



REPLY TO  
ATTENTION OF

HEADQUARTERS  
MULTI-NATIONAL CORPS - IRAQ  
BAGHDAD, IRAQ  
APO AE 09342

FICI-JA-AL

07 February 2007

MEMORANDUM FOR Commander, MNC-I, APO AE 09342

SUBJECT: Legal Review of AR 15-6 Investigation-20 November 2006 Escalation of Force Incident.

1. I have reviewed the Report of Investigation concerning the facts and circumstances surrounding the EOF incident that occurred on 20 November 2006, which resulted in the death of a local national.
2. I find that the report is legally sufficient subject to the following comments:
  - a. The findings of the Investigating Officer are supported by a greater weight of evidence than supports a contrary conclusion.
  - b. The actions taken during this investigation comply with the applicable legal and procedural requirements of AR 15-6, and are responsive to the directives in the appointment memorandum, with the following exception: The Investigating Officer failed to have all persons involved complete a privacy act statement as directed in the appointment memorandum dated 24 November 2006.
  - c. The failure of the IO to follow the privacy act directive, however, is harmless error and there were no material errors present that would affect the findings and recommendations.
  - d. The recommendations are supported by the facts and are consistent with the findings.
3. Recommendation: Approve the findings and recommendations of the Investigating Officer and forward to MNC-I Commander for approval.
4. The POC for this action is 1LT [redacted] at [redacted] [@iraq.centcom.smil.mil](mailto:[redacted]@iraq.centcom.smil.mil) or VOIP [redacted]

FOR THE STAFF JUDGE ADVOCATE:

[redacted]  
(b)(3), (b)(6)

1LT, JA  
Operational Law Attorney

006551

# Index of Exhibits

## 15-6: EOF Incident, 20 Nov 2006

A- Appointment orders

B- MAJ (b)(3), (b)(6) sworn statement

C- MAJ (b)(3), (b)(6) interview

D- MSG (b)(3), (b)(6) interview

E- SFC (b)(3), (b)(6) interview

F- SSG (b)(3), (b)(6) interview

G- Graphic, EOF sequence of events

H- Imagery, EOF incident location

UNCLASSIFIED (~~FOUO~~)

006552

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

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

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

**SECTION I - APPOINTMENT**

Appointed by \_\_\_\_\_  
(Appointing authority)

on \_\_\_\_\_ (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 Area 4, ISOF Brigade at 1515  
(Place) (Time)

on 28 November 2006 (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.)

The (investigating officer) (board) finished gathering/hearing evidence at 1700 on 30 Nov 2006  
(Time) (Date)

and completed findings and recommendations at 2300 on 02 Dec 2006  
(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 NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?

	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)?			X
<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			
<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: <sup>1)</sup> Explain all negative answers on an attached sheet.			
<sup>2)</sup> 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:

that given training, experience of those involved, and the environment, I have no expectation of response other than what occurred; that SFC (b)(3), (b)(6) followed proper EOF signalling and engagement procedures; that SSG (b)(3), (b)(6) followed proper EOF engagement procedures; that MAJ (b)(3), (b)(6) was justified in departing the scene without rendering aid or gathering incident information or evidence, due to lack of firefighting/aid equipment and the potential of u/i civilians on scene escalating hostilities.

On 20 November 2006, between the hours of 0300-0400, SSG (b)(3), (b)(6) did engage and disable an approaching speeding vehicle with unknown intent. Gunner (b)(3), (b)(6) observed SAF on his position at the vehicle 12 and 3 o'clock positions shortly before approaching vehicle was identified. Based on interviewees marking points (encl H) on image of engagement area, SFC (b)(3), (b)(6) signaled using an extra large surefire the approaching vehicle traveling 25-30 km/h at (b)(2)High this distance is further than the 50m verbal estimation by each, and less than 200m MNC-I standard, due to u/i obscuring items on the street divider. The surefire was bright enough it caught the attention of GFC MAJ (b)(3), (b)(6) who was in the engagement vehicle monitor maps and radios, and of the gunner. The gunner called out "firing shots" and put (b)(2)High notes in the pavement in front of the vehicle 55-74m away. The approaching vehicle responded by speeding up toward the intersection, and the gunner walked in his fire in front of the vehicle into the engine compartment and then into the passenger compartment; SFC (b)(3), (b)(6) a collocated SOF vehicle gunner with an M240, and an u/i dismount all engage the speeding vehicle (encl G). The vehicle rolled to a stop 25-42 meters away; GFC believes the driver was dead when the vehicle stopped; he also observed a large puddle of liquid under and surrounding the vehicle, and the vehicle burst into flames. An unidentified number of civilians rushed to the vehicle to render assistance, while others stood around in dark obscured areas with u/i items in their hands. The GFC made the decision to move to a safer position; his vehicle did not have firefighting equipment, he was conducting a night time combat operation in a non permissive environment, and the civilians on scene could initiate hostilities if his team tried to assist or gather evidence of the incident.

SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) are extremely confident of their actions, and would act accordingly in the future.

Additionally:

1. 0% illumination on 20 Nov 2006 between 0300 and 0400; GFC vehicle was in an area greater lit than surrounding area, meaning an approaching vehicle would have a better view of the GFC vehicle than vice versa; also difficult to observe if civilians on sidewalk were armed while the GFC was a clear target.
2. The only discrepancy in the three interviews was where first round landed; it is probable that MAJ (b)(3), (b)(6) and SFC (b)(3), (b)(6) witnessed incoming SAF from their 3 o'clock, rather than the gunner firing over the vehicle with his first shots. This discrepancy does not contradict the overall corroboration of the EOF incident
3. MNCI FRAGO 280 requires use of laser to signal; large surefire use significantly increased signalling effectiveness
4. Mitigating factors include night mission in SADR CITY, unknown motives of civilians present at the scene, previous SAF received in moments before vehicle appeared, and previous incident when an SVBIED was engaged late and vehicle rolled to within a few meters of friendly vehicle
5. gunner had excellent SA of the friendly force locations and the threat a potentially hostile vehicle posed, and quick actions saved lives if vehicle had hostile intent
6. Even with obscured view, SFC Baracio acted within timing/distance guidance established by MNCI (encl)
7. Two other gunners of vehicles on the mission that night who signaled and fired warning shots at approaching vehicles performed EOF actions consistent with those in the GFC vehicle; in all other incidents the vehicles stopped their approach after viewing the warning shots

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

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

It is clear from the evidence that SSG (b)(3), (b)(6) and SFC (b)(3), (b)(6) acted responsibly, appropriately and in accordance with MNC-I established ROE and EOF guidance, and consistent with actions other performed during the same mission. Since I was able to develop a clear understanding of the actions that occurred and the sequence of those actions, no further action is necessary.

I recommend no adverse actions or UCMJ be taken against MAJ (b)(3), (b)(6) SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) SSG (b)(3), (b)(6) quick response may have spared Coalition and Iraqi casualties.

I have no recommendations for changes in ROE/EOF training, since all interviewees had a clear understanding of and properly applied the fundamentals of ROE and EOF.

**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.)

\_\_\_\_\_  
(Recorder)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

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

\_\_\_\_\_  
(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.)

\_\_\_\_\_



DEPARTMENT OF DEFENSE  
Combined Joint Special Operations Task Force – Arabian Peninsula  
APO AE 09391

REPLY TO  
ATTENTION OF:

CJSOTF-AP-CO

3 December 2006

MEMORANDUM FOR Commander, Multi-National Corps – Iraq, Baghdad, Iraq APO AE  
09342

SUBJECT: AR 15-6 Investigation into 20 November 2006 Escalation of Force Incident

1. I have reviewed the findings and recommendations of the Investigating Officer, and I concur with both. I am forwarding the subject investigation to you as the approving authority for your consideration and action.

2. Point-of-contact is MAJ (b)(3), (b)(6) CJSOTF-AP SJA, at DSN (b)(2)

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

COL, SF  
Commanding

006557

Page 8 redacted for the following reason:

-----  
b (5), (b)(3), (b)(6)

CJSOTF-AP-SJA

December  
3 November 2006

MEMORANDUM FOR Commander, CJSOTF-AP, APO AE 09391

SUBJECT: Legal Review of AR 15-6 Investigation—20 November 2006 Escalation of Force Incident

1. I have reviewed the completed report of investigation and conclude that it is legally sufficient, specifically:

a. The inquiry complies with legal requirements and is responsive to the directives in the appointment memorandum.

b. There are no errors or defects which may have a material adverse effect on an individual's substantial rights.

c. Sufficient evidence exists to support the findings of the inquiry.

d. The recommendations are consistent with the findings.

2. As this investigation involves an escalation of force incident, which most likely resulted in a local national death, the report of investigation must be forwarded to the Commander, MNC-I for review and approval. The investigating officer did not comply with the directive to have each person interviewed complete a Privacy Act statement; however, this error does not alter the validity of the findings and recommendations.

3. POC is the undersigned at DSN (b)(2)

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

MAJ, JA  
Staff Judge Advocate

006559

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REPLY TO  
ATTENTION OF

**HEADQUARTERS**  
MULTI-NATIONAL CORPS-IRAQ  
BAGHDAD, IRAQ  
APO AE 09342

NOV 24 2006

FICI-JA-AL

MEMORANDUM FOR MAJ [REDACTED] (b)(3), (b)(6) CJSOTF-AP

SUBJECT: Appointment of AR 15-6 Investigating Officer

1. You are appointed as an investigating officer to conduct an informal investigation IAW AR 15-6 into all of the facts and circumstances surrounding a 20 November 2006 Escalation of Force incident, in which at least one local national was possibly killed. In addition to the general facts and circumstances, your investigation will specifically address the following issues:
  - a. Whether the unit used proper EOF measures and followed its ROE and TTPs.
  - b. Were the EOF measures, ROE, and unit TTPs sufficient? Identify any deficiencies in the execution of the TTPs, or in the TTPs themselves.
  - c. Whether the military vehicles were clearly marked.
  - d. When did the unit last receive EOF training? If possible, provide a copy of the training slides as an enclosure with your investigation.
  - e. What measures, if any, could have prevented this incident?
2. Your duties as an investigating officer will take priority over other duties. You will use the informal investigation procedures detailed in AR 15-6, paragraph 4-1 *et seq.* You will make specific findings of fact that are supported directly by the documented evidence or reasonably based upon circumstantial evidence. Based upon all factual findings and conclusions, you will make recommendations on all relevant issues you identify in the course of your investigation.
3. If during your investigation you suspect the person you intend to interview may have violated any provision of the Uniform Code of Military Justice (UCMJ) or any other criminal law, you must advise them of their rights under Article 31, UCMJ. Rights warnings and waivers will be documented on DA Form 3881. If during an interview, you begin to suspect criminal conduct on the part of a witness, you must stop the interview and advise the individual of his rights under Article 31, UCMJ.

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P. 1 of 2 EXHIBIT A

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FICI-JA-AL

SUBJECT: Appointment of AR 15-6 Investigating Officer

4. Whenever possible, witness statements will be sworn and recorded on DA Form 2823. All persons will complete a Privacy Act statement. If you conduct any witness interviews telephonically, you will prepare a memorandum of record memorializing the interview. You will use DA Form 1574 to prepare your report. Include with your report documentary evidence, sworn statements, and other information or evidence you considered as a basis for your findings and recommendations. Submit the original report to the CJSOTF-AP OSJA no later than 14 days after your receipt of this memorandum. Any requests for extension must be in writing.

5. Before proceeding with the investigation, and as necessary during the course of the investigation, you will coordinate with the CJSOTF-AP SJA at DSN (b)(2)

FOR THE COMMANDER:



DONALD M. CAMPBELL, JR.  
Brigadier General, USA  
Chief of Staff

2 of 2 EXHIBIT A

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (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: Radwanayah Palace Complex, Baghdad, Iraq
2. DATE (YYYYMMDD): 2006-11-27
3. TIME: 2100
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: (b)(3), (b)(6)
6. SSN: (b)(3), (b)(6)
7. GRADE/STATUS: MAJ

8. ORGANIZATION OR ADDRESS: FOB CENTRAL BAGHDAD, IRAQ

9. I, (b)(3), (b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I was the GFC during Operation Mary Lou on 20 NOV 06. I ensured that all personnel on the operation clearly understood escalation of force and force protection measures during the mission preparation phase of the operation. This preparation was borne out because on five different occasions the cordon positions were approached by vehicles that prompted escalation of force measures and in four of the five occasions the vehicles retreated without having to be engaged by deadly force. The occasions that deadly force was used is detailed below.
During the operation, we set up an outer and inner cordon. The southwest outer cordon position was approached by a vehicle moving at a medium rate of speed as the assault force was moving to assault the objective. Members of the outer cordon initiated escalation of force procedures by signaling with a flash light. The driver did not respond to the signal. The vehicle continued to approach the outer cordon. The firing of warning shots was initiated. The vehicle picked up speed towards the cordon. The vehicle constituted a threat and was engaged with disabling fire. The vehicle finally stopped approximately (b)(2)High from the outer cordon and burst into flames. (See attachment) The tactical situation did not allow for further investigation. Also, the CF did not have equipment to fight the fire or to attempt to remove any occupants from the vehicle. The outer cordon continued with its mission until mission completion and exfil.

Large diagonal watermark text: NOTHING (bottom left) and Follows (center). A box containing (b)(3), (b)(6) is located in the upper right quadrant of this section.

10. EXHIBIT:
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3), (b)(6)
PAGE 1 OF 2 PAGES

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 BE INDICATED.

STATEMENT OF (b)(3), (b)(6) TAKEN AT RPC DATED 2006/11/27

9. STATEMENT (Continued)

*No THING*  
*FOLLOWS*

(b)(3), (b)(6) AFFIDAVIT  
 I, (b)(3), (b)(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. 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.

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

WITNESSES:  
(b)(3), (b)(6)  
CPT. USA  
HHD/12/5 SFG(A)

(b)(3), (b)(6)  
SFC, USA  
HHD/12/5 SFG(A)  
 ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
 (Signature of Person Administering Oath)

\_\_\_\_\_  
 (Typed Name of Person Administering Oath)

\_\_\_\_\_  
 (Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT PAGE 2 OF 2 PAGES

p. 2 of 2 ENCL 13 006563

01 December 2006

MEMORANDUM FOR RECORD

SUBJECT: Conversation with MAJ (b)(3), (b)(6) Ground Forces Commander, 28 Nov 2006, 1515, Area 4

1. I gathered the following information from my interview with MAJ (3), (b)

- a. MAJ (3), (b) GFC, estimated time of event was 0400; had a good view of the incident; SFC (b)(3), (b)(6) signaled, then the gunner fired 4-6 rounds with the (b)(2)High saw 1<sup>st</sup> (b)(2)High go over the vehicle, 2<sup>nd</sup> in front, next into the trunk, and when didn't stop, the gunner engaged the front of the vehicle. The vehicle stopped, 25-35m from GFC vehicle, then was engulfed in flames; believes driver was dead when vehicle stopped and before burst into flames; large pool of liquid visible under and around vehicle.
- b. The area with GFC vehicle was more lit than surrounding areas; the surefire was bright enough to catch attention of the GFC, whose attention was on the radios and map; estimates the surefire can be seen at least 1x city block away. He has used a hellfire light in the past; all vehicle don't have; GFC vehicle did not.
- c. Two other EOF incidents that occurred that night were without incident. There have not been any direct firing on a vehicle during a mission since he has been commander a/o 15 Oct 2006; only warning shots.
- d. Soldiers receive ROE/EOF training during in processing from BN SJA; EOF/ROE briefed at every OPORD.
- e. He could not capture evidence of incident because of decision to move position due to gathering of civilians with unknown intent or armament; did not have equipment to assist to put out fire.

2. I did not take a sworn statement from MAJ (3), (b)

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

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

LTC, FA  
Investigating Officer

01 December 2006

MEMORANDUM FOR RECORD

**SUBJECT: Conversation by phone with MSG (b)(3), (b)(6) Team Sergeant 543 (A Co 2-5) Area 4**

1. I gathered the following information from my phone interview with MSG (b)(3), (b)(6) who responded to EOF incidents during the same mission.

- a. MSG (b)(3), (b)(6) was in a vehicle positioned due south and line of sight with the GFC vehicle.
- b. During the mission, 2x vehicles approached his position; each time the Hellfire (much brighter than a surefire) was used, and flashed repeatedly; u/i vehicles, approximately 200m away, did not stop each time and continued to approach his position; (b)(2)High rounds were fired in front of the approaching vehicles; drivers in each instance changed course away from his vehicle
- c. When asked to describe how he would conduct an EOF, he described if signaling failed, then fire 6-8 M240 rounds down and low.

2. His description of his actions is consistent with those of SSG (b)(3), (b)(6)

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

LTC, FA  
Investigating Officer

01 December 2006

MEMORANDUM FOR RECORD

**SUBJECT: Conversation with SFC (b)(3), (b)(6) positioned with GFC vehicle**

- 1. I gathered the following information from my interview with SFC (b)(3), (b)(6)
  - a. Upon seeing vehicle about 50m away (vision obscured by foliage in divider) flashed the Surefire; heard two shots, and then his gunner fired when the vehicle was about 25-30 m away; car then sped up and ~2 seconds later the gunner engaged the vehicle.
  - b. He observed 1<sup>st</sup> shot above the vehicle, then in front walking towards the vehicle; he fired about 5 shots after the (b)(2)High warning shot failed to stop vehicle; after the (b)(2)High walked in to the vehicle, dismounts and ISOF (vehicle east of GFC, using M240) all engaged the vehicle.
  - c. ROE was briefed at OPORD; he personally briefed it to his team; he described EOF procedures as "warning shot," then "near," "at," and "on." He relied on his understanding of the ROE in addition to his experience, and would do the same if again in a similar situation.

2. I did not take a sworn statement from SFC (b)(3), (b)(6)

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

LTC, FA  
Investigating Officer

01 December 2006

MEMORANDUM FOR RECORD

SUBJECT: Conversation with SSG [redacted] (b)(3), (b)(6); Tm 556, B 2-5, positioned with GFC vehicle

1. I gathered the following information from my interview with SSG [redacted] (b)(3), (b)(6)
  - a. He believed incident occurred about 0300. He received SAF from his vehicle's 3 and 12 o'clock position right before the u/I vehicle approached; after the vehicle eventually stopped, he received heavy stream of SAF from his 12 o'clock and had to take cover in the turret.
  - b. After seeing the surefire, he called out 'firing' and fired 2 shots in front of the approaching vehicle. He recognized an EOF situation, since the approaching vehicle would encounter the command (GFC) vehicle, or if turned the corner, the assault force. After the vehicle sped up, he engaged the vehicle to disable; he heard other shots but did not know where they were coming from. The vehicle sped up at about 50 meters away, and ultimately stopped about 25-30 meters away from his position
  - c. He is briefed all the time on ROE/EOF; he fired warning shots based on experience in SADR CITY and the area he was located is hot for VBIEDs. Past rotations he has experienced EOF; on a convoy, he gave visual to approaching vehicle then a warning shot, resulting in a safe and successful conclusion. He knows ROE/EOF response is "visual," "near," "at," and "disable," but did "visual," "near," and "disable" because vehicle accelerated a short distance away.
  - d. The surefire light was very bright; it was a large version that takes 3 batteries (versus 2x for smaller one) and is about 6-8 inches
  - e. SSG [redacted] (b)(3), (b)(6) stated he will never question or doubt his own actions; it was a high stress event.

2. I did not take a sworn statement from SFC [redacted] (b)(3), (b)(6)

[redacted] (b)(3), (b)(6)

[redacted] (b)(3), (b)(6)

LTC, FA  
Investigating Officer

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Pages 18 through 19 redacted for the following reasons:

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(b)(2)High, (b)(3), (b)(6)