

MILITARY COMMISSIONS UPDATE -- NOVEMBER 3, 2004

U.S. NAVAL BASE GUANTANAMO BAY, CUBA – The military commission hearing the case of *U.S. v Hicks* returned to the courtroom for a brief session this afternoon. Then, to the surprise of observers, they recessed until March 15, 2005.

The panel members spent the morning reviewing the materials and legal sources that counsel had submitted and considering the respective arguments of counsel. Upon returning to the courtroom this afternoon, Col. Peter Brownback, the presiding officer, explained what was meant by “authentication of the record of trial” under the applicable military commission order. He also stated that the defense motion to declare the commission improperly constituted will not be certified as an interlocutory question to the appointing authority. Interlocutory questions are those questions on legal matters that the panel elects to defer decision on and sends to the appointing authority for a decision.

Brownback then announced that the commission had carefully considered numerous defense motions. However, he said, the commission will defer ruling on those motions until some future date. Included were:

- a) the defense motions to dismiss charge one for failure to state an offense triable by military commission,
- b) to dismiss charge one regarding destruction of property by an unprivileged belligerent,
- c) to modify certain charges for lack of subject matter jurisdiction because the alleged offenses did not occur during an armed conflict,
- d) to dismiss for lack of subject matter jurisdiction because the armed conflict in Afghanistan has ended,
- e) to seek appropriate relief based on improper imposition of pretrial detention under international law,
- f) to dismiss for denial of the right to a speedy trial,
- g) to dismiss for lack of jurisdiction because the President’s military order violates equal protection under the U.S. Constitution,
- h) to dismiss for denial of fundamental rights in criminal proceedings,
- i) to dismiss for lack of subject matter jurisdiction because the President’s military order is invalid under U.S. and international law,
- j) to dismiss for lack of jurisdiction because the commission system will not afford a full and fair trial,
- k) to object to the structure and composition of the commission.

At the conclusion of the afternoon’s proceedings, Brownback announced that he was granting, over the prosecution’s objection, a defense request to delay the proceedings until March 15, 2005. The proceedings lasted approximately twenty minutes before recessing until March.