

## 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 2 April 05 (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 \_\_\_\_\_ at 1700 hrs (Time)  
(Place)on 2 April 05 (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 1900 (Time) on 2 April 05 (Date)  
and completed findings and recommendations at 2000 (Time) on 2 April 05 (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?			
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: <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.

Exhibits (para 3-10, AR 15-6)		YES	NO <sup>1</sup>	NA <sup>2</sup>
a.	Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>		
b.	Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>		
c.	Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?			<input checked="" type="checkbox"/>
d.	Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input checked="" type="checkbox"/>		
e.	Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			<input checked="" type="checkbox"/>
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?	<input checked="" type="checkbox"/>		
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)?			<input checked="" type="checkbox"/>
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			<input checked="" type="checkbox"/>
<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	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)?			
<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 checked="checked" 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: 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.

The (investigating officer) (board), having carefully considered the evidence, finds:

I have examined the enclosed evidence and interviewed the soldiers involved. There were no photographs available for this engagement which occurred on [REDACTED] April 2005, by [REDACTED], my findings show that:

-Patrol was moving along [REDACTED] headed North and [REDACTED] observed what was initially identified as an IED. The Platoons actions follows:

1) [REDACTED] ordered for all vehicles to cross over to the left hand side of the road and the vehicles began to scan their sector. (See exhibit 1, 2, and 3)

2) Bradley 2([REDACTED]); [REDACTED] observed a LN out after curfew within line of site to possible IED, making suspicious hand movements. (See exhibit 1 and 2)

3) With the proximity of the patrol to the possible IED and the LN out after curfew, having line of site to the PIED, and making suspicious hand movements, the BC and gunner of [REDACTED] had reasonable certainty that the LN posed an imminent threat to the patrol, and was showing signs of hostile intent of detonating the possible IED. (See exhibit 1 and 2)

4) The LN was too far away and the Bradley engine too loud for SHOUT, it was too dark for SHOW, and the vehicle did not have a spotlight to warn the LN, and time didn't allow for escalation of force to follow step by step, so they proceeded to SHOOT (See exhibit 2)

Given the tactical scenario, it is my opinion that the shooting was unavoidable. The proximity of the possible IED to the patrol and the fact that the LN was showing hostile intent, with movement of his hands and arms and the inability to SHOUT or SHOW, the final step was to SHOOT. The shooting was within the published Rules of Engagement, Multi-National Corp-Iraq policy and no further actions should be taken concerning this incident.

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

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

-Continue to reinforce ROE training

-Order more spotlights for patrols, to allow for limited visibility warning signal

**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)

 (Investigating Officer) (President)

(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.)



DEPARTMENT OF THE ARMY

APO AE 09325

April 2005

MEMORANDUM FOR

SUBJECT: Appointment of AR 15-6 Investigating Officer

1. You are appointed as an investigating officer to conduct an investigation into all the facts and circumstances surrounding the shooting of an Iraqi National on [REDACTED] by members of [REDACTED]. You will specifically address the following questions:

- a. Was the soldier briefed on the threat situation in the patrol vicinity;
- b. Was the soldier briefed on the ROE, specifically hostile intent;
- c. What was the hostile intent/act observed by the service member;
- d. What, if any, escalation of force steps were taken;
- e. Were the proper procedures followed for the escalation of force;
- f. Any and all other facts and circumstance concerning the incident.

You will conduct the investigation IAW AR 15-6.

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, chapter 4. You will make specific finding of facts that are supported directly supported 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 that persons 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 the witness, you must stop the interview and advise the individual of his or her rights under Article 31, UCMJ.

4. Whenever possible, witness statements will be sworn and recorded on DA Form 2823. If you conduct any witness interviews telephonically, you will prepare a memorandum for record memorializing the interview. Prepare your report using DA Form 1574. Include with your report all documentary evidence, sworn statements, and other information or evidence you considered as a basis for your findings and recommendations. Submit the original report through command channels to Commander, [REDACTED] (ATTN: SJA) no later than 10 days after your receipt of this memorandum. Any request for extension must be submitted in writing or by e-mail through your legal advisor to the SJA for approval.

SUBJECT: Appointment of 15-6 Investigating Officer

5. Before proceeding with the investigation, contact [REDACTED], Assistant Staff Judge Advocate, [REDACTED] OSJA, FOB [REDACTED] [REDACTED] will serve as your legal advisor for this investigation and will provide you with an initial briefing.



Commanding

Encl.

# Journal Entry

Original DTG: 2344ZAPR05  
Reporting Section: WO  
Category: Significant  
Journal Entry: SPOTREP 01

At 2314DAPR05 a 2/11 ACR patrol discovered a PIED at [REDACTED] on [REDACTED] South of Haswah. There was a male IZ near the location of the PIED who appeared to be holding and pressing on an unknown device. Patrol open fire on the possible trigger man and he took off running. The patrol reports firing upon the suspected trigger man and killing him. The patrol conducted a secondary sweep of the area of the KIA and found a second possible trigger man. After questioning the second possible trigger man, he and the KIA were turned over to the IP. The PIED was not an IED. It was described as being a black bag with a centrically shape object next to it. No detonation devices were found. The IP has taken over the situation.

Tasks to be completed:

Index of Exhibits to 15-6 of [REDACTED] PLT, [REDACTED] [REDACTED] [REDACTED]

1. Sworn Statement by [REDACTED] (BC)
2. Sworn Statement by [REDACTED] (Gunner)
3. Sworn Statement by [REDACTED] (PSG)

## SWORN STATEMENT

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

## 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

**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	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
██████████	2005 04 25	1300	
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	
██████████	██████████	██████████	
8. ORGANIZATION OR ADDRESS		██████████	
██████████ 2/11 ACR			

9.

I, ██████████, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

ON 2 APRIL 05 AROUND 2305 hrs while convoying to ██████████ Patrol Base ██████████ A possible IED on ██████████ heading North. My gunner ██████████ WAS SCANNING when he noticed a person moving around beating on something. I confirmed the target AND ALSO noticed something in his hands. Feeling threatened for my convoy I called it up on the radio AND GAVE A SITREP. AFTER DOING SO I THEN GAVE OUT THE DISTANCE, DIRECTION AND DESCRIPTION. THEN I GAVE THE COMMAND TO FIRE. After engaging I told ██████████ to cease fire AND continue to scan. A dismount team was sent out to sweep the area I ██████████ guided them in where the rounds impact at. Once the dismounts was set they walked the area AND found a male deceased. They continued to walk back and forth until they found another male hiding in some water unharmed. The deceased was found at grid ██████████

NOTHING FOLLOWS

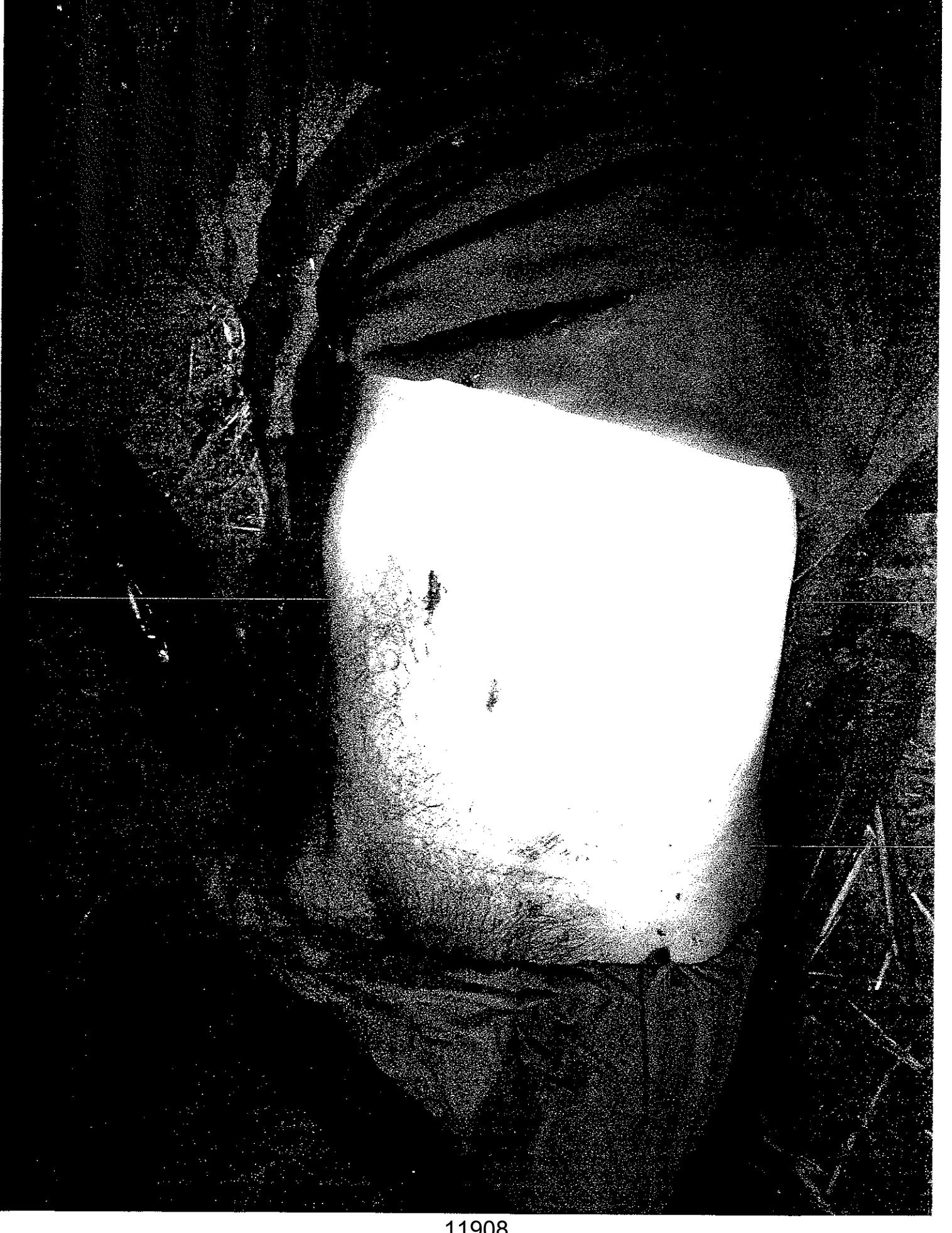
10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES
██████████	██████████	3

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.



11907



11908

## SWORN STATEMENT

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**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
██████████	2005 04 1	0915	
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	
██████████	██████████	██████████	
8. ORGANIZATION OR ADDRESS ██████████			
9.			

1. ██████████, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

ON ███ April at approximately 2300 hours, while conducting a movement with █3 Bradley fighting vehicles and 12 humvees to conduct relief in place at █████ █████ █████, I spotted what I believed was an IED on the right side of the road. I radioed for all vehicles to cross over to the left and get in the southbound lanes. After crossing over, as I was checking behind me, the second Bradley in the order of movement, Peper white 2, engaged something to the east with their coaxial machine gun. My humvees and dismounted infantry maneuvered and was guided in to the area where white 2 had engaged personnel doing something suspicious in nature. The dismounted troops found one deceased individual in a canal about 5 feet from shore. The IP's were dispatched to the scene and another individual was coaxed out of the water. This individual appeared to be suffering from an asthma attack and used an inhaler. No identification was on him or the deceased. A thorough search of the area was conducted, no weapons, IED's, or trigger devices were located. The IP's transported

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT
#3	██████████
PAGE 1 OF 3 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 INDICATED.

9. STATEMENT *(Continued)*

*(Signature of Person Making Statement)*

**WITNESSES:**

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 15 day of APRIL, 2005 at 12:00 PM.

*(Signature of Person Administering Oath)*

*(Typed Name of Person Administering Oath)*

*(Authority To Administer Oaths)*

**INITIALS OF PERSON MAKING STATEMENT**

100

PAGE 3 OF 3 PAGES

## SWORN STATEMENT

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1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
██████████	200504	1100	██████████
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	
██████████	██████████	██████████	
8. ORGANIZATION OR ADDRESS ██████████			
9. ██████████			

1. ██████████, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On █ April 2005 at around 2220 enroute to ██████████ we were on ██████████ headed North when the lead vehicle "TC" was ██████████ radioed he had spotted a possible IED on the east side of the road. I was scanning to the east using Thermals when almost immediately I spotted what appeared to be an individual holding something, and trying to work whatever it was he was holding. Because I was looking through thermals I couldn't tell what it was exactly he was holding, but it was definitely warm enough to give a thermal signature. Then I asked my TC "██████████" for permission to engage, without delay he said Yes. I immediately punched up my least lethal weapon system, co axial 7.62 mm, and engaged at 600 meters range setting and standard "Z" pattern. Once I started firing the target began to move to the south, I continued to engage until the target was no longer visible in my sight. I believe I fired 10-12 6-9 round bursts all fired.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES
#2		

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED

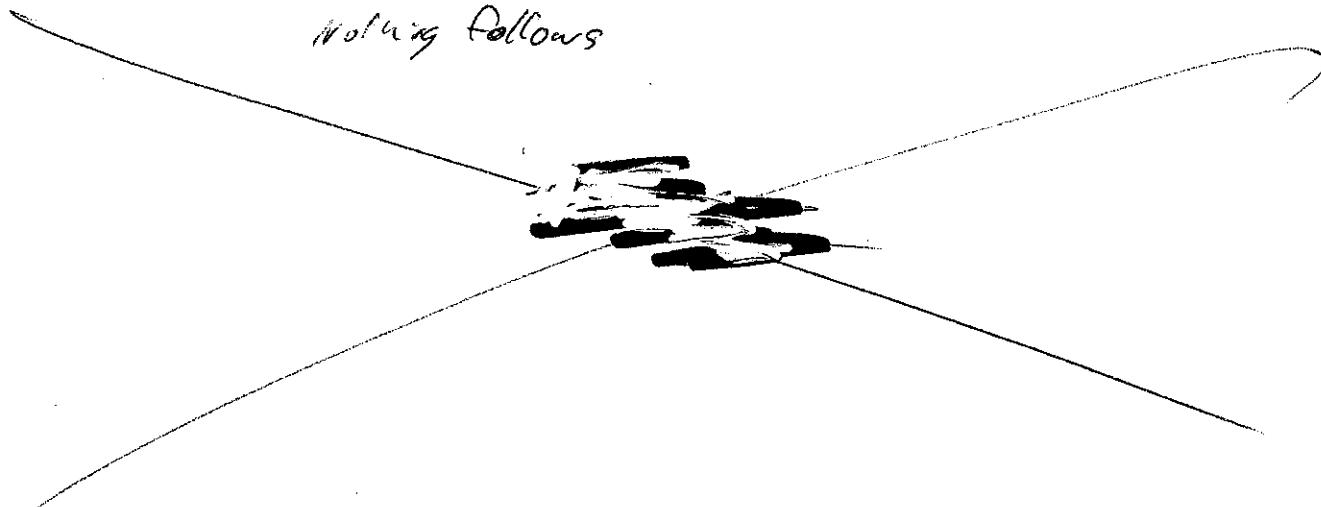
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF [REDACTED] TAKEN AT 1100 DATED 5 April 05

## 9. STATEMENT (Continued)

in "Z" pattern. Next a manouver element consisting of a HUMVEE and BFV moved south and east of our location where they droped dismounts to clear the area. While maintaining security, the dismounts moved north, and after some time of searching they found a trail of blood and followed it to the body of the first casualty. From what I was hearing on the radio, as the dismounts were removing the body of the casualty they stumbled upon a second person lying in the water. This second person was given to the I.P.s along with the body of the first. as for the possible IED I'm not sure if it was ever cleared or confirmed there was to much going on and this is the first time I've thought about it.

nothing follows



INITIALS OF PERSON MAKING STATEMENT

PAGE 2, DA FORM 2823, DEC 1998

PAGE 2 OF 3 PAGES

USAPA V1.00

## 9. STATEMENT (Continued)

*Nothing follows*

## AFFIDAVIT

I, [Redacted], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. 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.

*(Signature of Person Making Statement)*

## WITNESSES:

*[Redacted]*

## ORGANIZATION OR ADDRESS

*[Redacted]*

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 13 day of April, 2005 at 120041Z

*(Signature of Person Administering Oath)*

*(Typed Name of Person Administering Oath)*

*(Authority To Administer Oaths)*

INITIALS OF PERSON MAKING STATEMENT