

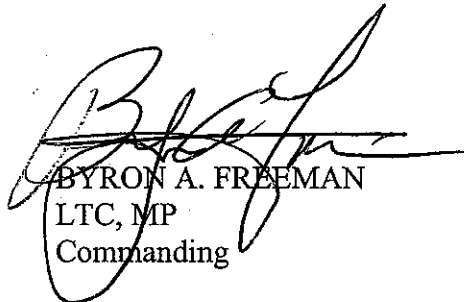
AFZC-Y-P-JA

SUBJECT: Appointment as an AR 15-6 Investigating Officer

the Freedom of Information Act, and you will further advise them that any actions taken in reprisal against them for making a statement should be reported immediately to their Commander, the Office of the Inspector General, or to the Office of the Staff Judge Advocate. Per Article 136.b.(4) and 136.b.(6) of the UCMJ, you are authorized, as an Investigating Officer, to swear interviewees to their statement.

6. This is your primary duty until you complete it. The report of investigation will be submitted to the appointing authority NLT 12 October 2004. Requests for extension must be made in writing to the undersigned. Following completion of your investigation, it should be submitted to your legal advisor for review prior to submission to the appointing authority.

7. The POC for this memorandum is SSG Monica Carlile, Battalion Paralegal, DNVT 584-0900.



BYRON A. FREEMAN
LTC, MP
Commanding



DEPARTMENT OF THE ARMY
TASK FORCE 759 MILITARY POLICE
CAMP CUERVO, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF:

AFZC-Y-P-JA

27 September 2004

MEMORANDUM FOR First Lieutenant Brandt R. Wathen, 415th Military Police Detachment, 759th Military Police Battalion, 89th Military Police Brigade, Camp Volunteer, Iraq, APO AE 09390

SUBJECT: Appointment as an AR 15-6 Investigating Officer.

1. Reference: AR 15-6, Procedure for Investigating Officers and Boards of Officers, 11 May 88, with Change 1, 30 Oct 96.
2. On 22 September 2004, elements of the 272d Military Police Company, 759th Military Police Battalion were involved in a Local National shooting, resulting in her death, while monitoring the Al Rasheed IPS Headquarters. There were no injuries to soldiers or damage to vehicles reported. You are directed to investigate the circumstances behind the shooting death of an Iraqi National by PFC Combs.
3. Please supply a brief description of each casualty, including 1) full name; 2) whether or not the casualty was engaged in hostile activities. You may coordinate with the CMOC on this investigation in order to obtain this information.
4. SSG Monica Carlile, Battalion Paralegal, 759th Military Police Battalion, has a packet of statements for your assistance. You are directed to go to the MNC-I, DSN 302-822-2500; Administrative Law office for an initial brief. You will formally interview all soldiers who have previously made statements in this case. You will also interview all witnesses identified as having knowledge of these events. You are authorized to investigate any issue(s) that arise during your investigation that are related to the primary purpose of your investigation.
5. During the course of your investigation, you will record all interviews on DA Form 2823 (Sworn Statement). If, during any interview, you suspect a violation of the UCMJ by the person you are interviewing, you are required to stop the interview, and advise the interviewee of their Article 31(b) rights, using a DA Form 3881 (Right Warning Waiver Certificate). You may continue to interview that person if they agree to make further statements. If they do not, terminate the interview and contact your legal advisor. If you have any questions about whether or not the person made a knowing and valid waiver, terminate the interview and contact your legal advisor. You will advise all persons being interviewed that their statements can be discovered under

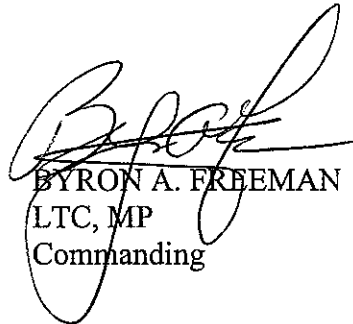
AFZC-Y-P-JA

SUBJECT: Appointment as an AR 15-6 Investigating Officer

the Freedom of Information Act, and you will further advise them that any actions taken in reprisal against them for making a statement should be reported immediately to their Commander, the Office of the Inspector General, or to the Office of the Staff Judge Advocate. Per Article 136.b.(4) and 136.b.(6) of the UCMJ, you are authorized, as an Investigating Officer, to swear interviewees to their statement.

6. This is your primary duty until you complete it. The report of investigation will be submitted to the appointing authority NLT 12 October 2004. Requests for extension must be made in writing to the undersigned. Following completion of your investigation, it should be submitted to your legal advisor for review prior to submission to the appointing authority.

7. The POC for this memorandum is SSG Monica Carlile, Battalion Paralegal, DNVT 584-0900.



BYRON A. FREEMAN
LTC, MP
Commanding



DEPARTMENT OF THE ARMY
415th MILITARY POLICE DETACHMENT (L&O)
BAGHDAD, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF

AFRC-CKS-U-MP

6 OCTOBER 2004

MEMORANDUM FOR RECORD

SUBJECT: Local National Shooting, AR 15-6 Investigation

1. Reference: Memorandum, Appointment as an AR 15-6 Investigating Officer, 27 September 2004.
2. An investigation into the circumstances behind the shooting death of an Iraqi National by PFC Combs, James E. III is complete.
3. On 22 September 2004 at approximately 1345 PFC Combs' assigned M-4 weapon (S/N W053730) was discharged at IP station #10 (Al Babal Shikh) fatally wounding an Iraqi Local National.
4. On 27 September 2004 I was appointed as the AR 15-6 Investigating Officer, tasked with investigating the circumstances surrounding the death. I was informed that CID was working the case and was able to obtain a copy of their initial report, which is enclosed. It was in the CID report that I learned the fatally wounded local nationals' identity to be Mrs. Husaene, Babea'a. The CID report said she resided adjacent to IP Station #10. I was also able to obtain the original statements from SFC Pryor, SGT Duran, and PFC Combs. These statements were taken directly after returning to Camp Cuervo after the incident. (Statements Enclosed)
5. On 1 October 2004, at 0945 I responded to IP station #10. Upon arrival I was able to meet with PFC Combs' team leader SGT Duran. (Statement Enclosed) According to SGT Duran, PFC Combs was inside the bunker on the top of IP Station 10 conducting force protection duties, when PFC Combs' weapon discharged. SGT Duran said he did not actually see PFC Combs fire the rifle, but knew he had done it because PFC Combs was the only one in the tower, and he observed the dust being blown out of the bunker ports. SGT Duran said he had been checking on PFC Combs at times throughout the shift. The last time SGT Duran checked on him PFC Combs was seated in the chair weapon in lap facing out of the bunker. According to SGT Duran, PFC Combs had been briefed on the proper weapon status, handling procedures, and weapon composure, such as weapon at the low ready. SGT Duran said in his original statement that following the shot, he observed a crowd gathered in the alley. He said he observed men carry what could have been a woman or child to a vehicle and drive off.

6. I then spoke with SPC Cook (Statement Enclosed) at approximately 1015. SPC Cook verified the same account as SGT Duran. He added that he went into the bunker about 10 minutes after SGT Duran went in to make sure everything was ok. According to SPC Cook PFC Combs appeared very pale and was visibly shaking. He added that when he saw Combs' weapon Combs had one hand on the weapon and the magazine in the other as if he had just cleared it. SPC Cook said that he heard SGT Duran then ask PFC Combs where the round had gone that he had fired. SPC Cook said he observed PFC Combs wave his hand in the direction of the alley and respond "that way."

7. I next took a series of photographs which are enclosed. The photos show the bunker and the alleyway where the local national was fatally wounded. (See index for photo titles) I also created a hasty sketch not to scale of the area, and later redid it on my computer. (Sketch enclosed)

8. After reviewing the statements on 4 October 2004 I responded to Camp Cuervo to interview PFC Combs. The interview took place at approximately 1200. (Statement Enclosed) In speaking with PFC Combs I learned the true status of his weapon to be on burst. This is in contradiction with his original statement and the statement to CID. According to PFC Combs while seated in the tower prior to the discharge he heard loud yelling coming from the alley in front of him and observed a sedan pull up. He said he saw several males jump out of the vehicle and open the trunk. PFC Combs said he had been bored and was trying to stay alert playing out scenarios in his head as to what he would do if confronted with a threat. Combs said while having these thoughts he placed his weapon on burst status, possibly when he saw the males jump out of the car and open the trunk quickly. PFC Combs told me he then decided the threat was no longer there and lowered his weapon failing to place the selector switch back on safe. PFC Combs said a short time following he raised his weapon again to scan his lane and accidentally discharged the weapon.

9. Conclusion. PFC Combs was negligent in his duties while conducting force protection at the IP station. His weapon should have been on safe unless he had identified a threat and was responding in accordance with the ROE for theater. PFC Combs also should not have had his finger in the trigger well, or on the the trigger of the weapon unless he was ready to fire the weapon. This is what caused the round to be discharged fatally wounding Mrs. Husaene.

10. Recommendations. Recommend that no action be taken against the unit leadership. That PFC Combs is negligent in his duties and appropriate action should be taken. The family of Mrs. Husaene should be compensated for their loss.

11. POC is the undersigned at DNVN 551-1294, or brandt.r.wathen@us.army.mil

BRANDT R. WATHEN
1LT, MP, USAR
Commanding

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by LTC Byron A. Freeman, Commander, Task Force 759th Military Police, Camp Cuervo, Iraq, APO AE 09390-2402
(Appointing authority)

on 27 September 2004 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at Camp Cuervo, Iraq (Place) at 1000 (Time)

on 27 September 2004 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1430 (Time) on 4 October 2004 (Date)

and completed findings and recommendations at 1600 (Time) on 6 October 2004 (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO ^{1/}	NA ^{2/}
1	Inclosures (para 3-15, AR 15-6)			
	Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
	a. The letter of appointment or a summary of oral appointment data?	X		
	b. Copy of notice to respondent, if any? (See item 9, below)			X
	c. Other correspondence with respondent or counsel, if any?			X
	d. All other written communications to or from the appointing authority?	X		
	e. Privacy Act Statements (Certificate, if statement provided orally)?			X
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			X
	g. Information as to sessions of a formal board not included on page 1 of this report?			X
	h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			X

FOOTNOTES: ^{1/} Explain all negative answers on an attached sheet.
^{2/} Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO ¹⁾	NA ²⁾
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			X
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	X		
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	X		
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
	b. Was the date of delivery at least five working days prior to the first session of the board?			
	c. Does each letter of notification indicate --			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
	d. Was the respondent provided a copy of all unclassified documents in the case file?			
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?			
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			
FOOTNOTES: 1) Explain all negative answers on an attached sheet. 2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.				

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)

(Member)

(Member)

1LT 
(Investigating Officer) (President)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

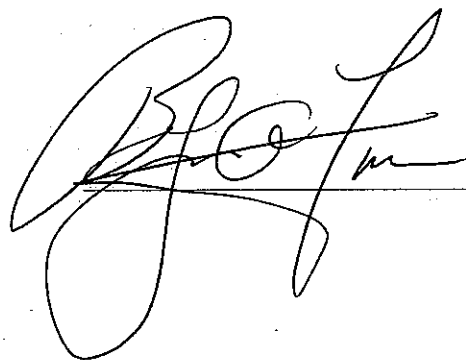
To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

 19 OCT 04

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

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

That PFC James E. Combs was present at IP station #10 on 22 September 2004, at approximately 1345 when a round was discharged from a weapon fatally wounding an Iraqi Local National.

That PFC Combs was pulling force protection duty on the roof of IP station #10 at the time of the incident.

PFC Combs was seated in the tower on the roof of the station facing the alley where the local national was fatally wounded.

That PFC Combs was holding his assigned weapon (M-4 S/N W053730), at the time of the discharge.

That the weapon was loaded, magazine inserted, round chambered, at the time of the discharge.

That the weapon selector switch was not on safe, but positioned on burst at the time of the discharge.

PFC Combs had the weapon pointed out of the bunker firing port toward the area where the local national was fatally wounded.

PFC Combs accidentally discharged a round from his assigned weapon that struck an Iraqi Local National, fatally wounding her.

That a functions check had been done by PFC Combs the previous night on his assigned weapon and it was functional.

That a functions check had been done by SGT Duran his team leader after the discharge upon return to Camp Cuervo, and the weapon was functional.

That PFC Combs had been briefed on the current ROE for the theater, and was checked by his team leader last about 10 minutes before the incident occurred.

That PFC Combs had been briefed by SGT Duran, on the posture of the weapon, and it was to be maintained at the low ready unless a threat is perceived.

That PFC Combs had identified a possible threat when he heard yelling from the alley close to where the local national was struck, and observed several local national males exit a vehicle and open a trunk.

That PFC Combs then raised his weapon, and placed it on burst, in order to be ready.

PFC Combs determined the local nationals not to be a threat, and then lowered his weapon forgetting to place the selector switch on safe.

That PFC Combs raised his weapon again with the weapon in a burst status, finger in the trigger well, on the trigger, and accidentally fired one round in the area of the alley where the local national was fatally wounded.

That the fatally wounded local national was identified as Husaene, Babea'a; female; residing in Al Nahada; adjacent to station #10

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

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

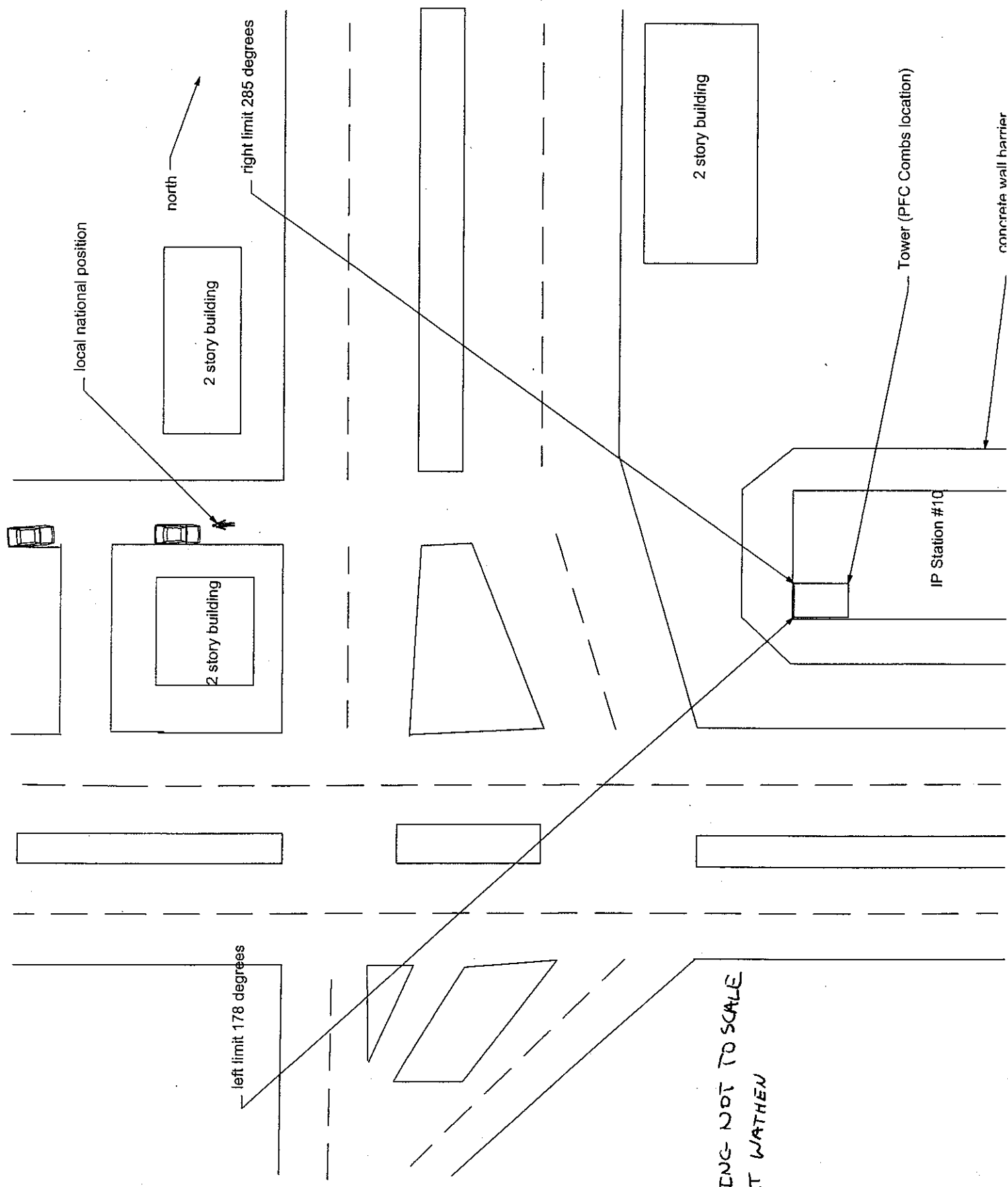
That no action be taken against the leadership.

That PFC Combs was negligent in his duties, and that appropriate action be taken.

That the family of Mrs. Husaene be compensated for their loss.

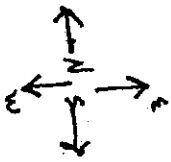
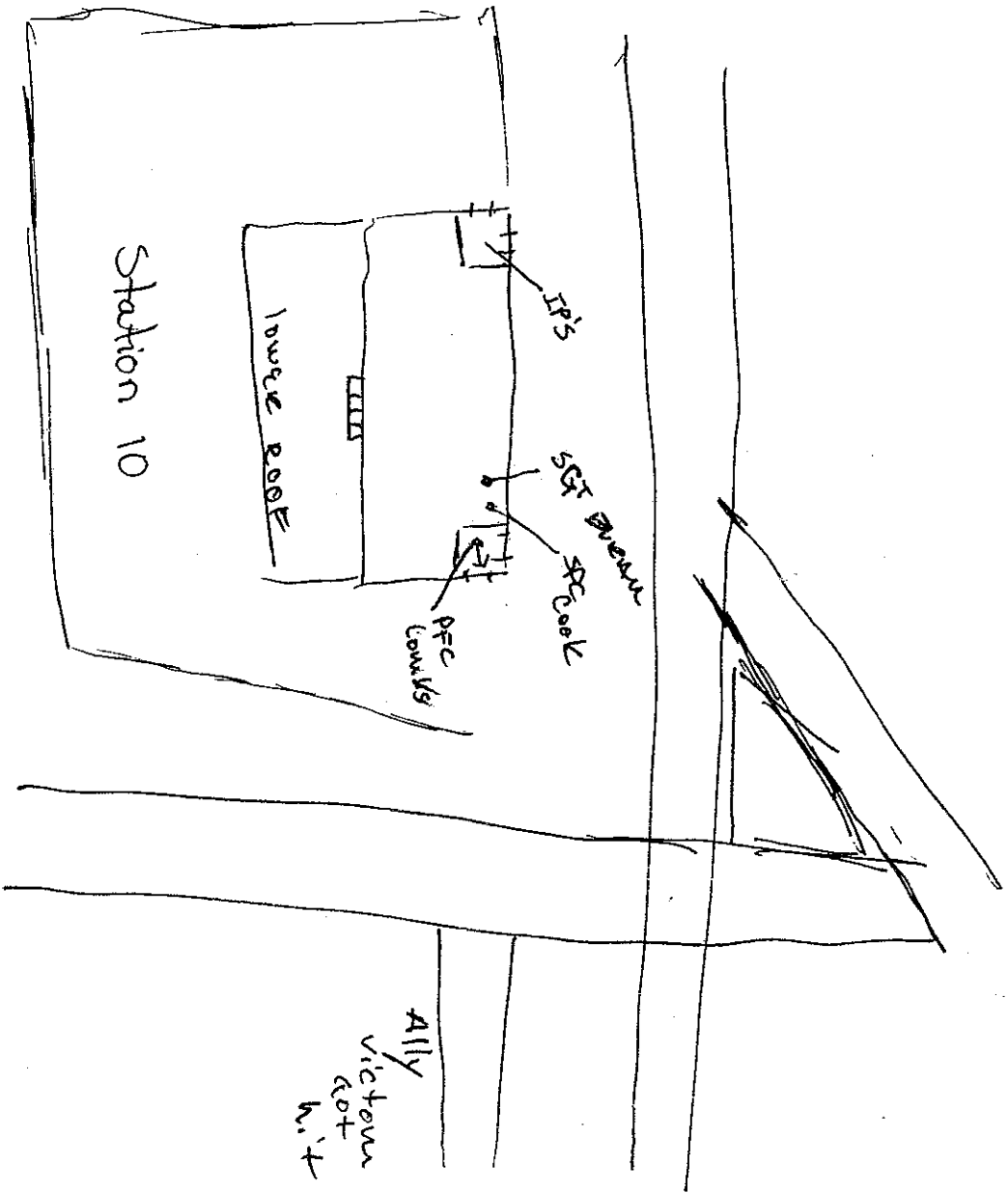
EXHIBITS INDEX

Exhibit 1	Diagram of area (not to scale)
Exhibit 2	Overall view of outside of bunker
Exhibit 3	Overall view of bunker with alley of occurrence in background
Exhibit 4	View of the opposite corner of bunker away from alley
Exhibit 5	View of the opposite corner of bunker away from alley
Exhibit 6	Overall view of alley of occurrence
Exhibit 7	Alley of occurrence with person in bright shirt (Shows approximate location of local national struck)
Exhibit 8	View of alley from on the base of the firing port window
Exhibit 9	View of alley from base of firing port window
Exhibit 10	View of soldier in the tower at the normal briefed position
Exhibit 11	View of bunker firing port window opposite alley
Exhibit 12	View at eye level of firing port window opposite alley
Exhibit 13	View at eye level of firing port window facing alley of occurrence
Exhibit 14	Close up from bunker of approximate location of local national struck
Exhibit 15	Close up from bunker of approximate location of local national struck with civilian in picture
Exhibit 16	View of weapon pointing out of firing port toward approximate location local national was struck.
Exhibit 17	View of weapon pointing out of firing port toward approximate location local national was struck.
Exhibit A	Original statement of SFC Pryor
Exhibit B	Original statement of SGT Duran
Exhibit C	Original statement of PFC Combs
Exhibit D	Later statement of SGT Duran
Exhibit E	Statement of SPC Cook
Exhibit F	Later statement of PFC Combs



2416

DRAWING NOT TO SCALE
BY ILT WATHEN



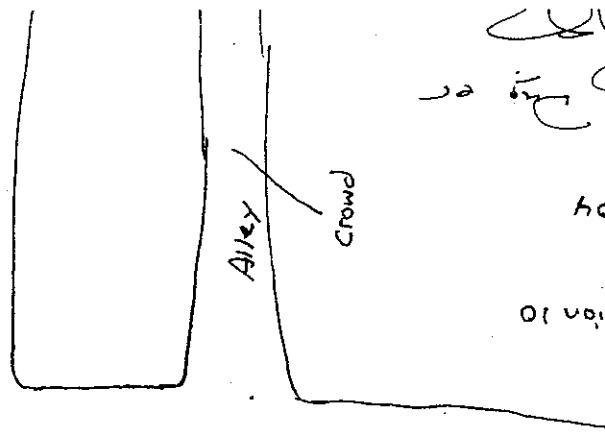
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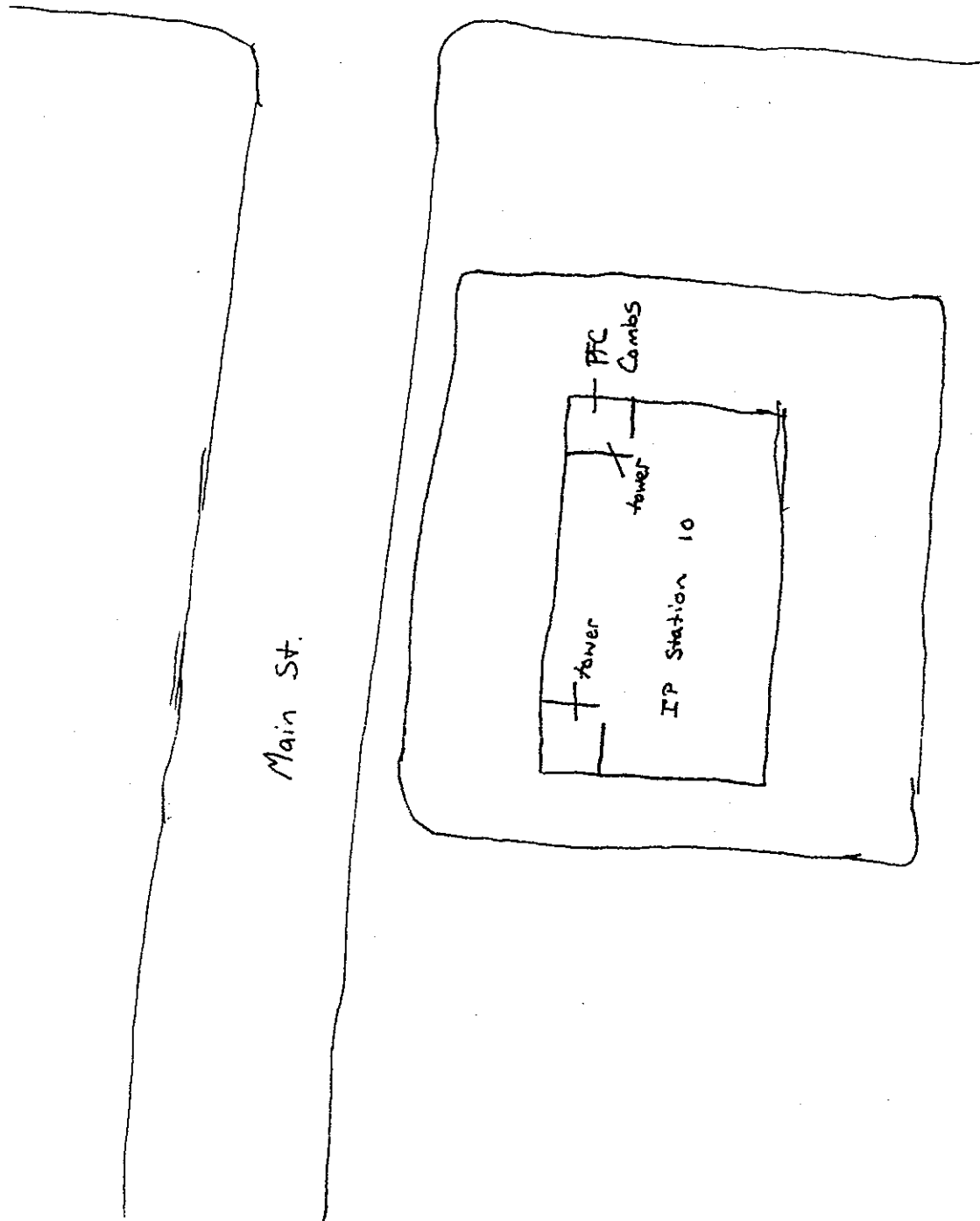
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23 SEP 04

IP Station 10
B. Duran
IP Station 10



RTE.
Wid



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

RIG WARNING PROCEDURE/WAIVER CER DATE
 For use of this form, see AR 190-30; the proponent agency is O JPS

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 CAMP QUERO, BAGHDAD, IRAQ	2. DATE 22 SEP 04	3. TIME 1459	4. FILE NO.
5. NAME (Last, First, MI) PAYOR, KENNETH. I., II	8. ORGANIZATION OR ADDRESS 272ND MP Co. APO AE 09390		
6. SSN	7. GRADE/STATUS E-7/AD		

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: **ART. 92 - DERELICTION OF DUTY**

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:

- 1. ~~I~~ I do not have to answer any question or say anything.
- 2. ~~My~~ Anything I say or do can be used as evidence against me in a criminal trial.
- 3. ~~I~~ (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.

- 4. ~~I~~ If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR 1LT PETIT, NICHOLAS P.
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 272ND MILITARY POLICE COMPANY APO AE 09390
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

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 <u>CAMP CUERVO, BAGHDAD, IRAQ</u>	2. DATE (YYYYMMDD) <u>20040922</u>	3. TIME <u>1605</u>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <u>Reyer, Kenneth Irvin</u>	6. SSN	7. GRADE/STATUS <u>E-7</u>	
8. ORGANIZATION OR ADDRESS <u>272nd MP Co.</u>			

9. I, Kenneth I Reyer II, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
 on 22 Sept 2004, WARRIOR 7, WARRIOR 1B, Jenkins, Bushmaster^{HP} 3B, Bushmaster 3C with 3PC HexOX loaded up at Camp Cuervo and SP to Station 11 at approximately 0745 hrs. we ARRIVED AT Station 11 at 0810, and we RPed Station 11 enroute to station 10 at approximately 1100 hrs. AROUND 1355, I heard a single round fired. Approximately 30 seconds later, I heard on the hand held radio that Combs had accidentally discharged around from Sgt. Duran. Sgt Rodriguez, D. asked if everyone was okay. Sgt Duran stated everyone was good. I left the training room where myself, Sgt. Imlay, the IPA, and our interpreter w/around 7 Iraqi policemen were located. I immediately made my way to the roof top where I found Sgt Duran, Cook, and Combs located together in the guard shack overlooking main st and wild. Combs said the shot came from his weapon, but he said his weapon was on safe. Cook or Sgt Duran, I cannot remember which. Said they were outside the guard shack and had only heard the round go off. Sgt. Duran and Combs were looking for the brass from the round that was discharged. I had noticed the 2 IPs on the roof top had left the roof after pointing at a crowd of about 15 to 20 Iraqi civilians formed up outside the station walls near the intersection. I went down to the second floor and

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <u>KRP</u>	PAGE 1 OF <u>3</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT K TAKEN AT _____ DATED _____
 THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

STATEMENT OF SFC PAVOR, KENNETH I., II TAKEN AT CAMP CUERVO DATED 22 SEP 04

9. STATEMENT (Continued)

~~WPP~~ grabbed the interpreter. We went into Col. Doo Woo's office where I had noticed the 2 IPs that were on the roof coming out of. He told me and the interpreter that a ~~child~~^{IP} woman had been shot. We went back to the roof top. I told Sgt. Duran and Combs to be careful because the round had hit a civilian, and they were still on the roof. Me and the interpreter went down stairs into Col. Haitham's office to see if he knew who had been shot. He said that a child had been shot, and they did not know whether she was going to live or not. I asked him to have an IP go to the hospital and get the victim's information with the extent of the injuries. He told the interpreter it would be best if we moved on to another IP station. I asked again about the injuries, which I could get no further details, and went outside to call Deuce Base. I called base and told the RTO let me speak to Deuce 3. I told him what happen, and he instructed me to return to Cuervo. I went back inside to get the name of the hospital since Deuce 3 had asked for it. I found out from Col. Haitham through the interpreter that it was a woman, and she had been grazed across the fore head with the round. Col. Haitham asked if we were planning to pay any money to the family, and told us ~~it~~^{if} it would be best if we did not return for a few days. ~~WPP~~

Q: ILT PETIT, N.P.

A: SFC PAVOR, K. I., II ~~WPP~~

Q: HOW LONG HAD PFC COMBS BEEN ON THE ROOF?

A: He had been on the roof about 55 minutes. We were on hourly rotations and the soldiers (2) were suppose to be one in each guard shack with a radio and binoculars. ~~WPP~~

INITIALS OF PERSON MAKING STATEMENT

~~WPP~~

PAGE 2 OF 3 PAGES

9. STATEMENT (Continued)

Q: WAS THE M-4 HIS ASSIGNED WEAPON?

A: I do not know. I am in 4th PLT and he is a soldier in second PLT. I am not sure what his rack number is suppose to be. ^{KRP}

Q: WHY DIDN'T YOU CALL HIGHER AS SOON AS YOU LEARNED OF THE DISCHARGE?

A: I was trying to find out what was going on. I had to make sure that 1st and foremost the soldier on the roof top was okay. At that point, I found out that the round had possibly hit someone. I needed to figure out exactly what was going on. ^{KRP}

/// NOTHING FOLLOWS ///

AFFIDAVIT

I, SFC KENNETH I. PRYOR II, 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.

[Handwritten Signature]

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22ND day of SEPTEMBER, 2004 at CAMP CURENO, BAGHDAD, IRAQ

[Handwritten Signature]

(Signature of Person Administering Oath)

1LT PETIT, NICHOLAS P.

(Typed Name of Person Administering Oath)

ART 136, UCMJ

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[Handwritten Initials]

PAGE 3 OF 3 PAGES

RIG WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is G-3/OPS

DATA REQUIRED BY THE PRIVACY ACT

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

1. LOCATION <i>CAMP CUERVO, BAGHDAD, IRAQ</i>		2. DATE <i>LSD</i> <i>22 SEP 04</i>	3. TIME <i>LSD</i> <i>1511</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>DURAN, LEVI B.</i>		8. ORGANIZATION OR ADDRESS <i>272ND MILITARY POLICE COMPANY APO AE 09390</i>		
6. SSN	7. GRADE/STATUS <i>E-5/AD</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: *APT. 92- DERELICTION OF DUTY*

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:

1. ~~USA~~ I do not have to answer any question or say anything.
2. ~~USA~~ Anything I say or do can be used as evidence against me in a criminal trial.
3. ~~USA~~ 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.

4. ~~USA~~ 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>L. B. Duran</i>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <i>Nicholas F. Petit</i>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR <i>LT PETIT, NICHOLAS F.</i>
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR <i>272ND MILITARY POLICE COMPANY APO AE 09390</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

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 <u>CAMP CUERVO, BAGHDAD, IRAQ</u>	2. DATE (YYYYMMDD) <u>20041122</u> ^{LBD}	3. TIME <u>1616</u> ^{LBD}	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <u>Duran, Levi, Benjamin</u>	6. SSN	7. GRADE/STATUS <u>E-5/Active</u>	
8. ORGANIZATION OR ADDRESS <u>272nd Military Police Co / 759th Military Police Bn.</u>			

9. I, Levi Benjamin Duran, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

^{LBD}
 On 20041122 at approximately 1345 I was on the rooftop of IP Station 10 talking with SPC Cook while looking out over Main Street. I heard a gunshot and immediately realized it had come from the bunker manned by PFC Combs because of the dust blown out of the bunker firing ports. I ran into the bunker to see what PFC Combs had fired at. He was seated facing towards an alley that runs parallel to Main St. Combs said "it just went off, it was on safe." I then asked where the weapon was pointed, Combs said somewhere toward the alley. At that time SGT. Rodriguez, D. called me on the Motorola handheld to ask what had happened. I told him Combs accidentally fired his weapon and we were all O.K. SPC Cook, PFC Combs and I looked around for the spent casing, PFC Combs found it. I looked down the alley and saw a large gathering of people and heard some yelling. One or two men carried what could have been a child or woman to a vehicle and drove off. SFC Pryor then came up to the roof to assess the situation. ^{LBD}

Q: ILT PETIT, N.P.
 A: SGT DURAN, L.B. ^{LBD}

Q: WAS THAT M-4 HIS ASSIGNED WEAPON?
 A: Yes. ^{LBD}

Q: DO YOU KNOW HOW MUCH SLEEP ^{NPP} HE GOT LAST NIGHT?
 A: About 7 hours last night and 14 hours total in the last 24 hours. ^{LBD}

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <u>LBD</u>	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 SGT LEVI B. DURAN

TAKEN AT CAMP CUERVO

DATED 22 SEP 04

9. STATEMENT (Continued)

Q: WAS THERE ANY CHANGE TO THE THREAT LEVEL AT THE STATION THAT WOULD HAVE CAUSED HIM TO BE "ON EDGE"?

A: No. LBD

Q: DO YOU KNOW OF ANY OTHER PROBLEMS/SITUATIONS IN COMBS'S LIFE THAT WOULD HAVE PUT HIM "ON EDGE"?

A: No. LBD

Q: WHAT WAS YOUR ROLE ON THE ROOFTOP OF THE IP STATION?

A: I WAS SUPERVISING SPC COOK AND PFC COMBS WHILE THEY WERE PULLING SECURITY ON THE IP STATION LBD

Q: WHERE WERE YOU WHEN THE WEAPON WENT OFF?

A: I WAS ABOUT 10 FEET FROM THE ENTRANCE OF THE BUNKER OCCUPIED BY PFC COMBS. LBD
/// NOTHING FOLLOWS ///

AFFIDAVIT

I, SGT LEVI B. DURAN, 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.

L. B. Duran

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22ND day of SEPTEMBER, 2004 at CAMP CUERVO, BAGHDAD, IRAQ

Nicholas Petit

(Signature of Person Administering Oath)

1LT PETIT, ~~NICHOLAS~~ NICHOLAS P.

(Typed Name of Person Administering Oath)

ART 136, UCMJ

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

LBD

PAGE 2 OF 2 PAGES

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

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 CAMP CUEVO, BAGHDAD, IRAQ	2. DATE ^{SEC} 22 SEP 04	3. TIME ^{SEC} 1530	4. FILE NO.
5. NAME (Last, First, MI) COMBS, JAMES E., III	8. ORGANIZATION OR ADDRESS 272 ND MILITARY POLICE COMPANY APO AE 09390		
6. SSN	7. GRADE/STATUS E-3/AD		

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: ART 92 - DERELICTION OF DUTY

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:

- ^{SEC} I do not have to answer any question or say anything.
- ^{SEC} Anything I say or do can be used as evidence against me in a criminal trial.
- ^{SEC} If 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.

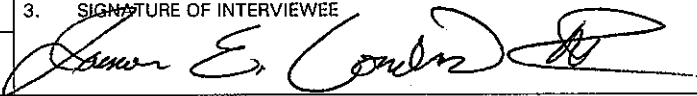
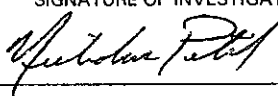
- or -

- (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.
- ^{SEC} If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR
		
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR
		ILT PETIT, NICHOLAS R.
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR
		272 ND MILITARY POLICE COMPANY APO AE 09390

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

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 <u>CAMP CUERVO, BAGHDAD, IRAQ</u>	2. DATE (YYYYMMDD) <u>20040922</u>	3. TIME <u>1635</u>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <u>Combs, James Edward III</u>	6. SSN	7. GRADE/STATUS <u>E-3/AD</u>	
8. ORGANIZATION OR ADDRESS <u>272nd MP Co</u>			

9. James E. Combs III, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

JEC On Sept 22, 2004 around 13:40-1345 PFC Combs was sitting in a tower at station 10. At the time we were about to *JEC* leave station 10 and go to station 14. When accidental discharge my issued M-4 in an alley north of the station. This was our second of three station to visit on the date in question. I was on guard no longer than 45 minutes at station 10 when I shot a round down the alley north of the station. Up on the roof was me and Spc Cook with two Ip's. At the time of the accident the Ip that was in the tower with me left to do his own thing. It was about 10 to 15 minutes after he left that the accident occurred. I was looking around my areas of fire with my rifle not pointing *JEC* it at anyone when I was looking down the alley I saw a few people but not that many most of the people were on the street. I observed before the accident that my weapon was on safe but next thing I knew my weapon went off and everything went blank for a second I guess from shock and the loud ringing in my ear. I really couldn't hear anything but I saw a group of people from the alley farther up the hill come down with a person in a person arms going to a blue like pick-up truck and put the person inside but at the same time SGT Duran got there and was talking to me so my mind was in two different places at the same time he was asking me what happen and I told him but at the *JEC*

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <u>JEC</u>	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.

9. STATEMENT (Continued)

JEC Sometime I really didn't know then from there SFC Puryor came and asked me the something that SGT Duran did and I told him the something after that SFC Puryor tried to get all the information he could and called up higher and we got out there and come back to base camp. *JEC*

Q: ILT PETIT, N.P.

A: PFC COMBS, J. E., III *JEC*

Q: ABOUT HOW MANY HOURS OF SLEEP DID YOU GET LAST NIGHT?

A: About 14 to 16 hours *JEC*

Q: WHY DID YOU HAVE YOUR FINGER IN THE TRIGGER WELL?

A: When last observed weapon was on safe *JEC*

Q: WAS THERE ANY ~~CHANGE~~^{///} CHANGE TO THE THREAT LEVEL AT THE STATION THAT WOULD HAVE CAUSED YOU TO BE "ON EDGE"?

A: NO *JEC*

Q: ARE THERE ANY PROBLEMS/SITUATIONS IN YOUR PERSONAL LIFE THAT WOULD CAUSE YOU TO BE "ON EDGE"?

A: NO *JEC*

/// NOTHING FOLLOWS ///

AFFIDAVIT

I, PFC JAMES E. COMBS III, 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.

James E. Combs III
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22ND day of SEPTEMBER, 2004 at CAMP LUERNG, BAGHDAD, IRAQ

ORGANIZATION OR ADDRESS

Nicholas Petit
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

ILT PETIT, NICHOLAS P.
(Typed Name of Person Administering Oath)
APT 136, UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

JEC

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 IP Station #10 (AL BABAL SHIKH)	2. DATE (YYYYMMDD) 2004/10/01 <i>LD</i>	3. TIME 0945 <i>LD</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME DURAN, LEVI BENJAMIN	6. SSN	7. GRADE/STATUS E-5/AD	
8. ORGANIZATION OR ADDRESS 272 MILITARY POLICE COMPANY APO AE 09390 / 759TH MILITARY POLICE BATTALION			

9. *LD*, LEVI BENJAMIN DURAN, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

QUESTIONS BEING ASKED BY 1LT BRANDT R. WATHEN (15-6 INVESTIGATING OFFICER)
RESPONSES BEING MADE BY SGT DURAN (SUBJECTS TEAM LEADER)

Q: YOU WERE ADVISED OF YOUR RIGHTS PREVIOUSLY ON 22 SEP 04, AND I AM MAKING YOU AWARE THAT THOSE RIGHTS STILL APPLY. DO YOU STILL WISH TO MAKE A STATEMENT AND/OR ANSWER MY QUESTIONS?
A: YES

Q: Are you the team leader of PFC Combs, James E. III?
A: Yes

Q: Describe the duties of your team while at IP station #10.
A: We conduct inventory of the arms room, detainee count, and supply 2 soldiers to go to the roof for force protection. Usually the NCO does the counts, and the other 2 members of the team provide the roof force protection. Usually Cook and Combs provide the force protection. There are usually IP's up there too.

Q: On 22 SEP 04 how was your team positioned?
A: Cook and I were on the rooftop outside of the bunker on the SW corner of the station. Combs was inside.

Q: Can you describe for me how PFC Combs was positioned in the tower?
A: PFC Combs was seated in the chair facing out in order to see both firing ports.

Q: How was PFC Combs holding his weapon when you last checked on him?
A: I last checked on him about 10 minutes prior to the discharge. I believe he had his weapon at the low ready, which is the weapon composure I brief them to use during the duties at the station. The only weapon that is different is the M249 which I brief them they may position propped in the firing port with muzzle pointing upward.

Q: What is the normal posture of weapons while performing force protection duties at the station?
A: The weapons are at red status (round chambered) and the selector switch on safe unless ready to fire at a hostile threat. This is normal for all IP stations

Q: In referring to your previous written statement what did you say to PFC Combs after the discharge and what was his response?
A: I knew Combs had fired the round, because of the dust blown out of the bunker firing ports. I went in and observed PFC Combs was seated facing the alley that runs parallel to Main St. I asked Combs what he had fired at? Combs responded It went off, it was on safe! I asked him where the weapon was pointed? Combs replied somewhere toward the alley.

Q: Did you conduct a function check on the PFC Combs' weapon?
A: Yes I did. I personally performed one when we returned to Camp Cuervo and the safety worked, and the weapon was functional. Just something else to add, I personally make sure that we rotate our rounds so that the current round is not chambered and over and over again causing the primer to slightly dent making it more susceptible to discharge. I can guarantee that his weapon was functioning properly.

Q: Was there anything at all that happened or went on that you would say put your team on edge or would make them think that any hostile action was occurring or was about to occur?

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>LD</i>	PAGE 1 OF <i>LD</i> <u>03</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.

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

STATEMENT OF LEVI BENJAMIN DURAN TAKEN AT IP Station #10 DATED 2004/10/01

9. STATEMENT (Continued)

A: No, nothing at all. Nothing whatsoever.

Q: Is there anything else you would like to add?

A: I cant think of anything else at this time.

NOTHING FOLLOWS
LSD

INITIALS OF PERSON MAKING STATEMENT

LSD

PAGE 2 OF 3 PAGES

STATEMENT (Continued)

NOT USED

LBD

AFFIDAVIT

I, LEVI BENJAMIN DURAN, 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.

LBD

(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 1 day of OCT, 2004 at IP STATION #10

Brandt R. Wathen

(Signature of Person Administering Oath)

1LT BRANDT R. WATHEN

(Typed Name of Person Administering Oath)

Art 136 b(4) OCMJ

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT *LBD*

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 IP Station #10 (AL BABAL SHIKH)	2. DATE (YYYYMMDD) <i>10</i> 2004/10/01	3. TIME <i>1015</i> 1015	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME COOK, WADE EDWARD	6. SSN	7. GRADE/STATUS E-4/AD	
8. ORGANIZATION OR ADDRESS 272 MILITARY POLICE COMPANY APO AE 09390 / 759TH MILITARY POLICE BATTALION			

9. I, COOK, WADE EDWARD, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

QUESTIONS BEING ASKED BY 1LT BRANDT R. WATHEN
 ANSWERS BEING MADE BY SPC COOK (SUBJECTS TEAMMATE)

Q: Are you in the same team as PFC Combs, James E. III?
 A: No

Q: Describe to me the events that took place on 22 SEP 04, with regard to the discharge of PFC Combs weapon.
 A: Myself and SGT Duran were outside the bunker on the rooftop where Combs was positioned. We were conducting normal force protection duties when I heard a shot come from inside the bunker. I was just outside the bunker. I knew it had come from inside the bunker because the shot was muffled. I immediately dropped to a knee and then SGT Duran went in the bunker to check on Combs. I went in behind him and observed PFC Combs was seated in the chair inside and had his weapon sitting across his lap. He looked very pale and was visibly shaking. I saw he had his weapon with one hand on it and had his magazine in the other, as if he had just cleared his weapon. I heard SGT Duran ask where the round had gone that he had fired. He told SGT Duran over there waving his hand in the general direction of the alley. It was soon after this I heard the IPs saying that a woman had been shot. I want to say that during that time there was about double the traffic and people as right now

Q: When the above incident occurred how was PFC Combs seated in the tower?
 A: I know that 10 minutes before he was in there with his weapon across his lap.

Q: So the weapon was not at the low ready or pointed outside the window?
 A: No when I saw him 10 minutes prior it was on his lap.

Q: What was PFC Combs' reaction after the round was fired?
 A: He was shaking and very quiet. I have known him ever since he came to us. He is very laid back all the time and is the most relaxed guy in the platoon, he never talked about killing anyone or anything like that.

Q: When you asked him where the round went did he know at all?
 A: I don't know for sure, but he waved his hand in the general direction of the alley, he did not point at a specific area.

Q: Was there anything at all that happened or went on that you would say put your team on edge or would make them think that any hostile action was occurring or was about to occur?
 A: There was some shots that went on before, but nothing at that time that made me feel threatened.

Q: Is there anything else you would like to add?
 A: Yes, I don't understand how the people got the injured woman from here to the hospital in 15 minutes. Traffic was very bad and I don't know if they could have got her there that fast. I guess if they knew a back way or something maybe it is possible.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>[Signature]</i>	PAGE 1 OF <u>13</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 INDICATED.

Exhibit E

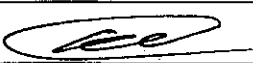
USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

NOT USED 

INITIALS OF PERSON MAKING STATEMENT



PAGE 2 OF 3 PAGES

STATEMENT OF _____

TAKEN AT _____

DATED _____

9. STATEMENT (Continued)

NOT USED

AFFIDAVIT

I, COOK WADG, 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.


(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1 day of OCT, 2004 at IP STATION #10


(Signature of Person Administering Oath)

ILT BRANDT R. WATHEN
(Typed Name of Person Administering Oath)

Art 1366 (4) UCMJ
(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT 

PAGE 3 OF 10 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 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: CAMP CUERVO IRAQ
2. DATE (YYYYMMDD): 2004/10/04
3. TIME: 1200
4. FILE NUMBER:
5. LAST NAME, FIRST NAME, MIDDLE NAME: COMBS, JAMES E., III
6. SSN:
7. GRADE/STATUS: E-3/AD
8. ORGANIZATION OR ADDRESS: 272 MILITARY POLICE COMPANY APO AE 09390 / 759TH MILITARY POLICE BATTALION

9. I, JAMES E. COMBS III, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

QUESTIONS BEING ASKED BY 1LT BRANDT R. WATHEN (15-6 INVESTIGATING OFFICER)
RESPONSES BEING MADE BY [Redacted] - Combs, James E. III PFC

Q: YOU WERE ADVISED OF YOUR RIGHTS PREVIOUSLY ON 22 SEP 04, AND I AM MAKING YOU AWARE THAT THOSE RIGHTS STILL APPLY. DO YOU STILL UNDERSTAND YOUR RIGHTS?, AND DO YOU STILL WISH TO MAKE A STATEMENT AND/OR ANSWER MY QUESTIONS?
A: Yes

Q: Were you present at IP station #10 on 22 SEP 04 at which time a round was discharged fatally wounding an Iraqi local national?
A: Yes

Q: Where were you when the incident occurred?
A: I was in the watchtower on the roof facing the direction of occurrence.

Q: Was it your assigned weapon that discharged fatally wounding the Iraqi local national?
A: Yes

Q: Were you holding the weapon when it discharged?
A: Yes

Q: What was the status of the weapon before the discharge?
A: The weapon was on red status, and the last time i observed it it was on safe.

Q: When was the last time you observed the weapon to be on safe?
A: About 10-15 minutes before the incident.

Q: What was the status of the weapon during the discharge?
A: It was on burst, but I don't know how it got there.

Q: I really need you to remember how the weapon got there.
A: I think that I got confused and placed the weapon on burst and feeling it with my thumb thought it was on safe.

Q: Was your finger in the triggerwell of the weapon when it discharged?
A: Yes

Q: Was your finger on the trigger of the weapon when it discharged?
A: Yes

Q: What is your normal posture of holding the weapon while providing force protection at the station?
A: It depends on each station, but during normal times with no perceived threat at station 10 it is at the low ready.

10. EXHIBIT
11. INITIALS OF PERSON MAKING STATEMENT: JEC
PAGE 1 OF 13 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

STATEMENT OF PFC Combs, James E. III TAKEN AT Camp Cuervo DATED 2004/10/04

9. STATEMENT (Continued)

JEC A: Continued from previous page. I was bored also and was trying to keep myself alert.

JEC Q: Did you have binoculars in the tower to "scan with" when you were in that tower?

A: Yes

JEC Q: How were you advised to do the job in the tower?

A: Normal Force protection duties according to our company policies and procedures.

JEC Q: Your team leader told me he briefed you on the posture in the tower. He told me the posture is weapon at the low ready unless a threat or target is identified. Is this true?

A: I'm not going to say he did it that day, but he has told me before.

JEC Q: From what I can tell and from the diagrams and pictures I have shown you, I am assuming that your weapon was pointed out of the bunker window, and not on your lap just prior to discharge. Is this true?

A: Yes the weapon was shouldered and I was seated with the weapon pointed outside of the window not resting on the window.

JEC Q: So the weapon is pointed out of the window, and now your finger is inside the trigger well correct?

A: Yes

JEC Q: So with the weapon pointed out the window, you are scanning your sector, and your finger is in the trigger well, this leads me to believe you had a threat identified or felt there was a threat against coalition forces correct?

A: I was bored and trying to stay alert as I said earlier. I also saw a car pull up and open the trunk with several males standing around the back of the car. I thought that i should be ready if they were to pull anything out of the trunk.

JEC Q: When was the last time a function check was done on your weapon?

A: I cleaned it the night before and did one then, and it worked.

JEC Q: You said in your statement you were looking down the alley and saw a few people. How many?

A: 3-5 possibly but I am not sure.

JEC Q: What were the people wearing?

A: No I don't remember

JEC Q: What was the local national that was hit wearing?

A: I think she was wearing some kind of black dress but I can't be sure.

JEC Q: What was she doing? walking? Stationary?

A: I never saw her before, or saw her go down.

JEC Q: How far would you say she was from your position?

A: About 125-150 meters estimated

JEC Q: Did she or anyone around her display any hostile action toward coalition forces?

A: There was alot of yelling coming from the alley and I didn't know for sure what was going on.

JEC Q: Is there anything else you would like to add?

A: Truthfully I gave you the whole story, I didn't tell the others that part about the weapon being on burst.

JEC Q: I want to revisit the burst thing. We need to find out how the weapon got on burst status.

A: I know when I did the function check the night before I for sure put it on safe. I know for a fact that it was on safe when i went to red status as we left Cuervo that morning. I was tinkering with the weapon, and took the straps off, and removed the sight and made a sight adjustment. This was at station 11 prior to departing for station 10. I didn't unload the weapon while I did this. Then we departed for station 10. When we arrived at station 10 I believe it was still on safe. Then I assumed tower duties. At some point while in the tower I was playing scenarios in my nead such as when the car trunk opened. At some point I can't remember exactly when, I am sure I placed my weapon on burst playing out one of these scenarios. I then am sure that I forgot to place it back on safe and that is how the accident occurred. I want to say that in no way did I intend for any of this to happen, and I am ver sorry that it did. I wish everyday that i could take it back. It was an accident. I am so sorry to the family.

INITIALS OF PERSON MAKING STATEMENT

JEC

PAGE 2 OF 3 PAGES

STATEMENT OF PFC Combs, James E. III TAKEN AT Camp Cuervo DATED 2004/10/04

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INITIALS OF PERSON MAKING STATEMENT

JEC

PAGE 2 OF 3 PAGES

9. STATEMENT (Continued)

NOT USED

JEC
JEC

AFFIDAVIT

I, James E. Combs III, 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.

James E. Combs III
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 4 day of October, 2004 at Camp Cuervo

ORGANIZATION OR ADDRESS

1LT Brandt R. Wathen
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

1LT Brandt R. Wathen
(Typed Name of Person Administering Oath)
Act 136 B (4) UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT JEC

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 (7) (C), 5 U.S.C. 552 (b) (7) (C):

Criminal Investigation Report

Contents cannot be released outside the Department of the Army without the approval of the Commander, United States Army Criminal Investigation Command, Fort Belvoir, VA.

