

UNCLASSIFIED//FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED
ABDU AL-NASHIRI

AE 084

**MOTION TO DISQUALIFY
OR, IN THE ALTERNATIVE
REQUESTING THE RECUSAL OF
COL JAMES L. POHL AS MILITARY
JUDGE IN THIS CASE**

June 14, 2012

- 1. Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905.
- 2. Relief Requested:** The defense respectfully requests that COL James L. Pohl recuse himself as the military judge presiding over this commission and, in his capacity as chief judge, detail another military judge to preside over this commission. Denial of this motion will violate the defendant's rights guaranteed by the Fifth, Sixth and Eighth amendments to the Constitution of the United States of America, the Military Commission Act of 2009, the DTA, treaty obligations of the United States and fundamental fairness.
- 3. Overview:** In his capacity as Chief Judge of the Military Commission, COL James L. Pohl has detailed himself to preside over every commission involving a so-called High Value Detainee. Notably, COL Pohl is presiding over this commission, the 9/11 Commission, *United States v. Mohammad, et al.*, and the commission that took the guilty plea in *United States v. Kahn*. For several reasons, COL Pohl's behavior, his relationship to the prosecutions arising out of the Abu Ghraib cases, as well as the circumstances of his employment raises a perception that COL Pohl cannot fairly preside over this commission. Moreover, the defense questions whether any single judge can fairly preside over both this commission and the 9/11 Commission.

UNCLASSIFIED//FOR PUBLIC RELEASE

4. **Burden of Proof and Persuasion:** The defense bears the burden of persuasion as the moving party on this motion and the standard is preponderance of the evidence. R.M.C. 905(c).

5. **Facts:**

According to his *voir dire*, COL Pohl presided over all the courts-martial arising out of the abuse of prisoners at the Abu Ghraib detention facility in Iraq. A cursory search of articles published contemporaneously reveals that the defendants in those trials sought to demonstrate that they were acting pursuant to orders given by their superior officers and that those orders were in response to directions and policies that came from senior military and civilian commanders including the Secretary of Defense, Donald Rumsfeld. Rulings by COL Pohl prevented those inquiries. In the view of some observers, COL Pohl assisted the senior commanders in hiding their role in the Abu Ghraib abuses. Subsequently, COL Pohl was named by the Convening Authority as a Commission Judge and appointed as Chief Judge. As Chief Judge he decides who will be detailed to any cases for which military commissions have been convened under the Military Commissions Act.

When this case was re-referred in 2011, COL Pohl detailed himself to this case. When the prosecution negotiated a plea agreement with Majid Kahn, COL Pohl detailed himself to the case. Now, COL Pohl has additionally detailed himself to preside over *United States v. Mohammad, et al.* As a consequence, COL Pohl now presides over all the pending capital cases in Guantanamo and every military commission convened for a so-called High-Value Detainee.

It is likely that these cases will explore serious questions of evidence, including claims of torture. *See, e.g.*, Unclassified Version of CIA Inspector General's Report at 44 & 90 (government agents threatened waterboarded both the accused and Khalid Shaykh Muhammed). These cases may involve efforts to demonstrate that the torture inflicted on the accused was done

with the full knowledge, consent and permission of high level government officials. *See, e.g., id.* at 23 (Noting that the Agency was consulting with Office of Legal Counsel as well as “appropriate senior national security and legal officials[.]”) Further, the Nashiri case involves serious and credible allegations of CIA efforts to destroy evidence, notably videotapes of Nashiri. *Id.* at 36.

COL Pohl’s status as a retiree recall requires that his contract be renewed year-to-year. Should cases be dismissed, COL Pohl’s contract very well may not be renewed. It is unclear who has responsibility for deciding whether to renew COL Pohl’s contract, but it is undisputed that the same sovereign that is seeking to prosecute and ultimately execute Mr. Nashiri makes the decision of whether to keep COL Pohl employed. Should COL Pohl decide matters adversely to the Government, he would reasonably fear that his contract might not be renewed.

The Defense raises this latter point because this is precisely what happened to the former head of the trial judiciary for military commissions. COL Peter Brownback, USA (Ret.) was the chief presiding officer through most of the commissions’ early years, beginning in 2004. He also served under a retiree recall status that required his contract to be renewed annually. This was done every year between 2004-2008, including long periods when the commission process was dormant due to intervening court decisions.

Following the enactment of the Military Commissions Act of 2006, COL Brownback was assigned as the military judge to preside over *United States v. Khadr*. At Khadr’s arraignment in June 2007, COL Brownback dismissed all charges without prejudice on jurisdictional grounds. This was adverse to the government’s interests. COL Brownback’s ruling drew public criticism from the White House and DoD. *Failed terror trials leave U.S. Defense Department scrambling, emboldens Democrat critics*. ASSOCIATED PRESS, 5 June 2007 (Attachment A); *Review of Khadr*

ruling sought; Pentagon asks judge to reconsider dismissal. TORONTO STAR, 9 June 2007

(Attachment B). The Department of Defense was forced to “scramble” and start up the Court of Military Commission Review, which did not yet exist on anything but paper, in order to hear an interlocutory appeal by the government to reverse COL Brownback’s ruling. *Pentagon plans to appeal dismissal of Khadr charges*, STAR PHOENIX, 9 June 2007 (Attachment C). This stalled the commencement of the military commission process by approximately six months and caused considerable embarrassment to the government. COL Brownback later acknowledged that he had taken “heat” in connection with this decision, a statement that was reported in the news media. *Decks Are Stacked in War Crimes Cases, Lawyers Say*. N.Y. TIMES, 9 November 2007 (Attachment D).

A few months later, COL Brownback was due to have his contract renewed, as it had been since 2004. Instead, his contract was terminated. COL Ralph Kohlmann, then the Chief of the Trial Judiciary, issued a statement that said that “the change of military judge in *US v. Khadr* was made by me solely because COL Brownback would not be on active duty to try the case to completion.” COL Kohlmann indicated that despite a request to extend COL Brownback’s period of active duty recall from retirement, the Army had elected “not to extend” COL Brownback’s recall orders. Both COL Kohlmann and COL Stephen Henley, then-serving Chief Trial Judge, U.S. Army Trial Judiciary, claimed to have supported COL Brownback’s requested extension. (Attachment E). COL Brownback’s removal was widely-reported in the news media and has elicited expressions of concern over the perceived fairness of this Military Commission. *See, e.g., Editorial: An appearance of interference*, GLOBE AND MAIL, 3 June 2008 (Attachment F).

6. **Argument.**

In an Article III court, the judge presiding over a capital case would have the guarantees of judicial independence that the Founders enshrined in the Constitution. These guarantees are designed to prevent any judge from having a personal stake in the outcome of any case to come before him or her. Article III judges are appointed by the President. Article III judges are individually confirmed by the Senate. Article III judges have life tenure absent extreme, illegal behavior. Article III judges' salary can never be lowered. In every district with more than one district judge, which is now every district, the selection of the judge for a particular case is random. If two cases are related, a party can make a motion to have them heard by the same judge or otherwise joined, but whether such a request is granted is something that can be litigated on the record by the opposing party.

In short, significant institutional and practical safeguards ensure that the only vested interest an Article III judge is likely to have is in the institutional integrity of the judicial system. If those safeguards break down and a judge happens, by chance, to have some personal interest in the case, he or she is legally obligated to recuse. 28 U.S.C.A. § 455. If a judge declines a recusal request, that decision is subject to interlocutory appeal. *Cobel v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003).

None of those protections exist here.

A. COL Pohl's selection was not random.

COL Pohl was hand-selected as chief judge by the Convening Authority. The Convening Authority uses no binding or even known criteria to decide who is appropriate for this role. As the military judge acknowledged at the last hearing, the Convening Authority serves substantially the same role as a U.S. Attorney. The Convening Authority's selection of COL

Pohl as chief judge therefore presents a situation where the judge in this case was hand-selected by the same government official whose duty is to ensure the successful prosecution of this very case.

Even in courts-martial, the Convening Authority does not, either directly or indirectly, choose the military judge. In courts-martial, a given military judge's service in a given case is, in the usual course, dictated by the regional command in which a particular case arises.

COL Pohl's service on this and all of the other HVD cases is a result of his choosing himself for that role after being hand-chosen by the very individual who initiated the prosecution of these cases. When questioned about this decision, COL Pohl refused to comment and provided no insight into why he chose himself for all the HVD cases. Because he has admitted to having no judicial experience presiding over a capital case or a complex document case, there is no obvious rationale based on unique experience. Indeed, at least eight other military judges are eligible to serve on military commission cases, who likely have comparable courts-martial experience. The reasonable public appearance, therefore, is that COL Pohl wishes to leave an outsized mark on the military commissions of the HVDs – an agenda that is separate and in many respects at odds with serving as an impartial arbiter of the law in those cases.

B. COL Pohl's independence is inhibited by his pecuniary interests.

COL Pohl has no life tenure or salary protection. Indeed, he does not even enjoy the job security that active duty military officers would enjoy in a similar position. Active duty military judges in courts-martial are, of course, selected and supervised not by convening authorities, but instead by the service JAGs. *See* 10 U.S.C. § 826 (Article 26). Because COL Pohl is under a retiree-recall status, his contract is up for renegotiation every year. As a consequence, he serves at the pleasure of the Army and the endorsement of the Convening Authority. His ultimate

vulnerability to the good graces of the very government that is seeking to prosecute, convict and execute Mr. Nashiri creates an irreconcilable conflict of interest that requires recusal and offends due process if left unremedied. “It is elementary that a fair trial in a fair tribunal is a basic requirement of due process.” *Weiss v. United States*, 510 U.S. 163, 178 (1994) (internal quotation omitted). And it goes without saying that “[a] necessary component of a fair trial is an impartial judge.” *Id.* (citations omitted).

In *Tumey v. Ohio*, 273 U.S. 510, 524 (1927), for example, the Supreme Court held that due process is denied if the officer deciding a case has “the slightest pecuniary interest” in the outcome. The leading federal case on comparable circumstances held that “we think recusal is required when, at the very time a case is about to go to trial before a judge, he is in negotiation—albeit preliminary, tentative, indirect, unintentional, and ultimately unsuccessful—with a lawyer or law firm or party in the case over his future employment. This would be clear enough if the negotiation were with only one side of the case, for a judge cannot have a prospective financial relationship with one side yet persuade the other that he can judge fairly in the case.” *Pepsico v. McMillen*, 764 F.2d 458, 461 (7th Cir. 1985) (Posner, J.).

In fact, the prospective influences at play in *Pepsico* were far less pernicious than those here. In *Pepsico*, a retiring federal judge had enlisted the services of a professional headhunter, who unbeknownst to him, had contacted various law firms for possible employment. Two of the firms the headhunter had contacted represented each of the opposing parties in a case before him. The judge in *Pepsico*, therefore, did not even know that the Sword of Damocles may be hanging over his head and that one or both of the parties could be holding his future livelihood in their hands. But as the Supreme Court has long held, it “does not depend upon whether ... the judge actually knew of facts creating an appearance of impropriety so long as the public might

reasonably believe that he or she knew.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988).

Complex capital trials take years to complete. Indeed, even the most run-of-the-mill military commissions have required years of litigation. Because of his status, there is no institutional safeguard to ensure that COL Pohl is not removed in the middle of a case, indeed even in the middle of trial, if he rules contrary to the interests of the government. By design, COL Pohl serves at the pleasure of very government bureaucrats who have a vested interest in ensuring nothing but successful prosecutions, convictions and death sentences. His perceived failure to facilitate that objective could lead to his termination along with the salary and benefits he obtains from his temporary duty status.

Indeed, COL Pohl’s service on this case is under the shadow of this very scenario coming to pass. Over the past decade, only one military judge in only one case ever dismissed a case. COL Brownback served for four years under retiree-recall status and had even served as the chief presiding officer. His contract had been renewed three times, during which time his reputation was decidedly pro-government. During this time, military commissions only proceeded in fits and starts and COL Brownback was continually renewed for further employment despite prolonged periods of dormancy. However, when he dismissed charges without prejudice in one case based on what he perceived to be a fatal jurisdictional defect, the government denied him the opportunity for continued employment within months of having done so. This was over his objection. This was over the objection of then-serving Chief Judge of the Military Commission Trial Judiciary. And this was despite the endorsement of the Chief Judge of the Army Trial Judiciary. Rightly, COL Brownback’s termination was widely seen by the public as reflecting the lack of judicial independence of those serving in the commission process.

“The dignity and independence of the judiciary are diminished when the judge comes before the lawyers in the case in the role of a suppliant for employment. The public cannot be confident that a case tried under such conditions will be decided in accordance with the highest traditions of the judiciary.” *Pepsico*, 764 F.2d at 461.

Even apart from the pernicious influence of those in the government who directly control COL Pohl’s livelihood, there are more subtle pressures that would rationally inhibit COL Pohl from ruling in ways that would make Mr. Nashiri’s continued prosecution by a military commission unviable. In *Connally v. Georgia*, 429 U.S. 245 (1977) (*per curiam*), the Supreme Court invalidated a system in which justices of the peace were paid for issuance but not for non-issuance of search warrants. The Court reasoned that this presented yet “another situation where the defendant is subjected to what surely is judicial action by an officer of a court who has ‘a direct, personal, substantial, pecuniary interest’ in his conclusion to issue or to deny the warrant.” *Id.* at 250.

Similarly, COL Pohl’s continued employment depends on his presiding over active cases. If his docket becomes empty, the rationale for re-upping his contract year after year becomes less defensible from the vantage of governmental expenditures. This gives him a rational and compelling disincentive to dismiss any case, regardless of how strong the merits for doing so may be. Should COL Pohl’s docket shrink, he reasonably knows that the additional income he draws from his service as a military commission judge will end shortly thereafter.

COL Pohl’s financial interest and the fact that his employment can be terminated should he rule adversely to the prosecution creates at least a perception of bias, if not actual bias. “The dignity and independence of the judiciary are diminished when the judge comes before the lawyers in the case in the role of a suppliant for employment. The public cannot be confident that

a case tried under such conditions will be decided in accordance with the highest traditions of the judiciary.” *Pepsico*, 764 F.2d at 461.

C. COL Pohl’s similar service in the Abu Ghraib cases creates the reasonable public perception that he is willing to facilitate the cover-up of CIA abuses.

Compounding the public’s skepticism respecting the appearance of his having a personal stake in the continuation of these cases, according to his *voir dire*, COL Pohl presided over all the courts-martial arising out of the Abu Ghraib prisoner abuse scandal. Research into the history of those trials reveals that the defendants in those trials sought to demonstrate that they were acting pursuant to orders given by their superior officers and that those orders were in response to directions and policies that came from senior military and civilian commanders including Secretary of Defense Rumsfeld.

COL Pohl ruled such evidence inadmissible, despite the value such a showing might have had in negating the *mens rea* of the low-level enlisted held responsible for the abuse, let alone its value as mitigating evidence. The governmental officials responsible for formulating the policies that led to the abuse at Abu Ghraib, those who solicited and drafted legal memoranda opining that ill-treatment of detainees was lawful, as well as the superior officers responsible for communicating those orders and creating a command climate in which such behavior was expected, were shielded from scrutiny and accountability. The likelihood that such evidence would have shown the involvement of non-military intelligence agencies in the interrogation and abuse of Iraqi prisoners was kept from entering the record.

As a consequence, COL Pohl ensured that the only people held accountable were low-level enlisted personnel. Many observers have suggested that COL Pohl assisted the senior commanders and the Administration officials responsible for the Abu Ghraib abuses in hiding their role in the those abuses and escaping potential criminal liability. *See, e.g.*, Frank Rich, *On*

Television, Torture Takes a Holiday. N.Y. TIMES, 23 January 2005 (Attachment G) (“What happened in the Fort Hood courtroom this month was surely worthy of as much attention as Harry’s reenactment of ‘Springtime for Hitler’: it was the latest installment in our government’s cover up of war crimes.”).

When this case was re-referred in 2011, COL Pohl detailed himself to this case. When the prosecution negotiated a plea agreement with Majid Kahn, COL Pohl detailed himself to that Commission for the acceptance of the plea. Now, COL Pohl has detailed himself to preside over 9/11 case. COL Pohl now presides over all the pending capital cases in Guantanamo and every case involving the trial of a so-called High Value Detainee.

He is the only jurist who will consider the many difficult issues that will be presented by these complex and challenging prosecutions. The reality is that one cannot shake the perception that COL Pohl’s mission in these cases, like Abu Ghraib, is to shield others from punishment who perhaps should be punished or even be labeled criminals under US treaty obligations. Because the perception can clearly exist, COL Pohl should recuse himself from this, if not both capital commissions and appoint a separate judge for each commission.

Each of the capital cases will explore serious questions of evidence and allegations of torture. Each case will involve efforts to demonstrate that the torture inflicted on the accused was illegal and was done with the full knowledge, consent and permission of high federal officials. The Nashiri case involves serious allegations of CIA efforts to destroy evidence, notably videotapes. The judge presiding over this commission has tremendous power to shape the evidence and to either promote or hinder the search for the truth, a search that the prosecution will undoubtedly resist at every turn.

“[J]ustice must satisfy the appearance of justice.” *Offutt v. United States*, 348 U.S. 11, 14 (1954). The public, some of which have grave doubts about the legitimacy of the military commission already, are entitled to better than a Judge who however well-meaning can be accused of shielding high military and civilian individuals from responsibility for some of the very policies that will be at issue in this case.

7. **Oral Argument:** Requested
8. **Witnesses:** None. However, additional voir dire of the judge is requested.
9. **Conference with Opposing Counsel:** The Defense has conferred with the prosecution and they object to this motion.
10. **List of Attachments:**
 - A. *Failed terror trials leave U.S. Defense Department scrambling, emboldens Democrat critics.* ASSOCIATED PRESS, 5 June 2007;
 - B. *Review of Khadr ruling sought; Pentagon asks judge to reconsider dismissal.* TORONTO STAR, 9 June 2007;
 - C. *Pentagon plans to appeal dismissal of Khadr charges,* STAR PHOENIX, 9 June 2007;
 - D. *Decks Are Stacked in War Crimes Cases, Lawyers Say.* N.Y. TIMES, 9 November 2007;
 - E. LTC Sowder e-mail thread of 2 June 2008;
 - F. *Editorial: An appearance of interference.* GLOBE AND MAIL, 3 June 2008;
 - G. Frank Rich, *On Television, Torture Takes a Holiday.* N.Y. TIMES, 23 January 2005.

/s/ Richard Kammen
RICHARD KAMMEN
DOD Appointed Learned Counsel

/s/ Stephen Reyes
STEPHEN C. REYES
LCDR, JAGC, USN
Detailed Defense Counsel

/s/Allison Danels
ALLISON C. DANELS, Maj, USAF
Assistant Detailed Defense Counsel

CERTIFICATE OF SERVICE

I certify that on the 14th day of June I electronically filed the forgoing document with the Clerk of the Court and served the forgoing on all counsel of record on the date of filing.

/s/ Stephen Reyes
STEPHEN C. REYES
LCDR, JAGC, USN
Detailed Defense Counsel

ATTACHMENT

A

10 of 11 DOCUMENTS

Copyright 2007 Associated Press
All Rights Reserved
Associated Press Worldstream

June 5, 2007 Tuesday 10:02 PM GMT

SECTION: INTERNATIONAL NEWS**LENGTH:** 939 words**HEADLINE:** Failed terror trials leave U.S. Defense Department scrambling, emboldens Democrat critics**BYLINE:** By ANNE FLAHERTY, Associated Press Writer**DATELINE:** WASHINGTON**BODY:**

Failed attempts to charge two terror suspects at Guantanamo Bay left the Defense Department scrambling Tuesday to determine a next step and emboldened Democrats who said the rulings exposed a flawed court system.

Military judges ruled Monday that the Pentagon could not prosecute Salim Ahmed Hamdan and Omar Khadr because they had not first been identified as "unlawful" enemy combatants, as required by a law that Congress enacted last year.

Hamdan, of Yemen, is believed to have been chauffeur to al-Qaida leader Osama bin Laden. Khadr is a Canadian who was arrested at 15 on an Afghan battlefield, accused of killing a U.S. soldier.

The decision dealt a blow to the Bush administration in its efforts to begin prosecuting dozens of detainees regarded as the nation's most dangerous terrorist suspects.

U.S. officials chalked up the ruling to semantics and said they were considering their options.

"We certainly disagree with the ruling," said White House spokeswoman Dana Perino on Tuesday. The Defense Department "is looking at the opportunities for appeal, and what they would say."

Lawmakers and legal experts agreed the decision was not necessarily a show stopper for the trials, and new legislation might not be necessary to convict Hamdan and Khadr. Democratic critics, however, said the ruling proved the current law was shabbily written.

Last year, Republicans and the White House pushed through legislation authorizing the war-crimes trials after the Supreme Court threw out President Bush's previous system as illegal and in violation of international treaties.

Bush established the specialized tribunal system shortly after the Sept. 11, 2001, attacks but had not been able to convict any terrorists because of legal hurdles. After the law passed, the administration convicted Australian David Hicks, who pleaded guilty in March to providing material support to al-Qaida. He is serving a nine-month sentence in Australia.

"Five-and-a-half years later, we find what happens with that kind of arrogant, go-it-alone attitude even conservative courts say 'no,'" said Sen. Patrick Leahy, Democratic chairman of the Senate Judiciary Committee.

Leahy and other Democrats have drafted legislation that would deal with various aspects of the law they say is unfair or unconstitutional.

On Thursday, Leahy's panel is expected to pass a bill that would allow detainees to protest their detentions in federal court; the law passed last year specifically stripped federal courts of their ability to hear habeas corpus challenges.

Failed terror trials leave U.S. Defense Department scrambling, emboldens Democrat critics Associated Press
Worldstream June 5, 2007 Tuesday 10:02 PM GMT

The measure is likely to be offered as an amendment to a \$649 billion (euro479.6 billion) defense policy bill on the Senate floor this month.

Co-sponsors of the bill include Sen. Arlen Specter, the top Republican on the Judiciary Committee, and four Democratic presidential candidates: Sens. Hillary Rodham Clinton, Barack Obama, Christopher Dodd and Joe Biden.

"The current system of prosecuting enemy combatants is not only inefficient and ineffective, it is also hurting America's moral standing in the world and corroding the foundation of freedom upon which our nation was built," said Dodd, who has a separate proposal that would make more sweeping changes.

The defense policy bill, drafted by Democratic Sen. Carl Levin and approved by his Senate Armed Services Committee, already is on track to grant new rights to terror suspects held at Guantanamo Bay, including access to lawyers regardless of whether the prisoners are put on trial. The bill also would narrow the definition of an enemy combatant and tighten restrictions on the types of evidence used to keep a person detained.

Sen. Dianne Feinstein, another Democrat, a member of the Judiciary Committee, said she wants to go further and to close Guantanamo Bay prison altogether. The prison holds some 380 military detainees suspected of terrorism.

Republicans are expected to oppose most of the Democratic proposals, particularly Leahy's attempt to restore habeas corpus rights for detainees.

Sen. Lindsey Graham, a Republican who helped write the law being used to prosecute detainees, said he thought Monday's ruling showed the process was working.

"In the rule of law, words matter," said Graham, referring to the distinction made by the judges that the detainees must be specifically deemed "unlawful" before being subjected to the military commission. "Lawful" enemy combatants are entitled to prisoner of war status under the Geneva Conventions.

"The best thing we can do is let the legal community work this out before we try to jump in," said Graham, a member of the Armed Services and Judiciary committees.

Navy Cmdr. Jeffrey Gordon, a Pentagon spokesman, said Tuesday the prosecution is considering its options, which include filing an appeal, and noted that the court of military commissions review would be the "appropriate venue for the appeals process."

One hurdle, however, is that the review court does not exist yet, said Marine Col. Dwight Sullivan, chief of military defense attorneys at Guantanamo Bay.

Another hurdle is sentiment in Congress that Democrats were not involved in helping create the trials and that the law was hastily written. Then there is the administration's patience in general.

"The only way this will spell the end of the military commissions is if this is the straw that breaks the camel's back," said Gregory S. McNeal, a law professor at Pennsylvania State University. "In other words, it only means the end if this is the final delay which forces the executive branch to reconsider their whole policy. I don't believe that is likely."

Associated Press writer Michael Warren in Mexico City contributed to this report.

LOAD-DATE: June 6, 2007

ATTACHMENT

B

7 of 16 DOCUMENTS

Copyright 2007 Toronto Star Newspapers, Ltd.
The Toronto Star

June 9, 2007 Saturday

SECTION: WORLD AND COMMENT; Pg. AA01**LENGTH:** 386 words**HEADLINE:** Review of Khadr ruling sought;
Pentagon asks judge to reconsider dismissal**BYLINE:** Tim Harper, Toronto Star**DATELINE:** WASHINGTON**BODY:**

The Pentagon has formally requested a military judge reconsider his decision to dismiss war crimes charges against Canadian Omar Khadr.

Officials here say such a request is "standard practice" but others said yesterday it appeared to be an attempt by the Bush administration to buy enough time to properly establish a three-judge military appeals panel and launch an appeal of two decisions at Guantanamo Bay, Cuba, which left its military commissions process in disarray.

Navy Cmdr. Jeffrey Gordon, a Pentagon spokesperson, said if the judges refuse to reconsider their rulings, appeals will be launched.

Khadr, the 20-year-old Canadian who has languished at the Cuban prison for five years, and Salim Ahmed Hamdan, a Yemeni alleged to have been Osama bin Laden's driver, had charges against them dismissed Monday.

Khadr was 15 when he was captured in 2002 on the battlefield in Afghanistan following a pitched battle with U.S. forces. He is charged with killing one U.S. soldier and wounding another.

The judges in the two cases said the Pentagon could not prosecute them because they had not been identified as "unlawful" enemy combatants.

The U.S. defence department maintains the judges' decisions were rooted in semantics, but a number of analysts here believe the ruling goes to the heart of the system for trying combatants in the war on terror which U.S. President George W. Bush has fruitlessly tried to begin. The 2006 legislation passed by the U.S. Congress which created the military commissions gave them jurisdiction over "alien unlawful enemy combatants" but the Pentagon has classified Khadr, Hamdan and an estimated 380 others detainees as "enemy combatants."

Gordon said the U.S. government believes it is "implicit" in that classification that those at Guantanamo are unlawful combatants.

"All of them are unlawful by the nature of their activities," he said.

He said the Pentagon judges them unlawful because they are not members of the armed forces of any recognized nation state, serve in no army with an official chain of command, do not display their arms openly, do not wear a uniform and do not have any rank insignia.

Bryan Whitman, the chief Pentagon spokesperson, said there was no "material" difference between the two terms.

Most observers consider it unlikely the judges would change their minds.

ATTACHMENT

C

6 of 58 DOCUMENTS

Copyright 2007 The Star Phoenix, a division of Canwest MediaWorks Publication Inc.
All Rights Reserved
The Star Phoenix (Saskatoon, Saskatchewan)

June 9, 2007 Saturday
Final Edition

SECTION: WORLD; Pg. A13

LENGTH: 503 words

HEADLINE: Pentagon plans to appeal dismissal of Khadr charges

BYLINE: Sheldon Alberts, CanWest News Service

DATELINE: WASHINGTON

BODY:

WASHINGTON -- The Pentagon announced Friday it will challenge a military judge's decision to dismiss all terrorism charges against Canadian Omar Khadr, even as the Bush administration scrambles to assemble an appellate court to hear a formal appeal of the ruling.

Jeffrey Gordon, a Pentagon spokesperson, said military prosecutors will file a motion asking army Col. Peter Brownback to reconsider his decision earlier this week to throw out the U.S. government's case against the 20-year-old Canadian detainee.

"It's the first route you take. It's standard procedure," Gordon said. "If you don't agree with the judge's findings, you file a motion to reconsider. That way, when you go to the appeals court, you will have exhausted every possible way to get your case resolved."

During a court hearing Monday at the American military base in Guantanamo Bay, Cuba, Brownback ruled U.S. military commissions lacked jurisdiction to put Khadr on trial because the Pentagon had failed to show he was an "unlawful enemy combatant" as required by law.

Khadr, accused of throwing a grenade that killed U.S. army Sgt. Christopher Speer in a 2002 firefight in Afghanistan, had previously been designated an "enemy combatant," leaving open the possibility he was lawfully waging war against American troops.

The distinction is potentially important for Khadr because he would be entitled to full prisoner-of-war rights if deemed to be a lawful combatant.

While the Pentagon claims the charges against Khadr were dismissed on a "semantic" technicality, human rights groups argue the ruling could lead to the collapse of the Bush administration's controversial war crimes tribunals.

The Khadr ruling initially caught the Pentagon off guard, with no avenue to appeal the decision because the Court of Military of Commission Review had not yet been assembled.

As of Friday, the appeals court "has been established, judges have been appointed, and the court is prepared to receive appeals," Gordon said.

The Pentagon acknowledged, however, the fledgling court was not yet ready to hear appeals.

Khadr's defence attorneys said the Pentagon's decision amounts to a delaying tactic as the Bush administration plots its next move.

Pentagon plans to appeal dismissal of Khadr charges The Star Phoenix (Saskatoon, Saskatchewan) June 9, 2007
Saturday

"I think, strategically, the prosecution's gambit is to use the motion for reconsideration to buy time to get this appeals court up and running in some form and fashion," said Lt.-Cmdr. William Kuebler, the military defence attorney detailed to Khadr's case.

"I don't think it exists in the sense that we would think a court exists. They have a clerk, so theoretically they have a warm body you could send an appeal to."

Khadr, who has been detained at Guantanamo since late 2002, had been charged with murder, attempted murder, conspiracy, spying and providing material aid to terrorists.

In the wake of the legal developments at Guantanamo this week, Democratic and Republican lawmakers have said they are considering legislation to amend the Military Commissions Act to clarify the law establishing the war crimes tribunals.

LOAD-DATE: June 9, 2007

ATTACHMENT

D

6 of 15 DOCUMENTS

Copyright 2007 The New York Times Company
The New York TimesNovember 9, 2007 Friday
Late Edition - Final**SECTION:** Section A; Column 0; National Desk; Pg. 23**LENGTH:** 676 words**HEADLINE:** Decks Are Stacked in War Crimes Cases, Lawyers Say**BYLINE:** By WILLIAM GLABERSON**DATELINE:** GUANTANAMO BAY, Cuba, Nov. 8**BODY:**

The administration's problem-plagued military commission system started up here again Thursday, but it began with contentious new claims that the war crimes cases are unfairly stacked against detainees.

Military defense lawyers said that on the eve of the hearing, military prosecutors told them for the first time of a government witness who might be able to help a detainee, Omar Ahmed Khadr, counter the war crimes charges on which he was arraigned Thursday.

Mr. Khadr, the only Canadian detainee at Guantanamo, has been held here since he was 16. He is now 21.

"It is an eyewitness the government has always known about," said Lt. Cmdr. William C. Kuebler of the Navy, Mr. Khadr's chief military lawyer, who questioned why the military was only now informing the defense. Mr. Khadr is charged with the murder of an American soldier, spying, material support for terrorism and other charges.

In court, military prosecutors accomplished one of their goals after a long delay in the commission cases by completing the new arraignment for Mr. Khadr. It was the first arraignment since all Guantanamo war crimes cases were stalled by legal rulings against the prosecutors in June that were later overturned.

Thursday's proceedings were important for Bush administration officials, who are frustrated at the pace of the Guantanamo war crimes cases, which have repeatedly been halted by practical difficulties and court rulings.

Mr. Khadr appeared in court wearing a white prison uniform -- the color indicated he was a compliant detainee -- and was relaxed throughout the two-hour hearing.

Mr. Khadr's case has drawn wide attention, both because of his age and because his Toronto family has deep ties to Al Qaeda. His lawyers argue that he should be treated with the leniency often accorded child soldiers under international law, since he was a teenager at the time of the alleged crimes. Mr. Khadr did not enter a plea, and no trial date was set.

The controversy over the witness emerged after the hearing was completed. Defense lawyers said the new disclosures by prosecutors in closed-door meetings showed that the system was not intended to be fair.

Michael J. Berrigan, the deputy chief military defense lawyer for the Guantanamo cases, told reporters that defense lawyers had been told Tuesday night of the existence of a witness who could provide information that could help Mr. Khadr.

Decks Are Stacked in War Crimes Cases, Lawyers Say The New York Times November 9, 2007 Friday

"How we can have newly discovered evidence is beyond me," since prosecutors have been pursuing charges against Mr. Khadr for years, Mr. Berrigan said. The lawyers said they could not describe the witness because prosecutors told them the information was classified.

"Every time you all come down here you see the problems in this process," Mr. Berrigan said. Spokesmen for the military said prosecutors turn over information that could help a defendant when they learn of it. The military prosecutors declined to answer questions from reporters.

In response to defense assertions that military commission participants are under pressure from superiors to get war crimes cases moving quickly, a spokeswoman for the Office of Military Commissions, Lt. Catheryne Pully, said, "Our interest is in making sure the process is done correctly, not quickly."

Commander Kuebler used the courtroom session to mount a strenuous challenge to the military judge hearing the case, Col. Peter E. Brownback III of the Army.

Commander Kuebler noted that the judge had barred the defense from raising challenges at this stage of the case to the constitutionality of the military commission system. He added that the judge had told him in a closed-door meeting that he had "taken a lot of heat" after issuing one of the rulings in June that stalled the commission cases. Pentagon officials and a White House spokesman said they disagreed with the June rulings.

Colonel Brownback, clearly irritated, said he had not intended Commander Kuebler to disclose that conversation but said, "I never said anyone who had any influence over me said anything."

URL: <http://www.nytimes.com>

GRAPHIC: PHOTO: A detention area at Guantanamo Bay, Cuba, where a military commission began hearing new claims yesterday. (PHOTOGRAPH BY TODD HEISLER/THE NEW YORK TIMES)

LOAD-DATE: November 10, 2007

ATTACHMENT

E

From: Sowder, William, LTC, DoD OGC
Sent: Monday, June 02, 2008 9:31 AM
To:



Subject: Comment Re MJ Change in US v Khadr

Col Kohlmann has directed that I forward the below email to appropriate persons.

v/r,

LTC William C. Sowder, USAR
Attorney Advisor
Military Commissions Trial Judiciary
Department of Defense

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

From: Kohlmann Col Ralph H [REDACTED]
Sent: Monday, June 02, 2008 9:03 AM
To: Sowder, William, LTC, DoD OGC
Subject: Comment Re MJ Change in US v Khadr

LTC Sowder: Please forward this message to the appropriate persons.

On 29 May 2008, I detailed COL Patrick Parrish as the military judge in the case of United States v. Khadr. COL Peter E. Brownback III had been detailed as the military judge prior to that action.

Rule for Military Commission 505 reads as follows: "Before the military commission is assembled, the military judge may be changed by the Chief Trial Judge, without cause shown on the record." This provision of the Manual for Military Commissions is a virtual mirror of its counterpart in the Manual for Courts Marital. As in a court-martial involving a trial before members, the point of "assembly" in a military commission occurs following the seating of the members. The case of U.S. v Khadr is still in the pre-assembly stage of the proceedings. Since a change of military judge at the pre-assembly stage does not require a showing of good cause on the record, no explanatory comment accompanied the notice of the change issued with regard to U.S. v Khadr on 29 May 2008. It is worthy of

UNCLASSIFIED//FOR PUBLIC RELEASE

note that the simple language used in the U.S. v Khadr notice of change was the same as that used in the several change notices issued in other Military Commissions cases.

As a general rule, it is inappropriate for individual judges or the Military Commissions Trial Judiciary to join in the public debate concerning the Military Commissions. In that the change of military judge in U.S. v Khadr has generated discussion about the independence of the judiciary, however, I have determined that a short comment is in order.

Colonel Brownback retired from active duty after 30 years of commissioned service in 1999. He was initially recalled to active duty for a period of one year in conjunction with the Military Commissions in 2004. Colonel Brownback's recall orders were then extended by the Army for an additional year on three occasions. His current recall orders will expire on 29 June 2008.

In late 2007 I was aware that COL Brownback's recall orders expired on 29 June 2008. In order to facilitate Colonel Brownback's ability to preside over the case of United States v. Khadr through its conclusion, I requested that an additional extension to his orders be issued. Colonel Brownback was aware of my request and stated that he was willing to continue in the service of his country for as long as deemed appropriate by the cognizant authorities. The Army ultimately decided against issuing an additional extension to COL Brownback's recall orders.

The decision not to extend Colonel Brownback's recall orders for a fifth year was made by the Army in February 2008. It is my understanding that this decision was based on a number of manpower management considerations unrelated to the Military Commissions process.

In light of that decision, it became apparent to Colonel Brownback and myself that the litigation in U.S. v Khadr might extend beyond Colonel Brownback's period of recalled active service. Accordingly, we had a full discussion regarding the most appropriate time for him to hand the case off to another judge if and when it became clear that the matter would not be resolved before 29 June 2008. We ultimately determined that the best time to make the change would be after completion of what are referred to as the "law motions," but before litigation of what are referred to as the "evidentiary motions." That point was reached in late May 2008 after Colonel Brownback had issued his ruling on the last of the pending law motions, and the trial start date had been continued such that the trial would not be completed before 29 June 2008.

The change of military judge in US v. Khadr was made by me solely because COL Brownback would not be on active duty to try the case to completion. My detailing of another judge was completely unrelated to any actions that Colonel Brownback has taken in this or any other case. Any suggestion that my detailing of another military judge was driven by or prompted by any decisions or rulings made by Colonel Brownback is incorrect. Any suggestion that COL Brownback asked to return to retired status before the case of US v. Khadr was completed is also incorrect.

V/R,

Ralph H. Kohlmann
Colonel, U.S. Marine Corps
Chief Judge, MCTJ

UNCLASSIFIED//FOR PUBLIC RELEASE

ATTACHMENT

F

5 of 16 DOCUMENTS

Copyright 2008 The Globe and Mail, a division of CTVglobemedia Publishing Inc.
All Rights Reserved
The Globe and Mail (Canada)

June 3, 2008 Tuesday

SECTION: EDITORIAL; KHADR AT GUANTANAMO; Pg. A18**LENGTH:** 488 words**HEADLINE:** An appearance of interference**BODY:**

The sudden removal of the United States military judge overseeing a Canadian's war-crimes case at Guantanamo Bay, Cuba, is disquieting, to say the least. Judicial independence is the core of any fair hearing, and the removal of a judge who had quarrelled with the prosecution makes the new military-commission system for suspected terrorists held at Guantanamo appear to lack independence.

The official explanation from the U.S. tribunals yesterday does not remove the taint of political interference from the military commission that will try Omar Khadr, who was arrested at 15 in Afghanistan and charged with the war crime of murder, being alleged to have killed the U.S. soldier Christopher Speer with a grenade in battle. The tribunals' chief judge says it was the U.S. Army's decision to return the judge, Colonel Peter Brownback, to his retirement. When he says, in wishy-washy language, that the reasons were innocent, he is unconvincing.

The initial explanation turns out to have been not the whole truth. Last week, a tribunal spokesman, Air Force Captain Andre Kok, said the removal was "a mutual decision between Col. Brownback and the Army that he revert to his retired status when his current active-duty orders expire in June." Mr. Khadr's lawyer, Lieutenant-Commander William Kuebler, had argued that the removal was political interference with a judge who had taken Mr. Khadr's side in demanding disclosure from the prosecution during pre-trial hearings. "The judge who was frustrating the government's forward progress is suddenly gone," he said.

Colonel Ralph Kohlmann said yesterday he felt it necessary to address concerns about the independence of the judiciary. Col. Brownback, the chief judge said in a written statement, had been recalled from retirement by the military in 2004 to serve for one year on the Guantanamo military commissions. Three times, the military extended his recall orders, a year at a time, and Col. Kohlmann had personally requested an additional extension so Col. Brownback could see the Khadr trial through to its completion. Col. Brownback, too, was prepared to stay on; he had said he would "continue in the service of his country for as long as deemed appropriate by the cognizant authorities."

As for why those authorities deem it no longer appropriate, Col. Kohlmann said "my understanding" is that it was "based on a number of manpower management considerations unrelated to the Military Commissions process." Given what is at stake for the United States in this trial that is to test the new military-commissions process, given the request from the chief judge that Col. Brownback stay on, and given the strange timing after years of extensions, this explanation is not enough to allay the impression of political interference.

The Stephen Harper government insists it wants to let the process work, but as the judge's removal suggests, this is a questionable process.

LOAD-DATE: June 3, 2008

ATTACHMENT

G

1/23/05 N.Y. Times 21
2005 WLNR 933582

New York Times (NY)
Copyright (c) 2005 The New York Times. All rights reserved.

January 23, 2005

Section: 2

On Television, Torture Takes a Holiday

FRANK RICH

Frank Rich column on near absence of network news coverage of Abu Ghraib prison scandal trial of Specialist Charles A Graner Jr; questions whether Americans want to know truth about US role in incidents of torture; photos (M)

ON the day that the defense rested in the military trial of Specialist Charles A. Graner Jr. for the abuses at Abu Ghraib, American television news had a much better story to tell: "The Trouble With Harry," as Brian Williams called it on NBC. The British prince had attended a fancy dress costume party in Wiltshire (theme: "native and colonial") wearing a uniform from Rommel's Afrika Korps complete with swastika armband. Even by the standards of this particular royal family, here was idiocy above and beyond the call of duty.

For those of us across the pond, it was heartening to feel morally superior to a world-class twit. But if you stood back for just a second and thought about what was happening in that courtroom in Fort Hood, Tex. -- a task that could be accomplished only by reading newspapers, which provided the detailed coverage network TV didn't even attempt -- you had to wonder if we had any more moral sense than Britain's widely reviled "clown prince." The lad had apparently managed to reach the age of 20 in blissful ignorance about World War II. Yet here we were in America, in the midst of a war that is going on right now, choosing to look the other way rather than confront the evil committed in our name in a prison we "liberated" from Saddam Hussein in Iraq. What happened in the Fort Hood courtroom this month was surely worthy of as much attention as Harry's re-enactment of "Springtime for Hitler": it was the latest installment in our government's cover up of war crimes.

But a not-so-funny thing happened to the Graner case on its way to trial. Since the early bombshells from Abu Ghraib last year, the torture story has all but vanished from television, even as there have been continued revelations in the major newspapers and magazines like The New Yorker, The New York Review of Books and Vanity Fair. If a story isn't on TV in America, it doesn't exist in our culture.

The latest chapter unfolding in Texas during that pre-inaugural week in January was broadcast on the evening

news almost exclusively in brief, mechanical summary, when it was broadcast at all. But it's not as if it lacked drama; it was "Judgment at Nuremberg" turned upside down. Specialist Graner's defense lawyer, Guy Womack, explained it this way in his closing courtroom statement: "In Nuremberg, it was the generals being prosecuted. We were going after the order-givers. Here the government is going after the order-takers." As T.R. Reid reported in *The Washington Post*, the trial's judge, Col. James L. Pohl of the Army, "refused to allow witnesses to discuss which officers were aware of events in cellblock One-Alpha, or what orders they had given." While Mr. Womack's client, the ringleader of the abuses seen in the Abu Ghraib photographs, deserved everything that was coming to him and then some, there have yet to be any criminal charges leveled against any of the prison's officers, let alone anyone higher up in the chain of command.

Nor are there likely to be any, given how little information about this story makes it to the truly mass commercial media and therefore to a public that, according to polls, disapproves of the prison abuses by a majority that hovers around 80 percent. What information does surface is usually so incomplete or perfunctorily presented that it leaves unchallenged the administration's line that, in President Bush's words, the story involves just "a few American troops" on the night shift.

The minimizing -- and in some cases outright elimination -- of Abu Ghraib and its aftermath from network news coverage is in part (but only in part) political. Fox News, needless to say, has trivialized the story from the get-go, as hallmarked by Bill O'Reilly's proud refusal to run the photos of Graner & Company after they first surfaced at CBS. (This is in keeping with the agenda of the entire Murdoch empire, whose flagship American paper, *The New York Post*, twice ran Prince Harry's Nazi costume as a Page 1 banner while relegating Specialist Graner's conviction a day later to the bottom of Page 9.) During the presidential campaign, John Kerry barely mentioned Abu Ghraib, giving TV another reason to let snarling dogs lie. Senator John Warner's initially vigilant Congressional hearings -- which threatened to elevate the craggy Virginia Republican to a TV stardom akin to Sam Ervin's during Watergate -- mysteriously petered out.

Since the election, some news operations, most conspicuously NBC, have seemed eager to rally around the winner and avoid discouraging words of any kind. A database search of network transcripts finds that NBC's various news operations, in conscious or unconscious emulation of Fox, dug deeper into the Prince Harry scandal than Specialist Graner's trial. "NBC Nightly News" was frequently turned over to a journalism-free "Road to the Inauguration" tour that allowed the new anchor to pose in a series of jus'-folks settings.

But not all explanations for the torture story's downsizing have to do with ideological positioning and craven branding at the networks. The role of pictures in TV news remains paramount, and there has been no fresh visual meat from the scene of the crime (or the others like it) in eight months. The advances in the story since then, many of which involve revelations of indisputably genuine Washington memos, are not telegenic. Meanwhile, the recycling of the original Abu Ghraib snapshots, complemented by the perp walks at Fort Hood, only hammers in the erroneous notion that the story ended there, with the uncovering of a few bad apples at the bottom of the Army's barrel.

There were no cameras at Specialist Graner's trial itself. What happened in the courtroom would thus have to be explained with words -- possibly more than a few sentences of words -- and that doesn't cut it on commercial

television. It takes a televised judicial circus in the grand O.J. Simpson tradition or a huge crew of supporting players eager (or available) for their 15 minutes of TV fame to create a mediathon. When future historians try to figure out why a punk like Scott Peterson became the monster that gobbled up a mother lode of television time in a wartime election year, their roads of inquiry will all lead to Amber Frey.

A more sub rosa deterrent to TV coverage of torture is the chilling effect of this administration's campaign against "indecent" through its proxy, Michael Powell, at the Federal Communications Commission. If stations are fearful of airing "Saving Private Ryan" on Veterans Day, they are unlikely to go into much depth about war stories involving forced group masturbation, electric shock, rape committed with a phosphorescent stick, the burning of cigarettes in prisoners' ears, involuntary enemas and beatings that end in death. (At least 30 prisoner deaths have been under criminal investigation.) When one detainee witness at the Graner trial testified in a taped deposition that he had been forced to eat out of a toilet, that abuse was routinely cited in newspaper accounts but left unreported on network TV newscasts. It might, after all, upset viewers nearly as much as Bono's expletive at the 2003 Golden Globes.

Even so, and despite the dereliction of network news and the subterfuge of the Bush administration, the information is all there in black and white, if not in video or color, for those who want to read it, whether in the daily press or in books like Seymour Hersh's "Chain of Command" and Mark Danner's "Torture and Truth." The operative word, however, may be "want."

Maybe we don't want to know that the abuses were widespread and systematic, stretching from Afghanistan to Guantanamo Bay, Cuba, to unknown locales where "ghost detainees" are held. Or that they started a year before the incidents at Abu Ghraib. Or that they have been carried out by many branches of the war effort, not just Army grunts. Or that lawyers working for Donald Rumsfeld and Alberto Gonzales gave these acts a legal rationale that is far more menacing to encounter in cold type than the photo of Prince Harry's costume-shop arm-band.

As Mr. Danner shows in his book, all this and more can be discerned from a close reading of the government's dense investigative reports and the documents that have been reluctantly released (or leaked). Read the record, and the Fort Hood charade is unmasked for what it was: the latest attempt to strictly quarantine the criminality to a few Abu Ghraib guards and, as Mr. Danner writes, to keep their actions "carefully insulated from any charge that they represent, or derived from, U.S. policy -- a policy that permits torture."

The abuses may well be going on still. Even as the Graner trial unfolded, The New York Times reported that a secret August 2002 Justice Department memo authorized the use of some 20 specific interrogation practices, including "waterboarding," a form of simulated drowning that was a torture of choice for military regimes in Argentina and Uruguay in the 1970's. This revelation did not make it to network news.

"Nobody seems to be listening," Mr. Danner said last week, as he prepared to return to Iraq to continue reporting on the war for The New York Review. That so few want to listen may in part be a reflection of the country's growing disenchantment with the war as a whole. (In an inauguration-eve Washington Post-ABC News poll, only 44 percent said the war was worth fighting.) The practice of torture by Americans is not only ugly in itself.

It conjures up the specter of defeat. We can't "win" the war in Iraq if we lose the battle for public opinion in the Middle East. At the gut level, Americans know that the revelations of Abu Ghraib coincided with -- and very likely spurred -- the ruthlessness of an insurgency that has since taken the lives of many brave United States troops who would never commit the lawless acts of a Charles Graner or seek some ruling out of Washington that might countenance them.

History tells us that in these cases a reckoning always arrives, and Mr. Danner imagines that "in five years, or maybe sooner, there will be a TV news special called "Torture: How Did It Happen?" Even though much of the script can be written now, we will all be sure to express great shock.

Photos: Specialist Charles A. Graner Jr. and his lawyer, Guy Womack. (Photo by Paul Buck/EPA)(pg. 1); A chance for Americans to take the moral high road: The Prince Harry scandal. (Photo by Reuters)(pg. 17)

--- INDEX REFERENCES ---

COMPANY: [NBC UNIVERSAL INC](#); JUSTICE DEPARTMENT; ABC NEWS; NATIONAL BROADCASTING COMMISSION; FEDERAL COMMUNICATIONS COMMISSION; [NATIONAL BANK OF COMMERCE \(UGANDA\) LTD](#)

NEWS SUBJECT: (Social Issues (1SO05); Government (1GO80); Economics & Trade (1EC26))

INDUSTRY: (Entertainment (1EN08); Celebrities (1CE65))

REGION: (United Kingdom (1UN38); Americas (1AM92); England (1EN10); North America (1NO39); Western Europe (1WE41); Latin America (1LA15); Cuba (1CU43); Middle East (1MI23); Germany (1GE16); Europe (1EU83); Central Europe (1CE50); USA (1US73); Gulf States (1GU47); Iraq (1IR87); New York (1NE72); Caribbean (1CA06); Arab States (1AR46))

Language: EN

OTHER INDEXING: (Rich, Frank; Graner, Charles A Jr (Specialist)) (ABC NEWS; ARMY; BONO; BOOKS; BRIAN; CBS; CHARLES GRANER; DONALD RUMSFELD; FEDERAL COMMUNICATIONS COMMISSION; GRANER; GRANER JR; JUSTICE DEPARTMENT; NBC; NBC NIGHTLY NEWS; ROMMELS AFRIKA KORPS; SADDAM HUSSEIN; SPECIALIST GRANER; TV; WILLIAMS) (Alberto Gonzales; Amber Frey; Bill O'Reilly; Bush; Charles A. Graner Jr.; Danner; Fox; Fox News; Frank Rich; Guy Womack; Harry; History; Hitler; James L. Pohl; John Kerry; John Warner; Mark Danner; Michael Powell; O.J. Simpson; On Television; Paul Buck; Photo; Sam Ervin; Scott Peterson; Seymour Hersh; T.R. Reid; Torture; Truth; Vanity Fair; Virginia Republican; Womack) (Prisoners of War; Torture; United States International Relations; United States Armament and Defense; News and News Media; Television; Terrorism) (Iraq; Abu Ghraib (Iraq))

EDITION: Late Edition - Final

Word Count: 2080

1/23/05 NYT 21

END OF DOCUMENT