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# RECORD OF TRIAL

(and accompanying papers)

of

DAVID MATTHEW HICKS  
also known as DAVID MICHAEL  
HICKS, ABU MUSLIM AUSTRALIA, ABU  
MUSLIM AUSTRALI, ABU MUSLIM  
PHILIPPINE, and MUHAMMAD DAWOOD

---

*Name and any aliases charged*

---

ISN: 0002

Identification Number

By

## MILITARY COMMISSION

Convened by the Convening Authority under 10 USC §948h

Office Military Commissions  
*(Name of Convening Authority)*

Tried at

---

Guantanamo Bay, Cuba  
*(place or Places of Trial)*

on

---

26 & 30 March 2007  
*(Date or Dates of Trial)*

Companion cases:

None.

**CHRONOLOGY SHEET<sup>1</sup>**

DAVID MATTHEW HICKS

also known as DAVID MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU MUSLIM

In the case of AUSTRALI, ABU MUSLIM PHILIPPINE, and MUHAMMAD DAWOOD (ISN: 0002)

(Name of Accused)

Date of alleged commission of earliest offense tried: \_\_\_\_\_, \_\_\_\_\_  
(Enter Date)

Date record forwarded to Court of Military Commission Review: \_\_\_\_\_, \_\_\_\_\_  
(Enter Date)

\_\_\_\_\_  
(Signature and Rank of Legal Advisor)

1 The Trial counsel is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.  2 In computing days between two dates, disregard the first day and count day. The actual number of days in each month will be counted.  3 Only this item may be deducted.  4 If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative.	ACTION	DATE	CUMULATIVE ELAPSED DAYS <sup>2</sup>
	1. Charges sworn (date of affidavit)		
2. Charges received by convening authority			
3. Charges referred to trial			
4. Sentence or acquittal			
Less days:			
Delay at request of defense			
Total authorized deduction <sup>3</sup>			
5. Net elapsed days to sentence or acquittal			
6. Record received by convening authority			
Action <sup>4</sup>			

REMARKS

CORRECTED COPY

There were no Military Commission Orders issued in 2006.

DEPARTMENT OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

MILITARY COMMISSION ORDER  
NUMBER 1

1 May 2007

David Matthew Hicks, a/k/a "David Michael Hicks", a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood," (ISN 0002), was arraigned and tried before a military commission convened at United States Naval Station, Guantanamo Bay, Cuba, pursuant to Military Commission Convening Order Number 07-01, dated 1 March 2007, as amended by Convening Order Number 07-03, dated 29 March 2007.

The accused was arraigned and tried on the following offenses and the following findings or other dispositions were reached:

CHARGE: Violation of 10 U.S.C. Section 950v Part 25--Providing Material Support for Terrorism, to wit al Qaeda

Plea: Guilty; Finding: Guilty.

SPECIFICATION 1: From in or about December 2000 through in or about December 2001 intentionally providing material support or resources to an international terrorist organization engaged in hostilities against the United States, namely al Qaeda.

Plea: Guilty, except paragraphs 23 & 24 of the specification, substituting paragraphs 1-35 of Appellate Exhibit 28. Finding: Of the excepted words: Not Guilty; of the substituted words: Guilty.

SPECIFICATION 2: From in or about December 2000 through in or about December 2001 providing material support or resources to be used in preparation for, or in carrying out, an act of terrorism.

Plea: Not Guilty. Finding: Dismissed.

## SENTENCE

The following sentence was adjudged by the members on 30 March 2007: confinement for 7 years.

## ACTION

In the case of David Matthew Hicks, also known as David Michael Hicks, Abu Muslim Australia, Abu Muslim Austraili, Abu Muslim Philippine, and Muhammad Dawood, ISN 0002, the sentence is approved and will be executed, but the execution of that part of the sentence extending to confinement in excess of nine months is suspended for seven years at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The Government of the Commonwealth of Australia may designate an appropriate place of confinement.

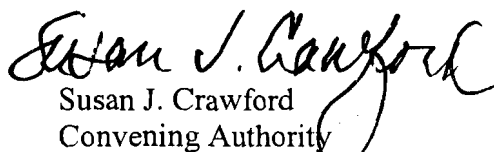
The conditions set forth in the pretrial agreement established the conditions of the suspension of the sentence to confinement. The following conditions of suspension apply and if violated, may result in vacation of the suspension:

- (1) David Matthew Hicks will not communicate with the media in any way regarding the illegal conduct alleged in the charge and the specification or about the circumstances surrounding his capture and detention as an unlawful enemy combatant for a period of one year.
- (2) David Matthew Hicks will cooperate fully, completely and truthfully in post-trial briefings and interviews as directed by competent United States or Australian law enforcement and intelligence authorities. David Matthew Hicks will provide truthful, complete and accurate information and, if necessary, truthful, complete and accurate testimony under oath at any grand juries, trials or other proceedings, including military commission and international tribunals. If David Matthew Hicks testifies untruthfully in any material way, he can be prosecuted for perjury. David Matthew Hicks will provide all information concerning his knowledge of, and participation in al Qaeda, Lashkar-e Tayyiba (LET), or any other similar organization. David Matthew Hicks will not falsely implicate any person or entity, and will not protect any person or entity through false information or omission.



- (3) David Matthew Hicks will waive all rights to appeal or collaterally attack his conviction, sentence or any other matter relating to his prosecution whether such right to appeal or collateral attack arises under the Military Commissions Act of 2006 or any other provision of United States or Australian law. David Matthew Hicks will not make, participate in, or support any claim, and not undertake, participate in or support any litigation, in any forum against the United States or any of its officials, whether uniformed or civilian, in their personal or official capacities with regard to his capture, treatment, detention, or prosecution.
- (4) If during the period of suspension, David Matthew Hicks engages in conduct proscribed by Sections 950q through w of Chapter 47A of title 10, United States Code.

DISTRIBUTION:  
Accused  
Defense Counsel  
Record of Trial  
Clerk of Court  
Corrections Facility  
Commonwealth of Australia

  
Susan J. Crawford  
Convening Authority  
For Military Commissions

DEPARTMENT OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
OFFICE OF THE CONVENING AUTHORITY  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

Date: 2 May 2007

MEMORANDUM FOR David Matthew Hicks, 0002, Guantanamo Bay, Cuba

SUBJECT: Service of Final Order in the Case of United States v. David Matthew Hicks  
a/k/a "Abu Muslim Australia, a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim  
Philippine," a/k/a "Muhammad Dawood"

You are hereby served with a copy of the Final Order (Military Commission  
Order Number 1), dated 1 May 2007 on 2 May 2007, pursuant to Regulation for Trial by  
Military Commissions and the Rules for Military Commission. A copy of the Order will  
be provided to your detailed defense counsel.

**AFFIDAVIT OF SERVICE**

I hereby certify that the above paragraph was read to, and a copy of the Final  
Order was served on, David Matthew Hicks this 2nd day of May, 2007. ↗

USN  
Typed/Printed Name/Grade

\_\_\_\_\_  
Signature

Joint Task Force – Guantanamo

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Address of Organization

DEPARTMENT OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

April 25, 2007

MEMORANDUM FOR David Matthew Hicks, 0002, Guantanamo Bay, Cuba

SUBJECT: Service of Record of Trial and Recommendation of the Legal Advisor --  
United States v. David Matthew Hicks, a/k/a "David Michael Hicks," a/k/a "Abu Muslim  
Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a  
"Muhammad Dawood," ISN 0002

You are hereby served with a copy of the Record of Trial and Recommendation of  
the Legal Advisor on 25 April 2007, pursuant to the Rules for Military  
Commissions, Rule 1104(b) and Rule 1106(e)(1), respectively. A copy of the  
Recommendation of the Legal Advisor was provided to your detailed defense counsel. A  
copy of the Record of Trial is also available to your defense counsel to review.

**AFFIDAVIT OF SERVICE**

I hereby certify that a copy of the Record of Trial and Recommendation of the  
Legal Advisor were served on David Matthew Hicks this 25<sup>th</sup> day of April  
2007.

typed/printed name/grade

MAJOR, USA

Signature

JTF Guantanamo

Organization

Address of Organization



OFFICE OF THE SECRETARY OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

19 April 2007

LEGAL ADVISOR

MEMORANDUM FOR Convening Authority, Office of Military Commissions, 1600  
Defense Pentagon, Washington, DC 20301-1600

SUBJECT: Recommendation of the Legal Advisor – United States v. David Matthew  
Hicks, a/k/a “David Michael Hicks”, a/k/a “Abu Muslim Australia,” a/k/a “Abu Muslim  
Australi,” a/k/a “Abu Muslim Philippine,” a/k/a “Muhammad Dawood”, ISN 0002,  
United States Naval Station, Guantanamo Bay, Cuba

1. This is my recommendation pursuant to R.M.C 1106 in the military commission trial  
of David Matthew Hicks. I have completed my review of the record of trial. The  
purpose of my recommendation is to assist you in your decision as to what action to take  
on the sentence in the exercise of your command prerogative.

2. PERSONAL DATA

a. HISTORY:

DOB: 7 Aug 1975                      Martial Status: Unmarried  
Education: 8<sup>th</sup> grade  
Unsworn statement: pages 200-202

b. PRIOR DISCIPLINARY ACTIONS/CONVICTIONS: None

3. CHARGES:

a. The Charge, Section 950v(25), Specification 1:

Providing Material Support For Terrorism, to wit: al Qaeda. *Plea:* Guilty, except  
paras 23 & 24, substituting para 1-35 of AE 28). *Findings:* Of the excepted  
words: Not Guilty. Of the substituted words: Guilty.

b. The Charge, Section v(25), Specification 2: *Plea:* Not guilty. *Findings:*

Dismissed without prejudice, ripening into dismissal with prejudice at the time  
sentence was announced.

c. To the Charge: *Plea:* Guilty. *Findings:* Guilty.

4. SENTENCE:

a. Date Adjudged: 30 March 2007.

SUBJECT: Recommendation of the Legal Advisor – David Matthew Hicks

b. Sentenced adjudged by Members: 7 years confinement

c. Clemency recommended by Military Commissions Judge or Members: None.

d. Pretrial Agreement:

- 1) The maximum period of confinement that may be adjudged and approved is seven (7) years.
- 2) The convening authority agrees to suspend any part of the sentence extending to confinement in excess of nine (9) months for a period of seven (7) years.
- 3) The United States will transfer the custody and control of the accused to the government of Australia not later than sixty days from the date the sentence is announced.
- 4) The members will be instructed that the maximum sentence is 7 years confinement
- 5) The prosecution will not present any evidence in aggravation and the defense will not present any evidence in mitigation during the sentencing phase of the trial. The accused may make an unsworn statement.
- 6) Appellate Review: accused waived (Appellate Exhibit 33).

e. Approved Deferment: none

5. ACCUSED'S DETENTION PRIOR TO TRIAL:

a. Days in pretrial confinement: none


b. Total presentence confinement credit: none

c. Detained in US custody: 5 years and 4 months

6. MATTERS SUBMITTED BY THE ACCUSED: the accused waived his right to submit matters under R.M.C. 1105(a) (Enclosure 2).

7. RECOMMENDATION: I recommend that the sentence be approved and ordered executed. I further recommend that you sign the action at Enclosure 1 approving the sentence and suspending the confinement in excess of nine months.

- 3 Encls  
1. Proposed Action  
2. Waiver  
3. Record of Trial

  
Thomas L. Heminger  
Brig Gen, USAir Force  
Legal Advisor to the  
Convening Authority

ACTION

OFFICE OF MILITARY COMMISSIONS  
1600 Defense Pentagon  
Washington, DA 20301-1600

MAY 01 2007

In the case of David Matthew Hicks, also known as David Michael Hicks, Abu Muslim Australia, Abu Mulsim Austraili, Abu Mulim Philippine, and Muhammad Dawood, ISN 0002, the sentence is approved and will be executed, but the execution of that part of the sentence extending to confinement in excess of nine months is suspended for seven years at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The Government of the Commonwealth of Australia may designate an appropriate place of confinement.

The conditions set forth in the pretrial agreement established the conditions of the suspension of the sentence to confinement. The following conditions of suspension apply and if violated, may result in vacation of the suspension:

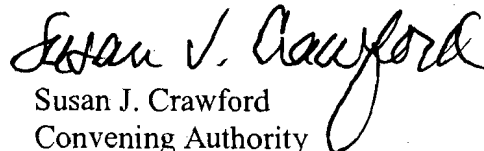
- (1) David Matthew Hicks will not communicate with the media in any way regarding the illegal conduct alleged in the charge and the specification or about the circumstances surrounding his capture and detention as an unlawful enemy combatant for a period of one year.
- (2) David Matthew Hicks will cooperate fully, completely and truthfully in post-trial briefings and interviews as directed by competent United States or Australian law enforcement and intelligence authorities. David Matthew Hicks will provide truthful, complete and accurate information and, if necessary, truthful, complete and accurate testimony under oath at any grand juries, trials or other proceedings, including military commission and international tribunals. If David Matthew Hicks testifies untruthfully in any material way, he can be prosecuted for perjury. David Matthew Hicks will provide all information concerning his knowledge of, and participation in al Qaeda, Lashkar-e Tayyiba (LET), or any other similar organization. David Matthew Hicks will not falsely implicate any person or entity, and will not protect any person or entity through false information or omission.
- (3) David Matthew Hicks will waive all rights to appeal or collaterally attack of his conviction, sentence or any other matter relating to his prosecution whether such right to appeal or collateral attack arises under the Military Commissions Act of 2006 or any other provision of United States or Australian law. David Matthew Hicks will not make, participate in, or support any claim, and not undertake, participate in or support any litigation, in any forum against the United States or

Action--David Matthew Hicks

any of its officials, whether uniformed or civilian, in their personal or official capacities with regard to my capture, treatment, detention, or prosecution.

- (4) If during the period of suspension, David Matthew Hicks engages in conduct proscribed by Sections 950q through w of Chapter 47A of Title 10, United States Code.

1 MAR 2007  
Date

  
Susan J. Crawford  
Convening Authority  
For Military Commissions

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UNITED STATES OF AMERICA

v.

DAVID HICKS

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))  
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))

Waiver of Rule 1105 Matters

Military Commission  
Guantanamo Bay, Cuba

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1. I, David Hicks, pursuant to Rule 1105(d)(3) of the Rules for Military Commissions, waive the right to submit matters under Rule 1105(a).
2. This waiver is submitted voluntarily.


Signed:

  
\_\_\_\_\_  
David Hicks

Date:

30/03/07

Signed:

  
\_\_\_\_\_  
M.D. Morr  
Major, U.S. Marine Corps  
Detailed Defense Counsel

Date:

30 MAR 07



DEPARTMENT OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

April 23, 2007

MEMORANDUM FOR Detailed Defense Counsel, Major Michael Mori

SUBJECT: Service of Recommendation of the Legal Advisor

You are hereby served with a copy of the Recommendation of the Legal Advisor in the case of David Mathew Hicks, 0002, on 23 APRIL 2007, pursuant to Rule for Military Commission 1106(e)(1).

<u>MSG</u> Typed/Printed Name & Grade	<input checked="" type="checkbox"/> _____ Signature
<u>DMC-CA</u> Organization	_____ Address

**ACKNOWLEDGEMENT OF RECEIPT OF SERVICE**

I received the Recommendation of the Legal Advisor in the case of David Matthew Hicks on this 23 day of APRIL, 2007. 1056 am

For Michael D. Mori  
Michael D. Mori  
Major, USMC  
Detailed Defense Counsel

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<b>UNITED STATES OF AMERICA</b>	)	<b>Waiver of Rule 1105 Matters</b>
	)	
<b>v.</b>	)	
	)	
<b>DAVID HICKS</b>	)	<b>Military Commission</b>
	)	<b>Guantanamo Bay, Cuba</b>
	)	

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1. I, David Hicks, pursuant to Rule 1105(d)(3) of the Rules for Military Commissions, waive the right to submit matters under Rule 1105(a).
2. This waiver is submitted voluntarily.

Signed:   
David Hicks

Date: 30/03/07

Signed:   
M.D. Mori  
Major, U.S. Marine Corps  
Detailed Defense Counsel

Date: 30 MAR 07

**ALLIED PAPERS**



DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF PROSECUTOR  
OFFICE OF MILITARY COMMISSIONS  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

March 1, 2007

MEMORANDUM FOR Detainee David M. Hicks 0002, Guantanamo Bay, Cuba

SUBJECT: Service of Referred Charges

You are hereby served with a copy of the charges referred against you on the 1st day of March, 2007, pursuant to the Military Commissions Act of 2006 (MCA) and the Manual for Military Commissions (MMC). A copy of the referred charges are being provided to you and your detailed defense counsel.

*(Pursuant to Rules of Military Commission (RMC) 602, a copy of the referred charges shall be served in English and, if appropriate, in another language that the accused understands. If the accused has questions when served with charges, the accused should be told to discuss the matter with defense counsel.)*

**AFFIDAVIT OF SERVICE**

I hereby certify that a copy of the referred charges were served on the above named detainee this 1<sup>st</sup> day of March, 2007.

Joint Task Force - GTMO  
Organization

Typed or Printed Name and Grade

Address of Organization \_\_\_\_\_

FEB 21 2007

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	<b>LEGAL ADVISOR'S</b>
	)	<b>PRETRIAL ADVICE</b>
DAVID MATTHEW HICKS	)	
a/k/a "David Michael Hicks"	)	
a/k/a "Abu Muslim Australia"	)	
a/k/a "Abu Muslim Australi"	)	
a/k/a "Abu Muslim Philippine"	)	
a/k/a "Muhammad Dawood"	)	

Pursuant to the Military Commissions Act of 2006 (M.C.A.) and the Manual for Military Commissions of 2007 (M.M.C.), the Chief Prosecutor has prepared and forwarded the attached charges that were sworn against David Matthew Hicks (hereinafter "Hicks") on February 2, 2007 in accordance with Rule for Military Commissions (R.M.C.) 307.

R.M.C. 401 authorizes a convening authority designated by the Secretary of Defense for the purpose of convening military commissions to dispose of charges. *See also* 10 U.S.C. § 948h. R.M.C. 406 requires that the legal advisor render pretrial advice to the convening authority based on certain conclusions before any charge may be referred for trial by a military commission.

a. Conclusion with respect to whether each specification alleges an offense under the MCA.

I conclude that Specifications 1 and 2 of Charge I, Providing Material Support for Terrorism, each allege an offense under the M.C.A. 10 U.S.C. § 950v(b)(25); Paragraph 6(25), Part IV, M.M.C.

I conclude that the Specification of Charge II, Attempted Murder in Violation of the Law of War, also alleges an offense under the M.C.A. 10 U.S.C. § 950t; 10 U.S.C. § 950v(b)(15); Paragraph 4, Part IV, M.M.C.; Paragraph 6(15), Part IV, M.M.C.

b. Conclusion with respect to whether the allegation of each offense is warranted by the evidence indicated in the report of investigation (if there is such a report).

The Chief Prosecutor has prepared a referral notebook containing TABS 1-30 for your consideration.

In my opinion, Specifications 1 and 2 of Charge I and Charge I, Providing Material Support for Terrorism, are warranted by the evidence.

**FOR OFFICIAL USE ONLY**

However, in my opinion, the evidence for the Specification of Charge II and Charge II, Attempted Murder in Violation of the Law of War, is insufficient to establish probable cause. See R.M.C. 406, Discussion. In particular, the evidence does not adequately support the Specification's allegation, *inter alia*, that Hicks attempted to commit murder in violation of the law of war "by directing small arms fire, explosives, or other means and methods, with the intent to kill divers persons of the United States, Northern Alliance, or other Coalition forces . . . ."

c. Conclusion with respect to whether a military commission would have jurisdiction over the accused and the offense.

The President is authorized to establish military commissions under chapter 47A of title 10, United States Code. 10 U.S.C. § 948b(b). The President, by executive order on February 14, 2007, established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10. Military commissions may try any offense under the M.C.A. or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001. 10 U.S.C. § 948d(a); R.M.C. 203. A Combatant Status Review Tribunal determined on September 30, 2004, that Hicks is an enemy combatant and a member of or affiliated with al Qaeda. The M.C.A. defines such persons as unlawful enemy combatants. 10 U.S.C. § 948a(1). Finally, Hicks is a citizen of Australia and not of the United States. Therefore, it is my opinion that a military commission has both *in personam* and subject matter jurisdiction over Hicks.

d. Conclusion with respect to whether trial of the charges would be harmful to national security.

I have concluded, after consultation with the Office of the Director of National Intelligence and appropriate intelligence agencies, that trial of the charges would not be harmful to national security.

e. Recommendation of the action to be taken by the convening authority.

I recommend that you approve and refer Specifications 1 and 2 of Charge I and Charge I, Providing Material Support for Terrorism, to trial by military commission. I recommend that you dismiss and do not refer the Specification of Charge II and Charge II, Attempted Murder in Violation of the Law of War, to trial.

Concur  
S/L  
3-1-07

Brigadier General, U.S. Air Force  
Legal Advisor to the Convening Authority  
for Military Commissions



DEPARTMENT OF DEFENSE  
 OFFICE OF THE CHIEF PROSECUTOR  
 OFFICE OF MILITARY COMMISSIONS  
 1610 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1610

2 Feb 07  
 (day) (month) (year)

MEMORANDUM FOR Detainee David M. Hicks 0002, Guantanamo Bay, Cuba

SUBJECT: Notification of the Swearing of Charges

1. You are hereby notified that criminal charges were sworn against you on the 2<sup>nd</sup> day of Feb, 2007, pursuant to the Military Commissions Act of 2006 (MCA) and the Manual for Military Commissions (MMC). A copy of this notice is being provided to you and to your detailed defense counsel.

2. Specifically, you are charged with the following offenses:

PROVIDING MATERIAL SUPPORT FOR TERRORISM

ATTEMPTED MURDER IN VIOLATION OF THE LAW OF WAR

*(Read the charges and specifications to the accused. If necessary, an interpreter may read the charges in a language, other than English, that the accused understands.)*

**AFFIDAVIT OF NOTIFICATION**

I hereby certify that a copy of this document was provided to the named detainee this 2<sup>nd</sup> day of Feb, 2007.

Signature

CITF  
 Organization

Typed or Printed Name and Grade

Address of Organization

**CRIMINAL INVESTIGATION TASK FORCE  
REPORT OF INVESTIGATIVE ACTIVITY**

**1. DATE OF INVESTIGATIVE ACTIVITY**  
02 FEB 07

**2. PLACE**  
(See Narrative)

**3. ACTIVITY NUMBER**  
07020508540790

**4. REMARKS**

Notification of Charges Sworn 20070202 - USXAS-000002DP

Date/Place: 02 Feb 07

(FOUO/LES) Between 1735 and 1810, 2 Feb 07, SA \_\_\_\_\_, Criminal Investigation Task Force (CITF) served Notification of Charges Sworn to David M. Hicks, ISN USXAS-00002DP. SA \_\_\_\_\_, CITF witnessed the notification, which occurred in an interview room of Camp Six, United States Naval Station Guantanamo Bay, Cuba.

THIS DOCUMENT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF CITF. IT IS THE PROPERTY OF THE CITF AND IS LOANED TO YOUR AGENCY; THIS DOCUMENT IS NOT TO BE RELEASED OUTSIDE YOUR AGENCY.

FOUO//LES

PAGE 1 OF 1 PAGES




# RECORD OF PROCEEDINGS

**ERRATA SHEET**

Page  
1 of 1

<u>UNITED STATES v.</u> <u>DAVID MATTHEW HICKS, also known as</u> <u>DAVID MICHAEL HICKS, ABU MUSLIM</u> <u>AUSTRALIA, ABU MUSLIM AUSTRALII,</u> <u>ABU MUSLIM PHILIPPINE, and MUHAMMAD</u> <u>DAWOOD</u>		Office of Military Commissions Office of the Convening Authority Washington, D.C.		Date Submitted to PROS: Via electrons 3 April 2007	
Reporter: MSG , US Army		Date(s) of Trial 26 & 30 March 2007		Date Submitted to DDC Via electrons 3 April 2007	
				Date Submitted to MJ Via electrons 11 April 2007	
Date Record Completed 3 April 2007		Date Completed by PROS: 6 April 2007	Date Completed by DDC: 10 April 2007	Date Authenticated by MJ:	

Page	Line	Change	To	PROS Initials	DDC Initials	MJ Initials
10	12	with	in			
38	12	in	and			
38	17	in	and			
46	4	haven't	have it			
52	6	whom	who			
67	16	"essential"	"essentially"			
71	1	I	it			
74	24	"a Maj Mori"	"by Maj Mori"			
80	11	"clenased"	"cleansed"			
91	14	as	has			
125	12	"Hick"	"Hicks"			
176	1	[Delete entire line]	[Delete entire line]			
217	21	"and tell"	"until"			
220	14	in tact	intact			
231	5	"The may"	You may"			
239	11	[Delete entire line]	[Delete entire line]			

Typed Name & Grade [Military Judge] , Colonel, USMC	Signature 	Date 19 April 2007
Typed Name & Grade [Prosecutor] LtCol, USMC	Signature	Date
Typed Name & Grade [Detailed Defense Counsel] MICHEAL D. MORI, Maj, USMC	Signature	Date

ERRATA SHEET

UNITED STATES v. DAVID MATTHEW HICKS, also known as DAVID MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU MUSLIM AUSTRALI, <u>ABU MUSLIM PHILIPPINE</u> , and MUHAMMAD DAWOOD		Office of Military Commissions Office of the Convening Authority Washington, D.C.		Date Submitted to PROS: Via electrons 3 April 2007	
Reporter: MSG , US Army		Date(s) of Trial 26 & 30 March 2007		Date Submitted to DDC Via electrons 3 April 2007	
		Date Submitted to MJ Via electrons 3 April 2007		Date Completed by MJ	
Date Record Completed 3 April 2007		Date Completed by PROS:	Date Completed by DDC:	Date Authenticated	

Page	Line	Change	To	PROS Initials	DDC Initials	MJ Initials
2	9-10	"The prosecution caused a copy of The Charge in English which is the accused's native language to be served on the accused on 1 March 2007."	"The prosecution caused a copy of the Charge in English, which is the accused's native language, to be served on the accused on 1 March 2007."			
7	17	"... that will not be representing ...."	"... but will not be representing ...."			
10	22	"was"	"were"			
12	7	"scheduled"	"schedule"			
12	11	"... I advise them ..."	"... I advised them ..."			
19	12	"... and is seeking ..."	"... and in seeking ..."			
23	12	"filed"	"file"			
28	3	"ultravirus"	"ultra vires"			
32	16	"... if you don't want in there ..."	"... if you don't want him there ..."			
33	3	"... that there is more information ..."	"... that there is important information ..."			
34	15	"... there rule ..."	"... the rule ..."			
53	5	"Bork"	"Borch"			
53	8 & 23	"Altenberg"	"Altenburg"			
56	21	"... except is provided ..."	"... except as provided ..."			
61	13	"Altenberg"	"Altenburg"			
64	1	"... our personnel present ..."	"... all personnel present ..."			
66	5	"... there is been a proffer ..."	"... there has been a proffer ..."			

✓ 75	18	"cause"	"caused"			
✓ 77	17	"I would request that it impossible the parties ..."	"I would request that if it's possible the parties ..."			
✓ 77	21	"... to address this time?"	"... to address at this time?"			
✓ COT 92	3	"... international terrorism organization ..."	"... international terrorist organization ..."			
✓ COT 111	13	"... with no enemy at sight in Kandahar ..."	"... with no enemy in sight at Kandahar ..."			
✓ 112	1	Delete "you're"				
✓ X 115	6	"1"	"one"			
✓ 122	13	"were"	"when"			
✓ 124	21	"your"	"you're" or "you"			
✓ 140	13	"... from a part ..."	"... from a party ..."			
✓ 141	4	"... should the Government of the United States that ..."	"... should the Government of the United States determine that ..."			
✓ 144	22	"ahs"	"has"			
✓ 146	12	"adjudge"	"adjudged"			
✓ 157	17	"... 957v(b) (25) ."	"... 950v(b) (25) ."			
✓ 159	1	"... convening quarter ..."	"... convening order ..."			
✓ 169	19	"Members, have of your ever been ..."	"Members, have any of you ever been ..."			
✓ 173	9	"Are all the folders closed with the notes covered up their?"	"Are all the folders closed with their notes covered up?"			
✓ 175	16	"Well it's just a branch that it can within the Army ..."	"Well it's just a branch that I came from within the Army ..."			
✓ 183	7	"know"	"now"			
✓ 184	3	"USS Baton"	"USS Bataan"			
✓ COT 201	3	"lives"	"life"			4:44:04
✓ COT 203	3	"I will remind you and bring up ..."	"I will remind you and bring it up ..."			4:48:04
✓ 203	7	"He saw firsthand."	"He saw it firsthand."			
✓ 203	15	"... on the battle fronts ..."	"... on two battle fronts ..."			
✓ 204	9	"Al Qaeda places zero value own life."	"Al Qaeda places zero value on life."			

✓ 204	12	"sits here or if we'll ever ..."	"sits here or if he'll ever ..."			
COT 205	14	"... train on a mock ..."	"... train in a mock ..."	4:52	1:28	
X 205	20	Delete "of"	<del>of</del>	4:52	:56	
✓ 205	20-21	"... other student operatives is what they call themselves ..."	"... other student operatives, is what they called themselves, ..."			
✓ 206	16	"has embassies in ..."	"has <del>to</del> embassies <sup>of</sup> in ..."			
✓ 206	17	"How do you think ..."	"Now do you think ..."			
OK 207	9	"provide to al Qaeda what's the more equivalent ..."	"provide to al Qaeda what's the moral equivalent ..."			
✓ 207	14	"If you wanted ..."	"If he wanted ..."			
COT 207	23	"... from his own friend evidence ..."	"... from his own friend's evidence ..."			
✓ 208	6	"anywhere that he freely ..."	"anywhere but he freely ..."			
COT 208	9	"as fuel and missiles to the people around them."	"as fuel and missiles to attack the people in and around them."	4:57	3:00	
NOT 209	14	"Now the enemy in Muhammad Dawood ..."	"Now the enemy of Muhammed Dawood ..."	4:59	5:04	
✓ 210	1	"... to stop them ..."	"... to stop him ..."			
✓ 210	14	"can do it again ..."	"can't do it again ..."			
NOT 211	2	"United States Government, that without any doubt ..."	"United States Government, and without any doubt ..."	5:01	:50	
✓ 215	7	"... to prove they weren't international ..."	"... to prove they were an international ..."			
231	21-22	"In the even that we should have such a notice provide ..."	"In the event that we should have such a notice provided ..."			
Typed Name & Grade [Military Judge] , Col, USMC			Signature	Date		
Typed Name & Grade [Prosecutor] , LtCol, USMC			Signature	Date 5 Apr 07		
Typed Name & Grade [Detailed Defense Counsel] MICHEAL D. MORI, Maj, USMC			Signature	Date		

**ERRATA SHEET**

Page  
1 of 1

UNITED STATES v. DAVID MATTHEW HICKS, also known as DAVID MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU MUSLIM AUSTRALI, ABU MUSLIM PHILIPPINE, and MUHAMMAD DAWOOD		Office of Military Commissions Office of the Convening Authority Washington, D.C.	Date Submitted to PROS: Via electrons 3 April 2007
Reporter: MSG	, US Army	Date(s) of Trial 26 & 30 March 2007	Date Submitted to DDC Via electrons 3 April 2007
		Date Submitted to MJ Via electrons 3 April 2007	Date Completed by MJ
Date Record Completed 3 April 2007	Date Completed by PROS:	Date Completed by DDC:	Date Authenticated

Page	Line	Change	To	PROS Initials	DDC Initials	MJ Initials
✓ 3	3	REBECCA R. SNYDER	REBECCA S. Snyder [sic]			
✓ 8	22	OWN	ON			
✓ 15	5	948(K)(a)2	948K(a)(2)			
✓ 22	17	You	she			
✓ 28	3	ULTRAVIRUS	ULTRA VICES			
✓ 34	3	confian	conferred			
✓ 34	15	There rule	The rule			
X 42	7	1 <sup>st</sup> of March				
✓ 50	15	IT was what	What			
✓ 54	17	Known	aware			
✓ 61	1	Our	all			
✓ 77	17	it	if			
✓ 79	13	client's	cleansed			
Typed Name & Grade (Military Judge) , COL, USMC			Signature	Date		
Typed Name & Grade (Prosecutor) , LTCOL, USMC			Signature	Date		
Typed Name & Grade (Detailed Defense Counsel) MICHAEL D. MORI, Maj, USMC			Signature	Date 10 Apr 07		

**ERRATA SHEET**

Page  
1 of 1

UNITED STATES v. DAVID MATTHEW HICKS, also known as DAVID MICHAEL HICKS, <u>ABU MUSLIM</u> AUSTRALIA, <u>ABU MUSLIM AUSTRALI</u> , <u>ABU MUSLIM PHILIPPINE</u> , and <u>MOHAMMAD</u> <u>DAWOOD</u>	Office of Military Commissions Office of the Convening Authority Washington, D.C.	Date Submitted to PROS: Via electrons 3 April 2007
Reporter: MSG , US Army	Date(s) of Trial 26 & 30 March 2007	Date Submitted to DDC Via electrons 3 April 2007
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Date Record Completed 3 April 2007	Date Completed by PROS:	Date Completed by DDC:
		Date Authenticated

Page	Line	Change	To	PROS Initials	DDC Initials	MJ Initials
✓ 81	18	as	ask			
✓ 112	1	and you're your	and your			
✓ 124	3	Mr. Hick	Mr. Hicks			
✓ 144	22	Ahs	has			
✓ 146	12	adjudge	adjudged			
✓ 164	19	will submitted	will be submitted			
✓ 198	18	apologized	apologizes [3 words]			
✓ 212	12	Two hours	two hours			
✓ 219	13	and to thereby	and thereby			
✓ 221	20	judge you will	judge will			
✓ 221	20	then	than			
✓ 222	5	punishment that	punish for what			
✓ 225	18	5 years	5 years			

Typed Name & Grade (Military Judge) , COL, USMC	Signature	Date
Typed Name & Grade (Prosecutor) , LtCol, USMC	Signature	Date
Typed Name & Grade (Detailed Defense Counsel) MICHEAL D. MORI, Maj, USMC	Signature	Date 10 Apr 07

**ERRATA SHEET**

Page  
1 of 1

UNITED STATES v. DAVID MATTHEW HICKS, also known as DAVID MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU MUSLIM AUSTRALIA, ABU MUSLIM PHILIPPINE, and MUHAMMAD DAWOOD		Office of Military Commissions Office of the Convening Authority Washington, D.C.		Date Submitted to PROS: Via electrons 3 April 2007		
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Date Record Completed 3 April 2007		Date Completed by PROS:	Date Completed by DDC:	Date Authenticated		
Page	Line	Change	To	PROS Initials	DDC Initials	MJ Initials
✓ 231	21	even	event			
✓ 231	22	provide	provided			
✓ 235	19	that	that.			
Typed Name & Grade [Military Judge] , COL, USMC			Signature	Date		
Typed Name & Grade [Prosecutor] , LtCol, USMC			Signature	Date		
Typed Name & Grade [Detailed Defense Counsel] MICHEAL D. MORI, Maj, USMC			Signature <i>[Signature]</i>	Date 10 APR 07		



# RECORD OF TRIAL

of

DAVID MATTHEW HICKS  
 also known as DAVID MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU  
 MUSLIM AUSTRALIA, ABU MUSLIM PHILIPPINE, and MUHAMMAD DAWOOD  
 \_\_\_\_\_  
*(Name and any aliases charged)*

ISN: 0002

\_\_\_\_\_  
*(Identification Number)*

By

## MILITARY COMMISSION

Convened by the Convening Authority under 10 USC §948h

\_\_\_\_\_  
 Office of Military Commissions  
*(Name of Convening Authority)*

Tried at

\_\_\_\_\_  
 Guantanamo Bay, Cuba  
*(place or Places of Trial)*

on

\_\_\_\_\_  
 26 & 30 March 2007  
*(Date or Dates of Trial)*

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On 30 March 2007	R- 79
On	R-
On	R-
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Prosecution evidence	R-
Defense evidence	R- 200
Sentence	R- 245
Appellate rights advisement	R- 249
Proceedings in revision	R-

<b>TESTIMONY</b>				
NAME OF WITNESS ( <i>Last, First, Middle Initial</i> )		DIRECT AND INDIRECT	CROSS AND RECROSS	COURT
<b>PROSECUTION</b>				
None				
<b>DEFENSE</b>				
None				
<b>COURT</b>				
None				
<b>EXHIBITS</b>				
NUMBER OR LETTER	DESCRIPTION	PAGE WHERE –		
		OFFERED	ADMITTED	
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AE 011	Prosecution Detailing Memo		7	
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**COPIES OF RECORD <sup>1</sup>**

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

\_\_\_\_\_ Copy(ies) of record forwarded herewith.

**RECEIPT FOR COPY OF RECORD <sup>2</sup>**

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. \_\_\_\_\_,

delivered to me at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*(Signature of accused)*

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. \_\_\_\_\_,

delivered to me at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*(Signature of accused)*

<sup>1</sup> For instructions as to preparation of copies of record, see Military Commission Regulations, Chapter 18.

<sup>2</sup> If copy of record prepared for accused contains matters requiring security protection, see RMC 1104d, MMC 2007.

**CERTIFICATE IN LIEU OF RECEIPT**

\_\_\_\_\_  
(Place)

\_\_\_\_\_  
(Date)

I certify that on this date a copy of the record of trial in the case of United States v. \_\_\_\_\_

was transmitted (delivered) to the accused, \_\_\_\_\_  
(Name of accused)

at \_\_\_\_\_, by \_\_\_\_\_  
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

\_\_\_\_\_  
(Signature of trial counsel)

**OR**

\_\_\_\_\_  
(Place)

\_\_\_\_\_  
(Date)

I certify that on this date a copy of the record of trial in the case of United States v. \_\_\_\_\_

was transmitted (delivered) to the accused's defense counsel, \_\_\_\_\_  
(Rank and Name)

at \_\_\_\_\_, by \_\_\_\_\_  
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

because (it was impracticable to serve the record of trial on the accused because he/she was transferred to \_\_\_\_\_

\_\_\_\_\_) (the accused requested such at trial) (the accused so  
(Place)

requested in writing, which is attached) ( \_\_\_\_\_ )  
(Other reason)

\_\_\_\_\_  
(Signature of trial counsel)

**OR**

The accused was not served personally because ( \_\_\_\_\_ )  
(Other reason)

\_\_\_\_\_).

Accused has no defense counsel to receive the record because (defense counsel has been excused under RMC 505(d)(2)(B))  
( \_\_\_\_\_ )

(Other reason)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of trial counsel)



DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF PROSECUTOR  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

February 28, 2007

MEMORANDUM FOR LIEUTENANT COLONEL  
LIEUTENANT  
LIEUTENANT

USMC

USN  
USN

SUBJECT: Detailed Prosecutors

Consistent with my authority as Chief Prosecutor and the provisions of Rule 501(b), Manual for Military Commissions, dated January 18, 2007, the above named counsel are detailed and designated as follows for the case of United States v. David Matthew Hicks:

Detailed Prosecutor:

Lieutenant Colonel USMC

Detailed Assistant Prosecutor:

Lieutenant USN  
Lieutenant USN

Colonel, United States Air Force  
Chief Prosecutor  
Office of Military Commissions

cc:  
Deputy Chief Prosecutor



DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF DEFENSE COUNSEL  
1620 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1620

February 5, 2007

MEMORANDUM FOR Maj M. D. Mori, USMC

Subject: Detailing as Defense Counsel in the Military Commission Case of *United States v. David Hicks*

Pursuant to Rule for Military Commissions 503(c), I hereby detail you as Defense Counsel in the military commission case of *United States v. David Hicks*.

A handwritten signature in black ink, appearing to read "D. H. Sullivan", is positioned above the typed name.

D. H. Sullivan  
Col, USMCR  
Chief Defense Counsel





DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF DEFENSE COUNSEL  
1620 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1620

February 5, 2007

MEMORANDUM FOR Ms. Rebecca Snyder

Subject: Detailing as Assistant Defense Counsel in the Military Commission Case  
of *United States v. David Hicks*

Pursuant to Rule for Military Commissions 503(c), I hereby detail you as  
Assistant Defense Counsel in the military commission case of *United States v. David  
Hicks*.

A handwritten signature in black ink, appearing to read "D. H. Sullivan".

D. H. Sullivan  
Col, USMCR  
Chief Defense Counsel

Copy to:  
Maj M. D. Mori, USMC



1 PROCEEDINGS OF A MILITARY COMMISSION

2

3 The military judge called the R.M.C. 803 session to order at  
4 Guantanamo Bay, Cuba, at 1404 hours, 26 March 2007, pursuant to the  
5 following orders:

6

7 Military Commissions Convening Order Number 07-01, Office of Military  
8 Commissions, Office of the Convening Authority, Washington D.C.,  
9 dated 1 March 2007; as amended by Military Commissions Convening  
10 Order Number 07-03, same headquarters, dated 29 March 2007.

11

12

[END OF PAGE]



There were no Convening Orders published in 2006

DEPARTMENT OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
OFFICE OF THE CONVENING AUTHORITY  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

MILITARY COMMISSION CONVENING ORDER  
NUMBER 07-01

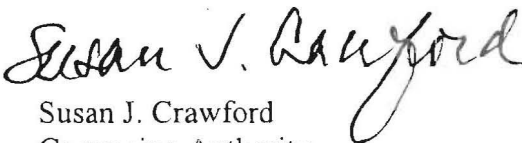
1 March 2007

Pursuant to the authority vested in the Secretary of Defense in accordance with the Military Commissions Act of 2006, 10 U.S.C. § 948h, and my appointment as Convening Authority for Military Commissions on February 6, 2007, a military commission is hereby convened. It may proceed at Guantanamo Bay, Cuba, unless otherwise directed, to try such persons as may be properly brought before it. The military commission is convened with the following members:

MEMBERS

<u>RANK</u>	<u>NAME</u>	<u>SVC</u>	<u>ASSIGNMENT</u>
COL		USA	
Col.		USAF	
Col.		USAF	
Capt.		USN	
COL		USA	
Capt.		USN	
Capt.		USN	
Col.		USMC	
Lt.Col.		USAF	
MAJ		USA	

DISTRIBUTION:  
Individual (1)  
Record of Trial (1)  
Reference Set (1)



Susan J. Crawford  
Convening Authority  
for Military Commissions

OFFICE OF MILITARY COMMISSIONS  
OFFICE OF THE CONVENING AUTHORITY  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

CONVENING ORDER  
NUMBER 07-03

29 March 2007

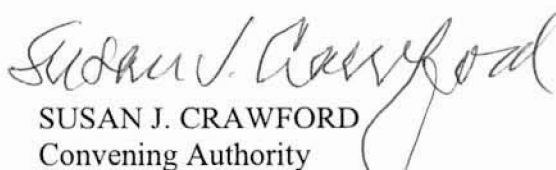
The officers listed below were detailed as members of the military commission convened by the undersigned Convening Authority by Convening Order 07-01, dated 1 March 2007.

Vice COL \_\_\_\_\_, US Army, and MAJ \_\_\_\_\_, US Army, for the case of United States of America v. David Matthew Hicks only:

Add the following alternate members for the case of United States of America v. David Matthew Hicks only:

**MEMBERS**

<u>RANK</u>	<u>NAME</u>	<u>SVC</u>	<u>ASSIGNMENT</u>
COL		USA	
COL		USAF	

  
SUSAN J. CRAWFORD  
Convening Authority  
For Military Commissions

DISTRIBUTION:  
Individual (1)  
Record of Trial (1)  
Record Set (1)

1 [The session was called to order at 1404 hours, 26 March 2007.]

2 MJ: This military commission is called to order.

3 PROS: This military commission is appointed by Convening Order  
4 Number 07-01, dated 1 March 2007, copies of which have been furnished  
5 to the military judge, counsel, and the accused and which have been  
6 marked as Appellate Exhibit 001 and attached to the record. The  
7 Charge has been marked as Appellate Exhibit 002 and has been properly  
8 approved by the Convening Authority and referred to this commission  
9 for trial. The prosecution caused a copy of The Charge in English  
10 which is the accused's native language to be served on the accused on  
11 1 March 2007.

12 The prosecution is ready to proceed in the arraignment of  
13 The UNITED STATES versus DAVID MATTHEW HICKS, also known as DAVID  
14 MICHAEL HICKS, ABU MUSLIM AUSTRALIA, ABU MUSLIM AUSTRALI, ABU MUSLIM  
15 PHILIPPINE, and MUHAMMAD DAWOOD. The accused and the following  
16 personnel detailed to this commission are present:

17 [REDACTED], COLONEL,

18 UNITED STATES MARINE CORPS, MILITARY JUDGE;

19 [REDACTED], LIEUTENANT COLONEL,

20 UNITED STATES MARINE CORPS, PROSECUTOR;

21 [REDACTED], LIEUTENANT,

22 JUDGE ADVOCATE GENERAL'S CORPS,

23 UNITED STATES NAVY, ASSISTANT PROSECUTOR;

1           **MICHAEL D. MORI, MAJOR, UNITED STATES MARINE CORPS,**

2                   **DETAILED DEFENSE COUNSEL;**

3           **MS. REBECCA R. [sic] SNYDER, ASSISTANT DETAILED DEFENSE**

4 **COUNSEL;**

5           **and MR. JOSHUA L. DRATEL, CIVILIAN DEFENSE COUNSEL.**

6           All other personnel detailed to this commission but absent  
7 is [REDACTED], Lieutenant, Judge Advocate General's Corps, United  
8 States Navy, Assistant Prosecutor. All other members are absent.

9           Court reporter, [REDACTED], Master Sergeant, United States  
10 Army, has been detailed reporter for this commission and has been  
11 previously sworn.

12           MJ: Thank you. I detailed myself to this case in my capacity  
13 as the Chief Judge for the Military Commissions Trial Judiciary and I  
14 have previously been sworn in accordance with Rule for Military  
15 Commission 807. I am certified and qualified in accordance with  
16 Articles 26(b) and (c) and 42(a) of the Uniform Code of Military  
17 Justice, as well as Rule for Military Commission 503. I have not  
18 acted in any manner which might tend to disqualify me in this  
19 proceeding.

20           Before continuing with other preliminary matters it is  
21 necessary for me to inquire into the accused's need for an  
22 interpreter/translator.

1           Mr. Hicks, are you able to understand and speak English?

2           ACC: Yes. But if you don't understand some of my speech  
3 sometimes, Mr. [sic] Mori will help. Being Australian English, sir,  
4 there are some differences.

5           MJ: Very well. Can you understand me now?

6           ACC: Yeah, yeah.

7           MJ: Is it fair to say then that you do not need a translator or  
8 interpreter for these proceedings?

9           ACC: No.

10          MJ: Mr. Hicks, pursuant to the Manual for Military Commissions  
11 you are represented by Major Mori, your Detailed Defense Counsel.  
12 You may also request a different military lawyer to represent you.  
13 If that person you request is reasonably available, he or she would  
14 be appointed to represent you as your detailed defense counsel. If  
15 you are represented by a detailed defense counsel of your own  
16 selection, then your Detailed Defense Counsel, Major Mori, would  
17 normally be excused. However, you could request that he continue to  
18 represent you along with the other military counsel that you selected  
19 and if you did that, the detailing authority which is the chief  
20 defense counsel would have the discretion to either grant or deny  
21 that request.

22                   Do you understand that?

23          ACC: Yes.

1 MJ: Detailed defense counsel are provided for you free of  
2 charge.

3 Do you understand that?

4 ACC: Yes.

5 MJ: Now in addition to your detailed defense counsel you may  
6 also be represented by a qualified civilian lawyer. A civilian  
7 lawyer would represent you at no expense to the government. To be  
8 qualified he or she must be a United States citizen admitted to the  
9 practice of law in a state, district, territory, or possession of the  
10 United States, or a federal court, and may not have been the subject  
11 of disqualifying action by a bar or other competent authority. They  
12 must be eligible for a secret clearance or higher as required, and  
13 they must agree in writing to comply with all orders, rules, and  
14 regulations of these military commissions.

15 Do you understand that?

16 ACC: Yes.

17 MJ: If a civilian lawyer represents you, your detailed defense  
18 counsel will continue to represent you as well unless you  
19 specifically waive the right to be represented by that detailed  
20 defense counsel.

21 Do you also understand that?

22 ACC: Yes.

1 MJ: Do you have any questions about your rights to counsel  
2 before this Commission?

3 ACC: No.

4 MJ: And by whom do you wish to be represented in this matter?

5 ACC: Mr. [sic] Mori, Joshua Dratel, and Rebecca down there on  
6 the end. I'm also hoping at a later date to be able to get some more  
7 defense counsel and paralegals to give me more equality with the  
8 prosecution to give me a better chance with my defense.

9 MJ: Okay. At this time you said you want to be represented by  
10 Major Mori, Mr. Dratel, and Ms. Snyder. Is that right?

11 ACC: Yes.

12 MJ: Is there anybody else you want to talk about right now?

13 ACC: No, not at this very moment, no.

14 MJ: Okay. I understand that you said that might change in the  
15 future ----

16 ACC: Well, I'm hoping to have some more defense counsel and  
17 paralegals to give me in equality with the prosecution.

18 MJ: Okay. I understand that ----

19 ACC: Obviously that will take requests and exceptions and such  
20 -- on top of already my defense counsel.

21 MJ: Okay. If there is somebody you want -- and I'm talking  
22 about the lawyers right now -- if there is some other lawyer that you

1 want to represent you, you should make that known to the court  
2 through your counsel as soon as you can.

3 ACC: Okay.

4 MJ: Prosecution, please state by whom you've been detailed and  
5 your qualifications.

6 PROS: Yes, sir. Your Honor, all members of the prosecution  
7 have been detailed to this military commission by the chief  
8 prosecutor. All members of the prosecution are qualified under Rules  
9 for Military Commission 503 and all members of the prosecution  
10 present here today have previously been sworn in accordance with the  
11 Rules for Military Commissions 807. No member of the prosecution has  
12 acted in any manner which may tend to disqualify us in this  
13 proceeding. That detailing document has been marked as Appellate  
14 Exhibit 011.

15 Prosecution also has sitting at prosecution table  
16 [REDACTED], Technical Sergeant, U.S. Air Force, paralegal, who will  
17 assist the prosecution but will not be representing the government.

18 MJ: Thank you.

19 Major Mori, please state your detailing information and  
20 qualifications, please.

21 DDC: Yes, sir. I've been detailed to this military commission  
22 by the chief defense counsel. I'm qualified under R.M.C. 503 and  
23 I've been previously sworn in accordance with R.M.C. 807. I've not



1 acted in any manner that might tend to disqualify me from  
2 participating in this military commission. The document has  
3 previously been provided to the court reporter.

4 MJ: I think that's marked as Appellate Exhibit 14.

5 DDC: Yes, sir.

6 MJ: Thank you. Ms. Snyder, Appellate Exhibit 14 indicates  
7 you've also been detailed as a counsel in this case. If you could  
8 please announce your detailing information and qualifications.

9 ADDC: Yes, Your Honor. I've been detailed to this military  
10 commission by the chief defense counsel and I'm qualified under  
11 R.C.M. [sic] 503 and I have previously been sworn in accordance with  
12 R.C.M. -- I'm sorry, R.M.C. 807 and I have not acted in any manner  
13 that might tend to disqualify me in this proceeding. I believe the  
14 document detailing me is marked as Appellate Exhibit 14 as well, Your  
15 Honor.

16 MJ: Thank you. Why don't you go ahead and be seated for a  
17 moment.

18 [The assistant detailed defense counsel did as directed.]

19 MJ: On 20 March 2007, after receiving a motion concerning  
20 prosecutorial misconduct which has been marked as Appellate Exhibit  
21 15 on which I saw Ms. Snyder's name there as signing off and  
22 submitting that on behalf of the defense, I sent an e-mail to counsel  
23 wherein I alerted the prosecution and defense of my concern about Ms.

1 Snyder's status in conjunction with the rules pertaining to civilian  
2 counsel. This e-mail is marked as Appellate Exhibit 16.

3 At this time I will note that yesterday I conducted a  
4 conference pursuant to R.M.C. 802 which I'll talk about for a moment  
5 now. Present at the conference were Major Mori, Ms. Snyder, Ms.  
6 Besabrasow, Lieutenant Colonel [REDACTED], Lieutenant [REDACTED],  
7 Technical Sergeant [REDACTED], Lieutenant Colonel [REDACTED], Ms.  
8 [REDACTED], and myself. In my e-mail of the 20th of March, I advised  
9 counsel of the agenda for this 802 conference that I would conduct  
10 would contain three items.

11 First, we would review the documents that we had already  
12 marked as appellate exhibits in this case and provide counsel an  
13 opportunity to advise me about any other documents they intended to  
14 present here today. Second, counsel would be provided with an  
15 opportunity to provide me with input concerning my development of a  
16 litigation schedule for this case. And third, we would discuss Ms.  
17 Snyder's status.

18 Despite a defense request that Mr. Hicks be present at that  
19 802 conference I determined that his presence was not required. In  
20 this regard, conferences conducted pursuant to R.M.C. 802 are not  
21 sessions of the Commission and the accused has no right to be present  
22 at such a conference. I also note that Major Mori objected to the  
23 802 conference in his e-mail of 21 March 2007, which is also captured

1 in Appellate Exhibit 16. The objection was based on the issue of Mr.  
2 Hicks' presence at the conference which I have already discussed and  
3 based on the defense's proffer that Mr. Dratel could not be present  
4 due to his travel plan.

5           Unfortunately, the defense request that the conference be  
6 held sometime after 1800 last night did not further my intent with  
7 regard to the conference facilitating efficient and professional  
8 conduct of this hearing today. At the 802 conference we initially  
9 dealt with a note in Major Mori's response to my e-mail announcing  
10 the 802 conference wherein he described the defense's intent to  
11 record the 802 conference. At the beginning of the 802 conference he  
12 withdrew his request in that regard and I also advised him that that  
13 would not be permitted anyway.

14           We also went through a review of the filings inventory that  
15 we've undertaken in this case and a review of the appellate exhibits  
16 that we had marked. I asked the parties whether they had any  
17 question regarding the filings inventory or the list of appellate  
18 exhibits and there were no questions. I also asked if there was  
19 anything present on that filings inventory or appellate exhibit list  
20 -- if there was anything not on that list that they thought should be  
21 in there and I was advised that there were no such documents. I  
22 asked if there was any other documents either side intended to offer  
23 at today's hearings such that they could be marked ahead of time and

1 reviewed by all hands prior to us coming in here and the only thing  
2 noted was from prosecution a note about the possibility of some  
3 documents having to do with protective orders. I received no such  
4 input after the conference.

5 I noted specifically that the court had not received the  
6 required notice of appearance and agreement from Mr. Dratel as  
7 discussed in previous e-mails and in the preliminary procedural  
8 instructions provided to counsel and in the statute governing these  
9 proceedings. Defense indicated they would get that to us soon after  
10 the proceedings and it was ultimately received by the court sometime  
11 yesterday afternoon after the 802 conference -- or I should say a  
12 letter was received and I'll be discussing the contents of that  
13 letter later.

14 Having completed our conference with regard to  
15 administrative matters I asked counsel from both sides if they had  
16 been able to work together to develop a litigation schedule that  
17 served both of their interests. I got a negative response in that  
18 regard. I then asked the defense if they had any input they wanted  
19 me to consider while I was developing a trial schedule. I was  
20 advised that they had none to provide for me at that time, but would  
21 get it to me later after consultation with Mr. Dratel. The  
22 government offered me a hard copy of their proposed schedule at that  
23 time. I advised them to send me an e-mail copy later to keep it in

1 accord with how we have been having information flow up to that  
2 point, and I received that sometime after the conference yesterday.

3 I advised the parties at the conference yesterday that I  
4 planned to give them a first draft of the litigation schedule either  
5 later yesterday or this morning and advised them that they would be  
6 provided an opportunity to be heard on that matter today. I  
7 ultimately provided that schedule to them this morning.

8 With regard to the Ms. Snyder agenda item I advised counsel  
9 that it was not readily apparent to me how a civilian counsel  
10 employed by the United States government could serve as a detailed  
11 counsel in this case. I advised them that I brought it up at the 802  
12 conference because I didn't want to blindside anyone with that issue  
13 in court here today and I wanted to provide the defense with notice  
14 about my concern and provide them an opportunity to provide me some  
15 input at the 802 conference ahead of the schedule. They declined to  
16 do so yesterday and I advised them that we would take the matter up  
17 on the record here today.

18 The 802 conference was continued this morning at  
19 approximately 0930. The same parties were present with the following  
20 exceptions; Mr. Dratel was present this morning, Ms. Besabrasow was  
21 absent, Sergeant Rioslatelpa was present. At this morning's  
22 conference Mr. Dratel noted his disagreement with the requirements  
23 set forth in Appellate Exhibit 7 regarding compliance with Title 10

1 United States Code Section 949c(b)(3)(e). The defense also noted  
2 their disagreement concerning the designated seating arrangement at  
3 counsel table, and at this morning's conference I also provided the  
4 parties with my initial draft concerning the litigation schedule in  
5 this case. The defense noted their disagreement with that draft.  
6 The parties were advised that they would be provided with an  
7 opportunity to be heard on these matters on the record here today.

8 Now with all of that being said, Ms. Snyder, you have just  
9 stated on the record that you are qualified in accordance with R.M.C.  
10 503. Is that based on your having been detailed by the chief defense  
11 counsel in Appellate Exhibit 14?

12 ADDC: Yes, Your Honor, it is.

13 MJ: And do I understand correctly that you are employed by the  
14 Office of Military Commissions, Office of the Chief Defense Counsel  
15 as a civilian employee?

16 ADDC: That's correct, Your Honor.

17 MJ: And do I understand correctly that you are not currently on  
18 active duty in the United States Armed Forces?

19 ADDC: That's correct, Your Honor.

20 MJ: Can you speak up just a little bit?

21 ADDC: Yes, sir.

22 MJ: There is a fan behind me.

23 ADDC: Does this amplify?

1 MJ: I don't think so. You don't have to shout -- just a little  
2 bit. All right, R.M.C. 506 specifically states that an accused at a  
3 military commission has the right to be represented before a military  
4 commission by a civilian counsel if provided at no expense to the  
5 government and by the detailed defense counsel. R.M.C. 503(d)(1)  
6 provides that ordinarily only persons certified under Title 10 United  
7 States Code Section 827 as competent to perform duties as counsel in  
8 courts-martial by the Judge Advocate General of the armed force of  
9 which the person is a member may be detailed as a trial or defense  
10 counsel or assistant or associate defense counsel in a military  
11 commission. R.M.C. 503(d)(1) provides an exception for detailing of  
12 a civilian as a trial counsel and R.M.C. 503(d)(3) provides  
13 provisions regarding qualifications of civilian defense counsel. But  
14 my initial review of the R.M.C.'s does not reveal any exception or  
15 provision for detailing of a civilian defense counsel. These and a  
16 number of other R.M.C. provisions appear to restate the language of  
17 Title 10 United States Code Section 949c(a) parts II and III which  
18 provide that the accused at a military commission shall be  
19 represented by military counsel and may be represented by civilian  
20 counsel if retained by him.

21 Now although I have made no rulings and I'm not making a  
22 ruling now on this matter, my understanding of your employment status  
23 and initial reading of the relevant law certainly raises an issue of

1 whether you are authorized to serve as a defense counsel in these  
2 proceedings. So that's the issue stated and I'd like to offer you an  
3 opportunity to respond to that.

4 ADDC: Yes, Your Honor. If I could back up from the Manual to  
5 the M.C.A. Section 948k(a)2 provides that assistant defense counsel  
6 may be detailed for a military commission under this chapter. There  
7 is no requirement there that the assistant defense counsel as opposed  
8 to the defense counsel be on active duty. Then if we go to the  
9 Manual, that contemplates that the assistant defense counsel may be a  
10 civilian. If you look at R.M.C. 502(d)(1), Your Honor, the title is  
11 "Certified Counsel Not Required."

12 I believe you just recited this first sentence, it states:  
13 ordinarily only personnel certified under 10 USC 827b as competent to  
14 perform duties as counsel in a courts-martial by the Judge Advocate  
15 General of the armed forces of which the counsel is a member may be  
16 detailed as trial or defense counsel or assistant or associate  
17 defense counsel in a military commission. The term "ordinarily"  
18 implies that the rule is not an absolute rule and there are at least  
19 two factors in this circumstance that justify departure from the  
20 general rule.

21 The first is that I have had an attorney-client  
22 relationship with Mr. Hicks since June of 2006. The second is that  
23 even though the rules as stated in the title do not require Article



1 27(b) certification, I am in fact qualified under Article 27(b).  
2 I've been qualified since March 1999 and I'm a drilling reservist  
3 with the Navy Marine Corps Court of Criminal Appeals. I do that on a  
4 weekly basis.

5 Article 70 of the UCMJ which refers to appellate counsel  
6 before the military appellate courts states that the Judge Advocate  
7 General shall detail in his office one or more commissioned officers  
8 as appellate government counsel and one or more commissioned officers  
9 as appellate defense counsel who are qualified under Section 27(b),  
10 so that would indicate that there is a present qualification that I  
11 have.

12 Additionally, Your Honor, if you look at subparagraph (f)  
13 in the discussion section to R.M.C. 502(d)(6), that provision  
14 addresses the duties of defense assistant or associate defense  
15 counsel and that paragraph (f) if you look at the second to last and  
16 the third to last sentence it states "responsibility for trial of a  
17 case may not be brought upon an assistant who is not qualified to  
18 serve as a defense counsel." So that would imply that the assistant  
19 may not be on active duty. The next sentence states "an assistant  
20 defense counsel may not act in the absence of the defense counsel at  
21 trial unless the assistant has the qualifications required of a  
22 defense counsel." So that again, Your Honor, implies that the  
23 assistant may not be on active duty. So in short, I think that the

1 Manual contemplates that the assistant could not be on active duty  
2 and if there is no express requirement in either the Manual or the  
3 Military Commissions Act that the assistant be on active duty, Your  
4 Honor, and that is the position of the defense.

5 MJ: How about the express provision in R.M.C. 506 that he can  
6 be represented at military commission by civilian counsel provided at  
7 no expense and the express provision in the United States Code ----

8 ADDC: Your Honor ----

9 MJ: ---- 10 USC 949c, that you can be represented by civilian  
10 counsel if retained by him. So I'm not questioning do I have this  
11 qualification or that qualification, the problem I have is express  
12 prohibitions that seem to stand in the way there.

13 ADDC: Well for that, Your Honor, I would say that I am employed  
14 by DOD and I'm going to be employed by DOD whether I represent Mr.  
15 Hicks or not for the purposes of these military commissions. It's  
16 not an additional expense to the government for me to represent Mr.  
17 Hicks, Your Honor. Additionally, the job description that I was  
18 hired under, I believe, provides that I will represent military -- or  
19 the accused at military commissions, Your Honor.

20 MJ: And so that job description then may run afoul of the  
21 United States Code.

22 ADDC: I would still say, Your Honor, that there is not any  
23 expense to the government because I'm still employed by the

1 government regardless of whether or not I'm representing Mr. Hicks in  
2 this courtroom or in Washington, DC or working on other matters with  
3 respect to the military commissions. And the chief defense counsel  
4 who is the detailing authority has determined that I am in fact  
5 qualified and so it would be the position of the defense that unless  
6 there is good cause, the military judge does not have the authority  
7 to undetail detailed counsel, Your Honor.

8 MJ: You say you are still associated with the U.S. Navy Reserve  
9 in some capacity?

10 ADDC: That's correct, Your Honor.

11 MJ: Have you pursued the possibility of getting orders so that  
12 you'll be on active duty for the purpose of the representation?

13 ADDC: Colonel Sullivan did that in the summer of 2006, Your  
14 Honor.

15 MJ: So the question is have you pursued the possibility of  
16 getting orders to be on active duty so then this concern would go  
17 away?

18 ADDC: Yes, Your Honor.

19 MJ: Okay.

20 ADDC: Not since the Military Commission Act was passed. This  
21 was prior to the Military Commission Act being passed, Your Honor.

1 MJ: So you have not at this time pursued the option of getting  
2 orders to place you on active duty in the military for the purpose of  
3 serving here as counsel?

4 ADDC: Not recently, Your Honor.

5 MJ: Okay. At this time I'm not going to recognize you as  
6 meeting the requirements for service as counsel based on the  
7 provisions I've noted. There seems to me to be at this time without  
8 making a ruling about this, an issue that requires some litigation  
9 and briefs by counsel perhaps with regard to your status. I  
10 understand the chief defense counsel's role, but I also have a role  
11 with regard to a gatekeeper function and keeping an eye on the  
12 statute and in seeking to have these proceedings conducted in  
13 accordance with applicable statutes and rules. So I'm not going to  
14 recognize you as an assistant detailed defense counsel at this time.

15 Instead I'm directing that if the defense wishes to have  
16 Ms. Snyder serve as counsel in this case, the defense should submit a  
17 brief on this matter providing a basis for the court to recognize Ms.  
18 Snyder as an authorized counsel in this case. It obviously should  
19 address the concerns that I've raised here today and the filing of  
20 that brief should be done in accordance with the standards for motion  
21 practice that are set forth in Appellate Exhibit 7. Then the  
22 government will have an opportunity to respond and weigh in on that.

1 If you should pursue that line, then I would also recommend pursuing  
2 the concept up having orders ----

3 [The detailed defense counsel and the civilian defense counsel  
4 conferred.]

5 MJ: ---- Counsel if you could hold your conversation while I'm  
6 speaking. If you need a recess to talk about things, please go ahead  
7 and ask.

8 You should also pursue the idea perhaps of military orders  
9 as that seemingly would moot the issue and pave the way for your  
10 participation without any problems. Until such time as this matter  
11 is resolved, Ms. Snyder may not serve as a detailed or a civilian  
12 counsel in this case. Now even though Ms. Snyder has not been  
13 approved as counsel, Rule for Military Commissions 506(d) provides  
14 the military judge with the discretion to allow persons other than  
15 counsel to remain at counsel table for the purpose of consultation.

16 Mr. Hicks, have you followed what I've been talking about  
17 with Ms. Snyder? Right now there is a problem with me recognizing  
18 her as far as serving as a counsel at this case. When I say  
19 "counsel" I mean a lawyer making representations for you. However,  
20 the rules do provide for other people to stay at the counsel table to  
21 provide consultation, and I'd like for you to take a moment to  
22 discuss this matter with your counsel and I'd like for you to tell me  
23 whether you would like Ms. Snyder to remain at counsel table today

1 for the purpose of providing consultation as necessary or desired.  
2 If you could just talk about that. Do you all want to step out for a  
3 minute?

4 [The detailed defense counsel and the civilian defense counsel  
5 conferred.]

6 DDC: Yes, sir.

7 MJ: Is 10 minutes okay?

8 DDC: Yes, sir.

9 MJ: We are in recess for 10 minutes.

10 **[The session recessed at 1434 hours, 26 March 2007.]**

11 **[The session was called to order at 1501 hours, 26 March 2007.]**

12 MJ: The Commission will come back into order. All parties  
13 present when the Commission recessed are again present.

14 Mr. Hicks, as I previously stated to you the Rule for  
15 Military Commissions 506(d) provides the military judge with the  
16 discretion to allow persons other than counsel at counsel table for  
17 the purposes of consultation. I'd like for you to tell me whether  
18 you would like Ms. Snyder to remain at counsel table today for  
19 consultation purposes.

20 ACC: From my understanding I just lost a lawyer. So I don't  
21 see the point that she remain at the table if she's not my -- she's  
22 not my lawyer.

1 MJ: Okay. So you don't want her at counsel table for  
2 consultation purposes?

3 ACC: Yeah, that's correct.

4 MJ: Okay?

5 ACC: If she can't consult me ----

6 MJ: Pardon me?

7 ACC: From my understanding she can't consult me.

8 MJ: No, that's not correct. She could consult with you. What  
9 she cannot do is speak on your behalf to the court, or file motions  
10 on your behalf or -- we don't have any witnesses today, but she  
11 couldn't question them -- but she could most certainly could consult  
12 with you or work with the other lawyers in this case. If you want  
13 her to remain there for that purpose -- and she may or may not do  
14 anything today -- but she certainly could be here hearing everything  
15 and participating and she might prove most helpful even just staying  
16 there today. Would you like for her to do that?

17 ACC: Can she represent me?

18 MJ: Well, what she cannot do is speak on your behalf in court  
19 here today, sign off on motions, but she certainly could participate  
20 in the development of those and we may find at a future session that  
21 she is going to be recognized by me. What I've identified today is  
22 an issue that needs to be resolved and we may resolve it favorably

1 such that she can act as counsel for you. I just don't know that  
2 right now.

3 ACC: Well I don't see any need for her to be at the table  
4 seeing that she's not my lawyer anymore.

5 MJ: Well what I'm asking you is, do you want her there or not?

6 ACC: No, I don't.

7 MJ: You don't want her there?

8 ACC: No.

9 MJ: All right, then ----

10 ACC: But I do want her to represent me as a lawyer.

11 MJ: I understand that and the defense can -- if you all want to  
12 pursue that and file the motion that was discussed. There is not a  
13 lot of harm done by her just sitting there here today. If you don't  
14 want her there, that's fine.

15 ACC: No, I don't want her there to answer the question.

16 MJ: Okay, fair enough.

17 Ms. Snyder, I'm afraid you'll need to depart counsel table  
18 at this time and to take a seat behind the bar.

19 [Ms. Snyder departed the courtroom.]

20 MJ: I think the record should reflect then that Ms. Snyder has  
21 departed the courtroom.

22 Major Mori, I note that Mr. Dratel is also seated at  
23 counsel table. As noted in my e-mail to the parties on 21 March



1 2007, and in our 802 conferences yesterday and today Mr. Dratel has  
2 not submitted a letter of agreement to comply with all applicable  
3 regulations or instructions for counsel including any rules of court  
4 for conduct during the proceedings as required by the law set forth  
5 in Title 10 United States Code Section 949c(b)(3)(e).

6           In our 802 conference I also noted that the letter that Mr.  
7 Dratel submitted which has been attached to the record as a part of  
8 Appellate Exhibit 19 does not comply with the format set forth in the  
9 sample agreement provided to the parties by the court on 9 March  
10 2007, and Appellate Exhibit 7. I'll note that the letter in  
11 Appellate Exhibit 19 does not comply with the federal statute because  
12 Mr. Dratel's offered agreement falls short of the required agreement  
13 to comply with all applicable regulations or instructions for counsel  
14 including any rules of court for the conduct during the proceedings.  
15 Accordingly, Mr. Dratel does not meet the requirements set forth in  
16 the United States Code for participation in this Commission as a  
17 civilian defense counsel. Now even though Mr. Dratel has not been  
18 approved as counsel, Rule for Military Commissions 506(d) provides  
19 the military judge with the discretion to allow persons other than  
20 counsel at counsel table for the purposes of consultation.

21           Mr. Hicks, I'd like you to take a moment now and discuss  
22 this matter with your counsel and then I would like for you to tell

1 me whether you would like Mr. Dratel to remain at counsel table today  
2 for consultation purposes.

3 CDC: Your Honor, we do not need a recess for that purpose. If  
4 I may be heard to make the record?

5 MJ: Yes.

6 CDC: At the 802 conference this morning -- and I had submitted  
7 last week and I understand that the court was not able to pick it up  
8 by e-mail -- but I submitted last week a notice of appearance which  
9 was precisely the same as that requested by the court with one  
10 exception. Instead of saying "all applicable regulations" it said  
11 "all existing applicable regulations" for a particular reason.

12 That reason is as the court is aware, the Secretary of  
13 Defense is in the process of promulgating -- of developing and then  
14 promulgating regulations that will in fact govern the participation  
15 of defense counsel. Those regulations do not exist at this point  
16 which of course begs the question of why we are proceeding at all  
17 when there is a provision for civilian defense counsel when there are  
18 no regulations to govern the participation of civilian defense  
19 counsel. And as the court's response to voir dire in number 260  
20 makes clear the court inquired as to the status of those regulations  
21 as to whether they were imminent or not and decided to proceed anyway  
22 regardless of whether -- and I don't know whether they are imminent  
23 or not -- but the court decided to proceed.

1           Section 502(d)(3)(e) gives the Secretary of Defense the  
2 sole authority to create the agreement that the court has created in  
3 the absence of any regulation. The court has usurped the authority  
4 of the Secretary of Defense. The court has violated Rule 108 that  
5 says that the court must obey the rules. That section says that I  
6 have to sign the agreement prescribed by the Secretary pursuant to 10  
7 USC 949c(b)(3)(e); not the court, but the Secretary of Defense alone.  
8 There is no provision for delegation in that section.

9           I cannot sign a document that provides a blank check on my  
10 ethical obligations as a lawyer, my ethical obligations to my client,  
11 my ethical obligations under the rules of professional responsibility  
12 for the State of New York to which I am bound. As I did in the 802  
13 conference, I explained to the court that when I first became  
14 involved in this process -- in this Commission system, and the prior  
15 Commission system -- at the end of 2003 this issue arose with the  
16 Annex B, the document that was in essence my agreement to terms with  
17 respect to participation in the Commission process. There were  
18 unacceptable terms in that agreement.

19           One I will mention is that I had to agree that my attorney-  
20 client conversations with Mr. Hicks would be monitored. I had to  
21 agree to that and I refused to agree to that. There were other  
22 conditions as well that were simply ethically untenable. I objected  
23 to those and in the process of negotiation that was worked out so

1 that I could participate consistent with my ethical obligations.  
2 Those provisions were either removed or modified to the extent that I  
3 could participate.

4 In the 802 conference this morning I specifically said that  
5 I wanted to move this process forward so that I could participate and  
6 that I was willing to entertain whatever accommodation the court was  
7 willing to offer. Instead the court made it an all or nothing  
8 proposition, and I cannot again buy a pig-in-a-poke in this process.

9 These are the same problems that plagued the previous  
10 commission; that everything is ad hoc, that everything moves in a way  
11 where you cannot predict from one day to the next what the rules are.  
12 The rules are made by parties who are not entitled to make rules and  
13 the statute to make them be clear. This to me is coupled with  
14 another issue that has arisen in that 802 conference which is the  
15 court's proposed schedule. Because even if -- even if I signed  
16 something that would enable me to participate ----

17 MJ: We're not going to talk about the schedule right now.

18 CDC: Well I think it's part of that, Your Honor, because the  
19 schedule is designed to deprive me ----

20 MJ: Excuse me -- excuse me, we're not talking about the  
21 schedule right now. We are talking about your willingness to comply  
22 with the federal regulations which will put you in a position to  
23 participate in the proceedings. That's it.

1 CDC: Well I don't look at it that way. I look at it as your  
2 regulation not the regulation in the federal code, but your  
3 regulation which is *ultra vires* and this is -- there is a way to do  
4 these things which is one way to make it work so that something can  
5 be done and there is a way to do it so that something can't be done.  
6 I choose the former. The court has chose the latter.

7 What you've chosen to do essentially is to deny Mr. Hicks  
8 first with Ms. Snyder with to me a tortured interpretation of the  
9 rules. And with me, not a tortured interpretation, just a completely  
10 invalid one without any authority. It belongs to the Secretary of  
11 Defense. You've now denied Mr. Hicks again another lawyer. The  
12 third lawyer, Mr. [sic] Mori, has already been attacked by the chief  
13 prosecutor in a manner that's designed to intimidate him and deny Mr.  
14 Hicks his zealous advocacy.

15 PROS: Objection, Your Honor.

16 MJ: Sustained. Mr. Dratel, stick with the issue about your  
17 qualifications.

18 CDC: This is part of the issue. This is what I see as the  
19 motivation for denying us the opportunity to represent Mr. Hicks --  
20 or denying him the opportunity of counsel of choice who's been here  
21 longer than anyone in this case except for Major Mori ----

22 MJ: Mr. Dratel ----

23 CDC: ---- more than anyone in this room ----

1 MJ: Mr. Dratel, right now you do not represent Mr. Hicks  
2 because you have not submitted a notice of appearance and agreement  
3 as required by the statute. ----

4 CDC: By the court.

5 MJ: ---- If you want to talk about this statute and that  
6 requirement, you may be heard. But please confine your comments to  
7 what applies right now and that is whether or not you are going to  
8 comply with the federal statute such that you can participate in the  
9 proceedings.

10 CDC: I am in compliance with the federal statute. I am not in  
11 compliance with the court's unilateral rule that is made without  
12 authority, and you don't have to ask Mr. Hicks about whether he wants  
13 me here or not, I'm not going to pretend that I'm here functioning  
14 when I'm not entitled to do my job. A famous lawyer representing a  
15 US serviceman said before Congress, "He is not a potted plant and  
16 neither am I." Thank you.

17 MJ: Mr. Dratel, you need to be seated right now until I'm  
18 finished with this issue.

19 CDC: I will, Your Honor.

20 MJ: The provision which Mr. Dratel has referred to in R.M.C.  
21 502 discusses the qualifications of civilian defense counsel and it  
22 lists a number of things which I have made some reference to already  
23 today in my discussion with Mr. Hicks as to the baseline

1 qualifications for participation by civilian counsel in these  
2 military commissions. R.M.C. 502(d)(3)(e) includes a provision that  
3 the counsel have signed the agreement prescribed by the Secretary  
4 pursuant to 10 USC 949c(b)(3)(e).

5 Mr. Dratel correctly states that no such agreement has been  
6 prescribed by the Secretary. That does not change the fact, however,  
7 that United States Code created by the United States Congress and  
8 upon which all these rules are based provides the same requirement  
9 that in order for an accused to be represented by civilian counsel,  
10 the civilian counsel must meet a number of qualifications to include  
11 having signed a written agreement to comply with all applicable  
12 regulations or instructions for counsel including any rules of court  
13 for conduct during the proceeding.

14 Now apparently there was some question on how civilian  
15 defense counsel might come in compliance with the statute and  
16 participate in these proceedings based on the absence of the  
17 prescribed agreement by the Secretary of Defense. I resolved that  
18 matter through my issuance of the Preliminary Procedural Instructions  
19 for counsel in this case which provided a sample agreement which took  
20 the exact language out of the federal statute whereby counsel could  
21 sign that agreement, be in compliance with the statute, and  
22 participate in the proceedings.

1 I find no merit in the claim that that is beyond my  
2 authority because that's sometime what judges do is that they provide  
3 ways to move forward within the law. It is the court's view that the  
4 sample agreement which again simply adopts the language in the  
5 statute passed by the United States Congress nothing more,  
6 essentially paved the way for participation for counsel who are  
7 willing to abide by the laws of the United States and whose presence  
8 and services are requested by the accused.

9 In this case Mr. Hicks has requested the participation of  
10 Mr. Dratel. The court has no problem with his participation, but the  
11 court will require compliance with the United States Code by Mr.  
12 Dratel. I will not force that, obviously, and if you do not wish to  
13 comply with that such that you have the qualifications there is  
14 nothing for me to do about that. You have indicated you do not wish  
15 to do so.

16 Now returning to you, Mr. Hicks ----

17 CDC: Your Honor, may I.

18 MJ: ---- I would like for you to tell me ----

19 CDC: Your Honor, may I ----

20 MJ: I would like for you to tell me whether you would like for  
21 Mr. Dratel to remain at counsel table today for consultation  
22 purposes.



1 ACC: I'm shocked because I just lost another lawyer. And for  
2 the same reason, what is the point of him sitting here when he's not  
3 representing me at my table? The table is for my lawyers who  
4 represent me. One's gone and now another one is going to have to go  
5 by your choice. And now I'm left with poor Mr. [sic] Mori.

6 MJ: Okay, well again, he doesn't have to go but he cannot  
7 represent you ----

8 ACC: He doesn't have much choice because you asked him to do  
9 something ----

10 MJ: Hold on a second. Mr. Hicks, I would ask that you don't  
11 cut me off. I certainly will not cut you off. And I will allow you  
12 to speak to me.

13 ACC: Sorry.

14 MJ: Okay. As I indicated as was the case with Ms. Snyder there  
15 may certainly be value in having him at table for consultation  
16 purposes and that's up to you. If you don't want him there, that's  
17 fine. If you do want him there, all you have to do is ask.

18 ACC: I want him as my lawyer, but not as a consultant at this  
19 table.

20 MJ: Very well.

21 Mr. Dratel, you're excused.

22 CDC: Your Honor, don't let my silence in response to your  
23 ruling -- make it clear on the record that I object. Thank you.

1 [Mr. Dratel departed the courtroom.]

2 PROS: Your Honor, under the circumstances the government  
3 believes that there is important information and would request an 802  
4 with counsel.

5 MJ: Sit down for a minute.

6 [The prosecutor did as directed.]

7 MJ: Does the defense also want that 802?

8 DDC: Not at that this time, sir. I would like to attach some -  
9 ---

10 MJ: Okay, hold on a second. The next thing I want to address  
11 is with regard to attire by the accused in this case. Although I've  
12 not yet had the opportunity to issue a rule of court with regard to  
13 this matter, it is my understanding that in most courts with regard  
14 to civilian participants a suit and tie or equivalent is encouraged  
15 and at a minimum business casual attire is required. Examples of  
16 business casual attire for me include long pants and buttoned up  
17 collared shirts with sleeves with or without a sport jacket. An  
18 accused will typically appear in business casual attire at a minimum,  
19 or if the accused desires, a culturally equivalent attire.

20 Arranging for this sort of attire is typically the  
21 responsibility of the defense counsel. In the event that defense  
22 counsel cannot with due diligence or even financially has any trouble  
23 securing sufficient appropriate clothing for an accused, then defense

1 counsel will typically notify the prosecutor sufficiently in advance  
2 of trial.

3 [The accused and his detailed defense counsel conferred.]

4 DDC: Sir, if you could finish, and then I'll consult with the  
5 client, sir.

6 MJ: Okay. I was saying that if the defense has any trouble  
7 securing sufficiently appropriate attire they should notify the  
8 prosecutor to provide the prosecutor an opportunity to assist in  
9 securing those items for the trial. It is also standard practice  
10 that an accused will not appear for a trial session wearing prison  
11 garb. That would refer to jumpsuits or scrubs or things of that  
12 nature.

13 These rules, as I would expect counsel probably know, are  
14 designed to protect the presumption of innocence on the part of the  
15 accused. The rule with regard to not appearing in prison attire is  
16 for the protection of the accused such that the court or commissioned  
17 members or a jury depending on what jurisdiction you are in, the  
18 people that are making findings with regard to guilt or innocence,  
19 would not be inferring anything adverse on the part of the accused  
20 based on them wearing some sort of prison or jail clothing. So  
21 again, this rule of court is there to buttress the presumption of  
22 innocence that an accused is afforded in these proceedings.

1           I'll note for the record that the accused is wearing what I  
2 would describe as some sort of scrubs or attire which certainly could  
3 be mistaken or perceived as the type of clothing that is of concern  
4 with regard to these rules. Frankly, I don't know what the  
5 regulation is and the different sorts of attire are with regard to  
6 detention facilities here, but I suspect that this is somewhere along  
7 those lines and that's why I raised it.

8           So I wanted to raise with defense counsel my concern so you  
9 know about this rule here today and to reiterate the purpose of the  
10 rule is for the benefit of the accused. I wanted to see if you had  
11 taken that in consideration for your arrangement today, but more  
12 importantly to ensure they are taken into consideration at future  
13 hearings when you'll actually have finders of fact or sentencing  
14 authorities or things like that. It's not that big a concern today,  
15 frankly, but I just wanted to make sure we are on the same page.

16           Major Mori?

17           DDC: Yes, sir. It's been noted, and it will be addressed, sir.

18           MJ: Okay. And if there is some reason you think that is  
19 helpful to your client, I'm not going to wrestle you to the ground on  
20 what he wears here as long as it's not frayed or overly soiled or  
21 things like that. But I would reiterate that long-standing protocols  
22 for the benefit of the accused are that they wear some sort of more

1 appropriate attire. I certainly recommend that you consider that for  
2 future hearings.

3 DDC: Yes, sir.

4 MJ: Okay, what did you have before we covered that?

5 DDC: Sir, I just wanted to ask one question. Was your proposed  
6 trial schedule already attached as an appellate exhibit, sir?

7 MJ: We're going to get to that and yours is going to be there  
8 too as part of it.

9 DDC: Yes, sir. I just also would like to offer defense's  
10 summary of the 802's on 25 March and 26 March, copies have been  
11 previously provided to the court reporter and asked that they be  
12 marked as the next appellate exhibit.

13 MJ: Now why didn't I receive those yesterday or been placed on  
14 notice earlier than right before we started today that you had  
15 something like that?

16 DDC: Because normally the defense -- when an 802 is summarized,  
17 sir, that the defense is supposed to be given an opportunity to also  
18 add additional summarizations of the 802 and I thought that was when  
19 it would happen and that's when I would offer it, sir.

20 MJ: In the future ----

21 DDC: I will, sir.

22 MJ: ---- you need to get them to me sooner so we can have them  
23 marked. We'll have them marked and appended afterwards.

1 DDC: Yes, sir.

2 MJ: They'll certainly become part of the record. I'm not going  
3 to take them now.

4 DDC: Yes, sir.

5 MJ: Okay. You still want an 802 conference, is that right?

6 PROS: Yes, sir.

7 MJ: How long do you think it will take?

8 PROS: Five minutes, sir.

9 MJ: Okay. Do you think it can wait a little while?

10 PROS: Through voir dire, sir.

11 MJ: Okay. The reason I'm hesitating is because every time we  
12 take a break there is a lot of things that have to be done so I'm  
13 trying to minimize the number of breaks.

14 I have previously provided counsel for both sides a  
15 summarized biography. This document has been marked as Appellate  
16 Exhibit 6. I also received questionnaires from the prosecution and  
17 defense. I provided written responses to all of those questions and  
18 provided them to counsel. Those questionnaires along with my  
19 responses which were placed on the questionnaire documents have been  
20 marked as Appellate Exhibit 13. Since providing responses in  
21 Appellate Exhibit 13 I have learned there is one other person  
22 associated with the process that I know that I did not disclose.

1           On 24 March 2007, I learned that Colonel [REDACTED], United  
2 States Army retired, is employed in some capacity with the OMC  
3 Prosecution Office. I first met Colonel [REDACTED] in 1990 when he  
4 was the head of the US Army Criminal Law branch in Washington, DC. I  
5 was at that time an action officer in the United States Marine Corps  
6 Military Law branch.

7           Colonel [REDACTED] and I were both assigned to the Joint  
8 Service Committee on Military Justice. A committee which I did note  
9 somewhere in my responses that I had that assignment -- that  
10 collateral duty essentially, along with my regular assignment.  
11 Colonel [REDACTED] was the US Army representative and I was a captain  
12 at the time and the United States Marine Corps working group member.  
13 We served on this committee together although in very different  
14 capacities for approximately 1 year. The committee met approximately  
15 once every 6 weeks or so for more or less 2 hours at each time.  
16 Since that time I've seen Colonel [REDACTED] from time to time at the  
17 US Army JAG School in inter-service judicial conferences where he  
18 sometimes comes and puts on programs of instruction.

19           Does counsel for either side have any follow-up questions  
20 based on my responses to your previously submitted voir dire  
21 questions?

22           Government?

23           PROS: No, Your Honor.

1 MJ: Defense?

2 DDC: Yes, sir. Sir, I would like to ask some follow-up  
3 questions specifically regarding question 26 -- I mean 260, sir. The  
4 question was, "Did you or through an agent have any communications  
5 with anyone in the convening authority regarding the status or  
6 content of any draft of the pending implementing regulations from the  
7 military commissions?" You indicated that mid-March Lieutenant  
8 Colonel [REDACTED] inquired about whether publication of any  
9 regulation was imminent such that it might be taken into account with  
10 regard to your preliminary instructions to counsel in the case.

11 How did you first find out that there were further  
12 regulations going to be published?

13 MJ: As I recall, Lieutenant Colonel [REDACTED] mentioned to me  
14 perhaps that he had heard. I have never received any formal notice  
15 or seen any draft, was never asked for comment or any participation.  
16 He just -- you may know better than me whether there is a rumor of  
17 one out there. Since we were going to be publishing preliminary  
18 instructions he wanted to check that because obviously if we put  
19 something out one day and the next day some reg came out that would  
20 make things more complicated. But I have no knowledge about status  
21 or anything. Lieutenant Colonel [REDACTED] had heard somehow.

22 DDC: Lieutenant Colonel [REDACTED] is your senior legal  
23 adviser, is that correct, sir?



1 MJ: We call it senior attorney adviser to the trial judiciary,  
2 that's correct.

3 DDC: To the trial judiciary.

4 MJ: That's correct.

5 DDC: Do you know who he spoke with ----

6 MJ: No.

7 DDC: ---- to even find out that they were implementing  
8 regulations coming out?

9 MJ: No. That person is intentionally a bit of a firewall on a  
10 lot of things like that so that I don't have problems with outside  
11 information, so we try to be rather careful about me not having  
12 things in my situational awareness that I don't need to have.

13 DDC: Yes, sir. But you thought it appropriate to find out  
14 whether they were imminent or not. Did you request him to find out  
15 the status or did he do that on his own, sir?

16 MJ: I don't recall specifically.

17 DDC: And why did you think it was important to know if they  
18 were imminent or not in making your preliminary instructions?

19 MJ: As I mentioned, the preliminary instructions there was some  
20 work involved in putting that together. I don't remember how many  
21 pages it was, but we tried to be careful about it and to do that and  
22 then immediately have a regulation the next day which might cause us

1 to have to go back and redo the whole thing is not efficient work, so  
2 it was a matter of efficiency essentially.

3 DDC: And one of those issues in regarding the regs that was  
4 coming out was how a civilian attorney could represent someone on a  
5 military commission. Were you aware of that, sir?

6 MJ: I'm not aware if there is any intention for the reg to  
7 address that.

8 DDC: You're not aware at all, sir?

9 MJ: I have no idea what's going to be in the reg.

10 DDC: No one -- did Colonel [REDACTED] at all -- if you had no  
11 idea, sir, well then why would you need to know if it was imminent or  
12 not, sir?

13 MJ: Because if a reg was going to come out, it might have  
14 something in there which might affect, interface, contradict, not  
15 line up very well with what we were preparing as our preliminary  
16 instructions.

17 DDC: And you needed to make these preliminary instructions  
18 because the convening authority had referred a Commission before  
19 these implementing regulations were published?

20 MJ: No. The preliminary instructions are to tell counsel how  
21 to conduct business.

22 DDC: Yes, sir. And you were aware that the convening authority  
23 had referred a case to a military commission before all the

1 regulations were published on how a military commission would run and  
2 operate?

3 MJ: I don't understand your question.

4 DDC: You were aware ----

5 MJ: I found out on the 1st of March that there was a case  
6 referred.

7 DDC: Yes, sir. And the 1st of March when you were appointed  
8 chief judge, is that correct, sir?

9 MJ: That's correct.

10 DDC: And on 6 March is when you ----

11 MJ: And I think on the 9th of March we issued the preliminary  
12 instructions because we went to work and somewhere along that line we  
13 thought about these things.

14 DDC: And as it's kind of worked out at least in Mr. Hicks' case  
15 those implementing regulations that might cover the agreement for a  
16 civilian lawyer to complete was not yet published. That would have  
17 interfered with the government moving forward in the Commission but  
18 for your coming up with your own form. Is that correct, sir?

19 MJ: What does that have to do about seeking out bias on me?

20 DDC: Well sir, it appears that the government referred a case  
21 to a Commission before the system was established, before all the  
22 regulations that were known to be published, some of the Manual for  
23 Military Commissions actually specifies that the Secretary of Defense

1 publish an additional regulation and I think it's in five areas and  
2 then in approximately 20 or so it gives the option to the Secretary.  
3 So the government chose to go forward with a case before all the  
4 implementing regulations were done. Yet that would probably make it  
5 very difficult for them to achieve or meet their speedy trial  
6 requirements of having the arraignment in 30 days if the regulations  
7 weren't complete. Would you agree with that, sir?

8 MJ: No. I neither agree nor disagree. What does that have to  
9 do with the challenge for cause for me which is what we are talking  
10 about right now?

11 DDC: It appears in your preliminary instructions you actually  
12 created forms which helped the government move forward with a  
13 military commission that they had chosen to move forward with that  
14 Commission when they did not have those regulations. You were coming  
15 to the aid of the government when they had not properly set up the  
16 system.

17 MJ: Is that a question?

18 DDC: That you asked what it dealt with on bias and challenge  
19 and that's why I'm asking this question.

20 MJ: No, no, you're wrong. I was not coming to the aid of the  
21 government. I was establishing procedural instructions to move the  
22 case forward.

1 DDC: Yes, sir. Sir, Sergeant First Class [REDACTED], he works  
2 in your office as well. Is that correct, sir?

3 MJ: Yes.

4 DDC: Did you assign him a task at either the end of February or  
5 beginning of March to speak to the chief defense counsel to find out  
6 the schedule or the commitments for the detailed defense counsel in  
7 Mr. Hicks' case?

8 MJ: No.

9 DDC: Are you aware that he did that?

10 MJ: Yes.

11 DDC: Do you know why he did that, sir?

12 MJ: What does this have to do with the challenge of me?

13 DDC: Again, sir, it goes to the fact that your office received  
14 notice that detailed and assistant detailed defense counsel had case  
15 commitments the first week that you scheduled the first hearing. You  
16 intentionally chose a week to schedule it when the defense had other  
17 commitments.

18 MJ: Is there a question in there, Major Mori?

19 DDC: You just asked me, sir, what does this have to do. I'm  
20 explaining why it has to do.

21 MJ: Okay. You've said something that you think that I was  
22 doing. Explain how that establishes impartiality or bias on my part.

1 DDC: Well, you set the initial trial schedule for this case in  
2 a time period that you knew that detailed and assistant detailed  
3 defense counsel had other commitments outside CONUS, part of which  
4 involved investigating.

5 MJ: This is a statement now, you're not asking me a question.  
6 You're going to be provided an opportunity to challenge me. If you  
7 think you're going to have the information to challenge me on that  
8 basis ----

9 DDC: I want -- no, sir ----

10 MJ: ---- Don't interrupt me. Don't interrupt me.

11 DDC: Yes, sir.

12 MJ: You're going to be able to make a challenge later. Right  
13 now you need to ask the questions to get the information upon which  
14 you may try to base a challenge for cause if you wish.

15 DDC: Yes, sir. I will ask factual questions. Sir, did you  
16 direct Sergeant [REDACTED] to find out the schedule of detailed  
17 defense counsel in Mr. Hicks' case before you scheduled the first  
18 hearing?

19 MJ: No.

20 DDC: Did he in fact find out that information and provide it to  
21 you?

22 MJ: I believe that's correct.

1 DDC: And did he provide to you that detailed defense counsel  
2 currently had orders for overseas from 14 to 23 March?

3 MJ: There was an e-mail talking about something like that. If  
4 you're reading from the e-mail ----

5 DDC: Yes, sir, I have a copy if you ----

6 MJ: No, I have it. I just don't remember all the contents.

7 DDC: And also where the chief defense counsel informed the  
8 judge that part of the trips purpose was for interviewing witnesses  
9 and conducting factual investigation of the case. Do you remember  
10 that, sir, being in the e-mail?

11 MJ: No, not specifically, but that e-mail is somewhere in the  
12 record there.

13 DDC: If not, I will have a copy to attach. Did your office  
14 receive any conflicts with scheduling -- and you set the hearing on  
15 March 20, correct, sir, after knowing this information?

16 MJ: Yes.

17 DDC: Did you receive any input from the government that said  
18 they had conflicts on March 20, sir?

19 MJ: I don't believe so.

20 DDC: You scheduled the first 802 for yesterday. You were  
21 informed that Mr. Dratel, the civilian lawyer, would not be here. Is  
22 that correct, sir?

23 MJ: Yes.

1 DDC: The defense asked for that to be moved at a time when the  
2 civilian lawyer, Mr. Dratel, could be present. Correct, sir?

3 MJ: Yes.

4 DDC: And you denied that. Correct, sir?

5 MJ: Yes.

6 DDC: When you first scheduled the initial session on 6 March  
7 2007, you had not been sworn as the chief trial judge yet had you,  
8 sir? Do you recall, sir?

9 MJ: No. I recall. I had not been sworn in accordance with  
10 R.M.C. 807. I had been sworn for regular court-martial duties and as  
11 a judge advocate.

12 DDC: Yes, sir. Sir, you were a presiding officer under the  
13 first military commissions system that was convened under the  
14 President's military commission order?

15 MJ: What are we following up on now? I think that's pretty  
16 clear in the answers already, right?

17 DDC: Yes, sir.

18 MJ: What I don't want you to do is try to do a cross-  
19 examination for members right now.

20 DDC: No I'm not, sir.

21 MJ: What I want you to do is ask follow-up questions and if you  
22 want to make a challenge ----



1 DDC: It was my sort of changing topic question for you, sir.  
2 You were aware that that military commissions system was found  
3 illegal by the Supreme Court?

4 MJ: Well I'm not either going to agree or disagree with your  
5 characterization. I know they stopped as a result of the Supreme  
6 Court decision.

7 DDC: You mentioned in your questions that you read a summary of  
8 the Hamdan case. Have you ever read the full opinion of the Hamdan  
9 case, sir?

10 MJ: How does that provide information about a basis for  
11 challenge of me in this case?

12 DDC: Because you just said that you didn't -- weren't aware of  
13 the illegality whole thing and I'm trying to direct Your Honor to  
14 where the Supreme Court said it was illegal.

15 MJ: Okay, and what does that have to do with the basis for  
16 challenge of me in this case -- whether I am very familiar with it or  
17 not familiar with it?

18 DDC: Whether you participated in a system that might have  
19 violated Article III of the Geneva conventions. I know you answered  
20 that question, I just had one follow-up question.

21 MJ: Why don't you ask your follow-up question, because I think  
22 I have addressed these things.

1 DDC: You answered that -- yes, sir -- you didn't feel -- do you  
2 not believe that as a military judge -- or actually as a presiding  
3 officer ----

4 MJ: Which question are you following up on now?

5 DDC: We're following up on violating the -- any concern for  
6 criminal liability from participating in the first military  
7 commissions system.

8 MJ: And I said, "No."

9 DDC: And you said no -- do you believe at that time the Geneva  
10 conventions governed your conduct?

11 MJ: I don't find that a relevant question at this time. I have  
12 no concerns about any sort of criminal liability based on my  
13 participation in the previous military commissions. None. Zero.

14 DDC: In your article that you wrote, sir, "Forum Shoppers  
15 Beware," this was an article you wrote back in March of 2002. In it  
16 you were somewhat critical of the Military Commission Order and on  
17 page 18 -- the copy I have had faxed page numbers on the bottom left,  
18 sir.

19 MJ: Which question are you following up on now?

20 DDC: On your article, sir.

21 MJ: Which number?

22 DDC: It's a question in which you disclose your writing, sir.

23 MJ: Which number?

1 DDC: [Looking through binder.]

2 MJ: It seems to me that you'd get there at about number 183.

3 DDC: Yes, sir. And I was going to put in a specific part of  
4 the article. In the article you addressed ----

5 MJ: Which question are you following up on now?

6 DDC: On that question, sir. On the whole article. Now I'm  
7 moving to follow up on a specific point you raised in the article  
8 where you said ----

9 MJ: So you're not following up on any of the questions you  
10 asked. You're asking a different question about the article?

11 DDC: I asked in the questions in which you disclosed this  
12 article. Now after reading the article I have a follow-up question,  
13 sir.

14 MJ: Go ahead.

15 DDC: You mention on page 18 -- it's the fax numbers on the  
16 bottom, there is fax numbers on my copy -- it says "for when the  
17 executive branch substitutes a panel of military officers in the  
18 civilian judge and jury's role as a trier of fact, a number of  
19 irrefutable appearance issues are created." It was what irrefutable  
20 appearance issues did you mean, sir?

21 MJ: What footnote are you at in the article?

1 DDC: Not a footnote. If you look at the bottom left corner,  
2 sir, there is page numbers from a fax that appears. This is fax page  
3 18 and it's the second paragraph, just the last sentence, sir.

4 MJ: Did you read the next three paragraphs, because that's kind  
5 of a segway sentence to the next three paragraphs where it's  
6 explained at length.

7 DDC: In those paragraphs ----

8 MJ: And then it goes on to say that in the military justice  
9 system even though we think we have the best military justice system  
10 in the world, there are still commentators who don't accept that and  
11 even though they are wrong, people still complain about it and that's  
12 the point I'm making.

13 DDC: And so would you believe that those irrefutable appearance  
14 issues are still created today in this military commission with  
15 having a military judge and military members?

16 MJ: I would agree that people will still complain about the  
17 Commissions no matter how well they are run and how good a trial is  
18 conducted, there are going to be some people who will complain about  
19 it anyway. I would agree with that.

20 DDC: Sir, I have no further questions.

21 MJ: Does either side have a challenge for cause?

22 Government?

23 PROS: No, Your Honor.

1 MJ: Defense?

2 DDC: [No response.]

3 MJ: Does the defense have a challenge for cause?

4 DDC: Yes, sir. The defense would challenge the military judge  
5 pursuant to R.M.C. 902 on the basis of the Your Honor's impartiality  
6 might reasonably be questioned and that Your Honor apparently has an  
7 appearance of a personal bias or prejudice concerning Mr. Hicks or  
8 his counsel. This is shown that the military judge, at least from  
9 the observer and the appearance standard is that the military judge  
10 has been pushing Mr. Hicks to go to trial at times that were  
11 inconvenient and when the defense was not available.

12 MJ: Times inconvenient to who? Could you clarify that?

13 DDC: The defense, yes -- you're scheduling of the initial  
14 session when the military judge knew and had information that the  
15 detailed defense counsels were to be scheduled outside of CONUS  
16 actually conducting defense case preparation. The military judge  
17 created rules to assist the government to move forward with their  
18 prosecution when it was the government's failure to properly have the  
19 rules published before sending cases to a military commission. Then  
20 by scheduling 802's knowing full well that the civilian lawyer could  
21 not be there to participate, as well as scheduling the trial schedule  
22 knowing full well that the trial schedule you set conflicts with the  
23 civilian lawyer's federal US criminal trial.

1 MJ: And you're talking about the draft schedule.

2 DDC: Yes, sir, the draft.

3 MJ: Because I've made no order about the schedule in this case.

4 DDC: Absolutely, the draft.

5 MJ: Got it.

6 DDC: And your participation in the previous system again would  
7 create the appearance that your participation in a system that the  
8 Supreme Court found illegal and further participating in this new  
9 system would give the appearance of unfairness. Your friendship or  
10 meeting again with so many people -- Colonel [REDACTED] the first  
11 prosecutor, Mr. [REDACTED] a current prosecutor who is also -- worked  
12 for the convening authority, and previously your contact with General  
13 [REDACTED], as well as your contact with Colonel [REDACTED] -- that  
14 it would give the appearance that it would be unfair for you to  
15 continue.

16 MJ: Before you go on.

17 DDC: Yes, sir.

18 MJ: You used the word "friendship" there. Who did you say I  
19 had a friendship with?

20 DDC: Your acquaintanceship maybe -- possible acquaintance --  
21 none of the people I list you actually have a friendship and  
22 socialize regularly. I don't want to give that impression, sir.

23 MJ: Okay. ----

1 DDC: They were listed in the questions.

2 MJ: ---- Because there is a difference, right?

3 DDC: Yes, sir.

4 MJ: So my having made the acquaintance of a bunch of people.

5 As far as contact with Major General [REDACTED], you're just talking

6 about the things I revealed in there as far as having met him a few

7 times?

8 DDC: Yes, sir.

9 MJ: Very well.

10 DDC: Also your rulings today dealing with Mr. Hicks' assistant

11 defense counsel -- detailed counsel, and Mr. Dratel, again would give

12 the appearance of a bias against Mr. Hicks. Your article where you

13 are very clear about your opinion about the use of military

14 commissions and that they were not the best choice to be used out of

15 the options to try people accused of violating the laws of war in

16 your opinion.

17 MJ: And why is that a problem for the defense? I would think

18 if anything, that would suggest rather open-mindedness about a lot of

19 these rules. Why do you think that that bodes ill for the defense?

20 DDC: That's true, sir. Except you chose to participate in the

21 first system that was illegal and continued to participate in it even

22 once you were known -- again this creates the appearance.

1 MJ: And what do you base your characterization that I chose to  
2 participate? I was assigned my duties and I'm discharging my duties,  
3 much as you are I suspect.

4 DDC: Absolutely, sir. Had you felt that what you participating  
5 in was not a full and fair -- or unfair trial, you could have raised  
6 an objection to that and asked to be removed. So while you had one  
7 position respective of military commissions, again I'm talking about  
8 from an appearance standard, sir. It appears that you had one  
9 position on military commissions when you weren't personally  
10 involved, then when you are personally involved your opinion changed  
11 and so that could be an appearance that there may be some self  
12 interest in participating -- the appearance.

13 MJ: Okay. I'm not offended by your comments. Don't worry  
14 about that.

15 DDC: I understand, sir. I just want to make sure I'm clear on  
16 the standard I'm applying and it's appearance based.

17 MJ: So no actual bias is claimed, just appearance on all those  
18 things?

19 DDC: I think the only actual bias would deal with the  
20 scheduling -- the actual scheduling and conflict with the defense.  
21 Scheduling favoritism to the government in the sense of fixing the  
22 rules to fix their mistakes and going forward without the system  
23 being set up, sir.



1 MJ: Okay. This is a good time for us to go ahead and take our  
2 break for the 802 conference and then we'll come back and carry on.

3 You say the 802 you anticipate is going to be short?

4 PROS: Yes, sir, I do.

5 MJ: Then we'll just take a small break and let's all work  
6 together to see if we can come back on the record with all of the  
7 movement and everything by 1630.

8 We are in recess.

9 **[The session recessed at 1554 hours, 26 March 2007.]**

10 **[The session was called to order at 1642 hours, 26 March 2007.]**

11 MJ: The commission will come to order. All parties who were  
12 present when court recessed are again present.

13 During the recess an R.M.C. 802 conference was conducted  
14 between trial counsel, defense counsel, and the military judge  
15 wherein we discussed the status of Appellate Exhibit 15 which is the  
16 defense motion regarding prosecutorial misconduct in light of the  
17 developments with regard to Ms. Snyder and Mr. Dratel and that they  
18 were the ones that signed off on that motion. I advised the parties  
19 that I would address that in court a little bit later. Do counsel  
20 concur with my summation of the 802 conference?

21 PROS: Yes, sir.

22 DDC: Defense does, Your Honor.

1 MJ: All right, the defense has made a motion to disqualify the  
2 military judge pursuant to R.M.C. 902 on two grounds. First is under  
3 R.M.C. 902(a) which provides that except as provided in section (e)  
4 of this rule which has to do with waiver which we are not going to  
5 deal with today, the military judge shall disqualify himself or  
6 herself in any proceeding in which that military judge's impartiality  
7 might reasonably be questioned. The second ground is under R.M.C.  
8 902(b) which deals with specific grounds and it appears to me that  
9 defense was seeking under R.M.C. 902(b)(1) which provides that a  
10 military judge shall also disqualify himself or herself in the  
11 following circumstances. One is where the military judge has a  
12 personal bias or prejudice concerning the party or personal knowledge  
13 of disputed evidentiary facts concerning the proceedings.

14 I'll address the challenge under part (b) first, the  
15 personal bias or prejudice concerning the party. Defense here raises  
16 a couple of issues. One, their position that my setting of the  
17 initial hearing in this case and the setting of the 802 conference as  
18 previously discussed indicated some sort of partiality or desire to  
19 help the government or some sort of animus or effort to frustrate the  
20 participation by Mr. Dratel or Ms. Snyder in this case. With regard  
21 to setting the hearing, the record establishes that the 1st of March  
22 was the day that the charges were served on the accused and R.M.C.

1 707 provides that the arraignment in these cases should be within 30  
2 days from that time.

3           That same day I was appointed as the chief judge for these  
4 military commissions and I decided to detail myself to this first  
5 case. At that point I have some responsibility with regard to case  
6 management, and the calendar would reflect that the week of the 26th  
7 of March is the last week on the calendar such as if one were to  
8 schedule an initial hearing during that week and there was any  
9 problem with weather or airplanes or things that I couldn't even  
10 think of, you'd be in a position where you probably wouldn't get your  
11 hearing done within the 30 days.

12           Accordingly, in the court's view to schedule an initial  
13 hearing that provides for those sorts of things to happen is not a  
14 good decision by the military judge. So instead I set up for the  
15 prior week. In setting it for the prior week as reflected in  
16 Appellate Exhibit 3 wherein I set the 20th of March for the first  
17 session, that same e-mail includes this language, "If either side  
18 believes they cannot comply with the schedule set forth above, the  
19 lead counsel on behalf of all counsel for either side will  
20 immediately request a continuance setting forth a requested date and  
21 stating the reasons why such a continuance is necessary. This  
22 request shall be contained in the body of an e-mail and must be filed

1 no later than 1700 hours Eastern Standard Time, 9 March." When the  
2 defense requested a continuance, it was granted.

3 In that fashion through case management the time of the  
4 continuance grant does not count within the 30 days and accordingly  
5 the case management responsibilities of the court were met as well.  
6 That was not done to help anyone that was just doing the job  
7 properly.

8 With regard to Mr. Dratel and the 802 conference, I've  
9 already had some discussion of that, but I'll review a few points.  
10 The R.M.C. 802 conference was conducted for my benefit such that I  
11 could go over matters that I thought needed to be addressed prior to  
12 us coming in here today and done in a fashion that they would provide  
13 me adequate time to respond and work with the information I received  
14 such that this hearing could be conducted in as professional and as  
15 efficient a manner as possible.

16 As I stated previously, the travel schedules of the various  
17 parties were left to themselves. I also stated that the postponing  
18 of the 802 conference until after 1800 yesterday did not serve my  
19 intentions with regard to being ready to conduct a professional  
20 hearing today. I will also note that I agreed to an additional 802  
21 conference this morning to allow Mr. Dratel to provide whatever info  
22 he wanted regarding the schedule and to again advise him about the  
23 shortfall with regard to his notice of appearance letter.

1           In my view the record is clear that this court has paved  
2 the way for Mr. Dratel to participate in every aspect of this  
3 proceeding as requested by Mr. Hicks. Unfortunately, Mr. Dratel has  
4 declined to take the necessary simple steps to bring himself in  
5 compliance with the federal code provisions. Accordingly, I find  
6 that the matters raised by the defense with regard to personal bias  
7 or prejudice, with regard to my handling of this case thus far do not  
8 establish any personal bias or prejudice by me concerning a party or  
9 personal knowledge of any disputed evidentiary facts concerning the  
10 proceedings.

11           With regard to the second basis under R.M.C. 902(a). This  
12 challenge was based on, from what I understand, the combined effect  
13 of the matters I just addressed as far as my dealing with counsel in  
14 the scheduling of this hearing and the status of Mr. Dratel and Ms.  
15 Snyder, the establishment of the 802 conference times and the hearing  
16 times, my promulgation of Preliminary Procedural Instructions for  
17 counsel, my prior contact with a number of people that are discussed  
18 in the voir dire question and answer section. I'll make just a  
19 couple of comments about those things.

20           With regard to the scheduling times, I just addressed that  
21 with regard to 902(b) and those same comments apply. With regard to  
22 the dealing with the defense counsel I would again note there has  
23 been no ruling with regard to Ms. Snyder and the defense is free to

1 pursue her participation in a number of ways, either through having  
2 her get orders to be military counsel -- and it's hard to understand  
3 why that wasn't done prior to now -- or to pursue litigation of the  
4 issue I raised today upon which I've made no ruling.

5           With regard to Mr. Dratel, again the court has paved the  
6 way for his participation and that is essentially left up to him at  
7 this point. So accordingly the court finds that I have done nothing  
8 to prohibit those people from participating in these proceedings.

9           With regard to the rules to assist counsel one of my  
10 responsibilities in the Manual for Military Commissions is to issue  
11 rules of court. The Preliminary Procedural Instructions were issued  
12 in lieu of an opportunity for me to issue a full set of rules of  
13 court in this case. They are not done to assist counsel, they are  
14 done to facilitate professional litigation of this case.

15           With regard to my participation in the prior military  
16 commissions system, I don't see that that has any effect one way or  
17 the other on my role in this matter. With regard to my contact with  
18 various people, several retired colonels talked about in the  
19 questions and answers, retired General [REDACTED], and perhaps a few  
20 others. I've been in the Marine Corps for almost 27 years, in the  
21 armed forces for almost 31. I've been involved in the military  
22 justice system basically since summer internship in 1985 and yes I've  
23 come across a number of people that are in the military justice

1 system from a variety of the services. There is nothing in my view  
2 in any of the questions or answers or things that have been  
3 established or things I know about that establish any sort of  
4 friendship with any of those people and they are all professional  
5 acquaintances essentially on both sides of the aisle in this case,  
6 none of which in my estimation would lead a reasonable person to  
7 question my impartiality in this matter.

8           So taken individually and collectively I find that the  
9 matters raised by the defense and all the matters in the voir dire do  
10 not raise matters that might cause a reasonable person to question my  
11 impartiality as contemplated in R.M.C. 902(a) and accordingly the  
12 challenge for cause is denied. I further find that I am qualified to  
13 serve as the military judge of this military commission under the  
14 provisions of Rule for Military Commissions 902.

15           Do counsel for both sides understand the provisions of the  
16 Manual for Military Commissions concerning safeguarding and securing  
17 classified information?

18           PROS: Yes, Your Honor.

19           DDC: [No response.]

20           MJ: Major Mori?

21           DDC: Yes, sir.

22           MJ: I'm going to go in order, so if you say it at the same time  
23 as him, I'm not going to be aware of it. So you understand that?

1 DDC: Yes, sir.

2 MJ: Thank you.

3 Do you understand that you must, as soon as practicable,  
4 notify me of any intent to offer evidence involving classified  
5 information so that I may consider the need to close the proceedings?

6 PROS: Yes, sir.

7 DDC: The defense does, Your Honor.

8 MJ: As I am required by the Manual for Military Commissions to  
9 consider the safety of witnesses and others at these proceedings, do  
10 counsel for both sides understand that they must notify me of any  
11 issues regarding the safety of potential witnesses so that I may  
12 determine the appropriate ways in which testimony will be received  
13 and witnesses protected?

14 PROS: Yes, sir.

15 DDC: The defense does, Your Honor.

16 MJ: No protective orders have been marked as an appellate  
17 exhibit before this commission.

18 Is counsel for either side aware of any protective orders  
19 that should be marked at this time?

20 PROS: No, Your Honor.

21 DDC: None from the defense, Your Honor

22 MJ: The current filings inventory as previously discussed has  
23 been marked as Appellate Exhibit 18.



1           Do counsel for both sides agree that it is an accurate  
2 reflection of all filings, motions, responses, replies and requests  
3 for relief to date?

4           PROS: Yes, sir.

5           DDC: Yes, sir.

6           MJ: The accused will now be arraigned. All personnel present  
7 appear to have the requisite qualifications and all required to be  
8 sworn have been sworn.

9           Major Mori, have you and the accused previously been  
10 provided a copy of the charges?

11          DDC: Yes, sir.

12          MJ: The prosecutor will announce the general nature of the  
13 charges.

14          PROS: Your Honor, the general nature of The Charge in this case  
15 is providing material support for terrorism.

16          MJ: Does the accused desire for the charges to be read?

17          DDC: Defense waives the reading, Your Honor.

18          MJ: Very well, the reading will be omitted.

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

20                                   **[END OF PAGE]**



DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF PROSECUTOR  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

1 March 2007

MEMORANDUM FOR Office of Military Commissions, Office of the Convening Authority

SUBJECT: David Matthew Hicks Charge Sheet

1. The attached charge sheet pertaining to David Matthew Hicks is a Resigned Duplicate Original Charge Sheet identical in all respects to the document forwarded to the Convening Authority except for the signatures in blocks III and IV of MC Form 458 and the initials at the bottom of pages 3 – 9 of the Attached Charges and Specifications.
2. I am the POC for any questions regarding this certification.

LTC, JA, USAR  
Deputy Chief Prosecutor  
OFFICE OF MILITARY COMMISSIONS

Attachment:  
One 9 page Charge Sheet  
consisting of a two page  
MC Form 458 and a seven  
page Continuation Sheet.

**CHARGE SHEET**

**I. PERSONAL DATA**

1. NAME OF ACCUSED:

DAVID MATTHEW HICKS

2. ALIASES OF ACCUSED:

a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood"

3. ISN NUMBER OF ACCUSED (LAST FOUR):

0002

**II. CHARGES AND SPECIFICATIONS**

4. CHARGE: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.

SPECIFICATION:

See Attached Charges and Specifications.

**III. SWEARING OF CHARGES**

5a. NAME OF ACCUSER (LAST, FIRST, MI)

Tubbs, II, Marvin, W.

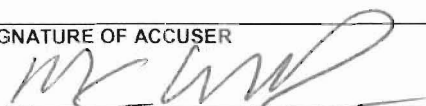
5b. GRADE

O-4

5c. ORGANIZATION OF ACCUSER

Office of the Chief Prosecutor, OMC

5d. SIGNATURE OF ACCUSER



5e. DATE (YYYYMMDD)

20070202

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser the 2nd day of February, 2007, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Kevin M. Chenail

*Typed Name of Officer*

Office of the Chief Prosecutor, OMC

*Organization of Officer*

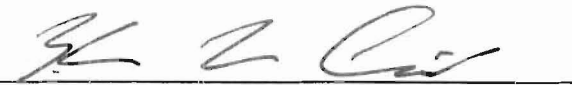
O-5

*Grade*

Commissioned Officer, U.S. Marine Corps

*Official Capacity to Administer Oath*

*(See R.M.C. 307(b) must be commissioned officer)*



*Signature*

MC FORM 458 JAN 2007

Blocks I through IV of this MC Form 458, including the continuation sheets for Block II, are duplicate originals, replacing misplaced originals. 506  
3-1-06

**IV. NOTICE TO THE ACCUSED**

6 On February 2, 2007 the accused was notified of the charges against him/her (See R.M.C. 308).

Kevin M. Chenail, LtCol, U.S. Marine Corps  
*Typed Name and Grade of Person Who Caused  
 Accused to Be Notified of Charges*

Office of the Chief Prosecutor, OMC  
*Organization of the Person Who Caused  
 Accused to Be Notified of Charges*


  
 \_\_\_\_\_  
*Signature*

**V. RECEIPT OF CHARGES BY CONVENING AUTHORITY**

7. The sworn charges were received at 1000 hours, on 6 Feb. '07, at the Office of the  
 Convening Authority for Military Commissions, Arlington, VA  
 \_\_\_\_\_  
*Location*

For the Convening Authority: Jennifer D. Young  
 \_\_\_\_\_  
*Typed Name of Officer*

CW3, USA  
 \_\_\_\_\_  
*Grade*

  
 \_\_\_\_\_  
*Signature*

**VI. REFERRAL**

8a. DESIGNATION OF CONVENING AUTHORITY

8b. PLACE

8c. DATE (YYYYMMDD)

Convening Authority

Arlington, VA

20070301

Appointed 6 Feb. 2007

Referred for trial to the (non)capital military commission convened by military commission convening order 07-01 dated  
1 March 2007

\_\_\_\_\_ subject to the following instructions<sup>1</sup>: See Continuation Sheet

By \_\_\_\_\_   
 \_\_\_\_\_  
*Command, Order, or Direction*

Hon. Susan J. Crawford  
 \_\_\_\_\_  
*Typed Name and Grade of Officer*

Convening Authority  
 \_\_\_\_\_  
*Official Capacity of Officer Signing*

  
 \_\_\_\_\_  
*Signature*

10 U.S.C. Sec. 948h

**VII. SERVICE OF CHARGES**

9. On March 1, 2007 I (caused to be) served a copy these charges on the above named accused.

Kevin M. Chenail  
 \_\_\_\_\_  
*Typed Name of Trial Counsel*

O-5  
 \_\_\_\_\_  
*Grade of Trial Counsel*

  
 \_\_\_\_\_  
*Signature of Trial Counsel*

**FOOTNOTES**

<sup>1</sup>See R.M.C. 601 concerning instructions. If none, so state.

CONTINUATION SHEET – MC FORM 458 JAN 2007, Block VI Referral

In the case of UNITED STATES OF AMERICA v. DAVID MATTHEW HICKS  
a/k/a “David Michael Hicks”  
a/k/a, “Abu Muslim Australia”  
a/k/a “Abu Muslim Austraili”  
a/k/a “Abu Muslim Philippine”  
a/k/a “Muhammad Dawood”

The following charge and specifications are referred to trial by military commission:

Specifications 1 and 2 of Charge I, as amended, and Charge I.

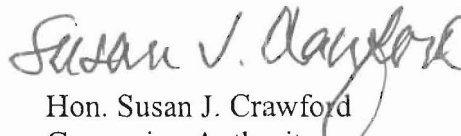
Other matters incorporated by reference in Block 4 of MC Form 458 pertaining to the accused, including those sections entitled “INTRODUCTION”, “JURISDICTION”, and “BACKGROUND” are in the nature of a bill of particulars and are not referred to trial.

The following charge and specification are dismissed and are not referred to trial:

The Specification of Charge II and Charge II.

This case is referred non-capital.

Date 3-1-07

  
Hon. Susan J. Crawford  
Convening Authority  
for Military Commissions

UNITED STATES OF AMERICA

v.

DAVID MATTHEW HICKS  
a/k/a "David Michael Hicks"  
a/k/a/ "Abu Muslim Australia"  
a/k/a "Abu Muslim Australi"  
a/k/a "Abu Muslim Philippine"  
a/k/a "Muhammad Dawood"

**CHARGES:**

Providing Material Support for Terrorism;  
and,  
Attempted Murder in Violation of the Law of War

INTRODUCTION

1. The accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Australi," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), is a person subject to trial by military commission for violations of the law of war and other offenses triable by military commission, as an alien unlawful enemy combatant. At all times material to the charges:

JURISDICTION

2. Jurisdiction for this military commission is based on Title 10 U.S.C. Sec. 948d, the Military Commissions Act of 2006, hereinafter "MCA;" its implementation by the Manual for Military Commissions (MMC), Chapter II, Rules for Military Commissions (RMC) 202 and 203; and, the final determination of September 30, 2004 by the Combatant Status Review Tribunal (CSRT) that Hicks is an unlawful enemy combatant as a member of, or affiliated with, al Qaeda.
3. The charged conduct of the accused is triable by military commission.

BACKGROUND

4. Hicks was born on August 7, 1975 in Adelaide, Australia.
5. In or about May 1999, Hicks traveled to Tirana, Albania and joined the Kosovo Liberation Army (KLA), a paramilitary organization fighting on behalf of Albanian Muslims. Hicks completed basic military training at a KLA camp and engaged in hostile action before returning to Australia.
6. While in Australia, Hicks converted to Islam. In or about November 1999, he traveled to Pakistan where, in early 2000, he joined a terrorist organization known as Lashkar-e Tayyiba (LET), meaning "Army of the Righteous" or "Army of the Pure."



- a. The LET is the armed wing of Markaz-ud-Daawa-wal-Irshad (MDI), (a/k/a Markaz Jamat al Dawa), a group formed by Hafiz Mohammed Saeed and others.
  - b. The LET's known goals include violent attacks against property and nationals (both military and civilian) of India and other countries in order to occupy Indian-controlled Kashmir and violent opposition of Hindus, Jews, Americans, and other Westerners.
  - c. Starting around 1990, LET established training camps and guest houses, schools, and other operations primarily in Pakistan and Afghanistan for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of India and other countries.
  - d. Since 1990, members and associates of LET have conducted numerous attacks on military and civilian personnel and property in Indian-controlled Kashmir and India, itself.
  - e. In 1998, Saeed called for holy war against the United States after LET members were killed by United States missile attacks against terrorist training facilities in Afghanistan.
  - f. On or about April 23, 2000, in a bulletin posted on the internet, LET claimed that it had recently killed Indian soldiers and destroyed an Indian government building, both located in Indian-controlled Kashmir.
  - g. On or about December 26, 2001, the United States designated LET a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act.
7. After joining LET, Hicks trained for two months at LET's Mosqua Aqsa camp in Pakistan. His training included weapons familiarization and firing, map reading and land navigation, and troop movement.
  8. Following training at Mosqua Aqsa, Hicks, along with LET associates, traveled to a border region between Pakistani-controlled Kashmir and Indian-controlled Kashmir, where he engaged in hostile action against Indian forces.
  9. In or about January 2001, Hicks, with assistance from LET, traveled to Afghanistan and attended al Qaeda training camps.

#### GENERAL ALLEGATIONS

10. Al Qaeda ("The Base") was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.
11. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaeda.
12. A purpose or goal of al Qaeda, as stated by Usama bin Laden and other al Qaeda leaders, is to support violent attacks against property and nationals (both military and civilian) of the

United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and to oppose U.S. support of Israel.

13. Al Qaeda operations and activities have historically been planned and executed with the involvement of a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.
14. Between 1989 and 2001, al Qaeda established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.
15. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.
16. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."
17. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."
18. In or about 2001, al Qaeda's media committee which created As Sahab ("The Clouds") Media Foundation which has orchestrated and distributed multi-media propaganda detailing al Qaeda's training efforts and its reasons for its declared war against the United States.
19. Since 1989 members and associates of al Qaeda, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the USS COLE in October 2000; and the attacks on the United States on September 11, 2001.
20. Following al Qaeda's attacks on September 11, 2001, and in furtherance of its goals, members and associates of al Qaeda have violently opposed and attacked the United States or its Coalition forces, United States Government and civilian employees, and citizens of various countries in locations throughout the world, including, but not limited to Afghanistan.
21. On or about October 8, 1999, the United States designated al Qaeda ("al Qa'ida") a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, and on or about August 21, 1998, the United States designated al Qaeda a "specially designated terrorist" (SDT), pursuant to the International Emergency Economic Powers Act.



SKC  
3-1-07

CHARGE I: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.  
SECTION 950v(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM

22. SPECIFICATION 1: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Australi," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from in or about December 2000 through in or about December 2001, intentionally provide material support or resources to an international terrorist organization engaged in hostilities against the United States, namely al Qaeda, which the accused knew to be such an organization that engaged, or engages, in terrorism, and, that the conduct of the accused took place in the context of and was associated with an armed conflict, namely al Qaeda or its associated forces against the United States or its Coalition partners.
23. That Paragraphs (10) through (21) of the General Allegations are realleged and incorporated by reference for Specification 1 of Charge I.
24. That the material support or resources provided by the accused, included, but were not limited to, the following:
- a. That in or about January 2001, Hicks traveled to Afghanistan, with the assistance of Lashkar-e Tayyiba (LET), to include LET's recommendation, funding, and transportation, in order to attend al Qaeda terrorist training camps.
  - b. That upon entering Afghanistan, Hicks traveled to Kandahar where he stayed at an al Qaeda guest house and met Richard Reid ("Abdul Jabal"), Feroz Abbasi ("Abu Abbas al-Britani"), and other associates or members of al Qaeda. While attending al Qaeda's training, Hicks would use the *kunya*, or alias, "Abu Muslim Australi," among others.
  - c. That Hicks then traveled to and trained at al Qaeda's al Farouq camp located outside Kandahar, Afghanistan. In al Qaeda's eight-week basic training course, Hicks trained in weapons familiarization and firing, land mines, tactics, topography, field movements, basic explosives, and other areas.
  - d. That in or about April 2001, Hicks returned to al Farouq and trained in al Qaeda's guerilla warfare and mountain tactics training course. This seven-week course included: marksmanship; small team tactics; ambush; camouflage; rendezvous techniques; and techniques to pass intelligence to al Qaeda operatives.
  - e. That while Hicks was training at al Farouq, Usama bin Laden visited the camp on several occasions. During one visit, Hicks expressed to bin Laden his concern over the lack of english al Qaeda training material.
  - f. That after Hicks completed his first two al Qaeda training courses, Muhammad Atef (a/k/a Abu Hafs al Masri), then the military commander of al Qaeda, summoned and

individually interviewed certain attendees. Hicks was interviewed about: his background; knowledge of Usama bin Laden; al Qaeda; his ability to travel around the world, to include Israel; and his willingness to go on a martyr mission. After this interview, Muhammed Atef recommended Hicks for attendance at al Qaeda's urban tactics training course at Tarnak Farm.

- g. That in or about June 2001, Hicks traveled to Tarnak Farm and participated in this course. A mock city was located inside the camp, where trainees were taught how to fight in an urban environment. This city tactics training included: marksmanship; use of assault and sniper rifles; rappelling; kidnapping techniques; and assassination methods.
- h. That in or about August 2001, Hicks participated in an advanced al Qaeda course on information collection and surveillance at an apartment in Kabul, Afghanistan. This course included practical application where Hicks and other student operatives conducted surveillance of various targets in Kabul, including the American and British Embassies. This surveillance training included weeks of: covert photography; use of dead drops; use of disguises; drawing diagrams depicting embassy windows and doors; documenting persons coming and going to the embassy; and, submitting reports to the al Qaeda instructor who cited the al Qaeda bombing of the USS Cole as a positive example of the uses for their training. During this training, Hicks personally collected intelligence on the American Embassy.
- i. That during the surveillance course, Richard Reid ("Abdul Jabal") visited on two separate occasions. After the course, Hicks returned to Kandahar airport, where Abdul Jabal taught a class on the meaning of *jihad*. Hicks also received instruction from other al Qaeda members or associates on their interpretation of Islam, the meaning and obligations of *jihad*, and related topics, at other al Qaeda training camps in Afghanistan.
- j. That on or about September 9, 2001, Hicks traveled to Pakistan to visit a friend. While at this friend's house, Hicks watched television footage of the September 11, 2001 attacks on the United States, and expressed his approval of the attacks.
- k. That on or about September 12, 2001, Hicks returned to Afghanistan and, again, joined with al Qaeda. Hicks had heard reports that the attacks were conducted by al Qaeda and that America was blaming Usama bin Laden.
- l. That upon arriving in Kandahar, Afghanistan, Hicks reported to Saif al Adel, then al Qaeda's deputy military commander and head of the security committee for al Qaeda's shura council, who was organizing al Qaeda forces at locations where it was expected there would be fighting against the United States, Northern Alliance, or other Coalition forces. Hicks was given a choice of three different locations (city, mountain, or airport), and he chose to join a group of al Qaeda fighters near the Kandahar Airport.
- m. That Hicks traveled to the Kandahar Airport and was issued an Avtomat Kalashnikova 1947 (AK-47) automatic rifle. On his own, however, Hicks armed himself with six (6)



ammunition magazines, 300 rounds of ammunition, and three (3) grenades to use in fighting the United States, Northern Alliance, and other Coalition forces.

- n. That on or about October 7, 2001, when the Coalition Forces, Operation Enduring Freedom, bombing campaign began, Hicks had been at the Kandahar airport for about two weeks and entrenched in the area where the initial military strikes occurred. At this site, other al Qaeda forces were in battle positions based a couple of hundred meters in all directions, and were under the direction of another al Qaeda leader.
- o. That on or about October 10, 2001, after two nights of bombing, Hicks was reassigned and joined an armed group outside the airport where he guarded a tank. For about the next week Hicks guarded the tank, and every day received food, drink, and updates on what was happening from the al Qaeda leader in charge.
- p. That Hicks heard fighting was heavy at Mazar-e Sharif, that Kabul would be next, and that western countries, including the United States, had joined with the Northern Alliance.
- q. That Hicks implemented the tactics he had learned with al Qaeda and trained some of the others positioned with him at Kandahar. After apparent resistance to his training, and no enemy in sight at the time in Kandahar, Hicks decided to look for another opportunity to fight in Kabul.
- r. That on or about October 17, 2001, Hicks told the al Qaeda leader in charge of his plans, and then traveled to Kabul. Hicks also took his weapon and all his ammunition.
- s. That Hicks arrived in Kabul and met a friend from LET, who requested Hicks go to the front lines in Konduz with him, and Hicks agreed.
- t. That on or about November 9, 2001, Hicks and his LET friend arrived at Konduz, the day before Mazar-e Sharif was captured by the Northern Alliance and U.S. Special Forces. Sometime after Hicks arrived at Konduz, he went to the frontline outside the city for two hours where he joined a group of al Qaeda, Taliban, or other associated fighters, including John Walker Lindh, engaged in combat against Coalition forces. Hicks spent two hours on the frontline before it collapsed and was forced to flee. During the retreat, Hicks saw bullets flying and Northern Alliance tanks coming over the trenches.
- u. That Hicks spent two to three days making his way back to Konduz while being chased and fired upon by the Northern Alliance.
- v. That Hicks made it safely back to the city of Konduz, where he approached some of the Arab fighters and asked about their plans. The Arabs fighters said they were going back into Konduz in order to fight to the death. Hicks, instead, decided to use his Australian passport and flee to Pakistan.

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- w. That Hicks then moved secretly within Konduz to a *madafah*, an Arab safe house. Hicks wrote the Arabs a letter that said not to come look for him because he was okay, and left the safe house. At this time Hicks still had his weapon, and moved again, secretly, to another house where he stayed for about three weeks. Later, a man who spoke some english helped Hicks sell his weapon so he could flee to Pakistan.
- x. That in or about December 2001, one week after the control of Konduz changed from the Taliban to the Northern Alliance, Hicks took a taxi and fled towards Pakistan. However, Hicks was captured by the Northern Alliance in Baghlan, Afghanistan.

25. SPECIFICATION 2: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from in or about December 2000 through in or about December 2001, provide material support or resources to be used in preparation for, or in carrying out, an act of terrorism, that the accused knew or intended that the material support or resources were to be used for those purposes, that the conduct of the accused took place in the context of and was associated with an armed conflict, namely al Qaeda or its associated forces against the United States or its Coalition partners.

26. That paragraphs (10) through (21) of the General Allegations are realleged and incorporated by reference for Specification 2 of Charge I.

27. That paragraph 24 and its subparagraphs (a) through (x) of Specification 1 are realleged and incorporated by reference for Specification 2 of Charge I.

~~CHARGE II. VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.  
SECTION 950t ATTEMPTED MURDER IN VIOLATION OF THE LAW OF WAR~~

~~28. SPECIFICATION: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from on or about September 11, 2001, through in or about December 2001, attempt to commit murder in violation of the law of war, by directing small arms fire, explosives, or other means and methods, with the intent to kill divers persons of the United States, Northern Alliance, or other Coalition forces, while the accused was without combatant immunity as an unlawful enemy combatant who was part of, or supporting, al Qaeda, Taliban, or associated forces engaged in hostilities against the United States or its Coalition partners, and that the conduct of the accused took place in the context of and was associated with an armed conflict.~~

SJC  
3-1-07

W

1 MJ: Accused and counsel, please rise. Mr. Hicks, you may rise  
2 at this time.

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

4 MJ: Mr. David Matthew Hicks, I now ask you how do you plead,  
5 but I advise you that any motion addressed under Rule for Military  
6 Commission 905(b) must be made prior to the entry of pleas.

7 DDC: Sir, the defense requests to preserve pleas.

8 MJ: Very well. Please be seated.

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

10 MJ: Okay, as we have discussed at various times and as is  
11 addressed in the AE's that are a part of the record, I previously  
12 submitted input from counsel with regard to the litigation schedule  
13 in this case. Although I did not receive any prior to the 802  
14 conference from yesterday, I did receive some last night and it was  
15 as previously noted discussed a bit more at the 802 conference this  
16 morning. At this morning's 802 conference I provided counsel with  
17 both sides with a draft schedule which I developed based on the input  
18 of counsel and with consideration for the Rules of Military  
19 Commissions and that has been compiled together with the counsels  
20 input and marked as, I believe, Appellate Exhibit 20. Does either  
21 side wish to be heard on this matter?

22 PROS: No, sir.

1           DDC:  Sir, the defense would object to the military judge's  
2 trial schedule, obviously already marked as appellate exhibit was our  
3 proposed dates and the federal trials of Joshua Dratel that he had  
4 previously scheduled and as such the military commission's current  
5 schedule by the military judge effectively removes his ability to  
6 participate in this due to his conflicting federal trials.

7           MJ:  Well, two things while you're standing.

8           DDC:  Yes, sir.

9           MJ:  At the present time he is not a counsel in this case for  
10 the reasons we discussed.  Additionally, there has been no discussion  
11 about any efforts by him with regard to seeking to move those other  
12 cases instead of assuming that Mr. Hicks comes third in line after  
13 those other clients.  So I understand the objection, but if you could  
14 speak to that why we assume that he can not participate at those  
15 times just because there has been a proffer about some other cases  
16 and there has been no discussion about who ordered them, why they  
17 couldn't be moved, whether he's the lead counsel, whether they're  
18 going to be in session every day or things like that.  Perhaps you  
19 could speak to that.

20           DDC:  Right now, sir, or would you like me to submit it in  
21 writing as a request?

1 MJ: While I have not ordered a schedule in this case, so it's  
2 problematic speaking about him since he is not a counsel in this case  
3 and has never entered a notice of appearance or agreement to comply.

4 DDC: Yes, sir. But as you're aware, obviously, that he is the  
5 civilian counsel that Mr. Hicks would like to have. To answer your  
6 question about his schedule, the trial coming up in New York starting  
7 next month is a previously scheduled federal US criminal trial that  
8 was scheduled prior to any charges being brought against Mr. Hicks.  
9 It's a multi-defendant case and so you're dealing with -- I believe  
10 it's three defendants in a criminal case, so you're dealing with the  
11 schedules for three different defense teams and that is again  
12 expected to end some time the first part of June. It's a federal  
13 trial in New York, sir.

14 MJ: This is a federal trial which is also rather complicated,  
15 and I don't see why there is an assumption that it's easier to wait  
16 in this case until 2008 essentially instead of moving that trial.

17 DDC: Well, obviously sir, as well as -- I mean, your milestone  
18 of having defense motions due the 7th of April -- now it's the 26th  
19 of March -- the legal motions -- basically gives the defense 13 days  
20 to raise all legal challenges to the Military Commission Act which  
21 was created in October of 2006 and to the regulations a 200-plus page  
22 document that was written by the government and for us to raise all  
23 legal issues that are associated with the very first military

1 commission -- except for the illegal ones a few years ago -- in 60  
2 years, this is something that is obviously -- we then, as we've  
3 suggested to you on approximately 45 legal motions that we have  
4 identified -- we could provide that in writing a full what we  
5 anticipate -- we're still learning and investigating and researching  
6 the legal issues, sir. So I would expect that even without Mr.  
7 Dratel ----

8 MJ: How long have you been working on this case?

9 DDC: I've been working on it for 3 years, sir.

10 MJ: Okay. How many other cases do you have assigned?

11 DDC: None, sir.

12 MJ: Okay. When was the Military Commissions Act passed?

13 DDC: October 2006, sir.

14 MJ: So don't tell me you had 13 days to work on it.

15 DDC: No, sir. We've already previously begun -- we've begun.

16 But we didn't have The Charge. I spent 3 years working on David  
17 Hicks' case for charges that don't exist anymore. That work is all  
18 thrown out the window. I spent 3 years -- the majority of 3 years  
19 working under a system that no longer exists -- a waste of time. I  
20 spent 3 years investigating facts to put on a defense to three  
21 specific charges that no longer exist, and yet there is an entirely  
22 new charge, so while not all of my investigative work is completely  
23 worthless, it does take on a different complexity or different angles



1 that you might have pursued in your investigation because you're  
2 dealing with a different charge that has different elements.

3           So I appreciate that I have been on this case a long time  
4 and I do not want to delay this trial 1 day longer than to adequately  
5 provide David Hicks with an adequate defense, because I realize he's  
6 in pretrial -- he's in confinement and we want to get him out. But I  
7 think the judge should appreciate that there is -- obviously this is  
8 an enormous case. We've been on it -- I recognize that. We want to  
9 get our legal motions in, but 13 days to challenge the Military  
10 Commission Act, the Manual for Military Commissions, and whatever 30  
11 chapter regulations that they decide to promulgate later, those  
12 eliminate issues or they may raise new issues as well as the -- now  
13 that at this point I'm the only counsel I would ask for more time and  
14 follow the defense's proposed schedule of having motions due in May,  
15 sir, the date proposed in May.

16           MJ: Anything else?

17 [The detailed defense counsel and the accused conferred.]

18           DDC: That's it, sir.

19           MJ: Anything from the government in light of that?

20           PROS: No, Your Honor.

21           MJ: All right, it is my determination that while the defense  
22 may ultimately be able to articulate a reasonable basis to support a  
23 continuance request in this case, it is appropriate for this court to

1 be mindful of the standards set forth in Rule for Military  
2 Commissions 707 with regard to the timing of pretrial matters and to  
3 set an initial trial schedule that calls for the assembly of the  
4 military commission within 120 days of the service of charges. In  
5 this case, the defense proposal would most likely have the effect of  
6 delaying the start of this trial well into the year 2008. While it  
7 is certainly hard to say how long this trial will take to complete,  
8 that is an unacceptable initial plan.

9           Additionally, the defense proposal was largely based, it  
10 appears, on an initial position placing Mr. Hicks' trial third in  
11 line behind two other cases in which Mr. Dratel is apparently a  
12 counsel. Now a couple of things have changed. Mr. Dratel is not a  
13 counsel in this case at this point. Even if he was, it would seem to  
14 me that it may well be upon further examination that those cases were  
15 more amenable to adjustment than the situation in this case. Major  
16 Mori has today raised a number of concerns with regard to the volume  
17 of work that he anticipates needs to be done on behalf of his client  
18 and I intend to be mindful of his requirements such that he is placed  
19 in the position to provide a full and vigorous defense on the behalf  
20 of his client.

21           However, I am going to order an initial trial schedule that  
22 will be set forth and what will be marked as the appellate exhibit  
23 next in order and which I will provide to counsel shortly after we

1 conclude here today. I will advise you that it will be in accord  
2 with the draft that I provided this morning with some additional  
3 instructions, but as far as the dates, you essentially have those  
4 dates already in hand.

5 I would advise the defense that after an assessment of the  
6 developments in this case which I certainly recognize are  
7 significant, but at the same time recognize that I have made no  
8 ruling about Ms. Snyder and she could be back and I certainly  
9 recognize that there are simple steps for Mr. Dratel to begin  
10 participation in this case and that is up to him.

11 After the defense has an opportunity to respond to what has  
12 developed here today, should the defense determine that the  
13 reasonable course of action is to seek a continuance in the schedule,  
14 you should promptly submit a motion for continuance in this case, and  
15 we will deal with that in a reasonable fashion.

16 On the 19th of March 2007, the defense filed a motion  
17 pertaining to claim prosecutorial misconduct. That has been marked  
18 as Appellate Exhibit 15. The government response was filed in  
19 accordance with the litigation requirements set forth in Appellate  
20 Exhibit 7 today. Pursuant to the standard set forth in Appellate  
21 Exhibit 7, the defense reply to the government response is due on the  
22 29th of March 2007. A hearing on that motion will be scheduled along

1 with any other motion that may be submitted in accordance with the  
2 trial schedule.

3 I will also note that that motion was submitted on behalf  
4 of the defense over the signature of Ms. Snyder; Mr. Dratel's name  
5 was also on there. Major Mori's name was not on the motion. Given  
6 the developments in this case, Major Mori, whether or not you intend  
7 to file a reply to the government response I'd like you to submit  
8 something in which -- since you are the counsel in this case at this  
9 time that you adopt the motion as your own because once again when it  
10 was submitted -- Mr. Dratel has never submitted an appearance in this  
11 case, and Ms. Snyder's status again is uncertain at this time. So in  
12 order to put that thing in the proper queue again let's get your name  
13 instead since it's still a defense motion. That's just as a minimum  
14 and then whatever other reply you want to do, you go ahead and do.

15 DDC: Yes, sir.

16 MJ: Are there any other matters that we need to take up at this  
17 time?

18 PROS: No, Your Honor.

19 DDC: Sir, just the defense's 802 summaries that they be marked  
20 as the next appellate exhibit in order.

21 MJ: The court order will be next and then those will probably  
22 be combined as one and put as the one after.

23 DDC: Yes, sir.

1 MJ: Anything else?

2 DDC: Nothing further from the defense, sir.

3 MJ: Okay, at this time we're going to recess in accordance with  
4 the trial schedule.

5 **[The session recessed at 1718 hours, 26 March 2007.]**

6 **[The session was called to order at 2022 hours, 26 March 2007.]**

7 MJ: The commission will come to order. All parties present  
8 when the court recessed are again present.

9 During our recess I was approached by counsel and a  
10 conference was conducted in accordance with R.M.C. 802 wherein I was  
11 advised that Mr. Hicks desired to enter pleas in this case and we  
12 decided to do that now.

13 Do counsel concur with my summation of the 802 conference?

14 PROS: Yes, Your Honor.

15 DDC: Defense does, Your Honor.

16 MJ: Accused and counsel, please rise.

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

18 MJ: David Matthew Hicks, I now ask you how do you plead, but  
19 before receiving your pleas I advise you that any motion addressed  
20 under R.M.C. 905(b) must be made prior to the entry of pleas.

21 **[END OF PAGE]**

1 DDC: Sir, David Hicks pleads through counsel:

2 **To Specification 1 of The Charge: Guilty.**  
3 **To Specification 2 of The Charge: Not guilty.**  
4 **To The Charge: Guilty.**  
5

6 MJ: Mr. Hicks, are those in fact your pleas?

7 ACC: Yes, sir.

8 MJ: Please be seated.

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

10 MJ: Mr. Hicks, I understand your pleas in this case. Before we  
11 proceed any further with regard to that plea, I want to ask you some  
12 questions.

13 I previously advised you with regards to your rights to  
14 counsel in this commission. Do you recall that explanation from  
15 earlier today?

16 ACC: Yes, sir.

17 MJ: Do you wish for me to review those counsel rights with you  
18 at this time before I ask you some questions about that?

19 ACC: No, there is no need.

20 MJ: If you have any questions as I go along, I'd be happy to go  
21 back and review that all with you again.

22 ACC: Okay.

23 MJ: Now you previously advised me that you wished to be  
24 represented in this case by Major Mori, Ms. Snyder, and Mr. Dratel.

1                   Is that correct?

2           ACC: Yes, it is.

3           MJ: Although I have not ruled on Ms. Snyder's situation as  
4 counsel, that situation has not been resolved and earlier today I  
5 withheld recognition of her as an authorized counsel in this case.

6                   Do you recall and understand that?

7           ACC: Yes, sir.

8           MJ: Then based on your decision not to keep Ms. Snyder at  
9 counsel table as a consultant, Ms. Snyder left the courtroom, right?

10          ACC: Yes.

11          MJ: Has anything that transpired with regard to Ms. Snyder  
12 today caused you to enter your plea of guilty in this case?

13          ACC: No, sir.

14          MJ: Additionally, do you recall that after Mr. Dratel ----  
15 [The defense counsel and the accused conferred.]

16          MJ: Do you need to talk about anything?

17          ACC: No, sir.

18          MJ: I want you to talk about everything that you need to talk  
19 about. At the same time I just want to make sure we have the  
20 attention focused when I'm speaking too.

21                   Additionally, do you recall that after Mr. Dratel decided  
22 not to sign the agreement that I told him he needed to sign in order  
23 to be qualified as a counsel in this case, I also determined that he

1 did not meet the qualifications of counsel to participate in this  
2 case.

3 Do you recall that?

4 ACC: Yes, sir.

5 MJ: Then based on your decision not to keep Mr. Dratel at the  
6 table as a consultant, he also left the courtroom, right?

7 ACC: Yes.

8 MJ: Has anything that transpired with regard to Mr. Dratel  
9 today caused you to enter your plea of guilty in this case?

10 ACC: No, sir.

11 MJ: Has a combination of Ms. Snyder and Mr. Dratel not being  
12 recognized as qualified to represent you at this time caused you to  
13 enter his plea of guilty?

14 ACC: No.

15 MJ: Do you at this time then wish to be represented before this  
16 military commission by Major Mori alone?

17 ACC: Yes.

18 MJ: Do you wish to be represented by any other attorney beside  
19 Major Mori, either military or civilian?

20 ACC: No.

21 MJ: Do you waive your right to have civilian counsel represent  
22 you before this military commission?

23 ACC: Yes.



1 MJ: Do you waive any right to have Ms. Snyder represent you  
2 before this commission in any capacity whether as detailed counsel or  
3 civilian counsel?

4 ACC: Yes.

5 MJ: And I know these questions a lot of times I'm coming at  
6 this same thing from a different angle, but I just want to make sure  
7 that we are all on the same page, all right?

8 ACC: Yes.

9 MJ: Do you waive any right to have Mr. Dratel represent you  
10 before this military commission as a civilian defense counsel?

11 ACC: Yes.

12 MJ: Have you discussed all these things with Major Mori?

13 ACC: Yes, I have.

14 MJ: Major Mori, have you had sufficient opportunity to discuss  
15 these matters with Mr. Hicks?

16 DDC: Yes, sir.

17 MJ: Major Mori, to the best of your knowledge and belief has  
18 the issue of representation in any way affected Mr. Hicks' decision  
19 to enter a plea of guilty in this case?

20 DDC: No, sir.

21 MJ: All right, we're going to recess shortly. I'm going to now  
22 direct the counsel for both sides to provide the court with tailored  
23 proposed elements and definitions for the offense to which the

1 accused has entered a plea of guilty not later than 1600 tomorrow, 27  
2 March 2007. If you encounter problems in complying with that, as  
3 always, please contact me before then ----

4 [The accused and his detailed defense counsel conferred.]

5 MJ: If you encounter problems with complying with that, please  
6 contact me before that time has expired. That's my order as far as  
7 what you need to do. I would request that if it possible, the  
8 parties reach an agreement as to these matters and if that is  
9 accomplished, you may submit a consolidated version of this material  
10 in lieu of your separate submissions.

11 Is there any other matter we need to address at this time?

12 PROS: No, sir.

13 DDC: None from the defense, Your Honor.

14 MJ: Court is in recess, and we'll meet on my call.

15 [The session recessed at 2029 hours, 26 March 2007.]

16 [END OF PAGE]

1 [The session was called to order at 0817 hours, 30 March 2007.]

2 MJ: The commission will come to order. All parties present  
3 when the commission recessed are again present.

4 Since the last session we've had a number of conferences  
5 conducted in accordance with Rule for Military Commission 802. These  
6 conferences generally covered discussion of the pleas in this case  
7 and the anticipated modification of the plea that has been entered;  
8 discussion of the sanitized charge sheet or flyer which has been  
9 marked as Appellate Exhibit 28; discussion of a pretrial agreement  
10 in this case which has been marked as Appellate Exhibit 27;  
11 discussion of a number of clarifications of the pretrial agreement  
12 which have been captured on a marked up version of the pretrial  
13 agreement, and that document has been marked as Appellate Exhibit 30;  
14 discussion of a stipulation of fact that has been marked as  
15 Prosecution Exhibit 1 for identification.

16 I'll note at this time that present at the 802 conferences  
17 were trial counsel, defense counsel, assistant trial counsel,  
18 military judge, Lieutenant Colonel [REDACTED], and Ms. [REDACTED].  
19 We also discussed voir dire of the members, preliminary instructions  
20 and sentencing instruction for the members. We also discussed the  
21 current appellate exhibit listing which has been provided to the  
22 parties.

1           The court was advised of and we discussed a modification to  
2 the convening order. This amending order dated 29 March 2007, has  
3 been marked as Appellate Exhibit 29. The prosecution also requested  
4 and I signed a protective order with regard to protection of the  
5 identities of the commission members. The defense had no objection.  
6 The signed protective order has been marked as Appellate Exhibit 32.

7           Do counsel concur with my summation of the several 802  
8 conferences?

9           PROS: Yes, sir.

10          DDC: Defense does, sir. What was the appellate exhibit for the  
11 cleansed charge sheet?

12          MJ: 28.

13          DDC: Yes, sir.

14          MJ: Major Mori, do you have a current copy of the Appellate  
15 Exhibits 1 through 33?

16          DDC: They're printing it off the CD right now, sir. My  
17 paralegal will be down in 1 minute.

18          MJ: Okay, we'll make sure you get it at the next break.  
19 Anytime you have any questions, go ahead and ask me again and I'll be  
20 happy to keep supplying that number. Okay?

21          DDC: Yes, sir.

22          MJ: Very well. Major Mori, does the defense wish to modify its  
23 plea at this time?

1 DDC: Defense does.

2 MJ: Accused and counsel, please rise.

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

4 DDC: David Hicks, through counsel, pleads as follows:

5 **To Specification 1 of The Charge:** **Excepting the words**  
6 **23 -- paragraphs 23**  
7 **and 24 and**  
8 **substituting**  
9 **paragraphs 1**  
10 **through 35 of**  
11 **Appellate Exhibit**  
12 **28: Guilty.**

13 **To The Charge -- To Specification 2**  
14 **of The Charge:** **Not guilty.**

15 **And to The Charge:** **Guilty.**

16  
17  
18 MJ: Okay, with regard to Specification 1, what I understand  
19 that to be is to the excepted words, not guilty; to the words  
20 substituted therefore, guilty ----

21 DDC: Yes, sir.

22 MJ: ---- and it to The Specification with those exceptions and  
23 substitutions, guilty?

24 DDC: Yes, sir.

25 MJ: Mr. Hicks, are those in fact your pleas?

26 ACC: Yes, sir.

27 MJ: Very well. Please be seated.

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

1 MJ: Good morning, Mr. Hicks.

2 ACC: Good morning.

3 MJ: You have entered a plea of guilty to The Charge and with  
4 exceptions and substitutions to Specification 1 of The Charge.

5 Is that correct?

6 ACC: Yes.

7 MJ: Your plea of guilty will not be accepted unless you  
8 understand its meaning and effect. I am going to discuss your plea of  
9 guilty with you. It's a rather lengthy process. As we go along you  
10 may wish to refer to a copy of the charge sheet while we go through  
11 the inquiry. Do you have a copy of the charge sheet and Appellate  
12 Exhibit 28 which is what I refer to as the sanitized copy of the  
13 charge sheet or the flyer? Do you have those two things in front of  
14 you?

15 ACC: [Examining documents in front of him.] Yes, I do.

16 MJ: We're going to take as much time as we need, so if you have  
17 any questions, go ahead and ask Major Mori. I'm in no rush.

18 Alright?

19 ACC: Yes, sir.

20 MJ: If at any time during this process you become confused or  
21 have any questions, please stop me and I'll give you a chance to talk  
22 things over with your attorney.

1           Do you understand that?

2           ACC: Yes.

3           MJ: Mr. Hicks, a plea of guilty is the strongest form of proof  
4 known to the law. Based on your plea of guilty alone and without  
5 receiving any evidence, this commission can find you guilty of the  
6 offense to which you are pleading guilty. Your plea of guilty will  
7 not be accepted, however, unless you understand that by pleading  
8 guilty you admit every act or omission and every element of the  
9 offense to which you are pleading guilty.

10           Further, I cannot accept your plea unless after making my  
11 inquiry I am satisfied that either there is a factual basis for the  
12 plea, or that you voluntarily agree that having viewed the evidence  
13 the prosecution intends to introduce against you, you are personally  
14 convinced that the prosecution could prove your guilt of the offense  
15 to which you are pleading guilty beyond a reasonable doubt.

16           Do you understand that?

17           ACC: Yes, sir.

18           MJ: Even if you believe you are guilty, you still have a legal  
19 and moral right to enter a plea of not guilty and to require the  
20 government to prove its case against you, if it can, by legal and  
21 competent evidence beyond a reasonable doubt. If you were to plead  
22 not guilty, then you would be presumed under the law to be innocent,  
23 and only by introducing evidence and proving your guilt beyond a

1 reasonable doubt could the government overcome this presumption of  
2 innocence.

3 Do you understand this?

4 ACC: Yes, sir.

5 MJ: By your plea of guilty you waive, or in other words, you  
6 give up certain important rights. The rights you give up are:

7 First, the right against self-incrimination, that is, the  
8 right that you have to say nothing at all about this offense.

9 Second, the right to a trial of the facts by the  
10 commission, that is, the right to have this commission decide whether  
11 or not you are guilty based on the evidence presented by the  
12 prosecution and, if you chose to do so, by the defense.

13 Third, the right to confront the witnesses against you, and  
14 to call witnesses on your behalf.

15 Do you understand all of those rights?

16 ACC: Yes, I do.

17 MJ: Now if you plead guilty, there will not be a trial of any  
18 kind with regard to the offense to which you are pleading guilty.  
19 Because by pleading guilty you give up the three rights that I've  
20 just described. You keep them with regard to the offense charged in  
21 Specification 2 of The Charge and with regard to the language that  
22 was accepted by your plea with exceptions and substitutions.



1 Do you understand that?

2 ACC: Yes, sir.

3 MJ: Have you discussed all these things with Major Mori?

4 ACC: Yes, I have.

5 MJ: Do you agree to give up these three rights then with regard  
6 to the offense to which you are pleading guilty and to answer my  
7 questions about it?

8 ACC: Yes, I do.

9 MJ: Now in a moment you are going to be placed under oath and I  
10 will question you to determine if you are, in fact, guilty based on  
11 that standard I described to you.

12 Do you understand this?

13 ACC: Yes.

14 MJ: Major Mori, could you just put that screen down?

15 [The detailed defense counsel turned the monitor screen away to  
16 unblock the military judge's view.]

17 MJ: With regard to my questioning you under oath, you should  
18 understand that if anything that you tell me is untrue, your  
19 statements could be used against you later in a subsequent  
20 prosecution for perjury or false statement.

21 Do you understand this?

22 ACC: Yes, sir.

1 MJ: Very well. Please rise, face the trial counsel and raise  
2 your right hand.

3 [The accused did as directed and was sworn.]

4 MJ: Please be seated.

5 [The accused did as directed.]

6 MJ: Does the government have an averment of facts pursuant to  
7 R.M.C. 910(e)?

8 PROS: Yes, Your Honor. The prosecution offers Appellate  
9 Exhibit 28, the sanitized charge sheet as the averment of facts under  
10 R.M.C. 910(e).

11 MJ: Is there a stipulation of fact in this case?

12 PROS: Yes, Your Honor.

13 MJ: Has it been marked as a prosecution exhibit?

14 PROS: It has, sir.

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

16 MJ: Mr. Hicks, I am showing you now what has been marked as  
17 Prosecution Exhibit 1 for identification.

18 Do you have a copy of that in front of you?

19 ACC: Yes, I do.

20 MJ: It appears to be six pages long and near the bottom of the  
21 sixth page there is a signature above your typed name.

22 Is that your signature?

23 ACC: Yes, it is.

1 MJ: Prior to signing this document, did you read it over  
2 completely and discuss it with your attorney?

3 ACC: Yes, sir.

4 MJ: Do you understand everything contained in this stipulation  
5 of fact?

6 ACC: Yes.

7 MJ: Do counsel for both sides agree to the stipulation and,  
8 Major Mori and Lieutenant Colonel [REDACTED], are these your  
9 signatures above your typed names on page six?

10 PROS: Yes, sir.

11 DDC: Yes, sir.

12 MJ: Mr. Hicks, at this point we are going to discuss the  
13 stipulation of fact to ensure that you understand it and agree to its  
14 uses. A stipulation of fact is an agreement between the trial  
15 counsel, the defense counsel, and yourself that the contents of the  
16 stipulation are uncontradicted facts in this case. You have the  
17 right not to enter into this stipulation, and this stipulation will  
18 not be accepted without your consent.

19 Do you understand that?

20 ACC: Yes.

21 MJ: Mr. Hicks, this stipulation appears to contain 50 separate  
22 paragraphs and statements.

1 Do you understand that?

2 ACC: Yes.

3 MJ: Have you reviewed each of those 50 paragraphs separately  
4 with your attorney?

5 ACC: Yes, I have.

6 MJ: Having reviewed each paragraph is there any part or  
7 paragraph of that stipulation that you do not want to consent to?

8 ACC: No.

9 MJ: With regard to the stipulation, do you understand and agree  
10 that the contents of the stipulation are binding on the commission  
11 and may not be contradicted after I have accepted your plea?

12 ACC: Yes, sir.

13 MJ: Has anyone forced or threatened you to enter into this  
14 stipulation?

15 ACC: No.

16 MJ: If I admit this stipulation into evidence, it will be used  
17 in two ways. First, I will use it to determine if you are, in fact,  
18 guilty. Second, it will later be given to the court members -- or  
19 the commission members, and they will have it with them when they  
20 decide upon the sentence in this case.

21 Do you understand that?

22 ACC: Yes, I do.

1 MJ: Do you agree to those uses?

2 ACC: Yes.

3 MJ: Do counsel for both sides also agree?

4 PROS: Yes, sir.

5 DDC: Yes, sir.

6 MJ: Again, Mr. Hicks, a stipulation of fact ordinarily cannot  
7 be contradicted. If the stipulation should be contradicted after I  
8 have accepted your guilty pleas, I will have to reopen my inquiry  
9 into your pleas. Therefore, you should let me know during this  
10 inquiry if there is anything whatsoever that you disagree with or  
11 feel is untrue.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Is there anything in here that you disagree with or feel is  
15 untrue?

16 ACC: No.

17 MJ: Does defense have any objection to Prosecution Exhibit 1  
18 for identification?

19 DDC: No, sir.

20 MJ: Very well, it is admitted as Prosecution Exhibit 1, and  
21 there are no words "for identification" written there.

22 Mr. Hicks, I am going to explain the elements of the  
23 offense to which you have entered a plea of guilty. By "elements" I

1 mean the facts that the government would have to prove beyond a  
2 reasonable doubt before you could be found guilty, if you pleaded not  
3 guilty.

4           When I state each element please ask yourself two things.  
5 First, are you willing to admit that the element is true, or second,  
6 are you willing to admit that having viewed the evidence the  
7 government intends to introduce against you, you are personally  
8 convinced that the government could prove the facts needed to  
9 establish the element beyond a reasonable doubt.

10           By "reasonable doubt" is intended not a fanciful or  
11 ingenious doubt or conjecture, but an honest and conscientious doubt  
12 suggested by the material evidence or lack of it ----  
13 [The accused and his detailed defense counsel conferred.]

14           MJ: I'm just going over now the definition of "reasonable  
15 doubt" for you.

16           By "reasonable doubt" is intended not a fanciful or  
17 ingenious doubt or conjecture, but an honest and conscientious doubt  
18 suggested by the material evidence or lack of it in the case. It is  
19 an honest misgiving generated by insufficiency of proof of guilt.

20           Proof beyond a reasonable doubt means proof to an  
21 evidentiary certainty, although not necessarily to an absolute or  
22 mathematical certainty. The proof must be such as to exclude not  
23 every hypothesis or possibility of innocence, but every fair and

1 rational hypothesis except that of guilt. The rule as to reasonable  
2 doubt extends to every element of the offense although each  
3 particular fact advanced by the prosecution which does not amount to  
4 an element, need not be established beyond a reasonable doubt.  
5 However, if, on the whole of the evidence, the fact finders are  
6 satisfied beyond a reasonable doubt of the truth of each and every  
7 element, then they should find the accused guilty.

8 Do you understand the things I just described to you?

9 ACC: Yes, sir.

10 MJ: Now after I list the elements for you, please be prepared  
11 to talk with me about the facts regarding the offenses. As I noted,  
12 I'll be using Appellate Exhibit 28 which is the sanitized version of  
13 the charge sheet to conduct this inquiry because in the course of  
14 your pleas the defense has excepted out or taken away the factual  
15 allegations that are on the original charge sheet and put in its  
16 place the factual allegations that are on Appellate Exhibit 28 which  
17 I refer to as the sanitized charged sheet.

18 Do you understand that?

19 ACC: Yes.

20 MJ: So we're working off the large paragraph of The Charge  
21 stated on the charge sheet and then after that the numbered factual  
22 allegations on the sanitized charge sheet of which there are 35.

1 Do you understand?

2 ACC: Yes.

3 MJ: Please take a look at the language of Specification 1 of  
4 The Charge. This alleges a violation of an offense described as  
5 providing material support for terrorism. As that pertains to you,  
6 they are:

7 That you, David M. Hicks, provided material support or  
8 resources to an international terrorist organization engaged in  
9 hostilities against the United States;

10 Second, that you intended to provide such material support  
11 or resources to such an international terrorist organization;

12 Third, that you knew such organization has engaged or  
13 engaged or engages in terrorism;

14 Fourth, that the conduct took place in the context of and  
15 was associated with an armed conflict; and

16 Further, that you are an alien unlawful enemy combatant.

17 I am going to explain some of those terms and provide you  
18 with some definitions. "Material support or resources" means any  
19 property, tangible or intangible, or service including currency or  
20 monetary instruments or financial securities, financial services,  
21 lodging, training, expert advice or assistance, safehouses, false  
22 documentation or identification, communications equipment,  
23 facilities, weapons, lethal substances, explosives, personnel (one or



1 more individuals who may be or include oneself), and transportation,  
2 except that of medicine or religious materials.

3           The term "international terrorism organization" includes  
4 any organization designated as a foreign terrorist organization under  
5 section 219 of the Immigration and Nationality Act designated as  
6 Title 8 United States Code Section 1189. You are advised that al  
7 Qaeda has been designated as a foreign terrorist organization, since  
8 October 1999.

9           "Terrorism" means an act by any person who intentionally  
10 kills or inflicts great bodily harm on one or more protected persons,  
11 or intentionally engages in an act that evinces a wanton disregard  
12 for human life in a manner calculated to influence or affect the  
13 conduct of government or civilian population by intimidation or  
14 coercion, or to retaliate against government conduct.

15           "Protected person" means any person entitled to protection  
16 under one or more of the Geneva Conventions, including: (a)  
17 civilians not taking part in hostilities; (b) military personnel  
18 placed hors de combat by sickness, wounds, or detention; and (c)  
19 military medical or religious personnel.

20           The term "alien" as it is used here means a person who is  
21 not a citizen of the United States.

22           The term "unlawful enemy combatant" as it is used here  
23 means:

1           A person who has engaged in hostilities or who has  
2 purposefully and materially supported hostilities against the United  
3 States or its co-belligerents who is not a lawful enemy combatant  
4 including a person who is part of the Taliban, al Qaeda, or  
5 associated forces; or

6           A person who, before, on, or after the date of the  
7 enactment of the Military Commissions Act of 2006 has been determined  
8 to be an unlawful enemy combatant by a Combatant Status Review  
9 Tribunal or other competent tribunal established under the authority  
10 of the President of the United States or the Secretary of Defense.

11           The term "co-belligerent" as it is used here means any  
12 State or armed force joining and directly engaged with the United  
13 States in hostilities or directly supporting hostilities against a  
14 common enemy.

15           Do you understand the elements and definitions as I have  
16 read them to you?

17           ACC: Yes, sir.

18           MJ: Have you had a prior opportunity to discuss all of this  
19 with your counsel?

20           ACC: Yes, I have.

21           MJ: Do you believe and admit that these elements that I've just  
22 described for you either accurately describe what you did, or

1 accurately describe what you having viewed the evidence, admit could  
2 be proven against you beyond a reasonable doubt?

3 ACC: Yes.

4 MJ: And which of these things do you believe and admit?

5 ACC: Number two.

6 MJ: Okay and that would be that you believe that they  
7 accurately describe what you having viewed the evidence admit could  
8 be proven against you beyond a reasonable doubt?

9 ACC: Yes, sir.

10 MJ: I'm going to restate it one more time to make sure we're on  
11 the same page again. So based on your personal knowledge, and having  
12 reviewed the evidence the government intends to introduce against  
13 you, do I understand correctly that you are personally convinced that  
14 the government could prove its case against you with regard to each  
15 of those elements that I have just described beyond a reasonable  
16 doubt?

17 ACC: Yes, sir.

18 MJ: Alright, let's take a look at the factual allegations in  
19 Appellate Exhibit 28 that have been incorporated into this  
20 specification.

21 [The accused and his detailed defense counsel conferred.]

22 MJ: All set?

23 DDC: Yes, sir.

1 MJ: Mr. Hicks, factual allegation number 1 on Appellate Exhibit  
2 28 is that: Al Qaeda or "The Base" was founded by Usama bin Laden  
3 and others in or about 1989 for the purpose of opposing certain  
4 governments and officials with force and violence.

5 Do you understand that?

6 ACC: Yes.

7 MJ: Based on your personal knowledge, and having reviewed the  
8 evidence the government intends to introduce against you, are you  
9 personally convinced that the government could prove this fact by  
10 competent evidence?

11 ACC: Yes.

12 MJ: Factual allegation number 2 is: Usama bin Laden is  
13 recognized as the emir or prince or leader of al Qaeda.

14 Do you understand that?

15 ACC: Yes.

16 MJ: Based on your personal knowledge, and having reviewed the  
17 evidence the government intends to introduce against you, are you  
18 personally convinced that the government could prove this fact by  
19 competent evidence?

20 ACC: Yes.

21 MJ: Factual allegation number 3 is: A purpose or goal of al  
22 Qaeda, as stated by Usama bin Laden and other al Qaeda leaders, is to  
23 support violent attacks against property and nationals both military

1 and civilian of the United States and other countries for the purpose  
2 of "inter alia" which means among other things, forcing the United  
3 States to withdraw its forces from the Arabian peninsula and to  
4 oppose United States support of Israel.

5 Do you understand that?

6 ACC: Yes.

7 MJ: Based on your personal knowledge, and having reviewed the  
8 evidence the government intends to introduce against you, are you  
9 personally convinced that the government could prove this fact by  
10 competent evidence?

11 ACC: Yes.

12 MJ: Factual allegation number 4 is: Al Qaeda operations and  
13 activities have historically been planned and executed with the  
14 involvement of a "shura" or consultation council composed of  
15 committees, including: political committee; military committee;  
16 security committee; finance committee; media committee; and religious  
17 or legal committee.

18 Do you understand that?

19 ACC: Yes.

20 MJ: Based on your personal knowledge, and having reviewed the  
21 evidence the government intends to introduce against you, are you

1 personally convinced that the government could prove this fact by  
2 competent evidence?

3 ACC: Yes.

4 MJ: Factual allegation number 5 is: Between 1989 and 2001, al  
5 Qaeda established training camps, guest houses, and business  
6 operations in Afghanistan, Pakistan, and other countries for the  
7 purpose of training and supporting violent attacks against property  
8 and nationals both military and civilian of the United States and  
9 other countries.

10 Do you understand that?

11 ACC: Yes, sir.

12 MJ: Based on your personal knowledge, and having reviewed the  
13 evidence the government intends to introduce against you, are you  
14 personally convinced that the government could prove this fact by  
15 competent evidence?

16 ACC: Yes, sir.

17 MJ: Factual allegation number 6 is: In August 1996, Usama bin  
18 Laden issued a public "Declaration of Jihad Against the Americans,"  
19 in which he called for the murder of U.S. military personnel serving  
20 on the Arabian peninsula.

21 Do you understand that?

22 ACC: Yes, sir.

1 MJ: Based on your personal knowledge, and having reviewed the  
2 evidence the government intends to introduce against you, are you  
3 personally convinced that the government could prove this fact by  
4 competent evidence?

5 ACC: Yes, sir.

6 MJ: Factual allegation number 7 is: In February 1998, Usama  
7 bin Laden, Ayman al Zawahiri, and others under the banner of  
8 "International Islamic Front for Fighting Jews and Crusaders," issued  
9 a fatwa, or purported religious ruling, requiring all Muslims able to  
10 do so to kill Americans whether civilian or military anywhere they  
11 can be found and to "plunder their money."

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Based on your personal knowledge, and having reviewed the  
15 evidence the government intends to introduce against you, are you  
16 personally convinced that the government could prove this fact by  
17 competent evidence?

18 ACC: Yes, sir.

19 MJ: Factual allegation number 8 is: On or about May 29, 1998,  
20 Usama bin Laden issued a statement entitled "The Nuclear Bomb of  
21 Islam," under the banner of the "International Islamic Front for  
22 Fighting Jews and Crusaders," in which he stated that it is the duty

1 of the Muslims to prepare as much force as possible to terrorize the  
2 enemies of God.

3 Do you understand that?

4 ACC: Yes, sir.

5 MJ: Based on your personal knowledge, and having reviewed the  
6 evidence the government intends to introduce against you, are you  
7 personally convinced that the government could prove this fact by  
8 competent evidence?

9 ACC: Yes, sir.

10 MJ: Factual allegation number 9 is: In or about 2001, al  
11 Qaeda's media committee which created As Sahab, or "The Clouds,"  
12 Media Foundation which has orchestrated and distributed multi-media  
13 propaganda detailing al Qaeda's training efforts and its reasons for  
14 its declared war against the United States.

15 Do you understand that?

16 ACC: Yes, sir.

17 MJ: Based on your personal knowledge, and having reviewed the  
18 evidence the government intends to introduce against you, are you  
19 personally convinced that the government could prove this fact by  
20 competent evidence?

21 ACC: Yes, sir.

22 MJ: Factual allegation number 10 is: Since 1989 members and  
23 associates of al Qaeda, known and unknown, have carried out numerous



1 terrorist attacks, including, but not limited to: the attacks against  
2 the American Embassies in Kenya and Tanzania in August 1998; the  
3 attack against the USS COLE in October 2000; and the attacks on the  
4 United States on September 11, 2001.

5 Do you understand that?

6 ACC: Yes, sir.

7 MJ: Based on your personal knowledge, and having reviewed the  
8 evidence the government intends to introduce against you, are you  
9 personally convinced that the government could prove this fact by  
10 competent evidence?

11 ACC: Yes, sir.

12 MJ: Factual allegation number 11 is: On or about October 8,  
13 1999, the United States designated al Qaeda a Foreign Terrorist  
14 Organization pursuant to Section 219 of the Immigration and  
15 Nationality Act; and on or about August 21, 1998, the United States  
16 designated al Qaeda a "specially designated terrorist" or SDT,  
17 pursuant to the International Emergency Economic Powers Act.

18 Do you understand that?

19 ACC: Yes, sir.

20 MJ: Based on your personal knowledge, and having reviewed the  
21 evidence the government intends to introduce against you, are you

1 personally convinced that the government could prove this fact by  
2 competent evidence?

3 ACC: Yes, sir.

4 MJ: Allegation number 12: In or about January 2001, you  
5 traveled to Afghanistan with the assistance of Lashkar-e Tayyiba, or  
6 LET, to include LET's recommendation, funding, and transportation, in  
7 order to attend al Qaeda terrorist training camps.

8 Do you understand that?

9 ACC: Yes, sir.

10 MJ: Based on your personal knowledge, and having reviewed the  
11 evidence the government intends to introduce against you, are you  
12 personally convinced that the government could prove this fact by  
13 competent evidence?

14 ACC: Yes, sir.

15 MJ: Factual allegation number 13 is: Upon entering Afghanistan  
16 you traveled to Kandahar where you stayed at an al Qaeda guest house  
17 and met associates or members of al Qaeda. While attending al  
18 Qaeda's training courses, you would use the kunya, or alias, "Abu  
19 Muslim Australia," "Abu Muslim Australi," "Abu Muslim Philippine,"  
20 or "Muhammad Dawood;" and later was referred to as "David Michael  
21 Hicks."

22 Do you understand that?

23 ACC: Yes, sir.

1 MJ: Based on your personal knowledge, and having reviewed the  
2 evidence the government intends to introduce against you, are you  
3 personally convinced that the government could prove this fact by  
4 competent evidence?

5 ACC: Yes, sir.

6 MJ: Allegation number 14 is: That you then traveled to and  
7 trained at al Qaeda's al Farouq camp located outside Kandahar,  
8 Afghanistan. In al Qaeda's 8-week basic training course, you trained  
9 in weapons familiarization and firing, land mines, tactics,  
10 topography, small unit fire, maneuver tactics, field movements, and  
11 other areas.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Based on your personal knowledge, and having reviewed the  
15 evidence the government intends to introduce against you, are you  
16 personally convinced that the government could prove this fact by  
17 competent evidence?

18 ACC: Yes, sir.

19 MJ: Factual allegation number 15 is that: In or about April  
20 2001, you returned to al Farouq and trained in al Qaeda's guerilla  
21 warfare and mountain tactics training course. This 7-week course  
22 included marksmanship, small team tactics, ambush, camouflage,

1 rendezvous techniques, and techniques to pass intelligence and  
2 supplies to al Qaeda operatives.

3 Do you understand that?

4 ACC: Yes, sir.

5 MJ: Based on your personal knowledge, and having reviewed the  
6 evidence the government intends to introduce against you, are you  
7 personally convinced that the government could prove this fact by  
8 competent evidence?

9 ACC: Yes, sir.

10 MJ: Factual allegation number 16 is that: While you trained at  
11 al Farouq, Usama bin Laden visited the camp on several occasions.  
12 During such visits, any weapons the trainees had were removed from  
13 them and they were seated as a group to hear bin Laden speak in  
14 Arabic. During one visit, you asked bin Laden why there were no  
15 training materials provided in the English language.

16 Do you understand that?

17 ACC: Yes, sir.

18 MJ: Based on your personal knowledge, and having reviewed the  
19 evidence the government intends to introduce against you, are you  
20 personally convinced that the government could prove this fact by  
21 competent evidence?

22 ACC: Yes, sir.

1 MJ: Factual allegation number 17 is that: After you completed  
2 your first two al Qaeda training courses, Muhammad Atef a/k/a Abu  
3 Hafs al Masri, then the military commander of al Qaeda, summoned and  
4 individually interviewed certain attendees. You were interviewed  
5 about your background, knowledge of Usama bin Laden, al Qaeda, and  
6 your ability to travel around the world, to include Israel. After  
7 this interview with Muhammed Atef, you then attended al Qaeda's urban  
8 tactics training course at the Tarnak Farm.

9 Do you understand that?

10 ACC: Yes, sir.

11 MJ: Based on your personal knowledge, and having reviewed the  
12 evidence the government intends to introduce against you, are you  
13 personally convinced that the government could prove this fact by  
14 competent evidence?

15 ACC: Yes, sir.

16 MJ: Factual allegation number 18 is that: In or about June  
17 2001, you traveled to Tarnak Farm and participated in the training in  
18 a mock city located inside the camp where trainees were taught how to  
19 fight in an urban environment. This city tactics training included  
20 marksmanship, use of assault and sniper rifles, rappelling,  
21 kidnapping techniques, and assassination methods.

22 Do you understand that?

23 ACC: Yes, sir.

1 MJ: Based on your personal knowledge, and having reviewed the  
2 evidence the government intends to introduce against you, are you  
3 personally convinced that the government could prove this fact by  
4 competent evidence?

5 ACC: Yes, sir.

6 MJ: Allegation number 19 is that: In or about August 2001, you  
7 participated in a 4-week al Qaeda course on information collection  
8 and surveillance at an apartment in Kabul, Afghanistan. This  
9 surveillance training included weeks of covert photography, use of  
10 dead drops, use of disguises, drawing diagrams depicting windows and  
11 doors, documenting persons coming and going to and from certain  
12 structures, and submitting reports to the al Qaeda instructor who  
13 cited the al Qaeda bombing of the USS Cole as a positive example of  
14 the uses for their training. The course also included practical  
15 application where the accused and other student operatives conducted  
16 surveillance of various locations in Kabul, including the former  
17 American and British Embassy buildings. During this training, you  
18 personally conducted intelligence on the former American Embassy  
19 building.

20 Major Mori, what's your understanding of the last sentence  
21 there? "During this training the accused personally conducted  
22 intelligence." That doesn't make sense to me.

1 DDC: The last sentence is just to identify the support that Mr.  
2 Hicks was the one who did the practical application on the American  
3 Embassy only, not the former British Embassy.

4 MJ: So you would understand that to be "During this training  
5 the accused personally conducted a practical applications  
6 intelligence exercise on the former American Embassy building"?

7 DDC: Yes, sir.

8 MJ: Does the government concur on that?

9 PROS: Yes, sir.

10 MJ: Okay.

11 Mr. Hicks, do you understand that?

12 ACC: Yes, sir.

13 MJ: And to include that last sentence, is that also your  
14 understanding of that last sentence there?

15 ACC: Yes, sir.

16 MJ: Based on your personal knowledge, and having reviewed the  
17 evidence the government intends to introduce against you, are you  
18 personally convinced that the government could prove this fact by  
19 competent evidence?

20 ACC: Yes, sir.

21 MJ: Allegation number 20 is that: After the surveillance  
22 course, you returned to Kandahar where he received instruction from  
23 members of al Qaeda on the meaning of "jihad." You also received

1 instruction from other al Qaeda members or associates on their  
2 interpretation of Islam, the meaning and obligations of jihad, and  
3 related topics at other al Qaeda training camps in Afghanistan.

4 Do you understand that?

5 ACC: Yes.

6 MJ: Based on your personal knowledge, and having reviewed the  
7 evidence the government intends to introduce against you, are you  
8 personally convinced that the government could prove this fact by  
9 competent evidence?

10 ACC: Yes, sir.

11 MJ: Allegation number 21 is that: On or about September 9,  
12 2001, you traveled to Pakistan to visit a Pakistani friend. While at  
13 this friend's house, you watched television footage of the September  
14 11, 2001 attacks on the United States, and the friend has said he  
15 interpreted your gestures as approval of the attacks. The allegation  
16 includes a statement that you had no specific knowledge of the  
17 attacks in advance.

18 Do you understand that?

19 ACC: Yes, sir.

20 MJ: Based on your personal knowledge, and having reviewed the  
21 evidence the government intends to introduce against you, are you



1 personally convinced that the government could prove this fact by  
2 competent evidence?

3 ACC: Yes, sir.

4 MJ: Allegation number 22 is that: On or about September 12,  
5 2001, you returned to Afghanistan to join with al Qaeda. Also that  
6 you had heard reports that the attacks were conducted by al Qaeda and  
7 that America was blaming Usama bin Laden.

8 Do you understand that?

9 ACC: Yes, sir.

10 MJ: Based on your personal knowledge, and having reviewed the  
11 evidence the government intends to introduce against you, are you  
12 personally convinced that the government could prove this fact by  
13 competent evidence?

14 ACC: Yes, sir.

15 MJ: Allegation number 23 is that: On or about the 1st of  
16 October -- and I would understand that to be 2001 -- Saif al Adel --  
17 then al Qaeda's deputy military commander and head of the security  
18 committee for al Qaeda's shura council, who was organizing al Qaeda  
19 forces at locations where it was expected there would be fighting  
20 against the United States, Northern Alliance, or other Coalition  
21 forces -- informed you that you could go to three different locations  
22 to position yourself with combat forces; city, mountain, or airport.

1 The allegation includes that you chose to join a group of al Qaeda  
2 and Taliban fighters near the Kandahar Airport.

3 Do you understand that?

4 ACC: Yes, sir.

5 MJ: Based on your personal knowledge, and having reviewed the  
6 evidence the government intends to introduce against you, are you  
7 personally convinced that the government could prove this fact by  
8 competent evidence?

9 ACC: Yes, sir.

10 MJ: Allegation number 24 is that: You traveled to the Kandahar  
11 Airport and was issued an Avtomat Kalashnikova 1947 (AK-47) automatic  
12 rifle. On your own, however, you armed himself with six ammunition  
13 magazines, approximately 300 rounds of ammunition, and three grenades  
14 to use in fighting the United States, Northern Alliance, and other  
15 Coalition forces.

16 Do you understand that?

17 ACC: Yes, sir.

18 MJ: Based on your personal knowledge, and having reviewed the  
19 evidence the government intends to introduce against you, are you  
20 personally convinced that the government could prove this fact by  
21 competent evidence?

22 ACC: Yes, sir.

1 MJ: Allegation number 25 is that: On or about October 7, 2001,  
2 when the Coalition Forces initiated a bombing campaign at the start  
3 of Operation Enduring Freedom, you had been at the Kandahar airport  
4 for about 2 weeks and entrenched in the area where the initial  
5 military strikes occurred. At this site, other al Qaeda forces were  
6 in battle positions based a couple of hundred meters in all  
7 directions and were under the direction of another al Qaeda leader.

8 Do you understand that?

9 ACC: Yes, sir.

10 MJ: Based on your personal knowledge, and having reviewed the  
11 evidence the government intends to introduce against you, are you  
12 personally convinced that the government could prove this fact by  
13 competent evidence?

14 ACC: Yes, sir.

15 MJ: Allegation number 26 is that: On or about October 10,  
16 2001, after 2 nights of bombing you were reassigned and joined an  
17 armed group outside the airport where you guarded a Taliban tank.  
18 For about the next week you guarded the Taliban tank and every day  
19 received food, drink, and updates on what was happening from the fat  
20 al Qaeda leader in charge who was on a bicycle.

21 Do you understand that?

22 ACC: Yes, sir.

1 MJ: Based on your personal knowledge, and having reviewed the  
2 evidence the government intends to introduce against you, are you  
3 personally convinced that the government could prove this fact by  
4 competent evidence?

5 ACC: Yes, sir.

6 MJ: Allegation number 27 is that: You heard radio reports that  
7 fighting was heavy at Mazar-e Sharif, that Kabul would be the next  
8 target, and that western countries including the United States had  
9 joined with the Northern Alliance.

10 Do you understand that?

11 ACC: Yes, sir.

12 MJ: Based on your personal knowledge, and having reviewed the  
13 evidence the government intends to introduce against you, are you  
14 personally convinced that the government could prove this fact by  
15 competent evidence?

16 ACC: Yes, sir.

17 MJ: Allegation number 28 is that: You implemented the tactics  
18 you had learned with al Qaeda and attempted to train some of the  
19 others positioned with you at Kandahar. After apparent resistance to  
20 his training and with no enemy at sight in Kandahar you decided to  
21 look for another opportunity to fight in Kabul.

22 Do you understand that?

23 ACC: Yes, sir.

1 MJ: Based on your personal knowledge, and having reviewed the  
2 evidence the government intends to introduce against you, are you  
3 personally convinced that the government could prove this fact by  
4 competent evidence?

5 ACC: Yes, sir.

6 MJ: Allegation number 29 is that: On or about October 17,  
7 2001, you told the fat al Qaeda leader of your plans, and then  
8 traveled to Kabul. And that you also took your weapon and your  
9 ammunition.

10 Do you understand that?

11 ACC: Yes, sir.

12 MJ: Based on your personal knowledge, and having reviewed the  
13 evidence the government intends to introduce against you, are you  
14 personally convinced that the government could prove this fact by  
15 competent evidence?

16 ACC: Yes, sir.

17 MJ: Allegation number 30 is that: You arrived in Kabul and met  
18 a friend from LET who told you that he was headed to the front lines  
19 in Konduz. You asked to travel with this LET friend.

20 Do you understand that?

21 ACC: Yes, sir.

22 MJ: Based on your personal knowledge, and having reviewed the  
23 evidence the government intends to introduce against you, are you

1 personally convinced that the government could prove this fact by  
2 competent evidence?

3 ACC: Yes, sir.

4 MJ: Allegation number 31 is that: On or about November 9,  
5 2001, you and your LET friend arrived at Konduz the day before Mazar-  
6 e Sharif was captured by the Northern Alliance and U.S. Special  
7 Forces. Sometime after you arrived at Konduz you went to the  
8 frontline outside the city for 2 hours where you joined a group of al  
9 Qaeda, Taliban, or other associated fighters engaged in combat  
10 against Coalition forces. You spent 2 hours on the frontline before  
11 it collapsed and you were forced to flee. During the retreat, you  
12 saw bullets flying and the Northern Alliance tanks coming over the  
13 trenches.

14 Do you understand that?

15 ACC: Yes, sir.

16 MJ: Based on your personal knowledge, and having reviewed the  
17 evidence the government intends to introduce against you, are you  
18 personally convinced that the government could prove this fact by  
19 competent evidence?

20 ACC: Yes, sir.

21 MJ: Allegation number 32 is that: You spent 2 to 3 days  
22 walking back to Konduz while being chased and fired upon by the  
23 Northern Alliance.

1 Do you understand that?

2 ACC: Yes, sir.

3 MJ: Based on your personal knowledge, and having reviewed the  
4 evidence the government intends to introduce against you, are you  
5 personally convinced that the government could prove this fact by  
6 competent evidence?

7 ACC: Yes, sir.

8 MJ: Allegation number 33 is that: You made it safely back to  
9 the city of Konduz where you approached some of the Arab fighters and  
10 asked about their plans. The Arabs fighters said that they were  
11 going to stay in Konduz in order to fight to the death. You instead  
12 decided to use your Australian passport and flee to Pakistan.

13 Do you understand that?

14 ACC: Yes, sir.

15 MJ: Based on your personal knowledge, and having reviewed the  
16 evidence the government intends to introduce against you, are you  
17 personally convinced that the government could prove this fact by  
18 competent evidence?

19 ACC: Yes, sir.

20 MJ: Allegation number 34 is that: You then moved within Konduz  
21 to a madafah, or an Arab safe house. That you wrote a note for your  
22 LET associates that said not to come look for you because you were  
23 okay, and then you ran away from the safe house. At this time you

1 still had your weapon and went to find a shopkeeper that you had met  
2 a few days earlier in the city market area. The shopkeeper took you  
3 to his home where you stayed for about 3 weeks. Later the shopkeeper  
4 gave you some clothes and helped you sell your weapon so that you  
5 could pay for a taxi to Pakistan.

6 Do you understand that?

7 ACC: Yes, sir.

8 MJ: Based on your personal knowledge, and having reviewed the  
9 evidence the government intends to introduce against you, are you  
10 personally convinced that the government could prove this fact by  
11 competent evidence?

12 ACC: Yes, sir.

13 MJ: Allegation number 35 is that: In or about December 2001, 1  
14 week after the control of Konduz changed from the Taliban to the  
15 Northern Alliance, you took a taxi and fled towards Pakistan.  
16 However, you were captured without any weapons by the Northern  
17 Alliance in Baghlan, Afghanistan.

18 Do you understand that?

19 ACC: Yes, sir.

20 MJ: Based on your personal knowledge, and having reviewed the  
21 evidence the government intends to introduce against you, are you



1 personally convinced that the government could prove this fact by  
2 competent evidence?

3 ACC: Yes, sir.

4 MJ: Mr. Hicks, based on your personal knowledge, and having  
5 reviewed the evidence the government intends to introduce against  
6 you, are you personally convinced that these facts that we've just  
7 discussed either individually or taken together are sufficient to  
8 establish your guilt to this specification and to The Charge beyond a  
9 reasonable doubt?

10 ACC: Yes, sir.

11 MJ: Mr. Hicks, with regard to your review of the evidence that  
12 I've referred to -- and this is the evidence that the government  
13 intends to introduce against you -- what sort of a review have you  
14 made of this evidence?

15 ACC: Notes by interrogators taken from other people.

16 MJ: Anything else?

17 ACC: No.

18 MJ: So I understand that at some point you were interrogated by  
19 someone, is that right?

20 ACC: That's correct.

21 [END OF PAGE]

1 MJ: And as a result of those interrogations you made some  
2 statements and then there were notes made about the statements that  
3 you made. Is that correct?

4 ACC: That's correct.

5 MJ: Okay, and do I also understand that you have been shown  
6 notes of interrogations that were made of other people as well?

7 ACC: That's correct.

8 MJ: And you've had a chance to review paper copies of those  
9 things?

10 ACC: Yes.

11 MJ: Anything else; tape recordings or videos of any of those  
12 things?

13 ACC: No.

14 MJ: Now these paper copies that you've seen, were they written  
15 in a form that you could read them?

16 ACC: Yes.

17 MJ: Did you go over them with your attorney?

18 ACC: Yes, I have.

19 MJ: Have you spoken with your attorney about what portions of  
20 the material is likely to be admitted as evidence in the event that  
21 you pleaded not guilty and this case was contested?

22 ACC: Yes.

1 MJ: Based on that, are you satisfied and personally convinced  
2 in fact that that evidence would be sufficient to establish your  
3 guilt to the specifications and prove up those facts that we just  
4 talked about?

5 ACC: Yes, sir.

6 MJ: Are you satisfied with your lawyer's advice with regard to  
7 the state of the evidence in this case?

8 ACC: Yes, sir.

9 MJ: As far as the advice, I note in the pretrial agreement that  
10 the pretrial agreement was signed on the 26th of March 2007, is that  
11 correct?

12 ACC: [Examining document.] Yes, sir.

13 MJ: And so your review of this material was conducted before  
14 that time, is that right?

15 ACC: Yes, sir.

16 MJ: And I note that on the pretrial agreement Mr. Dratel, who  
17 was with us earlier, also signed on that agreement as well. Is that  
18 correct?

19 ACC: Yes, sir.

20 MJ: And so your review of the evidence and your decision with  
21 regard to pleading guilty was made at a time when he was still  
22 advising you about things?

23 ACC: Yes, sir.

1 MJ: Does either counsel believe any further inquiry is  
2 required?

3 PROS: No, sir.

4 DDC: No, sir.

5 MJ: Mr. Hicks, pursuant to the Manual for Military Commissions,  
6 the maximum punishment for the offense to which you have entered a  
7 plea of guilty is confinement for life. In this case, however, based  
8 on your pretrial agreement, the maximum punishment which can be  
9 adjudged by the commission members is confinement for a period of 7  
10 years.

11 Do you understand that?

12 ACC: Yes.

13 MJ: Trial and defense counsel, do you agree?

14 PROS: Yes, sir.

15 DDC: Yes, sir.

16 MJ: Mr. Hicks, do you have any questions as to the sentence  
17 that could be adjudged by the commission members as a result of your  
18 guilty plea?

19 ACC: No, I don't.

20 MJ: Alright, we're going to talk about the pretrial agreement  
21 in this case. The offer to plead guilty and the Appendix A thereto  
22 are marked as Appellate Exhibit 27.

1           Mr. Hicks, do you have a copy of Appellate Exhibit 27 in  
2 front of you?

3           ACC: Yes, sir.

4 [The accused and his detailed defense counsel conferred.]

5           MJ: It's divided into two sections. The first section is  
6 referred to as the Offer for Pretrial Agreement and then there's an  
7 Appendix A portion. The offer portion including signature page is  
8 five pages. The Appendix A including the signature page is two  
9 pages. Is that what you have there?

10          ACC: [Examining document.] Yes, sir.

11          MJ: On the fifth page of the Offer section -- actually on the  
12 fourth page of the Offer section above your typed name there is a  
13 signature. Is that your signature?

14          ACC: [Examining document.] Yes, sir.

15          MJ: Then on the first page of Appendix A above your typed name  
16 there's also a signature. Is that also your signature?

17          ACC: [Examining document.] Yes, sir.

18          MJ: Before you signed this document in those two places did you  
19 read it completely and discuss it with your counsel?

20          ACC: Yes, I did.

21          MJ: Do you understand the contents of your pretrial agreement  
22 and this document?

23          ACC: Yes, sir.

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

2 ACC: No, sir.

3 MJ: Now I'll note, and I'm going to refer to in a moment what's  
4 been marked as Appellate Exhibit 30 of the pretrial agreement which  
5 is a copy of it with some bold portions inserted clarifying some  
6 terms. Do you have a copy of Appellate Exhibit 30 in front of you?

7 ACC: [Examining document.] Yes, I do.

8 MJ: Have you had a chance to go over that with your counsel?

9 ACC: Yes.

10 MJ: Mr. Hicks, does this agreement that's in Appellate Exhibit  
11 27 with some clarifying remarks in Appellate Exhibit 30 contain all  
12 the understandings or agreements that you have in this case?

13 ACC: Yes, sir.

14 MJ: Has anyone made any promises to you that are not written  
15 into this agreement in an attempt to get you to plead guilty in this  
16 case?

17 ACC: No.

18 MJ: Counsel, is Appellate Exhibit 27 the full and complete  
19 agreement in this case, and are you both satisfied with the  
20 clarifying language contained in Appellate Exhibit 30 -- and when I  
21 say "satisfied" you agree that that reflects the intent of the  
22 parties at the time the agreement was signed in the first instance?

23 PROS: Yes, sir.

1 DDC: Yes, sir.

2 MJ: Mr. Hicks, as a general rule in a pretrial agreement an  
3 accused agrees to enter pleas of guilty to some or all of the charges  
4 and specifications in a case, and in return the convening authority  
5 agrees to approve and order executed no sentence greater than that  
6 set forth in the sentence limitation portion of the agreement which  
7 in this case is listed as Appendix A.

8 Do you understand that?

9 ACC: Yes. Could I just speak Mr. [sic] Mori for just a minute?

10 MJ: Yes, go ahead.

11 [The accused and his detailed defense counsel conferred.]

12 DDC: Sir, could we take a recess?

13 MJ: Yes. I'd say 10 minutes, but that's impossible. So do you  
14 want a 10-minute break?

15 DDC: Yes, sir.

16 MJ: Okay, we're going to take a short break and then we'll be  
17 back in.

18 Court's in recess.

19 [The session recessed at 0922 hours, 30 March 2007.]

20 [The session was called to order at 0951 hours, 30 March 2007.]

21 MJ: The commission will come to order. All parties present  
22 when we recessed are again present.

1           Mr. Hicks, before we talk more about the pretrial agreement  
2 I just want to revisit the factual allegations that we talked about a  
3 moment ago with regard to the allegations in The Specification. Many  
4 of the factual allegations contained facts about your personal  
5 actions, decisions, and knowledge and then we talked about the  
6 evidence that you reviewed. I also wanted to ask, with regard to the  
7 facts having to do with your personal actions, are those allegations  
8 also consistent with your own recollection about what you did?

9           ACC: Yes, sir.

10          MJ: Alright, now I'm turning to the pretrial agreement. Mr.  
11 Hicks, as a general rule in a pretrial agreement you agree to enter  
12 pleas of guilty to some or all of the charges in a case and in return  
13 the convening authority agrees to approve and order executed no  
14 sentence greater than that set forth in the sentence limitation  
15 portion of your agreement.

16                 Do you understand that?

17           ACC: Yes, sir.

18          MJ: The law requires that I discuss the conditions of your  
19 pretrial agreement with you.

20          MJ: Trial counsel and defense counsel, as we go along I will  
21 also be asking you if you agree with my interpretations of the  
22 various provisions.

23                 Do you understand that?



1 PROS: Yes, sir.

2 DDC: Yes, sir.

3 MJ: Lieutenant Colonel [REDACTED], with regard to your  
4 responses, may I correctly understand that in this discussion of the  
5 pretrial agreement and the provisions therein, you are also speaking  
6 on behalf of the convening authority and binding her?

7 PROS: That's correct, Your Honor.

8 MJ: As I noted, I'll be referring to the pretrial agreement  
9 contained in Appellate Exhibit 27 and also referring to what's  
10 referred to in the Appellate Exhibit 30 as the military judge's  
11 marked up version of the pretrial agreement.

12 Mr. Hicks, I'm going to go through this essentially  
13 paragraph by paragraph.

14 Paragraph 1 states that you are presently the accused under  
15 a military commission charge that was sworn on February 2, 2007, and  
16 referred to trial on March 1, 2007. It states here that you've read  
17 The Charge and specifications against you and they have been  
18 explained to you by your detailed defense counsel, Major Michael D.  
19 Mori, and by civilian defense counsel, Mr. Joshua Dratel.

20 Now I'll note that Mr. Dratel is referred to several times  
21 in here and as we've discussed before this was apparently agreed to  
22 and signed before our hearing the other day. Are you still satisfied  
23 with this pretrial agreement and do you still wish to go forward with

1 it despite the fact that Mr. Dratel has not entered a notice of  
2 appearance and is not representing you here today?

3 ACC: Yes, sir.

4 MJ: Okay, it states in here that you understand The Charge and  
5 specifications and that you are aware that you have a legal right to  
6 plead not guilty and to leave upon the United States the burden of  
7 proving you're guilty beyond a reasonable doubt and by competent  
8 evidence. It states here that understanding the things I've just  
9 said and the conditions that we're going to talk about here below and  
10 in consideration for -- that means in exchange for -- the convening  
11 authority's agreement to approve a sentence in accordance with the  
12 limitations that are set forth in Appendix A which is the sentence  
13 limitation portion of the agreement or the last two pages; that you  
14 offer to plead as follows, and then it says to Specification 1 of The  
15 Charge and to The Charge, guilty.

16 Now as it turns out we modified the plea here to be to The  
17 Specification, guilty with exceptions and substitutions and to The  
18 Charge, guilty.

19 Does the government agree that the accused is in compliance  
20 with the terms written here with that plea with exceptions and  
21 substitutions?

22 PROS: Yes, sir.

1 MJ: Then it goes on to say that you understand that this offer  
2 when accepted by the convening authority will constitute a binding  
3 agreement and that you assert that you are in fact guilty of the  
4 offense to which you are pleading guilty and that you understand that  
5 this agreement absolves the United States of its obligation to  
6 present any evidence in court to prove your guilt and that you are  
7 offering to plead guilty freely and voluntarily because you are  
8 guilty and because it would be in your best interest that the  
9 convening authority grant you the relief set forth in Appendix A.  
10 That you understand that you waive your right to avoid self-  
11 incrimination insofar as the plea of guilty will incriminate you.

12 Do you understand all those things we just talked about  
13 there?

14 ACC: Yes, sir.

15 MJ: And that essentially reviews some of the things we talked  
16 about previously, right?

17 ACC: Sorry?

18 MJ: That reviews some of the things that we talked about  
19 earlier today as far as the rights you had and your waiver of those  
20 rights?

21 ACC: Yes.

22 MJ: Now in this term I note in the military judge's markup in  
23 Appellate Exhibit 30 that the preceding paragraph used the term

1 "binding agreement." It was indicated to me during our conferences  
2 that the parties both agree that that term did not in any way  
3 abrogate Mr. Hicks' right to withdraw from his guilty plea at any  
4 time prior to the announcement of sentence and that being in  
5 accordance with the rules set forth in Rule for Military Commission  
6 910(h).

7           So, Mr. Hicks, do you understand that you can withdraw your  
8 guilty plea at any time until sentence is announced in this case and  
9 that is still true despite the fact that we have this agreement here  
10 in place.

11           Do you understand that?

12           ACC: Yes, sir.

13           MJ: The next term talks about upon acceptance of the offer by  
14 the convening authority, Mr. Hicks, you agree in here that you will  
15 enter into a reasonable stipulation of fact with the United States to  
16 support the element of the offenses to which you are pleading guilty.  
17 We noted that it uses the word "offenses" and the parties agreed  
18 during our conference that that was just a typo and should have been  
19 referring to the "offense."

20           Now with regard to the stipulation of fact we've already  
21 discussed and entered into evidence Prosecution Exhibit 1 which is a  
22 stipulation of fact. Does the government concur that that

1 stipulation of fact satisfies Mr. Hicks' requirements under this  
2 agreement to enter into a stipulation of fact?

3 PROS: Yes, sir.

4 MJ: Okay the next paragraph -- now I'm at paragraph 2b.

5 Mr. Hicks, you say in here that you agree that you will not  
6 communicate with the media in any way regarding the illegal conduct  
7 alleged in The Charge and specifications, plural, or about the  
8 circumstances surrounding your capture and detention as an unlawful  
9 enemy combatant for a period of 1 year. It says in here that you  
10 agree that this includes any direct or indirect communication made by  
11 you, your family members, your assigns, or any third party made on my  
12 behalf.

13 In our conferences we clarified that the parties intended  
14 at the time this was signed that that period of 1 year discussed in  
15 here was intended to commence upon the date that sentence is  
16 announced. Additionally, the parties agreed to strike the following  
17 language from the term there: "my family members, my assigns, or any  
18 other third party made on my behalf." So that paragraph b now, the  
19 last sentence as I understand it would read, "I agree that this  
20 includes any direct or indirect communications made by me."

21 Do you understand that, Mr. Hicks?

22 ACC: Yes, sir.

1 MJ: And when I ask as we go along here "do you understand," if  
2 you have any questions or are unsure about any provision here, I'd  
3 like you to say, "I need to talk with my lawyer about that," and then  
4 we can talk about it some more. But if you are saying you understand  
5 it, then I'm not going to question you much more about that.

6 ACC: Okay.

7 MJ: Alright, paragraph 2c, it says here that you agree that as  
8 a material term of this agreement you will cooperate fully,  
9 completely, and truthfully in post-trial briefings and interviews as  
10 directed by competent United States or Australian law enforcement and  
11 intelligence authorities. You agree in here to provide truthful,  
12 complete, and accurate information; and if necessary, truthful,  
13 complete, and accurate testimony under oath at any grand juries,  
14 trials or other proceedings, including military commissions and  
15 international tribunals. You understand that if you testify  
16 untruthfully in any way that you could be prosecuted for perjury.

17 It says here you further agree to provide all information  
18 concerning your knowledge of, and participation in al Qaeda, Lashkar-  
19 e Tayyiba -- or LET which we referred to earlier -- or any other  
20 similar organizations. You agree that you will not falsely implicate  
21 any person or entity, and that you will not protect any person or  
22 entity through false information or omission.

1           In our conference the parties agreed that in an initial  
2 determination with regard to compliance with this term in the  
3 preceding paragraph would be made by the convening authority.

4           Mr. Hicks, do you understand that term?

5           ACC: Yes, I do.

6           MJ: The term talks about "cooperation" and that's the sort of  
7 term that whether someone cooperates or not that's the sort of thing  
8 that somebody might disagree with about afterwards.

9           Do you understand that?

10          ACC: Yes.

11          MJ: We certainly hope that doesn't happen, but I just mention  
12 that -- and I'm talking about disagreement about cooperation, that's  
13 what I'm hoping doesn't happen -- but I just mention that with regard  
14 to whether there is compliance or not, the initial decision in that  
15 belongs to the convening authority and then after that point that  
16 would have to be worked out there.

17          Do you understand that?

18          ACC: Yes, I do.

19          MJ: Some terms it's very clear whether it's complied with or  
20 not. The stipulation of fact, for example; it was entered, it was  
21 signed, the government's already said that term is done. A term like  
22 this talks about something in the future and I just want to alert you

1 this is the kind of term that sometimes there can be a disagreement  
2 about whether you cooperated or not.

3 Do you understand that?

4 ACC: Yes, sir, I do.

5 MJ: It's not an unusual term for a pretrial agreement, I just  
6 want to point out to you that it's not the same where "yes, he  
7 definitely this or he definitely did that," alright?

8 Do you understand that?

9 ACC: Yes.

10 MJ: And have you talked about that with your lawyer?

11 ACC: Yes, I have.

12 MJ: Alright. Okay, in paragraph 2d it states here, you hereby  
13 assign to the government of Australia any profits or proceeds which  
14 you may be entitled to receive in connection with any publication or  
15 dissemination of information relating to the illegal conduct alleged  
16 in the charge sheet. This assignment shall include any profits or  
17 proceeds for your benefit, regardless of whether such profits and  
18 proceeds are payable to me -- that's you -- or to others directly or  
19 indirectly for your benefit or for the benefit of your associates or  
20 a current or future member of your family.

21 You're representing in here that you have not previously  
22 assigned, and you agree that you will not circumvent this assignment  
23 to the government of Australia by assigning the rights to your story



1 to an associate or to a current or future member of your family, or  
2 to another person or entity that would provide some financial benefit  
3 to you, to your associates, or to a current or future member of your  
4 family. It states here that moreover, you will not circumvent this  
5 assignment by communicating with an associate or a family member for  
6 the purpose of assisting or facilitating his or her profiting from a  
7 public dissemination, whether or not such an associate or other  
8 family member is personally or directly involved in such  
9 dissemination.

10 In this agreement you agree that this assignment is  
11 enforceable through the Australian Proceeds Act of 2002, and any  
12 other applicable provision of law that would further the purpose of  
13 this paragraph's prohibition of personal enrichment for yourself, for  
14 your family, your heirs or assigns through any publication or  
15 dissemination of qualifying information, and that you acknowledge  
16 that your representations herein are material terms of this  
17 agreement.

18 And the parties in here agree that the preceding paragraph  
19 is intended to provide a basis for civil action rather than amounting  
20 to a provision the violation of which would support vacation of a  
21 portion of this sentence that might be suspended pursuant to the  
22 terms in this agreement. The parties also concurred that the term  
23 "illegal conduct alleged" as used in this preceding paragraph

1 includes all the matters on the charge sheet to which were referred  
2 to the commission for trial and is not just limited to the matters  
3 contained in Specification 1 of The Charge.

4 Mr. Hicks, do you understand that term in the pretrial  
5 agreement?

6 ACC: Yes, I do.

7 MJ: Okay, paragraph 3 states here you are satisfied with your  
8 detailed defense counsel, Major Mori, and again here it references  
9 here civilian defense counsel, Mr. Dratel, who have advised you with  
10 respect to this offer and that you consider them competent to  
11 represent you in this military commission and agree that they have  
12 provided you with effective assistance of counsel.

13 Do you understand that term?

14 ACC: Yes, I do.

15 MJ: It states here that no person or persons have made any  
16 attempt to force or coerce you into making this offer or to plead  
17 guilty. And that it's done as a matter of a free decision on your  
18 part with full knowledge of its meaning and effect.

19 Is that also correct?

20 ACC: Yes, sir.

21 MJ: It states here also that you're agreeing that your counsel  
22 have advised you of the nature of The Charge and specifications  
23 against you, the possibility of your defending against them, any

1 defense that might apply, and the effect of the guilty plea that you  
2 are offering to make. It says here that you fully understand the  
3 advice of these defense counsel and the meaning and effect of the  
4 consequences of this plea.

5 Is that all true?

6 ACC: Yes, sir.

7 MJ: Do you understand all of that?

8 ACC: Yes, sir.

9 MJ: Then paragraph d there says that you understand that the  
10 signature of the convening authority to this offer and Appendix A, or  
11 any other modified version of Appendix A -- and I'm not aware of any  
12 other modified version of Appendix A -- will transform the agreement  
13 into a binding agreement between you and the United States.

14 In the markup there I have restated what I said before  
15 about the "binding agreement." It does not change the fact that you  
16 can still seek to withdraw from your guilty plea at any time until  
17 sentence is announced.

18 Do you understand that?

19 ACC: Yes.

20 MJ: Okay, paragraph 3e states that you understand that the  
21 convening authority can withdraw from this agreement and that the  
22 agreement will become null and void which means have no effect, in  
23 the event that you fail to plead guilty as required by this agreement

1 -- and you've already done that -- the commission refuses to accept  
2 your plea of guilty to any charge. And when it says "commission"  
3 there, the parties agree that that term more properly refers to the  
4 military judge since that's part of my role as opposed to the  
5 commission members who would do the determination of sentence. Or if  
6 the commission, and more correctly the military judge, sets aside  
7 your plea of guilty for whatever reason, including upon your later  
8 request before sentence is announced. Or if you fail to satisfy any  
9 material obligation of this agreement or if it's determined that  
10 you've misrepresented any material term of this agreement.

11           In our discussion in the 802 the parties agree that the  
12 standard understanding is in place that the parties agree that  
13 determination with regard to initial compliance with the terms of  
14 this agreement as mentioned in these preceding paragraphs will be  
15 made by the military judge prior to the entry of sentence in this  
16 case and thereafter by the convening authority.

17           Then there's another term there which states that it could  
18 become null and void and that's if you fail to agree -- if the  
19 parties fail to agree to a satisfactory stipulation of fact and as  
20 we've mentioned, that's already been accomplished in this case.

21           Do you understand all of those circumstances in which the  
22 convening authority could withdraw from this agreement?

23           ACC: Yes, sir.

1 MJ: The next paragraph describes that you you'll understand and  
2 agree that if the agreement does become null and void for any reason,  
3 your offer to plead guilty and your offer for this pretrial agreement  
4 cannot be used against you in any way at any time to establish your  
5 guilt of The Charge alleged against you, but that the United States  
6 may prosecute The Charge and specifications alleged against you, and  
7 the limitations then that are set forth in Appendix A as far as  
8 sentence limitations would be of no effect.

9 Do you understand that?

10 ACC: Yes, sir.

11 MJ: And the parties agree that with regard to the use of the  
12 offer by the accused and the statements in the providence inquiry and  
13 the stipulation of fact, the parties agreed the preceding paragraph  
14 is intended to be read in a manner consistent with provisions that  
15 address those matters in Military Commission Rule of Evidence 410.

16 Paragraph 3g provides that you understand and agree that  
17 your failure -- and that really should be "any failure by you" to  
18 fully cooperate with the Australian or United States authorities may  
19 delay your release from confinement or custody under applicable  
20 provisions of Australian law.

21 The parties agreed that with regard to this term, it would  
22 be a representative of the Australian government that would make any

1 determination associated with Mr. Hicks' compliance with the terms of  
2 this preceding paragraph.

3 Do you understand that, Mr. Hicks?

4 ACC: Yes.

5 MJ: Okay, there's a statement in here that as part of this  
6 pretrial agreement you are acknowledging and agree that you are an  
7 alien unlawful enemy combatant as defined by the Military Commissions  
8 Act of 2006, Title 10 United States Code Section 948c.

9 In our conference the parties agreed that the words and  
10 figures herein "948c" in the preceding paragraph are incorrect  
11 because in actuality that section refers to definitions that are  
12 contained elsewhere and the more correct statement there would be,  
13 "Section 948a parts 1 and 3." The parties concurred that was an  
14 administrative oversight, but the intent by the parties was the same  
15 at the initial signing of this agreement.

16 Have you talked about that term with your counsel as well,  
17 Mr. Hicks?

18 ACC: Yes, I have.

19 MJ: Do you understand it?

20 ACC: Yes, I do.

21 MJ: Paragraph 3i includes as part of this pretrial agreement an  
22 agreement by you that you have never been illegally treated by any  
23 person or persons while in the custody and control of the United

1 States. This includes the period after your capture and transfer to  
2 the United States custody in Afghanistan in December 2001, through  
3 the entire period of your detention by the United States at  
4 Guantanamo Bay, Cuba. And that you agree that this agreement puts to  
5 rest any claims of mistreatment by the United States.

6 In our conferences the parties agreed that the term  
7 "illegally treated" in the preceding paragraph was intended to be  
8 interpreted consistently with the definition of illegal treatment  
9 contained in paragraph 50 of the stipulation of fact which is  
10 Prosecution Exhibit 1. The parties also agreed in conference that  
11 the preceding paragraph was intended to reflect a statement by Mr.  
12 Hicks concerning his belief in the truth of this statement with  
13 regards to the time period from on or about the 15th of December  
14 2001, until the date of trial. The parties also agreed to strike the  
15 following language from the preceding paragraph, that part about "I  
16 agree that this agreement puts to rest any claims of mistreatment by  
17 the United States" and that paragraph was deleted from the preceding  
18 paragraph because it is more fully addressed in paragraph 5 below.

19 Now have you talked about that term with your counsel as  
20 well, Mr. Hicks?

21 ACC: Yes, I have.

22 MJ: Okay, and do you agree with that term as well?

23 ACC: Yes, sir.

1 MJ: Okay, paragraph 3j states that you agree and understand  
2 that the entire period of detention as an unlawful enemy combatant is  
3 based upon your capture during armed conflict and has been lawful  
4 pursuant to the law of armed conflict and is not associated with, or  
5 in anticipation of, any criminal proceedings against you.

6 In our conference the parties agreed that the intent of the  
7 preceding paragraph reflects an acknowledgement by the defense and  
8 the prosecution and the convening authority that the accused will not  
9 be afforded any pretrial confinement credit to be counted against any  
10 sentence to confinement adjudged by this military commission.

11 Have you talked about that with your defense counsel, Mr.  
12 Hicks?

13 ACC: Yes, I have.

14 MJ: Okay, do you understand that?

15 ACC: Yes, sir.

16 MJ: In paragraph 4 it states that in exchange for the  
17 undertakings made by the United States in entering this pretrial  
18 agreement you voluntarily and expressly waive all rights to appeal or  
19 collaterally attack your conviction, sentence, or other matters  
20 relating to this prosecution whether such a right to appeal or  
21 collateral attack arises under the Military Commissions Act of 2006,  
22 or any other provision of United States or Australian law. In  
23 addition herein it states that you voluntarily and expressly agree



1 not to make, participate in, or support any claim, and not to  
2 undertake or participate in, or support any litigation, in any forum  
3 against the United States or any of its officials whether uniformed  
4 or civilian in their personal or official capacities with regard to  
5 your capture, treatment, detention, or prosecution.

6 In our conference the parties agree that this preceding  
7 paragraph is intended to be read in a matter consistent with Rule for  
8 Military Commission 1110 such that the accused agrees to waive  
9 appellate review of his conviction in this case at the earliest time  
10 allowed under that rule which would be immediately after the time  
11 sentence is announced in this case.

12 Have you talked about that provision with your counsel as  
13 well, Mr. Hicks?

14 ACC: Yes, I have.

15 MJ: Do you understand and agree to that?

16 ACC: Yes, sir.

17 PROS: Your Honor, may I be heard?

18 MJ: Yes.

19 PROS: The government requests, Your Honor, to note the parties  
20 understanding that that provision also applies with the legal affect  
21 of voluntary and express waiver to any habeas past, present, and  
22 future and that the accused would be actually removed from a party of  
23 any habeas case in light of that provision.

1 MJ: Is that also the understanding of defense?

2 DDC: Yes, sir.

3 MJ: Is that also your understanding, Mr. Hicks?

4 ACC: Yes, sir.

5 MJ: Have you talked about that with your counsel?

6 ACC: Yes, sir.

7 MJ: Do you need any more time to talk about that with your  
8 counsel?

9 ACC: No, no, I understand.

10 MJ: Okay, we're good to go with that one?

11 ACC: Yes, sir.

12 MJ: Paragraph 5 it says that you agree that for the remainder  
13 of your natural life, should the government of the United States  
14 determine that you've engaged in conduct proscribed -- which means  
15 prohibited -- by Sections 950q through w of Chapter 47A of Title 10  
16 United States Code -- and that's in the Military Commissions Act --  
17 after the date of the signing of this pretrial agreement, the  
18 government of the United States may immediately invoke any right it  
19 has at that time to capture and detain you, outside the nation of  
20 Australia and its territories, as an unlawful enemy combatant.

21 It also states that if you engage in conduct proscribed by  
22 Sections 950q through w of Chapter 47A of Title 10 of the United  
23 States Code after the date of the signing of this pretrial agreement

1 and during the period in which any part of your sentence is suspended  
2 pursuant to the terms of the Appendix to this agreement, the  
3 convening authority may vacate any period of suspension agreed to in  
4 this pretrial agreement or as otherwise approved by the convening  
5 authority and the previously suspended portion of the sentence could  
6 be imposed upon you. Finally, it states in that paragraph that this  
7 pretrial agreement resolves all charges against you under the  
8 Military Commissions Act of 2006 and United States law that may have  
9 occurred before the signing of this agreement.

10 So there's three sections of that paragraph. The first one  
11 talks about other offenses that might be committed by you under the  
12 Military Commissions Act in the future, that the United States  
13 government would have the authority to prosecute you for those  
14 offenses. The second section talks about how future violations of  
15 the Military Commissions Act, if they occur during a period of time  
16 in which some of the sentence that might be adjudged by this  
17 commission are suspended could provide a basis to vacate or put back  
18 in place the suspended portion of the sentence.

19 Do you understand those two parts?

20 ACC: Yes, sir.

21 MJ: Continuing jurisdiction in the future for new offenses  
22 under the Military Commissions Act, that's one piece. The second  
23 piece is future offenses like that providing the basis for the United

1 States government to seek to vacate or put back in place any  
2 punishment that might be suspended pursuant to the terms of this  
3 agreement.

4 Do you understand those two things?

5 ACC: Yes, sir.

6 MJ: Then the third part speaks in the way of transactional  
7 immunity for you for offenses that have occurred before the signing  
8 of this agreement which is the 26th of March 2007, that might be  
9 chargeable under the M.C.A. or other portions of United States law.

10 Do you understand that?

11 ACC: Yes, sir.

12 MJ: Okay, have you talked about that with your counsel?

13 ACC: Yes, I have.

14 MJ: Major Mori, are you satisfied I've correctly characterized  
15 that paragraph?

16 DDC: Yes, sir.

17 MJ: Trial counsel, do you affirm that the convening authority  
18 has been authorized to agree to the transactional immunity provision  
19 that's contained in paragraph 5 of the agreement here?

20 PROS: Yes, Your Honor.

21 MJ: And that's authorization as required by Rule for Military  
22 Commissions 704(c). Is that right?

23 PROS: Correct, sir.

1 MJ: Okay. Paragraph 6 there says that this document along with  
2 Appendix A which we're going to talk about in a moment, includes all  
3 the terms of the pretrial agreement and that there are no other  
4 promises or inducements that have been made to you by the convening  
5 authority or any other person which have affected your offer to plead  
6 guilty or enter into this pretrial agreement.

7 Is that also correct?

8 ACC: Yes.

9 MJ: I realize that some of these questions I seem to ask you  
10 repeatedly, but that's just the way it works out.

11 So do you have any questions about any of the provisions in  
12 the first part of the pretrial agreement?

13 ACC: No, sir.

14 MJ: You understand all of them?

15 ACC: yes, sir.

16 MJ: Now we're going to review the provisions in Appendix A to  
17 the agreement which is the last two pages. I've already made some  
18 reference to that because in paragraph 1a it states that the first  
19 part of paragraph 1a states that the maximum confinement which can be  
20 adjudged by the military commission members and approved by the  
21 convening authority in this case is 7 years. Now I referred to that  
22 earlier because I told you that under the Manual for Military

1 Commissions the offense to which you've pleaded guilty which carries  
2 a maximum permissible punishment of confinement for life.

3 Do you understand that?

4 ACC: Yes, sir.

5 MJ: I told you that earlier, right?

6 ACC: Yes, sir.

7 MJ: It's part of the pretrial agreement, however, the convening  
8 authority has agreed that the maximum in this case here today that  
9 the members will be instructed about that they can provide -- or  
10 adjudge I should say -- is confinement for a period of 7 years.

11 Do you understand that?

12 ACC: Yes, sir.

13 MJ: In paragraph 1a the convening authority further agrees to  
14 suspend any confinement adjudged by the commission members which  
15 exceeds a certain period of time. That period of time is contained  
16 within the last two words of paragraph 1a. Without stating that  
17 period of time, do you see that provision that I'm talking about in  
18 paragraph 1a?

19 ACC: Yes, sir.

20 MJ: Have you talked about that with your counsel?

21 ACC: Yes, I have.

22 MJ: Again, without stating the period of time that's discussed  
23 there at the end of paragraph 1a, do you then understand that portion

1 of any adjudged confinement that will have to be suspended by the  
2 convening authority pursuant to paragraph 1a?

3 ACC: Yes, sir.

4 MJ: Now with regard to the duration of the period of  
5 suspension, with regard to any confinement that might be suspended  
6 pursuant to the terms of this agreement, both sides have advised me  
7 that the period of suspension that was intended by the parties at the  
8 time the agreement was signed is for a period of 7 years from the  
9 date the sentence is announced. That would be the period of time  
10 that the confinement would be suspended.

11 Do you understand that, Mr. Hicks?

12 ACC: I'll just read it, sir. [Reads the document.]

13 MJ: Okay.

14 ACC: Yes, sir.

15 MJ: Okay, because what it says in there, the maximum period of  
16 confinement that may be adjudged and approved is 7 years. Then it  
17 says that the convening authority agrees to suspend any portion of a  
18 sentence to confinement in excess of "blank" and we're not going to  
19 discuss that right now. When confinement is suspended that means if  
20 there's any confinement adjudged in excess of the time there at the  
21 end, that will be suspended. That means it won't be executed and it  
22 won't be served, but rather it will be held in suspension for a  
23 certain period of time as I indicated to the parties in our meetings,

1 the term did not specifically for how long the confinement would be  
2 suspended and that is a requirement in the law that there be a  
3 definite period of suspension.

4           During our conference both sides indicated to me that at  
5 the time this agreement was signed it was the intention of both  
6 parties that the period of suspension be for 7 years from the date  
7 sentence is announced after which time, unless sooner vacated -- that  
8 means put back in place because you violated some term of the  
9 agreement or committed some other act which we talked about -- that  
10 suspended period would be remitted or go away and no longer have an  
11 affect after a certain period of time and that is a 7 year period.

12           Do you understand that?

13           ACC: Yes.

14           MJ: And have you talked about that with Major Mori?

15           ACC: Yes, I have.

16           MJ: Is his explanation of that exactly the same as mine?

17           ACC: Yes.

18           MJ: Good.

19           Now with regard to the sentence that's adjudged we've  
20 indicated that if it's above a certain period of time anything above  
21 that period of time is going to be suspended for 7 years and then it  
22 will be remitted or go away unless vacated sooner, right?

23           ACC: Yes, sir.



1 MJ: Now, on the other hand, if the sentence adjudged by this  
2 commission is less than the one provided for in your agreement, do  
3 you also understand that the convening authority cannot increase the  
4 sentence adjudged?

5 ACC: Yes, sir.

6 MJ: In paragraph 1b of Appendix A it states that the convening  
7 authority agrees to dismiss Specification 2 of The Charge with  
8 prejudice, at or before the time of sentencing.

9 Do you understand that?

10 ACC: Yes, sir.

11 MJ: Okay, so the government has agreed that so long as this  
12 pretrial agreement goes forward to its conclusion that that second  
13 specification is not going to be prosecuted and is going to go away.

14 Do you understand that?

15 ACC: Yes.

16 MJ: In paragraph 1c the convening authority agrees that the  
17 military judge will instruct the members that the maximum sentence to  
18 confinement which they may adjudge is 7 years. We've already talked  
19 about that, right?

20 ACC: Yes, sir.

21 MJ: In paragraph 1d the convening authority agrees that the  
22 United States will transfer custody and control of you to the

1 government of Australia no later than 60 days after the sentence is  
2 announced.

3 Do you understand that?

4 ACC: Yes, sir.

5 MJ: In paragraph 1e you and the convening authority or the  
6 government make reciprocal promises and agreements. Prosecution  
7 agrees that it will not offer any evidence in aggravation under Rule  
8 for Military Commission 1001(c)(2) which is the rule governing  
9 evidence in aggravation, although both sides have agreed that this  
10 provision permits the stipulation of fact to be given to the members  
11 for their consideration and use on sentencing.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: The defense has agreed and that is you too have agreed not  
15 to present any evidence in mitigation under R.M.C. 1001(c)(1)(B).

16 Do you understand that?

17 ACC: Yes, sir.

18 MJ: That's the rule that provides you with the right to  
19 represent such matters in extenuation in the defense.

20 Do you understand that?

21 ACC: Yes, sir.

22 MJ: Here you're essentially waiving that right.

1 Do you understand that?

2 ACC: Yes, sir.

3 MJ: The parties also agree that this preceding paragraph was  
4 intended at the time the agreement was signed to include an agreement  
5 by the defense not to offer evidence in extenuation either. So the  
6 rights that you have to present evidence on sentencing extend to  
7 extenuation and mitigation. The pretrial agreement discussed not  
8 providing mitigation, but the parties have advised me that the  
9 intention there was for there to be a waiver of the right to present  
10 evidence in extenuation and mitigation.

11 Do you understand that?

12 ACC: Yes, sir.

13 MJ: Have you talked about what both of those terms mean with  
14 your defense counsel?

15 ACC: Yes, I have, sir.

16 MJ: Regardless of the language in here, the provision as  
17 specifically provides that you may make an unsworn statement during  
18 the sentencing proceedings here in accordance with Rule for Military  
19 Commission 1001(c)(2)(C).

20 Do you understand that?

21 ACC: Yes, sir.

22 MJ: Both sides indicated to me that they agreed with my  
23 interpretation that as there is no specific statement in the

1 agreement concerning this matter, the prosecution may under Rule for  
2 Military Commission 1001(c)(2)(C) present evidence to rebut any  
3 statement of fact contained in your unsworn statement.

4 Do you understand that?

5 ACC: Yes, sir.

6 MJ: Mr. Hicks, with regard to all the things I've said about  
7 the pretrial agreement from start to finish, is that a correct  
8 statement of what you understand you and the convening authority have  
9 agreed to?

10 ACC: Yes, sir.

11 MJ: Have you had enough time to discuss your agreement with  
12 your defense counsel?

13 ACC: Yes, I have.

14 MJ: Are you satisfied with your defense counsel's advice  
15 concerning this pretrial agreement?

16 ACC: Yes.

17 MJ: Did you enter this agreement of your own free will?

18 ACC: Yes.

19 MJ: Has anyone tried to force you into making this pretrial  
20 agreement?

21 ACC: No.