

1 [The session recessed at 1045 hours, 30 March 2007.]

2 [The session was called to order at 1433 hours, 30 March 2007.]

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

5 First, I'd like to clarify for the record one thing about
6 my finding. In citing the US Code section with regard to The Charge
7 to which a finding of guilty was entered, I want to clarify that that
8 was to Title 10 United States Code Section 950v(b)(25).

9 Trial counsel, has a sentence worksheet been marked as an
10 appellate exhibit?

11 PROS: It has, Your Honor.

12 [The court reporter handed AE 26 to the military judge.]

13 MJ: I've been handed what has been marked as Appellate Exhibit
14 26, the sentencing worksheet in this case.

15 Major Mori, have you had the opportunity to inspect
16 Appellate Exhibit 26?

17 DDC: I have, sir, and I have no objection.

18 MJ: Thank you. I noted earlier today that during our series of
19 conferences over the past couple of days we had discussions of the
20 voir dire of the members as well as the sentencing instructions.
21 During the course of that process I provided trial and defense
22 counsel with a copy of my planned group voir dire of the members

1 which is developed in part based on the input from both sides, and
2 also my planned sentencing instructions for the members.

3 Have both sides had an opportunity to inspect my planned
4 group voir dire and sentencing instructions?

5 PROS: Yes, sir.

6 DDC: Yes, sir.

7 MJ: Is there any objection to any of that or a request for
8 additional group voir dire or instructions?

9 PROS: No, sir.

10 DDC: None from the defense, sir.

11 MJ: Major Mori, have you had an opportunity to inspect the
12 members' folders which have been placed in the jury box?

13 DDC: Yes, sir.

14 MJ: Is there any objection to any of that?

15 DDC: No, sir.

16 MJ: And there should be a copy of the convening order and the
17 modification thereto, each member's own member questionnaire, a copy
18 of the cleansed charge sheet, and a blank pad of paper. Is that in
19 accord with what you saw?

20 DDC: Yes, sir.

21 MJ: Major Mori, have you had an opportunity to review the
22 members' questionnaires to include their responses?

23 DDC: Yes, sir.

1 MJ: Those will be collectively marked as Appellate Exhibit 31.
2 Does either side have any other materials which could be marked at
3 this time?

4 PROS: No, sir.

5 DDC: No, sir.

6 MJ: Is there anything else from either side before we call the
7 members?

8 PROS: No, sir.

9 DDC: No, sir.

10 MJ: Very well, please call all the members into the courtroom.
11 [The bailiff did as directed.]

12 Bailiff: All rise.

13 [All persons in the courtroom did as directed.]

14 [The members entered the courtroom.]

15 [END OF PAGE]

1 [The commission was called to order at 1439 hours, 30 March 2007,
2 pursuant to the orders previously inserted in the record, and as
3 amended by Military Commission Convening Order Number 07-03, dated 29
4 March 2007.]

5 MJ: Members, please be seated.

6 [The members did as directed.]

7 MJ: Everyone, please be seated.

8 [All persons in the courtroom did as directed.]

9 MJ: Members, there is a folder in front of each of you with a
10 copy of the convening order on top. Please do not open the folder at
11 this time. Your name should be highlighted on a copy of the
12 convening order or the modification to the convening order which
13 should also be on top of the folder. At this time I would like for
14 each member to examine the convening order on top of the folder to
15 ensure that you see your name on the convening order with the correct
16 spelling, rank, and branch of service. If you don't see your name,
17 or if the spelling or information is incorrect, please raise your
18 hand.

19 [The members did as directed.]

20 MJ: Negative response from the members.

21 The members of the commission will now be sworn.

1 Members, when I ask you to rise, when the prosecutor states
2 your name, please raise your right hand and keep it raised until the
3 oath has been administered.

4 All persons in the courtroom, please rise.

5 [All persons in the courtroom did as directed.]

6 [The members were sworn.]

7 MJ: Members, please be seated.

8 [The members did as directed.]

9 MJ: Everyone, please be seated.

10 [All persons in the courtroom did as directed.]

11 MJ: The military commission is assembled.

12 Members, it is now appropriate that I give you some
13 preliminary instructions. I'm the military judge in this case, and
14 my duty is to ensure this trial is conducted in a fair, orderly, and
15 impartial manner in accordance with the law. I preside over open
16 sessions, rule upon objections, and instruct you on the law
17 applicable to this case. You are required to follow my instructions
18 on the law and you may not consult any other source as to the law
19 pertaining to this case unless it is admitted into evidence. This
20 rule applies throughout the trial including closed sessions and
21 periods of recess and adjournment. Any questions you have of me
22 should be asked in open court.

1 At a session held earlier today the accused pled guilty to
2 The Charge and Specification which is described in the folder before
3 you. I accepted that plea and entered a finding of guilty.
4 Therefore, you will not have to determine whether the accused is
5 guilty or not guilty, as that has been established by his plea.

6 Your duty is to determine an appropriate sentence. That
7 duty is a grave responsibility requiring the exercise of wise
8 discretion. Your determination must be based upon all the evidence
9 that is presented to you and the instructions that I will give you
10 with regard to the applicable law. Since you cannot properly reach
11 that determination until all the evidence has been presented and you
12 have been instructed, it is of vital importance that you keep an open
13 mind until all the evidence and the instructions have been presented
14 to you.

15 During what is called the voir dire process, I will ask you
16 some questions and counsel will be given an opportunity to ask you
17 questions and exercise challenges. With regard to challenges, if you
18 know of any matter that you feel might affect your impartiality to
19 sit as a commission member, you must disclose that matter when asked
20 to do so. Bear in mind that any statement you make should be made in
21 general terms so as not to disqualify other members who might hear
22 the statement.

1 Grounds for challenge would include if you had investigated
2 any offense charged, or if you have formed a fixed opinion as to what
3 an appropriate punishment would be for this accused, or any other
4 matter that may affect your impartiality regarding the appropriate
5 sentence for the accused. Questions asked by myself and the lawyers
6 are not intended to embarrass you. They are also not an attack upon
7 your integrity. They are asked merely in order to determine whether
8 a basis for challenge exists.

9 It is of no adverse reflection upon a member to be excused
10 from a particular case. You will be questioned individually and
11 collectively, but in either event, you should always indicate an
12 individual response to the question asked. Unless I indicate
13 otherwise, you are required to answer all questions. In all cases an
14 affirmative response should be indicated by raising your hand. I
15 will interpret the absence of a raised hand as a negative response.

16 Do all members understand this instruction? In which case
17 you should be raising your hand. Very good.

18 [All members indicated an affirmative response.]

19 MJ: Members, you must keep an open mind throughout the trial.
20 You must impartially hear the evidence and the instructions on the
21 law. Only when you are in your closed session deliberations may you
22 properly make a determination as to an appropriate sentence, after
23 considering all the alternative punishments that I will later advise

1 you. You may not have a preconceived idea or formula as to either
2 the type or the amount of punishment which should be imposed, if any.

3 During any recess you may not discuss the case with anyone,
4 not even amongst yourselves. You must not listen to or read any
5 account of the trial, or consult any source written or otherwise as
6 to matters involved in the case. You must hold all your discussion
7 of the case until you are all together in your closed session
8 deliberations, so that all of the members will have the benefit of
9 all the discussion.

10 If anyone attempts to discuss the case in your presence
11 during a recess or adjournment, you must immediately tell them to
12 stop and report that occurrence to me during the next session. I may
13 not repeat that instruction before every break, but it applies at
14 every break and please keep it in mind.

15 During any breaks I will try to estimate the time needed
16 for recesses or hearings outside your presence. Sometimes their
17 duration, however, is extended by consideration of new issues arising
18 during such hearings. Your patience and understanding regarding
19 these matters will greatly contribute to an atmosphere that is
20 consistent with the fair administration of justice.

21 While you are present in your closed session deliberations,
22 only the members will be present, and you must remain together, and
23 you may not allow any unauthorized intrusion into your deliberations.

1 Each of you has an equal voice and vote with the other members in
2 discussing and deciding all issues that will be submitted to you.
3 However, in addition to the duties of the other members, the senior
4 member will act as your presiding officer during your closed session
5 deliberations, and will speak for the commission in announcing the
6 results.

7 This general order of events can be expected during this
8 trial are: questioning of members, challenges and excusals,
9 presentation of evidence, closing argument by counsel, instructions
10 on the law, your deliberations, and announcement of the sentence.
11 Members, the appearance and demeanor of all parties to the trial
12 should reflect the seriousness with which the trial is viewed.
13 Careful attention to all that occurs during the trial is required of
14 all parties. If it becomes too hot or too cold in the courtroom, or
15 you need a break because of drowsiness or for comfort or for any
16 reason at all, please tell me so that we can attend to your needs and
17 avoid potential problems that might occur otherwise.

18 Each of you may take notes if you desire and use them to
19 refresh your memory during deliberations, but they may not be read
20 then to or show them to the other members. At the time of any recess
21 you should cover them up if you leave them at your place in the
22 member's box, or take them with you for safe keeping until the next
23 session.

1 Are there any questions?

2 Negative response.

3 Members, at this time please open your folder and take a
4 moment to read The Charge and Specification contained therein.

5 Please simply look up when you are through reading, and take your
6 time.

7 [The members did as directed.]

8 MJ: Does any member require any additional time to review The
9 Charge or Specification?

10 Negative response.

11 Alright members, at this time I'm going to ask you a series
12 of questions and this is what I refer to as the voir dire process.
13 Again, if you have an affirmative response to any question, please
14 raise your hand and I'll just make a note of that and then we'll move
15 on. After I state your name, that will indicate that I've got it
16 marked down.

17 Does any member know the accused in this case, Mr. David
18 Hicks?

19 Negative response from the members.

20 Does anyone know any person named in The Specification?

21 Negative response from the members.

1 Having seen the accused and having read The Charge and
2 Specification, does any member feel that they cannot give the accused
3 a fair trial for any reason?

4 Negative response from the members.

5 Does anyone have any prior knowledge of the facts or events
6 in this case?

7 Negative response from the members.

8 Has any member or any member of your family ever been
9 charged with an offense similar to the offense charged in this case?

10 Negative response from the members.

11 Has any member, or any member of your family, or anyone
12 close to you personally ever been the victim of an offense similar to
13 the offense charged in this case?

14 Negative response from the members.

15 Have any of you served in Afghanistan?

16 Negative response from the members.

17 Do any of you have a family member, a friend, or close
18 professional colleague who was killed or wounded in the course of
19 service in Afghanistan?

20 Affirmative response from Colonel [REDACTED], negative
21 response from the other members.

1 Do any of you have a family member, a friend, or close
2 professional colleague who was killed or harmed as the result of what
3 might be described as an act of terrorism?

4 Negative response from the members.

5 Has any act of terrorism, the war in Afghanistan, or the
6 war in Iraq had any impact upon you, your family, relatives or
7 friends?

8 Negative response from the members.

9 Have any of you previously served as a member of some other
10 military commission, court-martial, or civilian jury?

11 Affirmative response from all the members except Colonel
12 [REDACTED], Colonel [REDACTED], and Captain [REDACTED]. Thank you.

13 Has anyone had any specialized law enforcement training or
14 experience to include duties as a military police officer, off-duty
15 security guard, civilian police officer or comparable duties other
16 than general law enforcement duties common to military personnel of
17 your rank and position?

18 Negative response from the members.

19 Is there any member here who is in the rating or evaluation
20 or supervisory chain of any other member?

21 Negative response from the members.

22 Has anyone had any dealings with any of the parties to the
23 trial to include myself, and I am Colonel [REDACTED]; the Prosecutor,

1 Lieutenant Colonel [REDACTED] over here; Prosecutor Lieutenant
2 [REDACTED]; or the Defense Counsel, Major Mori?

3 Negative response from the members.

4 Have any of you had any contact with the following persons:

5 The Convening Authority, Ms. [REDACTED]; Legal Advisor to
6 the Convening Authority, Brigadier General [REDACTED], United States
7 Air Force, retired; Colonel [REDACTED], United States Air Force;
8 Colonel Dwight Sullivan, United States Marine Corps Reserve; or any
9 other person whom you are aware has worked or served in connection
10 with the Military Commissions process?

11 Negative response from all the members with regard to all
12 those persons mentioned.

13 Members, do any of you know of anything of either a
14 personal or professional nature that would cause you to be unable to
15 give your full attention to these proceedings throughout this trial?

16 Negative response from the members.

17 Is there any member who has seen or heard any mention of
18 this case in the media within the last 5-1/2 years?

19 Affirmative response from Colonel [REDACTED], Captain
20 [REDACTED], Lieutenant Colonel [REDACTED], Colonel [REDACTED],
21 Captain [REDACTED], and Captain [REDACTED]. Negative response other
22 than the ones I mentioned.

1 Is there any member who has seen or heard any press
2 coverage of this case within the last week?

3 Affirmative response from Colonel [REDACTED], Captain
4 [REDACTED], Lieutenant Colonel [REDACTED], Captain [REDACTED]; and
5 negative response from the other members.

6 Members, have any of you ever been stationed or assigned
7 TAD or TDY here at GTMO?

8 Affirmative response from Colonel [REDACTED], negative
9 response from the other members.

10 Has any member ever been engaged in detainee operations?

11 Negative response from the members.

12 Has any member been stationed or assigned TAD or TDY in
13 Bagram?

14 Negative response from the members.

15 Has any member been stationed or assigned TAD or TDY aboard
16 the USS Peleliu?

17 Affirmative response from Captain [REDACTED]. Negative
18 response from the other members.

19 Has any member been stationed or assigned TAD or TDY aboard
20 the USS Belleau Wood?

21 Negative response from the members.

22 Members, it is a ground for challenge that you have an
23 inelastic predisposition toward the imposition of a particular

1 punishment based solely on the nature of the crime for which the
2 accused is to be sentenced. Does any member, having read The Charge
3 and Specification, believe that you would be compelled to vote for
4 any particular punishment solely because of the nature of The Charge?

5 Negative response from the members.

6 Members, you will be instructed in detail before you begin
7 your deliberations. I will instruct you on the full range of
8 punishments which ranges from no punishment up to a maximum
9 punishment which in this case is confinement for a period not to
10 exceed 7 years. You should consider all forms of punishment within
11 that range. Consider doesn't necessarily mean that you would vote
12 for a particular punishment. "Consider" means that you would think
13 about and make a choice in your mind one way or the other as to
14 whether that's an appropriate punishment. Each member must keep an
15 open mind and not make a choice, nor foreclose from consideration any
16 possible sentence until the closed session for deliberations and
17 voting on the sentence.

18 Can each of you follow this instruction? If so, you should
19 raise your hand.

20 Affirmative response from all the members.

21 Members, can each of you be fair, impartial, and
22 open-minded in your consideration of an appropriate sentence in this
23 case?

1 Affirmative response from all the members.

2 Does any member believe that participating in this
3 proceeding as a commission member could have an impact on their
4 personal or professional life?

5 Negative response from the members.

6 Does any member believe that the sentence adjudged in this
7 proceeding could have an impact on their personal or professional
8 life?

9 Negative response from the members.

10 Members, do any of you believe that the result of this
11 commission may be taken into account in any future performance
12 evaluation or selection board in your case?

13 Negative response from the members.

14 Members, can each of you reach a decision on a sentence
15 upon an individual basis in this particular case and not solely on
16 the nature of the offense of which the accused has been convicted?
17 Can each of you do that?

18 Affirmative response from all the members.

19 Members, is there anything that I've touched on or not,
20 anything at all, that you think might raise a substantial question in
21 the mind of someone else about your participation in this commission
22 as a commission member?

23 Negative response from the members.

1 [The session was called to order at 1512 hours, 30 March 2007.]

2 MJ: Please be seated.

3 [All persons in the courtroom did as directed.]

4 PROS: Your Honor, is it possible for counsel to meet for a
5 bench 802 -- or just a brief bench conference on one or two issues?

6 MJ: No, it's not my practice to do that, if we're going to do
7 an 802. Does it need to be done before we proceed with voir dire?

8 PROS: Yes, sir, briefly.

9 MJ: Okay, we're going to take a short recess. We're in recess.

10 [The session recessed at 1512 hours, 30 March 2007.]

11 [The session was called to order at 1519 hours, 30 March 2007.]

12 MJ: The commission will come to order. All parties present
13 when the court recessed are again present. The members are absent.

14 With regard to voir dire, does either side have any
15 additional group voir dire questions they want asked? Government?

16 APROS: Negative, sir.

17 DDC: None from the defense, sir.

18 MJ: Based on responses to the group voir dire, I intend to
19 recall Colonel [REDACTED], Colonel [REDACTED], Captain [REDACTED],
20 Captain [REDACTED], Captain [REDACTED], Colonel [REDACTED], Colonel
21 [REDACTED], and Lieutenant Colonel [REDACTED], and Colonel
22 [REDACTED]. So that would be all except for Colonel [REDACTED] for

1 individual voir dire. Does either side have any reason to recall
2 Colonel [REDACTED] for individual voir dire?

3 APROS: No, sir.

4 DDC: No, sir.

5 MJ: First if we could get Colonel [REDACTED], please.
6 [Colonel [REDACTED] entered the courtroom and was seated.]

7 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

8 **Questions by the military judge:**

9 Q. Are all the folders closed with the notes covered up there?

10 A. They are, Your Honor.

11 Q. Thank you. Sir, you indicated that you had previously
12 served as a member of another Military Commission or a court-martial
13 or a civilian jury. Is that correct?

14 A. It is.

15 Q. Could you please just tell us about that?

16 A. It was a court-martial and the offense was child abuse.

17 Q. When was that?

18 A. I'd say it was around the '99 timeframe.

19 Q. Is there anything about your participation in that
20 proceeding that you believe would have any effect on your
21 participation here today?

22 A. None at all.

23 MJ: Additional questions from the government?

1 APROS: No, sir.

2 MJ: From the defense?

3 DDC: Sir, none from the defense.

4 MJ: Sir, thank you very much. You can go back to the
5 deliberation room. And if we could have Colonel [REDACTED], please.
6 [Colonel [REDACTED] departed the courtroom and Colonel [REDACTED]
7 entered the courtroom and was seated.]

8 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

9 **Questions by the military judge:**

10 Q. Sir, you indicated an affirmative response to the question
11 whether you had a family member, friend, or close professional
12 colleague that was killed or wounded in the course of service in
13 Afghanistan. Is that correct?

14 A. That's correct.

15 Q. Could you please tell us about that?

16 A. Well it's just the branch that I'm in within the Army had
17 several folks that were in Afghanistan on a rotational basis and some
18 were wounded. So I spent about 20 years in that particular line of
19 work and I wasn't in that particular unit at the time.

20 Q. So the question was, looking that if you had in the family
21 member, friend, or close professional colleague who was wounded or
22 killed in the course of service in Afghanistan?

1 A. It wasn't killed. It was wounded and it was professional
2 colleague or colleagues in Afghanistan.

3 Q. Were these people that you also socialize with at all or
4 just people you had just served with or attended training with or
5 something like that?

6 A. I had attended training with, served with previously. Have
7 not served with in the last -- well before I'd say last time would
8 have been in the year 2000.

9 Q. Do you believe that having that experience of having known
10 these people who were wounded there would have an impact on how you
11 viewed matters or how you make decisions in this case?

12 A. I don't believe so. There wasn't any specific reference to
13 any particular case.

14 MJ: Questions by the government?

15 APROS: No, sir.

16 MJ: From the defense?

17 DDC: Yes, sir.

18 MJ: Hold on. He had a positive response on a couple of others.
19 Let me cover those first. I apologize. I should have done that.

20 **Questions by the military judge continued:**

21 Q. You indicated an affirmative response also that you had
22 seen or heard mention of this case in the media within the last 5-1/2
23 years and also within the last week. Is that correct?

1 A. That's correct.

2 Q. Could you please tell us about that?

3 A. We've been studying about it, just reading newspapers.

4 Then this morning it was on as we were driving in -- it was on

5 National Public Radio.

6 Q. Now when you say "we've been studying about it," who are

7 "we"?

8 A. In the school -- just reading that we do within the school.

9 Q. Are you attending some sort of professional schooling?

10 A. I'm an instructor right now, yes.

11 Q. Where is that?

12 A. In Washington at the National Defense University.

13 Q. Okay. What is your area of instruction?

14 A. Strategy.

15 Q. When you say "strategy," are you talking about national

16 strategy?

17 A. National security strategy, correct. I just might add that

18 it's in the broader context, not a specific context. But I did hear

19 about it on the radio today -- this morning.

20 Q. Do any of your materials have anything to do with this

21 case?

22 A. No.

1 Q. Has there been any kind of discussion within your -- do you
2 teach a seminar format or a lecture format?

3 A. It's a seminar format, yes.

4 Q. Has there been any discussion in your seminars or in the
5 hallways about what should be done with regard to people that are
6 involved in unlawful warfare or anything like that?

7 A. No. Essentially what we're doing is understanding the
8 global context. Knowing that this situation is part of the global
9 context we've looked at several functional areas within the global
10 context of which terrorism has been part of it -- the global context.
11 So we just looked at it from a functional approach not in a detailed
12 case-by-case approach.

13 MJ: Government, any additional questions?

14 APROS: No, sir.

15 MJ: Defense?

16 DDC: No, sir.

17 MJ: Thank you very much. You can go back to the deliberation
18 room and we'll take Colonel [REDACTED], please.

19 [Colonel [REDACTED] departed the courtroom and Colonel [REDACTED]
20 entered the courtroom and was seated.]

1 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

2 **Questions by the military judge:**

3 Q. You indicated an affirmative response to the question if
4 you previously served as a member of any other military commission,
5 court-martial, or civilian jury. Is that correct?

6 A. Yes, it is.

7 Q. Could you please tell us about that now?

8 A. Yes. It was several years back. It was a military, male
9 member Air Force that had abducted and assaulted a girlfriend. My
10 part of the commission there was to render -- not render judgment,
11 but to vote on judgment that was going to be rendered to him.
12 Whether to retain or not retain in service.

13 Q. This was a court-martial proceeding?

14 A. Yes, it was.

15 Q. Is there anything about your participation in that process
16 there that you think would affect your participation here today?

17 A. No, sir.

18 MJ: Questions from the government?

19 APROS: No, sir.

20 MJ: From the defense?

21 DDC: No, sir.

22 MJ: Sir, thank you very much. If you can step back into the
23 deliberation room, please. Next we'll have Captain [REDACTED].

1 [Colonel [REDACTED] departed the courtroom and Captain [REDACTED]
2 entered the courtroom and was seated.]

3 **INDIVIDUAL VOIR DIRE OF CAPTAIN [REDACTED]**

4 **Questions by the military judge:**

5 Q. Sir, you indicated an affirmative response to the two
6 questions about the media contacts that you had heard mention of this
7 case in the media within the last 5-1/2 years and also within the
8 last week. Is that correct?

9 A. That's correct.

10 Q. Can you please tell us about that?

11 A. The longer timeframe, just when detainees were first
12 brought to Guantanamo. I couldn't even tell you the source. They
13 were profiling the nationalities of all but there was one Australian
14 national that was held here. Again, this was some time ago. As to
15 the most current one, I believe it was on -- I want to say it was
16 probably Tuesday afternoon watching the news -- I believe it was Fox
17 News Channel, they run the ticker at the bottom and there was a
18 mention I think that there had been a plea reached in this case.

19 Q. Did it provide you any more information than I've provided
20 you here today as far as Mr. Hicks having pleaded and been found
21 guilty?

1 A. No, not that I recall. I think the ticker was very brief
2 saying a plea had been reached and I think that was the extent of it
3 from what I recall.

4 Q. Have you learned more about the case since you've been here
5 than when you left and what you heard on the news?

6 A. From yourself?

7 Q. Yes.

8 A. Yes. Considerably more.

9 MJ: Questions in light of that. Government?

10 APROS: No, sir.

11 DDC: None from the defense, Your Honor.

12 MJ: Thank you very much. You can go back into the deliberation
13 room, and we'll take Captain [REDACTED], please.

14 [Captain [REDACTED] departed the courtroom and Captain [REDACTED]
15 entered the courtroom and was seated.]

16 **INDIVIDUAL VOIR DIRE OF CAPTAIN [REDACTED]**

17 **Questions by the military judge:**

18 Q. You indicated an affirmative response to the two questions
19 I asked about media coverage. Both that you had heard some mention
20 of the case in the media within the last 5-1/2 years and also within
21 the last week. Is that correct?

22 A. That is correct.

1 Q. Could you please tell us about that?

2 A. I read the paper every day and it was up in the Washington
3 Post and it just caught my interest because there has been a lot of
4 publicity about GTMO anyways and I've been here so it just caught my
5 interest.

6 Q. Do you recall what you learned about this case?

7 A. Honestly, I was trying to think about whether it was the
8 paper or on TV, but I've been to Australia a couple of times and just
9 somebody from Australia caught my attention. I typically skim
10 through the paper, I don't read every article because of the amount
11 of time I have. That's about it. That's about all I can remember
12 from the paper.

13 Q. Do you recall hearing or seeing anything in the media that
14 you haven't seen or heard now in court today based on what you've
15 read?

16 A. Well the charges. I don't recall ever hearing the name in
17 the paper or on news.

18 Q. What I'm getting after, I know what you've learned here
19 today, is there anything that you heard in the media in addition to
20 that?

21 A. No.

22 Q. So you've learned more today?

23 A. Oh, absolutely.

1 Q. You mentioned and I'll this follow-up on the trip to
2 Australia. Could you tell us about that and what they were?

3 A. Liberty port call on a typical deployment. This was '87,
4 maybe '88.

5 Q. How long were you there?

6 A. About a week. In Perth.

7 Q. Did you say since you've been in here now that you had been
8 in Guantánamo before?

9 A. I've landed here to refuel. Not TDY.

10 Q. Did you get off the airfield or not?

11 A. I tried to get off as quick as I could.

12 Q. You misinterpreted my question. Was your stay here limited
13 to being on the airfield and refueling, or did you come and stay
14 overnight?

15 A. No. It was just about 20 minutes for refueling and then we
16 were off.

17 Q. You indicated that you had been stationed or assigned on
18 the USS Peleliu. Is that correct?

19 A. That's correct.

20 Q. Could you please tell us about that?

21 A. It was a typical 6-month deployment which I was a part of
22 the air wing. A detachment of two Navy helicopters for combat search
23 and rescue.

1 Q. When was that?

2 A. '97.

3 Q. Have you ever been aboard the USS Bataan?

4 A. No, I haven't.

5 MJ: Questions in light of that, government?

6 APROS: Negative, sir.

7 DDC: None from the defense, sir.

8 MJ: Sir, thank you very much. You can go back to the
9 deliberation room. If we could have Captain [REDACTED], please.
10 [Captain [REDACTED] departed the courtroom and Captain [REDACTED]
11 entered the courtroom and was seated.]

12 **INDIVIDUAL VOIR DIRE OF CAPTAIN [REDACTED]**

13 **Questions by the military judge:**

14 Q. Sir, you indicated an affirmative response to the question
15 about having heard mention of this case in the media within the last
16 5-1/2 years. Is that correct?

17 A. Yes, sir.

18 Q. Could you please tell us about that?

19 A. I just happened to go to the Yahoo! home page and read a
20 story on it one day last week. That's the extent of the media
21 coverage.

22 Q. Do you recall what that story told you?

23 A. I only recall the person's name and your name in the story.

1 Q. That's it?

2 A. That's it, and his country of origin and that he was on
3 trial here.

4 Q. Do you recall anything in that story being reported to you
5 that in any way differs from what you learned in court today?

6 A. No, sir.

7 Q. You also indicated that you served previously as a member
8 of another military commission, or court-martial, or civilian jury.
9 Is that correct?

10 A. Yes, sir.

11 Q. Which one was it?

12 A. It was a military court-martial.

13 Q. Could you tell us about that, please?

14 A. It was a case where the military member was on trial for
15 child abuse. They thought that he might be starving his child to
16 death.

17 Q. When was that?

18 A. Probably about 10 years ago when I was lieutenant
19 commander.

20 Q. Is there anything about your service with regard to that
21 court-martial that you think will have an effect on your service here
22 today as a commission member?

23 A. No, sir.

1 MJ: Questions in light of that, government?

2 APROS: No sir.

3 DDC: None from the defense, Your Honor.

4 MJ: Sir, thank you very much. You can go back to the

5 deliberation room, and we'll take Colonel [REDACTED].

6 [Captain [REDACTED] departed the courtroom and Colonel [REDACTED]

7 entered the courtroom and was seated.]

8 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

9 **Questions by the military judge:**

10 Q. You indicated that you had previously served as a member of
11 another military commission, or court-martial, or civilian jury. Is
12 that correct?

13 A. Yes, sir.

14 Q. Could you please tell us about that?

15 A. Yes, sir. It was in the mid-90s. I was assigned to a
16 court-martial. It was a sexual assault case and I ended up being the
17 president of the members for that case.

18 Q. Is there anything about your service with regard to that
19 court-martial that you think will affect how you serve with regard to
20 this military commission?

21 A. No, I do not.

1 Q. You indicated that you had seen or heard some mention of
2 this case in the media within the last 5 years. Is that correct?

3 A. Yes, that's correct.

4 Q. Could you please tell us about that?

5 A. I would say 2 to 3 weeks ago I remember in the office one
6 morning seeing a short clip on one of the news media programs and
7 that was it.

8 Q. Do you recall what was reported?

9 A. I do not.

10 Q. You just remember ----

11 A. I remember something about Guantánamo Bay and the name
12 "Hicks."

13 Q. You indicated you had been stationed, assigned, TAD, or TDY
14 at GTMO before. Is that correct?

15 A. I was on an aircraft that transited here, I think due to
16 mechanical problems. I was not assigned here for any -- we didn't
17 even spend the night.

18 Q. Did you stay on the airfield there until it was fixed?

19 A. That's correct.

20 MJ: Questions in light of that, government?

21 APROS: No, sir.

22 DDC: Sir, just one quick one.

1 **Questions by the detailed defense counsel:**

2 Q. Sir, I noticed on your questionnaire you attended
3 university with I believe Captain [REDACTED]. Is that correct sir?
4 At The Citadel?

5 A. I did attend The Citadel. I don't remember him as a
6 classmate.

7 Q. Okay. That answers the question then, sir. Thank you.

8 MJ: Anything else?

9 APROS: No, sir.

10 DDC: Nothing from the defense, sir.

11 MJ: Colonel, thank you very much. You can go back to the
12 deliberation room. If we could have Colonel [REDACTED], please.
13 [Colonel [REDACTED] departed the courtroom and Colonel [REDACTED]
14 entered the courtroom and was seated.]

15 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

16 **Questions by the military judge:**

17 Q. Sir, you indicated that you had previously served as a
18 member of another military commission, court-martial, or civilian
19 jury. Is that correct?

20 A. Yes, it is.

21 Q. Could you please tell us about that?

22 A. It was a court-martial in 2001.

1 Q. What were the general nature of the charges, do you recall?

2 A. An Airman was charged with being on -- he was found with
3 drugs on duty and convicted.

4 Q. Is there anything about your service with regard to that
5 court-martial that you think would affect your service here today as
6 a military commission member?

7 A. No, sir.

8 MJ: Additional questions?

9 APROS: No, sir.

10 DDC: None from the defense, sir.

11 MJ: Sir, thank you very much. You may go back to the
12 deliberation room. If we could have Lieutenant Colonel [REDACTED],
13 please.

14 [Colonel [REDACTED] departed the courtroom and Lieutenant Colonel
15 [REDACTED] entered the courtroom and was seated.]

16 **INDIVIDUAL VOIR DIRE OF LIEUTENANT COLONEL [REDACTED]**

17 **Questions by the military judge:**

18 Q. Ma'am, you indicated that you had previously served as a
19 member of another military commission, or court-martial, or civilian
20 jury. Is that correct?

21 A. Yes, sir.

1 Q. Could you please tell us about that?

2 A. Approximately 10 years ago I sat on a court-martial in
3 Korea. It was concerning a sexual assault.

4 Q. Is there anything about your service and that court-martial
5 that you think would have an impact on your service as a military
6 commission member in this case?

7 A. No.

8 Q. You also indicated an affirmative response to my two
9 questions about having seen mention of this case in the media. Is
10 that correct?

11 A. Yes, sir.

12 Q. Could you please tell us about that?

13 A. Tuesday morning we have something called "aim points" in
14 the Air Force. News comes to us every day and there were a couple of
15 articles in there on Tuesday morning.

16 Q. In what format does it come to you?

17 A. It's e-mail.

18 Q. Do you recall what was reported there about this case?

19 A. That there was a plea. That's about it.

20 Q. Do you recall anything being reported to you that you
21 haven't learned since being in the room here today?

22 A. No.

23 MJ: Questions in light of that?

1 APROS: Yes, sir. Just very briefly.

2 **Questions by the assistant prosecutor:**

3 Q. Ma'am, I see on your questionnaire that you have a law
4 degree. Is that right?

5 A. Correct.

6 Q. While you were in law school, did you focus on any specific
7 area of the curriculum or was it general courses?

8 A. General courses, but intellectual property.

9 Q. With an expertise track, or was it just something that you
10 had just more courses in than anything else?

11 A. More courses than anything else.

12 APROS: That's all, sir. Thank you.

13 DDC: No questions from the defense, Your Honor.

14 MJ: All right, Colonel, thank you very much. You can step back
15 into the deliberation room, please.

16 [Lieutenant Colonel [REDACTED] departed the courtroom.]

17 MJ: Does either side wish to recall any member for any
18 additional voir dire?

19 APROS: No, sir.

20 DDC: Defense does not, Your Honor.

21 MJ: Does the government have any challenge for cause?

22 APROS: No challenges for cause, sir.

23 MJ: Does the defense have any challenge for cause?

1 DDC: None for cause, Your Honor.

2 MJ: Does the government have a peremptory challenge?

3 APROS: Yes, sir. The government would like to exercise a
4 peremptory challenge against Lieutenant Colonel [REDACTED].

5 MJ: Any objection to that?

6 DDC: Yes, sir. We would ask that the government have to state
7 a basis similar to a Batson challenge.

8 MJ: Okay. Does the government have a non-gender basis for that
9 challenge?

10 APROS: Yes, sir. The specific challenge to this member comes
11 directly out of answers she provided in her questionnaire,
12 specifically 13, 17, and 20.

13 MJ: And those are referring to the questionnaires that are in
14 Appellate Exhibit 31. Is that correct?

15 APROS: That's correct, sir.

16 MJ: Could you restate those numbers, please?

17 APROS: Yes, sir, certainly; 13, 17, and 20, sir.

18 MJ: All right, the government's peremptory challenge to
19 Lieutenant Colonel [REDACTED] is granted. Does the defense have any
20 peremptory challenge?

21 DDC: Yes, sir. The defense would peremptory challenge Captain
22 [REDACTED].

23 MJ: Any objection to that?

1 **[The commission was called to order at 1553 hours, 30 March 2007.]**

2 MJ: Members, before you are seated, Captain [REDACTED] and
3 Lieutenant Colonel [REDACTED], you have been excused from these
4 proceedings and your presence is no longer required. I thank you
5 very much for being here today. You may leave the courtroom at this
6 time and collect up any personal matters you left in the deliberation
7 room. You are discharged with my thanks.

8 [Captain [REDACTED] and Lieutenant Colonel [REDACTED], the excused
9 members, departed the courtroom.]

10 MJ: With regard to the rest of the members, we're now going to
11 take a brief recess to reorganize your box there and take a comfort
12 break. I plan to restart these proceedings as soon as possible,
13 hopefully within 20 to 30 minutes. It takes some time to do things.
14 The members may go back to the deliberation room. If you want to use
15 the restroom facilities, right when you go out would be the best time
16 to do that.

17 [The members departed the courtroom.]

18 MJ: Let's see if we can start at 1620. We're in recess.

19 **[The commission recessed at 1555 hours, 30 March 2007.]**

20 **[The session was called to order at 1623 hours, 30 March 2007.]**

21 MJ: This military commission will come back to order. All
22 parties present when we recessed are again present. The members are
23 absent.

1 [The commission was called to order at 1624 hours, 30 March 2007.]

2 MJ: Members, please be seated.

3 [The members did as directed.]

4 MJ: Everyone, please be seated.

5 [All persons in the courtroom did as directed.]

6 MJ: Members, I have previously admitted into evidence
7 Prosecution Exhibit 1 which is a stipulation of fact. A copy of
8 Prosecution Exhibit 1 will be handed to you now to read before we
9 continue and you will have it with you during deliberations.

10 Trial counsel, do you have copies?

11 PROS: Yes, sir.

12 MJ: If you could please hand them to the bailiff.

13 [The prosecutor handed the copies to the bailiff.]

14 MJ: Bailiff, you can give them to the members.

15 [The bailiff handed out copies of PE 1 to the panel members.]

16 MJ: Members, go ahead and take an opportunity to read through
17 that, please. Simply look up when you're done.

18 [All members did as directed.]

19 MJ: Does any member desire any additional time to review
20 Prosecution Exhibit 1?

21 Negative response.

22 Anything further from the prosecution?

23 PROS: No, Your Honor. The government rests.

1 MJ: Defense counsel, you may proceed.

2 DDC: Yes, sir. The defense offers no documentary evidence
3 besides the stipulation of fact that it agreed to. I will exercise
4 Mr. Hicks' unsworn statement rights and provide a statement to the
5 members.

6 MJ: Very well.

7 **UNSWORN STATEMENT**

8 **David Matthew Hicks, the accused through his detailed defense**
9 **counsel, made the following unsworn statement:**

10 DDC: Members, David Hicks is very nervous today so he has asked
11 that I provide information to you on his behalf. He means no
12 disrespect by this request. In May of 1998 at the age of 22, David
13 went to Japan to work on a horse farm. This was the first time he
14 traveled outside of Australia. Injured in a fall from a horse, he
15 returned home in August of 1998. He went home, recuperated, and went
16 back to Japan to work on a horse farm in December of 1998.

17 At the age of 23, in May of '99, David traveled to Albania
18 from Japan to join the KLA, Kosovo Liberation Army. Once returning
19 from Albania and back in Australia in June of '99, David went to
20 visit Kosovo refugees near his hometown in his KLA uniform and he was
21 well received by them. David contacted an Australian Army recruiter
22 and was told that he did not have the education qualifications to

1 enlist. At the age of 24 in November of '99, David left Australia
2 for Pakistan.

3 David has been in the US custody since approximately 2001.
4 Throughout his time in US custody, David feels he tried his best to
5 provide information to US investigators. Even after David Hicks had
6 legal counsel and faced a possible trial before military commission,
7 David Hicks still provided information to US investigators and
8 different federal agencies.

9 While at Guantánamo, David has worked by correspondence on
10 his high school qualifications as he had never finished grade nine.
11 He has completed up to year 11 math and English. He wants to finish
12 his high school education and hopefully attend university. While not
13 perfect, David feels he's tried his best to behave at Guantánamo. In
14 February of 2007, Admiral Harris, the current JTF Guantánamo
15 Commander told the media that David was generally cooperative for the
16 more than 5 years he's been at Guantánamo.

17 David owes apologies to many people. Foremost David
18 apologizes to his family, he apologizes to Australia, he apologizes
19 to the United States. David wants to acknowledge the many men and
20 women of the US military who have treated him with professionalism
21 and humanity while he's been here at Guantánamo Bay. David wants to
22 thank all Australians who have extended compassion and forgiveness

1 towards him during his time in Guantánamo. He pledges not to betray
2 their support.

3 Thank you, sir. The defense rests.

4 MJ: Does the government have a case in rebuttal?

5 APROS: Your Honor, could we have 30 seconds to confirm?

6 MJ: Go ahead.

7 [The prosecutor and assistant prosecutor conferred.]

8 APROS: Sir, the government has no case in rebuttal.

9 MJ: Very well. As previously noted, I provided counsel with my
10 planned sentencing instructions in this case and at one point you
11 indicated you had no objections or requests for any other
12 instructions. Are there any such objections or requests now?

13 PROS: No, sir.

14 DDC: Defense has none, sir.

15 MJ: Very well.

16 Members, you are about to deliberate and vote on the
17 sentence in this case. It is the duty of each member to vote for a
18 proper sentence for the offense of which the accused has been found
19 guilty. Your determination of the amount of punishment, if any, is a
20 grave responsibility requiring the exercise of wise discretion.
21 Although you must give due consideration to the matters presented by
22 the defense, as well as those presented by the prosecution, you must

1 bear in mind that the accused is to be sentenced only for the offense
2 of which he has been found guilty.

3 PROS: Your Honor, excuse me. May I be heard?

4 MJ: About what?

5 PROS: Counsel's argument.

6 MJ: Okay. I'm getting a little ahead of myself. I'm going to
7 provide an opportunity for the counsel to argue on sentence. Thank
8 you.

9 Trial counsel, you may present argument.

10 PROS: Thank you, sir. Your Honor, may I use the podium?

11 MJ: Yes.

12 PROS: Today in this courtroom we are on the frontline of a
13 global war on terrorism, face to face with the enemy. The enemy is
14 sitting at defense counsel's table and though he is now in a suit and
15 tie, you can be assured that when he was on the battlefield in
16 Afghanistan with al Qaeda going north and south trying to kill
17 Americans, he was not wearing a suit and tie. Nor was he wearing a
18 uniform. In fact, he was an unlawful enemy combatant.

19 Gentlemen, the global war on terrorism is real. It is
20 affecting every aspect of our life. It is not just a literal battle
21 between armed forces of the United States and its allies -- staunch
22 allies such as Australia versus al Qaeda and its associated forces of
23 terrorists. In some ways the global war on terrorism is more about a

1 figurative battle of ideologies. Though still a literal fight to the
2 death, the global war on terrorism really is about those who love
3 lives and freedoms like people of the United States and Australia
4 versus those who hate our freedoms and want to do everything to kill
5 anyone associated with those freedoms.

6 The enemy before you has been fighting that very battle
7 with himself as well as literally against the United States. As for
8 a battle with the United States, Prosecution Exhibit 1 leaves no
9 doubt that that enemy wanted to kill Americans. As for the battle of
10 beliefs, within this enemy what you have here is David Hicks the
11 Australian. He was born and raised in Australia. For 24 years he
12 lived under their freedoms, freedoms similar to the United States in
13 that they're our cornerstones for democracy where you openly elect
14 your leaders; freedom of religion where you choose whether and how to
15 worship; freedom of association where you choose where to work, where
16 to live, what to wear, what to believe.

17 However, at the mature age of 24, this enemy, the David
18 Hicks of Australia, freely chose to walk away from those freedoms.
19 But even worse, he freely chose to associate with al Qaeda, to
20 include providing material support to this international terrorist
21 organization. This is a war crime for which he has been convicted.
22 The enemy here has joined forces with al Qaeda.

1 Al Qaeda is the antithesis of freedom. Al Qaeda is an
2 international terrorist organization. It is a collection of
3 terrorists from all over the world for the sole reason of bringing
4 death and destruction to nations and its people such as the United
5 States and Australia and other members of the coalition forces.
6 Australia was a member of the coalition forces in Afghanistan. There
7 is no doubt what al Qaeda is about. Al Qaeda has openly declared war
8 against the United States.

9 I remind you and bring to your attention Prosecution
10 Exhibit 1, the stipulation of fact signed by David Hicks, at
11 paragraphs 17 and 20. Seventeen states that the purpose and goal of
12 al Qaeda stated by Usama bin Laden and other al Qaeda leaders is for
13 violent attacks against property both military and civilians of the
14 United States and other countries for the purpose of opposing the US
15 support of Israel, another friend and ally of the United States.
16 Number 20 is in August of '96, Usama bin Laden had declared a
17 declaration of jihad, calling on the murder of US military personnel.
18 But al Qaeda doesn't stop against declaring war against the United
19 States government or even targeting its military. Al Qaeda has gone
20 after our citizens, our civilians, issuing a fatwa calling on all
21 Muslims who are able to kill Americans, whether civilian or military,
22 wherever they may find them.

1 Though I'm sure every one of your memories does not need
2 refreshing about what happened on 9/11 and that horrendous attack by
3 al Qaeda against the United States. I will remind you and bring up
4 later just what that infamous day has in relation to this enemy.
5 This enemy didn't have to hear about al Qaeda's hatred for the United
6 States or for Western ideas by reading it in the paper -- the
7 Australian newspaper or even on the Internet. He saw it firsthand.

8 He met Usama bin Laden. He heard UBL's speeches, how he
9 spewed hatred for America, for our friendship with Israel. This
10 enemy fully embraced al Qaeda. He even asked UBL why there wasn't
11 more training materials in English. Nonetheless, this enemy got
12 plenty of training by al Qaeda. For close to a year he received over
13 four al Qaeda terrorist training courses at their camps, to include
14 during that timeframe joining with al Qaeda and fighting with al
15 Qaeda on two battle fronts until he was finally captured in December
16 2001.

17 Now from the moment this enemy met al Qaeda which was
18 around January 2001, the David Hicks of Australia became Muhammad
19 Dawood of al Qaeda. Muhammad Dawood was just one of a number of
20 aliases. Abu Muslim Australia was another. Now in French these may
21 be referred to as "noms de guerre" -- war names. In Arabic and for
22 al Qaeda's purposes they were "kunya" -- jihad or holy war names.

1 Now Muhammad Dawood chose to conceal his identity to train
2 with al Qaeda. He did this for a few reasons. One, to avoid
3 detection and not be apprehended as a terrorist, but more importantly
4 Muhammad Dawood wanted to train with al Qaeda so he could return free
5 and virtually invisible to a Western society with the training that
6 he had and effectively do al Qaeda's deadly work. There was no doubt
7 that al Qaeda saw in Muhammad Dawood an invaluable asset.

8 Now maybe that made Muhammad Dawood feel good. He
9 shouldn't have. Al Qaeda places zero value on life. It utilizes
10 suicide bombers, innocent children both as decoys and victims.
11 Muhammad Dawood shouldn't feel good about himself. Who knows, as he
12 sits here or if he'll ever know that by providing material support
13 for terrorism all he has become is a mere tool for terrorism. Proof
14 of that is found in Prosecution Exhibit 1, paragraph 31 where Muhammad
15 Dawood meets Muhammad Atef, al Qaeda's number three leader and chief
16 al Qaeda military commander. Don't let that mislead you. That
17 military commander is a term al Qaeda might have used on him. Their
18 military had no semblance of a bona fide armed force. No uniforms,
19 no following the laws of war.

20 But Muhammad Dawood met with Muhammad Atef and he was
21 screened. He was screened about his knowledge of UBL, about al
22 Qaeda, about his ability to travel around the world as a Westerner --
23 as an Australian, specifically to Israel. If not for the US, al

1 Qaeda probably hated Israel more than the US for its freedoms but
2 also because of the holy land. But al Qaeda diabolically uses our
3 Western freedoms against us.

4 Now Muhammad Dawood, he can still when he wants to fool
5 someone. He can dress up. He can look like David Hicks again. This
6 enemy here can look on the outside to be a Westerner, to be a law-
7 abiding Australian citizen. These features allow him to blend in
8 with virtually any of the free Western societies. That's why this
9 enemy, al Qaeda, chose to send him to some of their advanced courses.
10 Muhammad Dawood's last two al Qaeda trainings were some of the most
11 telling for why al Qaeda trusted in him and wanted to develop him.

12 After attending the basic training and the guerrilla
13 training, he went on to -- after also meeting with Atef -- he went on
14 to be able to go to a city tactics training where they train on a
15 mock city. There they learn such terrorist tactics as how to kidnap
16 and how to assassinate. From there Muhammad Dawood would move on to
17 the surveillance course. At this course the al Qaeda instructor
18 cited the USS Cole bombing as a positive example of what their
19 training can do for them. Paragraph 33 of Prosecution Exhibit 1
20 details of Muhammad Dawood and other student operatives -- is what
21 they call themselves -- doing for practical exercises. They actually
22 submitted real world surveillance to al Qaeda.

1 One of those surveillances was on the American embassy in
2 Kabul. Now on that point, don't for a minute be fooled that there is
3 somehow something harmless about doing practical exercises on an
4 American embassy building that may not have had diplomatic relations,
5 may not have even been occupied, this was not a Boy Scout activity
6 that Muhammad Dawood was doing. It is absolutely immaterial what
7 that building was being used for at the time. Yes, what he acquired
8 was limited to that building, but the real purpose for that training
9 was to teach him terrorist skills and those terrorist skills are
10 transferable.

11 Now what matters to al Qaeda is that once they possess this
12 information it is still death data. They could still use it if that
13 building is ever occupied at a later date. I point to prosecution
14 exhibit 24 -- excuse me, Prosecution Exhibit 1, paragraph 24. It
15 references what al Qaeda does with information about embassies and it
16 has embassies of Kenya and Tanzania in '98 and how al Qaeda destroyed
17 them. Now do you think that when Muhammad Dawood was attending the
18 surveillance course that the instructor specifically cites to you the
19 USS Cole bombing as a positive example and that Cole bombing occurred
20 in October of 2000, do you think he might have mentioned the Kenya
21 and Tanzania bombings that occurred in '98 when he is sending them
22 specifically out to conduct surveillance on embassies? That's what
23 he's training on.

1 As I mentioned, what matters most about that skill is that
2 it is transferable. It's not laughable that it could be a criminal
3 offense, and it was by providing material support. Once that
4 terrorist skill is required, it travels with Muhammad Dawood to
5 whatever country he goes to. He knows what kind of information al
6 Qaeda wants. He knows also how to get it to them. He will always
7 know how to get it to them.

8 When you conduct that surveillance on a building, you
9 provide to al Qaeda what's the moral equivalent of providing raw
10 materials to a time bomb to someone you know that can assemble and
11 detonate it. Now Muhammad Dawood, he's an enemy who will always
12 possess the skills he has. You will never be able to get rid of his
13 training with al Qaeda, his terrorist knowledge, the people he knows,
14 the inner workings of al Qaeda. If he wanted to make connection with
15 them, he could.

16 Muhammad Dawood always will be a threat unless he changes
17 his beliefs, his extremist ideology. Now how strong are Muhammad
18 Dawood's beliefs? Well 9/11 is a microcosm of that. On 9/11 that
19 day we were being attacked by al Qaeda, Muhammad Dawood was in
20 Pakistan at a friend's watching those attacks. He had just returned
21 from a few days in August of 2001 attending that surveillance course,
22 his fourth al Qaeda training. Now watching that attack, he expressed
23 approval and that comes from his own friend's evidence. Was his

1 friend's perception accurate? Well look at Muhammad Dawood's actions
2 after 9/11.

3 The next day he returns -- he goes from Pakistan back into
4 Afghanistan. He was in Pakistan with his Australian passport and
5 once again with the liberty and the freedom to return, to travel
6 anywhere but chooses -- he freely chooses to go back in the fight and
7 join up and rejoins with al Qaeda. He reports for duty to al Qaeda
8 and this is even after watching the 9/11 attacks and seeing those
9 planes used as fuel, the missiles, the people around them.

10 How he could have safely stayed out of that fight. He
11 could have stayed in Pakistan. He did not have to go into
12 Afghanistan. He could have returned to Australia with his passport,
13 but he went into Afghanistan because he knew America was coming after
14 al Qaeda, and he wanted to help them out.

15 Now when he got to his first battle position in Kandahar
16 and acquired his AK-47, acquired his rounds, acquired his hand
17 grenades, he wasn't satisfied that the enemy wasn't showing fast
18 enough. So he goes out of his way and traverses hundreds of miles
19 from the south in Kandahar, Afghanistan, up to Kabul up to Konduz for
20 another battle. Now do you think he really wanted to kill Americans?
21 If he didn't, he could have stayed in Pakistan. If he didn't want to
22 kill Americans, he could have stayed in Kandahar. Even better, if he

1 didn't want to kill Americans, he could have stayed in Australia.

2 But he chose to go up to the battle where he heard the action was.

3 Now the fact that when he got up there they had to go into
4 full retreat within hours, that's not a reflection of his character,
5 of his intent. There is no voluntary withdrawal there. There is no
6 moral mitigation. The only reason he stopped fighting was because he
7 was captured. But for him being captured, if he was able to and
8 managed to flee to Pakistan like he tried to after Konduz fell and he
9 went back into the city; if he was able to flee again to Pakistan,
10 there was every reason to believe he would again eventually have
11 joined up with al Qaeda's forces. Why? Because he did that very
12 thing on 9/11. He was so called free of al Qaeda after their
13 training and he voluntarily went back to them.

14 Now the enemy of Muhammad Dawood sits here today. There is
15 no way of knowing when you look at him whether he truly knows what he
16 did was wrong, or will ever appreciate it. All we know for a fact is
17 that he does possess the skill of a terrorist, and the free David
18 Hicks who chose to leave Australia at the age of 24 and train with al
19 Qaeda and take up arms against the US on two fronts, he didn't stop
20 until he was captured. Now that he's been captured and convicted of
21 a war crime, what is a just punishment?

22 Well there's basically three reasons to punish someone.
23 You have your retribution, a mere measure of justice for what has

1 been done. You have your specific deterrence to stop him from doing
2 again. And you have general deterrence to stop others from following
3 in his footsteps. That's where you get to the real damage of a
4 Muhammad Dawood. He is known throughout the world. He had left a
5 free society to join up with al Qaeda. Other confused, lost souls
6 might follow in his footsteps. Certainly, even al Qaeda being able
7 to tout a Westerner who left our freedoms to join al Qaeda, that
8 helps their recruiting goals. That helps prolong the global war on
9 terrorism. That's damage Muhammad Dawood has done that can never be
10 undone.

11 But the most compelling reason to punish Muhammad Dawood is
12 simply for what he has done and to prevent him from repeating those
13 acts and one way to do that is while he's in confinement, we know he
14 can't do it again. David Hicks -- not Muhammad Dawood, but David
15 Hicks walked away from Australian freedoms at the age of 24 only to
16 travel thousands of miles to attack the United States' freedoms.
17 Muhammad Dawood, as he sits there, he's still a vigorous 31. But
18 maybe being sentenced to the maximum authorized might help David
19 Hicks, the Australian, reemerge. To help him come to his senses
20 again to what the value is to live in a free society and not abuse
21 those privileges by trying to attack them and kill its people.

22 But because we can never know that, what should be done is
23 that Muhammad Dawood who sits there, he should not experience true

1 freedom again for at least the next 7 years. So on behalf of the
2 United States government, that without any doubt, reservation, or
3 apology, the prosecution recommends that you sentence this enemy to
4 the maximum authorized punishment -- to be confined for a period of 7
5 years. Thank you.

6 DDC: Sir, may I approach the podium?

7 MJ: Yes, and you may argue.

8 DDC: Good afternoon, members. You're here to punish David
9 Hicks, set a sentence for him, for what he did -- the offense he
10 violated. When the prosecutor got up here and started having to use
11 analogies about David Hicks, why did they have to do that? Why does
12 the prosecutor have to stand up here and say, "It was like putting
13 the parts to a bomb together"? It's an analogy, means he didn't do
14 it. The prosecutor stood up here and spit hate and wanted to rile
15 your emotions up and wanted to tell you, he met Usama bin Laden, so
16 give him the max. He was a Westerner who actually thought he might
17 explore Islam, give him the max punishment.

18 But that's not the offense that you need to punish him for,
19 and I do not want to minimize at all the offense that David Hicks has
20 been found guilty of. He was found guilty of providing material
21 support to an international terrorist organization. Understand what
22 that is. That's not support to commit a terrorist act.

1 All the attacks that they list in Prosecution Exhibit 1, is
2 there anything in the stip of fact that says, David Hicks provided
3 one ounce of support to help those actual attacks? No. And what's
4 not in the stip speaks louder than what is. Does anywhere in that
5 stip say David Hicks hurt anyone? It doesn't. Does it say David
6 Hicks shot at a US Special Forces soldier in Afghanistan? It
7 doesn't. Does it say David Hicks planted a mine to attack US forces?
8 No.

9 It actually says what did David Hicks do in the actual
10 sphere of combat in Afghanistan was he sat in a trench at the airport
11 and got bombed. He stood at a tank that never fired. Then as he got
12 up to the front up near Konduz, he was there for 2 hours -- it
13 doesn't say he shot at anyone. Then he ran away for 3 days.

14 Let's take a step back and say a little bit about who David
15 Hicks is, because you have to sentence the individual David Hicks.
16 He's a young man who left Australia for the first time to go work in
17 Japan. He then worked in Japan a second time, and then he traveled
18 to Kosovo and Albania to join the KLA. He was there for 4 weeks and
19 came right back and went to go visit Kosovo refugees. Obviously the
20 experience must have got him interested in the military because
21 that's what he next sought to do -- to join the Australian military,
22 but he never finished in ninth grade and didn't have the
23 qualifications.

1 [The session was called to order at 1706 hours, 30 March, 2007.]

2 MJ: Everyone, please be seated.

3 [All persons in the courtroom did as directed.]

4 MJ: Why don't you go back to your table. You can leave those
5 things there if you want.

6 DDC: I just need them for reference, sir.

7 [The detailed defense counsel returned to defense table.]

8 MJ: Government, why don't you go ahead and explain to me your
9 objection.

10 PROS: Yes, sir. Sir, defense stated that supporting Lashkar-e
11 Tayyiba is not a crime. Lashkar-e Tayyiba -- though the accused has
12 not been charged with that -- Lashkar-e Tayyiba (LET) is listed as an
13 FTO just as al Qaeda has been. An international organization
14 includes FTO's. So providing support to LET is in fact providing
15 support to an international terrorist organization. So to say that
16 providing support to LET is not a crime is a misstatement of the law.
17 What prosecution is willing to acknowledge is that he has not been
18 charged with that offense.

19 MJ: Okay. Major Mori?

20 DDC: Sir, I was under the impression -- and if I'm mistaken --
21 that Lashkar-e Tayyiba was not a prohibited organization until 26
22 December 2001. As such, it wouldn't have been prohibited.

23 MJ: You say it was not listed until when?

1 DDC: It was not listed -- if you look at the stip the fact,
2 paragraph six, it was designated a federal [sic] terrorist
3 organization on 26 December 2001, after David Hicks was already in US
4 custody.

5 MJ: Okay. Government.

6 PROS: Sir, the FTO is only one designation. It does not mean
7 that you wouldn't be able to prove they were an international
8 terrorist organization otherwise. I did not hear a qualification
9 that provides support to LET up until 2001 would not have been a
10 crime. It was simply stated that it was not a crime.

11 MJ: Okay. Major Mori, you also stated that -- or were making
12 the argument that why isn't what he was doing with LET not on the
13 charge sheet which actually it is, right? It is part of the factual
14 allegations that are part of the charge sheet. Isn't that correct?

15 DDC: Yes, sir. I was going to distinguish -- I was going to
16 continue and distinguish between what was in the stip of fact, the
17 full paragraphs and the stip of fact and what's in the cleansed
18 charge sheet. I could begin my argument and I will clarify my point
19 that -- I will just reference to the members that it was -- I was
20 referring to the designation. It was not designated a foreign
21 terrorist organization and pick up from there, sir.

22 MJ: [Pause.] Would the government's concern be addressed if
23 during the course of his argument he clarified that at the time that

1 he was interacting with this LET, they had not yet been designated as
2 a foreign terrorist organization, and then referencing paragraph six
3 of the stipulation which shows that they were not designated at that
4 time, but then also shows that they were designated sometime
5 thereafter which would be indicating then that that is a distinction
6 which the members I think will then take on board and to give it some
7 weight. Would that satisfy your concern?

8 PROS: If they also could include, sir -- the government just
9 does not want to concede that even with the statement that the
10 conduct occurred before LET was an FTO would therefore not constitute
11 a crime. Our position is that you could still prove an international
12 terrorist organization without being an FTO. So I think a solution
13 may be to simply have defense explain that what they meant was simply
14 that -- that they had not been designated an FTO and somehow withdraw
15 the idea that it's still not a crime to provide support before or
16 after.

17 MJ: [Pauses to write notes.] Okay. I'm going to read
18 something that I have drafted up here which may satisfy the concerns
19 of both parties. I'd like you just to listen to it and then if it
20 correctly addresses those things, the next issue would be whether I
21 would read it myself as a matter of clarification, or whether the
22 defense counsel can just put this in his argument. It would start

1 before the defense counsel continues or before I continue, depending
2 on who's reading it.

3 I'd like to clarify my remark -- or the remark -- about Mr.
4 Hicks' association with LET during the time period in question. As
5 agreed to by the prosecution and defense and Mr. Hicks in the
6 stipulation of fact, al Qaeda was designated as an FTO and thereby
7 automatically recognized under US law as an international terrorist
8 organization in October 1999. The LET, however, was not similarly
9 designated under US law until 26 December 2001, which was after the
10 time Mr. Hicks had already been captured. Accordingly, it may be
11 subject to dispute whether his association with that organization
12 standing alone would be found to be a violation of US law.

13 PROS: Government is satisfied with that, sir.

14 MJ: Because that leaves the stipulation intact ----

15 DDC: Yes, sir.

16 MJ: ---- it leaves a point worthy of note in your argument ----

17 DDC: Yes, sir.

18 PROS: Your Honor, I know you provided defense the option, the
19 government preference ----

20 MJ: I didn't provide them the option, I just said we're
21 thinking about it right now. I wanted to first deal with the
22 language and then we'll get to the best way to pitch it either
23 through instruction or his argument.

1 [The commission was called to order at 1723 hours, 30 March 2007.]

2 MJ: Members, please be seated.

3 [The members did as directed.]

4 MJ: Everyone, please be seated.

5 [All persons in the courtroom did as directed.]

6 MJ: Before Major Mori continues, I'd like to clarify one aspect
7 about his remarks with regard to Mr. Hicks' association with the
8 organization known as LET and discussed in the stipulation of fact
9 and on the charge sheet that you have during the time period in
10 question.

11 As agreed to by the prosecution and defense and Mr. Hicks
12 in the stipulation of fact, al Qaeda was designated as a foreign
13 terrorist organization and thereby automatically recognized under US
14 law as an international terrorist organization in October 1999. The
15 LET, however, was not similarly designated under US law until 26
16 December 2001, which was after Mr. Hicks had already been captured.
17 Accordingly, it may be subject to dispute whether his association
18 with that organization standing alone would be found to be a
19 violation of US law.

20 Major Mori, you may continue.

21 DDC: Members, I would like to address a little bit on what
22 drove David Hicks. The government stood up here and said it was
23 anti-West. I think if you look at the facts in the stip of fact then

1 you see how David's involvement -- and from the unsworn statement --
2 David's involvement that ended up leading to him being in a
3 battlefield in Afghanistan began back in the Kosovo liberation. He
4 only went to train there and he came back and what was his desire?
5 To join the Australian Army. Then he went to Pakistan and he got
6 involved with Lashkar-e Tayyiba and the only time he actually fired
7 at someone is when he's shooting at a bunker. Does that sound like a
8 soldier or does that sound like a terrorist?

9 Now granted, he might have just wanted to be a wannabe. A
10 wannabe soldier because he didn't have the education to join a real
11 service. And what did he do in Afghanistan. In the conflict, did he
12 act like a terrorist, or did he act like a soldier? I submit that he
13 acted like a soldier. The government would say he went through all
14 this training and you should punish him for what might have happened.
15 You should punish him for taking training, for people he met. But
16 that's not what you need to punish him for. You need to punish him
17 for what he did, and what he did was provide support as a soldier.
18 His person --he provided his person and he guarded a tank and he sat
19 in the trench and was bombed for it.

20 Have there been consequences for David Hicks? Because
21 that's what you need to factor in what the appropriate sentence
22 should be. The government says to max him. There is no question.
23 Most of the prosecutor's argument was why David is guilty. How do we

1 know why he's guilty? Because David accepted responsibility and pled
2 guilty. That's not in contention here. We are not arguing whether
3 this is or whether this is not a violation, we're talking how much
4 punishment and does David Hicks rate the most severe punishment for
5 it. Is the facts of David Hicks' case really deserving of 7 years
6 punishment.

7 The consequences he's already suffered is one, he was
8 bombed. He was shot at by the Northern Alliance running away. He
9 was scared and I think he finally got his first taste of what really
10 serving in a combat zone was for those 2 hours running away from the
11 Northern Alliance. It was something he didn't like and he ran away.
12 The wannabe finally got a real taste of it, and he ran away.

13 Then you see in the stipulation of fact he gets back to
14 Konduz and the other Arab fighters are saying "we're going to fight
15 to the death" -- he says, "I'm out of here," and he left. That's
16 when he made a decision, I'm out of here, this is not for me. He
17 sought out the shopkeeper who took him in and took pity on him. Does
18 that rate 7 years? Does he rate the maximum punishment for this?

19 Now members, you're going to hear and I anticipate the
20 judge will instruct you that a commission is different than a court-
21 martial. Many of you have experienced a court-martial where someone
22 who may be in the brig prior to a court-martial gets credit for that
23 time served. In a military commission, that is not the case. The

1 judge will instruct you on that. So the sentence -- you should not
2 adjudge in excess of sentence thinking that he will get credit for
3 the 5 years and 4 months he has already sat in a cell and thought
4 about the conduct that brought him here today. We're not talking
5 about someone that you need to punish for what just happened last
6 year. We are talking about punishing someone who has already sat in
7 a cell and had to think about it.

8 Now the prosecutor would like you to think that David hates
9 the West. He hates America, and he hates America so much that he
10 started cooperating with the US investigators right away. Does that
11 make sense? Of course not. He cooperated with US investigators
12 because he doesn't hate America. Why would he collaborate with
13 investigators even after facing criminal proceedings and he's willing
14 still to participate and assist US federal agencies. Because he has
15 no personal animosity against you or I or Americans.

16 Why does he behave here? Why did he try to behave? Why
17 would the commander of Guantánamo Bay just last month say for over 5
18 years generally he's been compliant? Is that the al Qaeda secret
19 trick, you know, you give them all the information they want and then
20 behave really well and they'll let you go? No. His heart wasn't
21 with al Qaeda. He wanted to be a soldier and actually this was the
22 only place he could do it. He shouldn't have been there. I'm not
23 minimizing him being there. But it wasn't out of hate and it wasn't

1 out of supporting or actually accomplishing or assisting any of the
2 most severe and egregious things you see in that charge sheet that
3 have nothing to do with David Hicks.

4 David Hicks was not responsible one bit for blowing up the
5 embassies in Africa. He was not responsible for the bombing against
6 USS Cole, and he wasn't responsible for the September 11 attacks.
7 And to even use as the prosecutor did that death and destruction can
8 somehow describe as David Hicks when he hasn't hurt one person and
9 yet they asked the maximum punishment for this offense.

10 You need to consider -- I just want to address one thing
11 before I get to sentencing factor and that was the government's
12 theory that David Hicks is somehow the invaluable resource to al
13 Qaeda. The government by their sort of emotional plea to you that he
14 somehow went from Usama bin Laden to David Hicks to the rest of al
15 Qaeda around the world. That's not the case. And how do we know
16 that? What is the most objective facts that we know that David Hicks
17 really -- even though we can't put anybody from al Qaeda here to
18 testify -- that he was nothing but the PFC but they put in a trench.
19 Because that's what they did. They put him in the trench at the
20 airport.

21 The government wants you to believe that David Hicks was
22 somehow the Australian al Qaeda member who was willing to travel all
23 around the world to do all this stuff and to punish him for what

1 might have happened. But the reality is, David Hicks was put in a
2 trench and I would think if I was a commander for al Qaeda if I had a
3 Westerner who was willing to do that type of thing, it sounds like a
4 pretty valuable person. And the government even recognizes that.
5 That would be a valuable tool. Would any of you put that supposed
6 valuable tool in a trench at an airport to be bombed? Would you
7 assign him to guard the tank? Would you let him run off on his own
8 up to Konduz and then run away? Because the most objective facts are
9 that David Hicks was not an invaluable resource, he was a PFC run
10 amuck, abandoning his post.

11 You also have to recognize that David Hicks, because he is
12 from Australia, your decision will have an impact and reach outside
13 our nation and it will be important to consider, and to determine
14 really based on what he did. That's what I'll ask for you to do.
15 Really what he did and what is his consequences.

16 I would like you to consider first of all the sentencing
17 factor of rehabilitation, and the judge will instruct you on that.
18 His plea of guilty establishes that he's already begun
19 rehabilitation, but that happened now, 5 years and 4 years [sic]
20 later. How do we know he's already rehabilitated? Because he
21 started cooperating with US investigators from the first involvement
22 with them. He's cooperated even after being charged. He's behaved
23 at Guantánamo. He started working on improving himself even here at

1 Guantánamo by taking correspondence courses in high school to improve
2 his education. He's recognized that he needed his education and he
3 started working hard to solve that.

4 How much further punishment is it necessary for David Hicks
5 to sit in his cell and think about what he's done? He's already done
6 5 years and 4 months. The government wants you to send a message
7 with David Hicks. The David Hicks people are going to know about.
8 They asked for 7 years. The prosecutor asked you to make him sit in
9 a cell for 7 years. He's already done 5 years and 4 months. He
10 won't get credit for that. Even though the prosecutor says 7 years,
11 you can give the prosecutor what he wants which is put David in jail
12 for 7 years. You can do that by sentencing him to 1 year and 8
13 months. That would be David Hicks has sat in his cell for 8 [sic]
14 years to think about the conduct that put him there.

15 Does he need to do a full 7 years more, or is 7 years
16 enough? I would submit his behavior since coming initially into
17 contact with US forces and cooperating, his behavior here at
18 Guantanamo Bay for 5 years and 4 months. He hasn't behaved just for
19 a few months in the brig before the trial, it's 5 years and 4 months.
20 Significant representation of his rehabilitative potential.

21 Is he a threat? Is Australia ever going to let him go? Is
22 he somehow -- people are going to forget who he was or do you think
23 he'll be watched? Easily, he'll be watched. People know his name.

1 He's not a threat. And I think by providing him the opportunity
2 after 1 year and 8 months from now to get out, to go back and finish
3 his education, you'll give him the opportunity to not let down those
4 people that have supported him.

5 He sits here today recognizing the US service members who
6 treated him kindly and professionally here. Why? Because that shows
7 you the person he is. He is a big enough man to accept
8 responsibility for his actions by pleading guilty and thanking those
9 who have helped him. All I would like you to do is give him an
10 opportunity to try to make a new start in life -- the new start that
11 he's already started here with his education. Sentence him to 1 year
12 and 8 months. You can give the prosecution their request and he'll
13 spend 7 years in a cell. But you also give David Hicks an
14 opportunity and you send a message that to have justice, you must
15 also have mercy. Thank you.

16 MJ: Members, you are about to deliberate and vote on the
17 sentence in this case. It is the duty of each member to vote for a
18 proper sentence for the offense of which the accused has been found
19 guilty. Your determination of the amount of punishment, if any, is a
20 grave responsibility requiring the exercise of wise discretion.
21 Although you must give due consideration to the matters presented by
22 the defense, as well as to those presented by the prosecution, you

1 must bear in mind that the accused is to be sentenced only for the
2 offense to which he has been found guilty.

3 Some of you may have experience with courts-martial wherein
4 an accused is given credit for confinement served prior to trial.
5 This is not the case at a military commission or upon review of the
6 commission's sentence. Therefore, you must not adjudge an excessive
7 sentence in reliance upon any possible credit for Mr. Hicks'
8 detention prior to today's session. You must not adjudge an
9 excessive sentence in reliance upon possible mitigating action by the
10 convening authority or some other authority.

11 The maximum punishment that may be adjudged in this case is
12 confinement for a period of 7 years. The maximum punishment is a
13 ceiling on your discretion. You are at liberty to arrive at any
14 lesser legal sentence. In adjudging a sentence in this case, you are
15 restricted to adjudging confinement or you may adjudge no punishment.

16 There are several matters which you should consider in
17 determining an appropriate sentence. You should bear in mind that
18 our society recognizes many reasons for the sentence of those who
19 violate the law. They include rehabilitation of the wrongdoer,
20 punishment of the wrongdoer, protection of society from the
21 wrongdoer, and deterrence of the wrongdoer and those who know of his
22 crime and his sentence from committing the same or similar offenses.
23 The weight to be given to any or all of these reasons along with all

1 other sentencing matters in this case rests solely within your
2 discretion.

3 Now I'll review the types of punishment you can adjudge. I
4 have already indicated that this commission may sentence the accused
5 to confinement for a period not to exceed 7 years. You may also
6 sentence the accused to no punishment. In selecting a sentence, you
7 should consider all of the matters presented by the defense and the
8 prosecution. Thus, all the evidence you have heard in this case is
9 relevant on the subject of sentencing.

10 You should consider evidence admitted as to the nature of
11 the offense of which the accused stands convicted, plus matters to
12 include: the accused's age of 31 years; the accused's education, the
13 highest level of education which the accused obtained was the eighth
14 grade; that the accused has been detained for approximately 5 years
15 and 4 months; that the accused is a citizen of Australia.

16 The commission will not draw any adverse inference from the
17 fact that the accused has elected to make a statement which is not
18 under oath. An unsworn statement as was made in his case is an
19 authorized means for the accused to bring information to the
20 attention of the commission and must be given appropriate
21 consideration. The accused cannot be cross-examined by the
22 prosecution or interrogated by the members of the commission or by me
23 upon an unsworn statement, but the prosecution may offer evidence to

1 rebut statements of fact contained in an unsworn statement. The
2 weight and significance to be attached to an unsworn statement rests
3 within the sound discretion of each member. You may consider that
4 the statement is not under oath, its inherent probability or
5 improbability, whether it is supported or contradicted by the
6 evidence in the case, as well as any other matter that might have a
7 bearing upon its credibility. In weighing an unsworn statement, you
8 are expected to use your common sense and your knowledge of human
9 nature and the ways of the world.

10 A plea of guilty is a matter in mitigation which must be
11 considered along with all the other facts and circumstances of the
12 case. Considerable time, effort, and expense to the government have
13 been saved by the accused's plea of guilty in this case. Such a plea
14 may demonstrate the accused's willingness to take responsibility for
15 his conduct and it may be the first step towards rehabilitation.

16 During their arguments, trial and defense counsel recommend
17 that you consider a specific sentence -- or two different specific
18 sentences in this case. You are advised that the arguments of
19 counsel are their recommendations, and are only individual
20 suggestions and may not be considered as the recommendation or
21 opinion of anyone other than the counsel.

22 Members, when you close to deliberate and vote, only the
23 members will be present. I remind you that you must all remain

1 together in the deliberation room during all of the deliberations. I
2 also remind you that you may not allow any unauthorized intrusion
3 into your deliberations. You may not make communications to or
4 receive communications from anyone outside the deliberation room, by
5 telephone or otherwise.

6 Should you need to take a recess or have a question, or
7 when you have reached a decision, you may notify the bailiff who will
8 be stationed outside the deliberation room who will then notify me of
9 your desire to return to open session to make your desires or
10 decision known.

11 Your deliberations should begin with a full and free
12 discussion on the subject of sentencing. The influence of
13 superiority in rank shall not be employed in any manner to control
14 the independence of the members in the exercise of their judgment.
15 When you have completed your discussion, then any member who desires
16 to do so may propose a sentence. You do that by writing it out on a
17 slip of paper and writing out a complete sentence. The junior member
18 collects the proposed sentences and submits them to the president,
19 who will then arrange them in order of their severity.

20 You then vote on the proposed sentences by secret, written
21 ballot. All of you must vote, and you may not abstain from the vote.
22 You vote on each proposed sentence in its entirety, beginning with

1 the lightest that has been proposed, until you arrive at the required
2 concurrence, which is two-thirds or in this case, six members.

3 The junior member will collect and count the votes. The
4 count is then checked by the president who shall announce the result
5 of the ballot to the members. Based on my review of the members'
6 questionnaires, I have determined that Colonel [REDACTED] is the
7 senior commission member and will serve as the president officer
8 during the deliberations and announce the decision as the president
9 of the commission. Colonel [REDACTED] is the junior member of the
10 commission.

11 If you vote on all of the proposed sentences without
12 arriving at the required concurrence of two-thirds or six, you may
13 then repeat the process of discussion, proposal of sentences and
14 voting. But once a proposal has been agreed to by the required
15 concurrence, then that is your sentence.

16 Members, you may reconsider your sentence at any time prior
17 to it being announced in open session of the commission. If after
18 you determine your sentence, any member suggests that you reconsider
19 the sentence, please open the commission session through notice to
20 the bailiff, and the president must announce that reconsideration has
21 been proposed without reference to whether the proposed reballot
22 concerns increasing or decreasing the sentence. In the event that we

1 should have such a notice provided, I will give you specific
2 instructions on the procedure for reconsideration.

3 As an aid in putting the sentence in proper form, the court
4 shall use the Sentence Worksheet which has been marked as Appellate
5 Exhibit 26.

6 Have both sides had an opportunity to review Appellate
7 Exhibit 26?

8 PROS: Yes, sir.

9 DDC: Defense has, Your Honor.

10 MJ: Any objections?

11 PROS: No, sir.

12 DDC: None from the defense.

13 MJ: Bailiff, please now hand Appellate Exhibit 26 to Colonel
14 [REDACTED].

15 [The bailiff did as directed.]

16 MJ: Appropriate care should be exercised in using this
17 worksheet and in selecting the sentence which properly reflects the
18 sentence of the commission. If you have any questions concerning
19 sentencing matters, you should request further instructions in open
20 session in the presence of all parties to the trial. In this
21 connection, you are again reminded that you may not consult any
22 publication or writing not properly admitted or received during this
23 trial.

1 My instructions should not be interpreted as indicating an
2 opinion as to the sentence which should be adjudged, for you
3 gentlemen alone have the responsible for determining an appropriate
4 sentence in this case. In arriving at your determination, you should
5 select the sentence which will best serve the needs of the accused
6 and the welfare of society. When the commission has determined a
7 sentence, the inapplicable portions of the Sentence Worksheet should
8 be lined through. When the commission returns, I will examine the
9 Sentence Worksheet and then the president will then announce the
10 sentence in open court.

11 Do counsel have any objection to my instructions or request
12 for any other instructions?

13 PROS: No, Your Honor.

14 DDC: No, sir.

15 MJ: Does any member of the commission have any questions for me
16 at this time?

17 [Affirmative response from Colonel [REDACTED].]

18 MJ: Colonel [REDACTED]?

19 MEMBER [COL [REDACTED]]: During part of the testimony today it
20 was pointed out that the defendant either provided information to the
21 US government while he was a detainee or cooperated with the US
22 government to some extent and that we should use that as a mitigating
23 factor as we deliberate the sentence. My question is -- how does --

1 because we don't know what that information is, so how can we use
2 that as a mitigating factor -- or how should we?

3 MJ: Okay. That information was provided to you during the
4 course of the accused's unsworn statement which was provided to you
5 in an authorized fashion through counsel. I've already read you the
6 instruction about unsworn statements. Upon your request, sir, I will
7 review that instruction with you again.

8 MEMBER [COL [REDACTED]]: No, sir.

9 MJ: I will also note then that following an unsworn statement,
10 the government has an opportunity to present a case in rebuttal, if
11 they wish, with regard to any statement of fact in the unsworn
12 statement. That did not happen.

13 Counsel in this case are each responsible for presenting
14 the case on the side of their party. They have done so at this time.
15 You have now received the evidence that you have to work with. What
16 I will tell you is you must base your consideration of the sentence
17 on the evidence that has been presented to you.

18 Does that answer your question?

19 MEMBER [COL [REDACTED]]: To the extent that defense counsel
20 made the same statement in his arguments, it was not just in the
21 unsworn statement, sir. That's what is kind of ----

22 MJ: Okay. With regard to that, I'll advise you that the
23 arguments of counsel are not evidence in this case. They are made

1 for the purpose of helping you understand the evidence that you have
2 received and it is counsel's opportunity to draw your attention to
3 the evidence that you've received in a fashion that they think is
4 appropriate for you to consider.

5 MEMBER [COL [REDACTED]]: That's perfect. That's all I need.
6 Thank you.

7 MJ: Does either side have any objection to that instruction or
8 request for any other instruction?

9 PROS: No, sir.

10 DDC: Defense does not, sir.

11 MJ: Any other questions for me at this time?

12 [Negative response from the members.]

13 MJ: Colonel [REDACTED], when you go into closed session
14 deliberations, as I've indicated, you all must stay in there together
15 during all that time. If at any time during your deliberations, you
16 desire to take a recess, we must first formally reconvene the
17 commission in open court, and then recess so that you're all at
18 recess together. Nobody can step out even to go to the head by
19 themselves. You must all be together for all of the deliberations.
20 We will also, upon your call, provide you with an evening meal and
21 you can just tell me about that.

22 Knowing this, would you like to take a brief recess before
23 you begin deliberations, sir, or would you like to begin immediately?

1 MJ: Okay, we're going to take an in-place recess and stand by
2 for them here. Everyone else that has to do whatever can do it after
3 they've gone into their deliberations. We're in recess.

4 **[The session recessed at 1753 hours, 30 March 2007.]**

5 **[The session was called to order at 1759 hours, 30 March 2007.]**

6 MJ: The commission is called to order. All parties present
7 when court recessed are again present.

8 Please recall all the members.

9 [The bailiff did as directed.]

10 Bailiff: All rise.

11 [All persons in the courtroom did as directed.]

12 [The members entered the courtroom.]

13 **[END OF PAGE]**

1 [The commission was called to order at 1800 hours, 30 March 2007.]

2 MJ: Colonel [REDACTED], are the members ready to begin their
3 deliberations?

4 PRES: We are ready, Your Honor.

5 MJ: Gentlemen, you can gather up your notes and retire to the
6 deliberation room.

7 [The members did as directed and departed the courtroom.]

8 MJ: Court is closed for deliberations.

9 [The commission closed at 1801 hours, 30 March 2007.]

10 [END OF PAGE]

1 [The session was called to order at 2002 hours, 30 March 2007.]

2 MJ: The commission will come to order. All parties present
3 when the court closed are again present. The members are absent.
4 I've been advised that the members have concluded their
5 deliberations. Please recall all the members to the courtroom.

6 [The bailiff did as directed.]

7 Bailiff: All rise.

8 [All persons in the courtroom did as directed.]

9 [The members entered the courtroom.]

10 [END OF PAGE]

1 [The commission opened at 2003 hours, 30 March 2007.]

2 MJ: Members, please be seated.

3 [The members did as directed.]

4 MJ: Everyone, please be seated.

5 [All persons in the courtroom did as directed.]

6 MJ: Colonel [REDACTED], have the members reached a sentence in
7 this case?

8 PRES: Yes, Your Honor.

9 MJ: Is the sentence reflected on the sentence worksheet?

10 PRES: Yes, Your Honor.

11 MJ: Have you signed it at the bottom?

12 PRES: Yes, Your Honor.

13 MJ: Colonel [REDACTED], please fold the sentence worksheet and
14 give it to the bailiff.

15 Bailiff, please recover that and without looking at it,
16 please give it to me so I may I examine it.

17 [The bailiff retrieved AE 26 from the president and handed it to the
18 military judge.]

19 MJ: [Examines AE 26.] Bailiff, I'm going to have you hand this
20 back to the president.

21 Colonel [REDACTED], I need for you to look at it again and
22 I'd like you just to circle the parts that are applicable and to
23 cross out all those parts that are not applicable.

1 [The bailiff retrieved AE 26 from the military judge and handed it to
2 the president.]

3 [The president marked AE 26.]

4 MJ: Okay, have you accomplish that, sir?

5 PRES: Yes, Your Honor.

6 MJ: Bailiff, please recover that again.

7 [The bailiff retrieved AE 26 from the president and handed it to the
8 military judge.]

9 MJ: [Examines AE 26.] I'm going to hand it back once more.
10 There's two sections in there. One is number 1, and one is number 2.
11 If you look at that again, you need to be operating under number 1 or
12 under number 2 and not under both, because that would be
13 inconsistent.

14 [The bailiff retrieved AE 26 from the military judge and handed it to
15 the president.]

16 [The president marked AE 26 again.]

17 MJ: Okay, bailiff, if you could please recover that.

18 [The bailiff retrieved AE 26 from the president and handed it to the
19 military judge.]

20 MJ: [Examines AE 26.] Okay. I have examined the sentence
21 worksheet and it appears to be in the proper format.

22 If you could please return it to the president of the
23 commission.

1 [The bailiff retrieved AE 26 from the military judge and handed it to
2 the president.]

3 MJ: Accused and counsel, please rise.

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

5 MJ: Colonel [REDACTED], if you could please announce the
6 sentence of the commission.

7 PRES: David Matthew Hicks, this commission sentences you:

8 **To be confined for 7 years.**

9 MJ: You may be seated.

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

11 MJ: Bailiff, please retrieve the sentence worksheet from the
12 president of the commission.

13 [The bailiff did as directed and handed AE 26 to the court reporter.]

14 MJ: Members of the commission, you have now completed your
15 duties and you are discharged with my thanks. Please leave -- well I
16 don't think you have any of the original exhibits with you, if you
17 did, you would need to leave those behind. You may take your own
18 personal notes with you which includes everything in your folders, or
19 you may leave those behind and they will be destroyed for you by the
20 court reporter.

21 In an effort to assist you in determining what you may
22 discuss about this case now that it is over, the following guidance
23 is provided. When you took your oath as members, you swore not to

1 disclose nor discover the vote or opinion of any particular member of
2 this commission unless required to do so in due course of law. This
3 means that you may not tell anyone about the way you or anyone else
4 on the commission voted or what opinion you or they had, unless I or
5 another judge require you to do so in open session.

6 You are each entitled to this privacy. Other than that,
7 you are free to talk to anyone about the case, including me, the
8 attorneys, or anyone else. You may also decline to participate in
9 such discussion, if that is your choice. Be mindful that there may
10 be certain service-specific or Department of Defense rules or
11 regulations which might also govern your contacts with the media.
12 Any advice may be obtained from a Public Affairs official.

13 Members, your deliberations are carried out in the secrecy
14 of the deliberation room to permit the utmost freedom of debate and
15 so that each one of you can express your views without fear of being
16 subjected to public scorn or criticism by the accused, the convening
17 authority, or anyone else. In deciding whether to answer questions
18 about this case, and if so, what to disclose, you should have in mind
19 your own interests and the interests of the other members of the
20 commission.

21 Does any member have any questions at this time?

22 Negative response from the members.

1 MJ: Members of the commission, I want to thank you again for
2 your participation and attentiveness during this case. You may now
3 depart the courtroom and resume your normal duties.

4 Bailiff: All rise.

5 [All persons in the courtroom did as directed and the members
6 departed the courtroom.]

7 MJ: Everyone, please be seated.

8 [All persons in the courtroom did as directed.]

9 MJ: Mr. Hicks, we are now going to discuss the operation of
10 your pretrial agreement on the sentence of the commission. We
11 discussed the portion of the appendix before, and now let me review
12 the pertinent part here.

13 The first part of the sentence limitation was that the
14 convening authority agreed that the maximum that could be adjudged
15 and approved was 7 years. That was the first part of the sentence
16 limitation. The convening authority also agreed in paragraph 1a of
17 the pretrial agreement to suspend any portion of a sentence adjudged
18 to confinement in excess of 9 months. That means here the commission
19 adjudged a sentence of 7 years which means anything in excess of 9
20 months is suspended pursuant to the terms of this agreement which
21 would be 3 months from the first year and then the 6 years after
22 that. So 6 years and 3 months of the 7 years adjudged are suspended
23 pursuant to the terms of this agreement.

1 Do you understand that?

2 ACC: Yes, sir.

3 MJ: And was that also your understanding of how this would
4 work?

5 ACC: Yes, it was.

6 MJ: Now with regard to section 1d, the government of the United
7 States is bound to transfer custody and control of you to the
8 government of Australia by not later than 60 days from the date upon
9 which the sentence is announced. That just happened today, and so 60
10 days from today would be the 29th of May, 2007.

11 Do you understand that?

12 ACC: Yes, sir.

13 MJ: And is that also your understanding of how that term would
14 work?

15 ACC: Yes, it was.

16 MJ: Do counsel concur with my interpretation of the pretrial
17 agreement with regard to those terms, because I think all the rest of
18 them were addressed before?

19 PROS: Yes, sir.

20 DDC: Defense does, Your Honor.

21 MJ: Now Mr. Hicks, as we discussed while going over the
22 pretrial agreement earlier, one of the conditions of the agreement
23 was that you waive your appellate rights as provided for -- and I

1 mean the waiver of appellate rights provided for in Rule for Military
2 Commission 1110.

3 Major Mori, do you have a waiver of appellate rights in
4 accordance with Rule for Military Commission 1110 before you?

5 DDC: Yes, sir.

6 MJ: Is it signed?

7 DDC: Yes, sir.

8 MJ: Bailiff, please recover that from the defense counsel.
9 Please show it to the government counsel.

10 [The bailiff did as directed.]

11 MJ: Trial counsel, does this satisfy the accused's requirements
12 with regard to the R.M.C. 1110 provision?

13 PROS: Yes, sir.

14 MJ: If I could have that marked as the appellate exhibit next -
15 - Appellate Exhibit 33, I believe.

16 [The bailiff handed the document to the court reporter who had it
17 marked.]

18 MJ: Are there other matters to take up before we adjourn?

19 PROS: No, Your Honor.

20 DDC: None from defense, Your Honor.

21 MJ: Very well. This military commission is adjourned.

22 [The commission adjourned at 2014 hours, 30 March 2007.]