

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.

1 MJ: Do you have any questions about any provision in your  
2 pretrial agreement?

3 ACC: No, sir.

4 MJ: Do you fully understand all the terms of the pretrial  
5 agreement and how they will affect your case?

6 ACC: Yes, sir.

7 MJ: Mr. Hicks, are you pleading guilty not only because you  
8 hope to receive a lighter sentence, but because based on your  
9 examination of the evidence against you and your own recollection of  
10 the events, you are convinced that the government could prove you  
11 guilty of the elements of the offense beyond a reasonable doubt?

12 ACC: Yes, sir.

13 MJ: Do counsel for both sides agree completely with my  
14 interpretation of the pretrial agreement?

15 PROS: Yes, Your Honor.

16 DDC: Yes, sir.

17 MJ: Mr. Hicks, have you had enough time and opportunity to  
18 discuss your case with Major Mori?

19 ACC: Yes, I have.

20 MJ: Major Mori, have you had enough time and opportunity to  
21 discuss your case with your client?

22 DDC: Yes, sir.

1 MJ: Mr. Hicks, have you fully consulted with your counsel and  
2 are you satisfied that you've received the full benefit of his  
3 advice?

4 ACC: Yes, sir.

5 MJ: Are you satisfied that his advice to you has been in your  
6 best interest?

7 ACC: Yes.

8 MJ: And are you satisfied with your defense counsel?

9 ACC: Yes, sir.

10 MJ: Are you pleading guilty voluntarily and of your own free  
11 will?

12 ACC: Yes.

13 MJ: Has anyone made any threat or in any way tried to force you  
14 to plead guilty here today?

15 ACC: No, sir.

16 MJ: Do you have any questions as to the meaning and effect of  
17 your plea of guilty in this case?

18 ACC: No, sir.

19 MJ: Do you fully understand the meaning and effect of your plea  
20 of guilty?

21 ACC: Yes.

22 MJ: Do you still want to plead guilty in this case?

23 ACC: Yes, sir.

1 MJ: Mr. Hicks, I find that your plea of guilty has been made  
2 voluntarily and with full knowledge of its meaning and effect. I  
3 further find that you have knowingly, intelligently, and consciously  
4 waived your rights against self-incrimination and to a trial of the  
5 facts by this military commission, and to be confronted by the  
6 witnesses against you. Accordingly, your plea of guilty is provident  
7 and is accepted.

8 I will also advise you that you may request to withdraw  
9 your guilty plea at any time before the sentence is announced in this  
10 case, and if you have a good reason for such a request, I will allow  
11 you to do so.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Does the government intend to go forward on Specification 2  
15 or the excepted words of Specification 1 to which Mr. Hicks has  
16 entered a plea of not guilty?

17 PROS: No, sir.

18 MJ: Do you move to amend Specification 1 of The Charge to  
19 conform with the pleas of the accused?

20 PROS: Yes, Your Honor.

21 MJ: Very well, the motion to amend Specification 1 of The  
22 Charge to conform to with the plea of the accused is granted, and the  
23 amendment is ordered.

1 MJ: Government, do you then move to dismiss with prejudice  
2 Specification 2 of The Charge?

3 PROS: No, sir, not at this time. The government moves to  
4 dismiss Specification 2 of The Charge without prejudice, to ripen  
5 into dismissal with prejudice upon announcement of the sentence.

6 MJ: Is there any objection to that?

7 DDC: No, sir.

8 MJ: Is defense satisfied that is in accordance with the  
9 pretrial agreement?

10 DDC: Yes, sir.

11 MJ: Very well. The motion to dismiss Specification 2 of The  
12 Charge and the excepted language with regard to Specification 1 is  
13 granted and the dismissal is ordered. It will ripen into dismissal  
14 with prejudice at the time the sentence is announced in this case.  
15 Specification 1 of The Charge is ordered to be renumbered then as  
16 "The Specification of The Charge."

17 Accused and counsel please rise.

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

19 **[END OF PAGE]**

1 MJ: David Matthew Hicks, in accordance with your plea of  
2 guilty, this commission finds you as follows:

3 **Of The Specification of**

4 **The Charge and to The Charge:**

5 **Guilty of a violation**  
6 **of Title 10 United**  
7 **States Code Section**  
8 **950v Part 25,**  
9 **"Providing Material**  
10 **Support for**  
11 **Terrorism."**

12 You may be seated.

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

14 MJ: Mr. Hicks, when the members come in we'll start the  
15 sentencing phase of this trial. Pursuant to the terms of the  
16 pretrial agreement in this case, the government may offer no evidence  
17 in aggravation, but it may offer a stipulation of fact that we have  
18 previously discussed.

19 Do you understand that?

20 ACC: Yes, sir.

21 MJ: Under the laws governing these commissions you have the  
22 right to present matters in extenuation and mitigation. Included in  
23 these rights are the rights that you have to testify under oath, to  
24 make an unsworn statement, or to remain silent. If you testify under  
25 oath, you may be cross-examined by the prosecutor and questioned by  
26 me or the members. If you make an unsworn statement, you may not be  
27 cross-examined by the prosecutor or questioned by me or the members.

1 The government may, however, provide evidence in rebuttal of any  
2 statement of fact made in an unsworn statement. An unsworn statement  
3 may be made orally or in writing, personally or through counsel, or  
4 you may use a combination of these methods. If you elect to remain  
5 silent, the commission members will be instructed not to draw any  
6 adverse inference from your silence.

7 Do you understand that?

8 ACC: Yes, sir.

9 MJ: Now we previously discussed in your pretrial agreement that  
10 you agreed to forego the right to present matters in extenuation and  
11 mitigation and to limit your presentation of matters during the  
12 presentencing hearing to an unsworn statement. Are you still  
13 satisfied with that aspect of your pretrial agreement?

14 ACC: Yes, sir.

15 MJ: Alright, at this time we're going to be taking a recess and  
16 I'll advise the parties about a restart time as soon as I'm advised  
17 of when the members will be available to us.

18 Is there anything else we need to address at this time  
19 before we recess?

20 Government?

21 PROS: No, Your Honor.

22 DDC: No, sir.

23 MJ: Very well, we're in recess.