



Convening Authority and Director

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

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.
- This organization is responsible for prosecuting and defending 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 all parties 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.
- There has been significant attention to the resources of the defense and prosecution in ensuring the former is resourced equitably to the latter. There has been little attention to the resourcing of the trial judiciary.
- Based on my review, I have concluded that the trial judiciary is not adequately resourced. Central to the imbalance is that unlike the defense and the prosecution functions, each of which are exclusively devoted to military commissions, the trial judiciary typically supports commissions as a collateral duty. After consulting with the Office of Military Commissions Trial Judiciary, I propose three measures in support of the trial judiciary: additional personnel; making Military Commissions the sole responsibility of assigned judges; and physically locating judges at the location of the trials. ~~Some of these changes must~~ can be effectuated through a revision to the Regulation for Trial by Military Commission.
- Consistent with ~~the~~ the Office of Military Commissions Trial Judiciary recently requested for 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. ~~I also conclude that in order to position the military judges for success to most effectively administer military commissions.~~

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• To avoid conflicting priorities, the Military Commission case assigned should be the assigned trial judge's sole case. These concerns were recently demonstrated on the record in *U.S. v. Abd al Hadi al Iraqi*. In response to a request by trial counsel to hold additional hearings before the next scheduled hearing date which was two months away, the military judge responded that he was unable to do so, as he had several courts-martial docketed in various locations around the world. ~~Compounding the military judges' challenge, travel time to Guantanamo Bay consists of two to four days for each hearing, depending on whether the judge is located outside of the Washington, D.C. area.~~ It is apparent that the division of duties experienced by detailed military judges, their geographical separation from the trial location, and the additional travel time needed to reach it, is impacting their ability to try military commissions cases in a timely, efficient manner. The proposed changes to the Regulation will afford the judges the ability to devote their full attention and resources exclusively to the military commission to which they are detailed. This will become particularly important once a military commission enters continuous operations during the trial on the merits. Recognizing that a sole focus on Military Commissions will significantly alter the current duties of trial judges, the change should be effectuated through a change in assignment. Assigned judges should receive orders to the Military Commissions to reflect their new focus.

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• The orders should be accompanied by a PCS to the location of the trial. The most efficient and effective way for military judges to conclude that in order to position the military judges for success to most effectively to administer military commissions cases, is to be their priorities must be clearly laid out and they must be physically located at the site of the trial. Compounding the military judges' challenge, travel time to Guantanamo Bay consists of two to four days for each hearing, depending on whether the judge is located outside of the Washington, D.C. area. In addition to saving this travel time, an anticipated second-order effect of the provision of additional resources and having military commissions as the sole focus of judges, is that issues will be decided more quickly than they have been previously. A shorter period between decisions will mean more hearings and as a corollary, additional time at the location of the trial. With only one courtroom capable of accommodating classified information, scheduling flexibility becomes critical. The co-location of the judges at the trial location facilitates the flexibility needed in organizing the docket. For example, trial weeks may be split between cases. All parties could depart on the same chartered flight, and the first half of trial week could be devoted to one case with the latter half devoted to another. Alternatively, the judges may decide on a different division of time. Defense counsel could make the best use of their time by meeting with their clients. In addition to investigating the pooling of logistical resources, the co-location of the judiciary enables the pooling of the trial judiciary's support services.

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• ~~These changes can be effectuated through a revision to the Regulation for Trial by Military Commission.~~

- **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 venue 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:

# ATTACHMENT R

From: [REDACTED] SFC USARMY OSD OMC CA (US)  
To: Ary, Vaughn A SES OSD OMC CA (US)  
Cc: Wilkins, Donna L CIV OSD OMC CA (US); Hill, Laura C CIV OSD OMC CA (US); [REDACTED] CIV OSD OMC CA (US); Toodle, Mark W CIV (US); [REDACTED] OCL USARMY OSD OGC (US)  
Subject: Re: Hours on the record....  
Date: Monday, November 24, 2014 2:20:04 PM  
Attachments: Copy of On the Record 2014.xlsx

---

Mr. Ary,

Good afternoon, sir. I hope you are doing well today. Mrs. Wilkins asked me to adjust the numbers on the chart that she sent you this past Friday to reflect the days/hours/page count of our active cases for FY 2014, to include Bin al Shibh.

The numbers reflect the pages of official transcript, which encompass the open 803 and the closed 806 sessions. They do not include the days/hours for the classified 505(h) sessions that took place during FY 2014. Those sessions are not included in the official page count for the record of trial. Instead, they are sealed and marked as appellate exhibits. For 505(h) sessions, KSM had a total of 3 hours and 7 min of 505(h) audio, and Nashiri had 4 hours and 56 min of 505(h) audio.

Please let me know if you have any questions concerning this data or if you need any additional info. Thank you, sir, and have a great day.

V/R  
SFC [REDACTED]  
Senior Court Reporter  
Office of Court Administration  
Office of Military Commissions  
[REDACTED]

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: ██████ 2nd: Mr. ██████								
2	U.S. v. Al-Nashiri								
3	MJ: Spath								
4	TC: Sher, Clayton, Martins, Moscati, Davis, Morris								
5	DC: Jackson, Daniels, Kammen, Hurley, Mizer								
	LAST UPDATED: 19 November 14 0801								
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
7		17 - 25 Feb 14	18 hrs 51 min	750	6				
8		22 - 27 Apr 14	25 hrs 59 min	1007	5				
9		28 - 29 May 14	6 hrs 51 min	255	2				
10		4 - 6 Aug 14	13 hrs	488	3				
11			<b>Total Hours of Audio 2014</b>	<b>Total # of Pages for 2014</b>	<b>Total Days on the Record for 2014</b>				
12			58 hours 41 minutes*	2500	16**				
13									
14				5285	Total # of Pages for ROT				
15									
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				
	20-Feb-14	2 hr 15 min	84	1				
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		2 hr 15 min	84	1				

\* Total hours of audio for FY 2014 includes hours for 803 open and 806 closed sessions

\*\* Total days on the record for FY 2014 includes days for 803 open and 806 closed sessions

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			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on the Record for 2014</b>			
		1 hr 40 min	60	2			

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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			
	22-25 Oct 13	21 hrs 38 min	849	4			
	17-19 Dec 13	11 hrs 10 min	454	3			
	14-17 Apr 14	02 hrs 38 min	303	3			
	16-Jun-14	03 hrs 45 min	153	1			
	14-Aug-14	03 hrs 42 min	137	1			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on Record 2014</b>			
		42 hrs 53 min	1696	12			

7869 Total # of Pages for ROT

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Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]

US v Binalshibh

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LAST UPD 19 Nov 14/1443

Status	Date of Session	Hours of Audio	Page Count	Number of Days on the Record			
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# ATTACHMENT S

From: [REDACTED] SFC USARMY OSD OMC CA (US)  
To: [Ary, Vaughn A SES OSD OMC CA \(US\)](#)  
Cc: [Wilkins, Donna L CIV OSD OMC CA \(US\)](#); [Hill, Laura C CIV OSD OMC CA \(US\)](#); [REDACTED] CIV OSD OMC CA (US); [Toole, Mark W CIV \(US\)](#); [REDACTED] OCL USARMY OSD OGC (US)  
Subject: Re: Hours on the record....  
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V/R  
SFC [REDACTED]  
Senior Court Reporter  
Office of Court Administration  
Office of Military Commissions  
[REDACTED]

# TAB 46-1

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# ATTACHMENT T

From: Adams, Alyssa S CIV OSD OMC CA (US)  
To: [Kotval, Raghav CDR USN OSD OMC CA \(US\)](#)  
Subject: RE: TAB B- Info Memo (RK edits)  
Date: Monday, November 24, 2014 2:44:00 PM

---

Thank you. Very helpful.

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

From: Kotval, Raghav CDR USN OSD OMC CA (US)  
Sent: Monday, November 24, 2014 2:11 PM  
To: Adams, Alyssa S CIV OSD OMC CA (US)  
Subject: RE: TAB B- Info Memo (RK edits)

I also thought of adding something like the following in the last bullet addressing geographic co-location:

"The status quo becomes increasingly infeasible with the addition of each new variable: the potential of the severing of one or more of the defendants in the currently joint 9-11 prosecution; the referral of charges against another accused; or the initiation of an extended trial period. The continuous presence of the judiciary becomes an inevitability once the trial phase begins. Accordingly, the question is not if, but when. While the continuous presence of the defense and prosecution may also become inevitable for similar reasons, the change in the nature of the judicial function makes this an opportune time to address the location of the judiciary."

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

From: Kotval, Raghav CDR USN OSD OMC CA (US)  
Sent: Monday, November 24, 2014 2:00 PM  
To: Adams, Alyssa S CIV OSD OMC CA (US)  
Subject: TAB B- Info Memo (RK edits)

A few thoughts.

# ATTACHMENT U

100

From: Adams, Alyssa S CIV OSD OMC CA (US)  
To: [Toole, Mark W CIV \(US\)](#)  
Subject: FW: TAB B- Info Memo (RK edits)  
Date: Monday, November 24, 2014 6:00:00 PM  
Attachments: [TAB B- Info Memo \(RK edits\).docx](#)

---

Sir,

Here are the suggested edits from Raghav, along with the para below, some of which are quite good. I will look at incorporating some of it into the memo.

V/R-  
Alyssa

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

From: Kotval, Raghav CDR USN OSD OMC CA (US)  
Sent: Monday, November 24, 2014 2:00 PM  
To: Adams, Alyssa S CIV OSD OMC CA (US)  
Subject: TAB B- Info Memo (RK edits)

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Convening Authority and Director

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ALEXANDRIA, VA 22350-2100

INFO MEMO

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COORDINATION: TAB C

Attachments:  
As stated

Prepared by:

# ATTACHMENT V

From: [Toole, Mark W CIV \(US\)](#)  
To: [Avy, Vaughn A SES OSD OMC CA \(US\)](#)  
Cc: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#)  
Subject: FW: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over  
Date: Wednesday, November 26, 2014 8:44:48 AM  
Attachments: [On the Record hours FY 2013.xlsx](#)

---

Sir,

Donna's folks did some fine work pulling the numbers together for FY 13. Two cases on the record - KSM and al Nashiri for total of 164 hours 28 minutes over a total of 34 days.

v/r,  
Mark

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

From: Wilkins, Donna L CIV OSD OMC CA (US)  
Sent: Tuesday, November 25, 2014 3:12 PM  
To: Toole, Mark W CIV (US)  
Cc: [REDACTED] COL USARMY OSD OGC (US); Wilkins, Donna L CIV OSD OMC CA (US)  
Subject: RE: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over

Mark

My folks are wonderful. See attached charts for FY 2013.

There were only two cases that went "on the record" in FY 2013--KSM and Nashiri.

Kahn occurred in 2012 so it is not listed in the charts.

My guys figured out how to have the excel chart add up for us the hours and minutes so the format is a little different than what was in the previous charts.

I would be very interested in what you all think these numbers reveal or show.

Enjoy!

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]



[REDACTED]

Caution: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without the approval from the Office of the DoD General Counsel.

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

From: Toole, Mark W CIV (US)  
Sent: Tuesday, November 25, 2014 10:07 AM  
To: Wilkins, Donna L CIV OSD OMC CA (US)  
Cc: [REDACTED] COL USARMY OSD OGC (US)  
Subject: RE: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over

He did Donna -- and he very much appreciated your office's efforts. SFC [REDACTED] was very helpful in explaining the distinction between the 505(h) sessions and 806 sessions.

The CA did mention he was thinking about asking if OCA could look at the numbers for FY 13 -- to see whether or not FY 14 was an anomaly. I don't think he's made a final decision on whether to make that request. Just want to give you a heads-up.

Thank you again.

v/r,  
Mark

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

From: Wilkins, Donna L CIV OSD OMC CA (US)  
Sent: Tuesday, November 25, 2014 9:35 AM  
To: Toole, Mark W CIV (US)  
Cc: [REDACTED] COL USARMY OSD OGC (US)  
Subject: RE: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over

You too.

Did you and the CA get everything you needed yesterday from SFC [REDACTED]

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]

[REDACTED]

[REDACTED]

[REDACTED]

Caution: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without the approval from the Office of the DoD General Counsel.

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

From: Toole, Mark W CIV (US)  
Sent: Tuesday, November 25, 2014 9:32 AM  
To: Wilkins, Donna L CIV OSD OMC CA (US)  
Cc: [REDACTED] COL USARMY OSD OGC (US)  
Subject: RE: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over

Thank you very much, Donna. And, if I don't talk with you beforehand, have a great Thanksgiving.

v/r,  
Mark

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

From: Wilkins, Donna L CIV OSD OMC CA (US)  
Sent: Tuesday, November 25, 2014 8:59 AM  
To: Toole, Mark W CIV (US)  
Cc: [REDACTED] COL USARMY OSD OGC (US)  
Subject: al Nashiri: Order regarding authentication of the transcript Judge Pohl presided over

Mark

The order came out yesterday:

Starting in January 2015, the Defense will conduct its R.M.C. 1103(f) examination of the transcript of the proceedings at a rate of one (1) commission session per month until the transcripts of all ten (10) sessions are examined, thus allowing COL Pohl to authenticate his portion of the record after October 2015. Failure on the part of the Defense to complete a monthly examination will be deemed a waiver of its opportunity to conduct the examination contemplated in R.M.C. 1103(f) as to that session, absent a showing of good cause.

Accordingly, AE 320 is DENIED.

The order should be in your folder.

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]

[REDACTED]

[REDACTED]

Caution: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without the approval from the Office of the DoD General Counsel.

	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 14/0801								
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
7		23-24 Oct 12	5:00	239	2				
8		4-5 Feb 13	5:50	234	2				
9		11-14 Jun 13	16:34	760	4				
10									
11			Total Hours of Audio 2014	Total # of Pages for 2014	Total Days on the Record for 2014				
12			28:24	1233	8				
13									
14									
15									
16									
17									

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]								
2	US v KSM et al								
3	M.J: Pohl								
4	TC: BG Martins, Ryan, Swann								
5	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				
6									
7		15-19 Oct 12	25:42	1127	5				
8		28-31 Jan 13	10:49	495	3				
9		11-14 Feb 13	20:28	931	4				
10		17-21-Jun-13	31:46	1327	5				
11		19-23 Aug 13	25:53	1114	5				
12		16-20 Sep 13	21:22	957	4				
13			<b>Total Hours of Audio 2013</b>	<b>Total # Pages for ROT 2013</b>	<b>Total Days on Record 2013</b>				
14			136:00	5951	26				
15									
16									
17									
18									
19									
20									

	A	B	C	D	E	F	G	H	I	K
1	Court Reporter LEAD: Mr. [REDACTED] 2nd: N/A									
2	US v Al Darbi									
3	MJ: Col Allred									
4	TC: LTC Hosang									
5	DC: LT Champ									
6	CDC: Prof Ramzi Kassem									
7	<b>Status</b>	<b>Date of Session</b>	<b>Hours of Audio</b>	<b>Page Count</b>	<b>Days on the Record</b>					
8	Transcription Completed	No Hearings during FY 2013								
9										
10			<b>Total Hrs of Audio 2014</b>	<b>Total # Pages</b>	<b>Total Days on the Record</b>					
11										
12										
13										
14										

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: Mr. [REDACTED] Second: N/A								
2	US v. Al Hadi								
3	M.J. Walts								
4	TC:								
5	DC: Jackson								
6	Status		Date of Session	Hours of Audio	Page Count	Days on the Record			
7			No Hearings during FY 2013						
8									
9									
10									
11			Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on the Record for 2014				
12									
13									
14									

	A	B	C	D	E	F	G	H
1	Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]							
2	US v Binalshibh							
3	MJ: Pohl				LAST UPDATED: 19 Nov 14/1443			
4	TC: BG Martins, Ryan, Swann							
5	DC: Nevin, Bormann, Harrington, Connell, Ruiz							
6	<b>Status</b>	<b>Date of Session</b>	<b>Hours of Audio</b>	<b>Page Count</b>	<b>Number of Days on the Record</b>			
7	No Hearings during FY 2013							
8			<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on Record 2014</b>			
9								
10	[REDACTED]							

# ATTACHMENT W

115

From: [Kotval, Raghav ODR USN OSD OMC CA \(US\)](#)  
To: [Toole, Mark W O V \(US\)](#); [Adams, Alyssa S O V OSD OMC CA \(US\)](#)  
Subject: Additional thoughts on the briefing paper  
Date: Wednesday, November 26, 2014 9:49:34 AM

---

Mr. Toole and Alyssa:

A few additional thoughts for your consideration.

v/r

Raghav

Under RTMC section 2-4.a.2. (as an interesting and completely unrelated aside, see 2-3.a.7)

- The CA shall, "use existing systems, facilities, and services of the DoD and other federal agencies, when possible, to avoid duplication and to achieve maximum efficiency and economy."

The argument becomes under that section

- the existing services are those of the judges. The CA must use them to in a manner designed to achieve maximum efficiency and economy.
  - additionally, it is unfair for the Services to pay for the overhead of judges (office space & miscellaneous resources) who are not performing functions ISO the location to which they are assigned.
  - furthermore, by pooling our trial judiciary support services and facilities in one location (a pool of judicial clerks; a single judiciary floor in an office), we are maximizing the use of those personnel and facilities that would otherwise be used part time.
- the existing facility is the current courtroom. Duplication would be a second courtroom. The CA must use that most effectively to achieve maximum efficiency and economy.
  - maximizing use of the current courtroom is also reversible. We can either use it less or if it is used too much, use it more.
  - building a second courtroom is not a reversible COA. It risks maximizing efficiency and economy. It may be needed, but courtroom 1 is used to its maximum capacity, the CA should not push for the building of courtroom 2 as it may result in duplication.

Integrating the section's "maximum efficiency and economy language" in the information paper in bullet that sums up the three prior bullets I suggest something like:

- I am required by regulation to use existing services and facilities to achieve maximum efficiency and economy. In the current stage of the trial process there are a significant number of pending motions requesting oral argument. We can anticipate forthcoming motions that will also request oral argument. As we progress toward the pretrial phase, this need will increase. Thus there is a pent up demand for additional hearing days. Until there are firm indicators that our existing facilities are approaching maximum capacity, I believe it will be neither economic or efficient to request additional facilities. As more fully explained in Tab B [the info. paper re: judges] I believe there are ways through which I can maximize the efficiency and economy of certain services.

Raghav Kotval  
CDR, JAGC, USN (Reserve)  
Assistant Legal Advisor  
Office of the Convening Authority  
Office of Military Commissions

Office: [REDACTED]  
NI PR: raghav.kotval.mil [REDACTED]  
SI PR: raghav.kotval [REDACTED]

# ATTACHMENT X

From: [Wilkins, Donna L CIV OSD OMC CA \(US\)](#)  
To: [Toole, Mark W CIV \(US\)](#)  
Cc: [REDACTED] [COL USARMY OSD OGC \(US\)](#)  
Subject: RE: On the Record Days and Times for 2013 and 2014  
Date: Wednesday, December 10, 2014 4:11:52 PM  
Attachments: [On the Record hours FY 2013.xlsx](#)  
[On the Record hours FY 2014.xlsx](#)  
[On the Record hours CY 2014.xlsx](#)

---

Mark

Let me try this again.

There are three charts:

CY 2014  
FY 2014  
FY 2013

The numbers for CY 2014 are the most interesting!

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

From: Wilkins, Donna L CIV OSD OMC CA (US)  
Sent: Wednesday, December 10, 2014 1:21 PM  
To: Toole, Mark W CIV (US)  
Cc: [REDACTED] [COL USARMY OSD OGC \(US\)](#)  
Subject: On the Record Days and Times for 2013 and 2014

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
1	Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]								
2	U.S. v. Al-Nashiri								
3	MJ: Spath								
4	TC: Sher, Clayton, Martins, Moscati, Davis, Morris								
5	DC: Jackson, Daniels, Kammen, Hurley, Mizer								
						LAST UPDATED: 19 November 14 0801			
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
7		23-24 Oct 12	6:00	239	2				
8		4-5 Feb 13	5:50	234	2				
9		11-14 Jun 13	16:34	760	4				
10									
11			Total Hours of Audio FY 2013	Total # of Pages for FY 2013	Total Days on the Record for FY 2013				
12			28:24	1233	8				
13									
14									
15									
16									
17									

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]								
2	US v KSM et al								
3	MJ: Pohl					LAST UPDATED:	19 Nov 14/1443		
4	TC: BG Martins, Ryan, Swann								
5	DC: Nevin, Bormann, Harrington, Connell, Ruiz								
	Status	Date of Session	Hours of Audio	Page Count	Number of Days on the Record				
6									
7		15-19 Oct 12	25:42	1127	5				
8		28-31 Jan 13	10:49	495	3				
9		11-14 Feb 13	20:28	931	4				
10		17-21 Jun-13	31:46	1327	5				
11		19-23 Aug 13	25:53	1114	5				
12		16-20 Sep 13	21:22	957	4				
13			Total Hours of Audio FY 2013	Total # Pages for ROT FY 2013	Total Days on Record FY 2013				
14			136:00	5951	26				
15									
16									
17									
18									
19									
20									

	A	B	C	D	E	F	G	H	I	K
1	Court Reporter LEAD: Mr. [REDACTED] 2nd: N/A									
2	US v Al Darbi									
3	MJ: Col Allred									
4	TC: LTC Hosang									
5	DC: LT Champ									
6	CDC: Prof Ramzi Kassem									
7	<b>Status</b>	<b>Date of Session</b>	<b>Hours of Audio</b>	<b>Page Count</b>	<b>Days on the Record</b>					
	Transcription Completed	No Hearings during FY 2013.								
8										
9										
10			<b>Total Hrs of Audio 2014</b>	<b>Total # Pages</b>	<b>Total Days on the</b>					
11					<b>Record</b>					
12										
13										
14										

	A	B	C	D	E	F	G	H	I
1	Court Reporter LEAD: Mr. [REDACTED] Second: N/A								
2	US v. Al Hadi								
3	MJ: Walts								
4	TC:								
5	DC: Jackson								
6	Status		Date of Session	Hours of Audio	Page Count	Days on the Record			
7			No Hearings during FY 2013						
8									
9									
10									
11			Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on the Record for 2014				
12									
13									
14									

	A	B	C	D	E	F	G	H
1	Court Reporter LEAD: ██████ 2nd: Mr. ██████							
2	US v Binalshibh							
3	MJ: Pohl				LAST UPDATED: 19 Nov 14/1443			
4	TC: BG Martins, Ryan, Swann							
5	DC: Nevin, Bormann, Harrington, Connell, Ruiz							
6	Status	Date of Session	Hours of Audio	Page Count	Number of Days on the Record			
7	No Hearings during FY 2013							
8			Total Hours of Audio 2014	Total # Pages for ROT 2014	Total Days on Record 2014			
9								
10								

	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, Kammien, Hurley, Mizer								
	LAST UPDATED: 19 November 14/0801								
6	Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
7		17 - 25 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			<b>Total Hours of Audio 2014</b>	<b>Total # of Pages for 2014</b>	<b>Total Days on the Record for 2014</b>				
12			58 hours 41 minutes*	2500	16**				
13				5285	Total # of Pages for ROT				
14									
15									
16									
17									
18									
19									

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				
	20-Feb-14	2 hr 15 min	84	1				
		<b>Total Hrs of Audio 2014</b>	<b>Total # Pages</b>	<b>Total Days on the Record</b>				
		2 hr 15 min	84	1				

\* Total hours of audio for FY 2014 includes hours for 803 open and 806 closed sessions

\*\* Total days on the record for FY 2014 includes days for 803 open and 806 closed sessions

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			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on the Record for 2014</b>			
		1 hr 40 min	60	2			

\* Total hours of audio for FY 2014 includes hours for 803 open and 806 closed sessions

\*\* Total days on the record for FY 2014 includes days for 803 open and 806 closed sessions

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			
	22-25 Oct 13	21 hrs 38 min	849	4			
	17-19 Dec 13	11 hrs 10 min	454	3			
	14-17 Apr 14	02 hrs 38 min	103	3			
	16-Jun-14	03 hrs 45 min	153	1			
	14-Aug-14	03 hrs 42 min	137	1			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on Record 2014</b>			
		42 hrs 53 min	1696	12			

7869 Total # of Pages for ROT

\* Total hours of audio for FY 2014 includes hours for 803 open and 806 closed sessions

\*\* Total days on the record for FY 2014 includes days for 803 open and 806 closed sessions

Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]

US v Binalshibh

MJ: Pohl

TC: BG Martins, Ryan, Swann

DC: Nevin, Bormann, Harrington, Connell, Ruiz

LAST UPD 19 Nov 14/1443

Status	Date of Session	Hours of Audio	Page Count	Number of Days on the Record			
	11 & 13 Aug 14	2 hrs 21 min	72	2			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on Record 2014</b>			
		2 hrs 21 min	72	2			

72 Total # of Pages for ROT

\* Total hours of audio for FY 2014 includes hours for 803 open and 806 closed sessions

\*\* Total days on the record for FY 2014 includes days for 803 open and 806 closed sessions

Court Reporter LEAD: [REDACTED] 2nd: Mr. [REDACTED]

U.S. v. Al-Nashiri

MJ: Spath

TC: Sher, Clayton, Martins, Moscati, Davis, Morris

DC: Jackson, Daniels, Kammen, Hurley, Mizer

LAST UPDATED: 19 November 14 0801

Status	Date of Session	Hours of Audio	Page Count	Days on the Record**				
	17 - 26 Feb 14	18 hrs 51 min	750	6				
	22 - 27 Apr 14	25 hrs 59 min	1007	5				
	28 - 29 May 14	6 hrs 51 min	255	2				
	4 - 6 Aug 14	13 hrs	488	3				
	5-6 Nov 14	6 hrs 35 min	274	2				
		<b>Total Hours of Audio 2014</b>	<b>Total # of Pages for 2014</b>	<b>Total Days on the Record for 2014</b>				
		71 hours 16 minutes*	2774	18**				

5285 Total # of Pages for ROT

\* total hours of audio for 2014 includes hours for classified sessions

\*\* Total days on the record for 2014 includes days for unclassified and classified sessions

Court Reporter LEAD: Mr. [REDACTED] 2nd: N/A

US v Al Darbi

MJ: Col Alfred

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				
		<b>Total Hrs of Audio 2014</b>	<b>Total # Pages</b>	<b>Total Days on the Record</b>				
		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			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on the Record for 2014</b>			
		5 hrs 43 min	60	4			

Court Reporter LEAD: ██████ 2nd: Mr. ██████ 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			
		<b>Total Hours of Audio 2014</b>	<b>Total # Pages for ROT 2014</b>	<b>Total Days on Record 2014</b>			
		10 hrs 5 min	383	5			

7869 Total # of Pages for ROT

# ATTACHMENT Y

135

From: [Toole, Mark W CIV \(US\)](#)  
To: [Adams, Alyssa S CIV OSD OMC CA \(US\)](#); [Kotval, Raghav CDR USN OSD OMC CA \(US\)](#)  
Subject: FW: DSD Mtg: Military Commision Update (17 Dec)  
Date: Tuesday, December 16, 2014 8:02:11 AM

---

Alyssa, Raghav,

Let's discuss when you get the chance.

v/r,  
Mark Toole

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

From: [REDACTED] LtCol USMC OSD OGC (US)  
Sent: Monday, December 15, 2014 3:33 PM  
To: Toole, Mark W CIV (US)  
Subject: FW: DSD Mtg: Military Commision Update (17 Dec)

FYI. You guys are lead for RAH materials and the like. Good hunting.

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

From: [REDACTED] CIV SD [REDACTED]  
Sent: Monday, December 15, 2014 3:10 PM  
To: [REDACTED] SSG USARMY OSD OMC CA (US); [REDACTED] CIV OSD OGC (US);  
[REDACTED] CIV OSD OGC (US); [REDACTED] Col USAF OSD OGC (US); [REDACTED] CIV  
OSD OGC (US); [REDACTED] LtCol USMC OSD OGC (US)  
Subject: DSD Mtg: Military Commision Update (17 Dec)

Your principal is requested to attend a meeting with DSD as detailed below. Please confirm attendance.

DATE: 17 Dec 2014  
TIME: 1315-1345  
LOCATION: 3E944

SUBJECT: Provide DSD an update on Military Commisions

\* ATTENDEES\*  
DSD  
OGC  
MajGen(ret) Vaughn Ary

\*\* Notes\*\*

-Any read ahead materials are due to the DSD front office (3E944) 48 hours in advance of meeting.

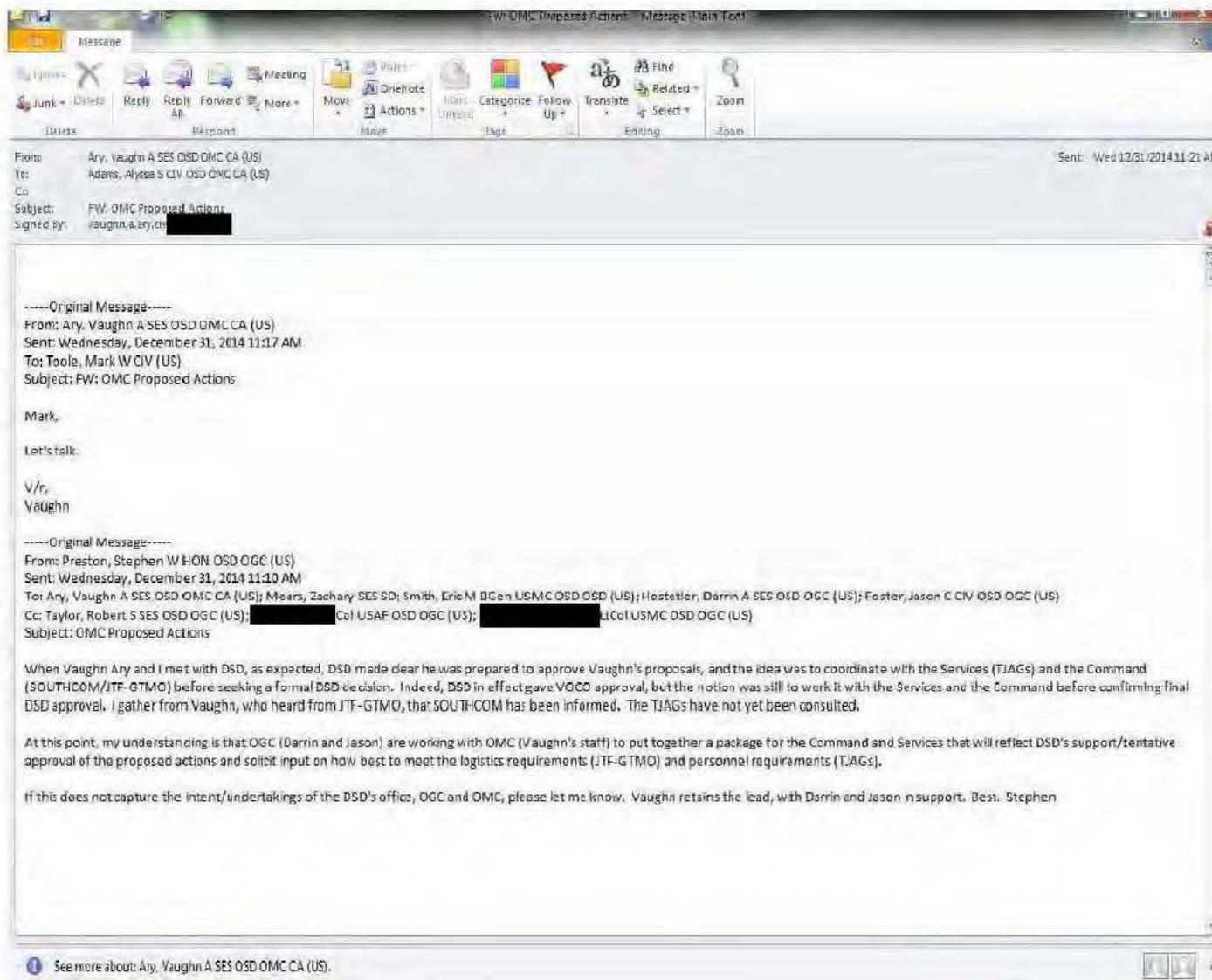
Please contact me if you have any questions or concerns regarding this matter. Thank you and have a great day!

Very Respectfully -

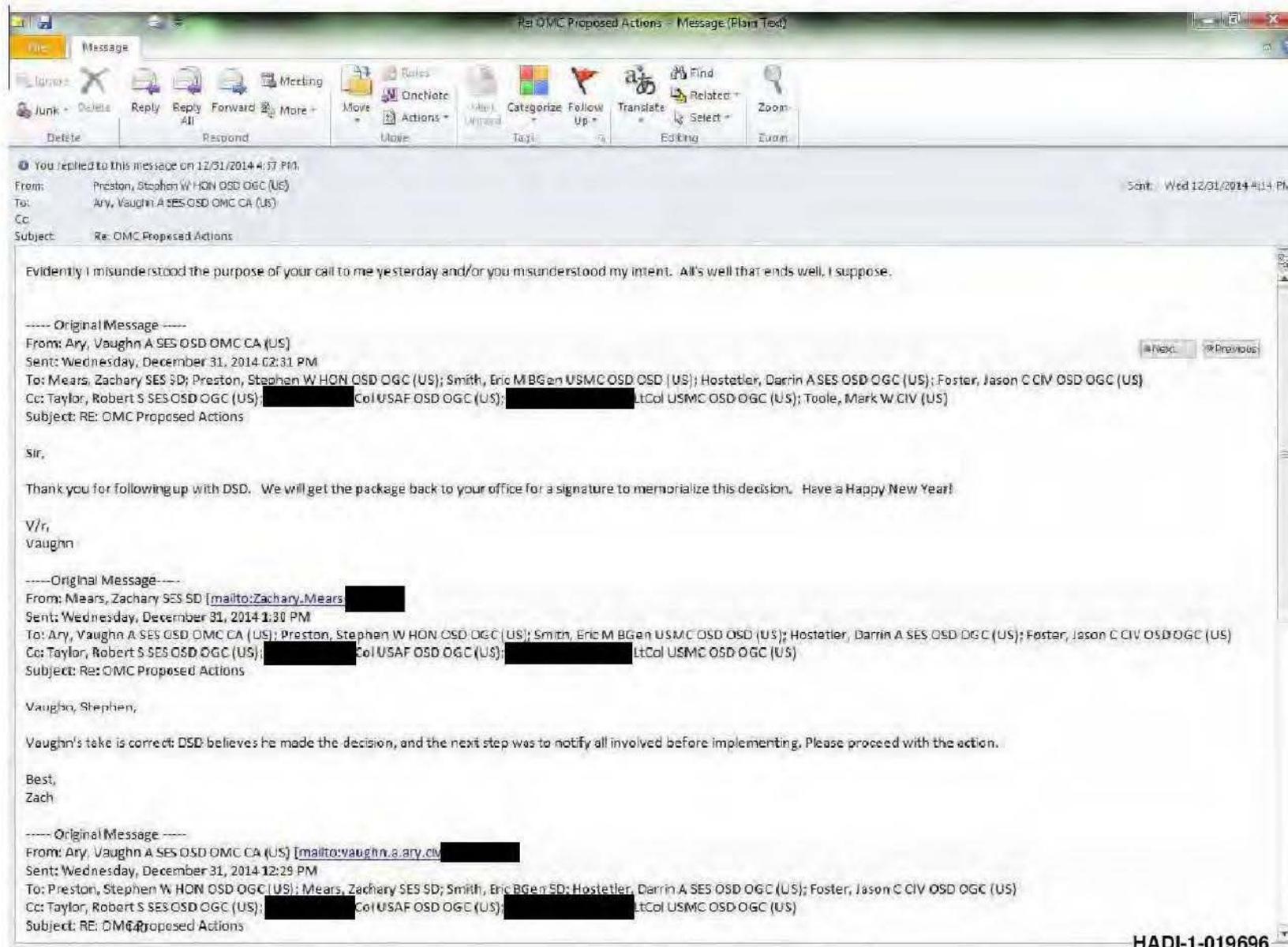
[REDACTED]  
Office of the Deputy Secretary of Defense

[REDACTED]  
[REDACTED]

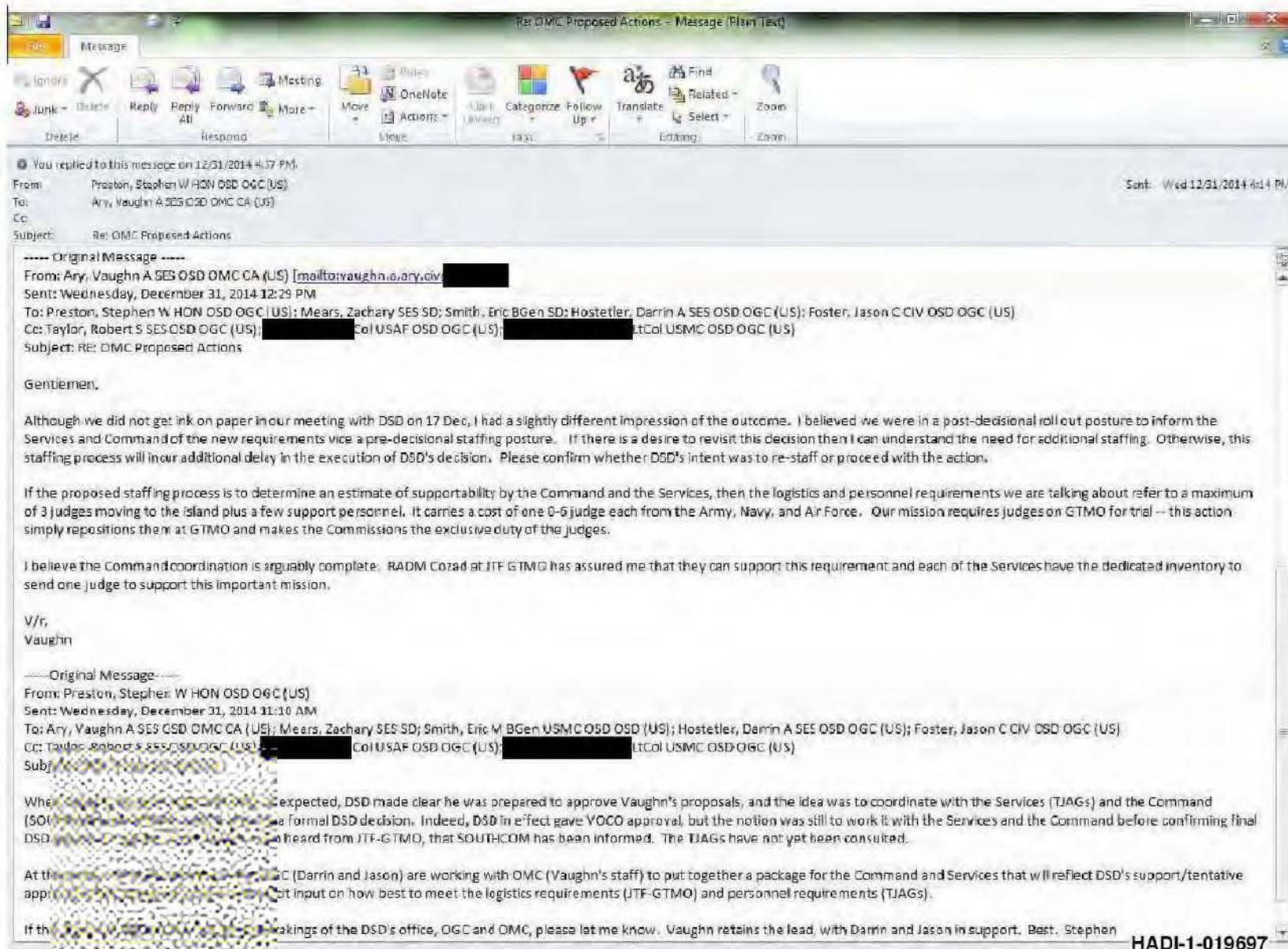
# ATTACHMENT Z



# ATTACHMENT AA



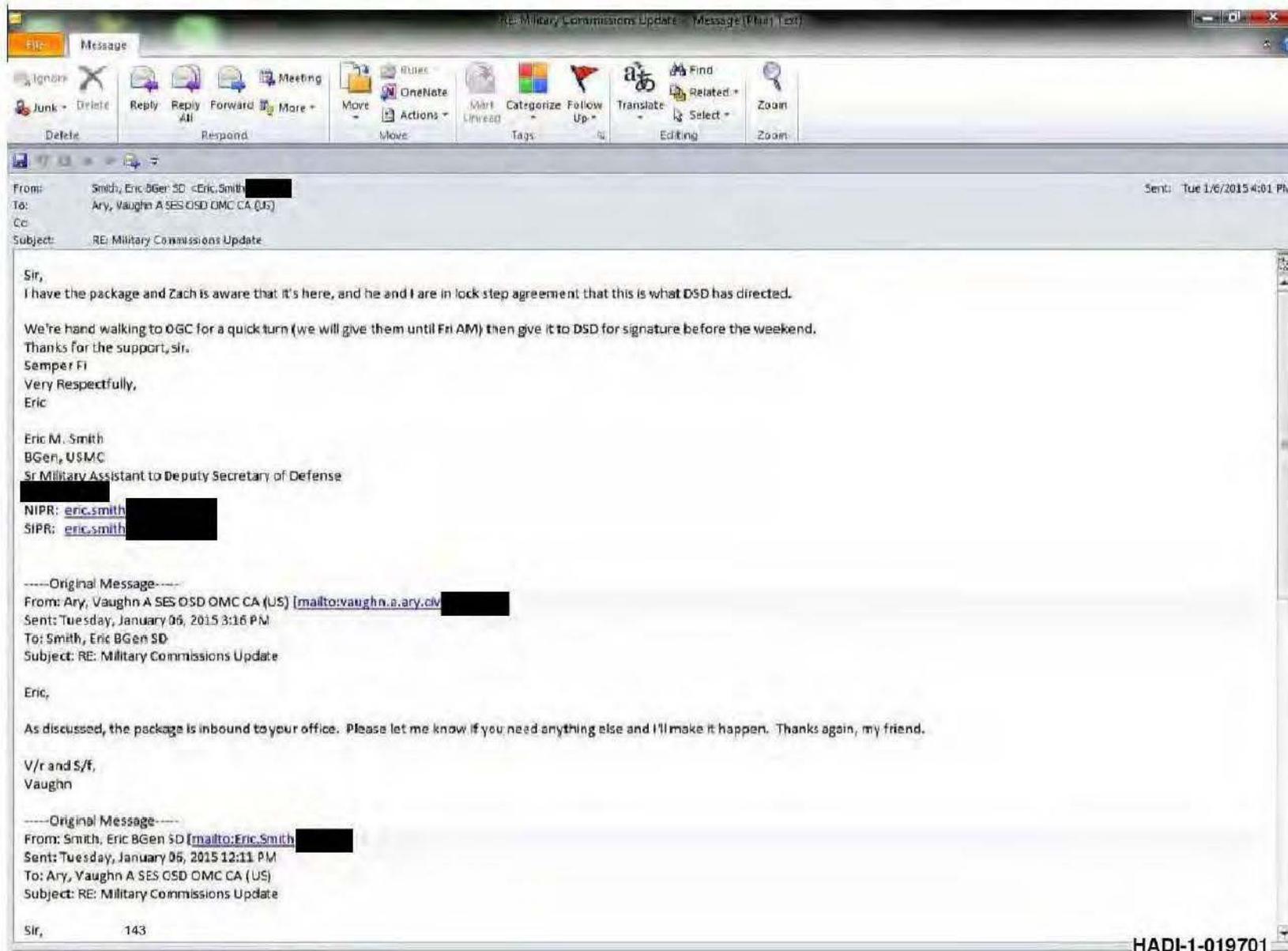
HADI-1-019696

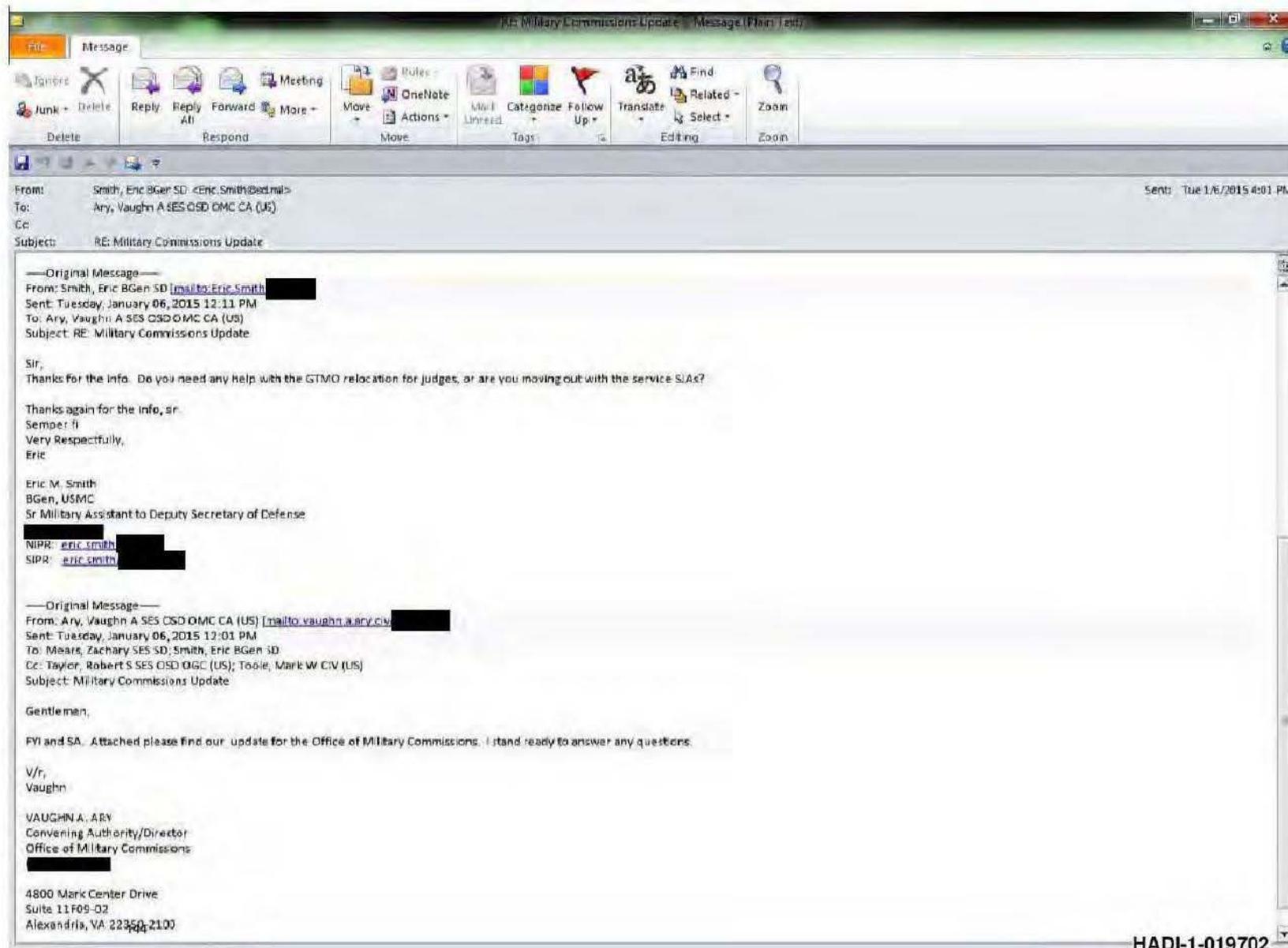


Filed with TJ  
 17 March 2015

Appellate Exhibit 032H (al Hadi)  
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# ATTACHMENT BB





# ATTACHMENT CC



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DEPARTMENT OF DEFENSE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

OMC-TJ

2 July 2014

MEMORANDUM THRU CHIEF OF STAFF, OFFICE OF MILITARY COMMISSIONS  
FOR DIRECTOR, OFFICE OF MILITARY COMMISSIONS

SUBJECT: Office of Trial Judiciary Staffing

1. The Office of Military Commissions (OMC) Trial Judiciary (TJ) currently has six (6) attorney positions, four (4) of which are filled by uniformed Judge Advocates and two (2) by term GS-15s (this list does not include the TJ Staff Director, currently a uniformed Judge Advocate in the grade of colonel). For myriad reasons discussed below, the Trial Judiciary requests two (2) of the military billets be converted to civilian billets at the GS-14 or GS-15 pay grade and two (2) additional civilian attorneys at the GS-14 pay grade be authorized. Additionally, the Trial Judiciary requests two (2) additional civilian paralegals, one (1) each at the GS-11 and GS-12 pay grades, be authorized. These structural changes must occur in order for the Trial Judiciary to achieve mission success and fully support the military commissions process in a timely manner.

2. Deputy Secretary of Defense's Guidance

a. On 7 May 2014, the Deputy Secretary of Defense issued a Memorandum to the Secretaries of the Military Departments, General Counsel of the Department of Defense, Director, Administration and Management, and the Convening Authority of Military Commissions entitled "Equitable Resourcing of the Office of Military Commissions" (Enclosure 1). The Deputy SECDEF wrote,

"I direct those with responsibility to provide resources, personnel support, and logistical support to military commissions continue to do so equitably, thereby providing the resources and support necessary for the Office of the Chief Defense Counsel and the Office of the Chief Prosecutor to perform their respective functions fully and professionally.

...To conduct a fair, just, and transparent military commissions process necessitates our continuing commitment to dedicate sufficient resources and skilled legal professionals to both prosecution and defense. Robust administrative support is also essential to enable professional personnel involved in the commissions to focus on the mission at hand. All addressees shall assist in these efforts.

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... The Secretaries of the Military Departments shall continue to fully support the personnel requirements of the prosecution, defense, and trial judiciary, as well as, where appropriate, provide other requested assistance and support." (emphasis added).

b. On 14 May 2008, the Deputy Secretary of Defense issued a Memorandum to the Secretaries of the Military Departments, General Counsel of the Department of Defense, and Director, Administration and Management entitled "Personnel Resources and Administrative Support for the Office of the Commissions (OMC)—and Related Matters." (Enclosure 2) The Deputy SECDEF wrote,

**The Military Commissions are a national priority. Conducting a fair, just, and transparent Military Commissions process is the Department's top legal services priority and necessitates our commitment to dedicate the right number of and most skilled legal professionals the Department has to offer. Robust administrative support is also essential to enable OMC professional personnel to focus on the critical mission at hand.**

... OMC needs the immediate and continued assignment of superbly skilled judges, counsel, paralegals, court reporters, and investigators. Accordingly, each Military Department will supplement personnel already requested/provided to OMC with those identified by the timeline depicted in the attachment... Each counsel must have substantial recent experience in complex litigation, and paralegals should have significant expertise in military justice." (emphasis added).

c. "The timeline depicted in the attachment" lists Judge Advocate requirements for each OMC division and a requirement for the Army, Navy, and Air Force to assign one Judge Advocate from each department to OMC TJ by May of 2008. The timeline also sets out minimum standards, beyond those mentioned in the actual memorandum (see above), Judge Advocates assigned to the TJ as attorney-advisors must possess "Trial Judiciary: (Attorney advisors with appellate or trial clerk expertise)." (emphasis added).

### 3. Current Staffing.

a. Attorneys: Two (2) term GS-15 attorneys, one (1) Army captain, and one (1) Air Force captain (who will be involuntarily separated from the USAF NLT 31 December 2014). This summer, an Air Force major and a Marine Corps captain are expected to report. An Army colonel serves as the staff director.

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b. **Paralegals:** One (1) GS-12, one (1) GS-11, one (1) Army Sergeant First Class (E-7), and one (1) Air Force Master Sergeant (E-7) work in the Clerk's office. One (1) GS-12 is the office manager and is not specifically assigned to work on one case.

c. **Court Security Officers:** Two (2) contractor employees are assigned.

4. **Current Caseload**

a. **Pre-trial.** Seven (7) high value detainees' (HVD) cases are currently active and are being tried. Six (6) HVD's capital cases are in the pre-trial phase (*United States v. Khalid Sheikh Mohammad, et al* (9/11 case) and *United States v. al Nashiri* (USS Cole case)). One (1) HVD's non-capital case, *United States v. al Hadi*, is also in the pre-trial phase.

b. **Sentencing.** Two (2) cases have completed findings and will enter into the sentencing phase in the coming years (*United States v. Khan* and *United States v. al Darbi*).

c. **Future Cases.** For planning purposes, we assume other cases will be preferred and referred in the future.

These cases have produced thousands of filings, most of which require TJ legal advisors to conduct extensive research, prepare draft orders, revise draft orders, and have in-depth discussions with the presiding military judge.

5. **Lack of Quality of Assigned Military Attorneys.** The quality of the uniformed Judge Advocates assigned to the TJ since July 2012 when I arrived has not been on par with uniformed Judge Advocates assigned to other OMC divisions and other service specific billets. Four (4) of the five (5), not including the staff director, which is 80% of the Judge Advocates assigned since 2012, were not selected for promotion. Three (3) of the five (5), which is 60%, were or are being involuntarily separated. Additionally, one (1) of the two (2) Judge Advocates being assigned to the TJ this summer has very limited military justice experience. None of the Judge Advocates currently assigned or scheduled to arrive this summer have "appellate or trial clerk expertise," and only one (1), the Air Force major, has "substantial recent experience in complex litigation."

a. Since 2012, the following Judge Advocates have been assigned to the TJ:

1. USAF major: passed over twice for promotion while assigned to TJ and involuntarily separated.

2. USMC lieutenant colonel: passed over twice for promotion while assigned to TJ and retired.

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3. USAF lieutenant colonel: passed over multiple times for promotion before and during TJ assignment and SERBed.

4. USAF captain: passed over for promotion prior to and during TJ assignment; is being involuntarily separated NLT the end of this calendar year. I am actively working with the USAF JAGC to detail him to a different billet in the NCR for the remainder of the calendar year, because the judges and I have no confidence in his ability to adequately continue to serve as a TJ attorney-advisor. Personal issues regularly affect his ability to work, and, unfortunately, this also occurred at his previous assignment.

5. USA captain: expected to seek early release from her ADSO.

b. The following two military attorneys are programmed to arrive to TJ this summer:

1. USMC captain: has less than two years of military justice experience; has not been in a dedicated legal billet since August 2013.

2. USAF major: stated he is coming to DC to find a civilian job.

c. Putting it bluntly, as a general rule, the services are not sending us Judge Advocates who are being groomed for positions of increased responsibility. Rather, we are being assigned officers who fall into one of two categories:

1. Officers who have no realistic chance of being promoted or have already been passed over for promotion, but still need to be assigned somewhere due to an ADSO or other administrative reason; or,

2. Officers who want to come to the National Capital Region to transition to civilian employment.

d. Historically, it is no secret, uniformed Judge Advocates assigned to the military commissions have been selected for promotion at rates below overall selection rates. Officers do not view assignment to OMC as being career enhancing, and, as a general rule, with some exceptions, the best ones do not request to be assigned to OMC. Generally, those who seek an OMC assignment request to be an active trial attorney rather than a behind the scenes advisor to a judge. By the same token, the services do not consider an assignment to OMC comparable to other assignments such as deputy staff judge advocate, chief of military justice in a busy jurisdiction, or other jobs within the respective service's Office of the Judge Advocate General in the NCR, and are reluctant to send their top attorneys and officers to OMC TJ. Officers assigned to OMC TJ are action officers and not in leadership positions, which may stunt the growth of their leadership abilities and make them less competitive for promotion with their peers. Although we can refuse to accept an officer offered for assignment by a service, they

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come one at a time. If we decline to accept an officer, the lengthy assignment process begins anew. Also, the pool of candidates offered to OMC TJ are not comparable to the candidates offered to other joint and service specific commands with mission essential billets.

As a result of both the officers' lack of desire to be assigned to OMC and the services' reluctance to assign their best officers to OMC, the overall quality of officers assigned to OMC TJ is marginal, at best. Additionally, none of the Judge Advocates possess the minimum skills required by the Deputy SECDEF's 14 May 2008 memorandum and timeline.

6. **Other Issues with Military Counsel.** In addition to the poor quality of military attorneys assigned to OMC TJ, lack of continuity and inexperience also adversely affect our ability to successfully meet mission requirements.

a. **Lack of Continuity.** Because the Judge Advocates rotate out of TJ with such regularity, maintaining any continuity and subject matter expertise is very difficult.

1. **Security Clearances.** After any person, military or civilian, arrives to OMC TJ, it takes an inordinate amount of time to process a top secret security clearance and be "read on" to the special access programs. This severely diminishes and delays a person's ability to provide meaningful assistance.

2. **Length of Judge Advocate Assignments.** The average tenure of Judge Advocates assigned to the office in the last two years is approximately 18 months, which includes the time required to process security clearances, get read-on to the special access programs, and out-process from their respective services. As a result, the actual time spent fully engaged as a TJ attorney-advisor, without accounting for military leave, is approximately 13 – 14 months. This fall, the most tenured Judge Advocate will be the Army captain, who will have been assigned to the office less than a year, and is, by necessity, the sole attorney-advisor to a judge in an HVD case.

3. **Case Assignments.** The frequency with which TJ counsel changes significantly hampers our ability to meet mission requirements in a timely manner. While defense counsel and prosecutors also rotate out of their positions, the ones who appear in court on behalf of their client do not switch with nearly the same regularity and unpredictability as ones assigned to OMC TJ. Additionally, learned counsel, some detailed counsel, and some members of the prosecution have been assigned to the same case(s) for many years, which is not possible at OMC TJ since we only have two (2) civilian counsel who are able to provide continuity. Although, when possible, multiple TJ attorneys are assigned to a case, a military officer's value is extremely limited by his inability to remain assigned to a case for a lengthy period of time.

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4. **Lack of Knowledge.** Trial Judiciary attorneys need to fully digest, both legally and factually, what has happened in cases assigned to them since arraignment, which is no small task as the two capital cases have been in the pre-trial stage for approximately two (2) years. The military judges, most of whom are new to the commissions themselves, rely on and expect the legal advisors to have a complete understanding of all pending and litigated issues and rulings. This requires the attorneys to achieve a working knowledge of thousands of pages of transcripts, filings, and orders. The judges also expect the legal advisors to be subject matter experts on military commission procedures, which have many very important, yet subtle, differences from the military justice and federal systems. By the time a military attorney is able to become a valuable contributor, advisor, and confidante to the judges, his time at TJ ends.

b. **Inexperience.** When attorneys arrive to the OMC TJ, they need to be experts in military justice and understand the fundamental differences unique to practicing military justice. In traditional military justice assignments, counsel serve as a second chair in numerous cases until they learn the military justice system and are trained to learn the skills necessary to serve in their current positions and those of greater responsibility. Unfortunately, due to the nature of serving as an attorney on the TJ staff, training junior officers on the skills and knowledge necessary to serve as a judge's legal advisor is not feasible and requires the senior attorney advisors to take time away from researching and writing orders. The attorney-advisors need to arrive with outstanding writing and analytical skills, which are usually developed during assignments as either a military appellate attorney or a member of an OTJAG division. Finally, and no less important, TJ attorneys must possess the ability to advise senior O6 military judges who are not geographically co-located with this office. Judges cannot afford to have a "yes" man; they require their legal advisor to let them know when they may be wrong. Attorneys must pay attention to the most minute of details to ensure judicial orders are legally, factually, and grammatically correct. Officers must possess experience and be comfortable to take and defend opposing positions with senior personnel. Simply stated, TJ attorneys can only be provided a minimal amount of on-the-job training — they must already possess the skills, knowledge, and intangibles needed to advise senior judges on and prepare near zero defect legal orders related to complex issues, many of first impression, covering a multitude of areas of law including criminal, international, and constitutional.

7. **Advantages of Civilian Attorneys.** Many advantages exist to civilianizing the military attorney billets assigned to OMC TJ.

a. **Excellent Quality.** This is due to their experience as attorneys, understanding of the military justice system, and ability to provide candid and competent advice to the judges. Both civilian attorneys are retired Army JAG colonels with many years' experience cultivating the skills required to excel as a TJ legal advisor. Currently, OMC TJ relies on the services to provide officers who possess the necessary skills and

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intangibles to adequately perform the mission, which they are not doing. Hiring civilian attorneys allows us to select personnel who already have the necessary skill set and are thus best suited to excel as attorney-advisors in the OMC TJ.

b. **Continuity.** Civilian attorneys provide continuity, which is critical for the TJ staff to successfully provide the required support to the military judges presiding over the commissions cases. Civilian attorneys are not subject to permanent change of station moves, expiration of mobilization orders, and involuntary separation. Judges gain confidence and trust in attorneys over time and require their attorney-advisors to have excellent factual and legal knowledge of the case. Civilian attorneys can remain assigned to a case from inception to completion. The importance of this cannot be understated. Six high-value detainees' cases have been in the pre-trial phase for approximately two years, and while the detainees and government have generally maintained continuity of counsel, TJ has been unable to. A working knowledge of the case is essential to being able to perform as an attorney-advisor.

c. **Ability to Assign as Lead Attorney-Advisor.** Because of the frequency with which military attorneys rotate through the office, it is almost impossible to assign one as the lead attorney-advisor to a case. Currently, one civilian attorney is the lead attorney-advisor in the 9/11 case, and the other is the lead in the USS Cole case. As a result, they are unable to specialize in a certain area of the law, such as the Classified Information Protection Act. In order to better utilize civilian attorneys, ideally they would be able to become a subject matter expert on a particular area of importance to the commissions. While they would remain assigned to a particular case or cases, they would be in a position to provide support to other judges and attorney-advisors on specific issues. However, because the need for continuity is a priority, their ability to focus on a specific area is limited. Having additional civilian attorneys would allow us to balance continuity with the ability to become a subject matter expert in a discrete area of law important in military commissions practice.

d. **Ability to Quickly Replace Civilians.** The TJ has the ability to sever ties with a civilian attorney who does not perform and quickly replace him. If a military attorney does not adequately perform, the services are not willing to replace the attorney. Also, when a military attorney is replaced, a long period of overlap is almost always guaranteed. It is much easier to terminate a civilian employee from a term position and hire a new one in a compressed time period.

8. **Personnel Compared to Other OMC Divisions.** The severe understaffing of OMC is magnified when the number of attorney-advisors assigned to our staff is compared to the number assigned to single defense and prosecution teams.

a. **Number of Attorneys.** Each defense team representing an HVD has at least two (2) attorneys. If the case is referred capital, one (1) of the attorneys is a "learned counsel," certified in capital litigation. Some Defense Teams, such as Mr. al-Nashiri's,

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currently have five (5) attorneys (one (1) learned counsel and four (4) detailed uniformed Judge Advocates) who have made appearances before the commission. The prosecution normally has at least five (5) attorneys present for each set of commission hearings. In other words, it is quite common for a party appearing before the commission to have more counsel at their table during hearings than are assigned to the entire OMC TJ office. Additionally, many attorneys work behind the scenes on behalf of one of the accused or the prosecution without making appearances.

**b. Ability to Focus on issues.** Attorneys for all parties focus on specific issues relating to their representation of their client. For example, some attorneys focus on issues related to classification of evidence, some focus on constitutional issues, and some focus on international law issues. Due to the limited number of attorneys assigned to OMC TJ, our attorneys are not afforded that luxury and must become as knowledgeable on all issues as the multitude of attorneys representing both sides.

**c. Workload Comparison.** Motions are usually followed up with a response from the opposing party and a reply from the moving party. Countless motions in the 9/11 and USS Cole cases have in excess of 20 filings related to one motion, and the total pages for some of the filings for a specific motion are in excess of hundreds of pages. Each motion generally requires the judge to issue an order, whether written or oral. While the defense and prosecution have multiple attorneys to prepare the filings and the luxury of assigning one attorney to focus on a specific motion, OMC TJ does not. Even if two (2) TJ attorneys are assigned to a case, those two (2) attorneys are required to advise the judge and prepare written orders based on the work product of, at a minimum, 10 attorneys in the USS Cole case and approximately 30 attorneys in the 9/11 case.

The personnel discrepancy is exacerbated when military attorneys are not familiar with the military justice, federal criminal, and military commissions systems, are not adept at advising senior personnel, are not experienced writing court orders, and do not possess situational awareness of what has already happened in the cases.

**9. Impact on Mission.** As a direct result of the limited number, the lack of continuity, the limited expertise, and the quality of military attorneys assigned to OMC TJ, some orders in the 9/11 and the USS Cole cases have not been issued even though they are fully briefed and oral argument before the commission has occurred. Without resolution of the associated personnel issues, the backlog could continue to get worse, and the cases may be needlessly delayed. The parties do not take breaks from filing motions; the consequence is TJ's attorneys need to advise the judge and research and write on an exponentially growing number of motions. Finally, most orders have second and third order effects, some of which, such as orders related to discovery and appointment of expert assistants, directly affect the trial schedule and need to be issued as soon as practicable.

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10. **Request for Additional Civilian Attorneys.** For all the reasons discussed above, and pursuant to the Deputy SECDEF's 14 May 2008 and 7 May 2014 directives, the Trial Judiciary requests the conversion of two (2) military attorney billets into civilian attorney billets and the addition of two (2) new civilian attorney billets be authorized. The civilian attorney positions should be rated no lower than the GS-14 level, and two (2) should be rated at the GS-15 level. Meeting mission requirements in support of the military commissions will be extremely difficult if this request is not granted as the 9/11 and USS Cole capital cases come closer to trial, two (2) detainees' sentencing cases approach, and one (1) non-capital HVD case begins the pre-trial phase. If other cases are referred, difficulties will grow exponentially.

11. **Paralegals / Program Analysts.** Similarly to our need for more attorneys, we also need more paralegals / program analysts. All paralegals in the office, except one, work in the Chief Clerk of the Trial Judiciary section. The other paralegal, in addition to performing paralegal duties, serves as both the office and security manager and handles all logistics related to OMC T.J. Continuity of personnel in these positions is absolutely critical due to the voluminous amount of classified and unclassified filings the paralegals maintain and account for.

a. **Responsibilities.** Paralegals in the Chief Clerk's office are responsible for all administrative aspects related to case management. These duties include, but are not limited to, reviewing every filing to ensure compliance with the Rules of Court, assigning appellate exhibit numbers, sending filings out for security reviews, sending reviewed filings to the OMC webmaster for publication on the OMC website, updating the public release tracker for each case, sending all filings to the judge, updating hard drives for each judge, coordinating filing issues with attorneys, paralegals, and court reporters, preparing draft orders, and administratively reviewing and processing every order. Paralegals also prepare each case's filings inventory, which the judge, attorney-advisors, and parties rely on to track filings, orders, and the general status of the case. The 9/11 case filings inventory already exceeds 130 pages and is required to precisely account for the most minute of details.

b. **Personnel Compared to Other Divisions.** With only four (4) paralegals in the Clerk's office, OMC TJ, as an entity, has fewer paralegals than some legal teams assigned to individual prosecution and defense teams. This disparity is even more pronounced when comparing the responsibilities of paralegals assigned to OMC TJ. Due to the limited number of personnel, sick leave, annual leave, and TDY to GTMO, each paralegal works on all active cases as a necessity. Paralegals assigned to the prosecution and defense, with limited exception, work solely on one case. Additionally, one of the paralegals is assigned as the Chief Clerk of the Trial Judiciary, which necessitates much time be devoted to supervisory and administrative duties.

c. **Inability to Meet Mission Requirements.** Due to the under resourcing, OMC TJ paralegals do not have time to perform legal research, help review and analyze

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classified materials, and provide meaningful substantive assistance to the judges and attorney-advisors. The paralegals try to be as timely as possible when responding to the multitude of requests from the parties concerning filings. However, with the limited number of paralegals working on seven (7) high value detainees' cases, it is very difficult for them to keep up with all the various and necessary requirements placed on them.

12. Request for Additional Civilian Paralegals. For all the reasons discussed above, and pursuant to the Deputy SECDEF's 14 May 2008 and 7 May 2014 directives, the Trial Judiciary requests two (2) additional civilian paralegals be authorized. They should be rated no lower than the GS-11 level, and one (1) should be a GS-12. Meeting mission requirements in support of the military commissions will be extremely difficult if this request is not granted as the 9/11 and USS Cole capital cases come closer to trial, two (2) detainees' sentencing cases approach, and one (1) non-capital HVD case begins the pre-trial phase. If other cases are referred, as previously noted, difficulties will only be worsened.

13. In summary, the Trial Judiciary requests:

- a. Two (2) military attorney-advisor billets be civilianized.
- b. Two (2) additional civilian attorney-advisor billets be authorized.
- c. Two (2) additional civilian paralegal billets be authorized.

14. The undersigned is the POC, is available to discuss this request in person and can be reached at [eugene.e.baime@usdoj.gov](mailto:eugene.e.baime@usdoj.gov) or [REDACTED]

EUGENE E. BAIME  
COL, JA, USA  
Staff Director, OMC Trial Judiciary

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Enclosure 1

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