



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3RD BRIGADE, 25TH INFANTRY DIVISION
MULTI NATIONAL DIVISION NORTH
FORWARD OPERATING BASE WARRIOR, APO AE 09338

REPLY TO
ATTENTION OF

APVG-ZZO-LO

14 May 2007

MEMORANDUM FOR Commander, 3rd IBCT, 25th Infantry Division, Forward Operating Base Warrior, Kirkuk, Iraq, APO AE 09338

SUBJECT: Recommendation and Legal Review of AR 15-6 Investigation, Dated 11 May 2007, Facts and Circumstances Surrounding Death of Local National Near Shumait, Iraq

1. I have reviewed the subject investigation IAW AR 15-6 and find it legally sufficient for the Appointing Authority to approve the findings and recommendations by signing Section VIII of DA Form 1574.
2. Background. The investigation revealed that at approximately 10 May 2007 elements from B Co., 2-27 executed a daylight ARF southeast of the village of Shumait, Iraq. The purpose of the ARF was to conduct an assessment of a water project located approximately 150 meters from the helicopter landing zone (HLZ). After the first chock exited the aircraft they formed up and began to move off the HLZ. They immediately encountered a group of five local national (LN) males, one of whom turned and began to walk away. The LN was not armed. The LN's behavior appeared to be suspicious to SGT (b)(3)(b)(6), who shouted "Stop!" in Arabic, and suggested to the squad leader that they X-spray the individual. The squad leader, SSG (b)(3)(b)(6) (b)(3)(b)(6), also shouted "Stop!," which the LN disregarded. SSG (b)(3)(b)(6) requested TSgt (b)(3)(b)(6) Air Force EOD, intercept the LN. A civilian in the area attempted to stop the LN, who broke free and began to run. SSG (b)(3)(b)(6) and TSgt (b)(3)(b)(6) yelled several more times for the LN to stop. When the LN refused to stop SSG (b)(3)(b)(6) fired a warning shot into the dirt. Shortly thereafter TSgt (b)(3)(b)(6) fired a warning shot, followed immediately thereafter by a lethally aimed shot that struck the LN in the abdomen. The LN was treated by the assigned medic, and then transported to FOB McHenry via a non-standard MEDEVAC flight. The LN died enroute to FOB McHenry. The LN's brother spoke to Soldiers after the incident and indicated that his brother may have suffered from a mental illness or was otherwise mentally unstable.
3. Discussion.
 - a. CPT (b)(3)(b)(6) investigation inaccurately refers to this event as an "escalation of force incident." In accordance with the ROE, EOF measures "assist CF to determine whether Hostile Intent exists in a particular situation." These facts do not support the existence of either a hostile act or a demonstration of hostile intent. Consequently, categorizing this as an EOF event

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culminating in the use of deadly force was incorrect. Instead, this event is more appropriately categorized as a violation of the Law of Armed Conflict.

b. The ROE incorporates the Law of Armed Conflict, which includes the following principles, all of which appear to have been violated by TSgt (b)(3)(b)(6) in some fashion in this case:

1. **NECESSARY AND PROPORTIONAL FORCE.** Both the warning shots, and more importantly the lethal shot fired by TSgt (b)(3)(b)(6), was neither necessary nor proportional in light of the absence of any hostile act or demonstration of hostile intent.

2. **USE OF FORCE MUST BE REASONABLE IN INTENSITY, DURATION, AND MAGNITUDE.** TSgt (b)(3)(b)(6) use of lethal force, i.e., its magnitude, was not reasonable in light of the absence of any hostile act or demonstration of hostile intent.

3. **DISTINGUISH NON-COMBATANTS FROM COMBATANTS AND LEGITIMATE ENEMY TARGETS.** There is nothing about these facts to suggest that the LN was armed or otherwise acted in a hostile fashion thereby making him a legitimate military target. Instead, he was a non-combatant.

The conclusion that TSgt. (b)(3)(b)(6) actions constitute a possible LOAC violation is further supported by a passage from the written statement he provided to the IO. Specifically: "Due to this man's unwillingness to stop, progressive non-compliance with commands to stop and furtive behavior, I felt that he wanted to get away at all costs. From my experience and training as an EOD Team Chief, I felt that more likely than not he wanted to evade detention for some potential hostile act he may have done at the location of our visit." From this passage it is clear TSgt (b)(3)(b)(6) did not fire because he observed a hostile act or a demonstration of hostile intent but instead fired because of a "potential" hostile act that "may" have occurred. Using lethal force in response to potential hostile acts, or acts that may have occurred, is unreasonable, not in compliance with the ROE, and therefore a possible LOAC violation.

c. DOD Directive 5100.77 as well as several Force, Corps, and Division FRAGOs require that suspected LOAC violations be reported to the Division Staff Judge Advocate for further action and investigation.

4. Aside from CPT (b)(3)(b)(6) inaccurate reference to this incident being an EOF event, his investigation was thorough, and his findings supported by the evidence. Specifically, a preponderance of the evidence supports the IO's findings that "the use of force, particularly lethal force, was not warranted solely by the behavior of the man or the circumstances in this incident." A preponderance of the evidence also supports the IO's findings that TSgt. (b)(3)(b)(6) was "at fault for not gaining from the man he shot any positive identification of direct hostile

APVG-ZZ-LO

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intent that warranted the use of lethal force." The appointment and subsequent investigation comply with all legal requirements. The investigation contains no procedural errors that materially affect the rights of any of the individuals involved in the investigation. The IO did, however, fail to administer an Article 31 rights advisement to TSgt. (b)(3)(b)(6) prior to taking TSgt. (b)(3)(b)(6)'s statement.

5. Recommendation. In light of the fact that TSgt. (b)(3)(b)(6) actions constitute a potential LOAC violation, I recommend that we forward this investigation to the Division SJA for further action and investigation, as deemed warranted by TSgt. (b)(3)(b)(6) Chain of Command. Additionally, I recommend that we coordinate with the Air Force to have TSgt. (b)(3)(b)(6) place of duty changed from FOB McHenry to either the 506th Air Expeditionary Group at FOB Warrior, or elsewhere where it is more convenient for the Air Force to conduct a follow up investigation.

6. The POC for this memorandum is the undersigned at VOIP (b)(2)High or email (b)(3)(b)(6) @31bct.25id.army.smil.mil .

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

MAJ, JA
Command Judge Advocate

Approve / disapprove the above recommendation

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

COL, IN
Commanding



DEPARTMENT OF THE ARMY
2ND BATTALION, 27TH INFANTRY REGIMENT
25TH INFANTRY DIVISION
FOB McHENRY, HAWIJAH, IRAQ APO AE 09338



APVG-ZZB-CDR

12 May 2007

MEMORANDUM FOR CPT (b)(3)(b)(6)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as an Investigating Officer pursuant to AR 15-6 to conduct a formal investigation into the escalation of force that took place at 101200 MAY 07 near Shumait, Iraq in which one local national civilian was killed.
2. In your investigation, all witness statements will be sworn. From the evidence, you will make the findings as to whether any law or regulation was violated in the escalation of force. In your recommendations, you will recommend a course of action that should be taken in regards to this incident.
3. Submit your findings and recommendations on a DA Form 1574 to me NLT 121200 MAY 07.

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

LTC, IN
Commanding

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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 OTJAG.

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

SECTION I - APPOINTMENT

Appointed by _____
(Appointing authority)

on 10 May 2007 (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 _____ at _____
(Place) (Time)

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

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

The (investigating officer) (board) finished gathering/hearing evidence at _____ on _____
(Time) (Date)
and completed findings and recommendations at _____ on _____
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

		YES	NO	N/A
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?			

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	N/A
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)?			

OOTNOTES: 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 dated 11 MAY 2007.

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

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

See attached memorandum dated 11 May 2007.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

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

_____	(Recorder)	_____	(Investigating Officer) (President)
_____	(Member)	_____	(Member)
_____	(Member)	_____	(Member)

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

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)
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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.)

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

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

(Recorder)

(Member)

(Member)

(Member)

(Member)

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

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(Member)

(Member)

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DEPARTMENT OF THE ARMY
2ND BATTALION, 27TH INFANTRY (WOLFHOUSES)
25TH INFANTRY DIVISION
FORWARD OPERATING BASE McHENRY, HAWIJAH, IRAQ APO-AE 09338



APVG-ZZB-CDR

11 MAY 2007

MEMORANDUM FOR RECORD

SUBJECT: Findings and Recommendations of a formal 15-6 investigation into the Escalation of Force incident involving B/2-27 Infantry on 10 MAY 2007 in which 1 Iraqi civilian was killed.

1. **Facts / Timeline:** The Platoon's mission was to assess the water project going on vic. (b)(2)High (b)(2)High southeast of the village of Shumait, Iraq (exhibit U-1). The platoon inserted via 2xUH-60s approximately 125 meters south of the water project. The first chalk landed on the LZ, the squad dismounted the aircraft and they pushed north toward the water project. In the first aircraft was SGT (b)(3)(b)(6) team leader and point man. He was with his squad leader, SSG (b)(3)(b)(6) and also an EOD technician, TSgt (b)(3)(b)(6). Immediately afterward the first aircraft landed and then took off, the 2nd aircraft landed and the dismounts moved north behind the first element. The second chalk to land included 1LT (b)(3)(b)(6) the Platoon Leader (schematics – ex. F-1 p.2, D-1 p.3, reenactment ex. Q, and photos ex. V).

As SGT (b)(3)(b)(6) approached the water project he identified 5 local national civilians near the road. Without any apparent cause for alarm one of the civilians became nervous and started walking down the road away from SGT (b)(3)(b)(6) and his team, from their 11 o'clock towards their 7 o'clock (ex. Q-1). SGT (b)(3)(b)(6) was suspicious of the man because of his nervous and erratic behavior. He shouted the Arabic word for "STOP!" at the man (ex. Q-2). Hearing the commands, the civilian hesitated briefly and then picked up the pace again down the road. As the man was walking across SGT (b)(3)(b)(6) yelled to SSG (b)(3)(b)(6) that the man was suspicious and they "should X-spray him" (ex. A-1, Q-3). SSG (b)(3)(b)(6) then continued to shout (in Arabic) "STOP!" at the man. Another civilian on the road physically stopped the man by grabbing him. SSG (b)(3)(b)(6) told TSgt (b)(3)(b)(6), Air Force EOD, to move to the left (west) and attempt to cut him off down the road. TSgt (b)(3)(b)(6) began to move in that direction (ex. C. Q-5).

The other civilian who tried to restrain the man only held him up for a moment. The man broke free and then began to run. TSgt (b)(3)(b)(6) decided that chasing after the man would be futile because of the uneven terrain, the man's head start, and his speed was too great (ex. C p.3). SSG (b)(3)(b)(6) and TSgt (b)(3)(b)(6) continued to shout at the man, but he refused to stop. SSG (b)(3)(b)(6) fired a warning shot into the ground behind the running man (ex. B-1, Q-6), which caused the man to turn his torso, look back, and increase his sprint. TSgt (b)(3)(b)(6) also waved his hands and yelled out (in Arabic) to "STOP!" The man continued to sprint away. TSgt (b)(3)(b)(6) fired 1 warning shot with his M-4 into the ground out in front of the man. The man continued his sprint. TSgt (b)(3)(b)(6) then aimed at the man (slightly leading him) and fired two more shots with his M-4 with intent to hit him (ex. C-1, Q-8). The second shot struck the man in the abdomen and mortally wounded him. [The bullet struck the running man in the right abdomen, likely as he strode forward with his right leg, and turned his torso to look back toward the patrol after the warning shots (ex. A p.3, P)].

1LT (b)(3)(b)(6) got off the UH-60 in time enough to see the man running east to west down the street, just before he was engaged (ex. D-1). The full patrol moved to the casualty, and the platoon medic rendered first aid (ex. V-3). 1LT (b)(3)(b)(6) attempted to get information out of the casualty with his interpreter. The man was in and out of consciousness, and was unresponsive to any questioning (ex. D-1). The casualty was aerielly MEDEVACed to FOB McHenry for treatment and

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DEPARTMENT OF THE ARMY
2ND BATTALION, 27TH INFANTRY (WOLFHOUSES)
25TH INFANTRY DIVISION
FORWARD OPERATING BASE McHENRY, HAWIJAH, IRAQ APO-AE 09338



APVG-ZZB-CDR

11 MAY 2007

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As SGT (b)(3)(b)(6) approached the water project he identified 5 local national civilians near the road. Without any apparent cause for alarm one of the civilians became nervous and started walking down the road away from SGT (b)(3)(b)(6) and his team, from their 11 o'clock towards their 7 o'clock (ex. Q-1). SGT (b)(3)(b)(6) was suspicious of the man because of his nervous and erratic behavior. He shouted the Arabic word for "STOP!" at the man (ex. Q-2). Hearing the commands, the civilian hesitated briefly and then picked up the pace again down the road. As the man was walking across SGT (b)(3)(b)(6) yelled to SSG (b)(3)(b)(6) that the man was suspicious and they "should X-spray him" (ex. A-1, Q-3). SSG (b)(3)(b)(6) then continued to shout (in Arabic) "STOP!" at the man. Another civilian on the road physically stopped the man by grabbing him. SSG (b)(3)(b)(6) told TSgt (b)(3)(b)(6) Air Force EOD, to move to the left (west) and attempt to cut him off down the road. TSgt (b)(3)(b)(6) began to move in that direction (ex. C, Q-5).

The other civilian who tried to restrain the man only held him up for a moment. The man broke free and then began to run. TSgt Hubbard decided that chasing after the man would be futile because of the uneven terrain, the man's head start, and his speed was too great (ex. C p.3). SSG (b)(3)(b)(6) and TSgt (b)(3)(b)(6) continued to shout at the man, but he refused to stop. SSG (b)(3)(b)(6) fired a warning shot into the ground behind the running man (ex. B-1, Q-6), which caused the man to turn his torso, look back, and increase his sprint. TSgt (b)(3)(b)(6) also waved his hands and yelled out (in Arabic) to "STOP!" The man continued to sprint away. TSgt (b)(3)(b)(6) fired 1 warning shot with his M-4 into the ground out in front of the man. The man continued his sprint. TSgt (b)(3)(b)(6) then aimed at the man (slightly leading him) and fired two more shots with his M-4 with intent to hit him (ex. C-1, Q-8). The second shot struck the man in the abdomen and mortally wounded him. [The bullet struck the running man in the right abdomen, likely as he strode forward with his right leg, and turned his torso to look back toward the patrol after the warning shots (ex. A p.3, P)].

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died of wounds in transit (ex.G p.3, ex. P). 1LT (b)(3)(b)(6) spoke with a civilian on the scene who claimed to be the casualty's brother. He communicated that his brother was "crazy" (ex.D-1 p.3).

2. Intent: There was no verbal order to engage the man. From the shouts TSgt (b)(3)(b)(6) assumed the "lead security wanted to stop the man" (ex.C p.1). He made the decision to use lethal force because he perceived the man posed a threat to the unit. He said, "I felt that more likely than not he wanted to evade detention for some potential hostile act he may have done at the location of our visit. The birds had circled the area for some time prior to landing. With my knowledge of IEDs and other explosive items, someone could very easily stage an explosive item during that time. With that knowledge, a personally viewed escalation of force to include a warning shot, and this man running away – I used my weapon" (ex.C p.2).

3. Briefing and Training: On the night before the ARF mission 1LT (b)(3)(b)(6) conducted an OPORD brief from his green notebook (ex. D p.3, R1-3). He briefed the enemy's most likely and most dangerous courses of action. Everyone who went on the ARF mission was present for the OPORD (except for SPC Harding who was a last minute addition to the manifest) (ex.D p.1). He did not brief the rules of engagement or escalation of force in the OPORD (ex.D p.2).

1LT (b)(3)(b)(6) did conduct a convoy operation to Abassi between the time of the OPORD and the ARF mission (ex. T). During the convoy brief, LT (b)(3)(b)(6) briefed the ROE and discussed escalation of force, and positive identification criteria (ex.D p.2-3, S-1). All who went on the ARF, including TSgt (b)(3)(b)(6) were at that briefing as well.

4. Findings: SGT (b)(3)(b)(6) SSG (b)(3)(b)(6) and TSgt (b)(3)(b)(6) executed the graduated use of force in accordance with their training. While they made a measured response to the nervously fleeing man, they did not appropriately assess the threat that the man posed directly to their unit or anyone else. Nervousness or anxiety can be symptomatic of hostile behavior or intent, but it is not does not by itself identify hostile intent.

TSgt (b)(3)(b)(6) did not gain positive identification himself, but assumed that there was cause to use the graduated escalation of force because of the behavior of the man, the shouts from SGT (b)(3)(b)(6) and the warning shot from SSG (b)(3)(b)(6). He was in the best position to finish the escalation of force that began with SGT (b)(3)(b)(6).

As there was no verbal communication from SSG (b)(3)(b)(6) or anybody, to shoot or not shoot, the ultimate responsibility for the use of lethal force rests with TSgt (b)(3)(b)(6). Though TSgt (b)(3)(b)(6) has seen the same behavior from positively identifiable Anti-Iraqi Forces in other situations (ex.C-1), the use of force, particularly lethal force, was not warranted solely by the behavior of the man or the circumstances in this incident.

* I find TSgt (b)(3)(b)(6) at fault for not gaining from the man he shot any positive identification of direct hostile intent that warranted the use of lethal force.

4. Recommendations:

A. Platoon Level:

i) This platoon should have a very detailed AAR with everyone who was involved in the mission. LT (b)(3)(b)(6) should give an overview of the situation, and SGT (b)(3)(b)(6) SSG (b)(3)(b)(6) and TSgt (b)(3)(b)(6) (at a minimum) should explain their rationale and decision making processes. LT (b)(3)(b)(6) should moderate a discussion of the appropriate use of force according to the rules of engagement.

ii) All Platoons in the Task Force must ensure that the rules of engagement are briefed prior to every mission. This is every Platoon Leader's responsibility. I recommend that for each convoy/mission brief or OPORD the Platoon Leader should develop a scenario and choose a Soldier or junior leader to describe the appropriate application of graduated response and escalation of force. Platoon leaders should pay particular attention to coaching new members of the unit or attached elements.

B. Company Level:

i) The B Company Commander must engage his subordinate leadership (squad leader and above) about this specific incident. He should review the details and discuss the errors in the decision making process, and the ways to mitigate similar violations of the ROE in the future.

ii) All Company Commanders in the Task Force will consistently discuss, in a formal setting, the rules of engagement to subordinate leadership at a minimum of once a month. This is in addition to specific briefings of ROE and EOF prior to each convoy, mission, or operation. The emphasis of the formal briefing should be on the developing dynamics of the enemy situation and the disposition of the civilian population in the company's area of operations. Specific emphasis and training should be given to new soldiers and new attachments.

The company commander is responsible for ensuring that each platoon has the knowledge, training and equipment to maximize their ability to gradually escalate force.

C. Battalion Level:

The rules of engagement and escalation of force should be specifically briefed in OPORDs for every operation and also included in contingency scenarios and rock drills. The rules of engagement should also be emphasized to new soldiers in the "Welcome Brief" by the battalion commander and command sergeant major.

The Battalion's primary responsibility is ensuring that the companies understand the context of the enemy situation and the sentiments of the regional population across the greater area of operations. The Task Force Commander should be responsible for discussion of changes to the enemy, population, and mission in order to provide subordinate commanders refined context for the rules of engagement in the counterinsurgency environment. This should be a formal briefing at a minimum of once a month.

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

CPT, IN
Investigating Officer