



DEPARTMENT OF THE ARMY  
 HEADQUARTERS, 506<sup>TH</sup> REGIMENTAL COMBAT TEAM  
 101<sup>ST</sup> AIRBORNE DIVISION (AIR ASSAULT)  
 CAMP LOYALTY, IRAQ APO AE 09390



REPLY TO  
 ATTENTION OF

AFZB-KG-CO

13 February 2006

MEMORANDUM FOR Commander, Multi-National Division-Baghdad, Camp Liberty, Iraq  
 09344-3029

SUBJECT: Review of AR 15-6 Investigation - Escalation of Force, Occurring 5 February 2006

1. I have reviewed the above-referenced investigation and recommend the following:

a. \_\_\_\_\_ recommend the investigating officer's findings and recommendations be approved.

b. \_\_\_\_\_ recommend the investigating officer's findings and recommendations be disapproved.

c. K recommend the investigating officer's findings and recommendations be approved with the following exceptions/substitutions:

WITH THE EXCEPTION OF SECTION 4 PAR E. 5  
(LIGHT PILE REPAIR BY CF)

2. Point of contact for this memorandum is \_\_\_\_\_, at \_\_\_\_\_ or SIPR at \_\_\_\_\_

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 UNLESS OTHERWISE  
 NOTED

COL, IN  
 Commanding



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 506TH REGIMENTAL COMBAT TEAM  
101ST AIRBORNE DIVISION (AIR ASSAULT)  
CAMP LOYALTY, IRAQ 09390



REPLY TO  
ATTENTION OF

AFZB-KG-CO

5 February 2006

MEMORANDUM FOR [REDACTED] HHC, 506<sup>th</sup> RCT, Camp Loyalty, Iraq 09390

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation into the escalation of force incident where Soldiers manning a Traffic Control Point (TCP)/Security Position from B-Company, 3d Battalion, 67<sup>th</sup> Armor Regiment, fired on a local national vehicle on 5 February 2006. Your investigation will focus on the following areas:

- a. What were the facts and circumstances requiring the escalation of force?
- b. Did the escalation of force comply with the Rules of Engagement?
- c. Was the escalation of force appropriate, given the facts and circumstances?
- d. Was the TCP/Security Position set up IAW the MND-B TCP SOP and 4ID OIF Leader's Handbook (cards 204 and 205)?
- e. What, if any, corrective actions, training, or changes to procedures should be made?
- f. Was there any damage to civilian personnel or property? If so, were claims cards distributed to the civilian personnel?

2. In your investigation, all witness statements will be taken on paper and sworn to at your discretion using DA Form 2823. If you discover any suspected criminal misconduct you must first read the individual their Article 31, UCMJ Rights, prior to taking their statement. From the evidence, you will make findings as to whether any criminal laws or Army regulations have been violated. In addition to your findings, you will make recommendations for any appropriate action to be taken. These recommendations may include but are not limited to: UCMJ or administrative actions concerning one or more individuals, additional training, policy changes, etc. Conduct your investigation pursuant to AR 15-6. Additionally, seek advice from RCT Legal prior to commencing your investigation. ([REDACTED])

3. This investigation takes priority over other duties. Record your findings and recommendations utilizing DA Form 1574. Submit your investigation packet to this headquarters NLT 1700 10 February 2006. Any requests for an extension should be made to me verbally or in writing.

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[REDACTED]  
COL, IN  
Commanding

14628

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6, the proponent agency is DTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by COL [REDACTED], Commander, 506th Regimental Combat Team  
(Appointing authority)

on 05 Feb 06 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at FOB Rustamiyah, Baghdad, Iraq at 1000  
(Place) (Time)

on 06 Feb 06 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

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The (investigating officer) (board) finished gathering/hearing evidence at 1600 on 10 Feb 06  
(Time) (Date)  
and completed findings and recommendations at 1030 on 11 Feb 06  
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

		YES	NO <sup>1/</sup>	NA <sup>2/</sup>
1	Inclosures (para 3-15, AR 15-6)			
	Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
	a. The letter of appointment or a summary of oral appointment data?	X		
	b. Copy of notice to respondent, if any? (See item 9, below)			X
	c. Other correspondence with respondent or counsel, if any?			X
	d. All other written communications to or from the appointing authority?			X
	e. Privacy Act Statements (Certificate, if statement provided orally)?			X
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			X
	g. Information as to sessions of a formal board not included on page 1 of this report?			X
	h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			X

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.  
2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO <sup>1/</sup>	NA <sup>2/</sup>
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			X
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			X
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?			X
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			
<b>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b>				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
	b. Was the date of delivery at least five working days prior to the first session of the board?			
	c. Does each letter of notification indicate:			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
	d. Was the respondent provided a copy of all unclassified documents in the case file?			
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?			
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/> )			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.  
2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The ~~(investigating officer)~~ ~~(board)~~, having carefully considered the evidence, finds:

See attachment entitled "Findings and Recommendations - 3-67 AR Escalation of Force Incident"

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the ~~(investigating officer)~~ ~~(board)~~ recommends:

See attachment entitled "Findings and Recommendations - 3-67 AR Escalation of Force Incident"

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)



MAJ, EN

Investigating Officer (President)

(Recorder)

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure \_\_\_\_\_, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (Investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

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UNLESS OTHERWISE  
NOTED

THOMAS C. MAFFEY  
BG, U.S. Army  
Assistant Division Commander-M

**SECTION IV -- FINDINGS.** The investigating officer, having carefully considered the evidence, finds:

a. What were the facts and circumstances requiring the escalation of force?

At 05 0930C FEB 06, 1/D/3-67 AR began an area reconnaissance of the Baladiat neighborhood of Baghdad Zone 9 in AO Currahee.<sup>1</sup> With [REDACTED] as the platoon leader, this tank platoon is attached to B/3-67 AR (MECH) and conducts patrols with a total of eighteen personnel -- sixteen (16) Soldiers, including the Medic, and one (1) translator -- in four (4) M1114 Up-armored HMMWVs.<sup>2</sup> For traffic control, the platoon has traffic cones, small stops signs for turret gunners to use, and signs on the rear of each vehicle that indicate in English and Arabic for local nationals to stay 100m away from the vehicle.<sup>3</sup>

At 05 1130C FEB 06, [REDACTED] stopped the patrol to talk with a guard in a parking lot VIC [REDACTED] in order to gain information about the guard, the parking lot, and that area of [REDACTED] the neighborhood.<sup>4</sup> He intended to stop for no more than 20 minutes, due to recent VBIED activity in Zone 9.<sup>5</sup> Upon stopping the patrol, the platoon set up a security perimeter with traffic cones about 30-40 feet in front of HMMWV positions as a signal for oncoming traffic to stop.<sup>6</sup> The relative position of the parking lot, HMMWVs, and road cones are shown in Figure 1.<sup>7</sup>



- <sup>1</sup> Exhibits E, I, J.
- <sup>2</sup> Exhibit F.
- <sup>3</sup> Exhibits E, F.
- <sup>4</sup> Exhibits E, F, I.
- <sup>5</sup> Exhibit E.
- <sup>6</sup> Exhibits C, E, F, G, H.
- <sup>7</sup> Exhibits E, F, H.

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Figure 1. Findings on the employment of security measures and application of escalation of force procedures.

Over the next ten (10) minutes, [REDACTED] spoke with the security guard at the parking lot.<sup>8</sup> During this period, approximately 12-15 cars approached the perimeter, but all responded to hand and arm signals by either stopping and turning around, or turning off the road to the southwest.<sup>9</sup>

(Investigating Officer's Note: The following estimates of distances result from a combination of witness sketches; relative positioning of events and vehicles with respect to street intersections; and distance analysis using DTSS-L with 1-meter CIB imagery, as shown in Figure 1.)

At approximately 1145 hours, a local national in a blue Volkswagen Passat approached the security perimeter from the northwest.<sup>10</sup> From approximately 250 meters away until about 120 meters away, the driver did not respond to repeated hand signals and shouts to stop.<sup>11</sup> The car continued moving towards the security perimeter at approximately 15 miles per hour.<sup>12</sup>

When the car was approximately 120 meters away, [REDACTED], [REDACTED], and [REDACTED] pointed their weapons at the vehicle in a gesture intended to get the driver to stop.<sup>13</sup> The driver did not respond to the gesture; he continued towards the security perimeter at the same rate of speed, about 15 miles per hour.<sup>14</sup>

During this period, an Iraqi Police vehicle drove through the platoon's perimeter from Southeast to Northwest, stopping behind the two HMMWVs where [REDACTED], [REDACTED], and [REDACTED] were pulling security.<sup>15</sup>

When the car was approximately 70 meters away, [REDACTED] ordered [REDACTED] to fire a warning shot at the vehicle.<sup>16</sup> In response, [REDACTED] fired one 5.56mm round over the top of the vehicle.<sup>17</sup> The driver did not respond to the warning shot and continued towards the security perimeter without slowing down.<sup>18</sup>

When the car was approximately 40 meters away and traveling at the same speed, [REDACTED] assessed the vehicle to be displaying hostile intent.<sup>19</sup> [REDACTED] ordered [REDACTED] and [REDACTED] to shoot to disable the vehicle.<sup>20</sup> Each soldier fired one 5.56 mm round.<sup>21</sup>

<sup>8</sup> Exhibit E.

<sup>9</sup> Exhibits F, H.

<sup>10</sup> Exhibit B, G, H.

<sup>11</sup> Exhibit B, F, G, H, K.

<sup>12</sup> Exhibit B, F, G, H.

<sup>13</sup> Exhibit H, K.

<sup>14</sup> Exhibit B, G, H.

<sup>15</sup> Exhibit E.

<sup>16</sup> Exhibit F, H.

<sup>17</sup> Exhibits B, F, G.

<sup>18</sup> Exhibit B, G, H.

<sup>19</sup> Exhibit F.

<sup>20</sup> Exhibit F.

<sup>21</sup> Exhibit B, F, G, H.

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Findings and Recommendations -- 3-67 AR Escalation of Force Incident

██████████ fired with the intent "to disable the vehicle."<sup>22</sup> ██████████ displayed the same intent, aiming at the engine block.<sup>23</sup>

As the car continued towards the security perimeter, ██████████, and ██████████ sought cover behind their M1114 Up-armored HMMWVs in response to the perceived VBIED threat.<sup>24</sup> As the driver lost control of the vehicle, the car swerved to the left (northeast) and came to a stop after striking a utility pole.<sup>25</sup>

The Iraqi Police later stated that they thought the vehicle was moving exceptionally fast and had shown no signs of slowing.<sup>26</sup> They also suspected it was a VBIED as it approached the security perimeter.<sup>27</sup>

██████████ and ██████████ continued to maintain security behind the cover of the M1114s. ██████████ arrived from the parking lot, observed the driver slumped over in the vehicle, and called for a medic.<sup>28</sup> After assessing that the driver was not attempting to use a detonation device, ██████████ approached the car and conducted a visual search for explosives, with negative results.<sup>29</sup>

The medic, ██████████, approached the vehicle and assessed that the local national was dead from a gunshot wound to the forehead.<sup>30</sup> Two bullet holes were in the windshield: one at the very bottom of the windshield, just above the hood, and another mid-way up the windshield, in front of the driver.<sup>31</sup> ██████████ examined the holes in the vehicle and the gunshot wound to the local national and assessed that the round that killed him likely resulted from a ricochet.<sup>32</sup>

It is beyond the scope of expertise of the investigating officer to verify the accuracy of this claim using forensic evidence; however, the NCO's directive to fire a warning shot and the Soldiers' intent are the important factors.

██████████ and ██████████ resumed pulling security while ██████████ initiated an investigation with the Iraqi Police. ██████████ verified that three (3) rounds had been fired by counting the expelled shell casings, and discussed the disposition of the local national's body and vehicle with the IPs.<sup>33</sup> Because ██████████ assessed the local national as having committed a potentially criminal act with hostile intent, he did not issue a claims card for the death or the damaged vehicle, and he turned over the scene to the Iraqi Police.<sup>34</sup>

- <sup>22</sup> Exhibit G.
- <sup>23</sup> Exhibit H.
- <sup>24</sup> Exhibit F, H.
- <sup>25</sup> Exhibit F, G, H.
- <sup>26</sup> Exhibit E.
- <sup>27</sup> Exhibit K.
- <sup>28</sup> Exhibit E.
- <sup>29</sup> Exhibit E.
- <sup>30</sup> Exhibit E, F, G, H, I.
- <sup>31</sup> Exhibit E, G, H.
- <sup>32</sup> Exhibit E, I.
- <sup>33</sup> Exhibit E.
- <sup>34</sup> Exhibit E.

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Findings and Recommendations - 3-67 AR Escalation of Force Incident

Of note, all Soldiers in I/D/3-67 AR received ROE/EOF training on 25 JAN 06.<sup>35</sup> Also, the [REDACTED] briefs his platoon on ROE/EOF in every patrol brief prior to leaving FOB Rustamiyah.<sup>36</sup>

The Iraqi Police investigator, Officer [REDACTED], has since identified the driver of the vehicle as Khader Abdu Mary.<sup>37</sup> He was approximately 60-years-old, and his car was licensed with tag number 103390.<sup>38</sup> He is survived by his son, Mr. [REDACTED].

b. Did the escalation of force comply with the Rules of Engagement?

Yes. In accordance with Paragraph g. (pg. E-11) "USE OF FORCE", the ROE states:<sup>40</sup>

FOIA  
"1) [REDACTED] GRADUATED FORCE. If individuals pose a threat to Coalition Forces by committing a hostile act or demonstrating hostile intent, US Forces may use force, up to and including deadly force, to eliminate the threat. When time and circumstances permit, use the following graduated measures of force when responding to hostile act or hostile intent:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

SUSC552(B)(D)

The failure of the driver to respond to the graduated escalation of force as he continued towards the security perimeter without slowing sufficiently demonstrated hostile intent. In response, [REDACTED] and the Soldiers applied measures (a), (b), (d), and (e) as the circumstances allowed. They did not have the capability to apply measures to (c) physically block the vehicle and simultaneously maintain a stand-off distance to survive the suspected VBIED threat.

c. Was the escalation of force appropriate, given the facts and circumstances?

Yes. IAW Card 106 - Escalation of Force from the 4ID Leader's Handbook, the leaders and Soldiers' actions were appropriate.<sup>41</sup> [REDACTED]

SUSC552(B)

<sup>35</sup> Exhibit B, E.  
<sup>36</sup> Exhibit B, E.  
<sup>37</sup> Exhibit Q (Page 5B).  
<sup>38</sup> Exhibit Q (Page 3B).  
<sup>39</sup> Exhibit Q (Page 1B).  
<sup>40</sup> Exhibit L, M.  
<sup>41</sup> Exhibit N.

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Findings and Recommendations – 3-67 AR Escalation of Force Incident

Their actions also met the EOF flow as outlined on Page 106-4.<sup>42</sup> The ranges for signals, warning shots, and the use of deadly force were within the specified distances shown in the 4ID Leader's Handbook.

Regarding the other components of the EOF Flow, the soldiers were well trained, used the equipment they carried with their convoy (traffic cones), prepared for the mission with an ROE/EOF briefing, and escalated force in graduated means. After the discharge of the weapons, they secured the site, attempted to render first aid, and reported the incident immediately. The platoon leader also coordinated with on-site Iraqi Police for further disposition of the local national and his vehicle.

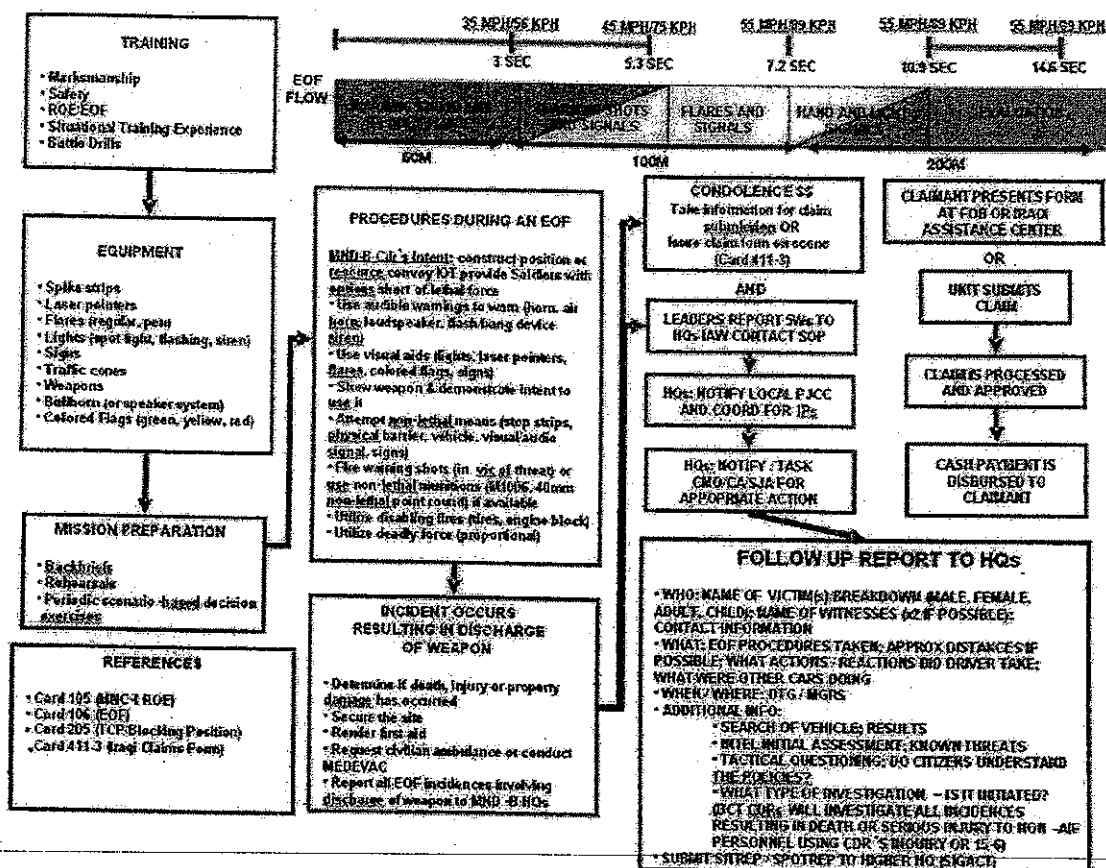


Figure 2. Escalation of Force Components from Change 1 to 4ID Leader's Handbook.

However, the "facts and circumstances" in which the Soldiers executed the Escalation of Force need to be changed. Specific recommendations are provided in Section (e).

d. Was the TCP/Security Position set up IAW the MND-B TCP SOP and 4ID OIF Leader's Handbook (cards 204 and 205)?

No. There are two elements from the MND-B SOP in which the EOF incident exhibited deficiencies.

<sup>42</sup> Exhibit N.

Findings and Recommendations – 3-67 AR Escalation of Force Incident

**Shortcoming #1.** The MND-B SOP specifically states to “fire warning shots *in front of the vehicle using tracers*” if the vehicle does not stop.<sup>43</sup> [REDACTED] fired a warning shot over the vehicle.<sup>44</sup>

**Shortcoming #2.** The platoon did not set up all of the physical barriers IAW the MND-B TCP-Blocking Position SOP because they did not have the TCP Kit with their vehicles. They only had traffic cones and stop paddles for the gunners.

Of note, the TCP Kit consists of:<sup>45</sup>

**TCP KIT**

1. (2x) Alert Signs
2. (1x) Warning Sign
3. (1x) Stop Sign
4. (1x) Stop Paddle
5. (5x) Sawhorses or (10x) Traffic cones or (7x) Warning triangles
6. (5x) bean-bag lights or similar flashing / warning lights
7. (3x) spike-strips, roles of C-Wire, or similar vehicle disabling device
8. (1x) portable speedbump, or field expedient substitute (Sandbags, track, etc.)
9. Flashlights (2 per Screening team and search team)
10. Pre-Printed instructions in Arabic or have a translator at the screening team location
11. (5x) body bags
12. (20x) Detainee Forms
13. (20x) Zip Ties
14. Laminated search instructions, curfew violation warnings, contraband list, weapon's policy guidelines, and female search instructions
15. Search mirrors
16. (10 pair) rubber gloves

However, the MND-B Blocking Position SOP states that “Field expedient barriers (orange cones & concertina) authorized in lieu of TCP Equipment.”<sup>46</sup> Although they did not have concertina, the platoon did act within the intent of the SOP with the use of their traffic cones and placement of personnel to clearly communicate to local nationals that the road was being blocked.

The MND-B Blocking SOP also states that “A deliberate command decision must be made (Co Commander & Above) if a TCP is executed using less than the proscribed layout due to METT-T considerations.”<sup>47</sup> No such deliberate decision was made, even though the platoon acted within the intent of the SOP.

The major graduation of force that the platoon did not have the capability to execute was to physically block traffic at a stand-off distance from friendly forces. The presence and use of spike strips may have stopped the local national's vehicle and prevented the further escalation of force that resulted in the local national's death.

<sup>43</sup> Exhibit O.

<sup>44</sup> Exhibits B, F, G.

<sup>45</sup> Exhibit O.

<sup>46</sup> Exhibit O.

<sup>47</sup> Exhibit O.

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Findings and Recommendations – 3-67 AR Escalation of Force Incident

Of note, Card 204 does not apply to this situation. It pertains to dismounted suicide bombers.<sup>48</sup>

**e. What, if any, corrective actions, training, or changes to procedures should be made?**

1) Warning shot TTPs – Placement of the Warning Shot. Recommend training of all platoons on the proper selection of an aiming point for a warning shot. Warning shots should be aimed in an area to mitigate the possibility of collateral damage in the surface danger zone of the weapon system. Specifically, the shot should be aimed at the ground – not in the air – into an area that will absorb the round and its energy rather than deflect it.

2) TCP – Blocking Position Equipment.

a) Recommend immediate unit-wide inventory of TCP kits to obtain accountability at the BN and BDE levels.

b) Recommend purchase of equipment to fill shortages by the quickest means available. Recommended distribution: 1 kit per four (4) up-armored vehicles.

c) Recommend deliberate analysis as to whether and how (i.e. load plan) the TCP kit can be carried on a four-vehicle M1114 convoy, along with the other standard loads such as water, ammunition for crew-served weapons, CLS bags, and forcible entry tools. If the TCP kit can be loaded, then continue to enforce the MND-B SOP. If it cannot, then modify the standard so that it is enforceable.

3) Non-lethal means. Recommend the purchase of green laser pointers on a broader basis of issue: two per vehicle. This basis of issue will provide one laser pointer for the gunner and one for the TC for use in dismounted operations. It is necessary to ensure more US Soldiers have non-lethal, visual means at their disposal to clearly communicate the intent to escalate force against a perceived threat.

4) Condolence Payment. A condolence payment should be offered to the surviving family of the deceased, Khader Abdu Mary for his death in the Escalation of Force incident.

5) Light pole repair. The coalition forces should pay for the contracted repair of the light pole damaged by the car.

**f. Was there any damage to civilian personnel or property? If so, were claims cards distributed to personnel?**

Yes. One local national (Khader Abdu Mary<sup>49</sup>) was killed and his 1986 Volkswagen Passat sustained damage. Specifically, the front of his vehicle and two front wheels were totaled, presumably when it struck the light pole.<sup>50</sup> Also, the front windshield and driver's side window were broken.<sup>51</sup> There was no surviving victim to whom the Soldiers could issue a claims card on site. The matter was turned over to Iraqi Police on the scene.

<sup>48</sup> Exhibit P.

<sup>49</sup> Exhibit Q (Page 5B).

<sup>50</sup> Exhibit Q (Page 2B).

<sup>51</sup> Exhibit Q (Page 2B).

Findings and Recommendations – 3-67 AR Escalation of Force Incident

**SECTION V – RECOMMENDATIONS.** In view of the above findings, the investigating officer recommends:

In accordance with the “Appointment as the Investigating Officer” dated 5 February 2006, the Findings of the investigation include “What, if any, corrective actions, training, or changes to procedures should be made?”

All of the investigating officer’s recommendations fall within this category and can be found in paragraph ‘e’ of “Section IV – Findings” on the previous page, page number 7.

## Exhibit List

- A. Appointment as Investigating Officer, dated 05 Feb 06
- B. Serious Incident Report, dated 05 Feb 06
- C. Excerpt from Currahee SIGACTS, 050800FEB06 - 060800FEB06
- D. 3-67 AR Storyboard for Escalation of Force, 05 Feb 06
- E. Statement from [REDACTED], dated 05 Feb 06
- F. Statement from [REDACTED], dated 05 Feb 06
- G. Statement from [REDACTED], dated 04 Feb 06
- H. Statement from [REDACTED], dated 05 Feb 06
- I. Statement from [REDACTED], dated 05 Feb 06
- J. Statement from [REDACTED], dated 05 Feb 06
- K. Statement from [REDACTED] (translator), dated 05 Feb 06
- L. MOD 2 to Annex E (Rules of Engagement) to FRAGO 016 to Phase IIIA of Operations Order 05-07, dated 09 Jan 06
- M. Card 105 - MNC-I ROE Card, 4ID Leader's Handbook, dated 26 Oct 05
- N. Card 106 - Escalation of Force (w/pg.106-4), 4ID Leader's Handbook, dated 01 Dec 05
- O. Card 205 - Traffic Control Point (w/new "MND-B TCP-Blocking Position SOP), 4ID Leader's Handbook, dated 01 Dec 05
- P. Card 204 - React to a Suicide Bomber, 4ID Leader's Handbook, dated 26 Oct 05
- Q. Iraqi Police Report documents, as of 10 Feb 06. (Translations provided by [REDACTED], 506<sup>TH</sup> RCT, as of 11 Feb 06.)

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SIR

From: B CO 3-67 AR

Thru: 3-67 AR

To: 4<sup>th</sup> ID / Division Operation Center

Subject: SIR

1. Category:

2. Type of incident: EOF

3. DTG: 05 1257 FEB 06

A. DTG of Incident: 05 1145 FEB 06

B. DTG Unit was notified of Incident: 05 1145 FEB 06

C. DTG received by DOC:

4. Location: Baghdad (Baladiat), IRAQ [REDACTED] SUCCESSFUL

5. Personnel involved:

A. Subject:

1. SPC [REDACTED]
2. 413-47-4833
3. Caucasian
4. Male
5. 20
6. Loader
7. None
8. D/3-67AR, 4ID
9. Active Duty
10. Single

B. Subject

1. PFC [REDACTED]
2. 530-39-3899
3. Caucasian
4. Male
5. 20
6. Loader
7. None
8. D/3-67AR, 4ID
9. Active Duty
10. Single

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C. Additional personnel involved: (use same format as 5.A. above): NONE

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D. Summary of incident: 1/D/3-67AR, attached to B/3-67AR, was conducting an area recon of Baladiat and made a short stop to search a parking lot. At 05 1145 FEB 06 B/3-67 AR a LN Volkswagen Passat entered their security perimeter. At 200m hand & arm signals, and verbal commands were used to try and stop the vehicle. At 50-75m 1 x 5.56 warning shot was fired over the vehicle. The vehicle still did not stop and then 2 x 5.56 rounds were fired into the vehicle, 1 round struck the driver in the forehead and 1 shot impacted into the hood of the vehicle. The vehicle was traveling at approximately 15MPH and failed to respond to verbal and visual warnings and a warning shot. BDE Legal taught ROE/EOF to the soldiers of B/3-67AR on 25JAN06. All soldiers involved in this incident were present for the training. ROE/EOF is also briefed in every patrol brief prior to the patrol leaving the FOB.



6. Other Information:

- A. Racial: N/A
- B. Alcohol Involvement: N/A
- C. Last Deployment to OIF/OEF (include start and end dates): N/A

7. Remarks: NONE

- 8. Commander reporting: [REDACTED]
- 9. Point of contact: [REDACTED]
- 10. Report originated by: [REDACTED]
- 11. Released by:
- 12. Unit Notifications:

A. Telephone [REDACTED]

<u>Position</u>	<u>Name</u>	<u>Time</u>	<u>Instructions</u>
Company Commander	[REDACTED]	1215	
Battalion TOC	Battle Captain	1145	

B. Email [REDACTED]

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> O AT 1148 3-67 AR REPORTS EOF AT [REDACTED] INITIAL 5USC552(G)W  
REPORT STATES 1 x LN KIA. RCT XO NOTIFIED OF INCIDENT. RCT  
CDR NOTIFIED OF INCIDENT. MTF.

UPDATE

1158 MND-B BTL NCO ([REDACTED]) NOTIFIED VIA VOIP. MTF.

UPDATE

1218 3-67 AR REPORTS 2/B/3-67 AR HAD ESTABLISHED A SECURITY POSITION DURING THE SEARCH OF A PARKING LOT AT THE INCIDENT SITE. A LN CAR CROSSED THE ENGAGEMENT LINE ESTABLISHED BY THE PLATOON. 1 x ROUNDS WERE FIRED AT THE LN VEHICLE AFTER IT CROSSED THE ENGAGEMENT LINE. THE LN CAR CONTINUED AND WAS ENGAGED A SECOND TIME, KILLING THE LN DRIVER OF THE CAR. THE PLATOON MEDIC RENDERED AID TO THE LN OCCUPANT AND WAS UNABLE TO STABILIZE THE LN. THE LN WAS PRONOUNCED DEAD ON THE SCENE. MTF.

UPDATE

1238 3-67 AR REPORTS THAT THE SECURITY POSITION HAD ESTABLISHED ROAD CONES AS TOP MARKERS. THE LN CAR DROVE PAST THE ROAD CONES. THE UNIT FIRED THE FIRST SERIES OF SHOTS TO THE SIDE OF THE VEHICLE IN AN ATTEMPT TO HALT THE VEHICLE. THE LN VEHICLE CONTINUED TOWARD THE PATROL. THE PATROL ENGAGED A SECOND TIME WITH 1 x ROUND TO DISABLE THE VEHICLE. THE LN VEHICLE CONTINUED DRIVING TOWARD THE PATROL AND THE PATROL ENGAGED THE VEHICLE A THIRD AND FINAL TIME KILLING THE LN OCCUPANT OF THE VEHICLE. MTF.

UPDATE

1250 3-67 AR TOC REPORTS THAT THE PATROL EMPLOYED HAND AND ARM SIGNALS AT 100M. THE PATROL ENGAGED THE LN VEHICLE WITH 3 x ROUNDS (5.56MM) ABOVE THE VEHICLE. THE PATROL ENGAGED THE LN WITH LETHAL FORCE AT 35M WITH 2 x ROUNDS (5.56MM), STRIKING THE LN IN THE FOREHEAD AND ABDOMEN, KILLING THE LN DRIVER.

UPDATE

1548 3-67 AR REPORTS EOF WITH SIR DESCRIBING THE FOLLOWING ACTIONS: AT 200M HAND & ARM SIGNALS, AND VERBAL COMMANDS WERE USED TO TRY AND STOP THE VEHICLE. AT 75-50M 1 X 5.56MM WARNING SHOT WAS FIRED OVER THE VEHICLE. THE VEHICLE STILL DID NOT STOP AND THEN 2 X 5.56MM ROUNDS WERE FIRED INTO THE VEHICLE, INTENDED TO DISABLE THE VEHICLE. ONE ROUND STRUCK THE DRIVER IN THE FOREHEAD (BELIEVED TO BE A RICOCHET) AND 1 SHOT IMPACTED INTO THE HOOD OF THE VEHICLE. THE PLATOON

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EXHIBIT C 1/2

MEDIC RENDERED AID TO THE LN OCCUPANT AND WAS UNABLE TO STABILIZE THE LN. THE LN WAS PRONOUNCED DEAD ON THE SCENE. THE VEHICLE WAS TRAVELING AT APPROXIMATELY 15MPH AND FAILED TO RESPOND TO VERBAL AND VISUAL WARNINGS AND A WARNING SHOT. IRAQI POLICE ALSO WITNESSED THE INCIDENT AND CONFIRMED THE VEHICLE WAS APPROACHING EXCEPTIONALLY FAST. BDE LEGAL TAUGHT ROE/EOF TO THE SOLDIERS OF B/3-67AR ON 25 JAN 06. ALL SOLDIERS INVOLVED IN THIS INCIDENT WERE PRESENT FOR THE TRAINING. ROE/EOF IS ALSO BRIEFED IN EVERY PATROL BRIEF PRIOR TO THE PATROL LEAVING THE FOB.

SUMMARY

1 x EOF  
3 x ROUNDS FIRED (5.56MM)  
1 x LN KIA  
1 x LN VEHICLE DAMAGED

CLOSED OUT

- > O AT 1150 4-320 FA REPORTS IPs HAVE SECURED PIED SITE (GRID UNK). 519 MP BN NOTIFIED AND WILL CONFIRM OR DENY REPORT AND LOCATION. MTF

UPDATE

1202 4-320 FA REPORTS IPs AND IP EOD HAVE SECURED PIED SITE AND CONFIRMED 2 x IEDs (DISMANTLED) AND 1 x IED (COMPLETE). IP EOD IS REQUESTING ASSISTANCE. 519 MP BN NOTIFIED AND WILL CONFIRM GRID IOT ALLOW US FORCES TO SECURE SITE AND DEPLOY US EOD TEAM. MTF.

- > O AT 1310 1-61 CAV REPORTED 2 x LN FILLING UP THEIR BLUE BONGO TRUCK WITH DIESEL FUEL AT [REDACTED]. 2 x AIF RAN UP TO THE VEHICLE AND PLACED TNT INTO THE VEHICLE AND RAN FROM THE VEHICLE. THE BONGO TRUCK EXPLODED RESULTING IN 2 x LN WIA. LN WITNESSES RENDERED AID TO THE WIA LN. A SECOND EXPLOSION RESULTED, 3 x LN WERE KILLED AND ANOTHER LN WAS WIA. A/1-61 CAV IS SECURING THE INCIDENT SITE ICW AN IP PATROL. MTF.

UPDATE

1315 1-61 CAV REPORTS PIED AT EXPLOSION SITE AND ARE REQUESTING EOD SUPPORT. BLUE-12 SUBMITTED.

UPDATE

EXHIBIT C 2/2

**Document was Removed under  
Exemption 5 USC 552(b)(1) or (2) because  
it is either Classified Secret or Top Secret  
and non-degradable to Unclassified**

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**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1993 (SSN).  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately identified.  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION <i>Conference Room 3167 AR TOC</i>	2. DATE (YYYYMMDD) <i>2006 02 06</i>	3. TIME <i>1015</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS <i>1LT</i>	
8. ORGANIZATION OR ADDRESS <i>B Co 3167 AR 4ID</i>			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

1. Describe the events that lead to an escalation of force on 05 FEB 06. Include the following in your statement, if known.
  - a. What was your patrol's mission?
  - b. What caused your patrol to search the parking lot?
  - c. Describe your security perimeter. Include a sketch. Estimate the following, as you remember it:
    - i. Locations of US and IP vehicles.
    - ii. Locations of US and IP personnel.
    - iii. Locations of any warning signs that were posted.
    - iv. Any physical barriers to stop traffic that were used.
  - d. Who first identified the driver of the VW as a threat?
  - e. What did the driver of the VW Passat do that showed hostile intent?
  - f. What graduated responses were used to try to stop the vehicle prior to firing at it? For each graduated response, indicate the following:
    - i. How far away was the vehicle?
    - ii. Who executed the graduated response action?
    - iii. What was the driver's response?
2. Describe the actions were taken after the incident. Include the following, if known:
  - a. What actions were taken to treat the local national after he was shot?
  - b. What damage was done to the vehicle?
  - c. Was a claims-card issued? If not, why not?

*We, 1/D/3-67AR, were conducting an Area Recon of Baladiat to engage the local nationals IOT gain intel about the area on 05 0930 FEB 06. We stopped at approximate grid [REDACTED] at approximately 1130 IOT talk to a success (b)(6) guard of a parking lot. I wanted to find out whether he was carrying a weapon and what the purpose for the parking lot was in the location it was situated. We used our 4 HMMWVs to set up a security perimeter as the diagram indicates:*

10. EXHIBIT <i>E</i>	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF <i>5</i> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF

[REDACTED]

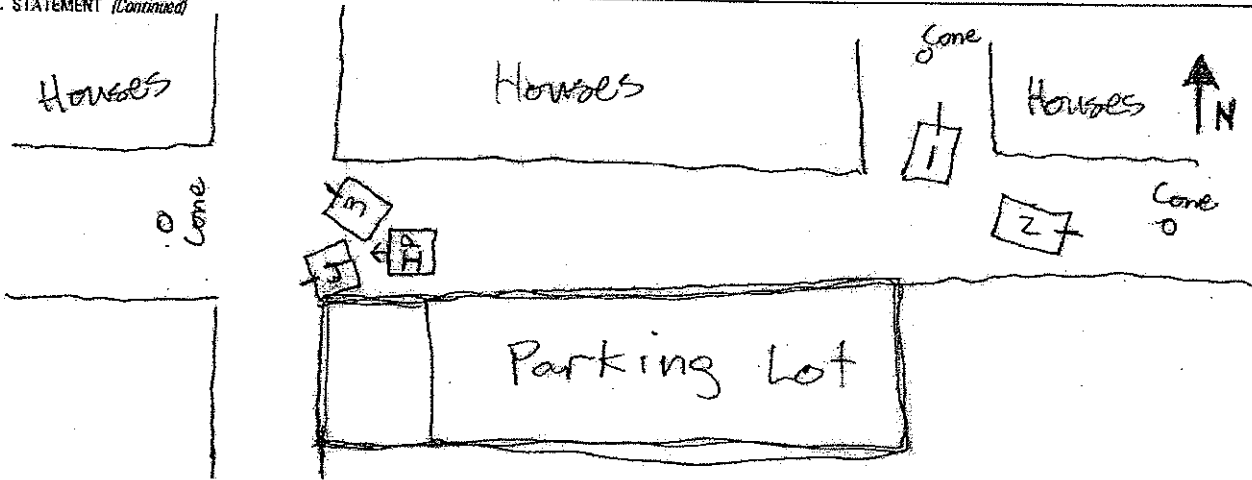
TAKEN AT

3/67 AB TOC

DATED

06 FEB 06

9. STATEMENT (Continued)



I had been talking inside the perimeter for about 10 minutes when I heard a shot fired from the west. There was a slight hesitation and then I heard two more, almost simultaneous, shots fired from the same direction. I sought cover and then immediately started making my way to the 3 and 4 vehicle. I saw a blue car veering off to the right of the 3 vehicle and hit a telephone pole. I saw the driver slumped over and called for the medic. Everyone got behind the HMMWVs until I assessed that the driver was not attempting to use a detonation device.

I went over to the car first and visually searched the vehicle for any signs of explosives, which I did not find. The medic came over and pronounced the driver

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

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PAGE 2 OF 5 PAGES

USAPA 11.03

STATEMENT OF

[REDACTED]

TAKEN AT

3/67 AB TOL

DATED

06 FEB 06

9. STATEMENT (Continued)

dead from a gunshot wound to the forehead. An IP vehicle was driving through our perimeter from East to West almost exactly at the time of the shooting. They were located behind the 3 and 4 HMMWVs when the shots were fired. They said they thought the vehicle was moving exceptionally fast and showed no signs of slowing. They also said they only saw two shots fired, both of which hit the vehicle. However, we found 3-5.56 shell casings on the ground in the vicinity of the two Soldiers who fired. I did not issue a claims card because, after assessing the situation, I felt it was a potential criminal act with hostile intent. As far as I had been briefed we did not hand out claims cards for such behavior, but indicated that our Battalion would make the final decision to the IP who asked me.

One of the shots hit the very bottom of the windshield just above the hood and did not hit the driver. The other shot hit about mid way up the windshield in front of the driver. The driver was very tall almost touching the roof of the car and it hit him in the forehead. Therefore, the shot had an upward trajectory. The size of the hole in his forehead was at least 1 1/2 in. in diameter, making me believe the bullet was already deformed before it hit him. I think it may have ricocheted.

We were briefed on BOE/EOF in late January. All of my Soldiers

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

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PAGE 3 OF 5 PAGES

USARV 100

STATEMENT OF

TAKEN AT

3/67 AB TOC

DATED

06 FEB 06

9. STATEMENT (Continued)

were in attendance. I brief ROE and EDF prior to every mission during my mission brief to include the mission on 05 FEB 06.

Follow up questions

① WHAT PHYSICAL MATERIALS AND SIGNS WERE ON-HAND TO WARN DRIVERS?

② WHAT SIGNS DO YOU ROUTINELY CARRY ON PATROL?

There are signs attached to the rear of every vehicle warning Local Nationals to stay 100m away from the vehicle, written both in English and Arabic. These signs are on all vehicles and are carried on every patrol. They are the only signs we have on patrol. Our cones are the materials we carry on patrol.

Additional Question

③ HOW LONG DID YOU INTEND TO STOP IN THAT AREA?

Our stops vary anywhere from 1 hour to 5 minutes. Two things dictate how long we stop for. The first is the significance of the conversations I am having with the Local Nationals. The second is the threat of the area. We had knowledge of numerous VBIEDs either within our Battalion AO or just outside it, ~~so we decided to make our stops~~ within the previous week. Therefore we decided to make our stops shorter,

INITIALS OF PERSON MAKING STATEMENT

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PAGE 4 OF 5 PAGES

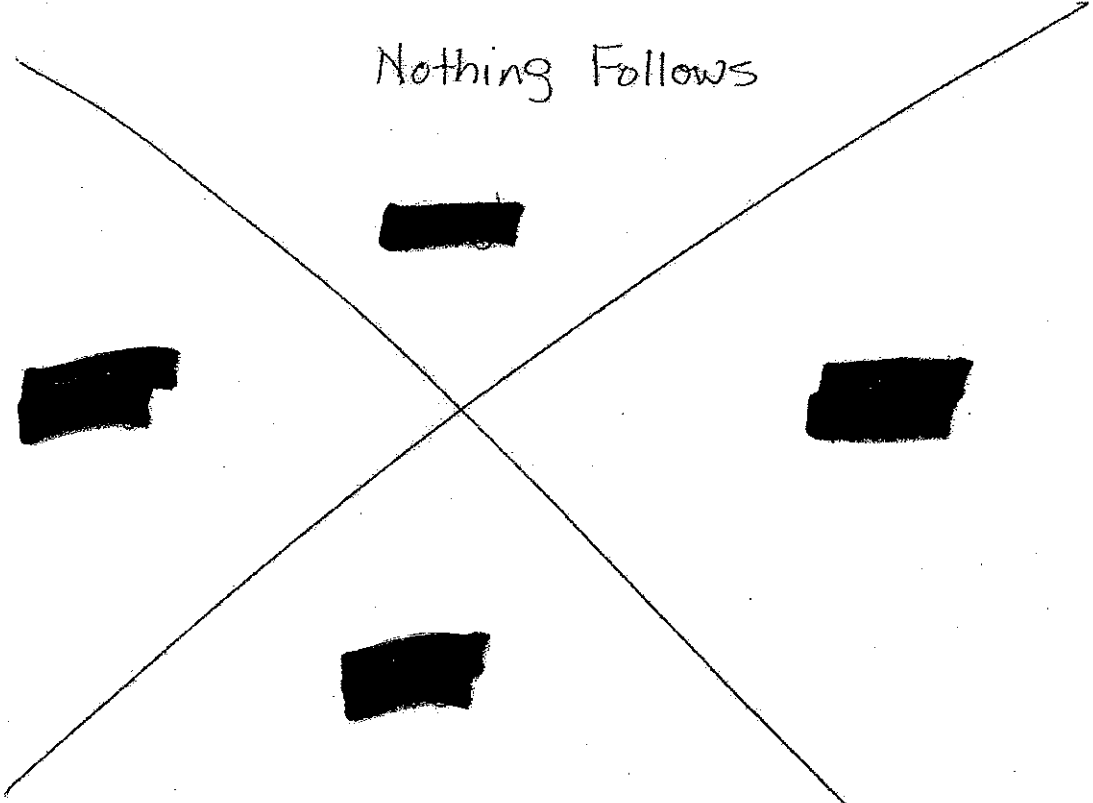


STATEMENT OF [REDACTED] TAKEN AT 3167 AB TOL DATED 06 FEB 06

9. STATEMENT (Continued)

no more than 20 minutes. [REDACTED]

Nothing Follows



**AFFIDAVIT**

[REDACTED] HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]  
(Signature of Person Making Statement)

**WITNESSES:**

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 06 day of FEB, 06 at Conference Room 3167 AB TOL.

[REDACTED]  
B 5167 AB HROCT, HUD  
ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

[REDACTED]  
613-67AA TOL B Av 3 TOL 7AB STAD  
ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 5 OF 5 PAGES

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