

Page 1 redacted for the following reason:

Nonresponsive, (b)(2)High, (b)(1)1.4a, (b)(3), (b)(6)

(b)(2)High

17 January 2008

MEMORANDUM FOR Commander (b)(1)1.4a, (b)(2)High

(S)(U), (C)(2)

SUBJECT: Escalation of Force/Three Non Combatant Deaths, (b)(1)1.4a, (b)(2)High Cdr's Inquiry, OBJ (b)(1)1.4a, (b)(2)High (S)(U), (C)(2)

1. (U) Background.

(3), (b)(2)High An escalation of force (EOF) with small arms fire and (b)(2)High high explosive rounds at a (b)(2)High (b)(2)High road blocking position during (b)(1)1.4a, (b)(2)High on 26 Nov. 2007 resulted in the deaths of three Iraqi nationals. The (b)(2)High EOF occurred shortly after the widely publicized Blackwater traffic circle incident which resulted in many non combatant deaths. In that information operations context, the (b)(2)High (b)(2)High's EOF was reported in the press and received interest through MNF-I Commander level. COL (3), (b)(2)High directed LTC (b)(3), (b)(6) to conduct a commander's inquiry. The investigation completion was delayed when the IO went on leave during late December and early January.

(C)(2)
(C)(2)

2. (U) Facts.

(3), (b)(2)High members established a road blocking position along (b)(2)High of Bayji, Iraq in the Multi National Division-North battlespace to keep vehicle traffic out of the (b)(2)High operational area and to address a reported threat of an improvised explosive device (IED) emplacer observed by locals over the previous few days in a white pickup truck - creating a threat to the area. The blocking position consisted of three lines along a (b)(2)High path along a hardball road. The first two lines, located roughly (b)(2)High (b)(2)High The third line was (b)(2)High (b)(2)High (b)(2)High (b)(2)High members monitored vehicle traffic during early morning daylight hours. Although approximately five previous vehicles had U-turned at a (b)(2)High (b)(2)High a white pickup truck drove through that point and through the first two lines of the (b)(2)High (b)(2)High As it passed through the first two points of the (b)(2)High, the (b)(2)High overwatch element fired one tracer warning round to the vehicle's front, followed by several warning rounds to the vehicle's front, and followed by a four-to-six round burst towards the vehicle's engine area and front tires. The vehicle came to a stop prior to the concertina, stopping on the right edge of the road. A male adult exited the vehicle on the passenger/far side of the vehicle and sought cover from the small arms fire, eventually crawling into a ditch. The (b)(2)High element's senior NCO determined the person's actions were hostile and directed small arms fire and (b)(2)High at the vehicle, and led a ground (b)(2)High element through the vehicle's location. The person in the ditch was engaged and killed at approximately (b)(2)High distance. Upon arrival at the vehicle, a (b)(6) boy was found in the floor of the truck seriously wounded. The driver - an (b)(6) male, and the ditch occupant - a (b)(6) male, were both dead. The child was treated and evacuated by helicopter, but later died. LTC (b)(3), (b)(6) coordinated for a Commander's Emergency Response Program payment of \$8,500 through the local imam to the family of those killed in the vehicle (assessed to be a grandfather, father, and son) as an expression of Coalition regret over their deaths and for the damage to the truck.

(C)(2)
(C)(2)

(C)(2)

(C)(2)

(C)(2)

3. (U) Investigating Officer's Findings and Recommendations.

(3), (b)(2)High The IO found that the (b)(2)High overwatch element complied with rules of engagement when it (b)(2)High

(S)(2)
(S)(6)

(b)(2)High

(b)(2)High

The IO recommended

(b)(5)

(S)(5)

(b)(5)

4. (U) Legal Analysis.

a. (b)(5)

(S)(5)

(b)(5)

(1) (U) Signage.

(b)(5)

(S)(5)

(2) (U) Use of Unmanned

(b)(2)High

(b)(5)

(S)(5)

(3) (U) Placement of

(b)(2)High

(b)(5)

(S)(5)

(b)(1)1.4a, (b)(2)High, (b)(3), (b)(6), (b)(5)

(4) (U) Use of Warning Shots.

(b)(1)1.4a, (b)(2)High, (b)(3), (b)(5), , (b)(6)

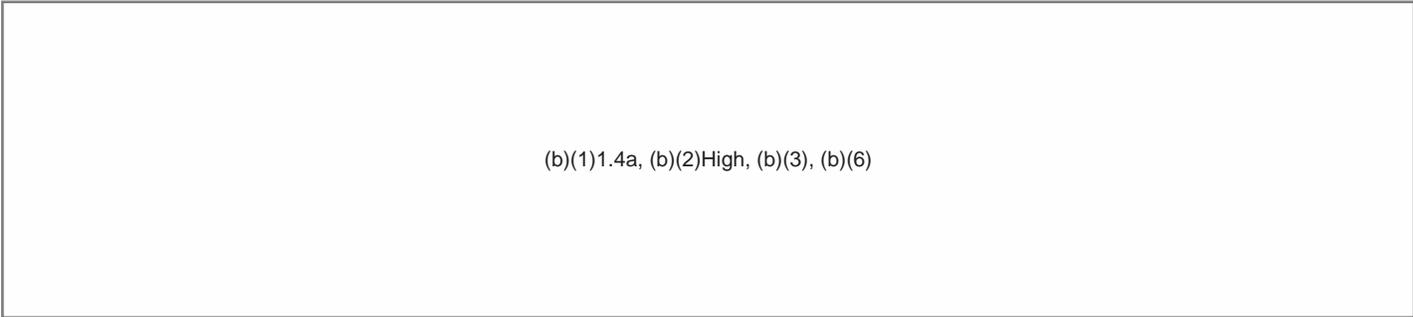
b. (U) Response to Hostile Intent.

(b)(1)1.4a, (b)(2)High, (b)(3), (b)(5), (b)(6)

5. (U) Recommendation.

(b)(1)1.4a, (b)(2)High, (b)(3), (b)(6)

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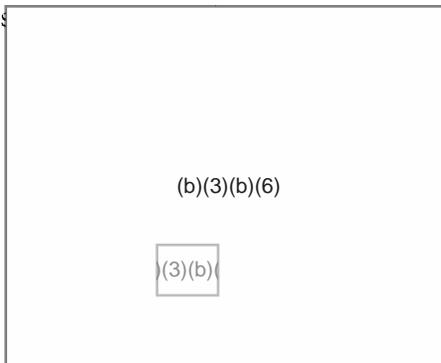


(b)(1)1.4a, (b)(2)High, (b)(3), (b)(6)

MAJ, JA
Legal Advisor

The recommendation is:

- approved.
- disapproved. Further invest
- modified as follows:



(S)(6)

~~SECRET~~

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 11.4a, (b)(2)High, (b)(3), (b)(6)
CONTINGENCY OPERATING BASE SPEICHER, IRAQ

(b)(1), (b)(2)

REPLY TO
ATTENTION OF

S: 15 December 2007

(b)(2)High SCO

(b)(1)

29 November 2007

MEMORANDUM FOR Captain (b)(3), (b)(6)

(b)(6)

SUBJECT: Commander's Inquiry Investigating Officer Appointment

1. **Appointment and Scope of Investigation.** You are hereby appointed as an investigating officer to conduct an informal commander's inquiry pursuant to Army Regulation (AR) 15-6 to investigate the facts and circumstances surrounding the shooting of a civilian during (b)(2)High (b)(2)High. The scope of your investigation should include an inquiry into the following:

- a. What was the sequence of events that led to the Escalation of Force in (b)(2)High sector during (b)(2)High?
- b. How was the road block established? What was the unit's SOPs for this action?
- c. What are the rules of engagement concerning an escalation of force?
- d. What TTP or equipment is available in the company to mitigate the use of deadly force?
- e. What was the approximate cause of that led to the use of deadly force?
- f. Any other significant issues or concerns that arise during the course of your investigation.

2. In conducting your inquiry, you will provide findings and recommendations regarding the evidence you obtain. If at any time during your investigation, it appears that any misconduct did occur, you must immediately consult with your legal advisor. Finally, you will make an assessment of the evidence and provide recommendations concerning the same.

3. **Conduct of the Investigation.**

a. Beginning today, this investigation will be your primary duty and will take precedence over all other assigned duties. You will use informal procedures under AR 15-6, Chapter 4. You will make specific findings and recommendations on all relevant issues you identify in the course of your investigation.

b. You may consult with any person possessing special expertise relevant to this investigation whenever desired. You should pursue any additional information regarding potential misconduct that is relevant and warrants investigation. Your investigation will include all relevant details, to include dates, times, places, participants, and witnesses. You will make findings and recommendations based upon the evidence you gather. Your findings must be supported by the facts you uncover. Your recommendations, to include corrective actions, must be consistent with your findings.

.4a, (b) SCO (S)(1)

SUBJECT: Commander's Inquiry Investigating Officer Appointment

4. **Executive Summary.** You should prepare an executive summary that will stand alone without reference to other documentation and should be limited to one page. A more detailed statement of findings, conclusions, and recommendations, and sufficient documentation, such as reports and statements will be attached.

5. **Witnesses.** When conducting your inquiry, you will interview all known witnesses and review all available documents and reports. Should a witness lawfully refuse to make a statement or respond to questioning, your report should reflect the date and time of your contact with the witness and a statement that they refused to respond.

a. Coordination with the Legal Office should be made to determine whether a witness may lawfully refuse to comply with your request.

b. If in the process of this investigation you determine that someone senior to you has engaged in misconduct, then cease your investigation as to the conduct of the senior officer and report the fact immediately to me and your legal advisor.

c. If you suspect that persons you intend to interview may have violated any provision of the Uniform Code of Military Justice (UCMJ) or other criminal law, you must advise them of their rights under Article 31, UCMJ (service members), or the Fifth Amendment (civilians), as appropriate. All suspects must complete and sign a rights waiver form (DA Form 3881). I prefer that all witness statements be sworn using DA Form 2823; however, if a sworn statement is not feasible you may utilize other methods of recording.

6. **Reporting.** Prepare the report of your proceedings in memorandum format and submit the original and one copy to me through the Staff Judge Advocate within the suspense date listed above. Submit any requests for delay or changes to the scope of your investigation to me in writing through the legal advisor. Documentation collected during your investigation will be lettered and attached as exhibits following order:

- a. Appointment memorandum.
- b. Statements of witnesses and person being investigated.
- c. Photographs, maps, charts, and so forth, if relevant.
- d. Any other exhibits relevant to the case.

7. Before you begin your investigation, you will contact SSG (b)(1)1.4a, (b)(2)High, (b)(3), (b)(6) (S)(1), (S)(2) Paralegal, for an initial legal briefing. SSG (b)(3), (b)(6) is your primary legal advisor. Upon the conclusion of the investigation, you will contact SSG (b)(3), (b)(6) who will request another attorney (S)(1) to conduct the final legal review. (S)(1)

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

(S)(1)

LTC, IN
Commanding



DEPARTMENT OF THE ARMY
HEADQUARTERS, (b)(1)1.4a, (b)(2)High, (b)(3), (b)(6)
CONTINGENCY OPERATING BASE SPEICHER, IRAQ

(S)(1), (U)(2)

(b)(2)High S3 (S)(1)

02 December 2007

MEMORANDUM FOR CPT (b)(1)1.4a, (b)(2)High, (b)(3), (b)(6)

SUBJECT: Commander's Inquiry on C CO Engagement, Executive Summary

1. **Summary of Events.** The facts in this situation are that the vehicle passed the initial warning line and did not respond to the warning shot or the disabling shots fired at the vehicle. After the vehicle was decisively engaged and came to a stop the occupant did not make himself know/seen as a non-combatant, nor did the passenger try to alert the soldiers to the presence of a child in a vehicle. By hiding in the ditch the soldiers could not clearly identify the passengers' intent thereby deeming his intent hostile and engaging him.

2. **Findings.** I, CPT (b)(3), (b)(6) find that: (U)(U)

a. The sequence of events that lead to the escalation of force began with the vehicle passing through (b)(2)High and not properly responding to the warning shots.

b. (b)(2)High was established according to the Squadron SOP and the actions taken followed the Squadron ROE.

c. (b)(2) High

d. (b)(2) High

e. Once the vehicle had been effectively engaged and came to a complete stop, the vehicles passenger dove into a ditch, establishing himself as combatant to the soldiers, which cause the soldiers to take action and decisively engage to neutralize the threat.

3. **Recommendations.** In view of the findings, I, CPT (b)(3), (b)(6) recommend the (b)(2)High (U)(U)

(b)(2)High, (b)(1)1.4a, (b)(3), (b)(6)

4. POC is the undersigned at

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

CPT IN
(b)(3), (b)(6) BTL CPT

-S3

SUBJ: Commander's Inquiry on C CO Engagement

combat equipment and immediately proceeded to (b)(2)High in support of the engagement. After firing the burst, the (b)(2)High element observed the vehicle veer off the (b)(2)High side of the road and stop just prior to the concertina wire. As the vehicle came to a complete stop, the passenger exited the vehicle and hid on the passenger side of the truck for cover. At this point, SSG (b)(3), (b)(6) deemed the vehicle hostile and ordered SGT (b)(3), (b)(6) to destroy the vehicle. SGT (b)(3), (b)(6) and SSG (b)(3), (b)(6) engaged the vehicle with fire. During this time, SPC (b)(3), (b)(6) armed and attempted to engage the vehicle with (b)(2)High (b)(2)High. The passenger then dove into a nearby ditch; the driver appeared to be dead and did not move. SSG (b)(3), (b)(6) ordered a cease fire and moved downstairs.

(S)(U)

SSG (b)(3), (b)(6) assembled a fire team and proceeded to move to the engagement area. SGT (b)(3), (b)(6) stayed in position and overwatched the engagement area, SGT (b)(3), (b)(6) then ordered SPC (b)(3), (b)(6) to contain the enemy personnel moving in the ditch. SPC (b)(3), (b)(6) then fired three to four (b)(2)High rounds in the immediate vicinity of the perceived enemy personnel in the ditch. As SSG (b)(3), (b)(6) moved with his assembled fire team, (SPC (b)(3), (b)(6) SPC (b)(3), (b)(6) SPC (b)(3), (b)(6) and SPC (b)(3), (b)(6) the person in the ditch crawled deeper into the ditch. At that point, the (b)(2)High team bounded to the engagement area (b)(2)High SPC (b)(3), (b)(6) observed the person still moving deeper into the ditch. SPC (b)(3), (b)(6) halted the team, and then fired two rounds from his (b)(2)High from about (b)(2)High at the individual; both rounds hit the enemy personnel in the head. Once the team reached the limit of advance – the immediate boundary of the engagement area, SPC (b)(3), (b)(6) and SPC (b)(3), (b)(6) established security for the team. They assessed the engagement area. SSG (b)(3), (b)(6) moved to the vehicle and identified the driver of the vehicle to be dead and the team found a small, young boy lying on the floor of the truck, wounded from what looked like ricochets to the back of the head. SPC (b)(3), (b)(6) – the platoon medic, was called up and immediately began administering aid, while simultaneously SSG (b)(3), (b)(6) began (b)(2)High SPC (b)(3), (b)(6) maintained emergency aid until the medical evacuation birds arrived (b)(2)High later. During aircraft loading of the casualty, the squad attempted to put an escort on the helicopter, but the aircraft crew waived them off. The aircraft then departed.

(S)(U)

2. Findings.

Charlie Company applied escalation of force in accordance with the rules of engagement. No one was negligent or committed misconduct during the engagement.

What was the sequence of events that led to the Escalation of Force in C CO sector during (b)(2)High? The escalation of force began with the vehicle passing through (b)(2)High (b)(2)High and not properly responding to the warning shots. After the vehicle was fully disabled the passenger's action was viewed as hostile and as the squad maneuvered on him they decisively engaged him to neutralize the perceived threats.

How was the road block established? What was the unit's SOPs for this action? (b)(2) High

(b)(2) High

Did Charlie Company appropriately apply escalation of force? (b)(2) High

(b)(2) High

(b)(2)High S3

SUBJ: Commander's Inquiry on C CO Engagement

(b)(2) High The acts from the vehicle occupants after (b)(2)High attempted disabling fire were perceived by the Charlie Company Soldiers as hostile acts.

What TTP or equipment is available in the company to mitigate the use of deadly force?

(b)(2)High

What event led to the use of deadly force? Once the vehicle had been effectively engaged and came to a complete stop, the vehicle's passenger hid behind the disabled vehicle. Instead of giving up or presenting the appearance of a non-combatant he dove into a ditch. From the perspective of (b)(2)High personnel, these actions established the local national as a combatant based on his perceived hostile intent. The local national's actions caused the Soldiers to take action to protect themselves and decisively engage to neutralize the perceived threat.

3. Recommendations.

(b)(2)High, (b)(3), (b)(5), (b)(6)

4. The point of contact for this investigation is the undersigned at

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

(S)(U)

(1)1.4a, (b)(2)High, (b)(3), (b)

(S)(U), (S)(U)

a, (b)(2)High, (b) Battle Captain

Major Lessons Learned

(b)(2)High, (b)(5), (b)(1)1.4a, (b)(3), (b)(6)