

**NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT**

U N I T E D S T A T E S

v.

FRANK D. WUTERICH
XXX XX 3221
STAFF SERGEANT
U.S. Marine Corps

GENERAL COURT-MARTIAL

MEMORANDUM
OF
PRETRIAL AGREEMENT

(PART I)

I, SSgt Frank D. Wuterich, the accused in a General Court-Martial, in exchange for good consideration and after thorough consultation with my defense counsel, do fully understand and agree to the following terms and conditions:

1. I agree to enter pleas of GUILTY as indicated below. I do so fully understanding that the Convening Authority may approve any sentence adjudged by the court-martial, but shall order executed only that sentence which does not exceed the lesser of the sentence contained in Part II of this Agreement (the Maximum Sentence Limitation Appendix) or the sentence adjudged by this court-martial.
2. This Agreement (Parts I and II) constitutes all the conditions and understandings of both the government and myself regarding the pleas in this case. There are no other agreements, written or otherwise.
3. I understand, and the sentence limitation portion of this Agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment.
4. I am satisfied with my defense counsels, Mr. Neal A. Puckett and Mr. Haytham Faraj, in all respects and consider them qualified to represent me at this court-martial.
5. I am entering into this Agreement freely and voluntarily. No one has made any attempt to force or coerce me into making this Agreement or into pleading guilty.
6. I have been fully advised by my defense counsel of, and I fully understand and comprehend the meaning and effect of, my guilty pleas and all attendant effects and consequences, including the possibility that I may be processed for



administrative discharge from the (United States Marine Corps). I understand that such an administrative discharge could result in an other than honorable characterization of service, unless otherwise limited by this Agreement, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason.

7. I understand that I may ask permission to withdraw any of my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw any of my pleas of guilty after they have been accepted, but before sentence is announced, and the military judge may, at his discretion, permit me to do so.

8. I understand that this Pretrial Agreement may become null and void, and the Convening Authority can withdraw from this Agreement, in the event that any of the following occur:

(1) I fail to plead guilty as required by this Agreement;

(2) The court refuses to accept any of my pleas of guilty;

(3) The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced;

(4) I fail to satisfy any material term of this Agreement; or

(5) I fail to plead guilty as required by this Agreement at a rehearing should one occur.

9. I understand that if this Agreement becomes null and void, then my offer to plead guilty and enter into this Agreement cannot be used against me in any way in determining whether I am guilty or not guilty of the charges alleged against me at this court-martial or in determining an appropriate sentence.

10. I understand that if the approved sentence includes a punitive discharge or confinement in excess of 90 days (or 3 months), whether the sentence is suspended or not, Article 58a of the UCMJ and § 0152 of the JAGMAN require that I suffer automatic administrative reduction in pay grade to the lowest enlisted paygrade, E-1, unless the Convening Authority takes action to remit or suspend the automatic reduction.

11. I understand that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, Article 58b of the UCMJ requires the automatic imposition of forfeitures of all pay and allowances due during any period of confinement served, unless the Convening Authority takes action to waive or

defer the automatic forfeiture provision. Forfeitures, whether adjudged or automatic, take effect upon the Convening Authority's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the Convening Authority defer execution of forfeitures until the Convening Authority takes action in this case. I also understand that I may request that automatic forfeitures be waived by the Convening Authority for a period up to six (6) months from the date of the Convening Authority's action. Finally, I understand that if I am held in confinement beyond my End of Active Obligated Service (EAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this Agreement.

12. I understand that should I commit any misconduct (i.e., any act or omission in violation of the UCMJ which constitutes a material breach of this Agreement) after the signing of this Pretrial Agreement but before the date of trial, such misconduct may be the basis for the Convening Authority to unilaterally withdraw from the Pretrial Agreement, rendering the entire Agreement null and void. I further understand that if I commit misconduct after the date of trial, but before the date of the Convening Authority's action, the Convening Authority may, after first complying with notice and hearing requirements consistent with Article 72, UCMJ and R.C.M. 1109, withdraw from the sentence limitation provisions of this Agreement. Should the Convening Authority withdraw from the sentence limitation provisions of this Agreement based on misconduct occurring after the date of trial but before action is taken in my case, I understand that any provisions in the Pretrial Agreement relating to suspension of any aspect of my sentence would become null and void in all respects, and that the entire sentence adjudged at my court-martial may be approved and imposed upon me.

13. I also understand that should I commit any misconduct after the date of the Convening Authority's action, or violate any of the conditions of suspension stated in this Agreement during the period in which any part of my sentence is suspended, the Convening Authority may, after complying with the procedures set forth in R.C.M. 1109, vacate any periods of suspension agreed to in this Pretrial Agreement or as otherwise approved by the Convening Authority, and that previously suspended portion of my sentence could be imposed upon me.

14. I understand that I may be placed on appellate leave under the provisions of Article 76a of the UCMJ, if the sentence, as approved, includes an unsuspended punitive discharge. I understand that an individual placed into an appellate leave status will normally not receive any pay or allowances. I further understand that receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave I have accumulated and choose to use, and on the sentence awarded by this court-martial. Furthermore, I agree

that, should a punitive discharge be adjudged, I will submit, within 5 days from the date of the conclusion of my trial, a written request to be placed on appellate leave without pay or allowances.

15. NOTICES

a. My defense attorneys have advised me that my guilty pleas to the charges and specifications contained in this Agreement may preclude me from the ownership, receipt, or transport of any firearm that has been transported in interstate or foreign commerce under 18 U.S.C. 922(g).

b. My defense attorneys have advised me that my guilty pleas to the charges and specifications contained in this Agreement may result in my discharge from the Navy/Marine Corps for misconduct, either by punitive or administrative means. This may require me to repay the Government for any and all advanced educational assistance benefits that I have received in accordance with JAGMAN 0171. This repayment will occur in the case that my early separation from the Navy/Marine Corps precludes me from fulfilling any additional service requirements that were required as consideration for this advanced educational assistance.

b. My defense attorneys have advised me that any punitive discharge that is adjudged and ultimately approved in my case may adversely affect my ability to receive retirement pay and any and all other benefits accrued as a result of my military service.

16. SPECIALLY NEGOTIATED PROVISIONS. I understand and agree that, in return for my pleas of guilty, and following the military judge's acceptance of my pleas as set forth below, the Convening Authority will withdraw the language and charges and specifications to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn language and charges and specifications will be dismissed by the Convening Authority with prejudice. [

PLEAS OF THE ACCUSED

CHARGE

PLEAS

Charge I:	Violation of the UCMJ, Article 92	Guilty
Spec 1:	In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, who knew of his duty to obey the Rules of Engagement while serving with 3 rd Battalion, 1 st Marine Regiment, during operations at or near Haditha, Iraq, on or about 19 November 2005, was derelict	Not Guilty

in the performance of that duty in that he willfully failed to achieve Positive Identification (PID) of targets (one or more unknown persons located near a white car at or near the intersection of Routes Chestnut and Viper), as it was his duty to do, by engaging those persons with a loaded M16A4 service rifle.

Spec 2:

In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, who knew of his duty to ensure that the Marines under his charge obey the Rules of Engagement while serving with 3rd Battalion, 1st Marine Regiment, during operations at or near Haditha, Iraq, on or about 19 November 2005, was derelict the performance of that duty; specifically, he willfully failed to ensure that the Marines under his charge obeyed the Rules of Engagement, as it was his duty to do, by ordering the Marines under his charge to "shoot first ask questions later," or words to that effect, prior to entering a structure identified as House 1.

Guilty, except the words "by ordering the Marines under his charge to "shoot first ask questions later," prior to entering a structure identified as House 1;" substituting therefor, the words "by failing to enforce the rules of engagement as it was his duty to do." To the excepted words, NOT GUILTY; to the substituted words GUILTY.

Spec 3:

In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, who knew of his duty to ensure that the Marines under his charge obey the Rules of Engagement while serving with 3rd Battalion, 1st Marine Regiment, during operations at or near Haditha, Iraq, on or about 19 November 2005, was derelict in the performance of that duty in

Not Guilty

that he willfully failed to achieve Positive Identification (PID) of a target (a person believed to be Yunis Salim Rasif a person identified with a red number 7, near a doorway in the structure identified as House 2) as was his duty to do, by ordering Lance Corporal Humberto M. Mendoza, U..S. Marine Corps, to shoot that person with a loaded M16A4 service rifle.

Charge II Violation of the UCMJ, Article 119 Not Guilty

Spec 1: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Yunis Salim Rasif (a person identified with a red number 7, near a doorway in the structure identified as House 2) by ordering Lance Corporal Humberto M. Mendoza, U.S. Marine Corps, to shoot that person with a loaded M16A4 service rifle. Not Guilty

Spec 2: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Huda Yasin Ahmed (a person identified with a red number 8, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

Spec 3: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Aida Yasin Ahmed (a person identified with a red number 9, inside a room in the structure identified as House 2) by shooting Not Guilty

that person with a loaded M16A4 service rifle.

Spec 4: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Mohamed Yunis Salim (a person identified with a red number 10, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

Spec 5: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Zainab Yunis Salim (a person identified with a red number 11, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

Spec 6: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Aisha Yunis Salim (a person identified with a red number 12, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

Spec 7: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Sebea Yunis Salim (a person identified with a red number 13, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

service rifle.

Spec 8: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill a person believed to be Noor Yunis Salim (a person identified with a red number 14, inside a room in the structure identified as House 2) by shooting that person with a loaded M16A4 service rifle. Not Guilty

Spec 9: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, willfully and unlawfully kill one or more unknown persons, located near a white car, at the intersection of Routes Chestnut and Viper, by shooting them with a loaded M16A4 service rifle. Not Guilty

Charge III: Violation of the UCMJ, Article 128 Not Guilty

Spec 1: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, commit an assault upon persons in a room in the structure identified as House 1, by shooting at them with a dangerous weapon, to wit: a loaded M16A4 service rifle. Not Guilty

Spec 2: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, commit an assault upon women and children in a room in the structure identified as House 2, by shooting at them with a dangerous weapon, to wit: a loaded M16A4 service rifle. Not Guilty

Charge IV: Violation of the UCMJ, Article 134 Not Guilty

Spec 1: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on

active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, wrongfully and recklessly engage in conduct, to wit: firing his loaded M16A4 service rifle into a room occupied by unarmed men, women and children in the structure identified as House 1, conduct likely to cause death or grievous bodily harm to persons within the room.

Spec 2: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, wrongfully and recklessly engage in conduct, to wit: firing his loaded M16A4 service rifle into a room occupied by unarmed women and children in the structure identified as House 2, conduct likely to cause death or grievous bodily harm to women and children within the room. Not Guilty

Spec 3: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, wrongfully and recklessly engage in conduct, to wit: firing his loaded M16A4 service rifle at one or more persons located near a white car at or near the intersection of Routes Chestnut and Viper, conduct likely to cause death or grievous bodily harm to the persons near the white car. Not Guilty

Charge V: Violation of the UCMJ, Article 134 Not Guilty

Spec: In that Staff Sergeant Frank D. Wuterich, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, wrongfully impeded an investigation by advising Sergeant Sanick P. Dela Cruz, U.S. Marine Corps, to provide false information regarding the engagement at the white car, near the intersection of Routes Chestnut and Viper. Not Guilty



SIGNATURE PAGE

By my signature below I acknowledge that I have read this Agreement completely, discussed it with my counsel, understand it in all respects, and am prepared to abide by its terms.

3/27/2009
Date SSgt/E6 [Signature] USMC
(Rate/Rank, Name, Service), Accused

3/27/2009
Date [Signature]
Neal A. Puckett, Esq. Defense Attorney

3/25/2009
Date [Signature]
Haytham Faraj, Esq. Defense Attorney

The foregoing Pretrial Agreement is approved, including the sentence limitation portion of this Agreement.

Date (Rank, Name, Service of Convening Authority)
(Title of Convening Authority)

**NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT**

U N I T E D S T A T E S)	
)	GENERAL COURT-MARTIAL
v.)	
)	MEMORANDUM
)	OF
FRANK D. WUTERICH XXX XX 3221 STAFF SERGEANT U.S. Marine Corps)	PRETRIAL AGREEMENT
)	MAXIMUM SENTENCE LIMITATION
)	
)	(PART II)

1. Punitive Discharge: May be approved as adjudged.
2. Confinement: If adjudged, any confinement will be disapproved.
3. Forfeitures or Fines:
 - a. Adjudged Forfeitures: All adjudged forfeitures will be disapproved.
 - b. Automatic Forfeitures: Automatic forfeitures will be deferred provided that the accused establishes and maintains a dependent's allotment in the total amount of the deferred forfeiture amount during the entire period of deferment. This Agreement constitutes the accused's request for, and the Convening Authority's approval of, deferment of automatic forfeitures pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeitures would otherwise become effective under Article 58b(a)(1), UCMJ, until the date the Convening Authority acts on the Sentence. Further, this Agreement constitutes the accused's request for, and the Convening Authority's approval of, waiver of automatic forfeitures. The period of waiver will run from the date the Convening Authority takes action on the sentence for six months. The deferred and waived forfeitures shall be paid to Marisol Wuterich, who is my dependent.
 - c. Fines: If adjudged, the fine will be disapproved.
4. Reduction: May be approved as adjudged.
5. Other lawful punishments: May be approved as adjudged.

SIGNATURE PAGE

I fully understand, and have discussed with my counsel, how this Agreement will affect any sentence that I may be awarded by the court-martial.

3/27/2009
Date SSG/56 JH D [Signature] USMC
(Rate/Rank, Name, Service), Accused

3/27/2009
Date [Signature]
Neal A. Puckett, Esq. Defense Attorney

3/25/2009
Date [Signature]
Haytham Faraj, Esq. Defense Attorney

The foregoing sentence limitation portion of this Agreement is approved.

Date (Rank, Name, Service of Convening Authority)
(Title of Convening Authority)

