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Guidance for Operation Iraqi Freedom
(OIF) 05-07 issued by the 4th Infantry
Division G2**



101ST AIRBORNE DIVISION (AASLT)
ROUTING SHEET



SUBJECT: *06-147 / EOF - Death of LN* DATE ACTION INITIATED: *18 APR 06*

ORIGINATOR / ACTION OFFICER: **STRIKE LEGAL** OFFICE SYMBOL: **AFZB-KB-JA** TELEPHONE: **242-4342** SUSPENSE:

| ROUTING | | | |
|-------------------|----------|----------|------------------|
| OFFICE | COMMENTS | INITIALS | DATE |
| BRIGADE S1 | | | |
| BRIGADE S2 | | | |
| BRIGADE S3 | | | |
| BRIGADE S4 | | | |
| BRIGADE S6 (SICO) | | | |
| BRIGADE CHAPLAIN | | | |
| BRIGADE SURGEON | | | |
| BRIGADE SJA | | | <i>25 APR 06</i> |
| BRIGADE CSM | | | |
| BRIGADE XO | | | <i>27 APR 06</i> |
| DEPUTY COMMANDER | | | |
| BRIGADE COMMANDER | | | <i>Sa Am 06</i> |

IMPACT
 PERSONNEL FUNDS TIME TRAINING SUPPLIES OTHER

SUMMARY
- Unit followed proper EOF per corp/101st/ASLT guidance
- Waving of a light at night could be misconstrued to mean "Come on ground"
- Maintain/increase IO message to Frags on rules when they're around U.S. forces

20 BCT, 101st Airborne Division (AASLT)

ALL ITEMS ARE REOACTED
 UNDER 5 USC (B) (6)
 UNLESS OTHERWISE NOTED



REPLY TO
ATTENTION OF

AFZB-KB-CDR

MEMORANDUM THRU Staff Judge Advocate, MND-B, Camp Liberty, Iraq

FOR Commander, MND-B, Camp Liberty, Iraq

SUBJECT: Approval and Ratification of AR 15-6 Investigation #06-147, Escalation of Force Resulting in Death of Local National Findings and Recommendations

1. The undersigned has reviewed thoroughly the aforementioned investigation conducted by Second Lieutenant Andrew Martin and approved by Lieutenant Colonel Thomas G. Kunk. I ratify and approve the findings and recommendations enclosed.

2. Commander's Comments:

| |
|--|
| TRAFFIC CONES WITH CHEMICAL SUITCASES - MUST BE USED |
| IN NIGHT OPS - VEH IS PUT EARLY WARNING ON FILTER |
| IN AWARE FORN IF DUNG FROM HAZZ. BLUF: EXTENDING TO |
| DEATH OF EOP TRUCKS - STRIKE |
| GOA REPORT - NO VISA |

3. POC for this memorandum is the undersigned.



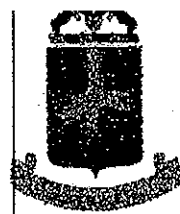
Commanding

5 USC 552 (b)(6)



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1-502D INFANTRY REGIMENT
101ST AIRBORNE DIVISION (AIR ASSAULT)
Mahmudiyah North, Iraq APO AE 09398
ALL ITEMS ARE REDACTED
UNDER 5USC(B)(6)
UNLESS OTHERWISE NOTED



AFZB-KB-CDR

18 April 2006

MEMORANDUM FOR [REDACTED] Co, TF 1-502D Infantry Regiment, 2d Brigade
Combat Team, 101st Airborne Division (Air Assault), FOB Lutfiyah North, Iraq APO AE 09398

SUBJECT: Appointment as an Investigating Officer to investigate EOF in A Co, 1-502D IN.

1. You are hereby appointed an investigating officer, pursuant to AR 15-6, to investigate EOF resulting in a death to an LN in A Co, 1st Battalion, 502d Infantry Regiment on or about 16 April 06. The scope of your investigation will include:

- a. The exact time and place of the incident.
- b. How exactly the incident occurred to include the events leading up to and concurrent with the incident.
- c. The soldiers' mission at the time of the incident.
- d. The existence, training and type of risk assessment and safety measures taken prior to the incident.
- e. Additionally, if negligence is found, analyze what steps could be taken in the future to avoid it.

2. As an investigating officer, you will use formal procedures under AR 15-6. There are no designated respondents. Respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.

3. [REDACTED] 2 BCT Command Judge Advocate [REDACTED] will serve as your legal advisor. The 1-502D BN S1 will provide necessary administrative support. The 101st AA Criminal Investigation Division Command (CIDC) will provide technical support, including preserving physical evidence, if needed.

4. Prepare the report of proceedings on DA Form 1574 and submit it to me within 24 hours.

FOR COMMANDER:

[REDACTED SIGNATURE]

Adjutant

SECTION I - APPOINTMENT

Appointed by  1-502D BN COMMANDER, APO AF, 09398 5 USC 552 (b) (6)
 (Appointing authority)

on 18 APRIL 2006 (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) _____ at _____ (Place) _____ (Time)
 on _____ (Date) (If a formal board met for more than one session. . 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 6-3a AR)

The (investigating officer) (board) finished gathering/hearing _____ (Time) on _____ (Date)
 and completed findings and _____ (Time) on _____ (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A COMPLETE IN ALL CASES

| | YES | NO | NA |
|--|-----|----|----|
| 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 (Authenticate 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.

| Exhibits (para 3-16, AR 15-6) | | YES | NO | OTHER |
|--|---|-----|----|-------|
| 1 | Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report? | X | | |
| 2 | Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit? | X | | |
| 3 | Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit? | X | | |
| 4 | Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated? | X | | |
| 5 | Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-9b, AR 15-6)? | X | | |
| 6 | 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 | | |
| 7 | 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 | | |
| 8 | 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 inclosure 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 5-6, 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.) | | | |
| 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

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

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

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.)

ALL ITEMS ARE REDACTED
UNDER 5USC(B)(6)
UNLESS OTHERWISE NOTED



(Recorder)

(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

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

To the extent indicated in _____, 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 etc

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 3-3, 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.)

- Concur with findings and recommendations
- This does underscore the need to maintain SA and understand urban terrain; the IA TCP could have been part of the security halt.
- Hand held flares are coming out of the cab and going into the turrets, day and night

I approve the Findings and Recommendations and remand to the BDE CDR for action as he deems appropriate.

THOMAS C. MATLEY
Brigadier General, US Army
Assistant Division Commander (Maneuver)



CHRONOLOGY OF EVENTS

17APR06

- 2030- [REDACTED] reinforces proper EOF procedures to [REDACTED]
- 2040- [REDACTED] gives patrol brief.
- 2052- Patrol SP's FOB Mahmudiyah traveling south on Route [REDACTED] to [REDACTED] to S USC 552 (S)(1)
conduct barrier emplacement.
- 2105- Patrol stops on Route [REDACTED] vic [REDACTED] near the IAC. S USC 552 (S)(1)
- 2105- Gun truck passengers dismount to provide security.
- 2114- Van stops at IA checkpoint approx. 125m north of trail vehicle.
- 2115- [REDACTED] shines spot light towards van.
- 2115- Vehicle starts movement towards patrol.
- 2115- [REDACTED] waves light and shouts at vehicle to stop.
- 2115- Vehicle increases speed and reduces distance to 75m.
- 2115- [REDACTED] fires 1x warning shot over vehicle.
- 2115- Vehicle does not acknowledge and reduces distance to 50m.
- 2115- [REDACTED] instructs his gunner to fire to disable the vehicle.
- 2115- [REDACTED] fires 5x 4rd bursts into the vehicle, [REDACTED]
[REDACTED] each fire 10 rds.
- 2115- Vehicle stops approx. 25m away and cease fire is given.
- 2116- [REDACTED] approaches vehicle.
- 2116- Assess 1x LN Male KIA, 1x LN Male WIA and 1x LN Female WIA.
- 2116- Wounded personnel helped out of vehicle.
- 2116- MiTT medic assesses injured passengers.
- 2120- IA ambulance arrives to transport victims.
- 2120- Claims card issued to woman.
- 2130- All LN's taken to hospital and van taken to IAC.
- 2157- Patrol continues mission.

18 April 2006

MEMORANDUM FOR RECORD

SUBJECT: Findings and Recommendations for Investigation (EOF)

1. At approximately 17 2115 APR 06 [REDACTED] and [REDACTED], A/1-502 IN, were involved in an escalation of force (EOF) incident, [REDACTED] while providing patrol security. SUSC 552 (b)(1)
2. Summary of the Facts:
 - a. A/1-502IN, including [REDACTED] and [REDACTED], received ROE Training on 04APR06.
 - b. [REDACTED] ensured that [REDACTED] was aware of all ROE related procedures by giving him a brief prior to movement reinforcing prior ROE TNG. (Exhibit [REDACTED])
 - c. The patrol leader, [REDACTED] gave a convoy brief prior to movement covering the mission, Rate of March, medic location, MEDEVAC procedures and actions on contact. He was confident that all soldiers understood ROE/EOF. (Exhibit [REDACTED])
 - d. The patrol reached the IAC and conducted a security halt along Route [REDACTED] while MiTT personnel entered the IAC. (Exhibit 1LT Shelton) SUSC 552 (b)(1)
 - e. The rear vehicle noticed a van stop at the IA TCP north of the patrol position and [REDACTED] shined a white light to keep the van halted. (Exhibit [REDACTED])
 - f. The van initiated movement south along Route [REDACTED] towards the patrol and did not respond to the light. (Exhibit [REDACTED]) SUSC 552 (b)(1)
 - g. [REDACTED] waved his light and shouted for the vehicle to stop, but noticed no response. The vehicle increased its speed and continued traveling towards the patrol closing to within 75 meters. (Exhibit [REDACTED])
 - h. [REDACTED] continued to the next step in EOF and fired 1x warning shot, which was a tracer round, above the approaching vehicle. The vehicle still did not slow its progress or otherwise acknowledge. (Exhibit [REDACTED])
 - i. When the vehicle came within 50 meters, [REDACTED] gave the order to fire disabling shots. The M240B gunner, [REDACTED], fired approximately 20 rounds of 7.62mm and the two dismounted soldiers,

[REDACTED] and [REDACTED], each fired 10 rounds of 5.56mm at the approaching vehicle. (Exhibit [REDACTED])

j. [REDACTED] gave the command to cease fire as the van turned to the west and halted approximately 25 meters north of the patrol. (Exhibit [REDACTED])

k. [REDACTED] and [REDACTED] remained in the same location providing security while [REDACTED] approached the vehicle. (Exhibit [REDACTED])

l. [REDACTED] assessed 1x LN male KIA (the driver), 1x LN male WIA (rear passenger) and 1x LN female WIA (front passenger). He requested the MiTT medic and helped the female passenger out of the vehicle. (Exhibit [REDACTED])

m. IA personnel arrived on scene with an ambulance to transport all LN's to the hospital. Before leaving, [REDACTED] gave the LN female a claims card. [REDACTED] took pictures of the vehicle and told [REDACTED] what had occurred. [REDACTED]

n. The IA then drove the LN's away and took the van into the IA compound. (Exhibit [REDACTED])

o. After the incident was complete, the patrol gathered all personnel and continued mission.

3. Findings: After carefully considering the evidence, I find that:

a. A/I-502 IN followed appropriate EOF procedures according to 1-502 IN SOP. Due to the proximity of the vehicle when escalation began, the personnel did all that was required before resulting to the use of deadly force. All vehicles were marked with reflective tape on front and rear windows to aid in night time recognition. Each vehicle had chemlights and 1x star cluster in an ammo can next to the radio. This equipment was not used due to the short amount of reaction time when the escalation of force began. Additional related equipment that is currently on order: 1x laser pointer per vehicle, 1x bullhorn per vehicle and 1x pressurized air horn per vehicle. The patrol did not use the following: M203 non-lethal rounds since there was not 203 gunner present, traffic cones and colored flags since the incident occurred at night and the security halt was brief.

b. [REDACTED] attempted to stop the approaching vehicle by waving a white spot light, shouting and firing a warning shot (tracer) before using deadly force.

c. Point of aim and shot placement: From the pictures it is apparent that out of approximately forty rounds, five struck the windshield, two struck the hood and unknown number struck the side windows. All

personnel were aiming at the engine block to disable. In doing so, the rounds that are unaccounted for were most likely high/low misses and side windows hits when the vehicle turned. The inconsistency in shot placement can be attributed to night time shooting with and without NODs, a moving target and recoil due to burst firing.

- d. The personnel involved had conducted the same mission on a previous night without incident and had no reason to believe an EOF incident was probable.
- e. Given the situation and VBIED attack in sector two days prior, the involved personnel acted properly in order to protect themselves and other fellow soldiers.

4. Recommendations: In view of the above findings, I recommend:

- a. No action be taken on [REDACTED] or [REDACTED]
- b. If time permits, fire warning shots with a crew served weapon to provide a louder report.
- c. When halted at night along ASRs establish security at a greater distance from the convoy utilizing any existing obstacles (IA TCP) and employ more easily recognizable signals for vehicles to acknowledge i.e. Red flashing hazard lights, multiple white lights in both directions, traffic cones with chemlights attached.
- d. Place star cluster and/or chemlights in gunners hatch to facilitate easy access and quick reaction.
- e. When on order equipment arrives, ensure that soldiers are briefed on all items and they are implemented into EOF procedures.

ALL ITEMS ARE REDACTED
UNDER 5USC(B)(6)
UNLESS OTHERWISE NOTED

- EXHIBIT A. Storyboard
- EXHIBIT B. Photos
- EXHIBIT C. [REDACTED] Sworn Statement
- EXHIBIT D. [REDACTED] Sworn Statement
- EXHIBIT E. [REDACTED] Sworn Statement
- EXHIBIT F. [REDACTED] Sworn Statement
- EXHIBIT G. [REDACTED] Sworn Statement
- EXHIBIT H. [REDACTED] Sworn Statement
- EXHIBIT I. [REDACTED] Sworn Statement
- EXHIBIT J. DA Form 1594
- EXHIBIT K. SIR
- EXHIBIT L. DA Form 1594
- EXHIBIT M. Email from [REDACTED] Dated 18 April 2006
- EXHIBIT N. Change to 2-101 EOF Procedures

Exhibit A

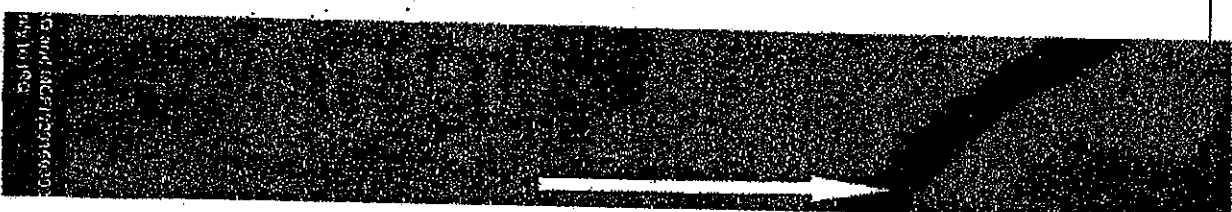
STORYBOARD

17 APR 06 Escalation of Force
Incident Along Route



5 USC 552 (b) (7)

144A



2025 RELEASE UNDER E.O. 14176

**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**

FINDINGS

- No evidence of neglect or willful misconduct.
- Proper use of escalation of force procedures.
- Soldiers received ROE Training on 04 APR 06 and were briefed prior to movement.
- Given the situation, all personnel acted properly in order to protect friendly forces.