Page 1 redacted for the following reason:
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(b) (5), (b)(3), (b)(6)

DEPARTMENT OF THE ARMY
HEADQUARTERS, 13th Sustainment Command (Expeditionary)
LSA ANACONDA, IRAQ
APO AE 09391

REPLY TO
ATTENTION OF

AFVG-CG

14 April 2007

MEMORANDUM FOR Attachment to DA Form 1574

SUBJECT: Findings and Recommendations for AR 15-6 Investigation into the Escalation of Force (EOF) Incident on 5 March 2007 Involving Company A, 2-135th Infantry Battalion, 1-34th Brigade Combat Team

1. Having reviewed the investigation into this matter, I approve the investigating officer's (IO) findings and recommendations with the exceptions listed below.

2. The 1-34th Brigade Troops Battalion must review and update their High Risk Traffic Control Point (TCP) guidance to make it clear that a demonstration of hostile intent or commission of a hostile act is necessary in order for lethal force to be used against a target. It must be emphasized that this requirement applies to EOF and High Risk TCP situations. Merely attempting to flee a TCP is not in itself a hostile act or demonstration of hostile intent.

(b)(3), b(6)

MICHAEL J. TERRY
Brigadier General, USA
Commanding

DEPARTMENT OF THE ARMY
HEADQUARTERS, 13th SUSTAINMENT COMMAND (EXPEDITIONARY)
LSA ANACONDA, IRAQ
APO AE 09391

REPLY TO ATTENTION OF

AFVG-CG

MEMORANDUM FOR Commander, 1st Brigade Combat Team, 34th Division, LSA ADDER, Iraq, APO AE 09331

SUBJECT: Escalation of Force (EOF) Incident on 5 March 2007 Involving Company A, 2-135th Infantry Battalion, 1-34th Brigade Combat Team

1. I reviewed the investigation into the escalation of force incident involving Soldiers from Wolf 10, A Company, 2-135th Infantry. I approved the investigating officer's (IO) findings and recommendations with the exceptions listed below.

2. The 1-34th Brigade Troops Battalion must review and update their High Risk Traffic Control Point (TCP) guidance to make it clear that a demonstration of hostile intent or commission of a hostile act is necessary in order for lethal force to be used against a target. It must be emphasized that this requirement applies to EOF and High Risk TCP situations. Merely attempting to flee a TCP is not in itself a hostile act or demonstration of hostile intent. Report back to me with a status report on the content and completion of this updated training by 20 May 2006.

(b)(3), b(6)

MICHAEL J. TERRY
Brigadier General, USA
Commanding

DEPARTMENT OF THE ARMY
HEADQUARTERS, 13th SUSTAINMENT COMMAND (EXPEDITIONARY)
LSA ANACONDA, IRAQ
APO AE 09391

REPLY TO
ATTENTION OF:

AFVG-JA

12 April 2007

MEMORANDUM FOR Commanding General, 13th Sustainment Command (Expeditionary), LSA ANACONDA, Iraq APO AE 09391

SUBJECT: Legal Review of Informal AR 15-6 Investigation into the Escalation of Force (EOF) Incident on 5 March 2007 Involving Company A, 2-135th Infantry Battalion, 1-34th Brigade Combat Team

1. Legal Review. I completed a legal review of the above-referenced informal AR 15-6 investigation in accordance with AR 15-6, Procedure for Investigating Officers and Boards of Officers, paragraph 2-3b. I determined the investigation complies with the legal requirements of AR 15-6. No legal errors are present that invalidate the investigation. However, there is insufficient evidence to support the Investigating Officer's (IO) inferred finding that the target vehicle and its occupants demonstrated hostile intent or committed a hostile act before it was engaged by the patrol. The evidence indicates that the Soldiers involved did not understand that even in High Risk Traffic Control Points (TCP) such as this, a hostile act or demonstration of hostile intent must be observed prior to the use of lethal force. A vehicle fleeing from the scene of a High Risk TCP does not constitute a hostile act or demonstration of hostile intent in itself. This lack of understanding was based on incorrect training guidance provided to the Soldiers by 1-34th Brigade Troops Battalion (BTB). I recommend 1-34th BTB publish new training correcting these deficiencies based on the Multi-National Corps-Iraq (MNC-I) and 13th Sustainment Command (Expeditionary) [13th SC (E)] Rules of Engagement (ROE) attached to this legal review.

2. Facts. Please review the Memorandum for the Commander, 13th SC (E), attached to the DA Form 1574 for the pertinent facts in the investigation.

3. Findings and Recommendations. Please review the Memorandum for the Commander, 13th SC (E) attached to the DA Form 1574 for the Findings and Recommendations of the investigation.

4. Discussion.

a. The IO outlined the circumstances surrounding the death of local national (LN) following an attempted traffic stop on MSR (b)(2) High. He concluded that the gunner's use of disabling shots at the LN pick-up truck exploded a gasoline container in the truck bed. The LN was either killed in the resulting fire or from a ricocheting bullet. The Soldiers did not examine the body and could not provide an exact cause of death.

b. The Soldiers had good intelligence and clear cause to stop the pick up. Prior to starting the route security patrol, they were briefed on enemy activity in the area: IED and EFP emplacement and kidnappings. The intelligence indicated many of these were composed of three to five young adult males driving white pickup trucks [EXHIBITS A-1, B, B-1, D-1, E-1, J, Y]. When the rear guntruck (IN-102) was followed too closely by a white pickup truck, the gunner responded appropriately with non-lethal escalation of force procedures and the vehicle backed off. As the patrol crossed over the roadway, and turned around to return to base, the lead guntruck (IN-100) observed a white pick-up in the oncoming traffic. The Soldiers in IN-102 believed this was the same pick-up that followed the patrol too closely earlier. The pickup stopped once the gunner of IN 102 shined his laser pen light on the vehicle. They could see into the vehicle while the gunner was lasing the driver. The gunner and the driver both stated that the passenger behind the driver starting waving his arm and signaling the driver to flee [EXHIBITS D and E]. At that point, the patrol was not blocking the roadway in front of the pick-up, so the driver drove away from the patrol. As the pick-up drove away, the gunner fired disabling shots at the driver's side rear tire.

c. The patrol observed that the vehicle and its occupants fit the intelligence description and acted suspiciously. This gave them cause to stop the vehicle in accordance with the current MNC-I and 13th SC (E) ROE. However, the investigation shows the occupants of this pickup did not demonstrate hostile intent or commit a hostile act against Coalition Forces. Under the current MNC-I and 13th SC (E) ROE, our Soldiers must have positive identification of a hostile act or demonstration of hostile intent prior to using lethal force against a target. Warning and disabling shots are considered lethal force. The reason the gunner of IN 102 articulated for engaging the white pickup truck was that it had been behaving suspiciously, and attempted to flee. [EXHIBITS B, B-1, D, and E]. This conduct was not sufficient to constitute a hostile act or a demonstration of hostile intent. Therefore the use of lethal force was not appropriate under the circumstances.

d. The IO included a document in the investigation that provides insight as to why the Soldiers believed that disabling shots were appropriate for a fleeing vehicle: EXHIBIT X, High Risk Traffic Control Point Tactics, Techniques and Procedures. This document is not consistent with higher headquarters ROE guidance. Specifically, EXHIBIT X states when vehicle attempts to flee from a High Risk TCP such as the one in this incident, that the vehicle should be disabled by firing into the engine block or tires. This blanket rule is not consistent with the current MNC-I and 13th SC (E) ROE. The Soldiers involved in this incident followed this guidance in firing the disabling shots at the white pickup truck. This erroneous guidance caused the Soldiers to use lethal force in this incident without positive identification of a hostile act or demonstration of hostile intent.

(b) (5)

However, because no Soldier committed any negligent or wrongful acts in this incident, (b) (5)

(b) (5)

d. A copy of this EOF investigation will be forwarded to the Administrative Law Section of the Multi-National Corps-Iraq Office of the Staff Judge for their review only.

5. Pursuant to AR 15-6, paragraph 2-3a, the appointing authority is neither bound nor limited by the recommendations and findings of the IO. Following legal review of an AR 15-6 investigation, the appointing authority may:

a. Approve the findings and recommendations.

b. Disapprove the findings and recommendations.

c. Approve the findings and recommendations with exceptions or substitutions.

d. Return the investigation to the IO for further proceedings or corrective action.

6. Pursuant to AR 15-6, paragraphs 3-17 and 3-18, and AR 340-21, The Army Privacy Program, paragraph 4-4, the appointing authority will also ensure the security of the personal information contained within the investigation by marking the investigation "For Official Use Only". No person shall disclose, release, or cause to be published any portion of the investigation without the approval of the appointing authority, except as required in the normal course of forwarding and staffing the investigation or as otherwise authorized by law or regulation.

7. If upon final action by the appointing authority a commander desires to use the informal AR 15-6 investigation as a basis to take adverse action against a Soldier, the commander should consult with the assigned Trial Counsel for guidance prior to taking such action.

8. The point of contact for this action is the undersigned (b)(3), b(6) @ (b)(2) High or by phone at DSN (b)(2).

FOR THE STAFF JUDGE ADVOCATE:

(b)(3), b(6)

CPT, JA
Administrative Law Attorney

3 Encls
1. MNC-I ROE 27 March 2007
2. Tab B (Definitions) to MNC-I ROE
3. 13th SC(E) ROE 30 November 2006

HEADQUARTERS MULTI-NATIONAL CORPS – IRAQ
BAGHDAD, IRAQ, APO AE 09342
27 MAR 07

APPENDIX 7 TO ANNEX C TO MNC-I OPERATIONS ORDER 06-03 (U)
(U) RULES OF ENGAGEMENT

1. (U) **SITUATION**. No change.

2. (U) **MISSION**. No change.

3. (U) **EXECUTION**.

(U) a. ~~(S//REL)~~ **GENERAL GUIDANCE**: This appendix establishes the Rules of Engagement (ROE) for all forces under the control of Multi-National Corps–Iraq.

(1) (U) All commanders will ensure their personnel are familiar with the Law of Armed Conflict and with these ROE.

(2) (U) Commanders may issue amplified ROE guidance applicable to forces under their command so long as they do not exceed the authority in this ROE. Commanders will ensure that modified or supplemental ROE:

(a) (U) Remain consistent with the intent of higher headquarters' ROE.
(b) (U) Result in more definitive guidance to subordinate commanders.
(c) (U) Do not impair the right of self-defense.
(d) (U) Are forwarded to MNC-I C3 and MNC-I SJA.

b. (U) **USE OF FORCE**.

(b)(1)1.4a

Enclosure 1

(b) (U) **Persons who Commit Hostile Acts.** MNC-I personnel may engage persons committing Hostile Acts with necessary force, including deadly force, in order to deter, neutralize, or destroy the threat. MNC-I personnel may continue to engage persons who have committed Hostile Acts until (1) they can no longer be positively identified, (2) they surrender, or (3) they are wounded and no longer pose a threat.

(c) (U) **Persons who Display Hostile Intent**. MNC-I personnel may engage persons who display Hostile Intent with necessary force, including deadly force, in order to deter, neutralize, or destroy the threat. MNC-I personnel may continue to engage persons who display Hostile Intent until (1) they can no longer be positively identified, (2) they surrender, or (3) they are wounded and no longer pose a threat.

(d) (U) **Pursuit of Hostile Elements in Self-Defense**. MNC-I personnel may pursue and engage persons who have committed a Hostile Act or demonstrated Hostile Intent until (1) they can no longer be positively identified, (2) they surrender, or (3) they are wounded and no longer pose a threat.

(3) (U) **Defense of Designated Persons and Property.**

(b)(1)1.4a

Page 9 redacted for the following reason:
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(b)(1)1.4a

(b)(1)1.4a

(5) (U) **Escalation of Force (EOF) Measures.** When time and circumstances permit, appropriate EOF measures assist Coalition Forces to determine whether Hostile Intent exists in a particular situation. When a Coalition Force member is confronted with a Hostile Act or demonstration of Hostile Intent, the Coalition Force member may use necessary force, including deadly force, without proceeding through EOF measures. See Appendix 20 (Escalation of Force) to Annex C to MNC-I OPORD 06-04 (SOP) for more specific guidance on EOF.

(b)(1)1.4a

(b)(1)1.4a

f. (U) POC for this order is Operational Law Division, OSJA, MNC-I, DSN (b)(2), SVOIP (b)(2), or via email at (b)(2)High @s-iraq.centcom.smil.mil.

4. (U) **ADMINISTRATION AND LOGISTICS.** No Change.

5. (U) **COMMAND AND CONTROL.** No Change.

TABS

A. (U) ROE General Policy Provisions
B. (U) Definitions
C. (U) ROE References
D. (U) Mosque Operations Guidance
E. (U) International Borders Guidance
F. (U) Kinetic Targeting Guidance
G. (U) MNC-I ROE Card
H. (U) MNC-I MiTT/SPiTT Guidance Card