr).

(b)(2)High

I remand the matter to the BCT Cdr for appropriate action

13 DEC 2007

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



DEPARTMENT OF THE ARMY
 HEADQUARTERS, 1ST BATTALION, 8TH CAVALRY
 2ND BRIGADE, 1ST CAVALRY DIVISION
 FOB RUSTAMIYAH, IRAQ, APO AE 09390

REPLY TO
 ATTENTION OF:

AFVA-1-8CAV-S3

05 November 2007

MEMORANDUM FOR RECORD

SUBJECT: 15-6 Investigation for D CC Blue Small Arms Fire 22 August 2007

1. **SUMMARY:** On 22 August 2007, 1LT (b)(3)(b)(6) D CO 1-8 CAV. was leading a (b)(2)High patrol in (b)(2)High New Baghdad, on the east side of (b)(2)High vic (b)(2)High (b)(2)High. Sunset that night was 1942 hours and percent illumination was 68% during the nighttime patrol. At 2232 hours, SSG (b)(3)(b)(6) in the B102 (b)(2)High at the intersection of (b)(2)High and (b)(2)High saw a military-aged man running past his position with what appeared to be an AK-47. The weapon appeared to be made of wood and metal, standard for an AK-47 (Exhibit F). At this time, SSG (b)(3)(b)(6) and his driver, SPC (b)(3)(b)(6) dismounted out of their (b)(2)High and shouted several times for the individual to stop and to put his weapon down. The individual did not stop and kept running past SSG (b)(3)(b)(6) position and into the palm grove to the northwest. SSG (b)(3)(b)(6) judged, based on the fact that the man was running at his outer cordon (Exhibit B/C) and the history of EFP/SAF activity in this muhalla, that it was appropriate to escalate to deadly force. He fired approximately 15x (b)(2)High rounds, and his gunner fired approximately 15x (b)(2)High rounds. The individual kept running at the outer cordon and appeared to throw an object, possibly the AK-47. At the same time, the individuals in the B-14 M2A3 located at (b)(2)High identified the individual and also began using deadly force. The (b)(2)High commander of B-14 was SPC (b)(3)(b)(6) and the gunner was SPC (b)(3)(b)(6). SPC (b)(3)(b)(6) gave the order to engage and, when the (b)(2)High jammed, SPC (b)(3)(b)(6) acknowledged, firing 3x (b)(2)High rounds at the individual. The individual fell and 1LT (b)(3)(b)(6) patrol moved to the individual to provide aid. The individual was declared dead of wounds. 1LT (b)(3)(b)(6) platoon conducted sensitive site exploitation and could not find an AK-47 or any other weapon in the area. The Iraqi Police were then called to the scene and picked up the dead individual and brought him back to the Rashad IP Station/Mustang JSS. 1LT (b)(3)(b)(6) began to exfil back to FOB Loyalty once the pick up was complete.

2. **FINDINGS:** After examining all evidence, 1LT (b)(3)(b)(6) the platoon leader, took appropriate action. His platoon, including SSG (b)(3)(b)(6) and SPC (b)(3)(b)(6) was justified to use deadly force on the individual as he was running with what appeared to be an AK-47 and acting in hostile manner based on his actions, mannerisms, and the history at (b)(2)High. Although their platoon was unable to recover the weapon that the suspect appeared to be carrying, their actions under possible enemy attack were appropriate for the security of the patrol and served the purpose of their mission to provide intelligence for future operations. After the body was brought to the JSS, IPs identified the individual as (b)(6). This specific individual was known by locals in the area as having a long history of problems with (b)(6). Because of this

AFVA-1-8CAV-S3

SUBJECT: 15-6 for D CO BLUE SAF 22 August 2007

finding, it is likely that the individual was merely imitating American Soldiers and, although it appeared he was carrying a weapon, likely posed no serious hostile threat.

3. **RECOMMENDATIONS:** After reviewing all evidence, I believe that there was no willful misconduct conducted by any soldier involved. The soldiers used proper escalation of force for individuals in the area of operations that appear to be holding AK-47 rifles and partaking in hostile behavior. It was determined after the mission, however, that this individual had a long history of (b)(6) and likely was unaware that his actions could cause retribution from American forces. I recommend that, although the soldiers in 1LT (b)(3), b(6) patrol were justified in using escalation of force, a condolence payment be paid to the family of the individual killed in this event. This action would be a positive information operation campaign for D/1-8 in the Baladiat area, and would also reinforce our desire to help the citizens of New Baghdad. I also

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

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

1LT, EN
Investigating Officer



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
Headquarters, 2d Brigade Combat Team
2d Infantry Division (MND-B)
Forward Operating Base Loyalty, Iraq 09390



AFZC-B-CDR

DEC 01 2007

MEMORANDUM FOR Commanding General, MND-B

SUBJECT: Legal Review of AR 15-6 into the Death of Local National,

(b)(6)

I recommend approval of the investigating officer's findings and recommendations. I intend to approve a condolence payment to the family members.

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

COL, IN
Commanding



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 2ND BRIGADE COMBAT TEAM
2ND INFANTRY DIVISION
MULTI-NATIONAL DIVISION-BAGHDAD
CAMP LOYALTY, IRAQ APO AE 09390



AFZC-B-CDR

MEMORANDUM FOR Investigating Officer, 1L1 (b)(3)(b)(6) 1-8 Cavalry Regiment, 2/2
Infantry Multi-National Division-Baghdad, FOB Loyalty, Iraq APO AE 09390

SUBJECT: Appointment as Investigating Officer under AR 15-6

1. You are hereby appointed as an Investigating Officer pursuant to *AR 15-6, Procedures for Investigating Officers and Boards of Officers*, to conduct an investigation into the facts and circumstances surrounding the death of a local national person that took place on 22 August 2007 by D Co, 1-8 Cav.
2. You will issue Findings and Recommendations that cover the following areas of inquiry:
 - a. Assess the use of force with respect to the Rules of Engagement and the Law of Armed Conflict. Specifically, consider whether the Soldiers involved used appropriate means in taking proportional self-defense to any threat that they were faced with.
 - b. Identify all individuals wounded or killed in the incident. Determine whether wounded or killed local nationals were engaged in hostilities against Coalition Forces at the time of the incident.
 - c. If the killed person was a non-combatant, determine whether his family should receive compensation for his death.
 - d. Identify any other relevant matters that you discover in the course of your investigation.
3. Your legal advisor is MAJ (b)(3), b(6) 2nd Brigade Operational Law Team, VOIP (b)(2)High who will give you an in-brief before you begin your investigation and be available to assist you during the investigation.
4. You may speak with any and all individuals that you believe have information pertinent to your investigation. You will obtain guidance from your legal advisor if in the course of your investigation you determine that completion thereof requires examining the conduct or performance of, or may result in Findings and Recommendations adverse to, a person senior to yourself.
5. If during the course of your investigation you come to suspect that an individual you are questioning may have committed a crime, you will advise that individual of his or her rights under Article 31, UCMJ, or the Fifth Amendment as appropriate. You will administer and record such rights advisements on DA Form 3881.

AFZC-B-CDR

SUBJECT: Appointment as Investigating Officer under AR 15-6

6. All witness statements will be sworn and, if possible, submitted on DA Form 2823. If circumstances preclude you from obtaining a sworn statement, or if you obtain a statement telephonically, you will summarize such a statement in a Memorandum for Record and swear to the accuracy of your summary.
7. Your report will be submitted to this office on DA Form 1574 together with all evidence marked as Exhibits, and an Index to said Exhibits. Your Findings must be based on the evidence you include as Exhibits and your Recommendations must be based on your Findings.
8. Your complete report will be submitted to this office no later than 11 November 2007. Requests for delays should be submitted to me in writing.

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

COL, IN
Commanding



DEPARTMENT OF THE ARMY
Headquarters, 2d Brigade Combat Team
2d Infantry Division (1st CAV DIV)
Forward Operating Base Loyalty, Baghdad, Iraq 09390



REPLY TO
ATTENTION OF

DEC 01 2007

AFZC-B-JA

MEMORANDUM FOR Commander, 2nd Brigade, 2nd Infantry Division, Multi-National
Division-Baghdad, FOB Loyalty, Iraq APO AE 09390

SUBJECT: Legal Review of AR 15-6 – 22 August 2007, Escalation of Force (EOF), Death of
Local National, 1st Battalion, 8th Cavalry Regiment

1. I have reviewed the investigation into the facts and circumstances surrounding the 22 August
2007 EOF incident involving 1/8 CAV which resulted in the death of a local national. I make the
following determinations:

- a. The proceedings complied with the legal requirements of *AR 15-6, Procedures for Investigating Officers and Boards of Officers (2 October 2006)*.
- b. The investigation does not contain any material errors or errors of appointment, and did not violate any individual's substantial rights.
- c. The evidence supports the investigating officer's findings.
- d. The investigating officer's recommendations are consistent with the findings.

2. Staff contact for this legal review is MAJ (b)(3)(b)(6) at VOIP (b)(2)High .

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

✓ Brigade Judge Advocate

CENTCOM 012203

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

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

SECTION I - APPOINTMENT

Appointed by CO: (b)(3)(b)(6), COMMANDER, 2D INFANTRY BRIGADE COMBAT TEAM, 2D INFANTRY DIVISION
(Appointing authority)

on 05NOV07 (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)
(Date)

SECTION II - SESSIONS

The (investigation) (board) commenced at FOB RUSTAMIYAH, BAGHDAD, IRAQ at 1600
(Place) (Time)

on 05 NOV 07 (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

ILT (b)(3), b(6) HHC/1-8 CAV, (INVESTIGATING OFFICER)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1200 on 05 NOV 07
(Time) (Date)
and completed findings and recommendations at 1600 on 05 NOV 07
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES YES NO 1/ NA 2/

- 1 Inclosures (para 3-15, AR 15-6)
- Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)
- a. The letter of appointment or a summary of oral appointment data?
 - b. Copy of notice to respondent, if any?(See item 9, below)
 - c. Other correspondence with respondent or counsel, if any?
 - d. All other written communications to or from the appointing authority?
 - e. Privacy Act Statements (Certificate, if statement provided orally)?
 - f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?
 - g. Information as to sessions of a formal board not included on page 1 of this report?
 - h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?

(b)(2)High

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.
2/ Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

2 Exhibits (para 3-16, AR 15-6)

a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?

b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?

c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?

d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?

e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?

f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?

g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?

3 Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?

B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)

4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?

5 Was a quorum present at every session of the board (para 5-2b, AR 15-6)?

6 Was each absence of any member properly excused (para 5-2a, AR 15-6)?

7 Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?

8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?

C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)

9 Notice to respondents (para 5-5, AR 15-6):

a. Is the method and date of delivery to the respondent indicated on each letter of notification?

b. Was the date of delivery at least five working days prior to the first session of the board?

c. Does each letter of notification indicate —

(1) the date, hour, and place of the first session of the board concerning that respondent?

(2) the matter to be investigated, including specific allegations against the respondent, if any?

(3) the respondent's rights with regard to counsel?

(4) the name and address of each witness expected to be called by the recorder?

(5) the respondent's rights to be present, present evidence, and call witnesses?

d. Was the respondent provided a copy of all unclassified documents in the case file?

e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?

10 If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):

a. Was he properly notified (para 5-5, AR 15-6)?

b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?

11 Counsel (para 5-6, AR 15-6):

a. Was each respondent represented by counsel?

Name and business address of counsel:

(If counsel is a lawyer, check here)

b. Was respondent's counsel present at all open sessions of the board relating to that respondent?

c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?

12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):

a. Was the challenge properly denied and by the appropriate officer?

b. Did each member successfully challenged cease to participate in the proceedings?

13 Was the respondent given an opportunity to (para 5-8a, AR 15-6):

a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?

b. Examine and object to the introduction of real and documentary evidence, including written statements?

c. Object to the testimony of witnesses and cross-examine witnesses other than his own?

d. Call witnesses and otherwise introduce evidence?

e. Testify as a witness?

f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?

14 If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?

15 Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?

(b)(2)High

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.
 2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

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

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

SEE ATTACHED MEMORANDUM

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

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

SEE ATTACHED MEMORANDUM

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