



DEPARTMENT OF THE ARMY  
HEADQUARTERS TASK FORCE IRONHORSE  
TIKRIT, IRAQ

REPLY TO  
ATTENTION OF

AFYB-CG

25 August 2003

MEMORANDUM FOR [REDACTED]  
Iraq

b-6-2  
b-7 C-2  
AR, FOB Warhorse, Baqubah,

SUBJECT Appointment as a 15-6 Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation into the 13 July 2003 accidental discharge, which resulted in the death of an Iraqi detainee. Additionally, you are to identify any systemic problems that the command can address and correct, if necessary.
2. All witness statements will be sworn and recorded on a DA Form 2823 if possible. If, in the course of your investigation, you come to suspect that an individual may be criminally responsible, you will advise that individual of his or her rights under Article 31, UCMJ, or the Fifth Amendment as appropriate. Use the DA Form 3881 to advise soldiers of his or her rights.
3. Before proceeding with the investigation, contact [REDACTED] at [REDACTED] for an initial legal briefing. [REDACTED] will serve as your primary legal advisor.
4. Your report, together with all evidence marked as exhibits, will be submitted to me in memorandum format no later than 2 September 2003. Submit any requests for delay to me either orally or in writing.

FOR THE COMMANDER:

[REDACTED]  
[REDACTED]  
[REDACTED]

6570

# REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

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

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

## SECTION I - APPOINTMENT

Appointed by

(Appointing authority) b62  
b7c2

on 25 AUG 03

(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 BARBARIAN, IRAQ

(Place)

at

1200

(Time)

on 14TH JULY 03

(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.)

b62  
b7c2

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

1200

(Time)

on

31 AUGUST 03

(Date)

and completed findings and recommendations at

1500

(Time)

on

31 AUGUST 03

(Date)

## SECTION III - CHECKLIST FOR PROCEEDINGS

### A. COMPLETE IN ALL CASES

	YES	NO <sup>1/</sup>	NA <sup>2/</sup>
1 Inclosures (para 3-15, AR 15-6)			X
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			X
a. The letter of appointment or a summary of oral appointment data?	X		
b. Copy of notice to respondent, if any? (See item 9, below)			X
c. Other correspondence with respondent or counsel, if any?			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: <sup>1/</sup> Explain all negative answers on an attached sheet.

<sup>2/</sup> Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

6571

		YES	NO	NA
2	Exhibits (para 3-16, AR 15-6)			
	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. 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 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)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
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 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

6572

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

The (investigating officer) (board), having carefully considered the evidence finds: (b)(6) 5; 67651  
On 13 July 03 at approximately 1745 hrs, [REDACTED] and [REDACTED], through simple negligence, discharged a 9mm pistol in the Bravo Company, 3-67 AR BN guard shack/detainee holding facility vic. MC 604736. The errant round struck an Iraqi civilian detainee wounding him in the lower back and resulting in him being medivaced to the nearest medical treatment facility (E/204th Medical Co). b65

At the time of the accident both soldiers admitted to being in a "Red" Weapon's Safety Posture status (magazine in the weapon, round chambered, weapon on safe). Both [REDACTED] and [REDACTED] said they did not know they were supposed to be at a different status other than "Red." It is my belief that when [REDACTED] handed his pistol to [REDACTED] the pistol was not on safe; a round was chambered; the hammer was cocked; and [REDACTED] touched or squeezed the trigger resulting in an accidental discharge which struck one of the detainees that was sitting on the floor in the back. In attempting to re-create this accidental discharge as described by [REDACTED] and [REDACTED] I could not cause the 9mm pistol to discharge. The Iraqis in the room were not able to see what happened and were not interviewed. b65 b65 b65

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

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

b(5)-3 deliberative process

6573

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.)

- b62  
b7c2

[Redacted Signature]

(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.)

Leaders thoroughly brief soldiers  
on weapons status procedures and  
execute appropriately.

[Handwritten Signature]

RECEIVED

09 SEP 2003

RAYMOND T. ODIERNO  
Major General, USA  
Commanding

6574

INDEX

Exhibit 1-Sworn statement from [REDACTED] - (b)6 5

Exhibit 2-Sworn statement from [REDACTED] b 6 5

Exhibit 3-Sworn statement from [REDACTED] b 6 4 b 7 c 4

Exhibit 4-Sworn statement from [REDACTED] b 6 4 b 7 c 4

Exhibit 5-Sworn statement from [REDACTED] b 6 4 b 7 c 4

**6575**

# 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.

LOCATION

Irma MC 603 736

2. DATE (YYYYMMDD)

28 Aug 03

3. TIME

1200

4. FILE NUMBER

LAST NAME, FIRST NAME, MIDDLE NAME

b65 b7c5

6. SSN

7. GRADE/STATUS

b65

ORGANIZATION OR ADDRESS

b6-5 b7c5

b65 b7c5

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I was conducting gate/detainee on 13 July 03 with [REDACTED] b65 b7c5. It was my 13th hour of duty when [REDACTED] b65 b7c5 handed me his 9mm Pistol.

He asked me to hang on to it. I reached for his pistol, took it firmly in my hand, and it discharged. I noticed one of the detainees bleeding and began rendering 1st Aid and [REDACTED] b65 called for the medics. The Medics arrived and the room was cleared.

Nothing follows

b65 b7c5

0. EXHIBIT

1

11. INITIALS OF PERSON MAKING STATEMENT

b65 b7c5

PAGE 1 OF 3 PAGES

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

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

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

USAPA V1.00

6576

STATEMENT OF

TAKEN AT

DATED

31 AUG 03

STATEMENT (Continued)

Not Used

INITIALS OF PERSON MAKING STATEMENT

b65

PAGE 2 OF 3 PAGES

PAGE 2, DA FORM 2823, DEC 1998

b7c5

6577



b65 b7c 5

STATEMENT OF [REDACTED]

TAKEN AT

1200

DATED

9 AUG 03

9. STATEMENT (Continued)

not used

b65 AFFIDAVIT

I, [REDACTED] b65 b7c 5, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 1. 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.

b65; b7c 5

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 31 day of August, 2003 at Baghdad, Iraq.

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)

US Army (Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

b65 b7c 5

PAGE 3

OF 3

6578

# RIGHTS TRAINING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency: DCSOPS

## DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY:

Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE:

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 <b>Bagdubah, Iraq</b>	2. DATE <b>31 AUG 03</b>	3. TIME <b>12:05</b>	4. FILE NO.
5. NAME (Type or Print) <b>[REDACTED] b65 b7c5</b>	8. ORGANIZATION OR ADDRESS		
6. SSN <b>[REDACTED] b65 b7c5</b>	7. GRADE/STATUS <b>[REDACTED]</b>		

## PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

### Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army **Officer** and wanted to question me about the following offense(s) of which I am suspected/accused: **Negligent discharge of a firearm**

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

### Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <b>[REDACTED] b64 b7c4</b>
1a. NAME (Type or Print) <b>[REDACTED] b64 b7c4</b>		4. SIGNATURE OF INVESTIGATOR <b>[REDACTED] b64 b7c4</b>
b. ORGANIZATION OR ADDRESS AND PHONE <b>[REDACTED] b64 b7c4</b>		5. TYPED NAME OF INVESTIGATOR <b>[REDACTED] b64 b7c4</b>
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR <b>HAC / 3-67 AR</b>
b. ORGANIZATION OR ADDRESS AND PHONE		

### Section C. Non-waiver

1. I do not want to give up my rights  
☐ I want a lawyer  
☐ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPA 2.01

6579

# PART II - RIGHTS WARNING PROCEDURE

## THE WARNING

WARNING - Inform the suspect/accused of:

- Your official position.
- Nature of offense(s).
- The fact that he/she is a suspect/accused.

RIGHTS - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

- "You do not have to answer my questions or say anything."
- "Anything you say or do can be used as evidence against you in a criminal trial."
- (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

## THE WAIVER

you understand your rights?"

If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

If the suspect/accused says "yes," find out when and where. If the request is recent (i.e., fewer than 30 days ago), obtain legal advice whether to resume the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

## SPECIAL INSTRUCTIONS

1. SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

2. WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort must be made to complete the waiver certificate before any questioning. If the waiver certificate cannot be completed at once, as in the case of prolonged interrogation, completion may be temporarily postponed. Notes should be made of the circumstances.

### INCRIMINATING STATEMENTS:

If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

- If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

NTS (Continued)

# 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 (SSM).  
 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 <b>IRAO MC 603736</b>	2. DATE (YYYYMMDD) <b>2003 AUG 31</b>	3. TIME <b>1321</b>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <b>[REDACTED]</b>	6. SSN <b>b65 b7c5</b>	7. GRADE/STATUS <b>b65 b7c5</b>	
8. ORGANIZATION OR ADDRESS <b>[REDACTED]</b>			
9. <b>[REDACTED]</b>			
10. <b>[REDACTED]</b>			

1. **[REDACTED]** WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the 13 Jul 03 myself and **[REDACTED]** were on gate guard **[REDACTED]** were guarding EPW's. My shift started at 0700 and **[REDACTED]** Relieved **[REDACTED]** at 0400. we guarded the EPW's until the Relief was available at 1800 hr. I was getting to use the latrine. And I said "take my weapon for sec." the weapon was on safe and I handed it **[REDACTED]** as soon as I **[REDACTED]** the weapon, it fired, there was a dust cloud so as soon as it was clear I saw a Red dot at the EPW's lower back. I jumped on the Radio and called 'barbarian Mike' and said "there has been an AD an EPW has been shot." **[REDACTED]** Rushed over to the EPW while I was on the Radio and started searching for the Entrance wound and the medics show up.

Nothing Follows

10. EXHIBIT <b>2</b>	11. INITIALS OF PERSON MAKING STATEMENT <b>[REDACTED]</b>	PAGE 1 OF <b>3</b> PAGES
-------------------------	--	--------------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT **[REDACTED]** DATED **[REDACTED]**

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

STATEMENT OF

[REDACTED]

b65 b7C5

TAKEN AT

KSC/boom

DATED

2003 AUG 31

STATEMENT (Continued)

Nothing follows

Nothing Follows

Nothing Follows

Nothing Follows

STATEMENTS OF PERSON MAKING STATEMENT

[REDACTED]

b65 b7C5

PAGE 2 OF 3 PAGES

GE 2, DA FORM 2823, DEC 1998

USAPA V1.00

6582

STATEMENT OF

b65 b7c5

TAKEN AT

for boom

DATED

2003 1204 31

9. STATEMENT (Continued)

Nothing Follows

Nothing Follows

Nothing Follows

Nothing Follows

b65 AFFIDAVIT

b7c5

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

b65  
b7c5

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 31 day of August, 2003 at Baguio, DNDG

ORGANIZATION OR ADDRESS

b64 b7c 4  
b6-2  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

b64  
b7c 4  
(Typed Name of Person Administering Oath)  
US Army OPD  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

b65 b7c5

PAGE 3 OF 3 PAGES

DATA REQUIRED BY THE PRIVACY AC.

AUTHORITY: Title 10, United States Code, Section 3012(g)  
PRINCIPAL PURPOSE: 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 <u>Baqubah, IRAQ</u>	2. DATE <u>31 AUG 03</u>	3. TIME <u>1322</u>	4. FILE NO.
5. NAME (Last, First, MI) <u>[REDACTED]</u>	8. ORGANIZATION OR ADDRESS <u>[REDACTED]</u>		
6. SSN <u>b65 [REDACTED] b7c5</u>	7. GRADE/STATUS <u>b65 b7c5</u>	<u>b65 b7c5</u>	

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army officer  
suspected/accused: negligent discharge of fire arm and wanted to question me about the following offense(s) of which I am  
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:  
1. I do not have to answer any question or say anything.  
2. Anything I say or do can be used as evidence against me in a criminal trial.  
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.  
- or -  
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.  
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print) <u>[REDACTED]</u>	<u>b64 b7c4</u>	<u>[REDACTED]</u> <u>b65 b7c5</u>	
b. ORGANIZATION OR ADDRESS AND PHONE <u>[REDACTED]</u>	<u>b64 b7c4</u>	4. SIGNATURE OF INVESTIGATOR <u>[REDACTED]</u> <u>b64 b7c4</u>	
2a. NAME (Type or Print) <u>[REDACTED]</u>		5. TYPED NAME OF INVESTIGATOR <u>[REDACTED]</u> <u>b64 b7c4</u>	
b. ORGANIZATION OR ADDRESS AND PHONE <u>[REDACTED]</u>		6. ORGANIZATION OF INVESTIGATOR <u>[REDACTED]</u> <u>b64 b7c4</u>	

Section C. Non-waiver

1. I do not want to give up my rights  
☐ I want a lawyer  
☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPA 2.01

6584

## THE WARNING

1. WARNING - Inform the suspect/accused of:
  - a. Your official position.
  - b. Nature of offense(s).
  - c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
 

"Before I ask you any questions, you must understand your rights."

  - a. "You do not have to answer my questions or say anything."
  - b. "Anything you say or do can be used as evidence against you in a criminal trial."
  - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

## THE WAIVER

"Do you understand your rights?"

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

## SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

## PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

## COMMENTS (Continued)



# SWORN STATEMENT

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

## PRIVACY ACT STATEMENT

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION Iraq MC 603736	2. DATE (YYYYMMDD) 13 JUL 03	3. TIME 1800	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED] b64 b7c4	6. SSN [REDACTED] b64 b7c4	7. GRADE/STATUS [REDACTED] b64 b7c4	
8. ORGANIZATION OR ADDRESS [REDACTED] b64 b7c4			
9. [REDACTED] b64 b7c4			

\_\_\_\_\_, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

During the morning of 13 July 2003, I was directing an observation post north of the city of Jaykhana in the early morning hours with the intent of detecting and disrupting illegal Iraqi checkpoint operations. Enroute to the OP at 0300, we detained 4 personnel who had 2 AK-47s and 180 rounds of ammunition in their vehicle. We secured these personnel and continued to the OP location. We maintained a guard on these personnel until we were able to arrange for transportation of the personnel back to the company assembly area. Upon occupation of the OP, some of my soldiers found the body of a person that had apparently been robbed and then executed. As the person did not appear to be Iraqi, I radioed back through my company CP to the Battalion TOC requesting MPI personnel to investigate the crime scene. The last message I recieved from the BN TOC (at 0700) was that MPI personnel were notified and that we were to remain on-site until their investigators arrived after that time. Shortly after 0700, communications with the company CP and the BN TOC were disrupted due to daytime interference and distance between communications stations. Following the last recieved instructions, my assets remained on-site and established a traffic control point on HWY 2 near the crime scene. Around 1500, MPs arrived to transport the detainees to the company assembly area. The personnel were loaded onto the MP vehicles and left for the company assembly area. Shortly after that, I returned to the company assembly area with the tank section conducting the OP. Upon return to the assembly area, the 4 personnel detained earlier in the day had been consolidated with another 10 personnel detained the evening before. All 14 detainees were awaiting transportation to take them to Baqubah detention facility. When I arrived, the assigned guards were [REDACTED] and [REDACTED] and the situation appeared to be stable. I recieved word over FM that I needed to call the BN TOC on DNMV and recieve additional guidance on the disposition of the dead body at the OP location. I left immediately to the MEK compound to make the phone call. When I arrived at the MEK compound, I heard a report of an accidental discharge resulting in the injury of one of the detainees. I immediately requested a 3 vehicle convoy from the MPs at the MEK compound to transport the wounded detainee to E/204th Med CO. When I arrived at the location of the accident, the detainee had already been stabilized by the BN Physician's Assistant, [REDACTED] and we transported the individual to E/204th Med CO.  
b64-b7c4 b65 b7c5

After I returned from evacuating the injured detainee, I talked to the two guards involved in the incident and the sergeant of the guard. The guards both stated that they realized that the weapon was loaded with the round chambered, but that they thought the weapon was on safe. When the weapon was passed from [REDACTED] to [REDACTED], they stated that the weapon discharged. [REDACTED] did state that his finger lightly touched the trigger when he recieved the weapon from [REDACTED], but he assumed the weapon was on safe.  
b7c5 b65 b65 b7c5

Later that evening, the company conducted weapons safety training in the assembly area and outlying locations in an effort to prevent a similar event from happening in the future. In the future, policies and SOPs concerning weapons control status, detainee operations, and guard force requirements will be modified and implemented to prevent future accidental discharge events from occurring. Additionally, all first line leaders have been counselled on the importance of enforcing appropriate weapons control posture based on the situation.

Nothing Follows

10. EXHIBIT 3	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED] b64 b7c4	PAGE 1 OF _____ PAGES
------------------	--	-----------------------

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

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

STATEMENT OF

TAKEN AT

1800

DATED

13 Jun 03

9. STATEMENT (Continued)

b64 b7c4

b64 b7c4

Nothing Follows

b64 b7c4

Nothing Follows

AFFIDAVIT

b64 b7c4

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

b64 b7c4

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

ORGANIZATION OR ADDRESS

[REDACTED] b64 b62 b7c4

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

b64 b7c4

PAGE

OF

PAGES

# SWORN STATEMENT

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

## PRIVACY ACT STATEMENT

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION Iraq MC 603736	2. DATE (YYYYMMDD) 13 JUL 03	3. TIME 1800	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED] 664 67c4	6. SSN [REDACTED] 664 67c4	7. GRADE/STATUS [REDACTED] 664 67c4	
8. ORGANIZATION OR ADDRESS [REDACTED] 664 67c4			
9. [REDACTED] 664 - 67c4			

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 13 JUL 03 around the time of 1745 the front gate called for a medic to the front gate area where the EPW's were being held. As my duty responsibilities include Sergeant of the Guard, I ran to the front gate. I found [REDACTED] and [REDACTED] doing first aid. The other EPW's were still in the room. I [REDACTED] cleared the room. Medical personnell were on site by the time I cleared the room. I then had [REDACTED] and [REDACTED] clear their weapons while medical personnell applied first aid to the wounded Iraqi. Of note, as SOG, I had both gate/EPW guard do radio checks with the CP every 1/2 hour and I personally talked with them for 5-15 minutes 6 or 7 during [REDACTED] and [REDACTED] guard shifts to ensure that the EPW and soldiers needs were met.

Nothing follows

10. EXHIBIT 4	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED] 664 67c4	PAGE 1 OF 1 PAGES
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED		
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.		

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

6588 USAPA V1.00

STATEMENT OF

664 b7c4  
TAKEN AT 180

DATED 13 Jul 03

9. STATEMENT (Continued)

not used

664 b7c4 AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 1. 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] 664 b7c4  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 13 day of JUL, 03 at

ORGANIZATION OR ADDRESS

[REDACTED] 664 b7c4 b62  
(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED] 664 b7c4  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 0 PAGES

# SWORN STATEMENT

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

## PRIVACY ACT STATEMENT

AUTHORITY:

Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).

PRINCIPAL PURPOSE:

To provide commanders and law enforcement officials with means by which information may be accurately

ROUTINE USES:

Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval

DISCLOSURE:

Disclosure of your social security number is voluntary.

1. LOCATION

Iraq MC 603736

2. DATE (YYYYMMDD)

13 JUL 03

3. TIME

1800

4. FILE NUMBER

5. LAST NAME, FIRST NAME, MIDDLE NAME

b64 b7c4

6. SSN

b64

b7c4

7. GRADE/STATUS

8. ORGANIZATION OR ADDRESS

b64 b7c4

9.

b64 b7c4

b64  
b7c4

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Approximateley 1730-1800 hr I monitored the radio that a POW had been shot. The exact words were "I think a POW has been shot." I instructed my medic to grab my aid bag and we ran to the guard house where the detainees were held. Iraqi detainee was lying his back. Exposure of the wound revealed a small entry wound to the lower right back. We and myself bandaged the wound, stabilized the patient, and requested an escort of MP's in a non-standard vehicle for patient evacuation. Dust-off was also requested in case it was needed. The patient was stable upon leaving the B/3-67 AA via MP non-standard evac HMMWV and MP escort vehicles. Patient was evacuated to Baqubah airfield to E 204th Medical Company.

It was determined that an exit wound existed in the thigh and re-entry into the ankle superficially. The bullet was not distorted suggesting no bone contact. The angle of the exit wounds suggests the weapon was pointed in a downward direction.

Nothing follows

b64  
b7c4

10. EXHIBIT

5

11. INITIALS OF PERSON MAKING STATEMENT

b64 b7c4

PAGE 1 OF 0 PAGES

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

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

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

USAPA V1.00

STATEMENT OF

TAKEN AT

1807

DATED

13 Jul 03

9. STATEMENT (Continued)

b64 b7c4

b64 b7c4

Nothing follows

b64 b7c4

*[Large X mark across the statement area]*

b64 b7c4

AFFIDAVIT

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

b64 b7c4

(Signature of Person Making Statement)

WITNESSES:

b64 b7c4

HC/3-67 AR

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 13 day of JUL 03 at

b64 b7c4

(Signature of Person Administering Oath)

b6-2

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

b64 b7c4

INITIALS OF PERSON MAKING STATEMENT