



DEPARTMENT OF THE ARMY
HEADQUARTERS,
172D STRYKER BRIGADE COMBAT TEAM
CAMP LIBERTY, BAGHDAD, IRAQ APO AE 09344

APVR-WLB-CJA

17 November 2006

MEMORANDUM FOR Office of the Staff Judge Advocate (attn: Chief, Adlaw), Camp Liberty, Iraq

SUBJECT: AR 15-6 Investigation into Escalation of Force on 30OCT06; TAC/B/4-23 IN

1. The attached 15-6 investigation is forwarded for action by the Commanding General, MND-B.

2. The Investigating Officer (IO), MAJ (b)(3), (b)(6) made the following findings (summarized):

a. At approximately 031328OCT06, B/TAC/4-23 IN was patrolling in Bayaa in Southwest Baghdad. CPT (b)(3), (b)(6) the Company Commander, was riding in the squad leader hatch of the lead of a three Stryker patrol. The area has seen a surge in Extra Judicial Killings (EJKs) in the two months leading up to the incident. CPT (b)(3), (b)(6) was riding in B13.

b. B13 pulled behind a yellow minivan. The driver of the minivan was the only person inside the vehicle. CPT (b)(3), (b)(6) saw the minivan's driver move one AK-47 to the van's passenger seat. CPT (b)(3), (b)(6) driver to honked the horn at the minivan. CPT (b)(3), (b)(6) used hand and arm signals to persuade the driver to stop. Instead the minivan's driver sped up and weaved between traffic to escape from B13.

c. B13 chased the van for several blocks. CPT (b)(3), (b)(6) attempted to disable the minivan by firing one round from his M4 at the right rear tire of the van.

d. The chase stopped when B13 lost sight of the minivan. B13 returned to the scene where the round was fired. (b)(6) and (b)(6) year old Local National (LN) had been shot in the lower left torso, presumably by CPT (b)(3), (b)(6) one round. (b)(6) was taken to a local hospital by family or neighbors. (b)(6) died at the hospital. (b)(6) family received a \$2,500 condolence payment on 7 October 06.

e. The incident occurred within a 10-hour window of templated high body dumping times. The minivan had one person inside and is not consistent with the profile of EJK body dumping, which usually involves multiple persons and multiple vehicles. There is no reason to believe that the minivan driver was conducting an EJK body drop as suspected by CPT (b)(3), (b)(6). The vehicle did not fit the description of any vehicle on the BOLO list. The minivan driver violated the MNC-I Weapons Policy dated 9 August 2006.

f. CPT (b)(3), (b)(6) has over thirteen months of company command experience in theater and has received/given several ROE classes. No hostile act/intent was displayed by the minivan driver. CPT (b)(3), (b)(6) statement indicated that "[The minivan driver] was not demonstrating hostile intent to my element by fleeing. If I had felt hostile intent it would have been when he

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brandished the AK-47 to the passenger seat while I was 15 m behind [the minivan driver]. I did not feel hostile intent at that time.” CPT (b)(3), (b)(6) also stated that he engaged the minivan because, “the driver almost hit several pedestrians and vehicles during the chase. Many LNs were literally jumping out [of] the way.” This claim about pedestrians was not corroborated by the B13 crew. However, SP6 (b)(3), (b)(6) said, “If cars had not quickly [gotten] out of the way, the van would have hit a number of them.”

g. On 20 September 2006, CPT (b)(3), (b)(6) received an email addressing engaging fleeing vehicles from the 172d SBCT Commander, Colonel (b)(3), (b)(6). The email originated from the MND-B Commander, Major General Thurman, on 19 September 2006 and stated; “We do not shoot unarmed persons who have not committed a hostile act and are running away from the scene of an incident. If a hostile act or hostile intent does not exist, the Soldiers should not be firing their weapons at fleeing persons.” Attached to the email was an information paper from MND-B SJA including vignettes that dealt with fleeing suspects. MG Thurman’s order was reinforced by the 4-23 IN Battalion Commander, LT (b)(3), (b)(6) at the Battalion update brief on/about 20 September 2006.

3. The IO made the following recommendations (summarized):

a. CPT (b)(3), (b)(6) should receive a General Officer Memorandum of Reprimand (GOMOR) for his poor judgment, violation of the Rules of Engagement, and violation of an order. The GOMOR should be filed locally.

4. The Brigade Commander, COL (b)(3), (b)(6) concurred with the IO findings and recommendations with exceptions. COL (b)(3), (b)(6) added the following:

a. BDE Letter of Concern (LOC)

[Note: COL (b)(3), (b)(6) recommended a Letter of Concern in his 16 November 2006 Memorandum to the Commander, MND-B.] In the 16 November 2006 Memorandum to the Commander, MND-B, COL (b)(3), (b)(6) handwrote, “Sir, One of our best & brightest. Has served in combat as a Co Cdr for 16 MOS in some of the worst areas of Mosul & Baghdad. Recommend (b)(5) VR W6”

b. Recommend local filing

5. Point of Contact for this memorandum is the undersigned at

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

or VOIP

(b)(2)High

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

CPT, JA
Brigade Judge Advocate

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