HEADQUARTERS
UNITED STATES FORCES - AFGHANISTAN
KABUL, AFGHANISTAN
APO AE 09356

OCT 13 2009

USFOR-A-CDR

MEMORANDUM FOR MG Guy C. Swan III, Special Assistant to the Vice Chief of Staff of the Army (VCSA)

SUBJECT: Appointment Order - Investigating Officer Pursuant to Army Regulation (AR) 15-6, *Procedures for Investigation Officers and Boards of Officers*, 2 October 2006

REFERENCES:

a. AR 15-6, (*Procedures for Investigating Officers and Boards of Officers*), 2 October 2006;
b. Guide for AR 15-6 Investigating Officers;
c. Uniform Code of Military Justice, 2008;
d. Department of the Army (DA) Form 3881, Rights Warning Advisement;
e. DA Form 2823, Sworn Statement (with Privacy Act Statement);

1. Having been made available to me by the VCSA, you are hereby appointed as an investigating officer to conduct an investigation in accordance with AR 15-6 into the complex attack and the resulting deaths and injuries that occurred on or about 3 October 2009 at Combat Outpost (COP) Keating. This investigation is your primary mission until you tender your completed findings and recommendations to me, no later than 30 days from the date you receive this order. Your appointment remains in effect until the investigation is completed and no further investigation is required, unless released sooner by me.

2. The scope of your investigation is as broad as necessary. You will investigate the circumstances surrounding the combat action at COP Keating in October 2009 and report any fault, negligence or responsibility therefore. You will make findings of fact and opinions regarding the accountability of commanders at the Battalion, Brigade and Combined Joint Task Force 82 levels for planning and operations associated with the emplacement and support of the unit at COP Keating. You will determine whether any of the deficiencies found may be characterized as dereliction of duty. You will also fully address matters relating to the sufficiency of actions relating to intelligence, operations, logistics, and command and control. You will also make recommendations of corrective action, including administrative and disciplinary action, if appropriate. In addition to the forgoing broad mandate, your investigation will address the following specific matters using a question and answer format in your findings and recommendations:

a. What are the facts and circumstances surrounding the complex attack on COP Keating?

b. How many US servicemembers and Afghan National Security Forces were occupying COP Keating? What units were present at the time of the attack?

c. Who attacked the COP? How many Anti-Afghan Forces (AAF) were involved in the attack? How many AAF were killed or injured during the attack?

d. When did the attack begin? Develop a timeline of the key events leading up to, during, and after the attack.

e. Where did the attack occur? Provide relevant graphics and photographs depicting the location of the attack.

f. What were the specific injuries to each member of the coalition forces killed or injured in this attack?

g. What was the AT/FP plan for the COP? Was it current? Was it available at the FOB or was it at a higher HQ? Was the plan appropriate based on the terrain and AAF activity in the area? What force protection technology was in place and how was it employed? Did the COP commander conduct any base defense rehearsals prior to the start of the attack? Was the plan followed? How many US Servicemembers were engaged in force protection duties at the time of attack?

h. Were there contract security guards in place at COP Keating? If so, how were they employed prior to the attack, how did they respond to the attack, and who had command and control of the contract security force?

i. Were the ISAF and/or US ROE followed during the engagement? If so were the ROE too restrictive? Did the on-scene commander understand his authority to employ force and did he apply the appropriate amount of force?

j. When was COP Keating first occupied? Was COP Keating under construction at the time of the attack? Was the occupation and construction of COP Keating a planned operation? If so, who did the planning and what planning was done? Was there a current vulnerability assessment? If so, what was the result of the vulnerability assessment? How were identified vulnerabilities mitigated?

k. Had COP Keating been attacked in the 30 days prior to this attack? If so, what was the extent of the attacks?

l. Was there a current threat assessment? Had any intelligence reports been received indicating a possible attack in the 30 days prior to this attack? If so, what was that intelligence? What office was responsible for those reports? What actions were taken as a result of that intelligence? Were those actions appropriate? Were higher HQ made aware of any current intelligence?

m. What Intelligence, Surveillance, and Reconnaissance (ISR) platforms were covering COP Keating at the time of the attack? Was the ISR support appropriate? What organic ISR support was available at the COP? Was that organic support adequate? Were any deficiencies made aware to higher HQ? Was anything done to correct deficiencies?

m. What was the relationship with the local community prior to the attack? Was there any indication from the local community that there would be an upcoming attack?

n. What was the indirect fire plan? If so, was it integrated with other military installations in the area? What organic indirect fire support was available at COP Keating? Was that level of support appropriate? Was close air support requested and delivered in a timely manner?

o. What were the personal protective equipment requirements for individuals on the COP? Were those requirements followed? Were the requirements appropriate?

p. What, if any, medical treatment was provided to the servicemembers? Were the MEDEVAC procedures timely and appropriate under the circumstances?

q. What is the nature and extent of loss of military equipment? Initial reports indicate that a UAV crashed during the attack. If so, what are the facts and circumstances surrounding the crash?

r. Were any Law of Armed Conflict violations alleged or observed during this engagement? If so, by whom and what were the specific violations? Did AAF attack the COP from inside Mosques or other protected buildings (e.g. Schools, Hospitals)?

s. What impact did the commander's plan to abandon this camp in the future have on the ability to defend this camp at the time of attack? Was the drawdown in progress or were defenses at their normal rate?

t. Recommendations concerning improvements, if any, to coalition force techniques, tactics and procedures to prevent future incidents from occurring?

u. Any other matters you deem relevant.

3. Use AR 15-6 to guide your investigation. The report of investigation will be completed on a DA Form 1574. You will consult with your legal advisor in developing your findings and recommendations. Your findings and supporting documentation shall be as thorough as necessary to fully capture the facts and circumstances surrounding the scope of this investigation. Consider any evidence in the investigation that you determine to be relevant and material to the incident. You should make appropriate findings and recommendations based on the facts gathered during the investigation. The completed investigation will include:

a. This appointing letter;

b. A memorandum for record with your findings and recommendations. Your findings are to be based on the facts you gather and your recommendations should include how to avoid or to mitigate the effects of this type of incident in the future;

c. An executive summary;

d. An index of exhibits;

e. A chronology of your investigation;

f. All exhibits labeled in successive order;

g. A list of all persons interviewed and those from whom no statement was taken;

h. Proper classification markings for each paragraph, page, and exhibit; and

4. During your investigation you will be required to interview numerous witnesses as well as obtain sworn statements and other documentary evidence. You are directed to obtain sworn statements from all witnesses memorialized on a DA Form 2823, Sworn Statement, unless impracticable or otherwise directed by your legal advisor. In the event that you are unable to obtain a sworn statement from a witness, you will prepare a detailed Memorandum For Record (MFR) memorializing the witness interview and explaining why a sworn statement was not obtained. As for documentary evidence, you should obtain original documents whenever possible. If originals are unavailable, ensure that accurate, legible copies are provided along with an MFR documenting where the original is maintained and why it was not obtained.

5. You must interview or arrange for a sworn statement from:

a. Every individual who may have first-hand knowledge of facts surrounding the incident.

b. Any civilian or military witnesses present at the location of the incident who may have witnessed the incident or the events leading up to the incident.

c. Any other relevant witness.

6. If, prior to or during any interview, you suspect an individual subject to the UCMJ of committing a UCMJ offense, you are required to advise that individual of his or her Article 31, UCMJ, rights, both orally and in writing, before any interview or questioning may commence and/or continue. A DA Form 3881, Rights Warning Procedure/Waiver Certificate should be used to accomplish this. If the individual being interviewed is a federal civilian employee, you must first consult your legal advisor prior to interviewing this witness in order to ensure any union or collective bargaining rights are protected. Consult your legal advisor if confronted with a witness you suspect of misconduct.

7. You may examine documents of personnel senior to you, and interview personnel senior to you. However, if, in the course of your investigation, you determine that the investigation will require you to examine the conduct or performance of duty of a service member senior to you, or to which you have a moral or ethical conflict, then you shall report that fact to my office immediately. I will then appoint another service member, senior to the service member affected, who will either replace you as the investigating officer or conduct a separate inquiry into the matters pertaining to the service member.

8. From the evidence, you will make findings concerning what occurred. Support your findings by substantial evidence and by a greater weight of evidence than supports any different conclusion. In developing your recommendations, ensure that your recommendations are very precise, detailed and are supported by your findings. Develop in

your recommendations any courses of action that seem appropriate to resolve any issues or problems raised by your findings, and recommend whether judicial, or nonjudicial proceedings, or further investigations are warranted.

9. Your legal advisor is COL (b)(6) who has also been provided by the VCSA. In addition MAJ (b)(6) has been delegated as your assistant legal advisor. These two will assist you with any legal issues that may arise during your investigation. MAJ (b)(6) can be reached at (b)(2)Low or DSN (b)(2)Low and SVOIP (b)(2)Low You should consult with your legal advisor regarding all aspects of this investigation, including developing an investigation plan, determining whether witnesses need to be advised of their rights under the UCMJ, Article 31 (or the Fifth Amendment), and preparing findings and recommendations.

10. Submit your completed report with all enclosures no later than 30 days from the date of this appointment to the USFOR-A legal office for review. If any circumstances prevent a timely completion of your report, submit extension requests through your legal advisor to me for approval. In addition to a completed report, you will submit unclassified and classified EXSUMs and a power point presentation summarizing the report.

11. The point of contact for this memorandum is CAPT (b)(6), JAGC, USN, USFOR-A OSJA, Chief of Administrative Law at DSN (b)(2)Low

STANLEY A McCHRYSTAL
General, U.S. Army
Commander
United States Forces-Afghanistan/
International Security Assistance
Force, Afghanistan