E-FILED
Tuesday, 20 October, 2009 02:06:14 PM
Clerk, U.S. District Court, ILCD

EXHIBIT 61

UNITED STATES OF AMERICA

v.

DAVID MATTHEW HICKS
a/k/a "David Michael Hicks"
a/k/a/ "Abu Muslim Australia"
a/k/a "Abu Muslim Austraili"
a/k/a "Abu Muslim Philippine"
a/k/a "Muhammad Dawood"

Stipulation of Fact

29 March 2007

1. This stipulation of fact is entered into by the Prosecution and Defense knowingly and voluntarily in the case of *United States v. David Hicks* (hereinafter "the accused"). It is hereby stipulated and agreed, by and between the Prosecution and Defense, with the express consent of the accused, that the following facts are true.

2. The accused acknowledges and agrees that he is an alien unlawful enemy combatant, as defined by the Military Commissions Act of 2006 (MCA), Title 10, United States Code, Section 948a(1) and (3). The accused is and has been at all times relevant to these proceedings, a person subject to trial by military commission, pursuant to Section 948c of the MCA.

3. On 30 September 2004, the Combatant Status Review Tribunal (CSRT) made the determination that the accused is an unlawful enemy combatant as a member of, or affiliated with, al Qaeda; as defined by Rule for Military Commission (RMC) 202.

4. The accused was born on August 7, 1975 in Adelaide, Australia.

5. In or about the middle of May 1999, the accused traveled to Tirana, Albania from Japan and joined the Kosovo Liberation Army (KLA), a paramilitary organization fighting on behalf of Albanians. The accused completed a four-week basic military training course at a KLA camp before returning to Australia on or about 27 June 1999.

6. After returning to Australia, the accused converted to Islam in September of 1999. In or about November 1999, he traveled to Pakistan where, in the middle of 2000, he joined a terrorist organization known as Lashkar-e Tayyiba (LET), meaning "Army of the Righteous" or "Army of the Pure;" designated a Foreign Terrorist Organization (FTO), on 26 December 2001, pursuant to Section 219 of the Immigration and Nationality Act.

7. The LET is the armed wing of Markaz-ud-Daawa-wal-Irshad (MDI), (a/k/a Markaz Jamat al Dawa), a group formed by Hafiz Mohammed Saeed and others.

8. The LET's known goals include violent attacks against property and nationals (both military and civilian) of India and other countries in order to occupy Indian-controlled Kashmir and violent opposition of Hindus, Jews, Americans, and other westerners.

9. Starting around 1990, LET established training camps and guest houses, schools, and other operations primarily in Pakistan and Afghanistan for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of India and other countries.

10. Since 1990, members and associates of LET have conducted numerous attacks on military and civilian personnel and property in Indian-controlled Kashmir and in India, itself.

11. On or about April 23, 2000, in a bulletin posted on the internet, LET claimed that it had recently killed Indian soldiers and destroyed an Indian government building, both located in Indian-controlled Kashmir.

12. After joining LET, the accused trained for two months at LET's Mosqua Aqsa camp in Pakistan. His training included weapons familiarization and firing, map reading, land navigation, and troop movement.

13. Following the training at Mosqua Aqsa, the accused, along with LET associates, traveled to a border region between Pakistani-controlled Kashmir and Indian-controlled Kashmir where he engaged in hostile action against Indian forces by firing a machine gun at an Indian Army bunker.

14. In or about January 2001, the accused, with assistance from LET, traveled to Afghanistan and attended al Qaeda training camps.

15. Al Qaeda ("The Base") was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

16. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaeda.

17. A purpose or goal of al Qaeda, as stated by Usama bin Laden and other al Qaeda leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and to oppose U.S. support of Israel.

18. Al Qaeda operations and activities have historically been planned and executed with the involvement of a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

19. Between 1989 and 2001, al Qaeda established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

20. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

21. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

22. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

23. In or about 2001, al Qaeda's media committee, which created the Media Foundation As Sahab ("The Clouds"), orchestrated and distributed multi-media propaganda detailing al Qaeda's training efforts and its reasons for declaring war against the United States.

24. Since 1989, members and associates of al Qaeda, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the USS COLE in October 2000; and the attacks on the United States on September 11, 2001.

25. On or about October 8, 1999, the United States designated al Qaeda ("al Qa'ida") a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, and on or about August 21, 1998, the United States designated al Qaeda a "specially designated terrorist" (SDT), pursuant to the International Emergency Economic Powers Act.

26. In or about January 2001, the accused traveled to Afghanistan, with the assistance of Lashkar-e Tayyiba (LET), to include LET's recommendation, funding, and transportation, in order to attend al Qaeda terrorist training camps.

27. Upon entering Afghanistan, the accused traveled to Kandahar where he stayed at an al Qaeda guest house and met associates or members of al Qaeda. While attending al Qaeda's training courses, the accused would use the *kunya*, or alias, "Abu Muslim Australia," "Abu Muslim Austraili," "Abu Muslim Philippine," or "Muhammad Dawood;" and later was referred to as "David Michael Hicks."

28. The accused then traveled to and trained at al Qaeda's al Farouq camp located outside Kandahar, Afghanistan. In al Qaeda's eight-week basic training course, the accused trained in weapons familiarization and firing, land mines, tactics, topography, small unit fire, maneuver tactics, field movements, and other areas.

29. In or about April 2001, the accused returned to al Farouq and trained in al Qaeda's guerilla warfare and mountain tactics training course. This seven-week course included: marksmanship;

small team tactics; ambush; camouflage; rendezvous techniques; and techniques to pass intelligence and supplies to al Qaeda operatives.

30. While the accused trained at al Farouq, Usama bin Laden visited the camp on several occasions. During such visits, any weapons the trainees had were removed from them and they were seated as a group to hear bin Laden speak in Arabic. During one visit, the accused asked bin Laden why there were no training materials provided in the English language.

31. After the accused completed his first two al Qaeda training courses, Muhammad Atef (a/k/a Abu Hafs al Masri), then the military commander of al Qaeda, summoned and individually interviewed certain attendees. The accused was interviewed about: his background; knowledge of Usama bin Laden; al Qaeda; his ability to travel around the world, to include Israel. After this interview with Muhammed Atef, the accused attended al Qaeda's urban tactics training course at Tarnak Farm.

32. In or about June 2001, the accused traveled to Tarnak Farm and participated in the training in a mock city located inside the camp, where trainees were taught how to fight in an urban environment. This city tactics training included: marksmanship; use of assault and sniper rifles; rappelling; kidnapping techniques; and assassination methods.

33. In or about August 2001, the accused participated in a four-week al Qaeda course on information collection and surveillance at an apartment in Kabul, Afghanistan. This surveillance training included weeks of: covert photography; use of dead drops; use of disguises; drawing diagrams depicting windows and doors; documenting persons coming and going to and from certain structures; and, submitting reports to the al Qaeda instructor, who cited the al Qaeda bombing of the USS Cole as a positive example of the uses for their training. The course also included practical application where the accused and other student operatives conducted surveillance of various locations in Kabul, including the former American and British Embassy buildings. During this training, the accused personally conducted intelligence on the former American Embassy building.

34. After the surveillance course, the accused returned to Kandahar, where he received instruction from members of al Qaeda on the meaning of *jihad*. The accused also received instruction from other al Qaeda members or associates on their interpretation of Islam, the meaning and obligations of *jihad*, and related topics, at other al Qaeda training camps in Afghanistan.

35. On or about September 9, 2001, the accused traveled to Pakistan to visit a Pakistani friend. While at this friend's house, the accused watched television footage of the September 11, 2001 attacks on the United States, and the friend has said he interpreted the accused's gestures as approval of the attacks. The accused had no specific knowledge of the attacks in advance.

36. On or about September 12, 2001, the accused returned to Afghanistan to join with al Qaeda. The accused had heard reports that the attacks were conducted by al Qaeda and that America was blaming Usama bin Laden.

37. On or about the first of October, Saif al Adel--then al Qaeda's deputy military commander and head of the security committee for al Qaeda's *shura* council, who was organizing al Qaeda forces at locations where it was expected there would be fighting against the United States, Northern Alliance, or other Coalition forces--informed Mr. Hicks that he could go to three different locations to position himself with combat forces (city, mountain, or airport). Mr. Hicks chose to join a group of al Qaeda and Taliban fighters near the Kandahar Airport.

38. The accused traveled to the Kandahar Airport and was issued an Avtomat Kalashnikova 1947 (AK-47) automatic rifle. On his own, however, the accused armed himself with six (6) ammunition magazines, approximately 300 rounds of ammunition, and three (3) grenades to use in fighting the United States, Northern Alliance, and other Coalition forces.

39. On or about October 7, 2001, when the Coalition Forces initiated a bombing campaign at the start of Operation Enduring Freedom, the accused had been at the Kandahar airport for about two weeks and entrenched in the area where the initial military strikes occurred. At this site, other al Qaeda forces were in battle positions based a couple of hundred meters in all directions, and were under the direction of another al Qaeda leader.

40. On or about October 10, 2001, after two nights of bombing, the accused was reassigned and joined an armed group outside the airport where he guarded a Taliban tank. For about the next week the accused guarded the Taliban tank, and every day received food, drink, and updates on what was happening from the fat al Qaeda leader in charge who was on a bicycle.

41. The accused heard radio reports that fighting was heavy at Mazar-e Sharif, that Kabul would be the next target, and that western countries, including the United States, had joined with the Northern Alliance.

42. The accused implemented the tactics that he had learned with al Qaeda and attempted to train some of the others positioned with him at Kandahar. After apparent resistance to his training, and no enemy in sight at the time in Kandahar, the accused decided to look for another opportunity to fight in Kabul.

43. On or about October 17, 2001, the accused told the fat al Qaeda leader of his plans, and then traveled to Kabul. The accused also took his weapon and all his ammunition.

44. The accused arrived in Kabul and met a friend from LET, who told the accused he was headed to the front lines in Konduz. The accused asked to travel with his LET friend.

45. On or about November 9, 2001, the accused and his LET friend arrived at Konduz, the day before Mazar-e Sharif was captured by the Northern Alliance and U.S. Special Forces. Sometime after the accused arrived at Konduz, he went to the frontline outside the city for two hours where he joined a group of al Qaeda, Taliban, or other associated fighters, engaged in combat against Coalition forces. The accused spent two hours on the frontline before it collapsed and was forced to flee. During the retreat, the accused saw bullets flying and Northern Alliance tanks coming over the trenches.

46. The accused spent two to three days walking back to Konduz while being chased and fired upon by the Northern Alliance.

47. The accused made it safely back to the city of Konduz, where he approached some of the Arab fighters and asked about their plans. The Arabs fighters said they were going to stay in Konduz in order to fight to the death. The accused, instead, decided to use his Australian passport to flee to Pakistan.

48. The accused then moved within Konduz to a *madafah*, an Arab safe house. The accused wrote a note for his LET associates that said not to come look for him because he was okay, and then ran away from the safe house. At this time the accused still had his weapon, and went to find a shopkeeper that he had met a few days earlier in the city market area. The shopkeeper took the accused to his home where he stayed for about three weeks. Later, the shopkeeper gave the accused some clothes and helped the accused sell his weapon so he could pay for a taxi to Pakistan.

49. In or about December 2001, one week after the control of Konduz changed from the Taliban to the Northern Alliance, the accused took a taxi and fled towards Pakistan. However, the accused was captured without any weapons by the Northern Alliance in Baghlan, Afghanistan.

50. The accused acknowledges that he has never been the victim of any illegal treatment at the hands of any personnel while in the custody or control of the United States. This acknowledgement includes the entire period after the accused was captured and transferred to U.S. custody in Afghanistan on or about 15 December 2001. The acknowledgment also includes the entire period for which the accused was detained by the United States at Guantanamo Bay, Cuba. The term "illegal treatment" means any treatment in violation or contravention of Common Article III of the Geneva Conventions, the Convention Against Torture, the Detainee Treatment Act, and Title 18 of the U.S. Code.

REDACTED _____ 29/3/07
DAVID M. HICKS — DATE
Accused

REDACTED _____ 29 MAR 07
MICHAEL D. MORI — DATE
Major, U.S. Marine Corps
Detailed Military Defense Counsel

REDACTED _____ 07 03 29
KEVIN M. CHENAIL — DATE
Lieutenant Colonel, U.S. Marine Corps
Prosecutor