



DEPARTMENT OF DEFENSE
COMBINED JOINT TASK FORCE-1
REGIONAL COMMAND-EAST
BAGRAM AIRFIELD, AFGHANISTAN
APO AE 09354

CJTF-1-JFC

19 June 2012

MEMORANDUM FOR Record

SUBJECT: Findings, AR 15-6 Investigation, 26 May 2012, CIVCAS Incident, 2/C/1-40 CAV, 4/25 ABN, Suri Kheyl Village, Wazi Dzadran District, Paktiya Province

1. **APPOINTMENT:** (U) I was appointed on 30 May 2012 by [redacted (b)(3), (b)(6)] CJTF 1 to conduct an informal AR 15-6 investigation into the facts and circumstances surrounding alleged civilian casualties possibly caused during an incident on 26 May 2012 that originated from an element of the TF 1-40 CAV operating in partnership with 6/1 Kandak. The incident allegedly involved an attack on U.S. and Coalition Forces and occurred just west of Suri Kheyl village in Wazi Dzadran (Gerda Serai) District, Paktiya Province, Afghanistan (Exhibit A).

2. **BACKGROUND:**

a. (~~S//REL TO USA, ISAF, NATO~~) Afghan and coalition forces launched a combined operation on 26 May 2012 into the Haki Kelay and Suri Kheyl region, Wazi Dzadran District, Paktiya Province. The purpose of the operation was to conduct an area reconnaissance to search Named Areas of Interest (NAIs) and suspected indirect fire points of origin (POOs) while denying the insurgents safe haven and disrupting their freedom of movement in the area (Exhibits L, M). The planning and conduct of the operation was due to a number of recent attacks by insurgents on elements from TF 1-40 CAV and 6/1 Kandak in the region and the results of a previous five-day operation conducted in the area (Exhibits K, L). Coupled with ANA intelligence indications, the belief was that the Haqqani Network (HQN) and their associates might use the area to set up a larger base of operations.

b. (~~S//REL TO USA, ISAF, NATO~~) The combined patrol, comprised of 6/1/203 Kandak and 2/C/1-40 CAV, TF 4/25 ABN came under fire twice on 26 May 2012. The first event occurred at approximately 261014MAY12 at 42S WB 341 893, where the combined patrol encountered small arms fire, RPGs and recoilless rifle rounds shortly after their insertion into the operational area. The combined patrol took fire from a qalat(s) in Haqi Kalay. The combined patrol did not return fire on the qalat(s) because the insurgent fire did not fix the patrol. During this first engagement, insurgent fire wounded one U.S. Soldier who required MEDVAC (1159L). Following the MEDEVAC, the combined security patrol continued to move south until 1230L when they set in a patrol base at 42S WB 349 881. That evening, at approximately 1810L a large insurgent element attacked the combined patrol (Exhibits L, N). Based upon [redacted (b)(1)1.4a] assets and the locations and volume of fire, the patrol estimated that sixty to seventy insurgents, organized in three groups, were occupying the ridgelines to the west, south and southwest of the combined patrol's location and were trying to overrun the unit's position. The insurgent fires pinned down the combined patrol and the unit was unable to maneuver even after engaging multiple insurgent positions with direct and indirect fires.

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Outnumbered, unable to maneuver or suppress the enemy fire, and running low on ammunition, the 2/C/1-40 CAV Platoon Leader (GFC) requested close air support. After the air strike, all insurgent fire and communications immediately stopped (Exhibit 17).

3. FINDINGS:

In regards to the 26 May 2012 Civilian Casualty incident near Suri Kheyl village, Wazi Dzadran District, Paktiya Province:

a. What are the facts and circumstances surrounding the incident? (5Ws) Provide a summary of the incident and a background of the events that led to the incident.

~~(S//REL TO USA, ISAF, NATO)~~ See the Background paragraph (paragraph 2) above and the Chronology of Events paragraph below (paragraph 4).

a. What are names of the civilians and any other individuals who were allegedly wounded or killed as a result of the incident? What were they doing at the time of the incident? Were any other individuals injured in the incident? If so, identify them and describe the extent of their injuries and their prognosis for recovery.

~~(S//REL TO USA, ISAF, NATO)~~ The CIVCAS claim by multiple local nationals (LN) on 28 May 2012 was that seven local national were killed (a man, his wife and five children) when their house was destroyed on 26 May 2012. This claim cannot be physically substantiated except by an identification card of [redacted (b)(6)] shown to [redacted (b)(3), (b)(6)] C/1-40 CAV [redacted (b)(3), (b)(6)] by four LN males in the vicinity of the bomb site on 28 May 2012. The four individuals claimed to be from Khost to visit relatives. The four men were between 40-60 years old, well dressed and well kept, which is not the norm in the Suri Kheyl village area. There were further claims that two additional children, a three year old boy and an eight year old girl, were slightly injured (cuts and scrapes) in the strike (Exhibits W, 23). Full Motion Video (FMV) following the strike shows dozens of people in multiple vehicles moving heat sources and other items from in and around the destroyed structure following the air strike (Exhibit 23 and Freedom 28 Video). Exactly who or what the individuals removed from the site following the air strike on the qalat is unknown. Later, [redacted (b)(6), (b)(3)] patrol was shown seven graves near the local mosque (one kilometer from destroyed qalat) where seven civilians (man, wife and five children) were said to have been buried.

~~(S//REL TO USA, ISAF, NATO)~~ Additionally, information was given to the Provincial Reconstruction Team (PRT) Paktiya by both [redacted (b)(6)] indicating that [redacted (b)(6)] (alleged father killed by the airstrike) had ties with the Haqqani Network and was a known insurgent. Furthermore, both DGs claimed that the air strike killed six other insurgents (two x Chechnya, two x Pakistan, and two x Paktika) (Exhibit 21).

b. Were any civilian structures damaged or destroyed as a result of the incident?

~~(S//REL TO USA, ISAF, NATO)~~ The airstrike destroyed a traditional, single story qalat at grid 42S WB 3419 8601 (Exhibits Freedom 28, A10 and Bone 23 videos).

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c. What, if any, medical treatment was provided to injured civilians?

~~(S//REL TO USA, ISAF, NATO)~~ Coalition personnel did not provide medical treatment to injured civilians from the airstrike (Exhibits W, X, 8, 9, and 15).

d. What US or Coalition Forces (CF) Soldiers were involved in the incident? What were their respective roles at the time of the incident?

~~(S//REL TO USA, ISAF, NATO)~~ This incident involved U.S. Soldiers from 2/C/1-40 CAV (4/25 ABN) and Afghan Soldiers from 6/1/201 Kandak who formed a combined patrol of approximately 40 Soldiers. (b)(3), (b)(6) 2/C/1-40 CAV) and (b)(3), (b)(6) (b)(3), (b)(6), 2/C/1-40 CAV) were the U.S. force leadership on the ground during the operation.

~~(S//REL TO USA, ISAF, NATO)~~ The TF 1-40 CAV Command Post (CP) is collocated with 1/203 Corps (Camp Parsa) and C/1-40 CAV Command Post at COP Wilderness is collocated with 6/1/203. These two CPs monitored the incident, feeds and communications through multiple means of communication including voice, text (MIRC and BFT), and full motion video (FM28 and Rover Feed). This command and control nodes provided enabler support, direct communication to the airborne platforms, and provided final approvals and clearance of fires, indirect and close air support. The leadership involved at these locations were (b)(3), (b)(6) TF 1-40 CAV, TF 4/25 ABN) and (b)(3), (b)(6) C/1-40 CAV).

~~(S//REL TO USA, ISAF, NATO)~~ During the incident, (b)(3), (b)(6) was unable to get in contact with (b)(3), (b)(6) (TF 4/25 ABN) (b)(3), (b)(6) and acting BCT (b)(3), (b)(6) at the time of the incident) at FOB Salerno to discuss the developing situation and eventually his decision to authorize the destruction of the qalat. (b)(3), (b)(6) contacted (b)(3), (b)(6) TF 1-501 ABN) to review the situation and get his thoughts. They discussed the need and inherent right of self-defense and the significance of destroying the qalat. Later (b)(3), (b)(6) called (b)(3), (b)(6) back to inform him of his decision to destroy the structure (Exhibits N, O) when the deteriorating situation did not improve.

~~(S//REL TO USA, ISAF, NATO)~~ During the engagement, multiple airborne assets supported the operation on the ground to include (b)(1)1.4a (b)(1)1.4a initially located and identified the qalat as an enemy location. (b)(1)1.4a delivered the munitions that destroyed the structure, and (b)(3), (b)(6) (b)(1)1.4a was the controlling (b)(3), (b)(6) from COP Wilderness (Exhibits H, I, J, 1).

~~(S//REL TO USA, ISAF, NATO)~~ Following the destruction of the qalat, a Shadow UAV and a Scout Weapons Team (SWT) provided support to the ground force and situational awareness for the TF 1-40 CAV and C/1-40 CAV (b)(3), (b)(6) at COP Wilderness and Camp Parsa (Exhibits O, X, 1).

e. Did US or CF Soldiers receive contact from enemy forces? What was their mission at the time of the attack? Who attacked them? How big was the attacking force? What

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weapons did the enemy use? Were any insurgents killed or captured? Were any US or CF Service members killed or wounded? If so, identify them.

~~(S//REL TO USA, ISAF, NATO)~~ The combined patrol, comprised of 6/1/203 Kandak and 2/C/1-40 CAV, TF 4/25 ABN came under fire twice on 26 May 2012. The first event occurred at approximately 261014MAY12 at (b)(1)1.4a where the combined patrol encountered small arms fire, RPGs and recoilless rifle rounds shortly from qalat(s) in Haqi Kayal after their insertion into the operational area. During that engagement one U.S. Soldier was wounded (BR # (b)(3), (b)(6)) who took a round into his left shoulder area requiring a MEDVAC (1159L) (Exhibits L, M).

~~(S//REL TO USA, ISAF, NATO)~~ Following the MEDEVAC, the combined security patrol continued to move south until 1230L where they set in a patrol base at (b)(1)1.4a. That evening, at approximately 1810L a large insurgent element attacked the combined patrol. Through (b)(1)1.4a assets and the locations and volume of fire, the patrol determined that an estimated 60-70 insurgents organized in three groups occupying the ridgelines to the west, south and southwest of the combined patrol's location were trying to overrun the unit's position. The insurgent force utilized mortars, recoilless rifles, PKM, AK-47s, and bolt action rifles to engage the coalition forces (Exhibits L, M, W, X, 2, 8, 9, 11, and 17).

~~(S//REL TO USA, ISAF, NATO)~~ Following the strike on the qalat the TF 1-40 CAV CTOC (Camp Clark) and the C/1-40 CAV CP (COP Wilderness) over watched the target area using multiple means. (b)(1)1.4a Immediately following the airstrike, three groups of people (6-10 each) moved from multiple locations out of the area. One hour following the air strike at 1930L, SWTs observed eight personnel attempting to hide in the debris of the structure and avoid detection. Approximately two hours following the airstrike at 2126L (b)(1)1.4a observed 40-60 personnel covering and loading heat signatures into four large trucks. At 2214L, the 40-60 personnel departed in the four trucks in multiple directions (Exhibits L, N, X, Z).

~~(S//REL TO USA, ISAF, NATO)~~ The combined patrol conducted ground BDA during the early hours (0045L) of 27 May 2012 from 700-900 meters away from the airstrike location with nothing significant to report. On 28 May 2012, a larger force led by (b)(3), (b)(6) C/1-40 CAV (b)(3), (b)(6) moved to the target to conduct additional BDA. No injured or killed civilians or insurgent were found at that time (Exhibits 8, W).

f. What, if any, medical treatment was provided to the injured U.S. Service members?

~~(S//REL TO USA, ISAF, NATO)~~ During the combined patrol's first engagement on 26 May 2012 one US Soldier from 2/C/1-40 CAV was wounded (BR # (b)(3), (b)(6)) The Soldier took one round into his left shoulder area requiring a MEDVAC (1159L) (Exhibits L, M).

g. If there was an attack, where was the unit attacked? Had US or Coalition Forces been attacked at this location before? How did the unit respond to the attack? What support was available to the unit? Was that level of support appropriate? Did the unit follow

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appropriate Rules of Engagement (ROE) during the attack? What ROE training had the US Forces involved in the attack received?

~~(S//REL TO USA, ISAF, NATO)~~ In the week prior to 26 May 2012, insurgents initiated four direct fire attacks against elements of TF 1-40 CAV and 6/1 Kandak while they conducted patrols in the Suri Kheyl area, Wazi Dzadran District, Paktiya Province. In addition, since December 2011 there have been over ten direct fire, indirect fire, IED attacks and cache finds in the same area as the 26 May 2012 attacks.

~~(S//REL TO USA, ISAF, NATO)~~ During the engagement, the combined patrol appropriately followed all rules of engagement during their response to the complex attack on 26 May 2012 under U.S. Standing Rules of Engagement for self-defense and ISAF ROE 421-424 (Hostile Intent / Hostile Act) until the air strike. In addition, the patrol understood and implemented all elements of the ISAF Tactical Directive (Revision 4) up until the air strike where positive identification (PID) came into question. The combined patrol's response to the second attack on 26 May 2012 demonstrated a graduated response of weapons systems and was consistent with Escalation of Force (EOF) principles, as they used direct and indirect fire systems (40mm – 37; 60mm – 24; 120mm – 20; 105mm – 3) and ultimately close air support. The Ground Force Commander (GFC) and his combined patrol were taking fire from the locations where he directed indirect fires. The GFC employed Close Air Support (CAS) based on the situation he saw and the reports from the (b)(1)1.4a. The insurgent fires pinned the combined patrol down and they were unable to maneuver even after engaging multiple insurgent positions with direct and indirect fires. These facts created the military necessity and demonstrated the unit leaders' understanding of proportionality as the decision was made to conduct the air strike on the qalat. Nevertheless, the GFC never had eyes on the qalat nor did he have eyes on farm animals or insurgents running into a building as noted by (b)(1)1.4a. Based on the enemy location the GFC provided to the JTAC at (b)(1)1.4a and his observations of insurgents moving over the spur's ridgeline (north of the qalat), he inferred from the map that the insurgents were moving towards the house described by (b)(1)1.4a. Nevertheless, the GFC lost positive identification of the insurgents when they ran over the ridge above the qalat. The GFC did not have positive identification of insurgents at the qalat because he could not see that location from his position nor could he develop pattern of life on the house (Exhibits N, X, 8, 9, 15, and 22).

~~(S//REL TO USA, ISAF, NATO)~~ There were clearly varying frames of reference and understanding of the situation between the GFC, the 1-40 CAV (b)(3), (b)(6) and the C/1-40 CAV (b)(3), (b)(6) in their command posts (CPs) and (b)(1)1.4a. These varying frames of reference were not functionally pulled together to create a common understanding between the distributed elements making rapid decisions to support the combined patrol in a deteriorating situation. The Squadron and Troop Commanders thought the GFC had eyes on the qalat and did not realize he had inferred it from his map and (b)(1)1.4a transmissions. The TF 1-40 CAV (b)(3), (b)(6) and C/1-40 CAV (b)(3), (b)(6) developed their beliefs and situational awareness through voice transmissions between the GFC, the JTAC and (b)(1)1.4a. They both assumed the GFC and (b)(1)1.4a had positive identification (PID) of the insurgents at the qalat.

~~(S//REL TO USA, ISAF, NATO)~~ The TF 1-40 CAV at Camp Clark and the C/1-40 CAV at COP Wilderness Command Posts (CP) received a contact report from the combined patrol at

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~~(S//REL TO USA, ISAF, NATO)~~ Both command posts interpreted the movement of the people at the qalat as being consistent with insurgent tactical movement and assessed that no civilians were present at that location. Both Commanders felt these observations coupled with the tactical information and observations communicated by the GFC and initially by (b)(1)1.4a (i.e. "Be advised that looks like enemy position, enemy fighters moved into the house.") provided positive identification of the insurgents at the qalat. Furthermore, they believed the aircraft feed demonstrated hostile intent as actions viewed were directly tied to enemy actions against the combined patrol (Exhibits N, O, P and Q). In addition, the fact that the combined patrol remained in contact and was unable to maneuver regardless of their direct fire response and the indirect fire support they received created the necessary conditions for the air strike (Exhibits W, Z, 1).

~~(S//REL TO USA, ISAF, NATO)~~ During the engagement, neither Commander confirmed the establishment of positive identification of the insurgents that were engaging the combined patrol. In addition, they did not verify a weapon(s), nor did they observe a target description consistent with combined patrol's reports at the qalat. Nevertheless, both the TF 1-40 CAV (b)(3), (b)(6) and the C/1-40 CAV (b)(3), (b)(6) believed they saw hostile intent because the actions viewed on the feed were tied to enemy actions (Exhibits N, O, P, and Q). Nonetheless, after the air strike, all insurgent fire and communications immediately stopped (Exhibit 17).

~~(S//REL TO USA, ISAF, NATO)~~ At 1839:58L (b)(1)1.4a was the only asset or person with eyes on the house (b)(1)1.4a indicated to the JTAC that he observed individuals "in the vicinity" of the last enemy location provided to the pilots at 1839:58L (b)(1)1.4a. At 1843:03L (b)(1)1.4a told the JTAC, "Be advised that (qalat) looks like enemy position, enemy fighters moved into the house." Based on this transmission by (b)(1)1.4a, reports by the GFC and the belief he (GFC) could observe the qalat the TF 1-40 (b)(3), (b)(6) (C/1-40 CAV) and (b)(1)1.4a (JTAC) assessed he had positive identification on insurgents at the targeted qalat location. After the Command Posts (CPs) established a Rover feed with (b)(1)1.4a the 1-40 CAV and C/1-40 CAV (b)(3), (b)(6) the controlling JTAC and the CP staffs felt they had good pattern of life on a known insurgent location where insurgents actions viewed were tied directly to enemy actions against the combined patrol.

Policy Considerations

Declared Hostile Force. ~~(S//REL TO USA, ISAF, NATO)~~ During the engagement, the controlling JTAC stated that the (b)(3), (b)(6) C/1-40 CAV "declared all forces hostile in the area." Although there were varying frames of reference, the TF 1-40 CAV and C/1-40 CAV (b)(3), (b)(6) assessed the individuals at the targeted qalat were demonstrating hostile intent and were

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tied directly to enemy actions against the combined patrol. Under the Standing Rules of Engagement for U.S. Forces, Commanders, units and individuals may only engage individuals based on a reasonable certainty that the individuals targeted are demonstrating hostile intent or a hostile act.

Positive Identification. ~~(S//REL TO USA, ISAF, NATO)~~ Although the (b)(3), (b)(6) assessed the individuals at the targeted qalat were demonstrating hostile intent, positive identification of the individuals initially demonstrating hostile act/intent was lost by the GFC and not transferred or reestablished prior to the engagement. Policy requires the establishment of positive identification prior to an engagement. Reestablishing PID is necessary prior to an engagement. Nevertheless, the various frames of reference and assessment by the (b)(3), (b)(6) that the GFC maintained PID of the insurgents at the qalat did not allow for complete situational awareness between the distributed locations. The (b)(3), (b)(6) thought the GFC established and maintained PID throughout the insurgent contact and the airstrike.

~~(S//REL TO USA, ISAF, NATO)~~ In this case, the GFC lost PID when the enemy moved over the ridgeline and did not affectively reestablish PID when he inferred their movement off a map. When (b)(1)1.4a came on station, he saw no individuals at the location given by the GFC but continued to scan the area. During the scan, (b)(1)1.4a moved his pod/sights to a house with individuals moving outside of it. When the (b)(3), (b)(6) and JTAC established a Rover feed from (b)(1)1.4a, the feed focused solely on the qalat. Again, the transfer or reestablishment of PID did not occur. When the JTAC and his (b)(3), (b)(6) and staffs could see (b)(1)1.4a feed in their respective command posts, they assessed that the people were "all hostile" based on the transmissions from the GFC and (b)(1)1.4a and their assessment the insurgent actions were tied to enemy actions against the combined patrol. However, the GFC never transferred PID to the pilots, the JTAC, the TF 1-40 CAV (b)(3), (b)(6) or the C/1-40 (b)(3), (b)(6)

Tactical Directive. ~~(S//REL TO USA, ISAF, NATO)~~ Although the GFC lost PID and did not transfer or reestablish PID before the airstrike the command posts and staffs at Camp Parsa (TF 1-40 CAV) and COP Wilderness (C/1-40 CAV) were under the presumption that the GFC established and maintained PID throughout the engagement. Once establishing the Rover feeds the (b)(3), (b)(6) and staff felt they had multiple forms of PID, and that it was never lost. These presumptions were due to a lack of clear and precise communication between the GFC, the JTAC and (b)(1)1.4a. In addition, due to these presumptions when the TF 1-40 CAV (b)(3), (b)(6) arrived at his CP, he received an incomplete picture from his staff based on their assessment of the combined patrol's situation.

h. What support did the unit(s) receive during and after the attack? Was the support adequate?

~~(S//REL TO USA, ISAF, NATO)~~ The combined patrol on the ground, the troop and squadron staffs and commanders had the highest levels of support throughout this operation to include: mortar and artillery indirect fires, close air support, multiple lines of UAV support and Scout Weapons Teams (SWTs).

i. Did any airstrikes occur? If so, who approved the airstrike? Who decided where to drop the munitions? Who was the battle space owner? Who had authority to approve an airstrike? Was the airstrike properly approved?

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~~(S//REL TO USA, ISAF, NATO)~~ The (b)(1)1.4a airstrike on a single qalat at (b)(1)1.4a (b)(1)1.4a did occur. (b)(3), (b)(6) TF 1-40 CAV), the tactical battle space owner, approved the airstrike. (b)(3), (b)(6) made the decision to engage the qalat after informing (b)(3), (b)(6) (b)(3), (b)(6), TF 1-501) when he could not reach the acting (b)(3), (b)(6). The airstrike had the concurrence of the Ground Force Commander and the C/1-40 CAV (b)(3), (b)(6) (b)(3), (b)(6) (b)(3), (b)(6) had the authority to approve the airstrike and took the necessary steps during the approval process. As the GFC, the (b)(3), (b)(6) was the Target Engagement Authority (TEA). However, (b)(3), (b)(6) gave the final approval based on the inputs from all levels of his command and his staff (Exhibits O, N, 5). (b)(3), (b)(6) stated that he recognized the risks associated with destroying the qalat, but he felt the decision to engage the house was necessary. He based this on the nature of combined patrol's enemy contact (bracketed IDF, direct fires), the engagement earlier in the day, the communication intercepts, and the fact that the platoon was unable to maneuver or break contact. He felt that the actions observed around the qalat (tactical movements) and the A10's observations coupled with the belief that the GFC was observing the insurgents at the qalat provided hostile intent, were necessary under self defense and clearly provided positive identification of insurgents at the qalat and confirmed that no civilians were at the targeted qalat.

j. Did US or Coalition Forces do Battle Damage Assessment? If so, what did it consist of and what were the results?

~~(S//REL TO USA, ISAF, NATO)~~ The combined patrol conducted ground BDA during the early hours of 27 May 2012 from 700-900 meters of the airstrike location with nothing significant to report. On 28 May 2012, a company size force, led by (b)(3), (b)(6) moved to the destroyed qalat and the village of Suri Kheyl to conduct additional BDA. (b)(3), (b)(6) patrol did not find any injured or killed civilians or insurgents at the target's location. The patrol was shown seven graves near the local mosque (one kilometer from destroyed qalat) where seven civilians (man, wife and five children) were said to have been buried. At the destroyed qalat, the patrol found several dead animals. In addition, EOD inspected and tested the destroyed structure and positively identified large quantities of perchlorate-based explosives on the scene. Approximately 100-150 meters on the spur above the destroyed qalat the patrol found large coils of copper wire, 60mm mortar end caps, a recoilless rifle casing, and clear indications of a recoilless rifle firing point (Exhibits N, W, X, 8, 9, 15).

k. What is the nature and extent of loss of military equipment?

~~(S//REL TO USA, ISAF, NATO)~~ There was no loss of military equipment during this incident.

l. What was the pre-mission briefing concerning the enemy force? Was a current threat analysis conducted for the mission? If not, why not? Who conducted the threat analysis and who received the threat analysis?

~~(S//REL TO USA, ISAF, NATO)~~ Prior to the combined patrol's insertion into the vicinity of Haki Kalay and Suri Kheyl on 26 May 2012, they received a complete operations order on their mission to include threat analysis, which covered recent activity in the area. That analysis specifically covered how the Haki Kely and Suri Kheyl area was a safe haven for insurgent fighters and an area

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m. What sort of notification, if any, did the unit give local nationals regarding the mission? Were warnings to the local national transmitted on a known broadcast frequency? Did the unit conduct any Key Leader Engagements (KLE) to inform the locals of the mission?

~~(S//REL TO USA, ISAF, NATO)~~ Prior to mission's execution no notification was given to the local population nor were radio warnings broadcasted or Key Leader Engagements (KLE) conducted due to reasons of operational security (OPSEC) and the nature of the threat within the combined patrol's area of operations. However, at approximately 1600L the patrol observed approximately 30 women and children from (b)(1)1.4a fleeing Suri Kheyl village to the east towards the mountains that connect to a neighboring village (Exhibit 9).

n. What was the response to the incident by the locals in the area? Did the provincial governor or any other local official respond publicly to the incident? Did the provincial governor or any other Afghan official provide evidence of CIVCAS? Did the incident receive any other local or national media attention? If so, what are the sources of the media stories?

~~(S//REL TO USA, ISAF, NATO)~~ As the patrol remained in the area over the next 36 hours, they found the local population to be very friendly, not upset and accommodating throughout their stay. Soldiers played and ate lunch with the children and local villagers repeatedly offered the Soldiers tea. The residents indicated to the patrol that the insurgents were afraid of them but admitted the insurgents beat local woodcutters and anyone else they came across in the mountains around the village. The local people also said that insurgents occupy houses on the edge of the village (targeted qalat was a kilometer from the village center) and steal from the locals while some temporarily occupy their homes from time to time. When asked why the villagers did not come to COP Wilderness to see the ANA about the incident the residents responded that that the ANA and AUP never do anything for them. During C/1-40 CAV's BDA visit to the site and during KLEs with the local population and GIRoA leadership there was never demands for payment of damages to people, structures, property, or livestock which is typically the case when damage occurs in instances like this (Exhibit W, X, 11).

~~(S//REL TO USA, ISAF, NATO)~~ Near the conclusion of C/1-40 CAV's KLE in Suri Kheyl on 28 May 2012 an Afghan delegation arrived with representatives from 203 Corps, AUP, Afghan CID, ABP, NDS, several Paktiya Shura members. This group took pictures of the grave sites at the mosque that the civilians were allegedly buried in and talked to the local population and officials (Exhibit W).

~~(S//REL TO USA, ISAF, NATO)~~ The incident did not receive media attention until approximately 0900 on 27 May 2012 when an individual, who was not a spokesman for the Governor of Paktiya, made a statement. The statement claimed an ISAF airstrike killed a man, his wife and their six children in Suri Kehyl village in Dzardran District. After this statement, most major English speaking media outlets contacted the IJC and or the ISAF press desks. ISAF acknowledged they were aware of the allegations and were looking into the incident while articulating ISAF's commitment to

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assist and protect the Afghan people. All reports released in the 24 hours after the statement described the incident as an ISAF caused CIVCAS that the command was looking into the allegations.

o. Has the unit in question caused any civilian casualties? Has anyone in the unit or chain of command had any adverse action against them as a result of this or similar events?

~~(S//REL TO USA, ISAF, NATO)~~ The units involved in this incident have not caused any previous civilian casualties or even had an EOF event prior to this incident. No one in the unit or chain of command has had any adverse action against them as a result of this or similar events in the past.

p. Are there any other matters pertaining to this incident that you deem relevant?

~~(S//REL TO USA, ISAF, NATO)~~ There are no additional matters pertaining to this incident that I deem relevant at this time.

4. Summary of Findings

a. ~~(S//REL TO USA, ISAF, NATO)~~ It is reasonable to assume, but cannot be verified, from this investigation that civilians may have been present in the targeted qalat at the time of the air strike reviewed. Thus, it is reasonable to assume there may have been civilian casualties caused by 26 May 2012 air strike in the area around Suri Kehyl village, Dzadran District, Paktiya Province, Afghanistan.

b. ~~(S//REL TO USA, ISAF, NATO)~~ It is equally reasonable to assume based on multiple sources of intelligence that one or more insurgents with weapons and explosive material may have been present in the targeted qalat at the time of the air strike reviewed. Thus, it is reasonable to assume there may have been insurgent casualties caused by 26 May 2012 air strike in the area around Suri Kehyl village, Dzadran District, Paktiya Province, Afghanistan.

c. ~~(S//REL TO USA, ISAF, NATO)~~ The decision to engage the qalat with CAS weapons was in self-defense because the GFC, the TF 1-40 CAV ~~(b)(3), (b)(6)~~ and the C/1-40 CAV ~~(b)(3), (b)(6)~~ ~~(b)(3), (b)(6)~~ determined that no other means of engagement except the air strike, to include fire and maneuver or withdrawal, could effectively counter the threat facing by the combined patrol. In addition, the ~~(b)(3), (b)(6)~~ their staffs, and the controlling JTAC assessed that the people they were observing at the targeted qalat were insurgents and that no civilians were present at that location.

d. ~~(S//REL TO USA, ISAF, NATO)~~ During this engagement, the Ground Force Commander lost PID on the insurgent forces who he observed moving over a ridgeline toward the targeted qalat. The GFC did not transfer or regain PID nor did any other involved individual or group do the same before engaging the qalat.

e. ~~(S//REL TO USA, ISAF, NATO)~~ There were clearly varying frames of reference and understanding of the situation between the GFC, the 1-40 CAV ~~(b)(3), (b)(6)~~ and the C/1-40 CAV ~~(b)(3), (b)(6)~~ in their command posts (CPs) and ~~(b)(1)1.4a~~. These varying frames of reference were not functionally pulled together to create a common understanding between the distributed

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elements making rapid decisions to support the combined patrol in a deteriorating situation. The (b)(3), (b)(6) thought the GFC had eyes on the qalat and did not realize he had inferred it from his map and (b)(1)1.4a's transmissions. The 1-40 CAV (b)(3), (b)(6) and C/1-40 CAV (b)(3), (b)(6) developed their beliefs and situational awareness through voice transmissions between the GFC, the JTAC and (b)(1)1.4a. They both assumed the GFC and (b)(1)1.4a had positive identification (PID) of the insurgents at the qalat.

5. Chronology of Events

~~(S//REL TO USA, ISAF, NATO)~~ The following is a detailed chronology of the events surrounding the alleged Civilian Casualty (CIVCAS) incident are based on the unit storyboards, (b)(1)1.4a external net transcripts provided by the 504 EASOG/CC AFCENT (Exhibit J) and 455 AEW/CC at BAF (Exhibit I). Relevant call signs and assets are as follows:

1. Ground Force Commander (GFC) (b)(3), (b)(6) 1-40 CAV
2. Combined Patrol: 6/1/203 KDK and 2/C/1-40 CAV (CP)
3. Controlling JTAC: (b)(1)1.4a
4. Supporting A10s: (b)(1)1.4a
5. Supporting B1: (b)(1)1.4a
6. MC-12 Liberty: (b)(1)1.4a

~~(S//REL TO USA, ISAF, NATO)~~ On 26 May 2012, the combined patrol (CP) conducted recon operations in the Wazi Dzadran District, Paktiya Province. Insurgents (INS) attacked the CP at approximately 1810L receiving indirect fire and then effective direct fire from three separate locations to the west, south and southwest of their location.

1810L: The CP immediately reported the contact and returned small arms fire (SAF).

1820L: GFC initiates 120mm indirect fires at (b)(1)1.4a

1823L: GFC initiates 120mm indirect fires at (b)(1)1.4a

1825L: GFC reports enemy position as (b)(1)1.4a

1826L: GFC reports still in contact and makes request for CL V (7.62, 60mm, 40mm) resupply.

1826L: 120mm indirect fires engage (b)(1)1.4a

1827:20L (b)(1)1.4a transmits to (b)(1)1.4a that friendlies are located at (b)(1)1.4a and 60 enemy fighters at (b)(1)1.4a (b)(1)1.4a slews to the grid but does not seem to observe any enemy movement (video), and he does not indicate that he does on the audio.)

1838:36L: (b)(1)1.4a that enemy are in the area of (b)(1)1.4a and requests aircraft to get eyes on.

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(b)(1)1.4a slews to this grid but does not see enemy movement (video) and does not indicate that he does on the audio.)

1839:47L: (b)(1)1.4a asks (b)(1)1.4a "do you have eyes on enemy?"

1839:58: (b)(1)1.4a says (b)(1)1.4a has individuals in the vicinity."

(On the video (b)(1)1.4a has moved S/SW from the (b)(1)1.4a grid approximately 200m, over a ridgeline. At that location, (b)(1)1.4a locates the house and people who are moving in and around the house.)

1840:04L: (b)(1)1.4a "How many individuals?" Copy, those are enemy, those are enemy personnel. Go ahead and pass elevation."

(At this point in the engagement, (b)(1)1.4a did not have a Rover feed or eyes on. The (b)(3), (b)(6) (b)(3), (b)(6) and JTAC believe the GFC has eyes on the house. Nevertheless, the GFC cannot see the house or behind the ridgeline where (b)(1)1.4a has observed the qalat and individuals in the vicinity.) (Exhibit 22)

1843:03L: (b)(1)1.4a "Be advised that looks like enemy position, enemy fighters moved into the house."

1843:11L: (b)(1)1.4a copies

1843:42L: (b)(1)1.4a comes on station and the 1-40 CAV TOC provides grid (b)(1)1.4a for (b)(1)1.4a to over watch / observe.

(TF 1-40 CAV TOC has eyes on through the (b)(1)1.4a (MQ-1) feed.)

1843:58L: (b)(1)1.4a is zapping point uh...current location of suspected fighters, be advised in the vicinity of building

(b)(1)1.4a lazies the target building to get an accurate target location.)

1845:29L: (b)(1)1.4a indicates he is dropping altitude to observe (b)(1)1.4a target and eventually receive target spot (b)(1)1.4a does not have eyes on the target house at this time.

1845:54L: (b)(1)1.4a "Ok, CE we are and confirm CDE is not an issue with this target that we are looking at on the river."

(b)(1)1.4a provides CDE observation to (b)(1)1.4a based on the house's location.)

1846:05L: (b)(1)1.4a "Ground commander says everyone in the area is hostile."

(Although both the (b)(3), (b)(6) thought the GFC had eyes on the house, he does not have eyes on target house. The GFC stated that everyone was hostile. However, the GFC's frame of reference is what he could see and could not see.)

1847:14L: (b)(1)1.4a passes the mission to the JTAC (b)(1)1.4a over his Rover ("good handshake") (b)(1)1.4a at this point can see what (b)(1)1.4a is looking at through his Rover. (b)(1)1.4a is looking at the target house and does not move off the house for the remainder of the engagement.)

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1847:23L: (b)(1)1.4a “And just confirm pattern meets enemy criteria and CIVCAS is not a factor.”

1847:35L: (b)(1)1.4a “CIVCAS is not a factor; the ground commander has named everyone in the area as hostile.”

(The Commanders and JTAC assess the GFC could see the targeted house and had declared hostile intent.)

1849:20L: (b)(1)1.4a receives spot (laser) from (b)(1)1.4a can positively identifies the target house (b)(1)1.4a has been observing since 18:39:58L.

1849:28L: (b)(1)1.4a “Copy 1611 (laser code) (b)(1)1.4a 10 digit grid, and CE be advised it looks like a farmhouse of some kind with animals inside, oh...multiple individuals.”

1849:48L: (b)(1)1.4a “Copy and the ground commander, the ground commander he sees everyone in the area hostile, he does not care about the animals.”

1850:15L: (b)(1)1.4a “And CE are you guys still taking fire?”
(The combined patrol was still under fire from multiple directions and unable to maneuver.)

1850:35L: (b)(1)1.4a confirms target location from (b)(1)1.4a spot and describes target location to (b)(1)1.4a to ensure he was viewing the same location.

1851:49L: (b)(1)1.4a confirms target grid passed between aircraft on his Rover as (b)(1)1.4a which is the same target house.

1852:09L: (b)(1)1.4a “and be advised this looks like normal pattern of life, I don't see any shooters down there.”

1852:21L: (b)(1)1.4a “the (b)(3), (b)(6) 1-40 CAV) says we have taken contact from shooters, this is still a valid target.”

1852:26L: (b)(1)1.4a “Copy that, I'm telling you I don't see any shooters down there, and I have multiple personnel, looks like normal pattern of life for that area.”

1852:37L: (b)(1)1.4a “copy, they keep shooting at this time, ground commander has deemed that everyone in that building and surround is hostile, and wants them neutralized.”

(The (b)(3), (b)(6) and JTAC still think the GFC has eyes on the targeted house.)

1852:55L: (b)(1)1.4a if he wants to pass the mission to (b)(1)1.4a
(Note: (b)(1)1.4a located the target and had over watched the house from the beginning while providing indications of enemy going into the house, commented on suspected enemy at the house, and providing a target description of multiple individuals at the house. However, he does not pass these observations to (b)(1)1.4a, who just arrived, to take the mission...)

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1853:01L to 1854:49L (b)(1)1.4a passes 9-Line to (b)(1)1.4a and verifies attack heading and friendly location.

1855:20L: (b)(1)1.4a confirms with (b)(1)1.4a that he has the correct target

1903:48L: (b)(1)1.4a drops three x GBU 38 and one x GBU 31 on the target house at (b)(1)1.4a

1904:35L: (b)(1)1.4a) Splash

1907:59L: (b)(1)1.4a requests reattack

1910:22L: (b)(1)1.4a identifies a woman and two children leaving a house to the SW of the target house.

1910:34L: (b)(1)1.4a calls off reattack confirming women and children in the area.

5. RECOMMENDATIONS AND OBSERVATIONS:

a. ~~(S//REL TO USA, ISAF, NATO)~~ My observation as the investigating officer is that TF 1-40th CAV is a very good unit with high morale and pride in the unit. They are dedicated professionals who are aggressive and appreciate the gravity of CIVCAS incidents and how these incident, founded or unfounded, can have strategic effects. The unit leaders understand the purpose, elements of and spirit of the Tactical Directive (Revision 4) and the Rules of Engagement (ROE) that are essential in the operational decisions made each day. Although the (b)(3), (b)(6) (b)(3), (b)(6) and the controlling JTAC thought the GFC and A10 flight established and maintained positive identification of the insurgents at the qalat, they had not. Therefore, the unit and its leaders did not comply with all elements of the Tactical Directive when the ground force commander failed to maintain Positive Identification of the insurgents engaging the combined patrol. The unit understands the finer points of their Area of Responsibility (AOR), the population and the threats. The leaders and Soldiers of TF 1-40 CAV have a strong partnership and working relationship with their ANA partners. The unit's AOR is kinetic. The unit and its leaders understand how to integrate direct, indirect and close air support to engage insurgent forces rapidly and accurately.

b. ~~(S//REL TO USA, ISAF, NATO)~~ I recommend the TF 1-40 CAV (b)(3), (b)(6) (b)(3), (b)(6) and leadership be formally retrained on the Tactical Directive, Positive Identification, and Patterns of life using lessons and vignettes. I also recommend the unit leaders and JTAC review the gun tapes (video and audio) and focus on how they can improve clear and concise communications inside their Command Posts and on the radio to achieve greater overall situational awareness and understanding in difficult situations.

c. ~~(S//REL TO USA, ISAF, NATO)~~ I recommend the TF 1-40 CAV leadership examine this report and assess what procedures and tools that could be added, revised, or improved within their command posts to improve their ability to functionally conduct mission command and improve the situational awareness of leaders across their formations during combat operations.

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d. ~~(S//REL TO USA, ISAF, NATO)~~ I recommend establishing a theater standard Area of Operation Handoff/Situation Update for Aircrew and Ground Forces to use as a briefing guide be expanded to include Tactical Directive considerations. The area of operations handoff and situation update between the JTAC (b)(1), 1.4a, the A10 Flight (b)(1), 1.4a and the (b)(1), 1.4a was hurried and incomplete. The battle handover section of JP 3-09.3 discusses recommendations and other pertinent information as part of a preferred transfer to an area of operation (AO). Although this section is referring to the transfer between a FAC-A and JTAC it could be a useful addition.

e. ~~(S//REL TO USA, ISAF, NATO)~~ I also recommend that the controlling JTAC (b)(1), 1.4a receive a debriefing and an appropriate level of retraining on delivering specific communication and how to best derive targeting data. In addition, this session should include a discussion on using more concise and precise language with aircraft and what language a ground force commander should and should not use to designate, name or identify a target. This coupled with a review of the Tactical Directive will allow the JTAC to better advise the commanders on the ground on targeting options in the future while improving decision making and engagements by being more precise during communications.

f. ~~(S//REL TO USA, ISAF, NATO)~~ I recommend that TF 1-40 CAV continue to review the Rules of Engagement, Tactical Directive, and operational policies and procedures monthly with all leaders and Soldiers. The unit needs to include vignettes during this training and during each patrol brief while adding more emphasis on the roles and responsibilities of the GFC, Forward Observers, Joint Fires Observers and the JTACs when utilizing fixed or rotary wing assets and the specific requirements of positive identification (PID) and patterns of life. The unit should maintain its constant review of EOF procedures and direct fire PID.

g. ~~(S//REL TO USA, ISAF, NATO)~~ Finally, I recommend the A10 (b)(3), (b)(6) review the communications between the A10 Flight (b)(1), 1.4a and the ground elements for areas of improvement to enhance air to ground situational awareness.

6. (u) The point of contact for this memorandum is the undersigned (b)(3), (b)(6) at (b)(3), (b)(6) or SVoIP (b)(6)

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

Investigating Officer