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Nonresponsive

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 _____ COL (b)(3), (b)(6)
(Appointing authority)

on 17 September 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 WARHORSE, Iraq at 0900
(Place) (Time)

on 16 September 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 1800 on 23 September 2006
(Time) (Date)
and completed findings and recommendations at 0900 on 25 September 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?	X		
	b. Copy of notice to respondent, if any? (See item 9, below)			X
	c. Other correspondence with respondent or counsel, if any?			X
	d. All other written communications to or from the appointing authority?			X
	e. Privacy Act Statements (Certificate, if statement provided orally)?	X		
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			X
	g. Information as to sessions of a formal board not included on page 1 of this report?			X
	h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			X

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.

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		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?	X		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			X
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			X
	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?	X		
	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)?			X
3.	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
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)?			
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 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)

(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.)

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

COL, W, Commanding

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

The *(investigating officer) (board)*, having carefully considered the evidence, finds:
See attached memorandum of findings and recommendations.

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

In view of the above findings, the *(investigating officer) (board)* recommends:
See attached memorandum of findings and recommendations.

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DEPARTMENT OF THE ARMY
HEADQUARTERS and HEADQUARTERS COMPANY
1ST BATTALION, 68TH ARMOR REGIMENT
3rd BRIGADE COMBAT TEAM, 4th INFANTRY DIVISION (M)
FOB WARHORSE
APO AE 09336

AFZC-FC-A-HHC

23SEP06

MEMORANDUM FOR Commander, 3rd HBCT, 4TH ID, FOB Warhorse, Iraq, 03966

SUBJECT: AR 15-6 Investigation Findings and Recommendations

1. FINDINGS. After investigating the events of 10JUL06 and actions taken by the Red/B/2-9 CAV it is my belief, based on a preponderance of the evidence, that the Red Platoon did not follow the Rules of Engagement (ROE) when engaging a local national (LN) fleeing from the patrol that was investigating a house reported to belong to another LN, suspected of emplacing an improvised explosive device (IED) that destroyed one of the patrol's vehicles earlier that morning. In regards to the question of why the shooting of the LN was not reported in the original significant activity (SIGACT), it is my belief that it was reported accurately.

2. RECOMMENDATIONS.

(b)(5)

3. BACKGROUND.

a. On 10JUL06 B/2-9 CAV established blocking positions in support of Operation AQRAB to prevent Anti Iraqi Forces (AIF) from ex-filtrating to the west of area of operations. At 100652JUL06 an IED detonated by the B12 M1114 destroying the vehicle and injuring one Coalition Force (CF) personnel who was evacuated with minor injuries (Exhibits B, C, and F). After the operation had ended the Red Platoon searched the site of the IED detonation and found one AK-47 Assault Rifle, a pair of binoculars, and various pouches. Other LNs had also approached the platoon and pointed out the house of the man who owned the land that the IED had detonated on. The LNs told the Platoon Sergeant (PSG), SF (b)(3), (b)(6) that they had seen the land owner come out to the site of the IED the night prior after elements of the platoon had left after conducting a reconnaissance of their blocking positions (Exhibits F-J). The Platoon Leader (PL), Second Lieutenant (2LT) (b)(3), (b)(6) moved a section from his platoon to the house identified as the one belonging to the land owner approx 1.5 kilometers (km) from the site of the IED detonation, while another section with his PSG and another section securing the IED site. The section with the PL approached the house belonging to the land owner and found him sitting out front of the house. They started to secure the house when Private First Class (PFC) (b)(3), (b)(6) observed a LN man running away from the field behind the house. This was reported to the PL who gave the order for his two trucks to pursue the LN. Sergeant (SGT) (b)(3), (b)(6) PFC (b)(3), (b)(6) Specialist (SPC) (b)(3), (b)(6) and SPC (b)(3), (b)(6) were the pursuing Soldiers. The PL reported the fleeing LN to the Attack 6 element who pushed the Air Weapons Team (AWT) to the Red Platoon to assist in the pursuit (Exhibits F-J). While the two trucks were conducting their pursuit of the LN, the PL was finding various IED making materials (two way radios, batteries, chargers, timers, and wires) at the land owner's house. The PL reported these findings to SGT (b)(3), (b)(6) and told him to continue the pursuit and use warning shots if needed to stop the LN (Exhibit F). The two trucks moved to the area where they had last observed the LN and upon the approach, the LN jumped out of an irrigation canal that he was hiding in. SG (b)(3), (b)(6) and PFC (b)(3), (b)(6) waved for the LN to come towards them. The LN began to run and SG (b)(3), (b)(6) and PFC (b)(3), (b)(6) began to shout for the LN to stop. After the LN made no attempt to stop, SP (b)(3), (b)(6) fired the first warning shot (Exhibits G-J). As the pursuit ensued, some LN farmers were able to wrestle the fleeing LN to the ground. SPC (b)(3), (b)(6) and PFC (b)(3), (b)(6) took custody of the fleeing LN. As they were crossing a barbed wire fence back to the waiting trucks, the LN broke free and began to flee again. SP (b)(3), (b)(6) and PFC (b)(3), (b)(6) fired more warning shots (Exhibits G, H, and J). SG (b)(3), (b)(6) had dismounted and linked up with the two Soldiers afterwards and they continued to pursue the LN into an orchard. At that time, the AWT was also pursuing

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and fired a 5-6 round burst and dropped flares as warning shots (Exhibits G and H). The three Soldiers went to investigate the area where the AWT had fired not knowing that they were warning shots at the time. As they continued their approach, an AH-64 was pointing and hovering over an area of the orchard, so the Soldiers started heading that way. Upon arriving at the area, they spotted the LN and he began to run again. At this time more warning shots were fired towards the ground, to avoid damaging the hovering AH-64, and finally SGT (b)(3), (b)(6) gave the order to "shoot to stop". SP4 (b)(3), (b)(6) and PFC (b)(3), (b)(6) fired one shot each hitting the LN in the buttocks and in the knee (Exhibits H and J). SGT (b)(3), (b)(6) ordered the two Soldiers to return to the vehicles while he applied first aid to the wounded LN. The LN was loaded into a truck and was being moved back to the location of the land owner's house. A MEDEVAC was called up and the medics at the house were providing additional first aid. The MEDEVAC was cancelled after the LN died due to loss of blood from an artery that was hit by one of the bullets. The LN was placed into a body bag and handed over to Iraqi Security Forces at a check point along Route (b)(2)High (Exhibits G-I).

b. The SIGACT concerning the shooting of a LN were reported in five different documents (Exhibits A-D and L) and the SIGACT was forwarded to Striker Main in an email from the 1-68 LNO (Exhibit L). The only documents that could be proven to have been sent to Striker Main were the SIGACT email from the 1-68 LNO and the 1-68 Green 1 report forwarded to Striker Main. These documents were retrieved from the Battle NCO's work computer inside the TOC. I was unable to prove whether exhibits A-C were ever forwarded from the 1-68 TOC to Striker Main.

4. ISSUES AND ANALYSIS. Was the ROE followed by elements of Red/B/2-9 on the day of 10JUL06? I used the following criteria to come to my conclusion:

- a. The ROE states that (b)(2)High
- b. EOF measures state that (b)(2)High
- c. The ROE states that (b)(2)High

Based on the testimonies and evidence gathered, I found that the criteria was not met by the elements involved. The evidence gathered at no time shows that the LN was ever positively identified as having committed a hostile act or demonstrating hostile intent. Warning shots should never have been used as there were no reasons to authorize deadly force. While the LN was seen fleeing a field behind a house where IED making materials were found, it was not established at that point in time whether the LN was involved in any way with the house or the occupants of the house.

5. The POC is the undersigned at (b)(3), (b)(6) @ (b)(2)High or (b)(3), (b)(6) @ (b)(2)High

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

CPT, AR
Investigating Officer



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 3d HEAVY BRIGADE COMBAT TEAM
4TH INFANTRY DIVISION (MECH)
FOB WARHORSE, IRAQ
APO AE 09336

AFZC-FC-CO

16 September 2006

MEMORANDUM FOR CPT (b)(3), (b)(6) HHC, 1-68 AR, FOB Warhorse, Iraq, APO AE 09336

SUBJECT: Appointment as Investigating Officer UP AR 15-6 (Informal Investigation)

1. You are hereby appointed as an investigating officer pursuant to AR 15-6 to conduct an informal investigation into the circumstances surrounding the death of a local national boy on 10 July 2006. See the attached storyboard for more information on this incident. You will specifically address whether the Rules of Engagement were followed in this engagement and why the shooting of the local national was not included in the original SIGACT.
2. In your investigation, all witness statements will be sworn using DA Form 2823. If you suspect someone of having committed a violation of the UCMJ, you will first read them their rights and fill out DA Form 3881. If they still wish to make a statement, they may. Contact the Brigade Judge Advocate, MAJ (b)(3), (b)(6), for any necessary legal advice.
3. Submit your findings and recommendations on DA Form 1574, NLT 250900SEP06, to the 3d HBCT Legal Office.

(b)(3), (b)(6)
COL, IN
Commanding

007560



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

3D HEAVY BRIGADE COMBAT TEAM
4th INFANTRY DIVISION (MECHANIZED)
FOB WARHORSE, IRAQ 09336

AFZC-FC-JA

2 October 2006

MEMORANDUM FOR Commander, 3d Heavy Brigade Combat Team, 4th Infantry Division (Mechanized), FOB Warhorse, Iraq 09336

SUBJECT: Legal Review of AR 15-6 Investigation, Fatal Shooting of Iraqi Local National / Investigating Officer CPT [REDACTED] (b)(3), (b)(6)

1. I have reviewed the AR 15-6 Investigation regarding the non fatal shooting of an Iraqi Local National 10 July 2006 by elements of B Troop, 2-9 Cavalry Squadron.
2. The investigation was conducted in accordance with AR 15-6, *Procedure for Investigating Officers and Boards of Officers*, and is legally sufficient. The evidence supports the findings and conclusions of the Investigating Officer.

[REDACTED]

(b)(5)

6. The POC is the undersigned at [REDACTED] (b)(3), (b)(6) @ [REDACTED] (b)(2)High

[REDACTED]

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

CPT, JA
Trial Counsel

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EVIDENCE CONTENT TRACKER

EXHIBIT	TYPE	DESCRIPTION
A	Document, 1 page	Post Operation Storyboard for Bulldog Red 10JUL06 submitted to 1-68 TOC
B	Document, 1 page	EOF Storyboard for Bulldog Red 10JUL06 submitted to 1-68 TOC
C	Document, 1 page	EOF Timeline maintained on record at 1-68 TOC
D	Document, 1 page	Page 1 of the 1-68 Green 1 Report submitted to Striker Main for the period covered between 091600JUL06 and 101600JUL06
E	Document, 1 page	Copy of the SIGACT posted on the Striker Web Portal for the EOF for Bulldog Red on 10JUL06
F	Document, 6 pages	Sworn Statement from 2LT (b)(3), (b)(6) (5 pages) with Privacy Act Statement (1 page)
G	Document, 4 pages	Sworn Statement from SGT (b)(3), (b)(6) (3 pages) with Privacy Act Statement (1 page)
H	Document, 3 pages	Sworn Statement from SPC (b)(3), (b)(6) (2 pages) with Privacy Act Statement (1 page)
I	Document, 4 pages	Sworn Statement from SPC (b)(3), (b)(6) (3 pages) with Privacy Act Statement (1 page)
J	Document, 3 pages	Sworn Statement from PFC (b)(3), (b)(6) (2 pages) with Privacy Act Statement (1 page)
K	Document, 5 pages	5 pages from September's ROE Brief covering hostile intent and hostile act, treatment of detainees, and EOF measures
L	Document, 1 page	Email from the 1-68 LNO to the 3HBCT Battle NCO