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Inspector General

United States
Department of Defense



Review of Matters Related
to the August 28, 2005, Shooting
of Reuters Journalists

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The Department of Defense Office of the Deputy Inspector General for Policy and Oversight, Assistant Inspector General for Investigative Policy and Oversight prepared this report. If you have questions or would like to obtain additional copies of the final report, contact Mr. Scott Russell at (703) 604-8718 (DSN 664-8718).

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LIST OF ACRONYMS

<u>Acronym</u>	<u>Refers to:</u>
3 ID	3rd Infantry Division
AP	Associated Press
APTN	Associated Press Television Network
AR	Army Regulation
BFV	Bradley Fighting Vehicle
BCT	Brigade Combat Team
BG	Brigadier General
CP	Checkpoint
CJCSI	Chairman Joint Chiefs of Staff Instruction
CJTF	Combined Joint Task Force
DoD IG	Department of Defense Inspector General
GCMCA	General Court-Martial Convening Authority
HHC	Headquarters and Headquarters Company
IO	Investigating Officer
IPS	Iraqi Police Services
JAG	Judge Advocate General
MSR	Main Supply Route
MG	Major General
MNC-I	Multi National Corps – Iraq
MNF-I	Multi National Forces – Iraq
NGA	National Geospatial–Intelligence Agency
NTC	National Training Center
OP	Observation Post
OPORD	Operation Order
ROE	Rules of Engagement
RPG	Rocket Propelled Grenade
RUF	Rules for Use of Force
SAW	Squad Automatic Weapon
SJA	Staff Judge Advocate
SROE	Standing Rules of Engagement
TMC	Troop Medical Clinic
TOC	Tactical Operations Center
TOD	Tour of Duty
TRAG	The Risk Advisory Group
TSOP	Tactical Standing Operating Procedures
TV	Television
U.S.	United States

IPO2008E001



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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JUN - 4 2008

MEMORANDUM FOR COMMANDER, UNITED STATES CENTRAL COMMAND
CHIEF, NATIONAL GUARD BUREAU
THE INSPECTOR GENERAL, DEPARTMENT OF THE ARMY
ADJUTANT GENERAL OF THE STATE OF LOUISIANA

SUBJECT: Review of Matters Related to the August 28, 2005 Shooting of
Reuters Journalists (Report No. 2008E001)

This final report is provided for your review and comment. Management comments on the previous draft report were considered in completing this report, and are included in their entirety as Appendix H. Please ensure we receive your comments on this final report within 30 days from this memorandum date. Your comments should be submitted electronically to scott.russell@dodig.mil.

Comments on this final report should conform to the requirements in DoD Directive 7650.3. You should specifically indicate whether you concur, partially concur, or nonconcur with each recommendation, if relevant to your operation. Comments should describe actions taken or planned in response to recommendations with which you concur. They should also include estimated completion dates for these actions. Comments on recommendations relevant to your operation, if any, with which you do not fully concur, should include specific facts supporting the nonconcurrence and propose an alternative.

We appreciate the courtesies extended to the review staff. For additional information on this report, please contact Mr. Scott Russell, (703) 604-8718; 664-8718 (DSN). You may also contact Mr. John Perryman, Director of Oversight, at (703) 604-8765; 664-8765 (DSN).

A handwritten signature in black ink, appearing to read "Donald M. Horstman", is written over a large, stylized circular flourish.

Donald M. Horstman
Deputy Inspector General
for Policy and Oversight

Attachment
Final Report IPO2008E001

IPO2008E001

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IPO2008E001

REVIEW OF MATTERS RELATED TO THE AUGUST 28, 2005, SHOOTING OF REUTERS JOURNALISTS

I. INTRODUCTION AND SUMMARY

We initiated this review to address a complaint by Reuters concerning the Army investigation into the death of a Reuters journalist and injury of a second Reuters journalist on August 28, 2005, in Baghdad, Iraq. Reuters complained that the Army Regulation (AR) 15-6 “Procedures for Investigating Officers and Boards of Officers,” investigation¹ improperly concluded the Army soldiers involved acted within the Rules of Engagement (ROE). Reuters based its complaint on a private investigation contracted with “The Risk Advisory Group” (TRAG) that concluded the soldiers did not comply with the ROE and their use of force was “prima facie unlawful.”² Our review sought to determine whether the Army properly investigated the incident and reached conclusions supported by the evidence. Our review also examined whether systemic weaknesses³ in Army or Reuters policies and practices contributed to the incident. In completing our review, we focused on these specific questions:

- o **Did responsible officials reach supportable conclusions based on relevant evidence?**
- o **Did systemic weaknesses in either Army or Reuters policies or practices contribute to the death and injury of Reuters’ employees?**
- o **Did responsible officials comply with applicable standards for investigating the death and injuries in this incident?**
- o **Did systemic weaknesses in Army policy or practice result in an inadequate investigation?**

During our work we reviewed the facts and circumstances of the incident, and re-interviewed the soldiers, the Reuters cameraman, the Investigating Officer (IO) and other witnesses.

We concluded that the AR 15-6 investigation, conducted by an officer in the same brigade as the team that engaged the Reuters vehicle, was tainted by the failure to preserve evidence and a lack of thoroughness (the failure to pursue logical investigative leads).

Notwithstanding, we found that although the IO who conducted the Army investigation did not pursue some logical investigative actions, he properly concluded

¹ Hereinafter referred to interchangeably as “AR 15-6 investigation,” “15-6 investigation,” or “15-6”

² April 7, 2006, letter from Ms. Jamie Gorelick, Attorney at Law, Wilmer Cutler Pickering Hale and Dorr, LLP, 2445 M Street, NW, Washington, DC 20037-1487, representing Reuters.

³ A systemic weakness is a fundamental problem that requires corrective action through administrative, regulatory, legislative, or policy change.

that during an ongoing enemy attack the soldiers thought a video camera and external microphone held out of an indigenous, unmarked vehicle was a rocket propelled grenade (RPG). The soldiers reasonably believed that act constituted a threat to United States (U.S.) forces and as such were obligated to act and did so in accordance with the ROE.

We found no systemic weaknesses related to either the Army unit's training of soldiers in applying the ROE or in training the IO to conduct AR 15-6 investigations (see Appendix A, section 3).

We determined that Reuters Baghdad bureau safety practices contributed in this incident. In accordance with Reuters' policy, the Bagdad bureau chief gave local national Reuters journalists the discretion to work without protective equipment and in unmarked, employee owned vehicles. Likewise, a Reuters security caution against extending cameras out vehicle windows was not complied with. We understand Reuters' concern for employee safety, and their employees' desire to reduce their visibility or profile in violent environments, but the actions of the Reuters journalists reduced the soldiers' ability to distinguish them from combatants during a battle.

We recommend the Commander, 256th Brigade Combat Team (BCT) take appropriate action with respect to the IO whom we identified as accountable for the regulatory deficiencies described in this review. We also recommend the Commander, 256th BCT reinforce through additional training the importance of properly and thoroughly investigating and documenting reports of noncombatant death and serious injury. We recommend Multi National Forces - Iraq (MNF-I) Public Affairs Office contact news media organizations in Iraq and offer to review their emergency response procedures to enable employees to safely respond to encounters with Multi National Forces when warning and disabling shots may be fired.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. THE SHOOTING INCIDENT

On August 28, 2005, soldiers assigned to C Company, 1st Battalion, 156th Armor, 256th BCT, Louisiana Army National Guard shot and killed the driver and injured the cameraman while they were filming an on-going insurgent ambush of Iraqi Police Services (IPS) and U.S. forces personnel in Bagdad, Iraq, from an unmarked vehicle.

Testimony and other evidence established that on August 28, 2005, Reuters dispatched the driver and cameraman to the Hay Al-Adil District of Western Baghdad, Iraq, where U.S. forces and Iraqi police battled insurgents who had just attacked an IPS convoy. The employees traveled in an unmarked white four-door Daewoo Prince automobile. One drove and the other, a cameraman, sat in the front passenger seat with a video camera with a yellow conical microphone.

As documented in the AR 15-6 investigation photographs, the camera was a handheld Sony® digital camcorder, with a yellow sponge over the forward facing external microphone strapped onto the camera handle directly above the lens. The microphone extended beyond the end of the lens by about 5 inches. The word “Reuters” was imprinted on the sides of the microphone (see Appendix E).

Also, during the late morning of August 28, 2005, four soldiers, members of C Company, 1st Battalion, 156th Armor, 256th BCT, on the roof of the Al-Adil Mall,⁴ Baghdad, Iraq, observed an ambush of an IPS convoy. The soldiers began to help the IPS convoy with suppressive fire against the attackers and summoned help from 256th BCT tanks and Bradley Fighting Vehicles (BFV) operating in the area. The ambush began to subside and then resurged with the attackers using mortars against the IPS and 256th BCT vehicles arriving to help. (See overhead image of the area with a legend at Appendix D.)

Around the time of the resurgence, a soldier on the Mall roof observed a lone white vehicle stopped on the roadway at the point where a roadway ramp closest to the Mall merged into an adjacent, parallel road; the roadway where the ambush was ongoing (see Appendix D). When observed, the vehicle faced north and was south of the 256th BCT vehicles responding to the ambush. The soldier said he saw the passenger hanging out the window pointing something that appeared to be an RPG; the soldier then yelled an alarm, “RPG.”

The soldiers’ team leader heard the alarm and observed the vehicle stopped immediately west of them and facing north toward the 256th BCT vehicles and the ambush area. He also saw the passenger hanging out the passenger window pointing something toward the tanks. He could not positively identify the object and asked another team member to bring binoculars.

The team leader testified that by the time he got the binoculars, the passenger had pulled himself and the object he pointed back inside the vehicle; the object was no longer visible. The team leader said he shouted at the people in the vehicle to get them to stop whatever they were doing and he and his team fired warning shots to get their attention. He told us he fired the first shots expecting the vehicle to stay where it was, but it began to back up (see Appendix D).

At this point, the vehicle’s retreat was south in a northbound traffic lane. The vehicle passed in front of the soldiers’ position, but on a parallel frontage road, and continued to drive backwards away from the soldiers and the ambush (see Appendix D).

They fired more warning shots and when the vehicle did not halt, the team leader ordered disabling shots. Each of the four soldiers on the roof fired disabling shots. Three of the soldiers used M-4 rifles. The fourth soldier used an M-249 Squad Automatic Weapon (SAW).

⁴ Hereinafter referred to as the Mall.

The vehicle slowed and rolled to a stop against a roadway lane barrier (see point 2, Appendix D) south of the soldiers' position. The team leader reported disabling the vehicle, and one of the tank commanders, using the tank's optical system, observed the disabled vehicle's driver apparently dead. The tank commander told the team leader to continue surveillance of the vehicle and keep it in place until the tanks and other 256th BCT vehicles finished searching for the people who initiated the ambush. The soldiers remained on the observation post (OP) until the IO arrived at the scene.

About 20 minutes later, the tanks and other 256th BCT vehicles arrived at the disabled white vehicle. According to the cameraman, who had remained out of sight in the front passenger seat, he sat up and called out "Reuters Cameraman" to the approaching soldiers.

III. SCOPE

We interviewed 60 witnesses, including: numerous 256th BCT soldiers; the IO; the appointing authority (BG John P. Basilica, Jr., Commander, 256th BCT); the 256th BCT SJAs; the cameraman, and other witnesses. We also conducted 14 follow-up interviews. In addition, we reviewed the AR 15-6 and TRAG reports and documents associated therewith, both classified and unclassified ROE, as well as relevant e-mail messages and internal documents within the chain of command and similar communications within the Department of the Army and civilian agencies.

We reviewed the policies and standards to determine whether responsible Army officials complied and whether any systemic issues contributed to the incident. The systemic review also considered Reuters guidance to employees in a hostile environment.

IV. CONCLUSIONS

The IO did not comply with some applicable standards for investigating incidents, which rightfully caused or reinforced Reuters impression the investigation was pro forma and less than independent (see Appendix A, section 2). However, a preponderance of evidence establishes that the cameraman and driver took actions during the incident that reasonably led U.S. soldiers to believe they were confronting hostile intent, which they were obligated to address under the ROE. The soldiers' escalating actions to warn and then disable the vehicle were consistent with the ROE and implementation standards/guidelines (see Appendix A, section 1).

We did not identify any systematic weakness in Army training for AR 15-6 investigating officers, or for training 256th BCT soldiers to understand and apply the ROE (see Appendix A, section 3).

We found that the Reuters Baghdad bureau's safety practices contributed to the incident. The bureau chief authorized an exception to general safety procedures, allowing local national journalists to enter hostile environments in private passenger

vehicles without press markings and without the occupants wearing safety equipment (see Appendix A, section 1).

Further, we identified a serious inconsistency between the Reuters Baghdad bureau safety procedures and U.S. forces expectations, which also significantly contributed to the incident (see Appendix A, section 1). The Reuters safety procedures require employees to flee a scene if they come under fire. Under the ROE, however, U.S. forces have escalating warnings that progress to disabling actions to force vehicles occupants to stop doing what they are doing and stand fast. U.S. forces equate fleeing attempts with insurgents combat tactics (drive into battle, fire a weapon, and flee quickly to avoid return fire). Unless this inconsistency is resolved, or Reuters takes steps to ensure that its employees use only vehicles with clearly visible PRESS markings, this type of incident is likely to reoccur.

V. RECOMMENDATIONS

1. We recommend the Commander, 256th Brigade Combat Team take appropriate corrective action regarding the investigating officer's failure to preserve real evidence.

2. We recommend the Commander, 256th Brigade Combat Team reinforce through additional training the importance of properly and thoroughly investigating and documenting reports of noncombatant death and serious injury.

3. We recommend Multi National Forces - Iraq Public Affairs Office contact news media organizations in Iraq and offer to review their emergency response procedures to enable employees to safely respond to encounters with Multi National Forces when warning and disabling shots may be fired.

VI. MANAGEMENT COMMENTS AND OUR EVALUATION

In response to the draft report, we received management comments from the Army Inspector General (April 22, 2008), the Departments of the Army and Air Force Joint Forces Headquarters – Louisiana, Louisiana National Guard (May 1, 2008), and from the United States Central Command (USCENTCOM), which incorporated the response from Multi-National Force -Iraq (May 13, 2008). The USCENTCOM comments addressed Recommendation 3. USCENTCOM concurred with Recommendation 3 and advised “. . . MNC-I PAO (Lead) and SJA (Support) will contact Reuters Baghdad Bureau and make known their availability to review emergency response procedures.” The USCENTCOM comments are responsive to the recommendation; however, we subsequently expanded the recommendation to cover news media organizations in Iraq.

The Army Inspector General and the Louisiana National Guard both agreed with our conclusion that U.S. forces' actions in this case complied with requirements. They also agreed with our recommendation concerning AR 15-6 training. However, they disagreed with our findings and recommendation concerning deficiencies in the IO's investigation. According to the Army Inspector General, “. . . [a]lthough the IO gathered

less evidence . . . he did ascertain the material facts, and his report was legally sufficient when he submitted it. His report remains legally sufficient even when now compared to DoDIG's extensive investigation, which reached the same core findings as the IO's investigation. . . ."

The Louisiana National Guard comments from the Commander, Operational Headquarters Number 1 (U.S. ARNORTH) were more extensive. The Commander was the 256th BCT Commander when the incident occurred. According to the Commander:

. . . The IO performed his duties in a conscientious and professional manner, consistent with the combat conditions on the ground, his training, and his substantial experience. . . . I completely reject any suggestion that the IO's conduct of the AR 15-6 investigation in this case was lacking. To apply rules of evidence as though they were required in a court of law, along with the benefit of complete 20/20 hindsight and after hundreds of hours of investigatory work by the DoDIG, is not fair or appropriate. The IO performed his duty to me, the Commander. He had no duty to satisfy the perceptions of third parties. . . . With regard to the handling of evidence, it is regrettable that the video tape was inadvertently lost. The circumstances were verifiably explained by all parties and I am satisfied there was no negligence on the part of the IO. More importantly, the Army Judge Advocates who reviewed the tape agreed that its contents were inconclusive and therefore irrelevant to the IO's report and my subsequent finding. Accordingly, no remedial action against the IO is necessary or appropriate. . . .

The full-text management comments are included as Appendix H.

The Commander mentions combat conditions existing during the IO's investigation. We recognize that hazardous conditions during combat can necessitate shortcuts in an investigation, even omitting specific investigative steps. However, no one claimed and nothing in testimonies to us suggested that investigative deficiencies in this case were due to hazardous combat conditions. On the contrary, the unit's actions following the incident refute this notion. In fact, the incident scene was contained/secured throughout the IO's time there and for several hours afterwards.

We cannot accept the position that the IO's investigation was sufficient because the ultimate conclusion was correct. The AR 15-6 requires a thorough, documented investigation. In this case, as detailed in the report:

- o The IO did not interview all personnel at the incident scene to identify potential witnesses. As a result, the IO was unaware of the third parties who would, based on real-time radio transmissions, confirm the shooting team members' beliefs that they were dealing with a RPG. The IO also did not attempt to determine whether RPGs with yellow warheads existed. The IO simply accepted the shooting team's testimonies at the scene without any reasonable attempt to verify the truthfulness or basis.
- o The IO did not personally obtain written statements from the shooting team members, or discuss their statements with them individually, which AR 15-6

required. As a result, the IO was unaware that distance discrepancies existed in the statements and did not attempt to resolve the discrepancies.

- o Although concluding the videotape was inconclusive, the IO did not document (1) the contents, (2) the videotape viewing, (3) the individuals present at the viewing, or (4) the viewers who considered the videotape inconclusive. In fact, the IO did not document the inconclusive decision, or even the existence of the videotape, and then was responsible for the loss.

Although most key witness testimonies to us supported the shooting team, they just as easily could have undermined the team's statements. The IO did not know one way or another because he did not identify or interview key witnesses.

The IO also did not fully process the incident scene for physical evidence. The scene was secured for about 6 hours. However, the IO was at the scene 30-40 minutes and, while there, omitted typical investigative steps because he was familiar with the area. Processing an incident scene requires more than familiarity with the area. Evidence not collected, or not protected after collection, is evidence lost, as was true for the videotape in this case. We have no way of knowing if other physical evidence was available at the scene and was also lost due to non-identification/non-collection.

The videotape loss may not have been due to negligence, but the evidence was lost nevertheless. Furthermore, while the videotape may have been inconclusive, it remained relevant to both the issues involved and the investigation. Otherwise, it would not have been necessary for us to rely on the distant memories of the individuals who viewed the videotape.

It is a mistake to assume that the issues in this case resulted from third party perceptions, or from applying rules of evidence as would be required in a court of law. On the contrary, deficiencies in the IO's investigation permitted Reuters and others to raise valid questions about both the investigation thoroughness and results. These questions could have been avoided had the IO complied with the AR 15-6 requirements. Because he did not, an extensive reinvestigation was required substantially after the fact to resolve those issues as much as possible without the benefit of all the evidence that may have been available to the IO. As we pointed out in the report, our findings were based on a preponderance of the evidence existing when we conducted the reinvestigation. We cannot certify that our findings would have been the same had we had access to all the evidence available during the IO's investigation.

As a final matter, following issuance of the draft report, a Reuters' representative provided information concerning the RPG picture that we included as Appendix F to the report. According to the representative, the cone coloration in the Washington Post Newspaper picture was due to the ink used in the newspaper printing process, since the cone was actually light green in the original picture. During the reinvestigation, we confirmed that RPGs with yellow warheads are manufactured and used in Iraq. In response to the new information regarding the picture, we viewed various other RPG pictures to see if they all appeared yellow due to printing. They depicted several different colored warheads, including yellow, brown, gray, and green. The cone coloration in

some yellow warhead pictures appeared identical to the Appendix F picture. Since the picture was for illustration purposes, the new information did not establish any need for us to adjust the final report. Nevertheless, we expanded Appendix F to include additional RPG pictures with different colored warheads, including one in which the cones are clearly yellow.

APPENDICES

Appendix A through Appendix I to the report follow.

Appendix A. Findings and Analysis

1. Did responsible officials reach supportable conclusions based on relevant evidence?

We concluded the IO did not consider all relevant evidence in conducting the AR 15-6 investigation (See Appendix A, section 2); however, we found the IO's conclusion that the soldiers acted in accordance with the ROE was correct.

Additionally, we examined whether any systemic weaknesses in Reuters policy or practice may have contributed to the death and injury of Reuters' employees. We concluded both Reuters Baghdad bureau safety practices and the actions of the driver and cameraman contributed to this incident. We found a preponderance of evidence to establish that, contrary to Reuters policy, the cameraman exposed his camera through his open passenger window. The cameraman's actions combined with the lack of vehicle press markings and the soldiers' heightened level of alert to hostile intent because of the ongoing battle, contributed to the soldiers' engagement of Reuters employees.

In examining this issue we also considered whether systemic weaknesses in Army policy or practice may have contributed to the death and injury of Reuters' employees. This amounted to a review of ROE training to prepare soldiers for duty in Iraq. We determined that responsible Army officials trained the soldiers involved in the incident regarding the applicable ROE as required by the standards. The training coincided with the principles detailed in the standards and in our view exceeded training requirements (See Appendix A, section 3).

Standards

The applicable ROE, Standing ROE (SROE), Tactical Standard Operating Procedures (TSOP), and Reuters safety procedures were considered in reaching our conclusions. They are detailed in Appendix C. The individual requirements are cited and discussed subsequently in this appendix. Overall, the ROE requirements are based on self-defense principles under which U.S. Forces are authorized to use "... all necessary means available and all appropriate actions ... in self-defense," based on de-escalation, necessity, and proportionality guidelines. However, when time and circumstances permit, U.S. forces are required to "... challenge and warn prior to using force, and if force is necessary, use an escalating scale of force."

The Reuters journalist safety procedures establish rules for covering conflicts and give details on safety equipment. The procedures relate to vehicles and markings, protective equipment, and safety practices and they outline how Reuters works to reduce risks to their employees.

Facts

The IO interviewed the soldiers involved in the shooting incident regarding the sequence of events and actions they took. Specifically, the four soldiers, who fired on the vehicle, reported that during an on-going armed attack by insurgents against a group of Iraqi policemen and arriving U.S. forces, they observed what they thought was an RPG being aimed at friendly and U.S. forces, and therefore, perceived the occupants of the vehicle to be a threat.

We also interviewed the soldiers involved in this incident. Our interviews focused on observations, thought processes, and actions each soldier took, as well as their knowledge, training, experience, and application of the ROE. We noted no substantive differences between the soldiers' initial statements taken on August 28, 2005, and testimony given us. The soldiers told us they observed a white Daewoo Prince and saw what looked like an RPG aimed at other "friendly" and U.S. forces and described the actions they took that led to the driver's death and the cameraman's injury.

In interviews with us, the team leader described the soldiers' actions and explained how the car first came to his attention when another soldier called out the alarm "RPG." The team leader told us he wondered what the car was doing and then saw something coming out of the side of the vehicle with a yellow cylinder shaped object. He said the object was pointed directly at the rear of an Abrams tank. He further explained the object he saw looked like an RPG but "we could not positively identify that it was an RPG." The team leader went on to say they attempted to positively identify the object using binoculars, but the object was no longer visible. Consequently, he told his soldiers to fire warning shots to get the attention of the car's occupants in an attempt to get them to stop what they were doing.

The team leader testified that once they fired the first warning shots, the person holding the suspected RPG "stopped, looked up and got back in very suspicious like," and the car immediately started backing up at a high rate of speed as if to flee. He said they fired more warning shots, and when the car continued to back up, he gave the order to disable the vehicle. They fired disabling shots until the vehicle stopped at a guardrail.

Once the vehicle stopped against the guardrail, the soldiers ceased firing and continued surveillance of the vehicle from the rooftop for about 20 minutes until other U.S. forces arrived at the scene and secured it. The team leader added that it was common knowledge in some prior attacks, vehicles would drive up just long enough to fire a round and get out of the area so they would not get caught.

We asked the team leader why he considered it suspicious the driver drove away when he started firing at the vehicle. He explained he did not think the driver was scared by the gunfire because the driver had just approached an ongoing battle. He interpreted the driver's actions as a response to being unexpectedly discovered by his team. He thought the vehicle occupants were fleeing the discovery.

A soldier manning the rooftop OP testified on the day of the incident that he saw the passenger hanging out the window pointing something he assumed was an RPG, and yelled an alarm, "RPG." Another soldier said he went to get binoculars in an attempt to positively identify the object; however, the passenger leaned back inside the car before the object could be identified.

The team leader said he also saw the passenger hanging out the passenger window pointing something towards the tanks. On interview, the other three soldiers involved told us how they saw a vehicle approach with its passenger hanging out the side window with a cylindrical object pointed towards the vicinity of the tanks and Iraqi police vehicles.

Following their team leader's orders, the soldiers said they fired warning shots, and when the vehicle started backing up, fired more warning shots. When the vehicle still did not stop, they then fired shots to disable it.

We interviewed all tank and BFV crew members, the majority of whom recalled hearing about a white vehicle and an RPG but only after the shooting occurred. However, the platoon sergeant, his tank gunner, and a BFV crew member, heard real-time radio communication from the OP regarding the RPG.

The platoon sergeant told us he heard the announcement of RPG on the radio and he "clenched" thinking he was about to get hit with an RPG. He then heard the dismounts on the OP (soldiers on the rooftop) had engaged the vehicle, and it was stopped against the guardrail.

The tank gunner told us when he heard the radio call from the OP, about the vehicle and RPG, he turned around and saw a vehicle coming toward the side of his tank. He told us he saw a person leaning out the window with a yellow cone-shaped object, and he thought it looked like an RPG pointed at the other tank.

The BFV crew member told us he heard the team leader say, "we have positive identification on an RPG, these guys have an RPG," followed by, "we fired warning shots, they keep coming, they keep coming...."

The cameraman was interviewed by Army intelligence personnel, Reuters personnel, TRAG investigators, and DoD IG investigators. There were contradictions in his various testimonies regarding whether he or the camera was outside the car window at any time.

The TRAG reports indicates the cameraman told TRAG investigators they were in a white four-door car, one of the Reuters pool cars.⁵ The cameraman said there were no "Press" markings visible on the car as this was the company policy. As they approached the ambush site, he saw an Iraqi police car parked in the central lane between

⁵ The Reuters Baghdad Bureau Chief told us the driver owned the vehicle. Reuters Baghdad Bureau safety procedures allowed drivers to use their privately owned vehicles for safety reasons.

two lanes of traffic and two Iraqi police officers standing by the car. The driver pulled the car over to the right side of the road to get a better look and see if this was the place the police were ambushed. About 20 seconds later, the driver pointed out some smoke that might be worth filming; it was slightly to their right and forward of their car. The cameraman said,

I placed the camera on the upturned palm of my hand to form a stable platform for it and turned it towards the smoke in order to film it....I leant out of the open car window very slightly at this point to get a better view.

He further stated that as he did this, he noticed a U.S. soldier standing on the roof of the Mall to his right and slightly behind him. The cameraman stated, "He had one foot on the parapet (wall) of the building and I could see that he was holding a black weapon in his hands." He said the weapon looked like the normal black rifle that U.S. soldiers carry, and the soldier on the roof was higher than they were on the road. The cameraman further stated,

As soon as I saw the soldier on the roof I moved my camera away from the window and down into the footwell of the car. As I did this, I saw the soldier on the roof aim his rifle at our car and start shooting at us.

The cameraman said he shouted to the driver they were going to kill them and to go back. He said the driver put the car into reverse gear and started to "reverse away very quickly."

When questioned by Reuters, the cameraman told a slightly different story as to how far he was out of the window. He said he was filming the smoke out the right window which was open. He stated, "...but the lenses (sic) of the camera was showing a little bit."

On interview, the cameraman told us repeatedly he did not film through the right passenger vehicle window. He said he filmed only through the windshield of the vehicle. When questioned regarding his prior statements he said he did not tell TRAG investigators he filmed out the open right passenger window but told them he filmed through the right corner of the windshield. He also denied extending any part of his body out the passenger window stating, "As Reuters' employees, we don't film like this from outside the window. You should get out of the car to film. You decide...how you want to do it....With a camera this size, how are you going to film anything outside the window of the car?"

With regard to his interview with Reuters supervisors, the cameraman told us he had only been released from detention for 2 hours.⁶ He stated, “I cheated death. You know? I avoided death and was a little shaken up. I said what I said then, and I’m telling you what I’m telling you now.” The cameraman denied filming through the right passenger window or extending his camera through the window.

The cameraman further stated that when he and the driver arrived at the ambush location, about 100 meters away, he saw Iraqi police waving their hands for them to stop. The driver stopped next to two other vehicles parked at the scene. The cameraman went on to say “...and as soon as we pulled up, I started recording, a wide, normal recording.” He said while recording, three tanks passed by and “...that’s when an explosion happened and smoke came up.” He said the driver pointed out the smoke, and he turned his camera towards it. While trying to “capture it,” he saw a U.S. soldier on the roof of the Mall pointing his weapon at him. The cameraman said the soldier was “kneeling.” He said the soldier didn’t say anything at all and “just started firing at us, from the roof,” at his side of the vehicle. He said they were scared and the driver put the car in reverse, trying to back up out of there when the driver was shot.

The cameraman testified that he was trained not to film from inside a vehicle because it looks suspicious; however, “it depends on you as a photographer when you arrive at the scene, location, and you basically determine, you know, how you should take your shots....” The cameraman also told us he had been trained not to stick his camera out vehicle windows for safety reasons, as well as quality reasons, that is, being able to see and frame your subject matter and keep the camera stable.

The cameraman further explained he was issued protective gear to include a helmet, a bullet-proof vest, and shin protection; however, he did not usually wear it because it increased the risk of becoming a target. He stated “...people over there can’t really tell the difference between a journalist or just being an infidel working for the U.S. forces or the Iraqi government.”

Eight of the 10 people who viewed the videotape footage collected by the cameraman believed the footage depicted the cameraman also filming from his open passenger side window. Of those eight, four thought the lens or external microphone extended, to varying degrees, outside the passenger window. One thought no portion of the camera extended out the passenger side window.

The bureau chief stated, based on the advice of their security advisors (mostly former British military or police personnel) without understanding the ROE, they instructed staff to drive in reverse out of situations if they were worried they were too close to an incident or coming under fire to show they had no hostile intent. Further,

⁶ 256th BCT detained the cameraman following the incident from August 28 until August 31 because they suspected the cameraman had foreknowledge of the incident based on the time (9:30 A.M.) he told 256th BCT personnel he was dispatched by his producer. See pages 22-23 of this Appendix for details regarding the detention.

because the driver worked with Reuters for 2 years, he would have been told to react in this manner.

With regard to Reuters local national journalists wearing protective equipment, the bureau chief testified, "Reuters reporters have discretion as to what is the safest approach for them to take." He said in Baghdad, "the wearing of safety equipment can itself create more risk than not to wear it, because it identifies the wearer as either a foreigner or someone with links to foreigners." For the same reason, after 2003, his staff declined to use the bureau's armored vehicles.

The IO recommended the command take no action against the soldiers finding they, "...utilized proportional force only after ROE had been met." The 256th BCT deputy SJA reviewed the AR 15-6 investigation for legal sufficiency and agreed with the IO's conclusions. The Appointing Authority, BG Basilica concurred the soldiers acted within the ROE. The 3 ID SJA told us he believed the totality of the circumstances clearly shows the soldiers' conformed to ROE.

We interviewed the IO several times concerning the soldiers' actions during the shooting incident. He told us his main focus was the ROE and whether the soldiers involved in the incident followed the rules. The IO stated he found no "negligence" on the part of the soldiers, and he "felt that the rules of engagement were followed." The IO told us he based his conclusion on the "classified" MNF-I ROE. He said based on his questioning of the witnesses, the soldiers thought the cameraman made threatening acts when observed leaning out of the vehicle window with what looked like an RPG. The IO stated the soldiers "on top of the mall felt that the car was a threat to U.S. forces on the ground."

Discussion

The SROE (CJCSI 3121.01.B) provides for an "inherent right of self-defense" in response to a hostile act or demonstrated hostile intent. Self-defense includes both unit and individual self-defense. Both categories of self-defense include defense of other U.S. military forces in the vicinity. Forces and individuals may be established as enemy either by their status, or their conduct, through their commission of a "hostile act" or their demonstration of "hostile intent," against U.S. forces, friendly forces, or persons or property under the protection of U.S. forces.

In accordance with the SROE's "inherent right of self defense," it was not readily apparent whether the vehicle and occupants the soldiers observed were enemy. Therefore, the soldiers had to rely on the occupants' conduct to determine their status.

The 256th ROE defines hostile intent as "[T]he threat of imminent use of force against...U.S. forces or other designated persons or property...." The SROE states, "The determination of whether the use of force against U.S. forces is imminent will be based on an assessment of all facts and circumstances known to U.S. forces at the time and may be made at any level...."

The MNF-I ROE states, “Self defense engagements occur when commanders or members of a unit can **positively identify** that they or one of their elements encounters a hostile force, an element committing a hostile act or a display of hostile intent.” (Emphasis Added) Although the MNF-I ROE is silent about what constitutes positive identification, Annex E to 256th BCT ROE does not require absolute certainty of a hostile action or intent. It states force may be used against “[A] person about to use any other force against you, your unit, or other designated friendly forces, and you **reasonably believe** that force to be deadly.” (Emphasis added)

The soldiers positioned on the OP were actively supporting U.S. and Iraqi forces under attack by insurgents when they noticed an individual pointing what they thought was an RPG toward those forces. In their testimonies, both during the AR 15-6 investigation and during our interviews, the four soldiers thought the occupants of the vehicle posed a threat to U.S. forces.

The team leader said he saw something coming out of the side of the vehicle with a yellow cylinder shaped object. Though he could not positively identify it, he thought it could be an RPG, and it was pointed at the rear of an Abrams tank which he characterized as the tank’s “weak spot.” He had to instantly decide whether hostile intent existed and whether it constituted a threat to U.S. and friendly forces already engaged in a battle with insurgents.

He decided to first challenge the occupant’s actions with warning shots to get them to cease. When in his judgment, they started to flee, he ordered disabling shots and ordered the soldiers to stop firing when the vehicle was disabled against the guardrail.

Although the suspected RPG was later determined to be a video camera, the team leader believed the vehicle and its occupants constituted a threat to 256th BCT and Iraqi security forces battling just north of their position. The vehicle was in close proximity of U.S. forces and Iraqi security forces under attack. Based on their statements, both the team leader and the other soldiers involved viewed the vehicle occupants’ actions as having “hostile intent.”

In keeping with the principles of self-defense established in the SROE, the soldiers were authorized to use “all necessary means available and all appropriate actions...in self-defense,” using the guidelines of de-escalation, necessity, and proportionality. In addition, Annex E of the ROE states, “when time and circumstances permit, CJTF-7 forces will challenge and warn prior to using force, and if force is necessary, use an escalating scale of force.” Soldiers apply escalation of force using the following “shout, shove, show, and shoot” methodology:

- **SHOUT:** verbal warnings to HALT or move as directed by CJTF-7 forces
- **SHOVE:** physically touch another person to restrain, block access, or detain
- **SHOW:** outwardly hold your weapon and demonstrate intent to use it
- **SHOOT:** only to remove the threat of death/serious bodily injury or to protect designated property

Interviews indicate the soldiers used escalating force by first shouting and showing themselves. The Reuters cameraman told us and TRAG investigators he saw at least one soldier and his weapon on the roof. The soldiers then fired warning shots followed by disabling shots believing the vehicle posed a threat to U.S. forces. We concluded the soldiers used escalating force by shouting, showing, and using warning shots in attempts to cause the vehicle to cease threatening actions. In this instance, the vehicle started to flee. The soldiers, believing the vehicle occupants possessed an RPG and because the vehicle occupants did not halt for warning shots, the soldiers fired and disabled the vehicle. The team leader explained to us it was better to disable the vehicle so it could be searched, the suspected RPG recovered, and the occupants interrogated.

We also considered the amount of force the soldiers used in this incident. With regard to proportionality, the SROE states,

The use of force in self-defense should be sufficient to respond decisively to hostile acts or demonstrations of hostile intent. Such use of force may exceed the means and intensity of the hostile act or hostile intent, but the nature, duration and scope of force used should not exceed what is required.

We concluded the soldiers' use of force was proportional to the perceived threat. In total, the soldiers fired 16 rounds that struck the vehicle. Six rounds struck the right rear area of the vehicle to include the right rear tire and door. Three rounds struck near the right passenger door jamb, with one of the three rounds passing through the door post between the right front and rear passenger door, while another entered the vehicle above the right rear door and exited through the left front door below the window, possibly striking the driver. Three rounds struck the right front portion of the vehicle. One round penetrated the upper right portion of the windshield above the passenger seat, and three rounds penetrated the lower center portion of the windshield above the windshield wipers.

During our interviews the soldiers told us they fired to disable the vehicle and did not intend to harm the occupants. Given the fire power available (three M4 carbines capable of sustained automatic fire, and one M249 SAW capable of firing around 750 rounds per minute), it appears the force used was measured and did not exceed what was required or what could have been used.

We concluded based on interviews with the soldiers on the rooftop OP, they observed actions they reasonably believed constituted hostile intent and were obligated to act. The responsibility rested squarely on the team leader's shoulders, and he decided the course of action, including escalation along a force continuum. Although ultimately there was no RPG, during an ongoing battle, the soldiers reasonably mistook a camera and yellow external microphone protruding from the vehicle's passenger window as representing an imminent threat and acted in accordance with the ROE.

Reuters safety procedures in effect on August 28, 2005, made bureau chiefs responsible for ensuring staff members in hazardous environments are properly equipped to deal with foreseeable dangers. According to the safety procedures, bureau chiefs must ensure their staff members are provided with the necessary equipment when working in a potentially dangerous environment and issue clear instructions such equipment must be worn, used, or carried as appropriate. Reuters journalist safety procedures in effect when the incident occurred required both training, and protective equipment issuance and use for all Reuters journalists operating in hazardous environments. It also required the use of “press” markings on vehicles. Neither protective equipment nor armored vehicles or “press” markings were used in this case.

In accordance with Reuters’ policy, the Baghdad bureau chief gave local national Reuters journalists the discretion to work without protective equipment in unmarked, private vehicles to reduce risk from local Iraqi threats. The bureau chief left the wearing of protective equipment to the local national journalists’ discretion because the risks of wearing it outweighed the risks of not wearing it. Although the practice may have decreased the local Iraqi threat, it may also have increased the risk from Multi National forces.

In this instance, the interviews we conducted of the cameraman, the Baghdad bureau chief, and the security consultant indicate Reuters Baghdad bureau issued both the driver and the cameraman protective equipment but they opted not to wear it, and although the bureau’s armored vehicles were available, in accordance with bureau practice, the driver drove his own unmarked vehicle.

Additionally, the Reuters Baghdad bureau chief implemented policies prohibiting the exposure of cameras out of their vehicles because they could be mistaken for weapons. Although when we interviewed the cameraman he denied even filming through his open passenger window, his prior statements indicate his camera protruded at least slightly from the open passenger window. While the cameraman’s testimony regarding his actions was inconsistent, the soldiers consistently stated they observed the passenger with a cylindrical object outside the passenger window of the vehicle.

Significantly, the cameraman’s description of the events to TRAG and Reuters is similar to the soldiers. The cameraman told TRAG investigators he filmed while leaning out the “open car window very slightly...to get a better view,” and after seeing a soldier on the roof, “I moved my camera away from the window and down into the footwell of the car....” He also told Reuters he was filming out the right open window stating, “but the lenses (sic) of the camera was showing a little bit.” Although the driver told us he only filmed through the windshield, the testimony of 8 of 10 witnesses who viewed the videotape footage support the fact that he filmed through the open window. Of those eight, four thought the lens or external microphone extended, to varying degrees, outside the passenger window. Only one thought no portion of the camera extended out the passenger side window. This gives credibility to the soldiers’ testimony they saw an object they suspected to be an RPG extended from the vehicle.

We also noted the Reuters Baghdad Bureau safety guidelines for their drivers and staff in Iraq advising them to approach incidents with care, warning that soldiers and police will be nervous. Drivers and staff are advised to return to the bureau if they feel their life is at risk, carefully extracting themselves without speeding unless required. The policy further states that if a vehicle comes under attack, the driver should reverse or U-turn away from the threat, “keeping the engine block between you and the threat,” and to drive into cover or get distance between you and the threat. Passengers are advised to get into the vehicle footwell or as low as possible to receive cover from the engine against small arms fire.

In this instance the driver and the cameraman acted in accordance with their procedures when under attack. U.S. soldiers reacted with warning shots as the cameraman quickly retracted the suspected RPG into the vehicle, and with disabling shots in reaction to the driver reversing the vehicle from the area following warning shots fired.

We concluded that the cameraman’s conduct and the vehicle reversing in response to warning shots established a reasonable belief of hostile intent and authorized the use of force.

2. Did responsible officials comply with applicable standards for investigating the death and injuries in this incident?

We concluded the IO did not comply with certain standards for investigating an incident. He did not pursue logical investigative leads and did not properly account for critical evidence, resulting in its loss. The IO’s omissions caused or contributed to Reuters’ impression the investigation was pro forma and less than independent.

Standards

The applicable requirements from AR 15-6, “Procedures for Investigating Officers and Boards of Officers,” September 30, 1996, are detailed in Appendix C. The individual requirements are cited and discussed throughout this report. To ensure investigative sufficiency, AR 15-6 requires the IO to pursue all investigative leads, to collect, consider and preserve all relevant evidence, and to fully document and report the investigative information, together with any recommendation resulting from the investigation. With respect to witness testimony, the IO should segregate witnesses to preclude collusions in testimony. With respect to physical evidence, such as a videotape that cannot be included in the investigative report, AR 15-6 requires establishing chain-of-custody to preserve the evidence and maintain its authenticity for any subsequent legal proceeding. The regulation also provides for the ultimate disposition of such physical evidence.

Facts

Appointment of investigating officer. The operational chain of command for the soldiers involved in this incident is as follows:

1. Commander, C Company, 1st Battalion, 156th Armor
2. Commander, 1st Battalion, 156th Armor
3. Commander, 256th BCT
4. Commander, 3 ID
5. Commander, Multi National Corps – Iraq (MNC-I)
6. Commander, US Central Command (CENTCOM)

The incident was reported through the chain of command. BG Basilica appointed the IO assigned to HHC, 256th BCT to investigate. The appointment memorandum, dated August 28, 2005, issued under the authority of BG Basilica, was signed “For” the commander by a noncommissioned officer assigned to the 256th BCT SJA. The memorandum directed the IO to submit findings and recommendations within 72 hours concerning the escalation of force in this incident.⁷

BG Basilica selected and appointed the IO the same way he normally did for all AR 15-6 investigations, based on the IOs knowledge, availability, and previous AR 15-6 investigative and operational work in Iraq.

Regarding BG Basilica’s appointment of the IO, MG Webster, Commander, 3 ID, told us he expected his subordinate commanders to investigate matters involving extensive property damage and death. MG Webster testified his SJA and an assistant SJA met with him and reviewed the investigation to include the attachments. MG Webster stated he approved the investigation based on the attorneys’ recommendation it was legally sufficient, but he did not recall whether he particularly signed an approval document.⁸

Investigative activity. The IO told us the 256th BCT SJA notified him of his appointment. He understood his appointment was based on his in-theater operational experience. Since he was preparing to redeploy early to the unit’s home station in Louisiana to help the Hurricane Katrina response, he had to redraw his weapon and other equipment. After organizing an escort patrol, he departed for the scene. He estimated

⁷ AR 15-6 “Procedures for Investigating Officers and Boards of Officers,” dated September 30, 1996, Subparagraph 2-1.a, “Authority to appoint,” directs only a General Court-Marital Convening Authority (GCMCA) may appoint an investigation or board for incidents resulting in the death of one or more persons. GCMCA is an administrative designation conferring military judicial jurisdiction and is also used to designate authority for various administrative functions, including appointment of IOs under certain circumstances (AR 15-6, paragraph 2-1.c.). The GCMCA was MG Webster; BG Basilica was not a GCMCA. We conducted interviews of MG Webster and BG Basilica, as well as their respective SJAs. None of the individuals interviewed were aware or recalled AR 15-6 required a GCMCA to appoint the IO to informally investigate an incident resulting in the death of one or more persons.

⁸ We subsequently queried the SJA, 3 ID who was unable to locate an endorsement by MG Webster.

arriving at the scene about 45 minutes after the event and spent 30 to 45 minutes at the scene investigating.

The IO told us he was familiar with the physical layout of the Mall area; therefore, he did not need to go on the roof to understand that vantage point. He was also aware of the security environment at the site and the ambushes earlier in the day. While at the scene, the IO took photographs, which he included as an exhibit to his report.

At the scene, the IO separately interviewed the four soldiers who shot at the vehicle; they pointed out the location where they initially spotted and then challenged the vehicle. Following oral interviews at the scene the soldiers returned to the Mall roof. While at the scene or later, the IO directed the soldiers provide written statements when they got off duty that evening. Once off duty, each soldier prepared a written statement while located in the same room and turned them in to someone other than the IO.⁹ They did not talk to the IO again after he left the incident scene. The IO told us he reviewed the soldiers' statements with them, the following day.¹⁰ He did not recall who brought the completed witness statements to him.

The written statements from the four soldiers have similar content and construction. Their team leader testified after talking to the IO on-scene, they finished their duty day atop the Mall. While there, the soldiers discussed their recollections of the shooting and concluded they had a common understanding of the event.

We asked the IO why he did not separate the soldiers on the roof of the Mall. He explained he did not have the authority to remove them from their post, nor did he ask to have them removed. He said he was not concerned the soldiers would talk about the incident among themselves once they went back on the roof. Consequently, the soldiers, with the event under investigation, were sent back to the roof and worked together for several hours.

BG Basilica told us that he agreed the IO did not have the authority to relieve the soldiers from their post. Though he said the IO could have requested the soldiers be replaced, BG Basilica indicated to us the security conditions at the time probably did not warrant replacing them.

At the scene, using an interpreter, the IO also talked to the Reuters cameraman. The IO either ordered or participated in the decision to detain the cameraman because the cameraman's answers about when he was sent to the scene were inconsistent with events at the scene. In subsequent interviews by Army interrogators and Reuters supervisors, the cameraman maintained that Reuters dispatched him to the ambush scene about two

⁹ The Battalion S-2 (Intelligence Officer) told us that while at the TOC, he administered the oath to the four soldiers swearing them to the contents of their written statements; however, he did not assist them in preparing their statements.

¹⁰ We referred inconsistencies in the recollections of the interview process involving the IO and some interviewees to the Commander, 256th BCT. The inconsistencies did not materially impact our review.

hours before the event occurred. Such information suggested foreknowledge of the ambush and played a part in the decision to detain him.

A couple of days after the detention, the IO spoke to the Reuters Baghdad bureau TV producer who had dispatched the cameraman to the scene. The TV producer provided a time reference for the dispatch much closer to the actual event. Additionally, the Army interrogators told the IO the cameraman was upset, confused, and gave inconsistent information. The IO told us that at some point he realized the time the cameraman was dispatched did not directly relate to his investigation about whether the soldiers' actions conformed to the ROE. He then decided to leave the conflicting information about the cameraman's dispatch time for resolution by military intelligence.

The cameraman lied to Army interrogators about his role in the incident, claiming he did not film and did not see American soldiers shooting. He later explained to Reuters supervisors and to TRAG investigators he was afraid, and another detainee told him if he admitted to seeing American soldiers shooting, he would not be released from detention. The cameraman was released from detention three days later on August 31, 2005.

The cameraman's statements from separate interviews with Reuters supervisors¹¹ and TRAG investigators indicate the cameraman filmed through the open passenger window and leaned slightly out, or slightly exposed the camera lens; however, when we interviewed the cameraman, he said he filmed only through the front windshield.

The IO did not participate in and was not present for interviews of the cameraman, but provided Army interrogators with pertinent questions regarding his investigation. The IO signed the cameraman's translated statements that Army interrogators obtained.

The IO did not direct canvass interviews for possible witnesses in the surrounding area, and based on his experience in Iraq, doubted it would have been fruitful. He also thought such activity increased the force protection risk. Although not directed by the IO, a military policeman and interpreter who arrived on scene conducted canvass interviews of homes in the immediate neighborhood. They did not locate any witnesses.

The IO did not ask soldiers at the scene if they took photographs and was satisfied the photographs he took were sufficient. He recalled information from the interrogators or from the press about other journalists possibly being at the scene. However, he discounted the information and did not pursue it. He said the information was not specific and the interrogators thought the cameraman was confused and that his information inconsistent.

The IO did not consider impounding the Reuters vehicle for evaluation as evidence. He told us he knew where the bullets came from; the soldiers told him they shot the vehicle.

¹¹ We requested a copy of the Reuters videotaped interview of the cameraman, but Reuters couldn't locate the videotape. We extracted this quote from a translated excerpt provided by Reuters.

At our request, the MNC-I Ballistics Laboratory examined the Reuters vehicle. We asked them to determine the precise trajectory angle at which each bullet struck the vehicle, and the sequence in which the bullets struck the vehicle.

As previously stated (see page 18) 16 bullets struck the vehicle. The MNC-I Ballistics Laboratory determined the direction and angle of entry into the vehicle (either front to back or back to front) for the 16 bullets. In general, the bullets' angles of entry indicated the vehicle was, at some point, north of the Al Adil Mall, directly west of it, and south of it. The laboratory could not determine the sequence the bullets struck the vehicle because the exact location of each soldier when he fired could not be determined as well as other unknown factors involving the vehicle's movement.

The laboratory observations did not conflict with the witness testimonies.

In addition to the team leader and three soldiers manning the OP, the AR 15-6 investigation included sworn statements from the platoon leader, the platoon sergeant, a tank commander, and a BFV commander who were on duty when the incident occurred. In sworn statements the platoon sergeant and BFV commander recalled radio calls reporting a white vehicle with an RPG aimed at a tank, which the soldiers on the roof engaged and disabled. The sworn statements did not specify whether they heard the radio traffic as the incident occurred or after the fact.

The IO did not interview the remaining tank and BFV crew members. He told us he did not interview other possible witnesses because the shooting was done by the soldiers on the OP; as far as the situation on the ground, he felt he had captured sufficient information to conclude his investigation.

We interviewed all tank and BFV crew members as well as the soldiers who manned the OP. The majority to include the aforementioned BFV commander, recalled hearing about the soldiers on the rooftop seeing a white vehicle and hearing the incident involved an RPG, but only after the shooting occurred. As detailed on page 13 above, the platoon sergeant, his gunner, and a BFV crew member heard real-time radio traffic from the OP regarding the vehicle, the RPG, and the engagement, and provided additional significant testimony, especially the gunner who testified hearing radio traffic, and seeing the vehicle and what he believed was an RPG.

Objective measurements at the scene. The IO did not take objective measurements at the scene and did not mention measurements in the narrative portion of his report. The four soldiers who fired on the vehicle provided written statements. In two written statements the soldiers estimated the vehicle was 250-300 yards away from them when they challenged it and started firing. The other two soldiers on the roof did not mention distances in their statements.

The IO told us he doubted the distance estimates in the soldiers' written statements because they were in an elevated position. He said, at the scene, the soldiers

pointed out the position of the car when they spotted and challenged it. The IO did not mark and objectively measure the position where the soldiers said they spotted and challenged the vehicle. Using the location the soldiers pointed out at the scene, the IO used a software program, "Falcon View," to obtain a digital overhead image of the area and approximated the distance between the soldiers' location and the vehicle. The estimated distance was 54 meters. He placed the plotted overhead image in his report at Exhibit T, including a legend explaining the image, but not the basis for the measurements. His narrative report made no reference to the measurement displayed in Exhibit T. Additionally, we determined Exhibit T was not released to Reuters, even in redacted form, because its distribution was limited by DoD policy.¹² Therefore, this information related to distances was not available for consideration by TRAG investigators.

As previously stated, TRAG investigators examined the portions of the AR 15-6 investigation released to Reuters. Concerning distance estimates, they only knew the estimates of 250-300 yards provided in the two soldiers' statements. Based on these distance estimates, the TRAG investigators concluded the soldiers were too far away to see the camera and therefore mistake it for an RPG. This formed the basis for their conclusion the soldiers did not comply with the ROE.

National Geospatial-Intelligence Agency (NGA) estimations and basis. At our request, using information derived from the AR 15-6 investigation report (other than Exhibit T) and interviews we conducted, the NGA estimated locations and distances between the soldiers and the vehicle¹³. Appendix D represents the results of the NGA work.

During our interviews, three of the four soldiers on the roof placed the vehicle at approximately point "1" on Appendix D, and themselves at approximately point "OP" when they first spotted and then fired, as their leader explained, to warn the vehicle occupants to stop doing whatever they were doing. Based on the three soldiers' testimony to us and the IO's notes on photographs he took at the scene, NGA measured the distance as 66 meters from the soldiers on the roof, point "OP," to where the soldiers first spotted the vehicle, point "1." NGA also analyzed photographs taken at the scene and placed the final resting place of the Reuters vehicle at point "2." The fourth soldier and the cameraman told us when the soldiers spotted and then shot at or near the vehicle, it was adjacent to the Mall on the roadway labeled "Access RD (N)" and traveled backwards only on "Access Road (N)" where it stopped.

Evidence Handling. The IO photographed the items recovered from the vehicle, to include cellular phones, press identification, video camera and film cassettes, etc., (see Appendix E) and unit members took the items and the cameraman to the Brigade Interrogation Facility. The IO told us he did not create a chain of custody for the items

¹² DoD Directive 5030.59, "...distribution of certain unclassified imagery and geospatial information and data is limited to the Department of Defense and to authorized DoD contractors...."

¹³ We sought assistance from NGA because of the time and travel associated with getting measurements at the scene. We do not suggest the IO should have sought help from NGA.

and did not recall chain of custody guidance from his AR 15-6 investigator training. He explained many of the investigations he previously conducted were not initiated at the scene of an event but later on in the process. Also, items of potential intelligence value found or obtained from detainees were routinely given to the intelligence specialists.

One of the items seized was the cameraman's videotape. The footage was filmed at the scene where the soldiers shot at the vehicle. On August 31, 2005, the IO was at the 3 ID public affairs office along with SJA personnel and Reuters representatives. They viewed the videotape recovered from the Reuters camera at the scene, watching it a couple of times. The IO told us he considered the video "benign" and thought it neither supported nor refuted the testimony of the soldiers on the Mall roof. After the viewing, the 256th BCT SJA gave the video to the IO and told him to hold on to it.

While impractical to attach the videotape to the report, the IO did not create a clear and accurate description of its contents, and he decided not to mention the video in his report. The only description we found of the video's contents was in the classified interrogation reports appended as exhibits to the IO's report.

On September 2, 2005, following short notice, the IO left Iraq, returning to Louisiana. While packing, he inadvertently included the videotape in his baggage. A couple weeks later, the 256th BCT SJA via email, instructed the IO to mail the video to the 3 ID SJA in Iraq. However, the IO explained that his duty schedule supporting Hurricane Katrina relief efforts left him no time to mail the video; he asked his wife to mail the video and obtain a postal tracking number.

The IO's wife told us her debit card records indicate she mailed the videotape on September 13, 2005, from the Bennington Street Post Office, Baton Rouge, Louisiana. At the post office, she learned she could not receive a mail delivery tracking number for mail sent to an overseas U.S. military address. She called her husband from the post office and explained the problem. He told her to do the best she could. She mailed the video without a tracking number; it never arrived¹⁴.

The 256th BCT SJA verified that following the viewing of the videotape on August 31, 2005, he instructed the IO to hold onto the videotape. The 256th BCT SJA told us he intended to have a property receipt done the following day, but when he went looking for the IO, he learned he flew back to Louisiana earlier that morning. Although the 256th BCT SJA told us in his legal opinion the contents of the tape had no probative value in connection to the soldiers actions, he planned to make a copy for himself, and give the original to the Chief, Admin Law, 3ID.

Associated Press Television Network (APTN) Video. While trying to resolve information related to the cameraman in Army interrogation reports about the presence of

¹⁴ During our review, we attempted to locate the video. Through liaison with postal officials in Atlanta, GA, we learned the Postal Service destroys undelivered first class mail after six months. We can not speculate on the impact of disruptions created by Hurricanes Katrina and Rita along the Gulf Coast during September 2005.

other journalists at the scene of the shootings, we learned APTN videotaped a portion of the event. The APTN cameraman told us on August 28, 2005, he and his driver were sent to cover the IPS ambush in the vicinity of Al Adil Mall. As they drove northbound on road leading to the mall [Route Vernon], he filmed a white vehicle moving southbound in reverse in his lane of travel taking gunfire. He taped the event until the car stopped against the guardrail. He noticed soldiers on the roof of the Mall shooting at the vehicle but did not film them. They then quickly drove from the area and notified their office.

Later, the APTN cameraman found out the white car may have belonged to Reuters and journalists were killed or injured. They returned and filmed the white car under control of U.S. forces from a safer vantage point. He estimated each video clip was 40-50 seconds long.

The Associated Press (AP) provided the APTN cameraman's videotape. We reviewed it, but did not see a white vehicle moving southbound in reverse taking gunfire. The footage does not appear to have been filmed during the shooting incident. The tape was subsequently examined at the National Media Exploitation Center; however, the Center could not find embedded date/time data to verify the date the tape was made.

Iraqi Police and Autopsy Reports. Press articles included in the AR 15-6 investigation report exhibits mentioned an Iraqi police investigation. The police report was not attached to, or mentioned in the AR 15-6 report. The IO also recalled learning that an autopsy was conducted on the driver, but told us he did not think the police or autopsy reports were necessary for his investigation. He also did not recall seeing Iraqi police at the scene.

We obtained a copy of the Iraqi police report and Reuters provided a copy of the autopsy report. The reports did not detail any substantive investigative activities and were inconsistent or conflicted with other known aspects of the incident. Additionally, the Iraqi police report stated the event occurred on August 29, and U.S. forces personnel barred Iraqi police from the incident scene. The platoon leader at the scene did not remember Iraqi police at the incident, but thought he called his Battalion Headquarters to request the Iraqi police once he turned the driver's body over to Reuters supervisors. He thinks he was told the Iraqi police would not come back to the area because they had just been ambushed there.

Discussion

We identified errors in the conduct of the investigation that may have contributed to a lack of confidence by third parties in the IO's work and the report's conclusions. The errors included the following: evidence was not preserved, logical investigative leads were not pursued, and investigative information was not fully documented and reported.

Evidence handling. We concluded that contrary to Army policy, the IO did not preserve and account for evidence (the video) depicting a portion of the incident under investigation, damaging the investigation's credibility. The IO understood the significance of the videotape. He told us he did not make up his mind about the soldiers'

compliance with the ROE until after he viewed the videotape and judged that the video neither supported nor refuted the soldiers' actions.

As discussed on page 15, the 10 people who viewed the videotape provided varying testimonies regarding its contents creating question regarding the videotape's value as evidence. The loss of the videotape and the omission of the required clear and accurate description of its contents in the report, deprived third parties and reviewing officials an objective standard against which to measure the recollections of witnesses.

Logical investigative activity. AR 15-6 mandates IOs examine all sides of an issue thoroughly and impartially. The expectation to thoroughly and impartially tell all sides of a story requires an exceptional effort to verify information in serious matters, such as the death of a person. Although the exigent circumstance of this incident provided limited opportunities to corroborate information, we found the IO did not pursue the possibility other journalists witnessed the incident, and did not obtain Iraqi police and autopsy reports.

The IO told us he discounted or did not pursue information about the possible presence of other journalists at the scene and the existence of Iraqi police and autopsy reports. In the end, after reasonably discounting the credibility of the cameraman, he interviewed other members of the 256th BCT for information only concerning the shooting incident and decided other possible sources of information (other journalists, police, and autopsy reports) would not be helpful.

We tracked down video of the incident allegedly taken by other journalists on the scene and the Iraqi police and autopsy reports. The video and reports did not provide significant information toward resolving the incident. However, neither we nor the IO could know that before the information was collected. By not pursuing those investigative leads, he fostered suspicion that he arrived at less than objective conclusions.

Additionally, the IO did not seize the vehicle and preserve it for possible evidentiary processing. He told us he knew where the bullets came from; the soldiers told him they shot the vehicle. The location of bullet strikes could corroborate vehicle location and verify or refute shooter's testimony with regard to firing to disable and help to explain bullet strikes to vital areas such as the windshield and passenger compartment that probably killed the driver. At the scene of a death investigation, in an unstable security environment, the vehicle should have been removed to a secure area until the investigation concluded, and then disposed of in accordance with regulatory guidance.

AR 15-6, subparagraph 3-7d., "Discussion of evidence" empowers IOs to direct or request witnesses not discuss their statements or testimony with other witnesses. We asked the IO why he did not separate the soldiers on the roof of the Mall. He explained he did not have the authority to remove them from their post, nor did he ask to have them removed. BG Basilica agreed. The IO said he was not concerned the soldiers would talk about the incident among themselves once they went back on the roof.

The soldiers, with the event under investigation, were sent back to the roof to work together for several hours. During that time, as their leader explained to us, they began,

Talking about it and I was like okay, we getting, you know we got to get our [expletive] straight and make sure you know, I might go to jail, we all might go to jail, I don't know and then we're talking it out and then we said, you know the crazy part about it is we don't have to get our stories together because all the stories match up, because it's the truth of what happened.

We acknowledge witnesses who meet and get their stories straight damage the credibility of an investigation. In this case, we view the damage somewhat ameliorated by the cameraman's testimony to his employer, and later by his testimony to TRAG investigators hired by his employer. In those testimonies, the cameraman said the camera lens was "showing a little bit" out the open side window and he slightly leaned out the window.

In the end, the cameraman's and soldiers' testimonies are generally consistent. Since the yellow conical shaped external microphone extended past the end of the camera lens (see Appendix E), it would have been visible. Additionally, since the cameraman saw and described a soldier on the roof of the Mall; it is reasonable that the soldiers could see the cameraman.

AR 15-6 states the IO "should" assist the witness in preparing a written statement "to avoid inclusion of irrelevant material or the omission of important facts and circumstances," and "care must be taken to ensure that the statement is phrased in the words of the witness." Additionally, with regard to specific responsibilities, Paragraph 1-5, "Functions of investigations and boards" establishes the duty of the IO or board to "ascertain and consider the evidence on all sides of each issue, thoroughly and impartially...."

In this instance, the IO did not comply with these provisions of AR 15-6. He was not present when the four key witnesses prepared their statements, which as previously stated contained similar testimony. The IO did not ask supplemental questions of the witnesses to obtain clarification regarding key issues in writing. Such actions by the IO appeared to have fueled Reuters' suspicions about the credibility of the Army's investigation. The complaint specifically expressed concerns about the remarkably similar stories by all four U.S. soldiers which Reuters did not think the IO challenged or tested.¹⁵

¹⁵ April 7, 2006, letter from Ms. Jamie Gorelick, Attorney at Law, Wilmer Cutler Pickering Hale and Dorr, LLP, 2445 M Street, NW, Washington, DC 20037-1487, representing Reuters, pp. 1 and 5

He did not ask what the witnesses meant when they said the individual was “hanging out” of the car window or why they believed the object they saw (two witnesses described the object as long and cylindrical) was an RPG, and as stated previously, he did nothing to clarify with the witnesses the distances estimated. He did not clarify how the witnesses having seen the Reuters video camera could have mistaken it for an RPG. Additionally, he did not use the contents of the videotape to verify or refute the soldiers’ testimony regarding the extent the cameraman may have been exposed through the passenger window.

Likewise, the IO did not ask the soldiers whether they mistook the yellow conical external microphone of the Reuters video camera for an RPG warhead, and he neither asked whether the witnesses had ever seen an RPG with a yellow warhead, nor verified RPGs with yellow warheads exist. We determined RPGs with yellow warheads exist (See Appendix F). Additionally, the IO did not ask the witnesses to explain how their disabling shots could strike the windshield and the passenger compartment of the vehicle.

Of the soldiers on-site when the incident occurred, the AR 15-6 investigation contained sworn statements only from the platoon leader, the platoon sergeant, another tank commander, and a BFV commander. The IO told us he decided not to interview remaining tank and BFV crew members because the shooting was done by the soldiers on the OP, and he felt he had sufficient information to conclude his investigation. The sworn statements of the platoon sergeant and a BFV commander reflected the soldiers on the Mall roof (which he referred to as “dismounts”) called in reporting a white vehicle with an RPG aimed at the other tank; they engaged the vehicle, and the driver was wounded or dead; however, it was not clear whether they heard the radio traffic real-time or after the fact.

We interviewed all tank and BFV crew members. The majority to include the BFV commander recalled hearing about the soldiers on the rooftop seeing a white vehicle and hearing the incident involved an RPG, but only after the shooting occurred. On interview, we clarified the platoon sergeant heard the announcement of RPG on the radio before OP soldiers engaged the vehicle. Additionally, we found two more crew members, the platoon sergeant’s tank gunner and a BFV crew member, who heard real-time radio communication from the OP regarding the RPG. The tank gunner testified he heard radio traffic about the RPG and saw the vehicle and what he believed was an RPG pointed at the other tank. A BFV crew member said he heard the OP team leader say, “...we have positive identification on an RPG, these guys have an RPG,” followed by, “...we fired warning shots, they keep coming, they keep coming....”

This information provides corroboration that the OP team observed what they thought was an RPG from their vantage point as the event occurred. More significantly, a witness on the ground states he also saw the vehicle and thought an RPG was pointed at a tank. The IO’s decision not to conduct interviews of all tank and BFV crew members at the scene resulted in an incomplete investigation and, therefore, the report did not thoroughly address all sides of the issue.

Investigative reporting. AR 15-6, paragraph 3-15 b., highlights the importance of including clear and accurate written descriptions or depictions (such as photographs) of physical evidence in the report. Although the IO photographed the video camera and videotapes, he did not prepare a clear and accurate written description of the video's contents. In fact, he did not mention the video in his report, although a classified interrogation report exhibit did refer to it. As mentioned above, his failure to create a written description of the video's contents exacerbated the impact of the video's loss.

A similar effect was created when the narrative of the report did not describe how the IO collected information used to estimate distance between the soldiers and the vehicle when they first spotted and challenged it. Though the IO told us he created an exhibit from information he obtained from the soldiers who challenged the vehicle, he neither explained the origin of that information nor created and maintained documentation of the verbal interviews and information collected at the scene. Complicating the matter, the exhibit with the IO's estimate of 54 meters was properly removed from the redacted report released to Reuters.¹⁶

Obviously, losing video evidence of an incident under investigation is contrary to regulatory guidance that requires property collected during an investigation to be maintained and disposed of in accordance with Army regulations when no longer needed. Additionally, the IO's failure to account in his report for collecting and resolving discrepancies over distances and for the information he used in his exhibit estimating the distance made the report an incomplete record of his investigation and, therefore, the report did not thoroughly address all sides of the issue.

3. Review of Rules of Engagement Training and AR 15-6 Investigation Training

In an effort to determine whether systemic weaknesses in policies and practices contributed to the death and injury of Reuters employees or contributed to the quality of the AR 15-6 investigation we reviewed the Army unit's conduct of both ROE and AR 15-6 investigation training. With regard to AR 15-6 investigation training we focused primarily on the training the unit provided.

Responsible Army officials adequately trained the soldiers involved in the incident regarding the applicable ROE as required by the standards. The training coincided with the principles detailed in the standards and in our view exceeded training requirements.

The Commander, 256th BCT, and 256th BCT SJA adequately trained the IO to investigate this incident.

¹⁶ Exhibit T was labeled "Limited Distribution." May 13, 2003, Department of Defense Directive (DoDD) 5030.59, "National Imagery and Mapping Agency (NIMA) Limited Distribution Imagery and Geospatial Information and Data." The DoDD restricts imagery and geospatial information and data labeled "limited distribution" to DoD and certain defense contractors.

Standards

Overall, AR 15-6 requires a commander to appoint an IO that is qualified (education, training, experience, length of service and temperament) to conduct the investigation. See Appendix C for the standards related to ROE training and AR 15-6 investigation training.

Facts

ROE Training. The 256th BCT SJA testified, after the 256th BCT, received deployment orders to Iraq in support of Operation Iraqi Freedom, he developed mandatory training based on ROE training requirements outlined in the SROE. He personally conducted ROE training at Fort Hood, Texas and all 256th BCT soldiers were required to attend.

The 256th BCT SJA further testified ROE training covered the following topics: the distinction between hostile intent and hostile action; verbal, hand, and light warnings; signage; and escalation of force, which included verbal warning order, warning shots, disabling shots, and ultimately, the application of deadly force. He said this training was extracted into pocket-sized cards that were distributed to every soldier who completed the ROE training. (see Appendix G - 256th BCT ROE Card 661) He stated that around April 2004 ROE training began with 1 week of classroom training at Fort Hood, Texas, followed with 2 weeks of mission rehearsal exercises and additional classroom training at the National Training Center (NTC), Fort Irwin, California. ROE training continued at the command's staging area in Kuwait, prior to the unit entering Iraq. ROE training continued throughout the unit's 12-month deployment.

The 256th BCT SJA also testified the soldiers manning the OP on August 28, 2005, were not only "schooled" in ROE in the classes at Fort Hood, Fort Irwin, and Kuwait, but also, by this time were very experienced soldiers, having been in theater 10-months by that point. With regard to the ROE, he stated he had no question in his mind they knew what they were doing. He added the unit certified 100 percent attendance at ROE training seminars.

BG Basilica testified ROE training was extensive with 100 percent attendance several times. He stated he mandated by mid-tour a second or third 100 percent ROE training the 256th BCT SJA and his staff conducted. BG Basilica explained he ordered this training as his unit transitioned from a rural area of operations into the "downtown" urban area. He felt it prudent to go through ROE training again to address an environment with a "higher density of civilians."

Regarding the training of the four-member OP team, BG Basilica testified he presumed they were highly trained and highly experienced because his unit had been in Iraq for almost a year. He characterized his unit as "seasoned" at this point in time, with "...17,600 combat patrols, 35 soldiers killed in action, 300 plus Purple Hearts."¹⁷

¹⁷ The Purple Heart is awarded to soldiers injured or killed during armed conflict with an enemy.

The soldiers who engaged the Reuters vehicle on August 28, 2005, acknowledged attending ROE training at Fort Hood, Fort Irwin, and Kuwait. The team leader testified while in Iraq they were required to carry the 256th BCT ROE cards as part of their uniform and they had them in their pockets. We also interviewed other unit personnel on duty who were manning armored vehicles when the incident occurred. Without exception, the soldiers verified training was extensive both prior to and during their deployment. Additionally, soldiers testified they were tested on their knowledge of ROE throughout their deployment. The platoon leader and platoon sergeant on duty on August 28, 2005, verified the extensive nature of ROE training and the issuance of ROE cards to unit personnel. The platoon sergeant testified the carrying of ROE cards was enforced through daily pre-combat checks and inspections.

The 256th BCT records we reviewed included slide presentations used to provide ROE training to soldiers. These presentations provided definitions of the key components of ROE and depicted real-life training vignettes and discussion of proper actions a soldier should take when applying the ROE to a situation.

We verified unit training was conducted between: May 18 and August 20, 2004, at Fort Hood, Texas; between August 20 and September 30, 2004 at NTC; between October 6 and October 22, 2004 in Kuwait, and again periodically when the unit arrived in Iraq.

AR 15-6 Investigation Training. The 265th BCT SJA testified shortly after the unit's arrival in Baghdad, he recommended BG Basilica appoint only mature officers (Major and above) to conduct AR 15-6 investigations. He testified BG Basilica believed command investigations were important, so BG Basilica decided to conduct 15-6 IO training personally. Using an Army Judge Advocate General (JAG) School designed program of instruction, BG Basilica personally instructed perspective IOs. He stated BG Basilica was an experienced IO, "...so he knew and demanded high standards in these investigations. He didn't want anything pencil whipped." The 256th BCT SJA also testified the IO for the August 28, 2005, incident, received that training.

BG Basilica verified that he personally conducted AR 15-6 training for the officers in his command at the rank of Major and above. BG Basilica testified he wanted to ensure his officers understood what the regulation required and to emphasize his expectations for them to support facts with evidence. He testified that to emphasize how important it was for him "in terms of the standards and the quality," he taught the class himself.

The AR 15-6 investigation training slides prepared by the 256th BCT SJA and used by BG Basilica covered the following topics:

- What is a 15-6 investigation?
- 15-6 Sequence of Events

- What should the 15-6 officer be looking for? (Who, What, When, Where, Why)
- Written statements
- Written Conclusions
- UCMJ [Uniform Code of Military Justice] Violations
- Recommendations

The AR 15-6 training slides highlighted the following specific requirements:

- Conclusions should be factually supported
- Witness statements will be detailed, straight to the point and answer the 5 W's¹⁸
- The 15-6 officer's knowledge and experience are very relevant when evaluating the facts and formulating conclusions
- Interview all witnesses, examine all evidence
- Base conclusions and recommendations on the facts and military experience

We discussed interviewing witnesses with BG Basilica. BG Basilica testified he covered witness interviews to the extent they should be detailed, to the point, and answer the "5 W's" (who, what, when, where, and why).

BG Basilica explained every soldier, and this group of Majors received a tremendous amount of evidence handling training because of their role in detaining suspected insurgents during combat operations. He said they trained extensively on what he called "police work," which he described as being able to provide evidence to justify holding suspected insurgents in detention. BG Basilica explained everyone had to learn "crime scene type techniques," which he described as picking up evidence and taking pictures. BG Basilica stated that training included: approaching incident scenes; gathering witness statements; taking pictures; securing, safeguarding, and handling evidence. With regard to the AR 15-6 investigation conducted in response to the instant case, BG Basilica stated it achieved his expectations because it contained sufficient information for him to make a judgment about what occurred and provided a factual representation.

On interview, the IO verified he received AR 15-6 IO training in Baghdad. He stated, the training consisted of "the process for conducting a 15-6, the recording of evidence..., the process of documenting, analyzing, recording...so that everybody was standardized, they understood what the standard was, they understood how to go about doing it," and BG Basilica emphasized completeness, accuracy, and correctness; not content, but the process. During a subsequent interview, the IO affirmed AR 15-6 investigation training given to all Majors and above between BG Basilica and the 256th BCT SJA and his deputy. The IO told us he could not remember if anyone of them explained or discussed chain of custody and proper collection of evidence. He recalled

¹⁸ 5 Ws: Who, What, When, Where, Why

all three individuals being present “[B]ut it was the JAG’s that were actually presenting the training.”

We also asked the IO whether his training prepared him to investigate the shooting death of a person. He stated “[T]he training that we received dating back to our home station and mobilization station included rules of engagement...which was the guiding principle for all engagements that we utilized in Iraq.” He believed this was reiterated during the AR 15-6 training using vignettes and reemphasizing the rules of engagement.

Discussion

ROE Training. The SROE requires unit commanders ensure unit personnel understand and are trained on when and how to use force in self-defense. The SROE are used as the fundamental guidance for training soldiers. Although the SROE did not provide specific guidance on training requirements, e.g., the application and scope of ROE training required, frequency, and length, the SROE provides definitions and conditions regarding ROE and RUF, while commanders exercise discretion in training unit personnel. The Commander, 256th BCT developed policy requiring ROE training to the lowest level prior to deployment, upon reception into theater, and retraining as necessary for units conducting missions in and around populated areas.

We interviewed BG Basilica, the 256th BCT SJA, the soldiers manning the OP, and soldiers and unit leaders assigned to mounted posts on August 28, 2005. Those interviews as well as documents we reviewed indicated training was conducted as mandated by the SROE and 256th BCT TSOP.

AR 15-6 Investigation Training. AR 15-6, Paragraph 2-1c. specifies “[I]nvestigating officers...shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament.” This reference to training makes it incumbent on appointing authorities to ensure investigating officers are properly trained.

We believe BG Basilica took steps to ensure the officers he appointed as AR 15-6 investigating officers were trained. With the assistance of his SJA, he personally trained his eligible investigating officers how to conduct an AR 15-6 investigation. The IO appointed to the instant case testified he attended the AR 15-6 investigation training. The IO described not only the training content, but BG Basilica’s emphasis on completeness, accuracy, and the investigation process so they would understand the standard and how to go about conducting an investigation.

We reviewed the training slides BG Basilica used to deliver the AR 15-6 investigation training and considered the topic areas to be comprehensive. The training required all witnesses to be interviewed and statements to be detailed, to the point, they addressed who, what, where, when, and why. While the training slides stated only “examine all evidence,” BG Basilica explained evidence handling was covered

extensively. He testified the nature of their mission, which required soldiers to detain suspected insurgents, necessitated all soldiers, to include investigating officers, understand how to do “police work” and learn “crime scene type techniques.”

The unit’s efforts to train AR 15-6 IOs met requirements.

Appendix B. Chronology

August 28, 2005

- o (0600-0700) Soldiers assigned to C Company, 1st Battalion, 156th Armor, 256th BCT, Louisiana Army National Guard begin their tour of duty (TOD) in the Ghazalia neighborhood, or more commonly referred to as Checkpoint (CP) 50A. The soldiers comprised crews of two BFV's responsible for patrolling Main Supply Route (MSR) Vernon (north-south) and crews of two M1A1 Abrams tanks responsible for patrolling MSR Sword (east-west), and a team of four dismounted soldiers at the OP atop the Al Adil Mall overlooking MSR Vernon and the Ghazalia neighborhood.
- o (0830) While patrolling MSR Vernon, a local national civilian vehicle crossed over from the southbound lane to the northbound lane of MSR Vernon, heading directly towards a BFV traveling north on MSR Vernon. The BFV crew engaged the vehicle with small arms fire to stop it, injuring the driver in the process. After determining the civilian vehicle was not hostile but had brake failure, both BFV's escorted the injured local national civilian to the Troop Medical Clinic (TMC) on Camp Stryker. The two tanks assumed patrol responsibilities for MSR Vernon.
- o (0930) The initial time the Reuters Baghdad bureau cameraman claimed he received notification from the Reuters Baghdad bureau senior television (TV) producer to obtain footage of an insurgent ambush of IPS in the vicinity of Ghazalia on MSR Vernon.
- o (1030-1100) The two tanks parked in the Al Adil Mall parking lot, adjacent to MSR Vernon, to perform maintenance on one of the tanks that was leaking oil.
- o (1100-1130) Four soldiers assigned to the OP atop the Al Adil mall who were providing visual security of CP 50A, observed an IPS convoy passing their location, traveling northbound on MSR Vernon. They heard gunfire approximately 300-500 meters north of their location from a wooded area to the east of MSR Vernon directed at the IPS convoy. They notified the tanks, who also heard the initial gunfire, and the OP Soldiers began to provide suppressive fire in support of the IPS convoy.
- o (1100) Reuters Baghdad bureau reported receiving information from a source that an incident had occurred involving an ambush on IPS in the Ghazalia neighborhood. The Reuters Baghdad bureau senior TV producer received the call and directed the cameraman respond to the incident scene to obtain film footage with the driver.

- o (1110) According to Reuters, the driver and the cameraman departed the Reuters Baghdad bureau and proceeded to the ambush location. While en route to the incident they made one stop at a local garage where they dropped off a co-worker.
- o (1120) According to the 256th BCT Tactical Operations Center (TOC) log, they received notification of a reported ambush on an IPS convoy near CP 50A.
- o (1122) According to the TOC logs, U.S. soldiers manning the OP atop Al Adil Mall witnessed three IPS vehicles under ambush by insurgents using rifles and machine guns north of the mall. On MSR Vernon, IPS returned fire and secured the ambush site. The OP team leader called for assistance from the two tanks patrolling MSR Vernon.
- o (1124) The OP team leader determined the direction of enemy fire came from east of the ambush site. He directed his three-man team to provide suppressive fire on a tree line east of the ambush site. He also waited for the tanks to maneuver in support of the ambushed IPS convoy.
- o (1126) The two tanks responded to the enemy ambush site from the south side of the Al Adil Mall traveling north on MSR Vernon. The tank commander reported five IPS personnel wounded and two killed. The tank commander radioed the TOC requesting assistance from the two BFVs still at the TMC.
- o (1130) The two BFVs departed Camp Liberty in response to the call for assistance.
- o (1130) The Reuters Baghdad bureau senior TV producer received information by telephone that the cameraman and the driver had been injured by U.S. forces and immediately dispatched another team to the scene to assist in any way possible.
- o (1139) A secondary ambush is reported.
- o (1140) The OP team observed a second enemy attack (involving mortar fire) on IPS who were initially attacked and the two tanks that responded to assist.
- o (1145) The OP team observed a white vehicle, later identified as belonging to Reuters Baghdad bureau, pointing from the side passenger window what they suspected to be an RPG at a US tank that straddled MSR Vernon. The OP team engaged the Reuters vehicle, shouting warnings, and firing both warning and disabling shots. As a result the OP team shot and killed Mr. Waleed Khaled, a Reuters driver and soundman,¹⁹ and injured a Reuters cameraman²⁰ while they were filming the ongoing insurgent ambush of IPS and U.S. forces personnel in Baghdad, Iraq, from their unmarked indigenous vehicle.

¹⁹ Hereinafter referred to as “the driver.”

²⁰ Hereinafter referred to as “the cameraman.”

- o (1145) While the OP team engaged the Reuters vehicle, two tanks searched the neighborhood west of the ambush site for another white civilian vehicle that was identified by local nationals as belonging to the insurgents who ambushed the IPS and the tanks.
- o (1155) The two BFVs arrived on-scene and assisted the two tanks in searching the neighborhood for the second white vehicle. The vehicle was located and upon searching, various bomb-making materials were discovered. During their search, the OP team leader notified the BFV commander that his team had engaged a white vehicle and it had been disabled. The BFV commander instructed the OP team leader to keep “eyes on” the vehicle until his BFV could respond.
- o (1230) The tanks and BFV’s responded to the disabled Reuters vehicle. They established a security cordon of CP50A, covering both MSR Vernon and MSR Sword.
- o On August 28, 2005, Brigadier General (BG) John P. Basilica Jr.,²¹ Commander, 256th BCT appointed an Army major assigned to Headquarters and Headquarters Company (HHC), 256th BCT, to investigate the incident in accordance with AR 15-6.
- o (1245) The IO arrived at the scene. He verbally interviewed the OP team involved in the shooting, the tank and BFV commanders and the officer in charge for the day. The IO decided to detain the cameraman based on inconsistencies regarding his presence at the scene. The IO departed the scene instructing all soldiers involved to provide sworn statements upon completion of their TOD.
- o (1300-1800) The soldiers involved in the incident to include the tanks and BFVs continued the area security cordon awaiting arrival of personnel to remove the driver and the Reuters vehicle. The OP team returned to the OP atop Al Adil Mall pending shift change. The shift change was delayed due to a shortage of vehicles for the relief shift.
- o (1700) The cameraman was placed in the back of a BFV, and later taken to the 256th BCT interrogation facility (BIF).
- o (1800-1830) The 256th BCT soldiers are relieved of their TOD and returned to the TOC.
- o (1830-2000) Eight soldiers to include the OP team, Officer in Charge, tank and BFV commanders, et al, provided sworn statements in support of the AR 15-6 investigation regarding their knowledge of the incident.

²¹ BG Basilica has since been promoted. However, in this report we will identify Service members using the rank and position they held at the time of events at issue unless otherwise noted.

August 29, 2005

- o Brigade Interrogation Facility (BIF) personnel interrogate the cameraman. He provides a statement denying he filmed the IPS ambush. He claimed the driver shot the video footage U.S. soldier seized when they detained him. The cameraman claimed he was sent to the ambush site at 9:30 AM.
- o Reuters, through the 3rd Infantry Division (3 ID) Staff Judge Advocate (SJA) and Public Affairs Office (PAO) demanded the cameraman's release.
- o Iraqi police investigate the engagement of the Reuters vehicle by U.S. forces and published a report. An autopsy of the driver was performed by Iraqi medical authorities.

August 30, 2005

- o BIF personnel interrogate the cameraman a second time. He denies prior knowledge of the IPS attack reiterating his initial statement that he did not film the ambush, while maintaining he was sent to the incident at 9:30 AM.
- o Reuters Baghdad bureau and 3 ID personnel agree to meet on August 31, at Camp Liberty, to view the video footage and facilitate the interview of the senior TV producer.

August 31, 2005

- o Reuters Baghdad bureau personnel meet at the 3 ID PAO, Camp Liberty. The meeting is attended by: 3ID SJA, 3 ID PAO, 3 ID effects officer, 256th BCT SJA, the IO, and Reuters Baghdad bureau personnel including the chief, senior TV producer, security advisor, and the senior producer for Jordan, Iraq, Syria and Lebanon. The group viewed the video footage taken by the cameraman. The 256th BCT SJA instructed the IO to maintain control of the videotape.
- o BIF personnel interviewed Reuters Baghdad bureau senior TV producer.
- o Based on the viewing of the videotape and information provided by the senior TV producer, the 3ID SJA determined there was no cause to further detain the cameraman and he was released to the bureau chief.
- o Reuters Baghdad bureau chief and Reuters senior producer for Jordan, Iraq, Syria, and Lebanon interviewed the cameraman regarding the incident and his detention. They recorded the interview (portions of the cameraman's testimony are later provided to Department of Defense Inspector General (DoD IG)).
- o The IO completes the AR 15-6 investigation submitting it to the 256th BCT SJA. The IO concluded that the four soldiers acted in accordance with the ROE for the

Iraq Theater of operations when they fired to disable the vehicle, killing the driver and wounding the cameraman.

- o The 256th BCT Deputy SJA conducted a legal review of the 15-6 investigation finding it legally sufficient. On September 3, 2005, BG Basilica approved the findings and recommendations. Major General (MG) William G. Webster Jr., Commander, 3 ID later reviewed the report and approved its findings and recommendations.

September 2, 2005

- o Reuters retains TRAG to investigate the facts and circumstances surrounding the shootings and specifically to try and determine who was responsible for the death of the driver and wounding of the cameraman.

September 3, 2005

- o The AR 15-6 IO departed Iraq, returning to Louisiana to assist his unit in Hurricane Katrina relief efforts. He inadvertently left Iraq with the videotape.

September – October 2005

- o The 3 ID SJA initiated efforts to obtain and subsequently locate the videotape. Because of duty commitments related to Hurricane Katrina relief efforts, the IO directed his spouse to mail the videotape to 3 ID SJA Admin Law, which she did on September 13, 2005. The videotape was never received in Iraq.

March 22, 2006

- o TRAG issued its report and concluded, “the use of force was not justified under the rules of engagement,” and, “the degree of force was not proportionate to the threat as there was no threat prior to the engagement,” and “the engagement was therefore in breach of U.S. Rules of Engagement, and in our opinion, on the current evidence was prima facie unlawful.”

April 7, 2006

- o Ms. Jamie S. Gorelick, Attorney at Law, Wilmer Cutler Pickering Hale and Dorr, LLP, 2445 M Street, NW, Washington, DC 20037-1487, representing Reuters wrote Mr. Thomas F. Gimble, Acting Inspector General, Department of Defense and requested an independent examination of the incident to “ensure accountability and serve the public interest,” as well as “prevent another occurrence of a Reuters journalist being gunned down by U.S. forces in Iraq in violation of the standing U.S. rules of engagement and applicable international law.” Ms. Gorelick asserted inconsistencies between testimonial and other evidence, failures to consider the surviving cameraman’s account of what

happened, to analyze ballistic evidence, and to address and account for critical evidence, as well as independently verify the soldiers' testimony.

Appendix C. Standards Related to the Rules of Engagement, Reuters Safety Procedures, and AR 15-6 Investigations

1. Rules of Engagement Standards

Enclosure A, Chairman Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, “Standing Rules of Engagement /Standing Rules for the Use of Force for U.S. Forces,” dated June 13, 2005²²

The Standing Rules of Engagement (SROE) provide implementation guidance on the application of force for mission accomplishment and self-defense. The SROE establish fundamental policies and procedures governing the actions taken by U.S. commanders during military operations and contingencies and routine Military Department functions.

The SROE provide the following principle as the Inherent Right of Self-Defense:

Unit commanders always retain the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. Unless otherwise directed by a unit commander as detailed below, military members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent.

The SROE also provide definitions for “Hostile Act” and “Hostile Intent.” The 256th BCT Tactical Standing Operating Procedures (TSOP), Card 660 – Rules Of Engagement incorporates these definitions. Additionally, the SROE define “Imminent Use of Force,” stating, “The determination of whether the use of force against U.S. forces is imminent will be based on an assessment of all facts and circumstances known to U.S. forces at the time and may be made at any level.”

Regarding the “Principles of Self-Defense” the SROE states, “All necessary means available and all appropriate actions may be used in self-defense.” The following guidelines apply:

- (1) De-escalation. When time and circumstances permit, the forces committing hostile acts or demonstrating hostile

²² Although the CJCSI is classified “SECRET,” Enclosure A is unclassified and other information taken from portions of the CJCSI is “UNCLASSIFIED”

intent should be warned and given the opportunity to withdraw or cease threatening actions.

(2) Necessity. Exists when a hostile act occurs or when a force demonstrates hostile intent. When such conditions exist, use of force in self-defense is authorized while the force continues to commit hostile acts or exhibit hostile intent.

(3) Proportionality. The use of force in self-defense should be sufficient to respond decisively to hostile acts or demonstrations of hostile intent. Such use of force may exceed the means and intensity of the hostile act or hostile intent, but the nature, duration and scope of force used should not exceed what is required.

Self-defense includes “the authority to pursue and engage forces that have committed a hostile act or demonstrated hostile intent, if those forces continue to commit hostile acts or demonstrate hostile intent.”

Appendix 5 to Annex C to “Multi National Forces – Iraq Framework Operation Order, Rules of Engagement for U.S. Forces,” dated March 22, 2005

The Multi National Forces – Iraq (MNF-I) ROE discuss the use of warning and disabling shots not discussed in the SROE. The MNF-I ROE states

Warning shots are normally aimed shots or bursts into a safe backstop. They may be used as a signal to an element that does not yet qualify as hostile (a positively identified hostile force, those who commit a hostile act, or those who display hostile intent), but that is potentially hostile.

It defines warning shots as,

The firing of shots or delivery of ordnance by personnel, or weapon systems in the vicinity of a person, vessel, or aircraft as a signal to immediately cease activity. Warning shots are one measure to convince a potentially hostile force to withdraw or cease its threatening actions.

It defines “disabling shots” as an alternative to warning shots and gives the following explanation:

If you have positively identified that vehicle occupants are hostile, you may fire a disabling shot instead of a warning shot. A disabling shot or burst is fired with the intent of stopping the vehicle. Normally, disabling shots with motor vehicles are into tires or the engine compartment.

The MNF-I ROE states, “Shots or bursts fired into a vehicle to disable it or reduce its mobility are not warning shots. They are instead disabling shots.” It provides the following examples of using warning shots:

If a vehicle approaches your checkpoint or convoy in a manner that appears threatening, but that is not yet hostile, then you may fire a warning shot into a berm, the shoulder of the road, or other safe direction. If the vehicle does not respond to your first warning shot and you believe that their failure to respond and continued approach indicates they are displaying hostile intent, you may fire a warning shot or burst into the engine block of the car from the front of the vehicle, that has a likelihood that you will cause death or grievous bodily harm to the occupants of the vehicle. Again, aiming a warning shot into a vehicle may only be done if you positively identify that the occupants of the vehicle are a hostile force, are committing a hostile act, or are displaying hostile intent. Each situation is different and requires the commander or person at the scene to use judgment in assessing the proper threat and method to fire a warning shot.

The MNF-I ROE discusses “Responding in Self-Defense,” and explains the concept of positive identification of a hostile force committing a hostile act or displaying hostile intent stating,

Self defense engagements occur when commanders or members of a unit can **positively identify** that they or one of their elements encounters a hostile force, an element committing a hostile act or a display of hostile intent....
(emphasis added)

Annex E (Rules of Engagement) to 256 Separate Brigade, undated:

This operation order (OPORD) implements the ROE responsibilities imposed by the Commanding General, Combined Joint Task Force 7 (CJTF-7). The annex indicates that the CJTF-7 ROE were coordinated with the Coalition Provisional Authority and the Secretary of Defense. This annex begins with a general statement regarding the inherent right of self defense based on the SROE. Additionally, it sets forth how forces and individuals may be established as enemy either by their status (through declaration as a hostile force by the President or the Secretary of Defense), or by their conduct (through their commission of a “HOSTILE ACT” or their demonstration of “HOSTILE INTENT,”) against CJTF-7 forces, friendly forces, or persons or property under the protection of CJTF-7 forces. (Emphasis in original) Annex E also provides the definitions of hostile act and hostile intent, which are compatible with the SROE. Additionally, Annex E defines the circumstances when deadly force may be used and escalation of force steps. The criteria for use of deadly force include, “a person who aims his weapon

at you, your unit, or other designated friendly forces; and, a person about to use any other force against you, your unit, or other designated friendly forces, and you reasonably believe that force to be deadly.” These criteria match the criteria in the 256th BCT TSOP, Card 660 – Rules of Engagement, detailed below.

256th BCT Tactical Standard Operating Procedures, Card 660 – Rules of Engagement (Not Marked as Classified), undated:

The 256th BCT TSOP states,

these rules and any supplemental rules do not limit a commander’s inherent authority and obligation to use all necessary means available and to take all appropriate action in self defense of the commander’s unit and other U.S. and designated friendly forces in the vicinity....

Further, “the rules for the use of force are currently in effect and they shall apply until changed or rescinded by the 256th BCT Commander.”

The TSOP provides the following definitions regarding enemy forces:

Conduct. Forces and individuals may be established as enemy either by their status...or by their conduct, through their commission of a HOSTILE ACT or their demonstration of HOSTILE INTENT against 256th BCT forces, friendly forces, or persons or property under the protection of 256th BCT forces.

Hostile Intent. Hostile intent is a threat of imminent use of force against 256th BCT or friendly forces, or persons or property under the protection of MNC-I forces that is likely to cause serious permanent injury or death or significant property damage. Hostile intent may be judged by the threatening force or individual’s capability and preparedness to inflict damage, or by evidence, particularly intelligence, that clearly indicates that a surprise strike is imminent.

In discussing the “use of force” and “self defense,” the TSOP states that 256th BCT forces have the right to use force in self-defense, either as individuals or as a unit. It further explains “the right to self-defense includes the right of the individual to use force to protect himself and go to the defense of others who are in danger of serious injury or death.”

The TSOP requires 256th BCT forces “use only the minimum force required to achieve the immediate objective....” It explains, “it may be necessary to use force against civilians and other noncombatants in self-defense in response to a hostile act or

hostile intent, to prevent interference with the military mission.” Further, “When time and circumstances permit, 256th BCT forces will challenge and warn prior to using force, and if force is necessary, use an escalating scale of force.” It provides the following shout, shove, show, and shoot escalation of force methodology:

SHOUT: verbal warnings to HALT or move as directed by 256th BCT forces.

SHOVE: physically touch another person to restrain, block access, or detain.

SHOW: outwardly hold your weapon and demonstrate intent to use it.

SHOOT: only to remove the threat of death/serious bodily injury or to protect designated property.”

2. Rules of Engagement Training Standards

Chairman Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, “Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces,” dated 13 June 2005

Appendix A reflects unclassified guidance regarding ROE training to U.S. Forces stating, “Unit commanders at all levels shall ensure that individuals within their respective units understand and are trained on when and how to use force in self-defense.” The SROE are to be used as the “fundamental guidance for training and directing of forces.”

256th BCT TSOP, CARD 660 – RULES OF ENGAGEMENT, undated

The paragraph entitled “ROE compliance and training” states, “All 256th BCT subordinate units will...Conduct ROE training to the lowest level prior to deployment and upon reception into theater. Retrain ROE as necessary focusing especially on units conducting missions in and around populated areas.”

256th BCT TSOP, Card 663 – RAMP/ROE Training, undated

Paragraph 2 of the TSOP mandates unit commanders use RAMP as a training method for the application of ROE. The acrostic “RAMP” represents **R**eturn fire with aimed fire; **A**nticipate attack; **M**easure the amount of force you use; and **P**rotect with deadly force U.S. lives and property designated by the commander. **RAMP** is used to assist soldiers in knowing the principles in applying the ROE. (emphasis added)

Paragraph 3.b. requires soldiers be trained to:

(1) Defend themselves and their unit with initiative; (2) Apply all levels of force only when necessary; (3) Apply an amount of force proportionate to each threat encountered; and (4) Transition appropriately to a combat situation when ordered to do so.

3. Reuters Journalist Safety Standards

Reuters Journalist Safety Procedures, undated²³

Journalist safety procedures published by Reuters establishes rules for covering conflicts and gives details on safety equipment. The procedures outline how Reuters and other international news organizations are working together to reduce risks. The following rules are applicable to this incident:

Paragraph 2 states, “Your vehicle should be identified as a press car *unless* that would increase rather than decrease the danger.” Additionally, “If caught in a situation where troops are acting in a threatening manner, cocking their weapons and so on, try to stay relaxed. Act friendly and smile. Aggressive or nervous behavior on your part is likely to be counter-productive.”

Paragraph 3, Safety Equipment, Staff Safety, states,

It is the clear responsibility of Bureau Chiefs to ensure that where staff are on duty in hazardous environments they should be properly equipped to deal with foreseeable dangers....Furthermore, where staff are issued with safety equipment for a particular assignment, it is obligatory that this equipment is worn. Exceptions in special circumstances, e.g. if staff on ground believe such equipment could attract attention and add to the dangers, can be made only with the express approval of the Bureau Chief. For the purposes of this policy ‘staff’ covers any person working directly on behalf of the company.

Paragraph 3, Safety Equipment, Responsibilities, states, “Bureau Chiefs must ensure that their staff are provided with the necessary equipment when working in a potentially dangerous environment and issue clear instructions that such equipment must be worn, used or carried as appropriate.”

Reuters journalist safety procedures encompass “Global Safety Guidelines” which state,

The preservation of human life and safety is paramount. Staff and freelancers should be made aware that unwarranted risks in pursuit of a story are unacceptable and must be strongly discouraged. Assignments to war zones or hostile environments must be voluntary and should only

²³ March 22, 2006, Investigation into death of Waleed Khaled on 28 August 2005, The Risk Advisory Group (TRAG), Annex 14, Undated, Reuters Journalist Safety procedures

involve experienced news gatherers and those under their direct supervision.

These guidelines specify, “Employers must provide efficient safety equipment to all staff and freelances assigned to hazardous locations, including personal issue kevlar vest/jackets, protective headgear and properly protected vehicles if necessary.”²⁴

General Driver Training Advice, Guidance for Reuter Drivers and Camera Operators, undated²⁵

The Reuters Baghdad Bureau safety advisors published the following guidelines for their drivers and camera operators in Iraq:

All drivers and staff are advised on the following: Approaching Incidents:

1. Approach with care.
2. If the incident has been cordoned off stay at least 100 meters from the cordon....
4. The Soldiers and Police on the ground will be Nervous.
5. Do not stick cameras out of window.
6.
7.
8. If one of you feel your life is at risk return to Bureau. Carefully extract from the area do not speed unless you have too. If you are in immediate danger, try to carry out a U-turn and drive off. If your vehicle comes under attack or an attack happens in the vicinity of your vehicle reverse or U-turn away from the threat keeping the engine block between you and the threat, drive into cover or get distance between you and the threat. Passengers get into foot well or as low as possible the engine will provide some cover from Small Arms Fire.

Reuters Bureau Baghdad Security and Safety Instructions, Instruction 9, Vehicle Movement in Baghdad, undated²⁶

Additional guidance published by Reuters Baghdad Bureau safety advisors states, “Camera men try to avoid using the camera from with in (sic) the vehicle it looks suspicious.”

²⁴ March 22, 2006, Investigation into death of Waleed Khaled on 28 August 2005, The Risk Advisory Group (TRAG), Annex 14, Undated, Reuters Journalist Safety procedures

²⁵ Received from Reuters via their attorneys in DoD IG Data Call

²⁶ Received from Reuters via their attorneys in DoD IG data call

4. Army Regulation 15-6 Investigation Standards

AR 15-6 “Procedures for Investigating Officers and Boards of Officers,” dated September 30, 1996

The regulation establishes Army procedures for administrative investigations and boards of officers not specifically authorized by another directive. AR 15-6 investigations and boards ascertain facts, make recommendations, and report them.

With regard to specific responsibilities, Paragraph 1-5, “Functions of investigations and boards” establishes the duty of the investigating officer or board to

Ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

Subparagraph 3-7. c. (2), “Taking Testimony or Statements,” states the IO “should assist the witness in preparing a written statement to avoid inclusion of irrelevant material or the omission of important facts and circumstances. However, care must be taken to ensure that the statement is phrased in the words of the witness.”

Paragraph 3-7. “Witnesses” provides specific guidance to preserve or protect the integrity of witness testimony. Subparagraph 3-7b “Attendance as spectators” states witnesses should not be present at the investigation when others testify, and at subparagraph 3-7d. “Discussion of evidence” it empowers investigating officers to direct or request witnesses not discuss their statements or testimony with other witnesses.

Paragraph 4-2, “Procedure” states,

An informal investigation or board may use whatever method it finds most efficient and effective for acquiring information...Although witnesses may be called to present formal testimony, information also may be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

Paragraph 3-15, “Exhibits,” details the handling of evidence and its inclusion in the investigating officer’s written report. With regard to physical objects, subparagraph 3-15b, “Real Evidence,” highlights the importance of including clear and accurate written descriptions or depictions (such as photographs) of physical evidence in the report. The subparagraph further stresses, “the real evidence itself should be preserved, including chain of custody where appropriate, for use if further proceedings are necessary.” The exhibit in the report should tell where the real evidence can be found, and after final

action has been taken in the case, the evidence should be disposed of as provided in Army regulation.

5. Army Regulation 15-6 Investigation Training Standards

AR 15-6 “Procedures for Investigating Officers and Boards of Officers,” dated September 30, 1996

The regulation establishes Army procedures for administrative investigations and boards of officers not specifically authorized by another directive. AR 15-6 investigations and boards ascertain facts, make recommendations and report them.

With regard to qualifications, Subparagraph 2-1.c, “Who may be appointed,” requires investigating officers and board members,

Shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, **training**, experience, length of service and temperament (emphasis added)

Appendix D. Overhead Image of Incident Site

UNCLASSIFIED



Relative Position*

OP = US OP Al Adil Mall
 1 = Reporter Vehicle Start Position
 2 = Reporter Vehicle Rest Position
 (N) = Northbound Traffic Lane
 (S) = Southbound Traffic Lane

Relative Distance*

Position OP to Position 1 = 65.99 meters
 Position 1 to Position 2 = 186.54 meters

* Positions and distances are based on witness testimony and photo analysis

Appendix E. Photograph of Cameraman's Equipment



Appendix F. Washington Post and Other RPG Pictures









Iranian Anti-Tank Rocket Propelled Grenades



New PG-7AT-1 rounds seized November 24, 2006 in Baqubah



Seized in al-Bayaa district of Baghdad January 23, 2007

Appendix G. Rules of Engagement Card 661

256 BCT RULES OF ENGAGEMENT CARD

1. On order, enemy military and paramilitary forces are declared hostile and may be attacked subject to the following instructions:

a. Positive Identification (PID) is required prior to engagement. PID is a reasonable certainty that the proposed target is a legitimate military target. If no PID, contact your next higher commander for decision.

b. Do not engage anyone who has surrendered or is out of battle due to sickness or wounds.

c. Do not target or strike any of the following except in self-defense to protect yourself, your unit, friendly forces, and designated persons or property under your control

- Civilians, or
- Hospitals, mosques, churches, shrines, schools, museums, national monuments, and any other historical and cultural sites.

d. Do not fire into civilian populated areas or buildings unless the enemy is using them for military purposes or if necessary for your self-defense. Minimize collateral damage.

e. Do not target enemy Infrastructure (public works, commercial communication facilities, dams), Lines of Communication (roads, highways, tunnels, bridges, railways) and Economic Objects (commercial storage facilities, pipelines) unless necessary for self-defense or if ordered by your commander. If you must fire on these objects to engage a hostile force, disable and disrupt but avoid destruction of these objects, if possible.

256 BCT RULES OF ENGAGEMENT CARD

2. The use of force, including deadly force, is authorized to protect the following:

- Yourself, your unit, and friendly forces
- Enemy Prisoners of War
- Civilians from crimes that are likely to cause death or serious bodily harm, such as murder or rape
- Designated civilians and/or property, such as personnel of the Red
- Cross/Crescent, UN, and US/UN supported organizations.

3. Treat all civilians and their property with respect and dignity. Do not seize civilian property, including vehicles, unless you have the permission of a company level commander and you give a receipt to the property's owner.

4. Detain civilians if they interfere with mission

Appendix H. Management Comments

United States Central Command Comments



UNCLASSIFIED

UNITED STATES CENTRAL COMMAND
OFFICE OF THE CHIEF OF STAFF
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5101

12 May 2008

FOR: OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: United States Central Command Response to Draft Report, "Review of
Matters Related to the August 28, 2005 Shooting of Reuters Journalists
(Project No. 2007C003), dated April 3, 2008

1. Thank you for the opportunity to respond to the recommendation presented in the draft report.
2. Attached is the United States Central Command consolidated comments incorporating the response from Multi-National Force – Iraq.
3. The Point of Contact is Colonel Jill Ludowese, USCENTCOM Inspector General, (813)827-6660.


J. W. MILLER
Rear Admiral, U.S. Navy

Enclosure
As Stated

UNCLASSIFIED

DODIG DRAFT REPORT**REVIEW OF MATTERS RELATED TO THE AUGUST 28, 2005
SHOOTING OF REUTERS JOURNALISTS (PROJECT NO. 2007C003)****CENTCOM COMMENT WITH REGARD TO THE DODIG RECOMMENDATION**

Recommendation: Reuters Baghdad bureau, in coordination with Multi-National Forces – Iraq Public Affairs Office, review their emergency response procedures to enable their employees to safely respond to encounters with multi national forces when warning and disabling shots may be fired.

CENTCOM/MNF-I Response: Concur. MNC-I PAO (Lead) and SJA (Support) will contact Reuters Baghdad Bureau and make known their availability to review emergency response procedures.

Department of Army Inspector General Comments



DEPARTMENT OF THE ARMY
OFFICE OF THE INSPECTOR GENERAL
1700 ARMY PENTAGON
WASHINGTON DC 20310-1700
APR 22 2008

Office of The Inspector General

Honorable Claude M. Kicklighter
Department of Defense Inspector General
400 Army Navy Drive
Arlington, Virginia 22202-4704

Dear Mr. Kicklighter: *Sir*

This letter responds to the Department of Defense Inspector General (DoDIG) request for comments concerning the draft report on the Review of Matters Related to the August 28, 2005 Shooting of Reuters Journalist (Project No. 2007C003). We concur with your report's finding that the Soldiers who accidentally killed a Reuters soundman on August 28, 2005, when they fired at his car, acted properly under the existing rules of engagement. The Soldiers' use of force was proportional to the perceived threat and reasonable under the circumstances.

We also concur that the Army Regulation 15-6 investigating officer (IO) is responsible for failing to account for the videotape taken from the cameraman's video camera by ensuring it was properly transferred to the appropriate authorities before he redeployed to the United States.

DoDIG's determination, however, that the IO failed to properly conduct a thorough investigation implies his investigation should have contained the same level of detail as the DoD IG investigation even though he did not have the same amount of time and resources as your investigators.

Although the IO gathered less evidence than your investigators, he did ascertain the material facts and his report was legally sufficient when he submitted it. His report remains legally sufficient even when now compared to DoDIG's extensive investigation, which reached the same core findings as the IO's investigation.

We agree with your report's recommendation to reinforce the importance of properly and thoroughly investigating and documenting reports of noncombatant death and serious injury in an AR 15-6 investigation.

Very Respectfully,
R. Steven Whitcomb
R. Steven Whitcomb
Lieutenant General, US Army
The Inspector General

Louisiana National Guard Comments



DEPARTMENTS OF THE ARMY AND AIR FORCE

JOINT FORCES HEADQUARTERS - LOUISIANA
LOUISIANA NATIONAL GUARD
BUILDING 305, F STREET, CAMP BEAUREGARD
PINEVILLE, LA 71360

JFHQ-LA

1 May 2008

MEMORANDUM FOR James L. Pavlik, Department of Defense Inspector General, Assistant Inspector General for Investigative Policy and Oversight, 400 Army Navy Drive, Arlington, VA 22202

THRU John Perryman, Department of Defense Inspector General Director of Oversight, 400 Army Navy Drive, Arlington, VA 22202

SUBJECT: Review of Matters Related to the August 28, 2005 Shooting of Reuters Journalists (Project Number 2007C003)

1. This memorandum is in response to the DOD IG draft report subject: "Review of Matters Related to the August 28, 2005 Shooting of Reuters Journalists (Project No. 2007C003)". The DoD IG review staff is to be commended for the thorough, objective and professional manner in which they conducted the investigation. Their findings confirm and validate the events of that fateful day and vindicate the conduct and performance of the soldiers of the 256th Brigade Combat Team (BCT) who were involved. Furthermore, the report acknowledges the reckless behavior of the Reuters employees and the culpability of their employer.
2. I was the Commander of the 256th BCT during its deployment to Baghdad, Iraq in 2004-2005. The Adjutant General of the Louisiana National Guard, Major General Bennett C. Landreneau asked me to reply to the draft report on behalf of the 256th BCT, in that I was the Commander during the relevant time period.
3. I do not concur with the findings and recommendations of the review staff regarding the performance of the AR 15-6 Investigating Officer (IO). The IO performed his duties in a conscientious and professional manner consistent with the combat conditions on the ground, his training, and his substantial experience. His findings of fact were correct (as validated by the DoD IG draft report) and supported by sufficient corroborating evidence to allow me to make a determination as to the further disposition of the Serious Incident Report (SIR). My report on the incident was subsequently approved and endorsed by the 3rd Infantry Division Commander, Major General Webster, without qualification, exception or reservation.
4. The IO's performance was conducted under combat conditions (in fact, much of it while the incident site was still under attack) and painted an accurate picture of the events. I completely reject any suggestion that the IO's conduct of the AR 15-6 investigation in this case was lacking. To apply standards for rules of evidence as though they were required in a court of law, along with the benefit of complete 20/20 hindsight and after hundreds of hours of investigatory work by the DoD IG, is not fair or appropriate. The IO performed his duty to me, the Commander. He had no duty to satisfy the perceptions of third parties.

"Inspired by the Past, Driven by the Future"

5. With regard to the handling of evidence, it is regrettable that the video tape was inadvertently lost. The circumstances were verifiably explained by all parties and I am satisfied there was no negligence on the part of the IO. More importantly, the Army Judge Advocates who viewed the tape agreed that its contents were inconclusive and therefore irrelevant to the IO's report and my subsequent finding. Accordingly, no remedial action against the IO is necessary or appropriate.

6. The report acknowledges that the 256th BCT training program for ROE and its AR 15-6 Investigating Officer training exceeded Army standards. Accordingly, no further action is required.

/s/

JOHN BASILICA, JR.
Major General, US Army
Commander, Operational
Headquarters Number 1
(U.S. ARNORTH)

cf: Chief, National Guard Bureau
The Adjutant General, Louisiana National Guard
LTG William Webster
Commander, 256th Brigade Combat Team

Appendix I. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Personnel and Readiness
General Counsel, Department of Defense

Department of the Army

Secretary of the Army
Assistant Secretary of the Army (Financial Management and Comptroller)
Inspector General, Department of the Army*
Commander, US Army Criminal Investigation Command
Chief, National Guard Bureau*
Adjutant General, Louisiana National Guard
Commander, 256th Brigade Combat Team*

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform

*Recipient of draft report

Team Members

The Department of Defense Office of the Assistant Inspector General for Investigative Policy and Oversight prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

Scott Russell
Melvina Coakley
Brian Grossman
Ray Arp
Nakita Pounds
Celia Story
John Gibson
Lt. Col. Robert Garza
Steven Wakefield
Jason Burr
Terry Hammer



Inspector General Department of Defense

