

ESCALATION OF FORCE (EOF) INVESTIGATION REPORT
101ST AIRBORNE DIVISION (AIR ASSAULT)
TASK FORCE BAND OF BROTHERS

In accordance with FRAGO 20 to OPORD 268-05, the following report is to be completed and forwarded to the Office of the Staff Judge Advocate of Task Force Band of Brothers no later than 24 hours following completion of any EOF investigations.

UNIT: C 14TH EN BN

DTG: 26 JAN 2006

LOCATION OF INCIDENT: (b)(2)High, **BETWEEN FOB WARHORSE AND FOB NORMANDY**

TYPE OF INVESTIGATION:
15-6

FINDINGS OF INVESTIGATION:

Hostile intent was present and escalation of force was justified. Civilian driver diverted from flow of traffic and sped toward IED team, ignoring: spotlights, Soldiers shouts to stop, (b)(2)High Soldier used M-16 with (b)(2)High rounds and fired into windshield killing passenger wounding driver.

RECOMMENDATION OF INVESTIGATION:

(b)(5)

Appendix 6 (EOF form), Annex I to FRAGO 21

(b)(3),(b)(6)	
SIGNATURE	12 Feb 2008 DATE

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 COI(3),(b)(1) _____
 (Appointing authority)

on 26 Jan 2006 _____ (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 F-OB Warhorse _____ at 0900 _____
 (Place) (Time)

on 27 January 2006 _____ (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 _____ 2300 _____ on _____ 27 January 2006 _____
 (Time) (Date)

and completed findings and recommendations at _____ 1700 _____ on _____ 2 February 2006 _____
 (Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO ^{1/}	NA ^{2/}
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 ¹⁾	NA ²⁾
2 Exhibits (<i>para 3-16, AR 15-6</i>)			
a. Are all items offered (<i>whether or not received</i>) 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 (<i>if substituted for real or documentary evidence</i>) 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 (<i>para 3-6b, AR 15-6</i>)?			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 (<i>para 3-16d, AR 15-6</i>)?			X
3 Was a quorum present when the board voted on findings and recommendations (<i>paras 4-1 and 5-2b, AR 15-6</i>)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (<i>Chapter 5, AR 15-6</i>)			
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (<i>para 5-3b, AR 15-6</i>)?			
5 Was a quorum present at every session of the board (<i>para 5-2b, AR 15-6</i>)?			
6 Was each absence of any member properly excused (<i>para 5-2a, AR 15-6</i>)?			
7 Were members, witnesses, reporter, and interpreter sworn, if required (<i>para 3-1, AR 15-6</i>)?			
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 (<i>para 5-2d, AR 15-6</i>)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (<i>Section II, Chapter 5, AR 15-6</i>)			
9 Notice to respondents (<i>para 5-5, AR 15-6</i>):			
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 (<i>or otherwise was absent during part of the proceedings</i>):			
a. Was he properly notified (<i>para 5-5, AR 15-6</i>)?			
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (<i>para 5-4c, AR 15-6</i>)?			
11 Counsel (<i>para 5-6, AR 15-6</i>):			
a. Was each respondent represented by counsel?			
Name and business address of counsel:			
(<i>If counsel is a lawyer, check here</i> <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 (<i>or, if oral, a summary</i>) of the request and the action taken on it included in the report (<i>para 5-6b, AR 15-6</i>)?			
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (<i>para 5-7, AR 15-6</i>):			
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 (<i>para 5-8a, AR 15-6</i>):			
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 (<i>para 5-9, AR 15-6</i>)?			
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 (<i>para 5-8b, AR 15-6</i>)?			
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 (<i>para 5-11, AR 15-6</i>)?			
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 attached memorandum

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

In view of the above findings, the *(investigating officer) (board)* recommends:
see attached memorandum

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)

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

(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.)

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

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

9 Feb 2006

COL EN

COMMANDING



DEPARTMENT OF THE ARMY
HEADQUARTERS, 14th ENGINEER BATTALION (CORPS) (WHEELED)
OPERATION IRAQI FREEDOM, FOB SPEICHER
APO AE 09393

REPLY TO
ATTENTION OF

AFZH-CEF

8 February 2006

MEMORANDUM FOR COMMANDER, 555th Combat Support Brigade

SUBJECT: AR 15-6 Investigation into Escalation of Force Resulting in Iraqi Civilian Death and Serious Injury Report, 26 January 2006 – Report of Investigation.

1. On 26 January 2006, I was appointed as Investigating Officer (IO) with respect to the above captioned matter.
2. In the course of my investigation, I reviewed the Serious Incident Report and sworn statements relating to the incident and interviewed witnesses.
3. Backup information:

a. I began my investigation by traveling to FOB Warhorse to interview the Soldiers involved in this incident from C/14th En Bn (TF Trailblazer). Upon arriving at the C/14th TOC, I collected the sworn statements of the Soldiers in the patrol and began my interviews. It is important to note that the information I gathered during the interviews allows a clearer and accurate description of the events that morning. Rather than recreate the entire narrative of the report, however, I will provide important details to “fill in the holes” and allow a better understanding of the incidents.

b. The original story board submitted by the platoon (Enclosure 3) is attached only to show a reference point from which I will expound. I have provided a modified version of this event sketch (Enclosure 3) based on the detailed information I gathered during the interviews. In addition to explaining the Escalation of Force steps during this event, I will also explain some of the tactical decisions made that relate to the patrol and its reactions to the possible IEDs at the incident site.

4. Sequence of Events:

- a. When C502 rolled past the first suspected IED, SGT (b)(3),(b)(6) instructed the driver to move past the box to the safe location (See Exhibit A). C502 then turned around to get a better view of the box and to be better positioned to use the arm of the Buffalo to investigate the suspected IED. At this time, SGT (b)(3),(b)(6) also identified another possible IED on the other side of the road. The locations of these two possible IED's have created what I called a “safety line”, beyond which the rest of the patrol was instructed not to cross. The

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shoulders of the road were not trafficable due to the recent rains and the two suspected IED's created a situation where other vehicles could not proceed without risk to potential explosive hazard from the suspected IEDs.

b. After SGT (b)(3),(b)(6) had positioned his vehicle on the other side of the "safety line," he requested the MARCBOT be employed to investigate the two suspected IEDs. SGT (b)(3),(b)(6) in the RG-31 (C516) deployed the MARCBOT (See Exhibit A and B). At this same time, civilian traffic was starting to back up on the far side of the Buffalo and 1LT (b)(3),(b)(6) instructed SGT (b)(3),(b)(6) to stop the vehicles at a safe stand-off distance (See Exhibit B). As SGT (b)(3),(b)(6) exited the rear of the Buffalo, staying on the back deck of the vehicle, he observed vehicles stopping on the side of the road with their hazard lights on (standard practice for civilian vehicles when they see TFTB vehicle like this).

c. SGT (b)(3),(b)(6) also observed a civilian vehicle speeding towards the rear of C502, coming around the other vehicles that were stopped on the side of the road. This is actually the first of the two Escalation of Force incidents, as SGT (b)(3),(b)(6) had to (b)(2)High of this first vehicle.

d. Shortly after this first vehicle was turned around, the second Escalation of Force incident occurred. SGT (b)(3),(b)(6) had his driver shine the spotlight on the approaching vehicle in an effort to warn the driver to stay back. SGT (b)(3),(b)(6) could not make out the occupants in the vehicle, as it was dark outside and the vehicle's headlights were on. There was, however, a perceived threat by this vehicle not stopping and continuing to disregard the graduated warning attempts. This falls in line with (b)(2)High
(b)(2)High (b)(2)High
(b)(2)High (b)(2)High
(b)(2)High and (b)(2)High
(b)(2)High SGT (b)(3),(b)(6) obviously felt threatened by the hostile intent portrayed by the speeding vehicle coming towards his patrol. This intent was demonstrated by this vehicle ignoring the actions of the other vehicles that obeyed the hand and arm signals given by SGT (b)(3),(b)(6) to stay back. This threat was further exacerbated by further (b)(2)High to follow.

e. SGT (b)(3),(b)(6) then followed the correct (b)(2)High by:
1. Shouting (b)(2)High
2. Waving his weapon and hands: (b)(2)High
(b)(2)High
(b)(2)High (b)(2)High
(b)(2)High (b)(2)High
(b)(2)High (b)(2)High
(b)(2)High

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5. Then into the windshield

(b)(2)High

(b)(2)High

- f. These last shots stopped the vehicle and it backed up and off the side of the road SGT (b)(3),(b)(6) shots were well placed and intentional (See Enclosure 4 for the locations of bullet holes in the vehicle). His rounds did include tracers, a visible signature that should have been seen by the approaching vehicle. C516 (RG-31) was called forward to provide security and to bring the medic up to provide first aid. The decision was made to risk an IED strike by rolling past the safety line to the front of the Buffalo.

Transcripts from Interviews (I interviewed 6 soldiers, only 4 had relevant comments below)

- a. SGT (b)(3),(b)(6) TC of the C502 Buffalo did the following events:

- * Did not call the RG-31 forward to provide frontal security because grain bag and banana box not clear yet.
- * Platoon leader called up to notify of civilian traffic approaching/backing up.
- * (b)(2)High at first vehicle that approached the patrol; vehicle stopped and turned around.
- * Second vehicle approached at high speed; (b)(2)High (b)(2)High (b)(2)High
- three shots to the windshield.
- * Called the RG-31 up to provide security and to bring up the medic; decision to risk the IED hit by moving vehicle past the safety line.
- * Only regret was the car had gotten so close before he took action.
- * Could not identify occupants in vehicle, as it was still dark out and the vehicle had it's headlights on.
- * Did not allow the Iraqi Police to transport the two wounded men and the body of the woman in the back of the pickup truck; wanted the ambulance to transport the body, out of respect for the woman.

- b. SGT (b)(3),(b)(6) TC of the C516 RG-31 and MARCBOT operator statement overview:

- * Did not see what was going on with Buffalo; was focused on the MARCBOT screen, interrogating the grain bag.

- c. 1LT (b)(3),(b)(6) PL, TC of C26 M1114 statement overview:

- * (b)(2)High
- * (b)(2)High
- * Observed civilian cars turning around on the other side of the Buffalo
- * Buffalo used the RC spotlight to signal cars to stay back
- * Couldn't send security vehicle up because of the IED threat and the soft ground on each side of the road.

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d. SSG (b)(3),(b)(6) Medic, C Co, 64th BSB statement overview:

- * Both times observed SGT (b)(3),(b)(6) using hand & arm signals to warn approaching vehicle.
- * The civilian vehicle had no weapons/explosives in it.
- * “SGT (b)(3),(b)(6) did exactly what he should have done, he saved our lives”

4. Findings:

a. I find that SGT (b)(3),(b)(6) C/14th En Bn, acted IAW and MNCI Rules of Engagement, Graduated Measures of Force (Enclosure 1) and I find no negligence in his actions.

5. Recommendations:

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

6. POC for this memorandum is SPC (b)(3),(b)(6) at VOP (b)(2) or email at

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

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

MAJ, EN
15-6 Investigation Officer

Table of Exhibits and Enclosures

EXHIBITS:

- A. Sworn Statements of SGT (b)(3),(b)(6) C Co. 14th, taken 26 January 2006
- B. Sworn Statements of 2LT (b)(3),(b)(6) C Co. 14th, taken 26 January 2006
- C. Sworn Statements of SPC (b)(3),(b)(6) C Co. 14th, taken 26 January 2006
- D. Sworn Statements of SPC (b)(3),(b)(6) C Co. 14th, taken 26 January 2006
- E. Sworn Statements of SPC (b)(3),(b)(6) C Co. 14th, taken 26 January 2006

ENCLOSURES:

- I. Appointment Letter from COL (b)(3),(b)(6)
- II. Memorandum for Record dated 3 February 2006
- III. Event Diagram of Escalation of Force
- IV. Picture of Shots of Vehicle
- V. ROE Card
- VI. Serious Incident Report
- VII. Escalation of Force Matrix

CHRONOLOGY

1.	26 Jan 06	0900	MAJ [REDACTED]	Received appointment letter.
2.	27 Jan 06	2300	MAJ [REDACTED]	Flight to FOB Warhorse.
3.	27-28 Jan 06	0900	MAJ [REDACTED]	Obtained sworn statements and interviewed Soldiers.
4.	29 Jan 06	1700	MAJ [REDACTED]	Completed findings and recommendations.