**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 [REDACTED], COL, AR, Commanding

(Appointing authority)

16 OCT 05

(Date)

### SECTION II: SESSIONS

The investigation/assembly commenced at 2-70 AR Maintenance Office

(Place)

at 1000

(Time)

on 22 October 2005

(Time)

If a formal board met for more than one session, check here. Indicate in an enclosure the time each session began and ended, the place, persons present and absent, and explanation of absence, if any. The following persons (members, respondents, counsel) were present:

(CYT [REDACTED], Investigating Officer)

The following persons (members, respondents, counsel) were absent. (Include brief explanation of each absence.)

(See para 3-15, AR 15-6.)

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

### SECTION III: CHECKLIST FOR PROCEEDINGS

#### 1. COMPLETE IN ALL CASES

<table>
<thead>
<tr>
<th>Item</th>
<th>YES</th>
<th>NO</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. The letter of appointment or summary of oral appointment data?</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[X]</td>
</tr>
<tr>
<td>b. Copy of notice to respondent, if any? (See item 9, below)</td>
<td>[X]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>c. Other written communications to or from the appointing authority?</td>
<td>[X]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>d. Any Act Statements (Certificate if statement provided orally)?</td>
<td>[X]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>e. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?</td>
<td>[X]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>f. Information as to sessions of a formal board not included on page 1 of this report?</td>
<td>[X]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

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

[ ]

**FOOTNOTES:**

1. Explanations of other answer on [REDACTED]
2. [REDACTED]

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2. Exhibits (para 5-6, AR 15-6)
   a. Are all items offered (whether or not received) or considered to evidence individually numbered or lettered as exhibits and attached to this report?
      [ ] Yes
      [x] No
      [ ] Not applicable
   b. Is there an inventory of all exhibits offered or considered by investigating officer or board at the time of the hearing?
      [ ] Yes
      [x] No
      [ ] Not applicable
   c. Was the testimony/statement of each witness who was recorded separately or been reduced to written form and attached as an exhibit?
      [ ] Yes
      [x] No
      [ ] Not applicable
   d. Are copies, descriptions, or depictions if satisfactorily authenticated as to authenticity and the location of the original evidence included?
      [ ] Yes
      [x] No
      [ ] Not applicable
   e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 5-6d, AR 15-6)?
      [ ] Yes
      [x] No
      [ ] Not applicable
   f. Is each written statement attached as an exhibit and each oral statement either reduced to writing and made an exhibit or recorded in a verbatim record?
      [x] Yes
      [ ] No
      [ ] Not applicable

3. Was a quorum present when the board voted on findings and recommendations (para 4-1 and 5-2a, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)
4. At the initial session, did the recorder read, or determine that all participants read, the letter of appointment (para 5-3b, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

5. Was a quorum present at every session of the board (para 5-2b, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

6. Was each member of any panel properly seated (para 5-2a, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

7. Were members, witnesses, reporter, and interpreter sworn if required (para 5-1, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

8. If any witnesses who were on findings or recommendations were not present when the board received some evidence, does the record describe how they familiarized themselves with that evidence (para 5-3c, AR 15-6)?
   [ ] Yes
   [x] No
   [ ] Not applicable

C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section I, Chapter 5, AR 15-6)
9. Notice to respondents (para 5-3, AR 15-6)
   a. In the method and date of delivery to the respondents indicated in each letter of notification?
      [ ] Yes
      [x] No
      [ ] Not applicable
   b. Was the date of delivery at least five working days prior to the first session of the board?
      [ ] Yes
      [x] No
      [ ] Not applicable
   c. Does each letter of notification indicate
      (1) The date, hour, and place of the first session of the board concerning the respondent?
      [ ] Yes
      [x] No
      [ ] Not applicable
      (2) The matter to be investigated, including specific allegations against the respondent, if any?
      [ ] Yes
      [x] No
      [ ] Not applicable
      (3) The respondent's rights with regard to contact?
      [ ] Yes
      [x] No
      [ ] Not applicable
      (4) The name and address of each witness expected to be called by the respondent?
      [ ] Yes
      [x] No
      [ ] Not applicable
      (5) The respondent's rights to be present, present evidence, and call witnesses?
      [ ] Yes
      [x] No
      [ ] Not applicable
   d. Was the respondent provided a copy of all unclassified documents in the case file?
      [ ] Yes
      [x] No
      [ ] Not applicable
   e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?
      [ ] Yes
      [x] No
      [ ] Not applicable

10. If any respondent was designated after the proceedings began for one who was absent during part of the proceedings:
    a. Was he properly notified (para 5-3a, AR 15-6)?
       [ ] Yes
       [x] No
       [ ] Not applicable
    b. Was record of proceedings and evidence received in his absence made available for examination to him and his counsel (para 5-4c, AR 15-6)?
       [ ] Yes
       [x] No
       [ ] Not applicable

11. Counsel (para 5-6, AR 15-6)
    a. Was each respondent represented by counsel?
       [ ] Yes
       [x] No
       [ ] Not applicable

12. If the respondent challenged the legal advice or any legal matter for lack of impartiality (para 5-7, AR 15-6)
    a. Was the challenge properly denied and by the appropriate official?
       [ ] Yes
       [x] No
       [ ] Not applicable
    b. Did each member successfully challenge cease to participate in the proceedings?
       [ ] Yes
       [x] No
       [ ] Not applicable

13. Was the respondent given an opportunity (para 5-3a, AR 15-6)?
    a. To present his counsel at all open sessions of the board which deal with any matter which concerns that respondent?
       [ ] Yes
       [x] No
       [ ] Not applicable
    b. To examine and object to the introduction of oral and documentary evidence, including written statements?
       [ ] Yes
       [x] No
       [ ] Not applicable
    c. To object to the testimony of witnesses and cross-examine witnesses other than his own?
       [ ] Yes
       [x] No
       [ ] Not applicable
    d. To all witnesses and otherwise introduce evidence?
       [ ] Yes
       [x] No
       [ ] Not applicable
    e. To call a witness?
       [ ] Yes
       [x] No
       [ ] Not applicable

14. If requested, did the recorder assist the respondent in obtaining evidence possession of the Government and in arranging for the presence of witnesses (para 5-6b, AR 15-6)?
    [ ] Yes
    [x] No
    [ ] Not applicable

15. Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an enclosure or exhibit to it (para 5-11, AR 15-6)?
    [ ] Yes
    [x] No
    [ ] Not applicable

FOOTNOTES:
1. Explain all negative entries on attached sheet.
2. Use the side only if the completed form is returned to the incident on the question and has been denied investigation.

Page 2 of 4 pages. DA Form 1574, Mar 85.
SECTION IV - FINDINGS

On 16 October 2005, at approximately 0400, two M2A2 Bradley Fighting Vehicles from 1st Armored Division were travelling west on RTE 6002. The lead Bradley, number 3003, and thetrail Bradley, number 3004, were on the 2-70 AR TAC. The lead Bradley, number 3003, was commanded by LT [redacted]. The trail Bradley, number 3004, was commanded by SSG [redacted].

Upon spotting the object, SGT [redacted] notified LT [redacted] and SSG [redacted] to identify the object using a thermal signature. LT [redacted] and SSG [redacted] assumed the object was in fact a human being in a crouched position and they began scanning the area for other vehicles or people in the vicinity of the individual, so LT [redacted] decided to investigate further. LT [redacted] was separated from the surrounding farmland by a large dirt canal that ran parallel to the RTE on the south side of the road. LT [redacted] directed SSG [redacted] to move back to the east on RTE 6002 in order to find a suitable site to cross the canal. Once LT [redacted] had found a way across, SSG [redacted] was to maneuver the suspect individual and detain him for questioning. SSG [redacted] acknowledged the order and began his movement back toward the east. As the AV12 Bradley started its move, the suspect individual visibly turned toward the sound of the moving vehicle and began reaching toward the ground. As soon as the individual began grabbing things from the ground, LT [redacted] called his PSG, SFC [redacted], in order to verify their location and clear the area for fire support.

As LT [redacted] was receiving verification from his B section on their location, SGT [redacted] lost visual contact with the individual. He had moved behind a small concrete canal that was just in front of his position and that ran from his initial position to the west, parallel to RTE 6002. LT [redacted] had his driver move the Bradley approximately 300 yards to the east, and which point his gunner re-acquired the suspect individual. As soon as his gunner re-acquired, LT [redacted] gave the order to fire. SGT [redacted] fired a 5-7 round burst to engage the individual with 2-3 additional bursts and then LT [redacted] ordered the cease fire.

SGT [redacted] did not re-acquire visual contact with the individual following his engagement. In order to aid in the search for the individual, LT [redacted] held his position on RTE 6002 and he instructed his other sections to maneuver to the location where they had initially observed the individual. SSG [redacted] and SSG [redacted] moved down RTE 6002 in order to search for the individual. SGT [redacted] was on the large dirt canal parallel to RTE 6002 where he moved south to a point where he could cut back to the east and the last known position of the suspect individual. While SSG [redacted] was moving, LT [redacted] sent his dismount infantrymen across a small concrete canal that ran south from the small concrete canal and began to search the individual. They were joined by SSG [redacted] and SSG [redacted] after approximately 20 minutes. By approximately 0430, the dismounts had found the body in a small dirt canal that ran south from the small concrete canal the individual had first been seen behind. The medic with the dismount squad, SGT [redacted], verified that the individual had been killed in the initial engagement.

After the dismounts found the body, they continued to search the surrounding area. They searched for approximately two hours and found a shovel, which was located under the body in the canal, and a few stacked sandbags near where they had initially identified the individual at the eastern edge of the small concrete canal. Additionally, SGT [redacted] in AV11 searched along RTE 6002 for any possible IEDs. No weapons, IEDs or IED initiating materials were found. They tested the body using SGT [redacted] and though no explosives were found at the site.

SECTION V - RECOMMENDATIONS

In view of the above findings, the investigating officer hereby recommends:

That no action be taken against LT [redacted] or his section and that the details of this incident be distributed as an ROE vignette for discussion in the E2E.
During the search of the area, LT [redacted] identified a small house approximately 500m south of the site, and he sent his dismounts to investigate. While moving toward the house, a man approached from that direction. The dismounts detained him and brought him back to LT [redacted] for questioning. The man identified himself as [redacted] a local farmer with no known insurgent ties. Mr. [redacted] sided that Mr. [redacted] had often came to this field in order to activate the irrigation systems for his village, which lay several kilometers to the west. He usually brought his son with him. Mr. [redacted] did not know why he was in the field as late as he was on the day in question.

Hassan Alaa Shihada Shihada

The evidence in this investigation proves that the shooting of Mr. [redacted] was justified and was the result of reasonable assumptions on LT [redacted] part and a proper escalation of force. LT [redacted] and his section began movement down RTE [redacted] knowing that there had been at least one IED attack on that RTE just three days earlier (as can be seen in Exhibit 14) and that sections of the RTE had been previously identified as probable locations for future IED attacks by the Task Force 2-70 AR SSG (as seen in Exhibit 15). LT [redacted] believed that attack by IED was the most likely form of contact he would encounter in sector and this fact is crucial in understanding LT [redacted] decision making process during this incident.

The CFLCC Rules for the Use of Force card authorizes individuals to "engage persons who...show hostile intent with the minimum force necessary to counter the...demonstrated hostile intent and to prevent US Forces." Hostile intent is further defined as "The threat of imminent use of force against US Forces." From his perspective, LT [redacted] was in a known IED area, and he was observing possible human crouching behind partial cover and concealment with excellent observation of RTE [redacted]. He was maneuvering his wing Bradley toward his position, the crouching individual reached for something on the ground—possibly an IED initiating device. At that moment, and under those circumstances, LT [redacted] saw Mr. [redacted] with hostile intent and crouched in the area nearby. LT [redacted] made an appropriate tactical decision based on what he knew at the time.

Knowing what we know now, after-the-fact, it is reasonable to believe that Mr. [redacted] was not an IED trigger man. No IED or triggering device was found at the scene. Mr. [redacted] as known to move about in the fields after dark to open irrigation channels. This, along with his body being found in the ditches, suggests that he was escaping the situation. However, news of this information was available to LT [redacted]—when he felt that his section was in danger and he had to make his decision to engage or not engage. Further, even now there are some good reasons to believe that Mr. [redacted] may have been an IED trigger man. Mr. [redacted] had 10-15 seconds to hide or lose the initiator. Some of which are as small as key chains and cellular phones. He was in the fields many hours outside of his usual routine, and he did not bring his son as he usually did. The movement of the second Bradley caused him to attempt to flee the area and he tested positive for two types of explosives. We can never know for sure if Mr. [redacted] was an IED trigger man, but there were several indicators leading LT [redacted] to believe he was when he decided to engage.

A Company, 1-41 IN, does have an appropriate TTP for dealing with suspicious local nationals that is well understood by the officers and soldiers of the company. They also have a good understanding of the CFLCC ROE and the CFLCC Rules for the Use of Force—both cards were referenced by the soldiers during their interviews.

After reviewing all material associated with this investigation, I find that LT [redacted] had sufficient evidence, at the time he engaged, to identify Mr. [redacted] as a hostile actor with hostile intent. In addition, I can find no contributing factors that, if changed, could have altered the outcome of this event.
SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OR 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.)

[Signatures]

(Recorder)  (Investigating Officer)  (President)

(Member)  (Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in inclusion, the undersigned states their concern about findings and recommendations of the board. (In the inclusion, identify by number each finding and/or recommendation to which the dissenting member(s) does/did not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclusion.)

[Signatures]

(Members)

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 revises the findings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclusion.

Unfortunate Incident here where the Brookings cited

[Redacted]

[Redacted]
MEMORANDUM FOR RECORD

SUBJECT: 15-6 Investigation Index of Exhibits for the A/1-41 IN Shooting on 16 OCT 05.

1. The following exhibits are included as a part of the investigating officer's report:

- Exhibit 1: Appointment Orders
- Exhibit 2: Statement by LT
- Exhibit 3: Statement by SGT
- Exhibit 4: Statement by SSG
- Exhibit 5: Statement by SPC
- Exhibit 6: Statement by SGT (2nd)
- Exhibit 7: Statement by SSG (2nd)
- Exhibit 8: DA FORM 3881 for LT
- Exhibit 9: Commander's Incident Report
- Exhibit 10: Unsigned Statement by LT
- Exhibit 11: Photographs of Site
- Exhibit 12: Site Diagram
- Exhibit 13: Statement by CPT
- Exhibit 14: Analysis of IED Activity vic. RTE
- Exhibit 15: TF 2-70 AR "Map"

2. Point of contact for this memorandum is the undersigned.

CPT. AR
Investigating Officer
MEMORANDUM FOR CPT. [Redacted], HHC, 2nd Battalion, 10th Armor Regiment, 3rd Brigade, 1st Armored Division, APO AE 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 shooting death of one local national on 16 October 2005 during a patrol conducted by 1/A/1-41 Infantry.

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 affect 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. During your investigation, 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 soldiers have Positive Identification (were they reasonable certain that the object of attack was a legitimate military target) before engaging the local national?
   d. Did the local national pose a threat by committing a hostile act or by demonstrating hostile intent?
   e. Did the On Scene Commander attempt to minimize collateral damage?
   f. What is the unit’s Standard Operating Procedure (SOP) prior to engaging a Local National?
   g. Were there any Law of War violations?
h. Are there any operational lessons that should be captured and disseminated?

i. Were there any other contributing factors that, if changed, could have altered the outcome?

4. If it becomes evident that there is possible misconduct outside the scope of your investigation, notify the appointing authority immediately. If during your investigation you become aware of information that needs command attention, immediately notify the appointing authority for guidance.

5. Contact the Command Judge Advocate, CPT [REDACTED], for legal guidance prior to starting your investigation. CPT [REDACTED] is located in Bldg 72 and his phone number is Vrips [REDACTED].


COL, AR
Commanding
SWORN STATEMENT
For use of this form, see AR 195-48; the preprinted agency is DOD

PRIVACY ACT STATEMENT

AUTHORITY:
Title 10 USC Section 301; Title 5 USC Section 29961; E.O. 9536 dated November 22, 1943 (SSN).

PRINCIPAL PURPOSE:
To provide commanders and law enforcement officials with means by which information may be accurately identified.

DISCLOSURE:
Disclosure of your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.

1. LOCATION
2-70 AR Maintenance Office

2. DATE (YYYY/MM/DD)
2005/10/22

3. TIME
1100

4. FILE NUMBER

5. ORGANIZATION OR ADDRESS
A Co, 1-41 IN, Camp B, Iraq, APO AE 09078

6. GRADE/STATUS
O-2

I, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the morning of 16 OCT, we received word from [redacted] that we needed to pick-up a crew from 3rd PLT at the TAC and take them back to [redacted] so they could bring out two Bradley to replace one of their broken vehicles. It was about 0430 while we were travelling west on RTE [redacted], say center, SGT [redacted] identified a hot spot. I told the driver to stop and we notified the 2nd track that we had stopped out for a hot spot. The 2 was the lead track. The driver and I continued to scan-I dropped down and scanned with him trying to figure out what the hot spot was. There was no movement from the hot spot. Initially, we couldn't even tell if it was a human or not. We tried to figure out what it was it was a pretty big hot spot, so we figured it was a human in a crouched position, hiding. We checked the surrounding area for clues as to why there might be a person out there at this hour. We were looking for stuff like animals, a vehicle parked near by or something that would normally be there. 95% of the time we see people out there we can usually determine what they're doing without investigating further. I don't remember if the guy was violating curfew, but it was close, and the curfew wasn't relevant to our investigating this guy. Iraqis are usually oblivious to the curfew anyway, so that wasn't a huge deal. The red flag was that IEDs had increased on this route, it's a [redacted], and the terrain and where this hot spot is, is typical of IED tactics as far as observing a route that is well-dressed by Coalition forces. He was in a covered and concealed position that also provided him with a covered and concealed escape route. So, it looked suspicious, so we continued to watch. Once my driver and I had checked the area for any tell-tale signs of why this guy is out here, there was nothing that we saw that would eliminate him as a pedestrian or something. That was when I decided we needed to investigate this catch this person and check him out. So that was my first course of action to begin maneuvering on him.

I called my 2nd track up and said, "Hey, we need to check this out. Start moving back toward my position and start looking for a route that cuts south, because there was a canal that runs between RTE [redacted] and where the heat source was at. So we had to identify a way to get back there to him before we could drop down."

The canal was parallel to the road limited the ability of dismounts. It was off for track, and dismounts would have to search the area and find a way to cross this canal. I stayed on the road, scanning with my gunner as the 2nd track comes up. The individual is hunched over. He's in a crouched position or squatting position. He's overwatching. I gave the 2nd track guidance to maneuver back to look for a place to cross over. He's coming back east to our position and we observe in the rifle the individual in question looks over at the 2nd track. We see him looking in the direction of the 2nd track. He turned and looked in the direction of the 2nd track, and we knew it was a person then. What made me identify him as an immediate threat, and made me decide to engage this individual is that when he looked at the 2nd track, and he was in crouched position, he immediately picked something off the ground and it was something small. He was doing something with his hands. That was when I spotted looking through the rifle. I jumped up and I can see if there were any OPs out, or if they were all co-located. They were co-located and they were on fire. While I was clearing fires, my gunner told me the guy had ducked away and he couldn't go behind the little concrete canal. We moved the Bradley like 5-10 ft to the east. The 2nd track was on his way back. As soon as the gunner had found the guy again, I told him to engage. He let off one burst, and the guy disappeared. He let off a couple more bursts to suppress the area.

I talked to the 2nd track. I was going to maintain overwatch since we knew where the guy was. So I walked the 2nd track down into the area, because he was going to drop his dismounts to search the area. I dropped my dismounts also, and told them the vicinity and told them to find a good place to cross the canal and so they started doing that. It took us a while. The helicopters that came out never saw anything. We used a green laser to designate the area. The only thing they ever saw was a dog in the area. It took a while for our dismounts to get out there. It was maybe 20 minutes before they found him. As soon as they found him, the medic was with them, SGT [redacted] and was confirmed that the individual was in fact a pedestrian that we had identified as a pedestrian.

10. EXHIBIT

11. INITIALS OF PERSON MAKING STATEMENT

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

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BE TAKEN AT _______ WORD MUST BE INDICATED.

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

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S. STATEMENT (Continued)

them we didn't need them anymore, so they came out. They didn't see anyone else in the area where the body was. I think they couldn't see with their thermals because the guy had fallen masked. After that we started to investigate and search for where the device was or whatever.

I had my 1st tech and we went inside to check the building there and we had 2 people inside there. I was taking pictures, and I had SGT [redacted] to focus his search; from where we saw him, a little concrete canal to the body. I took pictures of the area where he was at, how he could come. There was a house 200m south of where the individual was, so I figured that if he had a shady reason for being there, that house might be part of it. So I had my dismounts get the individual down by the house so I could question him. I talked to the questioned him and asked if he knew that the man was killed or not. We never saw another individual.

We continued to search the area. We couldn't find what he was messing with. But he had 20-30m from where we saw him. It wasn't a great distance; he hadn't moved very far. The thing is, he used that water canal for cover, and he was using the concrete and concealment of the area to mask his movements. We couldn't even tell he had moved that far, if at all, from our position. From 300m away, a movement of 20-30m we're not able to see that.

We continued to search the area. The dismounts found a shovel in the canal-in the water close to the body. He could have very well been carrying it but at no time did my gunner or myself see him with a shovel. A shovel is a very distinct object that even in thermals you can pick it up. We never saw this guy with a shovel. The only thing we saw was that he was messing with something small in his hands. We were unable to find anything that matched that description. We searched for an hour, and then I told them to go back and search again. I had them search in near-by tall grass and whatever, in case he had thrown it in something, and that's why I recognized him as an immediate threat to my forces, and the reason why I used lethal force. I felt without a doubt in my mind that he was about to engage my 2nd track heading back to my track. It appears, after the fact, that the guy was moving away from us when we shot him, but we didn't know that. We knew he was moving, but we didn't know he was fleeing the area. He was moving, but that doesn't mean that he's trying to haul-ass out of there. I think that some of the reports may have gone up sounding like this, but it wasn't like he was packing up his stuff and hauling-ass away. At the moment we identified him as a valid target, we lost visual contact. I felt that he obviously recognized that we were maneuvering on him, that there was a track moving back. He was moving to a better position to recognize the 2nd track, and engage him with an IED. He could have been doing a lot of things, but my first thought was that he was re-positioning to initiate an IED. He was undercover the whole time, and it you couldn't tell exactly what his actions were.

The decision to engage the individual was made when I saw him physically look at the 2nd track and then start doing something small with his hands on the ground. Every time we identify an IED trigger point, they usually have a supply stack-water bottles, various materials—because they plan on sitting there for a long time. Even when we've caught individuals red-handed, we've never been able to find a trigger device. They have been able to wash it or get rid of it. But everything this individual was doing pointed towards him being an IED trigger point. But that's not why I engaged- that's why I was maneuvering. I was maneuvering because everything pointed to this guy being a bad guy. But we don't engage based on assumptions. We engaged because as the 2nd track started coming back, this guy started messing with something in his hands on the ground. I would have engaged right then if I knew exactly where the IED was at. It would have been the exact moment that he was packing the stuff on the ground. While I cleared for fire, the gunner lost him. So I told the driver to back-up so that we could see better along the little concrete canal. I figured the guy was moving a little ways down the canal for cover and to engage. Maybe 10 seconds passed between when I decided to fire and when we fired. It was almost immediate.

In a generic situation like this, we recognize the individual and try to ascertain what the individual is doing. If there's some suspicion about the individual, we maneuver on him to detain and question him. If at any time you get positive identification of the individual as a valid threat, you have an AK-47 or RPG you engage. What we saw got us 95% of positive identification, but that's not me engaging. It was the threat he posed to the 2nd track coming back. We didn't know where the IED was. We never found an IED. But at that time, everything pointed to an imminent attack. In my opinion, if I had not engaged, it would have been gross neglect on my part. I would have been putting my forces at great risk had I not engaged. Looking back, there is nothing that we could have done differently to impact the outcome of the situation. If I was in the same situation again, I wouldn't do anything differently- I couldn't do anything differently.
STATEMENT OF [REDACTED] TAKEN AT 2-70 AR Motor Pool DATED 2005/10/22

6. STATEMENT (Continued)

THIS PAGE NOT USED. STATEMENT ENDS ON PAGE 2.

AFFIDAVIT:

[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 INITIALLED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPES OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INCENTIVE.

(Signature of Person Making Statement)

WITNESSES:

[REDACTED]

ORGANIZATION OR ADDRESS

[REDACTED]

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]

PAGE 3. DA FORM 2923, DEC 1998

PAGE 3 OF 3 PAGES
**SWORN STATEMENT**

For use of this form, see AR 190-40; the proponent agency is ODSOPS

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10 USC Section 301; Title 8 USC Section 2851; E.O. 9397 dated November 22, 1943 (ISSN).

**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which your social security number is used as an additional/alternate means of identifying information may be accurately identified. Notification to facilitate filing and retrieval.

**ROUTINE USES:** Disclosure of your social security number is voluntary.

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

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<th>1. LOCATION</th>
<th>2. DATE (YYYY/MM/DD)</th>
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<tr>
<td>2-70 AR Maintenance Office</td>
<td>2005/10/22</td>
<td>1045</td>
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</table>

**5. ORGANIZATION OR ADDRESS**
A, 1-41 IN, Camp Iraq, APE AE 09178

**6. NAME/MIDDLE NAME:**

**ADDRESS:**

**7. GRADE/STATUS:**
E-5

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At about 0430, A Section was rolling back to the TAC to pick-up a damaged Bradley and escort it back to Taji so we could continue operations in support of the polling sites. We were going down RTE and I was in the lead. Basic training, when we're going down the road in the BDs and the LT vehicle scans the rear and the flanks looking for triggering and stuff like that of RTE and I was scanning the south and I picked up a hot spot in a woodline. I asked me what it was. I said I saw a hot spot and I didn't know what it was, so we both decided to go forward. The contrast was working on this night, the trees were coming up hotter and it flattened everything and it was. The LT sat down and we started watching it. I was pretty sure it was a guy. It wasn't a false alarm. I don't really pay attention to the radio. I was trying to keep both eyes open. We were looking for people nearby or anything that might be a threat.

Then the LT called the 2nd and the guy in the front seat had his ID as a person, we could just see the corner of a bunch of trees, and I told the LT fire to the south - we had a Bravo section down south and we weren't sure exactly where they were. I remember him calling to clear the area.

I told the driver to back up because I lost sight of him. I had a rough time getting a visual with all the grass and trees down by where the guy was at. So the driver backed up 10-15 ft. and I caught sight of him again through the trees. I'm not sure if he was running at 45 degrees or straight away. He was about 100 yards away. When we got back up and gathered his things, it looked like he was running but I'm not sure. He didn't seem like there was so much stuff covering the way that it really got busy. He was sitting in the back, he was in a pocket where he could really see him. When he stood up, I lost him. When we backed up, I stopped the vehicle. I got another visual of him and the LT said engage. I just fired off a burst - three to seven rounds of coax. I saw him fall, but I didn't see if he was hit or not. The LT said cease fire after that the 2 track had come up to us, but I can't be sure because I was in the blind. I kept my ride on target to make sure that we didn't lose this guy in the terrain. I told the LT I was going to keep the visual in my sight and he dropped the discounts and he told 2 to try and find a way to get down there. The discounts circled around and I talked them into the area. They found a shallow area to cross the canal next to the road, and they got down there between the 2 track. SGT was the discounted squad leader.

Once the 2 track had made it around, the LT wanted to get down on the ground. We went back toward and found a place to move south over the canal and parked north of the small concrete canal the guy had been behind. After dropping the LT, they told me to come back up on the road and find any possible IED sites on the road. So the driver and I went back up to the engagement site and drove about 300m past the north-east concrete canal that tied into the east-west canal the guy was behind. Because it looked like the perfect place for placing an IED. The road was really soft and there could have been stuff anywhere but we didn't find anything. After that, they said come back so we drove back to assist with overwatch and security. I went to meet SPC on a body bag, and we scanned again a few times with my M4 and ACOG, but there was nothing conclusive-nothing to go on. They didn't find anything down by the canal that I knew of. I guess when the guy died and fell over, there was a shovel underneath him. When the driver was sitting, we didn't see anything like a shovel. I lost sight of him like 30 seconds before we engaged - maybe he picked it up on his way out, but we never saw anything like that in the AO or that he picked up while he was sitting there that whole time. That's about the only thing they found underneath him.

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**10. EXHIBIT**

<table>
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<th>11. INITIALS OF PERSON MAKING STATEMENT</th>
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**ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT DATE" AND PAGE NUMBER MUST BE INDICATED.**
STATEMENT (Continued)

He had a little plastic sand bag, the kind you sit on, set-up out there. It was like a little raised-up area behind the concrete
wall where he could have been sitting. He gathered up a couple of things when 2 was coming back- he looked down the road and
looked at where we saw him. He looked at 2, we were stationary- he had eyes on us the whole time- he was watching us.
He looked away as 3, cranked something off the ground and that's when I lost sight of him. I heard 4 shoot him and the bullet
crushed part of his head or his eye or something. He looked at me like he was in a slow motion.

My understanding in the beginning was the we were going to try and take the 2 come across and drop the IEDs and search
the area. That's the scenario. We tried it once before on 17593. We had two guys out there that had something in their hands,
and we were dropping dynamite and that's when they hit it. When they heard the ramp drop they took off running. So we were
even trying to get the 2 around, basically in a cut-off position. And the 2 was coming back, the guy reached for something on
the ground, and I think that was the sign. I don't know if he was reaching for a trigger mechanism like he was getting ready to set off
an IED or something. We hadn't reached the point where the concrete wall comes up to the road yet, and that's where I had
seen (the wall coming up to the road) that looked like some kind of aiming marker for an IED. Like how sometimes they use
things to signify on the side of a road as a marker to aim an IED.

I definitely had positive ID on this guy. The IED triggerman, in my opinion, is pretty clear. They always use real good
cover combined with a good excitation route. I surveyed the area real well while we were watching this guy, and everything
matched. He had good cover and concealment, a good escape route, all that stuff. And normally when we stop to observe people
out at night, they just continue on with whatever they were doing. They look over at you and continue what they're doing, or they
stop, put their hands on their shovel or wave at you. I know they are working a lot at night because it's Ramadan, and I'm used to
seeing people out, and that crossed my mind at the time so I figured this guy was just out working. So I started to scan and look
for houses and stuff, and scouting the immediate area around him said that this guy lived in a little house and was just working
in his garden or something. Basically, when I felt threatened was when he picked up his stuff out and started taking off
because we were maneuvering on him. I didn't engage when the guy first started moving because I hadn't been given the go and
the LT was clearing fires. We didn't engage because we didn't know where the friendly forces were at the time. Otherwise we
might have engaged at that time. I wouldn't have preferred to engage at that time. I've never seen anyone behave like that before.

In regard to a unit SOP for this type of situation, what we've done in the past is observe the individual and send a maneuver
element around to check them out- which is basically what we did here. We get dynamite on the ground to go out and search
the guy, see what he's doing out there. We've done this in the past, sent dynamite up and most people, they just walk right up to
and say, "Hey, how's it going," and the interpreter finds out what they're doing. Usually it's stuff like irrigating fields or digging
up some potatoes or whatever. When we're maneuvering on someone, and they get up and take off, it's that's what you would
expect you'd do. The SOP to this situation is to try and get hands-on so figure out what's going on. I've never heard anything that's passed down that says, "This is what you must do," but basically, if they show hostile
intent, engage. That's all that's ever been put down. And to me, when he was grabbing stuff up off the ground when 2 was
coming back he could have had something up there on the road. As far as I'm informed, that's what it was. It was an IED, and he was
reloading for the second vehicle. He was going to blow it and get the rest out of there. The guy passed positive for
(SEMTEX and C4).}

Looking back on it, he had a lot of time between when he picked up whatever he had on the ground and when I caught sight of
him again and engaged him. It was real muddy out there and he could have just stuffed it down or packed it in the dirt. To me, a
bit that asked positive for C4 and was hanging out beside the road and evading US forces- there has to be something out there.
We just missed it. It's something about that it doesn't add up- it wasn't right, the whole situation.

INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 3 PAGES
**SWORN STATEMENT**

For use of this form, see AR 196-48; the proponent agency is ODINSOPS

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2861; E.O. 9397 dated November 23, 1943 (SSN).

**ROUTINE USES:** Your social security number is used as an additional element of identification to facilitate filing and retrieval.

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

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<td>2005/10/22</td>
<td>1200</td>
<td>9-0</td>
<td>E-6</td>
</tr>
</tbody>
</table>

**LAST NAME, FIRST NAME, MIDDLE NAME**

**SSN**

**OCCUPANON OR ADDRESS**

1. **(a) WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:**

We were travelling west on RTE [REDACTED], which is one of the main routes on the middle of our sector that we use frequently. It's used by everybody that operates in sector. We were travelling west. Our vehicles were probably 150-300m apart. It was dark, and I'm guessing the time was between 3 and 4 AM. We were travelling to the west, and my gunner was scanning the road and about 10-15 ft. of each side of the road for IEDs. When I'm in the front, we tend to do 10 o'clock to 2 o'clock, and the LT will scan from the 6 o'clock, or from 9 o'clock to 3 o'clock.

So we were travelling that way, and the LT called me up telling me that he was stopping the vehicle because his gunner spotted somebody to the south of the road, about 200-300 m off the road. He saw someone over the big field. By the time they picked this guy up, they were almost facing 9 o'clock. He told the they were suspicious, and that they had positive ID on a guy in the bushes. I asked the LT if he wanted me to find a way to maneuver down there, because the way he was acting was pretty suspicious. My gunner scanned over that direction, but he couldn't see anything because there were some tall trees and stuff and he told me he couldn't see him. I turned our vehicle back to the east, and my gunner continued to try and find this guy, but I told him he still couldn't make it out. So I asked the LT if I should maneuver out there, and he said, "Yeah, Roger." I couldn't find any good routes because there was a canal separating us from that field. So what I had to do was maneuver back around the LT. As I started to maneuver my vehicle, the last thing I heard them say was "Alright this guy is packing stuff up -- he's running" and right there is the point where he decided to shoot. I was on my way back to his position, and we saw the engagement. Even then my gunner couldn't pick him up. There was a pause in communication, and then the LT called up that he had engaged him, and he wanted me to call him on his phone.

We had to travel back to RTE [REDACTED] to the east to move south. The air support sent out actually helped me find a way out there. The dismounts from the LT's track reached the site first. They went straight across the canal that was parallel to RTE [REDACTED]. When my track arrived, my dismounts linked up with his and they found the body after about twenty minutes. After they found him, I moved my track to provide overwatch to the squad and then the LT called in with his vehicle. He actually did cross before reaching RTE [REDACTED]. The LT confirmed that the soldier was the soldier they were looking for. We were on the south side of the canal where the suspected trigger man was, and the LT was just north of this little canal. Infantry guys didn't have any problems moving over the canal.

I stayed in overwatch of the dismounts, and they were looking for stuff that he bad -- had been reported that he was stuffing a bunch of stuff in a sack before he ran off, and that was the point where they thought that he was about to do something. And that's the point for us where stuff is really scary and unpredictable. The dismounts didn't find anything on the guy himself -- they started looking for whatever he did have, because the LT told them that he had something like a sack or satchel. The place had little canals everywhere, and the place was real quiet, and the guys were covered in mud by the time I got over there. I don't think they ended up finding anything. SGT [REDACTED] is the dismount squad leader for our section, and he led the dismounts in the search. They also identified the body.

About 20m south of the body was a house and that is where the civilian who identified the man who was shot came from. This civilian walked up, the dismounts searched him and then they had the interpreter talk to him. He said he knew who the guy was and he was from a village to the west along RTE [REDACTED]. We've done sensing operations there and there's a lot of anti-Coalition propaganda and whatnot there. He said that he has seen that man and his son around midnight opening some of the irrigation flood gates. I was wondering why this field was like two kilometers from the village this guy was from. So I didn't really understand that, why he was so far away. Even then, he said that usually his son was with him and they come at midnight, and this time he was alone and it was like 0500.

10. **EXHIBIT**

11. **INITIALS OF PERSON MAKING STATEMENT**

**PAGE 1 OF** 3 **PAGES**

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

**THE BOTTOM OF EACH ADDITIONAL PAGE MUST BE INDICATED**

DA FORM 2823, DEC 1998
STATEMENT: [redacted]

TAKEN AT: 2-70 AR Motor Pool

DATED: 2005/10/22

9. STATEMENT (Continued)

SGT [redacted] did not [redacted] swipe on the guy who was shot and it came up pink (positive for CS) so that was suspicious.

The foliage in the area was pretty thick, to where it could be kind of a obscuration. At the same time, there was a guy who had a clue and it was real thick from that position up to RL05 [redacted]. In fact, RL05 is elevated relative to where he was at. It sits up on a rise of terrain, and there was a small ravine right in the area (not that was). I had to come all the way around the hill in the east just to get down there.

The whole thing went down the way we normally operate. The actual escalation of force was me maneuvering my vehicle so I could get to the guy before they had to make the decision to shoot. As soon as I started to maneuver they said he started packing his stuff up and was getting ready to bolt.

We swept the road for IEDs as we came back toward the east, and after the sun came out I had the 1st gunner go back out there and sweep from where I stopped originally back to RL05 [redacted]. I'm sure we did about a mile block of the road and he said he didn't see anything. And they didn't find any other IED components either, even after the engineer search.

We followed our SOP out there. If somebody spots an individual and you can't observe him in a way that he's out there doing something or if he's not suspicious or if you think that this guy looks like he might be doing something shady, what we do is try to keep eyes on him and try to maneuver an element out there to catch the guy. If a guy isn't doing anything wrong, they'll just be out there until we can get dismounts on the ground and ask the guy some questions. We've been able to do this before and the best advice we can give everyone involved is be like this. Think the way they require and was the way it should be done. It's scary out there with all the IEDs and stuff.

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INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 3 PAGES

PAGE 2 DA FORM 2023, DEC 1999