

Working with Proximate Cause: An “Elements” Approach

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*All causes are beginnings.*¹

—Aristotle

*I never blame myself when I'm not hitting. I just blame the bat and if it keeps up, I change bats. After all, if I know it isn't my fault that I'm not hitting, how can I get mad at myself?*²

—Yogi Berra

Introduction

A lieutenant colonel (LTC) returns to his forward operating base, steps out of his Mine-Resistant Armor-Protected (MRAP) vehicle and strides confidently toward a weapons clearing barrel. As he retrieves the M9 pistol from the holster on his Improved Outer Tactical Vest (IOTV), he fails to see that the selector switch is now in the “up” or “fire” position, as indicated by the small red dot on the right side of the pistol’s upper assembly. Unknown to the LTC, this particular selector switch routinely slips northward at the slightest touch, a mechanical defect noted three days earlier by the company’s supply clerk filling in as unit armorer. With the late afternoon sun sinking behind the palm groves, the senior officer also fails to notice the rock-strewn path to the barrel he now walks. Just as he approaches the barrel to begin clearing procedures, he turns his ankle on a large stone, painfully lurching to one side. As he stumbles, he loses his grip on the weapon. The officer reflexively stretches out his hand to grab the falling weapon—despite his age and pain, he’s just fast enough to grip the handle tightly. Unfortunately, he is also able to squeeze the trigger with just enough pressure to discharge the chambered round into the tire of a nearby parked MRAP, and one more into his foot.

In the scene above, both the line-of-duty officer (LD) and the financial liability investigations of property loss (FLIPL) officer assigned to investigate these facts must resolve whether certain actions were negligent, and whether that negligence formed the proximate cause of the officer’s self-inflicted wounds and property damage to the MRAP.³

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¹ ARISTOTLE, *Metaphysics, Book V, in THE BASIC WORKS OF ARISTOTLE* 752 (Richard McKeon ed., 1941).

² Baseball Almanac, *Yogi Berra Quotes*, available at <http://www.baseball-almanac.com/quotes/quoberra.shtml> (last visited Feb. 15, 2012).

But, as judge advocates know well, working with the concept of “proximate cause”—in particular, helping investigating officers (IOs) apply it in the field—can be frustratingly difficult. This article proposes that these challenges lie primarily in the regulatory definitions of “proximate cause” relied on by IOs and their legal advisors. While the official guides provided by the Department of the Army⁴ and various installation Staff Judge Advocate offices⁵ are helpful, this article proposes a different solution: explaining the concept, and then reviewing the IO’s analysis, from an “elements” perspective. This elemental approach is consistent with the regulatory definition, but provides an improved emphasis on key aspects of “proximate cause,” like the foreseeability of harm, materiality, contribution, and predominance, that are often missed by IOs in part because they are inadequately described or ignored completely by the guides and sources we provide to them.⁶ Finally, I offer a

³ Financial Liability Investigations of Property Loss (FLIPLs) are governed by Army Regulation (AR) 735-5, *Policies and Procedures for Property Accountability*. U.S. DEP’T OF ARMY, REG. 735-5, POLICIES AND PROCEDURES FOR PROPERTY ACCOUNTABILITY ch. 13 (28 Feb. 2005) [hereinafter AR 735-5]. Line-of-Duty investigations are governed by AR 600-8-2, *Line of Duty Policy, Procedures, and Investigations*. U.S. DEP’T OF ARMY, REG. 600-8-2, LINE OF DUTY POLICY, PROCEDURES, AND INVESTIGATIONS (4 Sept. 2008) [hereinafter AR 600-8-2].

⁴ U.S. DEP’T OF THE ARMY, PAM. 735-5, FINANCIAL LIABILITY OFFICER’S GUIDE ch. 7 (9 Apr. 2007) [hereinafter DA PAM. 735-5].

⁵ See OFFICE OF THE STAFF JUDGE ADVOCATE, FORT SAM HOUSTON, FINANCIAL LIABILITY OFFICER GUIDE (Oct. 2005) [hereinafter FT. SAM HOUSTON FLO GUIDE], available at http://www.samhouston.army.mil/sja/adm_law.asp; OFFICE OF THE STAFF JUDGE ADVOCATE, FORT LEE, GUIDE TO FINANCIAL LIABILITY INVESTIGATIONS [hereinafter FT. LEE FLO GUIDE], available at <http://www.cascom.lee.army.mil/staff/sja/Info%20papers/AdLaw/735-5guide.pdf>; OFFICE OF THE STAFF JUDGE ADVOCATE, FORT CARSON, FINANCIAL LIABILITY OFFICER GUIDE [hereinafter FT. CARSON FLO GUIDE], available at <http://www.carson.army.mil/LEGAL/InfoPapers/FLIPL.pdf>. A similar guide appears in Major Thomas Keith Emswiler’s *Improving the Report of Survey Process*, ARMY LAW., Aug. 1993, at 20, 23–31.

⁶ For example, DA Pam 735-5, the Army’s primary guidebook for Financial Liability Investigations, tells IOs to use “common sense” and then defines proximate cause indirectly through a series of short hypothetical fact-patterns, all the while warning that “what appears to be the proximate cause may not be the case.” DA PAM 735-5, *supra* note 4, para. 7-2d and e. These fact patterns depict realistic (though simplified) scenarios, but fail to explain *why*—in those situations—the proximate cause determination comes out the way it does. Investigating officers are left to either glean what rules of logic or law they may from the list of examples, or fall back on them as rudimentary models and apply them as loose analogies to their

model worksheet and decision-tree methodology, applying this elements-based definition, which both the IO and legal advisor could employ to assist in their analysis of the facts.

Defining Proximate Cause

Primary. Leading. Contributing. Continuous. Linking. Direct. Material. Natural. Cause. Effect. Proximate. These words are frustratingly familiar to any judge advocate faced with explaining the concept of “proximate cause” to IOs and commanders, who are often tempted to focus on negligence alone, and treat proximate causation as “obvious” or ignore it altogether.

Financial Liability Investigations

A financial liability officer (FLO) must proceed through a three-step analysis before recommending financial liability for the loss, damage, or destruction (LDD) of government property. First, he must find that government property was lost, damaged or destroyed. Second, he must find that the individual was negligent or engaged in willful misconduct. Third, he must find that the person’s negligence or willful misconduct was the proximate cause of the LDD to government property—that is,

[t]he cause which in a natural and continuous sequence, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred.⁷

It is further defined as:

the primary moving cause, or the predominate cause, from which the loss or damage followed as a natural, direct, and immediate consequence.⁸

The first two steps of the proximate cause analysis are relatively straightforward. To the extent that the FLO must interview witnesses or the respondent to determine whether “negligence” occurred, FLOs rarely seem to struggle, especially if they have relevant experience. Without regular and clear advice from their legal advisors, these FLOs tend to struggle or ignore the third and final step: the element of causation.⁹

own facts, even at the expense of nuanced details that may undermine the analysis.

⁷ AR 735-5, *supra* note 3, para. 13-29c.

⁸ DA PAM 735-5, *supra* note 4, para. 2-1d. The definition is mandated by the Department of Defense Financial Management Regulation. U.S. DEP’T OF DEF. REG. 7000.14-R, Vol. 12, ch. 7, at 7-4, 7-30 (Mar. 2007).

⁹ Emswiler, *supra* note 5, at 20-21.

Thus, in the hypothetical presented at the beginning of this article, where should a novice IO begin to analyze the cause-and-effect relationship? With the Lieutenant Colonel’s absent-mindedness as he left his vehicle? With the rocky, unstable terrain beneath the officer’s boots? With the untrained and distracted supply clerk that who provided him with the weapon? With the pistol’s mechanical fault itself? The relevant definition of proximate cause—and how legal advisors explain the concept to lay investigators—muddies their efforts in resolving these questions.¹⁰ Investigating officers can conflate proximate cause with their earlier findings of responsibility, negligence or misconduct. Reading the different types of responsibility in AR 735-5, they can be tempted to create a form of strict liability, and force Soldiers to pay for the LDD based solely on their duty positions (i.e., the scale of their responsibility) or the name listed on a hand receipt.¹¹

Consider the following scenario: A toolbox is found to be missing right before a unit deploys. A hasty FLIPL occurs a few weeks after deployment. The FLO is able to locate a year-old hand receipt, the last one in unit records for the item. He is not able to determine when the loss actually occurred, who actually possessed the item, or how it disappeared from the motor pool. He can determine only that the loss occurred, and the identity of the last hand receipt holder. The IO’s temptation is to avoid further analysis, and declare the receipt holder liable in the absence of further evidence. In doing so, however, he neglects his duty to make findings to a preponderance of the evidence. He has not found sufficient evidence to establish that anyone was negligent, let alone how such negligence “in a natural and continuous sequence, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred.” The hand receipt holder *might* be liable—if, say, his negligence in failing to hand-receipt the toolbox to the next recipient made the item’s further history impossible to track¹²—but more facts are needed.

¹⁰ The Army installation-specific guides are no more expressive or detailed than the Department of the Army’s guide. For example, the guides published by Fort Carson and Fort Sam Houston restate the definition of proximate cause from AR 735-5, then provide a series of example fact-patterns. FT. SAM HOUSTON FLO GUIDE, *supra* note 5, at 6; FT. CARSON FLO GUIDE, *supra* note 5, at 5-6. Fort Lee’s guide does the same, despite the preliminary caveat that proximate cause has a “fairly complex legal meaning.” FT. LEE FLO GUIDE, *supra* note 5, at 6.

¹¹ See AR 735-5, *supra* note 3, para. 13-29a (listing different types of responsibility that can lead to liability, including “direct responsibility” for property receipted to the Soldier).

¹² See FT. LEE FLO GUIDE, *supra* note 5, at 5; FT. CARSON FLO GUIDE *supra* note 5, at 6. In such a case, the “loss”—the loss of accountability—occurred when the item became untrackable due to the receipt holder’s negligence, rather than the day the item actually left military control. FT. SAM HOUSTON FLO GUIDE, *supra* note 5, at 3. Installation guides often cover this issue under the heading of “presumed negligence”—stating that a person who had exclusive access and control of an item which is now lost may be presumed negligent, *if* all other causes for the loss may be ruled out. FT. SAM HOUSTON FLO GUIDE, *supra* note 5, at 6; FT. LEE FLO GUIDE, *supra* note 5, at 5; Emswiler, *supra* note 5, at 28.

Line of Duty Investigations

A LD inquiry is conducted to determine whether a Soldier's intentional misconduct or willful negligence was to blame for his death or injury. A finding that it was can jeopardize his entitlements and his beneficiaries'.¹³ The LD analysis is straightforward in principle, but messy in application. First, there is a rebuttable presumption that the Soldier was "in the line of duty" when his injury, disease, or death occurred. This presumption can only be refuted by "substantial evidence." If a preponderance of the evidence shows that (a) the Soldier deliberately engaged in misconduct or demonstrated willful negligence, and (b) this was the proximate cause of the injury, disease, or death, then he or she is not in the line-of-duty.

Assuming the IO finds willful negligence or misconduct, he faces the question of proximate causation, to which the LD Regulation offers a definition more expansive than that which guides FLOs during FLIPLs:

A proximate cause is a cause which, in a natural and continuous sequence, unbroken by a new cause, produces an injury, illness, disease, or death and without which the injury, illness, disease, or death would not have occurred. A proximate cause is a primary moving or predominating cause and is the connecting relationship between the intentional misconduct or willful negligence of the member and the injury, illness, disease, or death that results as a natural, direct and immediate consequence that supports a "not line of duty—due to own misconduct" determination.¹⁴

Even so, the IO can easily be confused, or be tempted to ignore the concept of proximate causation altogether.¹⁵

Consider this scenario: two sergeants are working just after dusk in an unlit motor pool on a Forward Operating Base in a combat theater. Their platoon leader is supervising their attempt to connect a truck cab with its flatbed trailer in

¹³ AR 600-8-4, *supra* note 3, para. 2-1.

¹⁴ *Id.* (glossary).

¹⁵ Installation guides for Line of Duty Investigating Officers typically say little or nothing about proximate causation. See OFFICE OF THE STAFF JUDGE ADVOCATE, FT. CARSON, A GUIDE FOR LINE OF DUTY INVESTIGATING OFFICERS (Sep. 2002), available at www.carson.army.mil/LEGAL/InfoPapers/Line_of_Duty.pdf (not even mentioning proximate cause); OFFICE OF THE STAFF JUDGE ADVOCATE, FT. SAM HOUSTON, A GUIDE FOR THE LINE OF DUTY INVESTIGATING OFFICER 3, available at www.samhouston.army.mil/sja/doc/2004LODGUIDE.DOC (last visited Feb. 14, 2012) (giving definition of proximate cause but providing no further explanation or helpful examples).

preparation for a logistical support mission early the next morning. Usually, this hook-up process is operated through a mechanical reeling system situated on the back of the cab, essentially pulling the two vehicles together. When this system fails to align the two vehicles correctly, and the platoon leader looks away and begins writing notes in his field book, the operators begin maneuvering the cab and the trailer together, actually driving the cab backwards into the trailer and snapping the two together like Lego blocks (the standard procedure). While one sergeant sits in the driver's seat of the truck, the other steps between the cab and trailer, turns his back to the cab to make some adjustments, even though he has recently taught a class on motor pool safety, warning his enlisted Soldiers about the dangers of working between vehicles. The cab moves backward, pinning the sergeant between the vehicles and killing him. A LD investigation ensues.

These circumstances make for a "proximate cause" nightmare, implicating legal doctrines like superseding causation, foreseeability, and recklessness in the context of a service-member's death while deployed. The IO, in making his findings, needs to address the victim's choice to stand between the two vehicles while the truck's engine is on, his experience and knowledge, the recent class (not only attended, but taught, by the deceased), the inattention of the officer present, the command's decision to have the work continue under low visibility conditions, and the possibility of mechanical brake failure. Some factors relate to negligence, but not causation. The sergeant's actions and experience suggest that his actions may have been willfully negligent, but did other possible causes "break the sequence," or was another cause "predominating?" Rather than perform the analysis, the IO may be tempted to make a perfunctory finding that the injury was in the line of duty, or go straight from a finding of willful negligence to a "not LD" finding, without examining proximate causation at all.

Common Concerns

"Proximate cause" is tricky for IOs to apply and for legal advisors to communicate,¹⁶ especially if they do not discuss the matter before the IO has formed conclusions and drafted a report. Legal advisors should approach IOs early and often during investigations with advice on properly thinking about whether the facts demonstrate the required degree of causation. Doing so is a challenging task for legal advisors. Can it be made easier?

Standard guides for FLOs do discuss proximate cause, but only by reciting the regulatory definition and providing illustrative examples, which may not relate to the investigation at hand. Guides for LD IOs do not provide even this. Case law might be helpful, if it comes from a

¹⁶ Emswiler, *supra* note 4, at 21.

jurisdiction that uses a similar definition, but finding a situation analogous to the one being investigated may prove difficult, and the search cannot take place until after the facts are known. Advisors can use metaphors to try to clarify the concept, but the picture that works for one IO may confuse another.¹⁷

A Way Ahead: Focus on the “Elements”

The Approach

To simplify the task, this article recommends a generic, element-based explanation of “proximate cause” to cover both FLIPLs and LD investigations. Such an explanation should avoid ambiguity and should not contradict the regulatory definitions because its sole purpose is to aid the IO in understanding the legal meaning and effect of causation and apply it to the set of facts before her. It should avoid words that imply anything other than the “totality of the circumstances” being the pool of available facts to analyze. It should keep the IO from falling into a “path of least resistance.” For a convenient analogy, this article adopts an approach akin to how the Manual for Courts-Martial defines the statutory requisites for each criminal offense under the Uniform Code of Military Justice.

Elements of proximate cause.

- (1) that a reasonable person would anticipate the harm or loss as a natural and probable consequence of the act or omission;
- (2) that the act or omission was a dominant factor in the sequence of events that contributed to the harm or loss; and
- (3) that the harm or loss would not have occurred in the absence of act or omission

Explanation.

In order for an act or omission to be a *proximate* cause of the undesired harm or loss, the harm or loss *must* first be the natural and probable result of the act or omission. In other words, it was a **foreseeable** consequence of the act or omission. Second, that act or omission *must* be a **predominate** factor linking a chain of events to the harm or loss.

¹⁷ Some judge advocates use a nautical theme: think of a “proximate cause” as a link in a chain connecting a triggering act (or failure to act) at one end of the chain (the dock) with an outcome, consequence, or effect on the other end (the ship). If a particular fact or circumstance is arguably a “cause,” then it is a link in that chain. Whether that fact is the *proximate* cause, however, is a function of both its hold on the other links (other causes) and how close it is to the outcome mooring the other end of the chain.

Though this factor need not be the triggering event, nor need it be the last-in-time event directly preceding the harm or loss, this factor *must* be both **material and contributing** to the harm or loss in order for it to be considered “proximate.” Material means relevant or related to the harm or loss—that is, a predictable connection between the fact and the consequence. If, in light of independent and intervening factors, the harm or loss was unforeseeable by a reasonable person in similar circumstances at the time of the act or omission, then the act or omission was not “material.” Contributing means the factor was a keystone—without that act or omission, the harm could not have occurred at all. There may be more than one “proximate cause” leading to the undesired harm or loss. The necessary features of predominance, materiality, contribution, and foreseeability are assessed by looking at all available facts and circumstances.

This explanation includes the full definition from AR 735-5. The concept of a “natural and continuous sequence” is covered by the exposition of the terms “predominate” and “material,” and by the first element. The concept that this sequence is “unbroken by a new cause” is covered by the exposition of the term “material.” The concept of negligence “without which the LDD would not have occurred” is covered by the third element. The concept of a “primary moving or predominating cause” is conveyed by the second element, and the concept of a “natural, direct, and immediate consequence” is covered by the first and second elements.

Thus, this explanation captures all the key concepts that distinguish proximate cause. By expanding upon the published definitions, it helps to ensure the IO does not determine proximate causation based only on the fact that the harm was foreseeable, or only because the subject’s negligence figured substantially in the fact pattern. If used in addition to the standard definitions, it will force the FLO to actively consider whether, and to what extent, other independent, intervening factors contributed to the harm or loss. Finally, it prompts the IO to think of the problem of causation linearly and sequentially, helping to overcome natural and convenient presumptions (based on the subject’s degree of responsibility) that lead a confused or frustrated IO toward findings of *de facto* strict liability. This is a measured response to a definite practical problem—but clearly, based on the scope of this article, not offered as an argument in favor of replacing the current published definitions. It is merely a suggested work-around for a potentially frustrated IO and legal advisor, in light of the

current definitional ambiguities and natural challenges with so thorny a subject.

A worksheet could also assist the IO to apply the concept of proximate cause to a given fact-pattern. A suggested worksheet, applying the elements approach, is provided in the Appendix.

Application

We can now re-consider the three hypothetical situations described in this paper. The third, involving a sergeant crushed between a truck cab and trailer, presented several possible causes for the Soldier's death: the command's decision to continue work in low visibility conditions, the platoon leader's failure to supervise or observe the situation, the possibility of a mechanical failure in the truck, and the NCO's dangerous decision to step between the cab and trailer. (Given the NCO's experience and ability to teach a class on the subject, there is no omission in his own training that has to be considered.) Ultimately, the NCO's decision is the one under analysis. If it is *both* "willful negligence" and a proximate cause of his death, then his death was not in the line of duty. Applying these facts to the "elements" delineated above, the IO has a more easily navigable path through the proximate cause analysis:

(1) Would a reasonable person anticipate the harm or loss as a natural and probable consequence of the act or omission? Certainly. Knowing that two Soldiers were maneuvering the cab and trailer together, with an inattentive ground guide and little adequate lighting, a reasonable person would anticipate that someone stepping in between them would probably be struck.

(2) Was the act or omission a dominant factor in the sequence of events that contributed to the harm or loss? Again, yes. Stepping between the two vehicles under those conditions was a "material" factor in the sense that it had a relevant role in the series of discrete events, even if it did not trigger the events themselves.

(3) Would the harm or loss have occurred in the absence of act or omission? No. Had the NCO not placed himself between the two vehicles, he would not have been crushed.

Thus, under the "elements" approach, analyzing the proximate cause in that scenario becomes more straightforward. Consequently, the only difficult issue is whether the NCO's decision to step between the two vehicles, under those conditions, was truly "willful negligence."

The second hypothetical, involving a missing toolbox, is complicated by the problem of missing evidence. In order to use the "elements" test, the IO must identify the "act or omission" that led to the loss of accountability. Since this is quite impossible without further investigative work, this test forces the IO to look for further evidence, to see whether the most recent hand receipt holder actually did, or failed to do, something that would have preserved accountability.

Finally, looking back at the opening hypothetical, it is clear how challenging it would be for an IO to appropriately gauge the relative weight of each Soldier's actions (or omissions) and their connectivity or relation to the resulting wounds and damage. A reasonable person could conclude that each of them "contributed" or were related to the final effect. But see now how the "elements" approach resolves the question of whether the officer's own negligence proximately caused his injury and the damage to the MRAP.

Consider the officer who fired the bullet. Take it as given that he would not be expected to see the rock-strewn path in the late afternoon gloom, or to see the rotated selector switch on a weapon he has not drawn. His negligent act, if there is any, is his decision to draw the pistol while still walking. The question then shifts to proximate cause:

(1) Would a reasonable person anticipate the harm or loss as a natural and probable consequence of the act or omission? No, considering the circumstances. The officer had properly set his pistol to "safe" in this scenario (a fact that might be evidenced by statements collected from other members of the patrol in the MRAP with him), and had no way of knowing the switch would reset itself to "fire." Had the switch been on safe, the weapon would never have fired.

(2) Was the act or omission a dominant factor in the sequence of events that contributed to the harm or loss? Yes, though the point is arguable. The rotated selector switch and the rock-strewn path had to work together to cause the damage, but neither would have led to the weapon going off without the officer's decision to draw while walking.

(3) Would the harm or loss have occurred in the absence of the negligent act or omission? No. Had he waited until he reached the clearing barrel, he would have fallen without setting off the weapon, or perhaps caught himself with his empty hand and not fallen at all.

This situation meets two of the three elements; but it does not meet one of them (the first—the foreseeability prong). Failure to meet any one element means there is no proximate cause; therefore, the officer's negligence should not lead to financial liability or a non-LD determination, even if the IO finds that he was negligent (or willfully negligent) in drawing the pistol while walking. A similar

analysis can be done for the other negligent parties in the scenario.¹⁸

Thus, this framework helps answer the question of whether a reasonable person would anticipate the errant bullet and the resulting harm under those environmental conditions and what the officer was likely to expect from a weapon provided to him from a unit arms room. It forces the IO to look at which decisions and which actions were material and contributing to the harm, to balance them, and to search for which factor, if any, was the “keystone” but-for cause of the property damage and physical injury.

Conclusion

This essay’s intent, in light of observed practical challenges in applying and explaining “proximate cause” across a wide swath of administrative investigations, was to offer an alternative definition that helps overcome those challenges. This much more expansive definition captures the key elements of foreseeability, materiality,

predominance, and contribution—elements that are often ignored or inconsistently described in the library of current definitions of “proximate cause.” As an additional tool for both the legal advisor and IO, this essay provided a step-by-step framework that prompts the user to consider, assess, weigh, and screen many of the facts (and preconceptions) that make proximate cause such a slippery and shifty target to acquire. This article has met its objective if it assists legal advisors to communicate across the legal language barrier for the greater good of producing warranted, appropriate, and fair findings during investigations.

¹⁸ Of course, one aspect of the legal advisor’s role is to help the IO identify other mitigating solutions or appropriate individual “counter-measures” when financial liability is unwarranted in light of the negative proximate cause determination.

Appendix

Proximate Cause Worksheet for Investigating Officers (FLIPL)

Was the negligent act or omission the Proximate Cause of the loss?

Assuming the FLO has found a preponderance of the evidence to show that a loss to the government occurred and that the subject Soldier is negligent based on their degree of responsibility and the other factors listed in AR 735-5, para. 13-29a and 13-29b(4):

Step 1: What KNOWN event or decision “triggered” or initiated the sequence of events that led to the harm or loss? (*i.e.*, “known” means that a preponderance of the evidence supports it)

Step 2: What was the last KNOWN discrete, discernable factor or cause immediately preceding the harm or loss? (*i.e.*, “known” means that a preponderance of the evidence supports it)

Step 3: Itemize your facts and circumstances you think are relevant to the question (many of these facts may be drawn from your analysis of negligence but must be supported by preponderance of the evidence). **Step 3A:** Label any fact that is an ACT or OMISSION (failure to act) by an identifiable Soldier by CIRCLING it.

-Human errors (by whom):

-Human decisions (by whom):

-Mechanical or electrical failures:

-Terrain or environmental considerations:

-Policies, SOPs, or other rules regulating one or more of the actions of the subject(s):

-Relevant training or experience of the subject(s) prior to the harm or loss:

-Relevant supervision or oversight of the subject(s):

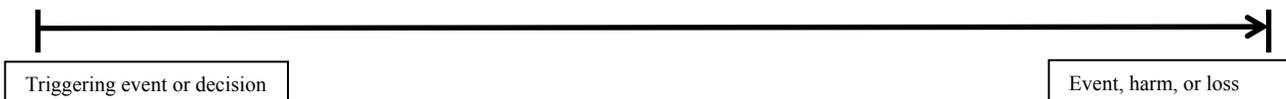
-Lapse of time between the triggering event and the harm or loss:

Step 4: Would the consequence (harm or loss) have occurred *anyway* if one or more of these factors had *never* occurred? If so, which factor(s)?

Step 5: Based on your experience, judgment, and common sense, rank the factors listed in Step 3, **MINUS the factors listed in Step 4**, in terms of **relevance to the harm or loss** (Number 1 being the most relevant, Number 2 being the next most relevant, etc.). These are your “presumptive causes.”

- 1.
- 2.
- 3.
- 4.
- Etc.

Step 6: Starting with your presumptive Number 1 cause, place it on the timeline below:



Step 7: Do any of your other ranked factors/causes (regardless of their “relevance rank”) *intervene* (on the timeline above) between your presumptive Number 1 cause and the harm or loss?

