

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)

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.

I approve the "Facts" and "Findings".

I approve (disapprove) the recommendation that no action be taken against the Soldiers involved.



JOSEPH F. FIL, JR
Major General, USA
Commanding

25 MAR 2007

CENTC

(b)(3), b(6)



DEPARTMENT OF THE AR
 Bravo Company
 2nd Battalion 325th Airborne Infantry Regiment
 Fort Bragg, North Carolina 28310



AFVC-BB-B

8 March 2007

MEMORANDUM FOR Colonel (b)(3), b(6) -headquarters, 2nd Brigade Combat Team, 82nd Airborne Division, Camp Taji, APO AE 09378

SUBJECT: AR 15-6 Investigation Concerning the Escalation of Force on 21 February 2007 in the Shaab/Ur district Iraq

1. On 23 February 2007, I was appointed as the AR 15-6 Investigating Officer (IO) for the Escalation of Force that occurred on 21 February 2007 that resulted in a death of a local national. I have conducted a thorough investigation of the circumstances surrounding this incident. My observations, conclusions, and recommendations are provided in the following format: facts, findings, and recommendations.

2. Facts. On 21 February 2007, at approximately 1415, C23 vehicle was struck by an IED just east of route Anstel vic (b)(2) High. The remaining Charlie elements positioned themselves so that they can pull security and support the damaged vehicle C23. The C26 vehicle was facing north on (b)(2)High to provide security at the intersection vic (b)(2) High (exhibits K, P-S). C25 vehicle was positioned directly in front of C23, and C22 moved approximately (b)(2)High (b)(2)High C25 (exhibits C, P-S). Approximately three minutes after the IED explosion the gunner or C26 (SPC b)(3), b(6) observed a white flatbed truck approaching from the north heading south at approximately 40 mph toward their blocking position (exhibits A, D). SPC b)(3), b(6) began shouting for the driver to stop (keef) and signaling the driver with hand and arm signals (exhibits D, H and O). The white truck did not slow down, or acknowledge the warning signs. Once the vehicle was (b)(2)High SPC b)(3), b(6) transitioned from (b)(2)High to (b)(2)High and fired a warning shot into the grill of the truck (exhibit D, A). The white truck still did not slow down or give any signs of stopping (exhibits A-E). At the same time C22's gunner (PFC)(3), b(6) observed the truck approaching C26's position. PFC)(3), b(6) fired warning shots above the white truck with (b)(2)High (exhibit A). At or about that time SGT (b)(3), b(6) and SGT (b)(3), b(6) exited a house they just cleared, and pulled local security by C25 when they saw the white truck approaching from the north (exhibit B, C). Once the vehicle was approximately (b)(2)High away from C26, SPC b)(3), b(6) fired one round from (b)(2)High into the cab of the truck (exhibit D). At or about the same time SPC b)(3), b(6) fired, SGT (b)(3), b(6) fired two rounds from (b)(2)High into the cab of the truck striking the man in the torso (exhibit C). The vehicle stopped approximately (b)(2)High from C26 (exhibits A, D, and K). The vehicle was not approached by Charlie Company due to the lack of personnel and the need for security of C23 who was struck by the IED (exhibits F, G). The battalion QRF platoon D36 arrived approximately 45 minutes to an hour after the IED hit C23 to provide additional security. Upon arrival of D25 (SFC b)(3), b(6), SPC b)(3), b(6) signaled SFC)(3), b(6) to check the white truck (exhibit L, D). SFC)(3), b(6) along with SGT b)(3), b(6) looked inside of the white truck and saw the local national (b)(6), with a head wound and two torso wounds, who appeared dead. SFC)(3), b(6) and SGT b)(3), b(6) moved back to their vehicle and headed east to assist in security and allow the National Police to handle the vehicle (exhibits L, M). Battalion was notified of the incident and called the National Police. The National Police arrived on the scene approximately one hour after the IED attack. The National Police removed the white flatbed truck (lic# (b)(6)) and (b)(6) who was pronounced dead at the scene (exhibits F, G, and N).

(b) (5)

3. Findings.

a. Definitions from MND-B Regulations: The following definitions came from MND-R

(b)(2)High

(b)(2)High

(b)(2)High

b. Based on the facts surrounding the Escalation of Force, MND-B, 1CAV, and the Escalation of Force SOP, I believe the paratroopers acted within the bounds of current ROE. Based on the IED attack and need to continue to remain vigilant in providing a safe and secure environment for the populace and the disabled vehicle. Vehicles driven by local nationals

(b)(2)High, (b)(5)

(b)(2)High, (b)(5) In a combat zone filled with Anti-Iraqi forces known to employ vehicle born improvised explosive devices (VBIED's) any soldier would have done the same. Based upon my interviews with each Trooper I found that they engaged the vehicle in self-defense. Also they made a split second decision which soldiers have to do on a daily basis, but because of the hasty EOF measures emplaced, they made a sound decision.

4. Recommendation: Although the outcome of this engagement was unfortunate, the facts surrounding the incident are consistent with the soldiers' inherent right to protect themselves and their equipment. I do not recommend further investigation or disciplinary action. The unit will coordinate for a solatia payment to the immediate family for the death of the driver.

5. POC for this memorandum is the undersigned at NIPR: (b)(3), b(6), (b)(2)High

(b)(3), b(6)

1LT, IN
Executive Officer



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 2ND BRIGADE COMBAT TEAM
82ND AIRBORNE DIVISION, CAMP TAJI, IRAQ
APO AE 09378

MAR 19 2007

AFVC-B

MEMORANDUM FOR Commander, Multi-National Division-Baghdad (ATTN: DCG (M)),
Camp Liberty, Iraq, APO AE 09344

SUBJECT: Brigade Combat Team Commander Transmittal

1. On 23 February 2007, I appointed First Lieutenant (b)(3), b(6) as an Investigating Officer pursuant to Army Regulation (AR) 15-6 to conduct an informal investigation into an incident that occurred on 21 February 2007, where a local national's vehicle was engaged by coalition forces and the local national driver was killed.

2. After reviewing the Investigating Officer's Findings I recommend:

- Approval.
- Approval with the following changes/recommendations: _____
- Disapproval.

3. After reviewing the Investigating Officer's Recommendations I recommend:

- Approval.
- Approval with the following changes/recommendations: _____
- Disapproval.

(b)(3), b(6)

3 Encls

- 1. EXSUM (b)(2)High
- 2. Legal Review
- 3. AR 15-6 Investigation

COL, IN
Commanding



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 2ND BRIGADE COMBAT TEAM
82ND AIRBORNE DIVISION, CAMP TAJI, IRAQ
APO AE 09378

S: 29 February 2007

AFVC-B

23 February 2007

MEMORANDUM FOR First Lieutenant (b)(3), b(6) Charlie Company, 2nd Battalion,
325th Airborne Infantry Regiment, 2nd Brigade Combat Team, 82nd Airborne Division,
Camp Taji, APO AE 09378

SUBJECT: Appointment as AR 15-6 Investigating Officer (2/82-016)

1. You are hereby appointed as an investigating officer pursuant to Army Regulation (AR) 15-6 (Procedures for Investigating Officers and Boards of Officers) to conduct an informal investigation into an incident that occurred on 21 February 2007, where a local national's vehicle was engaged by coalition forces and the local national driver was killed. In addition to determining the facts and circumstances of the incident, you will make specific findings on the following:

a. What was the composition and location of the friendly element at the time of the incident? Include number of Troopers, types of weapons, vehicles, and a sketch or diagram of the Troopers in relation to the individual engaged.

b. Describe where the incident occurred (b)(2)High
Use maps to highlight the location and provide graphics/pictures to depict EOF incident.

c. Describe the events leading up to the escalation of force (EOF). Include a description of the specific EOF measures employed, if any, prior to the use of warning shots or lethal force. Additionally, include as much information as possible about the individual that was killed as a result of the use of EOF procedures and any property damaged during the use of EOF procedures.

d. Describe in as much detail as is readily available, what the Troopers perceived as a hostile act and/or demonstration of hostile intent.

e. What additional EOF measures, if any, should have been attempted prior to engaging the vehicle?

f. Identify any actions taken, tactics, techniques, or procedures the unit should sustain.

g. Identify any lessons learned from the incident that the unit may use to improve existing tactics, techniques, or procedures.

AFVC-B

SUBJECT: Appointment as AR 15-6 Investigating Officer (2/82-016)

- h. Were claims cards issued and claims procedures initiated? If not, why not?
 - i. Include any other facts or findings that the command should be aware of to assist Troopers with handling similar incidents in the future.
2. You will speak with any and all individuals you believe have information pertinent to your investigation. You will obtain a legal briefing from the Brigade Judge Advocate prior to conducting your investigation. You should also familiarize yourself with the provisions of AR 15-6 and the Guide for Informal Investigations. Once your investigation is complete, you will make recommendations consistent with your findings.
3. All witness statements will be sworn if possible and recorded on DA Form 2823. If circumstances preclude you from obtaining a sworn statement, you will summarize the testimony in a memorandum and attest to the accuracy of your summary.
4. If, in the course of your investigation, you come to suspect that an individual may be criminally responsible, you will advise that individual of his or her rights under Article 31 of the UCMJ using DA Form 3881.
5. Copies of all relevant regulations and forms can be found on the 2BCT PORTAL in the SJA section.
6. Submit your report, together with all evidence marked as exhibits, to the Brigade Judge Advocate on DA Form 1574 for legal review no later than 28 February 2007. Requests for extensions will be submitted to the undersigned through the Brigade Judge Advocate in writing.
7. POC for this memorandum is MAJ (b)(3), b(6) at SVOIP 774-7156 or
(b)(3), b(6), (b)(2)High

(b)(3), b(6)

COL, IN
Commanding



DEPARTMENT OF THE ARMY
2ND BRIGADE COMBAT TEAM
82ND AIRBORNE DIVISION
CAMP TAJI, IRAQ
APO AE 09378

REPLY TO
ATTENTION OF

AFVC-B-JA

15 March 2007

MEMORANDUM FOR Commander, 2nd Brigade Combat Team, 82nd Airborne Division,
Camp Taji, Iraq, APO AE 09378

SUBJECT: Legal Review of EOF AR 15-6 Investigation (2/82-016)

1. In accordance with Army Regulation (AR) 15-6, paragraph 2-3, I have reviewed the AR 15-6 investigation into an incident that occurred on 21 February 2007, where a local national's vehicle was engaged by coalition forces and the local national driver was killed. I make the following determinations:

- a. The proceedings comply with the legal requirements of AR 15-6.
- b. Errors in the proceedings, if any, do not have a material adverse effect on any individual's substantial rights as related to an informal AR 15-6 investigation.
- c. Sufficient evidence supports the findings for an informal AR 15-6 investigation.
- d. The recommendations are consistent with the findings.

2. Pursuant to Multi-National Division – Baghdad (MND-B) Policy the DCG (M) is the approving authority for this action. Recommend you concur with the Investigating Officer's findings and recommendations by signing the attached memorandum and forward to MND-B, DCG (M).

3. The POC is the undersigned at SVOIP 242-6820 and (b)(3), b(6)
(b)(2)High

(b)(3), b(6)

MAJ, JA
Brigade Judge Advocate

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER OR 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) Headquarters, 2nd Brigade Combat Team, 82nd Airborne Division
(Appointing authority)

on 23 February 2007 (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 COB Callahan, Iraq (Place) at 1900 (Time)

on 23 February 2007 (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 2200 (Time) on 27 February 2007 (Date) and completed findings and recommendations at 2330 (Time) on 28 February 2007 (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	NO <u>1</u>	NA <u>2</u>
	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. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
	b. Was the date of delivery at least five working days prior to the first session of the board?			
	c. Does each letter of notification indicate —			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
	d. Was the respondent provided a copy of all unclassified documents in the case file?			
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?			
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

(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 invest or board.

SECTION IV - FINDINGS (para 3-10, AR

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

SEE ATTACHED MEMORANDUM

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

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

SEE ATTACHED MEMORANDUM

INDEX

Label	Description
Enclosure I	Investigating Officer Appointment Memorandum
Enclosure II	Chronology
Exhibit A	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) PFC (b)(3), b(6) dtd 23 Feb 2007
Exhibit B	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SGT (b)(3), b(6) , dtd 23 Feb 2007
Exhibit C	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SGT (b)(3), b(6) .. dtd 23 Feb 2007
Exhibit D	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SPC (b)(3), b(6) , dtd 23 Feb 2007
Exhibit E	DA Form 2823 (Sworn Statement) SFC (b)(3), b(6) dtd 23 Feb 2007
Exhibit F	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) 1LT (b)(3), b(6) . dtd 25 Feb 2007
Exhibit G	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SFC (b)(3), b(6) , dtd 25 Feb 2007
Exhibit H	DA Form 2823 (Sworn Statement) SPC (b)(3), b(6)
Exhibit I	Photo of Scene (b)(3), b(6)
Exhibit J	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SFC (b)(6) , dtd 25 Feb 2007
Exhibit K	Photo of scene (Sharp)
Exhibit L	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SFC (b)(3), b(6) dtd 25 Feb 2007
Exhibit M	DA Form 2823 (Sworn Statement) and DA Form 3881 (Rights Warning Procedure/Waiver Certificate) SGT (b)(3), b(6) , dtd 25 Feb 2007
Exhibit N	MFR from NPTT Team (Dover)

- Exhibit O Pictures of scene, and reenactment (b)(3), b(6)
- Exhibit P Imagery of the area and location of vehicles (b)(3), b(6)
- Exhibit Q Imagery of the area and location of vehicles (b)(3), b(6)
- Exhibit R Imagery of the area and location of vehicles (b)(6)
- Exhibit S Imagery of the area and location of vehicles (SFC (b)(3), b(6)

CHRONOLOGY

DATE	EVENT
23 FEB 07	Received appointment order as 15-6 Investigating Officer
23 FEB 07	Received brief by BJA on 15-6 procedures
23 FEB 07	Interviewed PFC (b)(3)(b)(6) and obtained a sworn statement
23 FEB 07	Interviewed SGT (b)(3)(b)(6) and obtained a sworn statement
23 FEB 07	Interviewed SGT (b)(3)(b)(6) obtained a sworn statement
23 FEB 07	Interviewed SPC (b)(3)(b)(6) and obtained a sworn statement
25 FEB 07	Interviewed SFC (b)(3)(b)(6) and obtained a sworn statement
25 FEB 07	Interviewed 1LT (b)(3)(b)(6) and obtained a sworn statement
25 FEB 07	Interviewed SPC (b)(3)(b)(6) with follow up questions and obtained additional sworn statement and photo.
25 FEB 07	Received Photo from PFC (b)(3), b(6)
25 FEB 07	Interviewed SFC (b)(3), b(6) and obtained a sworn statement, and a photo of the scene.
25 FEB 07	Interviewed SFC (b)(3), b(6) and obtained a sworn statement.
25 FEB 07	Interviewed SGT (b)(3), b(6) and obtained a sworn statement
27 FEB 07	Received information from CPT (b)(3), b(6) on LN who was killed..
28 FEB 07	Completed Facts gathering
28 FEB 07	Completed 15-6 Investigation Report

SWORN STATEMENT

For use of this form, see AR 100 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: COB Callahan
2. DATE (YYYYMMDD): 2007/02/23
3. TIME: 1900
4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME: (b)(3), b(6)
6. SSN
7. GRADE/STATUS: E-3 / PFC
8. ORGANIZATION OR ADDRESS: C Co, 2-325 AIR 2nd platoon

9. I, PFC (b)(6), (b)(3), b(6) WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
On or about midday on the 21st of February 2007 our platoon was on a mounted patrol through Baghdad. We were moving with (2)H vehicles, mine being third in order, the truck in front of the vehicle that was hit. It was around 1400 in the afternoon. We took a left off of (b)(2)High onto an unnamed side street. The IED struck the right side of the vehicle directly behind the one I was gunner for. We immediately stopped. I looked back and could barely see the vehicle rolling to a stop through a huge cloud of dust. After about 30 seconds the dust began to clear and I could see no one in the turret nor in the vehicle. We backed our vehicle up near the hit vehicle about (b)(2)High away from it. The TC and dismount Sgt (b)(3), b(6) dismounted and went to the vehicle that was hit. They called back that no one was in the vehicle. Everyone in the vehicle had gotten out and went to the roof of an adjacent house to the corner of the IED. Sgt (b)(3), b(6) went into the house. I am unsure what everyone was doing because I was pulling security over the field on the left of the vehicle. (b)(3), b(6) About 3 minutes had passed and Sgt (b)(3), b(6) was back on the side of our vehicle. I believe pulling local security for our vehicle. Approximately 5 minutes after the blast a white flat bed truck with a driver and no passengers was speeding towards the intersection that our trail vehicle was covering. He was traveling at about 50 mph by my judgement. He was not slowing down nor moving from his direct path towards the trail vehicle. I couldn't tell if the gunner in the last vehicle was facing his turret towards the oncoming vehicle. (b)(3), b(6) had fired a warning. Someone

10. EXHIBIT: A
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3), b(6)
PAGE 1 OF 2 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 (b)(3), b(6) TAKEN AT LOS Alamitos DATED 25 Feb 07

9. STATEMENT (Continued)

shot in the direction of the truck. He was on the right side of my turret when he shot I fired a burst into the air above the truck. It was about 6 rounds one of which was a tracer, I believe Sgt (b)(3), b(6) or Spc. (b)(3)(b)(6) may have fired another shot directly after. The vehicle came to a halt approximately (b)(2)High from the trail vehicle. I immediately went back to pulling security and continued with mission.

nothing follows

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

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

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

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

INITIALS OF PERSON MAKING STATEMENT (b)(3), b(6)

STATEMENT OF _____ (b)(3), b(6) _____ TAKEN AT COB (Alameda) DATED 23 Feb 07

9. STATEMENT (Continued)

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

(b)(3), b(6)

AFFIDAVIT

I, _____ (b)(3), b(6) _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT

(b)(3), b(6)

(Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 23 day of FEBRUARY, 2007 at COB (Alameda)

(b)(3), b(6)

SRL

SRT

(b)(3), b(6)

ORGANIZATION OR ADDRESS

C Co 2-325 Air 280T 82d.

ll: (b)(3)(b)(6)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

INDEPENDENCE OFFICE

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

(b)(3), b(6)

PAGE 3 OF 3 PAGES

HTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <u>COB CALLAHAN IRAQ</u>	2. DATE <u>23 Feb 2007</u>	3. TIME <u>2030</u>	4. FILE NO.
5. NAME (Last, First, MI)	8. ORGANIZATION OR ADDRESS		
6. (b)(3), b(6)	7. GRADE/STATUS <u>E3 / PFC</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 Head at COB Callahan and wanted to question me about the following offense(s) of which I am

suspected/accused: ESCALATION OF FORCE

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 (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NA	(b)(3), b(6)	
b. ORGANIZATION OR ADDRESS AND PHONE <u>C Co. 2-325 AIR</u>		4. (b)(3), b(6)
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR <u>KT</u> (b)(3), b(6)
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR <u>B Co 2-325 AIR 2 B Co 82d AW</u>

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 (b)(3), b(6)

ATTACH THIS 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)

REVERSE OF DA FORM 3881

EOF: C CO 2-325th AIR, 2-82, 21 FEB 07

CENTCOM

APD PE v2.01ES

(b)(3), b(6)

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: Calabran
2. DATE (YYYYMMDD): 2007-02-23
3. TIME: 2011
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: [Redacted]
6. GRADE/STATUS: E-5 / SGT
8. [Redacted] (b)(3), b(6)
9. CCO 2-525 ALK

(b)(3), b(6)

... WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the Day 21st after getting hit by an IED SGT (b)(3), b(6) and myself were making out of the building to get to the house across the street. When I heard the warning shots, I turned my head to see what was going on and saw the white truck speeding (30-40 mph) towards V 2-6. When the truck got within (b)(2)High of V 2-6 SGT (b)(3), b(6) fired 2 shots at the truck but I could not see where his 2 shot impacted.

(b)(3), b(6)

10. EXHIBIT: 3
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3), b(6)
PAGE 1 OF 1 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT DATED

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

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

STATEMENT OF (b)(3), b(6) TAKEN AT COB CALLAHAN DATED 23 FEB 07

9. STATEMENT (Continued)

(b)(3), b(6)

INITIALS OF PERSON (b)(3), b(6) STATEMENT

PAGE 2 OF 3 PAGES

9. STATEMENT (Continued)

(b)(3), b(6)

AFFIDAVIT

I, _____ (b)(3), b(6), 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.

(b)(3), b(6)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 23 day of FEBRUARY, 2007 at 2030

(b)(3), b(6) PFC
SGT

ORGANIZATION OR ADDRESS
C/O 2-325 AIR 2BLT 82d

(b)(3), b(6)

ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)
INVESTIGATING OFFICER
(Authority To Administer Oaths)

INITIALS OF PERSON ADMINISTERING OATH

(b)(3), b(6)

F HTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <u>Calabran</u>	2. DATE <u>23 FEB 07</u>	3. TIME <u>2011</u>	4. FILE NO.
5. NAME (Last, First, MI)	8. ORGANIZATION OR ADDRESS		
6. (b)(3), b(6)	7. GRADE/STATUS <u>ES/SGT</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 HERE AT COB CALABRAN and wanted to question me about the following offense(s) of which I am

suspected/accused: ESCALATION OF FORCE

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.

1a. I (b)(3), b(6)	3. SIGNATURE OF INTERVIEWEE
b. ORGANIZATION OR ADDRESS AND PHONE <u>COO 2-325 AIR</u>	4. SIGNATURE OF INVESTIGATOR (b)(3), b(6)
2a. NAME (Type or Print)	5.
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR <u>BCO 2-325 AIR 2804 82d.</u>

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. (b)(3), b(6)

ATTACH THIS WAIVER CERTIFICATE TO THE 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).
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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).
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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: COB Cullham
2. DATE (YYYYMMDD): 2007/02/23
3. TIME: 1900
4. FILE NUMBER
7. GRADE/STATUS: ES-TL

8. ORGANIZATION OR ADDRESS: Co 2-325 Air

9. Sot (b)(3), b(6)

... WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the 21st of February, I was part of a patrol that was hit by an IED, and following that was involved in a Eof incident. I was riding in the third vehicle (V-4) was hit at or around 1520. My vehicle V-3 turned 180 and moved to within of V-4. My self and Sot dismantled to check V-4 for casualties.

When we saw that there was no personnel in V-4 we moved to the house on the corner. We expediently cleared the house, until we found the crew of V-4

I moved back down to the court yard, preparing to move to the house across the street. I had seen people moving in and out of that house prior to the blast and after

At the moment I entered the courtyard I heard a warning shot, and looked up to see V2(2-1) fire a warning shot at a white truck (70m) an closing on V2 at a high rate of speed. (30-40 mph)

V-2's 1st warning shot that I saw went over the approaching truck. The 2nd shot that I saw went into the vehicle. The truck showed no signs of stopping.

10. EXHIBIT: C
11. INITIALS OF PERSON MAKING STATEMENT: (b)(3), b(6)
PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT TAKEN AT DATED
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