

IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW

DAVID M. HICKS,)	
)	APPELLANT’S MOTION TO ATTACH
)	
Appellant,)	CMCR Case No. _____
)	
v.)	Tried at Guantánamo Bay, Cuba,
)	on 26 & 30 March 2007, before a
)	Military Commission convened by
UNITED STATES OF AMERICA,)	Hon. Susan J. Crawford
)	
Appellee.)	Presiding Military Judge
)	Colonel Ralph H. Kohlmann, USMC
)	

**TO THE HONORABLE, THE JUDGES OF
THE COURT OF MILITARY COMMISSION REVIEW**

Appellant, by and through his undersigned counsel, and pursuant to Rules 14(d) and 20(b) of this Court’s Rules of Practice, respectfully moves to attach to his Brief on Behalf of Appellant, filed concurrently herewith, the following two documents:

A) Affidavit of David Matthew Hicks (Jan. 23, 2012), filed in *Director of Public Prosecutions v. David Matthew Hicks* (2011) N.S.W.S. Ct. Case 233139 (Austl.).

B) Affidavit of Joshua Lewis Dratel (Jan. 27, 2012), filed in *Director of Public Prosecutions v. David Matthew Hicks* (2011) N.S.W.S. Ct. Case 233139 (Austl.).

The documents are affidavits by Appellant and the Civilian Defense Counsel who represented him at trial before a military commission at Guantánamo Bay. They have previously been filed in the Supreme Court of New South Wales, Australia, in the case *Director of Public Prosecutions v. David Matthew Hicks*. They address, among other things, Appellant’s torture and abuse at Guantánamo Bay, and his guilty plea proceedings before the military commission.

The motion should be granted because the affidavits provide additional factual support for Appellant's claim that his guilty plea was unknowing and involuntary that is not included in the record of trial, and will assist the Court in deciding the issues on appeal.

Accordingly, the Court should grant this motion to attach.

Dated: November 5, 2013
New York, New York

Respectfully submitted,

//s// J. Wells Dixon

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DENIED (Signature): _____
DATE: _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via e-mail to BG Mark S. Martins, USA, and CAPT Edward S. White, JAGC, USN, at the Office of the Chief Prosecutor, on the 5th day of November 2013.

//s// J. Wells Dixon

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AFFIDAVIT OF DAVID MATTHEW HICKS

AFFIRMED 23 JANUARY 2012

COURT DETAILS

Court Supreme Court of NSW
Division Common Law Division
List
Registry Sydney
Case number 2011/233139

TITLE OF PROCEEDINGS

Plaintiff Director of Public Prosecutions
First defendant David Matthew Hicks
Second defendant Lakewood Pty Ltd as trustee for the Misha Family Trust

FILING DETAILS

Filed for First and Second Defendants
Filed in relation to
Legal representative Stephen Glass, Gilbert + Tobin
Legal representative reference 1007581
Contact name and telephone Tamara Sims 9263 4167

AFFIDAVIT

Name David Matthew Hicks
 Address 60 Heatherset Drive Salisbury Park South Australia
 Occupation Labourer
 Date 23rd of January 2012

I, David Matthew Hicks solemnly and sincerely declare and affirm:

- 1 On 7 October 2001 the USA together with a coalition (including Australia and the United Kingdom and a NATO alliance) commenced bombing suspected Taliban and Al Qaeda government infrastructure in "Operation Enduring Freedom".
- 2 On 24 November I was detained by the Northern Alliance at a taxi stand in Afghanistan.
- 3 On 9 December I was sold to USA military forces in Afghanistan after being detained by the Northern Alliance.
- 4 I was held by the Northern Alliance for five (5) days before being woken up at dawn and told that someone from the United Nations had come to collect me and was waiting outside.
- 5 I stepped out of the building and was confronted with a large crowd of young men gathered on the street. I was led through to the centre of this crowd. As I walked the men parted and then hemmed me in. I had nowhere to go. I said words to the effect

"Where are the United Nations?"

and someone responded in English with a Russian accent

"There is no United Nations".
- 6 My arms were restrained from behind, they were bent back as far as they would go, string was used to tie my biceps together so tightly they were almost touching. I was then pushed to the outside of the crowd of people and pushed into the back seat of a car. There were two people in the front of the car and one in the back with me. I kept asking:

"Where are we going and what are you going to do with me?"

- 7 We drove for approximately one hour to the town of Mazar-e-Sharif. We pulled over somewhere in the centre of town. The front passenger then got out and I watched him

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organise some papers before he disappeared into a building. I saw that among the papers was my passport. We then left this man behind and drove for a few more minutes before stopping again. This time we were in a side street, outside a rundown house. I was taken out of the car and led inside this house. A man opened the door to a room and I immediately became aware of an awful smell. It made me feel physically sick and my stomach reeled.

- 8 In this room there were approximately 8 men chained together at the ankles by heavy rusted clasps. They looked very unwell, and were encrusted with filth. I was led into the room and had one of the rusty clasps shut around my ankle joining me to the other men.
- 9 After the first day of being in this room my clothes were full of lice and I was shown the source of the stench was from a wound of one of the prisoners who had a badly infected arm, a bullet had gone through his bicep and bone leaving his arm attached to his body by only his triceps. As his wound had been left untreated for a week or more it was riddled with maggots.
- 10 I cannot now remember exactly which day but on the first or second day the door to the room swung open and a man who looked like what I thought was an American Special Forces soldier came in wearing a military uniform and armed, he was dressed all black. He said words to the effect:

"Don't look at me, put your hands on top of your head"

He then left and shut the door. A short time later he was back, this time with the Afghanis who had been watching over us. The Afghanis unlatched the clasp from my ankle and I followed. As I moved out of the room a number of other US soldiers moved in behind with their weapons drawn on me. I was led into an empty room and told to kneel on the ground with my hands on my head.

- 11 Two or three of these soldiers stood in front of me while approximately four soldiers remained behind me. They said:

"Take a good look at us"

as they displayed various weapons hanging from their mostly black uniforms. They then began threatening me and I was scared to the point of shaking with fear. They hit my head with their hands and were loud and aggressive. They said words to the effect:

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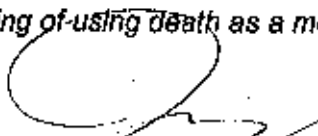
"You must do as we say, answer all questions and cooperate, or things will become nasty".

- 12 I began to run through my story about how I had come to be in Afghanistan and what my activities had been prior to arriving. I was interrupted, told I was lying and then they began violently hitting me with open handed cuffs to the back of my head. They took big swings and put a lot of force behind the impact.
- 13 I was only able to get a sentence or two out before they would again start hitting me, but as time went on the blows became more frequent. I kept restating my story at their orders. Regardless of the information I told them they just kept hitting me. It was clear that they were not listening and that they were more interested in scaring me.
- 14 By the end, I had at least one of the soldiers behind me, striking continually with great force. I was then sent back to the room I had been in and secured as I was before. I was afraid they would never listen, that in their quest for whatever they were looking for they would end up torturing me. I believed this because of the environment that I was in. I was a prisoner in a war zone where no legal procedures were being followed. The phrase going through my head at the time was "like getting blood from a stone" and I was afraid of becoming that stone.
- 15 Later that day, I was again taken out of the room and led to a different part of the house. In this room, one wall was a large window with a wide sill. I was told to enter the room first and as I did they drew my attention to approximately six US personnel standing outside the window. These men were mostly in black looking like what I thought would be CIA types or at least some brand of Special Forces. They had their weapons pointed at me through the window. He said:

"Move very slowly or you will be shot. Walk to the window and turn around and sit slowly on the sill with your back to the window."

As I turned around I saw the voice belonged to a US soldier, unarmed I think, he sat beside me. He then said:

"Turn around and look out the window, look at the weapons, you will be shot if you make the wrong move. See that soldier with the shot gun it is specially for you, it can maim your legs or other body parts, but you won't be given the pleasure of death. Just in case you are thinking of using death as a means of escape".


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- 16 I was then offered a cigarette. The procedure was time consuming and nerve wracking because he kept commenting that one of the soldiers outside the window could misinterpret any move. He passed me the cigarette and then lit it ordering my hands away. He continued with his insistence that I could be shot at any time. He then produced a pen and a notebook from a pocket and I began relating my story. This time he listened and made notes. I spoke for approximately 1 hour. He then thanked me and ordered the Afghanis to take me back to the room with the others.

The next morning a group of armed Northern Alliance soldiers came and led me outside. They put me into the backseat of a car and put a hood over my head. We drove for a short distance to a house. I was taken to a room. The hood was removed but two lots of cuffs, one metal and one plastic were left on my wrist. In front of me were several US soldiers. Two remained in the background with their weapons pointed at me while the third introduced himself as Cliff. He did not give me a last name. Cliff said words to the effect:

"You have been moved to this new location for your comfort and we will be asking you a number of questions over the next few days. If anyone else attempts to question you, I want you to let me know. My comrades in the background are there for my safety, and will not hesitate to shoot and they will be present at all times. As long as you cooperate you will not be physically harmed".

I believed him.

- 17 Cliff began by asking me questions about my citizenship, family, address and other personal details. He then left. When Cliff returned, he said:

"Good news, your government has acknowledged you. We now know who you are."

- 18 Cliff questioned me in the early hours of the morning over the next few days. He would always come after midnight. Except for one time when he came during daylight hours to tell me that someone else was there to speak with me and I was to cooperate. He then left, and another US soldier I had not seen before entered the room. This other soldier was very hostile towards me. He grabbed a seat and positioned it in front of mine so that we were face to face. He held a pistol in one hand, sideways, hovering out in front of his chest. His arm was not stretched outward, yet he was sitting so close I could have reached out and touched the pistol. He rested an elbow on his knee. He began yelling at me in foreign languages, and he only grew angrier when I indicated I

could not understand him. The hand that held the pistol started to shake violently and I thought he might accidentally squeeze the trigger. I could see it was loaded and the safety catch was off.

19 Because I only spoke English and did not pick up on key foreign words he seemed to be furious. I felt relief when he eventually gave up and left.

20 On another day I had my wrist cable tied behind my back and was led outside to the middle of the backyard. Two foreign white men approached from around the side of the house. One held a video recorder towards me while the other identified them as representatives of an NGO. He then started asking:

"Why did you come to Afghanistan?"

I could not tell if they were friend or foe until they asked my occupation, I told them that I'd been a horse trainer. One answered sarcastically with a hint of anger

"Yeah, you were training horses for Bin Laden."

They then turned the camera off and became polite asking if I was alright and saying that things would be ok. After that they left.

21 Back in the room one of the Northern Alliance soldiers said words to the effect:

"These guys who say they are from a NGO have been filming out the front before they filmed you, these men are American and with the soldiers."

22 That night I was hooded and returned to the other house. I was chained to the others again and became reinfested with lice. The same prisoners were still there and the wounded man with the maggots had still not been treated. I understood that the next morning I was to be interrogated by the person who had first questioned me on the windowsill. I was again transported back to the other house. Cliff made an appearance and complained about the other interrogator. He then said he was finished with me and that I'd be going on a little trip. He said words to the effect:

"The boys will be a little rough with you where you are going, but they will be alright once they get used to you."

23 A few hours later I was hooded and transported to a makeshift facility that the US was using within Mazar-e-Sharif.


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24. The procedure of "hooding" consisted of slipping a rough itchy hessian like material, shaped like a pillowcase, over my head. Duct tape was then wrapped 4 or 5 times around my head at eye level on the outside of the bag and then another 4 or 5 times around the neck, securing the bag tightly. Breathing was difficult when hooded. This hooding occurred every single time I was transported, from my arrival in Mazar-e-Sharif until my arrival in Guantanamo. Then it still occurred occasionally throughout my time at Guantanamo.

25. Once I was housed within this new facility, and the hood removed, the first interrogator from the windowsill incident came to see me and said:

Interrogator: *"Would you like a cigarette."*

David Hicks: *"Yes"*

He returned with a packet. I was sitting cross legged on a makeshift bed while he sat on the floor with his pen and paper, his back to the wall. I was in a higher position and unrestrained. The guard with the gun was initially told to keep his aim trained on us from his position in the hallway, and then eventually to be at ease. He finished the interrogation quite abruptly around sunset and then I was hooded and transported once more.

26. I believe I was put into a van with a number of US soldiers seated around me. These soldiers would talk among themselves and would also curse me saying words to the effect:


"You are a scumbag and a terrorist, we are going to fuck you up, you are dead meat".

They threatened to harm me, describing the punishment I would receive where I was going and using other degrading language

We finally stopped and I got off at the local airport. I felt my feet touch the tarmac and I could hear the blades of a helicopter idling nearby. I was facing the direction of the chopper and asked:

David Hicks: *"Am I going board the helicopter?"*

Soldier: *"No, you're going into the kitty bag"*


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My feet were then kicked out from under me. I landed with the full force upon the tarmac. Then someone took hold of my head and was repeatedly ramming it into the tarmac. It hurt but there was also no pain, it was like my body had shut down and it was all a bad dream. I was then picked up and thrown into the helicopter. I landed heavily on my side.

27 I was strapped over my arms beneath the shoulders and across the chest. While I was still lying on my side I could hear a ratchet noise then felt the strap tightening until it pressed me hard into the floor. I then felt the helicopter take off. Someone then removed the cuffs from my wrist and replaced them with new ones, both metal and plastic. This person made sure the plastic cuffs were very, very tight. I could feel fingers periodically rest on my neck and wrist checking my pulse. I was also given the odd slap on top of my hands. I could feel my head bleeding into the hood. As time passed the plastic cuff started to feel tighter. Soon the pain in my wrist dominated all of my senses. Eventually, I lost feeling in my hands, I could not even tell if I had hands, like they'd been severed with a knife. The cuffs were not removed until approximately 14 hours later.

28 When the helicopter landed I was unstrapped from the floor and moved into a large plane, which I guessed to be a C130 Hercules.

29 The plane ride was not as long as the one in the helicopter. After we landed I was removed from the plane and told to sit in a small, open cart, like a golf buggy, and driven away from the tarmac. I was ordered to get out of the buggy and grabbed roughly, hurried inside a building and told to stand in a hallway. This may have been the first time I was aware that plastic cuffs were also around my ankles. I could hear a TV in a nearby room and someone very close to me cleared their throat occasionally. I started appealing to this unseen individual to loosen my cuffs. I said words to the effect:

David Hicks: *"Please can you loosen the cuffs*

Male voice: *"There is nothing I can do".*

David Hicks: *Please can you loosen the ties?*

Male Voice: *"Shut up and be quiet or I'll show you what real pain is."*

I stood in this place for what felt like an hour or more, unable to sit down. At one stage, the tape around my head was removed and the hood lifted up. A water bottle was

placed to my lips, and I was allowed a few small sips. Sometime later the hood and tape were completely removed and replaced by a conventional blindfold.

- 30 I was then marched out onto the tarmac and into another plane; it could have been the same plane but the soldiers and procedures were different. They placed me face down on the floor of the plane. Once we were in the air I could feel my body rise with the turbulence, but then the floor would fall away and I would quickly land with a thud. Sometimes a soldier would place his boot on my lower back pinning me to the floor and then at other times the soldier would take his foot off my back and I would smack into the floor. The soldiers would whoop and laugh when this happened. Generally the fall was slight, but on occasion the plane would drop sharply, leaving a big gap and creating a more violent impact. I learnt to hold my face to the side as it was less painful when my cheeks hit the floor rather than my nose and forehead. The inside temperature of the plane was very cold. Between the turbulence, tight cuffs and freezing cold, this was a challenging and painful experience.
- 31 Once we landed I was picked up off the floor, marched out of the plane and straight into another waiting helicopter. I was positioned upright in a seat, with my hands restrained behind my back. I was now in extreme pain where the cuffs were. This chopper ride was a short trip compared to the three previous stages. When we landed I was made to walk and could see under the blindfold that the sun had risen. I had left Mazar-e-Sharif at sunset and by the light I estimated the time now to be around 9am.
- 32 I was made to shuffle quickly, but because of the plastic cuffs around my ankles I could not move very fast. The pain was very bad. I was shuffling so fast I snapped the plastic cuff. I lifted my head enough so I could see a large green painted corrugated shed from under the blindfold. Along the front stood a line of armed soldiers watching me, a large word painted in white behind them on the wall. I think it was the name of the location. I only now remember the first letter, "P",
- 33 I was marched into this complex and thrown on a cement floor. A group of people approached and gave me a quick medical examination. The cuffs on my wrist were cut off and I was left with only standard metal ones. I was then picked up and walked back outside, made to turn to the right then walked a little further until I felt myself enter a narrow corridor and descend a flight of metal mesh steps. At the bottom of the stairs I could hear voices and my escorts handed me over. The door closed behind me and my blindfold was removed. I was standing in a small empty room with two African American soldiers in front of me. One was nearly the tallest man I'd ever seen while the other was shorter than my 163cms. They yelled at me words to the effect:

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Soldiers: *"Pay attention and remove your clothes."*

Soldiers: *"We are going to take photographs of you."*

David Hicks: *"What, of me naked?"*

The short one answered:

"Nah man, shit man, just of your face, man".

After the photos were taken I was given a pair of blue overalls to wear. The door of the room was opened and I stepped into a larger room with adjoining cells for prisoners. There was a large cell, which held 8 or 9 beds and 2 small one man holding cells without beds. I went into the larger one where a lone prisoner was asleep. Some hours later, enough prisoners were brought in so that all the beds were taken. I was kept here for about 10 days.

USS Peleliu

34 I noticed that the room I was in was moving up and down. I could also feel it swing about like a ship at anchor. I became aware that the ship was the USS Peleliu because, at times, I saw the name of the ship on items such as coffee cups and caps.

35 During those first days on the *USS Peleliu* I had a visitor. I was taken out of the cell and stopped near where the more senior of the guards sat. My visitor appeared and through the bars he said:


"I am a member of the Australian Navy. I am just here to confirm that you exist. I can now report back that I have seen you"

The US soldiers were always looking and listening. I was too scared to have brought up how I was being treated. I did not know what the US soldiers were capable of. I tried to ask him some questions. I asked him questions to the effect of:

"Where am I? What is going to happen to me? Is the Australian Government going to help me? Is the Australian Government at least going to take responsibility of me?"

But he said:

"I am not allowed to answer your questions"

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He then left. We had only spoken for a very short time.

- 36 The next day I was taken out of the cell, hooded, was taken along corridors, and began to plead with the escort not to harm me. I said words to the effect:

"I don't want any more trouble".

He said nothing to me in response. I really felt at the time I was being marched off to be tortured. I could feel myself shaking. I entered a room and was seated in a chair. The hood was removed and I saw two men at a table opposite. They said they were there to ask a few questions, and I relaxed. They introduced themselves as Australian Security Intelligence Organisation (ASIO) employees.

- 37 At first I kept asking where I was and what was going to happen to me. I thought that ASIO was there to help me, but they would not answer any of my questions or give me any information about what was happening and what was to come. They spoke to me with hostility in their voices as they asked questions to the effect:

"Have you ever been in charge of prisoners? Have you ever tattooed prisoners? Have you ever dismembered someone under your care and responsibility? Have you been involved in genocide or in the making of nuclear weapons?"

Their questioning made me feel helpless, they were serious and scary questions to be asked in that environment. Their body language and facial expressions also showed their extreme hostility toward me.

I cannot remember now what I said to the ASIO employees:

I told them what had happened to me since I had been in US custody. They said words to the effect:

"It's not our business. We are only here to collect information on the crimes you have committed."

I did not attempt to continue with my complaints. I was already starting to learn that bringing up bad treatment does not end well. I learnt that very quickly. I was eventually returned to my cell. I was devastated. This same procedure was repeated again the next day. I felt very absent minded and depressed during that next interview. I felt like a bad dream was about to become a reality. The abuse, the threats, the questions, the indifference of my own government's representatives when I mentioned the mistreatment made me feel like no-one could help me or really cared.

- 38 It was while on the *USS Peleliu* that I was given a wristband identifying me as detainee 002.
- 39 I was not beaten while held on the *USS Peleliu* but I believe an Afghani and an Arab man were beaten on two occasions whilst I was held on this ship. I believe this as I witnessed an Afghani man being moved to a nearby cell. The front wall of the cell was made up of bars, the other three walls were sheet metal. Once the Afghani was placed in the cell a blanket was hung up over the bars so we could not see him. Not long after 4 or 5 soldiers entered the outer area. They put on plastic gloves, stretching and letting them go so that they snapped into place. At first we could hear voices spoken in a normal, conversational tone. But as the minutes passed, those voices were raised in anger. Then the banging started. It sounded like an object being rammed against the metal wall. I believe it was his head being rammed against the wall. These thuds were followed by pained cries.
- 40 When the Afghani prisoner was returned to the cell we all shared he had no visible marks of abuse. However, he was a mess. I had never seen a person so scared or heard a fellow human being cry out with so much anguish. He was teary and whimpering, flinching at the slightest motion. He would not speak to the other Afghanis. He just curled up into a ball and fell asleep. I felt so sorry for him, but I was also scared for myself and what might happen to me. This also happened to another prisoner who was from Saudi Arabia.
- 41 I was so frightened the whole time I was on the *USS Peleliu* that one day when I was sitting with my back up against the cell wall, I noticed one of the marines with a pack strapped to his back pacing the outer chamber. I noticed a thin hose protruding from the base of this pack. I was such a frightened mess that I thought the pack contained a harmful liquid to be sprayed on us at any moment. All I could think was, what now, what next, what will they do to us?
- 42 I was relieved when after hours spent staring at this marine I watched him casually sip from the end of the hose. I'd never seen a camelback before.
- 43 After approximately 10 days in the brig, soldiers came down and left enough hoods for the 8 of us. We were called out one at a time, had the plastic cuffs fastened on our wrists and the hoods taped to our heads. I pleaded with the marine not to apply the cables too tight. He put the first one on loose but secured the last one tight. He then picked up the hood and secured that over my head.

44 I remember being taken up some stairs and then being brought out into the open. I then stepped into a helicopter. We flew for about 15 minutes and landed on the deck of an aircraft carrier which I later knew to be the *USS Bataan*. We were marched down in single file and I could feel a huge space around me - unlike the *USS Peleliu* which always felt cramped.

USS Bataan

- 45 The first thing I noticed was the sound of aircrafts landing and taking off above our heads. There was also a speaker on the wall, constantly announcing information about what was happening aboard the ship. That was turned off once the navy personnel realised we were listening to the announcements. Three times a day we were served a handful of rice and 5 or 6 single purple grapes.
- 46 Not long after we arrived, we were made to strip naked as a group and form a line outside the cell. We were told that a doctor wanted to examine us one at a time. As he did, he declared into a hand held tape recorder his observations. For example, one of the Afghani's had a prosthetic leg and was overweight. The doctor said that he was a very important figure, a big fish and that he had abused his power and oppressed others in order to live a life of luxury, thereby explaining his weight. Nothing was mentioned that only having one leg for many years probably prevented him from exercising.
- 47 Another Afghani had an old immunisation scar on his shoulder. He explained to the doctor that an international aid organisation had given all the children in his village a vaccination shot about 20 years before. Instead, the doctor dictated into the tape recorder that this man had left Afghanistan in recent years to receive an injection in Iraq that would help immunise him from biological weapons. The guy had never left his village, let alone the country. From my naked body, he reached the conclusion that I was a leader.
- 48 I was interrogated aboard the *USS Bataan* on one occasion for a brief period by an American in civilian dress. He wanted to know information about the US citizen locked up with me. He was not interested in me, all he wanted to know was if I had any information about the US citizen John Walker Lindh.
- 49 After a few days hoods were laid out. I counted the hoods and concluded that one of us would be staying behind. That prisoner turned out to be the US citizen. The rest of us were hooded and restrained as usual and led up the stairs to the deck of the ship.

We were split between two helicopters and flown back to land, about 20 or 30 minutes away from the ship. We landed at an airport but I don't know where. We were then escorted into a large empty hangar. From listening to the others and from where the soldiers barked orders, I knew we had been positioned in a large half circle and I had been placed at one end. We were made to kneel and lean slightly forward though at other times we were able to sit back on our haunches. Our hands were restrained behind our backs.

- 50 While in this position, I heard a thud and one of us about 4 along in the half circle, moaned from the blow. Then someone closer gasped. I was then struck on the back of the head. It was an unexpected and powerful blow directly to my head. I received a few more hard blows and could hear the other prisoners being struck as well. These blows were much more aggressive than what I had earlier experienced in Mazar-e-Sharif.

There were also numerous cameras taking photographs continuously, as the flashes lit up the inside of my hood. Boots executed multiple kicks to my thighs and my back. Many of them spat on my back and into my hands which were crossed over each other behind me. They said words to the effect:

"You Kangaroo Fucker, we will rape you Kangaroo fucker"

another one said,

"You're fucking with a New Yorker now".

It was very hard to endure. I had to gather every ounce of will power to endure the pain, yet at times I felt dazed and unaware of what was happening, pain translating into a numbing throb.

- 51 This abuse went on for approximately an hour or two until it sounded like only one soldier was walking around us, whereas before there seemed to have been quite a few. Sometimes this soldier would sneak up on me so I could not hear him and then I would receive an unexpected blow. At other times only a boot or hand striking one of the others, followed by a groan would give away the soldier's position. A hand would occasionally slap down gripping my thigh and violently spin me so I would face another direction, making it very hard to visualise my surroundings. I became disorientated. Other times he would walk heavily and hit us so hard that it was impossible not to make some noise whether a yell, moan or expulsion of air.

- 52 Each prisoner made a different noise when struck and I could hear the soldier approach me along the half circle until I was hit. I desperately attempted to detect the soldiers' whereabouts and dreaded the sound of his approaching boots. I would hear them stomp in my direction and stop right in front of me. I would brace myself to receive the blow, which would be delivered instantly before he stomped off.
- 53 One of his other intimidation methods was to approach loudly and stop next to me. My ears strained at the silence while I remained tense, but he was patient because the blow would come just as I allowed myself to relax, thinking he had snuck away. Then there were times when he did just that, I would be waiting anxiously for the blow thinking he was standing beside me, but I would hear one of the others receive it instead.
- 54 After I had been kneeling there for around 3 to 4 hours, I heard what sounded like multiple helicopters landing outside the hangar. After the blades had wound down to neutral, I heard a small group enter the hangar amid whispers, murmurs and shuffling feet. I could hear their footsteps walking directly towards me. It was a horrible feeling to hear them all stop right behind me. I was nudged in the back of the head with what felt like the butt of a rifle. It then slammed into my head so hard that I fell forward onto my face. I picked myself up and was knocked down onto the ground a second time. The third time I rose I heard the group turn around and walk back out the way they had entered, not bothering the other prisoners. They seemed to have come in just to do this. The blades picked up and I heard the helicopters depart.
- 55 The abuse continued for about 7 hours. It felt like I had webbed fingers because of all the spit that had accumulated and dried there. They had also been rubbing spit into my back and hood.

I was picked up, led outside into the sun, pulled to a stop and had the tape removed from around my neck. The hood was lifted and someone shoved a water bottle into my mouth. The tape was removed from around my eyes and the hood was lifted even further so that I caught a glimpse of a few soldiers. They said:

"Look down and piss in the hole."

I saw that I was standing at the edge of an earthen well. Once I had finished the hood was again fitted and I was taken to a building across from the hangar. We were walked through a back door and to the front of the building, so that the tarmac was just outside the room, and individually seated around the floor. The abuse was not as intense in

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this spot: the odd kick to the thigh, being spun around and disoriented. At one stage I heard a male soldier saying,

"He's all over the media"

and I had a feeling they were talking about me. Then he said,

"Let's have some fun with him."

A female answered in a very sarcastic voice:

"We can't, the Geneva Conventions..."

These words scared the life out of me. It was as if what I had experienced was nothing and there was worse to come. I had only just survived that abusive treatment.

- 56 We were in this room for approximately 1 hour when I heard a large plane land and taxi up to our building. I heard one or two other prisoners being moved before I was also yanked up and dragged along. I was led right to the plane, the noise of the engine was deafening, and I felt the steps leading up in front of me. I was directed around to the other side of the plane instead, and put into a helicopter. I was too confused to know if any of the other prisoners were with me
- 57 We did not fly for long before we landed and I was led down a flight of stairs. When the hood was removed I realised I was back in the *USS Bataan* in the same cell with all the other prisoners. We were bruised and bloodied and looked a mess.
- 58 I worked out that we had left around 10am and were now returned at around 8pm. If you minus an hour for travelling it meant we had been beaten and taunted for approximately 9 hours. The doctor happened to be there, and I was very vocal about what had been done to us. He refused even to give me any pain relief, not even a panadol, to ease the pain in my head. I continued to protest to the navy personnel guarding us about what had happened until they punished us all by refusing to feed us until I shut up.
- 59 About an hour after we had returned to the ship after being beaten the American prisoner was handed a letter which he was told by the navy personnel was from his lawyer. This was news to him. Apparently his parents had arranged it and said they were working on his behalf.
- 60 There were two navy personnel watching us at this time. I demanded that I be given

access to a lawyer. His response at first was reasonable in tone. He said words to the effect:

"He (referring to Jonnie Walker Lindh) is in a different position to you. You are not entitled to a lawyer".

When I persisted he became annoyed and told me:

"Stop talking or you will all be punished by being denied meals until you cooperate"

I did not stop protesting and they stated that we would not receive food that evening. The detainees talked me around and so I eventually did stop complaining. By the time dinner time arrived they gave us our food.


- 61 In approximately two days the hoods were again laid out. We were escorted up to the same deck and boarded helicopters as before. To my horror we even landed at the same airbase and were taken into the same hangar. This time as I entered, an unseen fist struck me on the right side of my face, I thought to myself 'great it's begun before I've even been made to kneel'. I was placed in the same position within the half circle. The abuses dished out on us were no different from before except we only suffered through about five hours instead of nine before we were moved to the next building.
- 62 The plane then landed and taxied to where we were being held and as before I was marched to the base of the boarding stairs. This time I was taken up the stairs and into the plane. I was made to sit on the floor with my legs stretched out in front of me. A rope was tightly wrapped around both my biceps and then tied to the upper arms with detainees on either side of me. The ropes and straps were then used to fasten me to the floor.
- 63 I could tell that there were quite a few other detainees around me. Some of them would complain in English about the cold until I heard a boot or hand lash out with an angry order to shut up. The plane landed for two or three brief periods, taking some detainees off and bringing new ones aboard.
- 64 I later learned that one of those stops was Bagram Airbase. We'd left the unknown airfield where we'd been beaten while it was still light, possibly late afternoon and we landed at Kandahar airport around 3am – though I had no idea at that time that it was Kandahar.


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- 65 We were unloaded from the plane but this was a tricky operation as I was bound to two others, and we were only a small link in a long line of people bound together. As we shuffled blindly across the tarmac in the rain I listened to guards screaming orders while moving from one end of the line to the other.
- 66 I estimated the length of the line and guessed that there were about 30 of us marching in single file. Some of the detainees collapsed to the ground, pulling two or three others down with them from either side. The rope then tightened, digging deeper into our arms. This happened many times and made the walk slow and painful.
- 67 Once off the tarmac, we were told to lie face down in cold, wet mud. We were tied together by our upper arms. Our hands were restrained behind our backs with both the plastic and metal cuffs, and we were ordered to hold our fingers out flat.
- 68 A soldier stepped from one lower back to the next placing his full pressure on our hands. He yelled that if we held them correctly there would be no pain, but if we curled our fingers or made fists then we could only blame ourselves.
- 69 As the cold seeped in and the cuffs became tighter, I started to lose feeling in my hands and could not tell if my fingers were curled until he stepped on me. I was kicked a number of times in my hands and yelled at to hold them out flat. If I didn't have my hands flat the pain was even more extreme. I then felt a sharp shooting pain as my right hand fractured under one of their heavy boots. I was also hit in the head with what I believe to be a piece of hollow plastic pipe because of the sound it made when it hit me and the others. One particular soldier was moving up and down the line hitting everyone with this pipe. Other soldiers went about yanking on the rope between our arms. This continued until light began to fill the sky. I was lifted out of the mud by two soldiers. They were yelling and extremely hyper, carrying me away hurriedly, stopping once to throw me on the ground, yelling things I could not understand. It all happened very fast. I was confused and disorientated.
- 70 After being dropped, I was picked up and carried to a covered area. Without removing my restraints my overalls were cut off me with scissors. The hood was removed and I saw that I was standing naked in front of a large group of people in civilian dress. Most of them seemed to be pointing cameras and taking photos. A soldier screamed a bunch of questions, roughly removed the restraints and told me to put on a new pair of overalls and then secured the restraints once more.

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- 71 I then had to run, ripping the skin off my ankles, to a hangar where I was placed without restraints into one of 8 cells made of razor wire. I was alone in a razor wire cage but some cages contained half a dozen prisoners. At each end of the hangars US soldiers armed with M16s kept watch from elevated platforms.
- 72 I was exhausted and slept until lunch when I was woken by a ration pack thrown into my enclosure. The words 'MRE' (meal ready to eat) were printed across the front of the plastic wrapper. I read what the package was meant to contain (black bean burrito, minestrone, pasta, etc) and found that the single use heater and at least half the food items had been removed. I ate a lot of MREs in the future, and they were only ever half full.
- 73 After I had eaten I was ordered out of the enclosure. I had my ankles restrained and a blindfold was put on me. The soldiers then twisted my arms up behind my back and made me run until I reached a long line of prisoners. I thought they might break my shoulder. I joined that line of prisoners. I had to half stand half crouch with these prisoners with chest to backs and bums to crutches. There was no space between the prisoners. We were ordered to shuffle along as one body. We would move, then stop, move, then stop. This was a humiliating experience.
- 74 I was called out from the line by a soldier who yelled :

"Where's kangaroo?"

Guessing it was me, I stuck my head up and heard:

"Go get him".

Again they twisted my arms back behind my back and with a soldier holding each arm I was made to run as fast as I could with ankle restraints across an open area until I was outside a long tent. My overalls were again cut straight off me with a pair of scissors. My head was shaved and they removed all my body hair with razors. The shaved areas were then sponged with a whitish liquid in a silver bowl.

- 75 I was then escorted into a tent, still naked. Every few steps into the tent, a US soldier was doing something to a detainee, and I could see detainees exiting at the far end. It was like a production line. I was pushed towards the first of these personnel, and subjected to general inspection and examination, then moved along to the next station. Three quarters of the way down the tent, I was bent over and held down by the two soldiers who were escorting me along the line. The soldier at this station held a large

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piece of white plastic and shoved it up my anus. As this was done, I heard a nearby soldier say,

"Extra ribbed for your pleasure".

Once I stepped out from the other side of the tent I was given orange overalls to wear instead of the blue I had on previously.

Throughout the day I heard the occasional explosion just outside the camp perimeter. When this happened a soldier would yell:

"There goes another of your buddies"

I later found out from the ICRC that these were the Americans staging mock executions.

76 Once I had the overalls on, painted over ski goggles were placed on my head instead of the hood. Then industrial style earmuffs were fastened over my ears and orange oven mitts taped onto my hands. I was then made to sit on the ground all rugged up, and wait. I sat there for what felt like a few hours until my goggles, mittens and earmuffs were removed. I was escorted through the camp, able to see for the first time. My escort sat me down next to three civilians and I felt such a joy to see the ICRC identification on their shirts. I told them what had happened to me and they recorded my description as I spoke. They said that they were working on improving the way detainees were being treated upon arrival. They told me I was at the Kandahar airport, which was a huge surprise. Up until then I did not know where in the world I was, thinking I had left Afghanistan far behind. I was led back to my waiting spot and saw there were 20 or 30 other detainees spread around me. The soldiers rugged me up with all the sensory deprivation accessories, the goggles, earmuffs, mittens and I again waited.

77 After nightfall a soldier said to me:

"You understand English you will be leading the line of detainees."

We were all connected by ropes tied to our biceps, it was extremely painful, because if one detainee fell at least 3 or 4 detainees in a line of about 30 detainees would fall onto the ground either side of him. There were detainees falling over throughout the length of the line the whole time. We were exhausted from our beatings and not eating or sleeping and people had injuries. It was cold and windy as we shuffled along in the

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dark. I was led up into a plane and pushed into a seat. I was restrained, but not as painfully as I had been in past flights. This was the first time I had been put into an actual seat.

- 78 During the flight I was kept restrained and blindfolded, taken to a toilet and fed the odd peanut butter sandwich and were given sips from bottles of water. We flew for a long distance and landed in a cold location. We then changed planes at this location and when the soldiers handed me over to new escorts I heard one of them say:

"Shit he 'aint six foot four, he's four foot six!"

- 79 The next leg of the trip was so long that I fell asleep a number of times. I was extremely exhausted when the plane began its descent. Without warning, a needle was stabbed into my thigh through the overalls. I was later told that this was morphine.

- 80 A short time after we had landed a soldier said angrily:

"What did you do it for?"

I knew this disembodied voice was probably addressing me, although I hoped not. He asked:

"Was it for the money?"

then he pulled my goggles away, and I could see he was wearing a black beret and he said:

"Don't you forget this fucking face!"

- 81 We all remained in place on the plane for about an hour or so before a voice came over a megaphone which said:

"You are now the property of the US Marine Corps. You have reached your final destination. Welcome to Cuba."

Those words are burned into my brain. After that announcement it was very quiet in the plane. The door then opened with a boom and in flooded the sounds of screaming soldiers and barking dogs. There was a bright glare of spotlights in the hold. I felt myself taken out of the plane and into the centre of the chaos.

- 82 I have subsequently been told that I was then transported by both ferry and bus, but I have no recollection of this happening. I think I must have passed out.

- 83 When I came to, I was kneeling and leaning forward, trying hard to keep my balance. Someone kept hitting me in the back of the head and yelling

"Head down!"

I was so groggy and weak that I could not tell what position I was holding my head in, and I kept being hit for not following orders. I was not allowed to sit on my haunches so my thighs and knees had to take the full weight as I leaned forward on sharp gravel. I had to fight to keep my body from falling forward. Whenever I came to rest on my haunches, I was hit and screamed at until I was balanced forward again.

- 84 I was eventually made to get up and move, and I was taken to a medical tent. When my blindfold was removed briefly I saw a sticker on an x-ray machine that read "Cuba". I was then led to a little wire cage, where I would live for the next 3 months. I was so out of it and disorientated I could not tell if I was in a large covered area or actually outside. These were my last thoughts as I passed out.

Camp X-Ray

- 85 I woke up on a concrete slab with the sun in my face. I looked around and saw that I was in a cage made out of cyclone fencing. Internal fences divided the cage into 10 enclosures, and I was in one of the corner end cells. Around me, I saw 5 other concrete slabs with what looked like bird cages constructed on top. A fence covered in green shade cloth and topped with rolls of razor wire was wrapped around these 6 concrete slabs, able to house 60 human beings. Hanging on the inside of this fence was a sign saying *"if you attempt escape, you will be shot"*, with a featureless person with a target for a head. There was nothing else around except guard towers with large painted American flags manned by armed marines.
- 86 My block was only the second to have been built. But about a month later around 360 detainees lived in these outdoor enclosures.
- 87 The enclosures were open to the wind, sun, dust and rain. The local wildlife such as scorpions, snakes and 9 inch long tarantulas tried to find shelter in the enclosures, including mine. I never had to encounter the snakes or scorpions but the tarantulas still found their way in to my cage. My cage was the worst for tarantulas as it was on the corner. Because of the way the cells were made the Tarantulas, once they were in the compound had to go to the corner of the cement structures to try to escape. I know of a few detainees who were bitten by the scorpions and snakes in their cages.

- 86 My cage like all the cages, was 3 steps wide by 3 steps long. I shared this space with 2 small buckets: one to drink out of, the other to use as a toilet. There was an isomat (a 5mm thin foam mat) a towel, a sheet, a bottle of shampoo that smelt like industrial cleaner, a bar of soap (I think), a toothbrush with three-quarters of the handle snapped off and a tube of toothpaste. When I held the tube of toothpaste upside down, even without squeezing, a white smelly liquid oozed out until it was empty.
- 89 Every hour of the day and night we had to produce our wrist band and toothbrush for inspection in case I had sharpened it into a weapon. I could not sleep for more than an hour at a time because of these cage inspections.
- 90 I was not allowed to talk or look around. I had to stare at the concrete between my legs while sitting upright on the ground. If I did lie flat on the concrete, I had to stare at a wooden covering above our cages. Apart from blocking the sun for about 2 hours around high noon, the roof offered no other benefit.
- 91 Sitting alone in the middle of the cage, away from the sides, was the only position I was allowed to assume. I could not stand up unless ordered to and was not allowed to touch the enclosing wire. If any of these rules were broken, even if innocently looking about, we were dealt with by the Instant Reaction Force (IRF). The military police (MP) nicknamed this procedure being "IRFed" or "earthed" because they would slam detainees into the ground.
- 92 I witnessed many prisoners being IRFed but I was never IRFed. I think this is because I could speak English and tried to talk my way out of it. I was also so scared I was compliant with the soldiers' orders. To be IRFed involved MPs striking the detainee with hard blows and sometimes ramming the detainee into the concrete. I witnessed the IRF teams smear faeces on detainees, spray pepper spray into their eyes (and I know of one detainee who lost vision in one eye due to such an attack), shove detainee's head into toilets, spray high pressure hoses up their noses to simulate suffocation, and break detainee bones. The beatings were savage. There was no one to complain to, no one who could stop this from happening.
- 93 The first two weeks in Camp X-Ray was a blur of hardships: no sleeping, no talking, no moving, no looking, and no information. I felt disbelief and fear, pain and confusion, I wondered what was going to happen. To pass time and relieve the pressure on my aching back, I would lie down rather than sit up.

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94 I noticed after my arrival in Guantanamo that the guards took a special interest in me. MPs would come up and asked questions like

"Are you an expert in multiple martial arts"?

Another would ask:

"Are you an expert in small arms weapons?"

Others would walk past winking saying:

"You're hard core, you're high speed."

I asked where they had heard such rumours. They responded:

"I've heard about you...our superiors inform us during our briefings" and "I read about you in "Soldier of Fortune" magazine."

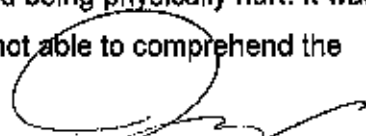
Camp X-Ray Interrogations-


95 My interrogations started approximately 2 weeks after I arrived at Camp X-Ray. Interrogations took place in portable rooms that were just outside the camp. I would be taken to these rooms strapped down on a medical stretcher. My first few interrogations were conducted by people in civilian clothes. However, military personnel quickly took over from the civilian dressed interrogators. From this point I always had the same interrogator during my time in Camp X-Ray. He was military personnel, probably a captain as he had two black bars on his uniform. The early interrogations were a mixture of 'getting to know you' style questions and then specific questions such as being asked to identify photos. However, for most of my time in Camp X-Ray I was asked about the military training that had been available in Afghanistan during the period I was there. I asked about whether I would be given access to a lawyer. The interrogator said words to the effect:

"This situation is not about criminal proceedings. It is weird for you to be thinking that way."

I was so scared I dared not risk angering them by continuing to ask for access to a lawyer. My main concern at this point was survival. I was trying to adapt to the range of hardships such as the sleep deprivation and to avoid being physically hurt. It was a bewildering, confusing and bizarre situation. I was not able to comprehend the

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implications of being denied access to a lawyer. Also, at that time the way he described the situation it made sense and I was not sure that I needed a lawyer.

96. The stretchers we were transported on were not used for long. Instead, we had to run to the portable rooms while wearing a Guantanamo "3 piece suit".
97. A 3 piece suit begins with normal handcuffs which are directly joined in the front to a chain that's wrapped around the mid section. A chain then goes from the midsection down to the ankles where they are restrained by modified handcuffs. Any time I was moved I would be escorted by 2 guards who had to keep a constant 4 point contact. For example, one MP held the chain at my back while their other hand was used to force my head down so I could only see my feet and not where I was going or my surroundings. The other MP did the same thing. The soldiers would arrive at the cage and say "exhibition" which meant it was time for interrogation. Later they changed the word to "reservation". Over the radio they said "the package is on route" then I would quickly shuffle to the portables as the skin ripped off my ankles.
98. During these interrogations, I talked and was upfront about my activities from the beginning. I was confident I would be released, and I thought I would be one of the first to go. My interrogator told me he knew I had done nothing wrong, that there were some terrorists in the camp but I wasn't one of them, I felt even more confident that it would not be long before I was returned home. I trusted the interrogator when he said I had nothing to worry about, despite the fact that I had no access to a lawyer. The interrogator said I did not need a lawyer. He also advised me to have patience as he explained how the Geneva Conventions did not apply to us in Guantanamo. He said words to the effect:

"Terrible events have happened in the world now, things like 9/11. You have now been caught in a big net but if you trust us and have patience then you will be out of here. You have to let us do our questioning and then we will let you go. It will all be okay. If you answer your questions then you will get out of here and go home".

He made it seem like it would be too complicated and difficult to start having to deal with the law. I was not in a position to challenge this or demand a lawyer. I was terrified and one look from my interrogator was enough to make me scared. I had been physically beaten and I knew it could happen again at any time. I had reached a point already where I stopped asking or pushing the boundaries. There were occasions when I found the courage and strength to argue with my interrogators although I was subdued by them quickly when this happened. Surviving day to day life was

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challenging enough and I could not handle extra beatings or punishment. I did become more concerned with obtaining a lawyer as time went on but at this point I just wanted to believe what the interrogator was telling me.

I did not understand the full consequences of the Geneva Conventions not applying to us in Guantanamo. At that time I believed they related to conduct during war but I did not realise the protections we were being refused. I was constantly being convinced that it was all good and that I would be going home. They did not replace the "you'll be going home" with the "you'll die here" until a few years had passed.

99 I was interrogated at least 50 times during my stay in Camp X-Ray, but probably not more than 100 times. Sometimes I was interrogated everyday or even twice a day. I never went more than 3 to 4 days without being interrogated. That was where I heard the word Al-Qaeda for the first time. Whenever the interrogator referred to a training camp he would say "Al-Qaeda camp" or, if he referred to a third person he would say "Al-Qaeda member". I asked what Al-Qaeda was, but during the whole time in Camp X-Ray the question was dismissed or left unanswered. I had heated debates with the interrogators on this point. I refused to agree with them, to allow them to put words in my mouth, not knowing what Al-Qaeda was, and because of the interrogators' insistence in using this term, I always said "No it was not an Al-Qaeda camp" or "I was not a member of Al-Qaeda". The interrogators even had to teach me how to pronounce the word "Al-Qaeda" properly.

100 Interrogators would become furious when I corrected them on this. They would suddenly shift from a normal conversation tone to being angry which was clear from the change in their body language, tone of voice and facial expressions. It was almost bipolar the way they would suddenly change, like a Jekyll and Hyde, between calm and anger. They would threaten me by alluding to the beatings I had endured before my arrival or by mentioning the IRF teams in the camp. They said words to the effect:

"You don't want the IRF teams in the camp entering your cage do you? Don't forget how the boys treated you on the way here, we can always go back to that".

This was posed as advice and not as a question. In these interrogations no information was given to me about my future. They would tell me that they were in the dark as much as I was. The Australian Government was never discussed at this camp and being released was presented as a matter of completing their questioning and allowing the powers that be in the bureaucratic system to operate.

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101 Over time, the threat of "special treatment and psychological conditioning" took its toll. The interrogators wore me down so that when they said "so when you attended the Al-Qaeda training camp I would answer the question without denial or protest. I became too exhausted to argue. I allowed the interrogators to frame my words and say anything they wanted. I was already petrified and subdued by the time I arrived in Guantanamo.

102 I was threatened on many occasions during my interrogations in Camp X-Ray. On one occasion maybe 6 weeks into my time there, I was interrogated by 3 civilians. Two of the civilians were white, while the third, who sat silently in the corner, looked to be Arab. After a few minutes of general chit chat they produced a hand held video recorder. On the screen was a still shot of a man lying on a bed with a white sheet pulled up to his chin while the surrounding walls and everything else was white. His entire face, however, was horribly bruised, a mix of black and blue that stood out in stark contrast to his surroundings. I was sure I was looking at a dead man. When I asked if he was dead, the Arab in the corner spoke for the first time. With a really hateful expression, he said

"If you don't cooperate, we will send you to Egypt. You can find out if he's dead and experience how it happened".

The thought scared me. However, the environment we were in and the way we were being treated also served as a constant threat. I was kept in a cage akin to a dog kennel. There were continuous beatings and detainees would be left bloody and sometimes with broken bones. Even if those beatings were not happening to me it is just as bad to witness this occurring to the people around me. Often they would occur for no reason. I was always vulnerable to be next and I was always aware that it could be my turn at anytime. During interrogations I went to great lengths not to offend or anger the interrogators. I was experiencing an extremely heightened sense of fear and so a simple look or gentle warning was enough to exacerbate that state of fear. As such, I was not physically harmed during these interrogations because they did not need to.

Camp Delta

103 I was moved to Camp Delta in a bus from Camp X-Ray. I was chained with a bag secured over my head with tape. I was guided onto the bus and locked to the floor. When we began to move, I could hear other detainees in chains around me and as

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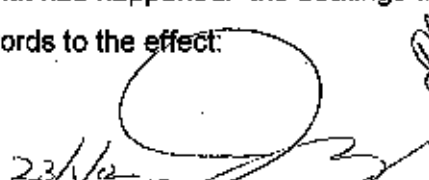
always whenever I was transported the soldiers angrily yelled orders and also physically hurt me including open handed blows and kicks.

- 104 It was a short journey to Camp Delta. I was let off the bus, the tape and bag were removed from my head. I was led through two lockable gates called a "sally port". There were fences covered in green shade cloth and lots of razor wire. A square, white sign hanging by the gates I entered read "C Block" (Charlie Block). Once through the gates, I stood before a long, narrow structure. It looked to be a hybrid between a cage and an enclosed building. I was escorted into this structure and down a hallway. Detainees were on both sides of the walkway, behind diamond wire. I was not taken far into Charlie Block, as it was called, when I was told to go into an empty cage on my right. The restraints that were on me were removed, and I was left alone.
- 105 The cages in Camp Delta were very small : one step wide, two steps long. The whole thing was constructed of metal. A cell contained a metal shelf about half a metre off the ground to sleep on, a sink and a hole in the floor for a toilet. The entire enclosure would be no bigger than an average suburban toilet. The floor space was smaller than a double mattress and twice as small as the cages at Camp X-Ray. The whole thing was constructed from shipping containers.
- 106 The cages in Camp Delta were made from 4 shipping containers being placed end to end. Diamond wire was used to internally divide this enclosure into 24 cages, meaning each shipping container could contain 6 detainees in a "single occupancy cell". The whole structure was raised off the ground on cement blocks opposite another 4 shipping containers. A raised platform between the containers allowed enough room for a soldier to walk along and inspect the detainees. The structure was then covered in white panels and roofed, hiding the metal shipping containers and the internal diamond wire from outside.
- 107 Down some steps, out the back, were two cupboard sized cement boxes used as showers. A bit further again, through two gates, were two large cages, enclosed by cyclone fencing, 12 steps by 12 steps each with a cement floor. These were the "recreation" cages. Everything was then surrounded by the green shade cloth covered fence, and beyond that armed guard towers. Like Camp X - Ray, this camp was also under construction. On arrival, only enough blocks had been built to house about 200 detainees, although after another year Camp Delta would house just over 800 at its peak. There was nowhere else to go – except interrogation or hospital – and there was nothing else to do, but sit in these toilet sized metal cages and wait.

- 108 I had not been in Camp Delta for a long time when I was moved to Alpha block as punishment for not agreeing to spy on other detainees in Charlie Block. Alpha block was full of non English speaking detainees who were very angry men. I was very isolated in Alpha Block.
- 109 One day a couple of months into my time in Camp Delta I was taken out of my cell and introduced to a delegation of Australians who introduced themselves as being from ASIO, Australian Federal Police and a representative from the Australian Embassy in the US, a woman. I was excited, thinking it was time to go home, but they quickly doused any of my hopes. I was told that this was not a consular visit – if I had any complaints or requests, there might be time to address them later. They told me they had come to conduct an interview regarding my activities overseas. Then, without asking for my consent, a tape recorder was placed on the table and they began a more formal introduction. They introduced themselves and all checked their watches to agree on the exact time. They then asked my name and address to try and establish my identity. When they asked if I would participate in an interview, I refused. They didn't seem to be expecting that answer and turned the tape recorder off. They then said words to the effect:

"We are here to help you, to see if you have broken any Australian laws, because if you have we will be able to get you out of Guantanamo and back to Australia. If you don't participate, we won't know if you have broken a law or not and we will not be able to do anything for you. You will remain in Guantanamo indefinitely. The US would like you to cooperate. The US would not be happy if you refused, you will remain behind and we will be powerless to help."

- 110 The thought of remaining in the military's hands for years to come, in this place, scared the hell out of me. The treatment that I had experienced and witnessed so far was at the forefront of my mind. In particular, I thought of the beatings and the painful positions I had been forced to hold. As well as the general horror of my every day existence which I was beginning to believe was my new daily reality for the rest of my life. I was also aware that the US military practically owned me and that I was on a military base where no one could reach us.
- 111 I told the Australian delegation everything that had happened: the beatings the privations, and the disrespect. They said words to the effect:

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"You are in their custody, not ours. There is nothing we can do about that. We are powerless to help. You are in the US's hands now. Let's not waste time right now."

112 Instead of causing a scene I was easily silenced because of my fear of "angering the Americans" and suffering some variety of punishments later on. I dropped the subject. They did not want to waste their time with me complaining. It was not why they were there and they cut me off pretty quickly. However, the reality that they were not going to help me only reinforced the message that the US military was all powerful and could do whatever they want with us and no one can help us.

113 The Australians then produced an Esky full of food and drink and also placed a full packet of cigarettes on the table. They said words to the effect :

"It would be a shame to throw it all out as we have brought these for you but you need to agree to an interview".

The offer of food and drink was a huge incentive when you have been kept in a rusting metal cage in the hot Cuban sun, eating only half of a cold MRE nearing the end of its seven year use by date and given only warm water to drink for months on end. So I agreed to the interview.

114 The Australian delegation placed a recorder on the table and began. When they asked this time why I had changed my mind to participate in the interview I hesitated, all I could think was *"Don't piss off the Americans. Don't piss off the Australians – you want them to take you home right. Don't get smart or you'll have to pay for it."* I answered the question by simply saying I changed my mind and even that answer felt rebellious.

115 The interview began mid-morning and lasted until late in the afternoon. They asked questions beginning with my birth through to the present but they concentrated in much more detail from the time I had left Australia. As I started talking about Kashmir they told me that under the circumstances I could not have a lawyer present. This was really my first and only contact with official Australian representatives. Although there were other visits with Australian people none ever felt as official as this one. I ate, drank and smoked as though I never would again. The interview resumed the next day for a similar length of time. When it was over the Embassy employee asked if I had any request she could submit to the US on my behalf. She did not mention the mistreatment of detainees, and I did not push the point. Thinking it would be a waste of time, I only requested to be moved to a block where detainees spoke English, as I was unhappy in Alpha Block.

- 116 It was explained that the reason for their visit was to see if they could get me out of there. They told me that in order to extradite me back to Australia I had to be charged with a crime that breached Australian law. This was the only point that they took time in explaining and they stressed the importance of me having committed an offence. This was the first time I had heard this information. They said words to the effect:

"A breach of Australian law means being released, whereas being innocent means staying in Guantanamo".

They told me that I needed to co-operate and help establish that I had committed a crime within the Australian jurisdiction. The last thing they said to me as a group was that based on the interview they could see no breach of Australian law and that I would have to remain in Guantanamo. Nevertheless, they would continue to look into it. They then added something about passing on my regards to my family for me. Then they were gone.

- 117 The day after the Australian's left I was moved to Delta Block within Camp Delta. As Camp Delta was such a physically enormous camp the military had broken the physical space down into smaller subsidiary blocks. This included Camps 1, 2 and 3. It also housed blocks A – W, which included Alpha Block, Delta Block, Kilo Block etc. There were no Westerners here at Delta Block, but a number of detainees could speak reasonable English.
- 118 Throughout my time in Camp Delta I did not have access to information about the outside world and felt very disorientated. My knowledge consisted of rumours, false leads and largely incorrect information. Whenever a detainee returned from interrogation he would report what was discussed. We would then spend days analysing the interrogators every word, looking for hidden meanings and clues to our fate. Other information came from the ICRC, guards and pure speculation. Detainees would scream this information from block to block, from shower to shower and rec yard to rec yard.
- 119 I continued to wait in Delta Block. As the weeks passed since the interview with the Australians, I was not interrogated. I took this as a good sign. Then one day in early August, I was escorted out of the block. My heart was racing with excitement as I thought I might be taken to a waiting plane. I was turned into the interrogation building instead. As my hope waned, I told myself that I might receive the news of my departure there. I was placed in a room with a military guy I had not seen before. Feeling optimistic, I pestered him with questions. He claimed not to know anything.

except that I should be moved from Delta Block in the near future. That sounded hopeful to me. The interrogation seemed to have no purpose and was over quickly.

- 120 Within days of that interrogation, MPs arrived at my cage, ordering me to get ready to move. I was chained in the usual manner, but this time I thought, "This is it, I'm going home." I was even more sure of this as I was led out of the camp altogether for the first time. I was placed in the back of a John Deere Gator utility vehicle, which also gave me hope. One guard drove while the other sat in the back, using an arm to lock me in. We drove along the front of the camp for a few hundred metres in the buggy until we reached another gate with a sign that read "Camps 2 and 3". I had watched this camp being built for the last few months and knew it had just opened. It wasn't what I was expecting, but I was not dismayed. We went through the numerous gates and turned left into November Block. This 24 cage structure was called "isolation". The room I was placed in was a metal box, as were all the rooms in November. There were no windows, no natural light. If it hadn't been for the soft red glow from a globe, it would have been darker than night. A cold blast of air constantly streamed in from a hole in the roof. I did not know what to think, but doubted this was the path to home.
- 121 I asked the guards working on this block why I was there. They responded that it could be punishment, or just a standard introduction to Camps 2 and 3. When I asked how long I might be in there they replied "possibly weeks". I spent 10 days in November Block until I was taken out into the sun, holding my garbage bag of belongings that accompanied me on a move (ISO-mat, blanket, sheet, etc) and led to the last block in the back of Camp 2 – Kilo Block – on the opposite side of Charlie Block in Camp 1.
- 122 In Kilo Block I was with some of the British detainees. I could not physically see most of them, but if we yelled we could communicate. Some detainees had also discovered microphones hidden in taps and in gaps around the windows in Kilo block. I had not been in Kilo Block for long when interrogations resumed. This time with a new military officer I had not seen before. I had to start from the very beginning and go through my story again and again. The interrogations in Kilo Block were the same as the ones in Camp X-Ray.
- 123 The weather had also become extremely hot whilst in Kilo Block, and the cages were beginning to rust badly. The water out of the tap, the only drinking water, was warm and the food situation was desperate. My average weight is around 81 kilograms, but I started to lose noticeable weight in Kilo Block. I began my time there around 72 kilos and, very soon my weight was down to 58 kilos. I knew my weight had dropped as I was weighed often whilst I was in Guantanamo. While in Kilo block I began to lose the

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small amount of hope I had been clinging to. I had been in Guantanamo for 8 months and I was beginning to realise I could be here for years. The deployment of guards that had been with us since Camp X-Ray had left. In their place was a fresh batch of soldiers. They were paranoid about how dangerous we were, from their recent training and propaganda. This meant I had to endure open mouth gawkers saying:

"Are you the Australian mercenary? I hear you can do spinning kicks and kick the roof. Will you show me?"

This really worried me, it was making me out to be something I wasn't. It wasn't a flattering characterisation that would aid my mission to return home. But in the years to come I became too burnt out to care any longer.

124 Sitting in the hot, rusty cage wore me down for many reasons, one of which was the local wildlife. The increase in food resources, now that hundreds of detainees and thousands of personnel had moved in, created a population explosion in many species. It began with ants. They made their way into cages, carrying eggs between their pincers, swirling about in huge numbers on the floor attempting to establish nests. Then came the mice. They also swarmed into the shipping containers in plague numbers. They were constantly scampering through my cage and it became so bad that, whenever I *managed to fall asleep they would yank the hair from my head, probably to line their nests with.* I tried to solve this problem by killing them quickly. It was definitely not something I wanted to do. With the mice came snakes. Long skinny pythons would pop up in pursuit of the mice through the gaps in the floor where two shipping containers met. They would then follow them down to the next gap, six cages along.

125 The Military medics also gave us tablets and injections and took blood samples the entire time I was in Guantanamo. The most common reason provided to me for the injections was immunisation against various strains of flu or tetanus and testing for TB. Refusal was not an option: either you gave your arm voluntarily or you were physically subdued. Because of this, I usually offered my arm. While in Kilo Block, this program of forced medication intensified. During my time in Kilo Block I was injected twice, both times in the morning, 2 days in between each injection. Although I had forced injections throughout my entire time in Guantanamo it was these two injections in Kilo Block that had a profound impact on me physically, mentally and emotionally.

126 Every second day the medics gave about half of us tablets and the rest injections. I was given the injections. At first we consented to what we were told was flu medication.

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Detainees receiving the tablets were the first to rebel. They were given a certain colour and shaped tablet one day and then something totally different the next – ostensibly for the same reason. The detainees became suspicious, and when they refused they were quickly IRFed and forced to take the medication.

- 127 I was given the injection and within an hour or so I could not help but huddle in the corner of the cage. Physically, I felt comfortable, even though it was an odd thing for me to do. In the back of my mind I knew it was strange, but as long as I stayed in that corner I had no real thoughts at all. When I tried to move from that position, whether to eat or go to the toilet, I became extremely agitated and nervous. I would quickly resume my huddled position. Getting the slight shakes was another side effect of this medication. Sometime on the second day I began to feel normal again and came out of the corner. I knew I had acted unusually, but, because most of that period was a blank in my mind, I could not decide if the injection was responsible.
- 128 Two days later, when I began to feel normal again, I was given another injection. I was scared and pleaded for them not to, but I was threatened with an IRFing if I did not cooperate. So I surrendered my arm thinking that the needle might snap off in my shoulder if they jabbed me during a beating. I went straight to the corner and curled up, but, unlike the last time, I was under no illusions about what was happening. I tried to fight this chemical reaction, but was powerless. My mind was clear and alert, and I could identify my behaviour as abnormal, but my body would not listen to my mind. I had no control. I remained in the corner, despite wanting to move. This time around the experience was very distressing. All I could do was wait for the effects of the medication to wear off a full day later. These injections created a heightened level of fear in me, more so than threats of actual physical harm or torture. The injections made me fear that I would lose my mind and my memories and become a different person. It was like the death of myself and felt like it was irreversible. I witnessed other detainees lose their mental health to the point they stopped functioning as normal people and were no longer the same person, to witness that and to know it could be me next was scariest of all. The intensification of the forced injections coincided with a visit from the ICRC to Guantanamo. I told the ICRC of my experiences and they informed me that this had been the most common complaint during this particular visit to Guantanamo. Shortly after their visit the forced medicating decreased.
- 129 I experienced two other health incidents in Kilo Block. One morning I woke with blood on the side of my face. It had been leaking from an ear while I slept, accompanied by a whistling sound. Later in the day I was taken to the clinic where I was told my eardrum

had ruptured. I asked how this could happen while I was sleeping. A doctor responded that I either had my ear up against a loud speaker or I had been banging my head against a wall. I told the doctor that those explanations seemed unreasonable and shed no light on the mystery nor did it help us from preventing it from occurring again. He said words to the effect

"Don't go banging your head against walls"

and dismissed me. The cause of my burst ear drum was never identified.

- 130 A short time later, a groin pain I had been experiencing recently became so severe that I put in another request to see a doctor. After an examination, I was informed that I had a double hernia. I agreed to be booked into the hospital for an operation. The detainee hospital in those days was still a complex of tents, a bit like MASH. I was led into one of those tents, where each of my limbs was chained to the bars on the side of the bed. I could not move about or sit up. I was stuck on my back. When I asked the doctor about this, he said it was standard procedure and that I would remain chained like that for my entire stay in the hospital. I began to think of the recent injections and pictured them filling me with any substance they desired without my being able to prevent it. I asked the doctor if I would be receiving any injections or medication other than what was needed to perform the surgery, and all he said was "you'll get what we give you". I took this as a yes, and panicked, complaining that I did not want the operation, asking to be returned to my cage. I was surprised when they agreed and further relieved when I was unstrapped from the bed and returned to Kilo Block.

- 131 When I realised I would have to return to the hospital I was so afraid of the injections I requested to see an interrogator by asking the guards working on my block and later when I was taken to interrogation I pleaded with the interrogator for protection from injections when I got to the Hospital. I said words to the effect:

"I fly the white flag, I give up. I hope we can scratch each others backs. I promise I will do anything you ask of me, just don't inject me"

The interrogator thought about it and finally he agreed and gave me his word. We never discussed or entered into any specific agreement about what they would require me to do.

- 132 A few days later I was taken to the hospital and had the hernia dealt with. I was strapped down, but after 24 hours they only strapped two opposing limbs.



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- 133 Throughout Camp Delta, there were loud speakers positioned in each block, on guard towers and also fixed in other strategic places. Towards the end of 2002, these speakers were used to deliver announcements to the detainees. There were hundreds of us from around 40 nations, so every announcement began in English and was then followed by the main half a dozen languages spoken by the detainee population. The announcement said words to the following effect:

"Some of you have spoken the truth and told us all you know. Some of you have cooperated, but still not told us all you know and have not been truthful in all areas. Some of you will never leave here. For those of you who have cooperated fully, you will return to your families and loved ones. Some of you still have more to tell your interrogators. The sooner you tell us the truth, the sooner you will go home and those who refuse to cooperate... you will stay here forever."


There was a strong emphasis on loved ones and family. The announcements would get played every few days once they began. It would give me great hope to hear them, I was sure I would be one of the first to go. I thought about my interrogations, how I had always cooperated and told the truth. I considered the fact that I was an Australian citizen; I had not committed a crime, I did not have a criminal record back in Australia, I had done nothing wrong. I had never been more sure of anything, I was going home.

- 134 One day the announcements changed to say:

"Today for the first time, we will be releasing some of you."

I was certain that I would be released. I kept looking for a reason why they would deny me, I could not find one. I thought to myself that my time had come at last to go home.

- 135 I saw a large group of military personnel enter the block only minutes after the announcement, some wielding TV cameras. My cage was half way down the block on their left and the party was approaching. Then they were directly outside my door. I was ready to receive the good news, when they opened the cage door of my neighbour, an Afghani, instead. Reserving my emotions, I watched him shake hands with the soldier who opened his door. He was handed a change of clothes and his personal effects from when he was kidnapped. The soldier made a show of the release even allowing him to shake hands with fellow detainees through their bean holes on his way out. The party followed the Afghani out of the block and did not return. In total three Afghanis were released.


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- 136 Once the party had departed the block I tried to keep my spirits up, but it was useless. It felt naïve to remain hopeful as the hours passed with no more releases other than the three Afghanis. It was a huge blow. The injustice and lack of understanding or knowledge of why all this was happening to me began to erode my sanity. I could see my physical health deteriorating. I experienced many fluctuating emotions: anger, depression, confusion, pessimism and then finally I became obsessed with suicide for a very long time.
- 137 In the weeks following the releases, the loudspeakers continued to announce the same information until eventually a new element was added. The announcement said words to the following effect:

"A new camp is being built. It will be modern and comfortable. You will be able to pray, sleep, eat and play sport together. Some of you will be moved there soon. Those of you who have cooperated and truthfully told your interrogators everything you know will be selected to be moved to this camp. If you qualify, you will be moved there to wait for a place to return to your loved ones, families... this new camp will be the last stage and destination for those of you who are selected to be released."

The camp the announcements were referring to was Camp 4. I never went to Camp 4.

- 138 During mid December 2002, I was informed I was being moved. By this time I had no hope left. I was moved from Kilo Block next door to Lima Block. Both of which are located in Camp Delta. Within days of my move all occupants of Lima Block were moved to Camp 1, which is also still in Camp Delta.

2003 Camp Delta

- 139 In 2003 General Geoffrey Miller took over camp operations at Guantanamo. Once General Geoffrey Miller took over things began to change. One of the first visible changes was an introduction of a levels system.
- 140 Level 1 allowed the most privileges meaning that the items you already had would not be taken away. There was also another level called level 1+, which allowed a detainee to have special items provided by interrogators. This might be a toothbrush, shampoo, soap, a whole roll of toilet paper instead of the usual four squares, an extra sheet or blanket, or perhaps a book.

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- 141 Level 2 would have something taken away from the few items we were used to having, level 3 even more.
- 142 Level 4 detainees were only allowed a pair of shorts. Anything more than a pair of shorts was now classed as a "comfort item". We were no longer entitled to toilet paper and other such necessities. Often we would have to defecate with no paper to wipe ourselves with. There was also no soap to clean our hands and we would have to eat our meals with our fingers.
- 143 In the beginning of 2003 new interrogation techniques were used on me. I was also told by other detainees that the new techniques were being used on them.
- 144 A number of the interrogation rooms were converted into what we called torture chambers. They comprised four main ingredients. Stress positions, temperate extremes, noise and erratic lighting. The process would be that two soldiers would come to your cage and strap a three piece suit on you. You would then be led into a dark room and short shackled to a ringed metal bolt in the floor. This forces you to crouch or kneel. While short shackled you cannot sit, lie down or rest. From the beginning this position is uncomfortable but then it quickly becomes painful. Initially the room is quiet and dark and then the temperature in the room starts to rise or fall. Whichever way it swings, it continues to become more extreme until it is unbearable. Then the room will switch to the opposite extreme and you were left for hours sweating, nearly passed out from the heat, or shivering desperately from the cold. The room could remain dark or become bright enough to hurt your eyes or contain continuously flashing strobe lights. The noise would consist of loud music, croaking frogs and what was referred to by the guards as the Bob the Builder CD which contained construction type noises such as jackhammers and a whistling train. There was also the music to a US advertisement for cat food which the guards called the "Meow Mix". It would go "meow, meow, meow, meow, meow" and no other words were used. The combination of the four was also a possibility.
- 145 I personally experienced the stress positions, and temperature extremes but not the lighting or noise. I experienced the stress positions and the temperature extremes so many times over five and a half years that I cannot now remember how many actual times it happened. It was a regular occurrence in Guantanamo. I was subjected to the stress positions and the temperature extremes sometimes at the same time and other times I would experience just one or the other. I was given no food or water and was left to urinate in the interrogation room. The stress positions would happen in the interrogation rooms or when I was being transported. I could remain in the stress

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positions for a few hours and sometimes up to a full day, which was the entire length of daylight hours. Yet I was always aware that they could leave you for much longer, as they did to others. Some detainees had experienced being left in the stress position for 3 or 4 days. I never knew when it was going to happen, it was always unexpected. The temperature extremes were not only in the interrogation rooms but also in our cages. The extreme temperature in the cages could last for weeks on end. It was all part of their interrogation methods whether in the purpose built interrogation rooms or in our cages. It was their way of controlling all aspects of our lives and I believe all such treatment was directed by the interrogators.

- 146 I also witnessed other techniques such as operation 'Sandman' which was a sleep deprivation program in which a detainee was moved every hour for weeks on end never given a chance for sleep or the right to refuse to participate. This was an intensified policy of sleep deprivation, different to the everyday policy of sleep deprivation. I never experienced the Sandman technique but I watched other detainees being subjected to it. I experienced the sleep deprivation practices throughout my time in Guantanamo. Each camp was somewhat different with their procedures. For example, in the early days of Camp X-Ray I would have to show my wrist band and toothbrush every hour. This was then replaced with a new procedure in Camp X-Ray where I was only allowed to sleep on my back, stomach and side and I could have a single sheet to cover myself although the guards at all times had to see the colour of detainees skin on our face and hands. During sleep my hands would inevitably move to behind my head to act as a pillow or underneath the sheet. If this happened we would be woken up by the guards, they would bend down inches from my our faces and scream "show me skin" or just "skin" and kick the wire fence right near you. This would mean that I was being woken up constantly whether it was a guard yelling at me or at another detainee. This made the process intense and traumatising. At Camp 5 you had to sleep laying on your back only looking at the -lights, the lights were on 24 hours a day. At Camp 6, we had to move a body part every 10 to 15 minutes 24 hours a day.

- 147 There were also other ways of punishing us, instead of just losing all comfort items, a detainee might find his room sealed up and a can of pepper spray pumped in while the detainee was in his room. It was common not just to be sprayed but drenched with an oil based pepper spray then carried into a freezing cold shower that would disperse the oil over the entire body, intensifying the burn. Next, you would be placed in isolation with the reddish glow in November, Oscar or India blocks. These would be pre-chilled and you would stay for a day or two before your clothes dried and the burning ceased.

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This did not happen to me but I saw it happening to others around me, including a number of my neighbours. Other detainees were much more provocative than me. They would kick their cages and yell whereas I never did that. In the early days the guards would hold the pepper spray behind their backs and then throw it straight into the face of the detainees. The guards would also play practical jokes on detainees. For example they would pepper spray detainees toilet paper. However, I never experienced this. I believe at least half the detainee population was exposed to these torture rooms and sleep deprivation programs possibly even more because some detainees would not discuss what had been done to them. I lived in fear of being subjected to the same treatment.

- 148 I could not understand how one human could treat another in such a way. I was a nervous wreck and not coping well. I constantly feared for my safety, found the daily living conditions tough, and I could not help at times being concerned about my life. I was determined to save myself from the punishments that were wearing away my physical and psychological health. By this stage I was a shadow of my former self. I got to a point where I could not take any more and begged for it to stop. So I tried bargaining with my interrogator. I said words to the effect:

"You have broken me and I give up, I will do anything you require. I just want protection and the physical and psychological programmes to stop. I want relief from the daily treatment".

I said this to the interrogator in the interrogation room.

- 149 The interrogator smiled and dictated to me the rules:

"You will have total protection from physical punishments in exchange for full cooperation. Once a week you will be taken to the 'love shack'. You can stay in there for the duration of one DVD."

- 150 The love shack was a large room within the interrogation facility set up to resemble a comfortable lounge room. 'Love shack' was given its nickname by the soldiers. That was what I heard the soldiers and interrogators refer to it as. It had a plush carpet, cushy lounge, flat screen TV, entertainment, ornaments and paintings on the wall. This granted me an escape from the shipping containers and the hostile environment for 2 or 3 hours every week. During that time I attempted to enjoy the unlimited cigarettes, real food and drink. I became addicted to those few hours of normalcy. Back in my cage I was allowed to keep soap, shampoo and a full roll of toilet paper

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- 151 The soap, shampoo and toilet paper helped to improve my level of hygiene, which had a positive impact on my morale. But the strongest influencing factor behind my surrender was an instinct to survive, a selfish determination, to further avoid the ongoing suffering and pain of my existence.
- 152 I had endured interrogation for over a year now. I had become a stranger to myself. It felt like something had died inside me. My end of the bargain was that I had to verbally repeat my story, agreeing with anything they added, even when they dictated my thoughts, beliefs and actions incorrectly. They also fed me things to say about detainees as well. I did so obediently, even though I knew they were all lies. I struggled terribly with this and hated every minute of it, especially when they brought up other detainees. I searched for the courage to resist and renege on the deal. I had no recourse. I had crumbled and was fully theirs.
- 153 After a month of going to the Love Shack I was taken to the interrogation room. Instead of my usual military interrogator meeting me there, I was met by six to seven people in civilian clothes. I presumed they were FBI because of their clothing. These people questioned me on the statements I had made about other detainees. After a while, I realised they thought these statements were the truth. They didn't know that I had made a deal with my interrogator to say whatever he told me to say as long as the torture stopped. When I told them it was all made up they stopped talking and they left. After that my weekly visit to the Love Shack stopped and I never saw that interrogator again.
- 154 To add more stress to the daily camp program, some detainees caught wind of the agreement I had entered into with my interrogator. I had been upfront with a neighbour, attempting to get some advice. Instead, he became angry and yelled out what I'd told him in confidence. This caused a disturbance and a number of detainees on my block were abusive and yelled threats. I was bombarded with hostile words which just added to the discomfort of camp life. Apart from the few detainees who continued to speak with me, the chasm widened between me and the population. Interrogators capitalised on my isolation, indirectly inviting me to forget the detainees and side with them.
- 155 One day sometime in May 2003, I was taken to interrogation. I was surprised however when I was led to the love shack. As I entered, three civilian men stood to greet me. They wore the biggest, friendliest smiles and warmly shook my hand in turn, a gesture that had never happened before. It had quite an impact on me. Their jovial demeanour charged the air with a hint of celebration. They asked me to sit and had

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the restraints removed from me. Then food and drink was spread before us as well as cigarettes, a lighter, and an ashtray. I was told to relax and enjoy myself. They said word to the effect:

"We have great news. A decision has been reached and you will soon be going home to Australia."

They congratulated me and I accepted what I was hearing as truth. For half a day we did nothing but eat, drink and smoke. After the treatment over the last year and a half it felt like a party.

156 Towards the end of the day, they proceeded to share more detailed information with me. They said words to the effect:

"Before being released, you will need to sign a statement. Within a week of signing, you will be moved to the island's naval brig, where conditions are more like a Federal prison. You will be able to use the gym, basketball court and spend time outside in the sun. You will be able to access music, books and magazines. Conditions will be clean, and you will be able to maintain your personal hygiene. You may also smoke and you will no longer be exposed to the interrogation games. We have been able to secure permission for you to stay in the brig until it is time for you to return to Australia."

They finished by saying:


"The very latest you will be released and returned to Australia will be August 2003"

This left me only three months in Guantanamo, at the most. They then told me that I would have to sign a document. I was furious.

I responded by saying

"I will not sign a document"

157 They suggested we all return tomorrow and go over the document together, while enjoying more food, drink and cigarettes. I would have some say in its content and amendments could be negotiated so that all parties are satisfied. They said words to the effect *"wait until tomorrow; see what you think, no harm in looking"*. They also added that I should be grateful that the powers that be had taken the time to resolve my case: to be released was a privilege because all other detainees at that time were

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not being offered the same opportunity. There was never any mention of me accessing a lawyer during this process.

158 I was still not convinced and they said words to the effect:

"You can sign now and go home, putting this time behind you. If you refuse you will be sent back to the camp. You will be offered the same opportunity, the exact same statement, in 6 months time with no changes anyway, so why not get it over and done with now."

I was thinking that I was going to be returned to the camp to conditions that were sucking the life out of me. I would have to suffer interrogation, MPs, a hostile environment and antagonist detainees. I thought about it for a long time and came to the conclusion that there would be no harm coming back and having a look at the document. That would also mean I would get another day out of my cage to eat, drink and smoke. I agreed to see them the following day.

159 The next day began in much the same way but I was then handed the document. Looking at it closely the first thing I noticed was that it was written in the first person as though I had typed up the document myself. The second thing that struck me was its outrageous contents. Furious, I threw it down onto the table in disgust. I refused to read the entire document and went to leave. They asked me not to be hasty and to recommend changes. I picked up the document and began reading again. Up to this point I had said whatever I was told and allowed my thoughts to be manipulated. Seeing those thoughts expressed in a written form, ready for my signature, was a shock. A voice in my head said, *"If I was going to write about what happened, it would not look like this, why would I sign that."* When I said this out loud and asked for the opportunity to do it myself, that choice and freedom was denied. It was a 4 or 5 page "confession", which contained the most outrageous assertions. If I was smarter, I would have left it how it was. Some parts were so ridiculous that others would surely have seen it for what it was: a trumped up piece of nonsense, written by someone – clearly not me – who had little knowledge of the subject matter or didn't care. Regretfully, instead of leaving sections that would have exposed it as a dubious confession, I attempted to educate them and gave them a helping hand. For example, I suggested that they shouldn't refer to Tabligh as one of the most violent and extreme political organisations in the world. I then argued and negotiated the allegations, disputing the way some points were misleading, such as the word Al Qaeda being peppered throughout the document and suggestions that I was a member of such an

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organisation or at least knew that it existed. One of the men had a small laptop, upon which the changes were made before printing off amended copies.

- 160 I hated everything about this process: the document, the people I was with and myself for being involved. What I hated most of all was the realisation that I was going to have to sign the confession regardless of how it painted me, or, as it suggested, how I painted myself. This reality reflected my limited options. Realistically I barely even had options at this point. I could remain in Guantanamo or sign the document. I had no choice unless I wanted to stay there. I reprimanded myself for exposing my weakness a month or two earlier, when I had said to the military interrogator that I was broken and had had enough. I felt like I had virtually advertised that the time was right to offer a confession for signature.
- 161 By the afternoon I was unable to negotiate anymore changes from these men. I was not at all happy with the "confession" but, when it came to the crunch I signed. I signed because the most important goal was getting out of there and back to Australia. I was so desperate to leave the island that I probably would have signed anything. When we had finished they said I would be moved to the brig in about a week, but until then I was to return to Mike block. I felt that I had no choice. If I wanted to ever leave Guantanamo I would have to sign what they wanted me to sign.
- 162 After a week, I was taken not to the brig but back to the love shack. Instead of the three men who were present for the "confession" signing, I was met by someone else. He apologised for the delay asked me to have patience and then sent me back to Mike block. During this time I was transferred back from Mike block to Camp 1 and then to Echo block.
- 163 At the end of June 2003, at least a month after I had signed the "confession", MPs eventually arrived with a garbage bag for my few belongings, indicating I was to be moved. I was told I was moving to a special location, which I was relieved to hear. I was tired, really tired. The camp had become very scary. Detainees were now paranoid and suspicious, some were losing their minds. It felt like my life was being saved when I was moved from Camp Delta, like I'd been pulled from a sinking ship. With a sigh of relief and my last remaining shred of hope I climbed into the back of an ambulance turned prisoner transport vehicle and was driven away to an unknown fate.


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Camp Echo

- 164 I was blindfolded and my ears were muffed for the transfer. When my sight was restored, I was in an average sized square room. A wall of diamond wire ran down the centre from floor to ceiling, dividing the room into two halves. On one side where I stood was a single chair and a small table for the guard. The other side also divided into two parts was for me. One section contained a shower, the first real shower I'd seen for years.
- 165 The other section was an exact replica of the Camp Delta cages (one step wide by two steps long), apart from it not being a shipping container. It also contained a real toilet. When I was led around into this section and had the restraints removed, a door separating the cage and shower was closed and locked.
- 166 An MP could open and close this door from outside in their half of the room, which was part of the daily program. My time was spent living in this quarter of the small room, though I was already used to the cramped space from the Camp Delta cages. This room had no windows, so I could not see any natural light. Instead, artificial ceiling lights were left on 24 hours a day. Only when the guards came and went could I tell if it was day or night outside. There was an exhaust fan used to keep the humidity down. However it made a maddening noise. Big, green mould stains spread across the ceiling. There was an air-conditioner to help keep temperatures down. The house had a corrugated iron roof, and during the few power shortages I felt how hot it could get without it.
- 167 Sometimes the air-conditioner was set to freezing. I would be in thin clothing, barefoot, in a metal cage. The guards wore multiple layers of clothing, sometimes even thermals, and could go outside now and then to thaw out while I would get colder and colder. They sometimes laughed at me shivering from the cold.
- 168 There were two lots of recreation periods in this camp. When the middle door was opened to allow access to the shower, it was usually left open for 1 hour. This added a 2 step wide by 2 step long space to the cage area to pace about in. I was almost able to walk 4 steps in one direction before having to turn around. This was the biggest living space I had been kept in so far. There was also a recreation yard outside but it was no more than 4 or 5 steps square. A cyclone fence cube. I was only allowed to use the recreation yard in the night time.


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- 169 There were 11 buildings set out in a rectangle, all facing a single glass structure in the middle. This is where the highest ranking soldier was stationed, along with two other lower ranking soldiers, and it was referred to as the 'guard shack'. All camp operations were run from this central point. The rest of the soldiers working in the camp rotated from building to building.
- 170 It had only just been built, and I was the third detainee to be transferred there. I had never heard about this camp. For the first few minutes, I kept thinking this is not the brig, and I kept telling my escorts that there must be some sort of mistake. They ignored me. When the escorts had left and it was just me and a lone guard in the chair on the other side of the diamond wire staring at me, I gave him a hard time about the brig until he lost patience and told me to ask my interrogators.
- 171 I felt like I had been screwed over and there was no mistake: this green, painted metal cage was probably going to be my new home. I asked the guard if he was going to keep staring at me, and he said there would be someone sitting in that chair 24 hours a day, writing in a big, green book what I was doing every 15 minutes, whether sleeping or using the toilet. Even though I had not been taken to the brig, I was still relieved to be out of Camp Delta. This new environment was not as intense and hostile, and I relaxed for the first time in a while.
- 172 At this time I was physically and mentally exhausted, and my belief in Islam was eroded. I stopped praying and no longer took part in religious observances. This is not because of anything to do with the religion itself or the people. By this time, I had been so broken that I just wanted to resume the life I had before venturing overseas and put everything else behind me.
- 173 After I had been in Camp Echo for a month or so, an Australian government representative came to see me accompanied by an unidentified American. The Australian woman read from a sheet of paper, and what she said was hard to comprehend. I hardly heard her words as she informed me that I had been chosen to front a Military Commission. It was the first time I had heard of Military Commissions or any type of "legal" proceedings being brought against me. I was in a daze. I could not understand what she was saying. I could not believe that after all this time, after all I'd been through, that this was what was happening to me. I had no idea what was going on and no one explained to me why I would be going before a Military Commission. I did not even know what a Military Commission was. I thought it was probably some kind of military hearing but I was given no information. Months later when I was finally

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provided with a Military lawyer, Major Mori, he too could not explain the process to me. I could not understand why I was not being released or what happened to going home.

174 The Australian woman said words to the effect:


"The Australian government has been able to secure a guarantee that you will not face the death penalty".

I couldn't understand why she was even talking about the death penalty. I couldn't stop laughing. I think I went a bit mad. I could feel the madness coming over me, I was so confused and shocked. I don't remember anything else, except that I was soon on my own with the guard staring at me.

175 The Australian returned later that day and told me that I would be assigned a lawyer. This would be the first lawyer I would have seen in the 2 years since being detained. She then asked about my welfare. I cannot remember everything I told her, just what bothered me most at the time. I think I told her that I had lost a lot of weight back in Camp Delta. I told her about my sore chest. I had 2 golf ball sized lumps behind each nipple. They were very sore to touch and caused me discomfort if I slept on my stomach. I stressed that I was afraid that they might be cancerous and although I had been complaining about the lumps to the guards and the medics for around 6 months, no medical assistance had been given.

176 Within days I was transported to the hospital. The hospital building was now a established structure rather than the tents I was treated in previously. After a quick examination I was informed by a doctor they could surgically remove the lumps if I consented, which I did. I was to go into surgery later that day. After I was chained to the operating table and the anaesthetic had been administered, I noticed an overweight man with salt and pepper hair and a beard dressed in civilian clothes enter the room. Everyone else was in medical attire, and I remember wondering what he was doing there -- and then I passed out.

177 It is difficult to explain what happened next, because it was surreal and something that I had never experienced before. During the operation, I remember regaining a degree of consciousness. My brain registered that I had just received an injection with an oversized needle in the spine at the base of my neck and that it was responsible for my awareness. It was most unusual, like a bizarre dream, an entirely foreign mental dimension. I then felt trapped, pinned to the bed and vulnerable.


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- 178 The only way to describe what happened next was that I felt an evil spiritual presence enter my body. This thing did not feel human as it penetrated a private, spiritual place so deep I never knew it existed. It was a horrible feeling. This presence felt like it was trespassing against my will and violating my soul, my very being. I felt that it was intent on harming me. It is hard to describe the feeling of a complete loss of control like this; to have your captors abuse you as they wish in such a fundamental way.
- 179 I felt psychologically and spiritually raped. It was the most horrible, disturbing experience of my life. Out of all the nightmares and horrible memories I have today, the worst are grounded in that experience and involves some form of forced medical procedure, something I'm very paranoid about now.
- 180 When I regained consciousness from the operation, I had a throbbing pain at the back of my neck. Later, back in my cell, I found a lump where the pain was, a lump that is just discernable today and which I believe I will have for the rest of my life.

Military lawyer – Major Michael Mori (Mori)

- 181 Sometime in December 2003 after 2 years in detention, the camp staff sergeant brought a phone into my room. He said an assigned military lawyer would ring, and I was to wait and answer it myself. When it rang I answered with some apprehension and the voice on the other end identified himself as Major Mori of the Marine Corps and, if I chose, he would be my acting lawyer. I agreed enthusiastically, hoping that I would get some answers at last. He said he would come see me soon and asked if there was anything he could bring. I instantly answered, food and cigarettes.
- 182 Two weeks later Major Mori appeared in my room at Camp Echo and an Australian had come with him. The Australian introduced himself as Stephen Kenny, a lawyer from Adelaide. He was retained on behalf of my father and was happy to act for me pro bono. I was overwhelmed to listen to Steven Kenny report on my family, with whom I had not had direct or meaningful contact up until that point, bringing messages of love and hope. They brought letters, books, photos and other much appreciated nick nacks from my family. Eventually, I was able to concentrate and spent the rest of the day informing Steve and Mori of my story before Guantanamo and all that had happened to me. This included informing Mori that I had already signed a document and all the un-kept promises of the interrogators.
- 183 On the second day, Steve obtained permission to bring in a real steak, which he had cooked. It was still in the pan and cut into bite size pieces because I was not allowed

to have a knife. My mouth watered as I consumed my first real fresh food in 2 years. After eating, I continued telling them about my story and they told me of how my father had gone public in an attempt to inform the Australian people of my plight. They told me about my half sister and they also told me about the media and the government's response. They also explained to me that a court action began in my name but had later become known as *Rasul v Bush*. I had by this stage absorbed too much information over the 2 day period to absorb any more and at that stage did not comprehend the legal implications. I was also not interested in court actions, I only wanted to go home. I was shattered when they said they were leaving the next day and would return in the New Year. I thought the lawyers would stay and visit me every day until everything was resolved. It was really hard to swallow Mori's words when he said the legal process would still take some time yet and I would have to hang in there.

184 I could not comprehend why after 2 years, in a lawyer's opinion I still had no definite answers, no date – not even a rough guess of when I would be released. All the hope that they brought was quickly extinguished. Before he left, Mori asked what I would like him to try to change about my daily living conditions, I blurted out food without even thinking. Skinny and weak, I was at my wit's end with hunger. It was only the scraps the guards slipped me that kept me going. I begged Mori for anything extra: a daily MRE would be fine. What about the guard food he suggested? And I could only laugh. I was very upset when I said goodbye to Steve and Major Mori. They left taking the year 2003 with them, and I began my third year in Guantanamo with no definite end in sight.

185 I witnessed a miracle in the days following the lawyers' departure. The camp staff sergeant passed me a menu and told me to pick what I wanted. I was confused and had to ask what he meant. From now on, he said, I would be eating from the guard's menu. At the beginning of each week I was to pick what meals I wanted for the coming week. Needless to say, this was like Christmas. Since being in Guantanamo, each meal consisted of an average of 20 flat teaspoons of food with a piece of very old fruit and slice of stale bread. I wrote an exact menu of the meagre portions, spoonful by spoonful and still have it today. The lawyers came and went, each time remaining for a day or two. As time passed I met my US civilian lawyer, Joshua Dratel and the paralegals on the team, Susan and Elizabeth. I also met another lawyer representing the large civilian firm Jenner & Block in the US. Mori was my most important contact with the outside world, and he would remain the central figure in my legal team. His regular visits helped me to cope, he was energetic and always infectiously positive, yet kept his enthusiasm tempered with the daunting realities we were up against.

[Handwritten signature]
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- 186 For the next few years, Mori would visit on average every 6 weeks.
- 187 I found the initial visits and flood of information from home uplifting but I soon began to slide back into depression.
- 188 Having access to lawyers allowed me other privileges. Mori obtained permission for me to keep real soap and shampoo in the cage. When guards entered the enclosed room, they no longer screwed their faces up at the stench of me. I would eventually come to have a toothbrush and real toothpaste, but this only lasted for a couple of months and then they were taken away from me. I had 5 or 6 books that I quickly read and re-read. Mori provided me with a detainee approved pen (a high security pen, a little transparent, flexible bit of rubber) and some scrapbooks so I could begin to prepare my defence.
- 189 In February 2004 I was moved to a different room on the other side of the camp. Apart from going from the door of my room to a transport vehicle, this was the first time I had seen the sun in nearly 8 months. As I was escorted across the camp a guard called me Casper because of my paleness.
- 190 Back in Camp Echo I was having other troubles. My letters from home were being heavily redacted. Sometimes entire pages were blacked out so I could not read them at all. Sometimes I wondered why they even bothered giving them to me. Other letters had too many redactions to be of use, for example:

"The baby now has blank teeth. John has turned blank years old. We have moved to number blank on blank street,"

Words of encouragement, news, information and love were blacked out at the bottom of letters. Anything Mori wished to bring into the room had to go through inspection and censorship. This meant food, shampoo, and letters from my family and all the legal paper work, even defence strategy material. A lot of books my family sent were denied: *Catcher in the Rye*, *To Kill a Mockingbird* and books on Australian history.

- 191 While in this second room in Camp Echo, I was told that I would be allowed to receive a phone call from my family. I was taken to an interrogation room in Camp Delta with Mori. Several antique telephones protruded from a large black box. I was given a lengthy lecture on the rules. They dictated what I should say: I'm fine, how's the weather etc. The list of what not to say was much more exhaustive. I could not describe camp procedures, camp layout, detainee treatments, any day-to-day matters, whether concerning myself or other detainees – not what we ate, how long or how

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often we showered or any other such mundane information. The officer lecturing me said he would be on one of the other phones – if I said one word out of line, he would hang up and I would never be allowed a call again. It was further explained to me that my family would be in a government building in Adelaide. From there the call would be diverted to another government building in Canberra, and then sent to a government building in Washington, and eventually end up in the interrogation room in Camp Delta. Someone would be listening at each diversion point, ready to sever the connection if necessary. This system made for a time delay between dad and me, making conversation confusing at times, but it gave the military and others confidence that nothing could get in or out that they thought inappropriate. Mori was to listen on another handpiece to advise me on what to say, which questions not to answer and subjects to avoid. The officer said that my father had been given the same instructions, though much later, dad told me no one had said such things to him. All I wanted to do was tell my father the truth of what was happening to me and the others. To be robbed of this opportunity deepened my depression. I felt intimidated and afraid for the entire phone call. I spent the rest of the time saying,

"Sorry, dad, I can't answer that" or "sorry dad we can't talk about that".

- 192 It was amazing to speak to him and I greatly appreciated having been given the opportunity, but any hope or happiness I could have found in it was lost.
- 193 In early June 2004 I found out that I had been formally charged after two and a half years of being detained. My legal team and I had wondered if it would happen, because we didn't think that the US government could charge me with anything. Instead they created a whole new system. I was charged with conspiracy, attempted murder by an underprivileged belligerent and aiding the enemy. This news was a blow to my side because it would slow down the process of my release. I also felt disheartened on learning that my own government supported these Military Commissions, which meant I would be tried by a military tribunal rather than a regularly constituted court. I learnt all the information about the Australian government's position through my lawyers. I found it hard to comprehend, especially when I learnt about the attitudes of other countries. It contributed to my sense of doom but also my acceptance of the pressure on me to plead guilty. It was becoming obvious that the only option acceptable to the US and Australian governments was for me to sign a guilty plea. There was no other option available to me. It was clear that they would never let me go without signing something first. Mori was keeping me informed of the information coming from the media and the government. I remember being told by Mori that

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someone in government had stated that I was one of the 10 most dangerous people. I started to realise the implications of this and I could see that the writing was already on the wall by that stage.

- 194 Approximately 2 weeks after being charged, near the end of June, the US Supreme Court ruled in *Rasul v Bush*. We had won and Guantanamo was brought under the jurisdiction of the US courts. We could now proceed to challenge our detention in the US Federal Courts. Another detainee, who had also been charged and slated for Military Commissions, began the challenge. This case became known as the *Hamdan v Rumsfeld* case.
- 195 The conditions at Guantanamo meant that I had no meaningful privacy to discuss matters with my lawyers. All of my legal documents were photocopied and the room I was in was monitored with video recorders and listening devices.
- 196 I was now having periodic consular visits from Mr Tucker, an employee from the Australian embassy in Washington. He visited me around 6 times during my time in Guantanamo Bay. During these visits we never discussed the position of the Australian government. Even though I felt that the Australian government used these visits as an excuse to tell the public how well I was being looked after, that I was in high spirits and good health, I liked Mr Tucker. I felt he was privately distressed by what he saw and tried hard to improve my daily living conditions. He was actually successful in some areas.
- 197 For example, around that time I was having a terrible time with lower back pain and relentlessly complained to guards, medics and anyone else who would listen, but nothing ever happened. There was nowhere in the cages to assume a stress free posture and I was in constant pain. The room was the size of a toilet and set up in much the same manner. There was no seating and I was forced to either lie down or stand for 24 hours a day, 7 days a week for 5 ½ years. This has deteriorated my muscles and I now suffer from herniated discs in my spine and six related facet joints have developed arthropathy. Mr Tucker was able to arrange a small table and a chair, which greatly helped my posture during times I was allowed to write. I was also allowed to have more books and eventually ended up with a library of 40 books. It was also arranged for me to continue with my schooling via correspondence school in Adelaide. I was able to hold onto these privileges long enough to complete year 11 Maths and English. Because I had nothing else to do I completed a semester's work in 10 days.

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- 198 At the time when the Military Commission actually began I was not concerned about the Commissions, or about potential seriousness of the outcome and the impact it could have had on the rest of my life, that I might never taste freedom again. Instead, all I could think about was getting out of my cage and experiencing a different routine, different food, different clothes, faces, atmosphere, and environment – any disruption to the monotony of what was my daily existence.
- 199 What I looked forward to the most during that first hearing was the opportunity to see, touch and speak with my family. I had been told that the Australian government had secured permission for Dad and Bev to come over for the proceedings. On the morning of the hearing Mori arrived early at Camp Echo. We had breakfast and then I changed into a suit that he had brought me. Mori left to go to the commission buildings, and I waited for the escorts.
- 200 I was shackled and was put into the back of an old ambulance, then it was a half hour drive to the commission building. I was led into a back room while a military photographer took photographs. I was then chained to the floor and surrounded by 6 or so guards. Mori then came into the room with the news that I was allowed to briefly meet with my family before the hearing. He returned shortly after and asked the guards to leave, and said

"Are you ready?"

I already had tears in my eyes as Dad and Bev entered the room. We hugged and cried together, and did not break our embrace for some time.

- 201 I was chained to the floor throughout our time together. After the meeting with Dad and Bev, Mori returned and said we would be entering the commission room in a couple of minutes.
- 202 It was the strangest feeling as I was unchained and stood up. I was led out of the room and into a passageway. Both sides were lined with soldiers all the way to the big wooden doors at the far end. It felt like everything was moving in slow motion. The only noise was the clacking of my leather soled shoes on the passageway, there were soldiers in rows along the wall each moving their face to look at mine as I passed. I made it to the end and the cuffs were removed.
- 203 I nodded that I was ready and took one step forward as the guards swung the doors open. I had gone from a narrow, silent corridor to a large, noisy room. I felt like an alien from another planet. I couldn't summon the courage to scan the room with a clear

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vision. I had been told previously where my family would be positioned and the crowd was a blur until my eyes rested on Dad and Bev. I gave them a nod, unable to summon a smile given the situation, and took a seat next to Mori. Everything was blocked out except for the panel members in front and the prosecutors to my right.

204 I have no real memory of the proceedings. I was emotionally drained.

Changed Conditions

205 Shortly after the Commission hearing, the guards were removed from the rooms of Camp Echo and cameras were put in the rooms in their place.

206 Once the cameras were installed I might only see another human being for 20 minutes within a 24 hour period. At first I found the camera an annoying intrusion, watching me eat, go to the toilet and sleep. At that stage I was able to blame the soldier controlling it, knowing there was an actual person at the other end. But as time passed, my perception of the technology changed – the camera took on a life of its own. It was always watching, always listening. I had epic mental battles with that stupid camera: goose bumps would run along my spine under its evil, unblinking gaze.

207 On my own, day after day, in a cage inside a room with no natural light, the years of hardship hit me all at once. I deteriorated more quickly in the following few months than I had in all the years I'd spent in Guantanamo. In the shipping containers of Camp Delta we were always in full view of each other: sleeping, eating, using the toilet, we lived in close proximity, each restricted to his own little personal space of metal. In Camps 5 and 6 though I could not see other detainees unless I stood up at the door, at least once a day there was an opportunity to say hello, maybe have a chat and hear the latest news from the detainees' grapevine. Even on days when I did not see or speak with anyone, I could still feel the detainees around me, the energy and the noise. Even though I still had the comfort of knowing I was not suffering alone, the strength derived from numbers was not as strong as it was in the shipping container environment.

208 In Camp Echo, there was not even any energy for reassurance. Just this intense consuming sense of being alone. I felt like the sole occupant of an entire universe and the infinite isolation was maddening. I truly felt I was flirting with the realm of the insane. I literally felt insanity spread throughout my mind like a cancer and I constantly fought for dominance and control. Being completely absorbed in such a self-absorbing occupation meant that the Military Commission was the last thing on my mind and it

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was very difficult to take note of even when I tried. It was also a process I did not want to think about because of how unfair it was. Others were being released while I, out of 800 people detained, was the only one being pushed in that direction. The world was against Guantanamo Bay, including the UK, whose citizens were also meant to go through the same process. It drove me mad when I would hear that Europe's legal system, the UK and even underdeveloped countries openly called Guantanamo illegal and had their citizens released.

- 209 Around this time Mori explained to me that a body called the Combatant Status Review Tribunal (CSRT) had been set up to establish whether detainees were unlawful enemy combatants. Mori warned me about the CSRT process, he said words to the effect:

"David, if anyone comes to your cage you are not to answer any questions, you must ask for me to be present if they want to speak to you."

Sometime after Mori had told me this three people came to my cage and one of them was introduced to me as my "personal representative". They said that I had been classified as an unlawful enemy combatant and they read out a document stating the reasons as to why I was classified as such. They told me I could spend time with the "personal representative" and explain to him my defence to the accusation of being an "unlawful enemy combatant" and then I would go before a panel of military personnel and I would have to represent myself with the help of the personal representative. They said words to the effect:

"Nothing you tell your personal representative is confidential"

They asked me how did I plead. I said words to the effect:

"Not guilty, I am not going to talk with you until my lawyer is present so please leave the room"

They left. They came back a second time to try to convince me to cooperate with them but I refused. I later found out that the hearing had occurred in my absence and I had been classified as an unlawful enemy combatant.

- 210 Late in the afternoon on an October day, after having now spent 16 months in isolation, the first eight of those months without ever seeing the sun, the guards came to tell me that I would be moving to Camp Delta. I thought I would never see Camp Delta or another detainee again. At around 10 or 11pm I was told to have my stuff ready and

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the escorts came, blindfolded and secured me, and led me out to a transport vehicle. Within half an hour the blindfold was removed and I was back in Camp Delta

Return to Camp Delta

- 211 Out of 700 odd detainees, I and five others had now been nominated to face a Military Commission. We were kept together and separate from all other detainees in Papa block located in Camp 3, Camp Delta.
- 212 By the beginning of November 2004 it was time for me to go to the Commissions once more. We were still in pre-trial motions and, similar to last time, I did not involve myself in the legal proceedings on the day. I paid great attention to motions and preparations prior to the hearings and outcomes after, but on this day I was only concerned about seeing my family. On this occasion my half sister came to Guantanamo.
- 213 On this occasion the Commissions hearings went for 3 days and I was grateful that I was able to see my family each morning before the hearings commenced, and sometimes we were allowed to eat lunch together. We also got to say goodbye at the end of each day before I was returned to my cage. Three days is long enough to become accustomed to spending time with a loved one, so saying goodbye to Stephanie was harder than the first time with Dad and Bev.
- 214 Around this time I was told that the *Hamdan v Rumsfeld* case had progressed and a Federal Judge ruled in *Hamdan's* favour. The Military Commissions were deemed illegal.
- 215 Soon after in early 2005 one of the British guys from my block (one of the 6) was transported back to Camp Echo for a lawyers visit. These visits could last for 2 or 3 days and we would sleep at Camp Echo without returning to Camp Delta until the visit was completely finished. On the second day that he was gone the other British citizen from our block was also removed to Camp Echo. He took all his stuff which suggested a permanent move and while the escorts were there they also took all the items of the other guy who had already gone to Camp Echo. I was shaking with excitement. There was another British citizen in the next block over (not one of the 6) and within minutes he yelled across to us that he was also being moved to Camp Echo. Then almost straight away we heard that the fourth and last British citizen left in Guantanamo was to follow. I was beside myself that they were possibly being released.
- 216 I understood from conversations with Mori that that if the last of the British citizens was released then I would also be released. I needed confirmation about the Brits but I

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could not get it. No detainees knew what was happening and neither did the guards on the block. I thought I would go insane from the lack of knowledge.

- 217 By lunch time on the day that the British detainees had been moved I was truly exhausted by the countless unanswered questions rushing through my head. I harassed the afternoon shift when they first began but my hopes were dashed by the simple stock response: "I don't know". Once the afternoon shift had settled in, I was taken to the outside rec yard. I was pacing around the cage, obsessing about the British when the Sergeant who was sitting on the steps watching me looked around secretively and waved me over. He whispered,

"The Brits and the other Australian are being released."

I instantly threw up. No news had ever produced such a violent reaction from me before: my spirit had just been crushed. I couldn't move or speak: my soul was screaming in anguish. The Sergeant panicked at my reaction and pleaded with me to pull myself together or the other soldiers would know something was up.

I kept saying to him

"What about me, was there anything said about me going home?"

He hung his head when he replied

"No"

He recommended I go back to my cage. I tried to be brave as I was escorted back into the block and had a cry when I was alone, completely unable to understand the logic of my being left behind.

- 218 Ever since day one I had lived with the hope and expectation of being released any time, any day. It was an exhausting and mentally draining way to exist but that was the reality of Guantanamo and the reality of indefinite detention. A soldier could suddenly come to your cage and say "You're going home". Now for the first time, despite having been charged before, this was the very first indication that I was not going to be released in the near future. I now knew I would not be released unexpectedly in the near future. Pleading guilty seemed to be the only way out, even though I still hoped that I would be treated according to the law, or that at least to the rules of UCMJ. It was when Habib was sent home that I truly accepted and understood that the Australian government were unlikely to bring me home. He had been accused of activities much

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worse than me. Logic told me that if my government had been considering bringing me home, they would have just done so while the plane was arranged to take the other Australian home. That was a very difficult reality to accept. It was the worst day of my life. No event had ever made me feel that way before. Something died inside me that day and I became obsessed with killing myself. It was the only way I could think to finally end this nightmare that kept intensifying with the passing of time.

219 I was visited soon after by the new Consul General for Australia who was in Guantanamo to facilitate the release of Habib, the other Australian. I did not like this new Consul and how he conducted himself during this visit. He was generally rude to me and expressed hostility through his body language and the tone of his voice when I explained the treatment I was experiencing in Guantanamo. To add insult to my predicament, he would not answer when I asked if he was there to assist in Habib's release. Instead, he handed me a calculator. I was still doing the correspondence schoolwork then – and he said that it should keep me going for some time to come. He was very different to Mr Tucker who presented himself and acted as someone who did not approve of the treatment I was getting. He helped where he could, unlike this new Consul General.

220 Shortly after the others had been released, the remainder of us were moved to the other end of the Camp. We were placed in Tango Block, which comprised only four shipping containers and so could hold 24 detainees. We were the only three in there, the fourth one being on a normal block with others. One of my memories of this time was when I was being transported to Camp Echo to see Mori. As usual, I was blindfolded and had the three piece suit on. The guards grabbed me as if I was a battering ram and drove my head into the wall of the van and then threw me against the wall of the van into a sitting position. When we made it to Camp Echo, they threw me out of the van and I fell to the ground. This had occurred to me before in the early days but the escorts had not behaved so violently toward me for a while at this stage. Mori complained on my behalf but, as far as I'm aware, nothing was done to the offending guards.

221 During my time in Tango Block, I decided how I would kill myself. It had become the only way I could see that I could put a stop to this nightmare. I decided I would use a razor blade. My plan was to obtain a razor from shaving day. It took a long time, but eventually the day shift guard swapped with the night shift without asking for the razor. I then asked the next shift for nail cutters. It worked the same way as shaving but if I cut my nails up against the door the bottom bean hole prevented them from seeing

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what I was doing. The soldier kept walking away and coming back to check on me. Every time he left I quickly used the nail cutters to eventually free the razor from its plastic housing. I flushed the broken bits down the hole in the floor and hid the razor in among my legal papers.

222 I had it all planned out. It was a very complicated procedure that required a lot of effort and planning. A successful suicide was virtually impossible in that environment with limited objects to utilise and required the type of long term, obsessive planning that I engaged in for months. I was desperate: there was no other way out. And I also knew I could not fail. Others who attempted suicide and failed, including self harmers, ended up in a refrigerated box with only shorts on, as punishment.

223 When everything was ready to go the next question was, when to do it. Since day one, Mori always came to see me with a mixture of good and bad news. There was always something to be equally depressed and hopeful about. I made a pact with myself that the first time Mori came to see me with only bad news, then I would go ahead with the plan. Until then, the plan would rest in my mind and the razor among the papers. Such a plan also gave me a sense of satisfaction and the sense of some control in an environment of hopelessness. I felt that I still had an emergency escape plan.

224 One source of hope at that time was discovering that while I had been in Guantanamo the British Government had passed a law that allowed a person whose mother had been born in Britain to be eligible for citizenship, instead of just their father. Because the British Government had opposed Guantanamo and the Commissions – and had secured the release of all their citizens – if I could obtain British citizenship then the UK Government, unlike Australia, would not only prevent me from facing the unfair system of Military Commissions, but also have me released. I was desperate now and clinging to anything. We began the application process.

225 During this period my legal documents were taken. I was still in Tango Block at this stage and had come back from a shower and noticed a book and some paperwork missing. The guards admitted to taking the book, but not the papers. The book was about illegal interrogation techniques adopted by the US during the war on terror called "The Torture Papers". But it was my missing papers that worried me the most. I had spent days writing down my various legal options depending on what moves the US Government made, it was part of my defence strategy.

226 Around this time many detainees, including me, were having problems with ingrown toenails, apparently due to not wearing shoes and being flatfooted. The toilet hole in

my cage floor was constantly blocking, and the flush would get stuck. As a result, my cage flooded with sewerage, faeces floated about in 2 inches of dirty water – and I had to walk about in it with untreated open wounds on my big toes. The room flooded this way at least once a week. Also around this time many detainees in nearby blocks were moaning constantly. It was like they were in pain or despair and it would go on for hours on end. I could not actually see the detainees, I could just hear them in neighbouring blocks. It was a very dismal and depressing environment to be in with the constant moaning. Also around this time the soldiers began using noise machines. The noise machines looked like a chainsaw without a blade, the chainsaw was put into a frame and would be moved around and put outside detainee doors on full revs until the petrol ran out. The soldiers would refuel it and the noise would continue. It was very loud. I never had the chainsaw put in front of my cage door, but this was happening to other detainees in other shipping containers and was so loud and close enough to affect me as well.

227 This was how things were when the Consular official returned for a visit. I told him about sewerage in my cage and everything else, brandishing my feet with their bleeding, infected wounds. He took a list of my complaints and said he would pass it on but I formed the opinion that he was not impressed and was not taking my concerns seriously. I also told the consular official how I had been left to urinate on myself while being short shackled, or just plain shackled, in the interrogation room for hours. Sometimes I would just be taken to the interrogation room, shackled to the floor for half a day to a full day, then taken back to my cage without having seen anyone. This continued to occur even after the Military Commission process had begun. Around that time they were doing it quite regularly to me, around six times.

228 My involvement in the Military Commission process did not stop me from being exposed to the regular torture. In terms of more extreme physical beatings or procedures they did become more careful in the days leading up to the Military Commission. Apparently they did not want me to have obvious physical marks when I attended hearings. Being involved in the Military Commission did not offer any protection or relief from being short-shackled and left. I found it demoralising and humiliating, especially if I had to keep wearing my soiled pants until the next time the linen was changed. Sometimes the linen was not changed for up to a month so I was wearing soiled clothes for long periods of time. I was very angry about this and everything else at the time of the Consular visit. When he entered the room I pointed to large dark stains on the carpet behind me in the corner. I asked him if he knew what it was, and when he showed no interest, I asked him if he couldn't smell the strong

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odour of urine. I then started explaining how I'd been left unattended and had no choice but to urinate in the corner. I asked him whether he thought that was acceptable treatment. He did not reply. It was all very frustrating.

- 229 During this time interrogations had practically stopped for me but not the rest of the detainee population. However, the day to day conditions in the camps had become worse. I was still being taken to the interrogations rooms, but I would just be short shackled and left for hours. Then I would be returned to my cage without actually seeing anyone. This happened more times than I can count or remember over the years in Guantanamo. Regardless of what camp or block that I was being held in at the time I would be taken to the interrogation rooms in Camp Delta, which was the main facility. These were the main rooms set up for torture and interrogation at Guantanamo.
- 230 The day after the Consular visit escorts came into Tango Block and told me I was being moved to Camp 5. Things were getting worse. I'd never been to Camp 5 but had heard plenty about it. It had a reputation as the worst camp on the island, and I'd always dreaded going there since I'd heard of its construction during the days I was in Camp Echo. I filled the garbage bag handed to me and surrendered my limbs for shackling.

Camp 5

- 231 Camp 5's design was three, 2-storey wings, radiating out from a central hub. I watched myself in a huge one way mirror as I approached the front entrance. The image I saw was of a puffy, pasty man secured in chains, surrounded by soldiers, the two of them gripping me with their hands. There appeared to be a central control area in a cavernous interior. Around the perimeter at ground level stood three big red doors. Camp 5 was like a technological marvel compared to the primitive padlocked cages of other camps, with its electrically operated doors, commanded from the central control room. I felt more lonely, depressed and helpless than ever.
- 232 I was led to one of the big red reflective doors, which a guard opened upon request from central command. A hallway lined with other red doors was exposed, each harbouring a detainee: a stairwell at the far end led to more detainees above. I was escorted to the first room on my right, which was generous in size compared to the cages of other camps (2 steps by 3 steps compared to 1 step by 2 steps). It was white and had a bunk bed and sink, plus an upright metal toilet (minus the seat). There were two strips of strong Perspex on the door, allowing me to see out into the hallway. This was not always possible as the soldiers had two magnetic strips which they would on

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occasion cover these windows with. There was also a slim, frosted window in the back wall above the bunk. The one in this camp seemed to let in a little natural light but was still impossible to see out of. Four very long fluorescent globes like spotlights were on 24 hours a day. They made it extremely bright and extremely difficult to sleep at night. Above the sink near the roof was an air vent that consistently blasted cold air. Detainees, including myself, were forever plugging with toilet paper the many little holes that made up the 32cm square grate, only to have it removed by soldiers during room searches. If the grate was unplugged I literally shivered – there was nothing worse than being denied toilet paper as you could not plug the vents.

- 233 Camp 5 had a nasty atmosphere and energy about it. It made me feel mad and melancholy. Besides a few books and some legal paperwork, I had lost all other privileges when I was moved to Camp 5, such as the table and chair. One of the soldiers asked me what I had done, because I had apparently "pissed somebody off" and Camp 5 was my punishment. I replied that I didn't know but suspect that I was being punished for complaining to the Consular official.
- 234 Until I moved to Camp 5 I had engaged in some form of daily exercise within the cages over the years. It had become an extremely important tool in my battle against depression and physical deterioration. There is not a lot I could do in the cage the size of a toilet, but I always managed something: push ups, sit ups, stretches. The guards even told me to stop exercising whenever they saw me, claiming was I training to assault them. This was a huge interference with my daily routine, and I stopped exercising altogether.
- 235 My suicide plan from Camp Delta was also impossible to carry out in Camp 5. I spent my initial days trying to devise an alternative plan, but I could not think of anything. I threw the razor away before I was caught with it. Losing that sense of control over my destiny and no longer exercising plunged me deeper into depression.
- 236 There was also a lot of hostility and harassment from the guards in Camp 5. It was much more hostile than Camp Delta. In Camp Delta the guards screamed and did behave in a manner to scare and frighten you. There were times though when the guards spoke and addressed detainees normally, almost civilly at times. The guards in Camp Delta were not always screaming. In Camp 5 they shouted and frightened us all the time. For example, simple orders were shouted. The screams of detainees were heard weekly, including twice in front of me. The first time was the detainee opposite me being IRFed. They went into his cage and beat him badly, until he could not move. Once he was like this they chained him and then would torture him by pushing in on

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pressure points. I watched this all through the slit in my door. The second time was the young Canadian teenage detainee who was being held. He was in the interrogation room diagonally opposite me so I could not actually see all of the room but just a small portion of it from my own cage. I could hear the Canadian saying words to the following effect:

"Why? Why are you doing this? Help!"

He would scream and ask this over and over again.

- 237 The sleep deprivation completely exhausted me. All my senses and my ability to think were becoming numb in that environment. I would have appeared extremely drunk, as I could barely walk from aching so much and my thinking and speaking was deteriorating. I felt like a zombie and I could not actually think, let alone do anything else. One of my worst experiences in Camp 5 was being made to sleep on the concrete floor with only a pair of shorts on, freezing in the bright light for a week. I so wanted to die but could not think of a way to be successful. This was the purpose of Camp 5 and it never changed during my stay. All the detainees feared this camp and many came out changed.
- 238 I eventually tried something that, to my surprise, worked. My hair was just long enough to hang over my eyes so I tousled it to look like any normal morning hair. It didn't always stay in place but it was thick enough to block out the light, and I was never yelled at to remove it from my face. I figured the soldiers looked past the hair because it was already strewn about my head, and not conspicuous like using sheets or toilet paper for cover. Once I discovered this I stopped having my hair cut.
- 239 I spent many hours in Camp 5 pouring over the books Mori had provided to me on International Law, the Law of War and the Geneva Conventions. These texts were interesting and enabled me to play a part in planning my defence. But I also found the information frustrating because it highlighted just how much I was being denied due process.
- 240 While I was in Camp 5 my legal case to obtain British citizenship case proceeded. I won the first court case and the government appealed. We went back to court and I won the second case as well. If the government was to appeal again there was only one more court to go to: the House of Lords. Instead of the government appealing, I was moved to Camp Echo for a day and presented with British citizenship around 9:30am. Then at about 2:30pm the same day my citizenship was revoked. This meant

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that to have my citizenship reinstated I couldn't appeal directly to the House of Lords – I had to take a detour through various tribunals first. This alone would take over a year to do before getting back on track. I was not surprised, but I was very disappointed. By this time hope was hard to come by as pessimism plagued the majority of my thoughts. Detainees continued to win in the US Supreme Court yet the US government repeatedly ignored them. After years of publicly calling Guantanamo and the Military Commissions "the Gulag of our times" the UK had just spent months of difficult negotiations to secure its citizens release. It seemed they were doing everything they could to avoid having to deal with me.

- 241 Around this time I also heard news of 3 detainees being found dead in Camp Delta. On the day it occurred every detainee in our camp had every item confiscated. With no explanation the guards rushed my room, as well as everyone else's, and left me with nothing except a pair of shorts. For a week I slept directly on the concrete floor and froze in the glare of the lights. When a week had passed, the others and I were given a T-shirt and pants, but had to continue to sleep directly on the concrete floor. A few days later the ISO-mat was returned and so forth, so that after a month most items had been given back. It was a very difficult, testing time.
- 242 If I had had a way to end it all, I would have carried it out. However, I adopted a different approach. For the first time I decided to hunger strike. My theory was that if I did not eat for long enough, I would become so weak that I would sleep my time away, oblivious to my environment and what I was enduring. I could no longer tolerate the waking moments and needed to escape. I would flush my meals down the toilet as there were severe punishments for hunger striking. I lasted 30 days on liquids alone and lost a lot of weight. It was a visit from Mori with news about the *Hamdan* case that persuaded me to eat again, that and the McDonalds he brought for me.
- 243 By the end of June, the *Hamdan* case was announced by the US Supreme Court. *Hamdan* had won, so all detainees had won. The court pronounced the Military Commissions for a host of reasons as illegal: they were gone and our invented retrospective charges dissolved along with them. It was a great relief and a time for me to be hopeful: I was now facing the most realistic chance ever of going home. While the significance of all these recent events – the hunger strike, being punished for detainees suicides or murder, the outcome of my British citizenship case and the *Hamadan* decision – hung over me, escorts came to my room and said I was going for a ride. I did not know what they meant. I cannot now remember exactly what they said, but while I was being led to the van, the soldiers hinted that my release was

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imminent. Once we were seated in the back, I began to ask questions but they kept being evasive, deepening my belief that I was about to learn about my release. They would not elaborate, and I was surprised upon arrival that our destination was an interrogation room in Camp Delta. I was seated and handed a phone with instructions to answer it when it rang, by then I was fully convinced that they were allowing my family to give me the good news first. When I answered, Dad was on the other end, and after the initial pleasantries he began to give me the footy updates. I was expecting him to cry out that I was going home, so growing dread hijacked my emotions. I did not take well to talk of football and interrupted, demanding, do you know anything about me coming home? I received the usual answer - "I don't know".

- 244 In October 2006 President Bush had Congress pass the *Military Commissions Act 2006*, which gave Congressional authorisation for the use of Military Commissions. Because of this change of events, I spent one whole afternoon squatting at my bunk, writing down all my thoughts on paper. I brainstormed all the possible scenarios. I imagined myself having to spend many more years in Guantanamo fighting the Commissions and charges again, and so for the first time on paper I wrote down the option of pleading guilty on the condition that I would be released to Australia very quickly and enjoy certain daily living conditions until my departure, i.e. conditions that would not further harm me. Such a decision would be a last resort, but it did present the quickest way off the island if I was charged again. By this time I had already spent just short of five years living an unbearable existence. Over the years since I had been in contact with Major *Mori*, the prosecution had offered plea bargains, albeit unreasonable ones. In the early days, pleading guilty meant serving 20 years in prison: as time went on it dropped to 10 years. In the week preceding the Supreme Court *Hamdan* decision, the prosecution, dropped it to 2 years, the lowest it had ever gone. From my point of view there were always positive outcomes on the table anyway so there was no incentive to even talk with the prosecution. I felt that there were positive outcomes because we were always winning our cases. There had also been the repeated successes in the UK and high media exposure of the illegality of Guantanamo. US Prosecutors were resigning in protest and government employees were leaking information about what was happening to detainees. There was also the slight possibility that perhaps the Australian government would change its position. Or that the extent of the injustices which had been acknowledged publicly would create a change. There had always seemed to be something going on and I had clung to the idea that maybe I would not resort to or be forced to plead guilty, to crimes I did not commit and to crimes that had not existed, as a means of getting out of there.

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- 245 By this stage though I was finally accepting that John Howard would never have me released as other countries had done for their citizens. I was broken and defeated and could not go on. I was left with life in Guantanamo, death or plead guilty. Pleading guilty became my only feasible option. No other option existed by this point, nor did my strength to continue fighting.
- 246 As I was writing down my thoughts that day, including my demand if I ever accepted a plea deal as a means to escape this nightmare, I noticed that the guards kept looking into my room more than usual and showing an interest in what I was doing. When I had finished, I stacked the paper together and stretched out on the floor. Soon after the soldiers demanded I get up and shackled me. They searched my room and picked up my legal notes. I alerted the soldiers to what the papers were and asked that they be put back. Instead, I was ignored and the papers were confiscated. When I was unshackled and back in the cell, I demanded to know what was happening to my paperwork that was supposedly private and protected by client attorney privilege: I was told to relax, that it was just being photocopied, and I would get it back soon.
- 247 This caused me great distress, and I was worried as these notes were all about me pleading guilty. In my mind I could picture Prime Minister Howard receiving a briefing and being told, Hicks is ready to throw in the towel just wait a little bit longer. If Howard was about to announce my release, he would definitely cancel those preparations now with the intelligence, in my handwriting, that I was considering pleading guilty.
- 248 In the following days I made another show of writing making sure the soldiers saw me. I wrote down things I hoped would dispel the idea that accepting a deal was on the cards: if they were relying on me folding, they would have to rethink their plans. I wrote as if it was a continuation of the plans they had photocopied and that I was full of strength and confidence. If it didn't work at least it helped make me feel better. A day or so after, when I was in the shower, I watched a soldier enter my cell through the large reflective pane in front of me. He pulled a small gadget from his pocket. I had a clear view and it was a camera. He photographed my notes. It made me feel better they had a copy of my staged notes. I noticed from that time forward that they began photographing all my written notes, so I didn't keep any more legal notes in my room.
- Camp 6**
- 249 Around early morning in the first days of November 2006 we were taken from our cells one at a time, and transported in a green Gator to the new Camp 6. Camp 6 was a few hundred metres from Camp 5.

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250 The bays of Camp 6 were designed so that 24 cells made an L-shape with another 24 cells above. This created a 48 celled, two storey structure. Within the arms of the "L" were metal table and chairs bolted to a cement floor. On the far side of the table and chairs from the cells were two showers. The inner cell walls were thin sheet metal, forming single prefabricated blocks. Some cells had single beds and other cells, like mine, had bunk shelves to sleep on. Like Camp 5, the metal rooms in Camp 6 were pumped full of cold air, but there was nothing we could do about it in this new camp. In Camp 6 there was also a 23 hour lock down policy. Our cell doors were never open to allow us access to the tables and chairs in the centre of the bay, and we were told outright that we would never use them. The wet weather outdoor rec area had been sectioned into 6 very small yards surrounded by walls 2-3 stories tall, preventing the sun from reaching detainees except for the 2 hours in the middle of the day. The main outdoor rec yard, which was to be the size of a football field, had not been completed, and we were told it never would be. It was apparently only for show.

251 The bay resembled a big stone cabin, which intensified every noise. Within a 24 hour period all detainees had to go to rec and shower twice, or at least have a cell search. Because of the way in which searches were conducted, it was impossible to sleep during that time. For the following 24 hours we were not allowed to come out of the cells. But this did not mean it was a time to sleep and recover from the previous 24 hours. If soldiers could not achieve eye contact with the detainee while he observed him through the Perspex slits, the soldier would slam the door until the detainee startled from his sleep and moved to look in their direction. When the soldier achieved eye contact, he then moved to the next door. Three guards paced the cells on a regular non-stop circuit, waking us at least every 10 minutes, sometimes more often. Even if I was lying on my bunk, already awake and staring at the door directly into the soldier's eyes when he appeared, I still had to move a part of my body to prove I wasn't dead. This exhausting madness went on day after day. The effect of being woken every 10 minutes is hard to explain. I no longer felt normal or really knew what was happening around me. I was merely existing and wishing for death. Death had become the only escape that I could think of. The sleep deprivation was a weird and horrible experience that has left me with nightmares and continuing problems and damage.

252 As had been the case for years, the daily necessities were performed so that even they were a form of punishment. For example we were rushed to the shower, yelled to hurry while we were in there, often had the water turned off before we could wash the suds

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off, then rushed back to our cells. We were rushed to rec, rushed to shave and change linen – every opportunity was exploited to harass us. Meals such as green powered scrambled eggs would be served along with oranges so extremely freezer burnt that no moisture was left. Hard boiled eggs had a consistency of leather. All hot meals were cooked in thick oil, and if they were served cold the entire meal solidified into a single gooey conglomerate. In Camp 6, the soldiers put the hot meals in front of a large air conditioner duct for a couple of hours before serving, which made it practically inedible. Not even the simplest pleasure was allowed to relieve us from the constant hardship, but only used to exacerbate it.

253 I had still not been charged even though my legal team and I thought it possible since President Bush's announcement of his intention to restart the Military Commissions. As each day passed, without any practical indications of the Military Commissions resuming, I felt the likelihood of my release possible again.

254 I also developed stomach pains in Camp 6. If I consumed either food or water, the pain was excruciating. My stools were shaped and coloured to suggest that something was terribly wrong. I was suspicious about this pain because it had occurred after I reported a used bandaid in one of my meals. I knew that the kitchen contractors were asked about it and my tired and suspicious mind pictured the cooks putting some form of powder in my food – enough to cause pain but not seriously endanger my health. The medics found a tablet for me that worked like magic. No matter how much pain I was suffering, not long after taking just one of these tablets the pain completely disappeared. I had to take the tablets for 4-5 days before the pain completely stopped of its own accord, only to have it start all over again after only one or two days had been pain free.

255 In the beginning of 2007 I was told I had a visitor from the Australia Embassy in Washington. I had refused to see the Australian Consular official since being punished for speaking with him about the conditions back in Tango block. But I was told on this occasion I could not refuse or I would be IRFed. I was surprised when I entered the interrogation room to be met by a man I had not seen before. He introduced himself as an Australian Embassy employee and said that he was on a Consular visit, yet he spoke with a heavy American accent. Everything he said sounded false. I quickly reached the conclusion that the man was not from the Embassy at all, an assertion he strongly denied when I challenged him. I was not in the mood and became very angry, accusing him of being an imposter. I did not believe what he had to say and refused to talk with him. Back in my cell I took the visit as a good omen. I thought it might have

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been a final test of my strength before they made the decision to release me: was I on the verge of giving in or not? A few days later, when my lawyers complained about this deception, the authorities insisted the man in question had not posed as an Australian Consular official.

256 Around this time Mori came for a visit and he said words to the effect:

"John Howard has publicly announced that if you aren't formally charged by February they will formally request your return to Australia."

257 This was the first time that the Australian government had ever given the US government a deadline for action or even even mentioned the possibility that I could be returned to Australia as a free man. As the deadline was so close I was 100% certain that Prime Minister Howard was going to have me released and I would be taken back to Australia. At about 4 pm on 2 February 2007, a medic came to my cell as usual to prescribe my stomach pain medication. Instead of the tablet, however, he produced a small bottle of mixed liquid and told me to drink it. I asked what it was and he said:

"It's a GI cocktail", it will be good for your stomach."

258 Without thinking, I swallowed the liquid. I do not know what it was, but the stuff was very strong because within 10 minutes I couldn't stay awake any longer. Very little time had passed when I was woken by a loud banging on my cell door. I was very drowsy and had difficulty comprehending what was happening, but I could make out a large group of people looking in at me. One of them addressed me and said words to the effect:

"I'm here to formally charge you. I can read the charges here or we can go to a private room."

259 What he said registered in my brain, but I was too drowsy to be emotionally affected by this awful news. In 5½ years this was the time I was most certain and confident of being released. I managed to stand up while they shackled me and was escorted to an interrogation room. Two men read the new charges, but I could barely stay awake and was returned to my cell without any of it sinking in. All I cared about was sleeping. I accepted that my 5½ years of hope had been for nothing. After all those years of surviving and waiting, I truly believed I was only days away from being released and now these new developments guaranteed I had many more years to go. I was shattered.

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260 What I did know was that there was no way I could go on living in Guantanamo under these conditions, and I gave up the will to continue. Over the last few months in Camp 6, I'd begun to think about a new way of successfully suiciding because I knew I could not go on much longer. Suicide in Camp 6, like in Camp 5, was virtually impossible, but I decided on the method that I was convinced would be fool proof. It had involved months of preparation. I trained myself into a yoga position that involved having my arms locked under my legs. I had been working on my flexibility and strength to do this. When the time came I would lock my hands in together underneath my body and not be able to free myself. I had made a hole in the middle of my soap bar and pulled a long string from my pants. My plan was to loop the string through the soap and then swallow the soap so that it became stuck in my throat. Simultaneously I would lock myself into the yoga position so that I could resist the urge to fight choking. Mori had come with no positive news and, even if he had, it would not have sustained me. For the first time my mind was set: the decision was made. I just needed to decide on when.

261 It was my understanding at this time that in order to justify Prime Minister Howard's years of investment in claiming that I was the "worst of the worst" and that I had committed the "worst" of all crimes I would have to plead guilty in order to come home.

262 I knew that family could attend the pre-trial hearings, and I decided I would wait to see Dad first before going through with my plan to kill myself. I asked Mori to ask my dad to attend, but he said it would be better to wait – the first pre-trial hearing would only be for the day. At a later stage, when we had begun to argue motions, the hearings would last for 2 or 3 days. Because my family had limited money, it would be wiser to wait to a later date so I could spend more time with them. Mori wouldn't promise to ask my Dad to attend the coming hearing, which caused me great distress as I knew I wouldn't be able to hold on any longer. Luckily, the ICRC came for a visit, and I stressed the importance of how I really needed to see my family at that first hearing. They promised to tell my Dad that I wanted him to come no matter what. My plan was to say something meaningful to Dad without giving away my intentions. So that in the days following his return to Australia, when he heard the news of my suicide, he would realise that I'd actually said goodbye.

263 I returned to the Military Commissions on 26 March 2007. I was relieved to see that Dad and Stephanie had come. We spent some time together at the beginning of the day but I had decided to give them my subtle hint at the time of our goodbye.

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- 264 There were so many things I wanted to say in front of the Judge while the whole world was listening. I had even written a list of all the disadvantages preventing me from defending myself. I wanted to make demands concerning my daily living standards so that I might have had a better chance of fully concentrating on the proceedings and not being so preoccupied with sleep, food, avoiding harassment, being afraid of having all legal notes confiscated and generally surviving and maintaining my sanity. Instead I said nothing, and my defence team was sacked so that only Mori was left to represent me.
- 265 The whole scenario was a joke, a thoroughly hopeless situation. It was what I had come to expect, too. The Military Commission was nothing more to me than an opportunity to say goodbye to my father before I killed myself on return to Camp 6.
- 266 My US civilian attorney Josh Dratel was sacked by the Judge because he'd refused to sign an agreement stating he would abide by the commission rules. The problem for him was that no rules existed on paper at the time, and the Judge could not answer when Josh enquired what those rules would be. He was being asked to sign a blank cheque and he rightly refused to sign due to his ethical and professional principals. This event and the sacking of my legal team occurred near the end of first day of proceedings.
- 267 I was able to spend the late afternoon adjournment with Dad and Stephanie and, unsure whether I would have another opportunity to see them, I considered it was time to say goodbye for the last time. I was getting ready to impart my coded farewell when Mori rushed excitedly into the room and shoved a document in my face. Dad and Stephanie left and Josh and my Australian lawyers entered. The document was a plea deal. I was advised by Mori that all I had to do was plead guilty to the Material Support of Terrorism charge and I could actually get out of Guantanamo within a promised 60 days. I'd have to serve a further 7 months in an Australian prison, but my lawyers advised me that the Australian government would allow me to serve that time in an Adelaide jail so as to be near my family. It was a heart wrenching decision to throw at me at the time. It tore me apart and massively interfered with the course of action I had already committed to. I had to think what pleading guilty to a terrorism offence would mean for me personally: it was something I knew I had not done, and something the Australian media would never let me forget. There was the anguish of giving in after a mammoth 5½ year struggle. I'd been so close, and there had even been a deadline given by Prime Minister Howard to the Americans. The Australian government up to that point had never publicly given the US a deadline and it was the closest I had ever

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felt that my release was imminent, that I was going home. Yet it had all been snatched away. All of my lawyers agreed that I should sign the plea deal. Mori said words to the effect:

"David this deal is the quickest, most realistic way to get off the island, and seven months in an Australian prison will not be difficult to endure after surviving 5 ½ years in Guantanamo. If you don't sign you could be in Guantanamo for many more years."

The lawyers in the room agreed with what Mori had told me. I knew that I did not have the strength for more months, let alone years in Guantanamo.

- 268 Mori advised that it was in my interests to get out of US military custody. Everyone in the room agreed that I needed to take this plea agreement. Mori was convinced that the whole system was set up for a guilty verdict to be returned. He said words to the effect:

"David, this system will never offer you anything but a guilty verdict. You want to avoid that at all costs".

I also knew that I could be held indefinitely as I had been declared an unlawful enemy combatant by CSRT even if found not guilty.

- 269 I did not make a decision straight away and asked for Dad and Stephanie to come back into the room so we could discuss the situation. I also asked my lawyers if they could try to secure time served as part of the deal or lessen the prison sentence.

- 270 While I was still discussing the options with Dad and my step sister Stephanie, the lawyers returned to report that they could not get the 60 days in Guantanamo or seven months in Australia reduced, and the 5½ years I'd spent in custody so far would not count towards any sentence. I would not get time served. However, I was told by my lawyers that I would be allowed to enter a plea called an Alford Plea, this involved pleading guilty but without admitting that I was in fact guilty.

- 271 I felt I had two choices: take the plea deal and face all consequences that would follow or return to my cell, resign myself to hopelessness and follow through with my suicide plan. I looked at my father and sister in the eyes and thought about what they and many others had done for me. I knew the great pain my death would cause them, and I decided I couldn't go through with it not with 60 days an alternative option. I knew that if I got out of Guantanamo at that stage, there would still be a chance for me to try

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and heal the physical and psychological damage to a point that would allow me to function and lead a relatively normal life. But if I was to stay any longer, I was afraid the resulting damage would be irreparable – it would not even be worth being released.

272 I took a deep breath, the silence in the room was intense, everyone was focused on me, knowing the answer was about to be revealed. With regret and a feeling of defeat yet relieved that it would soon be over and that indefinite detention – had been replaced with a date for release, I said:

"I'll sign."

My lawyers launched into a flurry of activity and left the room while Dad, Stephanie and I embraced and cried, knowing that it was over at last.

273 I thought I was pleading guilty to the one charge and that that was it, but after I said the magic words I was informed there would be a "statement of facts" where I would have to keep admitting guilt to a series of details. I was not happy about this and protested but Mori told me that if I did not go ahead with it then the deal would be forfeited. With heavy reluctance, I did what was required of me. That included saying "Yes, Sir" in response to a number of questions put to me in the Commission. Having to give the appearance and seemingly admit that I was a terrorist and a supporter of terrorist acts ripped my heart apart.

274 The 60 day deadline was near when Mori and the Australian Consular official arrived in Camp Echo to complete some paperwork. I had to sign more forms, this time for the Australian government, stating that everything I had said and done regarding the plea deal was voluntary and that competent lawyers had advised me and I fully understood all of the consequences.

275 I was told I had no choice but to sign because if I refused to sign these new extra documents, the Australian government would not take me. The consular official threatened me with this himself and Mori agreed and said I had no choice. Mori said words to the effect:

"David if you don't sign this the Australian government can leave you here in Gitmo. You have no choice but to sign".


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I did not want to sign anything or have anything to do with the commissions or plea deals but my fear of being left behind was too great. Once again I was forced to do something I did not want to do.

AFFIRMED at *Adelaide* on *23rd January 2012*

Signature of deponent 

Signature of witness 

Name of witness

JONATHON CRAIG MCKAY
A Commissioner for taking Affidavits in
the Supreme Court of South Australia

Address of witness

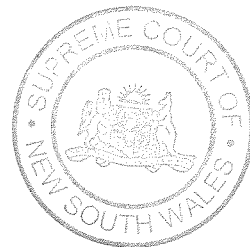
Level 1, 345 King William St Adelaide SA 5000.

Capacity of witness

Solicitor

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

FILED
- 6 FEB 2012



AFFIDAVIT OF JOSHUA LEWIS DRATEL

27 JANUARY 2012

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law Division
Registry	Sydney
Case number	<u>2011/232937</u> 2011 / 233139

TITLE OF PROCEEDINGS

Plaintiff	Director of Public Prosecutions
First defendant	David Michael Hicks
Second defendant	Lakewood Pty Ltd as trustee for the Misha Family Trust

FILING DETAILS

Filed for	The first and second defendants
Legal representative	Steven Glass, Gilbert + Tobin
Legal representative reference	1007561
Contact name and telephone	Steven Glass, 9263 4010

Joshua Lewis Dratel
Steven Glass

AFFIDAVIT

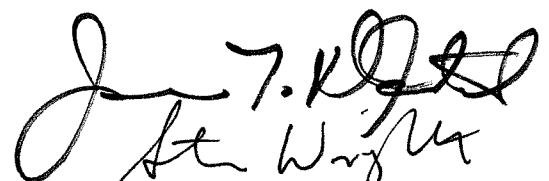
Name Joshua Lewis Dratel
 Address 2 Wall Street, 3rd Floor - New York, New York, United States of America
 Occupation Attorney
 Date 27 January 2012

I say on oath:

1 I am an attorney at Law Offices of Dratel & Mysliwiec, P.C. in New York City.

Qualifications and experience

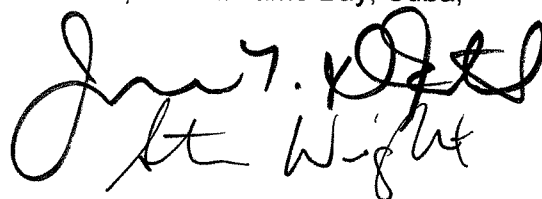
- 2 I am an attorney licensed to practice law in New York State, and admitted to practice in a number of United States federal District Courts, Circuit Courts of Appeals, and the United States Supreme Court. I have been practicing criminal defence law continuously since my admission to the Bar in 1982, and my practice has always been concentrated in that field.
- 3 I practice criminal defence law in the state and federal courts, primarily in New York. Throughout my career, my practice has included a wide range of matters, including "white collar," "organized crime," drugs, sex offenses, terrorism, and capital cases. I have served as President of the New York State Association of Criminal Defense Lawyers (2005), as well as Chair of its *Amicus Curiae* Committee. I am also a Co-Chair of the *Amicus Curiae* Committee of the National Association of Criminal Defense Lawyers, Chair of its National Security Committee, former Co-Chair of its Select Committee on Military Tribunals, a former member of its Board of Directors and Public Affairs Council, and its former Parliamentarian. I also serve on the Advisory Board of *The Champion*, NACDL's monthly magazine. In addition, I was Senior Fellow for Legal Research from 2009-2011, and a member of the Board of Advisors of New York University Law School's Center on Law and Security from 2006-2011.
- 4 I am also a member of the Capital Punishment Committee of the Association of the Bar of the City of New York, and previously served on the Committee on Criminal Law of that organization. Since 1988 I have been a member of the Criminal Justice Act panel in the Southern District of New York, representing indigent defendants in court-appointed cases. I am also a member of the Southern District of New York's capital



Joshua Lewis Dratel
 Attorney

representation panel since its inception in 1997, and have been involved in defending persons accused of death-eligible offenses in federal prosecutions.

- 5 I have appeared as a speaker and panellist at legal, academic, and other functions on a wide variety of subjects related to criminal defence law, including terrorism prosecutions in the U.S. and other courts. I have also written extensively on the subject of terrorism and other national security prosecutions. I am co-editor, with Karen J. Greenberg, of *The Torture Papers: The Road to Abu Ghraib* (Cambridge Press: 2005), a compendium of government memoranda, and *The Enemy Combatant Papers: American Justice, the Courts, and the War on Terror* (Cambridge Press: 2008), a digest of the litigation documents in the five most important "enemy combatant" cases in the U.S. courts. I have also contributed essays to *The Guantanamo Lawyers*, edited by Mark Denbeaux and Jonathan Hafetz (New York University Press: 2009), and *The Torture Debate in America*, edited by Karen J. Greenberg (Cambridge University Press: 2005).
- 6 In 2006, I was the recipient of NACDL's Robert C. Heeney Award, that organization's highest honour. In 2007, along with other lawyers representing Guantanamo Bay detainees, I received the Frederick Douglass Human Rights Award from the Southern Center for Human Rights. In 2011, I received the Honorable Robert Louis Cohen Award for Excellence in the Practice of Criminal Law from the New York Criminal Bar Association. I am a 1978 *magna cum laude* graduate of Columbia College and a 1981 graduate of Harvard Law School. My complete credentials are listed in my *Curriculum Vitae*, a copy of which is at Tab 1 of Exhibit JD-1 to this affidavit.
- 7 Since January 2000 I have held and maintained a top secret security clearance from the United States Department of Justice in connection with nearly a dozen cases, all of which have involved classified discovery produced by the government.
- 8 I have been involved as defence counsel, either at the trial or appellate level, and also as a consultant, in a significant number of other terrorism-related cases in various federal courts across the U.S., as well as in an expert and/or consulting capacity for cases in the United Kingdom and Canada. I have been involved as defence counsel (and to a more limited extent, as an expert consultant) in more federal criminal terrorism prosecutions than any other U.S. lawyer. Some, but not all, of those cases are listed in my C.V. at Tab 1 of Exhibit JD-1. I was also the first U.S. private lawyer to visit a client at the detention facilities at the U.S. Naval Base, Guantanamo Bay, Cuba,



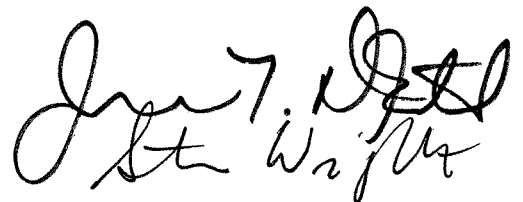
John R. Wight

and the first civilian lawyer to represent a Guantanamo Bay detainee in the military commissions instituted there. Since 2008, I have also served as a consultant to the John Adams Project, a joint American Civil Liberties Union/NACDL project designed to assist in the representation of "high value" detainees at Guantanamo Bay.

- 9 Because of my involvement in terrorism cases, I believe I have more clients who are or have been subject to solitary confinement and Special Administrative Measures (**SAMs**) – instituted by the U.S. Bureau of Prisons to dramatically restrict an inmate's contact with other persons inside and outside prison – than any other U.S. lawyer. I also presently represent four persons who are confined at ADX Florence, the most secure prison facility in the U.S. (nicknamed "Supermax"), three of whom have been convicted of terrorism-related offenses. I am the author of a law review article that addresses SAMs and their impact on a defendant and his right to a fair trial. See *Ethical Issues In Defending a Terrorism Case: How Secrecy and Security Impair the Defense of a Terrorism Case*, 2 CARDOZO PUB. LAW, POLICY & ETHICS J. 81 (2003). Accordingly, I am fully familiar with solitary confinement's effect on a fair trial, as well as on a defendant's mental and physical health.
- 10 I am a member of the following professional associations:
- (a) the American Bar Association;
 - (b) the National Association of Criminal Defense Lawyers (**NACDL**);
 - (c) New York State Association of Criminal Defense Lawyers;
 - (d) New York Criminal Bar Association; and
 - (e) The Association of the Bar of the City of New York.

Circumstances in which I became involved in the Guantanamo military commissions

- 11 In late 2003, I had been practising as a criminal lawyer for 20 years and I had expertise in the law relating to terrorism because I had represented a defendant in the Kenyan US Embassy bombings case and other subsequent matters involving terrorist charges.
- 12 On or about November 2003, I was contacted by Joseph Margulies, now an attorney with the Roderick MacArthur Justice Centre at Northwestern University in Chicago Illinois, and Major Michael "Dan" Mori, who were representing David Hicks.



13 Mr Hicks was an Australian citizen who, to the best of my knowledge and belief, had been captured by U.S. forces in Afghanistan in November 2001 and, since January 2002, had been detained at the detention camp at Guantanamo Bay, Cuba (**Guantanamo**).

14 Margulies or Major Mori said words to me to the following effect:

We need a "conflict counsel" because Joe is acting for several detainees in the civil cases whose interests are diverging because some of them have made statements incriminating one or more of the others.

15 I agreed to serve as conflict counsel. In performing that role, it became apparent that Margulies had a potential conflict and he withdrew from acting for Mr Hicks. I agreed to be Mr Hicks's civilian counsel and began representing him in or about December 2003.

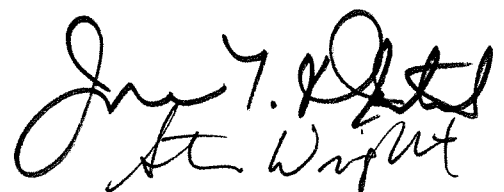
16 At the time I commenced representing Mr Hicks, he had already been in detention for over 2 years. In the following sections, I describe my observations of the conditions in which Mr Hicks was detained and the effect that detention had on his physical and mental well-being. I observed that these effects were at times more apparent and at times less apparent, but in general they increased over the time that I had contact with Mr Hicks.

Conditions of Mr Hicks's detention

17 In the period in which I represented him, I visited Guantanamo 14 times, sometimes visiting Mr Hicks several times per trip. I did not visit between November 2004 and April 2005 because I was suffering from a back injury that prevented me from flying.

18 The original detention facility at Guantanamo was called Camp X-Ray. Camp X-ray was a temporary detention facility that was closed in April 2002. Its prisoners were transferred to Camp Delta. Camp Delta is a 612-unit detention center finished in April 2002. It includes detention camps 1 through 6 as well as Camp Echo. There are other Camps at Guantanamo, but Mr Hicks was not detained in them on the occasions when I saw him.

19 On slightly less than half of the occasions I visited Mr Hicks, he was in his own cell.

A handwritten signature in black ink, appearing to read "Joe Wright". The signature is written in a cursive style with a large initial "J" and "W".

- 20 When I began visiting him, he was in Camp Echo. He was moved to Camp Echo on 9 July 2003. He had, by the time I began visiting him in January 2004, been detained for more than two years.
- 21 Prior to Camp Echo, Mr Hicks had been detained in Camp Delta, and before that he was in Camp X-ray. In August 2004, I toured Camp X-ray after it had been closed. I observed:
- (a) the facility comprised rows of wire-mesh cages about eight feet long and eight feet wide which were in an open yard, separated by chain link fence;
 - (b) there were no roofs, so the detainees in these cages would have had no way of escaping the elements, including the tropical sun and daily rain storm that is typical of tropical climates like that at Guantanamo;
 - (c) the detainees in these cages would have had no privacy;
 - (d) there were open shower facilities with no privacy measures in place;
 - (e) there were 4-5 inch thick mattresses on a concrete slab floor; and
 - (f) the camp was overrun by banana rats (or Hutia, which are moderately large rodents indigenous to Cuba).
- 22 I saw Camp Delta in 2006. The conditions in Camp Delta were slightly better in that there were rows of small, wire-mesh cells under a large roof so the detainees had some protection from the elements. They still had very little room to move around and no privacy.
- 23 In camp Echo, conditions were far better in that Mr Hicks was in a 12 foot by five foot cell in a building, with a 16 foot by eight foot room adjacent to it that he had access to for eating, interrogation and meetings with his defence team. However, in Camp Echo, he was almost invariably in solitary confinement. In addition:
- (a) when he was allowed into the larger room, he was shackled to the floor.
 - (b) he was not allowed out of his cell to exercise or feel sunlight from July 2003 until 10 March 2004;

John T. ...
John W. ...

- (c) he could not get books in English. The library offered books in Arabic and Urdu, but not in English;
- (d) his diet was unhealthy. It mainly comprised large portions of carbohydrates like potatoes and rice which, I observed, caused or contributed to David lapsing into torpor and lacking concentration;
- (e) the guards subjected him to ongoing petty harassment, such as denying him the right to keep certain things in the cell with no legal, security or rational basis for doing so;
- (f) he was not able to maintain his personal hygiene. He was at times not allowed to have shampoo or other toiletries;
- (g) his communications with his family, copies of which I saw, were monitored and invariably heavily redacted; and
- (h) He was periodically sedated for non-therapeutic reasons. For example, in or about March 2007, I had a conversation at the Staff Judge Advocate's office in Guantanamo with one of the prosecutor's on Mr Hicks's case (I am not able to recall which one) to the following effect:

JD: *David says the guards forced him to eat a meal which contained a sedative before you read him the charges.*

P: *That was done to protect the officers reading the charges from any of the detainees' reactions.*

24 Until late 2003, when Mr Hicks was assigned counsel, he had been subjected to interrogation without the ability to obtain legal advice. He informed me that this included:

- (a) interrogation after long periods of sleep-deprivation;
- (b) threats that, if he did not cooperate, he would never be released and would be deprived of showers, sufficient food, access to reading material, social contact and other privileges;
- (c) menacing with firearms and other weapons;

John W. Wright
John W. Wright

- (d) deprivation of sight by blindfolding and liberty by handcuffing and shackling;
- (e) injection of unidentified medication prior to interrogation;
- (f) offers of benefits such as prostitutes or being sent home to Australia if he cooperated; and
- (g) beatings and other physical abuse.

25 So far as I could observe, Australian government representatives did little to assist Mr Hicks or improve his conditions of detention. During the period in which I represented Mr Hicks, there were two consecutive Australian Consuls.

26 The second Consul, John McNulty, was appointed in 2006.

27 On or about January 2007, Major Mori, Mike Griffin, David McLeod and I were outside Camp Echo one day when Mr McNulty was there and I had a conversation with him to the following effect:

JM: *David has refused to see me.*

JD: *Why should he see you? You are supposed to be his advocate but all you do is report to the Government. Why should David see you when you come in there and do only the Government's bidding? The guy before you went into bat for David but you're not doing anything. David has no reason to trust you and so you'll not get one bit of cooperation from David. We've raised this before internally with the Australian government, so now our only alternative is to make this public.*

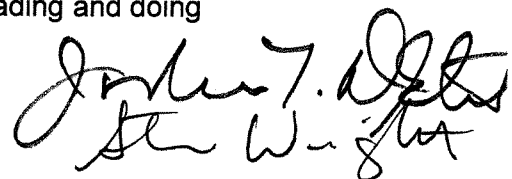
JM: *I don't see it that way.*

28 Following this conversation, we approached the press regarding the issue and at Tab 2 of exhibit JD-1 is an article that appeared in *The Sydney Morning Herald* newspaper on 31 January 2007 which concerns Mr Hicks's lack of trust in Australian government officials.

*John G. Wright
John Wright*

Observations of Mr Hicks's mental and physical state

- 29 As referred to above, I have had considerable experience representing prisoners in terrorism cases, including those held in solitary confinement. I have also reviewed the literature on the effects of solitary confinement.
- 30 Over the period of his detention, Mr Hicks spent an aggregate of about three years in solitary confinement. Over that time, his mental and physical condition, to my observation, deteriorated. For example:
- (a) he would complain extensively about routine matters that he stated were of paramount concern, for example regarding his food, which was too carbohydrate-heavy and came at erratic times, and his toothbrush and other hygiene products, which he was not provided with or were not replaced when they wore out. His obsession with matters that would to the ordinary, free person be unimportant became an impediment to my representation because it made it difficult to get him to focus on the case and consumed a considerable amount of valuable time during our limited visits;
 - (b) he began to trust the interrogators, guards and detention officials generally, and accept their advice even where it was contrary to the advice of his legal representatives. He would make 180° changes of position regarding legal matters based on the opinions expressed by his captors. For example:
 - (i) on more than one occasion, he said words to the effect of *"I think I should represent myself. The Guards say what do I need lawyers for? They say you don't care about me and I'd be better off representing myself"*;
 - (ii) he determined how he should dress and conduct himself in the commissions based on advice from the Guards; and
 - (iii) on more than one occasion, he said words to the effect of *"I don't think I should continue with the habeas corpus petition because the Guards say I have no chance of being successful"*;
 - (c) he stopped cutting his hair and seemed to lose his grip on his own identity. For example, there was a marked change in his engagement with his case. When he was engaged, he was very focussed on properly presenting his case and getting out of detention and home to his family. He enjoyed reading and doing



Jonathan T. Wright

correspondence courses. As time wore on, when we visited he didn't have a lot to say. He appeared to be despondent and no longer read or engaged in correspondence courses. He lost confidence that he could have a relationship with his children, his family and Australia, saying words to the effect of "*I am never going home. My kids and my family are better off without me.*" This despondency had a material effect on our ability to prepare Mr Hicks's case for trial;

- (d) he would become distracted by bizarre tangents. For example, in late 2006 or early 2007, when we were discussing the terms of a potential plea agreement that would allow him to go home, he said words to the following effect: "*I want them to agree to conduct a species replacement program for Gitmo, so that it will be an ecologically balanced system.*" In the context of our discussion, this was so off-topic that it made me and the other attorneys very concerned as to his mental well-being;
- (e) when the UK changed its laws on citizenship so that there was a chance Mr Hicks could become a UK citizen and be released along with the other UK citizens held at Guantanamo (their government had negotiated their release), Mr Hicks said words to the effect of "*but what would I do once I got to London? How could I survive there?*";
- (f) he was periodically paranoid. He was prescribed medication but he often said words to the effect of "*they've switched my medication. They're doping me*"; and
- (g) he was treated for a variety of different physical ailments, mostly related to his back, neck and stomach. I believe he had some upper abdominal or chest surgery prior to me meeting him. Then his spine and stomach ailments were ongoing from the time I met him throughout 2005 and 2006.

31 In my view, these behaviours were consistent with literature I had read concerning the mental deterioration of persons in solitary confinement, and my previous observations of such persons.

32 On many occasions, Mr Hicks said words to me to the following effect:

I don't know why I am bothering with this, I will never be released. I just can't believe the Australian government would abandon me like this. Why wouldn't they

John T. Wright
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fight for me like the British government fought for its citizens? Why am I still here when Habib [Mamdouh Habib, another Australian detainee who was released on 28 January 2005] is at home?

Features of the Guantanamo military commissions compared with civilian trials

- 33 The military commissions at Guantanamo (the **Commissions**) were instituted following the terrorist attack on the World Trade Centre in New York City on 11 September 2001. On 13 November 2001, President Bush issued a Military Order entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (the **2001 Military Order**). A copy of the 2001 Military Order is at Tab 3 of Exhibit JD-1.
- 34 The 2001 Military Order provided as follows (relevantly):

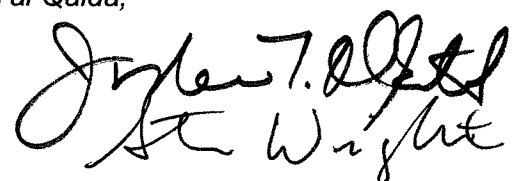
Section 1. Findings.

...

- (e) *To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.*
- (f) *Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.*

Sec. 2. Definition and Policy.

- (a) *The term "individual subject to this order" shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:*
- 1 *there is reason to believe that such individual, at the relevant times,*
- (i) *is or was a member of the organization known as al Qaida;*



Stephen T. Wright
 Stephen Wright

- (ii) *has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy or economy; or*
- (iii) *has knowingly harboured one or more individuals describe in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and*

2 *it is in the interests of the United States that such individual be subject to this order.*

Sec. 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

- (a) *Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.*

35 On 21 March 2002, the U.S. Secretary of Defense issued Military Commission Order No. 1 (**MCO-1**), a copy of which is at Tab 4 of Exhibit JD-1. It contained policy and procedures for the Commissions. Among other things, it stated that "*the Secretary of Defense or a designee ("Appointing Authority") may issue orders from time to time appointing one or more military commissions to try individuals subject to the [2001 Military Order] and appointing any other personnel necessary to facilitate such trials.*"

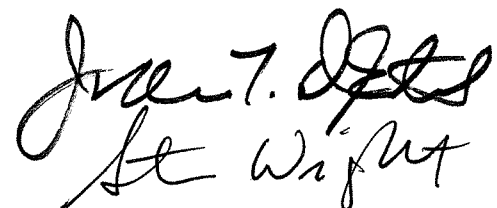
36 On 30 April 2003, the Department of Defence issued Military Commission Instruction No. 2 (**MCI-2**) which set out the crimes and elements for the Commissions. A copy of MCI-2 appears at Tab 5 of Exhibit JD-1.

37 The key features of the Commissions that differed from civilian criminal trials in a manner that created unfairness to defendants were as follows:

- (a) There is no right to a speedy trial;
- (b) Detainees were frequently denied counsel for long periods of time;
- (c) There was no privilege against self-incrimination;

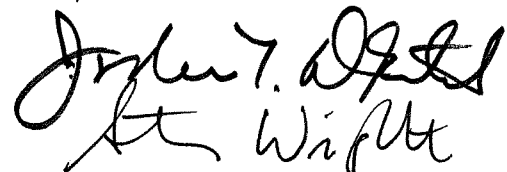
John T. D. [Signature]
St. Wright

- (d) There is no requirement that the prosecution provide timely notice that the death penalty would be sought or allege an aggravating circumstance to support the death penalty;
- (e) The rules regarding hearsay evidence were modified in that:
 - (i) witness statements could be used even if the witnesses were not available to testify. Their testimony was presented as unsworn hearsay and the accused had no opportunity to cross examine them;
 - (ii) evidence would be admissible if it would, in the opinion of the presiding officer or the majority of the Commission, have probative value to a reasonable person: section 4(c)(3) of the 2001 Military Order; and
 - (iii) the onus for hearsay was reversed, meaning that the usual rule that the proponent for admissibility of hearsay evidence has to prove that there is an applicable exception or other valid basis for admission did not apply. Instead, the opponent of the hearsay evidence had to prove that it should be excluded because it is unreliable and lacking in probative value;
- (f) Section 4.A (2)-(3) of MCO-1 provided that the Commissions must be heard by a panel to be made up of 3 – 7 members, all of whom must be Military Officers;
- (g) The Panel members were to act as triers of fact (that is, as the jury) and law (that is, as the judge), despite the fact that, except the presiding officer, the panel members were military officers of a certain rank with no legal training which meant that they were unlikely to be familiar with complicated legal concepts like the limits on the jurisdiction of the United States, or even simple doctrines such as *ex post facto*;
- (h) The defendant had no peremptory challenges with respect to members of the Panel;
- (i) Evidence that civilian courts would deem unreliable, such as statements coerced from detainees using waterboarding or other torture or harsh interrogation methods, were admissible until some controls were introduced in 2009 (which, of course, was two years *after* Mr Hicks's trial had concluded);



James T. O'Connell
St. W. O'Connell

- (j) Relevant evidence was sometimes “classified”, which curtailed the defence’s use of such evidence. For example, it could not be shown to Mr Hicks and had to be viewed or discussed in a closed proceeding which Mr Hicks was not permitted to attend;
- (k) The Military Judge had the right to exclude civilian counsel, even those with the requisite security clearance, from certain proceedings;
- (l) The Commissions could hear and adjudicate proceedings against detainees for offences that were not recognised by the traditional law of war at the time the alleged offences were committed (in breach of war crimes statutes such as War Crimes 18 USC 2340 and Article I, section 9, clause 3 of the U.S. Constitution, which prohibits the federal government from passing *ex post facto* laws, or laws which operate to change the legal status and/or consequences of acts committed or relationships that existed prior to the enactment of the law). For example, the second round of charges against Mr Hicks, referred to below, included a charge of providing material support for terrorism. This was not an offence at the time of Mr Hicks’s conduct. It was therefore, in my view, an *ex post facto* law;
- (m) There was little, if any, respect for legal professional privilege in the detention camps, as Mr Hicks’s cell was regularly searched without regard for the confidentiality of legal papers. For this reason, Mr Hicks ultimately preferred not to keep his notes and other confidential legal materials at all, which of course significantly impaired his ability to assist in the preparation of his defence;
- (n) Detainees were interrogated without the presence of counsel even when they were legally represented;
- (o) Access by counsel to their clients was restricted and counsel was instructed that they were not allowed to use electronic media while with the client nor share certain information;
- (p) There was no rule against double jeopardy, so detainees could be kept at Guantanamo even if acquitted at a Commission trial;
- (q) Appeal rights were severely curtailed: Sections H(4) – (6) of MCO-1 provided that the only avenue of appeal was first to the Appointing Authority, then to a designated Review Panel consisting of three Military Officers, one of which must

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have had experience as a judge. The Review Panel must review the record of trial and, in its discretion, any written submissions then deliberate in closed conference. Then, within 30 days, the Review Panel must either (a) forward the case to the Secretary of Defense with a recommendation as to disposition or (b) return the case for further proceedings, provided that a majority formed a definite and firm conviction that a material error of law occurred. In respect of the cases submitted to him/her, the Secretary of Defense must review the record of trial and recommendation of the Review Panel and either return the case for further proceedings or forward it to the President with a recommendation as to disposition. The President (or, if the President has so designated, the Secretary of Defense), must then make the final decision. Effectively, the detainees had no prospect of appeal to any impartial tribunal;

- (r) if a detainee was tried and convicted, time spent in custody was not to be taken into account in fixing a sentence; and
- (s) Section H "Post Trial Procedures" of MCO-1 contained no guarantee that a detainee would be released upon acquittal. This meant that no matter what the outcome of the hearing was, the detainee could still be detained as an enemy combatant. That is, even if the detainee was acquitted, he might not be released.

38 These features are also inconsistent with international humanitarian law, for example, the International Covenant on Civil and Political Rights (ICCPR) and Geneva Conventions (copies of which are at Tab 6 of Exhibit JD-1), as follows:

- (a) article 3 of the Geneva Conventions requires that "*the passing of sentences and the carrying out of executions*" are prohibited unless the "*previous judgement is pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples*". The Commissions were constituted on the basis that "*it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts*": section 1(f) of the 2001 Military Order;
- (b) the lack of right to a speedy trial was inconsistent with Article 14(3)(a) of the ICCPR which provides that the accused has a right to be promptly informed of

John G. Wright
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the charges against him or her and Article 14(3)(c) of the ICCPR which provides that the accused has a right to be tried without undue delay;

- (c) the limited appeal rights referred to in paragraph 37(q), above, were inconsistent with Article 14(5) of the International Covenant on Civil and Political Rights (**ICCPR**) which provides that the accused has a right to have his conviction and sentence reviewed by a higher tribunal according to law;
 - (d) the appointment of the presiding officer and commission members by the Appointing Authority was inconsistent with Article 14(1) of the ICCPR which provides that the accused has a right to hearing by an independent tribunal;
 - (e) the lack of privilege against self incrimination, referred to at paragraph 37(c), above, was inconsistent with article 14(1)(g) of the ICCPR; and
 - (f) the admissibility of testimony by witnesses who were unavailable to testify, as referred to at paragraph 37(e)(i), above, was inconsistent with Article 14(3)(e) of the ICCPR which provides the accused a right to examine, or have examined, the witnesses against him.
- 39 On 2 August 2003, at the NACDL Annual Meeting in Denver Colorado, the NACDL Ethics Advisory Committee issued an Opinion, a copy of which is at Tab 7 of Exhibit JD-1. The effect of the opinion was that criminal defence lawyers could not ethically represent a person accused before the Commissions (as they were then constituted) under the conditions imposed by the Commissions because they made it impossible for counsel to provide "*adequate or ethical representation.*" As a result, the NACDL Ethics Opinion made it incumbent upon lawyers to challenge those conditions in the Commissions.

The Hicks case 2004 - 2005

- 40 The unfair features of the Commissions, described above, all applied with regard to the trial of Mr Hicks.
- 41 Charges were first laid against Mr Hicks on 10 June 2004. A copy of the Charge Sheet appears at Tab 8 of Exhibit JD-1. The charges were:

June 7, 2004
 Steve Wright

- (a) Count One -- Conspiracy to commit the following offences: attacking civilians, attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.
- (b) Count Two – Attempted murder by an unprivileged belligerent.
- (c) Count Three – Aiding the enemy.

42 An “unprivileged belligerent” is a civilian (i.e. a person not having combatant status) who takes part in hostilities. This is an exception to the division in international humanitarian law between civilians and lawful combatants. Lawful Combatants have the “right” to participate directly in hostilities and, if they are captured, attain the status of “prisoner of war”, which is generally referred to as a “privilege”. Prisoners of war are entitled to the protections of the Geneva Convention. Civilians, on the other hand, may not participate directly in hostilities and are protected from attack. By participating in hostilities without authority, an unprivileged belligerent commits a belligerent act and has neither the protection from attack associated with civilian status nor qualifies for the privilege of being a prisoner of war.

43 On 25 June 2004, the charges against Mr Hicks were referred to the Commission. A copy of the Referral is at Tab 9 of Exhibit JD-1. At that time, the only procedures for the Commission were set out in MCO-1. There were at this stage no applicable procedural rules.

44 On 28 June 2004, the Supreme Court rendered its judgement in the case of *Rasul v Bush* 524 US 446 (2004). Mr Hicks was one of the petitioners in *Rasul*. The Supreme Court found that U.S. courts had jurisdiction to consider the legality of the detention of foreign nationals at Guantanamo.

45 Also on 28 June 2004, the majority of the U.S. Supreme Court held in *Hamdi v Rumsfeld* 542 US 507 (2004) that detainees must be given notice of the factual basis for their designation as “enemy combatants” and an opportunity to contest that designation before an impartial judge.

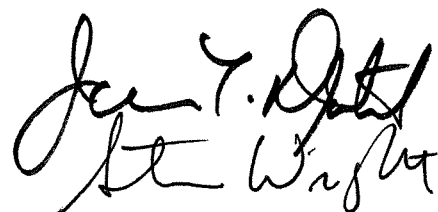
46 In response, the U.S. government established the Combatant Status Review Tribunal (CSRT) to determine the status of detainees. Features of the CSRT included:

Jan T. O'Connell
St. W. O'Connell

- (a) it was comprised of military officers who could not be expected to be impartial when reviewing designations by the Department of Defence or even the President;
 - (b) detainees were to be assisted at trial by a "Personal Representative" – a military officer, non-lawyer with whom they would not enjoy any relationship of privilege or confidentiality. They were not permitted legal counsel. Indeed a request by Major Mori and I to represent Mr Hicks at his CSRT was denied; and
 - (c) detainees were not allowed access to the "Classified" evidence against them.
- 47 Accordingly, I formed the view that the CSRT was not an "impartial judge" as described in *Hamdi*.
- 48 On 25 August 2004, I appeared before the Military Commission to determine a schedule for further proceedings, and to present the indictment. At that appearance, Mr Hicks pleaded not guilty to all charges. The trial was scheduled for January 2005.
- 49 Following this hearing, Mr Hicks's defence team filed multiple interlocutory motions and submissions. Many of these cite the inconsistency of the Commission system with the ICCPR and Geneva Conventions, as discussed above. Copies of these are at Tab 10 of Exhibit JD-1. They are entitled:
- (a) Defense Objection to the Presiding Officer or his Assistant Providing Advice to the Commission on the Law (7 September 2004);
 - (b) Defense Memorandum on Interlocutory Question # 1 and # 2, objecting to closed sessions of the Commission occurring outside of Guantanamo Bay unless Mr Hicks is available for consultation in the immediate area of the closed session (9 September 2004);
 - (c) Defense Memorandum on Interlocutory Question # 3, objecting to the Appointing Authority being connected in any way with any decision of law in the Military Commission assigned to Mr Hicks' pending case (9 September 2004);
 - (d) Defense Memorandum on Interlocutory Question # 5, objecting to the alternate member procedure proposed by the Presiding Officer (9 September 2004);

John T. Wright
John Wright

- (e) Defense Objection to the Structure and Composition of the Commission (9 September 2004);
- (f) Defense Notice of Motion for Bill of Particulars (20 September 2004);
- (g) Defense Motion to Dismiss for Lack of Jurisdiction: the Armed Conflict in Afghanistan has ended (1 October 2004);
- (h) Defense Motion for Appropriate Relief: Imposition of Improper Pre-Trial Detention under International Law (1 October 2004);
- (i) Defense Motion to Dismiss all Charges as the Commission has No Jurisdiction at Guantanamo Bay, Cuba (1 October 2004);
- (j) Defense Motion to Dismiss for Denial of the Right to a Speedy Trial (4 October 2004);
- (k) Defense Motion to Dismiss All Charges for Denial of Fundamental Rights in Criminal Proceeding (4 October 2004);
- (l) Defense Motion to Dismiss Charge 1 Offense of "Destruction of Property by an Unprivileged Belligerent" (4 October 2004);
- (m) Defense Motion to Dismiss All Charges as the Commission is Improperly Constituted: Appointing Authority Lacks the Power to Appoint a Military Commission (4 October 2004);
- (n) Defense Motion to Dismiss Charge 1 for Failure to State an Offense Triable by Military Commission (4 October 2004);
- (o) Defense Motion to Dismiss Charge 2 for Failure to State an Offense Triable by Military Commission (4 October 2004);
- (p) Defense Motion to Dismiss Charge 3 for Failure to State an Offense (4 October 2004);
- (q) Defense Motion to Dismiss: Improper Panel Selection Procedures (4 October 2004);

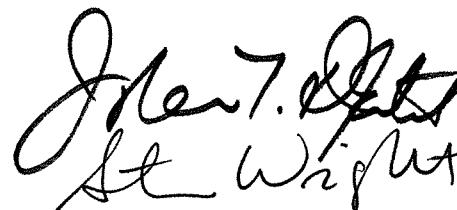


James T. Hoff
for the defense

- (r) Defense Motion to Modify Charges – Lack of Subject-Matter Jurisdiction – Offense must be Committed During International Armed Conflict (4 October 2004);
- (s) Defense Motion to Dismiss for Lack of Jurisdiction: President's Military Order of 13 November 2001 is Invalid under United States and International Law (4 October 2004);
- (t) Defense Motion to Dismiss – Lack of Jurisdiction – President's Military Order Establishing the Commission Violates Equal Protection Clause of the United States' Constitution (4 October 2004);
- (u) Defense Motion to Strike the Word "Terrorism" from Charge 1: Terrorism is Not an Offense Triable by Military Commission (4 October 2004);
- (v) Defense Motion to Dismiss for Lack of Jurisdiction: Commission Will Not Afford a Full and Fair Trial (4 October 2004);
- (w) Defense Response to Prosecution Motion to Exclude All Expert Witnesses (19 October 2004); and
- (x) Defense Request for Continuance until Professor Michael Schmitt is available to travel to Guantanamo Bay to assist Hicks defense team as expert consultant on International Humanitarian Law (28 October 2004).

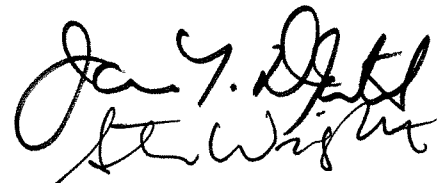
50 On 31 August 2004, Mr Hicks filed in U.S. federal court a motion for leave to file a *Second Amended Petition for Writ of Habeas Corpus and Complaint for Injunctive, Declaratory, and other Relief*, (the **Habeas Petition**). Leave was granted and the Habeas Petition was filed. Copies of the Habeas Petition and Mr Hicks's affidavit in support sworn 5 August 2004 are at Tab 11 of Exhibit JD-1. The Habeas Petition challenged:

- (a) the authority of the U.S. government to hold Mr Hicks as an enemy combatant; and
- (b) the authority of the U.S. government to try Mr Hicks before a military commission.



John T. Wight
St. Wight

- 51 On 7 July 2004, we received a notice that a CSRT would be convened to determine whether Mr Hicks could be held as an enemy combatant. A copy of the Notice is at Tab 12 of Exhibit JD-1.
- 52 On 29 July 2004, Major Mori and I sent a Memorandum to the Department of Defense which objected to the term of the notice that each detainee would be represented before the CSRT by a "Personal Representative" and stated that any contact with Mr Hicks in connection with the CSRT be through Major Mori and me.
- 53 On 17 September 2004, the US government convened a CSRT which purported to determine whether Mr Hicks could be held as an enemy combatant. Major Mori and I advised Mr Hicks not to participate in the CSRT because:
- (a) as stated above, he was not permitted to consult with legal counsel regarding the CSRT; and
 - (b) his testimony – given without the benefit of legal advice - could potentially have been used against him in the criminal proceedings before the Commission.
- 54 Mr Hicks did not participate in the CSRT.
- 55 On 30 September 2004, the CSRT found that Mr Hicks was properly classified as an "enemy combatant".
- 56 From 1 to 3 November 2004, the Commission heard the motions referred to above. A copy of the record of trial is at Tab 13 of Exhibit JD-1. Ultimately, several of the motions were denied, and ruling on the remaining motions was deferred.
- 57 On 31 January 2005, Judge Green of the District Court held in *In re Guantanamo Detainee Cases*, 355 F.Supp.2d 443 (D.D.C. 2005) that the CSRTs used to evaluate whether Mr Hicks and ten other detainees were enemy combatants were unlawful.
- 58 In December 2005, the U.S. Congress passed the *Detainee Treatment Act of 2005 (DTA)*. The DTA contained the following provisions at section 1005(e)(1):
- (a) that CSRT's were the only proper forum for determining the legal status of detainees;
 - (b) that only procedural irregularities affecting CSRT and Commission decisions are reviewable by the U.S. civilian courts; and

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- (c) that U.S. civilian courts did not have jurisdiction to hear an application for a writ of habeas corpus or other review application filed by or on behalf of an alien detained by the Department of Defense at Guantanamo.

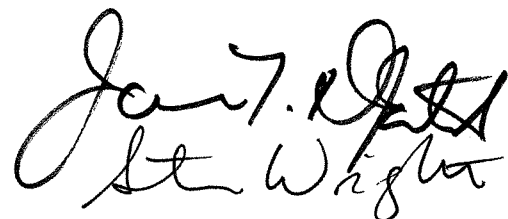
The Hamdan case and dissolution of the Commissions

- 59 On 8 November 2004, Judge James Robertson of the United States District Court for the District of Columbia ruled in favour of Salim Hamdan, a driver and bodyguard for Osama bin Laden, finding that the United States could not hold a military commission unless it was first shown that the detainee was not a prisoner of war. That finding effectively halted the Commissions for an extended period of time.
- 60 Next, on 15 July 2005, a United States Court of Appeals for the District of Columbia Circuit three-judge panel of Arthur Raymond Randolph, John G. Roberts, Jr. and Stephen F. Williams, unanimously reversed the decision of the District Court in *Hamdan v Rumsfeld* 415 F.3d 33 (D.C. Cir., 2005).
- 61 On 17 August 2005, Major Mori and I filed a Revised Brief in Opposition to Respondents' Motion to Dismiss and In Support of Petitioner David M. Hicks's Cross-motion for Partial Summary Judgement, a copy of which is at Tab 14 of Exhibit JD-1
- 62 On 7 November 2005, the Supreme Court issued a writ of certiorari to hear Hamdan's case, so the Commissions were again stalled. On 8 November 2005, we filed a motion to stay the proceedings against Hicks. A copy of the motion is at Tab 15 of Exhibit JD-1. On 14 November 2005, the stay was granted.
- 63 On 29 June 2006, the Supreme Court ruled in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) that, per page 4, point 4 of the Supreme Court Syllabus (or summary of the case), a copy of which is at Tab 16 of Exhibit JD-1, the Commissions lack "*the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949.*" After that, the existing version of the Commissions had to be scrapped. The commission trying Hicks was abolished and the charges against him voided.
- 64 While the Supreme Court's decision in *Hamdan* seemed positive for Mr Hicks, the result was actually that the proceedings against him became null and void and he returned to the position he had been in prior to charges being laid: detained indefinitely without charge.

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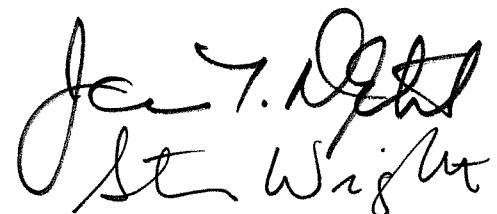
Reinstitution of the Commissions and new charges against Mr Hicks

- 65 On 17 October 2006, a new statute was passed entitled *The Military Commissions Act 2006 (MCA 2006)*. A copy of the MCA 2006 is at Tab 17 of Exhibit JD-1. Relevantly, MCA 2006 introduced at section 950v(b)(25) a new offence of "*providing material support for terrorism*". Further, section 950p provided that the provisions of MCA 2006 "*codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.*" In this way, MCA 2006 purported to make retroactive the offence of providing material support for terrorism and other previously unknown offences.
- 66 The Commissions were again instituted, with technical attempts to overcome the deficiencies raised in Hamdan without a genuine effort to change the fundamental unfair character of the commissions. Indeed, virtually all of the unfair features of the Commissions were unchanged under the MCA 2006 as far as Mr Hicks was concerned. There were some changes to the rules regarding interrogation techniques, but that didn't affect long-term detainees like Mr Hicks who had already been extensively interrogated. Transcripts and admissions obtained prior to the MCA 2006 were able to be used in trials held under the MCA 2006.
- 67 Finally, the process was unfair in that our access to Mr Hicks was restricted. On one occasion in or about early 2007, I travelled to Guantanamo and arrived in the late afternoon (which was the earliest arrival possible that day). Major Mori and I had been assured that we would be able to visit Mr Hicks as long as we arrived at the detention facility sufficiently before 5:00 p.m. Even with those special arrangements, when we arrived at the detention facility sufficiently in advance of 5:00 p.m., we were told words to the effect of "*David isn't available. Visiting hours are over.*"
- 68 On 17 or 18 January 2007, the U.S. Secretary of Defense, Secretary Gates, signed the Manual for Military Commissions (**the Manual**). A copy of the Manual is at Tab 18 of Exhibit JD-1.
- 69 On 2 February 2007, the following charges were sworn against Mr Hicks:
- (a) attempted murder in violation of the law of war; and
 - (b) providing material support for terrorism.



Jan T. Wright
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- 70 Copies of the initial and revised versions of the charge sheet are at Tab 19 of Exhibit JD-1. As was the case with the previous charges, neither of the charges was an offence under the law of war or otherwise at the time of Mr Hicks's conduct.
- 71 On 7 February 2007, Susan Crawford was appointed Convening Authority for the Commissions.
- 72 By this time, Mr Hicks had been in detention at Guantanamo for more than 5 years and his mental and physical state had deteriorated in the manner set out above, which made it very difficult to obtain proper instructions.
- 73 On or about 9 March 2007, I received a memo from the military judge assigned to Mr Hicks's Commission case, who was also the Chief Justice of the Commissions, a copy of which is at Tab 20 of Exhibit JD-1. The memo stated that in order to appear as civilian defence counsel, I had to sign a prescribed form which contained an agreement to comply with "*all the applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings*".
- 74 On 21 March 2007, I submitted to the Chief Justice a revised appearance form, a copy of which is at Tab 21 of Exhibit JD-1. In the revised form, I agreed to "*comply with all presently existing applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.*"
- 75 On Sunday, 25 March 2007 and Monday 26 March 2007, there was an "802 conference" which is an informal, "off-the-record" discussion between the Judge and counsel (usually in the Judge's chambers) which is authorized by Rule for Court-Martial (RCM) 802 of the Manual. I did not attend on 25 March 2007 but I did attend when the conference was continued at 9:30 a.m. on 26 March 2007. Summaries of the 802 conference prepared by either Major Mori or by Rebecca Snyder, Mr Hicks's second detailed military counsel, are at Tab 22 of Exhibit JD-1. To the best of my knowledge (in the case of the summary dated 25 March 2007, when I was not present) and recollection (in the case of the summary dated 26 March 2007), the summaries accurately record what transpired at the 802 conference. At the 802 conference on the morning of 26 March 2007, the Military Judge provided us his proposed schedule for the case, which set the matter down for hearing on 21 April 2007, less than a month away.

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76 If the hearing took place on 21 April 2007, I would be unable to attend because I was on that date obliged to attend a hearing for a case in which I was defence counsel in federal court. Accordingly, during the 802 Conference, the Judge (designated "MJ" for military judge) and I had a conversation to the following effect:

JD: *That hearing date is unsuitable for me because I have a hearing in federal court on that date.*

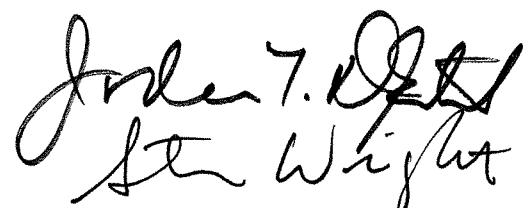
MJ: *I will not change the schedule. There are four seats available at each counsel table and it is fine to change who is sitting at them provided it is noted on the record.*

77 The transcript of the arraignment hearing at 2:00 p.m. that day (26 March 2007), a copy of which is at Tab 27 of Exhibit JD-1, includes multiple references to the schedule and my unavailability on the proposed hearing date. See, for example, Major Mori's submissions at page 44, lines 13 – 16 of the transcript.

78 In addition, in comparison with civilian case schedules and other military commission schedules Mr Hicks's other lawyers and I had seen, the case schedule was extremely accelerated. Prior to the hearing date, Mr Hicks' defence team needed to prepare as follows:

- (a) Prepare evidentiary motions, which were quite complicated and extensive, and which had always previously been deferred until all legal motions had been decided;
- (b) Contact and prepare witnesses (both fact and expert witnesses), including many from overseas (which would have involved considerable travel);
- (c) Review voluminous discovery (some of which had not yet been produced);
- (d) Issue subpoenas and make requests for the presence of witnesses; and
- (e) prepare submissions.

79 The schedule did not provide sufficient time to accomplish these tasks.



Jordan T. Wright
Ste Wright

The circumstances of Mr Hicks's return to Australia

80 Throughout 2005 and 2006, Mr Hicks sent letters to the Australian Prime Minister and Attorney General, including a letter to Prime Minister Howard dated 21 January 2005, a copy of which is at Tab 23 of Exhibit JD-1. That letter stated as follows:

...many detainees have been released from Guantanamo Bay, a large number who have been accused of graver deeds than myself... yet I find myself being left behind while others go home to walk free... Please could you ask the American government for my release and help me to return home...

81 In April 2006, we met with the Australian Attorney General's office regarding treaty transfer provisions that were being developed between the U.S. and Australia. Our objective was to explore whether they could be written in a way that might assist in getting Mr Hicks back to Australia or could facilitate a negotiated disposition that would result in David's prompt return to Australia. At that meeting, one of the participants from the Australian Attorney General's office said words to the following effect: "*The Australian Government is getting uncomfortable about the whole situation [with Mr Hicks]*".

82 We then commenced making enquiries with the Australian Government and Attorney General's office regarding the possibility of making a deal for Mr Hicks's release.

83 In or about February 2007, I read an article in *The New York Times* that reported that the Australian Government had claimed that Mr Hicks had turned down a plea offer of "time-served". So far as I am aware, no such deal had ever been offered to Mr Hicks.

84 On 12 March 2007, I wrote a letter to the Convening Authority of the Commissions, a copy of which is at Tab 24 of Exhibit JD-1. The letter stated:

...last week, the Australian Associated Press quoted Col. Morris Davis, the Chief Prosecutor for the Commissions, as saying that if a plea agreement is reached "it's possible [Mr Hicks] could be back home and walking free by the end of the year." ... I have enclosed a copy of that article, as well as one from the New York Times that makes similar claims... to date no such offer has been communicated to me or any member of Mr. Hicks's defense team. I am writing to ask whether the prosecution, or the Convening Authority, is making such an offer.

*Jan 7. 2005
ht Wright*

- 85 At Tab 25 of Exhibit JD-1 is a letter dated 13 March 2007 from the Convening Authority. It stated as follows:

...I have not offered any plea agreement to Mr Hicks... As the Convening Authority, I must approve any plea agreement entered into by the United States and Mr. Hicks. However, I believe the prosecution should be involved in the negotiation process prior to any proposed agreement being presented to me for approval. I remain ready to consider any agreement the parties wish to forward to me for decision.

- 86 On the same day as I received the letter referred to at paragraph 85, above, I was at Guantanamo and I received a call from Colonel Morris "Mo" Davis, the then Chief Prosecutor in the Commissions who had been assigned to the Hicks case. We had a conversation to the following effect:

MD: *The Convening Authority wants us to engage in some discussion of resolution.*

JD: *OK, what's your offer?*

MD: *20 years.*

JD: *See you at trial.*

- 87 On or about 23 March 2007, I received a call from Major Mori and we had a conversation to the following effect:

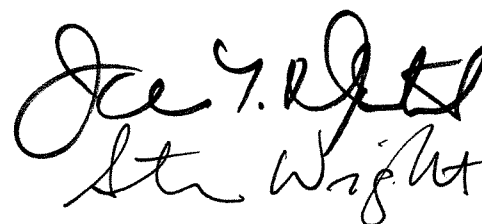
DM: *I just spoke with General Hemingway. [The legal advisor to the Convening Authority.]*

JD: *And?*

DM: *He thought that a deal where David served an additional 30 days would be something that was doable.*

JD: *Where do we sign?*

DM: *Well, they're going to have something in writing for us over the weekend.*



Joe G. Wright
Joe Wright

- 88 On 24 March 2007, I flew to Guantanamo. At that time, we did not yet have a written offer from General Hemingway.
- 89 On 25 March 2007, we received an offer in writing. Major Mori, Dave McLeod, Mike Griffin and I were present in the Commissions building's defence office. We reviewed the offer and identified 10 objections or conditions that we intended to communicate to General Hemingway.
- 90 That afternoon, I telephoned General Hemingway with Major Mori, Mike Griffin and Dave McLeod present and we had a conversation to the following effect:

JD: *Thanks for your offer. We have some objections to it. Can I go through them with you?*

GH: *Yes.*

- 91 We then had discussions about our objections (which are set out in bold in the draft at Tab 26 of Exhibit JD-1) to the proposed plea agreement, following which General Hemingway said words to the effect of "*I will take the revised proposed agreement back to those who will make the final decision and call you tomorrow morning.*"
- 92 The next morning, I received a telephone call from General Hemingway and we had a conversation to the following effect:

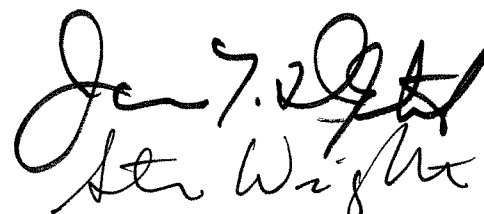
GH: *The agreement as revised by our negotiation yesterday is acceptable to the U.S. Government. We can proceed with the guilty plea proceeding as early as this afternoon.*

JD: *OK, we'll take it to David and let you know.*

- 93 Following that conversation, at about 11:30 a.m. I went to see Mr Hicks. He was already in the courthouse for the arraignment hearing scheduled for that afternoon. When we (the attorneys) entered the room, Mr Hicks was sitting with his father and sister. We had a conversation to the following effect:

JD: *David, we have just agreed in principle to a deal that will get you back to Australia within 60 days.*

DH: *What is involved?*



John W. Wright

JD: [I showed Mr Hicks a copy of the written plea agreement, and he read it.]

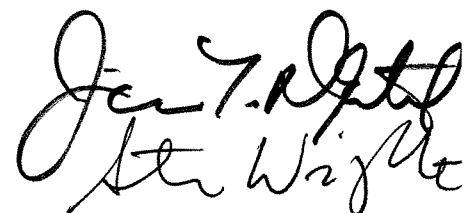
It's always your decision, but we want you to know that we're concerned that if we don't pursue this avenue, the trial will be in six weeks and I won't be there. We are worried that if we don't take advantage of this deal, that this train will leave the station and you're going to get a heavy, heavy sentence from this judge and from this Commission and we're going to be stuck fighting a much worse battle. And you know what? We could win the federal court challenge at the end of the day. We could win and have the commissions declared invalid. We should win. But you still wouldn't get to go home. It could take two years, you're going to be here every day and then when we win, they'll just pass a new law with new rules for the Commission. We're concerned about getting you out of here and we think this is the best path to get you out of here and put this behind you in a way that you can get on with your life and see your kids.

DH: *I'm not sure about it. I don't want to plead guilty. But I suppose you're right. I suppose I don't really have any alternative.*

94 Major Mori also had a discussion with Mr Hicks about accepting the proposed plea agreement.

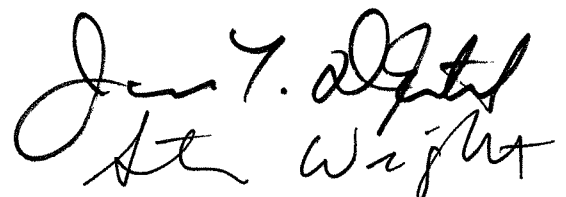
95 I advised Mr Hicks to agree to the proposed plea agreement for the following reasons:

- (a) I considered that Mr Hicks would not be given a fair trial under the Commission system for the reasons described at paragraphs 24, 34 – 39, 66 – 67 and 76 to 79, above,
- (b) By reason of my conversation with Colonel Davis set out above, I considered that if Mr Hicks was unsuccessful at trial, he faced a sentence of 20 years or more imprisonment, which, as stated at paragraph 37(r), above, would not take into account the more than 5 years for which he had already been detained;
- (c) as stated in paragraphs 37(p) and 37(s), above, even if Mr Hicks was acquitted of the offences he was charged with, there was no guarantee that he would be released from detention;



Jen T. Wright
John Wright

- (d) as described in paragraphs 21 to 24, above, Mr Hicks was suffering severely under detention, causing substantial deterioration in his mental and physical condition, as described in paragraph 30 to 32, above; and
- (e) I had formed the view that detainees faced such an unfair process in trials before the Commission that the only reliable means of being returned to their home country was to negotiate their release and, possibly, plead guilty as part of a deal. In my opinion, Mr Hicks had no viable alternative other than to consent to the plea deal offered.
- 96 Following mine and Major Mori's conversations with Mr Hicks, I telephoned General Hemingway and said words to the effect of "*OK David accepts the deal*".
- 97 The arraignment hearing proceeded at 2:00 p.m. that afternoon, as scheduled. Accordingly, I attended the courthouse together with Major Mori and Rebecca Snyder, Mr Hicks's second detailed military counsel. A copy of the transcript from that hearing is at Tab 27 of Exhibit JD-1.
- 98 During that hearing, the Judge challenged my ability to represent Mr Hicks at the hearing.
- 99 Section 949c(b)(3)(A) – (E) of the MCA 2006 sets out the requirements for civilian defence counsel. In particular, section 949c(b)(3)(E) requires that, in order to appear before a Military Commission, civilian counsel must sign a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.
- 100 Rule 502(d)(3) of the Manual, which expands upon and clarifies section 949c(b)(3) of the MCA 2006, provides that counsel must have signed an agreement prescribed by the Secretary of Defense pursuant to 949c(b)(3)(E) of the MCA 2006.
- 101 In the absence of a prescribed agreement from the Secretary of Defense, the presiding Judge, in his role as Chief Justice of the Military Commissions, had issued the prescribed form at Tab 20 of Exhibit JD-1.
- 102 As described at paragraphs 73 and 74, above, I did not sign the prescribed form but proposed the alternative form at Tab 21 of Exhibit JD-1.

A handwritten signature in black ink, appearing to read "James T. Wright". The signature is written in a cursive, flowing style with some loops and flourishes.

- 103 This was unacceptable to the Judge, who stated (at pages 23-24 of the transcript) as follows:

Mr. Dratel has not submitted a letter of agreement to comply with all applicable regulations or instructions for counsel including any rules of court for conduct during the proceedings as required by the law set forth in Title 10 United States Code Section 949c (b) (3) (e)... the letter that Mr Dratel submitted which has been attached to the record as a part of Appellate Exhibit 19 does not comply with the format set forth in the sample agreement provided to the parties by the court on 9 March 2007, and Appellate Exhibit 7. I'll note that the letter in Appellate Exhibit 19 does not comply with the federal statute because Mr. Dratel's offered agreement falls short of the required agreement "to comply with all applicable regulations or instructions for counsel including any rules of court for the conduct during the proceedings. Accordingly, Mr Dratel does not meet the requirements set forth in the United States Code for participation in this Commission as a civilian defense counsel.

- 104 Because regulations governing the conduct of defence counsel had not yet been promulgated, I considered that I could not agree to be bound by all applicable rules that might be issued in the future. Indeed, as noted above, the initial rules – that were changed in response to my objections – were so onerous that they placed defence counsel in the position of being unable to provide ethical and effective representation. I was not willing to submit to any such similar (or potentially worse) rules that the Commissions might impose in the future. I was particularly concerned because the Commissions (and the entire Guantanamo apparatus) had from the outset sought to compromise attorney-client relations, and to interfere with the adequate preparation and presentation of the defence case. Thus an agreement in advance to abide by a set of rules not yet issued was an intolerable proposition. Pages 25 to 29 of the transcript record the following submissions by me in relation to the issue:

At the 802 conference this morning -- and I had submitted last week and I understand that the court was not able to pick it up by e-mail -- but I submitted last week a notice of appearance which was precisely the same as that requested by the court with one exception. Instead of saying "all

*John F. K...
Steve W. Wright*

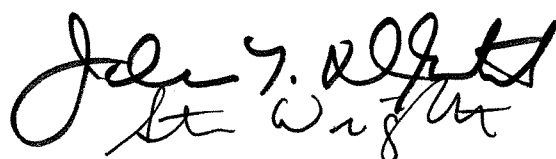
applicable regulations" it said "all existing applicable regulations" for a particular reason.

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

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

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

One I will mention is that I had to agree that my attorney-client conversations with Mr Hicks would be monitored. I had to agree to that

A handwritten signature in black ink, appearing to read "John G. Roberts" with a stylized flourish underneath.

and I refused to agree to that. There were other conditions as well that were simply ethically untenable. I objected to those and in the process of negotiation that was worked out so that I could participate consistent with my ethical obligations. Those provisions were either removed or modified to the extent that I could participate.

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

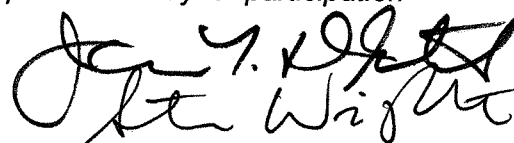
These are the same problems that plagued the previous commission in that everything is ad hoc, that everything moves in a way where you cannot predict from one day to the next what the rules are. The rules are made by parties who are not entitled to make rules and the statute to make them be clear. This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

...

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

105 In response to these submissions, the Judge said words to the following effect (at page 31 of the transcript):

I find no merit in the claim that it is beyond my authority because that's sometime [sic] what judges do is that they provide ways to move forward within the law. It is the court's view that the sample agreement which again simply adopts the language in the statute passed by the United States Congress nothing more, essentially paved the way for participation



for counsel who are willing to abide by the laws of the United States and whose presence and services are requested by the accused.

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

106 There followed a conversation between the Judge (designated MJ for "Military Judge") and Mr Hicks to the following effect:

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

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

107 The Military Judge then stated to me "Very well. Mr Dratel, you're excused" [T32: 20-21] and I left the court.

108 About 4:00p.m. that afternoon, Major Mori and I called Colonel Davis and had a conversation to the following effect:

MM: *Where do we stand on this?*

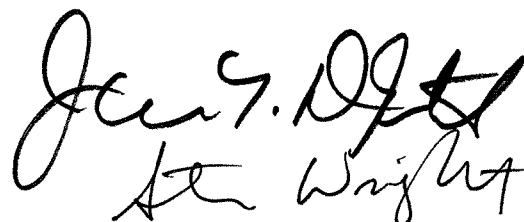
CD: *The agreement is approved, but we can't go forward with the plea today because it is too late. We will be ready to go tomorrow morning.*

109 The deal agreed to by Mr Hicks is set out in the document entitled "Offer for a pre-trial agreement" dated 26 March 2007 (PTA), a copy of which is at Tab 28 of Exhibit JD-1. In summary, Mr Hicks pleaded guilty and was sentenced to 7 years in confinement, with all but 9 months suspended. Also, the U.S. Government was obliged to transfer custody of Mr Hicks to Australia within 60 days of the date on which the sentence was announced.

Jan Y. Wright
At Wright

110 The PTA was in the nature of an Alford plea. An Alford plea is a plea that recognises that the defendant does not acknowledge guilt but that the government has sufficient evidence to convict. Practically, an Alford plea is utilised when it is determined by both sides that going to trial has disadvantages so the government is willing to accept a plea of guilty even though the defendant does not admit engaging in the alleged conduct and the defendant is willing to accept a punishment even though he or she is not guilty because the plea is better than the available alternative outcomes. In Mr Hicks's case, the alternatives were as follows:

- (a) A trial with one lawyer instead of three, where the remaining lawyer, Major Mori, had little relevant trial experience. His defence team had been dissolved by the Military Judge's decision that Ms Snyder and I could not participate in the trial;
- (b) A trial that Major Mori couldn't possibly adequately prepare for in time, given that it was scheduled for 21 April 2007, less than a month after the arraignment. In federal court, in a case as complex as Mr Hicks's case, the defence would be afforded ample time to investigate and prepare the case, and trial would not have been scheduled for a date in which the lead defence counsel was already committed to a federal trial by order of another federal court;
- (c) If Mr Hicks lost his trial, he faced a sentence of 20 years or more in detention because, as stated above, the Chief Prosecutor, Colonel Davis, had indicated that this is what he was seeking;
- (d) Even if Mr Hicks won his trial, he would still be a designated "enemy combatant". The Government had an express policy that it could hold prisoners pending cessation of hostilities and hostilities had not ended. Mr Hicks could therefore win his trial and be returned to his cell with no predictable release date; and
- (e) If we were successful in having the Commission system declared invalid, the Government would just change the rules, and lay new charges against him, as they did previously. Again, it would be unlikely to result in his release.

A handwritten signature in black ink, appearing to read "James G. Wright". The signature is written in a cursive, flowing style with some loops and flourishes.

SWORN at New York, New York, 27 January 2012

Signature of deponent

[Handwritten signature]

Signature of witness

[Handwritten signature: Steven Wright]

STEVEN D. WRIGHT
NOTARY PUBLIC, State of New York
No. 01WR6018067
Qualified in New York County
Commission Expires: Dec. 28th 2014

Name of witness

STEVEN WRIGHT

Address of witness

2 WALL STREET, NEW YORK, NY 10005

Capacity of witness

OFFICE MANAGER

EXHIBIT "JD-1"
AFFIDAVIT OF JOSHUA LEWIS DRATEL
27 JANUARY 2012

COURT DETAILS

Court Supreme Court of NSW
Division Common Law Division
Registry Sydney
Case number 2011/232937

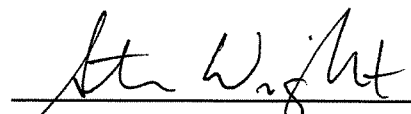
TITLE OF PROCEEDINGS

Plaintiff **Director of Public Prosecutions**
First defendant **David Michael Hicks**
Second defendant **Lakewood Pty Ltd as trustee for the Misha Family Trust**

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "JD-1" referred to in the affidavit of Joshua Lewis Dratel sworn before me on 27 January 2012.

Signature of witness



STEVEN D. WRIGHT
NOTARY PUBLIC, State of New York
No. 01WR6018067
Qualified in New York County
Commission Expires: Dec. 28th 20 14

Name of witness

STEVEN WRIGHT

Address of witness

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Capacity of witness

OFFICE MANAGER