

File No: TA4-01429

Toronto: December 6, 2004

IMMIGRATION AND REFUGEE BOARD

JEREMY DEAN HINZMAN
NGA NGUYEN
LIAM HINZMAN

CLAIMANTS

PRESIDING MEMBER: B. Goodman

J. House FOR THE CLAIMANTS

REFUGEE PROTECTION OFFICER: K. Dragaitis

MINISTER'S COUNSEL: J. Chisholm

CASE OFFICER: Rye

PRESIDING MEMBER: Okay, once again good morning everyone and welcome, especially on this snowy day. This is a hearing into the claims of Jeremy Hinzman, his wife Nga Nguyen and their child, Liam Hinzman (ph) for Convention refugee status and refugee protection. My name is Brian Goodman and I'm the member of the Refugee Protection Division of the Immigration and Refugee Board that's been assigned to be responsible for hearing and determining these claims.

Mr. Hinzman is represented by legal counsel and I'll ask him to introduce himself and to introduce the other people at the table with him.

COUNSEL: Yes, thank you very much, Mr. Member. My name is House, H O U S E, my initial is J for Jeffry and the people at the table, Nga Nguyen Hinzman who is Jeremy Hinzman's spouse.

PRESIDING MEMBER: Welcome to you.

COUNSEL: The little fellow there is Liam Hinzman, that's their child. Next to me is Jeremy Hinzman.

PRESIDING MEMBER: Hello, Mr. Hinzman.

COUNSEL: And on the right is Winona Ryman Ridgeman (ph) who assisted me at the last occasion and it will be my request that she be allowed to assist me on this occasion also.

PRESIDING MEMBER: Not a problem. Welcome to you too. The Minister is also represented by counsel. I'm going to ask her to introduce herself and to introduce the person seated beside her.

MINISTER'S COUNSEL: Yes, good morning. My name is Chisholm, C H I S H O L M, first initial J, Janet Chisholm, I'm representing the Solicitor General today and seated beside is Maryanne Zoric, she's with the Department of Justice. She will be assisting me today.

MS. ZORIC: Good morning.

PRESIDING MEMBER: Good morning.
Welcome to you.

MS. ZORIC: Thank you.

PRESIDING MEMBER: And to the right of Ms. Zoric is our Refugee Protection Officer and I'll ask her to introduce herself as well.

RPO: Good morning. My name is
Kristine Dragaitis, D R A G A I T I S.

PRESIDING MEMBER: Now, the role of the Refugee Protection Officer is neutral to the claim and her responsibility is to ensure that I, as member have all the information I require in order to make my decision. Now, there are some background information that's important to share with you today. First, I received applications from a number of media at the outset of this matter that the hearing be held in public and that the media be allowed to be present and in some cases to film the proceedings.

I received representations from those who made the application. I should mention that Mr. Hinzman supported the application of the media outlets and having reviewed the representations and the law I came to the conclusion on June 29th, 2004 that this hearing should be conducted in public. Now, that's unusual for a proceeding of the Refugee Protection Division as I'm sure you can understand why. As I mentioned at the pre-hearing conference which I'll get to in a moment, most people who apply for refugee protection are concerned that word of their application would get back to their country, the officials of their country of origin and that it will have a negative impact on them should they be required to return and also their families while they're here, but this is a different kind of hearing and I'm very pleased to be able to conduct it in public.

So I allowed the application. It was actually CBC's application at the outset to conduct the hearing in public subject to the measure that only non-disruptive audio equipment will be allowed in the hearing room during the proceedings and cameras will only be allowed in the hearing room when the hearing is not in process and my decision dated June 29th, 2004 was released to the applicants and to others who applied subsequently and I'm very pleased to see that everyone seems to have complied with the conditions.

This proceeding is an important proceeding for Mr. Hinzman and his family and also of course for the respondent and it's very important that all of us do everything we can to ensure that the hearing is conducted fairly and effectively and without disruption. Now, I'm going to make some suggestions as I did when we had the pre-hearing conference which was a public pre-hearing conference upon application of Mr. House. That was held on July 7th, 2002 (sic). The purpose of the pre-hearing conference which was jointly requested by Mr. House and by Ms. Chisholm was to deal with some preliminary issues to make this hearing more efficient and to ensure of course that it was fair. I'll deal in a moment with some of the other decisions that were made at the hearing, at the pre-hearing conference, but you're all sitting here so attentively and I hope that that will be the case throughout.

What I would like to caution against is constant comings and goings during the course of the hearing. It's disruptive to the parties, it's disruptive to me and I want to make sure that no one is distracted, everyone has a full and fair opportunity to give their evidence, to ask questions, et cetera, and so that being the case I had thought that perhaps we could have a mid-morning break, but we're getting started a little late. Maybe I'll hear from Mr. House and from Ms. Chisholm as to whether they believe a mid-morning break would be helpful.

I'm conscious that the media representatives who are here have deadlines and would like the opportunities to file reports. I said that at the pre-hearing and I want to make sure that I can help you do that rather than hinder you do that so that you don't have to come and go. So I'll hear first from Mr. House.

COUNSEL: Yes, Mr. Member, it does seem to me that a short mid-morning break would be appropriate. I understand first of all that there's the question of deadlines. There are also some elderly people in the audience who may find a short break of assistance, so that would be my suggestion.

PRESIDING MEMBER: Even some young people.

COUNSEL: There are some young people too, yes, including many members of the audience.

PRESIDING MEMBER: Not to mention one of the claimants.

COUNSEL: Right.

PRESIDING MEMBER: Ms. Chisholm?

MINISTER'S COUNSEL: I have no objection to a mid-morning break.

PRESIDING MEMBER: Okay. So, let's -- I think it's helpful if we decide now when the break will be so that everyone knows and we don't have them leaving before. You won't hurt my feelings, but I want to make sure that you have the opportunity to leave, give you enough time for those of you who have to do what you have to do and then come back. So, what do you say, Mr. House? What's a good time?

COUNSEL: Well, if you're going to until 1:00, would that be your plan, sir?

PRESIDING MEMBER: That would be my plan.

COUNSEL: I would say 11:30 to 11:40, something like that would be an appropriate time for a break.

PRESIDING MEMBER: Okay.

MINISTER'S COUNSEL: That's fine.

PRESIDING MEMBER: I'm going to say 11:30 to 11:45 because I think some of the media people may need more than ten minutes to file whatever reports they want to. Now, as I mentioned, the purpose of the pre-hearing conference which was requested by the parties was to do a number of things to help make this hearing run more efficiently and effectively.

At the pre-hearing we discussed what the main issues were and we agreed that they were as follows.

Is Jeremy Hinzman a Convention refugee by reason of a well-founded fear of persecution by the government of the United States and its military for reasons of political opinion, religion or membership in a particular social group, namely conscientious

objectors to military service in the U.S. Army in Iraq and that's the question posed under the Convention Refugee Section of the Immigration and Refugee Protection Act which is Section 96 of the Act.

The second question is the question posed under Section 97 of the Act, is Jeremy Hinzman a person in need of protection in that his removal to the United States of America would subject him personally to a risk of cruel and unusual treatment or punishment by the government of the United States and its military and we could include risk to life there as well and there are two sub-questions. Is he unable or because of that risk unwilling to avail himself of the protection of the United States and two, is the risk inherent or incidental to lawful sanctions unless imposed in disregard of accepted international standards.

So, those are the general questions that I have to answer at the end of the day here and in a moment we'll begin hearing evidence with respect to those issues after the Exhibits are admitted. Before I do that though there are a couple of preliminary matters. First of all, at the pre-hearing conference neither Ms. -- I don't believe Ms. Nguyen or Liam were present at the pre-hearing conference.

COUNSEL: That's correct.

PRESIDING MEMBER: And so, it was not possible at that time to designate someone to represent their interests. I raised the issue of designation at the pre-hearing conference. I believe, Mr. House, you indicated that you were going to speak to Mr. Hinzman?

COUNSEL: Yes, we would like Jeremy Hinzman to be designated, sir. Basically we have the sense that Liam may wish to leave fairly early in these proceedings and we would hope that Ms. Nguyen would be excused along with him and so the idea is that Mr. Hinzman would remain and represent their interests.

PRESIDING MEMBER: Okay. Let me deal first with the issue of designation. Mr. Hinzman, you realise that if I am to designate you, you must agree to act in the best interests of Liam?

CLAIMANT #1: Indeed, sir.

PRESIDING MEMBER: Okay. I should mention that the hearing, as you heard, isn't being filmed so that it's necessary that if you nod ---

CLAIMANT #1: Oh, pardon me.

PRESIDING MEMBER: --- that you say something to me.

CLAIMANT #1: Yes. Yes.

PRESIDING MEMBER: Okay, great. Thanks very much. Well, I hereby designate Jeremy Hinzman then to represents the interests of the infant child of Mr. Hinzman and Nga Nguyen, Liam Hinzman. I'll now deal with the issue of Liam's attendance. Since you, sir, have been designated, Mr. Hinzman, as his representative there is no need for Liam to remain. Now, Nga is in a different position in that she, as a party, has a right to remain here and it may be that she will be called as a witness by either Mr. House or by the Minister or by the Refugee Protection Officer.

I can't require her to stay, but she certainly has a right to say to hear what is being said and to participate fully in the proceedings. Normally where there is an infant child involved the parents make arrangements for someone else to take care of the child here somewhere in the waiting room while the hearing is proceeding. So, I'm going to turn it back to you, Mr. House.

COUNSEL: Well, I understand that that is often the procedure. I'm informed that Liam has a strong preference for his mother and that we would be -- it would be difficult to find someone else who will be able to be with him for a lengthy period of time other than his mother. Those are the considerations that are underlying this and we have volunteers who would be willing to take him, but it may be ineffective.

PRESIDING MEMBER: Okay. I'm going to ask, Ms. Nguyen, how you feel about this?

CLAIMANT #2: I prefer to take care of Liam if he needs to leave. Jeremy can speak on my behalf. We'll stay as long as possible.

PRESIDING MEMBER: Before I finalise this for the moment it's important that I tell you that your claims, because you are a family, have been automatically joined pursuant to Rule 49 of the Rules of the Refugee Protection Division passed under the Immigration and Refugee Protection Act and what that means is that although I will make separate decisions with respect to each of you, they are heard together, your claims are heard together, and the evidence of one of you can be taken into account with respect to the claim of the other and vice versa and in fact, when I pose the questions at the outset that I have to answer those questions apply equally of course to you and to Liam, not just to Jeremy.

However, your claims are dependent on or derivative from his claim as the principal claimant, but nonetheless, you are still a claimant and I still must reach a decision with respect to your claim and Liam's claim. So I'm going to ask you again, are you -- is it your wish then to leave or to be present? What do you prefer to do? What are your intentions?

CLAIMANT #2: If Liam needs to leave I will leave with him.

PRESIDING MEMBER: Okay. Well, Liam is certainly welcome to stay.

CLAIMANT #2: Yes.

PRESIDING MEMBER: And we've had wonderful hearings where minor claimants have not been disruptive at all in the proceedings. Sometimes I wonder why, but in any event, if he does become a problem and you feel that you have to leave I will then understand that. Is that all right with you, Ms. Chisholm?

MINISTER'S COUNSEL: Yes, of course.

PRESIDING MEMBER: Okay. We also discussed at the pre-hearing conference the disclosures that had been requested of Mr. Hinzman, many of which have not yet been received, and so although I don't intend to deal with it now, at some point when we deal with the order of questioning perhaps and figure out who's on first, so to speak, we're going to have to deal all of us with the issue of the disclosures that have not yet

been received, and in particular the military record of Mr. Hinzman which is an important document.

We also discussed the relevant rules of this Board, of the division, with respect to both disclosure and to the intention to call witnesses and with respect to the disclosure rule the time limits that are set out in the rule. With respect to witnesses the importance of advising the parties and the Board of witnesses intended to be called and providing a Will Say and that's another question that we'll have to deal with as well.

There were also some undertakings that you gave, Mr. House, with respect to letting the Board know whether certain things were or weren't going to happen or were or weren't obtained. That's another thing that we're going to have to deal with. We also discussed the order of proceeding and the relevant rule in that respect and the guideline of the Board, in particular Guideline 7 which deals with the conduct of proceedings and Guideline 7 very simply indicates that unless there are exceptional circumstances that the normal way to proceed will be that the Refugee Protection Officer will proceed first and in the event that there is no Refugee Protection Officer the member will proceed first and I indicated that I had not received anything to suggest that there were exceptional circumstances in this case, however I now have.

So, we now have an application by Mr. House which I'll deal with as a preliminary matter that he be permitted to proceed first which the rule does allow for and providing his reasons for that and also indicating that he has received the consent of counsel for the Minister that he be allowed to proceed first.

The transcript of the pre-hearing conference is a public document, just as the pre-hearing conference was and the hearing was, as will the transcript of these proceedings and the tapes of these proceedings. So this document that I'm referring to is available to you.

Most importantly we discussed the issues and the evidence that I would like to receive with respect to the issues as defined more narrowly than I defined the big question at the beginning and I, at the end of outlining what I believe the issues were and the evidence was, I asked the parties whether there was anything further that they wished to add and

they thought, no, you seem to have it right. So that was helpful.

I don't intend to review those issues at this time. They will become evident during the hearing and as I say, if you are interested in seeing what we decided the issues were then you can just get a copy of this.

The order of questioning by the way is dealt with at pages 54 and 55 and I must say that to be fair Mr. House didn't say that he wouldn't be making an application.

COUNSEL: Actually if I could interject here, Mr. Member? I did discuss the matter with Ms. Chisholm largely by way of e-mail and I've also now had a chance to discuss the matter with the RPO, Refugee Protection Officer, and I think I would be withdrawing that application and we will regress, if I can put it that way, to the normal state. I think on balance I would have difficulty showing the extraordinary circumstances that the guideline now requires.

PRESIDING MEMBER: Okay. The circumstances that you put forward -- let's deal with this now.

COUNSEL: All right.

PRESIDING MEMBER: We're an informal tribunal, we can deal with issues as they arise. I don't have the application in front of me, but my recollection is you applied on the basis that one, that I'd held, and I was just going to deal with that, also as a preliminary matter that evidence with respect to the legality of the U.S. incursion into Iraq would not be admitted into evidence because it was not relevant.

Now, it's important for those of you who are here attending this hearing to understand that I made no finding about the legality of the war. My finding was simply whether evidence with respect to the legality of the war, whether it was legal or illegal, was not relevant to my determination of these claims.

So, your first ground my understanding was that I'd already reached a decision in relation to part of your claim and that was one reason that you put forward. Now, the second reason was that you believed that the issues were complex and I'm assuming that that was originally one of the reasons that the Minister, although I'll hear from the

Minister's representative, that she agreed with you, that they are complex and so I'm just wondering what has changed?

COUNSEL: Well ---

PRESIDING MEMBER: Do you not believe that the issues are still complex?

COUNSEL: Oh, yes, I do. I do believe the issues are still complex. Basically I would say that I've had a conversation with the RPO and if I can put it that way, I'm satisfied that they're not so complex that she can't do it and in fact she seems, and assures me, that she's well and capably prepared. So, I honestly did not have a chance to communicate with her when I was dealing with Ms. Chisholm.

PRESIDING MEMBER: I see. I mean, I'm sure she feels the same way about you too.

RPO: Yes, I do as a matter of fact.

COUNSEL: At the beginning of the hearing, but we'll see at the end if she still feels that way.

PRESIDING MEMBER: Okay. Ms. Chisholm, I take it you have no objection to the withdrawal of the application?

MINISTER'S COUNSEL: I have no objection.

PRESIDING MEMBER: Okay. Well, that's good because then I don't have to deal with the failure to provide notice, adequate notice. Okay. So, the order of questioning will then be as per Guideline 7 which is the way we normally proceed and that is that the Refugee Protection Officer will proceed first, that the Minister will proceed second, that I will proceed third if there's anything left to ask, that Mr. House will wrap up. Is that all right with everyone?

COUNSEL: Yes, sir.

PRESIDING MEMBER: Okay. What I propose to do now is to turn to the issue of the Exhibits and in so doing once again I wanted to mention that one of the issues

that arose during the pre-hearing conference was whether evidence with respect to the legality or illegality of the U.S. incursion into Iraq and in particular, whether approval by the United Nations, the lack of approval by the United Nations Security Council for the actions of the U.S. military was relevant to the issues that I have to determine, which I outlined to you at the beginning of the hearing, and I received representations and submissions from the parties.

First from Mr. House, then reply from Ms. Chisholm and then again from Mr. House and I wanted to compliment you both on the quality of the submissions. I refer to them in detail in my decision and they were extremely helpful and the authorities to which you've referred were also very helpful.

At the end of the day I decided, and you should have a copy of that decision, that the evidence with respect to the legality of the war was not relevant and therefore would not be admitted and that has an impact obviously on the Exhibits that I'll be admitting.

I issued interlocutory reasons on November 12th, 2004. I would have liked to have issued them sooner, but the issue was a complex one and it required a great deal of research and I hope that my decision is clear and once again I'm sorry I was unable to release it before, although I must say that the final submission of Mr. House was received on September 15th, I believe. So, although it took some time, I don't believe it was an unreasonable time.

So, I'll be making my determination on these claims on both written documents I will enter as Exhibits in these proceedings and also on oral evidence, any oral evidence that is adduced at this hearing and what I propose to do first is to deal with the Exhibits. So I'm going to refer to the documents that have been received to date and indicate whether they will be admitted as Exhibits. If not, why not and then we'll number the Exhibits so that everyone is clear when they refer to a document what exactly it is.

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So, as I mentioned, what prompted the issue of the relevance of evidence with respect to the legality of the war in Iraq was the first document that I actually received from co-counsel, or associate counsel, Mr. Copeland (ph)?

COUNSEL: Yes.

PRESIDING MEMBER: And what I first received was a letter from Mr. Copeland, an affidavit and I think a curriculum vitae from a Law Professor at the University of Toronto Law School and which was the affidavit of Professor Juto Brunet (ph) and the letter was dated April 4th, 2004 and I think it's fair to say that in her affidavit Ms. Brunet concludes - and this is her academic opinion - she indicates on the legality of the military intervention in Iraq, that the military invasion was in violation of the prohibition of the use of force enshrined in Section 2(4) of the U.N. Charter. Given that evidence with respect to the legality, illegality of the war I have ruled is not relevant and will not be admitted I will not be admitting Mr. Copeland's letter of April 4th and the attachment.

Then on June 8th, 2004 I received a further letter from Mr. Copeland. When I say "I," the Board, and with that letter he enclosed another affidavit from another Professor of Law, this time from the University of Pittsburgh School of Law on the legality of the war and this was Professor Jules Lobel (ph) or Lobel. Again because of my ruling I will not be admitting either the letter or the affidavit.

On June 9th, 2004 Mr. Copeland wrote a further letter advising of letters that he had written to various Ministers of the Federal government. Well, to Mr. Graham, the Honourable Mr. Graham, Department of Foreign Affairs and International Trade, and once again I will not be admitting either the letter or the attachments.

Now, one of the most important documents that I look to is the claimant's Personal Information Form, or PIF, and the reason for that is that it not only contains basic information about the claimant, but as is the case here, it contains the claimant's story in his own words about why he left, in this case the United States, and what he fears should he return. Also usually it includes whom and -- whom he fears and why he fears returning to the United States in this case.

So, I'm going to ask counsel for the claimants to put before them the three Personal Information Form. In the case of Mr. Hinzman his own and Liam's and in the case of Ms. Nguyen her own, and in particular the signature page.

COUNSEL: Right.

PRESIDING MEMBER: Okay. Which is page 22.

COUNSEL: I now have a list of RPD documents. Is it page 22 on that? That's the one that I was going to show them.

PRESIDING MEMBER: It's actually your document.

COUNSEL: Right. I have several copies here, so. Here. This is page 22. I have Mr. Hinzman's.

PRESIDING MEMBER: Great. And if you could find Liam's as well?

COUNSEL: I don't find it, I'm sorry. Is there a copy that we could show him?

PRESIDING MEMBER: Oh yes.

RPO: I can show him my copy.

PRESIDING MEMBER: Thank you, Ms. Dragaitis.

RPO: You're welcome.

PRESIDING MEMBER: I have it here if you can't find it.

RPO: No, I have it.

PRESIDING MEMBER: Okay.

RPO: I don't have the original.

PRESIDING MEMBER: No, I have the originals. All right, you can show them a copy. It doesn't matter. And do you have Liam's as well?

RPO: Yes, I do have Liam's as well.

PRESIDING MEMBER: Okay. Well, if you could show that to Mr. Hinzman first. Mr. Hinzman, on

February 16th, 2004 it appears that you signed this document. I'm just going to ask you to confirm that the signature, not yet, I have the original if you would like to see the original, whether that is your signature on the Personal Information Form?

CLAIMANT #1: That is my signature, sir.

PRESIDING MEMBER: Thank you. And by providing your signature you indicate that the information provided in the form is complete, true and correct and that your declaration as the same force and effect as if made under oath. Was that true at the time?

CLAIMANT #1: That was true at the time, sir, and it is now.

PRESIDING MEMBER: And it is now. Thank you. And clearly you are able to read English and fully understand the contents of the form?

CLAIMANT #1: Yes, sir, I am.

PRESIDING MEMBER: Thank you, Mr. Hinzman. Now, you are the designated representative for Liam. Could you tell me, whose signature is on Liam's Personal Information Form?

CLAIMANT #1: It was my signature, sir.

PRESIDING MEMBER: Okay. And likewise, was the information in the form true and correct and complete when you signed the form?

CLAIMANT #1: It was when I signed the form, sir, as it is now.

PRESIDING MEMBER: Okay. And, Ms. Nguyen, I'm going to ask you the same question. There's a signature on page 22 of your form. Could you tell me whose signature that is, please?

CLAIMANT #2: That is my signature, sir.

PRESIDING MEMBER: And that's beside the date February 15th, 2004?

CLAIMANT #2: Yes.

PRESIDING MEMBER: And when you signed was the information true, complete and correct, to the best of your knowledge?

CLAIMANT #2: Yes, it was and still is.

PRESIDING MEMBER: Okay. And you are able obviously to read English and fully understand the contents of the form as well?

CLAIMANT #2: Yes, sir.

PRESIDING MEMBER: Thank you very much. So I'm going to enter the Personal Information Form of Mr. Hinzman as Exhibit C for Claimant 1, the Personal Information Form of Nga Nguyen as Exhibit C-2 and the Personal Information Form of Liam Hinzman as Exhibit C-3. I'm also going to admit as part of those documents, those Exhibits, the documents that were attached to each of their Personal Information Forms.

In the case of Mr. Hinzman it includes not only identity documents, but also a number of military documents, for example, the documents with respect to his claim for non-combatant status with respect to the military, but there are a number of documents attached and in the case of both Nga and Liam it includes identity documents. So that will be Exhibits C-1, C-2 and C-3.

Now, just continuing on with the documents that were submitted for the claimants I received on November 30th, 2004 three volumes of materials and let me say first that obviously these documents were not submitted within the time limits anticipated by the rules, but having reviewed most of the documents, and I'm going to deal with just the first, Part 1 and Part 2, because we normally don't admit, as I mentioned at the pre-hearing conference, legal material. Although I appreciate it we don't admit it as Exhibits. That much of the information in Exhibit -- in Part 1 and Part 2 is very recent information.

For example, about the situation in Iraq as recently as the last week of November and that being the case I'm assuming, Mr. House, that your position would be that it was not possible for you to comply with the rules?

COUNSEL: Yes, that's correct, sir. I might just add one detail. You indicated that your interim reasons were issued on the 12th of November. In fact, I attended here. I was alerted to their existence on -- that was a Friday. The 12th was a Friday. I was alerted to their existence on Monday afternoon and I came here Tuesday morning and they had been sent out by mail, so I only got them on Thursday, although I will say that Ms. Chisholm did send me unofficially a copy before then.

So, part of the reason that some of these documents are a bit late is that there were fewer than 20 days from the time of your reasons until they were prepared and they prepared in part as a result of the focus that your reasons indicated was appropriate. They do contain information up until probably the 29th and 30th of November, and so they were so recent that I do request that they be admitted on the basis that it's necessary and I believe my friend is not objecting to their admission. So I would ask that they be admitted on that basis.

PRESIDING MEMBER: Okay. Just with respect to the date of the issuance of the decision I had requested the case officer to contact as soon as possible the parties to let them know that the decision was available and I know that the case officer in this case did that on Monday, I think it was. It was either Friday or Monday.

COUNSEL: It was Monday, but I came in Tuesday morning at 8:30 and he couldn't be found. By the time he was found it happened that the materials had been sent out by ordinary mail, so although I had been told that I could pick them up I couldn't pick them up. I don't put too much weight on that because as I say, Ms. Chisholm did provide me with an unofficial copy of the reasons so I had good reason to know what the decision was by, I think by Tuesday morning.

PRESIDING MEMBER: Okay. Well, I certainly wanted you to know that I did my best to make sure ---

COUNSEL: I know.

PRESIDING MEMBER: --- you were able to get the reasons as soon as possible and but for the fact that I think he left the message on Friday, you were here on Friday, that Friday, and therefore, you know, he couldn't reach you. That you would have been able to pick them up if you'd checked your messages, but be that as it may, I accept your explanation that you got it, but there was every intention on my part I can tell you to get the decision and reasons to you as soon as possible.

COUNSEL: Mr. Member, I think I can speak for myself, Ms. Chisholm and I don't want to speak for you, but I think all of us have tried very hard to have this hearing go ahead today even though there were some short deadlines.

PRESIDING MEMBER: Great. Well, I'm going to ask Ms. Chisholm now whether she takes any position with respect to the late, my late receipt of these documents. Late in the sense that it's not in accordance with the rule. The rule, of course, does allow me to make exceptions to it in appropriate circumstances.

MINISTER'S COUNSEL: Yes, Mr. House and I have been communicating off the record quite extensively up until the time of the hearing and we had agreed, even before we received your decision, that the impact of your decision might not put us in a position immediately to be able to disclose the material that we needed. So we had spoken unofficially saying that if either of us had documents that did not comply with the 20 day rule we would not necessarily object to them provided that we gave each other as much notice as possible and provided that they weren't documents that took us off guard and in this case Mr. House has disclosed material that is in enough time that I was able to deal with them and as well, they're not materials that took me by surprise and I was unable to prepare for with such notice.

PRESIDING MEMBER: And for the benefit of those of you here who obviously hadn't had a chance to see the documents the documents I'm referring to are Part 1 and Part 2 of U.S. War Crimes In Iraq. That's what it's called. It has a number of parts to it. Tab 1 is Abuse, Torture and Murder of Iraqi Prisoners of War. Part 2, Reports From Human Rights Organisations. Part 3, U.S. Military Attacks on Civilian Population Centres and that is the end of the first volume.

The second volume continues with U.S. Military Attacks on Civilian Population Centres. It also deals with then part 4, Impact of War on Children's Health and Civilian Death Rate. Part 5, U.S. Military Attacks on Hospitals, Clinics and Health Workers. Part 6, U.S. Military Attacks on Mosques and Religious Leaders. Part 7, Denial of Due Process Rights to Prisoners of War. Part 8, Failure to Protect Journalists, and finally, part 9, World Opinion on U.S. War Crimes in Iraq. So, I'm going to admit this document as Exhibit C-4. That is both parts, Part 1 and Part 2.

I know there were some other late documents that were received, but I don't believe they were from you, Mr. House. Is that right?

COUNSEL: I don't believe they were.

PRESIDING MEMBER: Okay.

MINISTER'S COUNSEL: Sir, I think there was one other thing and that was your letter regarding the witness. I don't know if that's just properly disclosed or if you want to deal with it now, but that was just received.

COUNSEL: Yes, I don't think it's really disclosure, but I did provide a summary of a proposed witness, Staff Sergeant Jimmy Massey. That was done as soon as I could finalise his travel arrangements.

PRESIDING MEMBER: Yes.

COUNSEL: I don't believe it's really something that I need to disclose, although I know my friend has a copy of it. Would it normally be an Exhibit?

PRESIDING MEMBER: Well, normally it would be an Exhibit and I certainly can admit it as an Exhibit. I do have it here. Just so we're clear though as to what the rule is with respect to witnesses, it is an issue of disclosure, but it's not obviously an issue of disclosure of a document, it's an issue of a disclosure of your intention to call a witness and this is covered in the rules in the sections dealing with disclosure and it's Rule 38 and it says,

"If a party wants to call a witness the party must provide in writing to any other party and the division the following information; the witness's contact information, the purpose and substance of the witness's testimony, et cetera, the time needed for the witness's testimony, the party's relationship to the witness." In the case of an expert witness certain things, and if the party wants the party to testify by video-conference or telephone and, "that the witness information must be provided to the division together with a written statement of how and when it was provided to any other party and the document provided under this rule must be received by its recipient no later than 20 days before the hearing."

So, again it's really an issue of fairness and one of courtesy and it goes on to say that, "If a party does not provide the witness information as required under this rule the witness may not testify at the hearing unless the division allows the witness to testify." Obviously the purpose of the rule is, as is in other judicial proceedings, is to ensure that parties and the person adjudicating aren't taken by surprise. That they have enough time to understand why the person is being called, what it is that the person it's alleged will add through his testimony or her testimony and to prepare to be able to effectively examine and cross-examine the witness.

I'm just wondering, Mr. House, why we received such late notice?

COUNSEL: Well again, sir, first of all Sergeant, Staff Sergeant Massey, the essence of his testimony is actually included in volume 1 of the disclosure which was received by the Board on June 17th, 2004 and that's at tab 20. It was not -- sorry? It was not until your ruling that it was decided that the focus of the hearing had changed and it became then necessary to ascertain whether Mr. Massey, or Sergeant Massey, was available.

That was done in as expeditious manner as possible and I actually did provide my friend notice, informal notice, before the formal notice was written up indicating to her that we expected to call Staff Sergeant Massey and indicating to her that the essence of the testimony was contained in tab 20 of volume 1. The document that I subsequently provided does include, excuse me, the contact information for Sergeant Massey.

So, I apologise to the Board again that the formal documentation was not provided within the 20-day notice. I do think that there were extenuating circumstances which led to that consequence and I think it would be fair to say that as well what Ms. Chisholm had said applies here also. That we spoke about the possibility of witnesses once your decision had been made known. She was at one point thinking of calling witnesses, at least it was a possibility and she and I agreed that if so we would provide the materials to one another as quickly as humanly possible. I tried to do that and I hope that it has not caused any difficulty to the Board. In any event, basically that's the position.

PRESIDING MEMBER: Okay. Well, I appreciate that. I think that -- well, I guess we'll have to wait to hear the testimony and obviously notwithstanding that the notification is late and the notification was not made by way of application, I'm assuming that it will not simply be a repeat of what we already have which you pointed out which is at tab 20?

COUNSEL: Well, it will be partly that, but there will be some further information.

PRESIDING MEMBER: Okay, because clearly we don't need -- we already have the document. There's also been recent interviews picked up by the media as well.

COUNSEL: Well, I think though, sir, even though we have a substantial amount of what Sergeant Massey has said to the press in the past and it is material that I provided earlier on, in my submission Mr. Hinzman ought to have the right to have a living witness because that gives a certain emphasis to matters. There's a lot of material here and in my view his is particularly relevant and making him subject to cross-examination if my friends wish to cross-examine, in my view would heighten the reliability and the relevance of his evidence. So that would be my submission on that point.

PRESIDING MEMBER: Ms. Chisholm, what do you say?

MINISTER'S COUNSEL: I received notification from Mr. House on this witness last week and my issue with the witness is not at all related to the timing of the disclosure. I was more concerned after reading his Will Say about the relevance. Because Sergeant Massey isn't an expert, and I

think it's fair to say he's not being called as an expert, he's not a member of the same wing of the military as Mr. Hinzman is. Mr. Massey is a part of the Marines and Mr. Hinzman was part of an airborne troop that was attached to the army.

So my concern was how much probative value Mr. Massey would have, Sergeant Massey would have to offer. He can't -- he won't be in a position to discuss the general military approach in Iraq because he's not an expert and he can't -- in the Minister's submissions he can't testify as to what Mr. Hinzman could have been expected to do because he's not a member -- he's not a similarly situated person in the army, he's a Marine as opposed to an airborne parachutist and I mean, unless he wants to testify -- the only thing I could find in tab 20 that I felt was relevant how the army reacted when there was allegations that he brought forward that there were crimes against humanity and war crimes being perpetrated.

I think that that is something that the Board might want to hear evidence on but in terms of testifying as to what Mr. Hinzman could have feared or what he would have been expected to do or the general U.S. approach to this conflict, I think that we should really focus on what the relevant testimony would be and the Minister submits it would relate specifically to how the military reacted to his allegations and not relate to what Mr. Hinzman himself could have been expected to do or how the U.S. approached the entire conflict.

PRESIDING MEMBER: Ms. Dragaitis, any observations?

RPO: The only -- I agree generally with the Minister's comments. The only additional thing I would suggest is that I'm not sure what further information there is that counsel expects Sergeant Massey to testify to because the Will Say in my view is pretty close to what the interview was that's in counsel's disclosure. So we already have that before the Board and if there is something further it should be in the Will Say.

PRESIDING MEMBER: I think -- well, we heard what Mr. House said, that is the value of calling him as a witness is really twofold. One is that we have a live human being, aside from Mr. Hinzman and perhaps his wife who will be testifying, and secondly that he will be available for cross-examination to test the reliability of his evidence.

With respect to the concerns of Ms. Chisholm, it seems to me that those questions go to the weight that I ought to attach to the evidence and not the relevance of the evidence. The law is clear that the test for relevance is really, it's a very broad and wide test and at this point I'm not prepared to -- as opposed to the issue of the legality of the war which was to me a legal issue that could be determined based on submissions, I'm not prepared to rule in advance of hearing evidence that it's not relevant.

So what I propose to do is hear the evidence of Sergeant Massey and then when it's time to receive the submissions and observations of counsel and of the Refugee Protection Officer you will have an opportunity to argue what weight I ought to attach to the evidence in light of the factors mentioned by Ms. Chisholm and any other factors. So I will then admit the letter and Will Say as our next Exhibit, which is C-5 and I believe that those are all of the documents then for the claimants?

COUNSEL: Yes, the ones that have been provided subsequent to June 17th.

PRESIDING MEMBER: I'm going to refer now to the documents received from the Minister.

MINISTER'S COUNSEL: Before you go on have we entered the Exhibits volumes 1 through 4 from July 2004? Are you going to?

COUNSEL: Yes, I would like them to be entered.

PRESIDING MEMBER: Yes, those are part -- for some reason I don't have them in my file. Perhaps the RPO does.

COUNSEL: You did have them on the last occasion.

PRESIDING MEMBER: No, I know.

COUNSEL: And I think it was indicated -- if I recall correctly I think it was indicated that they would be made Exhibits at ---

PRESIDING MEMBER: Yes.

COUNSEL: --- this hearing.

PRESIDING MEMBER: That's right.
That's exactly what was said and that's why this says volume 5.

COUNSEL: Yes.

PRESIDING MEMBER: And it continues to be documentary evidence. Can I just see the index so I can let people know what it consists of? Thanks a lot.

MINISTER'S COUNSEL: Some parts of it are not going to be relevant based on what you've already ruled, but there are other parts I assume counsel will rely on.

PRESIDING MEMBER: So, volume 1 deals with Background Facts, Intervention in Iraq and Conscientious Objector. I'm not going to rule that the articles with respect to the intervention in Iraq are irrelevant to the issues before me because I think that in my view they are relevant with respect to the background to how it was the United States ended up in Iraq, but the issues as to the legality of the war, evidence with respect to that will not be admitted.

Volume 2, The Human Rights Situation in Iraq, and that's all of volume 2. A number of articles. Volume 3, there are -- this is a legal document, a document that includes both legal instruments, international instruments such as the Charter of the United Nations, the Geneva Conventions 3 and 4, the Status of the Office of the United Nations Human Rights Commissioner, the Uniform Code of Military Justice, et cetera, and there's a section on Conscientious Objector. Once again, these are legal documents and United Nations documents.

There are legal opinions, some of which deal with the legality of the war, and those will not be admitted as I mentioned. Items 14 and 15 are the two affidavits that I mentioned earlier from the Law Professors and then there are legal articles and the legal articles to the extent that they're legal matters, once again we normally don't admit law. I'm not sure whether there are -- some of these relate also to the legality of the war. So, with the exception of the Section on

legal opinions which deals with the legality of the war and any other articles that deal with that issue, all of volume 3 will be admitted.

MINISTER'S COUNSEL: What number will that be, Mr. Member? C?

PRESIDING MEMBER: Well, I mean, they're all -- we may as well have them all as Exhibit C-3. We'll just deal with them by volume number.

MINISTER'S COUNSEL: Okay.

PRESIDING MEMBER: C-4, sorry.

MINISTER'S COUNSEL: Okay, that's fine. Thank you.

PRESIDING MEMBER: C-4. And the next disclosure is again case law, International Case Law and Canadian Case Law, and once again I wanted to compliment counsel, both of you, for agreeing to share with each other case law from other than Canada which is often very difficult to obtain and you're to be commended for helping each other and I think it just goes to show, Mr. Hinzman, Mrs. Hinzman, that we're all here to make sure that you get the fairest possible hearing and counsel are doing their utmost to do that as well.

So, that will all be part of Exhibit C-4. We'll do it by volume number. So, C-4-1, C-4-2, et cetera. Thank you for reminding me. I didn't have to carry them downstairs.

MINISTER'S COUNSEL: We just have one other thing. We have C-1 through 5 and then we have the legal material, the latest one on November 30th. Mr. House disclosed, as well as volume 5-1 and 2, he disclosed another package called Legal Materials.

COUNSEL: That wouldn't have to be made an Exhibit.

PRESIDING MEMBER: No.

COUNSEL: It's just for your reference and for my friend's reference.

MINISTER'S COUNSEL: I'm wondering if we can though so just when we refer to it it's easier to refer to? Either give it a C number or call it volume 6.

PRESIDING MEMBER: Well, I don't intend to admit it, but you can call it volume 6.

MINISTER'S COUNSEL: All right, that's fine. Thank you.

PRESIDING MEMBER: Okay. And I believe those are all of the Exhibits now for the claimants. Exhibit M-1 will be the notice of intention to participate of the Minister dated June 17th, 2004 including the evidence, the Minister's evidence, bearing the same date, the evidence the Minister intends to rely on in support of the intervention and I should make it clear for those of you who aren't aware of this and weren't at the media briefing.

The Minister has not intervened to exclude Mr. Hinzman and his family as refugee claimants. So, there are Sections of an appendix to the Charter that allow for exclusion under certain circumstances. The Minister has not intervened to exclude, but simply to participate in the proceedings.

Then there's Exhibit M-2, a letter from counsel to the Minister, counsel to the Minister, dated June 18th, 2004 and attachment confirming the claimant's lack of a criminal record in the United States and that confirmation was dated June 17th, 2004.

Then as I mentioned before the letter from counsel for the Minister, copy to counsel for the claimant and the Board requesting the pre-hearing conference. That will be Exhibit M-3. Exhibit M-4 will be the request for postponement dated September 28th, 2004 from counsel for the Minister, which I granted and which was consented to by Mr. House.

Exhibit M-5 will be the volume of material that the Minister submitted, except for the case law dealing with the court martial case law which is at the bottom, items 13 through 20. If we're going to be consistent we shouldn't admit that.

MINISTER'S COUNSEL: Mr. Member, there's some concern that foreign law has to be proved as evidence. It's not the same as Canadian law and it should be admitted as evidence I'm told by my friend, Ms. Zoric. I don't know if you want to exclude that or not, but it should be -- I'm told that the Federal Court will look at foreign jurisprudence as something that needs to be proven and as such if we're relying on it we have to submit it as evidence as we would anything else.

PRESIDING MEMBER: And how are you going to prove it?

MINISTER'S COUNSEL: Well, it has to be before you as an Exhibit before we can prove it. To prove its existence. We can't just ask you to refer to it and take judicial notice of it is what I'm saying.

PRESIDING MEMBER: Well ---

MINISTER'S COUNSEL: This is what I've been advised, so ---

PRESIDING MEMBER: I must say that that's the first time I've heard that in relation to this tribunal. We're not a court and certainly there's no rule or guideline of the Board to that effect. If you're telling me that the Federal Court requires it I don't know what it adds to make it an Exhibit because -- just because I make it an Exhibit doesn't prove that it actually is the decision that it says it is.

MINISTER'S COUNSEL: I think that the issue might be that you're not -- the judicial notice that you take of things like the Canadian Criminal Code and Canadian jurisprudence are considered within your jurisdiction, but perhaps you can't take judicial notice of things outside of Canadian law and jurisprudence and so that's why there's some concern it should be admitted as an Exhibit, just so that it can be referred to. It doesn't go to its authenticity or voracity, but rather not how you know its existence, whether or not it's by judicial notice or by acknowledging it's an Exhibit.

COUNSEL: If I could just add here, I think perhaps during the break it might be useful if I speak to my friend about this because she's just now indicated that it doesn't go to its authenticity or voracity and I have some concerns because normally proving a foreign statute requires a

witness to prove a foreign statute. So, I would like with your permission to have an opportunity to discuss that with her.

MINISTER'S COUNSEL: Well, the Canada Evidence Act talks about how -- what we accept as in terms of foreign legislation and foreign law. I just don't know if the Canada Evidence Act applies to you, Mr. Member.

PRESIDING MEMBER: Well, I'll tell you what. I'm going to reserve judgement on it and I'll let you talk and I may have a conversation and let you know what the result of that conversation is with one of the lawyers is here. Obviously I'll let you know what the result of the conversation is. I mean, I have no problem with entering it, it's just that we normally don't do that. We normally -- and if we were to do it then one would expect that there would be either a requirement, a rule about it or a guideline which there isn't and if in fact it's something we should be doing then maybe it should be in the rules. Maybe we need a rule. Just what we need, another government rule.

COUNSEL: I'm going to quote you back on that during this hearing.

PRESIDING MEMBER: So, sure, let's -
- I'll reserve judgement on whether -- and obviously if in fact my finding is that -- my decision is that all foreign law should be admitted then we'll admit all of the cases and all of the ---

COUNSEL: Mr. Member, could I just add you haven't said anything about the timing of that and I just want to make clear on the record that I'm not the only one with late materials. My friend is late and we kind of agreed on that as we've said, but you haven't mentioned it in reference to her materials.

PRESIDING MEMBER: I haven't got around to it.

COUNSEL: Okay, sorry.

PRESIDING MEMBER: And that's because I'm trying to find a letter that was sent with it. That's the other thing about material that's filed late, is that it doesn't get put in the file in an orderly way and the result is that it's often difficult to find, but it was attached -- the

covering letter is dated December 2nd, 2004 and I'm going to ask the same question of Ms. Chisholm to be fair and even-handed. Why she was unable to file this information in accordance with the rule?

MINISTER'S COUNSEL: Are we speaking about M-5 or the article dated December 2nd?

PRESIDING MEMBER: Well, let's start with M-5.

MINISTER'S COUNSEL: M-5, the information related to Penalties for Desertion and Absence Without Leave. Yes, of course. Most of the information was put together after your ruling because it wasn't clear how heavily the issue of the penalties for desertion would weigh. If the legality had been relevant the penalty might not have been as relevant, so once that ruling came in we put this package together.

A lot of it is an overlap to the information provided by counsel and by the RPO. They both put together excellent packages regarding the U.S. law. This was merely to supplement their package in terms of the Absence Without Leave provision. Some of them are actual repeats and the case law at tabs 13 through 18 was provided as a matter of courtesy. As you stated earlier there's no obligation to disclose case law, but counsel and I had agreed at the pre-hearing conference that when we were going to be relying on foreign law we would disclose that to one another as a matter of courtesy. So, that's the reason why the M-5 disclosure was indeed five days late.

In regard to the December 2nd ---

PRESIDING MEMBER: Yes?

MINISTER'S COUNSEL: --- the information I received from counsel on November 30th indicated that -- and then subsequently the information as well about the witness that I received was putting at issue the act or the acts that the U.S. military had engaged in in Iraq and I, in going through all of this, found no information related to Mr. Hinzman's battalion in particular. They were related to military police. They were related to other battalions and so at that point in time I conducted a search in order to determine if anything had been reported on the acts of Mr. Hinzman's battalion in ---

PRESIDING MEMBER: That's the 82nd Airborne Division?

MINISTER'S COUNSEL: The 82nd Airborne Division and I do believe he was a member of the 1st Brigade. So that is why that piece of information came about on December 2nd. It was in response to a lack of information on the specific activities that Mr. Hinzman's specific unit engaged in in Iraq and under the rules, as you know there's a shorter time when you're providing information in response to other people's materials. So it was provided as soon as I could get it after I realised that this information was required.

PRESIDING MEMBER: Any comments?

COUNSEL: I think my friend is being fair in what she says with respect to the foreign law, although I had not thought it was going to be made an Exhibit, but certainly with the exception of that element I agree with what she said.

With respect to the December 2nd material I will tell you now that as a result of receiving what I did what I think we can call Googling and it may be that tomorrow I'll have something else that came and if so we can address it at that point, but I don't object to my friend's late disclosure of the December 2nd materials.

PRESIDING MEMBER: That's fine. Well, I actually was going to mention that, you know, events seem to be in some ways overtaking us and I'm sure that you are all aware of the recent recall of the 82nd Airborne and that news was I think in the last two or three days. That the 82nd Airborne is among the 1,500 I think it is troops that have been recalled to Iraq for another term of service. So, when you Google if you could make sure that you include that that is helpful and I think will indicate sort of what the current status is with respect to the 82nd Airborne.

COUNSEL: Mr. Member, at some point it may be useful if you'd give us some direction as to how we should deal with the fact that there is a tendency to be overtaken by events. I expect there will be further reports and so on maybe in the next few days, but I don't know if you're intending to reserve or not. If you are, are we permitted to provide late dawning reports or would you prefer that we not do so?

PRESIDING MEMBER: Well, to be frank with you I haven't got that far ---

COUNSEL: Okay.

PRESIDING MEMBER: --- about whether I'll be reserving or not. As you know the normal rule is that we don't reserve. In terms of relevant material, I mean it's really a two-sided coin. On the one hand the test for Convention refugee as you know is a future looking test and to that extent having the most up-to-date information is extremely helpful. The other side of the coin is that if it's complex information it doesn't provide a great deal of time for the parties to prepare and to respond to the information, but certainly, if we proceed, as we proceed not if, as we proceed ---

COUNSEL: Thank you.

PRESIDING MEMBER: --- and in the event that there are items that counsel wishes to bring forward you can make the application at the appropriate time and I will consider it. I'm not undertaking to admit it, but I will consider whether or not it should be admitted, ---

COUNSEL: Thank you.

PRESIDING MEMBER: --- but it occurred to me that evidence with respect to the recent recall of the 82nd Airborne to Iraq is important information and we ought to have something about that especially in light, Ms. Chisholm, of your comments about the relevance of some of the other articles that don't relate to the 82nd Airborne. Okay. So that's M-5 and M-6. Was there anything further, Ms. Chisholm?

MINISTER'S COUNSEL: There was something further, but I think I need to speak to counsel about it perhaps on the break and I will ask him. There was one other thing we had discussed before.

PRESIDING MEMBER: Okay. Then Exhibit R-1, sorry R/A-1.1 -- now R/A, why we're dealing with RA now is we now get into the English/French issue, so it's the Refugee Protection Officer, it's Agente de Protection (ph) I think or something like that, so that's why it's R/A, but 1.1 will be the information received from Citizenship and Immigration Canada with respect to Mr. Hinzman. R/A-1.2 the information received

from Citizenship and Immigration Canada with respect to Nga Nguyen and 1.3 with respect to Liam Hinzman, and very simply, that's the information that was completed when they made their applications for Convention refugee status and refugee protection.

Then Exhibit R/A-2 will be the documents disclosed by the Refugee Protection Officer on -- I'm not sure I have the date when they were disclosed, but they deal with conscientious objection. There are a number of U.S. Military Code Directives. As Ms. Chisholm indicated there is some repetition in the documents. I don't in this case believe it's necessarily a bad thing because some of the documents are more recent, some are more complete than others with respect to the whole issue of conscientious objection and the procedure to be followed in the U.S. military in the event that someone wishes to apply for either exemption or non-combatant status and then the procedure with respect to, in the event someone surrenders himself or is apprehended what happens then and in the event someone is court martialled what the procedure is for court martialling and what the penalties are that are provided for.

There are also I believe some articles that contain interviews with Mr. Hinzman. There are also some -- there's some reference to those cases of servicemen who have surrendered or been court martialled and what the penalty is that they received and one of those actually is a case that -- well, the documents are included in Mr. House's book. I think his name is Maja (ph), something like that.

COUNSEL: I think it's Mahia (ph).

PRESIDING MEMBER: Mahia. Thank you. Then also there's another letter from the Refugee Protection Officer to the parties dated July 23rd, 2004. Although I'm not going to enter them as Exhibits, the Board received some unsolicited letters from persons or organisation who are not parties to the proceeding and I directed that that correspondence be returned indicating that the Board will only accept documents from counsel or parties and then only if they're relevant. So in the event that the persons who wrote wanted the documents admitted then they would no doubt be in touch with Mr. House most likely and ask that the documents be admitted, but I didn't want them not to receive a response. Now, how are we doing in terms of time?

COUNSEL: It's time for a break according to your previous ruling.

PRESIDING MEMBER: Okay. And I just saw two people leave so that's what I figured. Ms. Dragaitis, are those all of the Exhibits now for the Refugee Protection Officer?

RPO: That's all that I'm aware of, yes. That's all I have.

PRESIDING MEMBER: Okay. So, are we all agreed that those are the Exhibits for the time being?

MINISTER'S COUNSEL: Yes.

PRESIDING MEMBER: And this is subject of course to the consultation we'll have during the break. Not me with you, you with each other and come back and talk about that. So we'll break now for 15 minutes. So if you could come back at ten minutes to 12:00. Thank you.

Okay, it's 12:00 and we're back on record after our somewhat extended morning break and the weather outside is frightful. I'm going to come back to the question that I said we would come back to about whether it's necessary for me to enter as Exhibits foreign case law and I'm taking from that both court cases and decisions of court martials.

Now, the advice that I received from our legal counsel is that so long as it forms part of the record it's not necessary that the law be admitted as Exhibits and of course it's not something of which I am taking judicial notice. I realise that counsel for the Minister suggested that it's not something that I can take judicial notice of and of course that's right, I can't take judicial notice of foreign case law, but I'm willing to hear from each of you.

My intention would be just as the affidavits of the Law Professors, notwithstanding that I have not admitted them, but they would nonetheless be part of the record so if it went up to Federal Court and my ruling was challenged about the relevance of the legality of the war that the court would have something to look at and also of course the articles with respect to the legality of the war, even though they're not admitted they're still in the binders, in the cerloxed (ph) copies.

So, if out of an abundance of caution you believe I should admit them I'm willing to do that,

but I've been told by our legal counsel that it's not necessary. Mr. House?

COUNSEL: Well, I guess from my point of view that's fine, Mr. Chair. I apprehend that my friend is of the view that the factual information contained therein concerning the penalties may be of value of you and that it would be evidence that you would have to make a finding about, but I think I should let her argue her point if that's what it is or if it's something similar. I don't particularly have any qualms about proceeding in the way that you wish to.

MINISTER'S COUNSEL: Yes, I would like it included as Exhibits for the reason that my friend stated. We're not -- in particular in M-5 we're not relying on general principles of law, we're introducing that as evidence of the penalties that have been imposed for desertion and those are facts which we'll need to establish.

I understand, you know, if I'm citing a general principle of international law that's not necessarily an Exhibit, but I want this to be entered as an Exhibit because I'm trying to establish certain facts. Ms. Dragaitis, do you have any comments?

RPO: I have no comments.

PRESIDING MEMBER: All right. I have no problem, other than speaking, admitting the documents so I will do that and therefore in the Minister's documents item 13 to 20 will continue to be part of M-5.

MINISTER'S COUNSEL: Thank you.

COUNSEL: Mr. Member, I don't know if this is an appropriate time. In the pre-hearing you had referred to Rule 7 and to the fact that it would be useful to have Mr. Hinzman's full military record available and I took that as a strong suggestion that I should write to the 82nd Airborne Division to obtain Mr. Hinzman's file. You've mentioned that you don't have it. I do have several letters that I would like -- I think they should be Exhibits, which will simply indicate that I've made attempts to get a copy of the file unsuccessfully. Excuse me.

As well, there is a much a shorter document which we got off of the internet and what it is is specific information concerning Mr. Hinzman. You could call it his military record I suppose but it's a very abbreviated one and the way it's gotten is that a code word is used to access a U.S. military site on the internet and this material appears. It is -- it does refer to Jeremy Hinzman and would provide you with some very basic information.

I've disclosed it to my friend and it was her view at least in conversation that it might not be probative of anything, but with your permission if I could just give you these two documents, or these two pieces of material and if you wish to enter them that will be fine. I think they probably should be.

PRESIDING MEMBER: All right. Here's what I propose to do. I will enter your letters requesting a copy of the record as Exhibits. As for the other document I will ask the Refugee Protection Officer in her questioning of Mr. Hinzman about that document to the best of his knowledge who prepared it, how it was obtained, whether it was edited in any way, et cetera. I won't admit it at this time, but I will admit your letters at this time.

COUNSEL: Thank you very much and I would just say, Mr. Member, that there is a code that is a private code that would allow Mr. Hinzman to access his personal information and that we're hopeful that that will not be disclosed.

PRESIDING MEMBER: No, I appreciate that. It won't be disclosed, certainly not by me anyway.

MINISTER'S COUNSEL: Can you show me where it is on my copy so I can black it out?

COUNSEL: Where it is?

MINISTER'S COUNSEL: Yes.

COUNSEL: The code?

MINISTER'S COUNSEL: Yes. Or can you black it out on my copy please?

COUNSEL: It's no a matter of blacking it out. There's a code which does not appear there.

MINISTER'S COUNSEL: Okay, that's fine then. As long as it's not on my copy.

RPO: Do you have a spare copy, Counsel?

PRESIDING MEMBER: So, my reading of these letters and they're dated July 20th, September 2nd, actually there's two of September 2nd. It looks like just an extra copy.

COUNSEL: That's an extra copy. I'm sorry. I made extras.

PRESIDING MEMBER: That's okay. It looks like in the first two letters you asked that you be sent any consent or waiver form prior to so that he would be able to have his file and that in the third letter of November 4th you prepared a waiver or you included a waiver. I'll ask Ms. Dragaitis to ask questions about whether this waiver was received in response to your letters and all that kind of stuff, but we'll admit the three letters. Are we up to C-6 now? Letters from counsel for claimant to the 82nd Airborne, July 20th, September 2 and November 4th and you've provided copies to ---

RPO: I don't have a copy.

COUNSEL: I will give her a copy right now.

MINISTER'S COUNSEL: Do you have a copy for me as well? I didn't get those letters, just the record. Okay, you can give them to me after the break.

PRESIDING MEMBER: Okay, so we've now completed the admission of documents, the written evidence part of the hearing and we're now going to turn to the oral evidence part of the hearing. Now, Mr. Hinzman I understand is the principal claimant. I'm going to ask that both he and Ms. Nguyen rise at this moment.

All persons who give oral evidence before the Immigration and Refugee Board are required to take either an oath on a Holy Book, if they've brought one, or to

solemnly affirm that they will tell the truth. Which do you prefer?

affirm, sir.

CLAIMANT #1: I prefer to solemnly

Nguyen?

PRESIDING MEMBER: Okay. And Ms.

CLAIMANT #2: Yes.

PRESIDING MEMBER: Okay.

CLAIMANT #2: Solemnly affirm.

raise your right hand and state your full names?

Hinzman.

CLAIMANT #1: I, Jeremy Dean

CLAIMANT #2: I, Nga Thi Nguyen.

PRESIDING MEMBER: Okay. Do you each of you solemnly affirm that the evidence to be given by you with respect to your claims for Convention refugee status and refugee protection will be the truth, the whole truth and nothing but the truth?

CLAIMANT #1: I do affirm that, sir.

CLAIMANT #2: Yes, I do affirm that.

PRESIDING MEMBER: Thank you very much, you may be seated. Now, before you give your evidence, Mr. Hinzman, I'm going to give you some friendly words of advice. We didn't get to that part of the pre-hearing last time and it was probably better that we didn't in the event that your wife testifies. First, please listen to the question very carefully no matter who asks it. As I mentioned, Ms. Dragaitis will be proceeding first, and just answer the question directly. Wait till the question has been completely asked, don't anticipate, just wait till it's asked and then answer it directly.

It's not necessary that you give a long explanation. In the event that any of us require

clarification or an explanation for your answer then don't worry, we'll ask for it, okay? But it's very important that you focus on the question and answer the question. If you don't hear or understand the question please say so, it will be repeated or explained. If you don't know the answer to a question please don't guess, just say I don't know. That's a perfectly acceptable answer if you really don't know. If you believe something to be true but you didn't see it with your own eyes or hear it you can testify as to that matter, but please indicate what the source of your information is, how is it that you know this. Did you read it, did someone tell someone that told you, et cetera.

Try to avoid using words that are not precise like "he" or "she" or "we" or "they" because I need to know who it is that you're talking about and of course we all have a predilection to do that, but I'd ask you to try and avoid doing it. Explain who it is that you're talking about when you say "we." Is it your company, is it you and part of your company, is it you and someone else, et cetera. That would be extremely helpful.

The main thing is to relax. We are all treating this hearing very seriously. We know how important it is to you and your family, but certainly my experience and I have no doubt that the experience of others in this room is that when claimants are relaxed and are able to focus on questions that the evidence goes in very well and the whole purpose of this hearing is really to allow you to give evidence to supplement that which we already have in writing. Evidence on the issues as I described them both today and also at the pre-hearing conference so that I can receive additional evidence to enable me to make I hope the right decision with respect to your claims.

So, please relax. If you'd like to get a glass of water please feel free to do so. In the event that you need a break please let me know. Our goal is to make you entirely comfortable and for you to understand exactly what is happening, why it's happening, et cetera.

So what's going to happen now is Ms. Dragaitis is going to begin the questioning and as I mentioned, she is a Board employee and is neutral to the claim, and then when she completes her questions then the Minister's counsel will ask questions followed by me and then Mr. House. I will only intervene while others are questioning in the event that I require clarification to understand your answer, otherwise I'm going to

leave it to counsel to elicit the evidence and I expect that is, that is until it's my turn to ask substantive questions, but I expect that if I need clarification of something they're likely to need it as well, so they'll probably ask with a follow-up question. So, before we begin any questions at all?

CLAIMANT #1: No, sir.

RPO: I just had a preliminary point, Mr. Chairman, about Sergeant Massey. I think you haven't excluded his evidence and I'm not sure if he's in the room and if you wanted to consider excluding him. I don't know what he looks like, so I don't know if he's here.

COUNSEL: He's not in the room.

RPO: Okay.

PRESIDING MEMBER: Thank you very much for reminding me of that. I assumed that he wasn't in the room if he was going to be called as a witness. As counsel is aware in the event that he was going to be called as a witness then he would either be called first or be excluded until such time as he was called. So I'm going to ask you, Mr. House, to ensure that while Mr. Hinzman is testifying that he is not admitted to the hearing.

COUNSEL: He's not in the building. He's in the city, but he's not in the building.

PRESIDING MEMBER: Okay. Ms. Dragaitis?

RPO: Okay. Mr. Hinzman, I wanted to ask you first of all some questions about your enlistment and the circumstances around that and I apologise a bit for my scratchy voice. Hopefully it won't get worse. When did you sign up for the army?

CLAIMANT #1: I signed up for the army I believe on January -- well, I went to basic training on January 17th, 2001 and I believe I signed up in mid-November of 2000.

RPO: And where did that happen?

CLAIMANT #1: That happened in Boston, Massachusetts.

RPO: Okay. That's where you were living at the time?

CLAIMANT #1: It was.

RPO: And can you tell me something about the circumstances surrounding your signing up back in November? How did that come about?

CLAIMANT #1: At that point in my life I just figured I needed some focus and direction and that I wanted to attend university and I didn't really have the means of doing so and one of the recruiting points that the military offers is assistance to attend university upon the completion of an enlistment and so, my main reason for enlisting was pragmatic in that I wanted to facilitate my education and then also that I wanted to be a part of something, I suppose you could say higher than myself. Something where I could transcend myself.

RPO: And how exactly did you envisage that as being part of your enlistment?

CLAIMANT #1: Well, I've always was brought up to think that the army has its higher purpose or it's carrying out higher purposes and for good whatever, and to me that had a bit more meaning than simply exchanging currency back and forth at the grocery store or hauling products from point A to point B. There was some sort of higher meaning to what I was doing than just facilitating ---

PRESIDING MEMBER: Could we stop for a moment? Could all of you who have cell phones please remember to keep them off while the hearing is on. So take a moment, check your cell phone. It's very disruptive. Please make sure your cell phones are turned off. Thank you. Perhaps you could repeat the question or the answer?

RPO: I think it was a short question and a lengthy answer. I don't know. I was asking Mr. Hinzman to clarify how he envisaged joining the army as being part of something bigger and I don't know if Mr. Hinzman wants to ---

PRESIDING MEMBER: Okay, could you repeat your answer, Mr. Hinzman? I have that you were brought up to believe that the army was ---

CLAIMANT #1: Right.

PRESIDING MEMBER: --- an honourable profession.

CLAIMANT #1: Right. I guess, again I was in a culture that looked upon the army as a good thing to do and the missions that they carried out were in the name of good or spreading democracy or any other number of noble means and to me that had more meaning than just working in the work-a-day world.

RPO: Okay. Did you grow up knowing anybody who was part of the army or part of the U.S. military?

CLAIMANT #1: I think I had an uncle, but no, I wasn't intimately connected with or I didn't have relatives that were in the service. I did grow up near an airforce base.

RPO: And did you approach somebody or did somebody approach you? How did you go about enlisting?

CLAIMANT #1: I approached the recruiting office in Summerville which is part of Boston and it was in my mind. It's no secret that there's quite a substantial college fund upon my completion of enlistment in the army and I approached them.

RPO: Okay. And did they give you any documents or any information about enlistment and the college fund? Anything like that?

CLAIMANT #1: Yes, they gave me a whole slew of brochures. I can't recall how many specifically, but they had quite a few different marketing tools ---

PRESIDING MEMBER: Now, just ---

CLAIMANT #1: --- and I was also privy to some videos.

PRESIDING MEMBER: Just before we proceed we're falling into the "they" trap here.

CLAIMANT #1: Pardon me.

PRESIDING MEMBER: So, perhaps you could indicate who it is that you met with?

CLAIMANT #1: Okay.

PRESIDING MEMBER: Not necessarily by name, but was it a Recruitment Officer, what rank was that person, et cetera.

CLAIMANT #1: Okay. The person I met with was a Sergeant First Class. He was a Recruiting Officer for the army. I don't recall his name and he, the Sergeant First Class gave me a number of documents and showed me a number of different things i.e. video or whatever to entice me or to show me that the army was a good career path.

RPO: Okay. Did you retain any of those brochures? Do you have any of them?

CLAIMANT #1: No, I think I put them in the recycling box.

RPO: I guess you probably don't have a copy of the videos?

CLAIMANT #1: No, I don't.

COUNSEL: I think we're going to lose one of our claimants ---

RPO: The minor claimant is ---

COUNSEL: --- at this point.

PRESIDING MEMBER: When he says come back you're welcome to.

RPO: Okay.

PRESIDING MEMBER: Thanks, Ms. Dragaitis.

RPO: So, can you give me some idea for how long you engaged in sort of discussion with the Recruitment Officer or any of these Recruitment Officers there.

CLAIMANT #1: Not too long, Ms. Dragaitis. I can't be specific as to how often I spoke to him. It wasn't more than a couple of weeks from my first visit to the recruiting office in Summerville to the steps that I took to enlist, but I will say that they weren't seeking me out, I sought them out.

RPO: Okay. And did you -- were you given some sort of choice as to what you could sign up for? That is, the length of the term, the division, anything like that, or were you told what you had to sign up for?

CLAIMANT #1: In the army you are according to your test scores able to pick your job if there are openings and I was given a options of different jobs I could take. If you want me to go into which specific ones I will, but actually I scored as pretty much as high you could on the armed service vocational aptitude battery and I had anything open to me. I could have been a cook, I could have been in psychological operations, I could have been a linguist. I chose to be an infantryman.

RPO: And why did you choose to be an infantryman?

CLAIMANT #1: I chose to be an infantryman because I felt that at the time that the army wasn't going to be a career. It was going to be a four year period of my life and many of the other jobs that are offered to prospective recruits are more towards gaining skills that could be used in the outside world and I figured at the time that if I was going to be in the army that I was going to experience the essence of the army, which is what the infantry is. I mean, when you watch a war movie and you see the people shooting back and forth or whatever else, that's the feel.

RPO: And was there a term that you had to sign up for or was there a minimum term of time in the army?

CLAIMANT #1: I could have signed up from anywhere from two to six years for my initial enlistment. I chose four.

RPO: And why did you choose four?

CLAIMANT #1: I can't recall. It seemed like a good in between.

RPO: Would the college fund have been available to you if you had signed up for two?

CLAIMANT #1: It would have. Not as much as four. Four of course wasn't as much as six.

RPO: And what was your understanding of the college fund? What was it they would subsidise or pay for ---

CLAIMANT #1: During ---

RPO: --- in the army?

CLAIMANT #1: During the first 12 months of my enlistment I would contribute \$100.00 per month to the Montgomery GI Bill and that would be my contribution and then upon the completion of the enlistment there would be \$48,800 that I wouldn't get it in a lump sum, I think I would get approximately \$600.00 a month throughout the duration of my studies.

RPO: And who would pay for the tuition?

CLAIMANT #1: Who?

RPO: Would that be the army's responsibility as well?

CLAIMANT #1: Well, they would send me a cheque provided I was enrolled in an accredited institution and so in effect the army would be paying for it. A sizeable share of it.

RPO: And when you signed up did you have some idea of what form of higher education you wanted to do?

CLAIMANT #1: I wanted to attend university and major in a Liberal Art and then upon finding out that I probably wouldn't be able to use that then go to graduate school for something else. For instance law or medicine or perhaps I would have been a teacher, but I'm not too mathematically inclined.

RPO: And just so I'm clear on this, how far would the army have paid for your education?

CLAIMANT #1: If I recall right you have to use, or you have to start using the funding within ten years upon completion of your enlistment and they would give me the money until I either completed my studies or the studies I had completed were paid for to the tune of \$50,000.

RPO: Okay. And I know you provided this enlistment document today. I haven't really had a chance to look at it in any detail, so you'll excuse me if some of the answers are here in it, but ---

PRESIDING MEMBER: Do I have that document, Ms. Dragaitis?

COUNSEL: That's the one I gave you this morning, sir.

RPO: It's the one I think you suggested I could ask questions on it and I'm not sure if it's ---

PRESIDING MEMBER: Oh, I see, okay, yes.

RPO: --- been marked as an Exhibit or whatever. I'm not sure what status it has, but it's marked as an Exhibit, Counsel.

COUNSEL: I think it's an Exhibit, yes. The letter ---

PRESIDING MEMBER: No, I don't think it's an Exhibit.

RPO: Perhaps we could do that.

PRESIDING MEMBER: When you say you provided it to me this morning?

COUNSEL: Yes, I believe I did. I believe I provided you with three letters ---

PRESIDING MEMBER: Yes?

COUNSEL: --- and also I referred to a document that came off of the internet.

PRESIDING MEMBER: Oh, that's the one you're talking about? The one that has the history of his ---

COUNSEL: It's a brief history. It has a code number ---

PRESIDING MEMBER: Yes.

COUNSEL: --- that I told you about. I'm pretty sure I just gave it to you.

PRESIDING MEMBER: Okay. No, I didn't admit it.

RPO: You wanted me to ask questions about it.

PRESIDING MEMBER: I didn't appreciate that it was an enlistment document. I had understood that it was a document about his history with the military.

COUNSEL: Right. I think, well ---

PRESIDING MEMBER: Okay.

COUNSEL: --- what exactly it is appears on its face, but it certainly includes some enlistment information.

RPO: Yes, I referred to the title at the top of the first page. It says Enlistment/Re-Enlistment Document.

PRESIDING MEMBER: Enlistment?

Document. RPO: Enlistment/Re-Enlistment

PRESIDING MEMBER: Okay, thank you.

RPO: And I'm not sure that the document itself has a date. Counsel, maybe ---

COUNSEL: I don't think it does as I recall.

RPO: And it is Mr. Hinzman's enlistment document. It's his specifically.

PRESIDING MEMBER: Well, could you ask him questions about how he obtained the document ---

RPO: Certainly.

PRESIDING MEMBER: --- and also whether it is complete and as of what date?

RPO: Mr. Hinzman, have you had a chance to look at this document that we're talking about? I think your counsel has just handed it to you.

CLAIMANT #1: I'm looking at it right now, Ms. Dragaitis.

RPO: Okay. You're familiar with it?

CLAIMANT #1: Yes.

RPO: And when did you obtain this document?

CLAIMANT #1: I obtained this document on October 6th, 2004.

RPO: Okay. And I think your counsel indicated it was obtained through the internet, is that correct?

CLAIMANT #1: It was obtained through the internet.

RPO: But it's using a code that's specific to you?

CLAIMANT #1: You know, I don't remember specifically how I obtained it, Ms. Dragaitis. Sorry, I cut you off.

RPO: No, that's fine.

CLAIMANT #1: When it became known - I mean, in July when Mr. Member made it known that he needed documents to establish my identity I took steps to try to obtain them, as did my counsel, and I checked everything. There are different sites the U.S. Army has, there's different sites that the National Archives have and out of everything I searched for this is these three documents were what I was able to find.

RPO: Okay. When you say three documents do you mean the documents that are stapled together as one that I'm referring to as the enlistment document?

CLAIMANT #1: The enlistment documents, the wording on my Airborne wings and the wording of my Expert Infantryman's Badge. Yes, that one.

RPO: Okay. I see the Expert Infantryman's Badge. Okay.

PRESIDING MEMBER: And if I could? Who operates and maintains this web site?

CLAIMANT #1: Sir, I would have to type this http in check again. That morning when I was looking for them I was on Army Knowledge On-Line which had some of my records that I were unable to obtain because my pin number had been changed and then I was led to some other search, to the National Archives, and I don't recall honestly which one it was that I found these documents on.

PRESIDING MEMBER: So, do you know whether it's a military web site?

CLAIMANT #1: It is. I would say so, sir, because it say son the address on the bottom of the page

that it's army.mil and that would maintained by the U.S. Army. It was a government web site.

RPO: And is there any reason that we wouldn't provided with this earlier then? Maybe more for your counsel than for you, but that's the only other preliminary question I have since the claimant's indicated he got it October 6th?

COUNSEL: No, there's no good reason. It should have been provided earlier. Perhaps I could just add I was hoping to get a complete file from him and presumably that would have included that.

RPO: Right. Okay. Mr. Chairman, do you want me to continue asking about obtaining the rest of the military records then before you decide whether you want to admit this or what you want to do with it?

PRESIDING MEMBER: Yes, I'll hear the other evidence. I just want to make sure I know where this document was obtained from to the best of Mr. Hinzman's knowledge and whether this is the complete document. That is, that as far as he knows it hasn't been edited, it hasn't been changed or altered in any way.

CLAIMANT #1: Sir, when I obtained these documents off my computer I took everything available that I could find because I knew we needed some sort of extensive background to establish my identity.

PRESIDING MEMBER: Thank you.

RPO: And you may have said this, but is this all that you were able to obtain then in that manner?

CLAIMANT #1: This was all I was able to obtain, Ms. Dragaitis.

RPO: Okay. And well, the other questions are really more for counsel than the claimant because they're his letters asking for -- asking the army or the Airborne Division for his complete file, but were you in contact at all with your Airborne Division to see if you could get further documents? Did you make any further attempts to get your military

record, other than the successful attempt through the web site to get this document?

CLAIMANT #1: I trusted, and my counsel indicated to me that he would take the steps to obtain the documents or the records.

RPO: And I take it, Counsel, that having sent these three letters you didn't obtain anything in response?

COUNSEL: Nothing.

RPO: And did they ever indicate that they wanted any particular waiver signed or anything like that that you refer to in your letters?

COUNSEL: Nothing was received.

RPO: Okay. And you ---

PRESIDING MEMBER: So you prepared the waiver?

COUNSEL: Yes, we prepared a waiver. Mr. Hinzman signed it. It was what I believed to be an adequate waiver for the purposes of obtaining the documents, but I indicated in the last letter that if there was some other document that I wasn't aware of that could be -- please let me know and we'll execute whatever can be executed.

RPO: Did you write to any other army authority or military authority to get the documents? Because I note these are written to the 82nd Airborne and I know that's where Mr. Hinzman was enlisted, but I just wonder if there wasn't some more central military authority?

COUNSEL: Well, we believe that this is the correct way to get the documents, to write to his division. I didn't send out 100 letters to various other entities. I should say that if anyone here, either you or Ms. Chisholm or the member, wishes to make efforts to obtain the documents we're certainly glad to co-operate. It's not that we don't want the documents before the member, we do want the documents before the member, but I wrote three letters to his division, I received no

response. That seemed to me to speak something about the situation.

RPO: Mr. Chairman, did you want to make the enlistment document an Exhibit before I continue questioning on this part of his evidence?

PRESIDING MEMBER: Well, what I propose to do is to ask, if this is okay with everyone, ask the Minister at this point whether, Minister's counsel, whether she has any objections to my admitting these documents?

MINISTER'S COUNSEL: I have no objection.

PRESIDING MEMBER: Okay. So, in that event I will admit the document which is entitled Enlistment/Re-Enlistment Document as Exhibit C-7.

RPO: Yes, there was actually two, three, four, five, there are six pages and then I think only the first three are the enlistment document.

PRESIDING MEMBER: Is there any reason that I shouldn't admit the others which relate to the awarding of his wings and the awarding of his Expert Infantryman Badge?

RPO: I can't think of a reason why not. His evidence was he downloaded them all at the same time from the same site. I'm just indicating they're not all strictly speaking enlistment documents.

PRESIDING MEMBER: Okay. So, plus awarding of wings and Expert Infantryman Badge. A total of how many pages?

RPO: Six pages. Am I right? Or seven.

PRESIDING MEMBER: Okay.

RPO: Seven pages. So, that's C?

PRESIDING MEMBER: C-7.

RPO: Okay.

PRESIDING MEMBER: Now, would you have an extra copy of that, Mr. House?

COUNSEL: Are we finished asking Mr. Hinzman questions about it?

RPO: Well, I don't know is the answer because I haven't really had a chance to look at it in detail and I still have questions about that period of time. So, I can't say that I'm finished.

PRESIDING MEMBER: It's okay, I have an extra copy now. Again, one of the problems with -- I appreciate your explanation for wanting to send in the whole record, but my experience in dealing with the sending in of Exhibits is that they ought to be sent in as soon as you get them as opposed to waiting to send them all together or something more comprehensive because otherwise we face situations like this where we're met with documents that no one has had a chance to look at.

COUNSEL: Right.

RPO: So, I think before we question on the document I was asking you about what exactly it was you signed up for, whether you had a choice and why you chose the infantry and so, after you signed up for this what was it that you started? Was it basic training or something else?

CLAIMANT #1: On January 17th of 2001 I flew from Boston to Fort Benning, Georgia to begin basic training.

RPO: Okay. And how long did basic training last?

CLAIMANT #1: I think we finished it towards the end of May of 2001.

RPO: Okay. And was it basic training that was particular to being in the infantry or was it more general than that?

CLAIMANT #1: No, infantry basic training combines the initial nine weeks of basic training that

all soldiers take no matter what their job is and then at that point other soldiers and other specialities go to different places to learn their trade and in the infantry our training was one 13 week block where we learned the basic soldiers steps and then we learned specific infantryman tasks.

RPO: During the 13 weeks, and then where did you go after the 13 weeks?

CLAIMANT #1: I remained at Fort Benning, Georgia for a month or so and then I began Airborne school which is also at Fort Benning, George.

RPO: And when was it that you decided that you wanted to be part of the Airborne Division?

CLAIMANT #1: Well, I decided that I wanted to be in the Airborne when I enlisted.

RPO: Okay.

CLAIMANT #1: And my assignment was not in my control.

RPO: And what do you mean by that?

PRESIDING MEMBER: Was not? Sorry?

CLAIMANT #1: My assignment as to where I would be stationed, sir, was not in my control. I knew I would be in an Airborne unit, but I didn't know where specifically.

RPO: And why did you choose the Airborne Division as opposed to any other infantry division?

CLAIMANT #1: It's a good question because it doesn't really seem sensical to jump out of a perfectly functioning aircraft, but it seemed exciting and so that's why I chose to join and I will say that I did enjoy falling out of aircraft.

RPO: And so how long was the Airborne training for?

CLAIMANT #1: The Airborne training was three weeks.

RPO: Okay. So we're at about 16 weeks?

CLAIMANT #1: Right, and during this time, for instance when I arrived at Fort Benning in January there was a holdover, so we didn't commence our training the day we arrived. We sat in some holding barracks for a few weeks and it probably began some time at the beginning of February and the same goes for when I finished basic training. There was another month holdover while we waited for slots to become available to attend Airborne school.

RPO: Okay. So when you finished Airborne school is that when you finished basic training and then were assigned?

CLAIMANT #1: Airborne school is a completely different entity than basic training. They just happened to be on the same base.

RPO: Oh, I see, okay. And when did you finish Airborne training then?

CLAIMANT #1: I think the end of June of 2001.

RPO: Okay. And is that when you were assigned to a particular battalion or how did that work?

CLAIMANT #1: Well again, after I finished Airborne school I waited to receive orders to be posted somewhere and that I think was approximately another month upon which time I received orders to go to Fort Bragg (ph) in North Carolina.

RPO: Okay. And other than jumping out of airplanes was there any other kind of training that you did during the 13 weeks doing Airborne Division training?

PRESIDING MEMBER: Hopefully landing as well.

RPO: Hopefully landing, yes.

CLAIMANT #1: The Airborne school again was three weeks. There was lots of training that we underwent to be soldiers. I could be specific if you'd like as to what weapons I learned how to use or ---

RPO: Certainly. You could start out being specific and I guess we'll let you know ---

CLAIMANT #1: Okay.

RPO: --- if we've heard enough.

CLAIMANT #1: All right. The first couple weeks of basic training consisted of basically getting broken down being -- it's basically conversion from being a civilian to a soldier and losing a lot of civilian traits that you bring with you into the military and that consists of, I don't know, being berated, doing push-ups, sit-ups. It's a pretty intense time. And then once you get acquainted with that you start to learn specific tasks, whether it be rifle marksmanship or how to throw a grenade or how to shoot an M-249 saw machinegun.

The basic training for infantry is basically they give you a little sample of everything that you could conceivably do in the military, whether it be shooting an AT-4 rocket launcher or going on long rucksack marches or digging a foxhole or waxing a floor when there's nothing else to do or -- it's pretty endless, but it's a controlled environment that you're not able to leave for the duration of the time.

PRESIDING MEMBER: Okay. So, have you mentioned all the weapons that you were trained with? You mentioned an M-249. An M-249 saw machinegun, you mentioned grenades, you mentioned AT-4 rocket launcher, you mentioned your own rifle, I guess. Any other weapons?

CLAIMANT #1: There were more weapons, sir. I used how to learn an M-203 grenade launcher. What else. Pistols, an M-240 Bravo machinegun which is a bit bigger version of the 249 and uses bigger ammunition. There's so many. An M-16 which is a basic rifle that all trainees learn how to shoot and right now that's what I can recall. There were others, but I can't recall them, but I didn't learn how to arm a nuclear missile or anything like that, it was just basically light

infantry weapons that I was able to learn how to become familiarised with.

RPO: Okay. And once you were assigned to the 82nd Airborne did you receive further training?

CLAIMANT #1: Yes. Your whole, at least my whole experience in the army was constant training for one thing or another, be it how to conduct a military funeral or how to -- I mean, I learned about some new weapons. I learned how to drive a Humvee. I learned how to shoot a javelin, an anti-tank device, but no, as an infantryman you're constantly honing your skills in one way or another and I know that's not specific, but we did train for our job. We would do different field exercises based on the cycle of training that we were in. Sometimes we would be out in training areas for a few weeks or a couple hours. It just varied in accordance to the dictates of our command.

RPO: And was there anything that you volunteered for? I mean shortly after you were assigned to the Airborne Division?

CLAIMANT #1: No, not that I -- I mean, there's instances where we had different raffles or pools that we were supposed to voluntarily give money to. I did that, I can say it was voluntary, but no, I didn't -- there was nothing additional. I was -- I volunteered to do a bit more of intense physical training and preparation for attending Rangers school, but other than that I don't think I ever volunteered to like take someone else's CQ-ship and...

RPO: Okay. Well, I'm looking at the information you provided concerning your conscientious objector application and I'll ask you more detailed questions about that later, but just looking at it it suggests that you were the platoon radio operator, for example?

CLAIMANT #1: Oh, I was and that's not something I volunteered to do, that was something I was ordered to do.

RPO: Okay. And it says you were on the EIB Committee and there you'll have to elucidate what the acronym is. What does EIB stand for?

CLAIMANT #1: EIB stands for Expert Infantryman's Badge and once you are awarded the Expert Infantryman's Badge you're able to be a judge, I guess, as the other soldiers take the test and try to get the award.

RPO: So when they say you were on the EIB Committee that means that you got your badge and were able to judge others?

CLAIMANT #1: Right.

RPO: That kind of thing?

CLAIMANT #1: Correct.

RPO: And is that one of the documents that we have as C-7?

CLAIMANT #1: It is. I think it's the last one in there. The awarding of the Expert Infantryman's Badge.

RPO: Okay. And that is dated September 21st, 2001?

CLAIMANT #1: It was. I received it -- the testing commenced for Expert Infantryman's Badge a few weeks after I arrived at my unit.

RPO: Okay. And what exactly did that entail? What did you have to be able to do to get your Expert Infantryman's Badge?

CLAIMANT #1: There's 40 different tests that you have to do. A lot of them are assembly and disassembly of different weapon systems within a specific period of time. You have to shoot 36 out of 40 on the rifle range, and what else is there. Don a gas mask and the accompanying attire in a certain amount of time. What else is there? But it mainly had to do with weapons systems. You had to complete a forced road march with a certain amount of leavage (sic), I think it was 35 pounds in your backpack in under three hours. That's all I can recall at this time, but there's 40 different tests.

RPO: And from September 2001 on did you actually judge other infantrymen?

CLAIMANT #1: The Expert Infantryman Badge testing takes place approximately once a year depending on deployments and different tests that the unit is conducting. So, I think it was about a year after I received by Expert Infantryman's Badge that I was on that committee to judge the others.

RPO: So you mean you were on the committee as of September 2002? Is that what you're saying? I'm not sure.

CLAIMANT #1: I think it was July. I think the training for the testing started then.

RPO: July 2002?

CLAIMANT #1: Yes.

PRESIDING MEMBER: And the question was did you judge others in terms of their qualification for the Expert Infantryman's Badge?

CLAIMANT #1: I did judge others and my specific area of expertise was the M-240 Bravo machinegun and the tasks I observed were correct and misfire and assembly and disassembly of the weapon within a specific amount of time.

RPO: Is there any reason that that was your particular area of expertise?

CLAIMANT #1: No, it was just the station that our platoon was allotted. I mean, another platoon or company was in charge of the grenades. I mean, I don't know if they were, but it was by platoon.

RPO: Okay. So just so I'm clear, do you mean that you judged as of July 2002?

CLAIMANT #1: Yes, that's when the testing took place.

RPO: Okay. And it says here that you helped train the brigade on the M-240B. So does that mean something else or is that ---

CLAIMANT #1: No, that's specific to the Expert Infantryman's Badge testing.

RPO: And ---

PRESIDING MEMBER: I'm looking at the clock, Ms. Dragaitis.

RPO: Oh, it's 1:00.

PRESIDING MEMBER: It is indeed 1:00 and I don't want to, you know, to cut you off, but I think it's going to take you some time to go through what exactly he was trained in and what his activities were.

RPO: Yes, I still have some more questions, I guess, along those lines.

PRESIDING MEMBER: So, that being the case we should probably break now for lunch. Three-quarters of an hour? Is that sufficient? Or one hour? What would you like?

COUNSEL: I vote for one hour.

MINISTER'S COUNSEL: Whatever.

PRESIDING MEMBER: Okay. Well, one hour it is then. So it's a little bit less than an hour actually. We'll reconvene at 2:00 then.

MINISTER'S COUNSEL: That's exactly what I wanted to say.

PRESIDING MEMBER: Okay, I'm going to remind all of you to turn off your cell phones again, please. Thank you very much. We're resuming after our lunch break. Hopefully you had a pleasant break and just before we broke for lunch Ms. Dragaitis was conducting her examination of Mr. Hinzman. She had reached the point where he had completed his training I believe and was assigned to the 82nd Airborne or just about that time in any event and so I'm going to ask her to continue with her questioning of Mr. Hinzman.

RPO: Okay. I think I was asking you about the Expert Infantryman's Badge just before the break and

I may have asked this, but was that something that you went for personally or did every infantryman go for that?

CLAIMANT #1: The Expert Infantryman's Badge is something that every infantryman who doesn't have one goes for. I mean, they can theoretically choose not to, but it's kind of like giving money to the raffle. You do it and so, yes, whenever your unit, your brigade sets up a time there's testing and everybody who doesn't have a badge will test and it's not specific to rank or whatever, it's just whether or not you have it.

RPO: Okay. And actually now that you mention rank, in your PIF, your Personal Information Form, you show your rank as being Specialist E-4. What's that?

CLAIMANT #1: There is a pay-grade structure for enlisted soldiers that goes from E-1 through E-9 and I was an E-4 which is a specialist. The ranks preceding that are Private, PD-2 Private, E-2, Private First Class which is E-3, Specialist which is E-4, Sergeant is the E-5 which comes after and then Staff Sergeant is E-6, Sergeant First Class is E-7, First Sergeant or Master Sergeant is E-8 and a Sergeant Major or a Command Sergeant Major is an E-9.

RPO: So you were between Private First Class and Sergeant?

CLAIMANT #1: At the time that I left the army I was.

RPO: Yes, right. You worked your way up through the ranks?

CLAIMANT #1: Yes.

RPO: Literally worked your way up through the ranks?

CLAIMANT #1: Yes.

RPO: And what did that entail? How did you get from being Private to be Private E-2?

CLAIMANT #1: When I enlisted initially for some reason or another I entered the army as a PD-2

and they do based on perhaps educational experience or maybe I -- I don't know remember why I had it specifically, but it wasn't because of any strength of character or anything else, I just went in as a PD-2.

RPO: Okay.

CLAIMANT #1: And then the PFC rank that I obtained was -- a lot of ranks you get based on time of service. If you're in for six months you become a PD-2. If you're in for a year and you're not in trouble you're a PFC. Two years is Specialist. If you're getting an E-5 or Sergeant is when it's more discretionary.

RPO: Okay.

CLAIMANT #1: And I was awarded that PFC rank in the -- yes, the PFC rank earlier than normal based upon my performance.

RPO: And what performance specifically? What is that that got you the increase in rank?

CLAIMANT #1: I don't know specifically. I don't think I irritated my chain of command too much. I did what I was told and I was proactive in regards to my job responsibilities and I wasn't given a whole lot of time early. I think it was three or four months ahead of time.

RPO: Okay. And there's a reference too in the materials that you were going to go to pre-Ranger?

CLAIMANT #1: That's correct.

RPO: Okay. And so what is pre-Ranger?

CLAIMANT #1: Pre-Ranger course is a course that the 82nd Airborne Division has to evaluate candidates that are potentially going to go to the United States Army Ranger school which is in Fort Benning, Georgia.

RPO: Okay. Maybe you can tell me what the Ranger school is then?

CLAIMANT #1: Ranger school is a leadership school ostensibly and then there's a lot of different privations. You can go into a lot of sleep deprivation and food deprivation and it's a very intense atmosphere.

RPO: What is the point of going to Ranger school and what does one expect ---

CLAIMANT #1: I don't know that there is one. It enhances one's career. You have this patch on your shoulder that says Ranger that not everybody has and people look up to you. It makes a you a more solid soldier. You learn a lot of stuff that you might not ordinarily learn in the day-to-day life of just being a normal line soldier, but I guess the stress that's involved with it is supposed to make you be able to excel in combat situations.

RPO: Okay.

PRESIDING MEMBER: You mentioned it was a leadership program. Is it a program that is designed to assist those who aspire to a higher rank? Would you stand a greater chance for example of being a Sergeant if you went to Ranger school?

CLAIMANT #1: You certainly would, sir. You would -- and I think I referred to it in my Personal narrative, but you're in essence a made man if you go to Ranger school. You're in like Flint if you do well in the army. And especially in my unit, if you have any hopes or aspirations to move quickly or be in the good graces of your unit you would definitely take every step you could to attend this school.

RPO: So, what was it that you were hoping to accomplish by attending Ranger school?

CLAIMANT #1: Honestly I don't know. I felt that I was in the army and I had four years and I might as well make the most out of it and an opportunity to go to Ranger school was two months away from the monotony or daily grind of work. You get a lot of TDY, which is Temporary Duty Pay. You go through an experience that I think is, for lack of a better word, exceptional. I mean, it's like falling out of an airplane. I'm sorry, I can't be more eloquent about it, but it's a good thing to do.

RPO: Okay, but did you have leadership aspirations?

CLAIMANT #1: I'm not really the type of person that likes to tell other people what to do, but when I say leadership I think the main purpose of this school is making you learn to make decisions when all the chips are down and you have very few resources to work with.

RPO: And did you ever get to pre-Ranger, the pre-Ranger course or had you left by the time that would have happened?

CLAIMANT #1: A few days before I was to go to the pre-Ranger course I submitted my conscientious objector application and I will emphasise, I was pretty indifferent about going to Ranger school, but it's definitely encouraged in the unit that I was in and so to try to fit in, try to be a good soldier, stay in the good graces of my unit I went along with it.

RPO: Okay. And when you say unit how big a group of men is that? What does a unit refer to?

CLAIMANT #1: Well, I'm speaking of my company specifically which was Alpha Company, the 2nd Battalion of 504th Parachute Infantry Regiment. So, but I mean unit, yes mainly that. I mean, it was a big deal in my company. It looks good for the command with the more soldiers with Ranger tabs they have. It's definitely a lot more competence among the soldiers, the more soldiers who have gone there.

RPO: Okay. And was it competitive to get in there? Did you have to meet some standards or compete against fellow enlistees?

CLAIMANT #1: If you're not cutting it as a soldier you're not going to go and there's some -- the physical preparation for it is pretty intense and if you can't meet the criteria for that year you're probably not going to be chosen to attend Ranger school.

RPO: And do you need to be chosen to go to pre-Ranger, the pre-Ranger course?

CLAIMANT #1: Yes. It's a formality. If you express a desire to go or if you follow through with the desire to your chain of command and take the steps necessary with the increased physical training.

RPO: Okay. And so, how many people approximately were in your battalion? You refer to it as your company.

CLAIMANT #1: My company had 135 soldiers give or take. My battalion was made up of five companies and some of those companies were smaller than that. So, 1,000 soldiers at any time would probably be -- 800 to 1,000 would probably be a good number.

RPO: Okay. And just to give me some idea how many of the 135 were also going to pre-Ranger?

CLAIMANT #1: In my company, I don't recall. I know that probably 15% of my company probably had Ranger tabs.

RPO: Okay. And just to complete the acronyms and references to what you did it says you were a member of a rifle platoon. What does that mean?

CLAIMANT #1: I was in the light infantry and a rifle platoon consists of three line squads which have a squad leader, two team leaders and then beneath the team leaders there's an automatic rifleman and a grenadier and then depending on the manpower another rifleman and then there's a fourth squad that's a weapons squad and that would generally consist of two teams. Each team has an M-240 Bravo machinegun and there's a gunner or someone who carries the ammo and someone to assist the gunner.

RPO: Okay. I think in your application it says somewhere you were a gunner for about a year?

CLAIMANT #1: I was a grenadier prior to becoming a radio operator for my platoon.

RPO: Okay. I'm just looking here where you says, "My duties in A-Company include being an M-240B gunner." So is that what you were?

CLAIMANT #1: I wrote that?

RPO: Yes.

CLAIMANT #1: No, I was on the 203 which was a grenadier. I instructed people on the M-240 Bravo during the Expert Infantryman's Badge testing, but I was never in fact a machine gunner.

PRESIDING MEMBER: I was looking at the document myself. Mr. House, to assist you, it's claimant's testimony with respect to his application for conscientious objector status and it's page 2.

COUNSEL: I believe that's included with his PIF, is it not?

RPO: Yes, it's part of it.

PRESIDING MEMBER: That's right.
That's right.

COUNSEL: It's somewhere here. It's not right there, but I do have copies of his PIF.

PRESIDING MEMBER: While you're looking I can read you what it says.

COUNSEL: I'll find one for him, but if you would?

PRESIDING MEMBER: It says -- this is after you say you were practising meditation more often until this deployment. You say, "My duties in A-Company include being an M-240B gunner for about a year and then I was a platoon RTO."

CLAIMANT #1: I must have gotten my nomenclature mixed up, sir. I was a grenadier prior to becoming a radio tele-operator.

PRESIDING MEMBER: And that's RTO?

CLAIMANT #1: Right. So pardon that.

PRESIDING MEMBER: But you mentioned earlier that you, and it's actually included on the first page of your application in the questions by the investigating officer of the witnesses, that you were on the EIB Committee and helped train the brigade on the M-240B?

CLAIMANT #1: That is correct, sir.

PRESIDING MEMBER: And that's what you've testified to earlier?

CLAIMANT #1: Yes, sir.

RPO: And what is OSCT (ph) training?

CLAIMANT #1: That is, OSCT training is basic training and infantry training combined - the combination of those two together.

RPO: Okay, and JRTC?

CLAIMANT #1: That's Joint Reserve Training Centre which is in Port Hope (ph), Louisiana.

RPO: Okay. And what kind of training was that?

CLAIMANT #1: Are you referring to when my First Sergeant spoke about going to JRTC?

RPO: Well, it's referred to in the conscientious objector application. I'm not sure who ---

CLAIMANT #1: There's a transcript of the hearing that took place in Kandahar and my First Sergeant referred to JRTC in that hearing and in fact he was mistaken in that because I never went to JRTC. It was during the time that my son was born.

PRESIDING MEMBER: And in fact that's what you say at the top of the same paragraph that I referred to earlier. You are quoted as having said, first you said, "I do not have any questions for any of the witnesses. I did not participate in JRTC at the time because my son was born. The second time I was on rear detachment."

RPO: Okay. So you didn't do JRTC?

CLAIMANT #1: No, I did not.

RPO: Okay. Okay. And I know I asked you why you made a decision that you wanted to opt for going to the Airborne Division and you said something to me about jumping out of airplanes?

CLAIMANT #1: I did.

RPO: And did you have any idea of what the purpose of the Airborne Division was, what the purpose of that kind of training was?

CLAIMANT #1: First of all, just because you're in an Airborne Division it doesn't preclude you from taking part in other missions. It merely means that the unit you're in is all Airborne qualified and to remain on jump status you simply have to jump once every three months to maintain your jump status and receive the extra jump pay that the army gives you which is \$150.00 a month.

RPO: Okay, but did you have some idea of what the purpose of the parachute Airborne training was all about?

CLAIMANT #1: It's to seize airfields.

RPO: Anything else?

CLAIMANT #1: Wipe out whatever's on the airfield that's preventing you from carrying out your mission. Set up a secure landing zone for allied aircraft.

RPO: And was there any suggestion that you would be required to drop behind enemy lines, things like that?

CLAIMANT #1: That's inherent in the jump.

PRESIDING MEMBER: So, could you just describe what you would do? You mentioned where it would

happen, but I mean, I'm assuming that the airfield that you would be dropped into would be defended in some way.

CLAIMANT #1: It would.

PRESIDING MEMBER: Okay. So, what happens? You're dropped into the airfield, get rid of your parachute. What happens next?

CLAIMANT #1: Generally you'll have a link-up point with -- by the nature of an Airborne operation people are going to be dispersed over a somewhat wide area. It depends on how long your drop time is. It could be anywhere from 30 seconds to a minute and you link up with other members of your platoon or company and then you go from there. If there's hindrances or enemy on the airfield you deal with that. If you need to establish a landing strip you have to find level ground. If you need to blow up stuff that's in the way or that's obstructing you or other people from landing then you take care of that.

PRESIDING MEMBER: So let's go back to if the enemy is on the airfield you would deal with that?

CLAIMANT #1: You would ---

PRESIDING MEMBER: What do you mean by that?

CLAIMANT #1: You would eliminate them or take measures to.

PRESIDING MEMBER: And how would you do that?

CLAIMANT #1: With guns, with rifles, with grenades, with -- depends on what kind of equipment they had and how many of them there were and again I'll emphasise that just because you're in Airborne it doesn't mean that the 82nd Airborne operates exclusively on airfields. They can be just as well be trucked into a city. It's just that they have that capability.

PRESIDING MEMBER: Okay. But if they encountered enemy, if they were trucked into the city, aside from securing the airfield which you mentioned what obviously --

and destroying what was on the airfield which would be specific to the airfield and to operation, if you encountered the enemy, let's say you were -- like you say, you were deployed in a city, what would you anticipate your duties to have been? The same? Eliminate the enemy?

CLAIMANT #1: That's your sole function in the infantry, sir, is to eliminate the enemy that you encounter.

PRESIDING MEMBER: Okay. And with guns, grenades?

CLAIMANT #1: Yes, any means at your disposal.

PRESIDING MEMBER: And were you trained in hand-to-hand combat?

CLAIMANT #1: I was, sir. I wasn't very good at it.

PRESIDING MEMBER: And other weapons besides guns? Knife? Bayonet?

CLAIMANT #1: Bayonet. Bayonet. We were trained with bayonets, but mainly rifles or grenades or machinegun.

PRESIDING MEMBER: Thank you.

RPO: Okay. And we know that at some point you made an application for conscientious objector status. When did you make that?

CLAIMANT #1: I believe it was August 2nd of 2002.

RPO: And what prompted you to make the application when you did?

CLAIMANT #1: Beginning in my basic training, I alluded earlier to how you go from being a civilian to a soldier and there's a lot of measures that take place to turn you into a soldier and so beginning in basic training I would, we would be marching around yelling Trained to kill, Kill We Will, or

Hoo Haw I Want To Kill Somebody, or on a run singing cadences about, raping and pillaging villages, and at first I thought it was all in good fun and then I started to question it, at least internally, and so -- and so that's one aspect of it. It was the collective kind of shedding of self and it's a big, long process of being desensitised which I alluded to in some length in my PIF and hopefully I can do it here.

For instance, when we begin rifle marksmanship training the first week of it we shoot at black circles. Then the second week the black circles have shoulders. The third week they have torsos and then they pop up over and over again and it becomes a reflex and we're told that it's a target to be acquired and I grant this is all necessary stuff to train effective soldiers.

I guess it was a gradual process. I didn't -- I didn't have any really kind of a big epiphany. I mean, I remember one instance we were marching to the chow hall during basic training and we were yelling, Trained to Kill, Kill we Will, Trained to Kill, Kill we Will, and we were told by our drill instructors that we weren't giving an enthusiastic enough rendition of the chant and we were threatened with extra physical encouragement if we couldn't give a more enthusiastic version of it and I remember at that time just looking around me and seeing my colleagues becoming red in the face and hearing them become hoarse and feeling myself becoming hoarse yelling Trained to Kill, Kill We Will, and at that point I guess it really hit me, indeed what I'm doing.

So, that said, you know, I realised that it was training. Perhaps it's necessary, what the infantry does is kill, you know. They don't really hide that and to be effective killers there's a lot of barriers that need to be broken down. I don't think anybody joins the army, and this is speculation, with any sort of real blood lust. I guess what I learned about myself is that I do indeed have a big inhibition against the taking of human life and I did before I joined, but despite all the training I went through I could never be convinced that it was right and so I thought it would end after the training and then I arrived at my 82nd Airborne Division in Fort Bragg, North Carolina.

In some respects it lessened and in other respects it was magnified. I mean, the first day I arrived at my unit I was made to exercise so much until I vomited and

basically my team leaders were showing me who's in charge and who I'm going to answer to and perhaps it's necessary, but I felt it was dehumanising. We were taught to dehumanise our enemies. Whenever we -- it's not of course easy to shoot another human being, you've got to find something in them or at least be positive there's something in them that makes them less than human, whether it be because they're black or purple or because they believe in Islam or Legos or anything. You have to find some reason to dehumanise them, to make them less -- to make it easy as shooting a beer can.

In terms of the dehumanising aspect too, I mean, there's a lot of camaraderie involved and that's one of the great things about it, but on the same token that camaraderie only goes -- it only works as long as you're functional to the unit. Because I was in an Airborne unit it was especially privy to this. Whenever we would jump there would be -- it depends on whether it was a company jump or a battalion jump. Statistically a couple of people are going to break down and they could have been the greatest soldier or they could have been the scum of the earth, it didn't matter. As soon as they no longer served a function to the unit they were told to get out of the way. They weren't one of the guys, they weren't going drinking on Friday night, they weren't one of you any more and so, I had issues with all that stuff, but on the same token I was in the army for four years.

I couldn't simply put in my two weeks and then say the heck with it and given that I felt some compulsion, obligation to make the most of the experience. So I tried to the best of my ability to be an effective soldier and do what I was told and be proactive, but in some sense I was kind of living a double life I guess, and so after doing this for, I don't know, 18 months or whatever and being on the verge of going to pre-Ranger I felt I couldn't do it any more and I had to act because it was my thinking that had I gone to pre-Ranger and subsequently Ranger school and was made a made man, as I alluded to earlier, or at least figuratively, that it would be kind of the point of no return for me and I would be leading my life as a lie and so I became aware that the army does have a provision for conscientious objection and that there were two modes of it.

There's the 1-Alpha, or A, to be completely discharged from the army and then there's the 1-Alpha Oscar, or 1-AO, to remain in the army in some sort of non-combatant status ---

RPO: I do want to ---

CLAIMANT #1: --- and I was eligible.

RPO: I do want to ask you a little bit more about that, but just before we get too far away from what you've already said I'm just trying to get a sense of this thing that you seem to be complaining about the most is the dehumanising aspect of the training. That's my sense of what you're telling me, that that's what bothered you most during your training. Is that correct?

CLAIMANT #1: Yes, among other things, but I think that would definitely weigh first and foremost. The enforced objective by other people and not think of them as human beings. It's kind of wearing.

PRESIDING MEMBER: Maybe I can just follow up with a couple of questions to help me understand. Because you mentioned you were sort of, in some ways you were living a double life. I guess first of all, do you know whether there were other fellow soldiers within your company who had similar concerns?

CLAIMANT #1: I do not, sir, but I can tell you that given the atmosphere of where I worked with it's loaded with machismo and you don't talk about your doubts or what you're thinking in regards to your job. You talk about messing people up and killing them. Because that's the way of fitting in and if you go to your platoon Sergeant and say, you know, I don't know about this shooting people, you're done. I mean, you'll still be in your unit but your life will be a living hell, so you just don't discuss it.

PRESIDING MEMBER: What about -- I can understand that, but what about someone like a Chaplain or someone who you could speak to on a spiritual level and wouldn't have that kind of a ---

CLAIMANT #1: When you say to the Chaplain ---

PRESIDING MEMBER: --- control over you?

CLAIMANT #1: I'm sorry. When you say to the Chaplain, sir, the Chaplain works for the Commander, he doesn't work for Joe or soldiers and if you divulge something to the Chaplain and it's showing weakness and weaken you as an infantryman and something that's going to render you ineffective as a soldier he's going to tell the Commander that he works for and Chaplains are nice and they give candy on road marches when we're really sucking and stuff, but it's not -- I mean, my team leader or squad leader they say whatever you do, I mean, one of the first things you're told is never go to the Chaplain if you can, you can't trust them. I know that's like a pretty heavy thing to say about a man of God or whatever, but their function is to work for the Commander and whatever is in the Commander's best interest that's their responsibility. So, no, I didn't see the Chaplain.

PRESIDING MEMBER: Was there anyone who you thought you might be able to talk to where you didn't believe you'd suffer some kind of repercussion?

CLAIMANT #1: My wife. Like, my grandmother who primarily has been the maternal figure in my life, the Church we went to in Fayetteville, but in terms of occupationally, no, there wasn't, sir.

PRESIDING MEMBER: Because you know, I'm looking at what I referred to before and Ms. Dragaitis referred to, your application as you put it, non-combatant status and it doesn't indicate -- well, I guess Staff Sergeant Roger Hedrick (ph) was called and one of the things that he said was again, "Hinzman was our platoon radio operator and was on our EIB Committee and helped train the brigade on the M-240B. He was preparing to go to pre-Ranger, so this came to me as a big shock. As a platoon Sergeant I do not have interaction with all of my soldiers on a day-to-day basis. I did not know what religion he was, nor did I care."

CLAIMANT #1: I believe that was Sergeant First Class Rousey (ph) who said that, sir.

PRESIDING MEMBER: Okay. There are a number of -- it's hard to tell because it just says questions by the investigating officer.

it says ---

COUNSEL: Actually just above that

that.

PRESIDING MEMBER: Oh, yes, I see

substance as follows."

COUNSEL: --- "testified in

PRESIDING MEMBER: Absolutely.

Okay. SFC Patrick Rousey. And then Hedrick was asked a question and he said that your behaviour has never led you to believe -- never led him to believe that you were going to submit a conscientious objector packet. "I just talked to him on religious matters. He would rather negotiate than fight." And then ISG, James Carabello (ph), "He was a good soldier. Everything I ever observed in him was good. I found this as a shock because he's an 11B, he went through OSCT (ph) training, Airborne school, reception integration indoctrinisation into the 82nd Airborne Division in our battalion. He fully knew what our mission is and that is to do an airborne assault onto an objective and destroy the enemy. He was fully aware of his mission and our duties. He's a member of the rifle platoon. He's participated in numerous field exercises and JRTC." We heard that you didn't participate in JRTC.

And then his statement, "This is did not become an issue until it was apparent that we were going to deploy to Afghanistan." So, there's a couple of witnesses who certainly saw it as a shock that you were applying for conscientious objector status and is that the kind of double life that you're talking about? That on the one hand that you were preparing for pre-Ranger school and on the other hand that you were having serious doubts about whether this was what you wanted to do?

CLAIMANT #1: I believe that's fair, sir. First I would like to clarify that when I submitted my conscientious objector application nobody in my unit knew that we were going to be deployed to Afghanistan.

PRESIDING MEMBER: Yes.

CLAIMANT #1: When I re-submitted it however three months later after he had done whatever, God knows what with it, we had known for a couple of weeks and so but no, I

did. I did have a double life. That's the only way I could function and not have 24 hour weekend duty every weekend or not be able to flex my pectoral muscles any more or whatever else. It's just not -- in that atmosphere it's not something that behooves you -- it's not a good thing to talk about if you want to maintain any sort of sanity. Because you're going to be set up for ridicule by your fellow colleagues.

I just -- it's not something that I wanted to talk about and where Sergeant Hedrick refers to me being a negotiator and talking about religious matters there was one detail we were tested on where we guarded a waste water treatment plant for a month in the wake of September 11th and we did it overnight and so there was times I had lots of conversation and I mean, our religious conversation started because he couldn't get over the fact that I didn't believe in corporal punishment and as a child, how he tried to convince me that you know, all the whippings he got served him well or whatever. I mean, that's all irrelevant, but I'm just telling you how the conversation -- conversations were generated.

PRESIDING MEMBER: I guess what I'm more interested in is, you know, why you submitted the application? I mean, outwardly you've explained why, because you couldn't talk to anybody about your concerns because it would make you in their view less macho, less of a soldier, it may result in your career going nowhere, et cetera, but outwardly I guess everyone was under the impression, from what I read, that you were a soldier's soldier?

CLAIMANT #1: To some extent I was, sir, and it's a good -- I mean, it's a good point to make.

PRESIDING MEMBER: I'm not making a point, I'm just trying to understand at what point you changed and why your view changed that caused you to make the conscientious objection?

CLAIMANT #1: It was a gradual process, sir. Again, I didn't have any sort of a road to Damascus moment or I was struck by lightning. It was ---

PRESIDING MEMBER: Right. You said you didn't have an epiphany, right?

CLAIMANT #1: Right. Yes, I mean, it was a gradual unfolding of events, but through training I had to do, witnessing what was happening in the world at the time, I came to the conclusion that I couldn't kill. That all violence does is perpetuate more violence and if I have an issue with that the only way I can say anything about it or do anything about it was to take myself out of the equation. The equation being killing, and I just came to the conclusion through my process of having to dehumanise other people, having to dehumanise my co-workers and look at them really as functionaries and objects, that killing was wrong. Period. Full stop. And that I couldn't participate in it any more and I guess the impetus for submitting the application was the Ranger school was on the horizon.

PRESIDING MEMBER: Thank you.

RPO: But the pre-Ranger course wasn't something you were obliged to do, was it?

CLAIMANT #1: No, I didn't have to, it was wholly voluntary, but it was encouraged.

RPO: Yes, but how would that be on the horizon? The thing that sort of prompted you to think this was a point of no return and this is when I have to submit my conscientious objector application since it was something you didn't have to do?

CLAIMANT #1: It wasn't something I had to do, but being a soldier's soldier and being in the context that I was in this Airborne unit it was in my best interests to go to Ranger school if I was at least capable and it was my thinking, and still is, that had I gone I would have been a lean, mean fighting machine. There would be no turning back and I just didn't -- I knew that if I was going to act upon what I was thinking and feeling and the beliefs that were simmering within me based upon my training then that was the time to do it.

There was no deployment on the horizon. I just didn't want to go to a school where the army is going to pay a million dollars for me to go to and then come back and say, you know, I have an issue with killing people now that you've pumped all this money into me and whatever else. I wasn't going to do that and ---

RPO: Sorry. You're referring to the pre-Ranger course when you say that or do you mean ---

CLAIMANT #1: Pre-Ranger and consequently the Ranger school.

RPO: Okay. But was there not a way out of doing that course? Couldn't you just say you had a change of heart and you didn't want to do that?

CLAIMANT #1: I could have said no, I don't want to go to Ranger school, but I also would have -- I would have been stuck where I was to some degree. I would have -- I would have been -- when I say we're encouraged you're pretty much -- you're pulled along. I mean, yes, you theoretically have the option to go, but it was in my best interests to go. So, no, I wasn't forced to go, it was a choice, but being in the unit I was in it was in my best interests in going.

RPO: And you said a bit earlier there was a point, I guess just before submitting the application, that you concluded that you couldn't kill, is that right?

CLAIMANT #1: That's correct.

RPO: And you've also told us a couple of times it was a gradual process. So, I take it there was no one point at which you just realised that there was no way you could pull a trigger?

CLAIMANT #1: Right. I mean, it was a gradual process from week five of basic training to now, but given the time when I submitted my application.

RPO: And just so I'm clear, what was your feeling about that when you first signed on?

CLAIMANT #1: Again, I don't think anybody joins the army with any sort of blood lust. I think the army tends to weed those people out before they can get in and so I knew conceivably I could be called upon to kill other people and no, I didn't have a smile upon my face when contemplating that, but I felt given that I enlisted for a noble country doing noble things that if called upon to do it I could do it and after being trained to do it I realised that I couldn't, and God knows I would have wanted to do it, but there's a sense of camaraderie with my

unit or whatever, I'm one the guys, but I can never think of it as (inaudible) pool and if I did something that I didn't feel was right, I mean, you know, I would be wrong.

RPO: Okay. But I'm just trying to get some clearer idea I guess of the timing. You say that when you were -- when you enlisted if you had been called upon to do it you could have done it, but after being trained you realised you couldn't. So what training do you mean made you realise that you couldn't kill anyone?

CLAIMANT #1: I thought I could have when I enlisted.

RPO: Right.

CLAIMANT #1: The training, repeatedly stabbing a bayonet into a dummy yelling, What Makes The Grass Grow - Blood, Blood, Bright Red Blood.

RPO: Okay, but was this basic training or Airborne training or subsequent training?

CLAIMANT #1: The whole experience.

RPO: Okay. And you submitted it in August of 2002 you told us, and we know from our materials that we provided that there is a whole process involved in submitting an application. Somebody prepares a report, there's an investigating officer, you're sent to see a Chaplain and a medical and all that sort of stuff. So, did you go through all of that?

CLAIMANT #1: Yes, I did.

RPO: So you saw a Chaplain?

CLAIMANT #1: I saw a Chaplain. I had a psychological evaluation and I had like a hearing in Kandahar, Afghanistan before an investigating officer.

RPO: Okay. And did the psychiatrist file a report in relation to your hearing?

CLAIMANT #1: Before it happened he just had to say that I was sane. Something like that. I don't

know the specifics. Like, he gave a piece of paper to one of my superiors.

RPO: Okay. You don't know his name?

CLAIMANT #1: No, it wasn't even a psychiatrist. It was a psychological technician or something from the army who asked me some basic questions.

RPO: Okay. And then what about the Chaplain? What kind of discussion did you have with him?

CLAIMANT #1: I don't know. He asked me why I thought what I thought and I pretty much told him what I'm telling you now and kind of tried to convince me that we are in fact training to do the right thing, that it is a noble pursuit and whatever. I don't really recall the specifics of the conversations, but his main I think function in that was to see that the religious or philosophical grounds that I gave in my claim are well-founded.

RPO: Okay. And what were the religious or philosophical grounds?

CLAIMANT #1: Basically I've been pretty influenced by a Buddhist outlook on my life. I wouldn't -- I've never taken Three Steps or anything so you couldn't officially call me a Buddhist. I went to a Quaker Church which I began attending shortly after arrival at Fort Bragg. I did that because the Quaker mode of worship is the closest thing I could find to silent meditation in the Fort Bragg area and my wife also had some interest in it and at that time when I started going to the Quaker meetings I had already started to have these issues with killing and whatnot and violence.

RPO: When did you start going to the Quaker meetings?

CLAIMANT #1: I think it was at the beginning of January 2002.

RPO: Okay. And when did you acquire your interest in the Buddhist outlook, as you've described it?

CLAIMANT #1: It had been sporadic. I originally read about it growing up in junior high, a little bit in high school, and then my meditation practice or what semblance I had of one began to intensify once I was in the army.

RPO: And why is that, do you know?

CLAIMANT #1: I think it might have been a stress coping mechanism. There was just a lot going on and if I sit on a cushion and stare at a wall and count my breath for a half hour it relieves the stress.

RPO: And other than the meditation aspect of it was there any other aspect of Buddhism that you adhered to or participated in?

CLAIMANT #1: I did a bit of reading and became familiar with some concepts that I've since found are pretty universal and doesn't matter what religion it is, and mainly it was the inner-connectiveness of everything. If I harm something it's going to harm something else and then it's going to create a chain reaction or if I do something good to somebody it's going to have an effect as well.

RPO: And you refer in your narrative to the -- or in your conscientious objector application to the Four Fold Path (ph) or probably the ---

CLAIMANT #1: The Eight Fold Path?

RPO: Sorry?

CLAIMANT #1: The Eight Fold Path.

RPO: The Eight Fold Path, yes, and isn't there something there about livelihood?

CLAIMANT #1: There is something about livelihood.

RPO: And do you know what it says?

CLAIMANT #1: I couldn't quote Ghatma (ph) on it, but I know that you should definitely ask yourself if the undertaking or job or occupation that you're doing is -- if it's doing good or if it's doing harm.

RPO: Just looking at your, not the transcript, but I guess the six or seven pages of application where you fill in answers to questions that are pretty standard questions and I think on page 3 that's where you refer to this livelihood.

PRESIDING MEMBER: Here. Here.

RPO: Which stipulates that, "Bearing arms is not conducive to ending the cycle of suffering," and you say, "Obviously being a combatant is not compatible with these aspects of the Eight Fold Path." So was that something that you were aware of before you enlisted in the army?

CLAIMANT #1: No, my awareness of Buddhism was pretty superficial before entering the army and after starting to undergo a lot of what I did in training I kind of sought it out as a refuge, I guess would be the right word, and so as I became familiar with that I was able to identify with that because it spoke to my in my situation.

RPO: Was that something you formally espoused at some point or was it just that that was consistent with the beliefs that you were beginning to develop?

CLAIMANT #1: It was beginning to develop. I'm not a formal Buddhist. I've never taken precepts or anything else like that, but again, the reason we started attending Quaker meetings is because they pretty much say the same thing in different words in terms of what I was speaking about in regards to inter-connectiveness.

RPO: And that was a Quaker meeting in?

CLAIMANT #1: Fayetteville, North Carolina.

RPO: Fayetteville, okay. And do you have anything -- I don't think that we received any sort of disclosure from the claimant or counsel from the Fayetteville, North Carolina Quaker meetings. Do you have any documents from them?

CLAIMANT #1: I thought you had, Ma'am. I don't know why it's not there, but I did begin attending with my wife in January of 2002 and the Quaker meeting that we attend now, although I know it's probably not admissible because it doesn't meet the 20 day criteria, they have letters from our meetings in Fayetteville that establish that we had indeed been -- that we weren't charlatans when we went to the Quaker House in Toronto, that we had indeed been attending meetings.

RPO: I'm not aware of anything about the Fayetteville Quaker meetings ---

PRESIDING MEMBER: No, no, we don't.

RPO: --- that have been disclosed unless I'm overlooking something.

PRESIDING MEMBER: No, I actually in the pre-hearing raised the issue.

COUNSEL: If I may? There may have been some misunderstanding because information was communicated to the Quaker House here in Toronto asking them to provide something to me. It's my understanding that they sent something to you directly which was obviously ruled inadmissible and I received this from them, your response, that it was inadmissible approximately four or five days ago, I would say about that. If there's a question about the legitimacy of Mr. Hinzman's Quaker attendance we can certainly provide evidence, either written evidence or oral evidence, and I'll try to get that for tomorrow.

PRESIDING MEMBER: You talked about, on page 77 if you want to take a look at the transcript, I indicated when we were discussing the basis of Mr. Hinzman's claim that I would like to know more about, "What motivated you to become a Buddhist, whether you believe that you are an observant Buddhist and what exactly that means to you. Are you a Quaker? If you are a Quaker or if you're not how do your Buddhist beliefs relate to your Quaker beliefs because you certainly mention both in your Personal Information Form.

So I'm being quite detailed because this is really at the heart of your claim, is your political opinion, your religious beliefs and your membership in a social group," and I think when we talked about disclosures as well earlier we mentioned if there was any documentation with respect

to his affiliation with -- yes. It was actually Ms. Dragaitis who raised it on page 34. "So, the only other thing I can think of is perhaps any documents that might show adherence to either the Buddhist or Quaker faith, for lack of a better phrasing. There may not be any, but just to put the request out," and I said, "That there may be documents about some of the activities or meetings that you attended, celebrations, a peace testimony. So any document in relation to your beliefs and your participation, which again you clearly outline in your text attached to your application for reclassification to non-combatant status."

COUNSEL: I'll be glad to provide the letter that was sent to me by the Quaker House here which I believe does refer to Mr. Hinzman having attended services in Fayetteville. If you require we'll get a letter from Fayetteville too.

PRESIDING MEMBER: What you had said at the time was -- I'm sorry, that was relation to his file, the army file. Okay. Well, certainly that will be helpful.

COUNSEL: I'll try to get that. I hadn't thought that it was really a contentious matter, but if there's some concern about that we can get a letter or we'll bring a witness.

PRESIDING MEMBER: Yes, I don't think bringing a witness is necessary, nor do I think it's necessarily a contentious matter, but clearly some evidence of his having attended Quaker meetings, what his activities were. As I understand his evidence the Buddhism -- just help me understand it. As I understand the Buddhism was really self-taught through reading?

CLAIMANT #1: It was mainly, yes.

PRESIDING MEMBER: It wasn't through attending Ashram or ---

CLAIMANT #1: No, I've never really been a place till now until I've had a recourse to such places and there are people ---

PRESIDING MEMBER: Till you got to Toronto, you mean?

CLAIMANT #1: Right. Yes, there's everything, but there are people in this room that would testify to me attending Quaker meetings because they are Quakers.

PRESIDING MEMBER: Okay.

CLAIMANT #1: Or friends is probably a better word.

PRESIDING MEMBER: I don't think it's going to be necessary for them to testify, just some document that indicates, you know, what your association and activities have been and when they started. That'll be fine.

RPO: Like it is really mainly there in Fayetteville more than here any way that we'd more interested in. I was asking about the meeting with the Chaplain and that's how we got on this thing with Buddhism. Did he explore anything else with you other than your, I guess, reading or being a self-taught sort of Buddhist? Did he explore anything else?

CLAIMANT #1: I don't really remember the specifics of my meeting with the Chaplain. I know that it was brief. He tried to ascertain from what I said if it was credible and I believe he relayed that it was, but I don't remember the specifics of the conversation. I know he kind of tried to make me see in a sort of divine sense why what we were doing was right, but I don't remember the more specific details of the conversation.

RPO: Okay. And did he submit some sort of report to the people who heard your conscientious objector status application?

CLAIMANT #1: Mr. Fitzgerald, or Lieutenant Fitzgerald at the time, should have received something and I don't know what it was, but it wasn't something that would be couriered from the Chaplain -- or couriered by me from the Chaplain to Lieutenant Fitzgerald.

RPO: It would have been given directly by the Chaplain to the commanding officer or whoever?

CLAIMANT #1: Yes.

RPO: Okay. And do you remember when it was that you saw the Chaplain?

CLAIMANT #1: Well, initially I turned in my application on August 2nd. It was -- it was -- it flew off somewhere and I had to re-submit one on November 1st or October 31st and then I believe I saw the psychiatric technician and the Chaplain shortly thereafter.

RPO: Okay. And I know you have referred to your application having been, I think you just said now it flew off, and you do refer to that in your narrative, but the application that we have is the one that's dated August 2nd, 2002. So, how is it that you came to re-submit the same application?

CLAIMANT #1: I didn't re-submit the same application, Ms. Dragaitis. After we returned from Afghanistan and my conscientious objector application had not gone anywhere I was re-assigned to normal duties with my unit, my company, the 2nd Battalion of 504 Parachute Infantry Regiment and at that time there was a day after work when my squad leader brought me into the office and opened the file cabinet, took out my conscientious objector packet and handed it to me and said do you want to take this? And I said sure, because of course then it would be out of the bureaucratic stream. So I brought it home and then when we came to Canada I figured that it would probably be a good idea to have it as evidence and upon arrival in Toronto I actually opened the folder and my application of August 2nd was there and I say that because my unit didn't receive word that it was going to deploy to Afghanistan until mid-October of 2002 and so, there was some doubt from official channels who didn't have knowledge of the August 2nd application as to why I would turn in a conscientious objector application two weeks after find out we were going to be deployed whereas I had actually submitted it two and a half months beforehand.

RPO: Just so I'm clear, the document we have is dated August 2nd. Is that the one that was actually used at the hearing that was held at Kandahar?

CLAIMANT #1: No, it should have been the one from November 1st and I don't know if you have one from November 1st. That's the only one I have.

August one? RPO: The only one you have is the

CLAIMANT #1: As far as I know.

RPO: But when you say you re-submitted do you mean you filled out a new personnel action form that would have been dated later on ---

CLAIMANT #1: Yes.

RPO: --- at the end of October?

CLAIMANT #1: Yes.

RPO: I haven't seen any document like that. I've only seen the one that we have attached to the PIF, the August 2nd, 2002 one.

PRESIDING MEMBER: It's also contrary to the information that Mr. House gave at the pre-hearing.

COUNSEL: I was under the impression that it was simply a duplicate form. Obviously the date would be different on the form, but it's the same form. So maybe I was mistaken and so I apologise.

PRESIDING MEMBER: Yes, you had indicated that they ultimately found and submitted -- there wasn't a second application, there was only one application and it was the earlier application that was subsequently found and submitted.

COUNSEL: Well, I ---

PRESIDING MEMBER: No, I accept your apology. I'm not worried about that.

COUNSEL: I wasn't there at the time, so I honestly don't know this detail myself. I must have got the wrong impression.

PRESIDING MEMBER: I'm just concerned that we have all the documentation that we should have before us and if what I'm hearing is that we have an application and a decision that doesn't relate to the application ---

COUNSEL: Well, could I ---

PRESIDING MEMBER: --- we ought to have the application to which the decision relates.

COUNSEL: Let me just clarify something.

CLAIMANT #1: I don't have the second application, sir, but in the transcripts from my hearing at Kandahar airfield it's referred to by the investigating officer and by my First Sergeant, that I didn't submit this until after we had knowledge of a deployment and in August we had no such knowledge, sir, and I apologise for the lack of documentation, but that's what I have there.

PRESIDING MEMBER: I mean, I believe you, that's not the issue that I'm raising. The issue is that we have a decision in relation to an application that we don't have and an application for which a decision was never made. So this transcript that you're talking about we don't have the transcript, we have -- I don't believe in any event. We have the recommendation of the investigating officer.

MINISTER'S COUNSEL: It's a report basically made up by the investigating officer that ---

PRESIDING MEMBER: That's right.

MINISTER'S COUNSEL: --- reflects some of the evidence.

PRESIDING MEMBER: Lieutenant Fitzgerald, but it's not a transcript.

COUNSEL: The transcript of the hearing, yes, right here. Well, we don't have a transcript but we have that document which is Exhibit 16 on volume 1 where it is a summary. It says, "The purpose of the hearing is to provide PFC Jeremy Hinzman the opportunity to provide any evidence in support of his application for conscientious objector. Also to allow the investigating officer to assert and assemble all relevant facts and to make a recommendation to the approving authority."

Then witnesses are called and you have a summary of their evidence. That's what we're referring to as the transcript. Witness So and So testified in substance as follows. It's true it's not a verbatim transcript and I believe somewhere there's an indication that no verbatim transcript was made at the air base.

PRESIDING MEMBER: Yes, what you're referring to we also have attached to the PIF.

COUNSEL: Right.

PRESIDING MEMBER: But as you say, it is not a transcript, it's a summary prepared of what happened and who gave evidence and what it was. It doesn't indicate who prepared the summary.

COUNSEL: It says Sergeant Brady Gilkerson (ph), Recorder. That's at the very top. That means that he ---

PRESIDING MEMBER: Oh, I see, yes.

COUNSEL: --- recorded it. He's recording this for Officer Fitzgerald.

PRESIDING MEMBER: So he's the recorder of the summary then.

COUNSEL: Then Officer Fitzgerald's report which follows at tab 17 refers to the previous document recorded by Gilkerson ---

PRESIDING MEMBER: Yes.

COUNSEL: --- and it says at item 2E, "The applicant elected not to provide a verbatim recording of the hearing. The applicant submitted the packet on 31 October of '02, a few weeks prior to his unit's deployment."

PRESIDING MEMBER: Just a second.

COUNSEL: So the point I'm making is that there was not transcript. It was recorded. It was recorded in the form that it was recorded on the air base and no apparently

PFC Hinzman did not request that there be a formal form of transcript, so we don't have a formal form of transcript.

PRESIDING MEMBER: Right. However, we have reference to the application ---

COUNSEL: Right.

PRESIDING MEMBER: --- of October 31st?

COUNSEL: Yes.

PRESIDING MEMBER: And from what I understand we don't have that application?

COUNSEL: Although I don't know if there's any evidence that it's any different other than the date on it. That would be the question that I would be dealing with in the examination if it's not dealt with here.

PRESIDING MEMBER: Okay. Go ahead, Ms. Dragaitis.

RPO: It's on the last page of Dennis Fitzgerald's, I guess, summary or report he's summarising Mr. Hinzman's evidence and Mr. Hinzman is saying, "I submitted this packet in August 2002," and so actually there's no reference I see to an October submission date. Everything refers to the August 2002 submission date. So I'm not even -- this is the first that we're hearing that there was actually a second application made, whether it's the same or not. I mean, it's for the moment besides the point. I just want to know whether we're missing a document.

COUNSEL: Well, it says, "The applicant submitted the packet on 31 October '02." Do you see that?

RPO: Oh, sorry, where is that?

COUNSEL: That's Department of the Army, D Company, 1st Battalion, tab 17, item 2E. "The applicant submitted the packet on 31 October '02, a few weeks prior to his unit's deployment operation (inaudible)."

RPO: Okay. So he's saying he submitted it August 2002 and then in the summary ---

COUNSEL: Yes, and the previous document, item 15, page 110, item 14D you can see the date of 2002 08/02, which is August 2nd, 2002.

RPO: Yes, on the application itself?

COUNSEL: Right.

RPO: On the personnel action form.

PRESIDING MEMBER: I guess the real question is, Mr. Hinzman, if you can recall whether there were any differences between the application that you submitted in August and the application that you submitted in October?

CLAIMANT #1: The only difference, sir, was the date. All the content was the same, I believe.

PRESIDING MEMBER: That's really what I need to know.

CLAIMANT #1: Yes, it was saved on a disk and I printed it out again and put a different date on it.

PRESIDING MEMBER: Okay. No difference in the content?

CLAIMANT #1: No, not at all, sir.

RPO: And how was it that it came to your attention that the August 2002 application didn't go anywhere?

CLAIMANT #1: On Halloween or October 30th, I guess, my First Sergeant informed me that "Hinzman, if you're a conscientious objector we need the expletive paperwork," and so -- and that was the same first Sergeant I had originally given the paperwork to in August. Does that make sense?

RPO: So, he knew you made an application in August 2002?

CLAIMANT #1: Yes.

RPO: So, what was he saying to you then in October? I don't understand what his query was?

CLAIMANT #1: He was saying to submit another one because he didn't receive one in August.

RPO: How did he even know you submitted one in August?

CLAIMANT #1: Because I gave it to him. He was the first person who found out about it.

PRESIDING MEMBER: Mr. Hinzman, the material is quite detailed as you know about what has to be included in the packets, when he returned the application to you and said you'd better fill out the expetive deleted paperwork, had you completed all the paperwork when you submitted it in August?

CLAIMANT #1: This whole application here is identical with the exception of the date that I gave him in August, sir.

PRESIDING MEMBER: Okay.

RPO: Well, maybe I'm the only one that doesn't understand why if you gave it to him he would then a few months later say where is it, where is the paperwork? If it's the same paperwork that you gave him and that's how he knew you were making the application then I don't understand what the meaning was behind his asking you on Halloween where's the paperwork?

CLAIMANT #1: It's probably not appropriate to speculate, Ms. Dragaitis, but by having me re-submit another application two weeks after finding out about a deployment it calls into question the motivations behind my submitting the application in the first place. An application submitted when no deployment on the horizon is a lot more credible than an application submitted after you find out you're going to go to a war zone.

RPO: And that was an issue during your hearing, wasn't it? The timing of your application? That it was just on the eve of deployment?

CLAIMANT #1: Yes, it was.

RPO: Okay. And did you mention somewhere in your evidence that that's what happened, that you submitted it in August but that it must have gone missing and all the circumstances you're telling us about now?

CLAIMANT #1: In my evidence before the hearing with the conscientious objector? No, I didn't because I thought the August application or the application dated August had been thrown away or shredded or something and so when I actually got the packet back with the original application it was like rain from heaven or something. I thought it was shredded in a landfill.

PRESIDING MEMBER: Actually you are quoted as saying, "I submitted this packet in August 2002 because I was to go to PRC and knew that was a point of no return."

CLAIMANT #1: That's what I said then, sorry. I just don't recall.

PRESIDING MEMBER: No, I'm not trying to trick you or anything, I'm just saying ---

CLAIMANT #1: Oh, okay.

PRESIDING MEMBER: --- that you indicated in response to Ms. Dragaitis's question did you say at the hearing that you had submitted it. Well, you did say you submitted it ---

CLAIMANT #1: Okay.

PRESIDING MEMBER: --- according to this summary.

RPO: Yes, I realised that. What I wondered was whether you explained? Because the timing was an issue during the hearing. You've already said that. We know that, but did you explain during the hearing that you submitted it in August but somehow or other the August application seems to

have been mislaid and you were forced to re-submit and all that sort of stuff?

CLAIMANT #1: I don't recall.

RPO: Is there a reason that you wouldn't try to make that clear since the timing was obviously an issue?

CLAIMANT #1: Well, I made it clear when I said I submitted an application in August. The Presiding Member just pointed out that I did indeed say that I submitted the application in August and I didn't make an issue of it during the hearing because it was for the investigating officer to make a determination as to the timing and the motivation behind the timing.

PRESIDING MEMBER: I guess the other -- I mean, I'm just musing here if I could. There are other explanations for why it didn't go forward, plausible, and I don't know what happened or why it happened, but for example one plausible explanation is that when you submitted it in August he asked you whether you really wanted to proceed with this, maybe you should give this some time and think about it and I'm going to hold onto it until you tell me otherwise and that's one possibility.

CLAIMANT #1: I can say, sir, that when I submitted it in August within three days I was re-assigned to separate duties commensurate with the stated beliefs in my conscientious objector application. I went from going to work at the infantry company every day to being a gate guard on Fort Bragg checking people's identification and license plates and they would only do that if they felt I was sincere in the submission of the application.

PRESIDING MEMBER: Well, why wouldn't they do it if they wanted you to really think about whether you wanted to proceed with it?

CLAIMANT #1: They wouldn't re-assign me to duties commensurate with the stated beliefs until I - - I mean, once I submitted that application in August that started the ball rolling and so I was automatically re-assigned. Had they said they wanted me to think about it or mull it over or whatever they would have kept me in the unit.

PRESIDING MEMBER: So you believe that as of the date you submitted it you were treated as the application having been gone forward. I'm talking about in terms of your assignment?

CLAIMANT #1: Yes, I was a gate guard.

PRESIDING MEMBER: Because you were re-assigned?

CLAIMANT #1: Right. Yes.

PRESIDING MEMBER: Within three days?

COUNSEL: I'm sorry. Could I just bring up one point about this document that hasn't been touched upon? That is, this is the document, tab 15, the original 2002 application. It's signed by the Commander Authorised Representative, Patrick S. Alternberg (ph) at point 12 and then there's a signature which I can't read, but I'm going to suggest is Patrick Alternberg's signature. So it's clear that Mr. Hinzman was not retaining this. An officer signed for it, the Commanding Officer or his representative signed for it and then at point 4 it says, "The person's chain of command will ensure that the application is processed expeditiously," et cetera, et cetera.

So, there can be no question that the officer received the material from Mr. Hinzman on August 2nd because he signed for it. Now, if your suggestion, which I don't think there's any evidence for is that ---

PRESIDING MEMBER: No, I'm not suggesting anything.

COUNSEL: Well, your question or your musing was that it was held back or something that would be contrary to all the procedures which are being suggested had to be followed.

PRESIDING MEMBER: Well, I certainly agree with that.

COUNSEL: Yes.

PRESIDING MEMBER: The procedures are very clear about what happens when that packet is delivered and when it happens ---

COUNSEL: Right.

PRESIDING MEMBER: --- and who does what, but it was simply that, a musing, wondering if there's such pressure placed on soldiers in the unit, does that pressure include why don't you think about this, I'm going to send you to somewhere else while you think about it, if you really want me to proceed with this I will and wait until, you know, the person -- regardless of what the procedures are and the answer to that I've heard is no.

CLAIMANT #1: Correct, sir.

PRESIDING MEMBER: Okay.

RPO: And we know you applied for non-combatant status?

CLAIMANT #1: That's correct.

RPO: And you must have realised that you had a choice between that and discharge?

CLAIMANT #1: I did realise that.

RPO: So, why did you choose to apply for non-combatant status? That is, to stay with your unit but in a non-combatant function as opposed to a complete discharge?

CLAIMANT #1: I chose option 1 of OSCAR (ph) because although I didn't feel I could kill I still did sign up to be in the army for four years and there's a lot of other things -- I could have done anything else in the army based on my test scores, I just didn't want to kill people. I would be content being a medic, being a truck driver, being a cook, being a paper pusher or pardon me, administrator, I mean any number of things. My main focus at the time of submission was not to be in a combat arms job which I was in being an infantryman.

RPO: Okay. And there's a reference in your narrative where you talk about the witnesses you presented to testify as to the sincerity of your convictions. Which witnesses were those?

CLAIMANT #1: Well, in Kandahar the only people that were witnesses as to the sincerity or lack of were my chain of command, my former squad leader, my former platoon Sergeant and my former First Sergeant. Being that we were in Afghanistan and my application wasn't acted upon expeditiously I couldn't call people from, for instance, the Quaker meeting that I attended in Fayetteville or my wife or any other number of people.

RPO: Okay. But it appears to me that there was only one person with whom you even had a discussion about your religious beliefs with?

CLAIMANT #1: And that is who?

RPO: Hedrick?

CLAIMANT #1: That was Sergeant Hedrick, yes, and ---

RPO: Or perhaps not. Sorry, I don't want to misstate who it is, but with respect to Sergeant Rousey he says he didn't know what religion you were nor did he care. So we now that wasn't him.

CLAIMANT #1: Yes.

RPO: And I don't see it reflected in James Carabello's evidence, so I think it's only Hedrick, is that right? So was he the only one who would have testified as to the sincerity of your convictions?

CLAIMANT #1: Our religious discussions weren't -- I don't even know why he characterized them as religion. They were more religious, they were more just in terms of philosophical and how life is to be lived or whatever. The guy is a great talker and we had lots of long conversations during that month when we were tasked out on the overnight, overnight duties, and they would cover any wide array of topics, but I don't -- I don't recall having any specific conversations with him in regards to religious faith or practice.

RPO: Well, was there anybody available to you in Kandahar that you could have called as a witness about your convictions?

CLAIMANT #1: Well, since the convictions I had that had come to develop with regards to killing and violence weren't something that I thought was a good idea to discuss with my co-workers. There was no established history of discussing those events, or those beliefs rather, with them and so there was nobody I could call because it's not something -- it wasn't something that I had discussed in any detail with any of my colleagues.

RPO: Okay. Well, I'm asking about this because in your narrative when you talk about the hearing and the negative decision that was made you say the Lieutenant who came to this conclusion that you weren't a conscientious objector, "made no references to the witnesses I presented as to the sincerity of my convictions," but really from what you're saying today it sounds as though there weren't any witnesses you presented as to the sincerity of your convictions?

CLAIMANT #1: I don't know how to answer that. I think I was referring to my former superior officers in terms of my effectiveness as a soldier. I don't know.

RPO: Well, when you say sincerity of your convictions were you not referring to your religious convictions?

CLAIMANT #1: Yes. I think I'll have to read it again.

COUNSEL: Could he have a moment just to read what he wrote so he can see what's there?

PRESIDING MEMBER: Certainly.

CLAIMANT #1: That's -- okay. I guess the best way to put it would be that I didn't have any witnesses to call upon, so there was nothing that he could -- that he could refer to and in most situations the hearing would have taken part stateside and also had my application been dealt with as soon as I turned it in the odds are that I would have had my

hearing in the States at Fort Bragg where I would have recourse to people who could vouch for the sincerity of my convictions.

RPO: That isn't what you say. You say the Lieutenant -- I think counsel is conferring with him.

CLAIMANT #1: I didn't present any witnesses at my ---

PRESIDING MEMBER: Mr. House, excuse me.

CLAIMANT #1: --- hearing.

PRESIDING MEMBER: I just think you should let ---

COUNSEL: All right.

PRESIDING MEMBER: --- the witness answer the questions.

COUNSEL: All right.

PRESIDING MEMBER: Otherwise I can't give them much weight.

COUNSEL: Right.

CLAIMANT #1: I didn't present any witnesses as to the sincerity of my convictions at the hearing, so I don't know why I wrote that.

RPO: Okay. And I guess I should ask you, is there anything, when you read this report taken by the recorder, is there anything that is inaccurate about it in your -- I assume you've had a chance to read it before today?

COUNSEL: We're talking now about the summary of the evidence?

RPO: That's right. Part of the PIF, but I guess it hasn't been sworn evidence. I have to find out first if there's anything.

PRESIDING MEMBER: We've already mentioned one thing, the reference to his participation in JRTC.

RPO: Which he corrected.

PRESIDING MEMBER: Which he corrected. He said he didn't go.

RPO: Right in the report.

PRESIDING MEMBER: Yes.

RPO: So that's already set straight.

CLAIMANT #1: Not that I see, Ms. Draigitis.

RPO: Okay.

CLAIMANT #1: I think the characterisation of me as a devout Buddhist would be a little ---

RPO: Overstated?

CLAIMANT #1: Yes, for sure, but other than that I think it's all pretty accurate.

RPO: Okay.

PRESIDING MEMBER: If I could just follow up with one question here, which we haven't really touched upon, but it follows from this issue of timing, the timing of your request and your evidence has been consistent that you submitted your request on August 2nd, I think it was. That it wasn't dealt with as it should have been. Had it been dealt with expeditiously it would have been dealt with stateside and it would have been dealt with before you received notice of your deployment to Afghanistan. Because it wasn't dealt with expeditiously it resulted in the perception that you had submitted it after you learned you were going to be deployed to Afghanistan.

But one thing you referred to in your hearing is the birth of your son and also your wife and I'm just wondering, I'm going to read you the words and then I'm going to ask you what you meant by them and it's right after you refer

to the Chaplain so I'm going to put it in context. "On the statement I gave the Chaplain I did state that I could not pull the trigger, however what I meant was not in an offensive operation. If my request is denied I don't know what I will do. I have a wife and a kid and need to consider their futures, not just my own. I just can't go back to the infantry," et cetera.

Now, your son was born in January,
is that right?

CLAIMANT #1: No, he was born on May
12th of 2002, sir.

PRESIDING MEMBER: I'm sorry, I
don't know why I thought January. So he was born in May and you
made the application in August?

CLAIMANT #1: Yes, sir.

PRESIDING MEMBER: Okay. And what
impact if any did the birth of your son have on your decision to
make the application?

CLAIMANT #1: He cemented in my mind
that I didn't want to kill babies and I didn't ever want to have
the possibility of killing babies, sir.

PRESIDING MEMBER: Anything else?

CLAIMANT #1: No. Just, I mean,
becoming a father really wakes you up to a lot of things and so
I'm sure it had some impact in my thinking, but mainly the fact
that I wouldn't want to kill him or I wouldn't want somebody to
kill him and I wouldn't want to do that to someone else.

PRESIDING MEMBER: What about
someone killing you?

CLAIMANT #1: I wouldn't be too
crazy about it, sir.

PRESIDING MEMBER: Well, neither
would your son I would imagine?

CLAIMANT #1: No, not at all.

PRESIDING MEMBER: So, the reason I'm asking you, I'm not trying to be smart about this, did it enter your mind that you now have a son and that you wanted your son to have a father and that if you were deployed to Afghanistan that you might be in harm's way and did that have any impact on your decision?

CLAIMANT #1: No, sir, because my application again was for non-combatant status. That doesn't preclude me from being a medic, a combat medic, with an infantry -
--

PRESIDING MEMBER: Sure.

CLAIMANT #1: --- platoon and having bullets whiz over my head and being in harm's way and I was fully willing to do that and I would be fully willing to do that. My sole concern was with taking other lives, sir.

PRESIDING MEMBER: Thank you.

RPO: Just in light of what you said about your son it sort of begs the question why wouldn't you have made a conscientious objector application earlier? You would have known that your wife was pregnant quite a bit earlier even than May, so even August seems relatively late? I mean, your words were that the birth of your son cemented your mind.

CLAIMANT #1: I actually composed this application in the spring and the summer was a process of working up the nerve to actually submit it and I think I may have composed it shortly after his birth or shortly before and it took me a lot of gumption or whatever to turn it in because I knew it wouldn't be the most comfortable experience.

RPO: And you said right towards the beginning that when you did your vocational testing you scored very high and there was any number of things that you could have done and based on a few of the examples you gave I assume some of those would put you less in harm's way than being with the infantry or especially the Airborne Division. So, did you give any thought to trying to apply to be in a different division? I think you said something about -- going back towards right at the beginning here, but something about being a psychologist or psychological testing or something like that.

CLAIMANT #1: Psychological operations.

RPO: Yes. Yes. So, did you give any thought to seeing if you could transfer out or transfer into something like that that would put you -- that would effectively give you something closer to non-combat status but that wouldn't make you go through this process, this non-combatant -- or conscientious objector process which you're describing as being quite a hurdle for you to have to overcome.

CLAIMANT #1: It wasn't an avenue that was open to me. You can generally only change MOS's, if you're a MOS or Military Occupational Speciality, your job is overstaffed or it's often used as an incentive to get people to re-enlist or if you want to be on the bomb squad. They're always looking for people as well, but it's not something that you can generally just do.

RPO: Did you make any inquiries about it?

CLAIMANT #1: Oh, yes, many.

RPO: What kinds of inquiries did you make? Who did you ask and what kinds of things were you asking?

CLAIMANT #1: I mean, I found out something about this program called the BEAR (ph) program which I don't even know what the acronym stands for, but it basically is a program that can let you switch jobs, but because I was in an understaffed job I wasn't eligible for it.

RPO: And what specifically was understaffed? The Airborne Division as a whole or?

CLAIMANT #1: The Airborne, infantry.

RPO: Okay. And BEAR is an acronym?

CLAIMANT #1: Yes, and I don't even remember -- I just remember it was always referred to as the BEAR program.

RPO: Okay. And your evidence in the conscientious objector status hearing is fairly clear that what you didn't want to do was engage in offensive operations?

CLAIMANT #1: That's correct.

RPO: Okay. And you say that, I'm quoting, "That is not to say that I could not act in defence. I have a weapon and it would be my duty to defend the airfield if it were attacked for example." Is that correct?

CLAIMANT #1: I did say that and I likened it to an instance of a house being burglarised, or my house being burglarised. I'm not the kind of a person that can simply let it happen and I may take steps to prevent it, but that doesn't mean I'm going to use that same rationale to plan and carry out a murder or kill someone.

RPO: You're drawing a distinction between offensive and defensive operations?

CLAIMANT #1: Yes.

RPO: And you'd be prepared to do defensive, just not offensive?

CLAIMANT #1: Yes.

RPO: And going again back to your Personal Information Form narrative, again when you're describing the hearing and talking about it you say that the Lieutenant who came to his conclusion, "fastened upon an "admission," and the word admission is in quotes, "I had made stating that I would use force to defence my home from an intruder to conclude my claim was lacking in merit," and you've said today you're drawing an analogy with that, but in fact at the hearing you did say that you would defend the airfield if it were attacked?

CLAIMANT #1: Yes, and I would still say that today.

PRESIDING MEMBER: Well, and indeed you said it in your PIF as well on the same page.

CLAIMANT #1: And I will say that if somebody broke the lines in our camp and started shooting I have a

tendency like anybody else and I would be obligated to the other soldiers that I'm with to take some sort of action, but that's a lot different than planning out a raid or an ambush that's rehearsed oftentimes weeks beforehand and then carrying it out. It's an instantaneous reaction versus a very well orchestrated plan or attack.

RPO: Okay. But I guess what I'm trying to focus on it seems in this paragraph as though you're criticising the Lieutenant, the Lieutenant's decision that was negative to you and there's almost a suggestion -- you put the word "admission" in quotation marks. You say, "He fastened upon the "admission" that you would use force to defend your home from an intruder," but there's almost a suggestion that ---

PRESIDING MEMBER: Is there a question, Ms. Dragaitis?

RPO: It's going to lead to a question, yes.

PRESIDING MEMBER: Okay, I hope so.

RPO: Yes. I'm just explaining where my -- what my concern is. Is that the description in the narrative of what happened at the conscientious objector status hearing does seem to be somewhat inaccurate?

CLAIMANT #1: I believe it says in the -- it's not a transcript, but whatever the account is of the hearing that took place, he did ask me if the camp was attacked would I help defend it, I said yes, and likened it to my house being burglarised and I'll admit for the purposes of the PIF I put in my house being burglarised, but in my thinking I equate it as the same type of action.

RPO: Okay. And is that still your belief? If you were doing another conscientious objector application would that still be your position?

CLAIMANT #1: It would.

RPO: Okay. I may have reached the end of a line of questioning. I'm just wondering if it's worth proceeding onto something else now?

PRESIDING MEMBER: Why don't we go off the record and do a time check. Okay, it's about 18 minutes after 4:00. We are back on the record. We've agreed during the break that we'll proceed until 5:00 this evening and will resume tomorrow sharply at 9:00, for those of you who are still interested in observing the hearing and you're obviously welcome to come back again. This is not a one-shot deal. Okay, Ms. Dragaitis?

RPO: Okay. I guess I should have asked you this before, did you not keep any copies of the personnel action form or anything like that that you submitted for your conscientious objector application? You told us you got this later on, but what I'm asking is if you retained any copies at the time you first made the application?

CLAIMANT #1: Not of the DD form 219, is it? On the bottom right. What is it? Oh, it's a 4187, I'm sorry. Not in terms of DA form 18 -- or 4187. But in terms of the rest of it that I composed I have it on a floppy disk, but no, I didn't receive a copy of any of the dated material in regards to that.

RPO: Okay. And you were saying that you were re-assigned to some other duty after you submitted the August application and my understanding ---

COUNSEL: He's nodding for the record.

RPO: Yes. You have to verbalise the answer. And I understood from your answer that that was sort of an implicit acknowledgement that they have received your application for conscientious objector status?

CLAIMANT #1: Once you submit the application it's the protocol or regulation or what have you to immediately re-assign you to duties that are in commensuration with your stated beliefs in the application.

RPO: And you're saying that happened right after the August 2nd date?

CLAIMANT #1: Within days. I was guarding gates or access points to Fort Bragg.

RPO: Okay. And did that continue up until your deployment?

CLAIMANT #1: That continued -- I think that detail lasted two months at which point I was assigned to work in the kitchen of my battalion or the dining facility doing different tasks related to food and that was still prior to the deployment and then when we deployed to Afghanistan I also worked in the dining facility for the duration of the deployment.

RPO: And your re-assignment then to guard duty and then to the kitchen would that not have been a give-away to your fellow soldiers that you had made some sort of similar application?

CLAIMANT #1: When I submitted the application I was ordered by my First Sergeant not to discuss it with any of my other fellow soldiers and the rationale behind that is to prevent what they call copycats or just so morale isn't lessened. People had no idea where I went. I mean, in terms of my fellow Privates and Specialists and whatever. My chain of command knew in terms of my squad leader and platoon Sergeant and First Sergeant and Commander of course, but in terms of the rank and file they weren't aware of where I had gone or what I had done.

RPO: And it wouldn't have been a beacon or a signal of some sort that you went from being a regular Airborne guy to being on guard and kitchen duty?

CLAIMANT #1: The detail that I was tasked out to, at least as far as the first one in terms of access point protection, was a detail that a few other soldiers in my company were assigned to as well. Our company was on a training cycle, I believe DRS-7, where we're appointed to different work details like that and so there were a few other soldiers, I don't know the exact number in my company, who were assigned to that detail as well.

RPO: Who as far as you knew hadn't made similar applications?

CLAIMANT #1: No, they were all -- they just lucked out and were assigned to that detail and during the duration of the detail all we had to do was show up to our access point. We didn't have to go back to the company or

anything like that. The only time I did go back to the company was to take part in an Airborne operation which was just a jump and there was nothing else involved. To maintain my jump status so I was still a paratrooper.

RPO: And how long did you remain in Afghanistan?

CLAIMANT #1: I deployed to Afghanistan with my unit on December 6th or 7th of 2002 and we remained there until between the 15th and 17th of July 2003.

RPO: And between the date of the decision which I think was the end of April 2003 up until July 2003 what were you doing?

CLAIMANT #1: I continued to work in the kitchen or dining facility.

RPO: And did anybody ask you to do anything else or was that just a given that that's what you would do?

CLAIMANT #1: That was my task for the entire deployment.

RPO: And once your application was rejected did you form any idea then of what approach you would take to the rest of the time you had ahead of you in the army?

CLAIMANT #1: During the time that I was in Afghanistan I worked long hours, as we all do I'm sure, but they were extraordinarily long hours, between 14, 15 hours a day, doing, well, it's debatable, but rather menial kitchen tasks and at the point of rejection I was pretty worn down and pretty fatigued and I guess I wanted some sort of semblance of a normal life. So, I didn't do anything else, no.

RPO: Once you came back, I guess it was Fort Bragg that you went back to in July, what detail or task or whatever were you assigned to then?

CLAIMANT #1: The point or before, even before the deployment I was -- no, actually when we came back to Fort Bragg I was back with my unit doing normal infantryman's task because my application was at that point a thing of the past

and initially I worked in administration for my company, although I pushed buttons instead of papers, but I did that and then it became apparent that our unit needed an armourer, which is a person who was responsible for security protocols, maintenance and other aspects related to -- or other things dealing with our company's weapons systems and I was designated as the armourer and I went to armourer school.

the armourer? RPO: So you did training to become

CLAIMANT #1: Yes.

RPO: And when was that?

CLAIMANT #1: That was in the fall of 2003.

RPO: But I'm still trying to get clear, once the application was rejected were you -- did you consider re-submitting an application based on some new evidence for example or were you resigned to your fate in the army or what was your point of view then?

CLAIMANT #1: Again at that point I was pretty worn down from the long hours and I wanted some sort of semblance of a normal life once we came back to the States. The thought crossed my mind to re-submit another application, however if I did it would be submitted to the same chain of command that rejected it the first time and also in order to -- I believe the rules are that if you are going to submit another application there has to be some sort of striking new piece of evidence that would enhance your claim and I didn't have that and so, I could have submitted another application and I could have continued living a life of drudgery or I could have -- and I wasn't willing to do that because it was going to go nowhere had I submitted another application.

RPO: Well, if you submitted another application when you were in Fort Bragg you would have had witnesses available to talk about your religious convictions. That's one of the things you've told us today that wasn't available to you in Kandahar?

CLAIMANT #1: That's a point well taken, but again, I was worn out. I was -- and I would have had

to go through another long process of waiting and doing menial tasks as I awaited the outcome and I'm not sure that the people who I would call to vouch for the sincerity of my claims, in the investigating officer's decision, that wasn't I think what was at issue, what was at issue, pardon me. The issue was whether or not I would defend the camp if it was attacked and that's what, at least in my understanding what deemed me not to be a conscientious objector.

RPO: And that part hasn't changed?
You've already told me that part hasn't changed?

CLAIMANT #1: That part hasn't changed and it's since come to my knowledge since I've been in Canada actually that an investigating officer is not -- you're not allowed to ask the question if the camp was attacked would you help defend it? And I say this because when we were deployed to Afghanistan I was given an M4 with all the gizmos on it, M-68 and a PAK-4 (ph) and a pair of nods and I asked ---

COUNSEL: I'm not sure we're really getting what it is that he was given. A pair of nods?

CLAIMANT #1: Oh, I'm sorry, nods are a device that allows you to see at night.

PRESIDING MEMBER: Night vision.

CLAIMANT #1: Yes, night vision goggles. I'm sorry. They're a night vision device. So anyway, I was given all this equipment prior to our deployment to Afghanistan and they knew that I was a conscientious objector and I said, hey Sergeant, why are you giving me this rifle, I'm a conscientious objector, it's pretty evident I don't want to shoot anybody, and he said well, Hinzman, even as a conscientious objector you have the inherent right to self defence and had I been reclassified as a non-combatant I still would have been made to carry a weapon because I have the inherent right to self defence and the obligation to look out for the welfare of my fellow soldiers if we came under attack.

RPO: All right. So are you suggesting that the Lieutenant's decision is wrong?

CLAIMANT #1: Yes. The question would you -- given the context I was in I had to carry a weapon. I

had no other choice. So was I carrying it around as dead weight to weigh me down? It was there for a purpose and to serve a function because any other number of people would have loved to have had an M-4 versus a heavy, bulky M-16, but I guess what I'm trying to say is you're not technically -- it's come to my knowledge you're not technically supposed to be allowed to ask that question because it's a no-win question. It's a Catch 22.

If I was to say no, I would go hide in a hole and not return fire if my camp was attacked I would be found to be remiss in my duties as a soldier. I mean, just saying that I wouldn't shoot back if our camp was attacked that would be basically saying that I wouldn't be willing to perform, again, my duties as a soldier. Sorry to repeat myself. And also again I'll emphasise that had I been reclassified to a non-combatant role that doesn't -- that still wouldn't prevent me from carrying or bearing arms because every soldier on a deployment, except a Chaplain, it doesn't matter what they are carries a weapon.

PRESIDING MEMBER: Just so I'm clear are you saying that you were asked the question directly, would you defend the airfield if it was under attack?

CLAIMANT #1: Yes, and given the context that I was in, sir, I mean I was told I have the inherent right to self defence, I had a weapon and if it was under attack I would feel an obligation to my other soldiers and myself that I would take measures to protect us.

RPO: I'm just going to refer to something in R/A-2 and it's the Army Regulations 643 which is the one the hearing was actually held under and it's at hand numbered page 19, around the middle. It's number D and it's just listing what the investigating officer should remember during the investigation and it says, "A conscientious objector is not necessarily a pacifist. An applicant may be willing to use force to protect himself or herself or his or her family and still be a conscientious objector, however if he or she is willing to defend the United States he or she cannot choose when and where."

So it seems to me that when you answer that you would defend your airfield, but you wouldn't do other things, that it may well be that the investigating officer was relying on this provision in the Regulations. That if you're willing to defend the United States you can't choose when and where?

CLAIMANT #1: I'm willing to defend -- as it says, you can be willing to defend -- willing to defend your family if it's attacked. If I'm out on deployment and I live amongst these people for seven months they are in effect my family at that time and when you share a tent with ten other guys and you're this close together for months and months you're going to have some sort of familiar bond or you're going to want to kill each other, just out of the fact of being so densely packed together. So there is a sense of fidelity that I'll venture to say is familial when you're in the service and especially on a deployment when you don't have any family within thousands of miles of you.

RPO: Did you have any access to any legal advice when you had your application heard in Kandahar?

CLAIMANT #1: I met with Sergeant Gilkrist (inaudible) I don't remember his name, but no, I didn't have any legal counsel.

RPO: Was there legal counsel? Was there somebody that you could have consulted with?

CLAIMANT #1: At the time I don't know. I know in the States if I was to have a hearing I would have recourse to counsel if I was willing to pay for it, but in Afghanistan there aren't any law firms that I know of that could have handled the case.

RPO: Well, or somebody who's there with you in Afghanistan who's trained as a lawyer. Did you know if there was anybody like that that you could have relied on?

CLAIMANT #1: There is the Judge Advocate General, JAG. I don't know if you -- I don't know if you can rely on them as your case is being heard. It was never offered to me. I mean, by all means I would have a JAG lawyer sitting by my side if I was offered it, but it was never offered to me.

RPO: Okay. When did you first hear that you would be likely deployed to Iraq?

CLAIMANT #1: December of 2003.

were at Fort Bragg?
RPO: Okay. And this was when you

CLAIMANT #1: It was.

hear that?
PRESIDING MEMBER: And how did you

we subsequently found out a couple of hours later from our chain
of command.
CLAIMANT #1: On CNN, sir. And then

part of your chain of command?
PRESIDING MEMBER: I thought CNN was

debatable, sir.
CLAIMANT #1: Well, that's

PRESIDING MEMBER: Sorry about that.

news.
COUNSEL: That's going to get in the

find out the same way, so we must be under the same command.
PRESIDING MEMBER: No, because I

argue that they're an apparatus.
CLAIMANT #1: I think some people

writing?
RPO: And did you get anything in

have received written orders on the eve of embarkation to Iraq.
CLAIMANT #1: No, Ma'am. We would

embarkation was going to take place?
RPO: And did you know when the

the tentative date was the 16th.
CLAIMANT #1: Mid-January. I think

heard what options did you consider?
RPO: Okay. So, when you first

about Iraq began in Afghanistan, but in regards to your question
CLAIMANT #1: Well, my thinking

and the time it deals with I discussed it with my spouse and I came to the conclusion that I was not going to go and I could go into the reasons for that later. Then we explored two different things. Either to refuse the orders of my command and take whatever repercussions stem from that or to go AWOL or go somewhere else and Canada was close by and my reason for choosing to come to Canada rather than refuse orders and be subject to the Uniform Code of Military Justice was because in my mind, and I know it's not relevant, but the expedition in Iraq was of an illegal nature and that by complying with it I would be complicit in a criminal act.

RPO: When you came back to Fort Bragg in July you would have known that there was war activity going on in Iraq, correct?

CLAIMANT #1: Yes, I knew before I came back.

RPO: Okay. And did you have any reason to think that your battalion wouldn't be shipped out sooner or later?

CLAIMANT #1: I think it was inevitable. I mean, just based on troop numbers and whatever, it was not a question of if, but when.

RPO: So, did you form any idea before you heard that your battalion, your unit, was going to be shipped out? Did you form any idea as to what you would likely do if you were required to go to Iraq?

CLAIMANT #1: When I was in Afghanistan I was privy to my chain of command or CNN or Fox News or whatever else and all the accounts that they had leading up to the conflict in Iraq. I saw Dr. Hans Plicks (ph) testify before the United Nations, Colin Powell, any other number of people as to why we should or shouldn't go to Iraq, and the reasons that were offered never have come to fruition. I mean, we said that there were weapons of mass destruction there when I was in Afghanistan and after I came back and now they haven't found any weapons of mass destruction.

They said that Iraq was linked to international terrorist organisations and there haven't been any links that have been established between Iraq and international

terrorist organisations and about bringing democracy to Iraq, I guess time will tell. From what little knowledge I have of just war or my oath as a soldier I know that if my country is under imminent threat i.e. having Egyptians stacked at my border ready to come in like the '67 war in Israel or someone's proffering threats or America is in imminent danger, then that's where my job as a soldier comes in.

As it was, Iraq had been under an embargo for ten years. It was pretty much bereft of any resources and posed no such threat to the U.S. and when I took my oath as a soldier it said that I swear or I affirm to defend the U.S. and the Constitution of the United States and there was no such threat. My country was going to Iraq on an offensive basis. It was going into Iraq offensively without any defensive basis and to me that didn't seem right or justified and I know I was just a little enlisted yokel, but even in basic training it was told to us by our drill Sergeants that if were given an illegal order to commit an illegal act it was not only our obligation, but our duty to refuse that, and in my eyes the U.S. involvement in Iraq was wrong, regardless of law.

RPO: When did you come to that conclusion?

CLAIMANT #1: I don't know the specific date. Probably after a few months of not finding weapons of mass destruction that there were supposed to be mass quantities of. After a few months of not being able to establish any links between Iraq and terrorist organisations. After that I just -- I mean, if there were so many weapons I think they would have found them. If there were links I think they would have established them or at least made them out and nothing was ever done in that regard, and so, I was faced with being deployed to Iraq to do what the infantry does, kill people, and I had no justification for doing so, so I didn't feel that I could go and so when I say a few months, see, -- when did the invasion happen, March?

RPO: Mm-hmm.

CLAIMANT #1: So probably by August I felt that I couldn't take part in an operation in Iraq.

RPO: Do you still have any contact with anybody in the 82nd Airborne Division?

CLAIMANT #1: I received an e-mail from a person I worked with in the dining facility in Afghanistan months ago, but no, there has been no ongoing contact with members of my unit.

RPO: Did you tell anybody there about your plans?

CLAIMANT #1: I don't think it would have been in my best interests.

RPO: So it was a secret except for you and your spouse? Or did you tell somebody else?

CLAIMANT #1: No, it was between my wife and I and we didn't discuss it with any other family members or anyone else for that matter.

RPO: And do you have any information as to what the 82nd Battalion or Division did in Iraq?

CLAIMANT #1: My unit was -- no, I don't have specifics, but my unit was an infantry unit and an infantry unit's job is to find the enemy on the battlefield and destroy them and I'm sure they, as an infantry unit and having as many manpower problems as there are in Iraq, they probably had ample opportunity to carry out that mission.

RPO: And what was the e-mail that you got recently from somebody who was with you in the kitchen?

CLAIMANT #1: It was six months ago. It was just from a friend I had expressing his support for my being in Canada.

RPO: And had he been in Iraq?

CLAIMANT #1: Not that I know of. I don't know where he was at the time he wrote it, I just knew it was him from his e-mail address.

RPO: I think I'm almost finished, Mr. Chairman. I'm just going to ask what do you think would happen to you if you went back to the United States today? If you had to go back.

CLAIMANT #1: I think undoubtedly I would go to jail. I'd be prosecuted or court martialled and I would go to prison for some length of time. I don't know the exact amount. It could be a year, it could be five years, it could be more. I don't know the exact details, but it's something I'm afraid of especially in light of the fact that I did this in order to avoid doing wrong. But I'm afraid of -- I'd be afraid of taking a shower in a prison. I'd be afraid of any other number of things that you could imagine that happens in prisons and I didn't do anything criminal, so.

RPO: Would this be a military prison?

CLAIMANT #1: Yes.

RPO: And I know we have information as to one or two people who were given a penalty. I think it didn't go beyond one-year imprisonment. So do you have some reason to believe yours would be more than one year when you say one to five years?

CLAIMANT #1: The nature -- the Uniform Code of Military Justice, when sentences are meted out there's no systematic way that they're -- they're arbitrary. It depends on what the command feels is appropriate. One command could feel a year is appropriate, another command could say five years is appropriate. So I don't know what my command would say.

RPO: And I know you say in your PIF that you believe there's an arrest warrant outstanding for you?

CLAIMANT #1: I believe after 30 days of being AWOL it's standard operating procedure that a warrant goes out for a soldier.

RPO: Okay. So you're saying that just on the basis of standard procedure, but you don't have any specific information?

CLAIMANT #1: No, I don't have the warrant at home or anything like that.

RPO: Okay. And have you had any contact with any military person in the U.S. since you've left?

CLAIMANT #1: The fellow that I referred to earlier.

RPO: The e-mail?

CLAIMANT #1: Yes.

RPO: Other than that?

CLAIMANT #1: Other than that my wife has a friend, two friends who are spouses of soldiers, but no, I haven't had any contact with other soldiers.

PRESIDING MEMBER: Mr. House, when we discussed this at the pre-hearing conference you indicated in response to my notification that one of the items that ought to be disclosed is the arrest warrant if any. You said there's a possibility it exists in the army record or the army file and that you would attempt to get that arrest warrant.

COUNSEL: Yes, and I think that all I can say is that it's my understanding that it would have to be on file. From what I know of legal procedures if there is a warrant for someone's arrest it's not necessarily produced to them or it usually isn't produced to them. It's kept as a surprise.

I have no doubt that at the very least there's an indication on a computer system that Mr. Hinzman is to be apprehended, but beyond that -- that would be the case in Canada generally and I think it's the case generally in the U.S. but beyond that I don't have a piece of paper attesting that he's wanted for leaving the army.

PRESIDING MEMBER: Because some of the documents indicate what procedure is to be undertaken in the event that someone is absent for 24 hours, 48 hours, 30 days, et cetera, et cetera, in the materials that the Minister produced I believe. So, you're not aware of any arrest warrant per se?

COUNSEL: No, I don't know whether one exists or not, but I believe that there would be some sort of directive to officials in the United States with respect to Mr. Hinzman being absent without official leave for a lengthy period of time.

PRESIDING MEMBER: And so, Mr. Hinzman, it's your belief that if you were to return to the United States you would be apprehended in accordance with the procedure outlined here and taken to military control?

CLAIMANT #1: Yes, sir.

PRESIDING MEMBER: Following which you would be court martialled?

CLAIMANT #1: Yes, sir. I don't think they would give me a slap on the wrist.

PRESIDING MEMBER: As you know, the materials indicate that the vast majority of desertions do not result in court martial. Ninety-four per cent as I recall.

CLAIMANT #1: I wasn't unaware of that, sir, but I think I might have ruffled enough feathers that I would be subject to that.

PRESIDING MEMBER: And you believe you would be sentenced to a term of prison?

CLAIMANT #1: I do, sir.

PRESIDING MEMBER: Imprisonment.

CLAIMANT #1: Yes, sir.

PRESIDING MEMBER: Would you be required to serve following that?

CLAIMANT #1: Would I? Following the prison sentence?

PRESIDING MEMBER: Yes?

CLAIMANT #1: I would assume that I'd probably be dishonourably discharged following the completion of a sentence.

PRESIDING MEMBER: The materials indicate that, if I can find it for you, but the vast majority of desertion charges result in discharges, less than honourable

discharges. So that would be bad conduct, dishonourable discharges?

CLAIMANT #1: Right. I know it's just speculation, sir, but I think I would fit into the six per cent that would be prosecuted.

PRESIDING MEMBER: Because of?

CLAIMANT #1: Because of the political nature of my claim here and the reasons for undertaking the course of action that I have.

PRESIDING MEMBER: Okay.

RPO: I don't have any other questions.

PRESIDING MEMBER: Well, it's five to 5:00. Sounds like a good place to stop and so when we resume at 9:00 a.m. tomorrow Ms. Chisholm will conduct her examination and if there are any additional documents as a result of your search, Mr. House, I am sure there will be because I've read the articles about the redeployment, the second deployment, and it's not just the 82nd Airborne, there are others as well. Certainly we should have that.

I would like to thank you all for being here. Thank you for being respectful of the process and I'd particularly like to thank the parties. I'm sorry your wife couldn't be here, but I'm sure that you'll have something to talk about this evening.

CLAIMANT #1: A little bit, sir.

PRESIDING MEMBER: And Liam too. We'll see you all tomorrow at 9:00 a.m. So this matter is adjourned till 9:00 a.m. tomorrow. Thank you. Have a nice night.

I HEREBY DECLARE THAT THIS IS A TRUE
TRANSCRIPT OF THE TAPE AND THAT I
HAVE SWORN THE OATH OF SECRECY

XL Transcribing

Barb Strachan 94031539

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