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his original allegations in e-mail to SFC (b)(3), (b)(6) to his sworn statement to CID,¹⁸ to his sworn testimony to this investigation,¹⁹ PVT (b)(3), (b)(6) story did not remain consistent.²⁰

Specifically, the AR 15-6 investigation was directed to answer the following questions that are highlighted in bold:

a. Did COI (b)(3), (b)(6) pose for pictures with dead detainees?

COI (b)(3), (b)(6) did not pose for pictures with dead detainees. Based primarily on the testimony of MAJ (b)(3), (b)(6) and MAJ (b)(3), (b)(6) this investigation is confident that it has acquired all photographs taken of the bodies while COI (b)(3), (b)(6) was present. COI (b)(3), (b)(6) did lift the head of the man shot through the window so that MAJ (b)(3), (b)(6) could get a clear head and shoulder picture for use by the S-2 to positively identify the remains. MAJ (b)(3), (b)(6) did use his boot to keep the body bags down while MAJ (b)(3), (b)(6) photographed two of the detainee bodies. In one of these photos, MAJ (b)(3), (b)(6) used his foot to keep the head facing the camera. There is no doubt that these photos were head and shoulder shots taken to use in positively identifying the remains.

b. Did COI (b)(3), (b)(6) maltreat dead bodies?

COI (b)(3), (b)(6) did not maltreat dead bodies. The only witness who claimed that COI (b)(3), (b)(6) stepped on bodies is PVT (b)(3), (b)(6). It is noteworthy that in his initial e-mail message to SFC (b)(3), (b)(6) PVT (b)(3), (b)(6) claimed that he was ordered to remove the blindfolds and zip ties.²² In his sworn statement to CID he claimed that he witnessed COI (b)(3), (b)(6) cut blindfolds and zip ties.²³ In his sworn testimony he backed off his claim that he saw four blindfolded and restrained bodies, and admitted that he personally only saw one.²⁴

c. Did COI (b)(3), (b)(6) cut the blindfold and zip tie off a dead detainee and state, "I guess we'll have to say these guys tried to escape" or words to that effect?

¹⁶ PVT (b)(3), (b)(6) claims the bodies came in on the second day of the operation (they came in on the first), that four bodies came on a single helicopter (they came on two helicopters 45 minutes apart), that the bodies were wrapped in white cloth (they were in black body bags), that their hands were bound behind (most witnesses did not see bound hands, but if bound they were most likely bound in front), that the PSD took pictures (the S-2 and S-3 took the pictures), and that two more dead detainees arrived for a total of six (there were only three dead detainees, the fourth KIA was not detained prior to his death),

¹⁷ See exhibit 13a.

¹⁸ See exhibit 13b.

¹⁹ See exhibit 13c.

²⁰ E.g. In his e-mail PVT (b)(3), (b)(6) claims that he was ordered to cut off the blindfolds and zip ties. In his sworn statement he claims he saw COI (b)(3), (b)(6) cut off four sets of blindfolds and zip ties. In his sworn testimony he says he only saw COI (b)(3), (b)(6) cut the blindfold and zip ties from one body.

²¹ See exhibit 17 and 22.

²² See exhibit 13a.

²³ See exhibit 13b.

²⁴ See exhibit 13c.

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COI (b)(3), (b)(6) did cut the blindfold from the face of one detainee, but did not cut zip ties from any dead detainees.²⁵ The cut blindfold was photographed with the remains and was not removed from the body bag. COI (b)(3), (b)(6) did not state, "I guess we'll have to say these guys tried to escape" or words to that effect. Again, the only witness who claims that COI (b)(3), (b)(6) cut zip ties is PVT (b)(3), (b)(6) MAJ (b)(3), (b)(6) MAJ (b)(3), (b)(6) and CSM (b)(3), (b)(6) and others were in the vicinity of COI (b)(3), (b)(6) while the body bags were open.²⁶ COL (b)(3), (b)(6) did cut one blindfold and used the same knife to lower the blindfolds from the other bodies so that MAJ (b)(3), (b)(6) could get photos that could be used by the S-2 to identify the bodies.²⁷ It is likely that PVT (b)(3), (b)(6) saw this from a distance and combined the portion he saw with rumors he heard. He then wrote to SFC (b)(3), (b)(6) and embellished his story by claiming that he was ordered to cut blindfolds and zip ties from the dead.

d. Did COI (b)(3), (b)(6) compliment, endorse or encourage the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect?

On 9 May 2006 in the TAC area, COI (b)(3), (b)(6) did not compliment, endorse or encourage the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect. There is evidence that confusion about the applicable ROE was a contributing factor in the deaths of the three individuals in the boat and the man in the window. The uncontradicted testimony is that none of these individuals demonstrated hostile acts or intent prior to being engaged.²⁸ In his sworn statement to CP (b)(3), (b)(6) LT (b)(3), (b)(6) states that the, "ROE given by our chain of command was to kill every military aged male on the objective."²⁹ This understanding of the ROE is consistent with other witness statements.³⁰ In his sworn testimony CP (b)(3), (b)(6) explained that this ROE was articulated by COI (b)(3), (b)(6) at the mission rehearsal.³¹

e. Did COI (b)(3), (b)(6) have knowledge of the death of detainees on or about 10 May 06 and fail to report to higher headquarters?

COI (b)(3), (b)(6) knew of CPT (b)(3), (b)(6) commander's inquiry and appointed MAJ (b)(3), (b)(6) to conduct an AR 15-6 investigation, but made the conscious decision to keep the investigations into the deaths at his level until after he returned from leave and was briefed on the final findings and recommendations.³² This decision demonstrated poor judgment and violated MNC-I CCIR guidance, FRAGO 248, FRAGO 212 and SECDEF Policy Memo 9, dtd 9 June 2004.³³ These documents lay out the requirement to report suspected LOAC violations and refer detainee deaths to CID for investigation.

f. Was there misinterpretation/miscommunication of the ROE?

²⁵ See primarily exhibit 25.

²⁶ See exhibit 11, 17 and 22.

²⁷ All photos taken in the presence of COI (b)(3), (b)(6) are at exhibit 17a and 22b.

²⁸ See exhibit 23.

²⁹ See exhibit 23b.

³⁰ See exhibit 23c - 1.

³¹ See exhibit 23.

³² See exhibit 4, 21 and 25.

³³ See exhibit 28 a - c.

While outside the scope of this investigation, there is evidence that there was misinterpretation and miscommunication of the ROE. In the days leading up to Operation Iron Triangle, COL (b)(3), (b)(6) directed his staff to put together a kinetic strike package of pre-assault indirect fires.³⁴ This request was intelligence driven. COL (b)(3), (b)(6) and his staff believed the request was being supported as it was forwarded to the SECDEF. As a late change, the request was modified from an area package that included a chemical facility, to individual targets that omitted the chemical facility. As such, the division commander became the approval authority. The night before the operation, the Commanding General denied the indirect fires. Nevertheless, COL (b)(3), (b)(6) and his staff believed the initial support by Division and Corps validated their belief that they would be attacking a hostile target.³⁵

The brigade command judge advocate and commander both assert that the on scene commander has the authority to target individuals, “with direct fire weapons systems based solely on their status [as members of designated terrorist organizations].”³⁶ While this appears to be a technically correct interpretation of theater specific ROE, taken to the extreme it raises serious issues about the manner in which PID is established.

COL (b)(3), (b)(6) verbally designated all persons on Objective Murray as members of Al Qaeda, based on his assessment of the intelligence available, and previous operations at that location.³⁷ This verbal designation was not crystal clear in that some, including COL (b)(3), (b)(6) referred to Objective Murray being declared hostile.³⁸ Although garbled, this designation clearly allowed Soldiers to engage individuals on Objective Murray who did not commit hostile acts or demonstrate hostile intent. Afterwards, several Soldiers describe the “new ROE” as an order to kill all military aged males on Objective Murray.³⁹ This “new ROE” interpretation of COL (b)(3), (b)(6) designation contributed to the deaths of four military aged males on Objective Murray.⁴⁰ Neither the man in the window killed on Objective Murray, nor the three men in the boat displayed hostile acts or intent.⁴¹ Two issues are apparent – PID was not properly established and the designation was not clearly communicated.

This investigation finds that COL (b)(3), (b)(6) honestly and reasonably believed he had the authority to designate all persons on Objective Murray as members of a terrorist organization. The problem was that by designating all personnel on Objective Murray as hostile, COL (b)(3), (b)(6) in effect eliminated the requirement to PID each individual as a member of Al Qaeda. The record is clear; the Soldiers on the objective demonstrated restraint in the application of force, which they were not required to, given the

³⁴ See exhibit 21, 22 and 25.

³⁵ See exhibit 21, 22 and 25.

³⁶ See exhibit 25 and 27a.

³⁷ See exhibit 21, 23, 25 and 27a.

³⁸ See exhibit 25.

³⁹ See exhibit 23a – 1.

⁴⁰ See exhibit 23a – 1.

⁴¹ See exhibit 23.

designation of OBJ Murray as containing members of a declared hostile force by COL
(b)(3), (b)(6)

This investigation finds that there was miscommunication of the ROE. At the brigade level not all members of the staff understood the designation of Objective Murray as hostile.⁴² At the battalion level the leadership of 3-320 FA were not aware that individuals on Objective Murray had been declared hostile.⁴³ At the company level the Soldiers in C/3-187 were aware of the designation, but mischaracterized it as an order to, "kill all MAM on the objective."⁴⁴ There was also confusion between designating individuals versus a place hostile. A person cannot be targeted on status simply by being present on an objective deemed hostile by an on scene commander. Although the Soldiers limited the designation to MAM on the objective, it was beyond their capability to limit the designation to members of Al Qaeda on the objective.

⁴² See exhibit 15 and 17.

⁴³ See exhibit 4, 11 and 12.

⁴⁴ See exhibit 23a-1.

SECTION V, RECOMMENDATIONS:

a. Posing for Pictures or Maltreating Casualties

The allegation that COI (b)(3), (b)(6) posed for unofficial photos and maltreated bodies is entirely without merit. There is no need for any further action regarding this issue.

b. Endorsing or Encouraging the Mistreatment of Detainees

The allegation that COI (b)(3), (b)(6) endorsed or encouraged the mistreatment of detainees is entirely without merit. COI (b)(3), (b)(6) did not say, "I guess we'll have to say these guys tried to escape" or "good job but we need more bodies." There is no need for any further action.

c. Failure to Immediately Report Suspected Detainee Deaths

COI (b)(3), (b)(6) should be admonished for his failure to report suspected detainee deaths to his chain of command and law enforcement officials in a timely manner. While his decision to fully investigate was sound, his decision to not inform his chain of command and CID immediately demonstrated poor judgment.

d. Misinterpretation and Miscommunication of the ROE

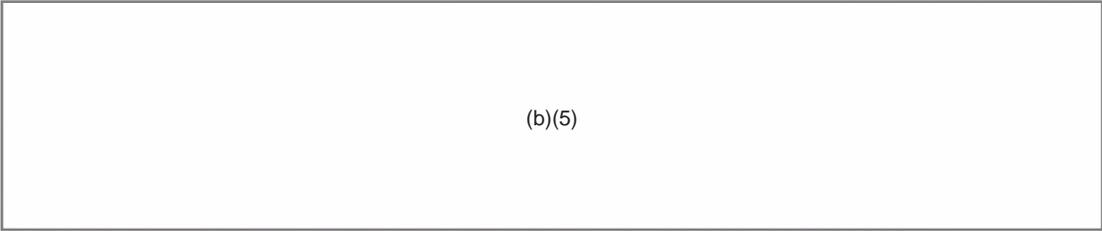
The 3 BCT should retrain commanders, staffs and soldiers on the application of the designation of declared hostile force, and should establish procedures for the communication of this decision to the lowest level of the command. The designation does not eliminate the necessity of PID and distinction. Declarations using location-based analysis are inherently defective given that Soldiers cannot know who is on the objective until it is taken.

The differences between analyzing a request for pre-assault fires and declaring a force hostile should be reinforced. Pre-assault fires utilize area weapons and require at least division level approval. Declaring a force hostile, and engaging the force with direct fire weapons, can be approved by the on scene commander, but does not relieve Soldiers from the requirement for PID and distinction of each individual targeted.

MNC-I should re-examine its ROE to determine if modifications are required to clarify the application of positive identification, and issue clarification on the continuing requirement to PID after an on scene commander declares a force hostile.

e. On-Going Criminal Investigation

(b)(5)



(b)(5)

SECTION IV, FINDINGS:**Summary:**

COI (b)(3), (b)(6) did not condone or attempt to cover up detainee deaths that occurred during Operation Iron Triangle. The facts and circumstances surrounding the deaths of three detainees, who were reported to have broken their restraints and assaulted their guards, continues to be the subject of an on-going criminal investigation.¹

The allegation that on or about 9 May 2006 COI (b)(3), (b)(6) posed for pictures with dead detainees; maltreated dead bodies; cut the blindfold and zip tie off of a dead detainee, and stated, "I guess we'll have to say these guys tried to escape" or words to that effect; complimented, endorsed or encouraged the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect; and failed to report the death of detainees to higher headquarters, has been thoroughly investigated.

The bulk of the allegation has proven to be completely false. It is true that COL (b)(3), (b)(6) supervised the photographing of four bodies, and did cut a blindfold from one body. This, however, was done in order to take official photographs for use in positively identifying the bodies.² COI (b)(3), (b)(6) did intentionally delay reporting the deaths, but his intent was to gather facts from eye witnesses prior to notifying his higher headquarters. COL (b)(3), (b)(6) intent is clearly documented by the fact that a commander's inquiry was initiated almost immediately and was followed, within 48 hours, by an AR 15-6 investigation initiated by COI (b)(3), (b)(6)

Background:

On 9-11 May 2006, units from 3d Brigade Combat Team, 101st Airborne Division (3-187 IN, 3-320 FA, 2-9 IN) and 4th Iraqi Army Division participated in Operation Iron Triangle in the vicinity of Muthana, Iraq.⁴

On the first day of the operation seven Iraqis were killed. Three individuals in a boat in vicinity of OBJ Murray were engaged by fires from a helicopter. Their bodies fell into fast moving water and were not recovered. SSG (b)(3), (b)(6) Charlie Company, 3-187 IN, shot and killed a man through a window on objective Murray. CPL (b)(3), (b)(6) and PFC (b)(3), (b)(6) members of SSG (b)(3), (b)(6) squad, shot and killed three detainees on objective Murray. These four bodies were collected and transported to the 3-320 FA TAC.⁵

¹ See exhibit 24.

² See exhibit 17, 22 and 25.

³ See exhibit 4, 21, 23 and 25.

⁴ See exhibit 2.

⁵ See exhibit 23.