



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 506TH REGIMENTAL COMBAT TEAM  
101ST AIRBORNE DIVISION (AIR ASSAULT)  
CAMP LOYALTY, IRAQ APD AE 09396



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.  recommend the investigating officer's findings and recommendations be approved with the following exceptions/substitutions:  
*(See attached page E-5)*

2. Point of contact for this memorandum is [REDACTED] at [REDACTED]

Ex 6

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

EX4

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 (VOIP 673-1104/1020).
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.

COL, IN  
Commanding  
12736

EX4

## REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form see AR 15-6; the document agency is DIA/C.

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

## SECTION I - APPOINTMENT

Appointed by [REDACTED] Commander, 506th Regimental Combat Team  
(Appointing authority) EX4on 05 Feb 06 (Attach inclosure 1, Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)  
(Date)

## SECTION II - SESSIONS

The investigation (board) commenced at FOB Rustamiyah, Baghdad, Iraq at 1000  
(Place) (Time)  
on 06 Feb 06 (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.)

The investigating officer [REDACTED] 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?			
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 problem (other than evidence) relating to administrative aspects of the investigation or board?			X

FOOTNOTES: 1. If 'No' all negative answers on an attached sheet.

2. Use of the NA column constitutes a positive representation that the circumstance described in the question did not occur in this investigation or board.

		YES	NO	N/A <sup>2</sup>
2	<b>Exhibits (para 3-16, AR 15-6)</b>			
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 3-6, 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 3-16a, 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)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
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 enclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
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 enclosure 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, 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 recommends:

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

SECTION V - AUTHENTICATION (Form 17 AF 15-6)

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

(Recorder)

[REDACTED] [REDACTED] [REDACTED]

EX  
10

(Member)

[REDACTED]

(Member)

[REDACTED]

SECTION VI - MINORITY REPORT (Form 17 AF 15-6)

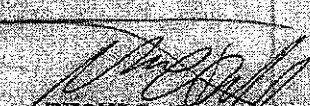
As the minority indicated in the enclosure, the undersigned does not concur in the findings and recommendations of the Board. (In the enclosure, identify by number each finding and/or recommendation in which the dissenting member(s) does not concur. State the cause of disagreement. Additional substantive findings and/or recommendations may be included in the enclosure.)

(Member)

(Member)

SECTION VII - APPROVAL OF REPORTING AUTHORITY (Form 17 AF 15-6)

I approve the findings and recommendations with the exception to the recommendations regarding TCP blocking position equipment, purchasing green laser pointers, condolence payment, and light pole repair. I remand to the BDE CDR to implement actions regarding the above actions as he deems appropriate.

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

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

**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 ██████████ in AO Currahee.<sup>1</sup> With ██████████ 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, ██████████ stopped the patrol to talk with a guard in a parking lot in order to gain information about the guard, the parking lot, and that area of the neighborhood.<sup>4</sup> He intended to stop for no more than 20 minutes, due to recent VBIED activity in ██████████. 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>5</sup> The relative position of the parking lot, HMMWVs, and road cones are shown in Figure 1.



EX 4

<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.

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

### 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> EX 4 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] 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] and [REDACTED] were pulling security.<sup>15</sup> EX 4

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 5.50mm 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 5.50 mm round.<sup>21</sup> EX 4

<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 F.

<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.

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

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

As the car continued towards the security perimeter, [REDACTED] and [REDACTED] sought cover behind their M1114 Un-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> EX 4

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>

[REDACTED] continued to maintain security behind the cover of the M1114s. [REDACTED] arrived from the parking lot, observed the driver slumped over in the vehicle, and called for a medic, [REDACTED].<sup>28</sup> After assessing that the driver was not attempting to use a detonation device, [REDACTED] approached the car and conducted a visual search for explosives, with negative results.<sup>29</sup> EX 4

The medic, [REDACTED], 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> [REDACTED] 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> EX 6

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.

[REDACTED] and [REDACTED] resumed pulling security while [REDACTED] initiated an investigation with the Iraqi Police. [REDACTED] 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 [REDACTED] 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> EX 4

<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.

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

Of note, all Soldiers in 1/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 Rastamiyah.<sup>36</sup>

The Iraqi Police investigator, [REDACTED], has since identified the driver of [REDACTED] 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, [REDACTED].  
[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>:

- [REDACTED]  
[REDACTED] EX 1
- (a) (U) Shout verbal warnings to halt;
  - (b) (U) Show your weapon and demonstrate intent to use it;
  - (c) (U) Physically restrain, block access, or detain;
  - (d) (U) Fire a warning shot;
  - (e) (U) Shoot to eliminate the threat."

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> The shouted verbal warnings, showed visual warnings, showed hand and arm gestures, showed intent to use their weapons, fired a warning shot, and eventually fired two shots to disable the vehicle which resulted in the death of the local national.

<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 5B).

<sup>39</sup> Exhibit Q (Page 1B).

<sup>40</sup> Exhibit L, M.

<sup>41</sup> Exhibit N.