

# 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 LTC [REDACTED] (Appointing authority)

on 16 MAY 2005 (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 FOB [REDACTED] at 0910 (Place) (Time)

on 17 MAY 2005 (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.)

ILT [REDACTED], INVESTIGATING OFFICER

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 1945 on 3 JUNE 2005 (Time) (Date)  
and completed findings and recommendations at 1400 on 3 JUNE 2005 (Time) (Date)

## SECTION III - CHECKLIST FOR PROCEEDINGS

### A. COMPLETE IN ALL CASES

	YES	NO	NA
1. Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?			
b. Copy of notice to respondent, if any? (See item 9, below)		X	
c. Other correspondence with respondent or counsel, if any?			X
d. All other written communications to or from the appointing authority?			X
e. Privacy Act Statements (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.

2 Exhibits (para 3-16, 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?	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	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 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 5-6h, 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)?			
<b>FOOTNOTES:</b> 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.				

SECTION IV - FINDINGS (para 3-10, AR 15-6)

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

At about 080600MAY2005 at MB 5249 7883 (RTE [REDACTED]), the MP platoon of 2-3 BTB was manning a temporary TCP in support of an operation being conducted by 1-9 FA Battalion. The MP platoon's mission was to search southbound traffic and to stop north bound traffic from it's location on RTE [REDACTED] for the duration of the operation.

At about 080945MAY2005 a blue minivan traveling north at a high rate of speed on Rte [REDACTED] passed both of the TCP warning points (a line of rocks that spanned Rte [REDACTED] and a stop sign). The minivan drove over the line of rocks, swerved around the stop sign, and continued to travel towards the MP's position at a high rate of speed. After the minivan dodged the stop sign, SPC [REDACTED], who was providing southward overwatch, fired a series of warning shots in front of the minivan. The driver neither slowed his speed or changed directions, and continued towards the MPs (Exhibit F). The vehicle was then engaged in a burst of deadly fire by eight soldiers in the platoon. The minivan then drove through a strand of concertina wire that spanned Rte [REDACTED] directly in front of the MP vehicles, and passed between the MP vehicles that were parked along the roadside. The minivan, which had gotten the concertina wire entangled underneath it, came to a stop after careening off the road and into a berm. The LN driving the vehicle was killed. *warning shots*

I find that all applicable rules of engagement were followed during this incident. Rules of engagement authorize graduated levels of warning (visual and audible warnings, warning shots, and deadly force respectively) (Exhibit [REDACTED]). The methods of using graduated warnings were appropriately used by the MPs. The overall appearance of the TCP ([REDACTED] and military vehicles with manned weapons pointing towards northbound traffic) served as a clear visual indication that traffic should stay away from the TCP. Audible warnings are impractical for a TCP. Warning shots were appropriately used after the minivan deliberately dodged the [REDACTED] obstacles and the stop sign. It was appropriate for deadly force to be used after warning shots were ignored because VBIEDs are a predominant threat to U.S. forces in the 2 BDE AO. ROE authorize deadly force to protect a unit in imminent danger (Exhibit [REDACTED]).

I find that the TCP was in accordance with division standards. Division TCP standards require that an [REDACTED] line and a [REDACTED] line be established in front of the [REDACTED] line of a TCP (Exhibit [REDACTED]). They also require that a barrier is placed so that a vehicle would have to stop or significantly slow down prior to warning shots being fired (Exhibit [REDACTED]). For temporary TCPs, field expedient measures (the rocks in the road in this case) are acceptable methods of meeting this requirement (Exhibits [REDACTED] and [REDACTED]).

As the TCP correlates to the standard (Exhibit [REDACTED]), the [REDACTED] that were placed across the road sufficiently served as an [REDACTED] line, the stop sign sufficiently met the standard of an [REDACTED] line, and the concertina strand in front of the MP position was the [REDACTED] line. In addition to these materials there was a group of local nationals voluntarily assisting in re-directing traffic, which gave drivers additional warning before they reached the stop sign of the TCP. Although the LNs were not a planned or essential element to the operation, it is undeniable that their active presence effectively elevated the level of warning to any driver at that intersection of Rte [REDACTED]. It is clear that the combination of obstacles and deterrents along the approach to the MP position met the standard for a TCP. Sworn statements indicate that no drivers demonstrated any misunderstanding of the TCP flow during the operation (Exhibits F, G, I, J).

Furthermore, MAJ [REDACTED], the S-3 of 1-9 FA Battalion, who had overseen dozens of similar TCPs during OIF III, reviewed and approved the TCP after its initial setup and prior to the incident (Exhibit P).

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

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

I recommend that no unfavorable actions be taken against any members of the 2-3 BTB MP platoon or against any other soldiers involved in this incident. All actions on and around the TCP had been taken with the intent of division standards and mission accomplishment in mind and were in the best interest of the soldiers involved in the mission and the local nationals in the immediate vicinity.

I recommend that the MPs continue to make sure that all ROE are clearly understood prior to missions. I additionally recommend that they continue the practice of thoroughly compiling documentation, to include sworn statements of participants and photographs of significant surroundings, following any future LN fatalities.

I recommend that the MPs review and closely follow all 2 BDE TCP SOPs for future missions. They should allocate all available resources so that they meet minimum SOP requirements before allocating resources elsewhere.

**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.)

**Classified Documents Removed**



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 2-3 BRIGADE TROOPS BATTALION  
2D BRIGADE, 3RD INFANTRY DIVISION  
APO AE [REDACTED]

REPLY TO ATTENTION OF:

AFZP-VBF-C (15-6)

16 May 2005

MEMORANDUM FOR 1LT [REDACTED], Alpha Company, 2-3 Brigade Troops Battalion

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as an investigating officer pursuant to Army Regulation (AR) 15-6 Procedures for Investigating Officers and Boards of Officers to conduct an informal investigation regarding a local national who attempted to run a [REDACTED] TCP resulting in a fatal shooting.
2. Your investigation should include but not be limited to:
  - a. The facts and events relevant to the cause of the incident.
  - b. Whether or not the ROE and checkpoint security procedures were followed.
3. Your investigation should include witness interviews with any Soldier related with the above list of events and anyone with information.
4. Prior to the beginning of your investigation, you must make an appointment with the Administrative Law Division of the Staff Judge Advocate's Office in building 1, located on FOB [REDACTED].
5. In conducting your investigation, use informal procedures under AR 15-6. Make specific findings as to the allegations above. The evidence you gather should support your findings. Make recommendations consistent with your findings to address any perceived or actual improper or criminal conduct.
6. In your investigation, all witness statements will be sworn and written on DA Form 2823, Sworn Statement. If, in the course of your investigation, you come to suspect that any individuals have committed a criminal offense, then use DA Form 3881, Rights Warning/ Procedure Waiver Certificate to advise them of their rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment (if interviewing a civilian), as appropriate. In addition, provide witnesses with a Privacy Act Statement before you interview (See AR 15-6, Appendix B).
7. Submit your findings and recommendations to me on DA Form 1574 within 10 working days of receipt of this appointment order. Should you require additional time, coordinate directly with the appointing authority undersigned.

[REDACTED]

LTC, EN  
Commanding



DEPARTMENT OF THE ARMY  
1<sup>ST</sup> BATTALION, 9<sup>TH</sup> FIELD ARTILLERY  
3<sup>RD</sup> INFANTRY DIVISION  
APO, AE [REDACTED]



AFZP-VBD-T

8 MAY 2005

MEMORANDUM FOR RECORD

SUBJECT: SIR (LOCAL NATIONAL KIA)

LINE 1: Unit reporting: 1<sup>ST</sup> BATTALION, 9<sup>TH</sup> FIELD ARTILLERY

LINE 2: Incident: LOCAL NATIONAL ATTEMPTED TO RUN [REDACTED] TCP

LINE 3: Date/time group (DTG) incident occurred: 080942MAY05

LINE 4: Location of incident: [REDACTED]

LINE 5: Personnel involved:

Name	Rank	Unit	SSN	Sex	Age	Race
[REDACTED]	SPC	HHC/2-3BTB	[REDACTED]	M	22	HIS
[REDACTED]	SGT	HHC/2-3BTB	[REDACTED]	M	25	CAU
[REDACTED]	SSG	HHC/2-3BTB	[REDACTED]	M	33	CAU
[REDACTED]	SFC	HHC/2-3BTB	[REDACTED]	M	36	CAU
[REDACTED]	SGT	HHC/2-3BTB	[REDACTED]	M	28	HIS
[REDACTED]	SPC	HHC/2-3BTB	[REDACTED]	M	21	CAU
[REDACTED]	SGT	HHC/2-3BTB	[REDACTED]	M	21	CAU
[REDACTED]	SPC	HHC/2-3BTB	[REDACTED]	M	22	CAU

LINE 6: Summary of incident: AT 080942MAY05 A LOCAL NATIONAL DRIVING WEST TO EAST IN A NAVY BLUE 1993 Kia Besta (License Plate [REDACTED]), PASSED A COALITION STOP SIGN. THE VEHICLE THEN DROVE THROUGH A MARKED STRAND OF CONCERTINA WIRE, AT WHICH TIME THE TCP FIRED WARNING SHOTS. THE VEHICLE CONTINUED FORWARD, DRAGGING CONCERTINA WIRE WITH IT, TOWARDS THE PARKED MP VEHICLES. THE MPs THEN ENGAGED THE VEHICLE WITH SAF, KILLING THE DRIVER.

LOCAL NATIONAL NAME: [REDACTED]

LINE 7: Damage to government and/or civilian property: NONE (OTHER THAN THE VAN).

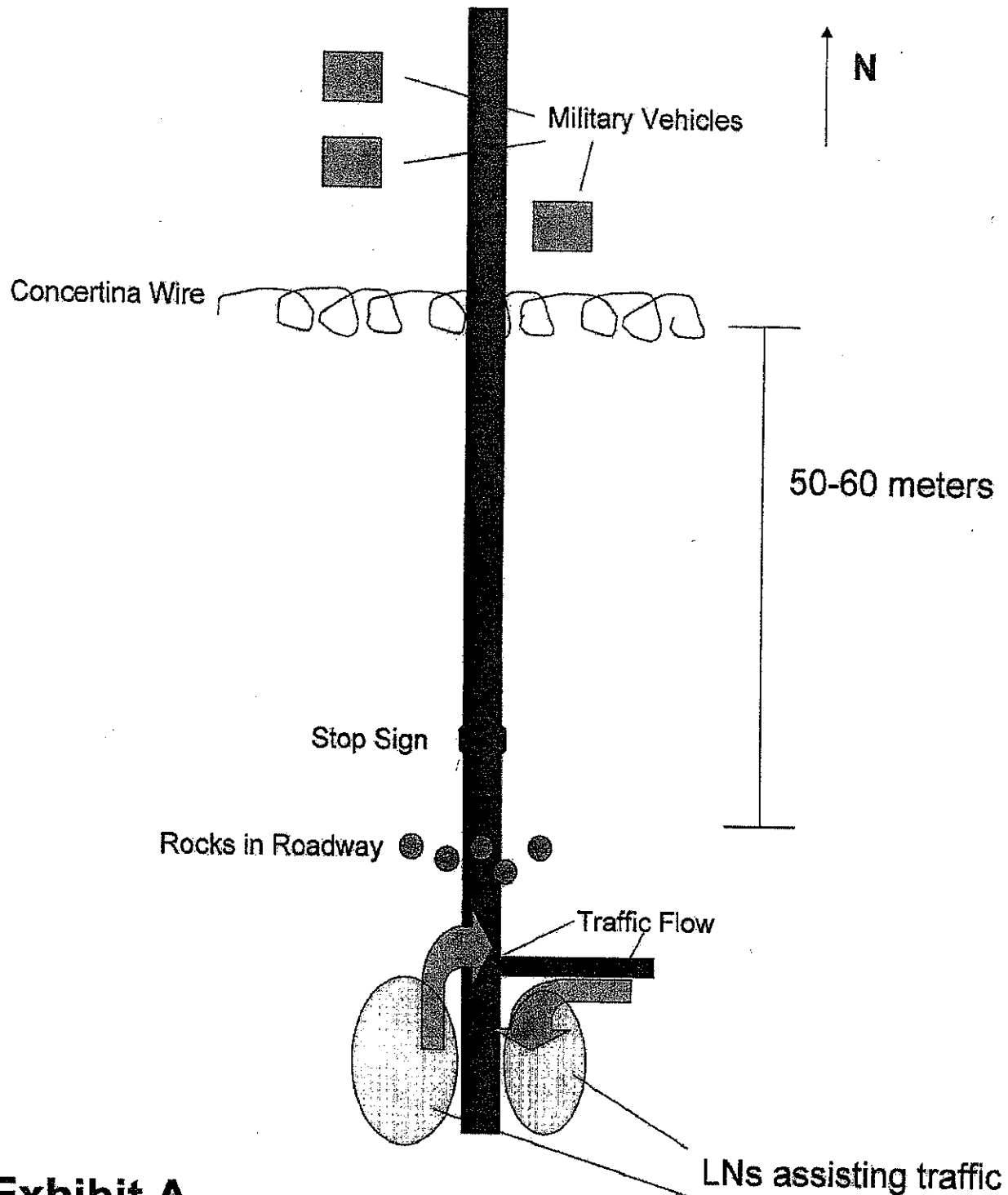
LINE 8: Commander reporting: 1LT [REDACTED] MP PLT, HHC/2-3BTB.

Exhibit Index

Exhibit A	Site Diagram
Exhibit B	Photograph, Facing North from concertina wire on Rte [REDACTED]
Exhibit C	Photograph, Facing South from concertina wire on Rte [REDACTED]
Exhibit D	Photograph, Facing South from crash site
Exhibit E	Photograph, Facing West, South of concertina wire
Exhibit F-L	Sworn statement of witnesses
Exhibit M	ROE (Section JJ, 3.A.3 of Annex E to FRAGO 25 to OPOD 05-06)
Exhibit N	TCP requirements (Coordinating Instructions, page 3, FRAGO 34 to OPOD 05-06)
Exhibit O	TCP Diagram (Annex C to FRAGO 41 to OPOD 05-06)
Exhibit P	Sworn Statement

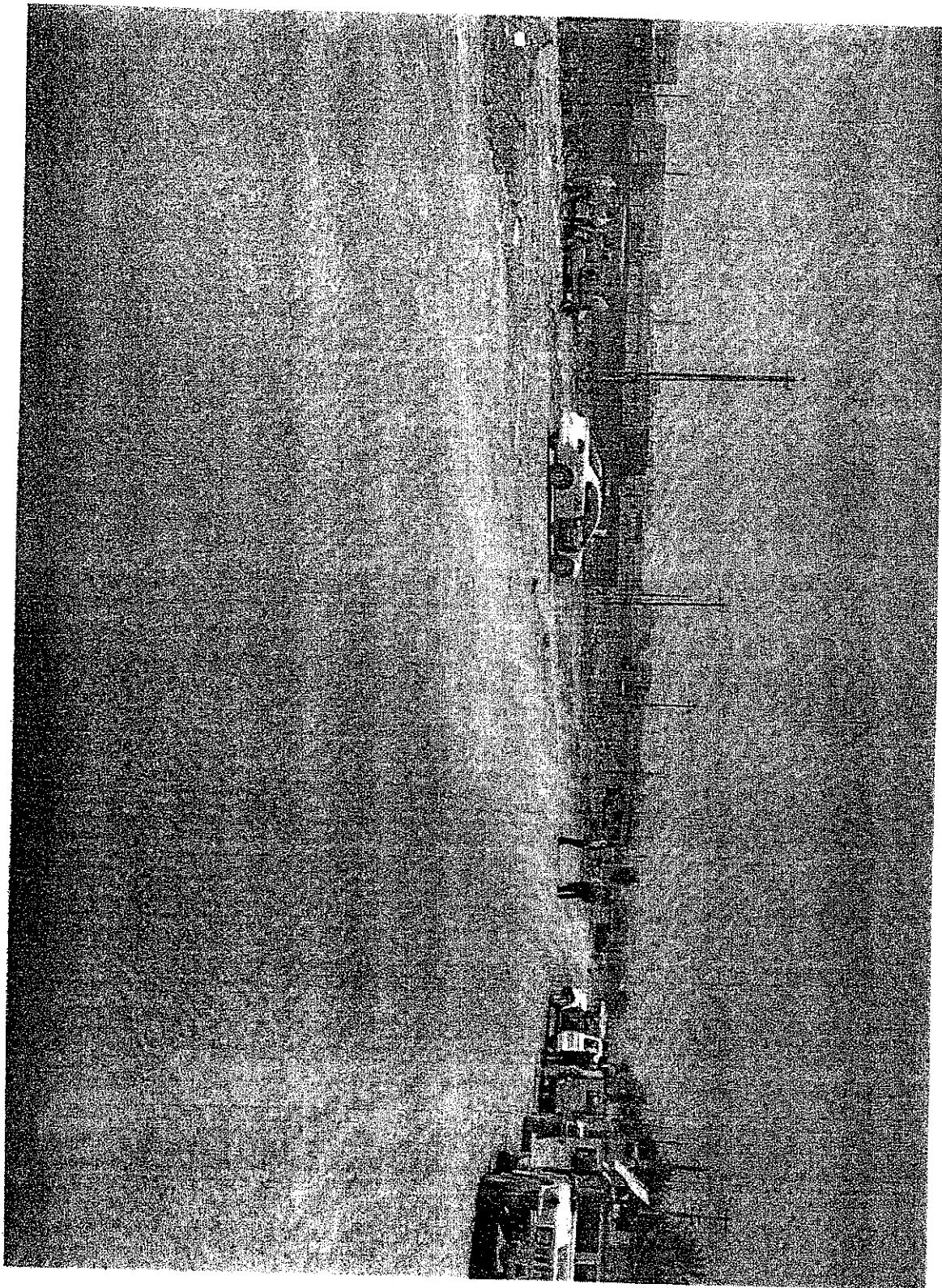


# Site Diagram

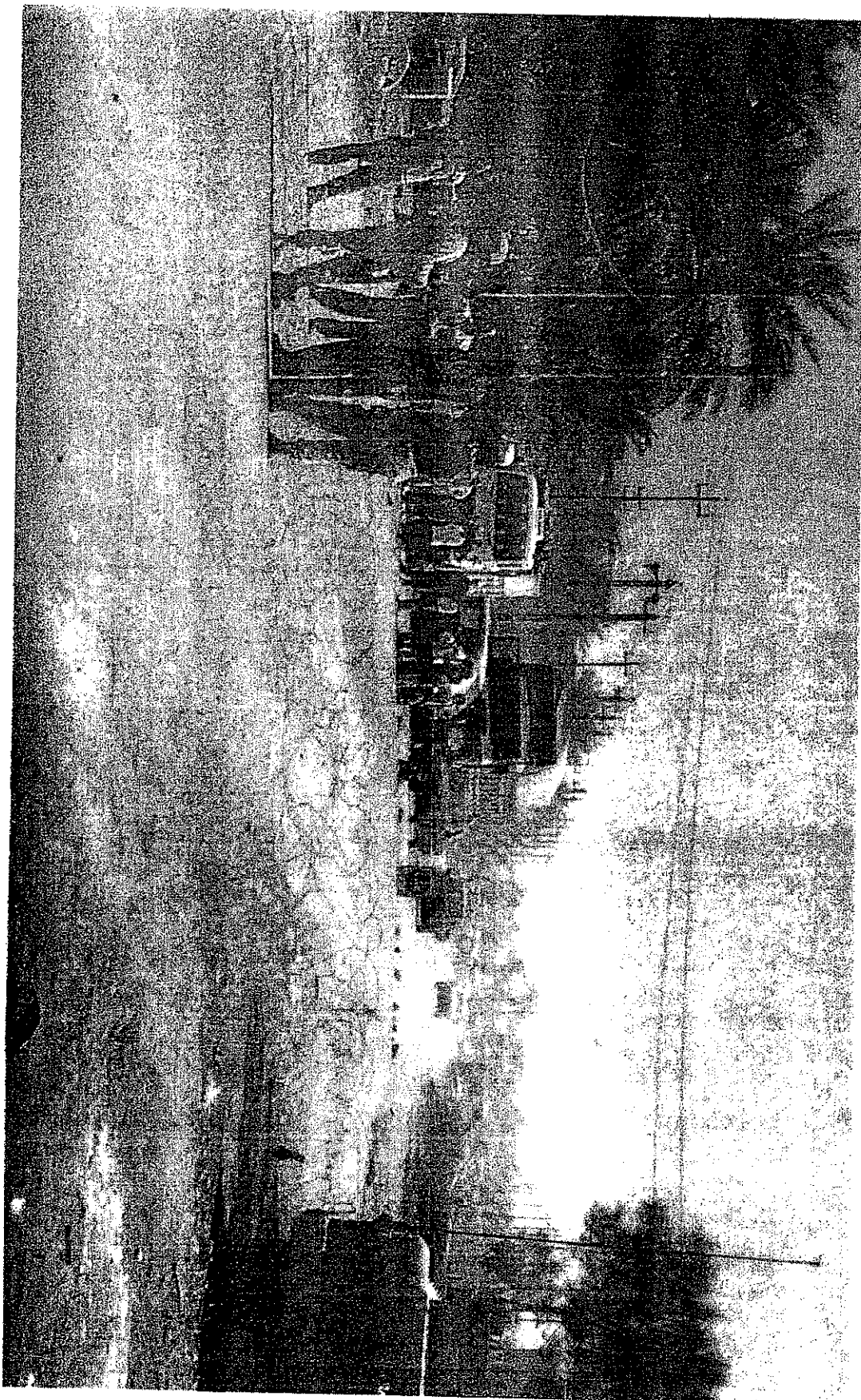


**Exhibit A**

## Exhibit B

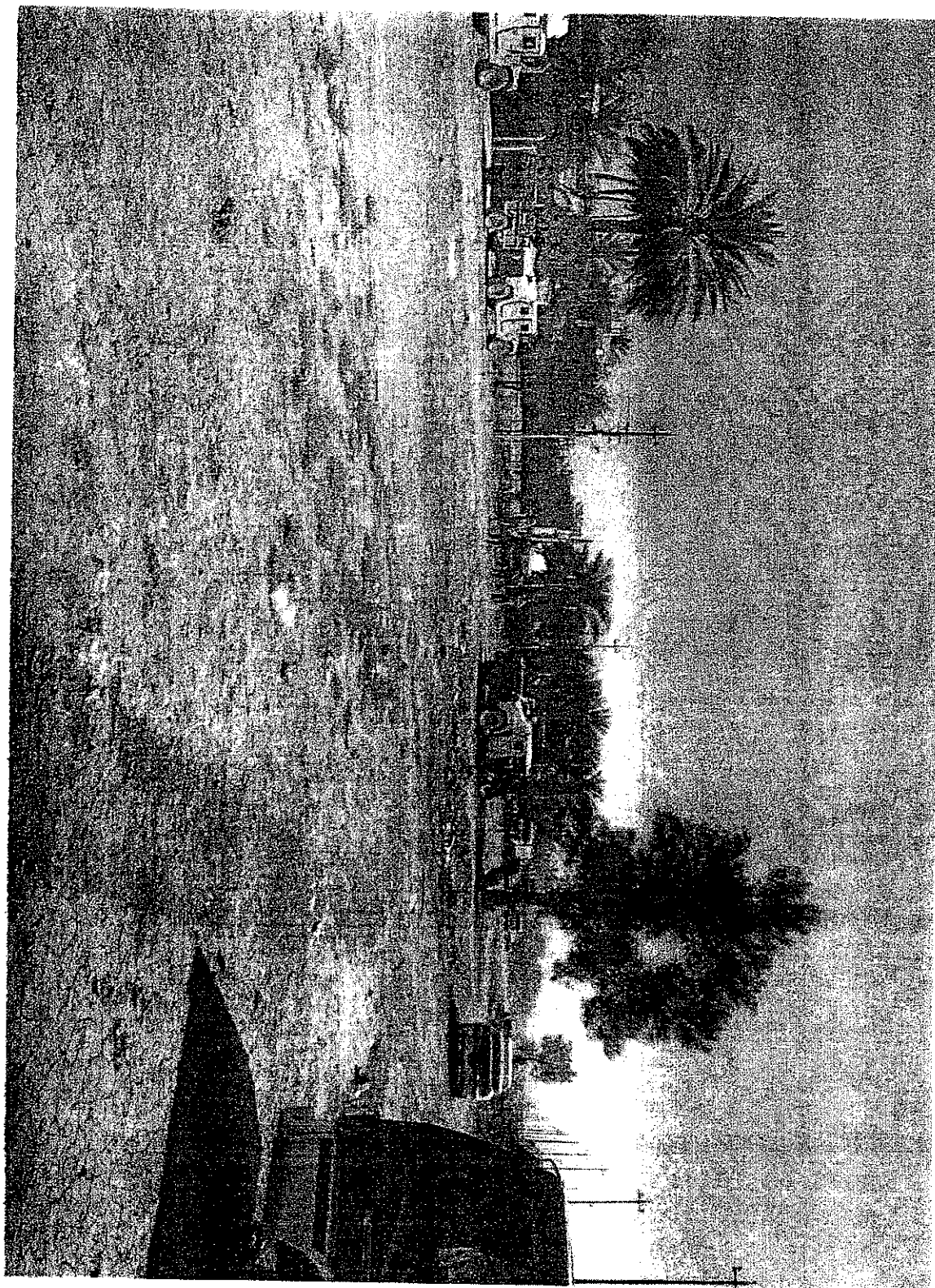


# Exhibit C

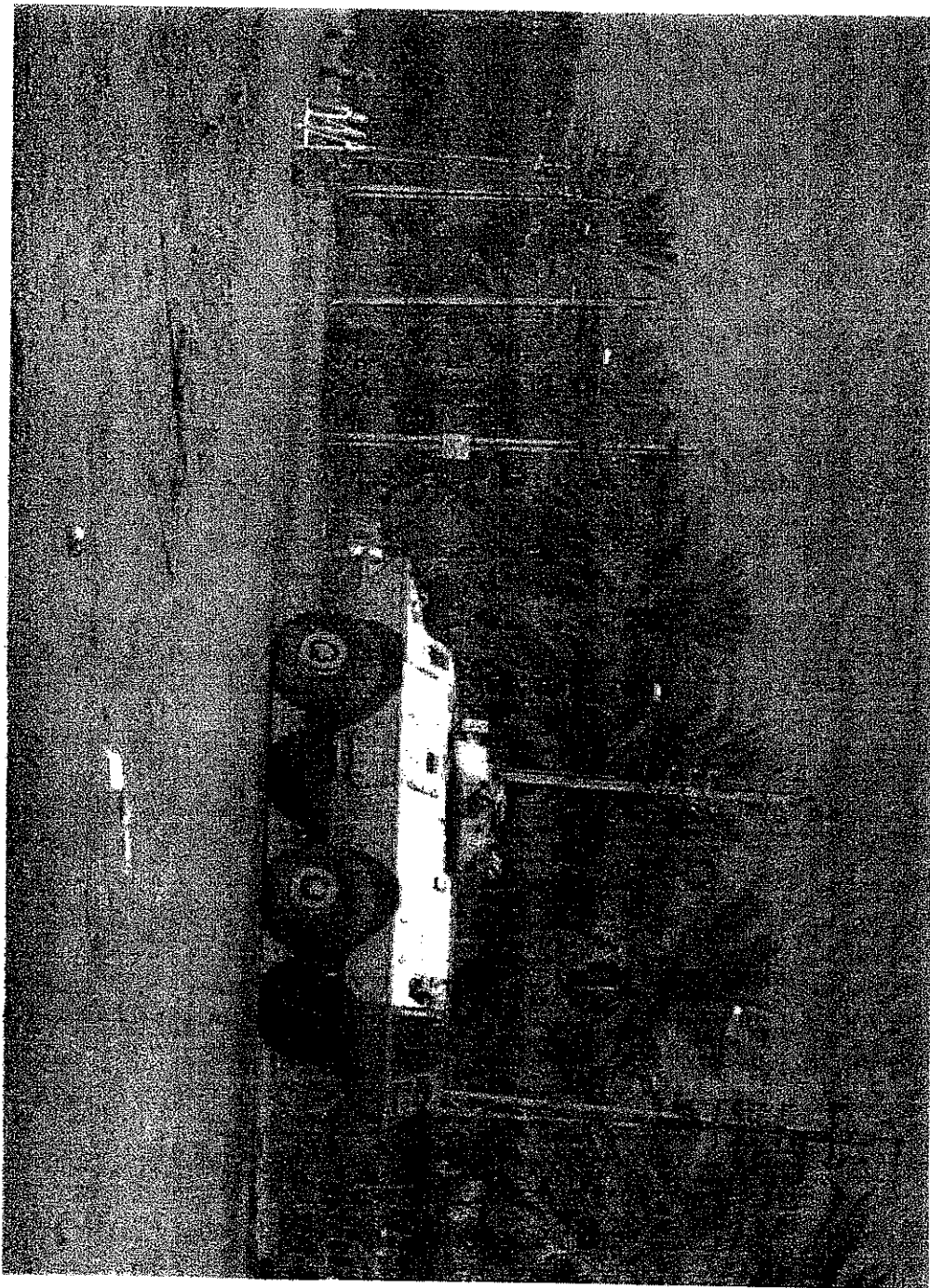




# Exhibit D



# Exhibit E



# 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: 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 Camp [REDACTED]	2. DATE (YYYYMMDD) 07mar17	3. TIME 0910	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS E-4	
8. ORGANIZATION OR ADDRESS			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the morning of May 8<sup>th</sup> at 0940 I was placed on security, which I had been pulling Since 0600. Since we arrived on Ben Rd. At 0940 a Navy blue van made a clear sign or ~~not~~ attempt to dodge our stop sign (our barricade), and proceed toward us showing no indication of slowing down. So I fired some warning shots and the truck was still moving so I engaged the driver. I stopped firing when the truck drove by me and braced for an explosion that did not occur. My platoon then engaged. As the vehicle came to rest about 25m from my truck. Supervisor in my unit were notified and reported <sup>the</sup> incident. I was and still am aware of our RoC for May 8<sup>th</sup>. We had our first level

10. EXHIBIT F	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT 0910 DATED 17/5/05

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)

of force which was our stop sign which nobody else had a problem recognizing. Our second level was my fired warnings, then the final level was deadly force. This was our first TCP on Rt. [REDACTED]

/// End of Statement ///

## AFFIDAVIT

I, [REDACTED], 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.

[REDACTED]  
(Signature of Person Making Statement)

## WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 17 day of May, 2005  
at [REDACTED]

ORGANIZATION OR ADDRESS  
\_\_\_\_\_  
\_\_\_\_\_

[REDACTED]  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS  
\_\_\_\_\_  
\_\_\_\_\_

[REDACTED]  
(Type Name of Person Administering Oath)

Investigating Officer  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 2 OF 2 PAGES