

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.)

(b)(3), b(6)

(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)

APPROVAL

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.)

I ratify the appointment of the investigating officer, CPT (b)(3), b(6) I approve the Findings. I acknowledge the planned CERP condolence payments for this incident (recommendation 3a). The recommendation that:

(b)(2)High

I remand the matter to the Regimental Cdr for appropriate action.

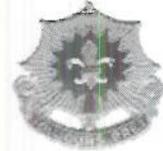
13 DEC 2007

(b)(3)(b)(6)

JOSEPH F. FIL, JR., Major General, USA, Commanding



DEPARTMENT OF THE ARMY  
 HEADQUARTERS, 2D STRYKER CAVALRY REGIMENT  
 CAMP LIBERTY, IRAQ (UNIT 93453)  
 APO AE 09344-3453



AFZH-BA

09 December 2007

MEMORANDUM FOR RECORD

SUBJECT: Report of Proceedings for 15-6 Investigation

1. **Purpose:** To clearly articulate my proceedings and findings regarding the Escalation of Force (EOF) incident that occurred on 06DEC07.
2. **Findings:**

a) Individuals involved.

U.S. Forces:

- PFC (Golf 2 Gunner)
- SGT (Golf 2 TC)
- SGT (Golf 2 Driver)
- SSG (Golf 1 TC)
- SSG (Recovery Team OIC)
- SGT (Recovery Team NCOIC)
- SPC (b)(3), b(6) (Golf 1 Gunner)
- SPC (Golf 1 Driver)
- SPC (RTAC HQ65 Gunner)
- SPC (RTAC HQ65 Driver)
- CPT (RTAC OIC)
- SPC (RTAC Medic)
- SPC (Recovery Team Medic)
- Other Individuals were present, but not involved (see Exhibit G)

Civilians:

- (b)(6) A woman estimated in her (b)(6) (Exhibit I) with a gun-shot wound to the head (Exhibit C12).
- (b)(6) – A woman estimated in her (b)(6) (Exhibit I) with a gunshot wound to the shoulder and a severed thumb (Exhibit C13).
- A)(4-year-old girl (Exhibit I) with minor glass shards in her scalp (Exhibit C12).
- The driver of the White Sedan, a boy estimated to be no older than b)(6) years of age.
- Riva Ridge TMC Translator received third party information that (b)(6) was the mother of the two children and sister of (b)(6)

b) Training and experience of Individuals involved. According to a conversation with CPT (b)(3), b(6) (Exhibit I) The entire Recovery Team involved participated in EOF training given by himself on Tuesday, 04DEC07. The training included detailed

Exhibit B – Report of Proceedings

06 DEC 07 EVENT EOF (1 X LN KIA, 2 X LN WIA) VBC

MAINT RSS 2 SCR

INCIDENT: EOF

RESULTS:

1 X LN KIA

2 X LN WIA

SIGACT/EVENT ID:

MND-B SIGAC

MND-B EVENT 29 (062001)

DTG: 06 1840 DEC 07

UNIT: MAINT/RSS, 2SCR

LOCATION

UNIT MISSION

SUMMARY:

AT 1840 HOURS, WHILE

EOF ON A LN VEHICLE RESULTING IN 1 X LN KIA AND 2 X LN

WIA. THE UNIT HAD ESTABLISHED A CORDON AND WAS

ASSESSING

VEHICLE PARKED

LIGHTS OFF AND DOORS OPENED. THE VEHICLE THEN

APPROACHED SLOWLY, WITH LIGHTS OFF, AND THEN

STOPPED AND OPENED THE DOORS AGAIN. A FEW MINUTES

LATER, THE VEHICLE APPROACHED THE UNIT AT A HIGH RATE

OF APPROXIMATELY 20 MPH.

A LEAD GUNNER FIRED 1 X ROUND OF 30 CALIBER TO DISABLE THE

VEHICLE. THE SHOT RESULTED IN 1 X LN GSW TO THE HEAD

AND 1 X LN GSW TO THE SHOULDER AND A THIRD WITH A HEAD

LACERATION. THE 2 X GSW WERE MEDEVACED TO RIVA

RIDGE AND FURTHER TO THE GSH. THE LN WITH THE HEAD

WOUND DOW. THE THIRD WAS TREATED ON SITE AND

RELEASED. THE UNIT COMPLETED RECOVERY OPERATIONS

AND DROPPED THE NON-INJURED PASSENGERS OFF WITH

THEIR FAMILY. A 15-6 INVESTIGATION HAS BEEN INITIATED.

(b)(2)High

(b)(2)High

(b)(2)H

(b)(2)Hig

(2)H

(2)H

(2)Hi

(2)H

(b)(2)High

SECRET//REL TO USA, MCF/2017/208  
FOR DISPLAY ONLY TO IBC

(b)(2)High

(2) Hig

(b)(2)High

(b)(2)High

(b)(2)High

SECRET//REL TO USA, MCF/2017/208  
FOR DISPLAY ONLY TO IBC

(b)(2)High

UNCLASSIFIED

UNCLASSIFIED

Exhibit E - Event Storyboard



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 2D STRYKER CAVALRY REGIMENT  
CAMP LIBERTY, IRAQ (UNIT 93453)  
APO AE 09344-3453

AFZH-BA

12 December 2007

MEMORANDUM FOR Commanding General, Multi-National Division - Baghdad, APO AE 09344

SUBJECT: Recommendation for Disposition of 15-6 Investigation Concerning Escalation of Force Incident by Maintenance Troop

1. I have ordered the investigation into the escalation of force incident by Maintenance Troop, Regimental Support Squadron on 9 December 2007. I have reviewed and concur with the investigating officer's findings and recommendations.
2. I request that you delegate this case back to me for appropriate disposition.
3. The point of contact for this memorandum is the undersigned at SVOIP 794-9006 or  
(b)(3), b(6), (b)(2)High

(b)(3), b(6)

COL, IN  
74<sup>th</sup> Commander of the Regiment

CENTCOM 012448



REPLY TO  
ATTENTION OF:

AFZH-BA

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 2D STRYKER CAVALRY REGIMENT  
CAMP LIBERTY, IRAQ (UNIT 93453)  
APO AE 09344-3453

6 December 2007

MEMORANDUM FOR Captain (b)(3), b(6) Headquarters and Headquarters Troop, Special Troops Squadron, 2d Stryker Cavalry Regiment, APO AE 09361

SUBJECT: Appointment of Investigating Officer

1. Appointment. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation into the facts and circumstances related to the escalation of force incident involving RSS, 2SCR, that occurred on 6 December 2007. This investigation is your primary duty and takes precedence over all other assigned duties.
2. Scope. Your report of investigation should include, but is not limited to, findings on the following issues:
  - a. Detail the events surrounding the shooting, including chronology; identify those individuals involved, including both civilian and military individuals and any relevant equipment/property, and the respective actions taken. Cover the specifics of this engagement and the decision-making process that went into it.
  - b. Identify the training and experience of all Soldiers involved. What understanding did the Soldiers involved have of the Rules of Engagement and Escalation of Force procedures? What, if any, role did either their training or experience have in the engagement?
  - c. What forms of escalation, if any, were used by the Soldiers involved?
  - d. What did the Soldiers observe the persons in the vehicle doing? What did the Soldiers observe the vehicle do? Include all relevant details. What did the Soldiers understand their engagement criteria to be? Have the Soldiers describe hostile act, hostile intent, and positive identification. At what point did the Soldiers decide to engage the occupants of the vehicle?
  - e. Should a condolence payment be made, and, if so, to whom?
  - f. If you determine that the incident should have been handled differently, make any appropriate suggestions concerning ways to minimize occurrence of future incidents.
3. Procedures. In your investigation, all witnesses will be sworn prior to interview; thoroughly document all witness interviews in writing, preferably on a DA Form 2823 (Sworn Statement); and interview all witnesses in person, if practical.
4. Report. You will draft a memorandum for record containing your findings and recommendations and attach it as an enclosure to DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers. You will also attach this appointment memorandum, the SIR, any written requests for extensions, and an index of exhibits to the DA Form 1574. This

CENTCOM 012449

AFZH-BA  
SUBJECT: Appointment of Investigating Officer

investigation will be completed and submitted to your legal advisor no later than **16 December 2007**.

5. Exhibits. Exhibits will be attached to the DA Form 1574 and must be properly labeled and indexed. Exhibits should include the following evidence: a chronology of your actions on this investigation; a complete personnel roster including full names, ranks, and duty positions of those involved; a diagram or story board depicting the incident; unit standard operating procedures; photos of the scene (e.g. UAV photos) and key evidence (e.g. vehicle); and sworn statements explaining the unit's mission at the time of the incident and addressing all issues outlined in paragraph 2 of this memorandum.

6. Legal Orientation. Before you begin your investigation, contact your legal advisor, CPT (b)(3), b(6) Regimental Judge Advocate, or his designee, at SVOIP 573-1042 for a legal briefing. You must have your legal briefing completed **NLT 7 December 2007**. Consult with your legal advisor regarding all aspects of this investigation, including the development of an investigation plan, determination of whether witnesses need rights advisement under Article 31, UCMJ or the 5th Amendment of the United States Constitution, and preparation of your findings and recommendations.

7. Request for Delay. In the event you are unable to meet the above suspense date, prepare a written statement explaining the reason for the delay, submit the request for delay to your legal advisor for approval by the Regimental Commander, and attach it to the investigation as an exhibit.

FOR THE COMMANDER:

(b)(3), b(6)

(b)(3)(b)(6) LTC, IN  
Regimental Executive Officer



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 2D STRYKER CAVALRY REGIMENT  
CAMP LIBERTY, IRAQ (UNIT 93453)  
APO AE 09344-3453

REPLY TO  
ATTENTION OF:

AFZH-BA-JA

11 December 2007

MEMORANDUM FOR COL (b)(3), b(6) Commander, 2d Stryker Cavalry Regiment,  
Camp Liberty, Iraq, APO AE 09344

SUBJECT: Army Regulation 15-6 Investigation into 9 December 2007 Maintenance Troop EOF  
Incident

1. I have reviewed the subject investigation in accordance with Army Regulation 15-6,  
Procedures for Investigating Officers and Boards of Officers (2 October 2006), and find it legally  
sufficient. There is substantial evidence to support the Investigating Officer's (IO) conclusions.  
I further find that:

- a. The appointment and subsequent investigation comply with all legal requirements.
- b. The investigation contains no procedural errors that materially affect the rights of any  
individuals involved in the investigation.
- c. Sufficient evidence supports the investigating officer's findings.
- d. The investigating officer's recommendations are consistent with the findings.

2. Recommendation. A greater weight of the evidence supports the IO's findings than supports a  
different conclusion. The recommendations are consistent with the findings. The investigation  
must be forwarded to the approval authority – the MND-B CG.

3. The POC for this memorandum is the undersigned at SVoIP: 573-1042 or email:  
(b)(3), b(6), (b)(2)High

(b)(3), b(6)

CPT, JA  
Administrative Law Attorney

CEN

451

**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 Colonel (b)(3), b(6) \_\_\_\_\_  
 (Appointing authority)

on 06 DEC 2007 \_\_\_\_\_ (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)  
 (Date)

**SECTION II - SESSIONS**

The (investigation) (board) commenced at Camp Liberty, Baghdad, Iraq at 1945  
 (Place) (Time)

on 06 DEC 2007 (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 1630 on 09 DEC 2007  
 (Time) (Date)  
 and completed findings and recommendations at 1600 on 10 DEC 2007  
 (Time) (Date)

**SECTION III - CHECKLIST FOR PROCEEDINGS**

**A. COMPLETE IN ALL CASES**

YES NO 1/ NA 2/

- |    |   |  |
|----|---|--|
| 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?  |  |
| b. | Copy of notice to respondent, if any? (See item 9, below)   |  |
| c. | Other correspondence with respondent or counsel, if any?  |  |
| d. | All other written communications to or from the appointing authority?   |  |
| e. | Privacy Act Statements (Certificate, if statement provided orally)?   |  |
| f. | Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)? |  |
| g. | Information as to sessions of a formal board not included on page 1 of this report?   |  |
| h. | Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?  |  |

(b)(2)High

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.

2	Exhibits (para 3-16, AR 15-6)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	
	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?	
	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)?	
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	
<b>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>		
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)?	
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b>		
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)?	
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.		

(b)(2)High

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

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

See attached Memorandum (Exhibit B)

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

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

See attached Memorandum (Exhibit B)

MAINTENANCE TROOP EOF 15-6  
091835DEC07

## Index of Exhibits

Exhibit A – Legal Review & Memorandum of Appointment of Investigating Officer

Exhibit B – MFR: Report of Proceedings

Exhibit C – Individual Sworn Statements

C1 – PFC		(Golf 2 Gunner)
C2 – SGT		(Golf 2 TC)
C3 – SGT		(Golf 2 Driver)
C4 – SSG		(Golf 1 TC)
C5 – SSG		(Recovery Team OIC)
C6 – SGT		(Recovery Team NCOIC)
C7 – SPC	(b)(3), b(6)	(Golf 1 Gunner)
C8 – SPC		(Golf 1 Driver)
C9 – SPC		(RTAC HQ65 Gunner)
C10 – SPC		(RTAC HQ65 Driver)
C11 – CPT		(RTAC OIC)
C12 – SPC		(RTAC Medic)
C13 – SPC		(Recovery Team Medic)

Exhibit D – Photographs of Engagement Site

Exhibit E – Event Storyboard

Exhibit F – RSS / 2d SCR Convoy Brief

Exhibit G – Sworn Statements from Individuals present, but not involved

Exhibit H – MND-B SIGACT Report

Exhibit I – Chronology of Investigation

Exhibit J – Dragoon 6 Sends - Message on Escalation of Force Incidents

**RIGHTS TRAINING 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 <i>Camp Liberty, Iraq</i>	2. DATE <i>06 Dec 07</i>	3. TIME <i>2112</i>	4. FILE NO.
5.	8. ORGANIZATION OR ADDRESS		
6. (b)(3), b(6)	7. GRADE/STATUS <i>E-3 / Active</i>		

**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 \_\_\_\_\_ and wanted to question me about the following offense(s) of which I am suspected/accused: *aggravated assault*

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.

- 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 <i>(If available)</i>		3. SIGNATURE OF INTERVIEWEE
1a. NAME <i>(Type or Print)</i>		(b)(3), b(6)
b. ORGANIZATION OR ADDRESS AND PHONE		
2a. NAME <i>(Type or Print)</i>		5.
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OR ADDRESS AND PHONE
		<i>RHAT, 2nd SCR, Camp Liberty, Iraq</i>

**Section C. Non-waiver**

- 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

*Exhibit C1*

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)