

# COURT-MARTIAL RECORD

NAME BURKE, RICKY A. SGT

SSN \_\_\_\_\_

ACTIONS CODED:

INITIAL \_\_\_\_\_

ACCA \_\_\_\_\_

FINAL \_\_\_\_\_

COMPANION(S): \_\_\_\_\_

ASSIGNED TO:

PANEL \_\_\_\_\_

~~EXAM. DIV.~~ ✓

ACCA CLERK of Court

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ARMY

20051072

SUMMARIZED  
**RECORD OF TRIAL<sup>1</sup>**  
(and accompanying papers)

BURKE, Ricky A.  
(NAME: Last, First Middle Initial)

[Redacted]  
(Social Security Number)

Sergeant  
(Rank)

B Btry, 1-623rd FA,  
503rd MP Bn (Abn),  
18th MP Bde  
(Unit/Command Name)

US Army

(Branch of Service)

Camp Victory, Baghdad, Iraq

(Station or Ship)

BY  
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL  
(Title of Convening Authority)

HQ, Multi-National Corps - Iraq  
(Unit/Command of Convening Authority)

TRIED AT

LSA Anaconda, Balad, Iraq and  
Camp Victory, Baghdad, Iraq  
(Place or Places of Trial)

ON 26 June and 1-3 September 2005  
(Date or Dates of Trial)

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG(GCM)  
(RCM 1111 and 1112, MCM, 1984)

UNIT/COMMAND NAME	LOCATION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY	DATE RECORD RECEIVED
ACTION	DATE	REMARKS
FINAL DISPOSITION: Findings & sentence, as approved by convening authority, correct in law and fact; to file		COMPANION CASES: None.
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file		
Acquittal or sentence set aside (see remarks), to file		
Copies of CMO disposed of in accordance with departmental regulations		
JUDGE ADVOCATE OR LAW SPECIALIST		
SIGNATURE	RANK	DATE SIGNED

PERMANENT  
FILE FRONT COVER

<sup>1</sup> See inside back cover for instructions as to use, preparation and arrangement.

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b) (6) 5 U.S.C. 552 (b) 6):

Photographs

**DEFENSE EXHIBITS  
ADMITTED**

**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 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 617 Military Police Company	2. DATE (YYYYMMDD) 2005/03/20 <i>JFA</i>	3. TIME 1600L <i>JFA</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Neim, Timothy Foster	6. SSN	7. GRADE/STATUS E6	
8. ORGANIZATION OR ADDRESS 617 Military Police Company, Camp Liberty Iraq APO AE 09342			

9. 1. Timothy F. Neim WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 20 March 2005, my squad was assigned to patrol the southern AOR of ASR Detroit. Our mission was to clear the MSR of any Anti Iraq Forces (AIF). This included the emplacement of Improvised Explosive Devices (IED) and of any ambushes that may occur. My patrol consisted of three M1114. The lead vehicle contained myself, SSG Neim, SGT Morris, and SPC Cooper. The middle vehicle contained SGT Hester, SPC Ordunez, and SPC Pullen. The trail vehicle contained SGT Rivera, SPC Haynes, SPC Mack, and SPC Mike who was our medic. While patrolling along the ASR, we came upon a convoy, Stallion 33 from B/623 FA. This convoy was heading south on ASR Detroit in rout to LSA Scania from camp Anaconda. I then contacted Stallion 33 on the battalion net and advised them my patrol would shadow them through ASR Detroit to ASR Bismarck to help with security. While we were shadowing the Stallion 33 convoy, at grid MB 737633, they came under a coordinated attack from the south. Upon observing this attack, I immediately ordered my squad to increase its speed and cross over into the north bound lanes of traffic to get up into the ambush area. Upon arriving in the kill zone, we cross back over to the south bound lanes and onto the contact side of the convoy. This would allow my patrol to engage the AIF. The AIF were located to the south of the ASR in a large field that contained several canals both wet and dry, with some orchard type trees located to the rear of the field. The AIF were hidden in these canals, behind berms and behind trees. Upon crossing over to the contact side of the ASR, I observed what appeared to be 20 to 30 AIF firing at the convoy and my patrol with RPG, RPK and AK-47. Immediately all three gunners from my patrol began to return fire onto the AIF. Realizing that there was a road to the east, adjacent to the field, I ordered my patrol to flank the ambush area down that road. Upon reaching the road and starting into the turn, my vehicle came upon heavy RPK fire and was struck by an RPG directly in the rear door behind the TC seat. I then checked with my gunner, SPC Cooper, to find out if he was all right. I observed that he was face down in the seat behind me. I yelled out to him and shook him to find out if he was all right. He did not respond, I then began to crawl up into the gunners platform. Upon doing this, I noticed that he started to move and respond to my questions. He advised me he was all right and without hesitation he went back onto the M2 machine gun. After turning down the adjacent road, we proceeded 200 meters flanking the ambush. At this time, I told SGT Morris to stop the vehicle. I observed numerous subjects in the orchard field, two of which contained an RPG and a RPK. Observing that the subject with the RPG was aiming at my truck, while under direct fire from a RPK, I dismounted and ran over to a berm that was in between us and the field. Upon arriving at the berm, I began to engage the subject with the RPG. After killing him I began to engage the subject with the RPK. SGT Hester, SGT Morris, and SPC Pullen had come up on line, also under direct fire, with me and was engaging AIF in the field. SGT Hester was engaging the RPK located at the corner of ASR and the road we were on. After both subjects with RPK were killed, I was informed by SPC Ordunez that we were being engaged by some one from the berm directly to the rear of our vehicles. I then ran up to the berm, and threw a hand grenade to engage a subject. This subject was engaging all three of my patrol vehicles with an RPK from a positions above us and within 20 meters of our position. After the grenade exploded, I jumped up onto the berm to make sure the subject was dead. I could not find the subject and presumed he had rolled down injured or dead into the canal water. At this time SPC Pullen advised me that SGT Rivera had been shot and needed help. I told SPC Pullen to take care of SGT Rivera. SPC Pullen then drove her vehicle 200 meters under fire to SGT Riveras location to render aid. I then noticed that several of my soldiers from SGT Riveras team were on the ground and that SPC Mike, our medic was engaging enemy with both a M4 rifle and a M249 that belong to SPC Mack and SPC Haynes. SPC Mike was taking fire from both the canal in front of him and a house behind us. SPC Ordunez then engaged the house with his MK19. Seeing that the MK19 was not stopping the AIF in the house, SPC Mike and SPC Cooper each fired one AT4 into the house to stop them. Knowing that there were still several insurgents in the canal between us and the orchard field, SGT Hester and myself while under direct fire from insurgents in the canal, entered into the canal to fight. I had SGT Morris stay up on top and flank us clearing vehicles that belonged to the insurgents as we went along the canal. While in this canal, SGT Hester and myself fought side by side against four insurgents armed each with AK47s, and hand grenades. We fought foot by foot engaging the AIF with both fire from our M4 rifles, SGT Hesters M203 grenade launcher, and hand grenades from both of us. SGT Hester threw one hand grenade and I threw three attempt to kill the insurgents engaging us.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>JFA</i>	PAGE 1 OF <u>2</u> 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.

DEFENSE EXHIBIT A FOR ID  
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DEFENSE DEFENSE I FOR ID

## 9. STATEMENT (Continued)

After we had fought and killed the four insurgents in the canal and made our way up to the location were SGT Riveras vehicle was, I found SPC Haynes still on his M2 machine gun. I could see that he was covered with blood. I asked him if he was all right and he advised he had been shot in the hand but could still fight. A soldier from the convoy who had been ambushed, proceed along with me on the main canal that the insurgents were occupying. After searching the insurgents, we found several of them who were still alive. We separated them from there weapons and secured them. During all of this, SPC Mike and SPC Pullen drove SGT Rivera, SPC Haynes and SPC Mack to a landing zone, to be MEDEVACED, some were about two miles east of our position on ASR Detroit. After the area was secure, we rendered aid to the AIF that needed it and MEDEVACED them. In the total fight that after noon, 24 AIF were killed on location, 7 were wounded, and I was taken prisoner. While waiting on the MEDEVAC, an MI patrol stopped and asked if they could question some of the AIF. During there questioning, the AIF informed them there was a total of 50 AIF and 10 vehicles involved in the ambush. We could only account for 35. Later reports given to me, said that 3 more of the insurgents died either in the MEDEVAC or at the hospital. The AIF involved in this ambush were well equipped, well trained, had a tactical plan of attack with high moral. There fighting positions were thought out with a plan for a primary attack, fall back positions with covering fire and an escape route. During this fight, each and every soldier in my squad, fought with honor, valor and performed acts heroism that were above and beyond there duty. The gunners from each vehicle never quit fighting and always continued looking for AIF in our area and engaged them, to include Spc Ordunez engaging with both the MK19 and M240 his vehicle was equipped with. Spc Cooper at one point in the battle, seeing that he was better needed up towards SGT Riveras vehicle, came down from the weapon platform and drove the vehicle to that location to cover them while aid was rendered. In total, 22 x AKM, 13 x RPK, 6 x RPG launchers, 16 x RPG rockets, 39 x handgrenades, 123 x AKM magazines (full), 52 x AKM magazines (empty), 1 x drum AKM (w/ 75 estimated rounds), approximately 2500 x loose 7.62mm. ammunition and several thousand rounds of linked RPK rounds. #####END OF STATEMENT#####

## AFFIDAVIT

I, Timothy F. Neim, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. 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.

Timothy F. Neim  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21 day of March, 2005  
at 617 Military Police Company TOC

ORGANIZATION OR ADDRESS

[Signature]  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

Todd M. Lindner  
(Typed Name of Person Administering Oath)  
Comrade  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

TENPAGE 2 OF 2 PAGES

SWORN STATEMENT

Form, see AR 190-45; the proponent agency is OL OPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: 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: 617 Military Police Company TOC
2. DATE (YYYYMMDD): 2005/03/24 JFN
3. TIME: 1000 JFN
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: Nein Timothy Foster
6. SSN:
7. GRADE/STATUS: E6
8. ORGANIZATION OR ADDRESS: 617 Military Police Company Camp Liberty Iraq, APO AE 09342

I, Timothy F. Nein, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

During an engagement between my squad, 2nd SQ, 4th PL and Anti Iraqi forces (AIF) on 20 March 2005, I observed some actions of soldiers from B/623 FA. These soldiers were escorting a convoy south bound on ASR Detroit in the Salma Park area of Iraq. After the initial engagement from the AIF on to the convoy, my squad, reacted and moved to contact on the AIF to stop them from killing or injuring any coalition forces or third country nationals in the convoy. After the fighting had ended, and I was trying to make sure that the scene was secure. I approached the area where my alpha team truck was to check on the injuries they sustained. Seeing that our medic, SPC Mike was taking care and directing soldiers to render aid to the three that were injured, I decided to proceed on into the main canal to insure that the scene was safe and all AIF were secure. At this time I observed a soldier that I was not familiar with. I presumed he was from the convoy escort element. I asked him and he advised that he was from 623. At this time I told him I needed him to come with me to finish securing the scene. The soldier and I then proceeded down the main canal to find anymore enemy combatants. At this time he advised that "it was pay back time" believing that this soldier was referring to the death of another soldier from a few days before. I told him to settle down. About half way down the canal we came upon one live AIF. He was on the opposite side of the canal, in the prone position, parallel with the canal and had one hand hidden under him. At this time the soldier said to me "let me shoot him, let me shoot him, I got pay back coming". I ordered him not to and advised him that we would be able to get information from him. He still insisted to just shoot him when the AIF would not remove his hand from under himself. Finally after a few moments, and some hand and arms signals the AIF complied. He appeared to me to only have a injury to his left leg from a gun shot wound. I never observed any weapons in his direct area of reach. Again the soldier said to me that he wanted to shoot the AIF. Again, I ordered him not to. I told him that we had to much more to worry about, there were still about ten more AIF in the canal to secure. He then advised me that we just couldn't leave this AIF unattended. Being that we did not have any way to secure his hands, I asked him if he could handle him and he replied he had it under control and would watch the AIF. I left him and proceeded down the canal. When I left, the soldier was watching the AIF pointing his rifle at him. After about 50 meters down the canal, I heard the report from what sounded to be a pistol from behind me. I then turned around and observed that the soldier was pointing his M9 at the AIF and the AIF, that was sitting up, fell back onto his side. I then yelled out "are you all right?" He replied yes. Believing that he had just killed the AIF, and knowing that I still had more area to secure, I proceeded on to the end of the canal where I located on AIF that was not injured and fully capable of fighting. At that time SGT Hester came to my area and with Flex cuffs we secured the last AIF and took him back to our vehicle. We then began to check more of the area for injured or alive AIF and render aid to them. END OF STATEMENT

10. EXHIBIT:
11. INITIALS OF PERSON MAKING STATEMENT: JFN
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 BE INDICATED.

**SWORN STATEMENT**

For use of this form, see AR 190-45 the proponent agency is ODCSOPS

LOCATION Camp Victory, Baghdad, IZ APO AE 09342	DATE 3 Apr 05 <i>TEN</i>	TIME 1130L <i>TEN</i>	FILE NUMBER 0083-05 CID759-36247
LAST NAME, FIRST NAME, MIDDLE NAME NEIN, Timothy Foster	SOCIAL SECURITY NUMBER		GRADE/STATUS SSG/E-6
ORGANIZATION OR ADDRESS 617th Military Police Company, 18th Military Police Brigade, Camp Liberty, IZ APO AE 09342			

*TEN* Timothy F. NEIN WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

During an engagement between my squad, 2nd Squad, 4th Platoon, and Anti Iraqi Forces, on 20 Mar 05, I observed some actions of soldiers from B Battery, 1/623 Field Artillery BN. These soldiers were escorting a convoy south bound on ASR Detroit in the Salma Park area of Iraq. After the initial engagement from the AIF on the convoy, my squad reacted and moved to contact on the AIF to stop them from killing or injuring any coalition forces or third country nationals in the convoy. After the fighting had ended, and I was trying to make sure that the scene was secure, I approached the area where my Alpha team truck was, to check on the injuries they sustained. Seeing that our medic, SPC MIKE was taking care and directing soldiers to render aid to the three that were injured. I decided to proceed on into the main canal to ensure that the scene was safe and all AIF were secure. At this time, I observed a soldier that I was not familiar with. I presumed he was from the convoy escort element. I asked him and he advised he was from 623. At this time, I told him I needed him to come with me to finish securing the scene. The soldier and I then proceeded down the main canal to find anymore enemy combatants. At this time, he said that it was "Pay back time", believing that this soldier was referring to the death of another soldier from a few days before, I told him to settle down. About half way down the canal, we came upon one live AIF. He was on the opposite side of the canal, in the prone position, parallel with the canal and had one hand hidden under him. At this time, the soldier I was with said, "Let me shoot him, let me shoot him. I got pay back coming". I ordered him not to and advised him that we would be able to get information from him. He still insisted to just shoot him when the AIF would not remove his hand from under himself. Finally, after a few moments, and some hand and arm signals, the AIF complied. He appeared to me to only have an injury to his left leg from a gun shot wound. I never observed any weapons in his direct area of reach. Again the soldier said to me that he wanted to shoot the AIF. Again, I ordered him not to. I told him that we had too much more to worry about, there were still about ten more AIF in the canal to secure. He then advised me that we just couldn't leave this AIF unattended. Being that we did not have any way to secure his hands, I asked the soldier if he could handle him and he replied he had it under control and would watch the AIF. I left him and proceeded down the canal. When I left, the soldier was watching the AIF and pointing his rifle at him. After I had went about 50 meters down the canal, I heard the report from what sounded to be a pistol from behind me. I then turned around and observed that the soldier was pointing his M9 at the AIF and the AIF had been sitting up, fell back onto his side. I then yelled out, "Are you all right?". The soldier replied yes. Believing that he had just killed the AIF, and knowing that I still had more area to secure, I proceeded on to the end of the canal where I located an AIF that was not injured and fully capable of fighting. At that time, SGT HESTER came to my area and with Flex cuffs we secured the last AIF and took him back to our vehicle. We then began to check more of the area for injured or living AIF and render first aid to them.

**QUESTIONS BY SA ROBINSON, ANSWERS BY SSG NEIN:**

- Q: Did you prepare/read the above narrative portion of this statement?  
A: Yes.
- Q: What is the name of the 623 FA BN soldier that accompanied you down the canal, after the firefight?  
A: I do not know his name.
- Q: Describe the soldier that accompanied you down the canal?  
A: White male, in his twenties. About 5'11, about 180-200lbs.
- Q: What type of rifle was he carrying?  
A: I am not sure, either an M16A2 or M4.
- Q: In your narrative, you mentioned an incident from a few days prior to the engagement on 20 Mar 05. Can you elaborate on this?  
A: Before the engagement occurred, on 20 Mar 05, the convoy and their escort elements were stopped for fuel and my squad stopped to provide security for them. I had a conversation with this same soldier about how they had taken a KIA from the night before, or a day or two before. I offered this soldier my condolences. He had told me that one of their soldiers had been killed from an IED.
- Q: When you approached the injured AIF, can you recall how close the nearest weapon was to him?  
A: 5 to 10 feet. It was apparent to me that this man had been in the canal, and had crawled up the north side to escape the .50 caliber fire we were laying down. The weapon closest to him was like an AK 47, and it, along with all the weapons on that side was laying down in the canal.
- Q: When you approached the wounded AIF, were you on the same side of the canal as he was?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>TEN</i>	PAGE 1 OF <u>3</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_ CONTINUED."  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE \_\_\_\_\_ OF \_\_\_\_\_ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.



STATEMENT OF SSG NEIN, TAKEN AT CAMP VICTORY, IZ, ON 3 APR 05,  
CONTINUED

A: No. We were walking down along the canal, on the south side of it and on top. The wounded AIF was on top, and on the edge of the North side of the canal, laying parallel with the canal.

Q: When the wounded AIF complied with the orders to withdraw his hand, what occurred then?

A: He sat up, propped on his right hand in a half sitting position.

Q: What position did you see him in, after you heard the pistol shot?

A: I saw him falling onto his right side from the same position he had been in.

Q: Do you recall where the AIF was shot?

A: I believe it was in his right leg, but I am not sure of all injuries. I know he was shot in the leg, because after he propped himself up, he was pointing to his leg injury.

Q: After hearing the pistol shot, and turning, did you observe what the soldier was doing?

A: He was pointing his pistol at the AIF, with his left hand. He had his rifle in his right hand.

Q: Where was the soldier?

A: He appeared to be in the same location that I had left him.

Q: As you were walking the canal line, before or after this happened, did you or any of your squad locate any other weapons on top of the canal, north side, that could have been within the reach of the wounded AIF?

A: Not that I am aware of. There was nothing in his immediate area. I am not saying that he could not have had a concealed weapon, such as a grenade or pistol, but I believe that I would have observed any type of long gun.

Q: Regarding the AK-47 type rifle that you observed as being closest to the wounded AIF, was it laying in the bottom of the canal? —

A: Yes. There were long barreled rifles laying up and down that canal.

Q: How steep in the canal bank?

A: It was about five feet deep, with a very steep embankment.

Q: Could the wounded AIF have stretched from where he was and retrieved the weapon from the bottom of the canal?

A: No. It would have slid down, or rolled down that bank.

Q: After you were done clearing and securing the live AIF, did you have the opportunity to discuss with this soldier what had occurred?

A: No. I never saw him again.

Q: How many pistol shots did you hear fired?

A: I believe one.

Q: Do you know who moved this AIF we have been discussing onto a stretcher, and then under shade?

A: It was elements from Raven, and I believe from my Platoon. I also think that my medic, SPC MIKE, treated this AIF and that he was medevaced along with the other injured AIF.

INITIALS OF PERSON MAKING STATEMENT fen PAGE 2 of 3 PAGES

**SWORN STATEMENT**

For use of this form, see AR 190-45 the proponent agency is ODCSOPS

LOCATION Camp Victory, Baghdad, IZ APO AE 09342	DATE 3 Apr 05	TIME 1330	FILE NUMBER 0083-05- C10259-36247
LAST NAME, FIRST NAME, MIDDLE NAME MORRIS, Dustin Taylor	SOCIAL SECURITY NUMBER		GRADE/STATUS SGT
ORGANIZATION OR ADDRESS 617th Military Police Company, 18th Military Police Brigade, Camp Liberty, Baghdad, IZ APO AE 09342			

**Q1: Dustin Taylor MORRIS** WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 20 Mar 05, my unit, 2nd Squad, 4th Platoon, 617th MP Company, was engaged in a firefight after a convoy traveling ASR Detroit, being escorted by elements of B Battery, 1/623rd FA BN, was attacked by several Anti Iraqi Forces. Just after the firing stopped, I was walking atop the main canal, which was the inside of two canals running parallel to the ASR. I had passed some dead AIF that were all laying in the canal, and I observed a wounded AIF laying on my side along the edge of the canal. I approached and I saw a 623 soldier on the other side of the canal, but I was not paying attention, until as I was about four feet from the insurgent when this 623 soldier fired a pistol near the AIF. I saw the pistol shot hit the ground. The 623 soldier said that we needed to search him, because he hadn't been searched. I put my weapon down and kind of pulled the Iraqi back a bit from the edge of the canal, and I searched him. He had no weapons on him. I informed the 623 soldier that he was clean. The 623 soldier put his pistol in the holster, and he crossed the canal to my side. As soon as he got to my side, I went down into the canal and started to walk in the canal. I got about ten feet away when I heard another gunshot, and when I turned, the 623 soldier was pushing the AIF down in the canal with his foot. Later, I assisted in pulling wounded AIF out of the canal, and this man was one of the last that we pulled out who was alive. We put him on a stretcher and put him in the shade, waiting for the chopper. I then rode on the last chopper with three wounded AIF, including this AIF. We went to LSA Anaconda. I was stranded at the hospital, and I know that two of the three died. I am not sure if the AIF I saw pushed into the canal survived or not. I think he was one of them that died.

**QUESTIONS BY SA ROBINSON, ANSWERS BY SGT MORRIS:**

Q: Do you know the name of the 623 soldier you saw shooting the pistol?  
A: I know he is a Sergeant and the name started possibly with a "B".

Q: Can you describe the Sergeant from 623?  
A: A white male, tall about 6'2" and probably weighing over 200 pounds. I would say he was in his mid-twenties.

Q: While you were with this Sergeant, did he tell you anything other than what you stated above?  
A: Yes. He did say, "It's time for payback".

Q: When did he say this?  
A: He said that after he kicked the AIF down into the ditch and we were walking in the canal.

Q: Do you recall which hand the Sergeant was holding his pistol in?  
A: I am pretty sure his right.

Q: Where was SSG NEIN when this happened?  
A: He was further down the canal from me, or possibly to the Orchard by then.

Q: When you saw the Sergeant fire the pistol, how close were you to the round that you saw hit the dirt?  
A: About four feet, way too close.

Q: Did you say anything to the Sergeant about the pistol shot?  
A: No, I didn't.

Q: Regarding the second shot, after you had walked about 10 feet away, do you recall if it was a pistol or rifle shot?  
A: It was a rifle shot.

Q: Do you know if the Sergeant shot the AIF?  
A: I do not.

Q: Right before the AIF rolled down into the canal, was he talking or making any sounds?  
A: Before, when I was searching him, he was talking. When he was rolled into the canal, he was just moaning, saying "Allah".

Q: Have you talked to this Sergeant since this occurred?  
A: No. It was the only day I have seen him.

Q: What can you recall of the AIF'S wounds, prior to the rifle shot by the Sergeant?  
A: A gunshot wound, I think gunshot, in his leg. His arm was really messed up, almost off. I don't recall any other wounds when I searched him.

Q: How far was the closest weapon to the wounded AIF when you left him with the Sergeant?  
A: Nothing close, 5 to 10 feet.

Q: Was this wounded AIF able to freely move when you left him with the Sergeant?  
A: I don't believe so. I don't think he could crawl that far to get a weapon.

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>DM</i>	PAGE 1 OF <u>2</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_ CONTINUED."  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE \_\_\_\_\_ OF \_\_\_\_\_ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DEFENSE EXHIBIT D FOR ID

STATEMENT (Continued)

Q: Was the wounded AIF able to sit or prop himself up at all?

A: Not that I saw.

Q: Were you able to look at digital photos, taken at the scene, at your unit with us today?

A: Yes.

Q: Did you recognize the photo of the AIF on the stretcher as the one described above?

A: Yes.

Q: Do you know if this individual had any head wounds?

A: No, I don't.

Q: Do you have anything further to add to this statement?

A: Yes. After this happened and we were on the chopper, this AIF'S head did swell up alot. I didn't see a wound, but the head swelled up alot.

Q: Do you know if he was conscious on the aircraft?

A: I think so, I think he was in and out of it, but yes.

Q: Do you have anything further to add to this statement?

A: No.///END OF STATEMENT/// *DTM*

AFFIDAVIT

*DTM* Dustin Taylor MORRIS

HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. 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.

*Dustin Taylor*  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law administer oaths, this 3rd day of APRIL 2005 at Camp Victory, Baghdad, IZ APO AE 09342

*Thomas D. Robinson*  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

SA Thomas D. ROBINSON

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

Article 136, UCMJ

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

*DTM*

PAGE 2 OF 2 PAGES

**SWORN STATEMENT**

For use on 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:** 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 (YYYYMMDD) <i>2005 03 21</i>	3. TIME <i>1600</i>	4. FILE NUMBER <i>1877</i>
5. LAST NAME, FIRST NAME, MIDDLE NAME <i>Morris Dustin Taylor</i>	6. SSN	7. GRADE/STATUS <i>E-5 / Sgt</i>	
8. ORGANIZATION OR ADDRESS <i>617<sup>th</sup> MPAC</i>			

9. I, Sgt. Morris, Dustin Taylor, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:  
 We were shadowing a convoy southbound down Detroit. The convoy was ambushed on the west side of the road. The order that we were in was Charlie, Bravo, Alpha truck. I was driven in the lead truck Sst. Nein was in the TC seat, my gunner was Spc. Cooper. When we seen the convoy get attacked we drove to the front of the convoy on the opposite side. We got to the front and immediately started to take IAF and RPG fire. My gunner took shrapnel but still continued to fire on the enemy while he was still under fire. We rolled to a ~~stop~~ stop and myself + Sst. Nein + Sgt. Hester dismounted to engage the enemy. All three of us took out multiple enemy targets. Sst. Nein + Hester used grenades to take out 3 or 4 IAF in the trench. ~~When~~ <sup>When</sup> that was over I noticed Spc. Mike had an At-4 pointed at a house that was shooting at us from behind, he had a direct hit on the house. Then I got on the radio to give our direct location to the air support. When I got back out of the truck the battle was pretty much over. Sst. Nein + Sgt. Hester continued on down the canal along the MSR to see who was dead and wounded. Then we started medicating the wounded out to on the last chopper I got on it with the rest of the EPWs. End of statement

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>DMT</i>	PAGE 1 OF <u>3</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"

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

DEFENSE EXHIBIT E FOR ID  
 page 1 of 3

STATEMENT OF Sgt. Morris, Durbin Taylor TAKEN AT Camp Liberty Iraq DATED 2005 03 21

9. STATEMENT (Continued)

*[The main body of the page is crossed out with a large 'X' and contains four handwritten instances of 'DTM']*

DTM

DTM

DTM

DTM

INITIALS OF PERSON MAKING STATEMENT

*DTM*

PAGE 2 OF 3 PAGES

*Exhibit E  
PAGE 2 of 3*

9. STATEMENT (Continued)

*[Large area crossed out with a large 'X' and the initials 'DTM' written in the four quadrants.]*

AFFIDAVIT

I, Dustin Taylor Morris, 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.

Dustin Taylor Morris  
(Signature of Person Making Statement)

WITNESSES:

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

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21 day of MARCH, 2005 at Camp Liberty, PEAR

Kenneth D. McQuerry  
(Signature of Person Administering Oath)

Kenneth D. McQuerry 156  
(Typed Name of Person Administering Oath)

ART 36(B) 4 PARM  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

DTM

PAGE 2 OF 3 PAGES

A exhibit E  
page 3 of 3

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b) (6) 5 U.S.C. 552 (b) 6):

Photographs

800 - 05-0328

not Freeman will (202)

APG DE 09110  
Staff Action  
TIGERS!

S: 21/03/05



SUBJECT: Detainees 823

REASON FOR ACTION: Detention Checklist

FACTS OR DISCUSSION:

**Required Forms and Evidence (complete prior to detention at BIF)**

- CPA Apprehension Form or DA Form 2748 - EPW Capture Tag (Parts A-C)
- DA Form 4137 / USIR 503-3 - Evidence/Property Custody Document
- DA Form 4002 - Evidence Property Tag
- DA Form 2823 (2) - Sworn Statements (Unit Soldiers) or USIR 503-2 in Arabic for detainees or Arabic witnesses
- SF 600 - Medical Exam Form
- DD Form 2708 - Receipt for Inmate/Detained Person
- Photographs of scene and / or detainees in front of evidence, i.e. weapons (take whenever possible, if no camera present sketch or notate possible evidentiary details).
- Targeting packet, if applicable.

CONCLUSION: I have received and reviewed the enclosed detention packet.

ACTION OFFICER/PHONE: BDE S2X 242-4326	NAME OF BDE S-2X: MAJ Darren L. Ledet
---	--

Section	Name	Initials	Date
BN S2			21/03/05
BN CDR/XO			21/03/05
BDE S2X	MAJ Darren L. Ledet		
SJA			
BDE DBC/XO	COL Ron Johnson		
BDE CDR	BG John P. Basilica, Jr.		

COMMENTS:

DEFENSE EXHIBIT # 15 FOR ID



Offense (check one) or describe if "Other" then describe:

- Article 32 3-2;
- Solicitation of Fornication/Prostitution (I.P.C. 399)
- Rape/Indecent Sexual Assaults/Acts (I.P.C. 393-38, 402)
- Murder (I.P.C. 405)
- Aggravated Assault/Assault With Intent To Kill (I.P.C. 410)
- Maiming (I.P.C. 412)
- Simple Assault (I.P.C. 415)
- Kidnapping (I.P.C. 421)
- Burglary or Housebreaking (I.P.C. 428)
- Extortion/Communicating Threats (I.P.C. 430)
- Theft (I.P.C. 439)
- Destruction of Property (I.P.C. 477)
- Obstructing a Public Highway/Road (I.P.C. 487)
- Discharging Firearm/ Explosive in City/Town/Village (I.P.C. 495)
- Riot or Breach of Peace (I.P.C. 495(3))
- Other

- Offense against Coalition Forces [check one] If "Other" then describe:
- Violation of Curfew
  - Illegal Possession of Weapon
  - Assault/Attack on Coalition Forces
  - Theft of Coalition Force Property
  - Trespass on Military Installation or Facility
  - Photographing/Surveillance Military Installation or Facility
  - Obstructing Performance of Military Mission
  - Other

Apprehending Unit: 617th MP Company, Camp Liberty, Iraq      Location Grid: MB 73700 63300

Date of Incident: (D/M/Y)      Time of Incident:      Date of Report: (D/M/Y)      Time of Report:

to 20/03/05      1130 hrs to 1300 hrs      21/03/05      1600 hrs

Detainee #: 823      Key Connected Person:  Victim  Witness

Last Name:      Last Name:

First Name:      Given Name:      First Name:      Given Name:

Hair Color:      Scars/Tattoos/Deformities:      Hair Color:      Scars/Tattoos/Deformities:

Eye-Color:      Weight: lb      Height: in      Eye-Color:      Weight: lb      Height: in

Address:      Address:

Place of Birth:      Place of Birth:

Ethn/Tribe/ Sect:	Sex:	Phone#:	DOB D/M/Y:	<input type="checkbox"/> Mobile	<input type="checkbox"/> Regular
	<input type="checkbox"/> M <input type="checkbox"/> F			<input type="checkbox"/>	<input type="checkbox"/>

Passport     Dr. license     Other (specify)       Passport     Dr. license     Other (specify)

Document #:      Document #:

Total Number of Persons Involved \_\_\_\_\_ (list names/identifying info on reverse under "Additional Helpful Information")

Vehicle Information      Vehicle Number \_\_\_\_\_ of \_\_\_\_\_ Vehicle(s)

Make:      Color:      License No.:      Owner:

Model:      Type:      Plate No.:      Number of People in Vehicle:

Year:      Names of People in Vehicle:

Contraband/Weapons in Vehicle:

Property/Contraband     Weapon    Photo Taken of Suspect with Weapon/Contraband: Yes/ No

Type:      Model:      Color/Caliber:

Serial No.:      Quantity:      Make:      Receipt Provided to Owner: Yes/ No

Other Details:      Where Found:      Owner:

Name of Assisting Interpreter:      Email, Phone, or Contact info:

Detaining Soldier's Name      Supervising Officer's

(Print)      SGT Dustin T. Morris      Name (Print):

Signature:      Last, First MI      Signature:

Email:      Email:

Unit Phone: 302.242.4445      Date: 21/03/05 /      Unit Phone: 302.242.4445      Date: 21/03/05 /

Who witnessed this person being detained or the reason for detention? Give names, contact numbers, addresses.

SGT Dustin T. Morris 617th MP Company, Camp Liberty, Iraq 302.242.4448

SSG Timothy F. Nein 617th MP Company, Camp Liberty, Iraq 302.242.4446

How was this person traveling (car, bus, on foot)?

Who was with this person?

What weapons was this person carrying?

AK-47

What contraband was this person carrying?

What other weapons were seized?

What other information did you get from this person?

Additional Helpful Information:

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 3041 Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  
 PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.  
 ADDITIONAL 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>Green Lake, Iraq</i>	2. DATE (YYYYMMDD) <i>2005 03 21</i>	3. TIME <i>1600</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <i>Morris, Dustin Taylor</i>	6. SSN	7. GRADE/STATUS <i>E-5 / Sgt</i>	
8. ORGANIZATION OR ADDRESS <i>317<sup>th</sup> AFB</i>			

I, Sgt Morris, Dustin Taylor, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:  
 We were shadowing a convoy southbound down Detroit. The convoy was  
 positioned on the west side of the road. The order that we were in  
 was Charlie, Bravo, Alpha truck. I was driven in the lead truck Sgt. Nein  
 was in the TC seat, my gunner was Spc. Cooper. When we seen the convoy  
 get attacked we drove to the front of the convoy on the opposite side.  
 We got to the front and immediately started to take JAT and PAB fire. My  
 gunner took shrapnel but still continued to fire on the enemy while he was still  
 under fire. We rolled to a ~~stop~~<sup>stop</sup> and my self + Sgt. Nein + Sgt. Hester dismounted  
 to engage the enemy. All three of us took out multiple enemy targets. Sgt. Nein + Hester  
 used grenades to take out 3 or 4 ATF in the trench. ~~When~~<sup>When</sup> that was over  
 I noticed Spc. Mike had an AT-4 pointed at a house that was shooting at us from behind,  
 he had a direct hit on the house. Then I got on the radio to give our direct location to the  
 air support, when I got back out of the truck the battle was pretty much over. Sgt. Nein +  
 Sgt. Hester continued on down the canal along the MSR to see who was dead and wounded.  
 Then we started making the wounded out to see the last chopper I got on it with the  
 rest of the E-5's. End of statement

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>DM</i>	PAGE 1 OF <u>3</u> PAGES
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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 James Earl Ray TAKEN AT Camp Liberty Bay DATED 2-1-65 03 21

STATEMENT (Continued)

*[The main body of the page is crossed out with a large handwritten 'X'. Inside the 'X', there are four handwritten initials 'JEM' in the corners.]*

INITIALS OF PERSON MAKING STATEMENT

*JEM*

PAGE 2 OF 3 PAGES

DTM

DTM

DTM

DTM

AFFIDAVIT

I, Dustin Taylor Morris, 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.

Dustin Taylor Morris  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21 day of MARCH, 2005 at Camp Liberty, Iraq

Kenneth D. McDermott  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

Kenneth D. McDermott 156  
(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

IAF 36 (b) 4 MACM  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

DTM

PAGE 2 OF 3 PAGES

**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 (SSM).  
**PRINCIPAL:** 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 617 Military Police Company	2. DATE (YYYYMMDD) 2005/03/27 JFN	3. TIME 1730L JFN	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Nein Timothy Foster	6. SSN	7. GRADE/STATUS E6	
8. ORGANIZATION OR ADDRESS 617 military Police Company Camp Liberty Iraq, APO AE 09342			

9. I, Timothy F. Nein, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 20 March, 2005 while on ASR Detroit we came upon a coalition convoy being ambushed by 50 Anti-Iraqi Forces. At that time my squad, 2nd squad, 4th platoon, 617 MP CO, reacted and moved to contact against the AIF assaulting that convoy. During this contact against the AIF, we killed 24 insurgents, wounded 8 and took 1 prisoner that was not injured. At time we conducted two separate MEDEVAC's. All 8 insurgents we transported via UH-60 to different locations for medical treatment. All 8 were involved in this attack and against coalition forces. //END OF STATEMENT JFN//

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT JFN	PAGE 1 OF <u>2</u> PAGES
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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 Timothy F. Nein

TAKEN AT 617 MP CO.

DATED 2005/03/27

9. STATEMENT (Continued)

THIS AREA NOT USED

AFFIDAVIT

I, Timothy F. Nein, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. 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]  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 27 day of March, 2005 at 617 MP CO Camp Liberty, Iraq

[Signature]  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

CPT Todd M. Lindner  
(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

Commander  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

TFN

PAGE 2 OF 2 PAGES

### 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:** 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 617th Military Police Company	2. DATE (YYYYMMDD) 2005/03/20 JA	3. TIME 2121 JF	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Mike, Jason Larnar	6. SSN	7. GRADE/STATUS E4	
8. ORGANIZATION OR ADDRESS 617th Military Police Company, Camp Liberty Iraq APO AE 09342			

9. I, SPC Mike, Jason L., WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the 20th of March I was riding along with Raven 42 as they were patrolling ASR Detroit. During our patrol we observed a convoy heading south and contacted them to let them know that we were going to be shadowing them for additional security. The unit which I believe to be Stallion 33 replied and let us know that they would be stopping shortly for a fuel break. We provided security for them during their fuel break and then we continued mission down the ASR. Five minutes into shadowing the convoy we noticed so erratic movements in the convoy. I could see dust and smoke kick up as the trucks swerved to the left and the right. I immediately heard SSG Nein come over the radio and to tell us that this convoy is being attacked. At this point all three trucks in our patrol pushed over into the northbound lane and then back into the southbound lane cutting in front of the broken up convoy. We soon after started to receive fire from the right side of the road. At that point SPC Haynes, the gunner, started to lay down fire with the 50 caliber machine gun. We made a right turn on a road that ran perpendicular with the trench that the AIF were fighting in. At that point SPC Haynes began to lay down fire in the trench. Approximately 15 seconds went by and SGT Rivera made the call for everyone to dismount and lay down fire in the trench. SGT Rivera got out on the contact side and ran around the vehicle to the non contact side. SPC Mack who was the driver of that vehicle and myself dismounted. At that point I started putting rounds down range at a target approximately 25-30 meters away from the vehicle. I was standing to the right of the rear passenger door using the truck as cover while SGT Rivera was on my right and he shot off a M203 round. He then went back around to the front of the vehicle to get a more effective shot off. I went through two magazines of 9mm ammunition when I realized that this was not the most effective weapon in this fight. At that point SPC Mack had given me his M4 and he took SPC Haynes M249. I began to fire and that's when I heard SPC Mack yell out he was hit. I went over to him and uncovered his wound and observed a gunshot wound to the left arm. At that time I gave him a first aid bandage to put pressure on his wound and I put him into cover under the vehicle. SGT Rivera and SPC Haynes were still laying down suppressive fire to keep security. I then proceeded to fire because we were taking heavy fire from the trench still at this point. Soon after I began shooting SGT Rivera yelled out he was hit and that he couldn't feel his legs. At this point I knew we were taking fire from different positions because both SGT Rivera and SPC Mack were behind cover when they were hit. I pulled SGT Rivera under our vehicle and into as much cover as possible and continued to lay down fire. At this point SPC Mack and SGT Rivera were both disabled. SPC Haynes and myself continued to lay down fire. Soon after SPC Haynes yelled to me he was hit, I looked in the vehicle and saw that we had taken a gunshot to the left hand. I asked him if he could remain in the gun to provide security and he agreed. I handed him a dressing and he wrapped his hand and continued to fire down into the trench. At this point I could hear bullets bouncing off the pavement behind me, I realized that we had been taking fire from the rear and that was possibly the position that hit SGT Rivera and SPC Mack. At this point I began shooting to my rear to provide suppressive fire for our rear security. SPC Haynes called for me again saying that he was hit for a second time. I put the M4 on top of the truck and looked into the vehicle and saw that SPC Haynes safety goggles had been hit from gunfire. I told him that I didn't see any blood and that I thought the goggles had saved him. He then said that he was going to grab another pair of goggles to put on. At this point I knew for a brief time period our front security wouldn't be manned. I then grabbed the M249 that SPC Mack was shooting and propped it up on the back of the truck. I began to give suppressive fire for our position until SPC Haynes got back up in the turret. I grabbed the M4 off the top of the vehicle and began to fire to my rear to keep security at both sectors. Soon after SPC Haynes was back up into the turret and I stopped shooting the M249. I continued to shoot to my rear with the M4. As I was doing this I was giving hand and arm signals to the Raven 42 Bravo element to get down to my position. That was ineffective and I got on the radio to let them know that all three packs in my vehicle were hit. I soon saw SPC Pullen jump into her truck and head down to my position. When she got there I told her to check out SGT Rivera while I continued to engage the enemy. She ran back to her vehicle to grab the CLS bag. At this point I saw another friendly element sitting at the beginning of the road that we were on. I motioned to them to come to my position and they sat there. I then motioned for them once more and they hesitantly came to my position. They pulled up and I realized it was a Stallion element but they didn't dismount their vehicle. By this time I am yelling and doing hand and arm signals to get them out of their vehicle. Finally a soldier dismounted from the TC side of the vehicle and informed him of what was going on and how I was going to need him to give me full security while I tended to the wounded. The soldier looked at me with a blank stare as if he was shell shocked. I yelled to him again and told him to get his guys out of the

10. EXHIBIT W	11. INITIALS OF PERSON MAKING STATEMENT JA	PAGE 1 OF 2 PAGES
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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.

**DEFENSE EXHIBIT** I **FOR ID**

PAGE 1 of 2

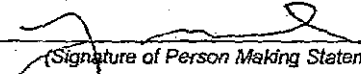


9. STATEMENT (Continued)

vehicle. He soon realized the situation and told his men to assist. Soon after another Stallion element came to our position and parked behind our vehicle. I am unaware of there actions but from what I know they were assisting SPC Pullen in aid of SGT Rivera. I don't recall the Stallion element ever firing a shot. During all this I was observing muzzle flash from a two story house. I immediately decided to hit the building with an AT-4. I told SPC Haynes to hand it to me. He reached down in the vehicle and grabbed the AT-4. I took aim on the house and hit the the target dead on. I watched to see if I could see any more muzzle flash and there was none. I picked up the M4 and went back to pull security. As I went back to my sector of fire I saw another unknown friendly element pulling security at the rear corner of vehicle. I heard them shooting and continued to shoot as well down into the trench. Soon I could hear SPC Haynes yelling that SSG Nein and SGT Hester were in the trench and I called a cease fire because they were about to walk through our sector of fire. I then had SPC Mack loaded into one of the Stallion elements vehicles and SGT Rivera loaded into another. I directed them to head south on ASR Detroit and set up an LZ for the medevac. The vehicle containing SPC Mack left first, I followed, and behind me was the vehicle that contained SGT Rivera. We got down to the LZ and the medevac was already inbound. The Stallion soldiers had SPC Mack on the ground giving treatment. I got SPC Haynes out of the turret and directed one of the Stallion soldiers to man the gun for our security. I then begin to give SPC Haynes an I.V, and give further supportive care treatments. I looked over to SPC Mack to monitor hs condition. He looked stable. Soon after the Medevac was in the area and I went to land the bird. The Stallion soldier giving aid to SPC Mack couldn't begin an I.V on him so he called me over to do so while he landed the bird. The bird landed and we loaded SPC Haynes and SPC Mack onto the bird. Right as we loaded them on the bird the vehicle containing SGT Rivera pulled up and we loaded him onto the bird aswell. The Medevac lifted off and soon after another vehicle pulled up containing a injured soldier from the 1075th Transportation Company. We called in another medevac and put him on the bird. I soon returned back to the ambush site to find other Raven elements on scene securing the area and treating the wounded insurgents. We then medevac all wounded insurgents.///////END OF STATEMENT///////

AFFIDAVIT

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

  
 (Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 20 day of March, 2005 at 617th Military Police Company

ORGANIZATION OR ADDRESS

  
 (Signature of Person Administering Oath)

CPT Todd M. Lindner  
 (Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

Commander  
 (Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

JM

PAGE 2 OF 2 PAGES

△ exhibit I  
 page 2 of 2

**U.S. ARMY ABBREVIATED GROUND ACCIDENT REPORT (AGAR)**  
For use of this form, see AR 385-40 and DA Pamphlet 385-40; the proponent agency is OCSA.

REQUIREMENT CONTROL SYMBOL  
CSOCS-308

1. TIME & DATE OF ACCIDENT a. Yr 05 b. Mth 05 c. Day 16 d. Time \_\_\_\_\_ 2. PERIOD OF DAY:  Day  Night 3. ACDT CLASS \_\_\_\_\_ 4. ACDT OCCURRED DURING:  Combat  Non-Combat

5. UNIT IDENTIFICATION a. UIC (6-digit Code) WPXDAA b. Name of Unit 617th Military Police Company c. Unit's Branch Military Police d. MACOM \_\_\_\_\_

6. LOCATION OF ACCIDENT a. Exact Location. (Detailed enough to locate site) 617th MP Co Motor Pool b. Type Location A1

c. State/County Iraq d.  Off Post  On Post Name: Camp Liberty 7. EXPLOSIVES/AMMO a. Present  Yes  No b. Involved  Yes  No

8. MISSION a. Briefly describe the mission Preparing for MSR Patrol b. METL Task?  Yes  No

9. VEHICLE/EQUIPMENT/MATERIEL INVOLVED M1117 and M1114 Material Failure/Malfunction Information

a. Type of Item (Nomenclature)	b. Model #	c. Ownership	d. Estimated Cost of Damage	e. Vehicle Collision	f. Failure Mode	g. Part Nomenclature	h. Part #	i. Part NSN	j. Part Manufacturer Code	k. EIR/ODR Submitted	
#1 M1117		617th MP	346.69	2						Yes	No
#2 M1114		617th MP	834.77							Yes	No

10. WHY DID THE MATERIEL FAIL/MALFUNCTION? (Check the root cause(s) in Block a. In Block b, explain how the root cause(s) led to the materiel failure/malfunction.) Describe how the materiel failed/malfunctioned and explain why (root cause).

a. LEADER (Not ready, willing to enforce standards)	STDS/PROCEDURES (Not clear, Not practical)	SUPPORT (Shortcomings in type, capability, amount or condition of equip/supplies/services/facilities)	
Direct Supervision	AR	SOP	Equip/Materiel improperly designed / Inadequate Manufacture
Unit Command Supervision	TM	Other	Equip/Materiel not provided / Inadequate Maintenance
Higher Command Supervision	FM	None exists	Inadequate Facilities/Services / Other

11. NAME (Last, First, MI) (Include Address & UIC if different than Blks 5a. & b.) Pullen, Ashley 12. SOCIAL SECURITY # \_\_\_\_\_ 13. PERSONNEL CLASSIFICATION \_\_\_\_\_ 14. MOS 31B 15. DUTY STATUS  On-duty  Off-duty

16. AGE 21 17. SEX F 18. PAY GRADE E-4 19. FLIGHT STATUS  Yes  No

20. MOST SEVERE INJURY (See instructions) a. Degree G b. Type N/A c. Body Part N/A d. Cause N/A

21. DAYS HOSPITALIZED 0 23. CODE P 24. SPECIFIC DESCRIPTION OF ACTIVITY/TASK Soldier was moving vehicle from motor pool to prepare for mission.

22. WORKDAYS: a. Lost 0 b. Restricted 0

25. PERSONAL PROTECTIVE EQUIP \_\_\_\_\_ 26. ALCOHOL/DRUGS CAUSE/CONT  Yes  No  Unk 27. EQUIP THIS PERSON WAS ASSOCIATED WITH? (Enter item No. from Blk 9a)

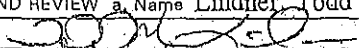
a. Required	b. Type of equip	c. Available	d. Used	28. LICENSED TO OPERATE EQUIP	29. HRS ON DUTY	30. HRS SLEEP	31. TACTICAL TRAINING	32. TYPE TRAINING FACILITY	33. LAST TRAINING	34. FIELD TRAINING EXERCISE	35. NIGHT VISION SYSTEM USED
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	#1 <u>A</u> #2 <u>B</u>	#1 <u>Yes</u> #2 <u>Yes</u>	#1 <u>Y</u> #2 <u>Y</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<u>6</u>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>N/A</u>	<u>MAR 05</u>	<input checked="" type="checkbox"/> Yes If Yes, provide name: <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes If Yes, provide name: <input type="checkbox"/> No

36. DID INDIVIDUAL MAKE A MISTAKE THAT CAUSED/CONTRIBUTED TO ACCIDENT? In Blk a., indicate if individual made a mistake. If yes provide the code (from instructions) in Blk b. and describe in Blk c.

a. Mistake  Yes  No c. Tell what the mistake was and how it caused/contributed to the accident  
SPC Pullen was attempting to move the M1117 from the motor pool to get the vehicle loaded for mission. SGT Morris (TM LDR) did not provide a ground guide while vehicle was being moved. It is company policy that when a vehicle moves in the motor pool or company area, there will be a ground guide.

b. Code 47

2002

37. WHY WAS THE MISTAKE MADE (ROOT CAUSE) (Check the root cause(s) in Blk a. In Blk b. tell how the root cause(s) led to the mistake.)								
a.	LEADER (Not ready, willing to enforce standards)	TRAINING (Insufficient in Content/Amount)	STDS/PROCEDURES (Not clear/Not practical)		SUPPORT (Shortcomings in type, capability, amount or condition of equip/supplies/services/facilities)		INDIVIDUAL (Mistake due to own personal factors)	
<input checked="" type="checkbox"/>	Direct Supervision	School	AR	<input checked="" type="checkbox"/> SOP	Equip/Materiel improperly designed	Inadequate Manufacture	Poor/Bad attitude	Fatigue
	Unit Command Supervision	Unit	TM	Other	Equip/Materiel not provided	Inadequate Maintenance	Overconfident	Alcohol, Drugs
	Higher Command Supervision	Experience, OJT	FM	None exists	Inadequate Facilities/Services	Other	<input checked="" type="checkbox"/> In a hurry	Fear/Excitement
b. Describe root cause(s) (reason) and tell how it/they caused the mistake The M1117 was being moved in the motor pool without a ground guide. It is hard to see when vehicles are close to the M1117. This creates a great need for a ground guide. Therefore, it is policy that when moving any vehicle in the motor pool a ground guide will be used. In this case, the TM LDR did not provide a ground guide for the vehicle. The TM LDR was at fault for not following policy and the driver was at fault because she knew it was policy to have a ground guide.							38. ENVIRONMENTAL CONDITIONS	
							a. Present:	
							#1	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk
							#2	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk
							#3	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk
39. PROVIDE BRIEF SYNOPSIS OF ACDT (Use additional sheets if required) (Explain sequence of events; tell how acdt happened.) SGT Morris and SPC Pullen were preparing for a night MSR patrol mission on the afternoon of 16 May 2005. The two had adequate sleep and rest prior to this event. SPC Pullen was moving the vehicle in the motor pool and SGT Morris was waiting for her behind our living quarters (across the road from the motor pool). She was going to pull the M1117 up to load equipment for mission. SGT Morris did not provide a ground guide for the movement and SPC Pullen hit a parked M1114 which belonged to 3rd Platoon, 617th MP Co. It was hit by the wheel of the M1117 (617-40A) and the foot stop on the drivers side of the M1117. The M1117 collided with the parked M1114 on the passenger side rear. The M1117 punched a hole in the panel of the M1114 (617-36), scraped the side and broke the reflector which estimated in a cost of \$834.77. The M1117 damage consisted of the steel ring on the drivers side front wheel being bent and some scrapes down the side which was estimated at \$346.69. Due to the lack of supervision, the accident occurred and was absolutely preventable, but totalled \$1,181.46 damage between the two vehicles.								
40. CORRECTIVE ACTION(S) TAKEN OR PLANNED -Ensure PSGs are holding soldiers accountable for actions and NCOs are enforcing the company policies. -Have PSGs and SQD LDRs spot check to make sure ground guides are being provided while in the company area. -Have SPC Pullens and SGT Morris present a class to each platoon on proper procedures and safety for moving vehicles in the motor pool and the company area.								
41. POINT OF CONTACT FOR INFORMATION ON THE ACCIDENT								
a. Name (Last, First, MI) Todd, Jay N.						b. Telephone # DSN: 302-242-4446 COM:		
42. COMMAND REVIEW a. Name Lindner, Todd M.				c. Rank CPT		43. SAFETY OFFICE REVIEW		b. Date
b. Signature 				d. Date 19 MAY 05		a. Name		

REVERSE OF DA FORM 285-AB-R, JUL 94

**RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE**

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

**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>617 MP CO TOL Camp Liberty</i>	2. DATE <i>Aug 12 05</i>	3. TIME <i>1555</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>Morris Dustin T.</i>	8. ORGANIZATION OR ADDRESS <i>617 MP CO APOAE 09342</i>		
6. SSN	7. GRADE/STATUS <i>E-5 / Sgt</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: *misappropriation*

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 <i>Dustin Morris</i>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <i>Todd Jay N.</i>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR <i>TODD JAY N.</i>
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR <i>617TH MP Co.</i>
b. ORGANIZATION OR ADDRESS AND PHONE		

**Section C. Non-waiver**

1. I do not want to give up my rights  
 I want a lawyer  I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DEFENSE EXHIBIT K FOR ID  
 page 1 of 2

**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."  
 (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."
  - c. "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.

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

*(For civilians not subject to the UCMJ)* You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

**THE WAIVER**

"Do you understand your rights?"  
 (If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"  
 (If the suspect/accused says "yes," find out when and where. If the request was recent (*i.e.*, fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"  
 (If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

**SPECIAL INSTRUCTIONS**

**WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE:** If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

**IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:** In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

**PRIOR INCRIMINATING STATEMENTS:**

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

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

**WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS:** If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

**COMMENTS** *(Continued)*

**SWORN STATEMENT**

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

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943. (SSN).  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION Camp Liberty Iraq	2. DATE (YYYYMMDD) 20050321 AH	3. TIME 1100 AH	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Hester, Leigh Ann	6. SSN	7. GRADE/STATUS E-5 /SGT	
8. ORGANIZATION OR ADDRESS 617 MP Co.			

9. SGT Leigh Ann Hester WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 20 Mar 05 at approximately 1100 hours, my squad, ~~000~~ Raven 42 was patrolling along MSR Detroit when we came upon a convoy, Stallion 33, who was travelling South along the MSR. My squad leader, SSG Mein made the decision that we should fall in behind Stallion 33 and provide additional security. I overheard via radio traffic that Stallion 33 would be doing a fuel halt 4-5 miles down the road. When this occurred, Raven 42 provided security for the convoy element. Once Stallion 33 proceeded on after refueling, 42 once again fell in behind to shadow the convoy. The order of march was 42 Charlie, 42 Bravo, & 42 Alpha. 42C consisted of SSG Mein, SGT Morris, & SPC Cooper. 42B consisted of myself, SPC Ordunez, & SPC Pullen. 42A consisted of SGT Rivera, SPC Haynes, SPC Mack, and our medic SPC Mike. Approximately 5-10 minutes down the road, SSG Mein came over the radio saying that the convoy had been hit. At that time, I noticed the trucks within the convoy had begun to swerve and a few of them were smoking. That's when I heard the RPG fire. Our 3 guntrucks then crossed the median as I informed my driver and gunner on what was going on. SPC Ordunez was already going to red status on the MK19, M240B, and the M249. Once we got to about the middle of the convoy, we crossed back over into the Southbound lane along the right side (contact side) of the convoy. It was then that we began taking fire from a berm that was approximately 50-75 meters off of the MSR. Initially when I looked I saw 7-10 insurgents on the berm. No later than I looked, my gunner as well as ZA & ZC gunners started to return fire. When I looked forward once again, I saw a road to the right that we had done a reconnaissance on 2 days before. SSG Mein immediately turned down that road to flank the insurgents. Just as they made the turn, their

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>LH</i>	PAGE 1 OF <u>3</u> PAGES
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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.

DEFENSE EXHIBIT L FOR ID

STATEMENT OF SGT Leigh Ann Hester TAKEN AT 607 MPCo, IDC DATED 21 Mar 05

## 9. STATEMENT (Continued)

vehicle took a direct RPG hit on the TC side. When this happened, my gunner, SPC Ordunez fell down inside of the vehicle. He then tried to get back up on the gun when he informed me that he was hung up. A few seconds went by and then SPC Pullen reached back and unhooked him. He immediately got up and started engaging the enemy once again. At this time, SSG Nein's truck had come to a halt about 200 meters ~~down~~ off of the ASE. My vehicle was approximately 10-15 meters behind him. Once we came to a halt, I looked right and noticed that there were over 3 times the number of insurgents that I had originally thought I could see 15 or more at the original berm, 10-15 out in the field behind trees, and 4-5 more in a trench that ran parallel to the road we were on. There were also 7 getaway cars lined up down the same road facing away from us. ~~As soon as~~ In the split second it took for me to notice all the insurgents, I knew that if we stayed in the vehicles, we would never make it. I saw SSG Nein jump out of his truck and ~~was~~ <sup>soon as he did, I jumped</sup> ~~right behind him~~ <sup>out and was</sup> right behind him. As soon as I stepped out, I heard bullets whizzing by and ricocheting off the truck and pavement. I ran to the berm on the right side of the road. From there I could see several insurgents out in the orchard, several in the trench to my immediate front, and several still on the berm that ran along side the ASE. Still under heavy fire, I returned fire, killing 3 insurgents with my M4. I had also taken 3 shots with my M203 with no prevail. At this time, SSG Nein was running back to my position from the other side of the trucks and I noticed that my gunner, SPC Ordunez, and 2C gunner SPC Cooper, were directing their fire to a berm and house behind them. When SSG Nein made it back to my location, I informed him that the only threat ~~we~~ I thought we had left was in the trench in front of us. There were 3 insurgents left ~~about~~ armed with AK47's that were still firing at us. They were approximately 50 meters from our location. SSG Nein made the decision that he and I would jump into the trench and work our way closer to the enemy to get a better shot. SGT Morris would run along the side of the trench out of sight to help support us if something were to go wrong. SSG Nein and I began to work our way down the trench at approximately 10 meters at a time, only stopping to take cover and prep hand grenades. We finally eliminated the last fighting insurgent with the fourth grenade as well as fire from our M4's. Once we cleared the rest of the trench, SSG Nein and I made our way to SGT Rivera's vehicle. As I came upon the vehicle, I noticed SGT Rivera lying on the ground bleeding & SPC Pullen applying pressure to his wounds. SPC Mike informed me to get SGT Rivera into a truck to get him to the LZ for the ordnance. With the aid of the 623<sup>rd</sup> soldiers whom I had called upon, we loaded Rivera

NAME OF PERSON MAKING STATEMENT

PAGE 2 OF 3 PAGES

STATEMENT (Continued)

into the truck and he was taken to the LZ along with SPC Mack, + SPC Haynes. The fighting had ceased and after doing a quick accountability of personnel we began to search the AO for anymore possible threats. We captured one unharmed insurgent + medicated 8 wounded insurgents. We also confiscated large numbers of weapons including AK47's, RPK machine guns, RPG's, and hand grenades as well as large amounts of ammunition. // End of Statement //

AFFIDAVIT

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

[Signature]  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 23 day of MAR, 2005 at \_\_\_\_\_

ORGANIZATION OR ADDRESS

[Signature]  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

Todd M. Lindner  
(Typed Name of Person Administering Oath)  
Commander  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

[Initials]

PAGE 3 OF 3 PAGES



**SWORN STATEMENT**

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

LOCATION Camp Victory, Iraq	DATE 03 APR 05	TIME 1330	FILE NUMBER 0083 -05-CID259-36247
LAST NAME, FIRST NAME, MIDDLE NAME HESTER, Leigh Ann	SOCIAL SECURITY NUMBER		RANK/STATUS SGT/E-5
ADDRESS/ORGANIZATION 617 MP CO, 503 MP BN, 18 <sup>th</sup> MP BDE			

I, Leigh Ann HESTER, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

After the engagement, I was securing insurgent weapons when I noticed a 623 soldier pulling security on what appeared to be an insurgent. This soldier was approximately 20-30 meters away from me on the side of the canal. I was below him on the edge of the field. I observed that the 623 soldier had his 9mm pistol drawn at the time. From my position, I did not have a clear view of the actual insurgent. As I continued to pick up weapons, I heard a single shot fired from the soldiers direction. When I looked up, the soldier still had his weapon drawn. SGT Morris had walked up close to the 623 soldier at that time. I wasn't close enough to hear any of their conversation if they had one. At that time, I figured that SGT Morris and the 623 soldier had everything under control, so I continued to pick up weapons and ammo. As I made my way towards where our trucks were parked, I heard another single shot come from the 623 soldiers direction. I turned around and once again observed that the soldier still had his 9mm drawn. After this, I continued to pick up weapons and ammo and never heard another shot fired.

Q: RENFRO

A: HESTER

Q: Did you recognize the 623 Soldier?

A: No.

Q: Could you see the insurgent at all from your location?

A: No. I knew that was what he was pointing his weapon at, but he was not visible to me.

Q: Was the shot you heard fired from a pistol or a rifle?

A: Pistol.

Q: How long was there between the shots you heard?

A: 2 or 3 minutes, maybe not that long.

Q: Was there any other soldiers near the 623 soldier who fired his pistol?

A: SGT MORRIS walked up sometime between the first and second shot. No one else.

Q: Did you have any contact with any of the insurgents after those two shots?

A: I helped carry one or two litters, but not the one with that particular insurgent.

Q: Did you see where SSG NEIN was when the 623 soldier fired the shots.

A: No, I don't know where he was.

Q: Did anyone talk with you about the reason those two shots were fired?

A: A few days ago SSG NEIN said there was probably going to be an investigation going on about that soldier saying that he had shot the insurgent. But we knew that he didn't engage the insurgent during the initial firefight.

Q: Do you have anything else to add to this statement?

A: No.///////End of Statement////////

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>LAH</i>	PAGE 1 OF <u>2</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_ TAKEN AT \_\_\_ DATED \_\_\_ CONTINUED."  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE \_\_\_ OF \_\_\_ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

NOT USED

AFFIDAVIT

I, Leith Ann Hester HAVE READ OR HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. 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 OR BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Leith Ann Hester  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by Law to administer oaths, this 03 day of April, 2005 at Camp Victory, Iraq

DALE

ORGANIZATION OR ADDRESS

SA David L. RENNRO  
(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

Article 136 (b)(4) UCMJ  
(Authority to Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT LAH

PAGE 2 OF 2 PAGES

**SWORN STATEMENT**

For use of this form, see AR 190-45 the proponent agency is ODCSOPS

LOCATION Camp Victory, Baghdad, IZ APO AE 09342	DATE 6 Apr 05	TIME 1702 JDO	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME ORDUNEZ, Jesse David	SOCIAL SECURITY NUMBER	GRADE/STATUS SPC/E-4	
ORGANIZATION OR ADDRESS 617th Military Police Company, 18th Military Police Brigade, Camp Liberty, IZ APO AE 09342			

JDO, Jesse David ORDUNEZ, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 20 Mar 05, I was the gunner in the second vehicle in my squad when we engaged several AIF members off of ASR Detroit, near Salman Pak, IZ. After the engagement, I remember SSG NEIN, my squad leader, calling a cease fire. At that time, I was in my turret. While I was still in the turret, I was looking down the canal that was the main one used by the AIF and I observed that a soldier, who I didn't know, from the 623 FA was standing along the canal and pointing his pistol at a AIF that was on the canal. I did not see him shoot at that time, and then another 623 FA soldier replaced me in the turret and I immediately went to where SGT RIVERA was being treated by our third vehicle. I stayed with him until he was taken to the chopper. I then started towards the main canal used by the insurgents. I walked up the canal on the side opposite to where the AIF was laying. When I got up to near the a 623 FA soldier, this soldier asked me something like, "What do you do if they are still moving" or "What do you do if they are alive". I answered something like, "If they are combatants, you shoot them". I did not think this soldier was going to shoot the wounded AIF that was on the bank of the canal. I thought he knew what we know, and would conduct himself appropriately. Anyway, this soldier then fired what I think was two rounds from his M-4 into the AIF that was on the bank. I saw the AIF jerk. I then remember that SGT MORRIS, this soldier, and I then continued down the trench clearing and searching.

QUESTIONS BY SA ROBINSON, ANSWERS BY SPC ORDUNEZ:

Q: Was the soldier you saw pointing the pistol the same soldier you observed shooting the wounded AIF?  
A: I am not sure of that.

Q: Was the soldier you saw pointing the pistol, pointing at the same AIF that you saw shot?  
A: I am not sure, but it was the same location.

Q: Can you describe the location of the AIF that was shot by the 623 soldier?  
A: He was laying on the side of the canal, not in it.

Q: Do you recall seeing wounds on the AIF?  
A: No.

Q: Where was the 623 soldier when he fired the rounds from the M-4 into the AIF?  
A: He was within touching distance of the AIF, and I think he was on the bank of the canal, rather than in the bottom of it, almost like standing beside him.

Q: What rank was the 623 soldier you saw shoot the wounded AIF?  
A: SGT, E-5.

Q: Did you see what happened to the AIF after he was shot?  
A: I don't recall seeing what happened.

Q: Prior to the shooting, where was SGT MORRIS?  
A: He was a little a head of where me and the 623 guy were.

Q: About how far was SGT MORRIS from you when that soldier shot his M-4?  
A: 15 meters, it wasn't too far.

Q: Do you recall if anyone else was in the immediate area?  
A: No one else was immediately around.

Q: Do you recall SGT HESTER's location when this occurred?  
A: No.

Q: Do you know if SGT MORRIS searched the wounded AIF prior to the 623 soldier shooting him?  
A: No.

Q: After this happened, did the 623 soldier say anything to you about what just occurred?  
A: No.

Q: Do you recall if any other shots were fired after SSG NEIN called a cease fire?  
A: No, I don't remember.

Q: Can you recall if the wounded AIF was talking prior to being shot by the 623 soldier?  
A: No, I don't recall.

Q: Did you see this AIF member moving prior to being shot by the 623 soldier?  
A: No.

Q: Do you know if there were any weapons near to this wounded AIF member when he was shot by the 623 soldier?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <u>JDO</u>	PAGE 1 OF <u>2</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_ CONTINUED."  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE \_\_\_\_\_ OF \_\_\_\_\_ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DEFENSE EXHIBIT N FOR ID

2011

STATEMENT (Continued)

A: There were no weapons. That is what shocked me. That is why I told CPT MINOR about what I saw, because it bothered me.

Q: When you answered the 623 soldier, after he asked the question about what you do with AIF if they are moving or still alive, did you think he was talking about the wounded AIF that was then shot?

A: I thought he was talking about all of them, in general. I would not shoot a wounded, unarmed enemy, and I was shocked that he did.

Q: Would you recognize this 623 soldier if you saw him or a photograph of him?

A: I don't know.

Q: Do you know where the wounded AIF was shot by the 623 soldier?

A: No.

Q: When you say that you saw the AIF "Jerk" after he was shot, did he move or was it the bullet strikes making him move?

A: No. He was still alive and jerked, actually moved.

Q: Did the man say anything or make any noise?

A: I think I did hear him say, "Allah, Allah, Allah", but I am not positive.

Q: Do you recall what the wounded AIF looked like?

A: Not really.

Q: Would you recognize the wounded AIF if you saw his photograph?

A: Maybe.

Q: Have you talked to anyone, except CPT MINOR, about what you witnessed on 20 Mar 05?

A: Not directly about this. I did tell SSG NEIN and SGT HESTER that I was surprised CID had not talked to me yet.

Q: Are you sure about the number of rounds you saw the 623 soldier fire into the wounded AIF?

A: I am not sure, but I think it was two.

Q: How close was this soldier's barrel to the wounded AIF when he fired?

A: A couple of feet.

Q: Do you know where the barrel was pointed when he fired?

A: I want to say up in the shoulder area, but I am not positive.

Q: Did you help to evacuate any wounded AIF?

A: No, I was security on the helicopter for some of them. I did put a bandage on one of their feet, that guy was from the Orchard.

Q: Where did the chopper go that you provided security on?

A: The CSH in the International Zone.

Q: Was the AIF you saw the 623 soldier shoot on your chopper?

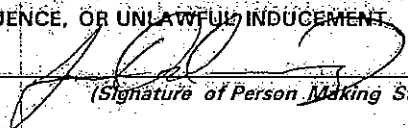
A: I don't know.

Q: Do you have anything further to add to this statement?

A: No.///END OF STATEMENT///

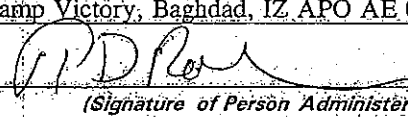
AFFIDAVIT

I, Jesse D. ORDUNEZ, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 6th day of April 2005 at Camp Victory, Baghdad, IZ APO AE 09342

  
(Signature of Person Administering Oath)

SA Thomas D. ROBINSON  
(Typed Name of Person Administering Oath)

Article 136, UCMJ  
(Authority To Administer Oaths)

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT



PAGE 2 OF 2 PAGES

**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 MSR Detroit MB737633	2. DATE (YYYYMMDD) 2005 March 21	3. TIME 1100	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Ordunez Jesse D	6. SSN	7. GRADE/STATUS E-4	
8. ORGANIZATION OR ADDRESS 67 MP Co			

9. Jesse Ordunez, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Yesterday at aprox. 1130 we were going ~~South~~<sup>North</sup> bound on ~~the~~<sup>the</sup> Detroit and we turned around to follow a convoy going ~~North~~<sup>South</sup> bound. Once we got to MB737633 I started to hear RPs going off and alot of small arms fire. I got up and saw a bunch of heads and weapons ~~at~~<sup>by</sup> the big burn that runs along Detroit. We went to the right side of the convoy to lay down fire. I shot ~~at~~<sup>2</sup> two hundred rounds of 240B at the burn on the right side of Detroit. I got down in the truck to get more ammo and got hung up on my DAPS as we maid a right turn to flank the AIF. At that time SPC. Pullen got me un hung and I reloaded the 240B. I thin layed down more fire on the right side of the road shooting AIF who were in the burms on both sides of the road. I thin lost my footing in the truck and fell whin my maine got shot as I was about to fire it. I tried to get up but I couldnt. I reached up and grab the 240B ~~still stuck~~<sup>go</sup> as I was still stuck in the truck and layed down more fire till I could get up. I thin got up and turned my MK19 at the field and put more rounds in the field. Thin I turned to the burn behind me and shot the house with the MK19 bec there was AIF shooting from the house.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT JO	PAGE 1 OF <u>2</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"

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

DEFENSE EXHIBIT 0 FOR ID

STATEMENT OF

Ordunez Jesse D

TAKEN AT

1600

DATED

21 March 05

## 9. STATEMENT (Continued)

I could then hear SPC Pullen on the radio and then she told me that Sgt. Rivera was shot. I told her to go help him. She ran about 150 meters to get to him. I was still shooting with my 240B when Pullen came back to my truck and moved me down to Rivera. I yelled at some one ~~from~~ <sup>near</sup> ~~the~~ who was just standing around to get up on my guns and I ran to Rivera to help until they took him to the bird. After he left me and Sgt Morris started to clear the ditch that ran beside Detroit. There was dead bodies and some wounded everywhere. Then I ran back to my truck to get some water when Sgt. Hester told me to take flex cuffs out to Sgt Ware. I ran them to him. Then SPC Cooper and I started to clear the bodies and both ditches that ran on both side of the side road. I then went back to the truck to get more water when SFC Ware told me to go to the bird and ride with the EPWs. I started to run to the bird when I saw Sgt. Rust taking a EPW over to the bird. I then helped him take the EPW over. Then ~~we~~ <sup>he</sup> I took off ~~to~~ <sup>to</sup> on the bird with the EPWs to the hospital and then the EPWs were turned over to the hosp. it — End of Statement.

i/B

INITIALS OF PERSON MAKING STATEMENT

JDO

PAGE 2 OF 2 PAGES

STATEMENT (Continued)

Not "Used"

AFFIDAVIT

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

[Signature]  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 23 day of MAR, 2005 at \_\_\_\_\_

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

[Signature]  
(Signature of Person Administering Oath)

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

Todd M. Lindner  
(Typed Name of Person Administering Oath)  
Commander  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 3 OF 3 PAGES

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b) (6) 5 U.S.C. 552(b)6):

Exhibit

Not Suitable for the Photocopier



UNITED STATES )

v. )

BURKE, RICKY A. )

SGT, U.S. Army )

B Battery, 1-623d FA, 503d MP BN (ABN) )

18th Military Police Bde, APO AE 09332 )

STIPULATION OF  
EXPECTED TESTIMONY  
SGT JAMES R. BAKER

25 August 2005

---

It is hereby agreed by and between the Trial Counsel, the Defense Counsel and Sergeant (SGT) Ricky A. Burke that if SGT James R. Baker, B Battery, 1-623d FA, 503d MP BN (ABN), 18th Military Police Bde, was present and testifying under oath, he would testify as follows:

1. My name is SGT James Baker and I am assigned to B Battery, 1-623d FA, 3rd Platoon, Team Alpha Team Leader. My PMOS is 13M (Field Artillery). While assigned at LSA Anaconda, Balad, Iraq, I served as a Team Leader (TL) providing convoy security for supply convoys originating from LSA Anaconda traveling throughout Iraq.
2. On 20 March 2005, I departed LSA Anaconda in the lead vehicle, call sign Stallion 33, conducting a convoy security mission consisting of thirty (30) third country national (TCN) vehicles headed southbound to Scania along ASR Detroit. The Stallion security squad consisted of three (3) M1114s vehicles. Stallion 33A included SPC Young, driver, and SPC Malone, gunner, with a MK-19 and myself, TL. Stallion 33B included SFC Hammons, Squad Leader (SL), SPC Vogel, driver, and SPC Saylor, gunner, with a M2. Stallion 33C included SGT Burke, TL, SGT Simpson, driver, and SPC Gregory, gunner with a M2.
3. Stallion 33A was the lead vehicle in the convoy, Stallion 33B was the sixteenth (16) vehicle and Stallion 33C was the trail vehicle in the convoy. Midway to Scania, the convoy stopped to refuel. As the supply convoy nears what will soon become a Complex Attack, we stop to refuel our HMMWVs. Members of the Stallion 33 element dismount and take up security positions as others fuel the vehicles.
4. At this point, SSG Nein, SL, 617<sup>th</sup> MP Company, Raven element, arrives; approaches my vehicle; and advises us of potential dangers and that the Raven element will shadow the convoy down ASR Detroit to provide additional security. During the conversation, I told SSG Nein that the 623d had lost a soldier the day before. After I told SSG Nein that we had lost a soldier, SSG Nein expressed his condolence for the loss.

DEFENSE EXHIBIT Q FOR ID

5. When all vehicles were refueled, we continued traveling south on ASR Detroit. At approximately 1140, 40-50 Insurgents fired small arms and rocket propelled grenades at our vehicles from a field southwest of our location immediately disabling a semi-tractor trailer near the front of the convoy. I ordered my gunner to return fire. Per the SOP, I ordered by driver to drive through the ambush. Through the driver side back door, I observed the vehicle immediately behind us rollover.
6. As we attempted to get the convoy to a safe location, we continued to take fire from the Insurgents for at least a half-mile stretch down ASR Detroit. Stallion 33B and Stallion 33C were pinned down in their positions by heavy fire from the Insurgents attacking from the southwest side of ASR Detroit.
7. We reached an Iraq National Guard checkpoint and brought the vehicle to a halt. I advised the Iraqis to go down and help the rest of the squad. When I turned around, I notice that we only had one vehicle that made it with us through the kill zone. I told the driver of that lone vehicle to remain inside the vehicle and stay down.
8. Next, we turned our vehicle around and headed back to the kill zone. During the entire trip back, we took fire from the Insurgents. As we approached the area where we took the initial fire, my vehicle was stopped by Stallion 33B who was carrying a U.S. casualty, SPC Mack, inside their vehicle. We secured a landing zone (LZ) 600-100 meters south along ASR Detroit.
9. Shortly thereafter, more U.S. casualties, SGT Rivera and SPC Haynes were brought to the LZ. While I called for air support/MEDEVAC on the Sheriff frequency, my driver got the U.S. casualties out of vehicle and secured them inside our vehicle. At approximately 1216, the first MEDEVAC helicopter arrived. SGT Rivera, SPC Haynes and SPC Mack were loaded onto the aircraft.
10. Next, we headed back towards the battle site. As we drove back north on the ASR, we received heavy fire from the Insurgents.
11. We loaded another wounded soldier into our vehicle that had shrapnel wounds to the abdomen and moved him to the LZ. While traveling back to the battle site, we were flagged down by some 1075<sup>th</sup> Trans Company soldiers who requested we help in extracting one of their wounded in action (WIA). We took the WIA to the LZ, where he was treated and MEDEVAC with the rest of the U.S. WIAs.
12. A total of five (5) U.S. casualties were MEDEVAC from the LZ. Once all casualties had left, we drove back to the battle site in a wedge formation. Although soldiers from both elements, Stallion and Raven, were conducting a clear and sweep of the area, I never heard SSG Nein call for a cease fire.

13. During this period I have served with SGT Burke, he has performed selflessly to make the unit's mission a priority. SGT Burke has always been a team player in assisting other soldiers in accomplishing their tasks.


14. Based upon my professional interactions with SGT Burke, I have formed the opinion that he is of high morale character; tremendous work ethic; and an outstanding soldier. I would be honored to serve with him again – especially in a time of war.



MATTHEW W. SHEPHERD  
CPT, JA  
Trial Counsel

1 Sept 05

(Date)



WILLIAM E. BROWN  
CPT, JA  
Defense Counsel

31 Aug 05

(Date)



RICKY A. BURKE  
SGT, USA  
Accused

01 Sept 05

(Date)

UNITED STATES )

v. )

BURKE, Ricky A. )  
SGT, US ARMY )  
B/1-623d FA, 503d MP Bn )  
APO AE 09342 )

STIPULATION OF  
EXPECTED TESTIMONY

25 August 2005

It is hereby agreed between the government and the defense, with the express consent of the accused, that if called to testify under oath, LTC Todd Abel, would testify as follows:

1. I am LTC Todd Abel. I am a licensed neurosurgeon. Neurosurgery is a highly specialized area of medicine. I have just left active service in the U.S. Air Force. I attended medical school at Loma Linda University in Southern California. I completed my residency and internship from 1992 to 1996 at Indianapolis University, Indiana. I am board certified by the American Association of Neurosurgeons.

2. As a practicing neurosurgeon, I have treated hundreds of head trauma incidents in both the civilian world as well as in the military. In my civilian practice, I have operated on over one-hundred (100) gunshot wounds to the head. A high percentage of the patients I have treated in the civilian world that made it to the emergency room only did so because they were shot with small caliber round, usually from a pistol. In my experience, being shot in the head with a high caliber round is usually fatal. This is because a higher caliber round puts out a much higher level of energy. It is the energy from the higher caliber round that causes damage to the brain tissue.

3. In my military capacity, I was assigned to the European Regional Medical Center located at Landstuhl, Germany. I was stationed at Landstuhl during the offensive in Fallujah, Iraq. During this time, I personally treated at least fifty (50) patients with gunshot wounds to the head and as the only qualified neurosurgeon in the hospital, I treated each and every head injury-patient we had. I deployed to LSA Anaconda in January, 2005 as a neurosurgeon. While deployed to LSA Anaconda, I have performed forty-five (45) neurosurgical procedures for victims in the last four (4) months. Ten (10) of these surgeries were from high caliber rounds. Although I am not an expert in the area of ballistics, I am qualified to say that a 5.56 caliber round fired from about less than five (5) feet away will cause a very significant injury to the brain. Specifically, there will be a very high level of trauma to the brain tissue. .

4. On 20 March 2005, I was working at the hospital in Balad at LSA Anaconda. We had a patient come in that day with a penetrating head wound and scalp laceration. The patient was given patient #823 and sent directly to the operating room. When he was brought into the hospital, he was covered in mud. I cannot identify a picture of the insurgent just by looking at his face, but I remember him because of the mud on his face and the extent of the injuries, so I can identify him. I conducted an initial examination of patient #823 and ordered an immediate CAT scan, which is an x-ray of his brain, to

DEFENSE EXHIBIT R FOR ID

determine the level of injury to the brain. Patient #823 had a laceration to his scalp; a penetrating head injury but not a significant skull fracture. The CAT scan showed that a foreign object was lodged in the front parietal lobe. The CAT scan also demonstrated that there was not significant swelling or any tearing in the brain. After further review of the CAT scan, I suspected the foreign object to be a skull fragment. I performed surgery on patient #823's skull to remove the foreign object from the brain tissue. Surgery confirmed that the foreign object was a bone fragment that was driven into the brain. During the surgery we took off a big plate of bone, washed out the bone fragments, controlled the bleeding. I did observe brain swelling in Patient #823, but it was not significant.

5. The area of injury was to the upper, rear section of the skull. Specifically, the round struck patient #823 one (1) inch behind and (2) inches above the ear. The trajectory of the round was from the rear of the patient's head and moving at a forward angle. I am certain of this because the bone fragment in the patient's parietal lobe were pushed forward from the skull into the brain. This is demonstrated in the CAT scan records of Patient #823. Not every gunshot wound to the head causes the brain to swell, it depends on the energy imparted to the brain.

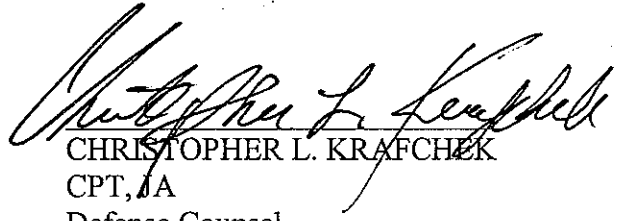
6. There were multiple x-rays done of patient #823. He did not have any injuries to his shoulder or chest area. The areas of injury were to the head, right arm and leg. As a neurosurgeon, I only conducted the surgery on the patient's head. The Patient also had a gunshot wound to his forearm, the result of which was that at the time the x-ray was taken, the Patient would have had no structural stability of his hand. He could have potentially used a firearm by taking the firearm in his left hand and putting it in his right. He could not, with his right hand, pull the weapon unassisted. The Patient also had a gunshot wound in his femur. This leg would have no weight-bearing capability as a result of that wound. He could not stand up without a crutch as a result of that wound. It would have significantly hindered his mobility. He could not have walked unaided.

7. In my opinion, the injury to Patient #823's skull is consistent with a low energy weapon such as a 9MM pistol. This opinion is based on the absence of a serious fracture to the skull and lack of significant trauma, swelling, or tearing of the brain tissue. In my experience, I have seen patients that were not struck by the bullet but they still suffered tearing of the brain from the shock wave of the passing round. This is usually from a higher caliber round like the AK-47 rifle.

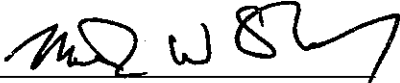
8. It is my opinion that it is very unlikely for patient #823's head wound to be consistent with an injury from a 5.56 round. I base my opinion on the fact that each person has what is called a "midline" in his brain. If there is trauma, swelling, or any injury to the brain, this midline will shift. Patient #823's midline did not shift. It is my professional opinion the injury to patient #823's head was consistent with an injury caused by a round fired from a 9MM pistol.



RICKY A. BURKE  
SGT, USA  
Accused



CHRISTOPHER L. KRAFCHER  
CPT, JA  
Defense Counsel



MATTHEW W. SHEPHERD  
CPT, JA  
Trial Counsel

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

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Photographs

To Whom it may concern,

I am writing this letter on behalf of Sgt. Ricky Burke. Sgt. Burke is highly regarded in his community. I can personally vouch for his moral character and integrity. He has been a friend of mine for over ten years. We attended high school and church together. He is very proud to be serving his country and values his place in the military. I do not pretend to know the details of the charges facing Sgt. Burke. I simply ask for the chance to be given a voice in this matter. A soldier is a selfless, honest and brave individual who proudly serves the country he loves. I can confidently say that Sgt. Ricky Burke displays all of these characteristics to the highest extent. I would like to thank Sgt. Burke for his time and sacrifices given. My prayers and support are with him and his family. May God bless them and hold them through this time of waiting. I wish them strength and perseverance. Sgt. Burke is a kindhearted, caring and level headed individual.

Thank you,

Stephanie  
Shearer



UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

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CHARACTER AFFIDAVIT

26 August 2005

1. My Name is SFC Jeffrey W. Campbell. I have been in the military for 19 years. I joined the Kentucky Army National Guard 5 September 1985. I enlisted as a 13B1O, and converted to 13M2O in 1994, which is a multiple launch rocket systems crew member. I am now a Platoon Sergeant serving in Iraq with Battery B, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS). I became SGT Burke's Platoon Sergeant 6 August 2004.

2. I have known SGT Burke since August 2004 when we joined a joint unit operation for OPERATION IRAQ FREEDOM 04-06. My first impression of SGT Burke was that he was an outstanding Soldier. As his Platoon Sergeant, I have witnessed SGT Burke work as a Team Leader to make our mission a success. SGT Burke has always been willing to help others when they needed help, and he has always ensured pre combat checks (PCC's) and pre combat inspections (PCI's) were completed before each mission. SGT Burke has always been dependable to complete any task given to him with highest military standards. He was always willing to work extra duty before deployment for the readiness of the unit. His Leadership skills and willingness to use the Army Values will take him far in his military career.

3. Based upon my interaction's with SGT Burke, while deployed I have been amazed at his ability to overcome any situation, and to adapt to change. In my opinion, he is an outstanding NCO with great potential to one day be an excellent senior NCO.

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is an outstanding Soldier and great individual and such misconduct would not be consistent with his character that he has displayed for and during this deployment.



JEFFREY W. CAMPBELL  
SFC, US Army  
3<sup>rd</sup> Platoon Sergeant

DEFENSE EXHIBIT U FOR ID

UNITED STATES

V.

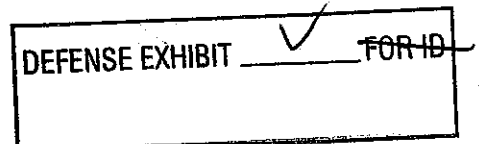
RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

22 August 2005

1. I am SFC Donald J. Criswell. I have been in the military for a total of 13 years. I joined the Army in August of 1992. I am a 13M30, which is a Platoon Sergeant. I am currently assigned to Bravo Battery 1-623 FA, at LSAA Anaconda, Iraq.
2. I have known SGT Burke for 15 years. I first met SGT Burke when he was in 7<sup>th</sup> grade at our local high school in Monticello, Kentucky. Since joining the military SGT Burke and I have become good friends. We travel to NASCAR Races together and go hunting every year. Since I've known SGT Burke at no time have I seen any behavior that relates to the allegations made against SGT Burke. SGT Burke is a good man and soldier that take pride in serving his country and being a soldier. I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our unit accomplish the mission, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for the past 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.
3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic.
4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

  
Donald J. Criswell  
SFC, US Army



OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

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Exhibit

Not Suitable for the Photocopier

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO. AE 09342

CHARACTER AFFIDAVIT

22 August 2005

1. I am CPT Jim E. Rush. I have been in the military for a total of 19 years and 4 months. I joined the Army in 1986. I am a 13A, which is a Field Artillery Officer. I am currently assigned to the Area Support Group-Kuwait (ASG- KU), Base Defense Liaison Team (BDLT), for the Kuwait (AOR).

2. I have served as Sgt Ricky Burke's Battery Commander since February 2002. During my command, SGT Burke has performed selflessly to make the units mission a priority. SGT Burk has also assumed responsibilities and duties beyond his rank structure when given assignments. Sgt Burke's dedication to duty assisted Charlie Battery in accomplishing its mobilization certification during OIF I. The battery certified in record time during mobilization. This record time was a direct reflection on SGT Burke's efforts. SGT Ricky Burke has always been a team player in assisting other soldiers in accomplishing their task. My time as his commander has enabled me to observe his actions at all hours of the day and night.

3. Based upon my interaction with SGT Burke, in a garrison and mobilized environment. I have been able to form an opinion about his character, work ethic, and performance as a soldier. In my opinion, SGT Burke is a man of high integrity. SGT Burke has consistently proven that he is an above-average soldier for Charlie 1<sup>ST</sup> 623<sup>RD</sup> FA (MLRS).

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

*Jim E. Rush*  
JIM E. RUSH  
CPT, U.S. Army

DEFENSE EXHIBIT

FEB 19

DEFENSE EX

.....  
UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT


22 August 2005

.....  
1. I am Kenneth Shane Wall. I have been in the military for a total of 8 years. I joined the Army in 1998. I am a 13A, which is a MLRS Platoon Leader. I am currently assigned to the B Btry 1/623 FA (MLRS), at LSAA.

2. I have known SGT Burke for 2 years/10 months. He has worked FOR me since November 2002. I have been his Platoon Leader through most of this past year. As his Platoon Leader, I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our battery, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.

3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic. He has proven himself repeatedly to be an outstanding leader. I have never questioned his decision making ability or his integrity.

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

  
KENNETH S WALL  
1LT, US Army

DEFENSE EXHIBIT  FOR ID

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

26 August 2005

1. My Name is 1SG Terry M. Fair. I have been in the military for 17 years. I joined the Kentucky Army National Guard 3 February 1988. I enlisted as a 13B1O, and converted to 13M2O in 1994, which is a multiple launch rocket systems crew member. I am now a Platoon Sergeant serving in Iraq with Battery B, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS). Before this deployment I was the First Sergeant at Battery C, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS) where SGT Burke is originally from.
2. I have known SGT Burke since December of 2003 when I took over as First Sergeant at Battery C 1/623 FA. My first impression of SGT Burke was that he was an outstanding Soldier. He has worked under 3<sup>rd</sup> Platoon since August of 2004, and I am the Platoon Sergeant for 1<sup>st</sup> Platoon. As his previous First Sergeant, I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always been willing to help others when they needed help, and he has a can do attitude for any task assigned. He has always done the right thing with or without supervision. He was instrumental in helping the full time staff in preparing for mobilization while on active duty special work (ADSW) from the end of August 2004 through the end of October 2004.
3. Based upon my interaction's with SGT Burke, while deployed I have been impressed with SGT Burke's work ethic's and his willingness to accomplish the mission. In my opinion, he is an outstanding NCO with high morals and values that always sets the example.
4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.



TERRY M. FAIR  
MSG, US Army  
1<sup>st</sup> Platoon Sergeant

DEFENSE EXHIBIT 2 FOR ID

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

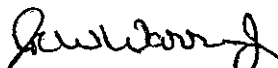
22 August 2005

1. I am Joe W. Warren JR. I have been in the military for a total of 19 years. I joined the Army in March 1986. I am a 13A, which is a Field Artillery Officer. I am currently assigned to the Battery B 1<sup>st</sup> BN 623<sup>rd</sup> FA (MLRS), at LSA Anaconda.

2. I have known SGT Burke for 9 months. He has worked with me since November 2004. I have been the 4<sup>th</sup> Platoon, Platoon Leader through most of this past year. I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our mission as Military Police, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.

3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic.

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.



Joe W. Warren JR  
CPT, US Army

DEFENSE EXHIBIT AA FOR ID

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

25 August 2005

1. I am CPT Kevin M. Behler. I have been in the military for a total of 4 years. I was commissioned the Army on 09 Jun 01. I am a 31A5P5W, which is a Military Police Officer. I am currently assigned to HHD, 503<sup>rd</sup> MP BN (ABN) (Prov), at Liberty, Iraq.
2. I have known SGT Burke for a little over 2 months. He worked in the Sheriff 17 role in the Trans Integration Fusion Cell since mid June. I have witnessed SGT Burke selflessly work to make their mission a success. SGT Burke has always asked for more responsibilities to help Sheriff 17, and is the type of soldier who will stay later just to help complete another soldier's mission.
3. Based upon my interactions with SGT Burke, in deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic.
4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

///ORIGINAL SIGNED///  
KEVIN M. BEHLER  
CPT, MP

DEFENSE EXHIBIT BB FOR ID



Sergeant Ricky Burke

B Company, 623rd Field Artillery

DEFENSE EXHIBIT CC FOR ID

# Contents

My Family

Tab A

Letters of Support

Tab B

# My Family

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

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Photographs

# Letters of Support

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

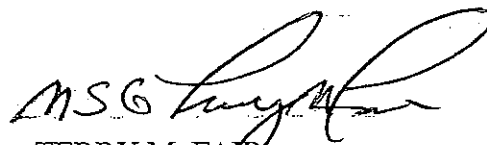
26 August 2005

1. My Name is 1SG Terry M. Fair. I have been in the military for 17 years. I joined the Kentucky Army National Guard 3 February 1988. I enlisted as a 13B1O, and converted to 13M2O in 1994, which is a multiple launch rocket systems crew member. I am now a Platoon Sergeant serving in Iraq with Battery B, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS). Before this deployment I was the First Sergeant at Battery C, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS) where SGT Burke is originally from.

2. I have known SGT Burke since December of 2003 when I took over as First Sergeant at Battery C 1/623 FA. My first impression of SGT Burke was that he was an outstanding Soldier. He has worked under 3<sup>rd</sup> Platoon since August of 2004, and I am the Platoon Sergeant for 1<sup>st</sup> Platoon. As his previous First Sergeant, I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always been willing to help others when they needed help, and he has a can do attitude for any task assigned. He has always done the right thing with or without supervision. He was instrumental in helping the full time staff in preparing for mobilization while on active duty special work (ADSW) from the end of August 2004 through the end of October 2004.

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4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.



TERRY M. FAIR  
MSG, US Army  
1<sup>st</sup> Platoon Sergeant

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

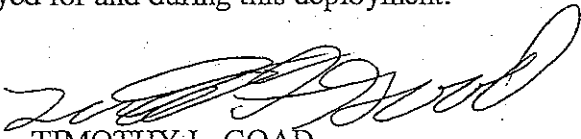
26 August 2005

1. My Name is MSG Timothy L. Goad; I have been in the military for 25 years. I joined the Kentucky Army National Guard 22 August 1980. I enlisted as a 88M10, which is transportation, and converted to 19K after I became Active Guard and Reserve (AGR) in August 1998. In January 2003 I became Readiness NCO of Battery C, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS) in Monticello, and converted to 13M40 where I was 2<sup>nd</sup> Platoon Sergeant. I am now the Operations Sergeant for Battery B, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS) currently serving in Iraq.

2. I have known SGT Burke since January 2003 where I became the Readiness NCO. My first impression of SGT Burke was that he was an outstanding Soldier. As the Readiness NCO, and being AGR I deal with each and every Soldier on many different issues. He has volunteered to work active duty special work (ADSW) whenever we need Soldiers help. He has been very dependable when called upon for any task. He was a great asset prior to mobilization, on ADSW he worked from August to October 2004, assisting myself and the Training NCO with numerous tasks prepping for the mobilization. He was always on time, in the right uniform, and dedicated to whatever task was assigned. When I assigned him a task, I didn't have to worry about supervising him; I knew that he would get the job done the right way the first time without complaint.

3. Based upon my interaction's with SGT Burke, while deployed he has shown the same loyalty to duty, his team and his unit. He still posses the same outstanding traits here as he did in the rear prior to deploying. He always shows true concern about any mission, or task assigned to him, and gets the job done without regard. In my opinion he is an excellent NCO with high morals and values, and always sets the example.

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is an outstanding Soldier and great individual and such misconduct would not be consistent with his character that he has displayed for and during this deployment.

  
TIMOTHY L. GOAD  
MSG, US Army  
Operations Sergeant

UNITED STATES


v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

22 August 2005

1. I am Kenneth Shane Wall. I have been in the military for a total of 8 years. I joined the Army in 1998. I am a 13A, which is a MLRS Platoon Leader. I am currently assigned to the B Btry 1/623 FA (MLRS), at LSAA.
2. I have known SGT Burke for 2 years/10 months. He has worked FOR me since November 2002. I have been his Platoon Leader through most of this past year. As his Platoon Leader, I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our battery, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.
3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic. He has proven himself repeatedly to be an outstanding leader. I have never questioned his decision making ability or his integrity.
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KENNETH S WALL  
1LT, US Army



UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

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25 August 2005

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2. I have known SGT Burke for a little over 2 months. He worked in the Sheriff 17 role in the Trans Integration Fusion Cell since mid June. I have witnessed SGT Burke selflessly work to make their mission a success. SGT Burke has always asked for more responsibilities to help Sheriff 17, and is the type of soldier who will stay later just to help complete another soldier's mission.
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///ORIGINAL SIGNED///  
KEVIN M. BEHLER  
CPT, MP

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
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APO. AE 09342

CHARACTER AFFIDAVIT


22 August 2005

1. I am CPT Jim E. Rush. I have been in the military for a total of 19 years and 4 months I joined the Army in 1986. I am a 13A, which is a Field Artillery Officer. I am currently assigned to the Area Support Group-Kuwait (ASG- KU), Base Defense Liaison Team (BDLT), for the Kuwait (AOR).

2. I have served as Sgt Ricky Burke's Battery Commander since February 2002. During my command, SGT Burke has performed selflessly to make the units mission a priority. SGT Burk has also assumed responsibilities and duties beyond his rank structure when given assignments. Sgt Burke's dedication to duty assisted Charlie Battery in accomplishing its mobilization certification during OIF I. The battery certified in record time during mobilization. This record time was a direct reflection on SGT Burke's efforts. SGT Ricky Burke has always been a team player in assisting other soldiers in accomplishing their task. My time as his commander has enabled me to observe his actions at all hours of the day and night.

3. Based upon my interaction with SGT Burke, in a garrison and mobilized environment, I have been able to form an opinion about his character, work ethic, and performance as a soldier. In my opinion, SGT Burke is a man of high integrity. SGT Burke has consistently proven that he is an above-average soldier for Charlie 1<sup>ST</sup> 623<sup>RD</sup> FA (MLRS).

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

  
JIM E. RUSH  
CPT, U.S. Army

UNITED STATES

v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

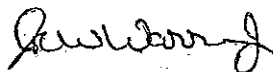
22 August 2005

1. I am Joe W. Warren JR. I have been in the military for a total of 19 years. I joined the Army in March 1986. I am a 13A, which is a Field Artillery Officer. I am currently assigned to the Battery B 1<sup>st</sup> BN 623<sup>rd</sup> FA (MLRS), at LSA Anaconda.

2. I have known SGT Burke for 9 months. He has worked with me since November 2004. I have been the 4<sup>th</sup> Platoon, Platoon Leader through most of this past year. I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our mission as Military Police, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.

3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic.

4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.



Joe W. Warren JR  
CPT, US Army

UNITED STATES


V.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

22 August 2005

1. I am SFC Donald J. Criswell. I have been in the military for a total of 13 years. I joined the Army in August of 1992. I am a 13M30, which is a Platoon Sergeant. I am currently assigned to Bravo Battery 1-623 FA, at LSAA Anaconda, Iraq.
2. I have known SGT Burke for 15 years. I first met SGT Burke when he was in 7<sup>th</sup> grade at our local high school in Monticello, Kentucky. Since joining the military SGT Burke and I have become good friends. We travel to NASCAR Races together and go hunting every year. Since I've known SGT Burke at no time have I seen any behavior that relates to the allegations made against SGT Burke. SGT Burke is a good man and soldier that take pride in serving his country and being a soldier. I have witnessed SGT Burke selflessly work to make our mission a success. SGT Burke has always responded first when a volunteer was needed, asked for more responsibilities to help our unit accomplish the mission, and is the type of soldier who will stay later just to help complete another soldier's mission. This has occurred in both a garrison and deployed environment. We have also been deployed together for the past 8 months to Iraq. In this environment, I saw SGT Burke at all hours of the day and night. As one can imagine, in the deployed environment, you truly learn what type of character a person possesses.
3. Based upon my close and daily interaction with SGT Burke, in a garrison and deployed environment, I have been able to form an opinion as to his duty performance, character for truthfulness, work ethic and performance as a soldier. In my opinion, he has the highest integrity possible, is an above-average soldier, his duty performance has been outstanding and he has an excellent work ethic.
4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is a good person and such misconduct would not be consistent with his character.

  
Donald J. Criswell  
SFC, US Army

UNITED STATES

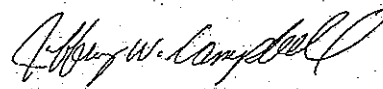
v.

RICKY A. BURKE  
1-623 Field Artillery  
503<sup>rd</sup> Military Police Battalion (ABN)  
18<sup>th</sup> Military Police Brigade  
APO, AE 09342

CHARACTER AFFIDAVIT

26 August 2005

1. My Name is SFC Jeffrey W. Campbell. I have been in the military for 19 years. I joined the Kentucky Army National Guard 5 September 1985. I enlisted as a 13B10, and converted to 13M20 in 1994, which is a multiple launch rocket systems crew member. I am now a Platoon Sergeant serving in Iraq with Battery B, 1<sup>st</sup> BN 623<sup>d</sup> FA (MLRS). I became SGT Burke's Platoon Sergeant 6 August 2004.
2. I have known SGT Burke since August 2004 when we joined a joint unit operation for OPERATION IRAQ FREEDOM 04-06. My first impression of SGT Burke was that he was an outstanding Soldier. As his Platoon Sergeant, I have witnessed SGT Burke work as a Team Leader to make our mission a success. SGT Burke has always been willing to help others when they needed help, and he has always ensured pre combat checks (PCC's) and pre combat inspections (PCI's) were completed before each mission. SGT Burke has always been dependable to complete any task given to him with highest military standards. He was always willing to work extra duty before deployment for the readiness of the unit. His Leadership skills and willingness to use the Army Values will take him far in his military career.
3. Based upon my interaction's with SGT Burke, while deployed I have been amazed at his ability to overcome any situation, and to adapt to change. In my opinion, he is an outstanding NCO with great potential to one day be an excellent senior NCO.
4. I am aware of allegations made against SGT Burke the reason for today's proceedings. Although I have no first-hand information or knowledge about the incidents, I know SGT Burke is an outstanding Soldier and great individual and such misconduct would not be consistent with his character that he has displayed for and during this deployment.

  
JEFFREY W. CAMPBELL  
SFC, US Army  
3<sup>rd</sup> Platoon Sergeant

To whom it may concern:

It is with pleasure that I am submitting this letter attesting to the character traits of Mr. Ricky Burke Jr. I have known Ricky for the past twelve years and have known him to consistently demonstrate outstanding character and integrity in his personal behavior.

I served as Mr. Burke's junior varsity and varsity basketball coach, as well as his high school classroom teacher. In this environment I witnessed Ricky display outstanding leadership skills and a very competitive nature. Ricky was not the most talented athlete, but he was at the forefront in terms of providing leadership. Mr. Burke was not only an excellent vocal leader, he was most effective by leading by example. He was not afraid to take on the tough assignments and on many occasions would personally request the tough assignments. Ricky made my job as a coach much less difficult, because I was fully aware of the type of influence he had over his teammates.

I had Ricky in my classes on several occasions during his high school career. I think this is a wonderful setting to find out about the "make-up" of a person. Ricky was the type of student that made friends with all of his classmates, but he was especially receptive to those kids who were not very popular. I feel like how a person treats those who are less fortunate than they are says a great deal about that person. Ricky never looked down on or ridiculed those students who resided on the lower levels of the high school social ladder. Instead, he was always very up beat with them and made them feel better about themselves. In my view his behavior epitomized "character".

I have witnessed Mr. Burke develop from that popular high school athlete into a responsible young husband and father. He has continued to demonstrate the same traits that made him an excellent student and athlete, in his adult life. The thing which is most impressive about Ricky's attitude is the fact that his own position in life has not always been a pleasant one. He grew up in a loving family, but also a family that would be considered lower middle class at best. Ricky did not have the luxuries that some of his more affluent classmates were afforded. However, I never witnessed Ricky exhibit any type of jealousy or envy regarding the situation. Ricky was always a kid that gave every one a fair shake and based his opinions of others on their behavior and not their economic or social standing. I am by no means implying that Ricky Burke Jr. is some sort of saint or perfect human being. I am sure Ricky has made the same mistakes as most all of us at some point or other in his young life. I am simply stating that from my dealings with Mr. Burke in some close settings and competitive situations, he consistently demonstrated the type of integrity and character that I would love to see in all of my students and athletes.

Respectfully,

Mr. Shane Blevins  
High School Teacher & Coach



# Russell Springs United Methodist Church

**Jim Kingry**  
*Senior Pastor*

**Don Hart**  
*Lay Pastor of Visitation*

**Dennis Price**  
*Minister of Outreach*

**Charlsea Johnson**  
*Office Administrator*

July 23, 2005

To whom it may concern,

Greetings in the name of Jesus Christ, our Lord and Savior. My name is Jim Kingry, and I am the pastor of the Russell Springs United Methodist Church located in Russell Springs, Kentucky. My purpose for writing this letter is to share with you about a young man who is serving our country, Sgt. Ricky Burke.

I first got to know Ricky when I was serving a church in Monticello, Kentucky in the early to mid 1990's. Ricky was a Freshman at the Monticello Independent School when he began attending our church with his family. Ricky got involved with our church's youth group and softball team both of which I was helping to work with. One summer, Ricky went with us on a mission trip to work on homes in the Appalachian Mountains of Southeast Tennessee. Due to his participation in these groups, I got to see Ricky's interaction with others in a variety of circumstances.

I found Ricky to be a young man who respected leadership, whether it be a pastor, youth leader or softball coach. On our mission trip, he worked extremely hard and was willing to do what he was asked to do. I have never known him to be anything other than honest with me and others who were involved in our groups. Ricky was a plus for our youth group in that he was considerate of and worked well with others. In addition to his involvement at our church, Ricky also played on the High School Basketball Team where he exhibited good leadership skills on the court.

Thank you for allowing me to share with you some words of support for Ricky. Feel free to contact me at the address on this letterhead or phone me at 270-866-5180 if you would like to speak with me in person. We are praying for our soldiers who are serving in Iraq and around the world.

In Christ,

Pastor Jim Kingry  
Russell Springs United Methodist Church

June 14, 2005

To Whom It May Concern:

My name is Wade Upchurch and I live in [redacted]. I am 54 years old, married for 35 years and a father of three children and grandfather of 5 children. I retired from teaching school after 28 years in 2001. During this time I also spent time coaching tennis, baseball, track, cross-country and basketball. My main area of coaching and the only area I coached extensively was boys high school basketball. At this time I serve my community as a Magistrate in county government and serve on the Board of Directors for the Kentucky Magistrates Association.

This letter is in regard to a young person I know as a former student in the classroom and a former player on the basketball court. His name is Ricky Burke and I have known Ricky since he was 8 or 9 years old. He currently is a member of the 623<sup>rd</sup> Kentucky National Guard Unit and serving his country in Iraq. I want to emphasize in the strongest terms possible that Ricky Burke is a good and decent young man. This is based on, but not limited to, the following character assessments.

- 1) I never observed Ricky being abusive to another player or student. He demonstrated respect for others and was a very caring young man toward others that was less fortunate than he as far as physical or academic skills. I would classify Ricky as a "good" boy. To clarify what this means, I want to use the following illustration. We had a student drown and I described him to someone as a good boy. They took this as being a good student and making good grades. I told them, the evaluation was based on how he treated other people. This holds true for Ricky; he treated others with dignity and respect.
- 2) Ricky was a competitor on the floor and in competition he competed. This is a very positive trait and I find today, there are too many young people that seem to have the intestinal fortitude to compete. If it does not come easy it is as if then "it must not be meant to be" attitude.
- 3) Ricky was trustworthy and I never heard another faculty member talk in a negative manner about Ricky. This is not to say Ricky was the perfect student or the perfect person. As a parent of a young man currently serving our country as a member of the 623<sup>rd</sup> Kentucky National Guard Unit, my son is not perfect, nor am I, or anyone else I



have ever known. But in the same manner that I am extremely proud of my son and the type person he is, I am proud of Ricky Burke and the type person he is.

There are two points I want to close with. I recall shortly before Ricky left for Iraq, holding him in my arms and he holding me. We both were crying and he offered words of comfort to me. This represents the type person Ricky is; it is not just about him. Sometime after being in Iraq, Ricky made the observation, that he survived because of some of the life lessons he learned through his association with me. I took this as a tremendous compliment and as his former teacher and coach, I think Ricky learned a great deal of those life lessons I tried to teach and I think he learned them well. Just as I had tremendous respect and admiration for Ricky on the day we held each other before departing for Iraq, I have tremendous respect and admiration for him today. Though I know he may not be perfect, we all know being perfect is not what life is about.

Though I have never used this point in a resume or any other description of myself, I am going to use it in this case. I have been an Adult Class Sunday School teacher for the past 18 years at the Monticello United Methodist Church. I have two former members of the 623<sup>rd</sup> in my class that served our country during the Korean Conflict. I also have two other Veterans in my class. One served in the Navy during World War II and one served in the Marines during the Vietnam War. I point this out merely to try to enhance the sincerity and honesty of my observations concerning Ricky Burke.

Only our God knows what lies in the heart and the make up of Ricky Burke. But I feel very strongly that with God as his judge, Ricky Burke is a good and decent young man.

Respectfully,



Wade Upchurch

\*If it will be of assistance to Ricky, I am willing to come on his behalf at my own expense, anywhere to speak on his behalf.

To Whom it may concern,

I am writing this letter on behalf of Sgt. Ricky Burke. Sgt. Burke is highly regarded in his community. I can personally vouch for his moral character and integrity. He has been a friend of mine for over ten years. We attended high school and church together. He is very proud to be serving his country and values his place in the military. I do not pretend to know the details of the charges facing Sgt. Burke. I simply ask for the chance to be given a voice in this matter. A soldier is a selfless, honest and brave individual who proudly serves the country he loves. I can confidently say that Sgt. Ricky Burke displays all of these characteristics to the highest extent. I would like to thank Sgt. Burke for his time and sacrifices given. My prayers and support are with him and his family. May God bless them and hold them through this time of waiting. I wish them strength and perseverance. Sgt. Burke is a kindhearted, caring and level headed individual.

Thank you,

Stephanie  
Shearer

To Whom It may Concern,

While I have not had contact with Ricky since his 1998 graduation, I would like to share my memories of him during his high school days.

Ricky was a student in two of my classes. As a sophomore, Ricky was in my World Civilization class and during his junior year, he was a student in my U.S. History class. I recall Ricky as being a quiet and respectful young man who was attentive and hard working. Ricky was very disciplined and was devoted to basketball. He was never any trouble in class; he was always friendly, laughed easily and usually had a smile on his face.

I have only pleasant memories of Ricky from his school days and have never had reason to doubt him.

Sincerely,  
James T. Cooper

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Defense Exhibit DD**

DEFENSE EXHIBIT DD FOR ID

**There is no  
Defense Exhibit EE**

DEFENSE EXHIBIT EE FOR ID

**There is no  
Defense Exhibit FF**

There is no  
Defense Exhibit GG

DEFENSE EXHIBIT GG FOR ID

There is no  
Defense Exhibit HH

DEFENSE EXHIBIT HH FOR ID



OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b) (6) 5 U.S.C. 552(b)6):

Photographs

**APPELLATE EXHIBITS**

United States )  
 )  
v. )  
 )  
Burke, Ricky A. )  
SGT, U.S. Army )  
B Battery, 1-623 Field Artillery )  
503<sup>rd</sup> MP BN (ABN), APO 09342 )

ORDER  
8 AUG 2005

1. This matter comes before the court upon the accused's motion to change venue from Camp Victory, Iraq to LSA Anaconda, Iraq. The accused's motion is **DENIED**.

#### Essential Findings of Fact

2. The accused is charged with the premeditated murder of an Iraqi civilian. The accused is stationed at LSA Anaconda, while the accused's higher headquarters are located at Camp Victory, Iraq. The Convening Authority, MNC-I, has referred this case to trial by General Court-Martial. MNC-I has multiple geographically based court panels, including at least one at LSA Anaconda and one at Camp Victory. The accused's case is referred to the Camp Victory panel.
3. LSA Anaconda has no dedicated courtroom. The temporary court facilities do not have VTC or separate deliberation chambers. There is routine, daily helicopter travel between LSA Anaconda and Camp Victory. Camp Victory is located near the Baghdad International Airport is a hub for bringing personnel into Iraq by air.
4. Rule for Court-Martial 906(b)(11) provides, "The place of trial may be changed when necessary to prevent prejudice to the right of the accused or for the convenience of the Government if the rights of the accused are not prejudiced thereby." The commentary further provides, "A change of place of the trial may be necessary when there exists in the place where the court-martial is pending so great a prejudice against the accused that the accused cannot obtain a fair and impartial trial there, or obtain compulsory process over a witness."
5. The accused asserts in his motion that he will suffer "prejudice" if the trial is held at Camp Victory because 1) his unit members will not be able to be spectators in the gallery in large numbers and 2) that he will suffer some unspecified mental anguish, if members of his unit have to travel to Camp Victory.
6. The accused has not shown or alleged any prejudice by any person or entity against him at Camp Victory. The accused has also not alleged

APPELLATE EXHIBIT

I

- any inability to obtain witnesses at Camp Victory. The accused's right to a fair trial do not extend to require an audience in the gallery be favorable to him. The accused has failed to show the audience at trial at Camp Victory would be hostile to him.
7. The accused desires to have witnesses produced via VTC. The VTC facility located in the Camp Victory courtroom is more conducive to an orderly administration of justice than some temporary hook up which will be in all likelihood more susceptible unreliable service than a hardwired, permanent system.
  8. Although the accused indicates he is concerned about his unit members if they should travel to Camp Victory, the accused expresses no concern for the equivalent number of persons who would have to travel LSA Anaconda if trial were held there. The accused has not requested any R.C.M. 706 sanity board and suggests no grounds for any concern about the accused's mental health, other than this unspecified concern about his unit members.
  9. The case is prepared for trial and the accused has been at LSA Anaconda with his counsel preparing his defense. The government has agreed to transport a substantial number of witnesses from the United States, Abu Ghraib, Camp Bucca, and LSA Anaconda. The accused has raised no issue about witness availability at either trial location.
  10. In so far as unit members are requested as witnesses, and the government refuses to voluntarily produce them, the accused can request court intervention. Local witness travel from LSA Anaconda can be arranged for any witnesses. The government may not use trial location of its choosing to deny the accused necessary and material witnesses.

#### Conclusions

The accused has failed to meet his burden to show prejudice sufficient to require the trial to be moved from Camp Victory, Iraq. Furthermore, taking into consideration all of the issues related to the convenience of the parties, the facilities and the transportation of witnesses, Camp Victory is a better trial location.



PATRICK J. REINERT  
COL, JA  
Military Judge