

DEPARTMENT OF THE ARMY
2nd BATTALION, 327th INFANTRY (NO SLACK)
1st BRIGADE, 101st AIRBORNE DIVISION (AIR ASSAULT)
FORT CAMPBELL, KENTUCKY 42223-5185

AFZB-KA-H

01 January, 2006

MEMORANDUM FOR: [REDACTED] EX 6

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer for a Commanders inquiry to investigate the circumstances surrounding the escalation of force by B CO 2-327 IN on 1 January 2006. In your investigation you will use the requirements of an informal inquiry as per AR 15-6
2. If, in the course of your investigation, you suspect that certain persons may be responsible for violations of the Uniform Code of Military Justice (UCMJ), you must advise them of their rights under Article 31, UCMJ, using DA Form 3881.
3. Submit your findings to the Battalion Commander NLT 08 January 2006
4. Point of contact for this memo is [REDACTED] FOB Warrior.

EX 6

EX 2

[REDACTED]
LTC, IN
Battalion Commander

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

Commander 2-327IN, 1 BCT, 101st ABN (AA<) DIV

(Appointing authority)

on 01 JAN 06

(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

Kirkuk Patrol Base (KPB)

(Place)

at

2155

(Time)

on 01 JAN 06

(Date)

(If a formal board met for more than one session, check here ☐. Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.)

The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at

0215

(Time)

on

02 JAN 06

(Date)

and completed findings and recommendations at

0910

(Time)

on

02 JAN 06

(Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

	YES	NO	NA
1. Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?	Y		
b. Copy of notice to respondent, if any? (See item 9, below)	Y		Y
c. Other correspondence with respondent or counsel, if any?			Y
d. All other written communications to or from the appointing authority?	Y		
e. Privacy Act Statements (Certificate, if statement provided orally)?	Y		
f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			Y
g. Information as to sessions of a formal board not included on page 1 of this report?			Y
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	Y		

FOOTNOTES:

1. Explain all negative answers on an attached sheet.

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

		YES	NO ^{1/}	NA ^{2/}
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?	<input checked="" type="checkbox"/>		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?			<input checked="" type="checkbox"/>
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input checked="" type="checkbox"/>		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input checked="" type="checkbox"/>		
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input checked="" type="checkbox"/>		
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input checked="" type="checkbox"/>		
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			<input checked="" type="checkbox"/>
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			<input checked="" type="checkbox"/>
B. 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 manner 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)?			
FOOTNOTES: 1/ Explain all negative answers on an attached sheet. 2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.				

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

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

See Attached

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

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

See Attached

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

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

(Recorder)

(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

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

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

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) ~~(board)~~ are (approved) ~~(disapproved)~~ (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

LTC IN
COMMANDING

RECOMMENDATIONS

Members of the Bayonet element followed the prescribed Rules of Engagement and showed proper Escalation of Force procedures. The vehicle driven by Yokhana Ygo Yokhana was a reasonable threat to the element that was securing and controlling a riot which was turning violent. All soldiers within the element acted in accordance with rules of engagement.

Recommendations:

- 1) All members of Bayonet Company and other units who regularly go on patrols should continue to receive additional Escalation of Force/Rules of Engagement training.
- 2) Soldiers should continue to receive additional training on collateral damage.
- 3) Development of classes to make soldiers aware of effects of rounds impact, i.e. ricochet impact and situational awareness of where they are shooting.
- 4) Ensure leaders continue to give in-depth briefs of situation and what their current mission is.
- 5) Condolence Payments be made to the two Local Nationals (Omar Faud and Aleela Ishan Wahab) families due accidental death and injury by CF.

FINDINGS

At approximately 1500 on 01 JAN 06 1st Section from 2nd PLT Bravo Company moved from the Rahem Awa Police Station into a flanking/blocking position. [REDACTED] IOT control a crowd of agitated demonstrators/rioters. The patrol leader was [REDACTED] (Bayonet 25) other individuals on site included [REDACTED]

[REDACTED] (Bayonet 27), [REDACTED] (PLT Medic), [REDACTED] (Team Leader), [REDACTED] (Squad Leader). After the initial incident [REDACTED] arrived on scene.

The section set there three vehicles in position: Two were set side by side with a three story building to their right. The third vehicle was to their rear pulling rear security with [REDACTED] and [REDACTED] co-located with vehicle. To the left of vehicles there was a parking lot, a small building, and some trees and bushes limiting view of the major road (running generally North to South) in front of their position. Directly in front of their position was a major road. To the front, rear, and left of their position large groups of demonstrators had gathered.

The demonstrators were demonstrating because of a recent rupture in the sewage line within the Rahem Awa Neighborhood which was flooding their homes. They were additionally agitated due to the Rahem Awa Police firing warning shot into the air. This group of demonstrators was most notably agitated of any group of demonstrators at the time the Bayonet element was ordered to secure vic [REDACTED]. The Local Nationals (LN) were throwing rocks at Coalition Forces which varied in size from small to large as well as burning tires and throwing aerosol cans into the fires. Some members of the crowd used sling shots to fling rocks at Coalition Forces causing injury to several members of the patrol (most notably [REDACTED] who has visible bruising on his right hand as well as a small cut on the same hand). The patrol heard warning shots from the Rahem Awa Police as well as sporadic small arms fire from the rear of the position (several hundred meters behind them).

The Escalation of Force (EOF) incident occurred approximately 30 minutes after setting into the patrol's blocking position. Prior to the 4 door white sedan moving into the alley two vehicles had been diverted by the Bayonet element from driving into the alley by shouting "stop" and "kief" as well as using hand gestures to stop and turn around.

The white 4 door sedan approached from the North moving South through the crowd of demonstrators. The demonstrators who had calmed down considerably at this point made attempts to stop the vehicle from approaching CF in the alley. The vehicle continued at a slow rate of speed (approximately 5-10 mph) towards the CF position. At this point [REDACTED] (interpreter), [REDACTED] and [REDACTED] (all dismounted soldiers and M240B gunner) began to yell at the driver of the vehicle to stop in English, Arabic, and Kurdish. At this point the driver continued to ignore orders given to him by CF. They then continued to yell in raised voices, starting using hand gestures to signal the vehicle to stop. The driver of the vehicle made eye contact with several members of the section ([REDACTED] who was position in the door way of the 3 story building is certain he made eye contact with him). At this point dismounted soldiers raised their weapons and [REDACTED]

charged his M240B. The vehicle then past the "GUN LINE" (as described to me by members of the patrol- a predetermined point 20 meters in front of their position where the use of deadly force became authorized if a threatening incident occurred (possibility of SVBIED)). When the white sedan (driven by Yokhana Ygo Yokhana) approached the CF position at a distance of 15 meters [REDACTED] (patrol leader) engaged (M4) the vehicle engine block with several rounds and then fired an additional rounds which impacted in the driver's side windshield and into the driver. At this time the other dismounts and M240B gunner (as listed above) engaged the vehicle (see below for number of rounds and aiming points) following their patrol leaders initial engagement of Mr. Yokhana's vehicle. They continued to fire for approximately 3-5 seconds until the order of cease fire was given by [REDACTED] and [REDACTED] (who was in an over watch position from the roof of the three story building). The vehicle rolled to a stop 5 meters away from the coalition forces lead HUMMVE. EX 6

Members of the section then approached the vehicle with caution (due to the belief the vehicle might be SVBIED). [REDACTED] saw that Mr. Yokhana was "twitching" and called for an EFR. Patrol members placed Mr. Yokhana behind a 4 foot wall and rendered medical attention to him. The victim had between 10 to 15 gunshot wounds. Soon after Mr. Yokhana died of wounds sustained. The patrol covered his body with a sheet found in the three story building adjacent to their position. Mr. Yokhana's wounds were severe and deadly still CF medics rendered aide in attempt to save his life. EX 6

While EFRs gave Mr. Yokhana medical care the crowd of rioters signaled to CF that there were individuals wounded in the crowd (Omar Faud and Aleel Ihsan Wahab). No member of the Bayonet element engaged the crowd. The two wounded individuals were at ten degree angel from where CF engaged Mr. Yokhana's vehicle. [REDACTED] signaled to four LNs to bring the 2 wounded individuals into CF position. No member of the patrol was sent into the crowd for their protection. The two wounded individuals were brought behind the two lead HUMMVEs and in front of rear vehicle where [REDACTED] EX 6
EX 6 [REDACTED], and [REDACTED] administered medical treatment. Both LNs had exit wounds on their right side.

The Bayonet element called for a FLA to exfil the two LNs which was unable to reach their location. Simultaneously the patrol's interpreter was calling the local hospital (Kirkuk General Hospital) which he was unable to reach. Approximately at this time EX 6 Bayonet 26 [REDACTED] arrived on scene. The element then called for a civilian ambulance to exfil the two wounded LNs. [REDACTED] made contact with LN (who spoke decent English and whom he talked to earlier) and asked him to call KGH which he did without success. After waiting an additional (approximate time) another 5 minutes for the civilian ambulance Bayonet 26 made the decision to exfil the wounded LNs to KGH using HUMMVEs. EX 6

A quick patrol was then put together and sent to KGH with the two wounded LNs. Approximately 3 minutes out from KGH Omar Faud died of wounds he sustained (he had sucking chest wound). Omar Faud body was turned over to individuals at KGH. The patrol delivered Aleel Ihsan Wahab (who had an exit wound coming out of his right rib cage) to KGH for further medical treatment. The patrol then continued their mission.

Bayonet 26 and Bayonet 27 turned the body of Yokhana Ygo Yokhana to the Rahem Awa Police (he was delivered in a CF HUMMVE because the Iraqi ambulance

wound not transport him) IOT ensure his body was returned to his (which had already spoken with Rahem Awa Police about his death).

Number of Shots fired by individual and aiming points: (according to each individual who fired)

	Individual/Number of Rounds	First Aim Point	Second Aim Point
EX6	(first to fire)		
	10-15 rounds		
EX6		Hood of the car	Driver
	4-5 rounds	Driver side door	
EX6			
	16 rounds	Hood of car (6)	Passenger Door (10)
EX6			
	30 rounds	Front Right Tire	Right Corner Panel of Hood
EX6			
	22-25 rounds	Hood of car	
EX6			
	(had to charge M240B before Firing)	Front tires	Driver
	One 3-4 second burst (unsure of round count)		

The Bayonet element did everything within their power to save the wounded individuals lives. Two medics and three EFR qualified soldiers render aide immediately after the incident with all available resources.

In my opinion the Rules of Engagement were followed and EOF was established. Due to the current tactical situation within Kirkuk at the time (there was a demonstration occurring in the vicinity of the Rahem Awa neighborhood consisting of 400-500 rioters who were burning buildings/tires and throwing rocks at CF, three SVBIEDs had been initiated within the city of Kirkuk between the hours of 1200-1500 of the same (two in Bravo Company's Area of Responsibility), and there had been two IED detonations one on an ISF patrol and the other on the Cougar 16 element who had been diverted to secure and SVBIED site on the border of Charlie and Bravo Company's AORs) the patrol had reasonable suspicion to believe Mr. Yokhana's vehicle was a threat. Two other vehicles had been diverted using their EOF procedures. According to two soldiers on the scene the vehicle attitude (windows rolled up and one male occupant/driver) matched the description of an individual who might initiate a SVBIED, as briefed by their chain of command (at an "earlier" date). The patrol yelled in three languages for the vehicle to stop, used hand gestures, then raised their weapons (charged their weapon in the case of M240B), fired shots into the car itself, and as a last resort fired at the driver of the vehicle. Mr. Yokhana saw the Bayonet element raise their weapons and in case charge his weapon. Mr. Yokhana made no attempt to comply with CF orders to stop his vehicle. No member of the element fired into the

crowd of demonstrators. It appears as if the two LNs were wounded by ricochets or shots that missed the threat vehicle (there is no way to positively confirm either way).

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

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 <u>Patrol Base</u>	2. DATE <u>Jan 01 06</u>	3. TIME <u>2150</u>	4. FILE NO.
5. NAME (Last, First, MI) [REDACTED]	6. ORGANIZATION OR ADDRESS		
6. SSN [REDACTED]	7. GRADE/STATUS <u>ES/Team Leader/Platoon Leader</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 HHC, 2-327 and wanted to question me about the following offense(s) of which I am suspected/accused: EGF, Rahem Amin Brest

But 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.
4. (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.
5. 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 [REDACTED] EX6	
1a. NAME (Type or Print) [REDACTED]		4. SIGNATURE OF INVESTIGATOR [Signature]	
b. ORGANIZATION OR ADDRESS AND PHONE <u>B Co 2/327 INF</u>			
2a. NAME (Type or Print) [REDACTED] <u>1LT, FA</u>		5. TYPED NAME OF INVESTIGATOR [REDACTED] EX6	
b. ORGANIZATION OR ADDRESS AND PHONE <u>HHC, 2-327 IN</u>		6. ORGANIZATION OF INVESTIGATOR <u>HHC, 2-327 IN</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 2623) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE

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)

REVERSE OF DA FORM 3881

USAPA V2.01

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 [REDACTED]	2. DATE (YYYYMMDD) 2006 01 01	3. TIME 1500	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS E5 / Team Leader	
8. ORGANIZATION OR ADDRESS Bco 2-327 INF 101st Airborne (AHS&T) Div			

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

On the date of 01/01/06 at 1500 hrs I moved into a flanking position to disrupt a crowd of ~~35~~ angry protesters who were throwing rocks and burning tires and cars in the street. We arrived at location [REDACTED] and [REDACTED] and [REDACTED] set up security in the area. About 30 min after arriving at that location I witnessed a white four door car traveling south at a moderate speed. At that time the crowd tried to stop the car from entering our area. The driver of the vehicle ignored the crowd and turned down the street heading towards our location. At that time everyone at our location began to shout stop in both arabic and Kurdish. The car continued toward our location. We showed our weapons and ^{the cards} continued towards our position. At that time I fired first and the the rest of our element began to fire. [REDACTED] and [REDACTED] then gave a cease fire command. After the cease fire we moved to the car and searched it. After finding nothing we began first aid on the driver in the car. During that time it was brought to our attention that two of the protesters in the crowd were hit by our rounds. [REDACTED] and [REDACTED] brought the two casualties into our secured area and began to treat them. After waiting for an ambulance that never came we made the call to transport the two casualties ourselves to Kirkuck General Hospital and then continued mission.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	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 BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT Kirkcuck Police Bus DATED Jan 01 06

9. STATEMENT (Continued)

EX6

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE OF PAGES

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

EX6

AFFIDAVIT

EX6 I, _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE _____. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

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

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

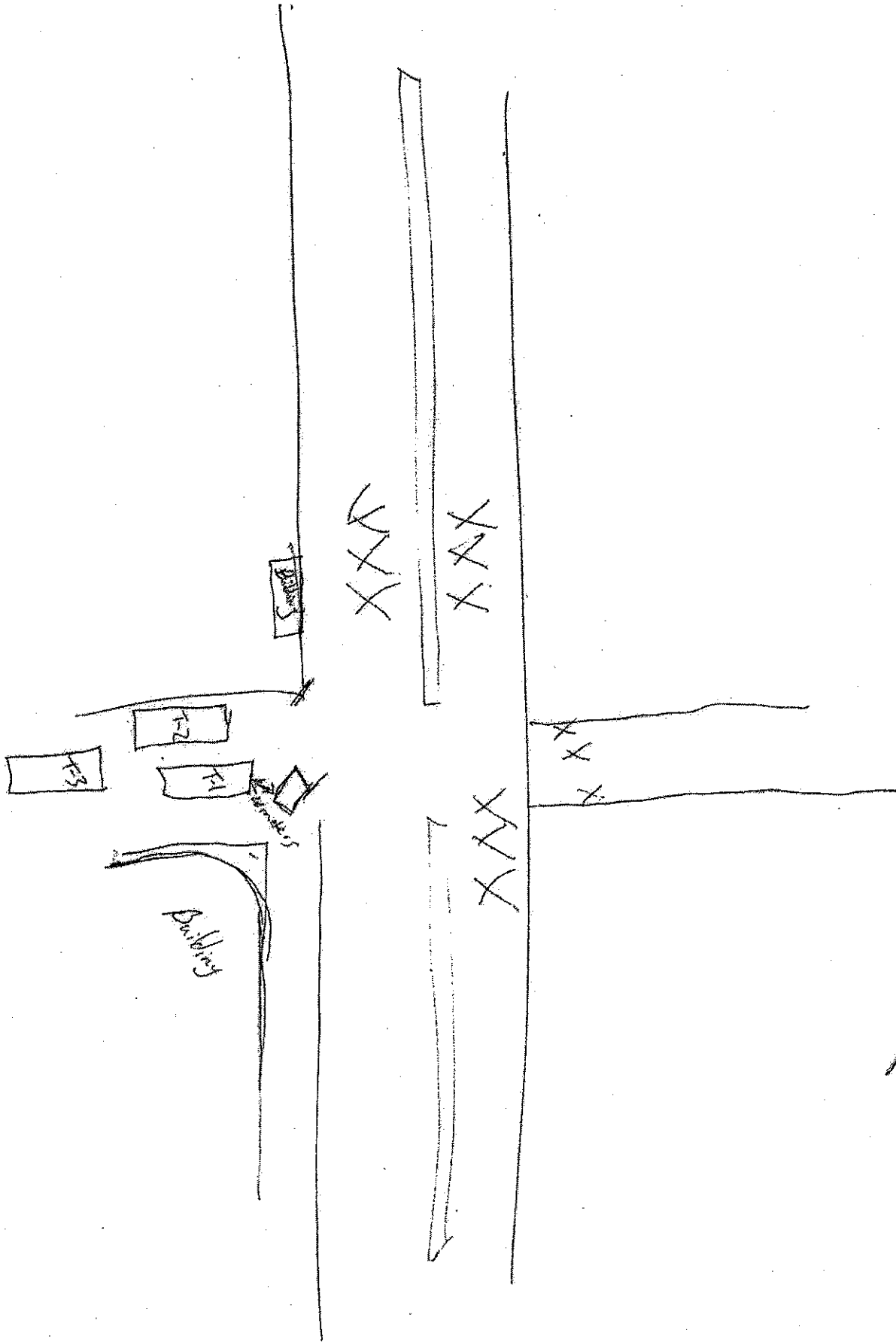
(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

EX6 INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

XXX



Rahem Awg

EX6 [REDACTED] - fired first shot 10-15

- throwing rocks / sling - to

- vel N to S

- crowd tried to stop

- passed gun line - shouted in Arabic / heard

- first rd engine

- second in h.m. [fine for 5-10s]

- started 1st aid - 2 med - [REDACTED] on the other 2

- loaded up in Humvee

EX6

- flanking position

- guy driving car - [REDACTED] EX6

shots fired - m4 - 10-15

24 @ 24s

- crowd shout - ^{Arabic / heard} showed upns - waved hands

fired warning shot into engine

- second rd tracers

EX6 [REDACTED] - E-5 - E7 overwatching

- 4 LAs ^{other to} brought to secure

- sucking chest - KIA en route

- Sec ord - entry wound back in r.h.s

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

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 Kekuk Patrol Base	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI) [REDACTED]	8. ORGANIZATION OR ADDRESS		
6. SSN 356 884864	7. GRADE/STATUS E4		

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 HHC 2-327 and wanted to question me about the following offense(s) of which I am

suspected/accused: EOF Baker Arms Det

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. If I am or 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.

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 [REDACTED] EX6	
1a. NAME (Type or Print) [REDACTED]	4. SIGNATURE OF INVESTIGATOR [REDACTED] EX6		
b. ORGANIZATION OR ADDRESS AND PHONE B Co 2-327 IN 101 ABN DIV	5. TYPED NAME OF INVESTIGATOR [REDACTED] EX6		
2a. NAME (Type or Print) [REDACTED] 1LT, FA	6. ORGANIZATION OF INVESTIGATOR HHC 2-327		
b. ORGANIZATION OR ADDRESS AND PHONE HHC 2-327 IN [REDACTED]	[REDACTED]		

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

PART II - RIGHTS WARNING PROCEDURE

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.

EX 2

EX 5

EX 6

EX 6

EX 6

EX 6

EX 6

1. LOCATION [REDACTED] 2. DATE (YYYYMMDD) 20060101 3. TIME 1500 4. FILE NUMBER

5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED] 6. SSN [REDACTED] 7. GRADE/STATUS E-4

8. ORGANIZATION OR ADDRESS B Co 2-827 IN, 101st ABN DIV

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

We came to a halt in an alley. I dismounted and picked up security watching the main street ahead of our position. I noticed that there were civilians to my right inside a multi-story building. Shortly after we began to get hit by large rocks being thrown at us from the main street. As I was going for cover I got hit in the back by one of the rocks. The people inside the building to my right began to yell so [REDACTED] and [REDACTED] went inside to investigate. There were over 20 civilians on the second and third floor of the building. [REDACTED] and [REDACTED] went upstairs to the roof to investigate. They sent everyone down and out of the building. [REDACTED] and [REDACTED] were the only ones left on the first floor guarding the entrance looking out the main street. I could hear rounds bouncing off the ground in front of the door. [REDACTED] left to oversee something back at the vehicles and I was left in the door way guarding the street. As I was standing there I saw a white car start to turn into the alley that our vehicles were parked in. It was close enough to me that I saw one person inside. It was moving at a moderate speed. I immediately held out my arm and yelled out "Stop" and "Die!" loudly. I proceeded to do that several times. The driver connected eyes with me so I was sure he saw me. The other US soldiers to my left around the corner also began yelling loudly.

10. EXHIBIT 11. INITIALS OF PERSON MAKING STATEMENT [REDACTED] 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.

STATEMENT OF

TAKEN AT

DATED 01 Jan 06

9. STATEMENT (Continued)

The driver proceeded forward into the parked humvees. He did not slow down or seem to react to the presence of our troops, the visual attempts to stop him, the yelling and the raised weapons pointed at him. As he kept coming at us I made the decision to open fire at the vehicle. I had a clear shot at the driver side of the vehicle. I was the only one on that side. Before I could pull the trigger to shoot at the tire and engine the one of the M240 mounted on the trucks directly ahead of the incoming car opened fire. With I opened fire and hit several more than M4's open fire on the vehicle. Even after the initial burst the vehicle kept coming. I fired 4 rounds before I thought I heard a scree time being called out. I put my weapon on safe and watched the driver for a few seconds before our troops ran up to check the vital signs of the driver. After a quick inspection of the vehicle it was determined that the driver was still alive. I assisted in pulling the driver out and laying him on the ground. [redacted] and [redacted] began working on determining the extent of the injuries. The driver was still alive, but barely. I worked to cut his clothes off and try to control bleeding and stabilize the man. After about 15 min of attempts to stabilize the man died. I checked his pulse and breathing personally. At this point we attempted to give CPR. I pumped the heart while [redacted] breathed air through a tube. After a few minutes of that, it was determined that the man was gone. We found blankets to cover the body. I then went to the other two victims and helped load them into a humvee which I took on the way to a hospital. One man was DOA and the other convulsed. They were both hit on the other side of the street. From the hospital we went to a gas station to provide security for five trucks trying to put out the fire. [redacted]

INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 8 PAGES

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

EX6

AFFIDAVIT

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

(Signature of Person Making Statement)

EX6

WITNESSES:

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

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

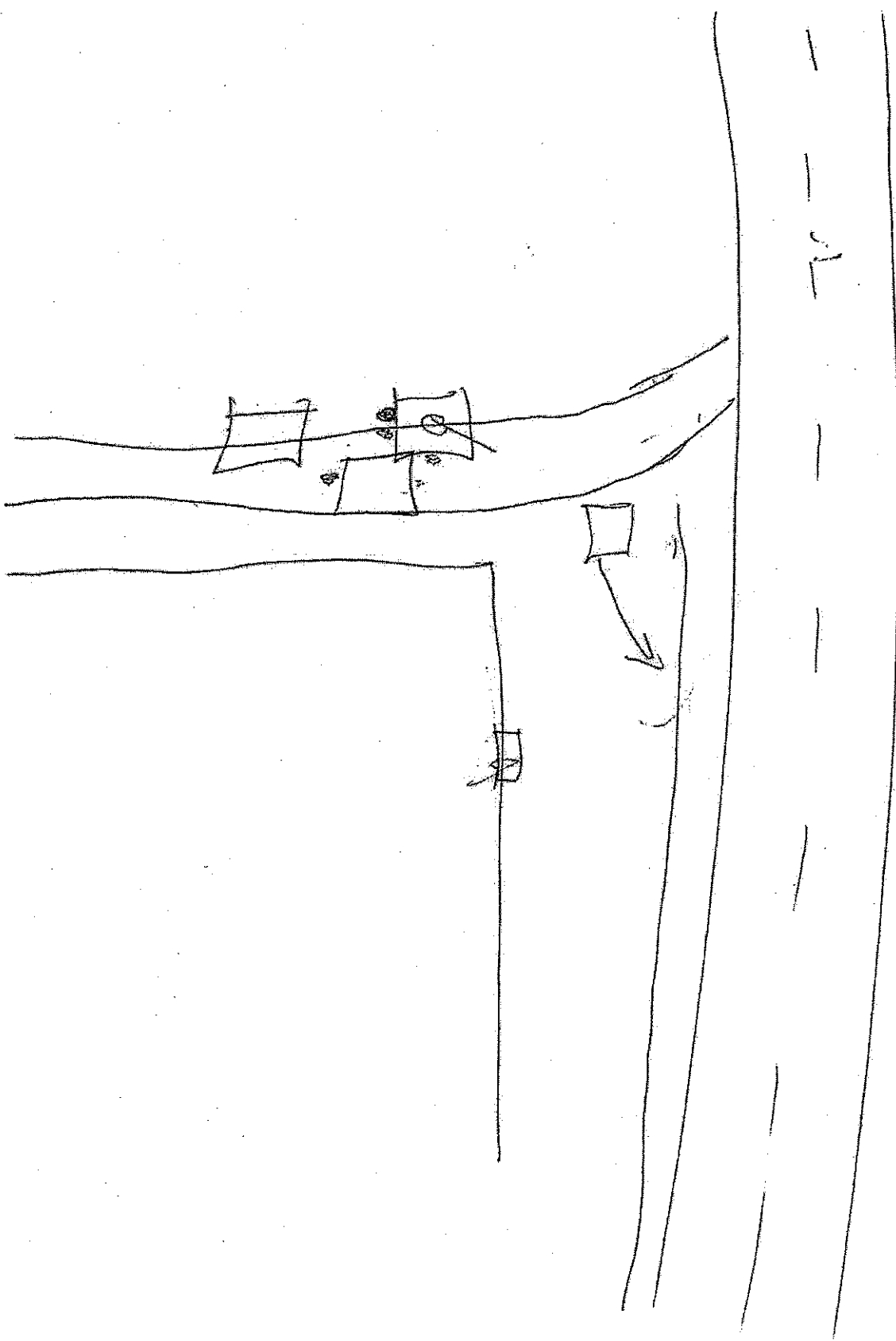
ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

SR

PAGE 3 OF 3 PAGES



OPV 21.11.0 SZ

NOT HIS SQD)

EXC

[REDACTED] → [REDACTED] 1st line Sup

- got to alley sorta calm
- right of hummers making "rockets"

EXC

[REDACTED] went into building

EXC

[REDACTED] told to get in bldg (at distance)
- stayed on ground

- Pairs in bldg told to leave
- heard rounds going
- crowd wanted to stop car - turned into alley
- CF yelled to stop: waved at him
- held arm out

EXC

driver - look @ "main guy" - looked @ [REDACTED]
saw him holding upn - driver made no
intention to stop

- had upn up - decide shoot @ wheel then
engine) - everyone fired @ once
car rolled for awhile

- guy was obviously hurt

- CF - rolled up on

- put driver on side of wall

- 10 - 15 bullet wounds - put truck in B - ? car
he could find

could see [REDACTED] EX6
- broken bones - most serious wound - broken
spine - bullet through neck - still slightly
breathing

- worked on ^{driver} him for awhile - [REDACTED] EX6

- didn't give mouth to mouth

- covered him w/ blankets after death

- brought ^{2nd Lt} guy over to CP position EX6

- moved to KCH in HUMVEEs [REDACTED]

working on him - one of the KIAs

Gunshots - positive about guns hot

- doesn't know who fired ~~the~~ ^{the} -- couldn't see them

- ^{with hand} 240-100ds he fired four or 5

- didn't fire for long 2-3 seconds

- 4 Ss - everyone in SCIP using

- on site could

- shot from side of wall

- PAXs from Bldg - pushed by IPI only
from crowd

- LNs (4) moved guys to US position

- wall just high enough for (shoulder height)

- Driver saw him - positive - ~~stop~~ enough break
for driver to stop before opening fire
- somebody called cease fire

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

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 KPD	2. DATE 1 Jan 06	3. TIME 0045	4. FILE NO.
5. NAME (Last, First, MI) [REDACTED]	8. ORGANIZATION OR ADDRESS Bco 2-327 inf 101st Abn Div		
6. SSN [REDACTED]	7. GRADE/STATUS E-3		

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 **HHC, 2-327** and wanted to question me about the following offense(s) of which I am suspected/accused: **POF Admin Area (Rat)**

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:

I do not have to answer any question or say anything.
 Anything I say or do can be used as evidence against me in a criminal trial.
 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.

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 [REDACTED]	EX6
1a. NAME (Type or Print) [REDACTED]	b. ORGANIZATION OR ADDRESS AND PHONE Bco 2-327 inf 101st Abn Div	4. SIGNATURE OF INVESTIGATOR [REDACTED]	
2a. NAME (Type or Print) [REDACTED]	b. ORGANIZATION OR ADDRESS AND PHONE HHC, 2-327 IN	5. TYPED NAME OF INVESTIGATOR LT	EX6
		6. ORGANIZATION OF INVESTIGATOR HHC, 2-327 IN	

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

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:

- Your official position.
- Nature of offense(s).
- 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."

- "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

"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:

- 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.")

COMMENTS (Continued)

REVERSE OF DA FORM 3881

USAPA V2.01