

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

DATA REQUIRED BY THE PRIVACY ACT

PRIVACY: 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 New Kabul Compound	2. DATE 17 Mar 10	3. TIME	4. FILE NO.
5. NAME (Last, First, MI) (b)(3), (b)(6)	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS MAJ		

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 USFOR-A and wanted to question me about the following offense(s) of which I am suspected/accused: Making a False Official Statement in violation of Article 107, UCMJ and or False Swearing in violation of Article 134 UCMJ

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.

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 (Continued 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 (b)(3), (b)(6)
1a. NAME (Type or Print) (b)(3), (b)(6)	b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR MG Timothy McHale
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

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

SIGNATURE OF INTERVIEWEE

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

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

WARNING - Inform the suspect/accused of:

- a. Your official position.
- b. Nature of offense(s).
- c. The fact that he/she is a suspect/accused.

2. RIGHTS - Advise the suspect/accused of his/her rights as follows:

- "Before I ask you any questions, you must understand your rights."
- a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

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

- or -

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

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

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

THE WAIVER

"Do you understand your rights?"

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

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

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

SPECIAL INSTRUCTIONS

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

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

PRIOR INCRIMINATING STATEMENTS:

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

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

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

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

COMMENTS (Continued)

SWORN STATEMENT

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

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN),

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD) 2010/03/02	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3), (b)(6)	6. SSN (b)(6)	7. GRADE/STATUS MAJOR/AD	

8. ORGANIZATION OR ADDRESS

9. I, (b)(3), (b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

INITIAL STATEMENT WAS TAKEN 2 MAR 2010.

ADDITIONAL QUESTIONING OF MAJ (b)(3), (b)(6) OCCURED ON 17 MAR 2010 AND IS INCLUDED.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 46 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.

STATEMENT OF MAJ (b)(3), (b)(6) DATED 02 MARCH 2010

MG: How long have you been in the Army?

MAJ (b)(3), (b)(6) Eleven years in August Sir.

MG: What is your commissioning source?

MAJ (b)(3), (b)(6) ROTC Sir.

MG: What college?

MAJ (b)(6)

MG: In those eleven years, could you tell me little bit about your training and career.

MAJ (b)(3), (b)(6) Yes sir. (b)(6)

(b)(6)

MG: You've been in this staff job since September?

MAJ (b)(3), (b)(6) Yes sir. We got back from OEF 13, the end of August. In September I moved into this position?

MG: When did you deploy here?

MAJ (b)(3), (b)(6) January 11, I believe sir.

MG: What kind of preparation training have you had for this deployment?

MAJ (b)(3), (b)(6) Staff wise, in addition to the computer systems training, INTEL systems, we planned a MRX out of the ASOC-C battle lab at FT Bragg. I believe SWIC runs it. It mimics the JOC sir. We had about 30 people running it, myself, MAJ (b)(3), (b)(6) acting as the JOC Chief. We had 80% of the personnel here on the ground with 3d Group participate. It covers everything from battle drills, resupply missions, things we would see day to day. It included reporting requirements, the ISAF directives. Our JAG provided a class that included a CIVCAS incident and reporting requirements and all the things we would deal with.

MG: On the night and day of the incident, the reporting started around 0300z, where were you?

MAJ (b)(3), (b)(6) Sleeping sir.

MG: And when did you come on duty?

MAJ (b)(3), (b)(6) Arrived around 0400Z sir.

STATEMENT OF MAJ (b)(3), (b)(6) DATED 02 MARCH 2010

CO (b)(3), (b)(6) 0830 local.

MAJ (b)(3), (b)(6) Yes sir.

MG: And your shift change is when?

MAJ (b)(3), (b)(6) 0900 local sir. We usually arrive in a half of an hour early sir.

MG: Who oversees the chief change between you and MAJ (b)(3), (b)(6), is LTC (b)(3), (b)(6) there?

MAJ (b)(3), (b)(6) He was in and out that day, it was Sunday. We don't have a formal brief on Sunday mornings. We run at CUB at 0600Z, 1030L. We didn't have generally the people would be on the floor at that time. Just shift personnel swapping out sir.

MG: Walk us through what you do for the shift change, and battle handover.

MAJ (b)(3), (b)(6) We do a couple things, a JOC Chief read-file, between me and MAJ (b)(3), (b)(6); we highlight the big things that happen that day, go over emails from the COL or CJSOTF. First thing, we address what's in the folder. We have a white board that includes battle handovers for our level ones and twos. Any TICs that happened or MEDEVACs that occurred. Any exclusives on de-confliction whether from it be from 310 or outside agency that needs to do one within our AOs. We just go down the line and discuss each one. The TIC we have the CONOPs printed, we have the TIC slide we print as well we can call SOTF and coordinate. The MRX did the same thing we did here, so it's pretty well rehearsed. We live 100 meters from the JOC so we can go ask if there is confusion. That morning, MAJ (b)(3), (b)(6) advised me of the events that were going on, the actions that led up to that incident.

MG: And you got here right before the strike happened?

MAJ (b)(3), (b)(6) Yes sir.

MG: What was specifically discussed that day during the battle handover, what was the JOC doing, specifically on this incident?

MAJ (b)(3), (b)(6) First I got the update of the primary objective which was 12 kilometers west of the strike site; we had a good situation of where everybody was at, where our friendlies were located. In the event something pops up and we end up pushing, we have a good way to update the commanders of where our guys are at. We then shifted to the reporting of the possible reinforcements. Then what the ISR was reporting, what they observed. The different actions the people were taking in and out of the vehicles. The reporting coming out of the objective. The SOC B and SOC A, what they were reporting on the (b)(1)1.4c.

MG: What was specifically reported on the mIRC chat and ISR?

MAJ (b)(3), (b)(6) The initial report I had was 30-40 personnel massing. They were moving village to village loading weapons and fighters. And that they were moving north to south and the outlining villages. The

STATEMENT OF MAJ (b)(3), (b)(6) DATED 02 MARCH 2010

plan that the GFC had at that time was that those forces were headed toward the target to reinforce. Part of that was, I wouldn't call them Taliban Senior Leadership, but some kind of sub commander who had requested through the (b)(1)1.4c insurgent fighters to come and reinforce the objective.

CO (b)(3), (b)(6) Your first name again, I'm sorry?

MAJ (b)(3), (b)(6) sir.

CO (b)(3), (b)(6) What I'm going to do is just ask some process questions of how this place operates so we have a better context; some background questions and that is so we can, the dialog that we are going to have we have the same reference point; we will talk a little in detail about what the boss just asked you about the activities when you took over; the strike; reporting up and down the chain; and activities after the strike. I will turn it over to (b)(3), (b)(6) and he will get into the specifics here and then he will turn it back over to me. No one is suspecting you of nothing we got to get to the bottom of what happened and how to prevent it in the future.

MAJ (b)(3), (b)(6) Roger sir.

CO (b)(3), (b)(6) The ODB, what is its role generally once an ODA leaves the wire?

MAJ (b)(3), (b)(6) Just battle tracking and general support. We go, when an ODA is out of the wire, this is just my experience, I never report back to the SOTF. The SOTF is the first in line of echelon for SF that enables that ODA on the ground. We only use the AOB for is if it becomes a choke point for information and doctrinally, what it should be, is a supporting role to the ODA. Pushing logistics, helping staff CONOPS and pushing up administratively. But in this situation the AOB was not involved in the any of the reporting process.

CO (b)(3), (b)(6) When you say doctrinally, what do you mean? Who's doctrinally? We observed that the ODB is a command and control HQs and synchronizes the ODAs in the fight.

MAJ (b)(3), (b)(6) That's being misconstrued I think; they are not reporting up to the AOBs. On a particular mission like this they are not coming up on the 102 and talking to an AOB and the SOTF is not monitoring that traffic. Its VFR directly from the ODA to the SOTF.

CO (b)(3), (b)(6) As we are looking at the C2 rings of responsibility. The ODB is out of the fight the CJSTF with command and control pick up 24. You're tracking how many ODAs out there.

MAJ (b)(3), (b)(6) ODAs sir, anywhere from 17 to 35.

CO (b)(3), (b)(6) Think that exceeds command and controls span of control. I ask that you look at RC East has ODB that are operating the east, having command and control of ODAs in the fight. Down the road, you need to have a discussion on how to thicken the ranks of responsibility.

MAJ (b)(3), (b)(6) You see RC east ODBs controlling AOBs in the east sir?

STATEMENT OF MAJ (b)(3), (b)(6) DATED 02 MARCH 2010

CO (b)(3), (b)(6) That is correct.

MA (b)(3), (b)(6) Is that what you have been told sir or observed?

CO (b)(3), (b)(6) That's what we're observing.

MA (b)(3), (b)(6) They are also reporting back to the SOTF, just as the south and west, so from my perspective I'm not seeing that sir.

CO (b)(3), (b)(6) What is the CCIR in this HQ that generates action up and down the chain?

MA (b)(3), (b)(6) The operational guidance CCIR requires immediately reporting of TIC, detainees specifically HVI/MVI, injury or death CJSOTF members, death of ANSF partners, confirmed or alleged CIVCAS, friendly fire incidents blue on blue, green on green, blue on green, or green on blue, EOF incidents directly against civilians, use of CAS on the compound, destruction of GMV/MRAPs, or requested destruction of a MGV/MRAP, downed aircraft, air space or border incursion or anyone that will cause significant media or attention or embarrassment to the command sir.

MG: Confirmed or alleged CIVCAS, explain how you interpret that?

MA (b)(3), (b)(6) Confirmed is easy; that would be from GFC seeing a dead or wounded. Alleged I interpret if anyone reports a CIVCAS, that is alleged CIVCAS until we can prove otherwise.

MG: What is immediate, when do we think immediate happens?

MA (b)(3), (b)(6) On the spot, we must inform the commander immediately.

CO (b)(3), (b)(6) I want to get a definitional framework. What does TIC mean to you?

MA (b)(3), (b)(6) Troops in Contact, trading lead with the enemy sir.

CO (b)(3), (b)(6) Is that what you interpret it means for the command as well?

MA (b)(3), (b)(6) I would like to sir, however since I have been here I have learned that are different levels sir. We assign different TIC numbers and different priorities to ODA. Example, if an ODA is moving and feel threatened and they assume that might be get involved into a TIC that becomes an ISAF priority. A number is assigned and they don't have to be trading lead. However it alerts us all that a unit may be getting involved soon in a TIC.

CO (b)(3), (b)(6) Where does that come from?

We push it through the ISAF CENTRIX. We say hey we have a unit that calls in a SALT report.

CO (b)(3), (b)(6) But you don't declare a TIC.

MA (b)(3), (b)(6) Is declared a TIC, because he comes up on the ISAF JOC watch and it gets a TIC number against itself. We track it as a TIC but don't go through the battle drills, but we do track it.

STATEMENT OF MAJ [REDACTED] (b)(3), (b)(6) DATED 02 MARCH 2010

CO [REDACTED] (b)(3), (b)(6) What does PID mean to you?

MA [REDACTED] (b)(3), (b)(6) That means you PID whatever it is you are describing.

CO [REDACTED] (b)(3), (b)(6) Need you to explain that more specifically.

MA [REDACTED] (b)(3), (b)(6) If you PID a weapon then you saw a weapon.

CO [REDACTED] (b)(3), (b)(6) Hostile intent, what do you think that is?

MA [REDACTED] (b)(3), (b)(6) Hostile could be raising a weapon raised towards you; what we are using now and is being supported through a lot of the ISAF stuff and that it's coming back like a priority TIC, it now comes over [REDACTED] (b)(1)1.4c That's now considered hostile intent when we ask ISAF to assign a number to this so we can press aircraft over the ODA.

CO [REDACTED] (b)(3), (b)(6) What is imminent threat to you?

MA [REDACTED] (b)(3), (b)(6) It means it is going to happen; I am about to get hit.

CO [REDACTED] (b)(3), (b)(6) Is that a US definition or the ISAF definition?

MA [REDACTED] (b)(3), (b)(6) Don't know sir; we could probably have that argument all day long.

CO [REDACTED] (b)(3), (b)(6) There's really no argument but we will come back to that later. Who declares TIC?

MA [REDACTED] (b)(3), (b)(6) Ground force commander.

CO [REDACTED] (b)(3), (b)(6) Is there a battle drill that occurs in the JOC when that happens?

MA [REDACTED] (b)(3), (b)(6) Absolutely.

CO [REDACTED] (b)(3), (b)(6) Walk me through that.

MA [REDACTED] (b)(3), (b)(6) Ground force commander calls up and reports a SALT, he declares TIC at that time. We have a battle drill sheet we go through; list the SALT. We verify the tasked org, the CONOP, their location to any other teams, and checks points listed, we sensitize FIRES, weather, MEDEVAC, and the commander immediately and concurrently, let them know we have TIC.

CO [REDACTED] (b)(3), (b)(6) The person who first sees it, what his responsibility to initiate the drill?

MA [REDACTED] (b)(3), (b)(6) Everyone has slightly different drills sir. It comes up [REDACTED] (b)(1)1.4c so everyone hears it. The JOC NCOIC or SGM will stand up and yell attention in the JOC. The information is distributed throughout the JOC to get everyone's attention to start their drill.

CO [REDACTED] (b)(3), (b)(6) The first guy that identifies a TIC has been declared, if no one else has said anything.

MA [REDACTED] (b)(3), (b)(6) Then, they stand up and yell attention in the JOC, TIC.