

UNCLASSIFIED

AFYB-UA-LGL

29 June 2006

MEMORANDUM FOR Commander, 4th Brigade Combat Team, 4th Infantry Division
(Mechanized), FOB Prosperity, APO AE 09348

SUBJECT: Legal Review – AR 15-6 Investigation Re: EOF-2-506 (Death of 1 LN)–29 June 06

1. I have reviewed the above described investigation and find it legally sufficient. The proceedings comply with legal requirements, sufficient evidence supports the findings, and the recommendations are consistent with the findings.

(b)(5)

3. Please contact me or CPT (b)(3)(b)(6) with any questions or concerns.

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

MAJ, JA
Brigade Judge Advocate

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CENTCOM 013470



DEPARTMENT OF THE ARMY
4TH BRIGADE COMBAT TEAM, 4TH INFANTRY DIVISION
FOB PROSPERITY, BAGHDAD, IRAQ
APO AE 09348

REPLY TO
ATTENTION OF:

AFYB-UA-CDR

29 June 2006

MEMORANDUM FOR RECORD

SUBJECT: Appointment of Major (b)(3)(b)(6) as Investigating Officer

This memo confirms that on 21 June 2006, I verbally appointed MAJ^{(b)(3)(b)(6)} as an investigating officer pursuant to AR 15-6. I ordered MAJ^{(b)(3)(b)(6)} to conduct an informal investigation into the facts and circumstances surrounding the fatal escalation of force conducted by D/2-506 IN in which one local national male was killed.

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

LTC, AR
Commanding

CENTCOM 013471



DEPARTMENT OF THE ARMY
4TH BRIGADE COMBAT TEAM, MULTI NATIONAL DIVISION - BAGHDAD
FOB PROSPERITY APO AE 09348

REPLY TO
ATTENTION OF:

AFYB-UA-CO

16 June 2006

MEMORANDUM FOR RECORD

SUBJECT: Assumption of Command

By the authority of Army Regulation 600-20, paragraph 2-6A(1), the undersigned assumes command of the 4th Brigade Combat Team, Multi National Division – Baghdad, APO AE 09348, effective 16 June 2006. _____

(b)(3), b(6)

LTC, AR
Commanding

CENTCOM 013472

Page 4 redacted for the following reason:

Already Reviewed and Redacted for Release



DEPARTMENT OF THE ARMY
HQ, 704TH SUPPORT BATTALION
4TH INFANTRY DIVISION (MECHANIZED)
FOB FALCON; BAGHDAD, IRAQ
APO AE 09361-2502

AFYB-UAE-XO

27 JUN 2006

MEMORANDUM FOR RECORD

SUBJECT: AR 15-6 Report of Investigation (Escalation of Force)

1. Purpose. The purpose of this memorandum is to provide the findings and recommendations regarding the Escalation of Force (EOF) by 1/D/2-506 IN on 21 JUN 06 vicinity (b)(2)High (b)(2)High

2. Summary of Incident.

a. At 211543JUN06 1/D/2-506th IN was on combat patrol headed northbound in (b)(2)High when the lead vehicle struck an IED at (b)(2)High (EXHIBIT 1). Two vehicles suffered damage; D17 suffered three flat tires, a destroyed power box and radiator; the second vehicle (LX) suffered a fractured driver side window (EXHIBIT 22). Immediately the patrol called (b)(2)High and established a cordon of the scene. (b)(2)High

(b)(2)High

(b)(2)High

D111 was

oriented north with the gunner, SPC (3)(b) covering the high speed avenue of approach to the west. Soldiers conducted their (b)(2)High meter searches to locate secondary IED's. Once the area around the vehicle was clear Soldiers began to establish Traffic Control Points (TCP) (EXHIBIT 7 - 16).

b. The driver of D111, SPC (3)(b) placed 2 cones (b)(2)High meters on the road to the south and west of his vehicle. He was in the process of retrieving concertina wire from his vehicle when he heard SPC (3)(b) shouting verbal command to stop, "awgar", to a white vehicle approaching their position. Both the gunner, SPC (3)(b) and the driver, SPC (3)(b) were shouting and providing the hand and arm signals to stop. The vehicle showed no signs of acknowledging their commands (EXHIBIT 6, 7, 8). SPC (3)(b) fired (2)High warning shots from his (b)(2)High and the driver fired (2)High warning shots from his (2)High (EXHIBIT 6, 7, 8), but the approaching vehicle showed no signs of acknowledging the shots fired. The vehicle commander, SG (3)(b) acknowledged the approaching vehicles failure to comply with either the verbal or visual commands or the warning shots and directed SPC (2)High to fire disabling shots into the engine block EXHIBIT (6, 7, 8). These measures showed no results as the vehicle continued to approach with no change in speed, approximately (2)High MPH. At approximately (2)High meters from their position SG (3)(b) (6) gave the order to use deadly force. Both SPC (3)(b) and SPC (3)(b) fired lethal shots into the approaching vehicle. At an estimated (2)High meters away from their position SPC (3)(b) got into the running (b)(2)High SPC (3)(b) dropped down in the hatch, and the vehicle was driven forward to avoid a collision with the approaching white vehicle.

c. The white vehicle missed D111 and continued to roll through the intersection at the same rate of speed. The white vehicle continued for an estimated 30-75 meters before crashing into a stationary bus (EXHIBIT 7, 9, 24). Since the vehicle was suspected to be a possible VBIED, the cordon area was expanded to include the vehicle. EOD support had already been requested for post blast analysis of the initial incident.

3. General sequence of events. All times listed are on 21 JUN 06 (EXHIBIT 1):

- a. 1543: 1/D/2-506 strikes IED
- b. 1606: 1/D/2-506 reports EOF

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SUBJECT: AR 15-6 Report of Investigation (Escalation of Force)

- c. 1655: EOD arrives to conduct post blast analysis of IED
- d. 1730: Recovery assets arrive
- e. 1825: EOD conducts boot blast of suspected VBIED vehicle
- f. 1910: EOD clears site
- g. 1915: Recovery assets RP to FOB FALCON

4. Findings of the investigation.

a. The actions taken by SPC(3)(b) and SPC(3)(b) in the death of a Local National (LN) during the Escalation of Force (EOF) on 21 Jun 06 were justified. The statements of all three occupants of D111 clearly articulate the appropriate use of Escalation of Force, the lack of acknowledgement from the driver of the white car to all means of non lethal and disabling measures that ended in the use of lethal force and death of a LN (EXHIBIT 6, 7, 8).

b. The Patrol Leader (PL) 1LT b(3)(b)(6) acknowledged receipt of an intelligence brief prior to departing on the patrol. This brief was presented orally from the 2-506th TOC and included notification of information in (2)Hi report (b)(2)High (EXHIBIT 9a, 17).

c. Intelligence information from the 2-506th TOC identified VBIED vehicles for the PL and his patrol to look for but did not identify that two of the vehicles would be detonated by remote control (EXHIBIT 9a).

d. The vehicle that was fired upon was not a white and orange taxi therefore did not meet the description provided in the PL's mission brief (EXHIBIT 24). From the D111 blocking position the soldiers reasonably could not have identified the vehicle was not a taxi or white and orange (Exhibit 24).

e. All vehicles approaching D111 prior to the white vehicle acknowledged and responded appropriately to the verbal and visual commands of SPC(3)(b)(EXHIBIT 8a). The white vehicle approached at twice the speed as all other vehicles (EXHIBIT 8a).

(3)(b)(f) (3)(b)(g) (3)(b)(h) (b)(2)High

g. Personnel in vehicles D17, D113, and LX made initial statements and were found to have no relevant information pertaining to the EOF incident primarily due to their position during the cordon (EXHIBIT 10 – 16). Personnel in those vehicles included: SGT (b)(3)(b)(6) SPC(3)(b)(f) and PFC (3)(b)(i) in D17; SPC(3)(b)(j) and SPC(b)(3)(b)(6) in D113; and SPC (b)(3)(b)(6) and SPC (b)(3)(b)(6) in LX (EXHIBIT 9a).

i. VBIED analysis from the 2-506th TOC reflects four VBIED attacks from 8 JUN 06 to 18 JUN 06 (EXHIBIT 18). VBIED analysis from the 2-506th TOC reflects 17 VBIED attacks since the TOA (EXHIBIT 18).

(b)(2)High (b)(2)High

k. One LN male was in the vehicle (EXHIBIT 7a).

l. The loud speaker for the vehicle, D111, does not work (EXHIBIT 7).

m. (b)(2) High

(b)(2)High (b)(2)High

5. Recommendations.

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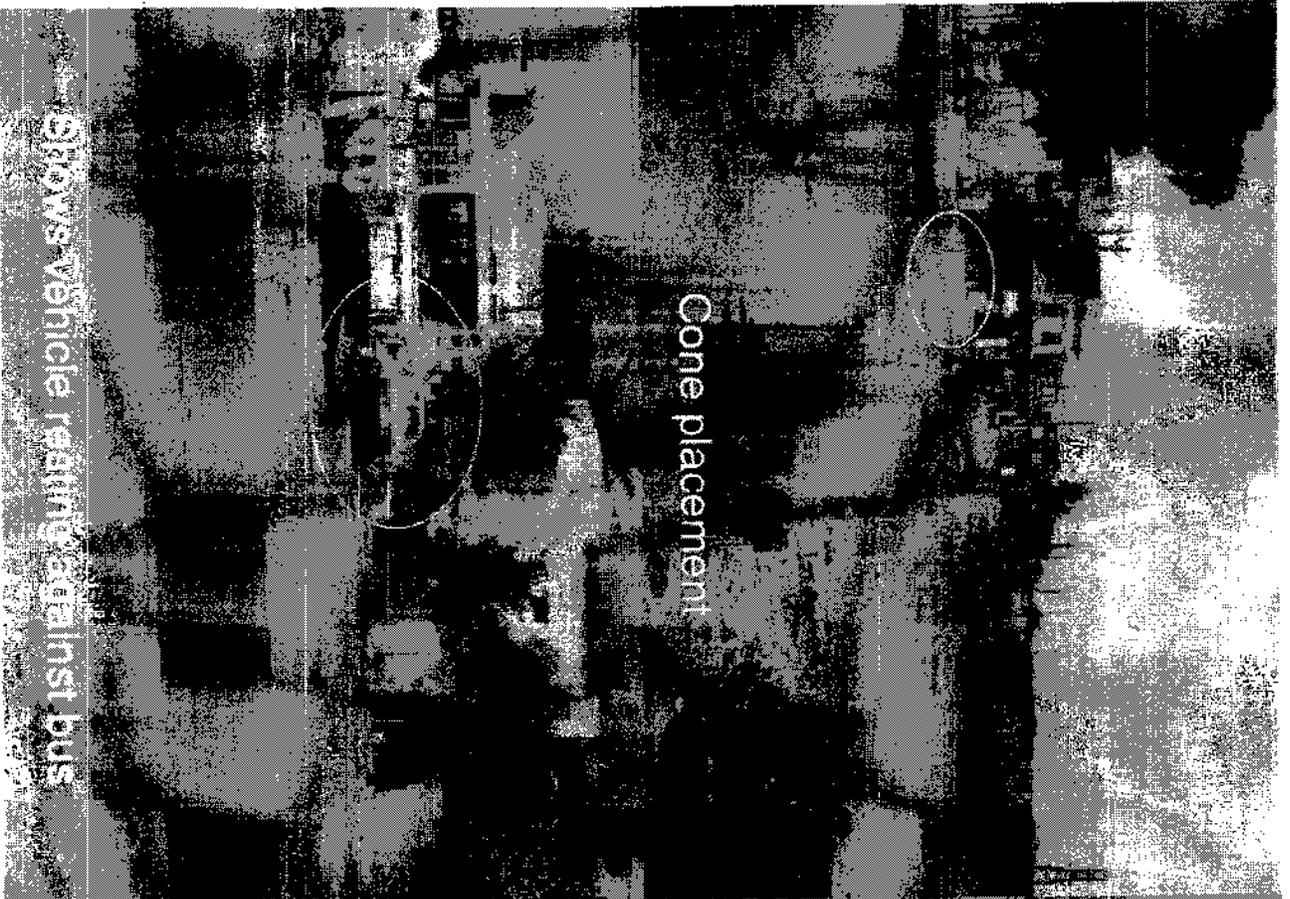
(b)(5), (b)(2)High

6. The point of contact for this memorandum is the undersigned at VOIP: (b)(2)High

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

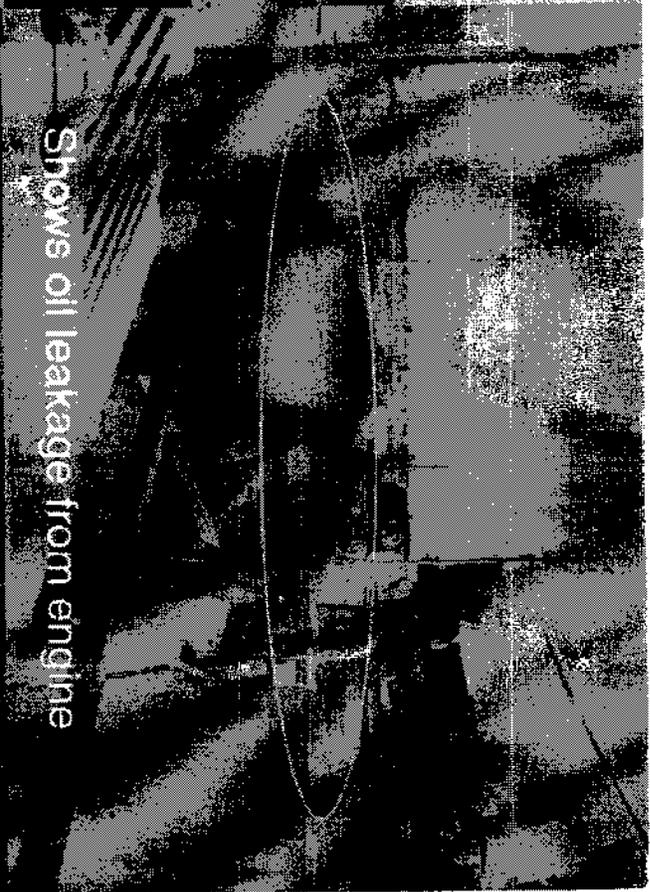
✓ MAJ, QM
Executive Officer

CENTCOM 013476



Cone placement

Shows vehicle resting against bus

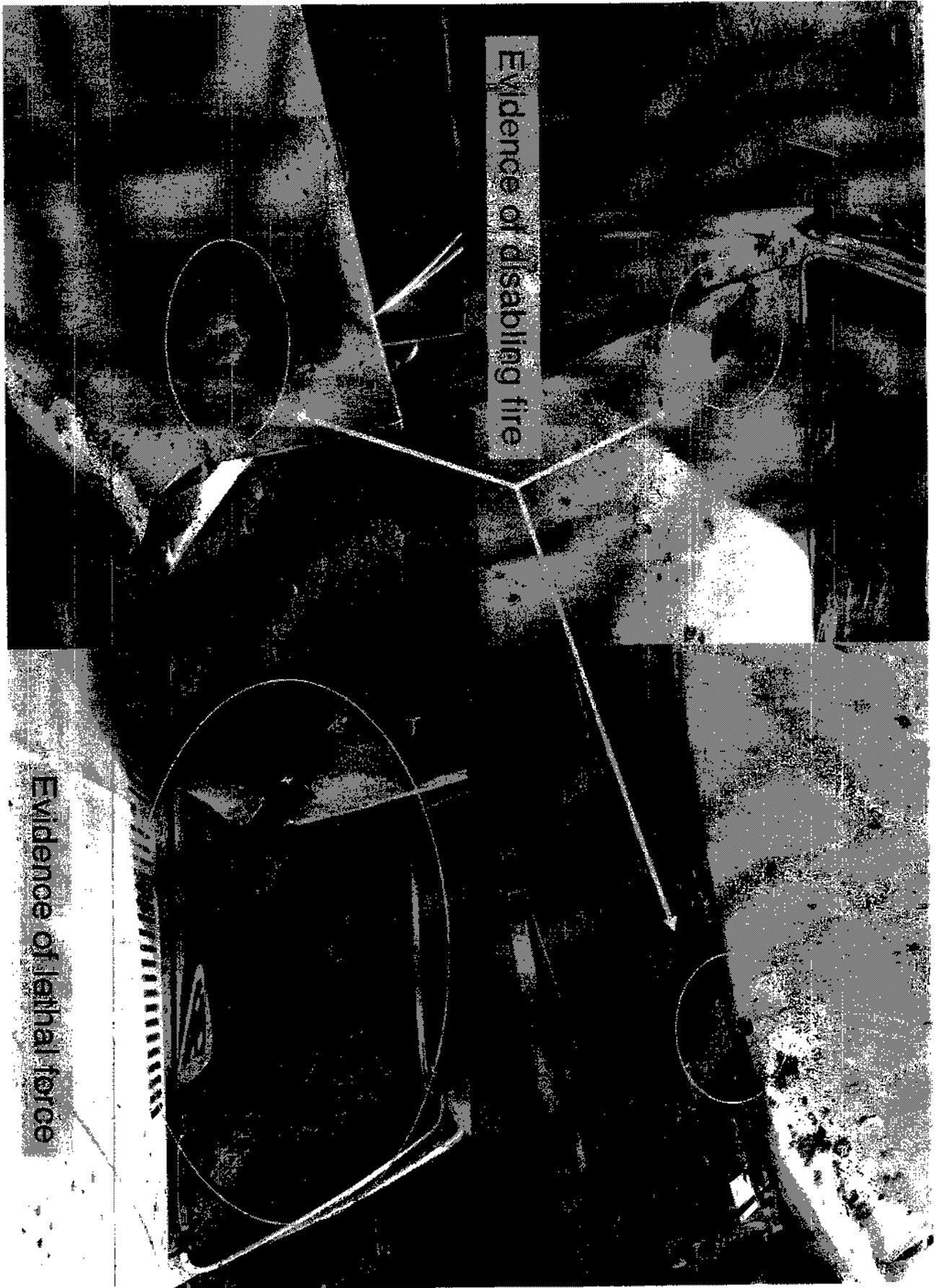


Shows oil leakage from engine



Shows shell casings and vehicle

EXHIBIT 24



Evidence of disabling fire

Evidence of lethal force

EXHIBIT 21

Robotic pictures confirming damage and location of vehicle

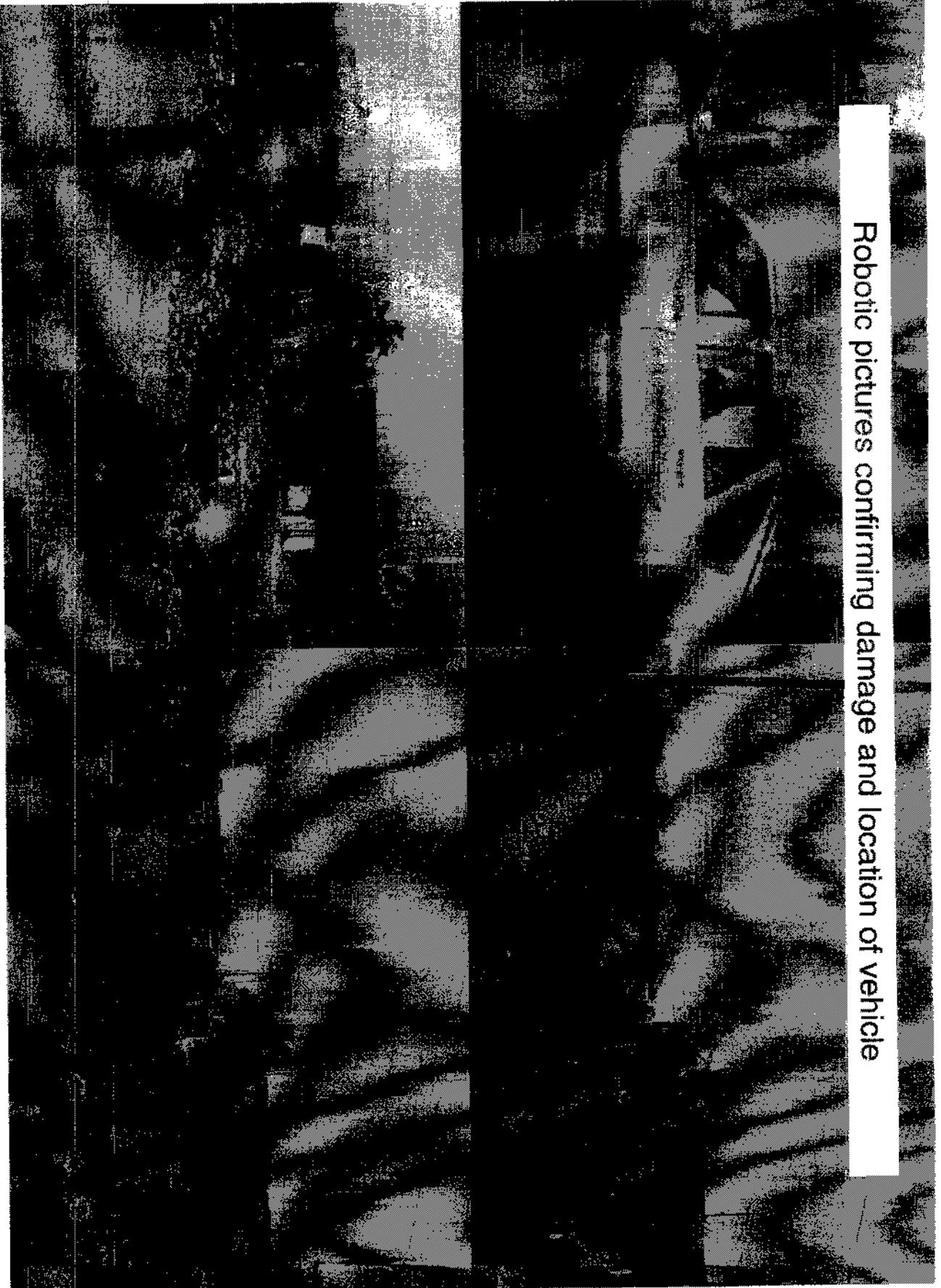


EXHIBIT 24

STATEMENT OF (b)(3)(b)(6) TAKEN AT FCB Falcon DATED 12/2/06

STATEMENT Continued:

While the Driver (SPC (b)(3)(b)(6)) was moving toward the vehicle at the time the wire when the Driver (SPC (b)(3)(b)(6)) observed a vehicle moving toward their position. From my location/blocking position I could not see the course or vehicle approaching. All direct information that I have with the engagement of the vehicle is Second-Hand intel. From my position I was facing south west. I was outside of the vehicle believing with the placement of the car at the time of the engagement. My business (SPC (b)(3)(b)(6)) was wearing shorts. I moved back to my vehicle just in time to see SPC (b)(3)(b)(6) engage the vehicle with his primary weapon (b)(2)High. After he engaged the vehicle with what I would say, was 30 to 40 rounds, he dropped down into the vehicle while SPC (b)(3)(b)(6) pulled DMI forward so not to be struck by the vehicle. The vehicle was not stopped by the bus, but instead continued through the Blocking Position another 30-40 meters where it hit a stationary bus. At this time believing this to be a UBIED I contacted my leader to secure the vehicle, we were later joined by Baker 5, and FOX 16 on the Cordon. EOD arrived on site and proceeded to blow the car in the believe it was a UBIED; due to it's actions and S's intel that matched the vehicle. After EOD completed it investigation of the area he determined that the vehicle was not a UBIED, and that the IED that hit us was (b)(2)High. After the Cordon was broke down we moved to CP20 to secure a NP Patrol to come and secure the body.

INITIALS OF PERSON MAKING STATEMENT

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

PAGE 2 OF 3 PAGES

USAPA V1.01

EXHIBIT 9

STATEMENT (Continued)

I did not leave a vehicle to secure the site due to recent abductions of U.S. personnel. We took approximately (b)(2)High to secure and bring the patrol of NP back to the site. When we returned the body had been removed and was gone. At this point it was roughly (b)(2)High and we left the security of the site to the NP. After completion of mission all personnel directly engaged by IED were taken to the TMC to be examined.

From what I was told the vehicle was given hand and arm signals, ~~verbal~~ verbal warning, warning shots from (b)(2)High into the ground, M4 warning shots, M4 disabling shots, (b)(2)High disabling, and final fatal shots from (b)(2)High. At no time did the vehicle try to change course or slow. The vehicle, even after being fired on from (b)(2)High, still had enough forward momentum to travel 30-40 meters only to be stopped by a stationary bus.

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

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

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

(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 UNLAWFUL INDUCEMENT.

(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 22 day of June, 2006 at _____

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

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

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

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USAPPC V2.07

EXHIBIT 9

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Page 14 redacted for the following reason:

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

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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 (b)(3)(b)(6) LTC, AR, Commanding
(Appointing authority)

on 21 Jun 2006 (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 FALCON, Baghdad, Iraq at 1300
(Place) (Time)

on 22 Jun 2006 (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 1700 on 27 Jun 2006
(Time) (Date)

and completed findings and recommendations at 2200 on 27 Jun 2006
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO ¹	NA ²
1	Inclosures (para 3-15, AR 15-6)			
	Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
	a. The letter of appointment or a summary of oral appointment data?			
	b. Copy of notice to respondent, if any? (See item 9, below)			
	c. Other correspondence with respondent or counsel, if any?			
	d. All other written communications to or from the appointing authority?			
	e. Privacy Act Statements (Certificate, if statement provided orally)?			
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			
	g. Information as to sessions of a formal board not included on page 1 of this report?			
	h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			

(b)(2)High

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

2	Exhibits (para 3-16, AR 15-6)	YES	NO	N/A
	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 3-16a, 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 5-3a, 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 enclosure 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 5-3, 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:			
	<i>(If counsel is a lawyer, check here <input type="checkbox"/>)</i>			
	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 enclosure or exhibit to it (para 5-11, AR 15-6)?			
FOOTNOTES:				
	1) Explain all negative answers on an attached sheet.			
	2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.			

(b)(2)High

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

The (investigating officer) (board), having carefully considered the evidence, finds:
See attached MEMORANDUM for FINDINGS.

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

In view of the above findings, the (investigating officer) (board) recommends:
See attached MEMORANDUM for RECOMMENDATIONS.