

COURT-MARTIAL RECORD

NAME COMBS, JAMES E. III PFC

SSN [REDACTED]

ACTIONS CODED:

ASSIGNED TO:

INITIAL _____

PANEL 2

ACCA _____

EXAM. DIV. _____

FINAL _____

COMPANION(S): _____

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL IV OF IV VOL(S)

ARMY 20050388

PERMANENT
FILE

G

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

COMBS, James E., III
(NAME: Last, First Middle Initial)

[Redacted]
(Social Security Number)

Private First Class
(Rank)

272d MP Co, 720th MP
Bn, 42d MP Bde

(unit/Command Name)

US Army
(Branch of Service)

Camp Cuervo, Iraq
(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

Camp Victory, Baghdad, Iraq
(Place or Places of Trial)

ON

20 Feb and 24 Mar 05
(Date or Dates of Trial)

COMPANION CASES: None.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)
² See inside back cover for instructions as to preparation and arrangement.

2565 2 0 0 5 0 3 8 8 0 0 5 0 3 8 8

20050388
20050388

RECORD OF PROCEEDINGS

RECORD OF TRIAL

COMBS, JAMES E., III

Private First Class

272d MP Co, 720th MP
Bn, 42d MP Bde, Camp
Cuervo, Iraq, APO AE
09390

U.S. Army

Camp Victory, Baghdad,
Iraq

By

GENERAL COURT-MARTIAL

Convened by Commanding General

Headquarters, Multi-National Corps - Iraq

Tried at

Camp Victory, Baghdad, Iraq

on

20 Feb and 24 Mar 05

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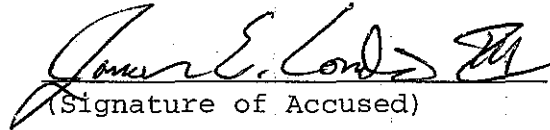
TESTIMONY			
Name of Witness (Last, First, Middle Initial)	Direct and Redirect	Cross and Recross	Court
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AE III	Quantum Portion		
AE IV	Post-trial and appellate rights		

COPIES OF RECORD

XX copy of record furnished the accused or defense
counsel as per attached certificate or receipt.
 copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of the accused's copy of the record of
trial in the case of United States v. James E. Combs, III,
 , delivered to me at Fort Sill, Oklahoma, the 21 day of
July, 2005.


(Signature of Accused)

US ARMY JUDICIARY
2005 SEP - 8 P 2: 14
RECEIVED
CLERK OF COURT

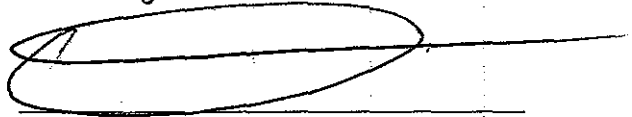
COPIES OF RECORD

XX copy of record furnished the accused or defense counsel as per attached certificate or receipt.

_____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of the accused's copy of the record of trial in the case of United States v. James E. Combs, III, 430-65-0689, delivered to me at Camp Victory, the 20th day of MAY, 2005.



(Signature of Defense counsel)


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Sent To James E. Combs, III
Street, Apt. No.,
or PO Box No. 1490 Randolph St.
City, State, ZIP+4 Fort Sill, OK 73503

PS Form 3800, June 2002 See Reverse for Instructions

2572

1 PROCEEDINGS OF A GENERAL COURT-MARTIAL

2

3 The military judge called the Article 39(a) session to order at 0906,
4 20 February 2005, at Camp Victory, Baghdad, Iraq, pursuant to the
5 following order:

6

7 Court-Martial Convening Order Number 1, Headquarters, Multi-National
8 Corps - Iraq, dated 17 January 2005.

9

[END OF PAGE]

MAR 22 2005

MEMORANDUM FOR RECORD

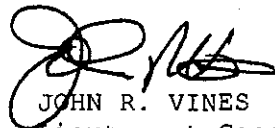
SUBJECT: Referral of Court-Martial Cases

1. I direct that the case of *United States V. Combs* previously referred to the General Court-Martial, convened by Court-Martial Convening Order Number 1, this headquarters, dated 17 January 2005, will be brought to trial by the General Court-Martial convened by Court-Martial Convening Order Number 3, this headquarters, dated 21 March 2005.
2. I direct that the case of *United States V. Jones* previously referred to the Special Court-Martial empowered to adjudge a bad conduct discharge, convened by Court-Martial Convening Order Number 2, this headquarters, dated 17 January 2005, will be brought to trial by the Special Court-Martial convened by Court-Martial Convening Order Number 4, this headquarters, dated 21 March 2005.
3. I direct that the following cases previously referred to the General Court-Martial convened by Court-Martial Convening Order Number 1, this headquarters, dated 17 January 2005, will be brought to trial by the General Court-Martial convened by Court-Martial Convening Order Number 5, this headquarters, dated 21 March 2005:

United States V. Taylor
United States V. Mora
United States V. Grant

4. I direct that the following cases previously referred to the Special Court-Martial, empowered to adjudge a bad conduct discharge, convened by Court-Martial Convening Order Number 2, this headquarters, dated 17 January 2005, will be brought to trial by the Special Court-Martial convened by Court-Martial Convening Order Number 6, this headquarters, dated 21 March 2005:

United States V. Keys
United States V. Garcia
United States V. Laos
United States V. Hernandez
United States V. Jackson
United States V. Dolan



JOHN R. VINES
Lieutenant General, USA
Commanding

DEPARTMENT OF THE ARMY
Headquarters, Multi-National Corps - Iraq
Baghdad, Iraq APO AE 09342

COURT-MARTIAL CONVENING ORDER
NUMBER 3

21 March 2005

A general court-martial is convened with the following members:


COL HENRY FRANKE, CM, HHC, XVIII ABC
COL BRYAN W. ELLIS, SC, HHC, 35th Sig Bde
COL THOMAS SEAMANDS, AG, HHC, XVIII Abn Corps
COL JONES, CASPER P., III, MS, 44th MEDCOM
COL BILLY BUCKNER, IN, HHC, XVIII Abn Corps
LTC KELVIN OWENS, MS, 44th MEDCOM
LTC NANETTE GALLANT, QM, HHC, XVIII ABC
LTC ALLEN J. DARDEN, MS, 44th MEDCOM
LTC RAYMOND DINGLE, MS, 44TH MEDCOM
LTC ELIZABETH COBLE, MI, 525th MI Bde
MAJ PATTY REIM, TC, 525th MI Bde
CPT JOYCE C. CRAIG, CM, 44th MEDCOM

In the event that the accused submits a request pursuant to Article 25(c), UCMJ, that court will be composed of the following officers and enlisted members.

COL HENRY FRANKE, CM, HHC, XVIII ABC
COL THOMAS SEAMANDS, AG, HHC, XVIII Abn Corps
LTC NANETTE GALLANT, QM, HHC, XVIII ABC
LTC ALLEN J. DARDEN, MS, 44th MEDCOM
MAJ PATTY REIM, TC, 525th MI Bde
CPT JOYCE C. CRAIG, CM, 44th MEDCOM
SGM STEPHEN STOTT, HHC, XVIII ABC
SGM ALPHONSO R. EPPS, JR., HQ, 20th Eng Bde
SGM BERNARD HARPER, HQ, 20th Eng Bde
SGM JAY L. BROWN, JR., HHC, 44th MEDCOM
MSG DONALD T. GREUX, HHC, 18th MP Bde
MSG MICHELLE R. BROWN, HHC, 44th MEDCOM

BY COMMAND OF LIEUTENANT GENERAL VINES:

DISTRIBUTION:
Record of Trial (5)
Ea indiv conc (1)


FRANCIS P. KING
LTC, JA
Chief, Criminal Law Division

There were no Court-Martial Convening Orders published for calendar year 2004.

DEPARTMENT OF THE ARMY
Headquarters, Multi-National Corps - Iraq
Baghdad, Iraq, APO AE 09342

COURT-MARTIAL CONVENING ORDER
NUMBER 1

17 January 2005

A general court-martial is convened with the following members:

COL PAYNE, II, Foster P., MI, 540th MI Bde
COL ANDERSON, Donnie P., CM, HHC, III Corps
COL JOHNSON, Fulton R., QM, HHC, III Corps
COL LYNN, Alan R., SC, 3d Sig Bde
COL HENSLEY, Barry R., SC, 3d Sig Bde
COL ORTIZ, Robert, AG, HHC, III Corps
LTC GAYAGAS, Christine M., TC, HHC, III Corps
LTC PACE, Joseph H., AD, HHC Corps
LTC LEE, Natalie G., MI, HHC, III Corps
LTC LACEY, Raymond, FA, HHC, III Corps

In the event an accused requests that the membership of the court-martial include enlisted persons, the following members are detailed to the general court-martial convened by this order:

MEMBERS

CSM KENNEDY, Jeffrey, HHC, III Corps
CSM COVINGTON, Rick, 504th MI Bde
SGM TUCKER, Edward W., HHC, III Corps
SGM JONES, Avery, HHC, 89th MP Bde
MSG RODRIGUEZ-ORTIZ, Jose A., HHC, 3d Sig Bde

VICE

COL PAYNE, II, Foster P., MI, 540th MI Bde
COL LYNN, Alan R., SC, 3d Sig Bde
COL HENSLEY, Barry R., SC, 3d Sig Bde
LTC PACE, Joseph H., AD, HHC Corps

Relieved only for trials in which an accused requests that the membership of the court-martial include enlisted persons.

CMCO No. 1, DA, Headquarters, Multi-National Corps – Iraq, Baghdad, Iraq, APO AE
09342. dated 17 January 2005 (continued)

BY COMMAND OF LIEUTENANT GENERAL METZ:

DISTRIBUTION:

Each individual indicated (1)
Cdr, FICI (SJA) (1)
Record Set (1)
Reference Set (1)



ROSEANNE M. BLEAM
MAJ, JA
Chief, Military Justice

1 MJ: This Article 39(a) session is called to order. You may
2 seated.

3 [All persons did as directed.]

4 TC: This court-martial is convened by Court-Martial Convening
5 Order Number 1, Headquarters, Multi-National Corps - Iraq, dated 17
6 January 2005, copies of which have been furnished to the military
7 judge, counsel, and the accused, and which will be inserted at this
8 point into the record.

9 The charges have been properly referred to this court for
10 trial and were served on the accused on 18 February 2005. The
11 prosecution is ready to proceed with the arraignment in the case of
12 The United States v. Private First Class James E. Combs, III.

13 MJ: You said 18 February? Was that the -- the charge sheet
14 says 16 February.

15 TC: That's correct, ma'am. I -- my glasses were on wrong. It
16 looked like an "8" from where I was standing. I'm sorry.

17 MJ: All right. So 16 February?

18 TC: That's correct.

19 MJ: All right.

20 PFC Combs, you have the right to a delay of 5 days between
21 the date the charges are served on you and the date of trial, not

1 counting the day of service and the day of trial. Unless you
2 consent, you may make -- may not be tried on these charges -- let's
3 see, until 22 February.

4 Do you understand this right?

5 ACC: Yes, ma'am. I do.

6 MJ: Have you discussed this with your defense counsel?

7 ACC: Yes, ma'am.

8 MJ: Do you consent to the trial -- in the sense of the
9 arraignment -- proceeding today?

10 ACC: Yes, ma'am.

11 MJ: Has anyone forced you to consent to proceeding today?

12 ACC: No, ma'am.

13 MJ: Trial counsel, you may proceed.

14 TC: The accused and the following persons detailed to this
15 court are present:

16 COLONEL STEPHANIE BROWNE, MILITARY JUDGE;

17 CAPTAIN CHRISTOPHER L. PAWLOSKI, TRIAL COUNSEL [sic];

18 CAPTAIN MATTHEW W. SHEPHERD, TRIAL COUNSEL; and

19 CAPTAIN DAVID A. SCOTT, DEFENSE COUNSEL.

20 The members are absent.

1 Sergeant First Class Cherie Barnett has been detailed
2 reporter for this court and has been previously sworn.

3 Captain Shepherd and I have been detailed to this court-
4 martial by Lieutenant Colonel Francis King, Chief, Criminal Law
5 Division, Multi-National Corps - Iraq. We're both qualified and
6 certified under Article 27(b) and sworn under Article 42 alpha,
7 Uniform Code of Military Justice. We have not acted in any manner
8 which might tend to disqualify us in this court-martial.

9 MJ: Thank you.

10 PFC Combs, you have the right to be represented by Captain
11 Scott, your detailed military defense counsel. He is provided to you
12 at no expense to you.

13 You also have the right to request a different military
14 lawyer to represent you. If the person you request is reasonably
15 available, he or she would be appointed to represent you free of
16 charge. If your request for this other military lawyer were granted,
17 however, you would not have the right to keep the services of your
18 detailed defense counsel because you are entitled to only one
19 military lawyer. You may ask his superiors to let you keep your
20 detailed counsel, but your request would not have to be granted.

1 In addition, you have the right to be represented by a
2 civilian lawyer. A civilian lawyer would have to be provided by you
3 at no expense to the government. If you are represented by a
4 civilian lawyer, you can also keep your military lawyer on the case
5 to assist your civilian lawyer, or you could exercise [sic] your
6 military lawyer and be represented only by your civilian lawyer.

7 Do you understand that?

8 ACC: Yes, ma'am.

9 MJ: Do you have any questions about your rights to counsel?

10 ACC: No, ma'am.

11 MJ: By whom do you wish to be represented?

12 ACC: Captain Scott, ma'am.

13 MJ: And by him alone?

14 ACC: Yes, ma'am.

15 MJ: Captain Scott, would you, please, state on the record by
16 whom you were detailed and your qualifications?

17 DC: Yes, ma'am. I have been detailed to this court-martial by
18 myself, Senior Defense Counsel, Baghdad Field Office. I am qualified
19 and certified under Article 27(b) and sworn under Article 42(a),
20 Uniform Code of Military Justice. I have not acted in any manner
21 which might tend to disqualify me in this court-martial.

1 MJ: Thank you.

2 I have been properly certified, sworn, and detailed to this
3 court-martial. Counsel for both sides appear to have the requisite
4 qualifications, and all personnel required to be sworn have been
5 sworn.

6 Trial counsel will announce the general nature of the
7 charges.

8 TC: The general nature of the charges in this case is one
9 charge and one specification of Article 119, UCMJ, involuntary
10 manslaughter.

11 The Charge was preferred by Captain Jason L. Marquiss.

12 An additional charge and two specifications of Article 107,
13 false official statements, was [sic] preferred by Colonel Richard W.
14 Swengros.

15 Both charges were investigated at the Article 32
16 investigation conducted by Major Margaret L. Compton.

17 The Charge under Article 119 was forwarded with
18 recommendations as to disposition by Captain Jason L. Marquiss,
19 Lieutenant Colonel Byron A. Freeman, and Colonel Richard W. Swengros.

20 The Charge under Article 107 was forwarded with
21 recommendations as to disposition by Colonel Richard W. Swengros.

1 Your Honor, are you aware of any matter which might be a
2 ground for challenge against you?

3 MJ: I'm not. Does either side desire to question or challenge
4 me?

5 TC: No, ma'am.

6 MJ: Just so I'm clear, although these charges were forwarded
7 with recommendations by different individuals, have all three of them
8 been investigated by the same Article 32 investigating officer?

9 TC: That's correct, ma'am.

10 MJ: And, because I asked that question, I'd forgotten
11 completely -- does either side desire to question or challenge me?

12 TC: No, ma'am.

13 DC: No, ma'am.

14 MJ: Thank you.

15 Now, PFC Combs, you have a right to be tried by a court
16 consisting of at least five officers; that is, at least -- that is,
17 commissioned and/or warrant officers. Also, if you request it, you
18 would be tried by a court consisting of at least one-third enlisted
19 members, but none of those enlisted members could come from your
20 unit. You're also advised that no member of the court would be
21 junior in rank to you.

1 Do you understand what I've said so far?

2 ACC: Yes, ma'am.

3 MJ: Now, if you're tried by court members, the members will
4 vote by secret, written ballot, and two-thirds of the members must
5 agree before you could be found guilty of any offense. If you were
6 found guilty, then two-thirds must also agree in voting on a
7 sentence. And, if that sentence included confinement for more than
8 10 years, then three-fourths would have to agree.

9 You also have the right to request a trial by military
10 judge alone. And, if approved, there will be no court members, and
11 the judge alone will decide whether you are guilty or not guilty and,
12 if found guilty, the judge alone will determine your sentence.

13 Do you understand the difference between trial before
14 members and trial before military judge alone?

15 ACC: Yes, ma'am.

16 MJ: Do you understand the choices that you have?

17 ACC: Yes, ma'am.

18 MJ: By what type of court do you wish to be tried?

19 DC: Ma'am, at this time, the defense would request to defer
20 choice of forum.

21 MJ: That request is granted.

1 The accused will now be arraigned.

2 TC: All parties to the trial have been furnished with a copy of
3 the charges. Does the accused want them read?

4 DC: The accused waives the reading of the charges.

5 MJ: The reading may be omitted.

6 [THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]

7 [END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (<i>Last, First, MI</i>) COMBS, James E., III			2. SSN	3. GRADE OR RANK PFC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 272nd Military Police Company, 720th Military Police Battalion, 42nd Military Police Brigade, Camp Cuervo, Iraq APO AE 09390				6. CURRENT SERVICE	
				a. INITIAL DATE 20021107	b. TERM 6 Years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED NONE	9. DATE(S) IMPOSED NONE	
a. BASIC \$ 1,547.84	b. SEA/FOREIGN DUTY \$ 375.00	c. TOTAL \$ 1,922.84			

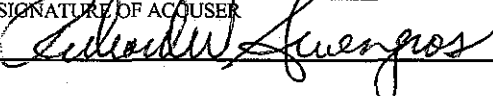
II. CHARGES AND SPECIFICATIONS

10. **ADDITIONAL CHARGE: VIOLATION OF THE UCMJ, ARTICLE 107**

Specification 1: In that Private First Class James E. Combs III, U.S. Army, did, at or near Baghdad, Iraq, on or about 22 September 2004, with intent to deceive, make to First Lieutenant Nicholas Petit, an official statement, to wit: that his M4 rifle had been in the safe position when the trigger was squeezed, which statement was totally false, and was then known by the said Private First Class James E. Combs III to be so false

Specification 2: In that Private First Class James E. Combs III, U.S. Army, did, at or near Baghdad, Iraq, on or about 22 September 2004, with intent to deceive, make to Special Agent Irene Cintron, an official statement, to wit: that, when asked if he had switched his weapon from safe to fire, he answered, I am sure I didn't touch it, which statement was totally false, and was then known by the said Private First Class James E. Combs III to be so false

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) RICHARD W. SWENGROS	b. GRADE 0-6	c. ORGANIZATION OF ACCUSER 42nd Military Police Brigade
d. SIGNATURE OF ACCUSER 		e. DATE 8 JANUARY 2005

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Christopher L. Pawloski
Typed Name of Officer

HHC, 42nd MP BDE
Organization of Officer

Captain
Grade

Trial Counsel

*Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)*


Signature

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) COMBS, James E., III		2. SSN	3. GRADE OR RANK PFC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade, Camp Cuervo, Iraq APO AE 09390			6. CURRENT SERVICE	
			a. INITIAL DATE 20021107	b. TERM 6 Years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED	
\$ 1,407.00^{MRS} \$1547.84	\$ 225.00^{MRS} \$375.00	\$ 1,632.00^{MRS} \$ 1,922.84	NONE	

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: **VIOLATION OF THE UCMJ, ARTICLE 119**

SPECIFICATION: In that Private First Class James E. Combs, III, U.S. Army, did, at or near Baghdad, Iraq, on or about 22 September 2004, by culpable negligence, unlawfully kill Babea'a Husaene, by shooting Babea'a Husaene in the head with an M4 rifle.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) JASON L. MARQUISS	b. GRADE 0-3	c. ORGANIZATION OF ACCUSER 272d MP Co, 759th MP Bn
d. SIGNATURE OF ACCUSER <i>Jason L. Marquiss</i>		e. DATE 20 OCT 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20th day of October, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

C. Cullen Sheppard
Typed Name of Officer

HHC, 89th Military Police Brigade
Organization of Officer

Captain
Grade

Article 136, UCMJ
Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)

C. Cullen Sheppard
Signature

12. On 20 October, 2004, used was informed of the charges against him/her and the accuser(s) known to me (See R.C.M. 308 (a)). 05 of 2004 (See R.C.M. 308 if notification cannot be made.)

JASON L. MARQUISS

Typed Name of Immediate Commander

272d Military Police Company

Organization of Immediate Commander

O-3

Grade

Jason L. Marquiss
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1745 hours, 20 OCT 04 at 759th Military Police Battalion
Designation of Command or

89th Military Police Brigade

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE: 1

BYRON A. FREEMAN

Typed Name of Officer

Commanding

Official Capacity of Officer Signing

O-5

Grade

Byron A. Freeman
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

HQ, Multi-National Corps-Iraq

b. PLACE

Camp Victory, Iraq

c. DATE

15 February 2005

Referred for trial to the General court-martial convened by Court-Martial Convening Order Number 1,

dated 17 January 20 05, subject to the following instructions: 2

By Command of Lieutenant General Vines

Command or Order

FRANCIS P. KING

Typed Name of Officer

Chief, Military Justice

Official Capacity of Officer Signing

LTC

Grade

Francis P. King
Signature

15. On 16 Feb, 20 05, I (caused to be) served a copy hereof on (each of) the above named accused.

CHRISTOPHER L. PAWLOSKI

Typed Name of Trial Counsel

CPT

Grade or Rank of Trial Counsel

Christopher L. Pawloski
Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.

2 - See R.C.M. 601(e) concerning instructions. If none, so state.

1 TC: The Charge is signed by Captain Jason L. Marquiss, a person
2 subject to the Code as accuser; is properly sworn to before a
3 commissioned officer of the Armed Forces authorized to administer
4 oaths; and properly referred to this court-martial for trial by
5 Lieutenant General John R. Vines, the Convening Authority.

6 The Additional Charge is signed by Colonel Richard W.
7 Swengros, a person subject to the Code as accuser; is properly sworn
8 to before a commissioned officer of the Armed Forces authorized to
9 administer oaths; and are [sic] properly referred to this court for
10 trial by Lieutenant General John R. Vines, the Convening Authority.

11 MJ: Will the accused and defense counsel, please, rise?
12 [The accused and his defense counsel did as directed.]

13 MJ: PFC James E. Combs, III, how do you plead? Before
14 receiving your plea, I advise you that any motions to dismiss or to
15 grant other appropriate relief should be made at this time. Your
16 defense counsel will speak for you.

17 DC: Ma'am, at this time, the defense requests to defer motions
18 and plea.

19 MJ: That's granted. You may be seated.

20 [The accused and his defense counsel did as directed.]

1 MJ: Now, according to the charge sheet, PFC Combs, you're not
2 in pretrial confinement; is that accurate?

3 ACC: Right, ma'am.

4 MJ: All right. Now, what's just happened is called an
5 arraignment. An arraignment has certain legal consequences, one of
6 which I'd like to explain to you now.

7 Under ordinary circumstances, you have the right to be
8 present at every stage of your trial. However, if you are
9 voluntarily absent on the date this trial is scheduled to proceed --
10 and right now, the next day in court for this case is 22 March with
11 trial scheduled for 28 March -- you may forfeit the right to be
12 present. The trial could go forward on the day scheduled even if you
13 were not present up to and including sentencing if necessary.

14 Do you understand this?

15 ACC: Yes, ma'am.

16 MJ: So it's important that you keep your defense counsel and
17 your chain of command apprised of your whereabouts at all times
18 between now and the trial date.

19 Do you have any questions about what I told you?

20 ACC: No, ma'am.

1 MJ: We had an 802 before this arraignment this morning which I
2 set certain dates. All defense motions, notice of plea and forum,
3 witness requests, and expert requests are due no later than close of
4 business on 6 March. Answers to motions, any denial of witnesses, or
5 denial of experts are due no later than close of business 9 March.
6 If there are motions hearings that need to be -- if there are motions
7 that need to be heard at a hearing, that hearing will be held on 22
8 March, unless Judge Hall changes it. And I have set the trial down
9 for 28 and 29 March if it is a contest. If it turns into a guilty
10 plea, the plea will be held on 22 March instead of the motions
11 hearings.

12 Is there anything else we need to deal with before I
13 adjourn this arraignment?

14 TC: No, ma'am.

15 DC: No, ma'am.

16 MJ: Then we're adjourned.

17 [The Article 39(a) session recessed at 0917, 20 February 2005.]

1 [The Article 39(a) session was called to order at 0811, 24 March
2 2005, pursuant to the orders previously inserted in the record and
3 the following order: Court-Martial Convening Order Number 3,
4 Headquarters, Multi-National Corps - Iraq, dated 21 March 2005.]

5 MJ: This Article 39(a) session is called to order.

6 All parties present when the court was last in session on
7 the 20th of February are again present with the exception that
8 Colonel Brown is no longer detailed as military judge in this case.
9 I, Lieutenant Colonel Robin Hall, have been properly certified,
10 sworn, and detailed to this court-martial.

11 It's my understanding that nobody else has changed, right?

12 [The court reporter nodded her head in the affirmative.]

13 MJ: Okay.

14 Good morning, PFC Combs.

15 ACC: Good morning, ma'am.

16 MJ: At the last session, Colonel Brown talked to you about your
17 rights to counsel. Essentially, that boils down to three rights.

18 You have the right to a detailed military defense counsel,
19 or you can ask for a specific military counsel by name, or you can
20 hire yourself a civilian counsel.

21 Do you remember that discussion?

1 ACC: Yes, ma'am.

2 MJ: Okay. At that time, you told her that you wanted to be
3 represented solely by Captain Scott. Is that still your decision?

4 ACC: Yes, ma'am.

5 MJ: All right.

6 And, Captain Scott -- and all counsel -- you entered your
7 detail and qualifications last time, right?

8 TC: That's correct, Your Honor.

9 DC: Yes, Your Honor.

10 MJ: All right. I am satisfied that counsel for both sides
11 appear to have the requisite qualifications then, and all personnel
12 required to be sworn have been sworn.

13 Now, I'm not aware of any grounds for challenge against me
14 in this case. Does either side desire either to question me or
15 challenge me?

16 TC: No, Your Honor.

17 DC: No, Your Honor.

18 MJ: Was there an Article 32 investigation in this case,
19 counsel?

20 TC: Yes, Your Honor. There was.

21 MJ: All right.

1 PFC Combs, at the last session also, Colonel Brown
2 discussed with you your rights to forum; that is, your choices as to
3 how you can be tried at this court. And again, it boils down to
4 three choices.

5 You have the right to be tried by a court of all officer
6 members, or a court of officers and enlisted soldiers, or by me as
7 the military judge alone.

8 Do you remember that discussion?

9 ACC: Yes, ma'am.

10 MJ: And have you talked about your choices with Captain Scott?

11 ACC: Yes, ma'am.

12 MJ: By which type of court do you wish to be tried?

13 ACC: Judge alone, ma'am.

14 MJ: All right.

15 Is there a written request?

16 DC: Yes, there is, ma'am.

17 MJ: Great.

18 [The court reporter handed AE I to the military judge.]

19 MJ: I've been handed Appellate Exhibit I. It is entitled,
20 Request for Trial Before Military Judge Alone.

21 Do you have a copy of this document?

1 [Pause.]

2 ACC: Yes, ma'am.

3 MJ: Now you do. Take a look at block one charlie there. Is
4 that your signature, PFC Combs?

5 ACC: Yes, ma'am.

6 MJ: And, if you look at the top of that document, was my name,
7 Lieutenant Colonel Robin Hall, typed in as the military judge?

8 ACC: Yes, ma'am.

9 MJ: So you knew I was going to be the judge at the time that
10 you signed that, right?

11 ACC: Yes, ma'am.

12 MJ: Is your request a voluntary one? By that, I mean are you
13 making it of your own free choice?

14 ACC: Yes, ma'am.

15 MJ: If I approve your request for trial by me alone, you
16 understand that you are going to give up, or waive, your rights to be
17 tried by either a court of all officers or officers and enlisted
18 soldiers?

19 ACC: Yes, ma'am.

20 MJ: You still wish to be tried by me alone?

21 ACC: Yes, ma'am.

1 MJ: Very well. Your request is approved.

2 The court is assembled.

3 Now, at the arraignment, Captain Scott, you deferred entry
4 of motions. Are there any motions to hear before I take the plea?

5 DC: There are not, ma'am.

6 MJ: All right.

7 PFC Combs and counsel, please rise then.

8 [The accused and his defense counsel did as directed.]

9 MJ: Private First Class James E. Combs, III, how do you plead?
10 Before receiving any plea, I advise you that any motions to dismiss
11 or grant any other appropriate relief should be made at this time.
12 And your defense counsel will speak for you.

13 DC: Ma'am:

14 **To Charge I and its Specification: Guilty.**

15
16 **To the Additional Charge and its specifications: Not**
17 **Guilty.**

18 MJ: Thank you. Please be seated.

19 [The accused and his defense counsel did as directed.]

20 MJ: All right. I note that you entered a plea to Charge I
21 first. There is only one Charge, so it is the original Charge,
22 right?

23 DC: Yes, ma'am.

1 MJ: Yes, trial counsel?

2 TC: There's one other issue for the record to clarify on the
3 convening order.

4 MJ: Oh, yeah. Let's do that. I meant to do that right up
5 front.

6 It's my understanding that there is a new convening order
7 in this case; is that right?

8 TC: That's correct, Your Honor.

9 MJ: What is it?

10 TC: On March 22d, 2005, General Vines, the Commanding General
11 of Multi-National Corps - Iraq, directed that this case -- which had
12 previously been referred under Court-Martial Convening Order Number
13 1, Multi-National Corps - Iraq, dated 17 January 2005 -- would be
14 brought to trial under a general court-martial convened by Court-
15 Martial Convening Order Number 3, Headquarters, Multi-National Corps
16 - Iraq, dated 21 March 2005.

17 MJ: Okay. And does the court reporter have a copy of that
18 Court-Martial Convening Order Number 3 and that action by the
19 General?

20 TC: Correct, Your Honor. A copy's been furnished to the court
21 reporter, and the accused and counsel.

1 MJ: They'll be inserted in the record at the appropriate spot.
2 And I assume, since there were no motions, that there's no issue with
3 that?

4 DC: No, ma'am.

5 MJ: Great.

6 Okay. Before we enter into the providence inquiry, let me
7 put on the record the substance of the 802 we held in conference just
8 a moment ago. Present were all three counsel and myself. We
9 discussed several things.

10 First, the change of parties; that is, me as the military
11 judge. I was asked what my weapons policy is. My weapons policy is
12 that weapons may be maintained in the courtroom. It's just too hard
13 to secure them otherwise. However, I prefer the ammunition be left
14 outside the courtroom or at least behind the bench.

15 I was told that there is a new Court-Martial Convening
16 Order -- Number 3 -- and wanted to discuss that, so I appreciate you
17 bringing that to my attention.

18 I was also told that there will be a change to the pay on
19 the original charge sheet in that it was preferred under the 2004 pay
20 and, of course, we've had a pay raise as of January 1st, 2005.

21 Has that change been made?

1 TC: Your Honor, it's not been made on the original yet.

2 MJ: Okay. When we get to it at sentencing, just make it then.

3 TC: Yes, ma'am.

4 MJ: I was also told that there is a minor change to the
5 stipulation of fact in that apparently the listing on the last page
6 of the written part of that stipulation does not accurately reflect
7 the pictures. So I told counsel just to make the change before
8 trial.

9 The defense counsel did warn me that there may be an issue
10 of raising the accident defense and, if it arises, then I will be
11 certain to discuss that with PFC Combs.

12 And finally, I was asked about my practice with regard to
13 interpreters and that I assume there will be an interpreter from the
14 English language to the Arabic language and Arabic language to the
15 English language. What I told counsel is that I'd like defense
16 counsel to satisfy himself that the interpreter that the government
17 intends to use has the proper qualifications and is able to make an
18 accurate translation; that is, translating verbatim what the witness
19 says and not adding any comment or interpretation to that. But,
20 assuming that, then I will just turn to the defense and ask if they
21 have any objection and, if they don't, then we will just immediately

1 swear the interpreter. The record of trial doesn't need to discuss,
2 for example, the qualifications of the interpreter unless there's
3 some issue. All right?

4 That's my notes from the 802. Do counsel have anything to
5 add?

6 TC: No, Your Honor.

7 DC: Other than talk about the witnesses in the courtroom,
8 ma'am, that was it.

9 MJ: All right. It is my practice that I personally don't
10 believe the sequestration is necessary, and I have no objection to
11 any future witnesses in this trial sitting in the back of the
12 courtroom throughout the trial.

13 All right. PFC Combs, your counsel has entered a plea of
14 guilty for you to one of the charges and its specifications [sic].
15 Your plea of guilty will not be accepted unless you understand its
16 meaning and effect. I'm going to discuss your plea of guilty with
17 you. You may wish to consult with Captain Scott at any time prior to
18 answering my questions. Bottom line is, if you have questions,
19 please feel free to ask them, all right?

20 ACC: Yes, ma'am.

1 MJ: A plea of guilty is equivalent to a conviction, and it is
2 the strongest form of proof known to the law. On your plea alone,
3 this court can -- without receiving any evidence -- find you guilty
4 of the offense to which you've pled guilty. Your plea will not be
5 accepted unless you realize that, by your plea, you admit every act,
6 or omission, and element of the offense to which you've pled guilty
7 and that you are pleading guilty because you actually are in fact
8 guilty.

9 If you do not believe that you are guilty, then you should
10 not for any reason plead guilty.

11 Do you understand what I've said so far?

12 ACC: Yes, ma'am.

13 MJ: By your plea of guilty, you give up three important rights,
14 but you give up these rights only as to the original Charge.

15 First, you give up the right against self-incrimination;
16 that is, the right to say nothing at all.

17 Second, you give up the right to a trial of the facts by
18 this court; that is, the right -- your right -- to have this court-
19 martial decide whether or not you are guilty based upon the evidence
20 which the prosecution would present and on any evidence you may
21 introduce.

1 Third, you give up the right to be confronted by and to
2 cross-examine any witnesses called against you.

3 Do you understand those rights?

4 ACC: Yes, ma'am.

5 MJ: Do you understand that, by pleading guilty, you no longer
6 have those rights as to the original Charge?

7 ACC: Yes, ma'am.

8 MJ: If you continue with your guilty plea, you will be placed
9 under oath, and I will question you to determine if you are, in fact,
10 guilty. Anything that you say to me may be used by me in determining
11 an appropriate sentence.

12 Do you understand that?

13 ACC: Yes, ma'am.

14 MJ: And then also, because you are under oath, if you tell me
15 anything that is untrue, then your statements could be used against
16 you for charges of perjury or making a false official statement.

17 Do you understand that?

18 ACC: Yes, ma'am.

19 MJ: Trial counsel, please swear the accused.

20 [Accused was sworn.]

21 [The court reporter handed PE 1 for ID to the military judge.]

1 MJ: Please be seated.

2 [The accused did as directed.]

3 MJ: I've been handed Prosecution Exhibit 1 for identification.
4 It's entitled, Stipulation of Fact, dated 23 March 2005.

5 Trial counsel, I don't see the change made that you said
6 you were going to. Is it just lining through the number 4 on --
7 excuse me -- page five, and putting 5 and then lining through 5 and
8 putting 4?

9 TC: Yes, Your Honor.

10 MJ: Any objection to me doing that?

11 DC: No objection, ma'am.

12 MJ: Okay. If you turn to page five -- do you have a copy of
13 this document?

14 ACC: Yes, ma'am.

15 MJ: Great. If you turn to page five, that first signature
16 block is yours. Is that your signature block [sic] above it?

17 ACC: Yes, ma'am.

18 MJ: And did you read through this document thoroughly before
19 you signed it?

20 ACC: Yes, ma'am.

1 MJ: Do both counsel agree to the stipulation and that your
2 signatures appear on the document?

3 TC: Yes, Your Honor.

4 DC: Yes, ma'am.

5 MJ: All right. PFC Combs, a stipulation of fact is an
6 agreement among the trial counsel, your defense counsel, and you that
7 the contents of the stipulation are true and, if I enter them into
8 evidence, they are the uncontradicted facts in this case. No one can
9 be forced to enter into a stipulation of fact, so you should enter
10 into it only if you truly wish to do so.

11 Do you understand that?

12 ACC: Yes, ma'am.

13 MJ: Are you voluntarily entering into the stipulation because
14 you believe it is in your best interest to do so?

15 ACC: Yes, ma'am.

16 MJ: If I admit the stipulation into evidence, I'm going to use
17 it in two ways. First, I will use it to determine if you are in fact
18 guilty of the offense to which you have pled guilty and, second, I
19 will use it to determine an appropriate sentence in your case.

20 Do you understand and agree to those uses of the
21 stipulation of fact?

1 ACC: Yes, ma'am.

2 MJ: And do both counsel agree to those uses?

3 TC: Yes, Your Honor.

4 DC: Yes, I do, ma'am.

5 MJ: All right. PFC Combs, a stipulation of fact ordinarily
6 cannot be contradicted. If it should be contradicted after I have
7 accepted your guilty plea, then I will reopen the inquiry. You
8 should, therefore, let me know if there is anything whatsoever you
9 disagree with or feel is untrue.

10 Do you understand that?

11 ACC: Yes, ma'am.

12 MJ: All right. I know you've read this before, PFC Combs, but
13 I'd like you to read it again and, as you're reading it, think to
14 yourself first, is everything in there true; second, is there
15 anything in there that you do not wish to admit is true because I'm
16 going to ask you those questions when we finish. And I need to read
17 through mine, all right?

18 ACC: Yes, ma'am.

19 MJ: Take a couple of minutes.

20 [Pause.]

1 MJ: I need to see both trial counsel and defense counsel up
2 here, please.

3 [Pause.]

4 MJ: Okay. For the record, the labels on the pictures -- page
5 three, attachment four, photo of intersection southwest of police
6 station, actually appears on page four, and the photo of Mrs. Husaene
7 in the hospital actually appears on page five. So I've just changed
8 those and added the words "next page" on each.

9 TC: Yes, Your Honor.

10 DC: Ma'am?

11 MJ: Yes?

12 DC: Is it possible, for just a moment, I can take a look at
13 that? I want to ensure that the stip of fact that's sitting in front
14 of me is the same one that you have.

15 MJ: Yeah. Of course.

16 DC: May I approach, ma'am?

17 MJ: And what I'd like to do -- let's take a -- well, in a
18 second because, also, I note that the ERB is attached and well, I
19 note one error on the ERB.

20 I assume that you didn't graduate from high school in 1900,
21 right?

1 ACC: No, ma'am.

2 MJ: Right. So let's take a recess in place and, if you would,
3 have PFC Combs go over this ERB and make any corrections, okay?

4 DC: Yes, ma'am.

5 MJ: Court's in recess.

6 [The court-martial recessed at 0833, 24 March 2005.]

7 [The court-martial was called to order at 0840, 24 March 2005.]

8 MJ: Court is called to order. Please be seated.

9 All right. I've been handed again Prosecution Exhibit 1
10 for identification, and I note that changes have been made to
11 enclosure 2, the ERB. I appreciate those changes. I understand them
12 all.

13 And, otherwise, Captain Scott, you're satisfied that this
14 copy that the court has comports entirely with the copy you have?

15 DC: Yes, ma'am. It must be something with the government's
16 color printer I'm assuming.

17 MJ: No problem.

18 All right. Have you read through all of this, PFC Combs?

19 ACC: Yes, ma'am.

20 MJ: And is everything in this document true?

21 ACC: Yes, ma'am.

1 MJ: Is there anything in the document that you do not wish to
2 admit is true?

3 ACC: No, ma'am.

4 MJ: So do you agree then under oath that the contents of this
5 stipulation of fact are true and correct to the best of your
6 knowledge and belief?

7 ACC: Yes, ma'am.

8 MJ: Very well.

9 Captain Scott, any objection to Prosecution Exhibit 1 for
10 identification?

11 DC: The defense has no objection, ma'am.

12 MJ: Prosecution Exhibit 1 for identification is received into
13 evidence as Prosecution Exhibit 1 subject, of course, to my
14 acceptance of PFC Combs' guilty plea.

15 MJ: All right. PFC Combs, what we're going to do now is I'm
16 going to explain the elements of the offense to which you have pled
17 guilty. By "elements," I mean those facts which the prosecution
18 would have to prove beyond a reasonable doubt if you had entered a
19 plea of not guilty. Again, when I ask -- or I state each element --
20 I want you to ask yourself two things. First, is the element true?
21 Second, do you wish to admit it is true? After I have explained all

1 of the elements and definitions to you, please be prepared to talk to
2 me about the facts in this case. All right?

3 ACC: Yes, ma'am.

4 MJ: Very well. Do you have a copy of the original charge sheet
5 there in front of you?

6 ACC: Yes, ma'am.

7 MJ: All right. Take a look at the original Charge and its
8 Specification then. Here, you've pled guilty to involuntary
9 manslaughter, in violation of Article 119, Uniform Code of Military
10 Justice. The elements of that offense are:

11 First, that Babea'a Husaene is dead;

12 Second, that her death resulted from your act of firing off
13 a burst of bullets from your M-4 at or near Baghdad, Iraq, on or
14 about 22 September 2004;

15 Third, that this act amounted to culpable negligence; and

16 Fourth, that the killing of Babea'a Husaene by you was
17 unlawful.

18 Killing a human being is "unlawful" when it's done without
19 legal justification or excuse.

20 Now, "culpable negligence" is a degree of carelessness
21 greater than simple negligence.

1 "Simple negligence" is the absence of due care. The law
2 requires everyone at all times to demonstrate the care for the safety
3 of others that a reasonably careful person would demonstrate under
4 the same or similar circumstances. That's what "due care" means.

5 "Culpable negligence" is a negligent act or failure to act
6 accompanied by a gross, reckless, wanton, or deliberate disregard for
7 the foreseeable results to others.

8 Do you understand the elements and definitions as I've read
9 them to you?

10 ACC: Yes, ma'am.

11 MJ: Do you have any questions about any of those?

12 ACC: No, ma'am.

13 MJ: Do you understand that, by pleading guilty, your plea
14 admits that those elements accurately and correctly describe what y
15 did?

16 ACC: Yes, ma'am.

17 MJ: All right. What I'd like you to do then is tell me in yo
18 own words why you think you're guilty of this offense.

19 ACC: On September 22d, ma'am, I was at IP Station 10. It was my
20 second station of a three-station cycle for that day. It was hot.
21 It was -- I was starting to get very tired and bored, so I started

1 running war game scenarios or "what ifs" in my head to keep me alert
2 and awake. While doing that, there was [sic] people walking around
3 in the market and in the alley where the incident occurred. I was
4 running a scenario, and this white vehicle pulled up into that --
5 well, it backed into the alley, and the driver got out and went to
6 his truck. And there's a store on the corner, and some of the people
7 from the store came to his -- the back of his trunk, and I couldn't
8 tell what they were doing. So I started to run a "what if" scenario
9 just to keep me alert and, while I was doing that, I switched my
10 weapon from safe to burst, I guess, as a precautionary [sic] -- not
11 really supposed to do it, but just did it.

12 No incident occurred, and the vehicle drove off. And I put
13 my -- like, I was at the low-ready and ready position while they were
14 looking in the trunk and, since no incident occurred, I went back to
15 regular scanning of my sectors of fire.

16 Later on, I started running some more "what if" scenarios
17 because I started to get more tired and bored closer to the end of
18 shift. So I was looking out the port -- or window -- and I was
19 running "what if" scenarios, like, through the windows and doors in
20 the alley. And I was -- when my weapon went off, I was pointing
21 towards the alley, and it went off. When it went off, it kind of

1 shocked me because I thought my weapon was on safe. I should have
2 checked or did other means of keeping myself awake, but I chose to
3 disregard other ways of doing so and was scanning with my weapon. It
4 went off, and it went up the alley.

5 I heard screams right after -- right -- a few seconds after
6 and, when the screams -- when I heard the screams, I knew then that
7 the round that I shot -- since it was the only round that was shot --
8 was my round -- I was trained -- we was [sic] in repetition for
9 safety, and I disregarded my safety by putting my finger in the
10 trigger well and squeezing it.

11 I still really don't know why I squeezed the trigger, but I
12 did, and it resulted in the other person's death, ma'am. And,
13 immediately after that -- when it went off -- I checked my weapon,
14 and I did see that it was on burst. So I switched it back to safe
15 and I took the magazine out before my team leader, Sergeant Duran,
16 came in and asked me what happened.

17 DC: Can I have a minute, ma'am?

18 MJ: Sure.

19 [Pause.]

20 ACC: During the incident, there was [sic] continuous people
21 walking around, walking up and down the alley -- wasn't for sure what

1 was in the alley, but I knew that people was [sic] walking around,
2 and I knew that people were in the alley. So, when I disregarded my
3 standards -- or ROE -- by switching my weapon to burst and pulling
4 the trigger, I knew that it was basically my fault for anything that
5 would happen.

6 MJ: Okay. Let me ask you a couple of questions then. All
7 right?

8 ACC: Yes, ma'am.

9 MJ: This -- are you satisfied that the person that got hit and
10 got killed was this Babea'a Husaene?

11 ACC: Yes, ma'am.

12 MJ: And she is dead, right?

13 ACC: Yes, ma'am.

14 MJ: Now, you said this happened on the 22d of September, 2004,
15 at IP-10; is that right?

16 ACC: Yes, ma'am.

17 MJ: Is that here in Baghdad?

18 ACC: Yes, ma'am.

19 MJ: Now, I heard you talking about a round went off, but I
20 thought your weapon was on burst. Was it?

1 ACC: On burst, ma'am, it's -- there's a trigger mechanism, and
2 it shoots one round, and then it resets itself to fire on burst,
3 ma'am.

4 MJ: Okay. So, even though it was on burst, only one round
5 discharged?

6 ACC: Yes, ma'am.

7 MJ: All right. I'm sure you've gone over this with your
8 counsel. Do you understand that soldiers in a combat zone are
9 required to carry weapons and to have magazines and, in fact, you
10 were in a red status, right?

11 ACC: Yes, ma'am.

12 MJ: All right. But that red status meant that you still had
13 your M-4 on safe, correct?

14 ACC: Yes, ma'am.

15 MJ: Now, you heard me describe the definition of culpable
16 negligence, which is the amount of negligence that's required.
17 Specifically, what do you think you did that was -- that amounted to
18 a reckless disregard for the foreseeable results to others?

19 [Pause.]

20 ACC: While people were down in the alley -- I knew there was
21 [sic] people down there. And pointing my weapon in the general

1 direction of people can result in a person getting bodily harm or
2 even dying from ----

3 MJ: So really, it's a combination of things; is that right?

4 [Pause.]

5 MJ: It seems to me that, taking your weapon off of safe and
6 putting it on burst, using the weapon to scan as opposed to
7 binoculars or your plain eye -- right -- putting your finger on the
8 trigger with a round chambered, and then actually pulling the trigger
9 -- all of those all together foreseeable could result in the death of
10 someone else, right?

11 ACC: Yes, ma'am.

12 MJ: And in fact, that's what happened in this case?

13 ACC: Yes, ma'am.

14 MJ: Now, you didn't intend to kill Babea'a Husaene, right?

15 ACC: No, ma'am.

16 MJ: Right. So do you agree that all of your actions all
17 together -- while they didn't arise to a level of intent to kill
18 somebody, they were so negligent that it's pretty foreseeable that
19 somebody could have died?

20 ACC: Yes, ma'am.

1 MJ: Okay. So you didn't have any legal justification or excuse
2 for your actions that day, did you?

3 ACC: No, ma'am.

4 MJ: All right. I'd like you to take a look again at the
5 stipulation of fact -- at page three -- the fourth full paragraph on
6 that page. Read that a moment to yourself.

7 [Pause.]

8 MJ: That's kind of a summary of what we just talked about,
9 isn't it?

10 ACC: Yes, ma'am.

11 MJ: You agree with everything that's in that paragraph?

12 ACC: Yes, ma'am.

13 MJ: All right. I do too.

14 MJ: All right, counsel, do you believe that any further inquiry
15 is required?

16 TC: No, Your Honor.

17 DC: No, I don't, ma'am.

18 MJ: Great.

19 So, trial counsel, what do you calculate to be the maximum
20 punishment authorized in this case based solely on the guilty plea?

1 TC: Your Honor, based solely on the guilty plea, the maximum
2 punishment would be confinement for 10 years, total forfeiture of all
3 pay and allowances, reduction to E-1, and a dishonorable discharge.

4 MJ: Do you agree?

5 DC: Yes, I do, ma'am.

6 MJ: PFC Combs, the maximum punishment authorized in this case
7 based solely on your guilty plea is indeed a dishonorable discharge
8 from the United States Army, forfeiture of all pay and allowances,
9 confinement for a maximum of up to 10 years, and reduction to Private
10 E-1. A fine could also be adjudged.

11 Now, based on your plea alone, this court could sentence
12 you to that maximum punishment that I just stated.

13 Do you understand that?

14 ACC: Yes, ma'am.

15 MJ: Do you have any questions at all as to the maximum sentence
16 that could be imposed as a result of your guilty plea?

17 ACC: No, ma'am.

18 MJ: Is there a pretrial agreement in this case?

19 TC: Yes, Your Honor.

20 [The court reporter handed AE II to the military judge.]

1 MJ: All right. I've been handed Appellate Exhibit II. It is
2 entitled, Pretrial Agreement, Offer to Plead Guilty, dated 20
3 February 2005. It's a three-page document because I see that, on
4 page three, I have an original signature from Lieutenant General
5 Vines and, on page -- excuse me -- on page two, I have an original
6 signature from General Vines, and page three, I have original
7 signatures from both PFC Combs and Captain Scott. So essentially,
8 two and three are the same document.

9 PFC Combs, do you have a copy of this document?

10 ACC: Yes, ma'am.

11 MJ: All right. And, on page two of the document, is the
12 signature block that has your name -- is that your signature above
13 it?

14 ACC: Yes, ma'am.

15 MJ: Did you read through this document thoroughly before you
16 signed it?

17 ACC: Yes, ma'am.

18 MJ: Do you understand the contents of your pretrial agreement?

19 ACC: Yes, ma'am.

20 MJ: Did anyone force you to enter into this pretrial agreement?

21 ACC: No, ma'am.

1 MJ: Does this agreement contain all of the understandings or
2 agreements that you have in this case?

3 ACC: Yes, ma'am.

4 MJ: Did anyone make any promises to you that are not written
5 into the agreement in an effort to get you to plead guilty?

6 ACC: No, ma'am.

7 MJ: Counsel, are this appellate exhibit and the appellate
8 exhibit that is the quantum portion the full and complete agreement
9 in this case, and are you satisfied that there are no other
10 agreements?

11 TC: Yes, Your Honor.

12 DC: Yes, ma'am.

13 MJ: PFC Combs, basically a pretrial agreement means you agree
14 to plead guilty and, in return, the Convening Authority agrees to
15 take some favorable action in your case. Usually, that's in the form
16 of limiting the sentence that he will approve.

17 Do you understand that?

18 ACC: Yes, ma'am.

19 MJ: The law requires that I discuss the conditions of your
20 pretrial agreement with you, and the way I'd like that -- to do that
21 -- is you take your copy. I'm going to go through my copy, and I'm

1 going to explain to you the way I think it works. If my explanation
2 differs somehow from how you think it works -- or how it was
3 explained to you by Captain Scott -- stop me, and we'll go through it
4 in some detail. All right?

5 ACC: Yes, ma'am.

6 MJ: Good. All right. If you look at paragraph one, it states
7 that you are the accused in a court-martial now pending, you've
8 examined the charges preferred against you and the supporting
9 evidence, you've consulted with Captain Scott, been advised of your
10 legal and moral right to plead not guilty and place the burden of
11 guilt -- proving your guilt beyond a reasonable doubt on the
12 prosecution. Nevertheless, you offer to plead guilty just exactly
13 the way you did; that is, to the original Charge, guilty, and to the
14 Additional Charge and its specifications, not guilty. So you did
15 everything you said you were going to do in paragraph one, right?

16 ACC: Yes, ma'am.

17 MJ: Paragraph two, you also offer to plead guilty provided the
18 Convening Authority will not approve any sentence in excess of the
19 sentence attached hereto as Appendix I.

20 Now, I don't have Appendix I, PFC Combs, because frankly, I
21 don't want to see it until the very end of trial after I've decided

1 in my own mind what is an appropriate sentence. It is important that
2 you understand what you and the Convening Authority have agreed to,
3 though.

4 Do you have a copy of Appendix I over there?

5 ACC: Yes, ma'am.

6 MJ: Okay. Read that silently to yourself, please.

7 [Pause.]

8 MJ: Does that document accurately reflect what you and the
9 Convening Authority have agreed to?

10 ACC: Yes, ma'am.

11 MJ: Okay.

12 Counsel, is there anything in that document other than a
13 limitation on sentence?

14 TC: Yes, Your Honor. There is.

15 DC: Yes, ma'am.

16 MJ: Okay. And that refers to some sort of action with regard
17 to the Additional Charge and its specifications; is that right?

18 TC: There is something in there about that. Yes, Your Honor.

19 MJ: Is anything going to be affected by my entering a finding
20 of not guilty as to those?

21 TC: No, Your Honor.

1 DC: No, ma'am.

2 MJ: Okay. Anything else I need to worry about from that then?

3 TC: No, Your Honor.

4 DC: No, ma'am.

5 MJ: Roger. Okay.

6 Getting back to the offer to plead then, PFC Combs, you --
7 in paragraph two, you understand that the terms of the appendix are
8 binding on the Convening Authority only if your plea is accepted and
9 if findings and sentence are entered pursuant to the plea. And
10 that's right. I mean, it's possible that, later on in the trial, I
11 might not accept your plea for some reason. In which case, the
12 contract would be broken.

13 Do you understand that?

14 ACC: Yes, ma'am.

15 MJ: But, for right now, he is a party to the contract that you
16 have with him, right?

17 ACC: Yes, ma'am.

18 MJ: Okay. In paragraph two alpha, you state that, upon
19 acceptance of the offer, you agree to enter into a written
20 stipulation of fact with the trial counsel; and you've done that.

1 Prosecution Exhibit 1, which I've already accepted into evidence is
2 that document.

3 In paragraph two(b), you offer to plead guilty. The offer
4 -- you say that the offer originated with you, and nobody has made
5 any attempt to force or coerce you into making the offer to plead
6 guilty. That's true, right?

7 ACC: Yes, ma'am.

8 MJ: Two charlie, you state that the defense counsel advised you
9 of the meaning and effect of your guilty plea, and you understand the
10 meaning and effect.

11 Do you understand everything?

12 ACC: Yes, ma'am.

13 MJ: Okay. Paragraph two delta, you understand you can request
14 to withdraw your plea at any time before the sentence is announced
15 and, if I grant that request, then again, you can plead not guilty,
16 and we'll go to a full trial. But the deal would be off, right?

17 ACC: Yes, ma'am.

18 MJ: Okay. Paragraph two echo, you state that the automatic
19 cancellation provisions are if you fail to enter into a stipulation
20 of fact -- but you've done that; at the top of the next page, if you
21 withdraw from the agreement prior to trial, but you apparently

1 haven't; or three, if I, as the military judge, refuse to accept your
2 guilty plea.

3 PFC Combs, the reason that I asked you those questions and
4 talked to you about the facts in this case is because I'm required by
5 law to make sure that there's a factual basis for your guilty plea.
6 If there was not a factual basis or I believe that there was some
7 sort of defense that you should raise on your behalf, then even
8 though you wanted to plead guilty, I would've entered a plea of not
9 guilty. The problem with that is the deal would then be out the
10 window, right?

11 ACC: Yes, ma'am.

12 MJ: Okay. It doesn't look to me, PFC Combs, like any of the
13 automatic cancellation provisions are going to kick in for your case,
14 all right?

15 ACC: Yes, ma'am.

16 MJ: Paragraph three states that the agreement shall not be
17 affected by dismissal of any specifications or charges by the
18 military judge or by motion by defense counsel. I haven't received a
19 motion, and I'm not likely to dismiss any of the charges, so that's
20 probably surplus language.

1 Paragraph four, you agree to request trial by military
2 judge alone, and we discussed that earlier. And, of course, I
3 accepted your request to be tried by me, right?

4 ACC: Yes, ma'am.

5 MJ: So you've done what you said you were going to do there.

6 And, in paragraph five, you agree not to request production
7 of any out-of-country -- that is, Kuwait or Iraq -- witnesses so long
8 as the government enters into a stipulation of expected testimony for
9 that witness or provides the means for video teleconference testimony
10 by the witness. Let's talk about that a moment.

11 As the accused in a court-martial, you have an absolute
12 right to call witnesses on your behalf, and that's whether those
13 witnesses are located here in theater or back in CONUS or anywhere
14 else in the world. If I determine that those witnesses had relevant
15 material and necessary information to present to this court-martial,
16 then I would order the government to produce those witnesses for
17 trial. By putting this into your pretrial agreement, you've actually
18 saved the government a significant amount of time, effort, and money
19 because now they don't have to bring those witnesses here for trial.

20 Do you understand that?

21 ACC: Yes, ma'am.

1 MJ: That probably made them want to agree to your deal, so I've
2 got no problem with you putting it in there. That was a voluntary
3 suggestion on your part, right?

4 ACC: Yes, ma'am.

5 MJ: All right. There are alternatives to live testimony at a
6 court-martial though, and one of those alternatives might be letters
7 from family and friends at home, or stipulations of expected
8 testimony -- which would be an agreement between you, your defense
9 counsel, and the trial counsel that, if someone were called, they
10 would say substantially what is in a written document -- or we can
11 call somebody on the telephone, or we can do a video teleconference.

12 It's my understanding, from talking to your counsel
13 yesterday that we do intend to do a video teleconference of a couple
14 of witnesses. Is that you're understanding as well?

15 ACC: Yes, ma'am.

16 MJ: Okay. So please recognize that, even though you've agreed
17 not to require the government to fly anybody here for trial, you have
18 all of those options still available to you at this trial, all right?

19 ACC: Yes, ma'am.

20 MJ: Good. All right. At the bottom of that document, on the
21 27th of February 2005, Lieutenant General Vines accepted your offer

1 to plead guilty so, as of that date, you and he have a contract,
2 right?

3 ACC: Yes, ma'am.

4 MJ: All right. PFC Combs, the way that I've explained this to
5 you, is that pretty much the same way that you understood it?

6 ACC: Yes, ma'am.

7 MJ: So it's the same way that Captain Scott explained it to you
8 as well?

9 ACC: Yes, ma'am.

10 MJ: PFC Combs, you get the benefit of whichever is less, each
11 element of the sentence of the court or that contained in your
12 pretrial agreement. If the sentence adjudged by this court is
13 greater than the one provided in your pretrial agreement, the
14 Convening Authority must reduce the sentence to one no more severe
15 than the one in your pretrial agreement.

16 On the other hand, if the sentence by me is less than the
17 one in your pretrial agreement, then the Convening Authority cannot
18 increase the sentence that I adjudge.

19 Do you understand that?

20 ACC: Yes, ma'am.

1 MJ: Have you had enough time to discuss this agreement with
2 Captain Scott?

3 ACC: Yes, ma'am.

4 MJ: Are you satisfied with Captain Scott's advice concerning
5 this pretrial agreement?

6 ACC: Yes, ma'am.

7 MJ: Did you enter the agreement of your own free will?

8 ACC: Yes, ma'am.

9 MJ: Has anyone tried to force you to make this pretrial
10 agreement?

11 ACC: No, ma'am.

12 MJ: Do you have any questions at all about your pretrial
13 agreement?

14 ACC: No, ma'am.

15 MJ: Do you fully understand then the terms of your pretrial
16 agreement and how they affect your case?

17 ACC: Yes, ma'am.

18 MJ: Are you pleading guilty not only because you hope to
19 receive a lighter sentence but also because you believe that you are
20 in fact guilty?

21 ACC: Yes, ma'am.

1 MJ: Do counsel for both sides agree with my interpretation of
2 the pretrial agreement?

3 TC: Yes, Your Honor.

4 DC: Yes, ma'am.

5 MJ: And, Captain Scott, have you had enough time and
6 opportunity to discuss this case with PFC Combs?

7 DC: Yes, I have, ma'am.

8 MJ: PFC Combs, have you had enough time and opportunity to
9 discuss this entire case with your defense counsel?

10 ACC: Yes, ma'am.

11 MJ: Have you in fact consulted fully with your defense counsel
12 and received the full benefit of his advice?

13 ACC: Yes, ma'am.

14 MJ: Are you satisfied that your defense counsel's advice is in
15 your best interest?

16 ACC: Yes, ma'am.

17 MJ: And are you satisfied with Captain Scott as your defense
18 counsel?

19 ACC: Yes, ma'am.

20 MJ: Are you pleading guilty voluntarily and of your own free
21 will?

1 ACC: Yes, ma'am.

2 MJ: Has anyone made any threat or tried in any way to force you
3 to plead guilty?

4 ACC: No, ma'am.

5 MJ: Do you fully understand the meaning and effect of your plea
6 of guilty?

7 ACC: Yes, ma'am.

8 MJ: Do you understand that, even though you believe you are
9 guilty, you have the legal and moral right to plead not guilty and to
10 place the burden upon the government of proving you're guilty beyond
11 a reasonable doubt?

12 ACC: Yes, ma'am.

13 MJ: Very well. PFC Scott, what I -- excuse me -- Combs -- I'd
14 like to take a moment and talk with Captain Scott about your guilty
15 plea because, if you still want to plead guilty, we'll finish up this
16 inquiry and drive on. All right?

17 ACC: Yes, ma'am.

18 [Pause.]

19 MJ: Do you still want to plead guilty?

20 ACC: Yes, ma'am.