

UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

D001 - Defense Reply
to Government's Response to the Defense
Motion to Dismiss the Charges and
Specifications for Unlawful Influence

28 May 2008

1. **Timeliness:** This reply is filed within the time frame permitted by the Military Commissions Trial Judiciary Rules of Court.
2. **Overview:** The unlawful influence in this case was part of a campaign either to subordinate the Chief Prosecutor to the Legal Advisor to the Convening Authority, or to force the Chief Prosecutor's resignation, so that individuals external to the Office of Chief Prosecutor could control every aspect of that office including who would be charged, what charges they would face, what evidence would be introduced against them, and when the process would begin. This campaign was successful, and the accused have been denied the independent Chief Prosecutor required by the Military Commissions Act (MCA). Even if the Legal Advisor to the Convening Authority was permitted to direct the actions of the Chief Prosecutor, he can no longer impartially perform the duties required of the Legal Advisor.
3. **Facts:**
 - xxxi. On April 29, 2008, during oral argument on an unlawful influence motion in *United States v. Hamdan*, Colonel Larry Morris made passing reference to orders given to prosecutors in his office not to speak to the press about the issues that led to Colonel Davis's resignation. "The depths of his disappointment led him to solicit subordinates to violate military orders and to talk to the press on his behalf."
 - xxxii. On May 23, 2008, Colonel Kelly Wheaton, the Senior Military Assistant to the General Counsel for the Department of Defense sent Colonel Davis an email. Citing a Department of Defense Instruction, Colonel Wheaton explained that Colonel Davis would not receive a citation for his two years of service as Chief

Prosecutor because Colonel Davis's service had "not been honorable." Electronic Message from Colonel Kelly Wheaton to Colonel Morris Davis dated 23 May 2008 (Attachment A). Colonel Wheaton characterized the unlawful influence found by Judge Allred in *United States v. Hamdan* as a "difference of opinion" with a superior officer and that reporting this unlawful influence "was putting self above service." *Id.*

xxxiii. On 27 May 2008, Colonel Davis notified the Office of Chief Defense Counsel that he would no longer cooperate with the Defense because he had been subject to reprisal for his previous cooperation. Electronic Message from Colonel Davis to Major Frakt dated 27 May 2008 (Attachment B).

4. Law and Argument:

A. The Unlawful Influence in this Case Resulted in the Resignation of the Chief Prosecutor

The Prosecution states "the Defense fails to cite a single case where the Legal Advisor improperly pressured a trial or defense counsel." In making this statement, the Prosecution ignores the findings of fact of Judge Allred in *United States v. Hamdan*, and the testimony of Colonel Morris Davis and Mr. Michael Berrigan in that case. (Attachments B, H, and N to D001). Furthermore, the Prosecution fails to address the fact that the unlawful influence in this case eventually forced Colonel Davis to resign as he concluded that "full, fair, and open trials were not possible under the current system." Ross Tuttle, *Rigged Trials at Gitmo*, THE NATION, (Feb. 20, 2008) (Attachment C).

The Prosecution's arguments are strikingly similar to those rejected by the Court of Appeals for the Armed Forces (C.A.A.F.) in *United States v. Lewis*, 63 M.J. 405 (C.A.A.F. 2006). In *Lewis*, the Staff Judge Advocate and Trial Counsel launched what the Navy-Marine Corps Court of Criminal Appeals called a "*voir dire* assault" aimed at forcing the recusal of the military judge, who the Prosecution believed to be sided against the government. The C.A.A.F. found that the recusal of the military judge "was the result of an unlawful effort to unseat an otherwise properly detailed and qualified military judge." *Lewis*, 63 M.J. at 414. In *Lewis*, the Court rejected the remedial measures that the military judge had directed (measures which included disqualification of the Staff Judge Advocate, the Convening Authority, and the entire

Sierra Judicial Circuit) as sufficient to cure the Prosecution's attempt to unseat the military judge; the Court therefore ordered that the case be dismissed with prejudice. *Id.* In this case, the target of the successful campaign of unlawful influence was the Chief Prosecutor. No less of a remedy than that dictated in *Lewis* is required in this case where the government has launched a similar campaign to unseat an otherwise properly detailed and qualified Chief Prosecutor and not a single remedial action has been taken.

The Legal Advisor's attack on the independence of the Chief Prosecutor here has resulted in the Legal Advisor becoming the *de facto* Chief Prosecutor. The *de facto* Chief Prosecutor now determines who will be charged and when, he reviews his own charging decision, he provides advice to the Convening Authority on his charging decision pursuant to R.M.C. 406, he advises the Convening Authority regarding the selection of members and defense requests for expert assistance, he determines what evidence the Prosecution will attempt to admit into court, and he then advises the Convening Authority as to the appropriateness of the sentence he and his subordinates have obtained in court under R.M.C. 1106(c)(3). General Hartmann's simultaneous performance of the quasi-judicial functions required of the Legal Advisor along with the partisan prosecutorial functions constitutes a structural attack on the integrity of the military commission process.

B. The Unlawful Influence in this Case is Far More Prejudicial than the Unlawful Influence Found in *United States v. Hamdan*

The Prosecution goes to great lengths to distinguish the facts of this case from the unlawful influence found in *United States v. Hamdan*. While there are factual distinctions between these cases, these distinctions reveal that the unlawful influence in this case is far worse than that which was found by Judge Allred in *Hamdan*. There was no allegation in *Hamdan* that political appointees thought that charges should be brought against Mr. Hamdan to influence elections. The same cannot be said in this case. (Attachment N to D001). The finding, moreover, that General Hartmann engaged in "nano-management" of the Office of the Chief

Prosecutor was never restricted to the facts in *Hamdan* as the Prosecution suggests. Govt Response at 9.

More importantly, Mr. Hamdan's case did not involve the use of evidence obtained through torture, such as the practice commonly known as waterboarding. The United States has publicly acknowledged that at least one of the defendants in this case was subjected to questioning while being tortured.¹ The Prosecution's assertion that Colonel Davis never even used "the terms 'torture' or 'waterboarding'" is false. Govt Response at 3. In *Hamdan*, Colonel Davis testified that he raised the subject at one of his first staff meetings:

[E]vidence obtained by water-boarding is not reliable evidence. So if you're working on cases that involve evidence obtained by water-boarding, I want to make it clear right now, we're not going to use that evidence.

Attachment B to D001 at 37-38. Colonel Davis's position stands in stark contrast to that of General Hartmann. The Prosecution concedes that General Hartmann would leave the "final call" as to the admissibility of such evidence to the military judge. Govt Response at 3. Colonel Davis would not have allowed such evidence into the courtroom in the first place. This proved to be a key dispute between Colonel Davis and General Hartmann, in which General Hartmann challenged Colonel Davis's authority to decide what evidence would be introduced in court. Attachment B to D001 at 64.

[Hartmann's] view was everything was fair game and let the judge sort it out...So to allow or direct the prosecutor to come in this courtroom and offer evidence that we've had senior officials say that they would consider torture I think it puts the prosecutor in an ethical bind and so I disagreed with [Hartmann] on that point.

Attachment B to D001 at 64-65. On this question of the prosecutorial function, Judge Allred reasoned that, "while it is true that the trial judge is ultimately the gatekeeper for each item of

¹ Please see the classified addendum to this motion. At the present time, the Defense does not have the facilities or equipment to prepare such a document, but will do so when the government provides the necessary resources.

evidence, each Prosecutor also has an ethical duty not to present evidence he considers unreliable.” (Attachment N to D001).

Colonel Davis also testified that individuals external to his office, including Mrs. Crawford and General Hartmann, pressured him to move more quickly with prosecutions. Attachment B to D001 at 70. And he described an oft-repeated theme that charging the defendants *in this case* would energize the public behind the prosecution of this case and salvage the military commission process:

[I]t was an underlying theme of we got to get—you get the train rolling, there is an election coming up in November this year and there was that consistent theme that if we don't get these things rolling before the election this thing is going to implode and if you get the 9/11 guys charged it would be hard once you get the victims families energized and public interested it would be hard for whoever wins the Whitehouse to stop the process.

Attachment B to D001 at 62. Judge Allred was “troubled” by General Hartmann’s direction that certain cases “would be tried, and that others would not be tried, because of political factors such as whether they would capture the imagination of the American people....” (Attachment N to D001). Such direction “suggests that factors other than those pertaining to the merits of the case were at play.” *Id.* Judge Allred so-found even though General Hartmann was not serving as the Legal Advisor when Mr. Hamdan was charged and Mr. Hamdan’s case was not the case with which General Hartmann aimed to capture the imagination of the American public, or to validate the military commission process. Indeed, the facts of the present case are even more compelling in support of this motion.

Colonel Davis testified that during his first year of serving as Chief Prosecutor “no one really cared too much of what we did – we had free reign to operate as we saw fit.” Attachment B to D001 at 39. That all changed when the defendants in this case arrived at Guantanamo Bay, Cuba in September 2006. “Suddenly, everybody had strong opinions about how we ought to do our jobs.” Attachment B to D001 at 39. This external influence ultimately forced Colonel Davis to resign and removed what appears to have been the only obstacle in the Office of the Chief

Prosecutor to the introduction of evidence derived by torture and politically motivated prosecutions. Not coincidentally, the Prosecution has now proposed a trial schedule that would force the trial of this case in mid-September, some seven weeks before the general election. Electronic Message from Mr. Clay Trivett to Captain Prescott Prince dated 27 May 2008 (Attachment D).

C. The Unlawful Influence in this Case Offends Notions of Justice and Requires Dismissal

The Prosecution recounts the number of Americans killed on September 11, 2001, and appears to suggest that there is an exception to the absolute prohibition against unlawful influence where particularly heinous offenses are in question. Govt Response at 9. It cites no authority for such an exception...Because no such exception exists. Indeed, the framers of the UCMJ were certainly aware of infamous crimes such as the lynching at Fort Lawton and the Port Chicago mutiny when they made the prohibition against unlawful influence the central focus of the Code. The legislative history of the MCA itself is replete with references to the charged offenses in this case, and yet, Congress insisted that the independent Chief Prosecutor be free from coercion or external influence. 10 U.S.C. § 949b (2006). In fact, while Congress limited the right of an accused to remain silent or to confront his accusers, it bolstered the protections against unlawful influence so that prisoners charged before a military commission have greater protections against that “mortal enemy” of military justice than do servicemembers in the United States military. Section 949b may in fact be the only section of the MCA where Congress afforded greater substantive protections to prisoners charged before military commission. The concerted effort of senior officials involved in this military commission process to thwart the Congressional prohibition on unlawful influence in order to manipulate the political process, warrants the drastic remedy of dismissal.

Even were this Court to find that there was no actual unlawful influence in this case, dismissal may be appropriate given the appearance of unlawful influence. *Lewis*, 63 M.J. at 415-16. *Id.* There is no basis in law for the Prosecution’s argument that the Defense must prove

actual unlawful command influence, in order to make a cognizable claim of unlawful influence.² To the contrary, “even if there was no actual unlawful command influence, there may be a question whether the influence of command placed an ‘intolerable strain on public perception of the military justice system.’” *Id.* at 415. Thus, even if the government had implemented remedial measures similar to those taken in *Lewis*, these would be insufficient to remedy the appearance of unfairness in the military commissions system which the successful assault on the independence of the Chief Prosecutor has created here. As in *Lewis*, dismissal is required in this case.

Still, the Prosecution asserts that the influence exercised in this case is “deeply rooted in military law....” Govt. Response at 5. But the Prosecution fails to address Congress’s decision to depart from military law and tradition by declining to provide for a staff judge advocate and its decision to create the office of Chief Prosecutor. The Prosecution also ignores that Congress specifically drafted the MCA to bolster the rule against unlawful influence found in Article 37, UCMJ, when it prohibited influencing “the exercise of professional judgment by trial counsel or defense counsel.” 10 U.S.C. § 949b (2006). As Judge Allred noted, this language “must be construed to reflect a Congressional determination that Prosecutors in military commissions require greater protection from political pressure than trial counsel in a court-martial require.” (Attachment N to D001).

The Prosecution omits any reference to the warning of the Tate investigation, which cautioned the Legal Advisor in this case to “avoid aligning himself with the prosecutorial function so that he can objectively and independently provide cogent legal advice to the Convening Authority on matters within her cognizance; otherwise, the Legal Advisor may disqualify himself from providing competent legal advice by having acted in essence as trial counsel.” Memorandum from Brigadier General Clyde J. Tate to the Hon. Jim Haynes dated

² “Having failed to prove actual command influence, the Defense has no basis for asserting apparent command influence.” Govt. Response at 5.

Sep. 17, 2007 at 5(d). If the Legal Advisor's asserted ability to direct the prosecutorial effort were truly "deeply rooted in military law," one wonders why this warning was necessary.

The Prosecution correctly argues that some of General Hartmann's actions are consistent "with the supervisory functions historically exercised by an SJA...." Govt. Response at 6. The Uniform Code of Military Justice, in concert with the Manual for Courts-Martial and service regulations, permits the staff judge advocate to pressure trial counsel. But the accused in this case are not being tried under the UCMJ. The MCA contains no authority for such pressure and, as addressed fully in the Defense motion, the Secretary of Defense's attempt to legalize such influence is *ultra vires* and void.

Even if the accused were being tried under the UCMJ, General Hartmann would have no authority to remove and assign prosecutors at will or to determine what evidence they would introduce at a particular court-martial. And "making public statements in which he aligned himself with the prosecution, took credit for their success and indicated that he is their leader" would require at the very least that he no longer continue to serve as the legal advisor to the Convening Authority. (Attachment N to D001). No less of a remedy is required in this case.


4. **Attachments:**


- A. Electronic Message from Colonel Kelly Wheaton to Colonel Morris Davis dated 23 May 2008.
- B. Electronic Message from Colonel Davis to Major Frakt dated 27 May 2008.
- C. Ross Tuttle, *Rigged Trials at Gitmo*, THE NATION, (Feb. 20, 2008).
- D. Electronic Message from Mr. Clay Trivett to Captain Prescott Prince dated 27 May 2008.


Respectfully submitted,

By: _____


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ATTACHMENT A

From: Wheaton, Kelly, COL, DoD OGC
Sent: Friday, May 23, 2008 4:35:55 PM
To: Davis Morris D Col AFLOA/JAJ
Subject: RE: Defense Meritorious Service Medal

Moe,

I'm writing to close this out. The Director for Military Personnel, OSD returned the request for award for you without action. The Director wrote that "IAW DoD 1348.33-M, Chapter 3, Paragraph C3.2.7. . . 'No Defense decoration shall be awarded or presented to any Service Member whose entire service during or after the time of the distinguished act, achievement, or service has not been honorable.'" The Director continues, stating that "as every position in the member's chain [of supervision] has recommended disapproval. . . we are returning the package without action."

As a professional courtesy, I'd like to tell you that I also recommended disapproval (the Senior Military Assistant provides a recommendation for all military awards). I wrote in my recommendation for disapproval that you quit your position when you were needed because you did not want to be supervised by a superior officer with whom you had a difference of opinion. I believe that this conduct was putting self above service.

Kelly Wheaton
COL, JA
Senior Military Assistant
703 697-6028

ATTACHMENT B

Subject: Dishonorable Conduct / Reprisal

Dear Maj Frakt,

I cancel my earlier agreement to cooperate on the unlawful command influence issue in the Jawad case. I also repudiate any assistance I provided you in the past.

As you know, I testified on the unlawful command influence motion in the Hamdan case on 28 April 2008. In a ruling released on 9 May 2008, Judge Allred found the factual allegations I made were true. He noted that the UCI language in the MCA is broader than the same in the UCMJ, and ensures prosecutors greater independence from outside influence than in the court-martial context. Judge Allred disqualified Brig Gen Hartmann from any further involvement in the case and directed the DoD General Counsel to ensure no one who spoke up on the issue suffered adverse consequences.

On 23 May 2008, two weeks after the Hamdan ruling, I received the attached email from the DoD General Counsel's office informing me that OSD found I did not serve honorably and would not receive a medal for my two-plus years of service as the chief prosecutor. The author of the email said he recommended disapproval of a medal because, in his view, I put my interests ahead of the interests of the military services when I quit over what he terms a personality conflict. I responded back expressing my sympathy if he's unable to distinguish unlawful command influence from a personality conflict. To the best of my knowledge, I am the only person who left OMC without receiving some form of positive DoD recognition. I suspect this act of reprisal will have a chilling effect on anyone else who may have had relevant information.

I have approved retirement orders and I anticipate my last day in uniform will be one month from today. Since DoD is now saying that I served dishonorably, I do not want to risk further acts of reprisal for telling the truth and refusing to bend to unlawful command influence and political pressure. In the grand scheme of things a medal is relatively insignificant. There are greater matters – adverse action on my security clearance or a retirement grade determination, for example – with more far reaching and lasting consequences. I am already finding that speaking up is making me unemployable. I'm told I'm a nice guy and very well qualified, but my criticism of the administration and DoD makes me too toxic and hiring me too risky, and I come with too much baggage. It's giving a whole new meaning to the expression "the truth will set you free." I believe I have done all I can do to tell the truth and to get this important issue to a place where someone with the power to do the right thing might actually take notice and do so. I remain optimistic that will happen.

Please convey to the entire defense team that I will not cooperate with them and ask that none of them contact me in the future.

Sorry for the inconvenience and good luck.

MORRIS D. DAVIS, Colonel, USAF
Pentagon, Room 5B269
(703) 697-1471
morris.davis@us.af.mil

[NOTE -- I no longer have a Blackberry, so I am unable to check this email account when I am away from my desk. I normally have access to this account during duty hours Monday through Friday. I apologize for any inconvenience.]

5/28/2008

ATTACHMENT C

THE Nation.

Click here to return to the browser-optimized version of this page.

This article can be found on the web at
<http://www.thenation.com/doc/20080303/tuttle>

Rigged Trials at Gitmo

by ROSS TUTTLE

[posted online on February 20, 2008]

Secret evidence. Denial of habeas corpus. Evidence obtained by waterboarding. Indefinite detention. The litany of complaints about the treatment of prisoners at Guantánamo Bay is long, disturbing and by now familiar. Nonetheless, a new wave of shock and criticism greeted the Pentagon's announcement on February 11 that it was charging six Guantánamo detainees, including alleged 9/11 mastermind Khalid Shaikh Mohammed, with war crimes--and seeking the death penalty for all of them.

Now, as the murky, quasi-legal staging of the Bush Administration's military commissions unfolds, a key official has told *The Nation* that the trials have been rigged from the start. According to Col. Morris Davis, former chief prosecutor for Guantánamo's military commissions, the process has been manipulated by Administration appointees to foreclose the possibility of acquittal.

Colonel Davis's criticism of the commissions has been escalating since he resigned in October, telling the *Washington Post* that he had been pressured by politically appointed senior Defense officials to pursue cases deemed "sexy" and of "high interest" (such as the 9/11 cases now being pursued) in the run-up to the 2008 elections. Davis, once a staunch defender of the commissions process, elaborated on his reasons in a December 10, 2007, *Los Angeles Times* op-ed. "I concluded that full, fair and open trials were not possible under the current system," he wrote. "I felt that the system had become deeply politicized and that I could no longer do my job effectively."

Then, in an interview with *The Nation* in February after the six Guantánamo detainees were charged, Davis offered the most damning evidence of the military commissions' bias--a revelation that speaks to fundamental flaws in the Bush Administration's conduct of statecraft: its contempt for the rule of law and its pursuit of political objectives above all else.

When asked if he thought the men at Guantánamo could receive a fair trial, Davis provided the following account of an August 2005 meeting he had with Pentagon general counsel William Haynes--the man who now oversees the tribunal process for the Defense Department.

"[Haynes] said these trials will be the Nuremberg of our time," recalled Davis, referring to the Nazi tribunals in 1945, considered the model of procedural rights in the prosecution of war crimes. In response, Davis said he noted that at Nuremberg there had been some acquittals, which had lent great credibility to the proceedings.

"I said to him that if we come up short and there are some acquittals in our cases, it will at least validate the process," Davis continued. "At which point, [Haynes's] eyes got wide and he said, 'Wait a minute, we can't have acquittals. If we've been holding these guys for so long, how can we explain letting them get off? We can't have acquittals. We've got to have convictions.'"

Davis submitted his resignation on October 4, 2007, just hours after he was informed that Haynes had been put above him in the commissions' chain of command. "Everyone has opinions," Davis says. "But when he was put above me, his opinions became orders."

Reached for comment, Defense Department spokesperson Cynthia Smith said, "The Department of Defense disputes the assertions made by Colonel Davis in this statement regarding acquittals."

"The fact that [Haynes] said there can be no acquittals will stain the entire [tribunal] process," says Scott Horton, who teaches law at Columbia University Law School and has written extensively about Haynes's conflicts with the Judge Advocate General's (JAG) corps, the judicial arm of the armed forces, which is charged with implementing the military commissions. According to Horton, Haynes tried to cut the JAG corps out of internal debates over the detention and prosecution of detainees, knowing it was critical of the Administration's views. In private memos and in public Senate testimony, high-ranking officers of the corps have repeatedly expressed concerns about the Administration's justification of "extreme interrogation techniques."

"The JAG corps consists of a group of rigorous professionals, but Haynes never trusted them to do their job," says Horton. "His clashes have always had the same subtext--they want to be independent; he wants them to do political dirty work."

Haynes, a political appointee and chief legal adviser to Defense secretaries Donald Rumsfeld and Robert Gates, was nominated in 2006 by the Bush Administration for a lifetime seat as a judge in the Court of Appeals for the Fourth Circuit. But his nomination never got out of committee, primarily because of the opposition of Republican Senator (and former military lawyer) Lindsey Graham and other members alarmed over Haynes's role in writing, or supervising the writing of, Pentagon memos advocating the use of harsh interrogation techniques the Geneva Conventions classify as torture.

Currently, in his capacity as Pentagon general counsel, Haynes oversees both the prosecution and the defense for the Guantánamo commissions.

"You would think a person in that position wouldn't be favoring one side," says Colonel Davis.

Told of Davis's story about Haynes, Clive Stafford Smith, a defense attorney who has represented more than seventy Guantánamo clients, said, "Hearing it makes me think I'm back in Mississippi representing a black man in front of an all-white jury."

He adds, "It confirms what people close to the system have always said," noting that when three prosecutors--Maj. Robert Preston, Capt. John Carr and Capt. Carrie Wolf--requested to be transferred out of the Office of Military Commissions in 2004, they said they'd been told the process was rigged. In an e-mail to his supervisors, Preston had said that there was thin evidence against the accused. "But they were told by the chief prosecutor at the time that they didn't need evidence to get convictions," says Stafford Smith.

At the time, the military wrote it off as "miscommunication" and "personality conflicts." And then there were changes in personnel. "They told us that the system had been cleaned up...but I guess the more

things change, the more they stay the same," says Stafford Smith.

The terrible truth is that even if acquittals were possible, the government has declared that it can continue to detain anyone deemed an "enemy combatant" for the duration of hostilities--no matter the outcome of a trial. Most of the 275 men held at Guantánamo are classified as "enemy combatants," and the hostilities in the "war on terror" could be never-ending.

Says ACLU staff attorney Ben Wizner, "The trial doesn't make a difference. They can hold you there forever until they decide to let you out." The one person to be released from Guantánamo through the judicial process, Australian David Hicks, pleaded guilty. As Wizner wrote in the *Los Angeles Times* in April 2007, "In an ordinary justice system, the accused must be acquitted to be released. In Guantánamo, the accused must plead guilty to be released."

Still, the trials serve a purpose for the government by providing the semblance of a legitimate judicial process. According to defense attorneys involved--and many of the former prosecutors, like Davis--the process is political, not legal.

"If someone was acquitted, then it would suggest we did the wrong thing in the first place. That can't happen," says Horton sardonically. "When the government decides to clear someone, it calls the person 'no longer an enemy combatant' instead of just saying they made a mistake."

He adds, "For people like Haynes, justice is meant to serve the party."

ATTACHMENT D

To: Lachelier, Suzanne, CDR, DoD OGC
Subject: RE: U.S. v Mohammed, et al-Prosecution's Proposed Trial Schedule

From: Claytogg [mailto:Claytogg@ptf.gov]

Sent: Tuesday, May 27, 2008 5:32 PM

To: Prince, Prescott, CAPT, DoD OGC; Hatcher, James, LCDR, DoD OGC; Lachelier, Suzanne, CDR, DoD OGC; Mizer, Brian, LCDR, DoD OGC; Jackson, Jon, MAJ, DoD OGC; Jimenez, Christina, Capt, DoD OGC; Federico, Richard, LT, DoD OGC; Acuff, Michael, LTC, DoD OGC; Fitzgibbons, Amy, MAJ, DoD OGC; Sosbee, Gretchen, LT, DoD OGC; amy.fitzgibbons@us.army.mil; prescott.prince@navy.mil

Cc: nicoleat@ptf.gov; dalejc@ptf.gov; Sears, Daniel, GySgt, DoD OGC; Gibbs, Rudolph, TSGT, DoD OGC; Cox, Dale, MSgt, DoD OGC; daniels@ptf.gov; Williams, Patricia, SSG, DoD OGC; Calopietro, John, LNC, DoD OGC; Guzman, Christopher, LN1, DoD OGC; Lindee, Kimberlee, LN1, DoD OGC; Stuyvesant, Rebekah, SSG, DoD OGC; Morris, Lawrence, COL, DoD OGC; ed.ryan@usdoj.gov; robertls@ptf.gov; patricts@ptf.gov; Thomas.swanton@usdoj.gov; claytogg@ptf.gov; Trivett, Clayton, Mr, DoD OGC; jeffredg@ptf.gov; Groharing, Jeff, Maj, DoD OGC; edwardr@ptf.gov

Subject: U.S. v Mohammed, et al-Prosecution's Proposed Trial Schedule

Defense Counsel,

On 14 May 2008, the Military Judge ordered the Prosecution and the Defense to discuss scheduling for the litigation of the case prior to arraignment, taking into account the time constraints set forth in RMC 707 and the appropriate phasing of motions.

In accordance with this order the Prosecution proposes the following trial schedule:

- 5 June 2008-Arraignment
- 27 June 2008-Legal Motions due
- 14 July 2008-Argument of legal motions
- 15 July 2008-Discovery and witness lists due
- 1 August 2008-Motion to compel discovery due
- 15 August 2008-Evidentiary Motions due and associated witness request
- 1 September 2008-Argument of Evidentiary Motions and Discovery-relate
- 15 September 2008-Assembly of Members/Begin Trial

Please either give me a call or respond to this email indicating whether your team accepts this schedule, or, in the alternative, please respond with your own proposal as the Prosecution endeavors to agree upon a schedule that works as well as possible for all parties.

v/r
CLAY TRIVETT
PROSECUTOR
OFFICE OF MILITARY COMMISSIONS
703-556-5095