

Investigating Officer's **Guide to Article 139 UCMJ** **Investigations**

This book is intended to help an officer tasked to conduct investigations of claims made pursuant to UCMJ Article 139. It should help the IO focus on the material aspects of the investigation and provide a guide to the paperwork that must be completed.

The Article 139 Process

Purpose: To set forth the steps in filing, adjudicating, and processing an Article 139 Claim.

Procedure:

1. **Claim Filing.** Any individual, corporation, or entity may file a claim against a soldier for willful/intentional property damage or loss due to vandalism or theft. There is no official form required to file a claim. Often, a type- or handwritten paragraph will initiate the claim. A claim may be submitted orally, but must be reduced to a written form within 10 days of presentation. A claim may be submitted to any Army officer.
2. **Presentation to the Special-Court Martial Convening Authority.** The individual making a claim against a soldier must present the claim to the person who has special court-martial convening authority (SPCMCA) over the soldier. This is usually the soldier's brigade commander. If there is any question as to who is the SPCMCA, contact the unit's 27D (paralegal specialist) for assistance. **A claim must be submitted within 90 days of the incident that gave rise to it, unless good cause for the delay is shown.**
3. **Appointment of the Investigating Officer (IO).** According to AR 27-20, if a claim appears cognizable, the SPCMCA must appoint an IO to conduct an informal investigation within 4 working days of receiving the claim. If the claim does not appear cognizable, the SPCMCA should forward the claim to a Claims Judge Advocate for a legal review. However, if after the legal review the SPCMCA still determines the claim is not cognizable, the SPCMCA may deny the claim without appointing an IO.
4. **Legal briefing.** As soon as possible after appointment, the IO will meet with a Claims Judge Advocate and receive a legal briefing. This briefing will discuss the scope of the investigation, investigation procedures, and the required paperwork.
5. **Investigation.** The IO will complete an investigation of the claim within 10 working days. The SPCMCA may extend the investigation period for good cause. A Claims Judge Advocate will at all times be available to advise the IO on procedural and legal questions.
6. **Legal review.** Within 5 working days of completion of the investigation, the IO will again meet with the Claims Judge Advocate for a legal review. This review will determine if the IO's findings and recommendations are supported by the evidence and are legally sufficient. If they are not, the claim may be returned to the IO for further investigation.
7. **Final action by the SPCMCA.** After the legal review, the IO will present his or her findings and recommendations to the SPCMCA. The SPCMCA will decide whether the claim is cognizable and, if so, in what amount.

8. Reconsideration period. Both the claimant and respondent will have a 10 working day period after the SPCMCA's decision to request a reconsideration.

9. Assessment. After the reconsideration period, the SPCMCA will direct the local finance company to assess the respondent's pay and forward that amount to the claimant, assuming the claim is cognizable.

References:

AR 27-20, Claims

DA PAM 27-162, Claims Procedures

Article 139 Paperwork

The IO should obtain a six-sided folder or other device in which to keep copies of all relevant documents. This folder should be logically organized and will be presented to the SPCMCA for review.

The six-sided folder should contain the following documents:

1. A table of contents
2. A copy of the original writing stating the Article 139 Claim
3. A copy of the IO's appointment letter.
4. Copies of the notification letters to the claimant and respondent. These letters will be prepared by the respondent's unit's 27D and contain the signature block and letterhead of the SPCMCA.
5. DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers. This form, along with any sworn and unsworn statements and rights waivers, will be the only paperwork that the IO must generate himself or herself. See the included example.
6. Evidence. All documentary evidence that the IO has used in the investigation should be placed in the folder for examination by the SPCMCA. This might include police or military police reports, sworn or unsworn witness statements, rights waivers, photographs, narratives, receipts, appraisals, etc. Items should be placed logically and may be tabbed for easy perusal.
7. A copy of the memorandum from the Claims Judge Advocate to the SPCMCA containing the results of the legal review.
8. Copies of the letters from the SPCMCA to the claimant and respondent notifying them of his or her decision regarding the claim. The letters will also notify the claimant and respondent of the reconsideration period. The letter to the respondent will also contain a copy of DA Form 1574. These letters will be prepared by the respondent's unit's 27D and contain the signature block and letterhead of the SPCMCA.
9. Copies of the SPCMCA's letters to the claimant and respondent setting forth the authority's final decision. These letters will be prepared by the respondent's unit's 27D and contain the signature block and letterhead of the SPCMCA.
10. A copy of the memorandum from the SPCMCA to the local finance company setting forth his or her order to assess the soldier's pay and forward the amount to the claimant. This memorandum will be prepared by the respondent's unit's 27D and contain the signature block of the SPCMCA.

11. A copy of DD Form 100, Pay Adjustment Authorization. This form will be prepared by the respondent's unit's 27D and forwarded to the Claims Judge Advocate for review. The Claims Judge Advocate will then forward this form, along with a memorandum, to the SPCMCA for his or her signature.

12. Memorandum to SPCMCA requesting the authority to sign the DD Form 100. This memorandum is usually prepared by the Claims Judge Advocate

*****Upon completion of the claim, the file will be given to the assisting 27D to bring to the XVIII Airborne Corps Claims Office.*****

Paperwork Generated by the IO

The IO should only have to produce:

1. DA Form 1574 containing the IO's findings and recommendations.
2. (Optional) DA Form 2823, Sworn Statement. Use this form to take any written statements from witnesses or the respondent. See enclosed guidance.
3. (Optional) DA Form 3881, Rights Warning Procedure/Waiver Certificate. This form *must* be used when a person suspected of criminal misconduct is questioned. See enclosed guidance.
4. (Optional) Any memoranda for record that the IO has produced.

Paperwork Generated by the Claims Judge Advocate

1. Memorandum setting forth the results of the legal review.
2. Memorandum asking SPCMCA to sign DD Form 100, Pay Adjustment Authorization

Paperwork Generated by the 27D

1. Notification letters to the claimant and respondent that a claim has been filed and an IO has been appointed.
2. Letters containing the SPCMCA's initial decision regarding the claim and notifying the claimant and respondent of the reconsideration period. The letter to the respondent must contain a copy of DA Form 1574.
3. Letters containing the SPCMCA's final decision.
4. Memorandum from the SPCMCA to the local finance company.
5. DD Form 100, Pay Adjustment Authorization

Making a Recommendation

The duties of an IO in investigating an Article 139 claim are set forth in DA Pam 27-162, paragraph 9-7. For a respondent to be found liable for the claim, the IO must find, and the SPCMCA must concur, that the respondent willfully damaged another's property. See DA Pam 27-162, paragraph 9-4.

The standard of proof that the IO must apply may be stated as follows: the IO must find that the preponderance of the evidence shows that the respondent willfully damaged the claimant's property. See DA Pam 27-162, paragraph 9-7. This "preponderance of the evidence" standard may be stated another way: the IO must be satisfied that, *more likely than not*, the respondent willfully damaged or stole the claimant's property.

Also, the IO must be convinced that the respondent *willfully* damaged or stole the claimant's property. That a respondent may have negligently damaged another's property is not enough. Accidentally or unintentionally damaging another's property is insufficient to find a soldier liable.

The amount of evidence that an IO gathers before making a decision is up to the particular individual. Often, statements made to the military police, other soldiers, or commanders combined with police reports may be enough to convince an IO of liability. However, the IO must provide enough evidence to the Claims Judge Advocate to allow him or her to make a finding of legal sufficiency. In addition, the IO must be able to articulate the reasons for recommending or not recommending liability to the SPCMCA. This is mainly accomplished through a detailed explanation on DA Form 1574. All documentary evidence that is relevant to the IO's decision should be placed in the six-sided folder for the SPCMCA.

Assessing Damages

If the IO determines that a respondent has willfully damaged the claimant's property, the IO must also recommend the amount that the claimant should be paid. In this case, the claimant should be placed in the same position he or she would have been in had the respondent not damaged the property. In determining the amount to which a claimant may be entitled, the IO must determine the value of the damaged property.

The internet provides an excellent resource for the determination of value. Also, the claimant may be required by the IO to provide an estimate of repair in order to justify the amount claimed. The IO may depreciate the property based on age and condition. One guide to depreciation that is useful may be found in DA Pam 27-162, Chapter 11. A copy of this depreciation guide is enclosed.

Unsworn Statements

Unsworn statements may be taken on DA Form 2823, the same form used for taking sworn statements. Be sure to strike the word "sworn" on the form and insert the word "unsworn". Be sure to initial the insertion.

OBTAINING WRITTEN STATEMENTS

Written statements are permanent records of the testimony of people suspected of misconduct, victims, and witnesses. Although they may be sworn or un-sworn under AR 15-6, the appointing authority usually requires that they be sworn. Statements taken for an AR 15-6 investigation are occasionally used in court or in an administrative proceeding as evidence attesting to what was told investigators or to refresh the memory of the persons making the statements. Statements may also be used as evidence of negligence or willful misconduct in a report of survey (ROS) investigation.

Record testimony of a person suspected of misconduct, a witness, or a victim on DA Form 2823 (Sworn Statement). The written statement that must accompany the sworn statement of people suspected of criminal misconduct is recorded on DA Form 3881 (Rights Warning Procedure/Waiver Certificate).

PREPARING DA FORM 2823

Written statements should be carefully and completely prepared. Begin with the heading of each DA Form 2823. List the place where the statement is made. Give the date and time it was signed. Give the name, the grade or rank, and the organization or address of the maker of the statement. The time may be entered by you or the interviewee. In either case, have it initialed by the interviewee.

You may record the body of the statement in a narrative format, question and answer format, or in a combination of the two. In the narrative format the subject relates his information in his own words in the first person. This format is ideal if he can express himself concisely. Otherwise, to get pertinent information, you can help the interviewee prepare the statement. The narrative format is used more often with a complainant or witness than with a victim or suspect. In the question and answer format, you can limit what is recorded to that which is pertinent. But this method is time-consuming. And it may suppress information that might have been volunteered if the narrative format were used. A combined format produces the best results. You allow the subject to express himself. Then you elicit any information he has omitted. This method is used most often with a victim or a suspect. Whatever the format, you must make sure the statement contains all the information you need to firmly prove or disprove the allegation.

The content of the body is extremely important. It must present the truth of the case under investigation. *It must answer the who, what, where, when, why, and how of the crime or misconduct under investigation.* All elements of proof for the suspected crime or misconduct must be present. It must cite the times and dates of specific acts and the methods used to complete the crime or misconduct. It must identify suspects, accomplices, witnesses, and persons knowing of the crime or misconduct. It must account for stolen property and instruments used. It must tie the evidence to the victim and/or to the suspect. The subject must be given a chance to express anything he wishes that is related to the matter under investigation. You must keep asking "Do you have anything

you wish to add concerning this matter?" until you receive the answer "No." After the last word of the body of the statement, write End of Statement to close it out.

If the statement will not fit on the front and back of one DA Form 2823, you can use continuation pages. If you do, begin the statement on the front of DA Form 2823. Line out the reverse side with one diagonal line drawn from corner to corner. Do not include the lined-out side of the form in the page count, It does not need to be initialed. Use white bond paper for your continuation pages. Each page must have a heading giving the same information as the heading of DA Form 2823 and bearing the word "continued." The bottom of each continuation page must show the initials of the person making the statement. It must also cite the page number in relation to total pages of the statement. Conclude the statement on the back of a second DA Form 2823 on which you will also obtain the affidavit.

The affidavit is the last section of the DA Form 2823. It states that the information was given voluntarily and that mistakes on the statement have been corrected. It shows that the number of pages in the statement have been verified.

If a mistake is made and noticed while the statement is being typed, make slash marks over each letter and leave a space for the subject's initials. This way, the wrong word can still be seen, and it will not cause any doubt when and if the statement is introduced into court. If a mistake is found after the statement is completed, line the word out, write the correction above the mistake, and then have it initialed by the subject. *Do not use correction tape or "white-out" to correct errors.*

Administer the oath to the subject by stating, "Do you swear or affirm that the information given by you in this statement is true and correct to the best of your knowledge, so help you God." If the subject objects to the use of the word God, delete it from the oath. After the interviewee answers the oath in the affirmative, have him initial the statement at the bottom of each page. Then you and he sign the statement in the presence of a witness. Have the witness sign also. The affidavit page is included in the page count of the statement, as it is an integral part of the statement.



SAMPLE DA FORM 2823
SWORN STATEMENT

A COMPLAINANT'S SWORN STATEMENT, RECORDED ON DA FORM 2823 (FRONT)

SWORN STATEMENT			
For use of this form, see AR 190-45; the predominant agency is Office of The Deputy Chief of Staff for Personnel.			
LOCATION Fort McClellan, AL	DATE 19 Nov XX	TIME 0100	FILE NUMBER MPRO 03142-XX
TOLTON, Sharon (NMN)	SOCIAL SECURITY NUMBER. 430-20-3472		GRADE/STATUS SSG
ORGANIZATION OR ADDRESS Co D, 8th Engr Bn, 3d Inf Div, Fort McClellan, AL 36205			

I, Sharon TOLTON, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
 On 6 August 19XX, I purchased a "JOHNSON" citizen's band (CB) radio from Lenlock Radio Sales, located in Lenlock Shopping Center, Anniston, AL, and had it mounted underneath the dash in my privately owned 1984 Ford. At the same time, I purchased a "clip-on" type antenna for the radio and had Lenlock Radio Sales connect the radio and antenna with a cable which they ran underneath the metal strip on the floorboard just inside the left front door of my car. This way I could disconnect my antenna whenever I wanted, and place it inside the car until I was ready to use it again. I knew a lot of CBs were being stolen and I thought maybe if an antenna wasn't visible when I left the car parked somewhere, no one would know I had a CB radio. About 1700, 18 November 19XX, I got off duty and after changing into civilian clothing, I drove over to the main NCO Club here at Ft McClellan. I pulled my car into the parking slot just to the left of the slot reserved for the Club Manager. This would be on the west side of the Club; however, I'm not sure of the building number. I got out of the car, disconnected the "clip-on" CB antenna, and placed it on the front seat of the car. I know my CB radio was in the car at that time, because I had just turned it off a few minutes before. I'm positive I secured all the doors to my vehicle. I had three or four beers in the Club, and after watching some TV decided to return to my BEQ. It was about 2200, 18 November 19XX, when I departed the Club alone and walked directly to my car. Upon approaching the car, I noticed the left front window had been broken. There was glass lying on the ground and some on the front seat and floorboard of the car. I noticed the left front door was also slightly ajar. At that time I opened the left front door and looked inside. I saw that my CB radio and antenna were missing. It looked as if someone had cut the cable which connected the antenna to the radio, because a piece of the cable was still in the car. I went back inside the NCO Club and telephoned SGT WALKER, the Military Police Desk Sergeant. About 10 minutes later, approximately 2220, the MPs got there. Shortly after that an Investigator arrived, and after processing the scene, transported me here to make a statement.

Q: Were you alone when you went to the NCO Club on 18 Nov XX?
 A: Yes, I was alone all evening with the exception of talking to a few casual acquaintances at the Club.
 Q: Did you touch or disturb anything outside or inside your car when you arrived at the scene and discovered the incident?
 A: The only thing I touched was the door when I opened it and looked inside. I may have stepped on some of the broken glass, but I didn't touch anything else.
 Q: Describe the radio that was stolen from your vehicle on 18 Nov XX.
 A: It's a "JOHNSON" citizen's band (CB), 40-channel selector, combination on-off and volume knob on the left front, channel selector knob to the right front, black in color with chrome trim, model #AS3541K, serial #17189, approximately 12" x 4" x 12" deep, and weighs about 5 or 6 pounds. The name "JOHNSON" is scrip-written across the front of the radio. The radio is in perfect condition and is not marked in any way

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT <i>ST</i>	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [NAME], DATED [DATE], CONTINUED. THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE OF [NUMBER] 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.

**A COMPLAINANT'S SWORN STATEMENT, RECORDED
ON DA FORM 2823 (BACK)**

STATEMENT (Continued) STATEMENT OF: SSG Sharon TOLTON, 430-20-3472 TAKEN AT: Ft McClellan, AL DATED 19 NOV XX CONTINUED.
for personal identification. I don't have the sales receipt, but as I said earlier I purchased it on 6 August 19XX, at Lenlock Radio Sales and paid \$129.00 for it. The "clip-on" antenna was \$17.95 extra.

Q: Describe the antenna.
A: It's just a regular metal-type antenna, chrome color, about 18" long. At the base of the antenna is a clip which you press and connect to the chrome trim that runs along the top outside edge of your car.
Q: Describe the vehicle your CB was stolen from.
A: I have a 1984 Ford LTD, 4-door sedan, brown in color with a darker brown vinyl roof, AL 19XX Lic #BET-207, Ft McClellan post dscal E-121.
Q: Describe the piece of antenna cable that was left at the scene.
A: Just a regular coaxial type cable, black in color. About a foot of the cable was left at both ends of the metal strip on the floorboard. It looked as if the antenna end had been cut, and the end nearest the radio disconnected by unplugging it.
Q: Was there anything else taken from your vehicle?
A: No.
Q: Did you notice anyone or anything unusual when you parked your vehicle in the NCO Club parking lot on 18 Nov XX?
A: No. There were some cars parked in the vicinity but I didn't notice anything unusual or pay that much attention to them.
Q: How many people entered or left the Club while you were there?
A: There were at least 70 people in the Club, but I didn't know any of them.
Q: Did you notice anyone or anything unusual when you discovered your vehicle broken into and your CB missing?
A: No, I didn't. Again, there were cars around, but nothing unusual. I didn't see any people in the vicinity.
Q: Is the area where your car was parked lighted?
A: There are some lights around, but it's not really too well lit.
Q: How many persons knew you had a CB radio in your car?
A: Quite a few. I gave a lot of people rides and use the radio a lot.
Q: Do you suspect anyone in particular?
A: No, I have no idea who might have taken it.
Q: Is there anything you wish to add concerning the matter under investigation?
A: No.///END OF STATEMENT///

AFFIDAVIT

I, Sharon TOLTON 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.

WITNESSES:

JOHN R. RODGERS *John R. Rodgers*
11th MP Co, Ft McClellan, AL 36205

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT *ST*

Sharon Tolton
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 19th day of November, 19 XX at FORT McClellan, Alabama

Clifford W. Ball
(Signature of Person Administering Oath)

CLIFFORD W. BALL
(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ
(Authority To Administer Oaths)

PREPARING DA FORM 3881

You must fill out a DA Form 3881 *each time* a person suspected of criminal misconduct is questioned. You can carry this form to have the waiver and rights readily available for use during the course of the investigation.

A DA Form 3881 is necessary for a report of survey investigation if a person is suspected of criminal misconduct in causing the loss, damage or destruction of government property. For example, a soldier suspected of selling his TA-50, of vandalizing a barracks room, or of wrecking a government vehicle while driving intoxicated should be given a rights advisement using the DA Form 3881. No DA Form 3881 is necessary for mere negligence. For example, a DA Form 3881 would be neither necessary nor desirable for a soldier who left his TA-50 unsecured in a common area for a brief period or forgot to lock his work area when he left for the evening.

Initiation of DA Form 3881 begins when you state your official position and that the person being interviewed is now suspected or accused of a particular offense. You can state this in your own words, as long as the subject understands.

It is best to fill out the administrative data on the form first. The heading of the form should be the same as that of the accompanying DA Form 2823. The time and date is that of the hour and day the certificate is signed. The subject should enter the time and initial it.

Make two entries within the rights section. The first states your identification and the office you represent. For example, it may state "126th Finance Battalion as an AR 15-6 investigating officer." The second cites the offense of which the person is suspected at the time of questioning. Use phrases like "Larceny of hand tools," "Inappropriate relationship/fraternization," "Improper use of government resources," "Writing bad checks," "Sexual harassment," or "Failure to obey order or regulation." It is not necessary that you enter the UCMJ article or Army Regulation. Enter the most serious offense that may logically follow from the incident under inquiry at the time of questioning. You may want to consult your legal advisor on the proper offense to cite.

Read the rest of the rights warning, *word for word*, from the certificate form. Reading the form word for word ensures uniformity and completeness in the reading of the rights. It leaves little doubt as to the voluntariness of any statements.

After the warning is given, *ask the suspect if he understands his rights and will be able to freely, knowingly, and intelligently waive them*. If he does understand his rights, then specifically ask him, "Do you understand your rights?" If the suspect says "No," ask him what is not understood. If necessary, repeat the appropriate rights advisement. If the suspect says "Yes," ask him, "Do you want a lawyer at this time?" If the suspect says that he does, stop the questioning until he has a lawyer. If the suspect says that he does not, ask him, "At this time, are you willing to discuss the offense under investigation and make a statement without talking to a lawyer and without having a lawyer present with

you." If the suspect says he is not willing, stop the interview. Have him read and sign the non-waiver section and mark the form to show that he either desires a lawyer or declines to be questioned. If the suspect says he is willing, have him read the waiver section. If the suspect is willing to sign the waiver, have him sign on the proper line in the presence of a witness. Then you and the witness sign. If the suspect refuses to sign or initial the form, he cannot be compelled to do so.

Sometimes a suspect refuses to provide information for the form. He may decline to sign the certificate, initial the time, or even give his true name. Some may refuse to sign, but they may be willing to make verbal statements. In these instances, follow the instructions on the back of the form. If a suspect is willing to discuss the matter under investigation, but he wants to have a lawyer present, modify the form to show this. Then ask him to initial the changes. Remember to record all information about the reading of the rights and the responses of the suspected person.



SAMPLE DA FORM 3881
RIGHTS WARNING PROCEDURE/
WAIVER CERTIFICATE

A SUSPECT'S REFUSAL TO WAIVE RIGHTS, RECORDED ON DA FORM 3881

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
For use of this form, see AR 190-30; the proponent agency is DCSPER.			
<small>AUTHORITY:</small> <small>PRINCIPAL PURPOSE:</small> <small>ROUTINE USES:</small> <small>DISCLOSURE:</small>		<small>DATA REQUIRED BY THE PRIVACY ACT</small> Title 10, United States Code, Section 3012(a). To provide commanders and law enforcement officials with means by which information may be accurately identified. Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval. Disclosure of your Social Security Number is voluntary.	
<small>LOCATION</small> Ft McClellan, AL	<small>DATE</small> 3 DEC XX	<small>TIME</small> 0820	<small>FILE NO.</small> XX-CID063-14321
<small>NAME (Last - First - MI)</small> SIMPSON, James W. Jr.		<small>ORGANIZATION OR ADDRESS</small> HHC 1st BN 22d Inf 171st Inf Bde (Mech) Ft McClellan, AL 36205	
<small>SOCIAL SECURITY NO.</small> 180-24-9023	<small>GRADE/STATUS</small> CPT		
SECTION A - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
<small>RIGHTS</small>			
The investigator whose name appears below told me that he/she is with the United States Army <u>Criminal Investigations</u> <u>Command as a Special Agent</u> and wanted to question me about the following offense(s) of which I am suspected/accused: <u>Rape, Robbery and Illegal Possession of a Weapon///</u> 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 do not have to answer any questions or say anything. 2. Anything I say or do can be used as evidence against me in a criminal trial. 3. (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. (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. However, I understand that I must make my own arrangements to obtain a lawyer and this will be at no expense to the Government. I further understand that if I cannot afford a lawyer and want one, arrangements will be made to obtain a lawyer for me in accordance with the law. 4. 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.			
<small>COMMENT (Continues on reverse side)</small> CPT SIMPSON stated that he understood his rights, does not want a lawyer, wants to discuss the offense(s) under investigation, but refuses to sign the waiver certificate.			
<small>WAIVER</small>			
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.			
<small>WITNESSES (if available)</small>		<small>SIGNATURE OF INTERVIEWEE</small>	
1. NAME (Type or Print) MARCEL VANDERHOEVAN <i>Marcel Vanderhoevan</i>		<small>SIGNATURE OF INVESTIGATOR</small> <i>Reese E. Farrish</i>	
ORGANIZATION OR ADDRESS AND PHONE Ft McClellan FO, Third Region, USACIDC Ft McClellan, AL 36205 (238-5583)			
2. NAME (Type or Print)		<small>TYPED NAME OF INVESTIGATOR</small> RESE E. FARRISH	
ORGANIZATION OR ADDRESS AND PHONE		<small>ORGANIZATION OF INVESTIGATOR</small> Ft McClellan FO, Third Region, USACIDC Ft McClellan, AL 36205	
<small>NON-WAIVER</small>			
I do not want to give up my right:			
<input type="checkbox"/> I want a lawyer.		<input type="checkbox"/> I do not want to be questioned or say anything.	
<small>SIGNATURE OF INTERVIEWEE</small>			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUBJECT SUSPECT/ACCUSED.			

**A SUSPECT'S AGREEMENT TO WAIVE RIGHTS,
RECORDED ON DA FORM 3881**

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
For use of this form, see AR 190-30; the proponent agency is DCSPEA.			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY:	Title 10, United States Code, Section 3012(f).		
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.		
LOCATION	DATE	TIME	FILE NO.
Ft McClellan, AL	5 DEC XX	1305	XX-CID063-13421
NAME (Last - First - All)	ORGANIZATION OR ADDRESS		
SHUMATE, James K.	Co C, 51st Engr Bn		
SOCIAL SECURITY NO.	GRADE/STATUS	Ft McClellan, AL 36205	
141-09-6789	SFC		
SECTION A - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
RIGHTS			
The investigator whose name appears below told me that he/she is with the United States Army <u>Criminal Investigations</u>			
<u>Command as a Special Agent</u> and wanted to question me about the following offense(s) of			
which I am suspected/accused: <u>Aggravated Arson///</u>			
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 do not have to answer any questions or say anything.			
2. Anything I say or do can be used as evidence against me in a criminal trial.			
3. (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. However, I understand that I must make my own arrangements to obtain a lawyer and this will be at no expense to the Government. I further understand that if I cannot afford a lawyer and want one, arrangements will be made to obtain a lawyer for me in accordance with the law.			
4. 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.			
COMMENT (Continue on reverse side)			
I, JAMES K. SHUMATE, understand my legal rights, and willing to discuss the offense under investigation in the presence of my lawyer.			
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)		SIGNATURE OF INTERVIEWEE	
1. NAME (Type or Print) RAYMOND CUNNINGHAM		<i>James K. Shumate</i>	
ORGANIZATION OR ADDRESS AND PHONE Ft McClellan FO, Third Region, USACIDC Ft McClellan, AL 36205 (238-5583)		SIGNATURE OF INVESTIGATOR <i>Paul E. Coffey</i>	
2. NAME (Type or Print) PETER J. KLINE		TYPED NAME OF INVESTIGATOR PAUL E. COFFEY	
ORGANIZATION OR ADDRESS AND PHONE SJA, Ft McClellan, AL 36205 (238-3222)		ORGANIZATION OF INVESTIGATOR Ft McClellan FO, Third Region, USACIDC Ft McClellan, AL 36205	
NON-WAIVER			
I do not want to give up my rights:			
<input type="checkbox"/> I want a lawyer. <input type="checkbox"/> 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 SUBJECT SUSPECT/ACCUSED.			

DA

FORM
NOV 84

3881

EDITION OF MAY 81 IS OBSOLETE.

**AN INVESTIGATOR'S AID TO ISSUING RIGHTS WARNING, RECORDED
ON BACK OF DA FORM 3881**

SECTION B - RIGHTS WARNING PROCEDURE

THE WARNING

1. **WARNING** - Inform the suspect/accused of:

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

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

"Before I ask you any questions, you must understand your rights."

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

- 07 -

(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. However, you must make your own arrangements to obtain a lawyer and this will be at no expense to the Government. If you cannot afford a lawyer and want one, arrangements will be made to obtain a lawyer for you in accordance with the law."

- 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.)

"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 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) apply, 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.

COMMENT (Continued)

SAMPLE