

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)

(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)

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 approve the findings and recommendations with the exception to the recommendations regarding (b)(2)High

(b)(2)High I remand to the BDE CDR to implement actions regarding the above actions as he deems appropriate.

THOMAS C. MEEFEY

BG, U.S. Army
Assistant Division Commander-M

EOF (soldiers) B. Co 3-67th, 101st Airborne Division.

CENTCOM 013004

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)

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

MAJ, EN

(Recorder)

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)

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.)

THOMAS C. MAFFEY

BG, U.S. Army

Assistant Division Commander-M



DEPARTMENT OF THE ARMY
HEADQUARTERS, 506TH REGIMENTAL COMBAT TEAM
101ST AIRBORNE DIVISION (AIR ASSAULT)
CAMP LOYALTY, IRAQ 09390



REPLY TO
ATTENTION OF

AFZB-KG-CO

5 February 2006

MEMORANDUM FOR MAJ (b)(3),(b)(6) , HHC, 506th RCT, Camp Loyalty, Iraq 09390

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation into the escalation of force incident where Soldiers manning a Traffic Control Point (TCP)/Security Position from B Company, 3d Battalion, 67th Armor Regiment, fired on a local national vehicle on 5 February 2006. Your investigation will focus on the following areas:

- a. What were the facts and circumstances requiring the escalation of force?
- b. Did the escalation of force comply with the Rules of Engagement?
- c. Was the escalation of force appropriate, given the facts and circumstances?
- d. Was the TCP/Security Position set up IAW the MND-B TCP SOP and 41D OIF Leader's Handbook (cards 204 and 205)?
- e. What, if any, corrective actions, training, or changes to procedures should be made?
- f. Was there any damage to civilian personnel or property? If so, were claims cards distributed to the civilian personnel?

2. In your investigation, all witness statements will be taken on paper and sworn to at your discretion using DA Form 2823. If you discover any suspected criminal misconduct you must first read the individual their Article 31, UCMJ Rights, prior to taking their statement. From the evidence, you will make findings as to whether any criminal laws or Army regulations have been violated. In addition to your findings, you will make recommendations for any appropriate action to be taken. These recommendations may include but are not limited to: UCMJ or administrative actions concerning one or more individuals, additional training, policy changes, etc. Conduct your investigation pursuant to AR 15-6. Additionally, seek advice from RCT Legal prior to commencing your investigation (VOIP (b)(2)High).

3. This investigation takes priority over other duties. Record your findings and recommendations utilizing DA Form 1574. Submit your investigation packet to this headquarters NLT 1700 10 February 2006. Any requests for an extension should be made to me verbally or in writing.

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

COL, IN
Commanding

CENTCOM 013006



DEPARTMENT OF THE ARMY
HEADQUARTERS, 506TH REGIMENTAL COMBAT TEAM
101ST AIRBORNE DIVISION (AIR ASSAULT)
CAMP LOYALTY, IRAQ APO AE 09390



REPLY TO
ATTENTION OF

AFZB-KG-SJA

13 February 2006

MEMORANDUM FOR Commander, 506th Regimental Combat Team, 101st Airborne Division
(Air Assault), Camp Loyalty, Iraq 09390

SUBJECT: Legal Review of AR 15-6 Investigation – Escalation of Force Incident Occurring on
5 February 2006

1. I have completed a legal review of the subject investigation and find it to be legally sufficient IAW AR 15-6, para. 2-3(b). Recommend the appointing authority approve the findings and recommendations by signing the enclosed memorandum, with the exception of approving the recommendation that (b)(5)

(b)(5)

2. Point of contact for this legal review is the undersigned at VOIP (b)(2)High or SIPR at (b)(3),(b)(6), (b)(2)High

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

Brigade Judge Advocate

CENTCOM 013007



DEPARTMENT OF THE ARMY
HEADQUARTERS, 506TH REGIMENTAL COMBAT TEAM
101ST AIRBORNE DIVISION (AIR ASSAULT)
CAMP LOYALTY, IRAQ APO AE 09390



REPLY TO
ATTENTION OF

AFZB-KG-CO

13 February 2006

MEMORANDUM FOR Commander, Multi-National Division-Baghdad, Camp Liberty, Iraq
09344-3029

SUBJECT: Review of AR 15-6 Investigation – Escalation of Force, Occurring 5 February 2006

1. I have reviewed the above-referenced investigation and recommend the following:

a. _____ recommend the investigating officer's findings and recommendations be approved.

b. _____ recommend the investigating officer's findings and recommendations be disapproved.

c. X recommend the investigating officer's findings and recommendations be approved with the following exceptions/substitutions:

_____ (b)(5)

2. Point of contact for this memorandum is MAJ (b)(3),(b)(6) , at VOIP (b)(2)High or SIPR at (b)(3),(b)(6), (b)(2)High

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

COL, IN
Commanding

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

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

SECTION I - APPOINTMENT

Appointed by COL (b)(3),(b)(6), Commander, 506th Regimental Combat Team
(Appointing authority)

on 05 Feb 06 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at FOB Rustamiyah, Baghdad, Iraq at 1000
(Place) (Time)

on 06 Feb 06 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

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

The (investigating officer) (board) finished gathering/hearing evidence at 1600 on 10 Feb 06
(Time) (Date)
and completed findings and recommendations at 1030 on 11 Feb 06
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

YES NO¹ NA²

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

(b)(2)High

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

		YES	NO ^{1/}	NA ^{2/}
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 <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

(b)(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 attachment entitled "Findings and Recommendations - 3-67 AR Escalation of Force Incident"

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

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

See attachment entitled "Findings and Recommendations - 3-67 AR Escalation of Force Incident"

Findings and Recommendations – 3-67 AR Escalation of Force Incident

SECTION IV – FINDINGS. The investigating officer, having carefully considered the evidence, finds:

a. What were the facts and circumstances requiring the escalation of force?

At 05 0930C FEB 06, 1/D/3-67 AR began an area reconnaissance of the (b)(6) neighborhood of Baghdad (b)(2)High in (b)(2)High .¹ With 1LT (b)(3),(b)(6) as the platoon leader, this tank platoon is attached to B/3-67 AR (MECH) and conducts patrols with a total of eighteen personnel – sixteen (16) Soldiers, including the Medic, and one (1) translator – in four (4) (b)(2)High . For traffic control, the platoon has traffic cones, small stops signs for turret gunners to use, and signs on the rear of each vehicle that indicate in English and Arabic for local nationals to stay (b)(2)High away from the vehicle.³

At 05 1130C FEB 06, 1LT (b)(3),(b)(6) stopped the patrol to talk with a guard in a parking lot VIC (b)(2)High in order to gain information about the guard, the parking lot, and that area of the neighborhood.⁴ He intended to stop for no more than 20 minutes, due to recent VBIED activity in (b)(2)High .⁵ Upon stopping the patrol, the platoon set up a security perimeter with traffic cones about (b)(2)High in front of (b)(2)High positions as a signal for oncoming traffic to stop.⁶ The relative position of the parking lot, (b)(2)High and road cones are shown in Figure 1.⁷

1/D/3-67 AR EOF INCIDENT
05 1145C FEB 06

(b)(2)High

(b)(2)High

(b)(2)High

(b)(2)High

(b)(2)High

(b)(2)High

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

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

¹ Exhibits E, I, J.

² Exhibit F.

³ Exhibits E, F.

⁴ Exhibits E, F, I.

⁵ Exhibit E.

⁶ Exhibits C, E, F, G, H.

⁷ Exhibits E, F, H.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

Figure 1. Findings on the employment of security measures and application of escalation of force procedures.

Over the next ten (10) minutes, 1LT(b)(3),(b)(6) spoke with the security guard at the parking lot.⁸ During this period, approximately 12-15 cars approached the perimeter, but all responded to hand and arm signals by either stopping and turning around, or turning off the road to the southwest.⁹

(Investigating Officer's Note: The following estimates of distances result from a combination of witness sketches; relative positioning of events and vehicles with respect to street intersections; and distance analysis using DTSS-L with 1-meter CIB imagery, as shown in Figure 1.)

At approximately 1145 hours, a local national in a blue Volkswagen Passat approached the security perimeter from the northwest.¹⁰ From approximately (b)(2)High away until about (b)(2)High away, the driver did not respond to repeated hand signals and shouts to stop.¹¹ The car continued moving towards the security perimeter at approximately (b)(2)High per hour.¹²

When the car was approximately (b)(2)High away, SSG(b)(3),(b)(6), SPC(3),(b)(6), and PFC(b)(3),(b)(6) pointed their weapons at the vehicle in a gesture intended to get the driver to stop.¹³ The driver did not respond to the gesture; he continued towards the security perimeter at the same rate of speed, about (b)(2)High per hour.¹⁴

During this period, an Iraqi Police vehicle drove through the platoon's perimeter from Southeast to Northwest, stopping behind the two (b)(2)High where SSG(b)(3),(b)(6), SPC(3),(b)(6), and PFC(b)(3),(b)(6) were pulling security.¹⁵

When the car was approximately (b)(2)High away, SSG(b)(3),(b)(6) ordered SPC(3),(b)(6) to (b)(2)High warning shot at the vehicle.¹⁶ In response, SPC(3),(b)(6) fired one (b)(2)High round over the top of the vehicle.¹⁷ The driver did not respond to the warning shot and continued towards the security perimeter without slowing down.¹⁸

When the car was approximately (b)(2)High away and traveling at the same speed, SSG(b)(3),(b)(6) assessed the vehicle to be displaying hostile intent.¹⁹ SSG(b)(3),(b)(6) ordered SPC(3),(b)(6) and PFC(b)(3),(b)(6) to shoot to (b)(2)High the vehicle.²⁰ Each soldier fired one (b)(2)High round.²¹

⁸ Exhibit E.

⁹ Exhibits F, H.

¹⁰ Exhibit B, G, H.

¹¹ Exhibit B, F, G, H, K.

¹² Exhibit B, F, G, H.

¹³ Exhibit H, K.

¹⁴ Exhibit B, G, H.

¹⁵ Exhibit E.

¹⁶ Exhibit F, H.

¹⁷ Exhibits B, F, G.

¹⁸ Exhibit B, G, H.

¹⁹ Exhibit F.

²⁰ Exhibit F.

²¹ Exhibit B, F, G, H.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

SPC (b)(3),(b)(6) fired with the intent “to (b)(2)High the vehicle.”²² PFC (b)(3),(b)(6) displayed the same intent, aiming at the engine block.²³

As the car continued towards the security perimeter, SSG (b)(3),(b)(6), SPC (b)(3),(b)(6) and PFC (b)(3),(b)(6) sought cover behind their (b)(2)High in response to the perceived VBIED threat.²⁴ As the driver lost control of the vehicle, the car swerved to the left (northeast) and came to a stop after striking a utility pole.²⁵

The Iraqi Police later stated that they thought the vehicle was moving exceptionally fast and had shown no signs of slowing.²⁶ They also suspected it was a VBIED as it approached the security perimeter.²⁷

SSG (b)(3),(b)(6), SPC (b)(3),(b)(6) and PFC (b)(3),(b)(6) continued to maintain security behind the cover of the (b)(2)High. 1LT (b)(3),(b)(6) arrived from the parking lot, observed the driver slumped over in the vehicle, and called for a medic, SGT (b)(3),(b)(6).²⁸ After assessing that the driver was not attempting to use a detonation device, 1LT (b)(3),(b)(6) approached the car and conducted a visual search for explosives, with negative results.²⁹

The medic, SGT (b)(3),(b)(6) approached the vehicle and assessed that the local national was dead from a gunshot wound to the forehead.³⁰ Two bullet holes were in the windshield: one at the very bottom of the windshield, just above the hood, and another mid-way up the windshield, in front of the driver.³¹ SGT (b)(3),(b)(6) examined the holes in the vehicle and the gunshot wound to the local national and assessed that the round that killed him likely resulted from a ricochet.³²

It is beyond the scope of expertise of the investigating officer to verify the accuracy of this claim using forensic evidence; however, the NCO’s directive to fire a warning shot and the Soldiers’ intent are the important factors.

SSG (b)(3),(b)(6), SPC (b)(3),(b)(6), and PFC (b)(3),(b)(6) resumed pulling security while 1LT (b)(3),(b)(6) initiated an investigation with the Iraqi Police. 1LT (b)(3),(b)(6) verified that three (3) rounds had been fired by counting the expelled shell casings, and discussed the disposition of the local national’s body and vehicle with the IPs.³³ Because 1LT (b)(3),(b)(6) assessed the local national as having committed a potentially criminal act with hostile intent, he did not issue a claims card for the death or the damaged vehicle, and he turned over the scene to the Iraqi Police.³⁴

²² Exhibit G.

²³ Exhibit H.

²⁴ Exhibit F, H.

²⁵ Exhibit F, G, H.

²⁶ Exhibit E.

²⁷ Exhibit K.

²⁸ Exhibit E.

²⁹ Exhibit E.

³⁰ Exhibit E, F, G, H, I.

³¹ Exhibit E, G, H.

³² Exhibit E, I.

³³ Exhibit E.

³⁴ Exhibit E.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

Of note, all Soldiers in 1/D/3-67 AR received ROE/EOF training on 25 JAN 06.³⁵ Also, the 1LT(b)(3),(b)(6) briefs his platoon on ROE/EOF in every patrol brief prior to leaving FOB Rustamiyah.³⁶

The Iraqi Police investigator, Officer (b)(6), has since identified the driver of the vehicle as (b)(6).³⁷ He was approximately (b)(6)-years-old, and his car was licensed with tag number (b)(6).³⁸ He is survived by his son, Mr. (b)(6).³⁹

b. Did the escalation of force comply with the Rules of Engagement?

Yes.

(b)(2)High

The failure of the driver to respond to the graduated escalation of force as he continued towards the security perimeter without slowing sufficiently demonstrated hostile intent. In response, SSG (b)(3),(b)(6) and the Soldiers applied (b)(2)High as the circumstances allowed. They did not have the capability to apply measures to (b)(2)High.
(b)(2)High

c. Was the escalation of force appropriate, given the facts and circumstances?

Yes.

(b)(2)High

(b)(2)High

³⁵ Exhibit B, E.

³⁶ Exhibit B, E.

³⁷ Exhibit Q (Page 5B).

³⁸ Exhibit Q (Page 3B).

³⁹ Exhibit Q (Page 1B).

⁴⁰ Exhibit L, M.

⁴¹ Exhibit N.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

(b)(2)High

Regarding the other components of the EOF Flow, the soldiers were well trained, used the equipment they carried with their convoy (traffic cones), prepared for the mission with an ROE/EOF briefing, and escalated force in graduated means. After the discharge of the weapons, they secured the site, attempted to render first aid, and reported the incident immediately. The platoon leader also coordinated with on-site Iraqi Police for further disposition of the local national and his vehicle.

(b)(2)High

However, the “facts and circumstances” in which the Soldiers executed the Escalation of Force need to be changed. Specific recommendations are provided in Section (e).

d. Was the TCP/Security Position set up IAW the MND-B TCP SOP and 4ID OIF Leader’s Handbook (cards 204 and 205)?

No. There are two elements from the MND-B SOP in which the EOF incident exhibited deficiencies.

⁴² Exhibit N.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

Shortcoming #1.

(b)(2)High

vehicle.”

(b)(2)High

SPC)(3),(b)(fired a warning shot over the

Shortcoming #2. The platoon did not set up all of the physical barriers IAW

(b)(2)High

(b)(2)High

because they did not have the TCP Kit with their vehicles. They only

had traffic cones and stop paddles for the gunners.

Of note, the TCP Kit consists of:⁴⁵

(b)(2)High

(b)(2)High

The major graduation of force that the platoon did not have the capability to execute was to

(b)(2)High

⁴³ Exhibit O.

⁴⁴ Exhibits B, F, G.

⁴⁵ Exhibit O.

⁴⁶ Exhibit O.

⁴⁷ Exhibit O.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

Of note,

(b)(2)High

e. What, if any, corrective actions, training, or changes to procedures should be made?

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

f. Was there any damage to civilian personnel or property? If so, were claims cards distributed to personnel?

Yes. One local national ((b)(6) ⁴⁹) was killed and his (b)(6) Volkswagen Passat sustained damage. Specifically, the front of his vehicle and two front wheels were totaled, presumably when it struck the light pole.⁵⁰ Also, the front windshield and driver's side window were broken.⁵¹ There was no surviving victim to whom the Soldiers could issue a claims card on site. The matter was turned over to Iraqi Police on the scene.

⁴⁸ Exhibit P.

⁴⁹ Exhibit Q (Page 5B).

⁵⁰ Exhibit Q (Page 2B).

⁵¹ Exhibit Q (Page 2B).

SECTION V – RECOMMENDATIONS. In view of the above findings, the investigating officer recommends:

In accordance with the “Appointment as the Investigating Officer” dated 5 February 2006, the Findings of the investigation include “What, if any, corrective actions, training, or changes to procedures should be made?”

(b)(5)

3-67 AR 051145CFEB06 ESCALATION OF FORCE

SUMMARY:

1x EOF
3 x ROUNDS FIRED (5.56MM)
1 x LN KILLED
1 x LN VEHICLE DAMAGED (2 x 5.56MM IMPACTS)

SIGACT EVENTS

WHO: 2/B/3-67 AR ICW IRAQI POLICE

WHAT: EOF

WHEN: 05 1145 FEB 06

WHERE: (b)(2)Hi

WHY:

TIMELINE/SEQUENCE OF EVENTS: AT 05 1145 FEB 06 B/3-67 AR A LN VOLKSWAGEN PASSAT ENTERED THEIR SECURITY PERIMETER THAT WAS MARKED WITH ROAD CONES.

AT (b)(2)H AND VERBAL COMMANDS WERE USED TO TRY AND STOP THE VEHICLE.

AT (b)(2)H 1 X WARNING SHOT WAS FIRED OVER THE VEHICLE. THE VEHICLE STILL DID NOT STOP AND THEN 2 X ROUNDS WERE FIRED INTO THE VEHICLE, INTENDED TO THE VEHICLE. ONE ROUND STRUCK THE DRIVER IN THE FOREHEAD (BELIEVED TO BE A RICOCHET) AND 1 SHOT IMPACTED INTO THE HOOD OF THE VEHICLE. THE PLATOON MEDIC RENDERED AID TO THE LN OCCUPANT AND WAS UNABLE TO STABILIZE THE LN. THE LN WAS PRONOUNCED DEAD ON THE SCENE.

THE VEHICLE WAS TRAVELING AT APPROXIMATELY 10 MPH AND FAILED TO RESPOND TO VERBAL AND VISUAL WARNINGS AND A WARNING SHOT. IRAQI POLICE ALSO WITNESSED THE INCIDENT AND CONFIRMED THE VEHICLE WAS APPROACHING EXCEPTIONALLY FAST. BDE LEGAL TAUGHT ROE/EOF TO THE SOLDIERS OF B/3-67AR ON 25 JAN 06. ALL SOLDIERS INVOLVED IN THIS INCIDENT WERE PRESENT FOR THE TRAINING. ROE/EOF IS ALSO BRIEFED IN EVERY PATROL BRIEF PRIOR TO THE PATROL LEAVING THE FOB.

FINAL BDA FOR OPERATION:

1 X LN KIA
1 X VW PASSAT DAMAGED (2 X IMPACTS)

(b)(2)Hi

(b)(2)High

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSA).
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: Conference rm 3/67 TOC
2. DATE (YYYYMMDD): 20060218
3. TIME: 10:13
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: (b)(3),(b)(6)
6. SSN: (b)(3),(b)(6)
7. GRADE/STATUS: E-3/PEC
8. ORGANIZATION OR ADDRESS: B Co 3/67 AR

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

- 1. Describe the events that lead to an escalation of force on 05 FEB 06. Include the following in your statement, if known.
a. What was your patrol's mission?
b. What caused your patrol to search the parking lot?
c. Describe your security perimeter. Include a sketch. Estimate the following, as you remember it:
i. Locations of US and IP vehicles.
ii. Locations of US and IP personnel.
iii. Locations of any warning signs that were posted.
iv. Any physical barriers to stop traffic that were used.
d. Who first identified the driver of the VW as a threat?
e. What did the driver of the VW Passat do that showed hostile intent?
f. What graduated responses were used to try to stop the vehicle prior to firing at it? For each graduated response, indicate the following:
i. How far away was the vehicle?
ii. Who executed the graduated response action?
iii. What was the driver's response?
2. Describe the actions were taken after the incident. Include the following, if known:
a. What actions were taken to treat the local national after he was shot?
b. What damage was done to the vehicle?
c. Was a claims card issued? If not, why not?

On 05 Feb 06 my platoon and I were given a recon mission to patrol to (b)(2)High (b)(2)High (b)(2)High
As we sped from FOB Rustamiyah about an hour in half into our mission we went down a street and saw a gentleman standing in his drive way and decided to make a short halt so we could speak with him about what was going on in the area. With all four vehicles to our (b)(2)High myself and Spc (b)(3),(b)(6) set up our perimeter cone as usual about (b)(2)High to (b)(2)High away from the Humvee. About 15 to 20 minutes into being dismounted and setting up our perimeter a blue passat approached the top of the street

10. EXHIBIT: H
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3),(b)(6)
PAGE 1 OF 5

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

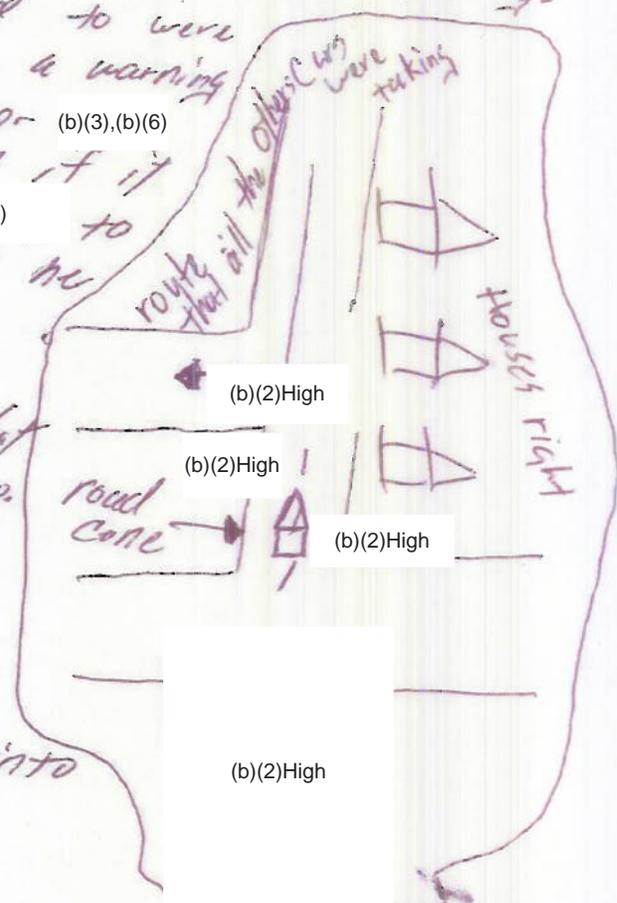
Customized

DATED

07 FEB 04

9. STATEMENT (Continued)

about (b)(2)High away from us. As the
 blue passenger was traveling down the street myself
 a SPC (b)(3),(b)(6) gave the (b)(2)High
 the vehicle for about 30 to 40 sec. Once the
 vehicle was within (b)(2)High
 us myself SPC (b)(3),(b)(6) and SSG (b)(3),(b)(6) pointed
 our weapons in the direction of the vehicle
 hoping that he/she would take the same
 turn as the rest of the car's were taking.
 As the situation escalated to were
 we were forced to use a warning
 shot. But before myself or (b)(3),(b)(6)
 took the shot I asked if it
 was OK to SSG (b)(3),(b)(6) to
 take a warning shot and he
 said yes. So SPC (b)(3),(b)(6)
 did so and into the air
 shot his weapon. After that
 the vehicle did not stop.
 Still traveling at about
 (b)(2)High mph myself and
 SPC (b)(3),(b)(6) decided to
 (b)(2)High the vehicle and
 shot one round each into
 the engine.



INITIALS OF PERSON MAKING STATEMENT

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

PAGE 2 OF 5 PAGES

Nonresponsive, (b)(2)High

Nonresponsive, (b)(2)High

~~SECRET~~
UNCLASSIFIED

~~SECRET~~
UNCLASSIFIED

Nonresponsive, (b)(2)High

Nonresponsive, (b)(2)High

(2)Hi

UNCLASSIFIED

~~SECRET//REL//NOFORN~~

(2)Hi

Nonresponsive, (b)(2)High

UNCLASSIFIED

~~SECRET//REL//NOFORN~~

ponsive, (b)

UNCLASSIFIED

~~SECRET~~ REF. MISC. 1

3

³(b)
Nonresponsive, (b)(2)High

UNCLASSIFIED

~~SECRET~~ REF. MISC. 1

(3)(b)

onsive, (

UNCLASSIFIED

~~SECRET//NF//MNCI~~

(b)(2)High

(2)H Nonresponsive, (b)(2)High

~~SECRET//NF//MNCI~~

UNCLASSIFIED

3)(b)

onsive, (t

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

UNCLASSIFIED

~~SECRET//NF//MNCI~~

Nonresponsive, (b)(2)High

3)(c)

UNCLASSIFIED

~~SECRET//NF//MNCI~~

Exhibit U

PRIVACY ACT STATEMENT
(5 U.S.C. 522a)

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 3012

PURPOSE: The purpose of this solicitation is to gather facts and make recommendations to assist the appropriate authorities in determining what action to take with regard to allegations of

NEGLIGENT DISCHARGE

ROUTINE USES: Any information you provide is disclosable to members of the Department of Defense who have a need for the information in performance of their official duties, and where use of such information is compatible with the purpose for which the information is collected. In addition, the information may be disclosed to Government agencies and persons outside the Department of Defense for law enforcement purposes, or if determined to be disclosable pursuant to a request submitted under the Freedom of Information Act, or if needed for Congressional or other Government Investigations.

DISCLOSURE MANDATORY FOR INDIVIDUAL WHO MAY BE ORDERED TO TESTIFY: providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under the UCMJ or applicable Army or other federal regulations.

DISCLOSURE VOLUNTARY FOR INDIVIDUAL WARNED OF HIS RIGHTS UNDER ARTICLE 31, UCMJ, OR THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION: providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information which might not otherwise be available to the commander for his decision in this matter.

ACKNOWLEDGMENT

I have read and been provided a copy of the Privacy Act Statement above and understand its contents.

16 Nov 06
Date

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

(b)(3),(b)(6) SGT
Printed name and rank

(b)(3),(b)(6)
Social Security Number

Exhibit V

CENTCOM 013031

SIR

From: B CO 3-67 AR

Thru: 3-67 AR

To: 4th ID / Division Operation Center

Subject: SIR

1. Category:

2. Type of incident: EOF

3. DTG: 05 1257 FEB 06

- A. DTG of Incident: 05 1145 FEB 06
- B. DTG Unit was notified of Incident: 05 1145 FEB 06
- C. DTG received by DOC:

4. Location: Baghdad (Baladiat), IRAQ (b)(2)High

5. Personnel involved:

A. Subject:

- 1. SPC (b)(3),(b)(6)
- 2. (b)(3),(b)(6)
- 3. (b)(6)
- 4. Male
- 5. 3),(t
- 6. Loader
- 7. None
- 8. D/3-67AR, 4ID
- 9. Active Duty
- 10. (b)(6)

B. Subject

- 1. PFC (b)(3),(b)(6)
- 2. (b)(3),(b)(6)
- 3. (b)(6)
- 4. Male
- 5. 3),(b
- 6. Loader
- 7. None
- 8. D/3-67AR, 4ID
- 9. Active Duty
- 10. (b)(6)

C. Additional personnel involved: (use same format as 5.A. above): NONE

D. Summary of incident: 1/D/3-67AR, attached to B/3-67AR, was conducting an area recon of Baladiat and made a short stop to search a parking lot. At 05 1145 FEB 06 B/3-67 AR a LN Volkswagen Passat entered their security perimeter. At (b)(2)High (b)(2)High and verbal commands were used to try and stop the vehicle. At (b)(2)High 1 x (b)(2)High warning shot was fired over the vehicle. The vehicle still did not stop and then 2 x (b)(2)High rounds were fired into the vehicle, 1 round struck the driver in the forehead and 1 shot impacted into the hood of the vehicle. The vehicle was traveling at approximately (b)(2)HMPH and failed to respond to verbal and visual warnings and a warning shot. BDE Legal taught ROE/EOF to the soldiers of B/3-67AR on 25.JAN06. All soldiers involved in this incident were present for the training.

(b)(2)High

PRIVACY ACT STATEMENT
(5 U.S.C. 522a)

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 3012

PURPOSE: The purpose of this solicitation is to gather facts and make recommendations to assist the appropriate authorities in determining what action to take with regard to allegations of

NEGLIGENT DISCHARGE

ROUTINE USES: Any information you provide is disclosable to members of the Department of Defense who have a need for the information in performance of their official duties, and where use of such information is compatible with the purpose for which the information is collected. In addition, the information may be disclosed to Government agencies and persons outside the Department of Defense for law enforcement purposes, or if determined to be disclosable pursuant to a request submitted under the Freedom of Information Act, or if needed for Congressional or other Government Investigations.

DISCLOSURE MANDATORY FOR INDIVIDUAL WHO MAY BE ORDERED TO TESTIFY: providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under the UCMJ or applicable Army or other federal regulations.

DISCLOSURE VOLUNTARY FOR INDIVIDUAL WARNED OF HIS RIGHTS UNDER ARTICLE 31, UCMJ, OR THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION: providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information which might not otherwise be available to the commander for his decision in this matter.

ACKNOWLEDGMENT

I have read and been provided a copy of the Privacy Act Statement above and understand its contents.

20/6/11
Date

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

(b)(3),(b)(6)
Printed name and rank

(b)(3),(b)(6)
Social Security Number