

1 MJ: Very well. PFC Combs, I find that your plea of guilty is
2 made voluntarily and with full knowledge of its meaning and effect.
3 I further find that you have knowingly, intelligently, and
4 consciously waived your rights against self-incrimination, to a trial
5 of the facts by this court-martial, and to be confronted by the
6 witnesses against you. Accordingly, your plea of guilty is provident
7 and is accepted. However, I advise you that you may request to
8 withdraw your guilty plea at any time before I announce the sentence
9 and, if you have a good reason for your request, I will grant it.

10 PFC Combs, counsel, please rise.

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

12 MJ: Private First Class James E. Combs, III, in accordance with
13 your plea of guilty, this court finds you:

14 **Of the original Charge and its Specification: Guilty.**

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

18 MJ: Please be seated.

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

20 MJ: All right. PFC Combs, what we're going to do now is advise
21 you of your rights for the sentencing portion of your trial, which we
22 will enter. But then we'll take a short recess so that your counsel

1 can talk to the interpreter and arrange anything that needs to be
2 arranged for the sentencing portion of your trial. All right?

3 ACC: Yes, ma'am.

4 MJ: At the sentencing phase of your trial, you have the right
5 to present matters in extenuation and mitigation; that is, matters
6 about the offense or yourself, which you want me to consider in
7 deciding your sentence.

8 In addition to testimony of witnesses and the offering of
9 documentary evidence, you may yourself testify under oath as to these
10 matters, or you may remain silent. In which case, I will not draw
11 any adverse inference from your silence.

12 On the other hand, if you desire, you may make an unsworn
13 statement. Because your statement was unsworn, you cannot be cross-
14 examined on it. However, the government may offer evidence to rebut
15 any statement of fact contained in your unsworn statement. An
16 unsworn statement may be made orally, or in writing, or both. It may
17 be made by you, by your counsel on your behalf, or by both of you.

18 Do you understand the rights you have at this stage of your
19 trial?

20 ACC: Yes, ma'am.

21 MJ: Very well. All right. Court is in recess.

1 [The court-martial recessed at 0909, 24 March 2005.]

2 [The court-martial was called to order at 0930, 24 March 2005.]

3 MJ: Court is called to order. All parties present when the
4 court recessed are again present.

5 Counsel, have you made the change to the personal data on
6 the front page of the charge sheet?

7 TC: That's correct, Your Honor. We have.

8 MJ: So then the total basic pay for the accused is \$1,547.84
9 with sea or foreign duty of \$375, for a total of \$1,922.84; is that
10 right?

11 TC: Correct, Your Honor.

12 MJ: No other changes then to the personal data?

13 TC: No other changes, Your Honor.

14 MJ: Is that right, defense counsel?

15 DC: That's correct, ma'am.

16 MJ: Okay. And, Captain Scott, have you looked into whether or
17 not PFC Combs has been punished in any way prior to trial that would
18 constitute illegal pretrial punishment under Article 13?

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

20 MJ: Any issue?

21 DC: No. I do not have one, ma'am.

1 MJ: Okay.

2 PFC Combs, you've not yet been punished for this offense,

3 correct?

4 ACC: Yes, ma'am.

5 MJ: You expect to be punished today but no other punishment

6 yet, right?

7 ACC: Yes, ma'am.

8 MJ: All right. Trial counsel, do you have any evidence to

9 present at this time?

10 ATC: Yes, Your Honor. The government will call Jalil 'Abas

11 'Ali, but first we'd like to swear the translator.

12 MJ: All right. Well, let me ask you, defense counsel, any

13 objection to -- well, who is the translator?

14 ATC: Bob, Your Honor.

15 [Mr. Matrood]: I am.

16 MJ: Are you the translator?

17 [Mr. Matrood]: Yes.

18 MJ: And your name, sir?

19 [Mr. Matrood]: Basim Matrood.

20 MJ: Okay. You want to spell that for me?

21 [Mr. Matrood]: B-A-S-I-M M-A-T-R-O-O-D.

1 MJ: Got it. Basim Matrood.

2 Any objection to Mr. Matrood acting as an interpreter from
3 the English language to the Arabic language and Arabic language to
4 the English language?

5 DC: No, Your Honor.

6 MJ: Okay. Very well.

7 Mr. Matrood, if you would come up here, please, and be
8 sworn as an interpreter.

9 [The interpreter was sworn.]

10 ATC: The government calls Jalil 'Abas 'Ali, Your Honor.

11 MJ: Very well.

12 JALIL 'ABAS 'ALI, civilian, was called as a witness for the
13 prosecution, was sworn, and testified as follows:

14 DIRECT EXAMINATION

15 Questions by the assistant trial counsel:

16 Q. You are Jalil 'Abas 'Ali?

17 A. Yes.

18 Q. When were you born?

19 A. 1938.

20 Q. You were married to Babea'a Husaene?

21 A. Babea'a Husaene 'Ali.

1 Q. She was married to -- Babea'a Husaene 'Ali?
2 A. Babea'a Husaene 'Ali.
3 Q. For how long were you married to Babea'a Husaene 'Ali?
4 A. A long time -- 35 years.
5 ATC: Your Honor, permission to approach?
6 MJ: Uhm-hmmm [nodding head to the affirmative].
7 Q. Let the record show I am handing Prosecution Exhibit Number
8 2 marked for identification to the witness.
9 I've handed you Prosecution Exhibit Number 2 for
10 identification. Can you tell me what that is?
11 A. This is her picture.
12 Q. Can you tell me -- how can you identify this picture of
13 your wife?
14 A. It's clear. Nobody will not know his [sic] wife.
15 Q. Can you tell me how it was taken?
16 A. They took it in the house.
17 Q. How accurate is that photograph of your wife?
18 A. Yes. It is accurate.
19 Q. Can you indicate for the court where your wife is in the
20 photograph?

1 Let the record reflect that the witness is pointing to the
2 woman on the far left of the photograph -- standing.

3 MJ: Would you, please, show the photograph to defense?

4 [The witness did as directed.]

5 [The defense counsel handed PE 1 for ID to the military judge.]

6 Q. Your Honor, I now offer Prosecution Exhibit Number 2 for
7 identification into evidence as Prosecution Exhibit Number 2.

8 MJ: Any objection?

9 DC: No objection, Your Honor.

10 Q. Jalil 'Abas ----

11 MJ: Wait a minute. Prosecution Exhibit 2 for identification is
12 received into evidence as Prosecution Exhibit 2.

13 Please proceed.

14 Q. Jalil 'Abas 'Ali, what was your wife like?

15 A. What do you mean?

16 Q. For example, was she friendly?

17 A. Yes. Yes -- for sure.

18 Q. Did she help other people in the neighborhood?

19 A. Yes.

20 Q. Did she have a good sense of humor?

21 A. Yes.

1 Q. Did she smile a lot?
2 A. Sure -- always. Human beings sometimes laughing, sometimes
3 sad.
4 Q. Did your wife raise any children?
5 A. One daughter I have [sic] -- just Sayf's mother.
6 Q. Did your wife also help in raising your grandson?
7 A. Yes.
8 Q. Have you always lived in a house -- did you live with her
9 in the house that you live in now?
10 A. Yes.
11 Q. And for how many years did you live in that house?
12 A. All life. All life.
13 Q. What kind of work do you do?
14 A. For me, I was auto body shop worker.
15 Q. Do you still work as an auto body shop worker?
16 A. No.
17 Q. After you lost that job as an auto body worker, how did you
18 earn income?
19 A. I was selling grocery [sic] in front of my house.
20 Q. Did your wife help you with that grocery business?
21 A. Yes. Both of us.

1 Q. What did your wife do for the grocery business?

2 A. Worked for bringing the grocery from Jamina, and we put in
3 front of our house. Then we sell it.

4 Q. On the day that she was killed, was your wife working at
5 the grocery?

6 A. Yes. She was sitting in front of the schell.

7 Q. And what was she doing when she was shot?

8 A. She was flipping the groceries. She was trying to organize
9 the eggplant -- tomatoes.

10 Q. What were you doing when she was shot?

11 A. I was inside laying [sic]. I heard the shot, and then I
12 went outside. I went outside and found her laying on the ground.

13 Q. What did you -- how did you feel when you saw your wife
14 laying on the ground?

15 A. It was very difficult. It wasn't easy.

16 Q. Did you go with her to the hospital?

17 A. Yes.

18 Q. Can you describe what your wife looked like in the
19 hospital?

20 A. She was laying there while they were trying to treat her.
21 She was sleeping -- trying to help her, but nothing worked.

1 Q. What effect did that have on you seeing your wife in that
2 condition?
3 A. I was upset.
4 Q. Does it still upset you to remember what she looked like in
5 the hospital?
6 A. For sure -- every time I remember her -- every time I see
7 her stuff.
8 Q. How often do you see her stuff?
9 A. Always. They are inside the house.
10 Q. After your wife's death, did the U.S. Army pay you any
11 money?
12 A. Yes. They paid me 35 papers, which means 35 -- papers.
13 MJ: What does that mean? Thirty-five what?
14 [Mr. Matrood]: You request [sic] me just to translate the ----
15 MJ: Yeah.
16 [Mr. Matrood]: It's \$3,500.
17 Q. Did you ask for that money?
18 A. I did not ask. They gave me.
19 Q. Is any of that -- do you still have any of that money now?
20 A. No. I did not spend all of it. We spent, but we did not
21 spend all of it.

1 Q. Getting back to your grocery business, is your grocery
2 business still in operation now?

3 A. No.

4 Q. How do you earn money now?

5 A. I have small car I'm working on.

6 Q. Why does the grocery business no longer work? Why don't
7 you operate the grocery business any longer?

8 A. I don't feel good to do it. It is too hard job and plus, I
9 need help.

10 Q. And your wife would have helped you?

11 A. Yes. I was -- because it's hard work selling the grocery.

12 Q. Do you miss your wife?

13 A. Yes -- for sure.

14 ATC: I have no further questions, Your Honor.

15 MJ: Defense, any questions?

16 DC: Ma'am, the defense has no questions.

17 **EXAMINATION BY THE COURT-MARTIAL**

18 **Questions by the military judge:**

19 Q. Sir, how old was your wife when she died?

20 A. Over 40 years. I have her ID with me [handing ID to trial
21 counsel who handed to military judge]. She died 6 -- 7 months ago.

1 Q. Did she live all her life in Baghdad?

2 A. Yes -- in Baghdad.

3 Q. Since 2003 when the Americans came to Iraq, have you had
4 any interaction with them?

5 A. No.

6 Q. And your wife as well, no interaction at all?

7 A. No. It's a friendly neighborhood. We did not.

8 Q. Has this incident impacted in any way the way you view
9 Americans?

10 A. One individual did the act, not all of them. Not all of
11 them.

12 MJ: Okay. Thank you.

13 Any questions based on mine?

14 TC: No, Your Honor.

15 DC: No, ma'am.

16 MJ: Sir, thank you very much for your testimony. Please don't
17 discuss your testimony with anyone else until the court-martial is
18 over, and you may go ahead and have a seat in the back of the
19 courtroom if you'd like. Thank you.

20 [The witness withdrew.]

21 MJ: Government, any other evidence?

1 TC: Yes, Your Honor. The government will call Master Sayf
2 Mizhir Al-Zubaydi.

3 SAYF MIZHIR MUHAMMAD 'AZAWI AL-ZUBAYDI, civilian, was called as a
4 witness for the prosecution, was sworn, and testified as follows:

5 DIRECT EXAMINATION

6 Questions by the trial counsel:

7 Q. Would you, please, state your name for all of us -- please?

8 A. Sayf Mizhir Muhammad 'Azawi Al-Zubaydi.

9 Q. And do you currently live in

10 A. Yes.

11 Q. How old are you, Sayf?

12 A. 15 years old.

13 Q. And are you in school?

14 A. Yes.

15 Q. And was Babea'a Husaene your grandmother?

16 A. Babea'a Husaene.

17 Q. And she was your grandmother?

18 A. Yes.

19 Q. And was that your grandfather who just spoke earlier?

20 A. Yes.

21 Q. Do you live near your grandfather?

1 A. We all live in the same place -- in the same house.
2 Q. And did your grandmother live with you there too?
3 A. Yes.
4 Q. And who else lives with you?
5 A. My family, my grandma, my grandfather.
6 Q. Did you spend a lot of time with your grandmother?
7 A. Yes.
8 Q. What kinds of things would you do with her?
9 A. I was helping her out with the grocery [sic]. I would go
10 with her.
11 Q. Were you very close to your grandmother?
12 A. Yes.
13 Q. Did she help to raise you from when you were a little boy?
14 A. Yes.
15 Q. What was your favorite thing about your grandmother?
16 A. When I was a kid, she raised me up, and she loved me a lot.
17 And everywhere she go, she would take me with her.
18 Q. Do you miss your grandmother?
19 A. Yes.
20 Q. On the day when she died, where were you when she was shot?
21 A. Beside her.

1 Q. How far away from you was she standing when she was shot?
2 A. It's not far.
3 Q. What do you remember happening?
4 A. She was cleaning, and I was trying to carry the grocery
5 with her.
6 Q. Was that something you often did with her?
7 A. Yes.
8 Q. Did you hear the shot?
9 A. Yes.
10 Q. What happened then?
11 A. I ran up the stairs to call my mom, and the neighborhood
12 were gathering in that area.
13 Q. Did you see your grandmother laying on the ground?
14 A. Yes.
15 Q. When you saw her, what were you feeling?
16 A. I was very upset. I saw her laying on the ground, and the
17 blood -- saw a little bit of blood from her head.
18 Q. Had you ever seen anybody shot like that before?
19 A. No.
20 Q. Do you know of anyone else who lived near you who had had
21 that happen to them?

1 A. No.

2 Q. How has the death of your grandmother affected you?

3 A. It affected me a lot because we miss her. We lost her.

4 Q. What do you miss the most about your grandmother?

5 A. Up to now, we remember her. We remember how she used to
6 come with us upstairs and talk to us and laugh and joke with us.
7 This is what we miss -- mostly.

8 TC: No further questions, Your Honor.

9 MJ: Defense, any questions?

10 DC: The defense has no questions, ma'am.

11 **EXAMINATION BY THE COURT-MARTIAL**

12 **Questions by the military judge:**

13 Q. Sayf, how many more years of school will you attend?

14 A. I am in the 7th grade now, and I will finish up.

15 Q. And how many grades are there to finish up?

16 A. I had the 2d, the 3rd, the 4th, the 5th, then the 6th, and
17 I'll finish high school.

18 Q. Do you know what your grandmother's hopes and dreams were
19 for you?

20 A. She was -- she loved me.

1 Q. Right. But did she encourage you, for example, to take any
2 profession in life or continue to live in Baghdad or anything like
3 that?

4 A. She always was asking me to stay in . . .

5 MJ: All right. I have no further questions. Do you have any
6 questions based on mine?

7 TC: No, Your Honor.

8 DC: No, ma'am.

9 MJ: Very well. Thank you very much for your testimony. You
10 can go have a seat in the back of the courtroom. All right?

11 [The witness withdrew.]

12 MJ: Government, anything further?

13 ATC: Yes, Your Honor. The government calls Isam Abud Jasim.

14 **ISAM ABUD JASIM MUHAMMAD AL-RUBI, civilian, was called as a witness**
15 **for the prosecution, was sworn, and testified as follows:**

16 **DIRECT EXAMINATION**

17 **Questions by the assistant trial counsel:**

18 Q. You are Isam Abud Jasim?

19 A. Isam Abud Jasim Muhammad Al-Rubi.

20 Q. Mr. Jasim, how long have you lived in the present
21 neighborhood?

← what's
relevant
7
0

1 A. Since my grandfather -- all days.

2 Q. Can you tell me approximately how many years that is?

3 A. I am 45 years old and, since I was a kid, I was there.

4 Q. Can you describe for me how close the residents of the
5 neighborhood are?

6 A. It's kind of like a brotherhood because we knew each other
7 for a long time.

8 Q. Was Jalil 'Abas 'Ali and Babea'a Husaene your neighbors?

9 A. Yes -- for all time -- for a long time.

10 Q. Where in relation to you did they live?

11 A. Nothing -- like 15 meters from our house.

12 Q. And how often would you see them?

13 A. We see them 24 hours. They're always out there.

14 Q. What was your relationship with them like?

15 A. They are neighbors. Our relation -- like brothers.

16 Q. What were you doing on the day that Mrs. Husaene was
17 killed?

18 A. As we were gathering to drink our tea -- and we heard the
19 shot and went to see what was going on.

20 Q. Did you go with her to the hospital?

21 A. Yes. I carried her to the hospital.

1 Q. Did you see her in the hospital?

2 A. Yes. I transferred her from Al Kindi Hospital to the
3 nervous system hospital.

4 Q. Were other members -- other residents -- of the
5 neighborhood there in the hospital -- in the neurological hospital --
6 when she was there?

7 A. They followed us after -- when they moved her to the nerve
8 specialist hospital.

9 Q. And how did they feel while she was in the nerve specialist
10 hospital?

11 A. They were upset. She's a simple lady.

12 Q. What was her reputation in that neighborhood?

13 A. Her reputation was very good. She had nothing against the
14 other people. She was helping the others.

15 Q. She helped other people? How did she help other members in
16 the neighborhood?

17 A. If somebody doesn't have money to pay for the groceries,
18 she would not take it from them.

19 Q. How would she -- would she get that money back later?

20 A. Sometimes. Sometimes, she takes it back. Sometimes she
21 just forgives them because they don't have money with them.

1 Q. She was well-liked in the neighborhood?

2 A. Yes. She was.

3 Q. Is she missed by the residents in the neighborhood?

4 A. Yes -- 24 hours.

5 Q. How do the residents in the neighborhood feel about her
6 death?

7 A. They're sad because they lost her. They lost her. The
8 neighborhood lost her.

9 Q. Are any of the residents angry about her death?

10 A. Yes.

11 Q. Have any of the residents been angry when Americans came
12 around the neighborhood since her death?

13 A. No. It's a safe neighborhood.

14 Q. Has this incident changed the way any resident feels about
15 Americans?

16 A. Yes. The incident affected us. There's sadness -- and
17 upsetting -- but we have nothing against Americans.

18 ATC: Your Honor, I have no further questions.

19 MJ: Defense?

20 DC: I have no questions, ma'am.

1 [An individual from the Fort Lewis VTC came on the VTC line for
2 communication checks.]

3 MJ: Standby.

4 All right. I have no questions either. Thank you very
5 much for your testimony, and you may either have a seat in the back
6 of the courtroom or return home if you'd like.

7 [The witness withdrew.]

8 [An individual from the Fort Lewis VTC came on the VTC line for
9 communication checks.]

10 MJ: Thank you. Court is in recess.

11 [The court-martial recessed at 1004, 24 March 2005.]

12 [The court-martial was called to order at 1015, 24 March 2005.]

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

14 All parties present when the court recessed are again
15 present.

16 Government, you rest?

17 TC: The government rests, Your Honor.

18 MJ: All right.

19 Defense, are you prepared to proceed?

20 DC: Yes, ma'am.

21 MJ: Please call your first witness.

1 DC: At this time, defense will call Ms. Janice Hunter.

2 MJ: Trial counsel, please swear her in.

3 JANICE RENEE HUNTER, civilian, was called by video teleconference by
4 the defense, was sworn, and testified as follows:

5 DIRECT EXAMINATION

6 Questions by the trial counsel:

7 Q. And is your full name Janice Hunter?

8 A. Janice Renee Hunter.

9 TC: Thank you, ma'am.

10 Questions by the defense counsel:

11 Q. Good morning Ms. Hunter. What time is it where you're at?

12 A. 2314.

13 Q. Thank you very much for coming in.

14 I want to talk to you a little bit about you and a little
15 bit about James. Where are you from?

16 A. [Inaudible.]

17 Q. Where do you live currently?

18 A.

19 Q. Where do you work?

20 A. Microsoft.

21 MJ: I'm sorry. I didn't catch that.

1 DC: She said Microsoft.

2 MJ: Microsoft. Thank you.

3 Q. If you would, would you, please, tell the court what you do
4 at Microsoft?

5 A. I'm a diversity coordinator.

6 Q. What does a diversity coordinator do, ma'am?

7 A. We work with our business groups within Microsoft. We help
8 [inaudible] workforce -- excuse me -- and also, we do outreach
9 through the different organizations in the community -- for the
10 schools and everything like that.

11 Q. How long have you worked at Microsoft?

12 A. A year.

13 Q. Let's talk a little bit about James. When was he born?

14 A. December 21st, 1983.

15 MJ: Hold on. The court reporter tells me that she's having a
16 hard time hearing, so either can we increase the volume or ask her to
17 speak louder?

18 DC: Ma'am -- either Fort Lewis or Ms. Hunter -- if you can turn
19 up your volume, or if you can speak up a little bit, Ms. Hunter. Our
20 court reporter is having a little difficulty hearing you.

21 MJ: Thanks.

1 WIT: Okay.

2 Q. Where were you at when James was born?

3 A. The Phillipines.

4 Q. What were you doing in the Phillipines, ma'am?

5 A. I was stationed there. I was in the United States Navy.

6 Q. Was he your first child?

7 A. Yes.

8 Q. What did you do in the Navy?

9 A. I was personnel. I worked with the personnel support
10 detachment.

11 Q. When James was born, did you have some hopes for him when
12 he grew up?

13 A. Yes.

14 Q. What were those, please?

15 A. Basically, my hopes -- okay -- well, that he would grow to
16 be a productive member of society.

17 Q. How long did you live in the PI?

18 A. Approximately 2 years.

19 Q. If you would, tell the judge a little bit about what -- how
20 James was as a baby. Was he a good baby?

1 A. He was a very good baby. We never had any problems with
2 him. He was very self-sufficient. He was a good child. I mean, he
3 didn't cry a lot. He didn't need a lot of attending to. We didn't
4 have to discipline him. He was good. I mean, he did the things that
5 we asked him to do, and we never had a problem with him.

6 Q. Where did you move to from the PI?

7 A. Whitbey Island -- the Naval station, Whitbey Island, in
8 Washington.

9 Q. Were you still in the Navy at that time?

10 A. Yes, I was.

11 Q. When did you get out of the Navy?

12 A. In 1988.

13 Q. Now, were you still married when you were in [sic] Whitbey
14 Island?

15 A. Yes.

16 Q. Did you stay married?

17 A. No.

18 Q. When did you get divorced?

19 A. In 1990.

20 Q. After the divorce, who did James live with?

21 A. His father.

1 Q. So how old was James when you split up?
2 A. Six and a half.
3 Q. If you would, would you explain to the court, was it hard
4 on James when you got divorced?
5 A. It was hard on the two of us being apart.
6 Q. So James didn't live with you?
7 A. No. He did not.
8 Q. Why didn't James live with you?
9 A. Because his father had custody, and they lived across the
10 country.
11 Q. So how often did you get to see him?
12 A. About 2 weeks in the summer.
13 Q. Just 2 weeks in the summer?
14 A. Excuse me?
15 Q. Did you say 2 weeks in the summer?
16 A. Yes.
17 Q. What would you do with James during the summers?
18 A. Occasionally -- sometimes, we went fishing. One of the
19 things James liked to do that we did when we were younger was make
20 sugar cookies and things like that -- and spend time with me and his

1 sister -- just catching up on the things that we missed, you know, in
2 the early part of the year.

3 Q. Was it difficult being away from him during the year?

4 A. Yeah. It was very difficult.

5 Q. How was James' relationship with your daughter?

6 A. They have a very good relationship. He emails her. He
7 talks to her. She's at a stage in her life now where she needs
8 guidance from her older brother, and he talks to her and lets her
9 know that, you know, she needs to listen to mom and her dad and, you
10 know. "They have wisdom," and, you know, "You need to listen." So
11 they have a very good relationship considering the age difference.

12 Q. Were you proud when James followed in your footsteps and
13 joined the military service?

14 A. Yes. It was ----

15 Q. How about when he ----

16 A. It was something he wanted to do. He told me, "Mom, I want
17 to join" ----

18 Q. Go ahead, ma'am.

19 A. Go ahead.

20 It was something he wanted to do. He joined the military
21 because he wanted to be a police officer. He said the Army offered

1 him that opportunity and training so, when he got out of the
2 military, he could be a police officer. So, you know, I was glad
3 that he had a course for life in mind when he joined the military.

4 Q. Did you get to see him much while he was in the military?

5 A. I haven't seen him since graduation in 2002.

6 Q. Was he going to come home on R and R?

7 A. He was ----

8 Q. Did he get to?

9 A. ---- but I don't know. Something happened. No, he didn't.

10 Q. Did you have plans?

11 A. Yes. His plan was to meet up with him in the D.C. area and
12 get together.

13 Q. So has it been about 3 years since you've seen your son?

14 A. About 3 years.

15 Q. How did you find out about James' court-martial?

16 A. James called me.

17 Q. Did he tell you what happened?

18 A. Yes, he did.

19 Q. How has this affected you?

20 A. Well, it's been kind of hard because we don't know what's
21 going to happen to him and -- it's just been pretty hard just

1 thinking about what his future's going to be after this proceeding
2 and this is over -- what course we're going to have to take in order
3 for things to be set right as far as he's concerned, so it's just
4 been really hard trying to think about the things that's going to
5 happen after this is over, you know. What are we going to need to do
6 -- what kind of support he's going to need?

7 Q. How is this going to change your relationship with James?

8 A. What was that?

9 Q. How is this going to change your relationship with James?

10 A. Can you clarify that question? How is what going to change
11 our relationship?

12 Q. The fact that he's pled guilty today.

13 A. Well, our relationship -- I mean, he's my son, and I love
14 him, and so that will never change. But he joined the military. I
15 feel like this helps -- it's going to help us become closer and
16 regain some of the years that we have lost. He's been calling me and
17 communicating with me a lot more. I don't know -- I'm kind of scared
18 of what the effects of whatever may happen may have on that
19 relationship. If it's going to separate us a little bit, and then
20 we'll have to start all over again. That's basically it.

1 Q. So you -- did you say you've grown closer to him the last
2 couple of years?

3 A. I would say we've grown closer. I mean, he talks to me
4 more. He calls me. He emails me, you know. He talks about things
5 that are going on in his life, you know. He's pretty open with me,
6 and I'm pretty open with him. So I think we have a -- we've grown,
7 you know, pretty close.

8 Q. Is confinement going to make it tough for you and James?

9 A. My thought is it's going to make it really tough for me --
10 for my daughter -- and for him. The separation -- to me -- it's like
11 moving him all over again. It's going to be really hard.

12 Q. What are you prepared to do for James once this is over
13 with?

14 A. Well, the family and I are here to support James and do
15 whatever it takes to get him, you know, stable and make him a
16 productive member of society -- to give him support, you know --
17 whatever support he needs to have from my family and from his
18 father's family and from friends. So we're willing to do whatever it
19 takes in order for him, you know, to get things straight and make
20 things right for him.

1 Q. Are you positive he'll become a productive member of
2 society?

3 A. Yes. I'm very positive. James has always been a very good
4 -- very, very, very good child. We've never had any problems with
5 him. He's never had any discipline problems. He's never had any
6 run-ins with the law. So I know, with the support of his family and
7 everything, he will be productive. I mean, we wouldn't expect
8 anything less from him.

9 Q. Now, earlier I asked you if you had hopes for James when he
10 was a baby. What are your hopes for James today?

11 A. My hope today is that, what has happened, won't change the
12 course of his life, won't change his view as far as what he wants to
13 do -- that he'll still be able to pursue his career -- that it just
14 won't make him bitter and that we could recover from this and go on.

15 Q. Is there anything you'd like to say to the court before we
16 go?

17 A. Like I said earlier, James and I were separated when James
18 was about 6 and a half years old and, as he got older, he matured.
19 When he joined the military, he was very excited about that. And he
20 matured, and so we began to become closer again. I'm hoping -- I
21 talked to him about what happened, you know, the accident and the

1 tragedy, but I'm hoping that the court will have mercy, and that they
2 could see that he could be a productive member of society if given
3 another opportunity and chance. I don't see where confinement is
4 going to help him do that. I just know it was a terrible accident.
5 I don't feel like he's a criminal, but I'm asking the court to be
6 merciful and give him another chance.

7 DC: Thank you very much, Ms. Hunter. That's all the questions
8 I have right now.

9 MJ: Government?

10 TC: Your Honor, no questions for this witness.

11 MJ: All right.

12 Thank you Ms. Hunter. I have no questions either.

13 Please tell her that you will call her after the court-
14 martial to let her know the results.

15 [The defense counsel did as directed.]

16 [The witness was excused, and the video teleconference between Fort
17 Lewis and Iraq was disconnected.]

18 MJ: All right. Let's talk to Fort Belvoir then.

19 [The defense counsel made a communications check with Fort Belvoir.]

20 DC: At this time, Your Honor, the defense would call Mr. James
21 E. Combs.

1 JAMES E. COMBS, civilian, was called by video teleconference by the
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. Are you Mr. James E. Combs?

6 A. Yes, sir.

7 Q. And what's your current address, Mr. Combs?

8 A.

9 TC: Thank you, Mr. Combs. Captain Scott has some questions for
10 you.

11 Questions by the defense counsel:

12 Q. Mr. Combs, it's good to see you. How are you doing?

13 A. Doing fine, sir.

14 Q. Thank you very much for coming in at this late hour.

15 If you would, sir, could you tell the court what your
16 current occupation is?

17 A. I'm a federal police officer.

18 Q. Where do you work, sir?

19 A. I work in

20 Q. Where at?

1 A. The weapons base down in Indianhead -- which is in Charles
2 County, Maryland.

3 Q. Have you always been a federal policeman?

4 A. No, sir.

5 Q. What did you do before?

6 A. I was in the United States Navy.

7 Q. How long were you in the Navy, sir?

8 A. A little bit over 20 years.

9 Q. Did you retire?

10 A. Yes, sir.

11 Q. Now, we just spoke to James' mom, and she said he was born
12 in the Phillipines. Is that where you were stationed at the time?

13 A. Yes, sir.

14 Q. What was your job in the Navy?

15 A. I was an aviation machinist -- jet mechanic.

16 Q. How long did you serve in the PI?

17 A. Three and a half years.

18 Q. Now, when James was born there, if you could, tell the
19 court what sort of a moment was that when he was born.

20 A. That was a very happy moment for me. I was very proud --
21 very proud.

1 Q. Did you have hopes and dreams for him when he was born?

2 A. Yes, sir. I was hoping that he would be a better man than
3 me.

4 Q. Now, how long were you married to Mrs. Hunter?

5 [Pause.]

6 DC: Fort Belvoir?

7 [The video teleconference communication between Fort Belvoir and Iraq
8 was lost.]

9 MJ: Keep trying.

10 [The defense counsel did as directed.]

11 DC: That's not good, ma'am.

12 MJ: Court's in recess.

13 [The court-martial recessed at 1036, 24 March 2005.]

14 [The court-martial was called to order at 1041, 24 March 2005.]

15 MJ: Court is called to order.

16 BAILIFF: All rise.

17 [All persons did as directed.]

18 MJ: Please be seated.

19 [All persons did as directed.]

20 MJ: All parties present when the court recessed are again
21 present.

1 Just for the record, the video teleconference that we were
2 in with Mr. Combs cut out and apparently all audio and video
3 telephonic communication to and from the courtroom has been somehow
4 interrupted, so Captain Scott will continue on with the trial. And
5 hopefully, before the defense rests, we'll have the video
6 teleconference back up and be able to finish up your testimony with
7 Mr. Combs. All right?

8 DC: Thank you, ma'am.

9 At this time, the defense would like to offer what has been
10 previously marked as Defense Exhibit Alpha, a stipulation of expected
11 testimony from Command Sergeant Major Geraldine Rimpley.

12 MJ: Okay. Do you have any other stipulations of expected
13 testimony?

14 DC: Yes, ma'am. Also what has been previously marked as
15 Defense Exhibit Bravo, First Sergeant Thomas Miller.

16 MJ: All right.

17 PFC Combs, do you have a copy of Defense Exhibits A and B?

18 ACC: Yes, ma'am.

19 MJ: Take a look at page two of both of these documents. Your
20 signature block appears to be the first one. Is that your signature
21 above your signature block?

1 ACC: Yes, ma'am.

2 MJ: And did you read both of these documents before you signed
3 them?

4 ACC: Yes, ma'am.

5 MJ: Did your defense counsel discuss with you what a
6 stipulation of fact [sic] is and how it's -- excuse me -- a
7 stipulation of expected testimony -- and how it's used at a court-
8 martial?

9 ACC: Yes, ma'am.

10 MJ: If you remember, when I was talking to you about
11 Prosecution Exhibit 1, the stipulation of fact, I said you can't be
12 forced to enter into a stipulation of fact. You only do it if you
13 want to do so. The same thing as with the stipulation of expected
14 testimony; that is, no one can be forced to enter into a stipulation,
15 so you should enter into it only if you want to do so.

16 Do you understand that?

17 ACC: Yes, ma'am.

18 MJ: All right.

19 Do both counsel agree to this stipulation [sic] and that
20 your signatures appear on the document [sic]?

21 TC: Yes, Your Honor.

1 DC: Yes, ma'am.

2 MJ: Are you voluntarily entering into this stipulation [sic],
3 PFC Combs, because you believe it is in your best interest?

4 ACC: Yes, ma'am.

5 MJ: When counsel for both sides and you agree to a stipulation
6 of expected testimony, you are agreeing that, in this case, if
7 Command Sergeant Major Rimpley and First Sergeant Thomas Miller came
8 into the courtroom and sat on the witness stand and testified under
9 oath, that they would testify substantially as what is typed in these
10 documents.

11 Do you understand that?

12 ACC: Yes, ma'am.

13 MJ: A stipulation of expected testimony does not admit the
14 truth of the person's testimony; that is, it's testimony just like
15 any other testimony. It can be attacked, contradicted, or explained
16 in the same way as if somebody were live on the stand.

17 Do you understand that?

18 ACC: Yes, ma'am.

19 MJ: Knowing what I've told you and what your defense counsel
20 has told you before today, do you still desire to enter into these
21 two stipulations of expected testimony?

1 ACC: Yes, ma'am.

2 MJ: Any objection to Defense Exhibits A and B?

3 ATC: No, Your Honor.

4 MJ: Defense Exhibits A and B for identification are received
5 into evidence as Defense Exhibits A and B.

6 Defense?

7 DC: At this time, ma'am, the defense calls Staff Sergeant
8 Connie Julian.

9 STAFF SERGEANT CONNIE G. JULIAN, U.S. Army, was called as a witness
10 for the defense, was sworn, and testified as follows:

11 DIRECT EXAMINATION

12 Questions by the trial counsel:

13 Q. Are you Staff Sergeant Connie Julian?

14 A. Yes, sir.

15 Q. Are you currently assigned to the 272d Military Police
16 Company?

17 A. Yes, sir.

18 TC: Thank you very much.

19 MJ: Sergeant Julian, you need to speak up. I can barely hear
20 you way over here. Okay?

21 WIT: Roger, ma'am.

1 MJ: Thanks.

2 **Questions by the defense counsel:**

3 Q. Sergeant Julian, I'm going to stand over here [standing in
4 front of the judge's bench] so you can answer your questions to the
5 judge and make it a little easier for you. Thanks for coming in here
6 today.

7 If you would, would you, please, tell the court a little
8 bit about your career?

9 A. I enlisted in the Army in 1993. I went to Fort McClellan,
10 Alabama for basic and AIT. My first PCS move was to Sierra Army
11 Depot, California. Then I PCS'd to Korea -- 552d MP Company. Then I
12 went to Fort Knox, where I was deployed to Bosnia for 6 months. I
13 went back to Fort Knox. I worked DST for CID for a while. Then I
14 went down to Fort Bliss, Texas, where I was stationed at 198th MP
15 Company, and then I went to work in the battalion S-2. I PCS'd to
16 Mannheim, Germany and deployed to Iraq.

17 Q. Are you in the 272d MP Company?

18 A. Roger, sir.

19 Q. When did you deploy to Iraq?

20 A. April of '04, sir.

21 Q. What type of work have you done here in Iraq?

1 A. We instructed at the Baghdad Police Academy for 6 months,
2 and then we switched missions. And we went to work at IPS -- IP
3 stations.

4 Q. IP -- could you explain to the judge what IP stations are?

5 A. We supervise and train IPs at Iraqi police stations, ma'am
6 [looking at the military judge.]

7 Q. Now, do you know PFC Combs?

8 A. Yes, sir.

9 Q. Have you worked with him here in Iraq?

10 A. Roger, sir.

11 Q. Have you supervised him here in Iraq?

12 A. Yes, sir.

13 Q. Have you seen him working in Iraq?

14 A. Yes, sir.

15 Q. What sort of work have you seen him do here in Iraq?

16 A. Motivated. Always working hard, taking initiative, doing
17 things before he could -- he needs to be told to. Always making sure
18 soldiers are doing the right thing.

19 Q. What sort of duties has he had here in Iraq?

1 A. He instructed at the Baghdad Police Academy also, ma'am
2 [looking at the military judge], and he has supervised and trained
3 IPs at IP stations.

4 Q. What did he do specifically in training the Iraqi
5 policemen?

6 A. He taught them about humanitarian rights. He did basic MP
7 functions -- searches, vehicle searches, house searches.

8 Q. Did you ever have the opportunity to watch James teach a
9 class?

10 A. Yes.

11 Q. If you would, could you comment to the judge on what you
12 thought about his class?

13 A. He was very patient, very detailed -- always making sure
14 the students understood the curriculum -- always one-on-one with the
15 soldiers.

16 Q. Did he have a good rapport with them?

17 A. Yes -- very good. They were always going to him, talking
18 to him, discussing things.

19 Q. Has -- when you were at the IP academy, did you take fire
20 there? I mean, is that a dangerous job?

1 A. We -- for the month of August, we were mortared for 22 days
2 straight.

3 Q. Did you say 22?

4 A. 22 -- I believe that's what it was.

5 Q. Did he do any other dangerous missions here in Iraq?

6 A. Going outside the wire is dangerous, sir.

7 Q. Did he do that?

8 A. Roger, sir.

9 Q. Did you do that with him?

10 A. Yes, sir.

11 Q. Have you observed him here in Iraq enough to give an
12 opinion as to his duty performance?

13 A. Yes, sir.

14 Q. Could you tell the judge -- is he a good duty performer,
15 bad duty performer -- here in Iraq?

16 A. He's a great duty performer, ma'am [looking at the military
17 judge.] He's always working hard. He's always making sure
18 everything is correct -- always putting in 110 percent.

19 Q. Is he a good combat soldier?

20 A. Yes, sir.

1 Q. Now, were you in here, sitting in the back, when PFC Combs
2 was explaining to the judge what he did?

3 A. Yes.

4 Q. Are you aware of the facts of the case?

5 A. Yes, sir.

6 Q. Do you know if the unit gave him a weapon to carry around
7 after this incident?

8 A. Yes, sir.

9 Q. Did they?

10 A. Yes, sir.

11 Q. Do you trust him with that weapon?

12 A. Of course.

13 Q. Have you gone on a convoy with him since this incident?

14 A. Yes, sir.

15 Q. Would you feel safe with him on a convoy?

16 A. Always.

17 Q. How has his attitude been since this incident?

18 A. He's keeping his chin up. He's still working hard --
19 always making sure his soldiers don't need anything done. If they
20 do, he helps them out with it -- always making sure the morale is

1 high. He's still a great performer. You can tell it gets to him
2 though.

3 Q. Having spent time with him here in Iraq, have you formed an
4 opinion as to his rehabilitative potential?

5 A. I think he has great rehabilitative potential.

6 Q. Now, is the 272d still here?

7 A. No. They redeployed back to Mannheim, Germany.

8 Q. When did they redeploy?

9 A. Somewhere around March 12th.

10 Q. About 12 days ago -- maybe?

11 A. Yes.

12 Q. Were you scheduled to go back with them?

13 A. Yes, sir.

14 Q. Why didn't you go back?

15 A. Because I volunteered to stay here with PFC Combs because
16 he's an -- he's a great performer. I'm going to stand behind a
17 soldier that's a great performer.

18 Q. So you volunteered to stay in Iraq?

19 A. Roger.

20 Q. Just a couple more questions.

1 A. No, sir. He was within the -- he was in the platoon -- in
2 a different squad.

3 Q. And your opinion of his duty performance today, is it based
4 on your observations since July or everything?

5 A. Since July, sir.

6 Q. Do you have any knowledge of what his duty performance was
7 prior to July?

8 DC: Objection. Outside the scope. It's not relevant.

9 MJ: She can answer that question -- does she have any
10 knowledge. It's overruled.

11 A. Say again? I'm sorry.

12 Q. Do you have any knowledge of his duty performance prior to
13 July of 2004?

14 A. I really didn't pay much attention when he wasn't my
15 soldier.

16 Q. Have you reviewed his counseling packet?

17 A. Yes, sir.

18 Q. Was anything surprising in that counseling packet to you?

19 A. A whole lot. A whole lot surprised me. The ----

20 DC: Objection, Your Honor. It's outside the scope. I focused
21 only on his duty performance when he was working with her.

1 MJ: Well, I'll agree with that. If there's anything in the
2 counseling packet since July, '04, it's relevant. Beyond that, it's
3 not.

4 TC: Yes, Your Honor.

5 [Pause.]

6 Q. You said earlier, Sergeant Julian, that he was a great
7 soldier because, among other things, he was always making sure
8 everything was correct?

9 A. Yes, sir.

10 Q. So it was all about attention to detail?

11 A. Roger. That's part of it, sir.

12 Q. And about doing the right thing at all times?

13 A. Roger, sir.

14 Q. And, in this case, what's resulted came from not making
15 sure everything was correct, right?

16 A. Say again, sir?

17 Q. What happened here resulted from not making sure everything
18 was correct, right?

19 A. Roger, sir.

20 Q. For not making sure the weapon had been switched back to
21 safe?

1 A. Sir, soldiers are human. They do make mistakes.
2 Q. And those mistakes have consequences?
3 A. Roger.
4 Q. And pretty serious ones in this one?
5 A. Roger.
6 Q. When he was teaching at the Baghdad Police Academy -- you
7 said he was teaching basic MP functions?
8 A. Roger.
9 Q. What type of basic MP functions was he teaching?
10 A. Searching -- be it people, vehicles, building clearance --
11 humanitarian rights, how to apply hand irons to subjects,
12 interviewing -- things like that.
13 Q. So he was teaching and being the example of what a military
14 police officer should do?
15 A. Roger, sir.
16 Q. And one of the things -- would you agree that one of the
17 things a military police officer should always do is be safe with
18 their weapon?
19 A. Yes, sir.
20 TC: Thank you very much, Sergeant Julian.
21 MJ: Anything else?

1 DC: I have no further questions, ma'am.

2 MJ: All right. Thank you, Sergeant Julian. I appreciate your
3 testimony. Please don't discuss your testimony with anyone except
4 PFC Combs or counsel until the court-martial is over. You may either
5 return to your duties or have a seat in the back of the courtroom.
6 All right?

7 WIT: Yes, ma'am.

8 [The witness withdrew.]

9 MJ: Defense?

10 DC: Ma'am, at this time, the defense would like to call
11 Sergeant First Class ----

12 [The video teleconference communication between Fort Belvoir and Iraq
13 reconnected.]

14 MJ: Wait. Wait. It looks like we got Fort Belvoir back.

15 DC: At this time, I would like to start again my testimony with
16 Mr. Combs.

17 MJ: All right.

18 [The trial counsel conducted a communications check with Fort
19 Belvoir.]

20 MJ: All right. For the record, the video teleconference with
21 Mr. Combs just came back on in the courtroom here in Baghdad and so,

1 when last we were talking to Mr. Combs, Captain Scott, you asked him
2 about his dreams for James, and he stated that he hoped that "he'd be
3 a better man than me."

4 Sir, you're reminded that you are still under oath. All
5 right?

6 WIT: Yes, ma'am.

7 MJ: Please continue.

8 DC: Thank you, ma'am.

9 JAMES E. COMBS, civilian, was called by video teleconference by the
10 defense, was reminded of his oath, and continued testifying as
11 follows:

12 DIRECT EXAMINATION

13 Questions by the defense counsel:

14 Q. I'm glad to have you back, Mr. Combs.

15 How long were you married to Mrs. Hunter?

16 A. Roughly 6 years.

17 Q. Who had custody of James after the divorce?

18 A. I did.

19 Q. Were you active duty Navy at the time?

20 A. Yes, sir.

1 Q. How is that, being a single father, while you are active
2 duty Navy?

3 A. It was rough. It was rough for me and my son. I had to
4 make a lot of sacrifices and I had to come off of active duty and go
5 into part of the Navy called TAR -- which is Training Active
6 Reserves.

7 Q. Was that a good career move or a bad career move?

8 [Pause.]

9 [The video teleconference communication between Fort Belvoir and Iraq
10 was lost.]

11 MJ: We appear to possibly have lost the connection again.

12 Court is in recess.

13 [The court-martial recessed at 1100, 24 March 2005.]

14 [The court-martial was called to order at 1104, 24 March 2005.]

15 MJ: Court is called to order. All parties present when the
16 court recessed are again present.

17 We have Fort Belvoir on the line again.

18 Please continue.

19 Q. Was it hard on you raising James by yourself?

20 A. Yes, it was.

1 Q. Let's talk a little bit about him as he was growing up.
2 Was he a good student?
3 A. Yes, he was.
4 Q. Was he a good son?
5 A. Very good.
6 Q. Did you ever have any problems with him?
7 A. No problems whatsoever.
8 Q. Now, what were James' plans after high school?
9 A. He wanted to stay and go into the service.
10 Q. Why did he want to do that?
11 A. I think he wanted follow in his mother and my footsteps.
12 Q. Did you go to his graduation from basic training?
13 A. Yes, sir.
14 Q. How did that make you feel?
15 A. I was very proud.
16 Q. What were your hopes for him at that moment?
17 A. That he would pursue his career on what he wanted to do.
18 Q. And what was that?
19 A. He wanted to become a police officer.
20 Q. Like you?
21 A. Yes, sir.

1 Q. What did you think when James got deployed to Iraq?

2 A. I was a little shocked. I didn't know if he was ready or
3 not to be put in that type of situation.

4 Q. But were you proud?

5 A. Yes, sir.

6 Q. Now, do you know the facts of this case?

7 A. Yes, sir.

8 Q. Do you know what happened?

9 A. Yes, sir.

10 Q. What impact does this have on you?

11 [Pause.]

12 [The video teleconference communication between Fort Belvoir and Iraq
13 was lost and then reconnected.]

14 DC: Are you there, Mr. Combs?

15 WIT: Yes, sir.

16 Q. All right. How has this affected -- or how does this
17 court-martial affect you?

18 A. I feel that I failed as a parent -- a father.

19 [The video teleconference communication between Fort Belvoir and Iraq
20 was lost.]

1 MJ: All right. We seem to have lost the signal again.

2 Hopefully, they'll keep trying and, when it comes back, we'll break
3 to that part of his testimony.

4 It didn't take them long last time. Do you want to take a
5 recess, or do you want to drive on?

6 DC: If we can just, maybe, wait a minute or 2 -- keep our
7 fingers crossed, ma'am. I'm almost done.

8 MJ: Okay. Let's -- court is in recess.

9 [The court-martial recessed at 1108, 24 March 2005.]

10 [The court-martial was called to order at 1109, 24 March 2005.]

11 MJ: Court is called to order. All parties present when the
12 court recessed are again present.

13 [The video teleconference between Fort Belvoir and Iraq reconnected.]

14 Please continue.

15 Q. How has -- do you know what James has pled guilty to?

16 MJ: Just ask him what the impact was.

17 A. Yes, sir.

18 Q. Is this going to change your relationship with James?

19 A. No, sir. No, it's not.

20 Q. What are your hopes for James, now?

1 A. That he'll recover from this tragedy that has happened to
2 him and move on.

3 Q. Are you going to be there for him when he gets back home?

4 A. Yes, sir. If I'm still alive, I'll be here.

5 Q. How long has it been since you've seen him?

6 A. It's been 2 years.

7 Q. Did you miss him on R and R?

8 A. He didn't get an opportunity to come on R and R.

9 Q. Is there anything else you'd like to tell the court before
10 we're done?

11 A. Yes. To the family that lost their daughter [sic]. I'm
12 very, very sorry that this has happened. I can't bring your daughter
13 back. I don't know what it feels like, but I do know what it feels
14 like to lose a loved one. I'm sorry. If there was anything I could
15 do, I would do it.

16 To the court, I would ask that you have mercy on my son. I
17 know he has done something that was an accident. We can't change
18 that. And I hope something can be done that can bring my son home.
19 The family misses him very much.

20 DC: Thank you very much, Mr. Combs. I'll call you and let you
21 know the outcome of this case.

1 MJ: Wait. Wait. Wait.

2 Government, any questions?

3 TC: No questions, Your Honor.

4 WIT: Thank you, sir.

5 MJ: All right. Thank you, Mr. Combs. I appreciate your
6 testimony.

7 WIT: Thank you, ma'am.

8 [The witness withdrew, and the video teleconference between Fort
9 Belvoir and Iraq was disconnected.]

10 MJ: All right. Before you go on, let me discuss the accident
11 defense with PFC Combs.

12 Private First Class Combs, the -- if you remember, at the
13 beginning of this court-martial, I told you that if anything
14 inconsistent with your pleading guilty came up that I would reopen
15 the inquiry.

16 Remember that?

17 ACC: Yes, ma'am.

18 MJ: Roger. Both your mom and dad have termed what happened on
19 the 22d of September 2004, as an accident, and I think they truly
20 believe that that's true. And they, like everyone, knows that you
21 did not intend to kill Mrs. Husaene. All right?

1 ACC: Yes, ma'am.

2 MJ: Nevertheless, "accident" has a specific meaning within the
3 law. What I'm going to do is read to you what the law says about the
4 accident defense and then discuss with you whether you think it
5 applies to what happened on the 22d of September. Okay?

6 "Accident" can be a complete defense to any offense -- any
7 crime. If you were doing a lawful act in a lawful manner, free of
8 any negligence on your part, and an unexpected death occurred, then
9 you cannot be criminally liable. The defense of accident has three
10 parts.

11 First, the act resulting in the death had to have been
12 lawful.

13 Second, you must not have been negligent. In other words,
14 you must have been acting with the amount of care for the safety of
15 others that a reasonably prudent person would have used under the
16 same or similar circumstances.

17 And third, the death must have been unforeseeable or
18 unintentional.

19 Now, do you think that that defense applies to what you did
20 on the 22d of September?

21 ACC: No, ma'am.

1 MJ: Yeah. I mean, I don't either. I think it fails pretty
2 much on all three parts, don't you? In other words, I think that a
3 reasonably prudent person would probably have kept his weapon on
4 safety, right?

5 ACC: Yes, ma'am.

6 MJ: Because there didn't -- there wasn't a fire fight or any
7 reason to take it off of safety, was there?

8 ACC: No, ma'am.

9 MJ: And you weren't acting in self defense or anything like
10 that? You didn't have a legal justification or excuse for firing
11 your weapon, did you?

12 ACC: No, ma'am.

13 MJ: So it seems to me that your firing on the 22d of September
14 was not doing a lawful act. Do you agree with me?

15 ACC: Yes, ma'am.

16 MJ: All right. And then the last thing is, when a weapon goes
17 off, it's a foreseeable event that somebody may be killed, right?

18 ACC: Yes, ma'am.

19 MJ: All right. So calling it an accident is something that I
20 think your mom and dad do because they love you, okay? And they
21 believe that you didn't intend to kill her, and that this was a bad

1 thing that happened on the 22d. But do you agree with me that the
2 lawful defense -- legal defense -- of accident doesn't apply in this
3 case?

4 ACC: Yes, ma'am.

5 MJ: Okay. I agree, and I find that the plea is still
6 provident, so please proceed.

7 DC: Thank you, ma'am. At this time, the defense would like to
8 call Sergeant First Class Stephen McQuerry.

9 SERGEANT FIRST CLASS STEPHEN MCQUERRY, U.S. Army, was called as a
10 witness for the defense, was sworn, and testified as follows:

11 **DIRECT EXAMINATION**

12 **Questions by the trial counsel:**

13 Q. Are you Sergeant First Class Stephen McQuerry?

14 A. Yes, I am.

15 Q. And are you currently assigned to the 272d Military Police
16 Company?

17 A. Yes, I am.

18 TC: Thank you very much.

19 Captain Scott?

1 Questions by the defense counsel:

2 Q. Sergeant McQuerry, thank you very much for being here
3 today. I'm going to stand over here so you can -- if you would --
4 address your answers to the judge.

5 If you would, first -- could you tell the court a little
6 bit about your military career?

7 A. [Looking at the military judge.] Ma'am, I've been in the
8 Army a little over 18 and a half years. I've been stationed in
9 Korea, Fort Monroe, Virginia, Panama, Korea, Fort Knox, Korea, Fort
10 Knox, and now currently, 272d Military Police Company in Mannheim,
11 Germany. I performed a myriad of different positions from team
12 leader, squad leader, military police investigator, platoon sergeant,
13 S-2/S-3 NCO, ma'am.

14 Q. Sergeant McQuerry, how many people do you have in your
15 platoon?

16 A. I have 30 personnel in my platoon.

17 Q. How many did you bring to Iraq?

18 A. I brought 31.

19 Q. Is Sergeant Julian in your platoon?

20 A. Sergeant Julian is in my platoon.

21 Q. One of your squad leaders?

1 A. Yes, she is.

2 Q. Now, were you in here when she was testifying?

3 A. Yes, I was.

4 Q. The unit redeployed?

5 A. The unit has redeployed. Yes.

6 Q. Why are you here?

7 A. I am here because I volunteered here -- to stay here on
8 behalf of PFC Combs and to testify on his behalf.

9 Q. The unit had a big ceremony when they got back?

10 A. They did.

11 Q. Is there a picture of it in the Stars and Stripes?

12 A. There is a picture in it of us in the Stars and Stripes,
13 and I did see that picture.

14 Q. But you weren't there?

15 A. I was not there. No.

16 Q. Were there other members of your platoon that volunteered
17 to stay?

18 A. There were several members of my platoon in the rank of
19 Specialist and PFC -- and a couple of Sergeants -- that did volunteer
20 to stay. However, the court did not ask them to.

1 Q. As a matter of fact, PFC Combs didn't want them to stay,
2 did he?

3 A. That is correct, sir.

4 Q. Now, I want to talk about Iraq. How long have you been
5 here in Iraq?

6 A. I've been here almost 1 year, sir.

7 Q. Have you known PFC Combs the entire time here in Iraq?

8 A. I have known PFC Combs the entire time he and I have both
9 been in Iraq.

10 Q. Have you seen him working here in Iraq?

11 A. Yes, I have.

12 Q. Have you seen missions -- him go on missions?

13 A. I have seen him in the Baghdad Public Service Academy, but
14 I have not seen him out on missions except for one, where he went out
15 on a mission to -- with the defense counsel -- out to IP Station 10.

16 Q. But did you see him out at volunteer teaching?

17 A. I did see him out at volunteer teaching.

18 Q. If you would, tell the court a little bit about what sort
19 of instructor PFC Combs is.

20 A. PFC Combs was an adequate instructor who taught the
21 civilian personnel who came in -- a good instructor who taught them

1 how to become police officers for their country -- to help improve
2 their country, to help them make it a more stable country so that
3 eventually the U.S. could go home.

4 Q. Now earlier, we had some testimony about getting mortared;
5 is that true?

6 A. That is correct. For a period of about 22 -- from about
7 the 4th of August to, like, the 22d of August -- we were mortared on
8 an every day -- five or six times a day. I think they counted
9 roughly somewhere around 127 mortars either impacted on the academy
10 or in the general vicinity of the academy.

11 Q. Did this young man ever complain about that?

12 A. Not at all, sir.

13 Q. Did he handle it with professionalism?

14 A. Yes, he did, sir.

15 Q. You've been to the IP stations we've been talking about
16 here today?

17 A. Yes, I have.

18 Q. Have you ever been on the roofs?

19 A. Yes, I have.

20 Q. Dangerous places?

21 A. It could be.

1 Q. What about the one -- IP Station 10?

2 A. IP Station 10 -- I've been on that roof several times. In
3 fact, we pulled security of that station during the elections. And
4 the night prior to us coming home, we came under attack at that
5 station.

6 Q. Have you ever pulled guard on the roofs?

7 A. I have not performed the man-hours that they perform guard
8 duty on the roofs but, as a platoon sergeant, I have been up on the
9 roofs, been in the positions that they have been in to see what it is
10 like to sit there. But I have never pulled, like, the 2-hour shifts
11 that they would do -- or the hour and 30-minute shift that they would
12 pull on the roof.

13 Q. Have you pulled any guard duty in your career?

14 A. I have pulled many, many hours of guard duty in my military
15 career.

16 Q. How many times do you think you've pulled duty -- guard
17 duty?

18 A. Too numerous to count, sir. Too numerous to count.

19 Q. Is it tough to stay awake sometimes on guard duty?

20 A. Sure is.

21 Q. Is it boring?

1 A. Very much can be, sir.

2 Q. How is it when it's hot?

3 A. When it's hot, wearing extra gear, it puts you into a lull.

4 You've got to do things to stay awake. It gets you very tired and

5 wore [sic] out.

6 Q. What sort of gear are you talking about?

7 A. I'm talking about -- for here in Iraq -- we wear the IBA

8 with a water -- on our back. We had -- obviously, we had our

9 compass, our field dressing. Depending on what weapon you would

10 carry -- in his case the M-4 -- we would carry magazine pouches on

11 our IBA also.

12 Q. Is that stuff pretty hot?

13 A. It could be -- oh, definitely, it was hot.

14 Q. Pretty heavy?

15 A. Yes. Yes.

16 Q. Wear the helmet?

17 A. We'd wear the Kevlar also. Yes.

18 Q. Can a soldier hold his weapon at low-ready when he's on

19 guard duty?

20 A. He sure can.

21 Q. What about high-ready?

1 A. Sure can.

2 Q. Can a soldier scan with his weapon?

3 A. Yes.

4 Q. Do you know what the term "running scenarios" is?

5 A. Yes, I do, sir.

6 Q. Would you, please, explain to the judge what that is?

7 A. [Looking at the military judge.] Ma'am, "running

8 scenarios" is where you're in an area, and you just physically go

9 through the scanning area of your -- of your sector of fire. You

10 say, "What if" -- "If this was to happen here, how would I react? If

11 this was to happen here, how would I react" -- and so on and so forth.

12 -- just running scenarios, keeping your mind awake so that you're

13 aware of everything going on in your sector.

14 Q. Is it a good training tool?

15 A. Very good training tool.

16 Q. Keep you awake?

17 A. Keeps you awake. Keeps you alive.

18 Q. Now, let's talk about duty performance here in Iraq --

19 specifically, James' duty performance here in Iraq. Have you

20 observed him enough to have an opinion?

21 A. Yes, I have, sir.

1 Q. What's your opinion?

2 A. He's a good duty performer.

3 Q. Now, are you aware of the facts of the shooting?

4 A. Yes, I am, sir.

5 Q. Do you know if he got to carry a weapon after that
6 shooting?

7 A. He sure did.

8 Q. Did you trust him with that weapon?

9 A. I sure did.

10 Q. Do you know if he volunteered to go out on missions after
11 this?

12 A. Yes. He did volunteer to go out on missions after this.

13 Q. Do you know if he got to go on R and R?

14 A. He did not get to go on R and R.

15 Q. Did he ever complain about that?

16 A. Not really complain. He mentioned a few times, "Hey, you
17 know, do you know if I'm going to get to go on R and R?" And I had
18 to explain to him that, no. At this [sic] time, he was not
19 authorized to go on R and R.

1 Q. Now, knowing him here in Iraq and seeing him change and
2 seeing him work, do you have an opinion as to his rehabilitative
3 potential?

4 A. He has very good rehabilitative potential.

5 Q. Just a couple more questions.

6 You said earlier you trust him with his firearm. Would you
7 trust him again with a firearm?

8 A. Yes, I would.

9 Q. Outside the wire?

10 A. Yes, I would.

11 Q. Watching your back?

12 A. Yes, I would. I know he would do it.

13 DC: No further questions.

14 MJ: Government, any questions?

15 TC: Yes, Your Honor.

16 CROSS-EXAMINATION

17 Questions by the trial counsel:

18 Q. Sergeant McQuerry, you were talking a moment ago about --
19 with Captain Scott -- about how hot it could be while on guard duty?

20 A. That's correct, sir.

1 Q. And you have to wear your IBA and -- with your magazine
2 pouches -- and it could also be boring; is that correct?

3 A. That is correct, sir.

4 Q. And is that usually the case with regard to any guard duty
5 position -- especially here in Iraq?

6 A. Anywhere.

7 Q. And what kind of behavior do you expect of your soldiers
8 when they're on guard duty?

9 A. Sir, they obviously need to be alert to what's going on.
10 Keep an eye on what their sector of fire is and where their area is
11 that they're concerned on, sir.

12 Q. And are they particularly pulling guard duty in urban
13 areas?

14 A. Yes, sir.

15 Q. Where you expect to have lots of people around?

16 A. Yes, sir.

17 Q. And are the people you expect to have around, are a large
18 percentage of them going to be civilians?

19 A. Yes, sir.

20 Q. And so, that being the case, are your soldiers expected to
21 maintain any type of extra precaution with their weapon?

1 A. Sir, they should keep their weapon on safe.

2 Q. Even when it's hot?

3 A. Even when it's hot out. Yes, sir.

4 Q. And is that something that all of your soldiers are taught?

5 A. Yes, sir.

6 Q. And how important is that weapon discipline?

7 A. Sir, weapon discipline is something that we're taught
8 throughout the military, especially as military police. It's very
9 important because, obviously, if your weapon goes off, there's a
10 potential there for somebody to be injured or killed.

11 TC: No further questions, Your Honor.

12 MJ: Anything else, defense?

13 **REDIRECT EXAMINATION**

14 **Questions by the defense counsel:**

15 Q. If we got attacked today, would you want him with you?

16 A. Yes, I would, sir.

17 DC: I have no further questions, Your Honor.

18 **EXAMINATION BY THE COURT-MARTIAL**

19 **Questions by the military judge:**

20 Q. Sergeant, does Sergeant Duran work for you?

21 A. Yes, ma'am.

1 Q. How did the incident affect him and -- was it Cook that was
2 with him?

3 A. Specialist Cook. Yes, ma'am. Ma'am, I believe that
4 Sergeant Duran and Specialist Cook were kind of in awe when it
5 happened. It has not been -- it obviously has not affected their
6 duty performance. They continue to go outside the wire on a daily
7 basis. They continue to drive on with their mission and, in fact,
8 Specialist Cook -- hopefully soon to be Sergeant Cook -- is
9 continuing to drive on. He's going to the promotion board -- went to
10 the promotion board. Hopefully, he'll be pinned on 1 May.

11 Sergeant Duran -- outstanding noncommissioned officer,
12 great team leader for my platoon, an individual I can call on and
13 say, "Hey, I need this mission done." He will do it with no
14 hesitation at all.

15 Q. So I take it then that everybody was kind of shocked ----

16 A. That is correct, ma'am.

17 Q. ---- of this happening. Prior to September 22d, had you
18 had any inkling that PFC Combs had anything less than a hundred
19 percent discipline?

20 A. Not at all, ma'am.

1 Q. And, in terms of soldiers in the unit that asked to -- or
2 suggested that they were willing to stay -- are they watching this
3 court-martial?

4 A. Yes, ma'am. They are.

5 MJ: Any questions based on mine, defense?

6 DC: No, ma'am.

7 MJ: Government?

8 TC: Yes, Your Honor.

9 **RE CROSS-EXAMINATION**

10 **Questions by the trial counsel:**

11 Q. Sergeant McQuerry, you just -- in answer to the judge's
12 question about, prior to September 22d, you were asked, "Had there
13 been anything with PFC Combs that indicated he had less than 100
14 percent discipline?"

15 A. Yes, sir.

16 Q. You said there was nothing that told you he had less than
17 100 percent discipline?

18 A. That's what I said. Yes.

19 Q. Well, he has had some incidents in the past that will show
20 he's not a hundred percent disciplined, right?

21 A. He's had some incidents in the past. Yes, sir.

1 Q. And incidents involving -- over-sleeping offense?

2 DC: I object, Your Honor. It's outside the scope of my direct.

3 MJ: Yeah. Don't use my question to open up the door. Okay?

4 TC: Yes, Your Honor.

5 MJ: I'd be surprised if any soldier in the United States Army

6 hasn't overslept once or twice.

7 TC: Yes, Your Honor.

8 MJ: Anything else?

9 TC: Not -- other than just what I've already asked about the

10 question you asked, Your Honor.

11 MJ: Roger. Okay.

12 Sergeant, thank you very much for your testimony. Please

13 don't discuss your testimony with anyone except counsel or PFC Combs

14 until the court-martial is over. You may either return to your

15 duties or have a seat in the back of the courtroom. All right?

16 WIT: Thank you, ma'am.

17 [The witness withdrew.]

18 MJ: Defense?

19 DC: Yes, ma'am. At this time, I would like to call Captain

20 Jason Marquiss.

1 CAPTAIN JASON L. MARQUISS, U.S. Army, was called as a witness for the
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel:

5 Q. Are you Jason L. Marquiss, Captain, U.S. Army, commander of
6 272d MP Company?

7 A. Yes, I am.

8 ATC: Your witness.

9 Questions by the defense counsel:

10 Q. Captain Marquiss, thank you very much for coming. I know
11 you've been sitting in the back. I'm going to ask you the same
12 questions right off the bat.

13 Why are you here?

14 A. Because PFC Combs was a soldier in my company, and I felt
15 that it was my responsibility to support him during this.

16 Q. If you would, would you, please, tell the judge a little
17 bit about your career?

18 A. [Looking at the military judge.] Ma'am, I enlisted in the
19 United States MP Corps in 1993. I was enlisted for 5 years. I
20 served half that time at Fort Myer Military Police Company,
21 Washington D.C. From there, I went to the 501st Military Police

1 Company (Divisional) -- deployed to Bosnia for a year in 1996. I was
2 commissioned and -- through OCS -- in April of 1998 in the MP Corps.
3 From there, I went to Fort Bliss, Texas -- deployed to Honduras for 6
4 months; from there, Military Police Captain's Career Course. I PCS'd
5 to Germany, where I served as the assistant S-3 in the 95th Military
6 Police Battalion for a year and a half and then was selected to
7 command the 272d Military Police Company and deploy them to Iraq.

8 Q. Have you been PFC Combs' commander here in Iraq?

9 A. The entire time -- yes.

10 Q. Have you observed him work here in Iraq?

11 A. Yes.

12 Q. Have you observed him on combat missions?

13 A. Yes.

14 Q. What sort of missions have you seen him on?

15 A. I did not have the opportunity to see him teach at the
16 Baghdad Public Service Academy, but I did see him during the OJT
17 process in the Iraqi police stations.

18 Q. Is it dangerous out there?

19 A. Every day.

20 Q. Baghdad is sometimes a scary area for those of us wearing
21 this uniform?

1 A. It certainly can be -- depending on where you're at.

2 Q. What is your area of operation?

3 A. [Looking at the military judge.] Ma'am, I was operational
4 control by the 39th Brigade Combat Team, 1st CAV Division, and we had
5 an area encompassing about 335 square miles -- ranging all the way
6 from on the east side to the central zones -- 12, 15, and 16 -- just
7 south of Sadr City, all the way through Aadhamya District up into and
8 past Camp Taji all the way up to the 1st Infantry Division boundary.

9 Q. Has he done some dangerous work?

10 A. Yes, he has.

11 Q. Here in Iraq, would you trust him with the lives of your
12 other soldiers when they're out?

13 A. Yes.

14 Q. Have you been out to station number 10?

15 A. Frequently.

16 Q. Did you go out there the day after the shooting?

17 A. The day after.

18 Q. Why did you go out there?

19 A. Because it was my obligation -- before I sent my soldiers
20 back out there -- to go out there and do an assessment of not only
21 what the IPs felt but also the -- to meet with the family.

1 Q. Did you send any special teams out or anything?

2 A. Not initially. I wanted to assess it myself before, like I
3 said, I sent my soldiers out there. And then I did coordinate with
4 the battle space owners -- 2/162d Infantry -- to solicit the use of
5 their CAT-B -- Civil Affairs, Psyops Team -- to assist in getting the
6 atmospherics -- to find out if there was an adverse impact on the
7 community.

8 Q. Was there?

9 A. Initially, we expected there to be but, as we found out
10 through the use of those teams that there wasn't.

11 Q. Now, you've seen -- you said earlier that you've seen him
12 work in Iraq. Have you had an opportunity to form an opinion as to
13 his duty performance here in Iraq?

14 A. Yes, I have.

15 Q. If you would, tell the judge what your opinion is.

16 A. [Looking at the military judge.] Unfortunately, ma'am,
17 prior to this, it's hard for a commander to know every soldier but,
18 as I -- as we worked through this, and I realized what type of person
19 he was -- he's a peer leader. He's a quiet soldier who soldiers --
20 other soldiers -- will turn to for assistance. Sometimes, they can
21 be your best leader soldiers.

1 Q. A good combat soldier?

2 A. Yes.

3 Q. And you're aware of the facts of the shooting, right?

4 A. Absolutely.

5 Q. Do you have an opinion as to his rehabilitative potential?

6 A. Whether it's in the United States Army or it's in civilian

7 life, I absolutely think and feel that he has a tremendous amount of

8 potential.

9 Q. Do you believe that he could become a productive member of

10 society?

11 A. Absolutely.

12 Q. Serve with him in combat again?

13 A. In a heartbeat.

14 Q. Trust him to provide the watch if you had to go down that

15 alley on IP 10?

16 A. Yes.

17 Q. Anything else you'd like to tell the judge?

18 A. While this question was not asked of me, ma'am, it was

19 asked of my NCOs. Yes, it was very painful for me to watch my

20 company redeploy, but PFC Combs is one of my soldiers, and I felt

21 this was the best place for me to affect a positive outcome.

1 I worked hard to get commissioned. It's kind of something
2 I wanted to do since I was enlisted and, if the only thing I can do
3 for him at this point -- not that it's probably going to affect a
4 positive change -- but the only thing I feel that I have to offer is
5 if I could -- to show you that he does not deserve a sentence in this
6 -- I would resign my commission tomorrow if that would help.

7 ATC: Objection, Your Honor. It's an improper line of
8 questioning.

9 MJ: Well, no. It wasn't even a response to a question, but
10 I'll take it in the spirit it was meant. Okay?

11 He's going to be sentenced.

12 WIT: I understand that, ma'am.

13 MJ: I have in my availability everything from no punishment at
14 all up to the maximum authorized by the UCMJ. So I appreciate the
15 offer. I don't want you to resign your commission. All right?

16 DC: I have no further questions, ma'am.

17 MJ: All right.

18 Do you have questions?

19 ATC: Yes, Your Honor.

CROSS-EXAMINATION

Questions by the assistant trial counsel:

Q. Captain Marquiss, you said that a civil affairs -- CAT-B -- and psyops team went down and did atmospherics on the alley after the shooting; is that correct?

A. Not necessarily the alley, but the general populace of that area.

Q. Can you tell me where they went exactly?

A. Pretty much the entire northern area there -- the IP stations.

Q. But they never went down the alley itself?

A. No.

Q. So they never spoke to anybody inside the alley?

A. I don't know if they did not speak to anybody inside the alley. All I did was solicit the use of the team. They were not at my disposal. They were task-organized, honestly, by the battalion commander who sent them to do that.

Q. But you base your entire opinion on whether or not there was -- well, they told you there was no adverse effect on this community -- without actually going down that alley; is that correct?

1 A. No. I did not. I took their word for it because that's
2 their profession.

3 Q. Thank you. Did you yourself ever go down that alley?

4 A. I did not.

5 Q. Have you ever spoken with anybody that was down that alley?

6 A. Yes. The family.

7 Q. What location did you speak to them at?

8 A. The IP Station.

9 Q. You never spoke to anybody else that lives down in that
10 alley?

11 A. I did not.

12 Q. So your -- you don't have any personal knowledge of whether
13 or not there was an impact on that neighborhood or not; is that
14 correct?

15 A. Besides talking with the family and the IPs from that
16 station, no. I don't.

17 Q. As far as your opinion on PFC Combs' rehabilitative
18 potential, prior to this incident, you didn't have very much contact
19 with PFC Combs; is that correct?

20 A. As a junior soldier, most commanders would not -- which is
21 not necessarily a bad thing.

1 Q. So the majority of your rehabilitative -- excuse me -- the
2 majority of your opinion on his rehabilitative potential has been
3 base on your interaction with him since the accident; is that
4 correct?

5 A. Yes. I would say in the last 6 months.
6 [Pause.]

7 Q. I just want to ask you a couple of questions about your
8 mission at the IP stations.

9 A. Yes.

10 Q. Would you characterize for me what that mission is exactly,
11 Captain Marquiss?

12 A. It has evolved since we got in theater. When we took
13 control of those stations under the auspices of what 1st Armored
14 Division would have us do -- is just force protection. As 1st CAV
15 took control of the battle space, we were expected to teach, coach
16 and mentor and train not only individual IPs but also the leadership
17 of those stations. And then it evolved further into conducting joint
18 police operations.

19 Q. When an MP team or squad would go down to visit one of
20 these IP stations, such as IP Station Number 10, what would they
21 typically do?

1 A. They -- the majority of the time, the leadership -- NCOs --
2 would conduct initial face-to-face contact with the senior IP on the
3 ground, go over the last 24 hours of their operations, discuss if
4 there were any matters while individual squads task-organize
5 themselves into smaller teams -- force protection teams. Some
6 soldiers would end up checking arms room, getting accountability or
7 checking detainees for abuse.

8 Q. You've had contact with the police chief there; is that
9 correct?

10 A. Every day.

11 Q. After this incident, did you speak to the police chief
12 about Babea'a Husaene?

13 A. I did.

14 Q. What did he -- did he tell you anything about whether you
15 should go down this alley or not?

16 A. He did not tell me. No.

17 Q. Did he tell you that the alley might be very dangerous to
18 go down to?

19 A. The initial -- when the initial incident initially
20 occurred, he recommended that we leave the station. After that
21 point, I continued to go down the next 2 or 3 days before I sent my

1 squads back down there. He did not give me the impression that it
2 would indeed be dangerous for us to go down that alley.

3 Q. So the next time that one of your squads was able to go
4 down to the police station was about 2 or 3 days after this incident?

5 A. That's correct. That's before I allowed them to go down.

6 Q. So basically -- during one of these missions, it would not
7 be the job of the squad to actually go down and speak to anybody in
8 the neighborhood -- other than the people inside the police station?

9 A. That was not our responsibility to do that.

10 ATC: I have no further questions, Your Honor.

11 MJ: Any questions?

12 DC: I have no further questions, ma'am.

13 **EXAMINATION BY THE COURT-MARTIAL**

14 **Questions by the military judge:**

15 Q. Captain, how many soldiers in your company?

16 A. I deployed with 164, ma'am. I redeployed 148. I have
17 about a 65-soldier rear detachment.

18 Q. Did I hear you say that, of those 164, you had soldiers
19 covering the area from south of Sadr City to Taji and up to the 1st
20 ID boundary up north?

21 A. Yes. At various times, they were up there. Yes, ma'am.

1 Q. And did PFC Combs have missions out there as well or
2 primarily in Baghdad?

3 A. His platoon's battle space was essentially zones 12, 15 and
4 16 -- the immediate zones around the Baghdad Police Academy and the
5 Al Rasheed police district, which is where the Babal Al Shikh Station
6 is located.

7 Q. Okay. And did I hear you say that you did meet with the
8 family?

9 A. Yes.

10 Q. The very next day?

11 A. Yes, ma'am.

12 Q. And did you take an interpreter with you?

13 A. Yes, I did.

14 Q. What was the purpose of your visit?

15 A. To find out -- I had initially wanted to speak with them
16 the day of the incident to find out what they were feeling and to
17 express our regret over their loss and to find out really, kind of,
18 where I needed to take the next step.

19 Q. Did you take anything away from that meeting?

1 A. I felt reassured that they did not hold a negative grudge
2 against, not only military police or IPs, but the Army in general,
3 and that was my biggest concern.

4 MJ: Any questions based on mine?

5 DC: No, ma'am.

6 MJ: All right.

7 Captain, thank you very much for your testimony. Please
8 don't discuss your testimony with anyone except PFC Combs or counsel
9 until the court-martial is over. And you, too, can either return to
10 your duties or have a seat in the back of the courtroom. All right?

11 WIT: Thank you, ma'am.

12 [The witness withdrew.]

13 MJ: Defense?

14 DC: Ma'am, I think now might be a good time for a comfort
15 break.

16 MJ: Court's in recess.

17 [The court-martial recessed at 1142, 24 March 2005.]

18 [The court-martial was called to order at 1159, 24 March 2005.]

19 MJ: Court is called to order. All parties present when the
20 court recessed are again present.

21 Defense?

1 DC: Yes, ma'am. At this time, the defense would like to have
2 PFC Combs give an unsworn statement from the witness box.

3 MJ: Very well.

4 PFC Combs, go ahead and have a seat on the witness stand,
5 please.

6 UNSWORN STATEMENT

7 PRIVATE FIRST CLASS JAMES E. COMBS, III, the accused, took the
8 witness stand and made the following statement:

9 DC: Good to see your folks?

10 ACC: Yes, sir.

11 DC: Please tell the judge a little bit about your family life
12 growing up.

13 ACC: As far back as I remember, ma'am, when I moved to
14 Washington -- essentially moved with my mom and dad -- we -- they had
15 their differences -- I guess as a married couple. Then, in the
16 breakup, essentially, I believe that my mom won me in the case, and I
17 lived with her for a few months. But I don't think she was able --
18 financially or mentally ready -- to take care of me as a single
19 mother. So my dad gained custody of me and which my mom believed
20 that they would go back and forth with custody I guess -- from what I
21 was told.

1 Then from there, I moved with my dad to Atlanta, where we
2 stayed there for 4 years. Then we moved to where my home
3 of record is now -- for the past 8 years -- until I joined the
4 military, where I'm currently staying in Mannheim, Germany, ma'am.

5 Through the family, people came in and out. Me and my mom
6 wasn't real close [sic]. I started to get further and further away
7 from her the more I moved and the more I was with my dad.

8 DC: Has it been tough being away from your mom and dad?

9 ACC: Yes, sir.

10 DC: Why did you enlist in the Army?

11 ACC: There is [sic] a few reasons why I enlisted, sir. One, to
12 better myself because some of my friends didn't really have their
13 head on straight in the direction they wanted to go. And I'm not
14 going to say exactly I was one of them, but I kind of had a course of
15 plan where I wanted to be at. And growing up with my dad, I kind of
16 took more on his side than on my mom's side, so I thought that
17 joining the military would help me better myself in the civilian
18 world. I thought about it for college money.

19 DC: You wanted to become a police officer like your dad?

20 ACC: I wanted to be a U.S. Marshal. I wanted to be -- like my
21 dad said, better than him, so I wanted to be, like, the next level.

1 DC: Okay. How long have you been in the Army?

2 ACC: Roughly 2 and a half years, sir.

3 DC: How long have you been in Iraq?

4 ACC: A year, sir -- well, close to a year.

5 DC: What did you think when you got activated to come over
6 here?

7 ACC: At first, I mean, I don't really watch the news, but I've
8 seen some of -- I glanced at some of the stuff that was going on
9 here, so I was kind of skeptical on the whole situation and what
10 was [sic] really going to do and kind of nervous. I didn't want
11 say die over here or anything like that. I wanted ----

12 DC: It was scary, huh?

13 ACC: Yeah. It was a little scary.

14 DC: Now, let's talk about the day of the incident -- the 22d.
15 What time did you get up?

16 ACC: It was roughly 5:00 -- 5:30. We usually got up about 2
17 hours -- since it was OJT, we roughly got up, like, an extra 30
18 minutes earlier than the people that was actually OJTing us, so we
19 got up about 2 hours earlier.

20 DC: How much sleep did you get?

21 ACC: I'm not for sure, sir.

1 DC: Not very much?

2 ACC: That night, I didn't really sleep.

3 DC: A little scary going out?

4 ACC: A little bit, but you kind of get used to it, sir, after a

5 while.

6 DC: All right. What time did you SP?

7 ACC: Roughly 7:30.

8 DC: Where'd you go?

9 ACC: I went to IP Station Number 11 first, and then we went to

10 10.

11 DC: Did you do any guard on 11?

12 ACC: Yes, sir. I pulled force protection on 11.

13 DC: So then you went to 10?

14 ACC: Yes, sir.

15 DC: Now, it was really hot that day, wasn't it?

16 ACC: It was getting there, sir.

17 DC: Over a hundred degrees?

18 ACC: Yes, sir -- especially with all the gear on.

19 DC: All the gear on? It's pretty hot in that tower too, isn't

20 it?

21 ACC: Yes, sir.

1 DC: Now, in that tower, you have to sit? You can't stand up,
2 right?

3 ACC: You'd have to slouch if you really wanted to stand up, but
4 no, sir. You really can't stand up in there.

5 DC: Maybe if you're short like Sergeant Duran or somebody?

6 ACC: Maybe a little bit shorter than Sergeant Duran, but yeah.
7 Yes, sir.

8 DC: All right. So you've got to sit though?

9 ACC: Yes, sir.

10 DC: All right. Now, is it tough when you're sitting -- when
11 you have to sit with all that stuff on in the heat to stay awake?

12 ACC: Yes, sir.

13 DC: Now, you alternated between high and low-ready; is that
14 right?

15 ACC: Yes, sir.

16 DC: Low-ready is holding the weapon down with both hands on it?

17 ACC: Yes, sir.

18 DC: High-ready is up scanning over the top of the rifle?

19 ACC: Yes, sir.

20 DC: Looking for targets, right?

21 ACC: Yes, sir.