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STATEMENT OF  
BRIGADIER GENERAL JAMES C. WALKER  
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS  
BEFORE THE  
HOUSE ARMED SERVICES COMMITTEE  
7 SEPTEMBER 2006

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Chairman Hunter, Ranking Member Skelton, members of the Committee, good morning. I wish to thank you for the opportunity to appear before you today, and for this Committee's interest in the military commissions process. I assumed duties as Staff Judge Advocate to the Commandant on 25 August, and look forward to working with the committee on this and future matters.

Military commissions are a necessary forum for the trial of unlawful enemy combatants captured in the Global War on Terror. They can provide the flexibility essential for dealing with these individuals in the construct of a war with no readily identifiable end.

Since the Supreme Court's decision in *Hamdan v. Rumsfeld* in June, a significant amount of effort has been devoted to drafting a legislative proposal to address shortfalls with the commissions identified by the Court, as well as the concerns of Congress and the American people. While this work occurred during my predecessor, Brigadier General Sandkuhler's tour, I am aware that military judge advocates provided feedback in response to drafts circulated via the Department of Defense. Additionally, following a meeting between the Attorney General and The Judge Advocates General, uniformed attorneys met with Department of Justice representatives to discuss the proposed legislation and participated in subsequent discussions. The draft legislation submitted by the President incorporates a number of comments presented by the military judge advocates in those meetings.

The *Hamdan* decision underscores the necessity of ensuring that military commissions reflect American values such as due process and the rule of law. In previous hearings on this very topic, the word "balance" has been used repeatedly to describe the nature of the challenge before us. Striking the balance between individual due process and our national security interests, while maintaining our nation's flexibility in dealing with terrorists and unlawful enemy

combatants we encounter on the battlefield is the end we all seek. At the end of the day, the system we create must provide the “judicial guarantees which are recognized as indispensable by civilized peoples,” as required by Common Article 3 of the Geneva Conventions.

In determining what would constitute “indispensable judicial guarantees,” a plurality of the Court looked to the “fundamental guarantees” listed in Article 75 of Additional Protocol I to the Geneva Conventions of 1949. These Article 75 enumerated rights include, among others, the presumption of innocence the right against self-incrimination, and the right to presence during one’s trial. Throughout the drafting process I previously described, the Judge Advocates General steadfastly maintained that a system which would permit the introduction of evidence against an accused, outside of his presence, is objectionable. I join them in this regard, and in their enthusiasm in continuing to work with Congress to create a system which will simultaneously help to defend our nation from those who seek to destroy it, while upholding the values which have set us apart for over 230 years.