



DEPARTMENT OF THE ARMY

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

REPLY TO
ATTENTION OF

AFZC-FC-JA

29 August 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

1. I have reviewed the AR 15-6 Investigation regarding the fatal shooting of an Iraqi local national on 2 August 2006 by elements of C Company, 1-8 Combined Arms Battalion.

2. Approximately 30 minutes after an IED detonation, elements of the above referenced unit were responding to a suspected incident of black market fuel trafficking. While motorists were being directed by U.S. Forces to exit their vehicles, a (b)(6) civilian bongo truck with about half a dozen jerry cans of fuel in the back (approximately 5 U.S. gallons each) attempted to flee the scene. A tank commanded by SSG (b)(3), (b)(6) took up pursuit of the fleeing vehicle and attempted via graduated measures to get it to stop. When the truck did not stop, SSG (b)(3), (b)(6) radioed 1LT (b)(3), (b)(6) who directed him to disable the truck based on 1LT (b)(3), (b)(6)'s belief that "this truck may be involved in more than black market fuel operations" (see page 2, sworn statement of 1LT (b)(3), (b)(6) dated 2 August 2006). Warning shots were initially fired, then lethal force was ultimately used to disable the vehicle, which resulted in the local national being struck in the wrist and neck with shrapnel, and caused him to crash into a dump truck. Trauma resulting either from the collision, the shrapnel wounds in the neck, or both, were the apparent cause of the local national's death. It is important to note that SSG (b)(3), (b)(6) and his gunner made every effort (2) hi

(b)(2) high

(b)(5)

(b)(5)

6. The POC is the undersigned at (b)(3), (b)(6) @us.army.mil.

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

CPT, JA
Trial Counsel

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

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

On 02 August 2006 1st Platoon C-Co 1-8 was returning to FOB Paliwoda from their patrol cycle when the following action took place. During the patrol cycle 1st Platoon responded to two IED detonations, the first two hours previous this event, and the second within 30 minutes of the following. The Platoon was in a heightened state of alertness as it moved south along (b)(2)High Around 020830AUG2006, SSG(3), (b) radioed 1st LT (b)(3), (b)(6) and informed him that he believed he was witnessing black market fuel operations being conducted from the Ishaki gas station. LT (b)(3), (b)(6) ordered his platoon to cordon the gas station, and block lateral routes, upon completion of this the platoon would investigate SSG(3), (b) (suspicion. As C65 moved to the south of the gas station, the TC, SSG(3), (b) noticed a (b)(6) bongo truck behaving differently than the other vehicles. While the other drivers were getting out of their cars in order to co-operate with the instructions they were being given in Arabic and English, the (b)(6) bongo truck started to flee the scene. LT (b)(3), (b)(6) then ordered SSG(3), (b) to follow the truck in his tank, and also ordered SSG(3), (b) to assist in his M114. As SSG(3), (b) followed the vehicle he was shouting in arabic for the driver to stop, when the driver ignored his shouts, he then raised his M4 carbine towards the truck, the driver continued down the road, at this time SSG(3), (b) made the call that this vehicle may have been involved in the earlier IED attacks, since the truck matched up with enemy TTP's involving the emplacement and transportation of IED's. He then decided to fire two warning shots into the air. He also instructed the Loader to fire a warning burst from the M240B on the turret. The driver looked back at this time, implying to SSG(3), (b) that he had heard the shots. The truck still did not stop. After receiving confirmation from LT (b)(3), (b)(6) SSG(3), (b) ordered his gunner to disable the vehicle with the co-axial machine-gun. The gunner was not able to get a good target picture due to dust. SSG(3), (b) then cease-fired the tank gunner, and instructed the Loader, SPC(3), (b) to disable the vehicle. SPC(3), (b) then assumed the proper firing position and started to engage the front of the vehicle. Approximately 100 meters from the initial burst on target, the bongo truck crashed into the back of a dump truck, killing the driver. SSG(3), (b) (b) was the first to observe the body, and though he said that there were wounds from shrapnel, there were no definitive bullet holes (entry or exit), this coupled with the fact that the driver was still gripping the steering wheel, leads me to conclude that his death was most likely the cause of blunt force trauma due to striking a stationary object at a high rate of speed.

It had been briefed by MG Turner the day before that platoons were not supposed to shoot fleeing vehicles. CPT(3), (b) the C-Co commander immediately informed his 2nd and 3rd Platoon leaders of this, but chose to wait for first platoon's return to brief them, as it wasn't something that his company had been subjected to in the past. It may have caused a different outcome had he informed the platoon via FM communication, but in light of the fact that SSG(3), (b) said he felt threatened by the fact that the driver was acting so suspiciously in the aftermath of an IED detonation I believe that any platoon still would have reacted in the same way.

It is important to note that though this incident does violate the published ROE, the rules of escalation were followed paying close attention to fire discipline, insuring minimal collateral damage.

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

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

(b)(5)