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#### 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.
- 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."
  - "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."

If or civilians not subject to the UCMJ) You have the right to telk privately to a lawyer before, defing, 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?\*

Iff 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 efter being read your rights?"
(If the suspect/accused says "yes," find out when and where, if the request was recent li.e., lewer than 30 days agol, 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 offensels) 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 supsect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be rold 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 of 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.

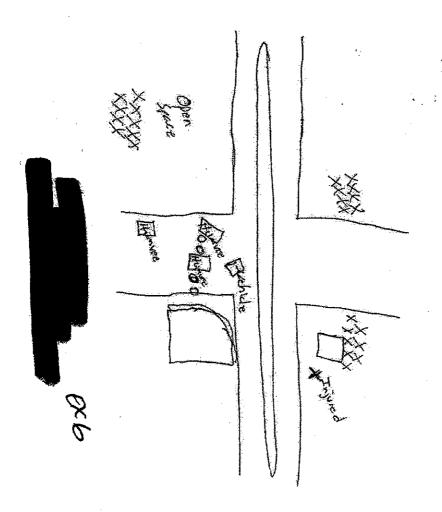
NOTE: If 1 or 2 applies, the fact that the suspent/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspent/accused.

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)

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## PART II - RIGHTS WARNING PROCEDURE

### THE WARNING

- . WARNING Inform the suspect/accused of:
  - 8. Your official position.
  - b. Nature of offense(s):
  - c. 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."
  - 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 divillan you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both,"

(For civilians not subject to the UCMI) 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 enswering 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 if: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 REPUSES 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 supsect/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 enything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

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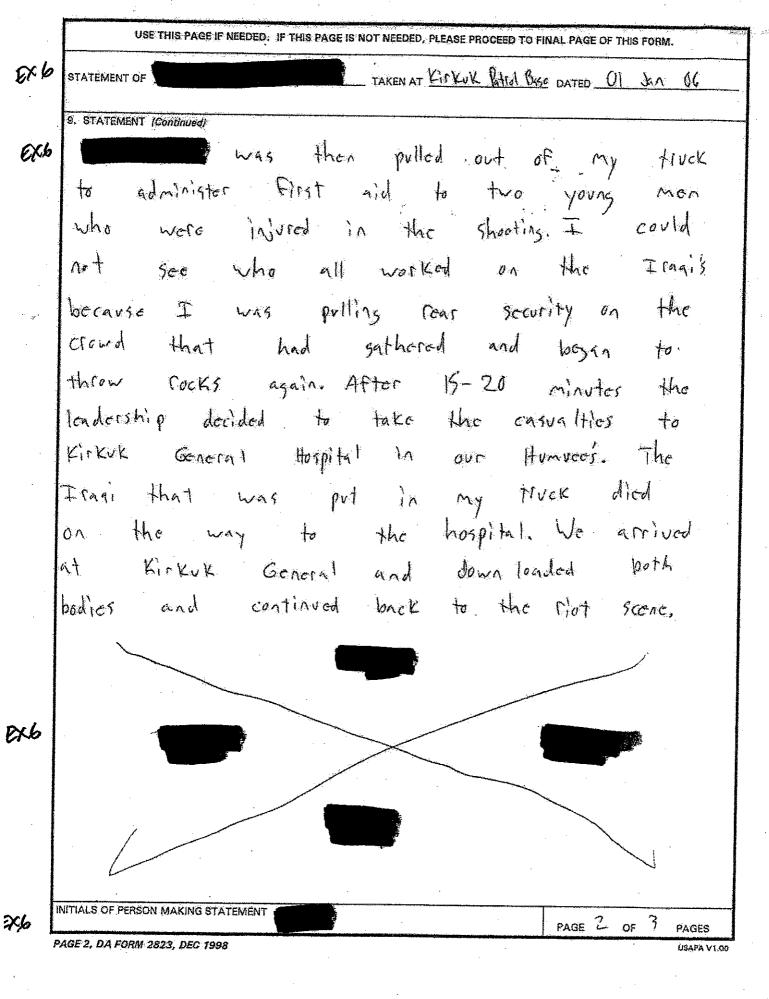
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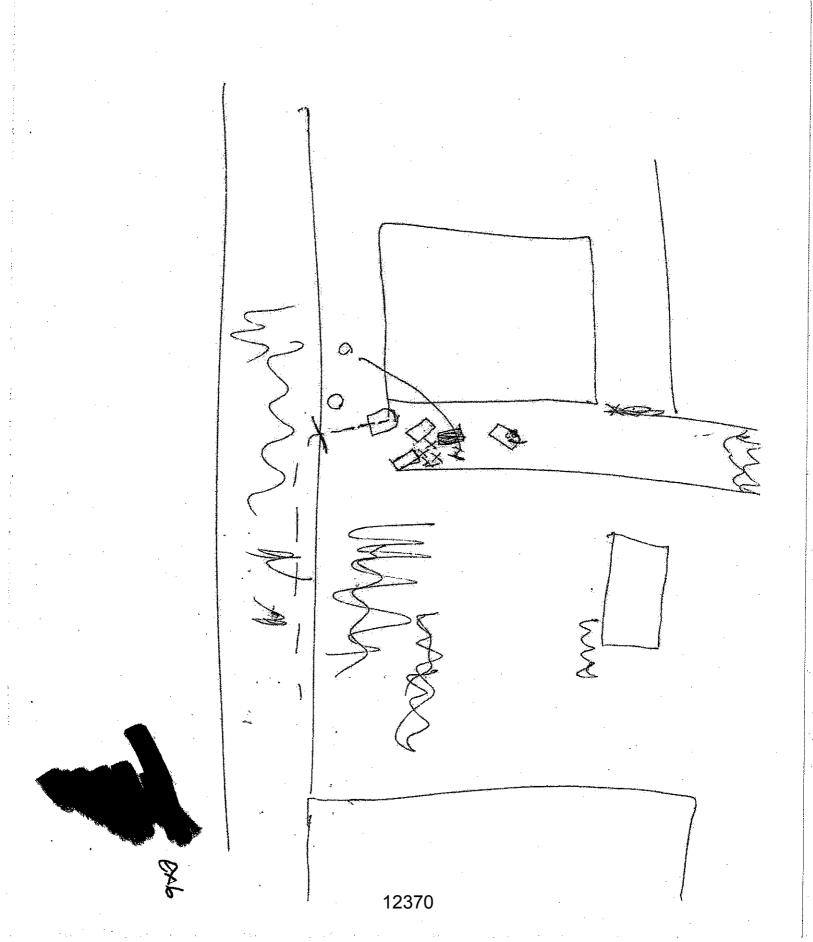
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