

### SWORN STATEMENT

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

#### 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 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 FOB ██████████, ██████████, IZ	2. DATE (YYYYMMDD) 2005/07/05	3. TIME 1143	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME ██████████	6. SSN ██████████	7. GRADE/STATUS E6	
8. ORGANIZATION OR ADDRESS 717th ORD CO, BOD (OPCON TO TF 1-108th AR)			

9. I, ██████████, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 05 Jul 05 at approximately 0730 717th EOD Team 3 arrived at an BOD incident grid ██████████. It was initially reported by an informant that there was 2 Command Wire IEDs on the side of the road and the trigger house was in a cluster of trees to the South. Once on site I, SSG ██████████, the BOD Team Leader in charge of the incident met up with SFC ██████████ the NCOIC of the unit that had been securing the incident location. I asked if the reported trigger house was secured south of the road, he stated that the house to the West and East was secure but not house the South. I instructed him that the southern house was to be secured before any BOD operations were to begin. While the house was being secured I instructed PFC ██████████ to utilize the robot to conduct a remote recon of the site to try and locate any evidence of command wires or and IED. After approximately one hour I was told that the perimeter and the house were secure.

After dressing in the Bombsuit I left down range with my security element, SFC ██████████, SSG ██████████ and SGT ██████████. Approximately 150 meters from our safe area SGT ██████████ fired one shot and identified a civilian in black garb walking from our front left in a Southeastern direction into tall vegetation. SSG ██████████ immediately instructed the individual to stop in Arabic; the individual gave no response or compliance. SSG ██████████ fired a two warning shots and ordered the individual to stop in-between each shot. After the second warning shot and the command to stop SSG ██████████ fired three shots in rapidly and issued another order to stop. At no time did the individual stop or give any type of response other than continuing to the vegetation. At that time SSG ██████████ fired one more shot, the individual fell to the ground. SFC ██████████ instructed SSG ██████████ and SGT ██████████ to continue to escort me to the incident site that he would hold that position.

We continued to the road, approximately 15 meters from the road we saw another man on a mule moving along the road inside of the perimeter. SSG ██████████ motioned the individual to move away from area to a safe area. The man stopped his mule and looked at SSG ██████████ and I at that time SSG ██████████ fired one warning shot into a dirt mound and motioned again, the man complied and departed the scene. I positioned SGT ██████████ and SSG ██████████ on an overwatch position and moved in toward the suspect mounds. Utilizing an improvised BOD tool I reconed the mound from approximately 20 feet, once I felt that the mound was clear I began moving to the second mound. Halfway to the second mound I noticed some disturbed earth so I conducted a recon of that area. The recon exposed a bundle of three strands of detonation cord and an electric blasting cap that was not attached to a firing wire. I gathered my security personnel and moved back to our safe area. Once at our safe area I picked up a counter charge and remotely placed it disposing of the IED by detonation. With crater analysis we determined that there were approximately 5 to 8 120mm mortars.

Nothing Follows

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT ██████████	PAGE 1 OF 1 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ 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.

STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_

9. STATEMENT (Continued)

[Redacted statement content]

**AFFIDAVIT**

\_\_\_\_\_, 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.

\_\_\_\_\_  
(Signature of Person Making Statement)

**WITNESSES:**

SGT \_\_\_\_\_  
SGT \_\_\_\_\_  
2LT \_\_\_\_\_  
ORGANIZATION OR ADDRESS

TF 1-108th AR  
FOB \_\_\_\_\_, \_\_\_\_\_, IZ  
APO, AE 09372  
ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 5 day of JULY, 2005 at FOB \_\_\_\_\_, \_\_\_\_\_, IZ

\_\_\_\_\_  
(Signature of Person Administering Oath)

\_\_\_\_\_  
(Typed Name of Person Administering Oath)

COMMISSIONED OFFICER  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

\_\_\_\_\_  
\_\_\_\_\_

PAGE OF PAGES

## **Exhibit L**

48BCT CIR

LINE 1: Unit reporting: 1-108 AR

LINE 2: Incident: Iraqi Civilian killed

LINE 3: Date/time group (DTG) incident occurred: 050900JUL05

LINE 4: Location of incident: [REDACTED]

LINE 5: Personnel involved:

Name	Rank	Unit	SSN	Sex	Age	Race
Unknown at this time						

LINE 6: Summary of incident: EOD and mortars were at [REDACTED] conducting a cordon and search after an IED was found at location. [REDACTED] had conducted an ambush site at location based on information from the THT that the IED had bad wiring and the trigger man was coming back to the location to re-wire the IED. After he didn't come back, the units on the ground conducted the search and secured the area. A female was observed walking into a secure area near some tall bushes within the secure area. It was advised that at least six warning shots were fired after telling the female repeatedly to stop. After she didn't stop, she was shot at the scene. The medic on site rendered aid but advised that the female had expired. Statements are being completed at this time. It is also unknown at this time who all fired warning shots or who the actual shooter of the female was.

LINE 7: Damage to government and/or civilian property: None

LINE 8: Commander reporting: For [REDACTED], LTC

48BCT CIR

LINE 1: Unit reporting: 1-108 AR

LINE 2: Incident: Shooting of Local National

LINE 3: Date/time group (DTG) incident occurred: 050908JUL05

LINE 4: Location of incident: [REDACTED]

LINE 5: Personnel involved:

Name	Rank	Unit	SSN	Sex	Age	Race
Unknown at this time						

LINE 6: Summary of incident: EOD and mortars were at [REDACTED] conducting a cordon and search after an IED was found at location. [REDACTED] had conducted an ambush site at location based on information from the THT that the IED had bad wiring and the trigger man was coming back to the location to re-wire the IED. After he didn't come back, the units on the ground conducted the search and secured the area. A female was observed walking into a secure area near some tall bushes within the secure area. It was advised that at least six warning shots were fired after telling the female repeatedly to stop. After she didn't stop, she was shot at the scene. The medic on site rendered aid but advised that the female had expired. Statements are being completed at this time. It is also unknown at this time who all fired warning shots or who the actual shooter of the female was.

LINE 7: Damage to government and/or civilian property: None

LINE 8: Commander reporting: For [REDACTED], LTC

## **Exhibit M**

APPENDIX 3 (QUICK REFERENCE) TO ANNEX R (FRATRICIDE) TO THE  
INFANTRY BRIGADE TACSOP

INVESTIGATIONS UNDER AR 15-6

1. PURPOSE. This overview is intended to explain how assist you in conducting a timely, thorough, and legally sufficient informal AR 15-6 investigation. This guidance does not replace the need to obtain, read, and follow AR 15-6.

a. An informal investigation differs from a formal investigation in that the investigating officer follows the informal procedures set forth in AR 15-6, Chapter 4, rather than the formal procedures specified in Chapter 5.

b. There are no respondents designated in an informal investigation.

2. REFERENCE: Army Regulation 15-6, Procedure for Investigating Officers and Boards of Officers (11 May 1988) and Interim Change No. I01.

3. ADDITIONAL REFERENCES: While AR 15-6 contains the basic rules for informal investigations, some investigations are appointed under a specific regulation or directive (e.g., AR 735-5 provides for the investigation of the loss/damage to government property).

a. When appointed under a specific regulation, the provisions of the specific regulation or directive will control the investigation.

b. If the specific regulation contains a provision making AR 15-6 applicable to the investigation, you must look to both the specific regulation involved and to AR 15-6 for the proper procedures.

c. If the two regulations conflict on a particular point, the provisions of the specific regulation will override the provisions of AR 15-6.

4. WHAT IS YOUR MISSION?

a. The primary purpose of an investigation is to look into and report on the matters as directed by the appointing authority. Your investigation is a fact-finding mission involving the identification and interview of witnesses and the collection and preservation of real and documentary evidence.

b. Your objective is to discover and document the "who", "what", "where", "how", "when" and "why" of the matter.

R-3-1

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(1) You must accurately fix dates, places, persons and events.

(2) You should review the appointment order to ascertain whether there are any special instructions.

5. HOW DO YOU PREPARE FOR YOUR INVESTIGATION?

a. Review your appointment order, AR 15-6, and any other pertinent regulations or directives, then promptly begin your investigation.

b. Use AR 15-6, Chapter 3, as a guide. Pay particular attention to paragraphs 3-6, 3-7, 3-8, 3-9 and 3-10; this will help ensure the legal sufficiency of your findings and recommendations when you submit your report to the appointing authority.

6. BEGINNING THE INVESTIGATION. Ascertain the type of the information you need and where you are likely to find it.

a. Do you need to interview witnesses? If so, make a list of the witness names and the questions you want to ask each witness.

b. Do you need documents? Where are these documents located?

c. Do you need to visit the scene of an alleged incident?

d. Do you need logistical support: a vehicle, camera, clerk, etc.?

7. CONDUCT INVESTIGATION.

a. Interview witnesses.

(1) Since you may have only one chance to interview a witness, you should be thoroughly prepared. It is generally best to begin with the witnesses to an event, rather than the persons most directly involved. By interviewing witnesses before the main players involved, you should find it easier to formulate the right questions to ask.

(2) Except in the case of a person suspected of having committed a crime (see subparagraph 5d below), it is usually best to engage the witness in free-flowing conversation by asking general, open-ended questions like "What happened next?" An open-ended question will generate better information than a specific question like "Did you see the HMMWV run the stop sign?" The answer to the first question will provide



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more detail, while the answer to the second question may only provide a "yes" or "no."

b. As an investigating officer, you are authorized to administer oaths and take sworn statements (Art. 136, UCMJ). Generally, the statements you obtain should be sworn.

(1) Do not treat this aspect of your duties lightly. Have the witness raise his or her hand and solemnly swear/affirm to the statement. See AR 15-6, figure 3-1, for the format of an oath.

(2) Do not consider "off the record" statements as evidence. See AR 15-6, para 3-6c(3).

c. Record the substance of your interviews on DA Form 2823, "Sworn Statement," if available. Otherwise use plain bond or ruled paper. Either form of statement must be dated and signed by the individual making the statement.

(1) It is often difficult to transfer a long interview into written form after the interview concludes. To ensure accuracy, you should take notes during, or tape record, the interview, and assist the witness by drafting the statement for him or her. You may also write out specific questions and ask the witness to write specific answers. Do not simply hand a form to a witness after a lengthy interview and tell them to "write down what we talked about."

(2) If the witness is unavailable or refuses to sign, the investigating officer will note, over his or her own signature, the reasons why the witness has not signed and will certify the statement is an accurate summary of what the witness said.

d. There are no respondents (AR 15-6, para 1-7) in an informal investigation. However, there may be an individual or individuals, who during the course of your investigation, you find reason to suspect may have committed a crime.

(1) The test is objective. The test is not whether you suspect the individual, but whether a reasonable person, knowing the same things you know, should have suspected the individual of committing the crime.

(2) A crime is defined as a violation of the Uniform Code of Military Justice (UCMJ). This includes violations of other local, state or federal laws.

(3) It is best to consult your legal advisor once you believe you have reason to

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suspect a person of a crime. At this point it may be appropriate to involve a criminal investigative agency. Your legal advisor can assist you with the necessary determination and coordination.

(4) Advise soldier suspects of their rights against self-incrimination under Article 31 of the UCMJ. Advise civilian suspects of their rights under the Fifth Amendment to the Constitution.

(5) The procedure for explaining rights is set forth on DA Form 3881, "Rights Warning Procedure/Waiver Certificate."

e. You should read the Art. 31 rights exactly as set forth on the back of the DA Form 3881.

(1) You should not change the words, even when explaining them.

(2) If the suspect indicates he or she does not understand the rights, determine what is not understood. Then repeat the rights advisement as written. Do not attempt to put the rights advisement into your or the suspect's own words. After one or two repeats, suspects will usually indicate they understand and you can proceed.

(3) If suspects repeatedly indicate they do not understand, you should presume they do not waive their Art. 31 rights. Also, if a suspect indicates he/she is not going to waive his/her rights, all questioning must cease. Seek legal advice before proceeding further.

f. Requests for Counsel.

(1) If a suspect indicates he or she wants to talk to a lawyer first, all questioning must cease until the suspect has had a reasonable opportunity to see a lawyer.

(2) If the suspect already has a lawyer:

(a) The lawyer must be given a reasonable opportunity to be present during the questioning, even if the suspect says he doesn't want/need the lawyer.

(b) If you want to question the individual on a matter totally unrelated to the matter for which the individual is represented by an attorney, you need not contact the attorney. However, you must not discuss anything concerning the matter for which the individual is already represented by the attorney. In a situation such as this, you should

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seek legal advice first.

g. You may not draw an adverse inference against any individuals who invoke their rights under Art. 31 or the Fifth Amendment. If a military witness has no Art. 31 rights, he or she may be ordered to testify. The right to invoke Art. 31 or the Fifth Amendment is personal. No one may assert it to protect anyone other than himself or herself. There may, however, be privileged communications involved (see AR 15-6, para 3-8c(1) and subparagraph 7j below). You should consult a judge advocate for further advice in this area.

h. You may use whatever method you find most efficient and effective for acquiring information, including personal interview, correspondence, telephone inquiry, or other informal means. You should avoid duplicating investigative work already being done in an ongoing investigation, e.g., a military police investigation. You may conduct an AR 15-6 investigation concurrently with another ongoing investigation into the same matter; however, you, in conjunction with your legal advisor, should coordinate with the other investigators.

i. As an investigating officer with an "official need to know," you should have access to all relevant government records.

(1) If someone denies you access, you should seek legal advice immediately.

(2) An investigating officer may consider any evidence which, in the mind of a reasonable person, is relevant and material to the issue.

(3) An investigating officer may not consider privileged communications, polygraph tests (unless the subject agrees), "off the record" statements, bad faith unlawful searches, required (involuntary) statements regarding disease or injury, or involuntary (coerced/forced/tricked) statements.

j. Privileged Communications.

(1) The rules in section V, part III, Manual for Courts-Martial, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), and husband-wife privilege (MRE 504) apply.

(2) Present or former inspector general personnel will not be required to provide evidence regarding information they obtained while acting as inspectors general.

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(3) There is other information/records such as ADAPCP or "limited use," the use/release of which is restricted by regulation. Any questions concerning these records or privileged communications should be referred to your legal advisor.

k. Search Authorizations. If you believe you require a lawful search and seizure during the course of your investigation, contact your legal advisor for assistance in obtaining a search authorization from the military magistrate, appropriate commander or judge.

l. If you discover your investigation cannot be completed without examining the conduct or performance of duty of a person senior in rank or position to you, you must report this fact to the appointing authority. The appointing authority may replace you with a more senior officer or determine it is impractical because of military exigencies and direct you to continue.

m. If you discover something which you think could cause the appointing authority to consider enlarging, restricting or terminating the investigation, you should report this situation to the appointing authority.

n. The Privacy Act.

(1) The Privacy Act requires that whenever personal information is solicited from an individual and the information will be filed so as to be retrievable by reference to the name or other personal identifier of the individual, he or she must be advised orally or in writing of the information listed in AR 15-6, Appendix B, paragraph B-1a.

(2) Generally, a Privacy Act statement is only required when soliciting information from an individual who could have been designated as a respondent in a formal board/investigation.

(3) If you have any questions concerning the Privacy Act, contact the Administrative Law Division, Office of the Staff Judge Advocate.

## 8. REPORT OF PROCEEDINGS.

a. Unless the appointing authority has authorized an oral report, you should record your investigation on a DA Form 1574, "Report of Proceedings By Investigating Officer/Board of Officers", with enclosures and exhibits. Attach an Index of Exhibits and Enclosures. The DA Form 1574 is advisable, but not mandatory.