

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL HADI AL-IRAQI</p>	<p>AE032H</p> <p>Defense Supplement To AE032</p> <p>17 March 2015</p>
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1. Timeliness: The Defense timely files this Supplement pursuant to Military Commissions Trial Judiciary Rule of Court ("R.C.") 3.5(e) and 3.7.
2. Relief Sought: The defense respectfully requests the Commission supplement AE032 with the documents provided at Attachments B through MM.
3. In AE032E the Government conceded that the testimony of Mr. Vaughn A. Ary was relevant but that they did not intend to offer him as a live witness, relying instead on the transcript of his testimony from *United States v. Nashiri*. We believe Mr. Ary has relevant testimony to this specific Commission case that was not elicited during the *Nashiri* hearing. His testimony is relevant and he should be compelled to testify. If the military judge believes that the defense still has a burden to show some evidence of unlawful influence then we would call Mr. Ary and move the Commission to allow the defense to treat him as an adverse witness.¹ Furthermore, if the Commission denies Mr. Ary as a live witness, we move that the entire transcript of his prior testimony be entered into the record.

¹ M.C.R.E. 611(c) provides that "When a party calls a hostile witness or a witness identified with an adverse party, interrogation may be by leading questions." Since AE032 alleges that Mr. Ary's actions were unlawful, he is obviously an adverse witness with respect to the interests of the Accused.

4. The Defense objects to the proffered testimony of Judge (retired) Michael B. Mukasey. The Government appears to be offering Judge Mukasey's testimony as an expert witness opining on the difficulty of national security litigation in Article III courts and the propriety of the Convening Authority's recommendation to implement Change 1. This is not at Article III court, and this is not national security litigation – this is an Article I Military Commission adjudging war crimes. Judge Mukasey is, at best, a lay witness as contemplated by M.C.R.E. 701 being called to give his imprimatur to the thought process behind Change 1 based on his distinguished career. However, Judge Mukasey has literally zero experience in military commission litigation, nor as a Convening Authority, and cannot offer any relevant testimony helpful to the resolution of AE032. That litigation can be complex and time consuming has nothing to do with the unlawful influence exerted by the Convening Authority and the irrevocable taint it has given these proceedings.

5. Affirmative Statement: Military Commissions Trial Judiciary Rule of Court 3.5(e) permits a party to file a supplement if it “add[s] new facts, not known at the time of filing, or newly decided case law to an existing motion.” This supplemental filing does not raise new issues or advance new arguments. The new facts included in this supplement were not known by the Defense at the time of filing AE032.

6. Attachments:

- A. Certificate of Service
- B. DEPSECDEF Signed Action memo and Change 1
- C. Email from Vaughn Ary, dtd 9 Jan 15
- D. Email from Mark Toole, dtd 7 Jan 15
- E. Email from Mark Toole w/attachment dtd 10 Dec 14
- F. Email from Alyssa Adams, dtd 14 Nov 14
- G. Email from Alyssa Adams, dtd 14 Nov 14
- H. Email from Alyssa Adams, dtd 14 Nov 14
- I. Email from Matthew Rich, dtd 14 Nov 14

- J. Email from Vaughn Ary, dtd 19 Nov 14
- K. Email from Vaughn Ary, dtd 19 Nov 14
- L. Vaughn Ary – Stephen Preston meeting invite, dtd 19 Nov 14
- M. Email from Alyssa Adams, dtd 19 Nov 14
- N. Email from Alyssa Adams w/2 attachments, dtd 19 Nov 14
- O. Email from Donna Wilkins, dtd 21 Nov 14
- P. Email from Donna Wilkins, dtd 21 Nov 14
- Q. Email from Raghav Kotval w/attachment, dtd 24 Nov 14
- R. Email from [REDACTED] dtd 24 Nov 14
- S. Email from [REDACTED] dtd 24 Nov 14
- T. Email from Alyssa Adams, dtd 24 Nov 14
- U. Email from Alyssa Adams, dtd 24 Nov 14
- V. Email from Mark Toole, dtd 26 Nov 14
- W. Email from Raghav Kotval, dtd 26 Nov 14
- X. Email from Donna Wilkins w/ 3 attachments, dtd 10 Dec 14
- Y. Email from Mark Toole, dtd 16 Dec 14
- Z. Email from Vaughn Ary, dtd 31 Dec 14
- AA. Email from Stephen Preston, dtd 31 Dec 14
- BB. Email from BGen Eric Smith, dtd 6 Jan 15
- CC. Memorandum for Director, OMC dtd 2 Jul 14
- DD. Email from Stephen Preston, dtd 31 Dec 14
- EE. Email from Stephen Preston, dtd 31 Dec 14
- FF. Email from Vaughn Ary, dtd 7 Jan 15
- GG. JAG INSTRUCTION 5813.4I
- HH. Email from Jason Foster, dtd 8 Jan 15
- II. Email from David Bennett, dtd 9 Jan 15
- JJ. Email from Jason Foster, dtd 10 Jan 15
- KK. Email from Lt Col [REDACTED] dtd 26 Jan 15
- LL. Email from Lt Col [REDACTED] dtd 27 Jan 15
- MM. Email from Jason Foster, dtd 2 Jan 15

Respectfully Submitted,

//s//

THOMAS F. JASPER, Jr., LtCol, USMC
Detailed Defense Counsel

//s//

ROBERT B. STIRK, Maj, USAF
Assistant Detailed Defense Counsel

ATTACHMENT A

ATTACHMENT B

CMD COVER SHEET

PRIORITY Normal	SUSPENSE DATE	CORRESPONDENCE DATE 7 Jan 2015	CONTROL NUMBER OSD000152-15
REQUEST TYPE Response	RESPONSE TYPE I&R		
ORIGINATOR DEPSEC	Package View Action Memo Response		
RECIPIENT GC			
ACTION AGENCY Department of Defense General Counsel (GC)			
SUBJECT CHANGE 1 TO REGULATION FOR TRIAL BY MILITARY COMMISSION			

DISTRIBUTION AGENCY	DISTRIBUTION TYPE
RLB	R
GC	E O

JAN 07 2015

**CHANGE 1
TO REGULATION FOR TRIAL BY MILITARY COMMISSION (2011)**

PURPOSE: The Regulation for Trial by Military Commission (Regulation) provides guidance for practitioners in military commissions and implements the provisions of the Military Commissions Act of 2009 and the 2012 edition of the Manual for Military Commissions. This is Change 1 to the Regulation.

APPLICABILITY: The Regulation applies to trials by military commission under Chapter 47A of Title 10, United States Code.

RELEASABILITY: **Cleared for public release.** The Regulation and Change 1 are available on the Internet from the Office of Military Commissions website at <http://www.mc.mil/>.

EFFECTIVE DATE: Change 1 is effective as of the date of my signature.

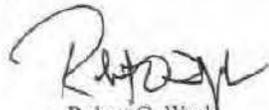
Pursuant to 10 U.S.C. § 949a(c), I hereby prescribe the following change to the Regulation for Trial by Military Commission (2011).

**Chapter 6
MILITARY JUDGES**

6-2. DETAIL OF MILITARY JUDGES

a. The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary when charges are referred. Once detailed, military commissions shall be the military judge's exclusive judicial duty until adjournment, final disposition of charges, recusal, replacement by the Chief Trial Judge pursuant to R.M.C. 505(e), or reassignment by the appropriate Judge Advocate General. A detailed military judge shall be issued assignment orders for duty at the venue where the military commissions are to be convened.

b. A detailed military judge may perform such other duties as are assigned by or with the approval of the appropriate Judge Advocate General or his/her designee, provided that such other duties do not conflict with judicial duties as a detailed military judge for military commissions. See 10 U.S.C. § 948j(e).



Robert O. Work
Deputy Secretary of Defense

CMD COVER SHEET

PRIORITY Normal	SUSPENSE DATE	CORRESPONDENCE DATE 9 Dec 2014	CONTROL NUMBER OSD000152-15
REQUEST TYPE Action Memo	RESPONSE TYPE I&R		
ORIGINATOR GC	Package View Action Memo Response		
RECIPIENT DEPSEC			
ACTION AGENCY Department of Defense General Counsel (GC)			

SUBJECT RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION

DISTRIBUTION AGENCY	DISTRIBUTION TYPE
RLB	RWI
GC	E OWM



Convening Authority and Director

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22304-2100

ACTION MEMO

DEC 09 2014

FOR: DEPUTY SECRETARY OF DEFENSE

FROM: Mr. Vaughn A. Ary, Director, Office of Military Commissions and Convening Authority
for Military Commissions

SUBJECT: Recommendation to Revise the Regulation for Trial by Military Commission

- I recommend you revise the Regulation for Trial by Military Commission, as indicated in the attached draft proposed changes at TAB A.
- In my first two months at the Office of Military Commissions, I conducted an assessment of this organization with a view to implementing measures that will contribute to the efficient, fair and just administration of ongoing and future military commissions cases. My findings and conclusions are addressed in the Executive Summary attached at TAB B.
- Based on my analysis, I believe the status quo does not support the pace of litigation necessary to bring these cases to a just conclusion. I believe we must realign resources and reposition the trial judiciary to make it a full-time, on-site duty for the judges assigned to military commissions. To achieve this end state, my recommendations are two-fold: (1) I recommend implementing the attached proposed changes to the Regulation for Trial by Military Commission, which would, in effect, move the judges to Guantanamo Bay and make the military commissions their exclusive judicial duty, and (2) I have requested the General Counsel validate the hiring of five law clerks, four paralegals, three court security officers, and an office manager to support the judges. See Executive Summary attached at TAB B and proposed changes to the Regulation attached at TAB A. I believe these actions will accelerate the pace of litigation and demonstrate a renewed commitment to achieving a just conclusion to these cases.

RECOMMENDATION: Initial your approval of the proposed changes to the Regulation for Trial by Military Commission.

Approve Disapprove Other

COORDINATION: TAB C

Attachments:
As stated



OSD000152-15

TAB

A

JAN 07 2015

**CHANGE 1
TO REGULATION FOR TRIAL BY MILITARY COMMISSION (2011)**

PURPOSE: The Regulation for Trial by Military Commission (Regulation) provides guidance for practitioners in military commissions and implements the provisions of the Military Commissions Act of 2009 and the 2012 edition of the Manual for Military Commissions. This is Change 1 to the Regulation.

APPLICABILITY: The Regulation applies to trials by military commission under Chapter 47A of Title 10, United States Code.

RELEASABILITY: **Cleared for public release.** The Regulation and Change 1 are available on the Internet from the Office of Military Commissions website at <http://www.mc.mil/>.

EFFECTIVE DATE: Change 1 is effective as of the date of my signature.

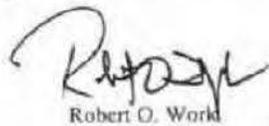
Pursuant to 10 U.S.C. § 949a(c), I hereby prescribe the following change to the Regulation for Trial by Military Commission (2011).

**Chapter 6
MILITARY JUDGES**

6-2. DETAIL OF MILITARY JUDGES

a. The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary when charges are referred. Once detailed, military commissions shall be the military judge's exclusive judicial duty until adjournment, final disposition of charges, recusal, replacement by the Chief Trial Judge pursuant to R.M.C. 505(e), or reassignment by the appropriate Judge Advocate General. A detailed military judge shall be issued assignment orders for duty at the venue where the military commissions are to be convened.

b. A detailed military judge may perform such other duties as are assigned by or with the approval of the appropriate Judge Advocate General or his/her designee, provided that such other duties do not conflict with judicial duties as a detailed military judge for military commissions. See 10 U.S.C. § 948j(e).



Robert O. Work
Deputy Secretary of Defense

Chapter 6
MILITARY JUDGES

6-1. GENERAL

a. Military judges will preside over the military commissions. *See* 10 U.S.C. § 948j; and R.M.C. 503(b).

b. *Organization.* The Military Commissions Trial Judiciary will consist of military judges nominated by the Judge Advocates General~~s~~ from the military departments. The Chief Trial Judge will be selected from that pool of military judges by the Secretary of Defense or his or her designee. *See* R.M.C. 503(b)(2).

6-2. DETAIL OF MILITARY JUDGES

a. The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary when charges are referred for each military commission trial. Once detailed, military commissions shall be the military judge's exclusive judicial duty until adjournment, final disposition of charges, recusal, replacement by the Chief Trial Judge pursuant to R.M.C. 505(e), or reassignment by the appropriate Judge Advocate General. A detailed military judge shall be issued assignment orders for duty at the venue where the military commissions are to be convened.

b. Military judges in the Military Commissions Trial Judiciary may be detailed to. A detailed military judge may perform such other duties as are assigned by the Chief Trial Judges of their respective services or with the approval of the appropriate Judge Advocate General or his/her designee, provided that such other duties do not conflict with their primary duty judicial duties as a detailed military judges for military commissions trials. *See* 10 U.S.C. § 948j(e).

6-3. QUALIFICATIONS

a. A military judge must be a commissioned officer of the armed forces and a member in good standing of the bar of Federal court, or a member of the bar of the highest court of a State or the District of Columbia.

b. A military judge must be certified to be qualified for duty under section 10 U.S.C. § 826 (Article 26 of the U.C.M.J) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member. *See* 10 U.S.C. § 948j(b).

c. Military judges must be on active duty at the time of their detail to a military commission.

d. Military judges must have a current TOP SECRET clearance. A TOP SECRET/SCI(Sensitive Compartmented Information) clearance or a TOP SECRET

clearance with eligibility for SCI is preferred and may be required for certain cases. Military judges must have at least two years of experience as a military judge while certified to be qualified for duty as a military judge in general courts-martial. See R.M.C. 503(b).

Regulation for Trial by Military Commission (2011)

Chapter 6

**Chapter 6
MILITARY JUDGES**

6-1. GENERAL

- a. Military judges will preside over the military commissions. See 10 U.S.C. § 948j; and R.M.C. 503(b).
- b. *Organization.* The Military Commissions Trial Judiciary will consist of military judges nominated by the Judge Advocates Generals from the military departments. The Chief Trial Judge will be selected from that pool of military judges by the Secretary of Defense or his or her designee. See R.M.C. 503(b)(2).

6-2. DETAIL OF MILITARY JUDGES

The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary for each military commission trial. Military judges in the Military Commissions Trial Judiciary may be detailed to other duties by the Chief Trial Judges of their respective services, provided that such other duties do not conflict with their primary duty as military judges for military commissions trials.

6-3. QUALIFICATIONS

- a. A military judge must be a commissioned officer of the armed forces and a member in good standing of the bar of Federal court, or a member of the bar of the highest court of a State or the District of Columbia.
- b. A military judge must be certified to be qualified for duty under section 10 U.S.C. § 826 (Article 26 of the U.C.M.J) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member. See 10 U.S.C. § 948j(b).
- c. Military judges must be on active duty at the time of their detail to a military commission.
- d. Military judges must have a current TOP SECRET clearance. A TOP SECRET/SCI(Sensitive Compartmented Information) clearance or a TOP SECRET clearance with eligibility for SCI is preferred and may be required for certain cases. Military judges must have at least two years of experience as a military judge while certified to be qualified for duty as a military judge in general courts-martial. See R.M.C. 503(b).

**Military
Commissions Act of
2009**

10 U.S.C. § 948j

H. R. 2647—388

best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

“(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

“§ 948j. Military judge of a military commission

“(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

“(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge of general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

“(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if such person is the accuser or a witness or has acted as investigator or a counsel in the same case.

“(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

“(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

“(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

“§ 948k. Detail of trial counsel and defense counsel

“(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

“(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

“(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

TAB

B



Convening Authority and Director

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22304-2100

EXECUTIVE SUMMARY

DEC 09 2014

FOR: DEPUTY SECRETARY OF DEFENSE

FROM: Mr. Vaughn A. Ary, Convening Authority and Director, Office of Military Commissions *VAA*

SUBJECT: Assessment of Office of Military Commissions

- In the first sixty days following my appointment as Convening Authority, I conducted an assessment of the current situation and future challenges facing the Office of Military Commissions (OMC). Based on this assessment, I am convinced we must take action to realign resources and better position the commissions to achieve the efficient, fair, and just administration of ongoing and future military commissions.
- During FY14, the trial judiciary conducted hearings on 33 calendar days for a total of 107 hours and 50 minutes on the record in all four cases combined. In other words, during FY14, the commissions as a whole averaged less than three days of hearings each month and an average of less than three and a half hours on the record for the days on which hearings were held. One case was resolved at a guilty plea in February 2014, but three contested cases (seven detainees) remain on the docket: 9/11 (*U.S. v. Khalid Shaikh Mohammad, et al.*, charges referred 31 May 2011); USS Cole (*U.S. v. Abd al-Rahim al-Nashiri*, charges referred 28 Sept 2011); and *U.S. v. Abd al Hadi al-Iraqi* (charges referred 2 June 2014). An analysis of the FY13 hearing data yields a similar pattern. In FY13, commissions held hearings in only two cases: 9/11 and USS Cole. These hearings were held in nine sessions over the course of the year with a total of 34 separate days of hearings and an average of less than five hours on the record each day.
- The parties continue to create additional demand for more hearings by appropriately filing a large number of motions to address the multitude of complex issues in these cases (*e.g.*, there are 325 appellate exhibits to date in the 9/11 case alone). To properly litigate these issues, the parties request oral argument routinely. Certain issues have generated multiple hearings with several matters from the initial phases of litigation still pending resolution. Of the three contested cases on the docket, two were referred for trial over three years ago, two still have jurisdictional issues pending resolution, all three have pending motions regarding the form of the charges, and the discovery phase of litigation in all three cases has yet to be resolved. Given the complexity of the cases, the current pace of litigation, the issues to be decided, and the work necessary to get these contested cases to trial, I believe we still find ourselves in the beginning stages of the trial process.
- In FY14, OMC spent approximately \$78 million in support of the commissions (not including military personnel costs for approximately 153 uniformed personnel).

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- I believe action is required to change the status quo. The commissions are currently positioned to accomplish exactly what they have done over the last several years: support guilty pleas and conduct infrequent litigation on the record. Moving forward, the addition of each potential variable could further impact the pace of litigation: the possibility of one or more of the accused being severed from the joint 9/11 prosecution; the referral of charges in another contested case; or the initiation of an extended trial period. Fundamental changes are necessary if we are to better position the commissions to meet the demands of complex contested litigation. Unless and until we dedicate full-time judges on site, we cannot demonstrate a serious commitment to the commissions process. I believe the time to act is now.
- Recommendation: I recommend that you implement two important revisions to the Regulation for Trial by Military Commission: (1) establish military commissions as the exclusive judicial duty for the military judges and (2) designate the judge's place of duty as the venue where the military commission is to take place. See TAB A, recommended revisions to Regulation. If you approve my recommendations, I believe the pace of litigation will accelerate, leading to a corresponding increase in requirements in order to build OMC's capability and capacity to support the commissions.
- Supporting Action: On October 31, 2014, I requested the prosecution, defense and trial judiciary revisit their personnel requirements. We are continuing a dialogue with the prosecution and defense to assess their needs. As we work through the challenges and as their missions evolve, we will continue to make sure they are adequately and equitably resourced. The trial judiciary has demonstrated an immediate need for additional support. I have therefore requested the General Counsel validate the hiring of five additional civilian attorney-advisors for the judiciary to assign as law clerks to each military commission case, as well as four paralegals, three court security officers and an office manager, in accordance with the Regulation for Trial by Military Commission, chapter 2-3(d).
- Future Requirements: I am prepared to dedicate additional resources to expand on-site offices for the prosecution, defense, trial judiciary, and the office of the convening authority. In a parallel effort, OMC is taking measures to improve the efficiency of our budgetary and resource management processes. Finally, as the pace of litigation accelerates, I anticipate an emerging requirement for further resources from outside agencies in order to synchronize the declassification process to meet the time constraints of trial.

COORDINATION: TAB C

Attachments:
As stated

TAB

C

LIST OF COORDINATING OFFICIALS FOR
Recommendation to Revise the Regulation for Trial by Military Commission

General Counsel Stephen Preston

~~FOR OFFICIAL USE ONLY~~

OFFICE OF MILITARY COMMISSIONS				<input type="checkbox"/> URGENT <input checked="" type="checkbox"/> ROUTINE	
1. SUBJECT: Action Memo for Deputy Secretary of Defense Concerning Change 1 to Regulation for Trial by Military Commission				2. TODAY'S DATE 6-Jan-15	
3. ACTION REQUESTED:		<input checked="" type="checkbox"/> Signature	<input type="checkbox"/> Concurrence	<input checked="" type="checkbox"/> Decision/Approval	<input type="checkbox"/> Other:
				4. POC: Ms. Alyssa Adams <div style="background-color: black; width: 100px; height: 15px;"></div>	
5. ROUTING		INITIALS	DATE	REMARKS	
Deputy Secretary of Defense					
6. SUMMARY: <ul style="list-style-type: none"> • Request that you initial the attached Action Memo and sign at TAB A approving Change 1 to the Regulation for Trial by Military Commission. • Attachments: <ul style="list-style-type: none"> TAB A: Change 1 to Regulation for Trial by Military Commission TAB B: Executive Summary TAB C: Coordination Sheet 					
7. CONVENING AUTHORITY:					

This communication is intended only for the use of the designated recipient(s) and may contain attorney-client communication. As such, it is privileged and confidential. Any distribution or copying of the message is strictly prohibited.

ATTACHMENT C

Ary, Vaughn A SES OSD OMC CA (US)

From: Ary, Vaughn A SES OSD OMC CA (US)
Sent: Friday, January 09, 2015 5:53 PM
To: Darpino, Flora D LTG USARMY HQDA (US)
Subject: RE: Change 1 to Reg for Trial by Military Commission (UNCLASSIFIED)
Signed By: vaughn.a.ary [REDACTED]

Ma'am,

No worries. I fully understand. Detailing of judges is the purview of the Chief Judge -- currently Judge Pohl. He is the only Army judge detailed to a case at this time and we would like to keep him if possible.

Have a great weekend.

V/r,
Vaughn

-----Original Message-----

From: Darpino, Flora D LTG USARMY HQDA (US)
Sent: Friday, January 09, 2015 5:28 PM
To: Ary, Vaughn A SES OSD OMC CA (US)
Subject: RE: Change 1 to Reg for Trial by Military Commission (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

Vaughn -

This change in policy has caught me unaware. I ask that you give me a bit of time to determine its ramifications, and, as I look at it, ensure no cases are assigned to COLs [REDACTED] and [REDACTED]. As COL [REDACTED] is my Chief Trial Judge and COL [REDACTED] is responsible for the Military Judges Benchbook, I am not sure they are the right officers to serve as Commission judges under this altered construct. I cannot not afford to lose them to Cuba.

Army Strong!

Flora D. Darpino
Lieutenant General, US Army
The Judge Advocate General



CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process, or other privileges and protected from mandatory disclosure under the Freedom of Information Act.

-----Original Message-----

From: Ary, Vaughn A SES OSD OMC CA (US)
Sent: Wednesday, January 07, 2015 7:06 PM
To: DeRenzi, Nanette M VADM USN JAG (US); Darpino, Flora D LTG USARMY HQDA (US); Burne, Christopher F Lt Gen USAF AF-JA (US); Ewers, John R Jr MajGen USMC USN (US); Poulin, Steven D RDML USCG (US)
Cc: Preston, Stephen W HON OSD OGC (US); Kelly, John F Gen USMC SOUTHCOM SC-CC (US); Cozad, Kyle J RDML JTFGTMO/CMD; Toole, Mark W CIV (US); Taylor, Robert S SES OSD OGC (US); Hostetler, Darrin A SES OSD OGC (US); Nettleton, John R CAPT USN GTMO
Subject: Change 1 to Reg for Trial by Military Commission

Ladies and Gentlemen,

FYI, today DepSecDef approved Change 1 to the Regulation for Trial by Military Commission, revising a provision on the assignment of military judges. This change makes the military commissions the exclusive judicial duty for those military judges detailed to commissions. In addition, it provides that the judges be issued assignment orders for duty at the venue where the military commissions are to be convened. A copy of his action is attached.

This change effectively establishes a requirement for the military judges to serve at GTMO for the duration of their cases, but leaves to the Service some discretion in assignments, reassignments, and the timing of the moves. I sincerely hope that the three judges currently detailed can remain on their cases, because I know how difficult it is to replace judges with their exceptional qualifications and experience. This step is intended to support the military commissions in carrying out their mission to resolve these important cases in a manner consistent with the interests of justice.

As always, thank you for your continued support to the Office of Military Commissions.

V/r,
Vaughn

VAUGHN A. ARY
Convening Authority/Director
Office of Military Commissions
[REDACTED]

4800 Mark Center Drive
Suite 11F09-02
Alexandria, VA 22350-2100

Classification: UNCLASSIFIED

ATTACHMENT D

UNCLASSIFIED//FOR PUBLIC RELEASE

From: Toole, Mark W CIV (US)
To: [REDACTED] LtCol USMC OSD OGC (US)
Subject: RE: OSD000152-15 (RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION)
Date: Wednesday, January 07, 2015 7:15:00 PM

Thank you [REDACTED] We'll work the notification piece. We have the POCs.

v/r,
Mark

-----Original Message-----

From: [REDACTED] LtCol USMC OSD OGC (US)
Sent: Wednesday, January 07, 2015 6:06 PM
To: Toole, Mark W CIV (US)
Subject: RE: OSD000152-15 (RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION)

That was not our intention or understanding, Mark.

As this was an OMC-CA action, we defer to your offices to work notification/execution with the MC Trial Judiciary, the Services (to include the TJAGs) and SOUTHCOM/GTMO. At last meeting with the Service GCs and TJAGs the DSD had not yet made a decision on this action (and we thought it was still pending further coordination) so Mr. Preston did not mention this matter to any of them. Out of courtesy to those with a vested equity, we would recommend notification be made before the contemplated PA roll out of the decision.

If you need any points of contact, let me know and I'll try to run those to ground for you.

v/r
LtCol [REDACTED]

-----Original Message-----

From: Toole, Mark W CIV (US)
Sent: Wednesday, January 07, 2015 5:41 PM
To: [REDACTED] LtCol USMC OSD OGC (US)
Subject: RE: OSD000152-15 (RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION)

[REDACTED]

I assume that OGC will do the notification to the Service JAGs. Is that an appropriate assumption on my part? Is there anything that I can do to assist? Thanks very much again.

V/R,
Mark Toole

MARK L. TOOLE
Deputy Legal Advisor
Office of Military Commissions
[REDACTED]

-----Original Message-----

From: [REDACTED] LtCol USMC OSD OGC (US)
Sent: Wednesday, January 07, 2015 2:00 PM
To: Toole, Mark W CIV (US)
Cc: [REDACTED] Col USAF OSD OGC (US)

Subject: FW: OSD000152-15 (RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION)

FYI. Copy of your action signed out by DSD.

-----Original Message-----

From: [REDACTED] CIV WHS ESD (US)

Sent: Wednesday, January 07, 2015 1:54 PM

To: Adams, Alyssa S CIV OSD OMC CA (US)

Cc: [REDACTED] LtCol SD; [REDACTED] MAJ SD; [REDACTED]; [REDACTED]
[REDACTED] CIV OSD OGC (US); [REDACTED] CIV OSD OGC (US); [REDACTED] Col USAF OSD OGC
(US); [REDACTED] LtCol USMC OSD OGC (US)

Subject: OSD000152-15 (RECOMMENDATION TO REVISE THE REGULATION FOR TRIAL BY MILITARY COMMISSION)

Subject case has been approved, signed, and is being out-processed by the Correspondence Management Division.

The original of the complete package (copy of pages 1 & 2 attached) will be returned to you via our Analysis Branch.

A copy will be sent to the GC CMO.

v/r, [REDACTED]

[REDACTED]

ATTACHMENT E

From: Toole, Mark W. CV (US)
To: [REDACTED] (OPR USN US)
Cc: Flannery, Stephanie L. CV WHS EM (US)
Subject: Office of the Convening Authority Request for Reassessment of Classification Guides
Date: Wednesday, December 10, 2014 5:20:00 PM
Attachments: 2014-12-10 - CA signed Request for Reassessment of Classification Guides ...pdf

Commander [REDACTED]

It was good speaking with you earlier. After our discussion it was decided to prepare the memo for the Acting Director, DIA. It is attached. Would you effect distribution?

I've cc'd Ms. Flannery because, in an earlier conversation, I indicated that I would forward the memo to her for appropriate distribution.

Thanks very much.

V/r,
Mark Toole

MARK L. TOOLE
Deputy Legal Advisor
Office of Military Commissions
[REDACTED]



Convening Authority

OFFICE OF THE SECRETARY OF DEFENSE
 OFFICE OF MILITARY COMMISSIONS
 4860 MARK CENTER DRIVE
 ALEXANDRIA, VA 22350-2100

December 10, 2014

MEMORANDUM FOR Acting Director, Defense Intelligence Agency
 Original Classification Authorities (OCAs) on the Security
 Classification/ Declassification Review Team

SUBJECT: Request for Reassessment of Classification Guides Employed in Support of Military
 Commissions

The Office of Military Commissions (OMC) is committed to promoting transparency to the maximum extent possible as part of our mission to provide a fair and just forum for cases referred to military commissions. Understanding that our goal of transparency is bounded by national security concerns that may evolve over time, I believe we must reevaluate the classification guides applied to the military commissions to ensure they stay consistent and keep pace with the evolving national security posture. Yesterday's declassification and release of the Executive Summary of the Senate Select Committee on Intelligence (SSCI) Study of the CIA's Detention and Interrogation Program represents a significant departure from past classification practice. This change presents an opportunity for those agencies involved in the classification/declassification review process to revisit their classification guides employed in support of the military commissions. Accordingly, I request the Original Classification Authorities take this opportunity to reassess whether these guides can be simplified and clarified in a manner that will better support the interests of justice and national security.

In a related matter, OMC currently operates without access to the different guides used to classify the court filings of the parties. Under the current practice, documents are prepared by the parties and subsequently classified by the review process. If it is possible to provide OMC and the litigants with any documents that would clarify the classification standards in a way that would support an increased pace of litigation, it would be helpful.

By taking advantage of this opportunity to create greater transparency for the military commissions, I believe we have the ability to take a significant step toward providing a more open, fair, and just military commissions process. Thank you for your consideration.

Vaughn A. Ary
 Convening Authority
 for Military Commissions

Printed on  Recycled Paper

ATTACHMENT F

From: Adams, Alyssa S CIV OSD OMC CA (US)
To: Kotval, Raghav CDR USN OSD OMC CA (US)
Subject: RE: Military judges
Date: Friday, November 14, 2014 4:50:00 PM

Yes, he is influencing it, but is it unauthorized influence? I think not.

I'm sure "positioned for success" will be taken out. It hasn't even been reviewed by Mr. Toole yet.

-----Original Message-----

From: Kotval, Raghav CDR USN OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:45 PM
To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: RE: Military judges

1. From the memo:

"The primary conclusion I have reached is that the trial judiciary for military commissions is under-resourced and is not positioned for success in administering its significant responsibilities under the Military Commissions Act. "

- "is not positioned for success"

Is the CA saying the judges are not and will not be successful? Is that a report on the judge's effectiveness or efficiency?

See 949(f) The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

2. What does the attachment say?

3. Regardless of whether SECDEF is making the policy change or not, the CA is still influencing the judicial process by asking for the change.

-----Original Message-----

From: Adams, Alyssa S CIV OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:39 PM
To: Kotval, Raghav CDR USN OSD OMC CA (US)
Subject: RE: Military judges

I think you hit the nail on the head with the question below:

Issue: are we coercing, or by unauthorized means, influencing the action of a judge? If not, why are we intruding on what is not typically or traditionally a CA's role? What is the explanation for the action?

Answer: DepSecDef is making this policy change, not the CA. It is not coercing the action of a judge, or influencing it by an unauthorized means. If in his discretion DepSecDef feels this change to the Reg is warranted, he will implement it. He is not influencing the outcome of the case one way or the other.

Take a look at my first stab at the action memo, attached.

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From: Kotval, Raghav CDR USN OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:34 PM
To: Adams, Alyssa S CIV OSD OMC CA (US)

Subject: RE: Military judges

Actually, as I think about this issue:

1. Would we need to put people on notice because of the regulatory changes?
2. If so, would that give the defense time to file motions?
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5. Even if the judges rule in our favor, the issue may become the topic of motions and serve to impugn the CA's impartiality.

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To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: Military judges

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10 USC 949b.

(a) Military Commissions. -

(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

(2) No person may attempt to coerce or, by any unauthorized means, influence-

(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

(C) the exercise of professional judgment by trial counsel or defense counsel.

Issue: In trying to speed up a trial, are affecting its fairness? If for example, the judge is less inclined to grant a continuance because it means more time on GTMO is that adverse to the accused?

10 USC 949e.

The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Issue:

(1) In light of 948j(a) have and will we make regulatory changes in all necessary areas and does that require notice and comment (the earlier issue for a separate action) and regulatory action?

- (2) In light of 948j(e) can we make Commissions the sole duty of judges?
- (3) In light of 948j(f) could it be argued that the spirit of the statute is to separate the control of the judiciary and the CA? See also, 949b and 949e?

10 USC 948j

(a) Detail of Military Judge.- A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

(e) Other Duties.- A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

(f) Prohibition on Evaluation of Fitness by Convening Authority.- The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

ATTACHMENT G

From: Adams, Alyssa S CIV OSD OMC CA (US)
To: [Kotval, Raghav CDR USN OSD OMC CA \(US\)](#)
Subject: RE: Military judges
Date: Friday, November 14, 2014 4:50:00 PM

Already did that and got a memo from Fred Taylor which will be included. Enough e-mails now!

-----Original Message-----

From: Kotval, Raghav CDR USN OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:49 PM
To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: RE: Military judges

The judges I think would say that the proper way to support them is to ask them what resources they need and provide those resources. That way the CA is supporting but not influencing the judges.

-----Original Message-----

From: Kotval, Raghav CDR USN OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:45 PM
To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: RE: Military judges

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"The primary conclusion I have reached is that the trial judiciary for military commissions is under-resourced and is not positioned for success in administering its significant responsibilities under the Military Commissions Act. "

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Is the CA saying the judges are not and will not be successful? Is that a report on the judge's effectiveness or efficiency?

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To: Kotval, Raghav CDR USN OSD OMC CA (US)
Subject: RE: Military judges

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Answer: DepSecDef is making this policy change, not the CA. It is not coercing the action of a judge, or influencing it by an unauthorized means. If in his discretion DepSecDef feels this change to the Reg is warranted, he will implement it. He is not influencing the outcome of the case one way or the other.

Take a look at my first stab at the action memo, attached.

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To: Adams, Alyssa S CIV OSD OMC CA (US)
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Actually, as I think about this issue:

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To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: Military judges

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(C) the exercise of professional judgment by trial counsel or defense counsel.

Issue: In trying to speed up a trial, are affecting its fairness? If for example, the judge is less inclined to grant a continuance because it means more time on GTMO is that adverse to the accused?

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The military judge in a military commission under this chapter may, for reasonable cause, grant a

continuance to any party for such time, and as often, as may appear to be just.

Issue:

- (1) In light of 948j(a) have and will we make regulatory changes in all necessary areas and does that require notice and comment (the earlier issue for a separate action) and regulatory action?
- (2) In light of 948j(e) can we make Commissions the sole duty of judges?
- (3) In light of 948j(f) could it be argued that the spirit of the statute is to separate the control of the judiciary and the CA? See also, 949b and 949e?

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ATTACHMENT H

From: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#)
To: [OSD Pentagon OMC List CA Legal Advisors](#)
Subject: FW: Military judges
Date: Friday, November 14, 2014 4:52:32 PM
Attachments: [Working document- Chap 6, RTMC, suggested changes.docx](#)

ALCON,

Good comments and thoughts from CDR Kotval below.

In response, I have changed "sole duty" back to "primary duty" for the MJs and tweaked some of the language in para 6-2a. Can someone confirm that "adjourned" is actually language used in MCs? I took that from the MCM.

I am hoping we can discuss this further on Monday. LTC Lewis and I can call in from GTMO at a designated time.

V/R-
AA

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To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: Military judges

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Chapter 6 MILITARY JUDGES

6-1. GENERAL

a. Military judges will preside over ~~the~~ military commissions. *See* 10 U.S.C. § 948j; ~~and~~ R.M.C. 503(b).

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b. *Organization.* The Military Commissions Trial Judiciary will consist of military judges nominated by ~~the~~The Judge Advocates Generals from the military departments. The Chief Trial Judge will be selected from that pool of military judges by the Secretary of Defense or his or her designee. *See* R.M.C. 503(b)(2).

6-2. DETAIL OF MILITARY JUDGES

a. The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary for each military commission ~~trial~~ in which charges are referred. Once detailed to a military commission, that trial shall be the military judge's primary duty until the commission is adjourned or the charges are otherwise finally disposed of. ~~is~~ In the event of a lengthy abatement in a military commission, a detailed military judge ~~Military Commissions Trial Judiciary~~ may be detailed to other duties by the Chief Trial Judges of ~~their~~ his/her respective services, provided that such other duties do not conflict with ~~their~~ his/her primary duty as a detailed military judge for military commissions trials.

b. Once detailed, a military judge shall be relocated through permanent change of station (PCS) orders to the location where the military commission is to take place. The military judge's place of duty shall remain at that location until the commission is adjourned or the charges are otherwise finally disposed of.

6-3. QUALIFICATIONS

a. A military judge must be a commissioned officer of the armed forces and a member in good standing of the bar of a Federal court, or a member of the bar of the highest court of a State or the District of Columbia.

b. A military judge must be certified to be qualified for duty under section 10 U.S.C. § 826 (Article 26 of the U.C.M.J) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member. *See* 10 U.S.C. § 948j(b).

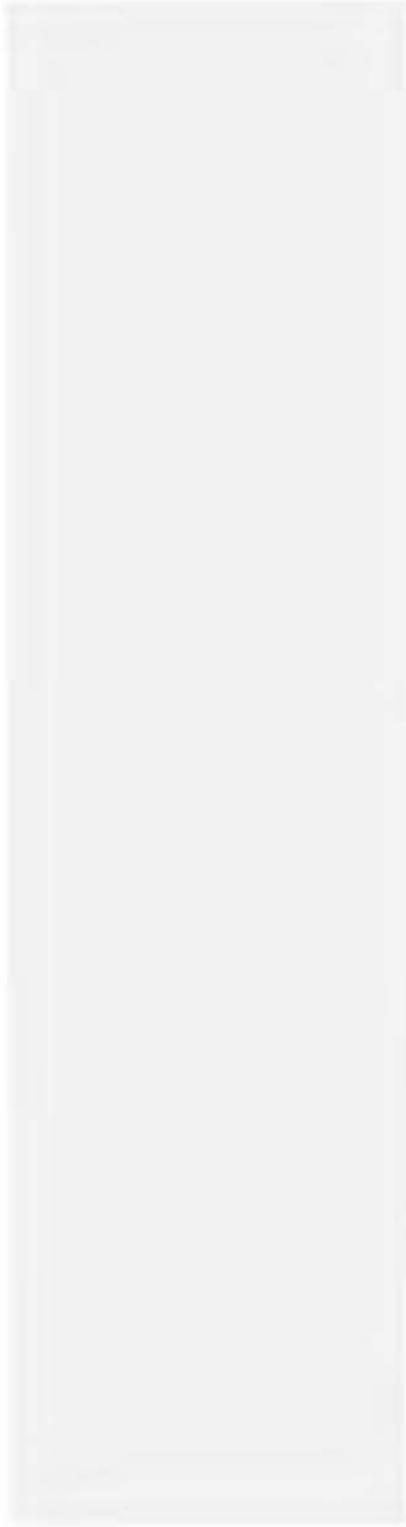
c. Military judges must be on active duty at the time of their detail to a military commission. Can activate a reserve judge? Or recall a judge from retirement?

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d. Military judges must have or be eligible for a current TOP SECRET clearance. A TOP SECRET/SCI (Sensitive Compartmented Information) clearance or a TOP SECRET clearance with eligibility for SCI is preferred and may be required for certain cases.

|
Military judges must have at least two years of experience as a military judge while certified to be qualified for duty as a military judge in general courts-martial. *See* R.M.C. 503(b).
|

DRAFT



ATTACHMENT I

From: [Rich, Matthew J CPT USAFMY OSD OMC CA \(US\)](#)
To: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#); [OSD Pentagon OMC List CA Legal Advisors](#)
Subject: RE: Military judges
Date: Friday, November 14, 2014 5:04:26 PM

ALCON:

My two cents: Regarding 6-3.(c): There may be reserve judge's who have prior experience as U.S. Attorneys or some experience in national-security related cases. Given the UCMJ/Art. III hybrid world we currently occupy, judges with both Art. I and Art. III experience may be ideal candidates if they were willing to PCS to GTMO.

Have a great weekend everyone: Hope the flight down to GTMO goes well on Sunday!

V/R,

- Matt R.

-----Original Message-----

From: Adams, Alyssa S CIV OSD OMC CA (US)
Sent: Friday, November 14, 2014 4:53 PM
To: OSD Pentagon OMC List CA Legal Advisors
Subject: FW: Military judges

ALCON,

Good comments and thoughts from CDR Kotval below.

In response, I have changed "sole duty" back to "primary duty" for the MJs and tweaked some of the language in para 6-2a. Can someone confirm that "adjourned" is actually language used in MCs? I took that from the MCM.

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ATTACHMENT J

From: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)
To: [REDACTED] [LTCOL USMC OSD OGC \(US\)](#)
Cc: [REDACTED] [COL USAF OSD OGC \(US\)](#); [Toole, Mark W CIV \(US\)](#)
Subject: RE: Possible Mtg Times
Date: Wednesday, November 19, 2014 12:29:24 PM

Jon,

I'll sign up for the 1500 tomorrow. Please let me know if you need to shift it. Thanks again,

V/r and S/f,
VA

-----Original Message-----

From: [REDACTED] [LTCOL USMC OSD OGC \(US\)](#)
Sent: Wednesday, November 19, 2014 11:37 AM
To: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)
Cc: [REDACTED] [COL USAF OSD OGC \(US\)](#); [Toole, Mark W CIV \(US\)](#)
Subject: Possible Mtg Times

Good Speaking with you Sir,
Have windows tomorrow afternoon at 1500 or 1530 and then on Friday morning at 10:30 or anytime
btwn 1300-1500. Let me know what works best for you and we'll build it. Thank you.

v/r

LtCol [REDACTED]

[REDACTED] LtCol, USMC
Military Assistant to the DoD General Counsel
Phone: [REDACTED]
NIPR: [REDACTED]
SIPR: [REDACTED]
JWICS: [REDACTED]

CAUTION: Information contained in this message may be protected by the attorney/client, attorney
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ATTACHMENT K

From: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)
To: [REDACTED] [LTCOL USMC OSD OGC \(US\)](#)
Cc: [REDACTED] [COL USAF OSD OGC \(US\)](#); [Toole, Mark W CIV \(US\)](#)
Subject: RE: Possible Mtg Times
Date: Wednesday, November 19, 2014 12:29:24 PM

Jon,

I'll sign up for the 1500 tomorrow. Please let me know if you need to shift it. Thanks again,

V/r and S/f,
VA

-----Original Message-----

From: [REDACTED] [LTCOL USMC OSD OGC \(US\)](#)
Sent: Wednesday, November 19, 2014 11:37 AM
To: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)
Cc: [REDACTED] [COL USAF OSD OGC \(US\)](#); [Toole, Mark W CIV \(US\)](#)
Subject: Possible Mtg Times

Good Speaking with you Sir,
Have windows tomorrow afternoon at 1500 or 1530 and then on Friday morning at 10:30 or anytime
btwn 1300-1500. Let me know what works best for you and we'll build it. Thank you.

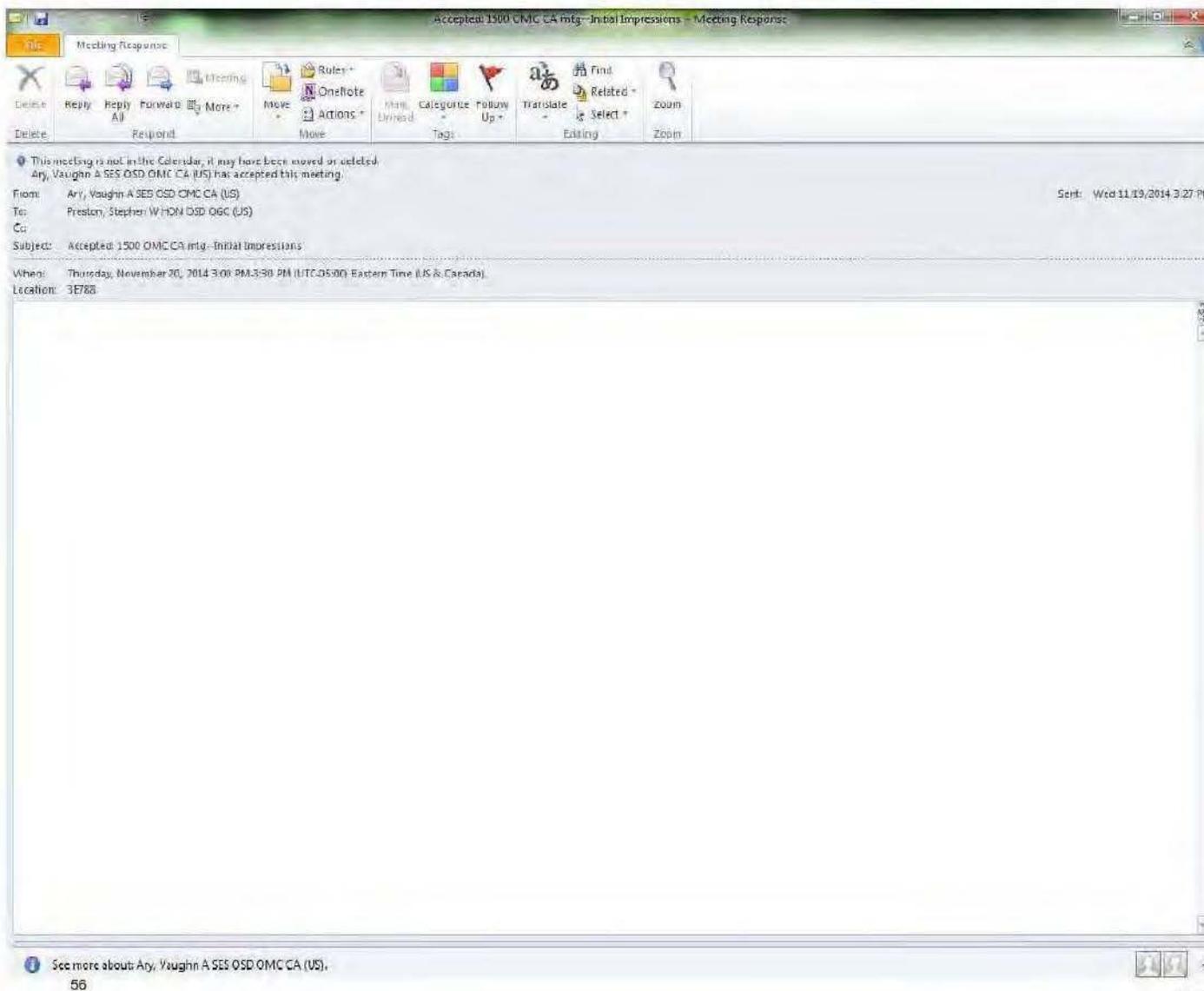
v/r

LtCol [REDACTED]

[REDACTED] LtCol, USMC
Military Assistant to the DoD General Counsel
Phone: [REDACTED]
NIPR: [REDACTED]
SIPR: [REDACTED]
JWICS: [REDACTED]

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ATTACHMENT L



HADI-1-019580

ATTACHMENT M

From: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#)
To: [Toole, Mark W CIV \(US\)](#)
Subject: RE: 19 NOV
Date: Wednesday, November 19, 2014 5:27:00 PM

Hi Sir-

I feel like I have had a writing block the past two days, so you will want to thoroughly review and revise what I have written for the TJ recommendations. It's actually quite awful- the tone is wrong, etc. The documents will be posted shortly in the folder on the O Drive.

On a different note, we got Raghav's gift and it looks great. He had only left off one "s" at the end of military commissions, which he added while we waited. The total amount is \$92, including the coin.

We are not looking forward to coming back to the frigid weather up there, as I understand the temps have dropped quite a bit. But maybe that will help relieve my brain drain, which perhaps is due to the heat.

At any rate, hopefully all goes smoothly tomorrow. We will keep you updated as possible.

V/R-
Alyssa

-----Original Message-----

From: Toole, Mark W CIV (US)
Sent: Wednesday, November 19, 2014 12:31 PM
To: Adams, Alyssa S CIV OSD OMC CA (US)
Subject: RE: 19 NOV

Thanks Alyssa -- I apologize, I have not sent the email requesting the CVs. Do you have access to his email address down there? If not, I'll send it - I think I'd like to just send it as a follow-on to the earlier request (I mean just forwarding the initial request with a note saying we're still waiting).

That's also great about Raghav's award -- that was quick. Hope lunch with [REDACTED] goes well. Her impressions of yesterday would be interesting.

v/r,
Mark Toole

-----Original Message-----

From: Adams, Alyssa S CIV OSD OMC CA (US)
Sent: Wednesday, November 19, 2014 11:55 AM
To: Toole, Mark W CIV (US)
Subject: 19 NOV

Hi Sir-

[REDACTED] and I have been discussing the DepSecDef action and I should have some updated drafts for your review this afternoon.

Also, did you send an e-mail to Mr. Connell about the CVs, or should I do that?

We are headed out to pick up Raghav's present, which is ready! I hope they

spelled the name right. [REDACTED] has asked to tag along for lunch.

V/R:
Alyssa

ATTACHMENT N

From: [Adams, Alyssa S.O.V.OSD.OMC.CA \(US\)](mailto:Alyssa.S.O.V.OSD.OMC.CA@US)
To: [Adams, Alyssa S.O.V.OSD.OMC.CA \(US\)](mailto:Alyssa.S.O.V.OSD.OMC.CA@US)
Subject: CA memo
Date: Wednesday, November 19, 2014 5:33:00 PM
Attachments: [TAB B- Info Memo.docx](#)
[Working document- Chap 6, RTMC, suggested changes.docx](#)

Alyssa S. Adams

Assistant Legal Advisor

Office of the Convening Authority

Office of Military Commissions

4800 Mark Center Drive, Suite 11F09-02

Alexandria, VA 22350-2100

Office: [REDACTED]

NIPR: alyssa.s.adams [REDACTED] <<mailto:alyssa.s.adams> [REDACTED]>

SIPR: alyssa.adams [REDACTED] <<mailto:alyssa.adams> [REDACTED]>



OFFICE OF THE SECRETARY OF DEFENSE
 OFFICE OF MILITARY COMMISSIONS
 4800 MARK CENTER DRIVE
 ALEXANDRIA, VA 22350-2100

Convening Authority and Director

INFO MEMO

FOR: DEPUTY SECRETARY OF DEFENSE

FROM: Mr. Vaughn A. Ary, Director, Office of Military Commissions and Convening Authority
 for Military Commissions

SUBJECT: Results of Assessment of Office of Military Commissions Trial Process and
 Administration

- I conducted an assessment of the Office of Military Commissions with a view to implementing measures that will aid in the efficient, fair, and just administration of ongoing and future military commissions. I came to the following conclusions.
- This organization is responsible for trying some of the most important criminal cases in United States history and, arguably, in world history. The magnitude of the loss experienced by the victims, their family members, and the Nation as a result of the 9/11 attacks is unparalleled, and the United States Government has a duty to ensure the fair, transparent, and efficient administration of justice. As the Convening Authority for Military Commissions, it is my responsibility to position and resource this organization for success.
- I have concluded that the trial judiciary is under-resourced to administer its significant responsibilities under the Military Commissions Act. In order for the military judges to effectively administer military commissions cases, their priorities must be clearly laid out and they must be physically located at the site of the trial.
- These concerns were recently demonstrated on the record in *U.S. v. Abd al Hadi al Iraqi*. On November 18, 2014, during military commission hearings, the trial counsel suggested holding additional hearings before the next scheduled trial date, which was January 26, 2015. In response, the military judge stated, "That's not going to happen. I have a day job, okay? When I get back next week after Thanksgiving, I have a case in Sigonella, Sicily. I go immediately from there to Bahrain, and then I have cases after the new year, I have two more cases starting in January. So I'm fully booked." Unofficial transcript at 214. Earlier in that hearing, defense counsel stated, "Your Honor, we understand that you are in Italy, in Naples. Why is that the defense's issue as well? It is just—it is what it is, but unfortunately we need more time." *Id.* at 180. It is apparent that the division of duties experienced by currently detailed military judges, and their geographical separation from the trial location, is hampering their ability to try military commissions cases in a timely, efficient manner.
- In November 2014, the Office of Military Commissions Trial Judiciary requested additional attorneys and paralegals in order to ensure the trial judiciary is appropriately resourced. I

concur that such resourcing is necessary to allow for continuity of experience in cases that involve incredibly complex legal issues requiring thorough legal research.

- **Course of Action:** I have authorized the hiring of five additional civilian attorney-advisors, who will be assigned as law clerks to each military commission case. I have also authorized the hiring of -- additional paralegals to provide sufficient support to the attorneys and military judges assigned to specific cases.
- **Recommendation:** I recommend that you implement two important revisions to the Regulation for Trial by Military Commission: (1) establish military commissions cases as the primary duty for detailed military judges and (2) re-locate detailed judges to the situs where the military commission is to take place. *See* Action Memo and TAB B, recommended revisions to Regulation.

COORDINATION: TAB C

Attachments:
As stated

Prepared by:

**Chapter 6
MILITARY JUDGES**

6-1. GENERAL

a. Military judges will preside over ~~the~~ military commissions. See 10 U.S.C. § 948j; ~~and~~ R.M.C. 503(b).

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b. *Organization.* The Military Commissions Trial Judiciary will consist of military judges nominated by ~~the~~ The Judge Advocates General~~s~~ from the military departments. The Chief Trial Judge will be selected from that pool of military judges by the Secretary of Defense or his or her designee. See R.M.C. 503(b)(2).

6-2. DETAIL OF MILITARY JUDGES

a. The Chief Trial Judge will detail a military judge from the Military Commissions Trial Judiciary for each military commission ~~trial in which charges are referred.~~ ~~Once detailed to a military commission, that trial shall be the~~ ~~the~~ military judge's primary duty until the commission is adjourned or the charges are otherwise finally disposed of. A military judge of a military commission under this chapter may perform such other duties as are assigned by or with the approval of The Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General, ~~may be detailed to other duties by the Chief Trial Judges of their his/her respective services,~~ provided that such other duties do not conflict with ~~their his/her~~ primary duty as a detailed military judges for military commissions trials.

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b. Once detailed, a military judge shall be relocated through permanent change of station (PCS) orders to the location where the military commission is to take place. The military judge's place of duty shall remain at that location until the commission is adjourned or the charges are otherwise finally disposed of.

6-3. QUALIFICATIONS

a. A military judge must be a commissioned officer of the armed forces and a member in good standing of the bar of a Federal court, or a member of the bar of the highest court of a State or the District of Columbia.

b. A military judge must be certified to be qualified for duty under section 10 U.S.C. § 826 (Article 26 of the U.C.M.J) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member. See 10 U.S.C. § 948j(b).

c. Military judges must be on active duty at the time of their detail to a military commission.

|
| d. Military judges must have or be eligible for a ~~current~~ TOP SECRET clearance. A TOP SECRET/SCI(Sensitive Compartmented Information) clearance or a TOP SECRET clearance with eligibility for SCI is preferred and may be required for certain cases. Military judges must have at least two years of experience as a military judge while certified to be qualified for duty as a military judge in general courts-martial. *See R.M.C. 503(b).*

DRAFT

ATTACHMENT O

From: [Wilkins, Donna L CIV OSD OMC CA \(US\)](#)
To: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)
Cc: [Toole, Mark W CIV \(US\); \[REDACTED\] COL USARMY OSD OGC \(US\); Wilkins, Donna L CIV OSD OMC CA \(US\)](#)
Subject: Hours and Numbers on the Record
Date: Friday, November 21, 2014 5:06:38 PM
Attachments: [On the Record 2014.xlsx](#)
Importance: High

Sir

Per your request, please see the attached document.

Sorry it took so long to get this information to you. It took longer than I had anticipated.

v/r

Donna

Donna L. Wilkins
Chief, Office of Court Administration
Office of Military Commissions

Email: Donna.L.Wilkins.civ [REDACTED]

Voice in VA: [REDACTED]

BB: [REDACTED]

Voice at GTMO: [REDACTED]
Commercial: [REDACTED]
DSN: [REDACTED]
Alt (LSS): [REDACTED]

Mailing: 4800 Mark Center Drive
Suite 11F09-02
Alexandria, VA 22350-2100



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UNCLASSIFIED//FOR PUBLIC RELEASE

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]								
2	U.S. v. Al-Nashiri								
3	MJ: Spathi								
4	TC: Sher, Clayton, Martins, Moscati, Davis, Morris								
5	DC: Jackson, Daniels, Kammen, Hurley, Mizer								
						LAST UPDATED:	19 November 14/0601		
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
7		17 - 26 Feb 14	18 hrs 51 min	750	6				
8		22 - 27 Apr 14	25 hrs 59 min	1007	5				
9		28 - 29 May 14	5 hrs 51 min	255	2				
10		4 - 6 Aug 14	13 hrs	488	3				
11		5-6 Nov 14	6 hrs 35 min	274	2				
12			Total Hours of Audio 2014	Total # of Pages for 2014	Total Days on the Record for 2014				
13			71 hours 16 minutes*	2774	18**				
14									
15				5285	Total # of Pages for ROT				
16									
17									
18									
19									
20									

Court Reporter LEAD: Mr. [REDACTED] 2nd: N/A
 US v. Al Darbi
 MJ: Col Allred
 TC: LTC Hosang
 DC: LT Champ
 CDC: Prof Ramzi Kassem

LAST UPDATED: 19 Nov 14/1630

Status	Date of Session	Hours of Audio	Page Count	Days on the Record				
Transcription Completed	20-Feb-14	2 hr 15 min	84	1				
		Total Hrs of Audio 2014	Total # Pages	Total Days on the Record				
		2 hr 15 min	84	1				

Court Reporter LEAD: Mr. [REDACTED] Second: N/A								
US v Al Hadi		LAST UPDATED: 19 Nov 14/1630						
MJ: Waits								
TC:								
DC: Jackson								
Status	Date of Session	Hours of Audio	Page Count	Days on the Record				
	18-Jun-14	0 hrs 35 min	17	1				
	15-Sep-14	1 hrs 5 min	43	1				
	17-Nov-14	2 hrs 43 min	TBD	1				
	18-Nov-14	1 hrs 20 min	TBD	1				
		Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on the Record for 2014				
		5 hrs 43 min	60	4				

Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED] US v KSM et al MJ: Pohl TC: BG Martins, Ryan, Swann DC: Nevin, Bormann, Harrington, Connell, Ruiz							
						LAST UPDATED: 19 Nov 14/1443	
Status	Date of Session	Hours of Audio	Page Count	Number of Days on the Record			
Transcript Complete	14-17 Apr 14	02 hrs 38 min	103	3			
Transcript Complete	16-17 Jun 14	03 hrs 45 min	153	1			
Transcribing	14-Aug-14	03 hrs 42 min	127	1			
		Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on Record 2014			
		10 hrs 5 min	383	5			

7869 Total # of Pages for ROT

ATTACHMENT P

From: [Wilkins, Donna L CIV OSD OMC CA \(US\)](#)
To: [Arv. Vaughn A SES OSD OMC CA \(US\)](#)
Cc: [Toole, Mark W CIV \(US\)](#); [REDACTED] [COL USARMY OSD OGC \(US\)](#); [Wilkins, Donna L CIV OSD OMC CA \(US\)](#)
Subject: Hours and Numbers on the Record
Date: Friday, November 21, 2014 5:06:38 PM
Attachments: [On the Record 2014.xlsx](#)
Importance: High

Sir

Per your request, please see the attached document.

Sorry it took so long to get this information to you. It took longer than I had anticipated.

v/r

Donna

Donna L. Wilkins
Chief, Office of Court Administration
Office of Military Commissions

Email: Donna.L.Wilkins.civ [REDACTED]

Voice in VA: [REDACTED]

BB: [REDACTED]

Voice at GTMO: [REDACTED]

Commercial: [REDACTED]

DSN: [REDACTED]

Alt (LSS): [REDACTED]

Mailing: 4800 Mark Center Drive
Suite 11F09-02
Alexandria, VA 22350-2100

[REDACTED]

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	A	B	C	D	E	F	G	H	I
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4	TC: Sher, Clayton, Martins, Moscati, Davis, Morris								
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	LAST UPDATED: 19 November 14/0601								
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
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13			71 hours 16 minutes*	2774	18**				
14									
15				5285	Total # of Pages for ROT				
16									
17									
18			* total hours of audio for 2014 includes hours for classified sessions						
19									
20			** Total days on the record for 2014 includes days for unclassified and classified sessions						
21									

Al Darbi Col Alired LTC Hosang LT Champ Prof Ramzi Kassem				LAST UPDATED: 19 Nov 14/1630			
Date of Session	Hours of Audio	Page Count	Days on the Record				
20-Feb-14	2 hr 15 min	84	1				
Total Hrs of Audio 2014		Total # Pages	Total Days on the Record				
	2 hr 15 min	84	1				

US v. Al Hadi		LAST UPDATED: 19 Nov 14/1630					
MJ: Wallis							
TC:							
DC: Jackson							
Status	Date of Session	Hours of Audio	Page Count	Days on the Record			
	18-Jun-14	0 hrs 35 min	17	1			
	15-Sep-14	1 hrs 5 min	43	1			
	17-Nov-14	2 hrs 43 min	TBD	1			
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		Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on the Record for 2014			
		5 hrs 43 min	60	4			

Court Reporter: LEAD: [REDACTED] 2nd: Mr. [REDACTED] US v KSM et al MJ: Pohl TC: BG Martins, Ryan, Swann DC: Nevin, Bormann, Harrington, Connell, Ruiz		LAST UPDATED: 19 Nov 14/1443					
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		Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on Record 2014			
		10 hrs 5 min	383	5			

7869 Total # of Pages for ROT

ATTACHMENT Q

From: [Koival, Raghav CDR USN OSD OMC CA \(US\)](#)
To: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#)
Subject: TAB B- Info Memo (PK edits)
Date: Monday, November 24, 2014 2:00:07 PM
Attachments: [TAB B- Info Memo \(PK edits\).docx](#)

A few thoughts.