

7. The escort/bailiff will pick you up and drive you to your meals in accordance with a schedule to be determined later. The uniform for service during any trial session is as follows:

Army: Class B
Navy: Summer White
Marine Corps: Summer Service C
Air Force: Class B

V/R,

Colonel, U.S. Marine Corps
Military Judge

OMC

From: LTC OMC
Sent: Tuesday, March 27, 2007 3:34 PM
To:
Cc:

Subject: FW: Initial Members Order

Attachments: Initial Members Order.pdf



Initial Members
Order.pdf (20 ...

Mr. ,

Pursuant to 's request, please forward this email and the attachment to the Military Commission Members. (Also, please CC me.) Thank you.

--
USAR, JA
Senior Attorney Advisor
Military Commissions Trial Judiciary

-----Original Message-----

From: USSOUTHCOM JTFGTMO
Sent: Tuesday, March 27, 2007 3:28 PM
To: LTC OMC
Subject: FW: Inital Members Order

Please have the Initial Members Instruction sent to the Members.

OMC

From: USSOUTHCOM JTFGTMO
Sent: Tuesday, March 27, 2007 3:17 PM
To:
Cc:

Subject: RE: HICKS DEFENSE COMMENTS RE: Member Instructions

-- sir,

1. Prosecution objects to Defense request in paragraphs 1 and 2, on the basis that the present captioned case is relevant now because the case will be identified to the members. Knowing now may help members better avoid outside information. As for the removal of any "a/k/a" this has been the case caption for all filings, to date. Moreover, each "a/k/a" is included in Specification 1 of the Charge, to which the CA referred and the accused pled guilty (without any exceptions or substitutions).

V/r-- LtCol

, LtCol, U.S. Marine Corps Prosecutor, Office of Military Commissions

-----Original Message-----

From: Mori, Michael D. MAJ OMC
Sent: Tuesday, March 27, 2007 2:57 PM
To:

Subject: HICKS DEFENSE COMMENTS RE: Member Instructions

Sir

1. The defense would ask that Mr. Hicks not be identified to the members yet. The instructions are written in some areas as to not single out a particular case, such as in the introductory paragraph: "detailed to be members on a Military Commission concerning the trial of certain individuals now being detained at US Naval Station." And the defense requests that all the instructions be non-case specific.

2. Should the military Judge believe it is best to identify Mr. Hicks in the instructions, the defense would ask that the AKAs be removed. The AKAs are not relevant to these initial instructions and could be matters in dispute. Instructions from the Military Judge with the AKAs included places the weight of the Military Judge's position in support of the truthfulness of the AKAs.

3. In paragraph 1 and its sub-paragraphs, the defense would request a direct instruction to avoid all new media. The current language focuses the members to avoid media regarding this case. As the defense explained above in paragraph (1), it is requested that the instructions be non-case specific and with the short window of time involved, an instruction to avoid all news media would be the best course of action. Once a member hears a news report and figures out it is about the Hicks case, it is too late.

4. In paragraph 6, only the Defense is mentioned. I would ask that

"prosecution area" also be added.

v/r
Maj Mori

-----Original Message-----

From: LTC OMC
Sent: Tuesday, March 27, 2007 2:10 PM
To:

Subject: Member Instructions

intends to send the attached Order to the members. Please let me know via reply ASAP, but NLT 1530, if you have any objection. Thanks

USAR, JA
Senior Attorney Advisor
Military Commissions Trial Judiciary

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"

Member Instructions

27 March 2007

Instructions for Military Commission Members

I am _____, the Military Judge in this case. You have been detailed to be members on a Military Commission concerning the trial of certain individuals now being detained at US Naval Station, Guantanamo Bay, Cuba (GOMO). You are directed to read the contents of this Order immediately and adhere to the requirements contained herein.

1. Due to the publicity which these cases may have already received, and recognizing the probability of further publicity, each of you is instructed as follows:

a. Your determination as matters given to you to decide must be based solely upon the matters you receive in court and the law as I will instruct you. Thus, it is important that you keep an open mind and not form or express any opinions on the case until all of the evidence and the applicable law has been presented to you.

b. A trial by Military Commission includes the determination of the ability of each member to sit as a member. As a prospective member, you may be questioned in open session by counsel for either side or by me to determine whether or not you should serve. You may also receive a questionnaire and other documents from me to prepare prior to trial.

c. Due to the previous publicity about this case and the probability of further publicity, you are instructed that you must not listen to, look at, or read any accounts of alleged incidents involving these cases. You may not consult any source, written or otherwise, as to matters involved in such alleged incidents. You may not listen to, look at, or read any accounts of any proceedings in these cases. You may not discuss these cases with anyone, and if anyone attempts to discuss these cases with you, you must forbid them to do so and report the occurrence to me. You may not discuss, other than as required to inform your military superiors of your duty status, your detail to this Commission as a prospective member with anyone.

2. Your duty as a potential Commission member will not begin before Friday morning, 30 March 2007, at the earliest. The necessary logistical arrangements to bring members of the Commission, the prosecution, the defense, the prosecution, and support personnel to (GTMO) may bring them into close proximity while traveling to Guantanamo and in-processing there. Until such time as you are advised by me that you may discuss matters involved in this case, you may not discuss with anyone – not even among yourselves – anything about the Commission trials or the cases that may come before it.

3. After you arrive at GTMO, there will be in-processing and you will be taken to your billets. An assigned escort or bailiff will be your driver. You will be given all necessary information regarding meals, etc. On your free time, you may use or visit the NEX, the varied eating establishments, and the available fitness and MWR activities.

4. Do not at any time visit or attempt to visit any of the detainee areas. The escort/bailiff has been instructed not to take you in the area where those facilities are located. Should you see members of the media, avoid them. If approached by the media, walk away and do not even listen to questions they may ask. If confronted by the media, refuse to speak to them and refer them to a Public Affairs representative. The same rules apply to official Public Affairs representatives, except that they should be referred to me or my staff.

5. Members of my staff include

They are responsible to me for making logistical and administrative arrangements. The Commission will also be assigned a bailiff. My staff and the bailiff will work with you on strictly administrative and logistical matters. Because members of my staff and the bailiff are not members of the Commission, you must strictly observe the following rules:

a. You may not discuss any case, or the evidence offered in any case, with my staff or the bailiff.

b. You may not discuss any case, or the evidence offered in any case, in the presence of the bailiff or my staff.

c. You may not seek from, or express an opinion to, my staff or the bailiff concerning any case or the evidence offered in a case at any time.

b. Neither the bailiff nor my staff may enter the deliberation room when closed sessions are in progress. The exception to this rule is that either members of my staff or the bailiff may need to enter the deliberation room during a closed session on an administrative mission – such as to provide paper and pens. In such a case, they will knock at the deliberation room door and announce their presence. Before being allowed to enter, all discussions must stop.

6. Be cautious about any contact you have with members of the prosecution, defense, security personnel, or the administrative staff of any office as any such contact could be

misinterpreted. Do not go into the defense area or upstairs in the Commissions building. If you are outside the Commissions building and you see any detainee or detainee security personnel, immediately return to the building. The best advice I can give you is to stay together as a group or by yourself while at GTMO and do not think about or discuss the Commission or any of the cases until instructed you may do so.

7. The escort/bailiff will pick you up and drive you to your meals in accordance with a schedule to be determined later. The uniform for service during any trial session is as follows.

Army: Class B
Navy: Summer White
Marine Corps: Summer Service C
Air Force: Class B

V/R,

Colonel, U.S. Marine Corps
Military Judge

OMC

From: LTC OMC
Sent: Thursday, March 29, 2007 11:14 AM
To:
Cc:

Subject: Member Questionnaire

Attachments: Member Questionnaire.pdf; Member Quest Cont Sheet.pdf



Member Questionnaire.pdf (231 KB)
Member Quest Cont Sheet.pdf (1... KB)
Mr. ,

Pursuant to Mr. 's request and our phone discussion, please have each Member complete the attached questionnaire at a proper time at Andrews AFB or on your flight to GTMO. If possible and secure, please fax to me before wheels up on your flight.

Thank you.

v/r,

USAR, JA
Senior Attorney Advisor
Military Commissions Trial Judiciary

MILITARY COMMISSIONS MEMBER QUESTIONNAIRE

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE AND PROVIDE TO MR.

THIS QUESTIONNAIRE MUST BE FILLED OUT BY EACH MEMBER.

YOU MAY NOT DISCUSS THE QUESTIONS OR YOUR ANSWERS WITH EACH OTHER, EITHER INDIVIDUALLY OR COLLECTIVELY.

MR. _____ IS NOT ALLOWED TO ANSWER ANY QUESTIONS REGARDING THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE, EXCEPT TO PROVIDE CONTINUATION SHEETS.

YOU MUST PLACE YOUR NAME ON THE BOTTOM OF EACH PAGE OF THE QUESTIONNAIRE.

IF YOU NEED ANY MORE PAPER TO COMPLETE YOUR ANSWERS, PLEASE ASK MR. MCCLLOUD.

YOU MAY NOT DISCUSS YOUR ANSWERS WITH ANYONE UNTIL YOU APPEAR IN COURT.

COUNSEL AND THE MILITARY JUDGE WILL USE THE QUESTIONNAIRE TO PREPARE FOR TRIAL AND A COPY WILL BE ATTACHED TO THE RECORD OF TRIAL.

1. Name _____ Grade _____ Date of Rank _____ Service _____

2. Active Duty Base Date _____ Date Current Tour Began _____ Years of Service _____

3. Military Awards / Decorations: _____

4. Current Duty Position: _____ Work Phone: _____

5. Unit: _____

6. Date of Birth _____ Gender _____ Race or Ethnic Origin _____ Marital Status _____

7. Age and gender of any children _____

8. Age, race, and occupation of spouse if married _____

9. Civilian Education: College / Vocational / Civilian Professional School / Civilian Post-Graduate:

Date graduated or dates attended (and number of years), school, location, degree/major: _____

10. Military Education. Dates attended, school/course title. _____

MILITARY COMMISSIONS MEMBER QUESTIONNAIRE

11. Duty Assignments. Last four assignments, units, and dates of assignments.

12. Have you ever sat as a member of a commission, a court-martial, a jury, or any other fact finding body capable of finding guilt or innocence and thereafter sentencing an individual to loss of liberty? What were the general natures of the charges for these cases (rape, murder, theft . . .)?

13. Have you or any close relative or friend ever had any legal or law enforcement training or experience? Explain:

14. Have you or a close relative or friend ever been the victim of any crime? Explain:

15. Have you or a close relative or friend ever been the witness to any crime? Explain:

16. Have you or a close relative or friend ever testified in any legal proceeding? Explain:

17. Have you or a close relative or friend ever been arrested for, accused of, or investigated for committing any crime? Explain:

18. Have you formed an opinion about the military commission system?

19. Do you believe that anything about your religious beliefs would make it difficult for you to sit in judgment of another person? Explain:

20. After you leave military service, what profession or job do you plan to pursue?

21. Do you believe you may be disqualified to sit as a commission member for any reason? Explain:

SIGNATURE OF MEMBER: _____ DATE: _____

Name: _____

MILITARY COMMISSIONS
MEMBER QUESTIONNAIRE
CONTINUATION SHEET

NAME: _____
PAGE ___ 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"

Member Instructions

30 March 2007

In announcing the sentence, the President should announce:

"David Matthew Hicks, this commission sentences you:

[NOTE: do not read the language in bold print]

~~NO PUNISHMENT~~

~~1. "To no punishment."~~

CONFINEMENT

2. "To be confined for SEVEN (7) (days) (months) (years)."

30 March 2007

Date

Note: Before the President reads the Sentencing Worksheet in open court, this worksheet will be handed to the Military Judge for inspection. Please ensure that you have circled all portions that are part of your sentencing and crossed out any portions that are not part of your sentencing. The president should sign and date the worksheet.

UNITED STATES)
)
 v.) **OFFER FOR A PRETRIAL**
) **AGREEMENT**
 DAVID MATTHEW HICKS) **Date: 26 March 2007**

1. I, David Matthew Hicks, am presently the accused under a military commissions charge that was sworn on February 2, 2007, and referred to trial on March 1, 2007. I have read the charge and specifications alleged against me, and they have been explained to me by my detailed military defense counsel, Major Michael D. Mori, and my civilian defense counsel, Mr. Joshua L. Dratel. I understand the charge and specifications, and am aware that I have a legal right to plead not guilty and to leave upon the United States the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence. Understanding the above and under the conditions set forth below, and in consideration of the Convening Authority's agreement to approve a sentence in accordance with the limitations set forth in Appendix A, I offer to plead as follows:

To Specification 1 of the Charge and the Charge: Guilty

I understand that this offer, when accepted by the Convening Authority, will constitute a binding agreement. I assert that I am, in fact guilty of the offense to which I am offering to plead guilty, and I understand that this agreement absolves the United States of its obligation to present any evidence in court to prove my guilt. I offer to plead guilty, freely and voluntarily, because I am guilty, and because it will be in my best interest that the Convening Authority grant me the relief set forth in Appendix A. I understand that I waive my right to avoid self-incrimination insofar as a plea of guilty will incriminate me.

2. Furthermore, upon acceptance of this offer by the Convening Authority:
- a. I agree that I will enter into a reasonable stipulation of fact with the United States to support the elements of the offenses to which I am pleading guilty.
 - b. I agree that I will not communicate with the media in any way regarding the illegal conduct alleged in the charge and the specifications or about the circumstances surrounding my capture and detention as an unlawful enemy combatant for a period of one (1) year. I agree that this includes any direct or indirect communication made by me, my family members, my assigns, or any other third party made on my behalf.

- c. I agree that as a material term of this agreement I 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. I agree to 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 commissions and international tribunals. I understand that if I testify untruthfully in any material way I can be prosecuted for perjury. I further agree to provide all information concerning my knowledge of, and participation in al Qaeda, Lashkar-e Tayyiba (LET), or any other similar organizations. I agree that I will not falsely implicate any person or entity, and I will not protect any person or entity through false information or omission.
- d. I hereby assign to the Government of Australia any profits or proceeds which I may be entitled to receive in connection with any publication or dissemination of information relating to the illegal conduct alleged in the charge sheet. This assignment shall include any profits and proceeds for my benefit, regardless of whether such profits and proceeds are payable to me or to others, directly or indirectly, for my benefit or for the benefit of my associates or a current or future member of my family. I hereby represent that I have not previously assigned, and I agree that I will not circumvent this assignment to the Government of Australia by assigning, the rights to my story to an associate or to a current or future member of my family, or to another person or entity that would provide some financial benefit to me, to my associates, or to a current or future member of my family. Moreover, I will not circumvent this assignment by communicating with an associate or a family member for the purpose of assisting or facilitating his or her profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination. I agree that this assignment is enforceable through the Australian Proceeds Act of 2002, and any other applicable provision of law that would further the purpose of this paragraph's prohibition of personal enrichment for myself, my family, or my heirs and assigns, through any publication or dissemination of qualifying information, and I acknowledge that my representations herein are material terms of this agreement.

3. In making this offer, I state that:

- a. I am satisfied with my detailed military defense counsel, Major Michael D. Mori, and my civilian defense counsel, Mr. Joshua L. Dratel, who have advised me with respect to this offer, and I consider them competent to represent me in this military commission and agree that they have provided me effective assistance of counsel.

- b. No person or persons have made any attempt to force or coerce me into making this offer or to plead guilty. This is a free and voluntary decision on my part made with full knowledge of its meaning and effect.
- c. My counsel have fully advised me of the nature of the charge and specifications against me, the possibility of my defending against them, any defense that might apply, and the effect of the guilty plea that I am offering to make. I fully understand the advice of my defense counsel and the meaning, effect, and consequences of this plea.
- d. I understand that the signature of the Convening Authority to this offer and to Appendix A, or to any modified version of Appendix A which I also sign, will transform this offer into an agreement binding upon me and the United States.
- e. I understand and agree that the Convening Authority can withdraw from this agreement and this agreement will become null and void, in the event that:
 - 1. I fail to plead guilty as required by this agreement;
 - 2. The commission refuses to accept my plea of guilty to any charge;
 - 3. The commission sets aside my plea of guilty for whatever reason, including upon my request, before sentence is announced; or
 - 4. I fail to satisfy any material obligation or term of this agreement, or I have misrepresented any material term of this agreement.
 - 5. I fail to agree to a satisfactory stipulation of fact with the prosecution related to the charge and specification to which I plead guilty.
- f. I understand and agree that, if this agreement becomes null and void for any reason, my offer for this plea agreement cannot be used against me in any way at any time to establish my guilt of the charge alleged against me, the United States may prosecute the charge and specifications alleged against me, and the limitations upon the disposition of my case set forth in Appendix A will have no effect.
- g. I understand and agree that my failure to fully cooperate with Australian or United States authorities may delay my release from confinement or custody under applicable provisions of Australian law.
- h. I acknowledge and agree that I am an alien unlawful enemy combatant, as defined by the Military Commissions Act of 2006, Title 10, United States Code, Section 948 (c).
- i. I have never been illegally treated by any person or persons while in the custody and control of the United States. This includes the period after my capture and transfer to U.S. custody in Afghanistan in December 2001, through the entire period of my detention by the

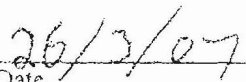
United States at Guantanamo Bay, Cuba. I agree that this agreement puts to rest any claims of mistreatment by the United States.

j. I further understand and agree that the entire period of detention as an unlawful enemy combatant is based upon my capture during armed conflict, has been lawful pursuant to the law of armed conflict and is not associated with, or in anticipation of, any criminal proceedings against me.

4. In exchange for the undertakings made by the United States in entering this Pretrial Agreement, I voluntarily and expressly waive all rights to appeal or collaterally attack my conviction, sentence, or any other matter relating to this prosecution whether such a right to appeal or collateral attack arises under the Military Commissions Act of 2006, or any other provision of United States or Australian law. In addition, I voluntarily and expressly agree not to make, participate in, or support any claim, and not to 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 my capture, treatment, detention, or prosecution.
5. I agree that for the remainder of my natural life, should the Government of the United States determine that I have engaged in conduct proscribed by Sections 950q. through w. of Chapter 47A of title 10, United States Code, after the date of the signing of this Pretrial Agreement, the Government of the United States may immediately invoke any right it has at that time to capture and detain me, outside the nation of Australia and its territories, as an unlawful enemy combatant. If I engage in conduct proscribed by Sections 950q. through w. of Chapter 47A of title 10, United States Code, after the date of the signing of this Pretrial Agreement and during the period in which any part of my sentence is suspended, the Convening Authority may vacate any period of suspension agreed to in this Pretrial Agreement or as otherwise approved by the Convening Authority and the previously suspended portion of my sentence could be imposed on me. This pretrial agreement resolves all charges against me under the Military Commissions Act of 2006 and United States law that may have occurred before the signing of this agreement.
6. This document and Appendix A include all of the terms of this Pretrial Agreement and no other promises or inducements have been made by the Convening Authority or any other person which affect my offer to plead guilty or enter into this Pretrial Agreement.

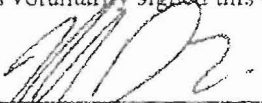


DAVID MATTHEW HICKS
Accused



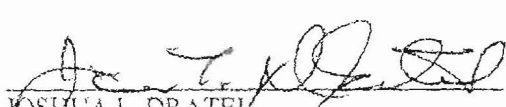
Date

We certify that we provided David Matthew Hicks the advice referred to above and explained to him the elements of the offenses to which he is pleading guilty, and that he has voluntarily signed this offer for pretrial agreement.



MICHAEL D. MORI, Major, USMC
Detailed Military Defense Counsel

26 MAR 07
Date



JOSHUA L. DRATEL
Civilian Defense Counsel

26 Mar. 07
Date

I recommend (acceptance) (~~rejection~~) of this offer.

, Colonel, USAF
Chief Prosecutor

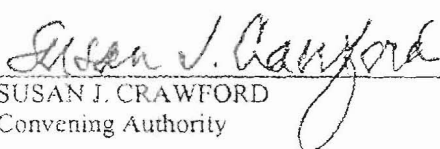
26 MAR 07
Date

I recommend (acceptance) (~~rejection~~) of this offer.

USAF
Legal Advisor to the Convening Authority

26 March 2007
Date

The foregoing instrument, including Appendix A., concerning David Matthew Hicks, dated March 26, 2007 is (approved and accepted) (~~(disapproved)~~) SJC
SJC



SUSAN J. CRAWFORD
Convening Authority

26 March 2007
Date

UNITED STATES)

v.)

DAVID MATTHEW HICKS)

)
)
) **APPENDIX A**
) **TO OFFER FOR A**
) **PRETRIAL AGREEMENT**
)

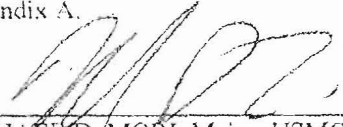
Date: 26 March 2007

1. As consideration for the offer of David Matthew Hicks (the "Accused") to plead guilty and his agreement to other terms and conditions as set forth in the Offer for A Pretrial Agreement, dated March 26, 2007, the Convening Authority will undertake as follows:
 - a. The maximum period of confinement that may be adjudged and approved is seven years. The Convening Authority agrees to suspend any portion of a sentence to confinement in excess of nine months.
 - b. The Convening Authority agrees to dismiss Specification 2 of the Charge with prejudice, at or before the time of sentencing.
 - c. The Military Judge will, in accordance with R.M.C. 1005(e) (5), instruct the commission members that the limits on their discretion, as pertains to a sentence to confinement, is as specified in a. above.
 - d. The Government of the United States will transfer custody and control of the Accused to the Government of Australia by not later than sixty (60) days from the date upon which the sentence is announced.
 - e. Upon signing of this agreement, the prosecution agrees not to present evidence in aggravation during the sentencing hearing and the defense agrees not to present evidence in mitigation. The accused may make an unsworn statement.
2. There are no limitations on the sentence other than that provided in paragraph 1, above.
3. This is original Appendix A submitted with the Offer for A Pretrial Agreement.

DMHicks
DAVID MATTHEW HICKS

26/3/07
Date

We certify that we gave David Matthew Hicks the advice referred to above and explained to him the meaning and effect of the foregoing, and he has voluntarily signed this Appendix A.



MICHAEL D. MORI, Major, USMC
Detached Military Defense Counsel

26 MAR 07
Date



JOSHUA L. DRATEL
Civilian Defense Counsel

26 Mar 07
Date

I recommend (acceptance) (~~rejection~~) of this Appendix A.

Colonel, USAF
Chief Prosecutor

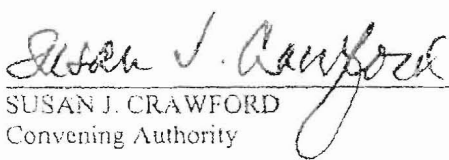
26 MAR 07
Date

I recommend (acceptance) (~~rejection~~) of this Appendix A.

USAF
Legal Advisor to the Convening Authority

26 March 2007
Date

The foregoing Appendix A is (approved) (~~(disapproved)~~) in conjunction with the pretrial agreement dated March 26, 2007.



SUSAN J. CRAWFORD
Convening Authority

26 March 2007
Date

CHARGE: VIOLATION OF SECTION AND TITLE OF CRIME IN SECTION
950v(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM

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 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.

1. 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.
2. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaeda.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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."

8. 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."
9. 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.
10. 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.
11. 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.
12. In or about January 2001, the accused 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.
13. Upon entering Afghanistan, the accused traveled to Kandahar where he stayed at an al Qaeda guest house and met associates or members of al Qaeda. While attending al Qaeda's training courses, the accused would use the *kunya*, or alias, "Abu Muslim Australia," "Abu Muslim Australi," "Abu Muslim Philippine," or "Muhammad Dawood;" and later was referred to as "David Michael Hicks."
14. The accused 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, the accused trained in weapons familiarization and firing, land mines, tactics, topography, small unit fire, maneuver tactics, field movements, and other areas.
15. In or about April 2001, the accused 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 and supplies to al Qaeda operatives.
16. While the accused trained at al Farouq, Usama bin Laden visited the camp on several occasions. During such visits, any weapons the trainees had were removed from them and they were seated as a group to hear bin Laden speak in Arabic. During one

visit, the accused asked bin Laden why there were no training materials provided in the English language.

17. After the accused 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. The accused was interviewed about: his background; knowledge of Usama bin Laden; al Qaeda; his ability to travel around the world, to include Israel. After this interview with Muhammed Atef, the accused attended al Qaeda's urban tactics training course at Tarnak Farm.
18. In or about June 2001, the accused traveled to Tarnak Farm and participated in the training in a mock city 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.
19. In or about August 2001, the accused participated in a four-week al Qaeda course on information collection and surveillance at an apartment in Kabul, Afghanistan. This surveillance training included weeks of: covert photography; use of dead drops; use of disguises; drawing diagrams depicting windows and doors; documenting persons coming and going to and from certain structures; 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. The course also included practical application where the accused and other student operatives conducted surveillance of various locations in Kabul, including the former American and British Embassy buildings. During this training, the accused personally conducted intelligence on the former American Embassy building.
20. After the surveillance course, the accused returned to Kandahar, where he received instruction from members of al Qaeda on the meaning of *jihad*. The accused 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.
21. On or about September 9, 2001, the accused traveled to Pakistan to visit a Pakistani friend. While at this friend's house, the accused watched television footage of the September 11, 2001 attacks on the United States, and the friend has said he interpreted the accused's gestures as approval of the attacks. The accused had no specific knowledge of the attacks in advance.
22. On or about September 12, 2001, the accused returned to Afghanistan to join with al Qaeda. The accused had heard reports that the attacks were conducted by al Qaeda and that America was blaming Usama bin Laden.
23. On or about the first of October, 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-- informed Mr. Hicks that he could go to three different locations to position himself with combat forces (city, mountain, or airport). Mr. Hicks chose to join a group of al Qaeda and Taliban fighters near the Kandahar Airport.

24. The accused traveled to the Kandahar Airport and was issued an Avtomat Kalashnikova 1947 (AK-47) automatic rifle. On his own, however, the accused armed himself with six (6) ammunition magazines, approximately 300 rounds of ammunition, and three (3) grenades to use in fighting the United States, Northern Alliance, and other Coalition forces.
25. On or about October 7, 2001, when the Coalition Forces initiated a bombing campaign at the start of Operation Enduring Freedom, the accused 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.
26. On or about October 10, 2001, after two nights of bombing, the accused was reassigned and joined an armed group outside the airport where he guarded a Taliban tank. For about the next week the accused guarded the Taliban tank, and every day received food, drink, and updates on what was happening from the fat al Qaeda leader in charge who was on a bicycle.
27. The accused heard radio reports that fighting was heavy at Mazar-e Sharif, that Kabul would be the next target, and that western countries, including the United States, had joined with the Northern Alliance.
28. The accused implemented the tactics that he had learned with al Qaeda and attempted to train 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, the accused decided to look for another opportunity to fight in Kabul.
29. On or about October 17, 2001, the accused told the fat al Qaeda leader of his plans, and then traveled to Kabul. The accused also took his weapon and all his ammunition.
30. The accused arrived in Kabul and met a friend from LET, who told the accused he was headed to the front lines in Konduz. The accused asked to travel with his LET friend.
31. On or about November 9, 2001, the accused 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 the accused 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, engaged in combat against Coalition forces. The accused spent two hours on the frontline before it collapsed and was forced to flee. During the retreat, the accused saw bullets flying and Northern Alliance tanks coming over the trenches.

32. The accused spent two to three days walking back to Konduz while being chased and fired upon by the Northern Alliance.
33. The accused made it safely back to the city of Konduz, where he approached some of the Arab fighters and asked about their plans. The Arab fighters said they were going to stay in Konduz in order to fight to the death. The accused, instead, decided to use his Australian passport to flee to Pakistan.
34. The accused then moved within Konduz to a *madafah*, an Arab safe house. The accused wrote a note for his LET associates that said not to come look for him because he was okay, and then ran away from the safe house. At this time the accused still had his weapon, and went to find a shopkeeper that he had met a few days earlier in the city market area. The shopkeeper took the accused to his home where he stayed for about three weeks. Later, the shopkeeper gave the accused some clothes and helped the accused sell his weapon so he could pay for a taxi to Pakistan.
35. In or about December 2001, one week after the control of Konduz changed from the Taliban to the Northern Alliance, the accused took a taxi and fled towards Pakistan. However, the accused was captured without any weapons by the Northern Alliance in Baghlan, Afghanistan.

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

CONVENING ORDER
NUMBER 07-03

29 March 2007

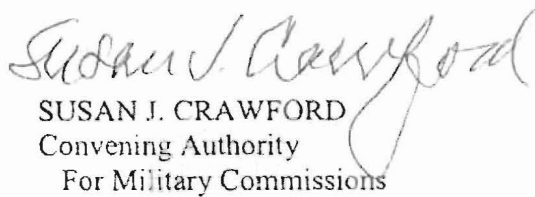
The officers listed below were detailed as members of the military commission convened by the undersigned Convening Authority by Convening Order 07-01, dated 1 March 2007.

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)

Appellate Exhibit 030 Military Judge Mark-Up of the Pretrial Agreement

UNITED STATES)	
)	
v.)	OFFER FOR A PRETRIAL
)	AGREEMENT
DAVID MATTHEW HICKS)	Date: _____

1. I, David Matthew Hicks, am presently the accused under a military commissions charge that was sworn on February 2, 2007, and referred to trial on March 1, 2007. I have read the charge and specifications alleged against me, and they have been explained to me by my detailed military defense counsel, Major Michael D. Mori, and my civilian defense counsel, Mr. Joshua L. Dratel. I understand the charge and specifications, and am aware that I have a legal right to plead not guilty and to leave upon the United States the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence. Understanding the above and under the conditions set forth below, and in consideration of the Convening Authority's agreement to approve a sentence in accordance with the limitations set forth in Appendix A, I offer to plead as follows:

To Specification 1 of the Charge and the Charge: Guilty

I understand that this offer, when accepted by the Convening Authority, will constitute a binding agreement. I assert that I am, in fact guilty of the offense to which I am offering to plead guilty, and I understand that this agreement absolves the United States of its obligation to present any evidence in court to prove my guilt. I offer to plead guilty, freely and voluntarily, because I am guilty, and because it will be in my best interest that the Convening Authority grant me the relief set forth in Appendix A. I understand that I waive my right to avoid self-incrimination insofar as a plea of guilty will incriminate me.

The preceding paragraph uses the term "binding agreement". The parties do not understand this term to abrogate Mr. Hick's right to seek to withdraw from his guilty plea any time prior to announcement of sentence IAW R.M.C. 910(h).

2. Furthermore, upon acceptance of this offer by the Convening Authority:
- a. I agree that I will enter into a reasonable stipulation of fact with the United States to support the elements of the offenses to which I am pleading guilty.

“Offenses” rather than “offense” in the preceding paragraph is agreed to be a typographical error.

- b. I agree that I will not communicate with the media in any way regarding the illegal conduct alleged in the charge and the specifications or about the circumstances surrounding my capture and detention as an unlawful enemy combatant for a period of one (1) year. I agree that this includes any direct or indirect communication made by me, my family members, my assigns, or any other third party made on my behalf.

The parties agree that the one year period discussed in the preceding paragraph was intended to commence upon the date sentence is announced.

The parties agree to strike the following language in the preceding paragraph: “, my family members, my assigns, or any other third party made on my behalf”.

- c. I agree that as a material term of this agreement I 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. I agree to 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 commissions and international tribunals. I understand that if I testify untruthfully in any material way I can be prosecuted for perjury. I further agree to provide all information concerning my knowledge of, and participation in al Qaeda, Lashkar-e Tayyiba (LET), or any other similar organizations. I agree that I will not falsely implicate any person or entity, and I will not protect any person or entity through false information or omission.

The parties agree that initial determination with regard to compliance with terms of preceding paragraph will be made by the Convening Authority.

- d. I hereby assign to the Government of Australia any profits or proceeds which I may be entitled to receive in connection with any publication or dissemination of information relating to the illegal conduct alleged in the charge sheet. This assignment shall include any profits and proceeds for my benefit, regardless of whether such profits and proceeds are payable to me or to others, directly or indirectly, for my benefit or for the benefit of

my associates or a current or future member of my family. I hereby represent that I have not previously assigned, and I agree that I will not circumvent this assignment to the Government of Australia by assigning, the rights to my story to an associate or to a current or future member of my family, or to another person or entity that would provide some financial benefit to me, to my associates, or to a current or future member of my family. Moreover, I will not circumvent this assignment by communicating with an associate or a family member for the purpose of assisting or facilitating his or her profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination. I agree that this assignment is enforceable through the Australian Proceeds Act of 2002, and any other applicable provision of law that would further the purpose of this paragraph's prohibition of personal enrichment for myself, my family, or my heirs and assigns, through any publication or dissemination of qualifying information, and I acknowledge that my representations herein are material terms of this agreement.

The parties agree that preceding paragraph is intended to provide a basis for civil action rather than amounting to a provision, the violation of which could support vacation of any portion of a sentence of this commission that might be suspended pursuant to the terms of this agreement.

The parties agree that the term "illegal conduct alleged" in the preceding paragraph includes all matters on the Charge Sheet which was referred to this commission for trial, and is not limited to the matters contained in Specification 1 of the Charge.

3. In making this offer, I state that:
 - a. I am satisfied with my detailed military defense counsel, Major Michael D. Mori, and my civilian defense counsel, Mr. Joshua L. Dratel, who have advised me with respect to this offer, and I consider them competent to represent me in this military commission and agree that they have provided me effective assistance of counsel.
 - b. No person or persons have made any attempt to force or coerce me into making this offer or to plead guilty. This is a free and voluntary decision on my part made with full knowledge of its meaning and effect.

- c. My counsel have fully advised me of the nature of the charge and specifications against me, the possibility of my defending against them, any defense that might apply, and the effect of the guilty plea that I am offering to make. I fully understand the advice of my defense counsel and the meaning, effect, and consequences of this plea.
- d. I understand that the signature of the Convening Authority to this offer and to Appendix A, or to any modified version of Appendix A which I also sign, will transform this offer into an agreement binding upon me and the United States.

The preceding paragraph uses the term “binding agreement”. The parties agree that this term does not abrogate Mr. Hick’s right to seek to withdraw from his guilty plea any time prior to announcement of sentence IAW R.M.C. 910(h)

- e. I understand and agree that the Convening Authority can withdraw from this agreement and this agreement will become null and void, in the event that:
 - 1. I fail to plead guilty as required by this agreement;
 - 2. The commission refuses to accept my plea of guilty to any charge;

The parties agree that the term “commission” used in the preceding paragraph refers to the Military judge.

- 3. The commission sets aside my plea of guilty for whatever reason, including upon my request, before sentence is announced; or

The parties agree that the term “commission” used in the preceding paragraph refers to the Military judge.

- 4. I fail to satisfy any material obligation or term of this agreement, or I have misrepresented any material term of this agreement.

The parties agree that initial determination with regard to compliance with material obligation or term of this agreement as mentioned in the preceding paragraph, will be made by the military judge prior to sentencing and by the Convening Authority thereafter.

5. I fail to agree to a satisfactory stipulation of fact with the prosecution related to the charge and specification to which I plead guilty.
- f. I understand and agree that, if this agreement becomes null and void for any reason, my offer for this plea agreement cannot be used against me in any way at any time to establish my guilt of the charge alleged against me, the United States may prosecute the charge and specifications alleged against me, and the limitations upon the disposition of my case set forth in Appendix A will have no effect.

The parties agree that the preceding paragraph is intended to be read in a manner consistent with M.C.R.E. 410.

- g. I understand and agree that my failure to fully cooperate with Australian or United States authorities may delay my release from confinement or custody under applicable provisions of Australian law.

The parties agree that a representative of the Australian Government would make any determination associated with regard to Mr. Hicks' compliance with the terms of the preceding paragraph.

- h. I acknowledge and agree that I am an alien unlawful enemy combatant, as defined by the Military Commissions Act of 2006, Title 10, United States Code, Section 948 (c).

The parties agree that the words/figures "Section 948(c)" in the preceding paragraph are incorrect, and the correct words/figures are: Section 948a (1) and (3).

- i. I have never been illegally treated by any person or persons while in the custody and control of the United States. This includes the period after my capture and transfer to U.S. custody in Afghanistan in December 2001, through the entire period of my detention by the United States at Guantanamo Bay, Cuba. I agree that this agreement puts to rest any claims of mistreatment by the United States.

The parties agree that the term "illegally treated" in the preceding paragraph shall be interpreted consistently with the definition of "illegal treatment" contained in paragraph 50 of the stipulation of fact.

The parties agree that the preceding paragraph is intended to reflect a statement by Mr. Hicks concerning his belief in the truth of this statement with regard to the time period from on or about 15 December 2001 until the date of trial.

The parties agree to strike the following language in the preceding paragraph: “I agree that this agreement puts to rest any claims of mistreatment by the United States.” The sentence is deleted from the preceding paragraph because it is more fully addressed in paragraph 5 below.

- j. I further understand and agree that the entire period of detention as an unlawful enemy combatant is based upon my capture during armed conflict, has been lawful pursuant to the law of armed conflict and is not associated with, or in anticipation of, any criminal proceedings against me.

The parties agree that the preceding paragraph reflects an acknowledgment by the defense and the prosecution and the Convening Authority that the accused will not be afforded any pretrial confinement credit to be counted against any sentence to confinement adjudged by this commission.

4. In exchange for the undertakings made by the United States in entering this Pretrial Agreement, I voluntarily and expressly waive all rights to appeal or collaterally attack my conviction, sentence, or any other matter relating to this prosecution whether such a right to appeal or collateral attack arises under the Military Commissions Act of 2006, or any other provision of United States or Australian law. In addition, I voluntarily and expressly agree not to make, participate in, or support any claim, and not to 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 my capture, treatment, detention, or prosecution.

The parties agree that the preceding paragraph is intended to be read in a manner consistent with R.M.C. 1110 such that the accused agrees to waive appellate review of his conviction in this case at the earliest time allowed, that is: immediately after the sentence is announced.

5. I agree that for the remainder of my natural life, should the Government of the United States determine that I have engaged in conduct proscribed by Sections 950q. through w. of Chapter 47A of title 10, United States Code, after the date of the signing of this Pretrial Agreement, the Government of the United States may immediately invoke any right it has at that time to capture and detain me, outside the nation of Australia and its territories, as an unlawful enemy combatant. If I engage in conduct proscribed by Sections 950q. through w. of Chapter 47A of title 10, United States Code, after the date of the signing of this Pretrial Agreement and during the period in which any part of my sentence is suspended, the Convening Authority may vacate any period of suspension agreed to in this Pretrial Agreement or as otherwise approved by the Convening Authority and the previously suspended portion of my sentence could be imposed on me. This

pretrial agreement resolves all charges against me under the Military Commissions Act of 2006 and United States law that may have occurred before the signing of this agreement.

The Trial Counsel affirms that the Convening Authority has been authorized to agree to the immunity provision contained in the preceding paragraph as required by R.M.C. 704(c).

6. This document and Appendix A include all of the terms of this Pretrial Agreement and no other promises or inducements have been made by the Convening Authority or any other person which affect my offer to plead guilty or enter into this Pretrial Agreement.

DAVID MATTHEW HICKS

Accused

Date

We certify that we provided David Matthew Hicks the advice referred to above and explained to him the elements of the offenses to which he is pleading guilty, and that he has voluntarily signed this offer for pretrial agreement.

MICHAEL D. MORI, Major, USMC
Detailed Military Defense Counsel

Date

JOSHUA L. DRATEL
Civilian Defense Counsel

Date

I recommend (acceptance) (rejection) of this offer.

Colonel, USAF
Chief Prosecutor

Date

I recommend (acceptance) (rejection) of this offer.

_____, USAF
Legal Advisor to the Convening Authority

Date

The foregoing instrument, including Appendix A., concerning David Matthew Hicks, dated March _____, 2007 is (approved and accepted) (disapproved).

SUSAN J. CRAWFORD
Convening Authority

Date

UNITED STATES

v.

DAVID MATTHEW HICKS

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**APPENDIX A
TO OFFER FOR A
PRETRIAL AGREEMENT**

Date: _____

1. As consideration for the offer of David Matthew Hicks (the "Accused") to plead guilty and his agreement to other terms and conditions as set forth in the Offer for A Pretrial Agreement, dated March _____, 2007, the Convening Authority will undertake as follows:

a. The maximum period of confinement that may be adjudged and approved is seven years. The Convening Authority agrees to suspend any portion of a sentence to confinement in excess of nine months.

The parties agree that the intent of the preceding paragraph includes an agreement by the Convening Authority that any confinement to be suspended will be suspended for a period of seven years from the date sentence is announced, at which time, unless sooner vacated, it will be remitted without further action.

b. The Convening Authority agrees to dismiss Specification 2 of the Charge with prejudice, at or before the time of sentencing.

c. The Military Judge will, in accordance with R.M.C. 1005(e) (5), instruct the commission members that the limits on their discretion, as pertains to a sentence to confinement, is as specified in a. above.

d. The Government of the United States will transfer custody and control of the Accused to the Government of Australia by not later than sixty (60) days from the date upon which the sentence is announced.

e. Upon signing of this agreement, the prosecution agrees not to present evidence in aggravation during the sentencing hearing and the defense agrees not to present evidence in mitigation. The accused may make an unsworn statement.

The parties agree that the preceding paragraph permits the presentation of the stipulation of fact to the members for their use and for their consideration during their deliberations upon sentencing.

The parties agree that the preceding paragraph includes an agreement not to offer evidence in extenuation.

2. There are no limitations on the sentence other than that provided in paragraph 1, above.

3. This is original Appendix A submitted with the Offer for A Pretrial Agreement.

DAVID MATTHEW HICKS

Date

We certify that we gave David Matthew Hicks the advice referred to above and explained to him the meaning and effect of the foregoing, and he has voluntarily signed this Appendix A.

MICHAEL D. MORI, Major, USMC
Detailed Military Defense Counsel

Date

JOSHUA L. DRATEL
Civilian Defense Counsel

Date

I recommend (acceptance) (rejection) of this Appendix A.

Chief Prosecutor Colonel, USAF Date

I recommend (acceptance) (rejection) of this Appendix A.

_____, USAF Date
Legal Advisor to the Convening Authority

The foregoing Appendix A is (approved) (disapproved) in conjunction with the pretrial agreement dated March _____, 2007.

SUSAN J. CRAWFORD Date
Convening Authority

Appellate Exhibit 31 - U.S. v David Matthew Hicks

Pursuant to the Protective Order, dated 29 March 2007, issued by Colonel
, and marked as Appellate Exhibit 32, the commission member completed
questionnaires marked as Appellate Exhibit 31 have been ordered sealed by the military
judge in the original record of trial. All subsequent copies of the complete record of trial
will contain this page in place of Appellate Exhibit 31.

OMC

From: LTC OMC
Sent: Thursday, March 29, 2007 6:54 PM
To:
Cc:
Subject: RE: Hicks - Protective Order - MC Members
Attachments: Protective Order - Members.pdf



Protective Order -
Members.pdf...

Col [redacted] has directed me to forward to the parties the attached Protective Order. The Order may be posted outside of the courtroom entrance, and a copy may be provided to PAO for distribution as necessary. He will refer to the Order on the record, but will not read it on the record.

v/r,

[redacted], USAR, JA
Senior Attorney Advisor
Military Commissions Trial Judiciary

-----Original Message-----

From: LTC USSOUTHCOM JTFGTMO
Sent: Thursday, March 29, 2007 5:53 PM
To: LTC OMC
Cc:

Subject: RE: Hicks - Protective Order - MC Members

Pros. replies as follows:

1. Attached is a revised ProOrder that now pertains solely to MC panel members.
2. As stated, below, the previous draft present order was virtually identical to the PAO written ground rules. Per Maj [redacted]'s e-m (pasted into this e-mail), she advised of the verbal modifications to the prohibitions of para. "g."
3. In sum, the revised ProOrd pertains exclusively to MC panel members, and is in its written form consistent with the written and verbal PAO guidance.
4. To promulgate, Pros. requests that the order: (a) be posted outside of the courtroom entrance; (b) a copy provided to PAO for distribution as necessary; and, (c) issued by the MJ on the record.

5. ***** MAJ [redacted] 'S E-MAIL BEGIN:

AE 32 (Hicks)
Page 1 of 5

-----Original Message-----

From: MAJ USSOUTHCOM JTFGTMO
Sent: Thursday, March 29, 2007 4:59 PM
To:
Cc:
JTFGTMO
Subject: RE: Hicks - Protective Order - MC Members

No concerns.

I reiterated the ground rules to the press today at 1500.

I advised that the parties and the judge had waived the restriction to being identified by name, and that DOD had approved that the sketch artist may draw the accused's facial features.

The sketch artist was advised she may not depict the members' faces.

I advised the press today they could refer to the panel members only by gender, rank, and branch of service.

MAJ

***** MAJ 'S E-MAIL END. *****

V/r-- LtCol

, LtCol, U.S. Marine Corps
Prosecutor, Office of Military Commissions

-----Original Message-----

From: LTC OMC
Sent: Thursday, March 29, 2007 5:35 PM
To:

Subject: RE: Hicks - Protective Order - MC Members

Per Col , the Order you have submitted appears to be at variance with current OMC policy at least regarding Judges and Prosecutors as we understood the rules applicable to the hearing on Monday. It appears that this Order will seem illogical to members of the press. Please verify. Also, he would like to know how this Order/info will be provided to the spectators. Will they be given a copy, etc. Thanks.

v/r,

USAR, JA
Senior Attorney Advisor
Military Commissions Trial Judiciary

AE 32 (Hicks)
Page 2 of 5

-----Original Message-----

From: LTC USSOUTHCOM JTFGTMO
Sent: Thursday, March 29, 2007 5:00 PM
To: LTC OMC

Subject: FW: Hicks - Protective Order - MC Members

-- sir:

1. Prosecution requests Your Honor issue the attached protective order, to include on the record before the proceedings involving members.
2. Per below, Def. does not object.
3. Pls note this language mirrors the present para. "g" of the PAO "ground rules." The order is primarily intended to protect the panel members. Per OMC PAO (MAJ) the other listed participants, except panel members, were previously authorized (verbally) by PAO for disclosure by certain credentialed members of the media who have signed the ground rules. However, panel members identities remain prohibited from disclosure by all spectators, press or otherwise.

V/r-- LtCol

LtCol, U.S. Marine Corps
Prosecutor, Office of Military Commissions

-----Original Message-----

From: Mori, Michael D. MAJ OMC
Sent: Thursday, March 29, 2007 4:33 PM
To:

Cc:

Subject: RE: Hicks - Protective Order - MC Members

Sir,

I have no objection to following the PAO rules.

Sf
Maj Mori

-----Original Message-----

From: LTC USSOUTHCOM JTFGTMO
Sent: Thursday, March 29, 2007 3:58 PM
To: Mori, Michael D. MAJ OMC; MAJ USSOUTHCOM JTFGTMO

Subject: Hicks - Protective Order - MC Members

Maj Mori-- pls review and let me know if you have any objections. Upon receipt I will forward to the MJ. The provision is modeled after the "ground rules" provided by the OMC PAO. Per my mtg w/ OMC PA (MAJ) there appears to have been oral authorization provided to the press, but no one else.

AE 32 (Hicks)
Page 3 of 5

MAJ -- pls advise if any other concerns. I believe this should suffice.

V/r--

LtCol, U.S. Marine Corps

Prosecutor, Office of Military Commissions

FOR OFFICIAL USE ONLY

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"

Protective Order
Protection of Military Commission
Members

29 March 2007

1. This protective order is issued pursuant to the authority under the Military Commissions Act (MCA) of 2006 (10 U.S.C. §§ 948a, *et seq.*) and the Manual for Military Commissions (MMC), to include but not limited to:

- a. Rules for Military Commissions (RMC) 701(f)(8) and (l)(2);
- b. RMC 806;
- c. Military Commission Rules of Evidence (MCRE) 104(a);
- d. MCRE 505(e); and,
- e. MCRE 611(d)(2).

2. IT IS HEREBY ORDERED:

- a. The identities of all commission panel members will not be reported or otherwise disclosed in any way without the prior release approval of the Office of Secretary Defense (Public Affairs). No drawings, sketches, photographs or videotape of commission panel members are permitted either inside or outside of the courtroom without prior release approval by OSD (PA) and the individual.
- b. This prohibited conduct applies to all spectators of the military commission proceedings, to include members of any press or other news organization, Non-governmental Organization (NGO) representatives, or any one else whether viewing the proceedings in official or private capacity.

3. **Violation and Remedy.** Any breach of this Protective Order may result in disciplinary action or other sanctions.

Colonel, U.S. Marine Corps
Military Judge

FOR OFFICIAL USE ONLY

AE 32 (Hicks)
Page 5 of 5

UNITED STATES OF AMERICA

v.

DAVID HICKS

Waiver of Appellate Review

Military Commission
Guantanamo Bay, Cuba

1. I, David Hicks, waive appellate review of my military commission.
2. I, David Hicks, have discussed my right to appellate review and the effect of waiver of appellate review with my Detailed Military Counsel, Major Michael D. Mori. I understand these matters.
3. This waiver is submitted voluntarily.

Signed:

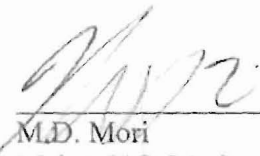


David Hicks

Date:

30/3/7

Signed:



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

Date:

30 MAR 07



INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM – This form and the M.M.C., Rule 1103, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial for trials by military commission.

COPIES – See R.M.C. 1103(b). The convening authority may direct the preparation of additional copies.

ARRANGEMENT – When forwarded to the convening authority for review, the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 5, 6, and 13e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 12 will be inserted by either trial counsel or the convening authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of MC Form 490.
2. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
3. Briefs of counsel submitted after trial, if any.
4. MC Form 490, "Commission Data Sheet."
5. Military Commission orders promulgating the result of trial as to each accused, in 10 copies.
6. When required, signed recommendation of legal advisor, in duplicate, together with all clemency papers, including clemency recommendation by commission members.
7. Matters submitted by the accused.
8. MC Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).
9. Congressional inquiries and replies, if any.
10. Advice of legal advisor.
11. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

12. Records of former trials.

13. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt
- c. Record of proceedings in court, including R.M.C. 803 sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.