REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

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

SECTION I: APPOINTMENT

Appointed by: Colonel [redacted], Commander 3rd Brigade Combat Team, 1st Armored Division (Attaching authority)

Appointed on: 6 October 2005 (Date)

SECTION II: SESSIONS

The investigation commenced at Camp [redacted], Iraq (Place) and lasted 1830 hours (Time) on 6 October 2005 (Date).

Indicate if a formal board met for more than one session, check here □. Indicate 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 investigating officer (board) finished gathering and hearing evidence at 1600 hours (Time) on 09 October 2005 (Date) and concluded findings and recommendations at 1600 hours (Time) on 10 October 2005 (Date).

SECTION III: CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

1. Identification (para 3-15, AR 15-6)

   a. The letter of appointment or a summary of the appointment data?

   b. Copy of notice to respondent, if any? (See item 2, below)

   c. Other correspondence with respondent or counsel, if any?

   d. All other written communications to or from the appointing authority?

   e. Privacy Act Statements (Certificate, if statement provided orally)?

   f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?

   g. Information as to sessions of a formal board not included on page 1 of this report?

   h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?

   i. Use of the 15-6 form template? A positive representation that the circumstances described in the question did not occur in the investigation or board?

DA FORM 1574, MAR 83 EDITION OF NOV 77 IS OBSOLETE. Page 1 of 4 pages
YES NO

a. Are all bone offered, whether or not considered as evidence individually numbered or lettered as exhibits and attached to this report?

b. Is an exhibit of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?

c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?

d. Are copies, documents, or depositions, if substituted for real or documentary evidence properly authenticated and is the location of the original evidence indicated?

e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3C-6h, AR 15-6)?

f. Is each written stipulation attached as an exhibit and if each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?

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 3C-6d, AR 15-6)?

What is the nature present when the board voted on findings and recommendations (para 4-1 and 3-2b, AR 15-6)?

B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)

At the initial session, did the recorder record, or determine that all participants had read, the letter of appointment (para 5-2, AR 15-6)?

Was a verbatim account of every session of the board (para 5-2, AR 15-6)?

Was each absense of any member properly excused (para 5-2a, AR 15-6)?

 Were members, witnesses, experts, or interpreter sworn, if required (para 3-5, AR 15-6)?

Were members who voted on findings or recommendations not present when the board received some evidence (para 5-2c, AR 15-6):

C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)

Notice to respondents (para 5-5, AR 15-6):

a. Was the notice and date of delivery to the respondent indicated on each letter of notification?

b. Was the notice delivered at least five working days prior to the first session of the board?

c. Does each letter of notification indicate:

   (1) the date, time, and place of the first session of the board concerned by the respondent;
   (2) the matter to be investigated, including specific allegations against the respondent and any evidence;
   (3) the respondent’s rights with regard to counsel;
   (4) the names and addresses of each witness expected to be called by the recorder;
   (5) the respondent’s right to be present, present evidence, and call witnesses;
   a. Was the respondent provided a copy of all uncased documents in the case file?
   b. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?

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 5-5, AR 15-6)?

Counsel (para 5-5, AR 15-6):

a. Was each respondent represented by counsel?

b. Name and business address of counsel:

Off counsel is a lawyer, check here [ ]

b. Was respondent’s counsel present at all open sessions of the board relative to this respondent:

c. If military counsel was requested but not made available, is a copy for (if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?

17. If the respondent challenged the legal advice or any other matter for lack of impartiality (para 5-7, AR 15-6):

a. Was the challenge properly denied and by the appropriate authority?

b. Did each member successfully challenge each to participate in the proceeding?

Was the respondent given an opportunity to (para 5-6d, AR 15-6):

a. Be present with an 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)?

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 5-9b, AR 15-6)

Are all of the respondent’s requests and objections which were denied indicated in the report of proceedings or in an inclusive or exhibit with (para 5-11, AR 15-6)?

FOOTNOTES:
1. Exhibit does not appear on an attached sheet.
be (investigating officer) (herein), having carefully considered the evidence, finds:

See attached memorandum.

SECTION V - RECOMMENDATIONS

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

See Attached Memorandum.
SECTION VI - AUTHENTICATION

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. If any voting member or the record is to sign here or in Section VII below, indicate the reason in the space where his signature should appear.

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT

To the extent indicated in enclosure, the undersigned does not concur in the findings and recommendations of the board. (In the enclosure, identify by number each finding and/or recommendation in which the dissenting member(s) does not concur. State the reasons for disagreement. Additional/substantial findings and/or recommendations may be included in the enclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY

The findings and recommendations of the [Investigating Officer] (board) are [approved] [disapproved] approved with following exceptions/substitutions. If the appointing authority refers the proceedings to the investigating officer or board for further proceedings or corrective action, attach the correspondence (or a summary if oral) as a numbered enclosure.
MEMORANDUM FOR Commander 3rd Brigade, 1st Armored Division, APO, AE 09342

SUBJECT: Findings 15-6 use of deadly force 2-70th AO

1. On 30 September members of A Co 1-41 INF (TF 2-70) used the proper escalation of force measures resulting in the death of a local national. The squad was conducting a mounted patrol when at approximately 1900 hours, in dusk conditions allowing visual recognition up to 300 meters; the squad encountered a suspicious vehicle. One M2 Bradley stopped approximately 200 meters behind the sedan and the second vehicle stopped approximately 50 meters in front of the suspect vehicle. (see Exhibit K Diagram A)

2. The following dismounts were involved in the escalation of force: SSG , SGT , PFC , PVT and their interpreter . The patrol's escalation of force detailed in Exhibits D, E, F, G, H, and I corroborate the following: There was enough ambient light to see without right vision enhancement beyond 300 meters.

3. The escalation of force included the following order: voice commands, sure-fire flashes, 3 warning shots away from the vehicle, several vehicle disabling shots, and finally PVT , fearing for his life, and hearing SSG command to "take the occupants down" shot into the vehicle. All Soldiers then raced for cover behind the M2 each one expecting the vehicle to be a VBIED and explode. The vehicle was within 25 meters and continuing forward toward the dismounted Soldiers when they engaged with deadly force.

4. The Soldiers did have positive ID against a legitimate target demonstrating hostile intent, therefore deadly force was authorized.

5. A Co 1-41 and Battalion S-3 (Major ) reported that the technique of "locking down" a vehicle from front and rear to establish overwhelming fire superiority has been a standard operating procedure for several months without incident prior to this event.

6. The actions taken by the local nationals resulted in the shooting. There were no mitigating circumstances which Alpha Company 1-41 INF should change which would have altered the outcome.

7. POINT OF CONTACT: MAJ at VOIP. or email SIPR @army.mil

MAJ, SF
SPT BCT S-6

17409
MEMORANDUM FOR Commander 3rd Brigade, 1st Armored Division

SUBJECT: Recommendations for investigation of use of deadly force 2-70th AO

1. On 30 September members of A Co 1-41 INF (TF 2-70) used the proper escalation of force measures resulting in the death of a local national. The squad was conducting a mounted patrol when at approximately 1900 hours, in dusk conditions allowing visual recognition up to 300 meters; the squad encountered a suspicious vehicle. One M2 Bradley stopped approximately 200 meters behind the sedan and the second vehicle stopped approximately 50 meters in front of the suspect vehicle.

2. The following recommendations are made:
   a. The current SOP of locking down suspect vehicles on the side of the road uses the principles of surprise, speed, and overwhelming combat power. This maximizes Soldiers safety and ensures any enemy force remains passive and on the defensive reaction mode.
   b. 2-70th has created an SOP that allows US Soldiers to dictate when and where a potential enemy contact will occur. This enhances US security and I recommend no changes to the current SOP.
   c. I recommend no action be taken against the leadership of Alpha Company, or any of the members of the B section, 1st Squad.


MAJ, SF
3/1 BCT S-5
The following is an index of the Exhibits and incidents listed during this investigation:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Appointment Letter (MAJ)</td>
</tr>
<tr>
<td>B</td>
<td>Commander Incident report</td>
</tr>
<tr>
<td>C</td>
<td>Appointment Letter (CPT)</td>
</tr>
<tr>
<td>D</td>
<td>Statement SSG</td>
</tr>
<tr>
<td>E</td>
<td>Statement SGT</td>
</tr>
<tr>
<td>F</td>
<td>Statement SGT</td>
</tr>
<tr>
<td>G</td>
<td>Statement Pvt</td>
</tr>
<tr>
<td>H</td>
<td>Statement PFC</td>
</tr>
<tr>
<td>I</td>
<td>Statement Iraqi Interpreter</td>
</tr>
<tr>
<td>J</td>
<td>Statement SSG</td>
</tr>
<tr>
<td>K</td>
<td>Rear of Vehicle</td>
</tr>
<tr>
<td>L</td>
<td>Passenger Front of Vehicle</td>
</tr>
<tr>
<td>M</td>
<td></td>
</tr>
</tbody>
</table>
MEMORANDUM FOR MAJ [REDACTED], Headquarters and Headquarters Company, 3rd Brigade, 1st Armored Division, Camp [REDACTED], Iraq 09378

SUBJECT: Appointment as Investigating Officer

1. Pursuant to AR 15-6, paragraph 2-1, you are hereby appointed as an investigating officer to investigate the use of deadly force by 2nd Platoon, A Company, 1st Battalion, 41st Infantry Regiment that allegedly caused the death of a local national.

2. In your investigation, use procedures under AR 15-6, Chapter 4, for an informal board of officers. All witness statements will be sworn, and you will follow the procedures in AR 15-6, paragraph 3-7e for Privacy Act statements. If the person you are interviewing states that he/she does not know anything about the allegations, prepare a sworn statement to that effect for the witness to sign. If, in the course of your investigation, you suspect a soldier has committed an offense under the UCMJ, you must advise and read him/her their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate, prior to conducting any interview.

3. In your investigation you need to answer the following questions:
   a. What was the sequence of events that led up to the incident?
   b. Did the soldiers involved properly escalate the use of force?
   c. Did the patrol have Positive Identification (were they reasonably certain that they were taking action against a legitimate military target) before engaging?
   d. Was deadly force authorized?
   e. Was the use of deadly force (warning shots, disabling shots, etc.) appropriate for the situation?
   f. Were there any Law of War violations?
   g. Are there any operational lessons that should be captured and disseminated?
   h. Were there any other contributing factors that, if changed, could have altered the outcome?
AFZN-BB-CC
SUBJECT: Appointment as Investigating Officer

4. You may obtain assistance from CPT [redacted], the Trial Counsel for 3rd BCT, 1st AD. CPT [redacted] will serve as your legal counsel. Prior to starting your investigation, you should contact him at the Brigade Legal Center for legal guidance concerning your investigation.

5. Submit your findings and recommendations on DA Form 1574 to CPT [redacted] for legal review no later than 9 October 2005.

COL, AR
Commanding
Appendix 1 (CIR BLUE to REPORT) to Annex C to FRAGO (RSOI)

COMMANDER'S INCIDENT REPORT:

LINE 1: Unit reporting: 2-70 AR

LINE 2: Incident: Escalation of force

LINE 3: Date/time group (DTG) incident occurred: 301920SEP05

LINE 4: Location of incident: MB

LINE 5: Personnel involved

<table>
<thead>
<tr>
<th>Name</th>
<th>Rank</th>
<th>Unit</th>
<th>SSN</th>
<th>Sex</th>
<th>Age</th>
<th>Race</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SSG</td>
<td>2/A/1-41</td>
<td></td>
<td>M</td>
<td>35</td>
<td>Hispanic</td>
</tr>
<tr>
<td></td>
<td>PVT</td>
<td>2/A/1-41</td>
<td></td>
<td>M</td>
<td>19</td>
<td>African American</td>
</tr>
<tr>
<td></td>
<td>SGT</td>
<td>2/A/1-41</td>
<td></td>
<td>M</td>
<td>36</td>
<td>Caucasian</td>
</tr>
<tr>
<td></td>
<td>SGT</td>
<td>Driver</td>
<td></td>
<td>M</td>
<td>23</td>
<td>Caucasian</td>
</tr>
<tr>
<td></td>
<td>LN</td>
<td>Driver</td>
<td>N/A</td>
<td>M</td>
<td>JKN</td>
<td>Iraqi</td>
</tr>
</tbody>
</table>

LINE 6: SUMMARY: 2/A/1-41IN, TF 2-70AR, while conducting hasty TCPs, conducted escalation of force against a local national car (white Toyota Corolla) vicinity. The vehicle matched the list. As the dismounts approached, the vehicle began backing away from the dismounted Soldiers, and then began driving towards the dismounts. The interpreter yelled at the driver to stop and get out of the car. The vehicle continued toward the dismounts. When the vehicle was approximately 30m away from the dismounts, SGT (dismounted) fired 1 x warning shot (M4). The vehicle continued toward the dismounts and SGT (dismounted) fired 2 x disabling shots (M4) into the grill from his Bradley as the vehicle closed to within 25m. The vehicle continued and at approximately 20m away, PVT fired 1 x shot (M4) into the vehicle's passenger compartment, killing the passenger. The driver then pushed the passenger out of the car, turned the car around, and started moving south. The second Bradley then blocked the vehicle from retreating. The vehicle and driver were searched with no contraband found. The driver stated he is a taxi driver and did not know the passenger. A follow up CIR will be submitted upon completion of a commander inquiry. The Brigade Commander has directed an AR16-6 has been initiated.

LINE 7: Injuries or damage to government and/or civilian property: (1) local national killed

LINE 8: Commander reporting: COL, AR

Commanding
MEMORANDUM FOR Commander, Headquarters and Headquarters Company, 2nd Battalion, 70th Armor, ATTN: CPT [redacted], Camp [redacted], Iraq 09378

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an Investigating Officer pursuant to AR 15-6 and AR 380-5, paragraph 6-103, to investigate the circumstances surrounding the prisoner abuse on 2 OCT 05.

2. In your investigation, all witness statements will be sworn and Privacy Act Statements taken. From the evidence, you will make specific findings into the circumstances behind the incident and the potential for criminal or administrative liability. You will also make recommendations for corrective action to prevent similar acts or incidents and for administrative and/or disciplinary action, if appropriate.

3. You may obtain advice and assistance from the Administrative Law Division, Office of the Staff Judge Advocate. Administrative support will be provided by CPT [redacted] of the Brigade Legal Office located at [redacted].

4. Prior to interviewing any service member whom you suspect may have violated the UCMJ, you must provide an Article 31 rights warning. The Article 31 rights warning should be done using DA Form 3881. Please consult with your legal advisor for more information.

5. Coordinate and report to the Task Force XO upon receipt of this order for an initial briefing and follow on scheduling with the Task Force Commander.

6. Submit your findings and recommendations, with continuation sheets, enclosures, and exhibits to the S1 Office upon completion. Point of contact for this memorandum is CPT [redacted] at [redacted].

LTC, AR
Commanding
On 30 September 05 at 1400 hours myself, section, and 1st squad started on our evening TOPs. With A23 leaving south in [redacted] to west [redacted] where we were to start our mission. At [redacted] we stopped our first vehicle, a white 4x4 JK Toyota Strada. A 23 stopped further down on the road about 200 meters and I stopped my 4x4. About 50 meters to the front (north) of the vehicle, my dismounts from 1st squad included Sgt [redacted], PFC [redacted], Lt [redacted], and myself, the interpreter. We dismounted off to the left and right sides of the road. [redacted] was screening for the occupants of the vehicle to get out of the vehicle before I closed up, but [redacted] fired a warning shot into a dirt berm. The vehicle then pulled forward towards the occupants and Sgt [redacted] my gunner shot the next 2 shots into the crew of the vehicle. The vehicle continued to move forward; by this time the vehicle was now to take the occupants down. Pvt [redacted] took the shot and killed the passenger. The driver reached over the passenger and threw his knife and threw him out of the vehicle. The driver continued to move towards the dismounts. I told them to get back behind the Bradley this could be a used. I also backed my vehicle up out of the way we dismounted and did [redacted]. I saw both his hands then come out of the vehicle. I dismounted my Bradley and pulled him out and onto the ground. I searched the dismount for weapons, he had nothing on him except for a piece of cigarette, a few pens, and a 7.62 my team of dismounts with [redacted] opened up to me to search the car. Nothing was found in the vehicle that was incriminating. Using [redacted], I advised him why don't you stop and get out. He says that his brother, the passenger told him not to stop. The Americans wouldn't stop them. O.K. I say so what is your brother's name? He thinks nothing. I pull the outside, called for a sniper to fire them in up to this point. [redacted] advises me to take a statement from the dismount about what he was doing. I say, and I ask him again what is your brother's name? He replies, I don't know. I am a taxi driver and I don't know him. At this point the advisor asked me if we were going to be able to talk about this. [redacted] being the taxi driver and being the car back to the IAC once we loaded the dismount for any wounds, because he had a change in dress. [redacted] Bravo section and I continued movement to the line with the dismounts vehicle. At this point also advised us to come up with to hand off the body. The IAC my 4x4 tank had maintenance problems. By this time an advisor joins us at the time when they ask the body and met up with [redacted] at the end of the mission.